

RECEIVED

Case No. 2023-001733 Nov 27 2024

SC Court of Appeals

In

The State of South Carolina
The Court of Appeals

Jian-yun (John) Dong, M.D., Ph.D., Appellant

v.

The Medical University of South Carolina, Respondent

FINAL RECORD ON APPEAL

John Dong, M.D., Ph.D.
Appellant, *pro se*
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Charleston, SC 29492
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Jian Yun Dong M D , plaintiff, et al VS Medical University of South Carolina The

Case Number:	2016CP1006683	Court Agency:	Common Pleas	Filed Date:	12/14/2016
Case Type:	Common Pleas	Case Sub Type:	Breach of Cont 140	File Type:	Jury
Status:	Dismissed	Assigned Judge:	Toal, Jean H		
Disposition:	Dismissed by Court - not Rule 40J	Disposition Date:	07/17/2023	Disposition Judge:	Toal, Jean H
Original Source Doc:		Original Case #:		Restore Reason:	Reopened Case
Judgment Number:		Court Roster:			

Case Parties **Judgments** **Tax Map Information** **Associated Cases** **Actions** **Financials**

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Dong, Jian Yun M D	Notice of Appeal as to Order Granting Dfs Motion/Summary/Srv	Filing		11/27/2023-07:44		
Dong, Jian Yun M D	NEF(10-04-2023 11:09:06 AM) Order/Other	Filing		10/04/2023-11:09		
Dong, Jian Yun M D	Order Denying Motion f/Recusal Bases on Appearance of Bias	Order		10/04/2023-11:09		
Dong, Jian Yun M D	Motion/Recusal Based on Appearance of Bias & Crt/Sr	Motion		09/28/2023-11:53	10/04/2023-11:53	
Dong, Jian Yun M D	Reply to Defnts Response to Pltffs Motion for Amendment/Srv	Filing		09/28/2023-07:59		
Dong, Jian Yun M D	NEF(09-22-2023 09:33:43 AM) Order/Other	Filing		09/22/2023-09:33		
Dong, Jian Yun M D	Order Denying Motion for Amnd of Order Grant Defnt Sum Judg	Order		09/22/2023-09:33		
Medical University of South Carolina The	NEF(08-16-2023 04:04:36 PM) Response	Filing		08/16/2023-16:09		
Medical University of South Carolina The	Response to Motion to Amend, Crt/Svc	Filing		08/16/2023-16:04		
Dong, Jian Yun M D	Motion for Amendedment Order Granting Summary Judgment	Motion		07/28/2023-16:27	09/22/2023-16:27	
Medical University of South Carolina The	NEF(07-17-2023 03:04:50 PM) Order/Summary Judgment	Filing		07/17/2023-15:05	07/17/2023-15:05	
Medical University of South Carolina The	Order Granting Motion for Summary Judgment	Order		07/17/2023-15:04	07/17/2023-15:04	
Dong, Jian Yun M D	NEF(07-17-2023 01:23:46 PM) Order/Electronic Form 4	Filing		07/17/2023-13:24	07/17/2023-13:24	
Dong, Jian Yun M D	Order/Rehearing of Dfs Motion for Summary Judgment is Denied	Order		07/17/2023-13:23	07/17/2023-13:23	
Dong, Jian Yun M D	Motion for Rehearing on PL Response in Opposition to Summary	Motion		06/27/2023-09:39	07/17/2023-09:39	
Dong, John M D Ph D	Memo in Support of his Opposition to Summary Judgment	Filing		06/27/2023-07:50	07/17/2023-07:50	
Dong, Jian Yun M D	NEF(06-20-2023 04:33:07 PM) Order/Electronic Form 4	Filing		06/20/2023-16:33	07/17/2023-16:33	
Dong, Jian Yun M D	Order/Motion for Equal Time is Granted	Order		06/20/2023-16:33	07/17/2023-16:33	
Medical University of South Carolina The	NEF(06-09-2023 03:10:30 PM) Order/Order Cover Sheet \$25....	Filing		06/09/2023-15:48	07/17/2023-15:48	
Medical University of South Carolina The	Order/Order Cover Sheet \$25.00	Filing		06/09/2023-15:10	07/17/2023-15:10	
Dong, Jian Yun M D	Motion/Continuance & Certificate of Service	Motion		05/26/2023-16:43	07/17/2023-16:43	
Medical University of South Carolina The	NEF(05-23-2023 02:43:25 PM) Notice/Notice of Appearance	Filing		05/23/2023-14:51	07/17/2023-14:51	
Medical University of South Carolina The	Notice/Notice of Appearance	Filing		05/23/2023-14:43	07/17/2023-14:43	
Medical University of South Carolina The	Amended Notice of W/Draw as Counsel F/Defendant	Filing		05/23/2023-14:43	07/17/2023-14:43	
Medical University of South Carolina The	NEF(05-23-2023 02:06:40 PM) Notice/Other	Filing		05/23/2023-14:16	07/17/2023-14:16	
Medical University of South Carolina The	Notice of W/Draw as Counsel F/Defendant	Filing		05/23/2023-14:06	07/17/2023-14:06	
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Dong, Jian Yun M D	Notice of Hearing	Filing		05/08/2023-10:03	07/17/2023-10:03	
Dong, Jian Yun M D	NEF(05-08-2023 09:48:04 AM) Notice/Other	Filing		05/08/2023-09:48	07/17/2023-09:48	
Dong, Jian Yun M D	Notice of Trial	Filing		05/08/2023-09:48	07/17/2023-09:48	
Dong, Jian Yun M D	Motion/Protective Order & Certificate of Service	Motion		05/01/2023-07:05	07/17/2023-07:05	
Dong, John M D	Plaintiffs Opposition to Dfs Motion for Summary Judgment/Srv	Filing		04/24/2023-07:46	07/17/2023-07:46	

Dong, Jian Yun M D	Motion/Extended Time F/Response to Motion/Summary Judgment	Motion		04/21/2023-16:15	07/17/2023-16:15	
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Dong, Jian Yun M D	Notice of Hearing	Filing		04/20/2023-15:24	07/17/2023-15:24	
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Medical University of South Carolina The	Motion/Summary Judgment & Certificate of Service	Motion		03/31/2023-11:26	05/26/2023-11:26	
Medical University of South Carolina The	Memo in Support of Summary Judgment	Filing		03/31/2023-11:26	07/17/2023-11:26	
Medical University of South Carolina The	NEF(03-22-2023 10:29:19 AM) Order/Protection from Court ...	Filing		03/22/2023-10:35	07/17/2023-10:35	
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Dong, John M D Ph D	Motion/Extension of Time F/Discovery & Crt/Srv	Motion		02/22/2023-12:55	03/01/2023-12:55	
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Dong, Jian Yun M D	Motion/Reconsideration or Renewed Request F/Protective Order	Motion		01/23/2023-07:31	01/31/2023-07:31	
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Dong, Jian Yun M D	Order/Motion for Protective Order is Denied	Order		01/04/2023-08:24	07/17/2023-08:24	
Dong, Jian Yun M D	Motion for Protective Order,Crt/Svc	Motion		12/21/2022-15:53	01/04/2023-15:53	
Dong, Jian Yun M D	Remittitur From Court Of Appeals-Denying Motion to Compel	Filing		11/23/2022-11:09	07/17/2023-11:09	
Dong, John M D Ph D	Notice of Civil Appeal as to Judgment & Service	Filing		10/14/2022-14:41	07/17/2023-14:41	
Dong, Jian Yun M D	NEF(10-07-2022 05:26:15 PM) Order/Scheduling Order	Filing		10/07/2022-17:26	07/17/2023-17:26	
Dong, Jian Yun M D	Order/Scheduling Order	Order		10/07/2022-17:26	07/17/2023-17:26	
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Dong, Jian Yun M D	Notice Of Status Conference	Filing		09/20/2022-16:53	09/28/2022-16:53	
Dong, Jian Yun M D	Remittitur From Supreme Court-Assigning to Judge Toal	Filing		09/20/2022-10:23	09/28/2022-10:23	
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Dong, Jian Yun M D	Order/Motion to Amend Scheduling Order is Granted	Order		09/08/2022-10:12	09/28/2022-10:12	
Dong, Jian Yun M D	Motion F/Amendment Scheduling Order & Certificate of Service	Motion		08/23/2022-13:06	09/28/2022-13:06	
Dong, Jian Yun M D	Motion for Reconsideration	Motion		08/23/2022-12:59	09/28/2022-12:59	
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Dong, Jian Yun M D	Order/Motion to Reconsider is Denied	Order		08/12/2022-09:27	09/28/2022-09:27	
Cleveland, Caroline Wrenn	9/9/2022_JRY_Roster/Notice of Case Roster Publication Sent	Action		08/11/2022-12:37	09/28/2022-12:37	
Conley, Bob J.	9/9/2022_JRY_Roster/Notice of Case Roster Publication Sent	Action		08/11/2022-12:37	09/28/2022-12:37	
Dong, John M D Ph D	9/9/2022_JRY_Roster/Notice of Case Roster Publication Sent	Action		08/11/2022-12:37	09/28/2022-12:37	
Dong, Jian Yun M D	Opposition to Motion for Protective Order & Crt/Svc	Filing		06/30/2022-10:16	09/28/2022-11:36	

Medical University of South Carolina The	NEF(06-17-2022 01:33:57 PM) Motion/Other	Filing		06/17/2022-15:07	09/28/2022-15:07	
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	Miscellaneous Documents	Filing		04/28/2022-10:17	09/28/2022-10:17	
	Miscellaneous Documents	Filing		04/14/2022-07:39	09/28/2022-07:39	
Medical University of South Carolina The	NEF(04-07-2022 11:18:56 AM) Order/Protection from Court ...	Filing		04/07/2022-11:26	09/28/2022-11:26	
Medical University of South Carolina The	Order/Protection from Court Appearance	Order		04/07/2022-11:18	09/28/2022-11:18	
Medical University of South Carolina The	NEF(04-04-2022 10:21:39 AM) Proposed Order/Protection fr...	Filing		04/04/2022-10:32	09/28/2022-10:32	
Medical University of South Carolina The	Order/Order Cover Sheet \$25.00	Filing		04/04/2022-10:21	09/28/2022-10:21	
Dong, Jian Yun M D	Motion/Reconsideration/Interocutory Appeal of Magistrate	Motion		03/08/2022-15:11	08/12/2022-15:11	
Dong, John M D Ph D	Notice Of Appeal As To Order By Maristrate Judge Cothran/Srv	Filing		02/18/2022-08:08	09/28/2022-08:08	
Dong, Jian Yun M D	NEF(02-07-2022 04:04:17 PM) Order/Other	Filing		02/07/2022-16:04	09/28/2022-16:04	
Dong, Jian Yun M D	Order Denying Pltff 2nd Motion/Compel & Granting Expanded Ti	Order		02/07/2022-16:04	09/28/2022-16:04	
Dong, Jian Yun M D	Opposition to Proposed Order or Motion for Reconsideration	Filing		02/03/2022-10:59	09/28/2022-08:38	
Dong, Jian Yun M D	Pltff Reply to Response to Motions to Expand & Compel (Copy)	Filing		11/24/2021-16:01	09/28/2022-16:01	
Dong, John M D Ph D 23179171	12/13/2021_MOTION_Roster/Notice of Motions Roster Publicatio	Action		11/18/2021-13:52	09/28/2022-13:52	
Dong, John M D Ph D 23179171	12/13/2021_MOTION_Roster/Notice of Motions Roster Publicatio	Action		11/18/2021-13:52	09/28/2022-13:52	
Dong, John M D Ph D 23179171	12/13/2021_MOTION_Roster/Notice of Motions Roster Publicatio	Action		11/18/2021-13:52	09/28/2022-13:52	
Dong, John M D Ph D 23179171	12/13/2021_MOTION_Roster/Notice of Motions Roster Publicatio	Action		11/18/2021-13:52	09/28/2022-13:52	
Dong, John M D Ph D	12/13/2021_MOTION_Roster/Notice of Motions Roster Publicatio	Action		11/18/2021-13:52	09/28/2022-13:52	
Dong, John M D Ph D	12/13/2021_MOTION_Roster/Notice of Motions Roster Publicatio	Action		11/18/2021-13:52	09/28/2022-13:52	
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Dong, John M D Ph D	12/13/2021_MOTION_Roster/Notice of Motions Roster Publicatio	Action		11/18/2021-13:52	09/28/2022-13:52	
Dong, John M D Ph D	12/13/2021_MOTION_Roster/Notice of Motions Roster Publicatio	Action		11/18/2021-13:52	09/28/2022-13:52	
Conley, Bob J.	12/13/2021_MOTION_Roster/Notice of Motions Roster Publicatio	Action		11/18/2021-13:52	09/28/2022-13:52	
Conley, Bob J.	12/13/2021_MOTION_Roster/Notice of Motions Roster Publicatio	Action		11/18/2021-13:52	09/28/2022-13:52	
Conley, Bob J.	12/13/2021_MOTION_Roster/Notice of Motions Roster Publicatio	Action		11/18/2021-13:52	09/28/2022-13:52	
Conley, Bob J.	12/13/2021_MOTION_Roster/Notice of Motions Roster Publicatio	Action		11/18/2021-13:52	09/28/2022-13:52	
Cleveland, Caroline Wrenn	12/13/2021_MOTION_Roster/Notice of Motions Roster Publicatio	Action		11/18/2021-13:52	09/28/2022-13:52	
Cleveland, Caroline Wrenn	12/13/2021_MOTION_Roster/Notice of Motions Roster Publicatio	Action		11/18/2021-13:52	09/28/2022-13:52	
Cleveland, Caroline Wrenn	12/13/2021_MOTION_Roster/Notice of Motions Roster Publicatio	Action		11/18/2021-13:52	09/28/2022-13:52	
Cleveland, Caroline Wrenn	12/13/2021_MOTION_Roster/Notice of Motions Roster Publicatio	Action		11/18/2021-13:52	09/28/2022-13:52	
Medical University of South Carolina The	NEF(10-29-2021 01:11:11 PM) Response	Filing		10/29/2021-13:34	09/28/2022-13:34	
Medical University of South Carolina The	Response to Plaintiff's 2nd Motion/Compel & All Other Motion	Filing		10/29/2021-13:11	09/28/2022-13:11	
	Miscellaneous Documents	Filing		10/20/2021-10:56	09/28/2022-10:46	
Cleveland, Caroline Wrenn	11/1/2021_MOTIONS_Roster/Notice of Motions Roster Publicatio	Action		10/12/2021-17:25	09/28/2022-17:25	
Cleveland, Caroline Wrenn	11/1/2021_MOTIONS_Roster/Notice of Motions Roster Publicatio	Action		10/12/2021-17:25	09/28/2022-17:25	
Cleveland, Caroline Wrenn	11/1/2021_MOTIONS_Roster/Notice of Motions Roster Publicatio	Action		10/12/2021-17:25	09/28/2022-17:25	
Conley, Bob J.	11/1/2021_MOTIONS_Roster/Notice of Motions Roster Publicatio	Action		10/12/2021-17:25	09/28/2022-17:25	
Conley, Bob J.	11/1/2021_MOTIONS_Roster/Notice of Motions Roster Publicatio	Action		10/12/2021-17:25	09/28/2022-17:25	
Conley, Bob J.	11/1/2021_MOTIONS_Roster/Notice of Motions Roster Publicatio	Action		10/12/2021-17:25	09/28/2022-17:25	
Dong, John M D Ph D	11/1/2021_MOTIONS_Roster/Notice of Motions Roster Publicatio	Action		10/12/2021-17:25	09/28/2022-17:25	
Dong, John M D Ph D	11/1/2021_MOTIONS_Roster/Notice of Motions Roster Publicatio	Action		10/12/2021-17:25	09/28/2022-17:25	
Dong, John M D Ph D	11/1/2021_MOTIONS_Roster/Notice of Motions Roster Publicatio	Action		10/12/2021-17:25	09/28/2022-17:25	
Dong, John M D Ph D 23179171	11/1/2021_MOTIONS_Roster/Notice of Motions Roster Publicatio	Action		10/12/2021-17:25	09/28/2022-17:25	
Dong, John M D Ph D 23179171	11/1/2021_MOTIONS_Roster/Notice of Motions Roster Publicatio	Action		10/12/2021-17:25	09/28/2022-17:25	
Dong, John M D Ph D 23179171	11/1/2021_MOTIONS_Roster/Notice of Motions Roster Publicatio	Action		10/12/2021-17:25	09/28/2022-17:25	

Dong, Jian Yun M D	NEF(10-06-2021 03:51:24 PM) Order/Electronic Form 4	Filing		10/06/2021-16:01	09/28/2022-16:01	
Dong, Jian Yun M D	Order: Stay is Lifted	Order		10/06/2021-15:51	09/28/2022-15:51	
Dong, John M D Ph D	Motion to Amend Discovery Restrictions & Schedule	Motion		09/22/2021-10:26	12/13/2021-10:26	
Dong, Jian Yun M D	Plaintiffs Second Motion to Compel For Production	Motion		01/20/2021-10:36	12/13/2021-10:36	
Dong, Jian Yun M D	Plaintiffs Motion To Expand Discovery Schedule Due To COVID-	Motion		01/11/2021-11:29	12/13/2021-11:29	
Medical University of South Carolina The	NEF(11-10-2020 01:46:42 PM) Notice/Other	Filing		11/10/2020-13:59	09/28/2022-13:59	
Medical University of South Carolina The	Notice of Withdrawal as Counsel For Defendant	Filing		11/10/2020-13:46	09/28/2022-13:46	
Dong, John M D Ph D	Notice of Address Change	Filing		09/02/2020-10:06	09/28/2022-10:06	
Dong, Jian Yun M D	2nd Requests for Production to Defendant, crt/srv	Filing		01/30/2020-11:33	09/28/2022-11:33	
Dong, John M D Ph D	Motion/Motion Filing Fee	Filing		01/29/2020-14:27	09/28/2022-14:27	
Dong, John M D Ph D	Motion/ Expand Discovery & Crt/Srv	Motion		01/29/2020-10:33	12/13/2021-10:33	
Dong, John M D Ph D	Response to Notice of Taking Deposition, crt/srv	Filing		01/27/2020-16:26	09/28/2022-16:26	
Dong, John M D Ph D	Response to Notice of Taking Deposition, crt/srv	Filing		01/27/2020-16:23	09/28/2022-16:23	
	Order on Motion to Compel	Order		10/04/2019-15:50	09/28/2022-15:50	
	Confidentiality Order	Order		10/04/2019-15:45	09/28/2022-15:45	
Dong, John M D	Response to Motion to Alter or Amend, crt/srv	Filing		07/16/2019-14:47	09/28/2022-14:47	
Conley, Bob J.	Defnt Motion/Alter and/or Amend & Crt/Srv	Motion		07/03/2019-12:28	10/07/2021-12:28	
Medical University of South Carolina The	Motion/Motion Filing Fee	Filing		07/03/2019-11:20	09/28/2022-11:20	
	Confidentiality Order	Order		06/20/2019-11:44	06/20/2019-11:44	
	Order Granting Motion to Compel & Staying Case	Order		06/20/2019-11:32	06/20/2019-11:32	
Conley, Bob J.	6/10/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		05/20/2019-14:34	06/20/2019-14:34	
Conley, Bob J.	6/10/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		05/20/2019-14:34	06/20/2019-14:34	
Cleveland, Caroline Wrenn	6/10/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		05/20/2019-14:34	06/20/2019-14:34	
Cleveland, Caroline Wrenn	6/10/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		05/20/2019-14:34	06/20/2019-14:34	
Dong, John M D Ph D 23179171	6/10/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		05/20/2019-14:34	06/20/2019-14:34	
Dong, John M D Ph D 23179171	6/10/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		05/20/2019-14:34	06/20/2019-14:34	
Ferguson, Emmanuel Joseph Sr.	6/10/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		05/20/2019-14:34	06/20/2019-14:34	
Ferguson, Emmanuel Joseph Sr.	6/10/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		05/20/2019-14:34	06/20/2019-14:34	
Dong, John M D Ph D 23179171	Pltff Motion/Compel & Crt/Srv	Motion		03/05/2019-11:52	06/10/2019-11:52	
Dong, Jian Yun M D	Objection to Defnt Response & Crt/Srv	Filing		03/05/2019-11:49	06/20/2019-11:49	
Dong, Jian Yun M D	Motion/Motion Filing Fee	Filing		03/05/2019-11:20	06/20/2019-11:20	
	Plaintiffs' Change of Address	Filing		02/25/2019-13:55	06/20/2019-13:55	
Dong, John M D Ph D 23179171	Pltff Motion/Oblection & Crt/Srv	Motion		02/13/2019-12:20	06/10/2019-12:20	
Dong, John M D	Motion/Motion Filing Fee	Filing		02/13/2019-11:33	06/20/2019-11:33	
Medical University of South Carolina The	Motion/Motion Filing Fee	Filing		01/31/2019-11:07	06/20/2019-11:07	
Ferguson, Emmanuel Joseph Sr.	Defnt Motion/Status Conference & Crt/Srv	Motion		01/31/2019-09:13	02/12/2019-09:13	
Dong, Jian Yun M D	Motion/Motion Filing Fee	Filing		11/28/2018-16:08	06/20/2019-16:08	
Dong, John M D Ph D 23179171	Pltff Motion/Continuance & Crt/Srv	Motion		11/28/2018-09:06	02/12/2019-09:06	
Dong, Jian Yun M D	Request for Production to Defnt & cert/srv	Filing		01/17/2018-16:15	06/20/2019-16:15	
Dong, Jian Yun M D	Answer to First Interrogatories & cert/srv	Filing		01/02/2018-14:07	06/20/2019-14:07	
Dong, Jian Yun M D	Response to Defnts First Request of Production & cert/srv	Filing		01/02/2018-14:05	06/20/2019-14:05	
	Order/defnt's motion to compel is granted	Order		12/14/2017-11:20	06/20/2019-11:20	
Dong, John M D Ph D 23179171	12/11/2017_MOTION_Roster/Notice of Motions Roster Publicatio	Action		11/30/2017-10:38	06/20/2019-10:38	
Ferguson, Emmanuel Joseph Sr.	12/11/2017_MOTION_Roster/Notice of Motions Roster Publicatio	Action		11/30/2017-10:38	06/20/2019-10:38	
Cleveland, Caroline Wrenn	12/11/2017_MOTION_Roster/Notice of Motions Roster Publicatio	Action		11/30/2017-10:38	06/20/2019-10:38	
Conley, Bob J.	12/11/2017_MOTION_Roster/Notice of Motions Roster Publicatio	Action		11/30/2017-10:38	06/20/2019-10:38	
Conley, Bob J.	Roster/Notice of Motions Roster Publication Sent	Action		11/08/2017-08:35	06/20/2019-08:35	
Cleveland, Caroline Wrenn	Roster/Notice of Motions Roster Publication Sent	Action		11/08/2017-08:35	06/20/2019-08:35	

Ferguson, Emmanuel Joseph Sr.	Roster/Notice of Motions Roster Publication Sent	Action		11/08/2017-08:35	06/20/2019-08:35	
Dong, John M D Ph D 23179171	Roster/Notice of Motions Roster Publication Sent	Action		11/08/2017-08:35	06/20/2019-08:35	
Dong, John M D Ph D 23179171	Roster/Notice of Motions Roster Publication Sent	Action		08/17/2017-09:02	06/20/2019-09:02	
Ferguson, Emmanuel Joseph Sr.	Roster/Notice of Motions Roster Publication Sent	Action		08/17/2017-09:02	06/20/2019-09:02	
Cleveland, Caroline Wrenn	Roster/Notice of Motions Roster Publication Sent	Action		08/17/2017-09:02	06/20/2019-09:02	
Conley, Bob J.	Roster/Notice of Motions Roster Publication Sent	Action		08/17/2017-09:02	06/20/2019-09:02	
Dong, Jian Yun M D	Notice of Change of Address, crt/srv	Filing		08/08/2017-15:43	06/20/2019-15:43	
Ferguson, Emmanuel Joseph Sr.	Roster/Notice of Motions Roster Publication Sent	Action		05/04/2017-14:12	06/20/2019-14:12	
Cleveland, Caroline Wrenn	Roster/Notice of Motions Roster Publication Sent	Action		05/04/2017-14:12	06/20/2019-14:12	
Conley, Bob J.	Roster/Notice of Motions Roster Publication Sent	Action		05/04/2017-14:12	06/20/2019-14:12	
Dong, John M D Ph D 23179171	Roster/Notice of Motions Roster Publication Sent	Action		05/04/2017-14:12	06/20/2019-14:12	
Ferguson, Emmanuel Joseph Sr.	Motion/Compel & crt/srv	Motion		03/29/2017-14:43	12/13/2017-14:43	
Medical University of South Carolina The	Motion/Motion Filing Fee	Filing		03/29/2017-12:00	06/20/2019-12:00	
	Response/ First Extension Filing for Pitff	Filing		03/17/2017-10:25	06/20/2019-10:25	
	Note-no response fr Dr. Dong-Dr Dong responded with address	Filing		02/02/2017-13:39	06/20/2019-13:39	
Dong, Jian Yun M D	Order/Relieve Counsel-Holmes & Lewis	Order		01/25/2017-09:00	06/20/2019-09:00	
Holmes, Allan R. Sr.	Roster/Notice of Motions Roster Publication Sent	Action		01/09/2017-12:11	06/20/2019-12:11	
Cleveland, Caroline Wrenn	Roster/Notice of Motions Roster Publication Sent	Action		01/09/2017-12:11	06/20/2019-12:11	
Ferguson, Emmanuel Joseph Sr.	Roster/Notice of Motions Roster Publication Sent	Action		01/09/2017-12:11	06/20/2019-12:11	
Conley, Bob J.	Roster/Notice of Motions Roster Publication Sent	Action		01/09/2017-12:11	06/20/2019-12:11	
Holmes, Allan R. Sr.	Motion/Relieve As Counsel for plaintiff	Motion		01/05/2017-14:58	01/23/2017-14:58	
Dong, Jian Yun M D	Motion/Motion Filing Fee	Filing		01/05/2017-11:51	06/20/2019-11:51	
Medical University of South Carolina The	Answer to Complaint, crt/srv	Filing		12/28/2016-09:22	06/20/2019-09:22	
Dong, Jian Yun M D	Order/Order to Restore	Filing		12/14/2016-10:06	06/20/2019-10:06	

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE CHARLSTON COUNTY
Court of Common Pleas

Honorable Jean Toal, Circuit Court Judge

Civil Action No. 2016-CP-10-06683

Jian-Yun (John) Dong, M.D., Ph.D., ... Appellant

v.

The Medical University of South Carolina, ... Respondent

NOTICE OF APPEAL

Appellant Jian-Yun (John) Dong, hereby submit this Timely Notice of Appeal of the Order granting Defendant's Motion for Summary Judgement issued on July 17, 2023, and the Order Denying Motion for Reconsideration/Amendment issued on September 22, 2023, by the Honorable Jean Taol.

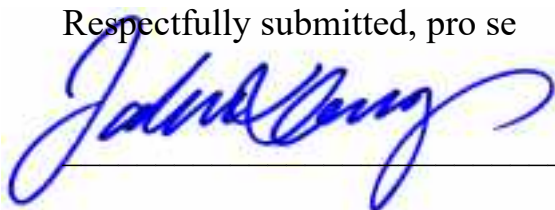
This Notice is **timely** because Appellant was not granted the access to the ECF system of the Court of Common Plea, did not receive the notice of either entry from the court electronically or by the mail. The Appellant only received the notice of the

entries forwarded by the Defendant using USPS mails on **October 5th 2023**, which was mailed on October 3, 2023 (a copy is attached).

Furthermore, Appellant filed a motion for Judicial Recusal due to the appearance of bias, which stays the time. The denial of the motion was entered on October 4th, 2023, and a notice forwarded by the Defendant was received on **October 6, 2023**.

November 3, 2023,

Respectfully submitted, pro se

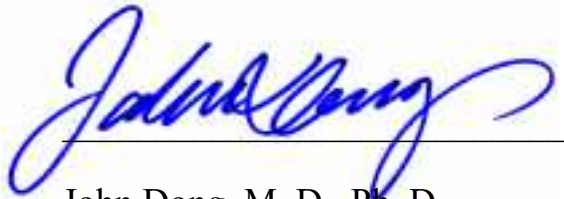


John Dong, M. D., Ph. D.
71 Delahow St
Charleston, SC 29492
Email: johnny.dong@gmail.com
Phone: 843-991-2332

CERTIFICATE OF SERVICE

This is to certify that I have this 3 day of September 2023, caused to be served a copy of the Plaintiff's Notice of Appeal via Email at bconley@clevelandlaborlaw.com and United States Mail Services with postage and addressed as the follows:

Bob J. Conley, Esq.
Cleveland & Conley LLC
171 Church Street, suite 310
Charleston, South Carolina 29401



John Dong, M. D., Ph. D.
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Email: johny.dong@gmail.com
Phone: 843-991-2332

Orders

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-06683
	)	
Jian-Yun (John) Dong, M.D., Ph.D.,	)	
	)	
Plaintiff,	)	ORDER DENYING PLAINTIFF'S
	)	MOTION FOR RECUSAL BASED
vs.	)	ON APPEARANCE OF BIAS
	)	
	)	
Medical University of South Carolina,	)	
	)	
Defendant.	)	
_____	)	

This matter is before the Court on Plaintiff's Motion for Recusal based on Appearance of Bias filed on September 28, 2023. Plaintiff's Motion for Recusal is hereby DENIED as it is filed too late for this Court to consider and this Court has already made final rulings. Plaintiff Jian-Yun (John) Dong's M.D., Ph.D. ("Dr. Dong") latest Motion is based on the same contentions he has made several times during these proceedings regarding rulings with which Dr. Dong simply disagrees. As detailed in the above referenced Order Denying the Motion for Amendment of the Order Granting Summary Judgment, this Court has treated Dr. Dong with fairness and impartiality at all times. Therefore, no recusal is warranted.

This Court signed and filed a final Order Granting Summary Judgment in favor of Defendants on July 17, 2023. Dr. Dong filed a Motion for Amendment of this Order on July 28, 2023. On September 22, 2023, this Court filed an Order denying the Motion for Amendment of its Order granting summary judgment. Dr. Dong is reminded of his running deadline to file an appeal in this case, if any. This latest Motion by Dr. Dong is not the type of motion which stays the running of the time for the appeal in this matter.

IT IS SO ORDERED.

[JUDGE'S E-SIGNATURE PAGE FOLLOWS]



Charleston Common Pleas

Case Caption: Jian Yun Dong M D , plaintiff, et al VS Medical University of South Carolina The
Case Number: 2016CP1006683
Type: Order/Other

So Ordered

Jean H. Toal

Electronically signed on 2023-10-04 10:47:50 page 2 of 2

ELECTRONICALLY FILED - 2023 Oct 04 11:09 AM - CHARLESTON - COMMON PLEAS - CASE#2016CP1006683

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-06683
	)	
Jian-Yun (John) Dong, M.D., Ph.D.,	)	
	)	
Plaintiff,	)	ORDER DENYING PLAINTIFF'S
	)	MOTION FOR AMENDMENT OF
vs.	)	ORDER GRANTING DEFENDANT'S
	)	MOTION FOR SUMMARY JUDGMENT
	)	
Medical University of South Carolina,	)	
	)	
Defendant.	)	
_____	)	

This matter is before the Court on Defendant Medical University of South Carolina's ("MUSC" or "Defendant") Motion for Summary Judgment (the "Motion"). In its Motion, MUSC asserted: 1) Plaintiff Jian-Yun (John) Dong, M.D., Ph.D. ("Dr. Dong") could not show MUSC breached a contract with him, 2) even if Dr. Dong could provide evidence of a breach, Dr. Dong could not present evidence of damages, and 3) Dr. Dong did not file his Complaint before the expiration of the applicable statute of limitations. Therefore, MUSC contended summary judgment was appropriate under Rule 56, SCRPC. This Court granted MUSC's Motion for Summary Judgment and entered an Order on July 17, 2023.

On July 28, 2023, Dr. Dong filed a Motion for Amendment of Order Granting Defendant's Summary Judgment. In his motion, Dr. Dong argues this Court should amend its Order Granting Summary Judgment in favor of MUSC for various reasons, including misinterpretation of the law and violation of due process, and requested a rehearing. MUSC filed their response on August 16, 2023 and Dr. Dong emailed a reply September 6, 2023.

For the reasons set forth below, the Court denies Dr. Dong's Motion for Amendment of Order Granting Defendant's Summary Judgment and his request for a rehearing.

RELEVANT FACTS

The relevant facts are stated in the Court's Order Granting Summary Judgment in favor of MUSC entered on July 17, 2023.

LEGAL STANDARD

Rule 52(b) of the South Carolina Rules of Civil Procedure allows a party to file a motion for a court to "amend its findings or make additional findings and [] amend the judgment. . . ." Further, the rule states the party must make the motion "not later than 10 days after receipt of written notice of entry of judgment" and "provide a copy of the motion to the judge within ten (10) days after filing the motion."

LAW AND ANALYSIS

First, Rule 52(b) clearly provides the motion for amendment must be filed not later than 10 days after entry of written notice of judgment. This Court entered its Order Granting Summary of Judgment on June 17, 2023. Dr. Dong filed his Motion for Amendment of Order Granting Summary Judgment under Rule 52(b) on July 28, 2023. Dr. Dong's Motion was filed a day late, given the deadline under the rules.

Regardless, the Court denies Dr. Dong's Motion for Amendment based on the merits of his argument. In short, Dr. Dong fails to provide any new findings or evidence to persuade this Court to Amend its Order Granting Summary Judgment.

As the Court stated in its findings granting summary judgment in favor of MUSC, the Defendant met the burden imposed on it by Rule 56, SCRCP, and explained by Baughman v. Am. Tel. & Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). Specifically, Baughman, states:

With respect to an issue upon which the nonmoving party bears the burden of proof, this initial responsibility "may be discharged by 'showing'—that is, pointing out to the [trial] court—that there is an absence of evidence to support the nonmoving party's case." *Celotex*

477 U.S. at 325, 106 S.Ct. at 2554, 91 L.Ed.2d at 275. The moving party need not “support its motion with affidavits or other similar materials negating the opponent's claim.” *Id.* at 323, 106 S.Ct. at 2553, 91 L.Ed.2d at 274. (Emphasis in original).

Id. at 306 S.C. at 115, 410 S.E.2d at 545. Dr. Dong failed to oppose MUSC’s Motion in any meaningful, sufficient manner, and Dr. Dong failed to meet the well-recognized requirements of Baughman and Rule 56, SCRCP. Notably, as already explained in the Court’s Order Granting Summary Judgment, Dr. Dong provided no deposition transcripts, affidavits, documents or other admissible, material evidence in opposition to MUSC’s Motion.

“It is a fundamental rule that ‘if the plaintiff relies solely upon the pleadings, files no counter-affidavits, and makes no factual showing in opposition to a motion for summary judgment, the [trial] court is required under Rule 56, to grant summary judgment, if, under the facts presented by the defendant, he [it] was entitled to judgment as a matter of law.’” Higgins v. Medical University of South Carolina, 326 S.C. 592, 598, 486 S.E.2d 269, 272 (Ct. App. 1997) (*quoting Humana Hospital-Bayside v. Lightle*, 305 S.C. 214, 216, 407 S.E.2d 637, 638 (1991)). As a pro se litigant, Dr. Dong’s statements and argument at the hearing are not evidence in opposition to MUSC’s Motion. *See e.g.*, South Carolina Dept. of Transp. v. Thompson, 357 S.C. 101, 105, 590 S.E.2d 511, 513 (Ct. App. 2003) (recognizing “[a]rguments made by counsel are not evidence” and collecting other, similar cases).

Further, the Court directs the parties to its Order Granting Summary Judgment which states the findings of the Court and details how Dr. Dong failed to provide evidence and oppose MUSC’s Motion for Summary Judgment.

Last, the Court addresses Dr. Dong’s contention the Court violated his due process rights. When this Court was assigned jurisdiction of this matter, the only remaining discovery task was

the scheduling of depositions. The Court issued a detailed Scheduling Order¹ with deadlines for depositions, dispositive motions, mediation, and a trial date. Dr. Dong then noticed 13 depositions and then proceeded to cancel all of the depositions. Dr. Dong never rescheduled any depositions or offered any affidavit by his potential witnesses or himself addressing the facts of this matter as the Plaintiff. The only factual evidence was the deposition of Dr. Dong taken by the Defendant. Therefore, Dr. Dong failed to meet his obligation under Rule 56 for two main reasons. First, Dr. Dong failed to provide any factual evidence to oppose summary judgment as provided under Rule 56 and Baughman. Second, Dr. Dong failed to file his Complaint before the expiration of the applicable statute of limitations. Specifically, South Carolina law is clear the statute of limitations for a contract breach begins when the alleged breach first occurred. *See Poly-Med, Inc. v. Novus Scientific PTE. LTD.*, 437 S.C. 343, 347, 878 S.E.2d 896, 898 (2022) (“The limitations period begins to run when a party knows or should know, through the exercise of due diligence, that a cause of action might exist”). Further Poly-Med concludes South Carolina does not recognize the continuing breach theory in applying the statute of limitations to breach of contract claims.

The parties entered into the agreement on May 3, 2010. Dr. Dong testified under oath in his deposition that MUSC first breached its agreement with him by failing to meet a contractual term of the agreement within a specified forty-five days after the parties had signed the contract. This would set the date of the first breach as June 17, 2010.² Three years from this date would be June 17, 2013. Dr. Dong of course contends that there were many other breaches that followed. But clearly his testimony under oath demonstrates that the first breach claimed, as reflected above, is June 17, 2010. Dr. Dong filed his complaint on September 2, 2014, which is well after the running of the 3-year statute of limitations.

¹ The Court entered the Scheduling Order on October 7, 2022.

² *See* Dong’s Dep. 94: 4-95:11.

Last, the Court has provided proper notice to Dr. Dong at all times. The Court has provided Dr. Dong with much leeway with his filings, requests for extensions of time, and scheduling hearings. At all times, Dr. Dong has been provided with the opportunity to be heard and has been provided sufficient notice.

CONCLUSION

For these reasons, the Court denies Dr. Dong's Motion for Amendment of Order Granting Defendant's Summary Judgment.

IT IS SO ORDERED.

[JUDGE'S E-SIGNATURE PAGE FOLLOWS]



Charleston Common Pleas

Case Caption: Jian Yun Dong M D , plaintiff, et al VS Medical University of South Carolina The
Case Number: 2016CP1006683
Type: Order/Other

So Ordered

Jean H. Toal

Electronically signed on 2023-09-22 09:30:21 page 6 of 6

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-06683
	)	
Jian-Yun (John) Dong, M.D., Ph.D.,	)	
	)	
Plaintiff,	)	ORDER GRANTING SUMMARY
	)	JUDGMENT
vs.	)	
	)	
	)	
Medical University of South Carolina,	)	
	)	
Defendant.	)	
_____	)	

This case came before the Court for hearing on May 26, 2023, regarding Defendant Medical University of South Carolina's ("MUSC") Motion for Summary Judgment (the "Motion"). In general, MUSC asserted Plaintiff Jian-Yun (John) Dong, M.D., Ph.D. ("Dr. Dong") could not show MUSC breached a contract with him and/or, even if Dr. Dong could provide evidence of a breach, Dr. Dong could not present evidence of damage and Dr. Dong did not file his Complaint before the expiration of the applicable statute of limitations. Therefore, MUSC contended summary judgment is appropriate under Rule 56, SCRPC.

Bob J. Conley appeared at the hearing on behalf of MUSC. Dr. Dong appeared pro se. Based upon the record, submissions of the parties, and the arguments made by the parties at the hearing, the Court grants MUSC's Motion for Summary Judgment.

RELEVANT FACTS

Dr. Dong and MUSC had a long professional relationship beginning in 1998 when Dr. Dong left a position at the University of California San Francisco to become a tenured Professor of Microbiology and Immunology at MUSC. With MUSC's support, Dr. Dong was successful in obtaining several large grants under the auspices of the United States National Institutes of

Health and other funding agencies to support his research. At a certain point, Dr. Dong formed an association with GenPhar, Inc., a private biotech firm, to conduct research.

Contentious disagreements arose between Dr. Dong and MUSC. On May 3, 2010, Dr. Dong and MUSC entered into a written agreement (hereinafter, the "Agreement"): "A Final Separation Agreement between The Medical University of South Carolina, including its College of Medicine, and Dr. Jian-Yun Dong, Professor of Microbiology and Immunology." Dr. Dong, along with J. G. Reves, M.D. ("Dr. Reves"), MUSC's then Vice President for Medical Affairs and College of Medicine Dean, signed the Agreement on May 3, 2010.

The first two paragraphs of the Agreement contain the following key provisions:

By their entering into this final agreement, the University agrees that Dr. Dong's compensated appointment as Professor of Microbiology and Immunology will continue through March 31, 2012. Dr. Dong agrees to withdraw any and all pending or future grievance(s) for actions prior to the date of this agreement (above) and agrees that this final separation constitutes full settlement of any and all past grievances or claims that Dr. Dong may have against the University, its employees and against any and all of its affiliated entities up to and including the date of this agreement.

During the term of this final agreement, the University will continue Dr. Dong's employment, faculty appointment and make scheduled salary payments to him. In consideration, Dr. Dong acknowledges that this final agreement constitutes his irrevocable resignation of his tenured faculty appointment to be effective no later than March 31, 2012. Dr. Dong will retain his faculty appointment, tenure and title until the effective date of his resignation.

Dr. Dong and Dr. Reves signed the Agreement on May 3, 2010, in Dr. Reves' office. According to Dr. Dong, prior to signing the Agreement, he did not read the Agreement but, instead, Dr. Dong "scanned through" the Agreement. Dr. Dong acknowledged Dr. Reves did not pressure him to sign the Agreement.

The Agreement imposed obligations and benefits on Dr. Dong and MUSC. (A discussion of MUSC's obligations is contained in Section I.B.) According to Dr. Dong, MUSC breached the Agreement no later than June 17, 2010, no more than forty-five days after the Agreement was signed on May 3, 2010. Dr. Dong did not file his Complaint until September 2, 2014.

Approximately eighteen months after the Agreement was signed, on September 20, 2011, MUSC was notified that Dr. Dong had been indicted by the United States government for alleged misconduct in connection with his federal grants. On September 29, 2011, Dr. Dong was notified that he would be placed on administrative leave. None of his financial payments as set forth in the Agreement were affected by the administrative leave. On December 19, 2014, three months after filing the Complaint in this matter, Allen R. Holmes, attorney for Dr. Dong, and Annette Drachman, attorney for MUSC, filed a joint Motion for Stay which provided:

Plaintiff and Defendant move jointly to stay this matter until June 1, 2015, pending the criminal matters that have a direct correlation to this litigation.

This stay was granted. Over the years, this stay continued to be renewed, during which time Dr. Dong was tried and convicted in federal court, served a sentence in the federal penitentiary, and was ultimately released after service of his sentence. This case was ultimately dismissed and subsequently restored to the docket with a new civil action number. This matter was reactivated in 2019 with many disputes regarding pretrial discovery handled by several different circuit court judges. On September 20, 2022, the undersigned was assigned exclusive jurisdiction to hear and dispose of this case. On October 4, 2022, the undersigned conducted a status conference and discussed with both parties the establishment of the scheduling order. On October 7, 2022, the undersigned issued a Scheduling Order providing for deadlines for the scheduling of discovery

depositions, the filing of dispositive motions, and if necessary, the scheduling of mediation and trial.

Although this matter has had a lengthy and complicated procedural history, in the final analysis, this matter can be decided on straight forward principles of South Carolina law governing civil procedure and the law of contracts.

LEGAL STANDARD

The purpose of summary judgment is to expedite disposition of cases that do not require the services of a fact finder. Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003). Summary judgment is proper where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Id. In determining whether summary judgment is appropriate, the evidence must be viewed in the light most favorable to the nonmoving party. Id. The party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact. Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991).

However, “[w]ith respect to an issue on which the nonmoving party bears the burden of proof, this initial responsibility may be discharged by ‘showing’ – that is, pointing out to the [trial] court – that there is absence of evidence to support the non-moving party’s case.” Baughman at 115, 410 S.E.2d at 544 (*quoting Celotex Corporation v. Catrett*, 477 U.S. 317, 325 (1986)). In that instance, the “moving party need not ‘support its motion with affidavits or other similar materials *negating* the opponent’s claim.’” Id. (*quoting Celotex*, 477 U.S. at 323) (emphasis in original). “Once the moving party has carried its initial burden, the opposing party must . . . ‘do more than simply show that there is some metaphysical doubt as to the material facts,’ and ‘must come

forward with ‘specific facts showing there is a genuine issue for trial.’” *Id.* (quoting Matsushita Electrical Ind. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87(1986)).

FINDINGS

MUSC met the burden imposed on it by Rule 56, SCRPC, and Baughman. However, Dr. Dong failed to oppose MUSC’s Motion in any meaningful, sufficient manner, and Dr. Dong failed to meet the well-recognized requirements of Baughman and Rule 56, SCRPC. Notably, and important, Dr. Dong provided no deposition transcripts, affidavits, documents or other admissible, material evidence in opposition to MUSC’s Motion.

“It is a fundamental rule that ‘if the plaintiff relies solely upon the pleadings, files no counter-affidavits, and makes no factual showing in opposition to a motion for summary judgment, the [trial] court is required under Rule 56, to grant summary judgment, if, under the facts presented by the defendant, he [it] was entitled to judgment as a matter of law.’” Higgins v. Medical University of South Carolina, 326 S.C. 592, 598, 486 S.E.2d 269, 272 (Ct. App. 1997) (quoting Humana Hospital-Bayside v. Lightle, 305 S.C. 214, 216, 407 S.E.2d 637, 638 (1991)). As a pro se litigant, Dr. Dong’s statements and argument at the hearing are not evidence in opposition to MUSC’s Motion. *See e.g.*, South Carolina Dept. of Transp. V. Thompson, 357 S.C. 101, 105, 590 S.E.2d 511, 513 (Ct. App. 2003) (recognizing “[a]rguments made by counsel are not evidence” and collecting other, similar cases).

I. Breach of Contract.

In his Complaint, Dr. Dong asserts a single cause of action for breach of contract. Dr. Dong’s Complaint contains no other causes of action, and Dr. Dong’s Complaint stands without amendment. Specifically, Dr. Dong alleges MUSC breached the Agreement.

Dr. Dong, along with Dr. Reves, MUSC's then Vice President for Medical Affairs and College of Medicine Dean, signed the Agreement on May 3, 2010. Dr. Dong filed his Complaint on September 2, 2014.

In this action for breach of contract, the burden is on Dr. Dong to prove the contract [Agreement], its breach, and damages caused to him by such breach. Maro v. Lewis, 389 S.C. 216, 222, 697 S.E.2d 684, 688 (Ct. App. 2010). Additionally, the law imposes an obligation on Dr. Dong to file and serve his Complaint alleging breach of contract within the applicable statutes of limitation. As discussed below, Dr. Dong did not present sufficient material evidence to show MUSC breached the Agreement, to show damages accrued as to him regarding alleged breaches, or to show he filed and served the Complaint within the applicable three-year statute of limitations.

A. Dr. Dong's Breach of Contract Claim is Barred by the Statute of Limitations.

The statute of limitations for actions pursuant to contract is three years. Poly-Med, Inc. v. Novus Scientific PTE. LTD., 437 S.C. 343, 347, 878 S.E.2d 896, 898 (2022) (*citing* S.C. Code Ann. § 15-3-530(1) (2005)). Consequently, the statute of limitations applicable to Dr. Dong's allegations regarding the Agreement is three years. Applying the three-year statute of limitations to Dr. Dong's Complaint, any breach of the Agreement is time barred for several reasons.

First, Dr. Dong did not present material evidence any alleged breach occurred after September 1, 2011 – three years prior to Dr. Dong filing the Complaint. Second, Dr. Dong did not present material evidence any alleged breach first occurred after September 1, 2011, or occurred more than three years after he knew or should have known (i.e., discovered) a cause of action for breach of contract existed. *See Poly-Med* at 350, 878 S.E.2d at 899 (“The limitations period begins to run when a party knows or should know, through the exercise of due diligence, that a cause of action might exist.”) (*quoting Anonymous Taxpayer v. S.C. Department of Revenue*, 377 S.C.

425, 439, 661 S.E.2d 73, 80 (2008)). In Poly-Med, the South Carolina Supreme Court confirmed “South Carolina does not recognize the continuing breach theory in applying the statute of limitations to breach of contract claims.” Poly-Med at 355, 878 S.E.2d at 902. Therefore, the three-year statute of limitations accrued as to each breach of the Agreement Dr. Dong alleges when Dr. Dong either knew, or should have known by exercising due diligence, MUSC breached the Agreement. For the reasons discussed below, Dr. Dong did not present material evidence to overcome application of the three-year statute of limitations and resulting bar of his claims.

1. Dr. Dong Did Not Present Material Evidence MUSC First Breached the Agreement After September 1, 2011.

According to Dr. Dong, MUSC breached the Agreement soon after entering into the Agreement. For example, Dr. Dong claims MUSC failed to meet the terms of the Agreement addressed in Section B.12 below. However, the Agreement required MUSC meet the terms of the Agreement in that respect within forty-five days of entering into the Agreement, on or before June 17, 2010. By way of further example, the Agreement required MUSC meet the terms of the Agreement addressed in Sections B.18 and B.20 below. However, the Agreement required MUSC meet the terms of the Agreement in those respects within thirty days of the effective date of the Agreement – no later than July 18, 2010.¹ Additionally, Dr. Dong testified “of course” MUSC breached the Agreement prior to March 25, 2011.

In summary, taking Dr. Dong’s deposition testimony as true, Dr. Dong knew or should have known as early as June 17, 2010, that MUSC breached the Agreement. Therefore, the three-year statute of limitations accrued and began to run as to Dr. Dong’s breach of contract claim as early as June 18, 2010, but no later than July 18, 2010. Moreover, Dr. Dong testified he believed

¹ The phrase “effective date” in the Agreement refers to June 18, 2010, because Dr. Dong had forty-five days from May 3, 2010, to revoke/rescind the Agreement. June 18, 2010, is day forty-six after May 3, 2010.

MUSC breached the Agreement prior to March 25, 2011. Regardless of which date the statute of limitations accrued as to Dr. Dong's claim MUSC breached the Agreement, Dr. Dong waiting until September 2, 2014, to file his Complaint results in his claim falling outside the statute of limitations. Consequently, Dr. Dong's breach of contract claim is time barred.

2. Dr. Dong Either Knew of or Should Not Have Known of MUSC's Alleged Breaches of the Agreement Through the Exercise of Due Diligence Prior to September 2, 2011.

See Section A.1.

B. Dr. Dong Did Not Present Sufficient Evidence MUSC Breached the Agreement.

“It is fundamental that, in the construction of the language of a contract, it is proper to read together the different provisions therein dealing with the same subject matter, and where possible, all the language used should be given a reasonable meaning.” Bluffton Towne Ctr., LLC v. Gilleland-Prince, 412 S.C. 554, 569, 772 S.E.2d 882, 890 (Ct. App. 2015) (*quoting* Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC, 374 S.C. 483, 498-99, 649 S.E.2d 494, 502 (Ct. App. 2007)). “In construing and determining the effect of a written contract, the intention of the parties and the meaning are gathered primarily from the contents of the writing itself, or, as otherwise stated, from the four corners of the instrument.” Silver v. Abstract Pools & Spas, Inc., 376 S.C. 585, 591, 658 S.E.2d 539, 542 (Ct. App. 2008) (*quoting* McPherson v. J.E. Sirrine & Co., 206 S.C. 183, 204, 33 S.E.2d 501, 509 (1945)). The Agreement is unambiguous and, therefore, the Court must enforce it “according to its terms regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully.” S.C. Dep't of Transp. v. M & T Enterprises of Mt. Pleasant, LLC, 379 S.C. 645, 655, 667 S.E.2d 7, 13 (Ct. App. 2008).

It is a question of law for the Court whether the language of the Agreement is ambiguous. South Carolina Dep't of Natural Res. v. Town of McClellanville, 345 S.C. 617, 623, 550 S.E.2d

299, 302–03 (2001). After reviewing the Agreement, the Court finds the Agreement “is unambiguous, clear, and explicit, it must be construed according to the terms the parties have used, to be taken and understood in their plain, ordinary, and popular sense.” C.A.N. Enters., Inc. v. South Carolina Health and Human Services Commission, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988). Because the Agreement is “clear and capable of legal construction,” the Court’s “only function is to interpret its lawful meaning and the intention of the parties as found within” the Agreement “and give effect to it.” Ebert v. Ebert, 320 S.C. 331, 338, 465 S.E.2d 121, 125 (Ct. App. 1995). The Court is “without authority to alter” the unambiguous Agreement “by construction or to make” a new agreement for the parties.” C.A.N. Enters., Inc., 296 S.C. at 378, 373 S.E.2d at 587.

The Court finds the Agreement contains unambiguous obligations as to both MUSC and Dr. Dong. However, Dr. Dong did not present sufficient evidence MUSC breached its obligations in the Agreement. MUSC’s obligations, as contained in the Agreement, are each addressed sequentially below:

- 1. Continue “compensated appointment [of Dr. Dong] as Professor of Microbiology and Immunology will continue through March 31, 2012.”**

Dr. Dong presented no material evidence MUSC breached this provision in the Agreement. To the contrary, the material evidence in the record shows MUSC did not breach this provision of the Agreement. First, Dr. Dong acknowledged the payments were made to him by MUSC. Second, the letter from Mark Sothmann, Ph.D. (“Dr. Sothmann”), MUSC’s then Vice President for Academic Affairs and Provost, to Dr. Dong on September 29, 2011, placed Dr. Dong on paid administrative leave, and MUSC continued to pay Dr. Dong. Third, there is no evidence Dr. Sothmann removed Dr. Dong’s faculty appointments.

2. “[C]ontinue Dr. Dong’s employment, faculty appointment and make scheduled salary payments to him [through March 31, 2012].”

See Section B.1 above. Additionally, Dr. Dong provided no evidence MUSC either failed to employ him until March 31, 2012, or make the scheduled salary payments to him through March 31, 2012. Additionally, Dr. Dong provided no evidence MUSC did not allow him to continue his faculty appointments, tenure, or title or that MUSC otherwise removed Dr. Dong’s faculty appointments, tenure, or title until after March 31, 2012.

3. Allow Dr. Dong to “retain his faculty appointment, tenure and title until the effective date [March 31, 2012] of his resignation.”

See Sections B.1 and B.2 above.

4. Allow Dr. Dong “forty-five (45) days after the execution of the agreement to revoke it [the Agreement].”

Dr. Dong provided no evidence MUSC breached the Agreement in respect to the revocation provision. Moreover, Dr. Dong acknowledged he did not request to revoke the Agreement, including within the forty-five-day period.

5. “[P]ay Dr. Dong his current level of monthly salary compensation through March 31, 2012. This amount will equal but not exceed his effective annual rate of pay (\$105,313.00/year) at November 1, 2009.”

See Sections B.1 and B.2 above.

6. “Primary [MUSC faculty] appointment will be in the Department of Biochemistry with a secondary appointment in the Department of Microbiology and Immunology [through March 31, 2012].”

See Sections B.1 and B.2 above.

7. “Dr. Dong may use the title ‘Director of Biotherapeutics and Vaccine Development’ [through March 31, 2012].”

See Section B.1 and B.2 above. Additionally, Dr. Dong acknowledged no recollection of ever using the title. Moreover, Dr. Dong provided no material evidence MUSC told him to not use the title, or otherwise prohibited or prevented Dr. Dong's use of the title, through March 31, 2012.

- 8. "Any and all MUSC academic appointments are understood to be term limited, not to extend beyond March 31, 2012, or the date of his employment at another institution or company, whichever may come first."**

See Sections B.1, B.2 and B.7 above.

- 9. "University [MUSC] will waive the direct charging of Dr. Dong's salary to any grants or contracts he receives during the period of this agreement. University [MUSC] will cost-share this expense in compliance with federal rules and regulation."**

Dr. Dong provided no evidence MUSC breached the Agreement in respect to this provision.

- 10. "University [MUSC] will continue to provide customary fiscal support and oversight for research awards received through MUSC and the Division of Basic Science."**

Dr. Dong provided no evidence MUSC breached the Agreement in respect to the provision requiring "customary fiscal support and oversight for research awards received through MUSC and the Division of Basic Science."

- 11. "University [MUSC] will pay Dr. Dong a sum of \$30,000 directly from the Chairman's budget in the Department of Microbiology and Immunology, to be paid no later than day 50 following the signing of this agreement."**

According to Dr. Dong, the amount was paid by MUSC. Consequently, Dr. Dong acknowledged MUSC did not breach this provision in the Agreement.

- 12. "Mr. Scott Reid and Mr. Ronald Bycroft will attempt to locate an vectors or similar materials shared with other investigators for re-propagation by Dr. Dong and will attempt to locate written, enduring, hard-copy records which have been lost. This will occur**

in the 45-day window above. Any additional items located after that time of search will also be provided Dr. Dong.”

Dr. Dong provided no evidence MUSC, specifically its then employees Scott Reid and Ronald Bycroft, failed to “attempt” to “locate” the “vectors and similar materials.” Moreover, Dr. Dong provided no evidence MUSC failed to provide him with “additional items located after that time of search” by Mr. Reid and Mr. Bycroft or evidence such “additional items” were located at all.

13. “University [MUSC] agrees to relinquish any all active, commercially funded research awards received by Dr. Dong to Dr. Dong as permitted by the sponsor upon his resignation.”

Dr. Dong provided no evidence MUSC breached the Agreement in respect to the provision regarding relinquishment of “commercially funded research awards.”

14. “Active, federally funded research awards received will be relinquished [by MUSC] directly back to the federal agencies as obligated by the award agreements.”

Dr. Dong provided no evidence MUSC breached the Agreement in respect to the relinquishment provision.

15. “Enduring grant materials, records, lab books and any other documentation required by law or University policy, will be secured, catalogued and maintained by MUSC, in the office of General Counsel.” “Dr. Dong may make copies of his enduring grant materials, records, and lab books.”

Dr. Dong provided no evidence MUSC breached the Agreement in respect to this provision.

16. “MUSC will cover Dr. Dong’s legal fees and other costs in this matter, through a second one-time payment of \$20,000, also to be made to Dr. Dong no later than day 50 following the signing of this agreement.”

Dr. Dong provided no evidence MUSC breached the Agreement in respect to this provision. Dr. Dong acknowledged he does not have knowledge whether MUSC paid the \$20,000.00. Dr. Dong also acknowledged no recollection of incurring or claiming legal fees, including attorney fees, related to the Agreement because Dr. Dong did not have an attorney involved, and Dr. Dong did not believe he claimed the \$20,000.00 for legal fees and other costs.

17. “[A]ccess to campus facilities and to their use [by Dr. Dong] shall not be limited during his remaining years of appointment and employment.”

Dr. Dong provided no evidence MUSC breached the Agreement in respect to the access provision. Moreover, although a letter from Dr. Sothmann to Dr. Dong on September 29, 2011, placed Dr. Dong on paid administrative leave, Dr. Dong provided no evidence Dr. Sothmann prohibited him from accessing “campus facilities” or limited Dr. Dong’s use of “campus facilities.”

18. “[A]ny equipment purchased through extramural grants written by Dr. Dong as the sole PI and which was in Dr. Dong’s laboratory at the time of relocation to the 700 sf laboratory space (including freezers and refrigerators also located nearby in equipment rooms of CSB) shall be relocated to GenPhar in 30 days of the effective date.”

MUSC acknowledges it never relocated “equipment” subject to this provision of the Agreement. However, as discussed in Section I above, to the extent Dr. Dong could have asserted a claim for breach regarding this provision, the three-year statute of limitation accrued thirty days after the effective date of the Agreement – no later than July 18, 2010. Therefore, the statute of limitations expired no later than July 18, 2013 – over a year before Dr. Dong filed his Complaint.

19. “Relocate at its [MUSC’s] expenses such Exhibit B equipment as it [MUSC] may evaluate from the remaining Vector Core equipment which can be temporarily relocated without jeopardizing other on-going funded faculty researchers,” including “equipment which Dr. Dong purchased from UCSF [University of California – San

Francisco] and for grants on which Dr. Dong was the named original PI [“Primary Investigatory”] as permitted by law and University [MUSC] policy to the GenPhar location, provided that all certificates of occupancy, governmental permits and insurance coverages are in place for that site.” “All equipment shall remain within the MUSC property accounting system.”

Dr. Dong provided no evidence MUSC breached the Agreement in respect to this provision for several reasons. First, Dr. Dong provided no evidence he ever provided MUSC with an “Exhibit B” to the Agreement and no “Exhibit B” was attached to the Agreement. The Agreement required Dr. Dong provide MUSC with “Exhibit B” no later than “10 days after the date of entry into” the Agreement – by May 13, 2010. Second, Dr. Dong provided no evidence the “GenPhar location” received “certificates of occupancy, governmental permits, and insurance coverages,” as required by the Agreement.

20. “University [MUSC] agrees to relocate at its expense the equipment listed in Exhibit A.”

MUSC acknowledges it never relocated the equipment listed in Exhibit A to the Agreement. However, Dr. Dong provided no evidence the “GenPhar location” received “certificates of occupancy, governmental permits, and insurance coverages,” as required by the Agreement. In the absence of such certificates, permits, and insurance coverages, the Agreement did not require MUSC relocate the equipment listed in Exhibit A to the Agreement. Additionally, as discussed in Section I above, to the extent Dr. Dong could have asserted a claim for breach regarding this provision, the three-year statute of limitation began to run after thirty days of the effective date of the Agreement – no later than July 18, 2010. Therefore, the statute of limitations expired no later than July 18, 2013 – over a year before Dr. Dong filed his Complaint.

In summary, Dr. Dong provided no substantive, admissible, and/or material evidence sufficient to support his allegations MUSC breached the Agreement.

C. Dr. Dong Did Not Present Sufficient Evidence of Damages.

“The general rule is that for a breach of contract the defendant is liable for whatever damages follow as a natural consequence and a proximate result of such breach.” *Id.* (quoting Fuller v. E. Fire & Cas. Ins. Co., 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962)). “In a breach of contract action, damages serve to place the nonbreaching party in the position he would have enjoyed had the contract been performed.” *Id.* (quoting S.C. Fed. Sav. Bank v. Thornton-Crosby Dev. Co., 303 S.C. 74, 77, 399 S.E.2d 8, 10 (Ct. App. 1990)). “The measure of damages for breach of contract is the loss actually suffered by the contractee as the result of the breach.” S.C. Fin. Corp. of Anderson v. W. Side Fin. Co., 236 S.C. 109, 122, 113 S.E.2d 329, 335 (1960).

“Generally, in order for damages to be recoverable, the evidence should be such as to enable the court or jury to determine the amount thereof with reasonable certainty or accuracy.” Austin v. Stokes-Craven Holding Corp., 387 S.C. 22, 43, 691 S.E.2d 135, 146 (2010) (quoting Whisenant v. James Island Corp., 277 S.C. 10, 13, 281 S.E.2d 794, 796 (1981)). “While neither the existence, causation nor amount of damages can be left to conjecture, guess or speculation, proof with mathematical certainty of the amount of loss or damage is not required.” *Id.* (quoting Whisenant, 277 S.C. at 13, 281 S.E.2d at 796).

Dr. Dong did not provide any material evidence of damages associated with any alleged breach of the Agreement by MUSC.

CONCLUSION

Dr. Dong failed to present evidence sufficient to show: 1) he filed his Complaint within the applicable statute of limitations; 2) MUSC breached the Agreement; and/or 3) he incurred any damages because of alleged breaches of the Agreement. For all the noted reasons, the Court grants MUSC summary judgment as to Dr. Dong’s claims and cause of action.

IT IS SO ORDERED.



Charleston Common Pleas

Case Caption: Jian Yun Dong M D , plaintiff, et al VS Medical University of South Carolina The
Case Number: 2016CP1006683
Type: Order/Summary Judgment

So Ordered

Jean H. Toal

Electronically signed on 2023-07-17 12:15:17 page 16 of 16

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2016CP1006683

Jian Yun Dong, M D et al
PLAINTIFF(S)

Medical University of South Carolina The
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiff's June 27, 2023 Motion for Rehearing of Defendant's Motion for Summary Judgment is DENIED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/17/2023 .

Dong, John M D Ph D for Dong, John M D Ph D
John Dong, M D
Dong, Jian Yun M D Ph D
Dong, John M D Ph D for Dong, John M D Ph D
Jian Yun Dong, M D

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Jian Yun Dong M D , plaintiff, et al VS Medical University of South Carolina The
Case Number: 2016CP1006683
Type: Order/Electronic Form 4

So Ordered

Jean H. Toal

Electronically signed on 2023-07-17 12:04:31 page 3 of 3

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2016CP1006683

Jian Yun Dong, M D et al
PLAINTIFF(S)

Medical University of South Carolina The
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiff's 6/15/23 emailed (but not filed) Motion for Equal Time to Prepare for Plaintiff's Objection to Defendant's Proposed Order for Summary Judgment is GRANTED.

Plaintiff will have until 7/3/23 to file any objections to Defendant's proposed order.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/20/2023 .

Dong, John M D Ph D for Dong, John M D Ph D
John Dong, M D
Dong, Jian Yun M D Ph D
Dong, John M D Ph D for Dong, John M D Ph D
Jian Yun Dong, M D

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Jian Yun Dong M D , plaintiff, et al VS Medical University of South Carolina The
Case Number: 2016CP1006683
Type: Order/Electronic Form 4

So Ordered

Jean H. Toal

Electronically signed on 2023-06-20 16:18:30 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-06683
	)	
Jian Yun Dong, M.D., Ph.D.,	)	
	)	
Plaintiff,	)	
	)	NOTICE OF HEARING
v.	)	
	)	
Medical University of South Carolina,	)	
	)	
Defendant.	)	
_____	)	

A hearing has been set in the above-captioned action for 10:00 am on May 26, 2023, at the Charleston County Judicial Center Complex.

[JUDGE'S SIGNATURE PAGE FOLLOWS]



Charleston Common Pleas

Case Caption: Jian Yun Dong M D , plaintiff, et al VS Medical University of South Carolina The
Case Number: 2016CP1006683
Type: Notice/Notice of Hearing

So Ordered

Jean H. Toal

Electronically signed on 2023-05-08 09:32:54 page 2 of 2

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-06683
	)	
Jian Yun Dong, M.D., Ph.D.,	)	
	)	
Plaintiff,	)	
	)	NOTICE OF TRIAL
v.	)	
	)	
Medical University of South Carolina,	)	
	)	
Defendant.	)	
_____	)	

A trial has been set in the above-captioned action beginning at 9:30 am on July 24, 2023,
at the Charleston County Judicial Center.

[JUDGE'S SIGNATURE PAGE FOLLOWS]



Charleston Common Pleas

Case Caption: Jian Yun Dong M D , plaintiff, et al VS Medical University of South Carolina The
Case Number: 2016CP1006683
Type: Notice/Other

So Ordered

Jean H. Toal

Electronically signed on 2023-05-08 09:38:37 page 2 of 2

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-06683
	)	
Jian Yun Dong, M.D., Ph.D.,	)	
	)	
Plaintiff,	)	
	)	NOTICE OF HEARING
v.	)	
	)	
Medical University of South Carolina,	)	
	)	
Defendant.	)	
_____	)	

A hearing has been set in the above-captioned action for 10:00 am on May 11, 2023, at the Charleston County Courthouse (courtroom 4B).

[JUDGE'S SIGNATURE PAGE FOLLOWS]



Charleston Common Pleas

Case Caption: Jian Yun Dong M D , plaintiff, et al VS Medical University of South Carolina The
Case Number: 2016CP1006683
Type: Notice/Notice of Hearing

So Ordered

Jean H. Toal

Electronically signed on 2023-04-20 14:54:04 page 2 of 2

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-06683
	)	
Jian-Yun (John) Dong, M.D., Ph.D.,	)	
	)	
Pro Se Plaintiff,	)	
vs.	)	ORDER FOR PROTECTION
	)	
The Medical University of South	)	
Carolina,	)	
	)	
Defendant.	)	
_____	)	

IT APPEARING that attorney Caroline Wrenn Cleveland with the law firm of Cleveland & Conley, L.L.C. is requesting and should be granted for good reason being shown, an order protecting her from court appearances and proceedings in the Charleston County Court of Common Pleas from Tuesday, March 28, 2023 through Tuesday, April 4, 2023 for a family vacation.

ORDERED that Caroline Wrenn Cleveland is hereby granted protection from March 28, 2023, through April 4, 2023.

AND IT IS SO ORDERED.

Jean H. Toal
Ninth Judicial Circuit

Charleston, South Carolina
_____, 2023



Charleston Common Pleas

Case Caption: Jian Yun Dong M D , plaintiff, et al VS Medical University of South Carolina The
Case Number: 2016CP1006683
Type: Order/Protection from Court Appearance

So Ordered

s/Julie J. Armstrong, Charleston County Clerk of Court

Electronically signed on 2023-03-22 10:30:12 page 2 of 2

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-06683
	)	
Jian-Yun (John) Dong, M.D., Ph.D.,	)	
	)	
Pro Se Plaintiff,	)	
vs.	)	ORDER FOR PROTECTION
	)	
The Medical University of South	)	
Carolina,	)	
	)	
Defendant.	)	
_____	)	

IT APPEARING that attorney Bob J. Conley with the law firm of Cleveland & Conley, L.L.C. is requesting and should be granted for good reason being shown, an order protecting him from court appearances and proceedings in the Charleston County Court of Common Pleas from Monday, March 27, 2023 through Wednesday, April 12, 2023 for travel to visit a child residing outside the United States.

ORDERED that Bob J. Conley is hereby granted protection from March 27, 2023, through April 12, 2023.

AND IT IS SO ORDERED.

Jean H. Toal
Ninth Judicial Circuit

Charleston, South Carolina

_____, 2023



Charleston Common Pleas

Case Caption: Jian Yun Dong M D , plaintiff, et al VS Medical University of South Carolina The
Case Number: 2016CP1006683
Type: Order/Protection from Court Appearance

So Ordered

s/Julie J. Armstrong, Charleston County Clerk of Court

Electronically signed on 2023-03-22 10:28:41 page 2 of 2

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-06683
	)	
Jian-Yun (John) Dong, M.D., Ph.D.,	)	
	)	
Pro Se Plaintiff,	)	
vs.	)	ORDER FOR PROTECTION
	)	
The Medical University of South	)	
Carolina,	)	
	)	
Defendant.	)	
_____	)	

IT APPEARING that attorney Bob J. Conley with the law firm of Cleveland & Conley, L.L.C. is requesting and should be granted for good reason being shown, an order protecting him from court appearances and proceedings in the Charleston County Court of Common Pleas from Monday, March 27, 2023 through Wednesday, April 12, 2023 for travel to visit a child residing outside the United States.

ORDERED that Bob J. Conley is hereby granted protection from March 27, 2023, through April 12, 2023.

AND IT IS SO ORDERED.

[JUDGE'S E-SIGNATURE PAGE FOLLOWS]



Charleston Common Pleas

Case Caption: Jian Yun Dong M D , plaintiff, et al VS Medical University of South Carolina The
Case Number: 2016CP1006683
Type: Order/Protection from Court Appearance

So Ordered

Jean H. Toal

Electronically signed on 2023-03-21 12:58:16 page 2 of 2

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-06683
	)	
Jian-Yun (John) Dong, M.D., Ph.D.,	)	
	)	
Pro Se Plaintiff,	)	
vs.	)	ORDER FOR PROTECTION
	)	
The Medical University of South	)	
Carolina,	)	
	)	
Defendant.	)	
_____	)	

IT APPEARING that attorney Caroline Wrenn Cleveland with the law firm of Cleveland & Conley, L.L.C. is requesting and should be granted for good reason being shown, an order protecting her from court appearances and proceedings in the Charleston County Court of Common Pleas from Tuesday, March 28, 2023 through Tuesday, April 4, 2023 for a family vacation.

ORDERED that Caroline Wrenn Cleveland is hereby granted protection from March 28, 2023, through April 4, 2023.

AND IT IS SO ORDERED.

[JUDGE'S E-SIGNATURE PAGE FOLLOWS]



Charleston Common Pleas

Case Caption: Jian Yun Dong M D , plaintiff, et al VS Medical University of South Carolina The
Case Number: 2016CP1006683
Type: Order/Protection from Court Appearance

So Ordered

Jean H. Toal

Electronically signed on 2023-03-21 12:56:53 page 2 of 2

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-06683
	)	
Jian Yun Dong, M.D., Ph.D.,	)	
	)	
Plaintiff,	)	
	)	ORDER
v.	)	
	)	
Medical University of South Carolina,	)	
	)	
Defendant.	)	
_____	)	

On February 22, 2023, the Clerk of Court for Charleston County accepted for filing the Plaintiff, John Dong's Motion for Extension of Time for Discovery dated February 20, 2023. This is yet another attempt by Plaintiff Dong to modify the deadlines specified in the Scheduling Order in this matter, issued on October 17, 2022 by the undersigned. Plaintiff cites as his grounds for this latest motion: (1) The due date for his brief to the U.S. Court of Appeals for the Fourth Circuit in another matter and (2) the allegation that he has pulmonary problems and has been referred by his primary physician to a pulmonary specialist.

I deny this motion. First, the Plaintiff has received several extensions from the Fourth Circuit. Another consent request for extension is pending. The current extension expires today. The Fourth Circuit Brief has not been an impediment to complying with the Scheduling Order in this case. Second, the medical referral form attached to Plaintiff's Motion lists a doctor in San Francisco, California. It does not list any doctor to whom referral is made. Plaintiff's residence is and has for many years been in Charleston, South Carolina.

This is at least the third motion by Plaintiff seeking to delay pretrial discovery. Meanwhile, Plaintiff has not been timely or cooperative with the discovery process or Scheduling Order in this matter. This Motion has clearly been made for purposes of delay. The period for pretrial discovery

depositions expires today. Dispositive motions must be filed by Friday, March 31, 2023. Responses are due by April 21, 2023. I will proceed to set a date for hearing on dispositive motions. Replies should be filed at least three days before this hearing. I will proceed to obtain a date for trial for a date after May 19, 2023.

The Motion is DENIED.

IT IS SO ORDERED.

[JUDGE'S SIGNATURE PAGE FOLLOWS]



Charleston Common Pleas

Case Caption: Jian Yun Dong M D , plaintiff, et al VS Medical University of South Carolina The
Case Number: 2016CP1006683
Type: Order/Other

So Ordered

Jean H. Toal

Electronically signed on 2023-02-28 16:03:15 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-06683
	)	
Jian Yun Dong, M.D., Ph.D.,	)	
	)	
Plaintiff,	)	
	)	ORDER
v.	)	
	)	
Medical University of South Carolina,	)	
	)	
Defendant.	)	
_____	)	

Plaintiff Jian Yun Dong, M.D., Ph.D. (“Dr. John Dong”) has moved the Court to reconsider its January 4, 2023 Order denying Plaintiff’s Motion for Protective Order. As outlined in this Court’s previous Order, any improper attempts to delay proceedings or deviate from the established Scheduling Order will be rejected.

This Court DENIES the Motion for Reconsideration or Renewed Request for Protective Order.

IT IS SO ORDERED.

[Electronic Signature on Following Page]



Charleston Common Pleas

Case Caption: Jian Yun Dong M D , plaintiff, et al VS Medical University of South Carolina The
Case Number: 2016CP1006683
Type: Order/Other

So Ordered

Jean H. Toal

Electronically signed on 2023-01-30 16:50:01 page 2 of 2

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-06683
	)	
Jian Yun Dong, M.D., Ph.D.,	)	
	)	
Plaintiff,	)	
	)	ORDER
v.	)	
	)	
Medical University of South Carolina,	)	
	)	
Defendant.	)	
_____	)	

On December 21, 2022, Plaintiff Dr. John Dong filed a Motion for Protective Order in which he states:

Plaintiff requests the Court's protection for a period of forty-five (45) days to be free of proceedings and court process be continued to the end of the protective period.

Plaintiff cites, as grounds for this Motion, his representation that he has a Brief due in 45 days in an appeal of his to the U.S. Court of Appeals for the Fourth Circuit unrelated to this case.

This matter is a 2016 case, which has been delayed many times. As soon as I was assigned to this case, I conducted an on-the-record Status Conference in this matter on October 4, 2022. Thereafter, I filed a detailed Scheduling Order. Shortly thereafter, Dr. Dong filed an appeal of my rulings. The South Carolina Court of Appeals dismissed this interlocutory appeal on the grounds that my Scheduling Order and discovery rulings are not immediately appealable.

The Scheduling Order requires that discovery depositions in this matter must be completed by February 28, 2023. Mr. Bob Conley, counsel for Defendant MUSC in this matter, notified this Court in December 2022 that Dr. Dong had canceled certain depositions that Dr. Dong has

previously noticed. Mr. Conley has now notified this Court that Dr. Dong has noticed thirteen depositions for the month of January 2023. Dr. Dong noticed these depositions before he filed his Motion for Protection.

Because Plaintiff Dr. Dong has cited no valid reason for delaying this matter further, this Court DENIES Plaintiff Dr. John Dong's Motion for a Protective Order.

IT IS SO ORDERED.

[Electronic Signature on Following Page]



Charleston Common Pleas

Case Caption: Jian Yun Dong M D , plaintiff, et al VS Medical University of South Carolina The
Case Number: 2016CP1006683
Type: Order/Protective Order

So Ordered

Jean H. Toal

Electronically signed on 2023-01-03 16:26:06 page 3 of 3

The South Carolina Court of Appeals

John Dong, M.D., Ph.D., Appellant,

v.

The Medical University of South Carolina, Respondent.

Appellate Case No. 2022-001427

 ORDER

This appeal arises out of an order of the circuit court denying Appellant's motion to compel. Because the underlying order is not immediately appealable, this appeal is dismissed. See *Hamm v. S.C. Pub. Serv. Comm'n*, 312 S.C. 238, 241, 439 S.E.2d 852, 853 (1994) (holding discovery orders are interlocutory and not immediately appealable). The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.


 FOR THE CLERK

Columbia, South Carolina

cc:

John Dong

Bob J. Conley, Esquire

FILED
Oct 19 2022



The South Carolina Court of Appeals

JENNY ASBOTT KITCHENS
CLERK

W. CLAY REALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11526
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1616
FAX (803) 734-1639
WWW.COURTSCA.SOUTH-CAROLINA.GOV

November 21, 2022

The Honorable Julie J. Armstrong
100 Broad St Ste 106
Charleston SC 29401-2210

REMITTITUR

Re: John Dong v. The Medical University
Lower Court Case No. 2016CP1006683
Appellate Case No. 2022-001427

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jenny Asbott Kitchens".

CLERK

Enclosure

cc: John Dong
Bob J. Conley, Esquire

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-06683
	)	
Jian Yun Dong, M.D., Ph.D.,	)	
	)	
Plaintiff,	)	
	)	SCHEDULING ORDER
v.	)	
	)	
Medical University of South Carolina,	)	
	)	
Defendant.	)	
_____	)	

The Court held a status conference pursuant to Rule 16, SCRPC, on Tuesday, October 4, 2022. Plaintiff Jian Yun Dong, M.D., Ph.D. appeared pro se. Bob J. Conley appeared on behalf of Defendant Medical University of South Carolina. Among issues addressed by the Court and the parties was the establishment of a scheduling order. As a result of the status conference, the following schedule is established:

1. **Discovery (Depositions Only):**

Depositions shall be completed no later than **Tuesday, February 28, 2023**.¹ Depositions of current MUSC employees, unless otherwise agreed upon by the parties and approved by the Court, shall occur at the law offices of Cleveland & Conley, LLC. All depositions shall take place in a manner consistent with Rules 26 and 30, SCRPC. Except for stenographic recording and transcription, no other recording of depositions is allowed, other than video recording conducted in strict compliance with Rule 30, SCRPC. Each party is responsible for retaining and scheduling a court reporter to record and transcribe by stenographical means each deposition the party notices and schedules, consistent with Rule 30, SCRPC. Additionally, each party, consistent with Rule 45, SCRPC, is responsible for serving any non-party, including persons no longer employed by Defendant Medical University of South Carolina, with an appropriate deposition subpoena.

¹ Following this order, the parties will provide the Court with a list of deponents and scheduled deposition dates as soon as possible.

2. **Schedule of Depositions:**

A. Deposition of Dr. Dong by MUSC

The Deposition of Dr. Dong will be taken by defense counsel Bob Conley, and recorded by a certified court reporter on October 18, 2023, beginning at 10:00 am, at the offices of Cleveland & Conley, LLC (171 Church Street Suite 310, Charleston, SC 29401).

B. De Bene Esse Depositions

Depositions will be taken de bene esse by defense counsel Bob Conley to preserve the testimony of out-of-state witnesses. These depositions will be recorded by a certified court reporter, and Dr. Dong will be granted access via a video conferencing platform (e.g. Zoom, WebEx). A list of deponents will be provided in a subsequent court order.

C. In-State Depositions

Deposition of in-state witnesses will be conducted by Bob Conley, before a certified court reporter, at the offices of Cleveland & Conley, LLC at times to be specified. A list of deponents will be provided in a subsequent court order.

3. **Dispositive Motions:** Dispositive motions, including motions for summary judgment pursuant to Rule 56, SCRCP, shall be filed no later than **Friday, March 31, 2023**. Responses to dispositive motions shall be filed no later than **Friday, April 21, 2023**. Any party, thereafter, may file a reply, so long as any reply is filed three business days in advance the Court conducting a hearing regarding dispositive motions. The Court may schedule a hearing regarding any dispositive motions for any date on or after **Thursday, April 27, 2023**. Any such hearing will also, to the extent necessary, be utilized and conducted as a pre-trial hearing pursuant to Rule 16, SCRCP.
4. **Mediation:** The case is subject to mediation and the Court will evaluate whether to order the parties to mediation as the case progresses. In the event the Court orders mediation, the Court may set the terms and conditions of mediation including, but not limited to, the timing of mediation and appointing/designating the mediator.
5. **Trial:** This case is subject to being set by the Court for trial beginning any date after **Friday, May 19, 2023**.

IT IS SO ORDERED.

[Electronic Signature on Following Page]



Charleston Common Pleas

Case Caption: Jian Yun Dong M D , plaintiff, et al VS Medical University of South Carolina The
Case Number: 2016CP1006683
Type: Order/Scheduling Order

So Ordered

Jean H. Toal

Electronically signed on 2022-10-07 17:25:56 page 3 of 3

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2016CP1006683

Jian Yun Dong, M D et al
PLAINTIFF(S)

Medical University of South Carolina The
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiff's Motion for Reconsideration is DENIED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 09/28/2022 .

Dong, John M D Ph D for Dong, John M D Ph D
John Dong, M D
Dong, Jian Yun M D Ph D
Dong, John M D Ph D for Dong, John M D Ph D
Jian Yun Dong, M D

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Jian Yun Dong M D , plaintiff, et al VS Medical University of South Carolina The
Case Number: 2016CP1006683
Type: Order/Electronic Form 4

So Ordered

s/ R. Ferrell Cothran, Jr., 2144

Electronically signed on 2022-09-28 11:06:44 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	
	)	
<u>Jian Yun Dong, M.D., et al</u>	)	CASE NO. 2016-CP-10-06683
Plaintiff,	)	
	)	NOTICE OF STATUS CONFERENCE
v.	)	
	)	
<u>The Medical University of South Carolina</u>	)	
Defendant.	)	

A status conference has been set in the above entitled action on October 4, 2022 at 9:30 a.m. You are hereby notified to be present in the Charleston County Court of Common Pleas at that time.

The scheduled status conference will serve as an opportunity to discuss the following: the posture of the case; any remaining discovery disputes; whether the parties have any pretrial motions that need to be heard; deadlines for filing motions; setting a hearing for pretrial motions; and setting a trial date.

IT IS SO ORDERED.

The Hon. Jean Hoefer Toal
September 20, 2022

[Signature on following page]



Charleston Common Pleas

Case Caption: Jian Yun Dong M D , plaintiff, et al VS Medical University of South Carolina The
Case Number: 2016CP1006683
Type: Notice/Notice of Hearing

So Ordered

Jean H. Toal

Electronically signed on 2022-09-20 16:44:47 page 2 of 2

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2016CP1006683

Jian Yun Dong, M D et al
PLAINTIFF(S)

Medical University of South Carolina The
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiff filed a motion to amend scheduling order on 8/23/2022. A virtual hearing was held on 9/6/2022. Plaintiff's motion is hereby GRANTED. To allow the parties to complete discovery, the amended scheduling order shall include a Trial Not Before Date of 11/1/2022.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 09/08/2022 .

Dong, John M D Ph D for Dong, John M D Ph D
John Dong, M D
Dong, Jian Yun M D Ph D
Dong, John M D Ph D for Dong, John M D Ph D
Jian Yun Dong, M D

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Jian Yun Dong M D , plaintiff, et al VS Medical University of South Carolina The
Case Number: 2016CP1006683
Type: Order/Electronic Form 4

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

Electronically signed on 2022-09-08 09:39:54 page 3 of 3

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2016CP1006683

Jian Yun Dong, M D et al
PLAINTIFF(S)

Medical University of South Carolina The
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiff filed a Motion to Reconsider on March 8, 2022, Judge Cothran issued a ruling on February 7, 2022. The time for filing is past due. In accordance with Rule 59, Plaintiff's Motion to Reconsider is DENIED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/12/2022 .

Dong, John M D Ph D for Dong, John M D Ph D
John Dong, M D
Dong, Jian Yun M D Ph D
Dong, John M D Ph D for Dong, John M D Ph D
Jian Yun Dong, M D

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Jian Yun Dong M D , plaintiff, et al VS Medical University of South Carolina The
Case Number: 2016CP1006683
Type: Order/Electronic Form 4

So Ordered

s/ R. Ferrell Cothran, Jr., 2144

Electronically signed on 2022-08-12 09:17:42 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-06683
	)	
Jian-Yun (John) Dong, M.D., Ph.D.,	)	
	)	ORDER FOR PROTECTION
Plaintiff,	)	
v.	)	
	)	
The Medical University of South	)	
Carolina,	)	
	)	
Defendant.	)	
_____	)	

IT APPEARING that attorney Bob J. Conley with the law firm of Cleveland and Conley, L.L.C. is requesting and should be granted for good reason being shown, an Order Protecting him from court appearances and proceedings in the Charleston County Court of Common Pleas from April 20, 2022 through May 4, 2022 for a planned vacation and for Monday, May 16, 2022.

ORDERED that Bob J. Conley is hereby granted protection from April 20, 2022 through May 4, 2022 and for Monday, May 16, 2022.

AND IT IS SO ORDERED.

Chief Administrative Judge
Ninth Judicial Circuit

Charleston, South Carolina

_____, 2022



Charleston Common Pleas

Case Caption: Jian Yun Dong M D , plaintiff, et al VS Medical University of South Carolina The
Case Number: 2016CP1006683
Type: Order/Protection from Court Appearance

So Ordered

s/Julie J. Armstrong, Charleston County Clerk of Court

Electronically signed on 2022-04-07 11:15:21 page 2 of 2

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-06683
	)	
Jian-Yun (John) Dong, M.D., Ph.D.,	)	
	)	
Plaintiff,	)	ORDER DENYING
	)	PLAINTIFF'S SECOND
v.	)	MOTION TO COMPEL AND
	)	GRANTING EXPANDED TIME
The Medical University of South	)	TO COMPLETE DISCOVERY
Carolina,	)	
	)	
Defendant.	)	
	)	

This case came before the Court for hearing on Monday, December 13, 2021, regarding Plaintiff's pending motions. For the reasons stated below, the Court denies Plaintiff's Second Motion to Compel. Additionally, the Court grants, in part, Plaintiff's Motion to Expand Discovery Schedule Due to COVID-19 Pandemics, and approves a schedule for the case as to the completion of discovery, mediation, filing dispositive motions, and, if necessary, trial. All Plaintiff's other pending motions were moot at the time of the hearing.

BACKGROUND

Plaintiff Jian-Yun Dong, M.D, Ph.D. ("Dr. Dong") and Defendant Medical University of South Carolina ("MUSC") entered into a separation agreement on or about May 3, 2010. In his Complaint, Dr. Dong alleges MUSC breached the separation agreement. Dr. Dong's sole cause of action in his Complaint is for breach of contract – the separation agreement.

Dr. Dong filed his Complaint on September 2, 2014. Subsequently, on October 22, 2015, Dr. Dong dismissed the lawsuit under Rule 40(j), SCRPC. Thereafter, on December 14, 2016, Dr. Dong's lawsuit was restored to the general docket, under Rule 40(j), SCRPC. Although Dr. Dong

was previously represented by counsel, Dr. Dong's counsel withdrew in January 2017. Dr. Dong remains a pro se litigant. (Dr. Dong appeared pro se at the hearing on December 13, 2021.)

In April 2011, before Dr. Dong filed his Complaint, Dr. Dong was indicted for various federal felonies in federal district court. In April 2013, a Third Superseding Indictment was entered as to Dr. Dong. Thereafter, on August 4, 2015, before Dr. Dong's Complaint was dismissed under Rule 40(j), SCRCF, Dr. Dong was convicted in the federal district court.

On or about October 3, 2017, approximately ten months after Dr. Dong restored the case to the active roster, Dr. Dong was sentenced and committed to the custody of the Federal Bureau of Prisons for a term of seventy months. Based upon Dr. Dong's statements at the hearing on December 13, 2021, it is understood Dr. Dong is now residing at his home in Charleston, South Carolina, and he is available to participate in discovery, mediation and, if necessary, a trial.

MUSC and Dr. Dong proceeded with discovery after the case was restored, including the exchange of written discovery requests and associated responses. In March 2019, Dr. Dong filed a motion to compel ("First Motion to Compel"). The First Motion to Compel was subsequently heard by the Honorable D. Craig Brown. Dr. Dong appeared for the hearing by telephone. As a result of the hearing, Judge Brown issued an order on June 20, 2019, granting, in part, the First Motion to Compel. Judge Brown's order also stayed the case pending Dr. Dong's release from federal confinement.

Subsequently, on July 3, 2019, MUSC filed its Motion to Alter or Amend as to Judge Brown's June 20, 2019, order. Thereafter, Judge Brown held a hearing regarding MUSC's Motion to Alter or Amend. Dr. Dong appeared for the hearing by telephone. As a result of the hearing, Judge Brown issued an order on October 4, 2019, granting MUSC's Motion to Alter or Amend.

The order issued by Judge Brown on October 4, 2019, became the controlling order in this matter as to the First Motion to Compel and further discovery.¹ Judge Brown's October 4, 2019, order also contains a "scheduling order" establishing various deadlines.

In compliance with Judge Brown's October 4, 2019, order, MUSC provided discovery responses to Dr. Dong on October 14, 2019. Additionally, on November 18, 2019, counsel for MUSC sent Dr. Dong a letter inquiring about scheduling his deposition for the week of January 13, 2020.

On January 16, 2020, counsel for MUSC served Dr. Dong with a Notice of Taking Deposition, scheduling Dr. Dong's deposition for February 14, 2020, before the February 28, 2020, discovery deadline set by Judge Brown in his October 4, 2019, order. However, on January 27, 2020, Dr. Dong filed his Response to Taking Deposition, requesting, in general, his deposition be delayed until after March 15, 2020. Consequently, Dr. Dong's deposition did not go forward as noticed for February 14, 2020.

On January 29, 2020, Dr. Dong filed his Motion to Expand Discovery. On the same date, Dr. Dong served counsel for MUSC with Plaintiff's Second Requests for Production to Defendant. Thereafter, and in response, MUSC served its responses to Dr. Dong's Second Requests for Production on March 18, 2020.

By late February and early March 2020, the COVID-19 pandemic was ongoing and evolving. On or about March 4, 2020, the South Carolina Supreme Court issued an initial memorandum regarding the pandemic. By March 12, 2020, the operations of certain circuits courts in South Carolina began to close or otherwise alter operations due to the pandemic.

¹ This Order incorporates by reference Judge Brown's October 4, 2019, order.

On or about September 2, 2020, Dr. Dong filed a Notice of Change of Address indicating he is now residing on Daniel Island, South Carolina, not in a Federal Bureau of Prisons facility. On January 11, 2021, Dr. Dong filed Plaintiff's Motion to Expand Discovery Schedule Due to COVID-19 Pandemics. Subsequently, and finally, on January 20, 2021, Dr. Dong filed Plaintiff's Second Motion to Compel Production ("Second Motion to Compel").

FINDINGS

The Court, at the hearing on December 13, 2021, understood the following motions of Dr. Dong were pending resolution: 1) Response to Taking Deposition filed January 27, 2020; 2) Motion to Expand Discovery filed January 29, 2020; 3) Plaintiff's Motion to Expand Discovery Schedule Due to COVID-19 Pandemic filed January 11, 2021; and 4) Plaintiff's Second Motion to Compel Production filed January 20, 2021. From a practical standpoint, Dr. Dong's motions filed in January 2021 are the motions requiring resolution because the Response to Taking Deposition is moot as of March 15, 2020, because the date Dr. Dong requested his deposition not be taken before in his Response to Taking Deposition is now in the past. Further, Dr. Dong's Motion to Expand Discovery Schedule Due to COVID-19 Pandemics appears to be a resubmission/reassertion of Dr. Dong's previous Motion to Expand Discovery.

MUSC, within this framework, responded to Plaintiff's Motion to Expand Discovery Schedule Due to COVID-19 Pandemics, and Plaintiff's Second Motion to Compel Production. MUSC asserted, and the Court finds, the resolution of these two motions resolves all pending motions and places this matter on course to complete discovery and trial, if necessary.

A. Plaintiff's Motion to Expand Discovery Schedule Due to COVID-19 Pandemics.

Based upon the submissions of MUSC and Dr. Dong, and considering their respective arguments and representations at the hearing on December 13, 2021, the Court concludes an amended scheduling order allowing for the orderly progress and resolution of this matter is necessary and appropriate, particularly given the circumstances created by the COVID-19 pandemic since February/March 2020 and Dr. Dong's related incarceration. To that end, the Court concludes an amended scheduling order containing the following deadlines is appropriate: 1) June 30, 2022, complete discovery; 2) July 29, 2022, engage in mediation or request a party or the parties be relieved from the obligation to participate in mediation; 3) August 31, 2022, file dispositive motions; and 4) case not eligible for trial until on or after September 30, 2022.²

The remaining discovery is limited to taking and concluding depositions only. No further written discovery is allowed unless approved by the Court.

B. Plaintiff's Second Motion to Compel Production.

Judge Brown, in his October 4, 2019, order, limited Dr. Dong's First Requests for Production as follows:

3. In responding to Dr. Dong's discovery requests, the scope of discoverable materials shall be limited to relevant documents generated or created no earlier than April 1, 2010. The parties may at any time prior to the discovery deadline, and for good cause, petition the circuit court to expand this limitation as discovery progresses.

² Attached as Exhibit A to this Order is an Amended Scheduling Order that contains the noted deadlines. Upon entry of this Order, the Court will forward this Order and Exhibit A to the Chief Administrative Judge for the Ninth Judicial Circuit, so the Chief Administrative Judge can sign and approve the Amended Scheduling Order. Doing so is in keeping with Judge Brown's October 4, 2019, order, and its requirement that the schedule established by Judge Brown "shall only be modified, if necessary, by the Ninth Circuit Chief Administrative Judge."

4. In responding to Dr. Dong's discovery requests, the scope of discoverable materials shall further be limited to relevant documents generated by, created by, sent to, or received from Dr. Dong, Mark Sothman, Ph.D. or Stephen Lanier, Ph.D. The parties may at any time prior to the discovery deadline, and for good cause, petition the circuit court to expand this limitation as discovery progresses.

On October 14, 2019, consistent with Judge Brown's orders, MUSC produced documents to Dr. Dong. Dr. Dong did not subsequently move to further compel production under Judge Brown's October 4, 2019, order or otherwise assert MUSC failed to comply with Judge Brown's October 4, 2019, order concerning the documents produced. Instead, Dr. Dong, in January 2020, filed his Motion to Expand Discovery and served Plaintiff's Second Requests for Production. On March 18, 2020, MUSC served its responses to Plaintiff's Second Requests for Production.

As noted in MUSC's responses to Plaintiff's Second Requests for Production, Plaintiff's Second Requests for Production are subject to objection, and rejection by the Court, for two particular reasons. First, Dr. Dong did not obtain leave of the Court to request materials beyond those expressly required by Judge Brown's prior orders. However, even if Dr. Dong's Second Requests for Production can be viewed as impliedly requesting the Court's permission to request materials beyond the express parameters in Judge Brown's October 4, 2019, order, the Court denies Dr. Dong's request. Dr. Dong, neither in his submissions to the Court nor his arguments at the December 13, 2021, hearing provided sufficient basis, reason, or "good cause" for expanding the scope of discovery.

Moreover, and more importantly, the requests contained in Plaintiff's Second Requests for Production are the very same (i.e. identical or virtually identical) requests contained in Plaintiff's First Requests for Production – being the requests previously ruled upon by Judge Brown in his

October 4, 2019, order. In particular, requests for production 1 and 16 through 40 in Plaintiff's Second Requests for Production are also in Plaintiff's First Requests for Production. In other words, twenty-six of the forty requests contained in Plaintiff's Second Requests for Production, and that Dr. Dong moves to compel MUSC to respond to, were previously reviewed and limited by Judge Brown in his October 4, 2019, order. Finally, even in respect to the remaining fourteen requests, being requests 2 – 15, that do not appear to be identical to those requests contained in Plaintiff's First Requests for Production, the noted requests seek the very same, broad materials sought by Dr. Dong in Plaintiff's First Requests for Production.

For the reasons stated, and based upon the submissions of the parties and the arguments presented at the hearing on December 13, 2021, Dr. Dong's Second Motion to Compel is denied.

CONCLUSION

For the reasons discussed, the Court grants an expanded period for the parties to complete discovery, conduct mediation, file dispositive motions, and, if necessary, prepare for trial. However, the Court denies Dr. Dong's Second Motion to Compel.

Honorable R. Ferrell Cothran, Jr.
Circuit Court Judge
Third Judicial Circuit

_____, 2022



Charleston Common Pleas

Case Caption: Jian Yun Dong M D , plaintiff, et al VS Medical University of South Carolina The
Case Number: 2016CP1006683
Type: Order/Other

So Ordered

s/ R. Ferrell Cothran, Jr., 2144

Electronically signed on 2022-02-07 14:59:31 page 8 of 8

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2016CP1006683

Jian Yun Dong, M D et al
PLAINTIFF(S)

Medical University of South Carolina The
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Stay is lifted in this matter. Pending motions shall be placed in the motions queue to be heard.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/06/2021 .

Dong, John M D Ph D for Dong, John M D Ph D 23179171, Dong, John M D Ph D
John Dong, M D
Dong, Jian Yun M D Ph D
Dong, John M D Ph D for Dong, John M D Ph D
Dong, John M D Ph D 23179171 for Dong, John M D Ph D
Jian Yun Dong, M D

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Jian Yun Dong M D , plaintiff, et al VS Medical University of South Carolina The
Case Number: 2016CP1006683
Type: Order/Electronic Form 4

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

Electronically signed on 2021-10-06 15:16:29 page 3 of 3

ELECTRONICALLY FILED - 2021 Oct 06 3:51 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1006683

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Jian-Yun (John) Dong, M.D., Ph.D.,)
)
Plaintiff,)
)
v.)
)
The Medical University of South)
Carolina,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2016 CP 10 06683

ORDER

FILED
2019 JUN 20 PM 9:35
JUL 10 2019
JUL 10 2019

On March 5, 2019, *pro se* Plaintiff Jian-Yun (John) Dong, M.D., Ph.D. (“Dr. Dong”) filed a Motion to Compel Defendant’s Responses to Plaintiff’s First Requests for Production to Defendant Medical University of South Carolina (“MUSC”). This matter came before the Court on June 10, 2019. Present for the hearing was Emmanuel Ferguson on behalf of MUSC. Dr. Dong appeared on his own behalf by telephone.¹ At issue is Dr. Dong’s request the Court order MUSC produce records responsive to his discovery requests.

MUSC, in general, asserts Plaintiff’s discovery requests are vague, overbroad, and seek materials subject to attorney-client privilege. Further, in light of Dr. Dong proceeding *pro se* and Dr. Dong’s limited access to communication due to his federal incarceration, MUSC believes any discussions with Dr. Dong regarding the exchange of discovery would not be productive and may be misinterpreted.² Therefore, after review of the arguments and filings of the parties, the Court **GRANTS** Plaintiff’s Motion to Compel pursuant to the following conditions outlined below:

¹ Dr. Dong is currently incarcerated at the Federal Corrections Institution in Selters, South Carolina (a/k/a “FCI Williamsburg”). Dr. Dong agreed to attend the hearing on this Motion to Compel by telephone.

² Dr. Dong has previously accused Counsel for MUSC of engaging in “bullying” and “unethical” behavior.

0683-
3

1. All discovery in this case shall be conducted pursuant to this Order and the attached Confidentiality Order incorporated herein.
2. Discovery pursuant to Rules 26 through 37, SCRPC, shall continue to the extent the parties are able while Plaintiff remains incarcerated at the Federal Bureau of Prisons (FBOP). *De bene esse* depositions shall be completed to the extent the parties are able to do so while Plaintiff is incarcerated at the FBOP.
3. In responding to Dr. Dong's discovery requests, the scope of discoverable materials shall be limited to relevant documents generated or created no earlier than April 1, 2010. The parties may at any time and for good cause, petition the circuit court to expand this limitation as discovery progresses.
4. In responding to Dr. Dong's discovery requests, the scope of discoverable materials shall further be limited to relevant documents generated by, created by, sent to, or received from Dr. Dong, Mark Sachman, Ph.D. or Stephen Lanier, Ph.D. The parties may at any time prior to the discovery deadline, and for good cause, petition the circuit court to expand this limitation as discovery progresses.
5. Documents produced to Plaintiff may be delivered by electronic means (such as compact disc or "USB" flash drive) containing password protected encryption.
6. MUSC shall serve its responses to Plaintiff's First Requests for Production to Defendant pursuant to this Order within 30 days from the date of this Order.

One additional issue came up during said hearing. That being the issue of "staying" this case. The Court recognizes that Mr. Ferguson does not consent to such. After considering the circumstances surrounding this case, namely Dr. Dong being incarcerated, discussing this issue

Dick
-084-2013

with Dr. Dong and Mr. Ferguson via email, and discussing such with Judge Roger Young, Chief Administrative Judge for Common Pleas, Ninth Judicial Circuit, the case shall be "stayed" from being called to trial until after Dr. Dong is released from the FBOP. Discovery, however, shall continue to the extent the parties are able and as set forth above.

IT IS SO ORDERED.



D. Craig Brown
South Carolina Circuit Court Judge

Charleston, South Carolina
6-13, 2019

DCB
P-085

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

FILED

CASE NO. 2016-CP-10-6683

Jian Yun Dong, M.D., et al
PLAINTIFF(S)

Medical University of South Carolina

2017 DEC 14 PM 2:15

Submitted by:

JULIE A. HARRIS
CLERK OF COURT

Attorney for: ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 41(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT TRIEBNA, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT FILING IN THIS APPEAL

IT IS ORDERED AND ADJUDGED: ☐ See attached order (format order to follow) ☒ Statement of Judgment by the Court: Defendant's Motion to Compel filed on March 29, 2017, is Granted. Plaintiff has thirty (30) days to answer interrogatories and request for production. In regards to the request for production, if Plaintiff is not in possession of the requested material or cannot access it due to his incarceration then he may respond to that effect. Plaintiff must also contact his criminal attorney to determine how he may obtain any material that was seized during his criminal prosecution in order to proceed with the present suit.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		

If applicable, describe the property, including tax map information and address, referenced in the order:
N/A

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs shall be indicated on the front of the form and filed with the judge may be provided to the clerk. Note: Title abstracts and researchers should refer to the official court order for judgment details.

E-Filing Note: In certain counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

411/
Judge Code

12/13/2017
Date

SCRCP Form 40 (07/2017)

Page 1 of 4

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JIAN-YUN (JOHN) DONG, M.D., Ph.D.

Plaintiff(s)

vs.

THE MEDICAL UNIVERSITY OF SOUTH CAROLINA

Defendant(s)

Submitted By: Allan R. Holmes

Address: Gibbs & Holmes, Suite 110, 171 Church Street,
Charleston, SC 29401

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVER SHEET

2016 -CP- 10 - 6683

SC Bar #: 2576

Telephone #: 843-722-0033

Fax #: 843-722-0114

Office:

E-mail: aholmes@gibbs-holmes.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action to Judgment/Settlement do not complete*

- ☒ **JURY TRIAL** demanded in complaint. ☐ **NON-JURY TRIAL** demanded in complaint.
- ☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is exempt from ADR. (Proof of ADR Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts	Torts - Professional Malpractice	Torts - Personal Injury	Real Property
☐ Construction (100)	☐ General Malpractice (200)	☐ Conversion (310)	☐ Chain of Title (400)
☐ Debt Collection (110)	☐ Legal Malpractice (210)	☐ Motor Vehicle Accident (220)	☐ Condominium (420)
☐ Goods (120)	☐ Medical Malpractice (220)	☐ Premises Liability (330)	☐ Eminent Domain (430)
☒ Breach of Contract (130)	☐ Previous Notice of Intent Case & 20 - 40 - 60 - 80 - 100 - 120 - 140 - 160 - 180 - 200 - 220 - 240 - 260 - 280 - 300 - 320 - 340 - 360 - 380 - 400 - 420 - 440 - 460 - 480 - 500 - 520 - 540 - 560 - 580 - 600 - 620 - 640 - 660 - 680 - 700 - 720 - 740 - 760 - 780 - 800 - 820 - 840 - 860 - 880 - 900 - 920 - 940 - 960 - 980 - 1000	☐ Products Liability (340)	☐ Neighbor's Lien (440)
☐ Fraud/Dual Faith (140)	☐ Notice of Eminent Domain (250)	☐ Personal Injury (350)	☐ Partition (450)
☐ Failure to Deliver Warranty (150)	☐ Other (299)	☐ Wrongful Death (360)	☐ Possession (460)
☐ Employment Dispute (170)		☐ Assault/Battery (370)	☐ Building Code Violation (480)
☐ Employment (180)		☐ Standard Contract (380)	☐ Other (499)
☐ Other (199)		☐ Other (399)	
Immune Petitions	Administrative Law/Relief	Judgments/Settlements	Appeals
☐ NDR (500)	☐ Administrative Div. License (600)	☐ Death Settlement (700)	☐ Arbitration (900)
☐ Mandamus (520)	☐ Judicial Review (610)	☐ Foreign Judgment (710)	☐ Municipal Court (910)
☐ Habeas Corpus (530)	☐ RFE (620)	☐ Mayoral Judgment (720)	☐ Magistrate Criminal (920)
☐ Other (599)	☐ Permanent Injunction (630)	☐ Mutual Settlement (730)	☐ Municipal (930)
	☐ Perfection-Petition (640)	☐ Transcript Judgment (740)	☐ Public Court (940)
	☐ Perfection - Consent Order (650)	☐ Lien Penalties (750)	☐ SCOT (950)
	☐ Other (699)	☐ Transfer of Securities Settlement Payment Rights Application (760)	☐ Worker's Comp (960)
Special/Complex/Other		☐ Confession of Judgment (770)	☐ Zoning Deed (970)
☐ Enforcement (600)	☐ Pharmacy (630)	☐ Partition for Workers Compensation Settlement Approval (780)	☐ Public Service Contract (980)
☐ Automobile Acc. (610)	☐ Unfair Trade Practices (640)	☐ Other (799)	☐ Employment Security Contract (990)
☐ Medical (620)	☐ Out of State Depositions (650)		
☐ Other (699)	☐ Motion to Quash Subpoena in a Civil Case (660)		
☐ Sex Offender (670)	☐ Pre-Suit Discovery (670)		
☐ Permanent Restraining Order (680)			

Submitting Party Signature: _____

Date: December 8, 2016

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Unlawful SCCA / 734 (03/2016)

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis. Turn among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals;
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JIAN-YUN (JOHN) DONG, M.D., Ph.D.,

Plaintiff,

vs.

THE MEDICAL UNIVERSITY OF SOUTH
CAROLINA,

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 14-CP-10-5332

2016-CP-10-6683

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

Allan R. Holmes, Bar No. 2576

Address:

171 Church Street, Suite 110

Charleston, SC 29401

Phone: 843-722-0033 Fax 843-722-0114

E-mail: aholmes@gibbs-holmes.com Other:

Defendant's Attorney:

Bob J. Conley, Bar No. _____

Address:

171 Church Street, Suite 310

Charleston, SC 29401

Phone: 843-577-9626 Fax _____

E-mail: _____ Other: _____

☐ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)

☒ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Consent Order Rule 40(j)

Estimated Time Needed: 0

Court Reporter Needed: ☐ YES ☒ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff ☐ Defendant

December 8, 2016

Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: \$**

☐ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)

☐ Proposed order submitted at request of the court, or:

reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE: _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ **MOTION FEE COLLECTED: \$** _____

☐ **CONTESTED AMOUNT DUE: \$** _____

SCCA 253 (17/2003)

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

JIAN-YUN (JOHN) DONG, M.D., Ph.D.,)

Plaintiff.)

vs.)

THE MEDICAL UNIVERSITY OF
SOUTH CAROLINA,)

Defendant.)
_____)

Civil Action No. 14-10-CP-5334

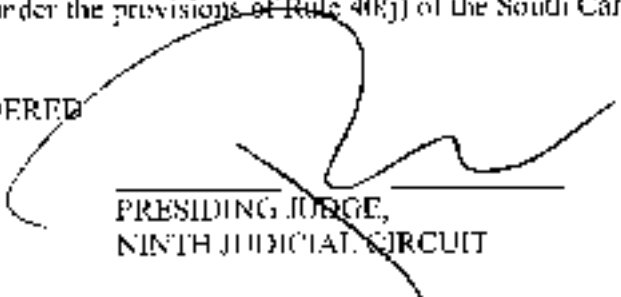
2016-CP10-6683

CONSENT ORDER
RESTORING CASE UNDER
RULE 40(j)

FILED
2016 DEC 14 AM 10:05
JULIE J. AGRESTI
CLERK OF COURT

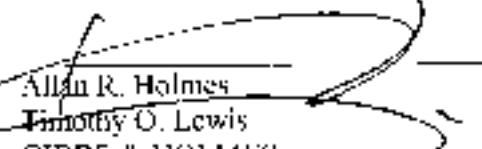
Upon motion and consent of the parties and counsel, this case is hereby RESTORED to the docket under the provisions of Rule 40(j) of the South Carolina Rules of Civil Procedure.

AND IT IS SO ORDERED

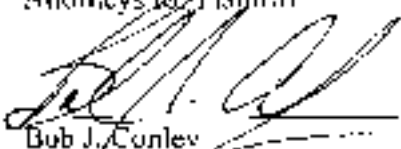


PRESIDING JUDGE,
NINTH JUDICIAL CIRCUIT

WE CONSENT:


Allan R. Holmes
Timothy O. Lewis
GIBBS & HOLMES
171 Church Street, Suite 101
Post Office Box 938 (29402)
Charleston, SC 29401
Telephone: (843) 722-0033
Facsimile: (843) 722-0114

Attorneys for Plaintiff


Bob J. Conley
CLEVELAND & CONLEY
171 Church Street, Suite 310
Charleston, SC 29401

Telephone: (845) 577-9626
Facsimile: (845) 577-6672

Attorneys for Defendant

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JIAN-YUN (JOHN) DONG, M.D., Ph.D.,

Plaintiff.

vs.

THE MEDICAL UNIVERSITY OF SOUTH
CAROLINA

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 14-CP-10-533L

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

Allan R. Holmes, Bar No. 2576

Address:

171 Church Street, Suite 110

Charleston, SC 29401

Phone: 843-722-0033 Fax 843-722-0114

E-mail: aholmes@gibbs-holmes.com Other:

Defendant's Attorney:

Bob J. Conroy, Bar No. _____

Address:

171 Church Street, Suite 310

Charleston, SC 29401

Phone: 843-577-9626 Fax

E-mail: _____ Other:

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Consent Order Rule 40(j)

Estimated Time Needed: 0

Court Reporter Needed: ☐ YES ☒ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order

Signature of Attorney for ☒ Plaintiff ☐ Defendant

October 13, 2015

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)

☐ Proposed order submitted at request of the court, or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached
order.

☐ Other: _____

JUDGE CODE: 2860

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON
	)	PLEAS
COUNTY OF CHARLESTON	)	
CIRCUIT	)	FOR THE NINTH JUDICIAL
JIAN-YUN (JOHN) DONG, M.D., Ph.D.,	)	
Plaintiff,	)	Civil Action No. 14-10-CP-5332
vs.	)	
THE MEDICAL UNIVERSITY OF	)	CONSENT ORDER RULE 40(j)
SOUTH CAROLINA,	)	
Defendant.	)	

Upon motion and consent of the parties and counsel, this case is hereby stricken from the docket under the provisions of Rule 40(j) of the South Carolina Rules of Civil Procedure.

AND IT IS SO ORDERED

[Signature]
PRESIDING JUDGE
NINTH JUDICIAL CIRCUIT

WE CONSENT:

[Signature]
Allan R. Holmes
Timothy O. Lewis
GIBBS & HOLMES
171 Church Street, Suite 101
Post Office Box 938 (29402)
Charleston, SC 29401
Telephone: (843) 722-0033
Facsimile: (843) 722-0114

Attorneys for Plaintiff

10/20/2015
Charleston, SC

2015 OCT 22 PM 3:17
JULIE J. COOPER, CLERK
CLERK OF COURT

FILED



Caroline Wren Cleveland

Bob J. Conley

Joshua D. Cagle

CLEVELAND & CONLEY, LLC

171 Church Street, Suite 310

Charleston, SC 29401

Telephone: (843) 577-9626

Facsimile: (843) 577-6672

Attorneys for Defendant

RMDO/2

Proceedings

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE CHARLSTON COUNTY
Court of Common Pleas

Honorable Jean Toal, Circuit Court Judge

Civil Action No. 2016-CP-10-06683

FILED
2023 NOV 27 AM 11:35
CLERK OF COURT
CHARLSTON COUNTY

Jian Yun (John) Dong, M.D., Ph.D., ... Appellant

v.

The Medical University of South Carolina, ... Respondent

NOTICE OF APPEAL

Appellant Jian-Yun (John) Dong, hereby submit this Timely Notice of Appeal of the Order granting Defendant's Motion for Summary Judgment issued on July 17, 2023, and the Order Denying Motion for Reconsideration/Amendment issued on September 22, 2023, by the Honorable Jean Toal.

This Notice is **timely** because Appellant was not granted the access to the ECF system of the Court of Common Pleas, did not receive the notice of either entry from the court electronically or by the mail. The Appellant only received the notice of the

entries forwarded by the Defendant using USPS mails on **October 5th 2023**, which was mailed on October 3, 2023 (a copy is attached).

Furthermore, Appellant filed a motion for Judicial Recusal due to the appearance of bias, which stays the time. The denial of the motion was entered on October 4th, 2023, and a notice forwarded by the Defendant was received on **October 6, 2023**.

November 3, 2023,

Respectfully submitted, pro se

A handwritten signature in black ink, appearing to read 'John Dong', written over a horizontal line.

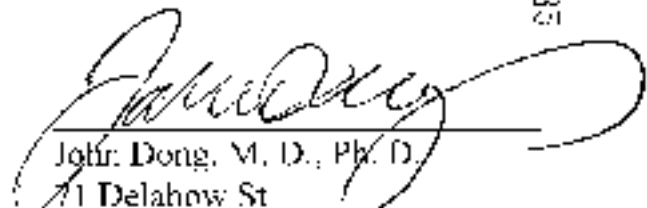
John Dong, M. D., Ph. D.
71 Delahow St
Charleston, SC 29492
Email: johnny.dong@gmail.com
Phone: 843-991-2332

CERTIFICATE OF SERVICE

This is to certify that I have, on this 22nd day of September 2023, served a copy of the Plaintiff's Notice of Appeal, which was submitted to the South Carolina Court of Appeals on the 3rd Day of September 2023, to the Court of Common Pleas, to replace the copy of the same Notice served on the 10th day of September. This Notice is sent via United States Mail Services with postage and addressed as the follows:

Julie J. Armstrong
Clerk of Court
Charleston County
100 Broad Street, suite 106
Charleston, South Carolina 29401-2258

FILED
2023 NOV 27 PM 1:35
CLERK OF COURT
DC


John Dong, M. D., Ph. D.
71 Delahow St
Charleston, SC 29492
Email: johny.dong@gmail.com
Phone: 843-991-2332

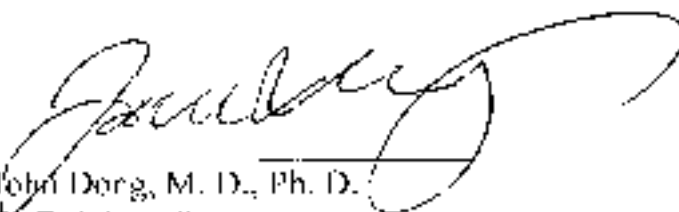
Honorable Julie J. Armstrong
Clerk of Court
Charleston County
100 Broad Street, suite 106
Charleston, South Carolina 29401-2258

Sept. 22, 2022

Dear Court Clerk,

Please find the replacement of the Notice of Appeal submitted to the court on 10 September 2023. The regional copy of the Notice was returned because I mistakenly signed and submitted two copies of the certificate of service instead of signing the second page. Therefore, I hope to keep the regional submission date.

Sincerely,



John Dong, M. D., Ph. D.
71 Delahow St
Charleston, SC 29492
Email: johny.dong@gmail.com
Phone: 843-991-2332

COURT OF COMMON PLEAS
AND GENERAL SESSIONS
100 BROAD STREET, SUITE 1100
CHARLESTON, SC 29401-2256
(843) 535-8000
(843) 535-8000 FAX
scclerk@charlestoncountysc.gov



FAMILY COURT OF THE
NINTH JUDICIAL CIRCUIT
CHARLESTON COUNTY
100 BROAD STREET, SUITE 1100
CHARLESTON, SC 29401-2256
(843) 535-7400
(843) 535-7400 FAX
ccfclerk@charlestoncountysc.gov

JULIE J. ARMSTRONG
CLERK OF COURT
CHARLESTON COUNTY

The enclosed document is being returned for the following reason(s):

- ☒ The document is not signed / notarized.
- ☐ The filing fee is insufficient. The correct amount is: _____
- ☐ The check or money order must be made payable to the Clerk of Court.
- ☐ This document is a copy. We must have an original.
- ☐ This is not a Charleston County case.
- ☐ The case has been transferred/remanded to: _____
- ☐ Inmate litigation must comply with S.C. Code of Laws, Title 24, Chapter 27.
- ☐ The document is refused for filing pursuant to S.C. Code of Laws §30-9-30(B)(1).
- Name of submitting party: _____
- ☐ There is not a case listed in our system that matches this caption.
- ☐ Information may be obtained from our web-site at <http://clerkofcourt.charlestoncountysc.org/>
- ☐ The required **new case** coversheet is not included. (SCCA234)
- ☐ The required **motion/order** coversheet is not included. (SCCA/232)
- ☐ The required **order (Form 4)** coversheet is not included. (SCRCP Form 4C)
- ☐ Effective October 21, 2019 Charleston County began accepting electronic filings from all South Carolina licensed attorneys. Please re-submit your filing electronically.
- ☒ Other: The Notice of Appeal is missing its second page and
signature.

Staff initials JP

Date 11/13/23

STATE OF SOUTH CAROLINA
COUNTY OF _____ Charleston

IN THE COURT OF COMMON PLEAS
Ninth JUDICIAL CIRCUIT

CASE NO. 2016 CP 10 06683

Jian-Yun (John) Dong, M.D., Ph. D.
Plaintiff
vs.
The Medical University of South Carolina
Defendant

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:
John Dong, Bar No. PRO SP
Address:
71 Delahow St. Charleston, SC 29407
Phone: (843) 991-2332 Fax:
E-mail: ohny.dong@gmail.com

Defendant's Attorney:
Bob Conley, Bar No. 81431
Address:
171 Church St. Suite 310, Charleston, SC29401
Phone: 843-577-9626 Fax: 843-577-6677
E-mail: bconley@clevelandlaw.com

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Plaintiff's Motion for Judicial Recusal based on Appearance of Bias

Estimated Time Needed: _____ Court Reporter Needed: ☐ YES; ☒ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order

Signature of Attorney for ☒ Plaintiff; ☐ Defendant

September 27th, 2023
Date submitted

SECTION III: Motion Fee

☐ PAID AMOUNT: \$ _____

☐ EXEMPT:

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

Order: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order JUDGE CODE _____

☐ Other: _____ Date: _____, 2023

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____, 2023

☐ MOTION FEE COLLECTED \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
John Dong, M.D., Ph.D.,)
- Plaintiff,)
v.)
The Medical University of South)
Carolina,)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-10-06683

MOTION FOR RECUSAL BASED
ON APPEARANCE OF BIAS

FILED
2016 SEP 28 AM 11:00
CLERK OF COURT
NINTH JUDICIAL CIRCUIT
CHARLESTON, SOUTH CAROLINA

Comes now John Dong, the Plaintiff, and respectfully moves for Honorable Judge Jean Neal's recusal from the above-captioned case on the grounds of appearance of bias. This motion is made pursuant to the South Carolina Code of Judicial Conduct, the Canon Rules, the Fifth Amendment to the United States Constitution, and the United States Supreme Court's decisions.

THE LEGAL STANDARD

The South Carolina Code of Judicial Conduct Rule 501.01 states that "a judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned." (Emphasis added) Also See Canon Rule 2.11(A)(1) and 2.11(A)(2)

Rule 501.02 states that "a judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities."

A judicial system free of bias is assured by the Due Process Clause under the 4th, 5th, and 6th Amendments of the Constitution. The possibility of bias of a judge need not be proven, but the probability of a judicial bias that may affect the fairness of a court is too high a risk to be constitutionally tolerable and mandates the recusal or disqualification of the judge.

The South Carolina Court of Appeals has held that a judge must recuse himself or herself if there is an appearance of impropriety. In *State v. Brown*, 308 S.C. 257 (1993), the Court held that “a judge must recuse himself or herself if there is a reasonable basis to believe that the judge’s impartiality might reasonably be questioned.” (Emphasis added)

The Supreme Court of the United States has long held that judges must recuse themselves if there is an appearance of bias. In *Laird v. Tatum*, 408 U.S. 1 (1972), the Court held that “judicial disqualification is required whenever a reasonable person might entertain a doubt about the judge’s impartiality.” (Emphasis added)

“The due process clause requires recusal when the risk of actual bias on the part of the judge is too high to be constitutionally tolerable.” *Capeston v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009)

The Supreme Court commanded that “[u]nder our precedents, the Due Process Clause may some time demand recusal even when a judge ‘has no actual bias’” *Rippo v. Baker*, 586 U.S. 137 S Ct 197 L Ed. 2d 176, 2017 citing *Aetna Life Ins. Co. v. Lavoie*, 476 U.S. 815, 825, 106 S. Ct. 1580, 89 L. Ed. 2d 823 (1986).

“The due process clause requires recusal when the risk of actual bias on the part of the judge ‘is too high to be constitutionally tolerable.’”

“Recusal is required when, objectively speaking, ‘the probability of actual bias on the part of the judge or decision-maker is too high to be constitutionally tolerable.’” *Withrow v. Larkin*, 421 U.S. 35–47 95 S. Ct. 1456, 43 L. Ed. 2d 712 (1975). (Emphasis added)

“The Court asks not whether a judge harbors an actual bias, but instead whether, as an objective matter, the average judge in his position is likely to be neutral, or whether there is an unconstitutional potential of bias” *Williams v. Pennsylvania*, 579 U.S. 136 S. Ct. 1899 195 L. Ed. 2d 132 (2016) “When the possibility of a judicial bias is too high to be constitutionally tolerable, the judge must be recused.” *Id.*

ARGUMENT

In the present case, Judge Toal has engaged in conduct that creates an appearance and possibility of bias that may cause a reasonable person to question her Honor’s impartiality.

Specifically, the grounds for recusal are as follows:

1. Holding a preconceived decision that contradicts the law and the Due Process Clause under the Fifth Amendment to the Constitution.

(1) Honorable Toal stated that her mission is “to have a speedy deposition of this case [in favor of the defendant]” and “this is what I am intended to do.” This statement is direct contradiction to the Court’s obligation of providing fair and impartial justice for all following Due Process under the law. The court must apply the appropriate law to the facts.

(2) Under this erroneous mission, Honorable Toal implemented serious restriction on the Plaintiff’s discovery by limiting the scope and period of the discovery. These restrictions violated the Due process, the statutes and well-established precedents by the South Carolina Supreme Court and Court of Appeals and the Supreme Court of the United States.

Specifically:

(a) Judge Toal “affirmed” and continued limiting the scope of the Plaintiff’s discovery to only “the communications to the Plaintiff from Stephen Larier and Mark Sothmann” during one year after the signing the breached Agreement; and ruled the Defendant had produced “all the documents that [Dr. Dong] was entitled to.” Judge Toal abandoned her neutrality by constantly stopping Dr. Dong from raise his issues or making argument; and joined the Defendant by arguing for the Defendant. Appx. P64, L23 P71, L6.

Knowing this is a clear error of due process violation and abuse of power. Judge Toal first denied that she ever limited the scope of discovery, then stated that it was never a question to her, and finally claimed she held the restrictions because of she was not responsible for the ruling of her predecessor. Appx. P138, L.19 P139, L.5.

(b) Judge Toal further limited Plaintiff's discovery to a short timeline and held it strictly as if it were the law. Even though, the scheduling order was solely based the Defendant's request without any Plaintiff's input, and it was arbitrarily set by the judge without statutory authority and due process interest. In contrast, unencumbered discovery is assured by the Due Process right. The arbitrary restrictions on discovery directly contradict to the law and the well-established commands by the US Supreme Court that "due process interests outweigh the court interest in deadlines" and "pro se pleaders should be given more leeway than attorneys in filing schedules."

(c) To restrict the discovery, Judge Toal repeatedly denied Defendant's motions for extension of time for discovery necessary for the Plaintiff to conduct depositions of the witnesses. Judge Toal denied these due process request by applying the erroneous standard "the motion conflict with the scheduling order," even when Dr. Dong was suffering pneumonia and bronchitis following a Covid infection (supported by health records and doctor's letter).

(d) Knowing that the denying Motions for Extension of Discovery Time, which was supported with good cause and unopposed by the other party, was a violation of due process and abuse of discretion, Judge Toal went on to accused Dr. Dong "attempt to delay due process" and "would not be tolerated." See order, and Judge Toal's email sent to Dong.

(e) Judge Toal placed her scheduling order above the order of superior court and denied Dr. Dong's Motion for Extension of Time based on a Briefing Order issued by the US Court of Appeals on an unrelated case, again without the opposition of the Defendant and using the erroneous standard the motion conflicts with her Scheduling Order. Again, Judge Toal doubled down on the accusation that Dr. Dong filed the Motion with the intent to delay due process and threatened Dr. Dong with potential punishment. See order emailed.

This denial order further showed Judge Toal abandoned the Court's obligation to be fair and impartial, and made the Court an extension of the Defendant and put her "scheduling order" above the law. The due process right protects people from facing more than one legal controversy at a time; and the US Court of Appeals is a superior court and has the priority over the county district court. Under the law, this Court shall suspend the proceeding until the resolution of the proceedings in the superior court. Violation of this Due Process, "nullifies the proceedings and orders as if they were never entered."

2. Having expressed an opinion on the merits of this case

Under the same preconceived decision of “speedy disposition of the case,” Judge Toal declared that “this case will not go to trial” at the first and the only status hearing, after expressing opinions unfavorable to Dr. Dong and merit of the case.

Without the Defendant raising it as defense and making any argument, Judge Toal had a preconceived notion that the Chairman of the Department, James Norris, took Dr. Dong’s research materials, equipment, and funds for his benefit and the final breach of the contract by the Defendant was because Dr. Dong was indicted for GenPhar’s using contract funds for a research building. Appx. P11, L19 – P14, L24.

Judge Toal further argued against the fact that Dr. Dong was indicted for GenPhar using contract fund for a research facility was this happened four years after Dr. Dong was pushed out of MUSC and not be able to obtain a job at another university due to the Department Chairman took over Dr. Dong’s research projects, funding, research materials and equipment and never returned to him. Dr. Dong had to take the position as the Chief Scientist and later CEO at GenPhar and ended becoming the sacrificial lamb after the professional managers resigned from the company. Evidence show that Judge Toal’s decisions have been heavily influenced by this preconceived and erroneous notion. Appx. P18, L21 – P21, L15; P154, L18 – P158, L21;

Under Article III of the Constitution, the Court is charged with “ensuring the American people the promise of equal justice under law” and “ensuring access to the court process for all who seek it.” To resolve a controversy, a court must supervise “the fact finding by a jury” through due process and must apply the appropriate law to the facts. Under these Constitutional guarantees, a judge who holds a preconceived opinion on the merit of the case commits a disqualifying error for violating the due process guarantee.

3. Abandoning the fairness, impartiality and equal justice of the Court and advocating for the Defendant using the Court.

- (1) Under the preconceived decision and opinions, Judge Toal failed to hold the Court’s obligation to administer fair, impartial, and equal justice for all.

Judge Toal has made the Court an extension of the Defense team issuing all her orders in favor of the Defendant without legal and factual basis, and Plaintiff’s motion without the Defendant’s opposition. Judge Toal even repeatedly making baseless accusations and threats of punishment against the Plaintiff in the effort to deter him from pursuing his claim through the court.

For examples:

- a. Ruled 100% for Defendant and 100% against Plaintiff without any support of the law and fact. See the court record.¹

b. Not only, without citing any legal and factual basis, denied Dr. Dong's motions for extension of time for discovery necessary to complete deposition, and motions for protection based on documented health issues, superior court order, and eye surgeries, but also accused Dr. Dong of filing these motions "with intent to delay justice and would not be tolerated." See Orders denying.

c. Instead of giving more leeway to Dr. Dong as a pro se pleader, Judge Toal repeatedly interrupted Dr. Dong's argument and testimony and tried to deprive Dr. Dong's right to be heard.

While allowing the Defendant's attorney to testify falsely about the facts, Judge Toal repeatedly snapped at Dr. Dong: "overruled" even before Dr. Dong could complete his objection. When Dr. Dong finally was able to state his basis for the objection, that Defendant's attorney should not be allowed to testify about the fact without citing a witness or making up Dr. Dong's testimony without any citation, Judge Toal firmly overruled Dr. Dong's objection without any explanation.

d. In contrast, after shutting down Dr. Dong's objections, Judge Toal allowed Defendant's attorney to make false testimonies at will. Defendant's attorney testified about the terms and meaning of the Agreement signed between MUSC and Dr. Dong and "MUSC's position on the Agreement" without any witness or document support as if the attorney himself were a witness and a party. Judge Toal

also allowed Defendant's attorney to testify fictitiously about Dr. Dong's position or statement without any citation over Dr. Dong's repeated objections.

a. Furthermore, as if all these were not enough support for Defendant, Judge Taol actually raised a defense for Defendant by posing it as a question. For example, to justify the major breach of the Agreement by not giving back Dr. Dong's assets essential for his research and not allowing Dr. Dong to continue his research at the off-campus location, Judge Taol asked the Defense attorney "Was there any evidence that Dr. Dong submitted the various certificates of operation at the company?" Under suggestion, the Defendant's attorney immediately claimed that showing these certificates was "a prerequisite" for giving back Dr. Dong's personal assets illegally taken by MUSC, and transferring the assets to the Company for Dr. Dong to reinstate his research interrupted by the department chairman, James Norris, and vice president research, Stephen Lanier.

Judge Taol firmly agreed with such a brilliant defense and dismissed the proven fact:

(a) MUSC never initiates the transfer of Dr. Dong's assets to Dr. Dong or the Company, pending for Dr. Dong to provide the operation permits to the Company.

(b) MUSC was well aware that the Company had all the essential permits to operate under the US Government funding and had received copies of these certificates when MUSC had joint grant funding with the Company.

(c) Dr. Dong personally submitted these certificates with his grant proposals to the Department while applying for collaborative research grants.

(2) Displayed significant hostility and expressed negative extrajudicial opinion against Dr. Dong.

At hearings, Judge Toal apparently made her decision before hearing the arguments. Judge Toal started by repeatedly interrupting and being dismissive of Dr. Dong's arguments and testimony, and then directly arguing and criticizing Dr. Dong. It was painfully apparent that the Court was not neutral, impartial, and applying the law equally. Dr. Dong was not only arguing his case against a team of attorneys but also against a biased court, which violated its Constitutional duty of being fair, impartial, applying them all equally to all who seek it, and maintaining the public perception and trust of the judicial system.

Examples of these conducts include:

While allowing the defendant's attorney to testify about the agreement's terms and meanings without citing any witness or the actual document, Judge Toal repeatedly interrupted Dr. Dong from his testimony about the events and his understanding of the agreement with his direct knowledge.

Judge Toal was dismissive of Dr. Dong's testimony and arguments without any objections or arguments by the defendant's attorney or any legal or factual basis.

This is true even when Judge Toal obviously knew that she was not following the law.

Finally, Judge Toal resulted in constant interruption, distraction, and direct arguments against Dr. Dong and extrajudicial comments about Dr. Dong that was irrelevant, erroneous, and prejudice. Appx. P109, L22 – P169, L119.

4 Egregiously abusing discretion or authority

Judge Toal makes her decision wholly based on the Defendant's attorney's request and ignores the law and the facts. To date, Judge Toal granted 100% of the Defendant's motions and denied 100% of Dr. Dong's motions without citing a single piece of fact or statute. Judge Toal also does not announce the legal and factual basis of decision in the court but simply grants the Defendant's motion or request by signing the Defendant's proposed order. See court records.

Examples include:

(1) Deprivation of Due Process Rights

Judge Toal limited Dr. Dong's discovery to a narrow scope: "only communications between Dr. Dong and Stephen Lanier or Mark Sothmann" within a year after signing the Agreement.

Judge Toal further restricted Dr. Dong's discovery to a short timeline and strict conditions and held the timeline and the conditions as if they were the law. Judge Toal denied all of Dr. Dong's motions for an extension of time or protection from

legal proceedings due to good causes, such as documented health conditions, surgeries, and other legal proceedings under the superior court's order.

In addition, Judge Toal ordered that Dr. Dong could only depose his witness in the office of the defendant's attorney. It gave the defendant the at-home advantage and, more importantly, allowed the defendant's attorney complete control of the deposition process. As a result, Dr. Dong could not even take the deposition of a single witness.

Judge Toal made these decisions with complete disregard for the statutes ensuring unencumbered discovery and Dr. Dong's rights to due process.

(2) Abuse of Discretion

Judge Toal made every effort to make it difficult for Dr. Dong to seek justice in his complaint. In addition to repeatedly setting short and rigid timelines, Judge Toal rejected Dr. Dong's requests for access to the court's electronic court filing system and refused to implement the common-law mailing time allowance for Dr. Dong to send and receive filings using the mailing system. It reduced at least six business days from the minimal timeline for Dr. Dong to receive the filings from the defendant and mail out responses. In addition, because of the upgrade of the ECF system, including its excess to pro se leaders, the clerk's office has stopped sending out notices by mail. Dr. Dong had not been receiving notice from the court. For example, the statute requires the moving party to submit a motion for summary

judgment at least ten days before the hearing. Judge Toal set the hearing date strictly at the minimally required ten dates, and Dr. Dong did not receive a notice from the court. Dr. Dong found out about the hearing date until he received an email a few days before the hearing, and the hearing overlapped with his scheduled eye surgeries. Dr. Dong timely filed a motion for protection from court proceedings.

Instead of granting Dr. Dong's motion based on the "good cause standard," judge told criticized him for not being able to schedule the surgeries around the hearing date and accused Dr. Dong scheduled his eye surgeries intentionally to delay the justice, and once again threatened with a judicial punishment.

After Dr. Dong submitted additional motions and letters to Judge Toal explaining his advanced stage of cataracts due to the seriousness of his diabetes that severely hampered his ability to read and write, Judge told moved the hearing date to one day after the requested protection period and stated that further extension would be denied. As a result, Dr. Dong could not complete his Memorandum supporting his Opposition to the Defendant's Motion for Summary Judgment and had no time to prepare for the hearing.

At the hearing, Judge Toal denied Dr. Dong's Motion for Continuance Pursuant to Rule 56(f) without a hearing.

Judge Toal's obstructions of Dr. Dong's pursuing his Complaint through the court are abuses of discretion. The Supreme Court of the United States, as well as

the South Carolina Court of Appeals, has long established that courts should give “more leeway,” or a “certain degree of latitude to pro se litigants in the presentation of their cases” and “should be held to less stringent standards” for both the contents and the procedures and “due process concerns can outweigh rigid procedural rules,” in this case, arbitrary deadlines set by judges. See *Beekles v. United States*, 137 S. Ct. 886 (2017); Also see *Landell v. Sorrell*, 382 F.3d 91 (2d Cir. 2004); *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998).

(3) Abuse of Power

Judge Toal has been advocating for the Defendant using the judicial power and disregarding the law. Judge Toal repeatedly issue orders in favor of the Defendant without statutory authorization.

Examples of abusing power include:

- a. Limiting the scope and time of the plaintiff's discovery contradicting the statutes governing the discovery.
- b. Denying Dr. Dong's motions using illegitimate standards, such as denying motions for extension of the time for discovery using the standard that the motion conflict with the arbitrary scheduling order arbitrarily set by herself.
- c. Setting an unreasonable short timeline not to allow Dr. Dong sufficient time to submit his memorandum supporting his opposition to Defendant's motion for summary judgment and denying Dr. Dong's motion for continuance in violation of rule 56(f), which specifically instructs that a judge may not apply

the summary judgment but should order additional time for discovery, such as interrogatory, or deposition when the opposing party cannot provide sufficient evidence or affidavit to support his opposition. In this case, the Judge ordered the hearing only one day after Dr. Dong's surgeries and necessary recovering time and denied his motion for continuance necessary for him to submit the memorandum and affidavit under rule 56(f).

- d. Judge Toal granted the plaintiff's motion for summary judgment in violation of rule 56, which requires the moving party to prove the lack of genuine issues with evidence, interrogatories, and affidavits. In this case, Defendant raised two issues – statutory limitation and whether the plaintiff can present sufficient evidence, without supporting evidence, such as testimony, verified documents, and affidavits. Even were the two issues valid, but they are not, they do not meet the requirement for summary judgment under Rule 56.

This judgment error is extrajudicial because it is based on the Judge's biased interest rather than being authorized by the statute. It is rudimentary that judges must enforce the law as it is written; when the language is clear, any expansion from its written language is illegitimate. Judge Toal is a seasoned and retired justice, making it unlikely an error of judgment but a biased interest.

- e. Judge Toal argued against Dr. Dong in the interest of the Defendant and made erroneous and misleading statements to cover up her malfeasance in court.

For example, Judge Toal allowed the Defendant's attorney to testify freely about his understanding of the terms and meanings of the Agreement without any testimony or evidential support and allowed the attorney to testify about Dr. Dong's statement falsely. Judge Toal repeatedly overruled Dr. Dong's objections that Defendant's attorney was not a witness and could not

testify about the facts without stating a reason for her ruling. To cover up this elementary error, Judge Toal stated that the reason for her overrule of Dr. Dong's objections was that Defendant's attorney was allowed to make arguments and was not testifying about any facts. This statement was misleading and erroneous because Defendant's attorney was testifying about the facts of Defendant MUSC's "position and understanding" of the Agreement without a witness testifying on MUSC's behalf. On this contrary, Judge Toal tried to stop Dr. Dong from arguing by saying you cannot interpret the terms of the Agreement. This was erroneous because Dr. Dong is a party and a witness and can testify about the facts, including the terms of the Agreement, as he was explained and understood.

For another example, despite the fact that Defendant's attorney failed the burden of proving the "lack of genuine issues with testimonies, interrogatories, documents, and affidavits," and the fact that Dr. Dong proved the breach of contract by MUSC with his testimonies and verified documents, Judge Toal granted Defendant's motion for summary judgment on the issue of statutory limitation without stating her basis. Knowing that such a ruling violated Rule 56 and the statutes require the judge "to announce the judgment and the factual and legal basis in an open court," Judge Toal simply asked the Defendant's attorney to draft the order. As a seasoned attorney, Defendant's attorney apparently understood that it would be difficult to justify such an order to the statutory requirements; he requested Judge Toal to give him the authority to add "the other issues" by posing it as a question. Judge Toal replied: "Yes." without identifying what the other issues were and the basis for granting these issues. In essence, Judge Toal gave the Defendant the authority to issue the order at will and served as a rubber stamp for the

Defendant. When Dr. Dong objected by pointing out that Defendant's attorney was not asking a question but a request of the Judge to allow him to grant other issues as he wanted, Judge Neal explained that this was standard practice because she only had one law clerk. It would be more efficient to allow the Defendant's attorney to draft the order. This statement is erroneous and misleading in this context because the law requires the Judge to announce the judgment and the legal and factual basis in the open court. Even if it were a common practice to allow a Party's attorney to draft the final judgment, the attorney would be legally bound by accurately reflecting what the Judge announced in the court, not to get unlimited authority to issue the order at his will.

Courts have the discretion to adopt a proposed order submitted by a party when the issue is procedural, interlocutory, and uncomplicated. However, under the parties' due process right to be properly noticed, the proposed order must be submitted with the motion before the hearing so that the opposing party can make the opposing argument before a decision is rendered. In contrast, a Summary Judgment is a depository decision, depriving Dr. Dong's rights to be properly noticed and the opportunity to be heard is a due process violation and a structural error.

The law is clear. The United States Supreme Court has long established that "[n]othing is better settled than that in the construction of a law, its meaning must first be sought from the language employed. If that be plain, it is the duty of the courts to enforce the law as written." *United States v. Standard Brewery*, 251 U.S. 210, 40 S. Ct. 139, 64 L. Ed. 229. "The Court is [] obligated to enforce the statute as

written," "any expansion from the words written is illegitimate." See *Lamie*, 540 U.S. at 534, 124 S. Ct. 1023.

The South Carolina Court of Appeals also has underscored the significance of giving effect to the plain language of statutes. The Court stated, "When the statutory language is plain and unambiguous, there is no room for judicial construction or interpretation, and the court must apply the statute according to its literal meaning." *State v. Smith*, 322 S.C. 225 (Ct. App. 1996). This clear directive emphasizes that judges are bound to interpret statutes based on their plain and ordinary meaning without inserting their own subjective interpretations or modifying the language to suit personal preferences.

Additionally, the South Carolina Court of Appeals has emphasized that "stare decisis is the foundation of our legal system" and that "prior decisions of this court are binding precedent and must be followed unless and until overruled." *State v. Bright*, 361 S.C. 43 (Ct. App. 2003). This principle underscores the court's commitment to consistency and stability in the law, and it ensures that judges respect and give due deference to previous decisions when interpreting and applying the law.

Statutes give courts the authority to adjudicate cases and issue judgments. Want of statutory authority is a jurisdictional error and must be corrected at this court.

It is unlikely that Judge Toal violated the statutes and the well-established case laws due to ignorance, but the biased interest in advocating for the Defendant, a prominent State institution.

Any one of these conducts creates an appearance and the possibility of bias as defined by the law – “a reasonable person could question whether [Judge Toal] is impartial” in this case.

As The South Carolina Court of Appeals held that “[Judge Toal] must recuse [] herself [because] there is a reasonable basis to believe that the [Judge’s impartiality might reasonably be questioned.” *Brown. Id.*

The United States Supreme Court commanded that “judicial disqualification is required whenever a reasonable person might entertain a doubt about the judge’s impartiality.” *Laird v. Tatum. Id.* In this case, Judge Toal’s legislating over the bench and disregarding the law and the fact create “the probability of actual bias on the part of the [Judge Toal] is too high to be constitutionally tolerable.” *Withrow v. Larkin. Id.*

Even to assume that were there no actual bias, Honorable Toal’s 100% ruling for the Defendant without citing any law or fact was only coincidental, her preconceived opinions and the colorful extrajudicial comments were unintentional, the Supreme Court of the United States commands: “[u]nder our precedents, the Due Process Clause may some time demand recusal even when a judge ‘has no actual

bias”” *Rippo v. Baker, Id.* “The Court asks not whether a judge harbors an actual bias, but instead whether, as an objective matter, the average judge in his position is likely to be neutral, or whether there is an unconstitutional potential of bias.” *Williams, Id.*

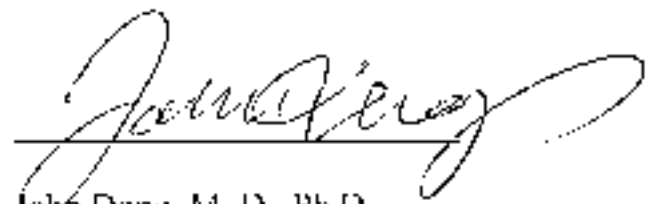
CONCLUSION

For the reasons stated above, John Dong respectfully requests that Honorable Judge Jean Loal recuse her Honorable from the above-captioned case.

Respectfully submitted, pro se,

September 26, 2023

Charleston, South Carolina

A handwritten signature in black ink, appearing to read "John Dong", written over a horizontal line.

John Dong, M. D., Ph.D.
71 Delahow St
Charleston, SC 29492
Email: johny.dong@gmail.com
Phone: 843-991-2332

Appendix:

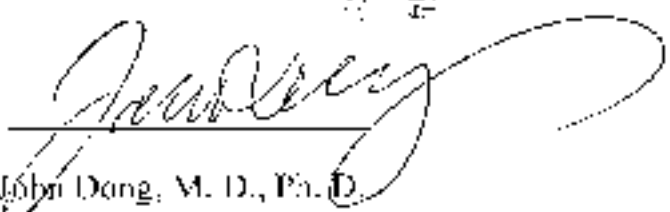
Transcripts of the Status Hearing and the Hearing on Summary Judgment

CERTIFICATE OF SERVICE

This is to certify that I have on this 26th day of September 2023, served a copy of the Plaintiff's Motion for Recusal to the LC e system, which will notify all parties electronically. In addition, a copy of this motion is served via email at bconley@clevelandlaborlaw.com and United States Mail Services addressed to the following:

Bob J. Conley, Esq.
Cleveland & Conley LLC
171 Church Street, suite 310
Charleston, South Carolina 29401

FILED
2023 SEP 28 AM 11:54
CLERK OF COURT
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



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Charleston, SC 29492
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APPENDIX:

1. Transcript of Status Hearing: P 1 – 93
2. Transcript of Hearing on Defendant's Motion for Summary Judgement: P 95 – 190

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF CHARLSTON) TRANSCRIPT OF PROCEEDINGS
JIAN-YAN (JOHN) JONG, M.D., Ph.D.,
Plaintiff,
vs. Case No. 2016 CP 10 06682
THE MEDICAL COLLEGE OF
SOUTH CAROLINA,
Defendant.

October 4, 2017

STATUS CONFERENCE HEARING

P R E S E N T:

The Honorable Dean H. Tolson, Presiding Judge

A P P E A R A N C E S:

Jian-Yan "John" Jong, M.D., Ph.D.,
Pro Se Plaintiff

Bob J. Conley, Esq.
Attorney for the Defendant

Court Reporter: Deborah Chen, RPR
SC Official Court Reporter 111

I N D E X

APPENDIX/DESCRIPTION	PAGE
State Conference Hearing	3

E X H I B I T S

(None)

P R O C E E D I N G S

(Whereupon, the following proceedings started at 9:30 a.m.):

THE COURT: Good morning, ladies and gentlemen. My name is Jean Toal. I am a retired Chief Justice of South Carolina, serving in the senior active status as a circuit court judge, and I have been specially assigned the following matter: John Dony, M.D., Ph.D., Plaintiff, against the Medical University of South Carolina, Defendant. This is Case No. 2016-02-10-00883.

I am conducting this status conference this morning with a court reporter here to make note of what we do. And let me explain, by way of preliminaries, what I'd like to have happen. The goal is to set a scheduling order that sets up everything that needs to be done to bring this case to a pretrial hearing on what ought to be or might not be dispositive pretrial motions, and then, depending on what happens with the motion hearings, to move on to trial. And I'll schedule all of that in the scheduling order that I will develop in the course and conversation with you.

The first thing I'd like to have done is for the plaintiff, whom I understand is appearing pro se, to introduce himself to the court reporter.

And, Dr. Dony, if you would do this for me: If you would introduce yourself for the record, state your address and your contact information by way of an email address and by way of a



1 cell phone. And I just tell you in advance -- I'll introduce
 2 everyone here. This is my law clerk, Zitel Roswell. And I
 3 will give y'all information about our contact information as
 4 we go so that everybody is on the same page.

5 So if you would stand and introduce yourself and give
 6 your contact information.

7 DR. DONG: Yes, Your Honor. My name is John, J-o-h-n,
 8 last name Dong, D-o-n-g. I currently reside at 61 Delbow
 9 ~~Street~~:

10 THE COURT: Say that again.

11 MR. DONG: 61 Delbow Street, 29402. My cell number is
 12 That's Charleston, South Carolina 29402. My cell number is
 13 (843) 391-2332. My email address is j o h n y dot d o n g at
 14 me.com. That's more exclusive than --

15 THE COURT: Very good. Thank you, sir. You may be
 16 seated.

17 Counsel, I want you to -- I take it you represent the
 18 Medical University of South Carolina.

19 MR. CONLEY: Yes, Justice Hall.

20 THE COURT: Glad to see you. Please introduce yourself
 21 in the same way and give your name, your firm name and contact
 22 information.

23 MR. CONLEY: Certainly. Just so the Court knows, I
 24 shared all my contact information with the court reporter
 25 while we were waiting in the hallway.

THE COURT: That's great. I just want to be sure it appears on the record and that we take it down.

MR. CONLEY: Sure. So, my name is Bob Conley. I'm with the law firm of Cleveland and Conley, and it's spelled just like the city. Our address is 171 Chason Street, Suite 330, Charleston, 29492. The office number is (843) 577-2626. My work email address is BConley, just spelled like my last name, at Cleveland, like the city, later @w.com.

THE COURT: Great. Thank you very much.

What I'd like to do first is to find out -- I have looked at the pleadings, and I'd like to find out from each of you -- and I'll start with you, Dr. Dong -- whether -- well, whenever there are any amendments you intend to make to the pleadings and what your view is of what has happened in discovery, if anything so far, with this matter and what kind of pretrial motions you have filed or intend to file.

So if you would begin, sir.

DR. DONG: Yes, Your Honor. Actually, just give a little bit background with me --

THE COURT: Certainly, that would be helpful.

DR. DONG: Okay. Thank you very much.

The basis of the lawsuit is based on all the time -- first of all, I was the honored full professor in Medical University of South Carolina. The first appointment at the Department of Immunology and Microbiology. Second appointment is the

1 Department biochemist -- no secular biochemistry, and I also
2 have an appointment at the Hollis Cancer Center as research. So
3 I was recruited from UCSF by then the director Ken Dreesen
4 (ph), came to Medical University of South Carolina.

5 THE COURT: When did you come to the Medical University
6 of South Carolina?

7 DR. DONG: I'm not quite sure. I think it was 2006 or
8 2008.

9 So among the conditions I did not know at the time he was
10 asked me to help the University, under the mandate of the
11 State, to sponsor biotechnology companies and to establish
12 high-paid jobs for South Carolina, especially for the interest
13 of MUSC is to provide job opportunities to the doctors'
14 graduates to be scientists, to have employment opportunity,
15 and, also, being the first duck landing in the pond, attract
16 other biotech companies to a beautiful environment and with a
17 company with high-skill jobs that there's no pollution and
18 actually to fit an environment.

19 A. the request of their president Greenberg
20 Dr. Greenberg -- and, actually, I did have my contact in San
21 Francisco, brought investors, and they actually joined with
22 the science research foundation of MUSC. It was called FRC.
23 Set up a company. So I was asked to help the company as a
24 consultant to --

25 THE COURT: So they joined the foundation and then

1 established a company?

2 DR. DONG: KUSC established a foundation.

3 THE COURT: Well, I understand. KUSC has a science and
4 research foundation. In addition to that, these Van Vranos and
5 contacts of yours, did they establish a company?

6 DR. DONG: The foundation -- FRD, Foundation Research
7 Development, established company based on the contact --
8 brought in --

9 THE COURT: What was the name of the company?

10 DR. DONG: The name of the company is GenPhar, Inc.,
11 also, basically, the person who --

12 THE COURT: And GenPhar is capital G-e-n capital P-h-a-r?

13 DR. DONG: Yes, Your Honor.

14 THE COURT: All right.

15 DR. DONG: And the major investor was from Wall Street,
16 who handles billions of dollars in private fund. So the
17 company was founded eventually by his grant's college
18 associate personally with well over \$13 million. But -- and
19 also during this time, I was requested by KUSC to collaborate
20 with them. So obtained contracts excessive -- more than --
21 I think about \$14 million, and there was also 22- or
22 \$30 million pending. In top of that, there was \$300 million
23 contract was also pending.

24 THE COURT: Contract with who?

25 DR. DONG: With the Department of Defense and as well as

1 NIA, Department of Human --

2 DR. COOPER: National

3 DR. JONES: National Institute of Health.

4 THE COURT: Oh, Health. Right.

5 DR. JONES: Sorry.

6 During this time, I actually brought a lot of research
7 money, came with me from UCSF. So, start from there, I was --
8 of course, I'd like to be a productive member for the NCI, so
9 I actively, at the request of then the vice chair, Jim Norris,
10 actively collaborated with him and many colleagues on the
11 campus, including David Cole, who came in assistant professor
12 at the time, and now, he's the president of the university.

13 So, long story short -- and I will try to help Dr. Norris
14 with his graduate student who was from Iran, could not
15 graduate, there was no publication, no scientific project. So
16 we help -- I helped Dr. Norris transition from chemical
17 oncology to genetic-level oncology, which is cutting edge at
18 the time; namely, gene therapy.

19 So I helped each -- nine or twelve, his graduate
20 students, based on my research project, my genetic material,
21 and my funding, graduate. And, yes, they graduate the first
22 author because the research project was mine, I should be the
23 correspondent. But Jim Norris -- Dr. Norris always put
24 himself, which he has nothing to do with the actual project,
25 other than being the mentor, long story short.

1 And he was the corresponding author, but he in the middle
2 or actually deleted my name completely and put one other
3 person working in my lab into the publication. It's critical
4 for publication is for any faculty member as professors that
5 is associated with future funding as well as career
6 advancement.

7 And, also, at the same time, because he not only was his
8 graduate student, basically, came to my lab, taking materials
9 -- genetic materials, documents, and everything, and also,
10 yes, they were learning from me, from my post doctoral fellows
11 and the scientists in my lab, paid by me, but that was all
12 appeared to be logistic, but he's supposed to acknowledge me.

13 And, also, in the end -- so long story -- he not only
14 got -- took my genetic material and everything and completely
15 transformed my research project to become his, he also dipped
16 into my grants.

17 THE COURT: And the name of this person you're talking
18 about is MISC?

19 DR. BONE: Dr. James A. Norris.

20 THE COURT: James A. Norick?

21 DR. BONE: Norris. N-o-r-r-i-s.

22 THE COURT: Norris. Okay. Got it.

23 DR. BONE: Right. He later became the chairman. And he
24 was holding my promotion for tenure and holding my salary.
25 Actually, he reduced my salary based on he's saying the only

1 thing -- he promote everybody around me to full professor with
2 a tenure, not me. I was associate professor at MRCO -- sorry,
3 USC, which was a more prestigious university, with promise I
4 will be named the center of gene therapy --

5 THE COURT: Well, you ultimately got named at MRCO; did
6 you not?

7 DR. DONG: Yes, I did, but that was -- but that was

8 THE COURT: How long was it? You came in 2008. When did
9 you receive tenure?

10 DR. DONG: Only 2013 or --

11 THE COURT: That couldn't be right. The trouble started
12 before that. You would have had tenure --

13 DR. DONG: Or, right. Sorry, sorry. 2013, '08. I'm
14 sorry.

15 THE COURT: So a year or a year and a half after you
16 came, you received tenure; right?

17 DR. DONG: No, no, sorry. I messed up. Actually, I came
18 in 1998. Sorry.

19 THE COURT: You came in 1998?

20 DR. DONG: Right. 1998. So, actually, I was confused
21 with that --

22 THE COURT: And you received tenure --

23 DR. DONG: A two thousand -- 2013.

24 THE COURT: 2013?

25 DR. DONG: Right.

THE COURT: So that would seem kind of odd in terms of
2 the timeline. You received tenure 11 years after you came to
3 MUSC?

4 DR. DONG: Right. About ten years.

5 THE COURT: Okay. All right.

6 DR. DONG: And including assistant professor at the
7 department and being promoted to tenure of full professor.
8 Right. Sorry. I have a problem remembering dates.

9 THE COURT: Right.

10 DR. DONG: And that came from history when I was in
11 China. My family was persecuted by the Communist party,
12 including my father.

13 THE COURT: Well, let's go back to telling me what
14 happened to MUSC.

15 DR. DONG: All right. At the MUSC, basically one of
16 the defects, he criticize -- everything was --

17 THE COURT: Well, let's not try the whole case right now.

18 DR. DONG: All right. Sorry.

19 THE COURT: Your objection was Mr. Forsie look your
20 publications and your grants.

21 DR. DONG: Grant money and research material and
22 equipment.

23 THE COURT: Okay. I got that.

24 DR. DONG: So, basically, everything I had, including
25 notebooks and technologies.

1 THE COURT: And when did that happen?

2 DR. DONG: That just -- it happened gradually during the
3 entire process. Right? In the end -- and then I realize,
4 ever -- he was holding the -- basically the -- holding over me
5 is the -- if you don't do so, I will not promote you. So the
6 only thing I could do

7 THE COURT: I got that.

8 DR. DONG: Right. So, finally, I have to raise the issue
9 with the -- actually, at the same time, he's raising issues
10 with the biosafety committees and everything. So I'm
11 basically constantly being involved with defend myself

12 THE COURT: I got that. What then happens?

13 DR. DONG: Then, eventually, with help of his friend,
14 Dr. Shapiro -- sorry, sorry. Could you remind me of the name?

15 Ex. DONG: Talking about Dr. Carter?

16 DR. DONG: Yes, Dr. Steve Lanier. With the help of Steve
17 Lanier, they basically shut down my lab. Well, one day,
18 before I know it, they closed down my lab, took all my --

19 THE COURT: well, now, let's stop here for a minute. Was
20 that in the time period when the federal authorities began to
21 investigate your grants and programs?

22 DR. DONG: No.

23 THE COURT: Is that when the shutdown of your lab took
24 place?

25 DR. DONG: No.

1 THE COURT: Well, when did that occur?

2 DR. DONO: That occurred during the end of the prelease
3 disclosure.

4 THE COURT: What's that?

5 DR. DONO: Disclosure. So they said because they say I
6 brought in

7 THE COURT: I'm asking what time period are we in right
8 now when your lab -- when they shut your lab down, do you
9 claim?

10 DR. DONO: I think it's almost two years before -- more
11 than two years before 2011.

12 THE COURT: Well, two years before we'll just say

13 DR. DONO: Two years before signing the contract.

14 THE COURT: All right. Now, there came a time when you
15 signed a contract, right? A separation agreement?

16 DR. DONO: Yes.

17 THE COURT: And why was that?

18 DR. DONO: Right. When? Why?

19 THE COURT: What was the reasoning behind --

20 DR. DONO: Right. That's what I'm going -- [unclear] about to
21 go into. So they basically shut down my lab, locked the door,
22 changed the lock from me, changed the lock from the office,
23 and under the false tense, somebody stole genetic material
24 from my freezer.

25 Because, one day, I came to the lab, and I was blocked

1 from entering my lab, and then one of my student's facial
2 expression, something serious happened, and it turned out the
3 manager worked with Jim Morris was inside the lab supervising
4 people taking material out of the freezer and beside my
5 completely blocked me from my genetic material, my research
6 lab and including --

7 THE COURT: Okay. And your contention is that, at a
8 certain point in time, they took over your lab, locked you out
9 and so forth.

10 DR. DONG: Right.

11 THE COURT: Then you have a separation agreement allow-
12 that; right?

13 DR. DONG: That's what actually transpired too. So
14 have to go through an attrition, finding the one, two potential
15 person over me because they did not.

16 THE COURT: Dr. Dong, let me get you focused a little
17 bit. Just kind of need the time lines. And this is very
18 helpful, so I'm not being critical at all.

19 DR. DONG: Yes, Your Honor.

20 THE COURT: But there came a point in time when you
21 signed, on May the 3rd of 2010, a final separation agreement.
22 And this final separation agreement, take it, was signed
23 because of the federal investigation.

24 DR. DONG: That's not true. I'm sorry. That's

25 THE COURT: All right. Well, then, tell me what happened

1 With this key too --

2 DR. DOUG: That is all before, actually, the
3 investigation happened. It's about a year after that. So
4 that was actually -- the reason the separation, because I
5 raised the issue with the Senate, before that, I did
6 raise the issue with the division, mainly, Dr. John Greenman
7 who was provost at the time, and also actually was writing
8 letters to Dr. Greenman and also actually was writing letters
9 to Dr. Nick Greenberg to explain --

10 THE COURT: What this -- I really don't need every detail
11 of the interactions, and that doesn't mean you can't bring
12 them out in a later court proceeding. I'm just trying to get
13 an overall view of this thing of what the agreement says. It
14 doesn't tell us why and that's what I was asking. It simply
15 says that this is an irrevocable reservation of your tenured
16 faculty appointment, unless we do later than March the 31st,
17 2012. This was signed in May of 2010. So it provides that, a
18 little less than two years after this agreement is signed, you
19 irrevocably resigned your tenured appointment. You resign
20 your faculty appointment until the effective date of the
21 resignation, which is about two years from the time you signed
22 this agreement.

23 DR. DOUG: I wasn't challenging those.

24 THE COURT: Okay?

25 DR. DOUG: I wasn't challenging those, but I did -- yes,

1 is --

2 THE COURT: Well, I mean, this is what it says.

3 DR. DONG: I understand.

4 THE COURT: It's got your signature on it and initials on
5 it.

6 DR. DONG: Yes.

7 THE COURT: All right. It says that your primary
8 appointment is in biochemistry with a secondary appointment
9 with microbiology and immunology. You will receive annual
10 evaluations, respond to critical friends. The University
11 acknowledges you were primarily working off-site in the
12 Charleston area, and you agreed to do teaching and writing and
13 so forth and so on.

14 And, then, it says that you relinquished your future use
15 of the lab facilities, campus research laboratories and
16 resources, and it gives some other information, but it says,
17 "The University intends to equip a temporary vector core
18 facility insofar as the temporary relocation of that equipment
19 does not disadvantage the group. Indeed by other -- no research
20 of other faculty members."

21 And it says, "In lieu of rental payment for the space in
22 Goughan building, the University will waive direct charging of
23 Dr. Dong's salary to any grants or contracts."

24 And it says --

25 DR. DONG: If I may summarize --

1 THE COURT: Well, it talks about relocating some of your
2 equipment and this sort of thing.

3 DR. DONG: There's a deal --

4 THE COURT: And it lists a lot of this stuff on here.

5 DR. DONG: Right. I think, first of all, why we signed
6 the agreement, because actually --

7 THE COURT: Well, you signed the agreement. That's all I
8 can look at. You signed it.

9 DR. DONG: Right. But the reason was proposed
10 presented to me was, instead of fighting, it's going to take a
11 long process, because that was going to affect my career, it's
12 going to --

13 THE COURT: Well, I mean, that's what people do
14 sometimes. They resolve their differences in this way. So
15 you signed this agreement?

16 DR. DONG: Yes. I signed the agreement --

17 THE COURT: And you got outside legal --

18 DR. DONG: -- under the condition --

19 THE COURT: And you got outside legal counsel. The
20 agreement says that.

21 DR. DONG: I did not -- yes, that's --

22 THE COURT: You signed an agreement.

23 DR. DONG: I signed it, yes.

24 THE COURT: -- that said you got outside legal counsel.

25 DR. DONG: Yes, Your Honor.

1 THE COURT: All right.

2 DR. DONG: All right. Okay. The reason they presented
3 to me is to give me a transitional period or cool down for me
4 to look for another job.

5 THE COURT: Right. It says that in the agreement, that
6 you'll be actively pursuing other appointments.

7 DR. DONG: While I continue my research off-site, they
8 transfer all my documents, material, genetic materials, and
9 equipment on the list to me so I can continue. That's the
10 critical part of it. If a surgeon without equipment -- a
11 surgeon without equipment cannot perform surgery.

12 THE COURT: We don't need to try the case now.

13 DR. DONG: Right, understand. So that's breached of
14 the contract, first -- actually, I would add a claim because
15 of bad faith, because they presented to me as giving me a
16 cool-down period, transitional period, and they actually said
17 -- the wording as they have is the right to require me --

18 THE COURT: Well, what -- is the separation agreement, is
19 that the contract you saying was breached?

20 DR. DONG: Yes.

21 THE COURT: Okay. Now, is there any other condition to
22 this agreement, or is this -- I think there's a letter.

23 After this agreement was signed and after -- but during
24 the period the agreement was still operative, during that
25 two-year period, a letter was sent to you dated September the

1 29th of 2011, and it says administrative leave. You,
2 apparently, were notified that you had been placed on
3 administrative leave with pay. And it says your -- the
4 administrative leave applies to all your responsibilities
5 until the March 31st, 2012, deadline for the end of the
6 separation agreement. Right?

7 DR. DOUG: But that's not a letter I agreed with.

8 THE COURT: That's not a question of whether you agreed
9 with it. That's why we've got cases to try. I'm just looking
10 at the agreement, and it says in the agreement that, in your
11 separation agreement, you relinquished use of your laboratory
12 space at EUSC, agreed to relocate certain equipment to the
13 GenPhar building, "due to a change in ownership of GenPhar, we
14 have been unable to relocate the equipment, and it has
15 remained in a secure place on campus. As you know, the area
16 currently housing your laboratory equipment is scheduled for
17 renovation beginning October 2011." That would be shortly
18 after the date of this letter.

19 "Therefore, Scott Reed, in the Department of Biochemistry
20 and Molecular Biology will coordinate an inventory relocation
21 of your lab equipment and freezers to a secure location. Any
22 access to this material during the period of administrative
23 leave can be coordinated through Scott Marie with the
24 Associate Provost for Research."

25 So that is the action they took after your indictment.

1 on -- and when was the indictment?

2 DR. DONG: That was not at least a year or two before
3 the indictment.

4 THE COURT: Right. If it was a year or two before that,
5 then it was right about the time you signed the separation
6 agreement. When in relation to the separation agreement were
7 you indicted?

8 DR. DONG: At least two or three years before --

9 THE COURT: No, that can't be right. That can't be
10 correct. The final separation agreement is signed the 3rd of
11 May 2016. This letter of September 2017 says that --

12 DR. DONG: Actually --

13 THE COURT: -- you have been indicted, and you're saying
14 that occurred a year before. So it sounds to me like it
15 occurred around the time of the separation agreement. I can
16 look and find the indictment date.

17 DR. DONG: Right. But, off my memory -- because the
18 trial -- there is a speedy trial, and I think the trial
19 started --

20 THE COURT: Well, if you were indicted around the time of
21 the separation agreement --

22 DR. DONG: No, that's not true.

23 THE COURT: Well, when were you indicted?

24 DR. DONG: I couldn't give you exact date, but I think at
25 least two or three years after all of this occurred.

1 THE COURT: Okay. The indictment -- this is the third
2 superseding indictment, and that is April the 16th, 2013.

3 DR. DONG: Right. So the agreement was signed in --

4 THE COURT: Right. Well, this says the unsealed third
5 superseding indictment. You apparently were indicted before
6 that and then you had superseding indictments. That's what
7 that generally means.

8 DR. DONG: Right, certainly.

9 THE COURT: Well, go to you, Counsel. I'm not going to
10 go on forever with this, but

11 DR. DONG: We can find the date of this indictment
12 because they --

13 THE COURT: Sir?

14 DR. DONG: We can find the date of this indictment

15 THE COURT: And we certainly can, so I won't spend any
16 more time on that. It seems to me as if the separation -- if
17 the indictment occurred then, as complicated as this thing is,
18 it probably was the result of some investigation that went on
19 for several years before that, and at some point in time, you
20 would have been contacted and MUSC probably would have been
21 contacted at some point before the indictment was released.

22 DR. DONG: I think that's all, excused. I'll get to it if
23 you allow me to

24 THE COURT: I want you to really briefly summarize it,
25 but I want you to -- what I'm trying to figure out is when you

1 first knew that the federal government was investigating you
2 for what ultimately became an indictment and a conviction.

3 DR. DONG: Actually, the indictment -- head indictment
4 was sealed, actually, for a long time --

5 THE COURT: Before anybody knew about it.

6 DR. DONG: Right. To the indictment --

7 THE COURT: And the indictment was maybe sealed for a
8 couple of years, right?

9 DR. DONG: Right. So I did not know. There was nothing
10 going on about that there was -- also, there was -- the whole
11 thing was based on the qui tam lawsuit, based on what Garth
12 did, not me. I did not take a single dollar from ConPac,
13 because I was pushed to conduct research --

14 THE COURT: Who was the qui tam action lodged against?

15 DR. DONG: Sorry?

16 THE COURT: Who was sued in the qui tam action? If
17 you're saying the indictment was the result of the qui tam
18 matter -- I'm familiar with what qui tam cases are. They are
19 civil attempts by the government to recover misappropriated
20 funds. Did the qui tam action name you?

21 DR. DONG: No. The qui tam was claimed the company
22 billed with the contract --

23 THE COURT: ConPac?

24 DR. DONG: Yes.

25 THE COURT: And Garth was your company with others?

1 right?

2 DR. DONG: No. I was the consul here before I was pushed
3 into the company based on the contract because

4 THE COURT: Let's go back to the start. The company was
5 started because of you and the --

6 DR. DONG: No.

7 THE COURT: -- means you were going to get and the good
8 contracts you had in San Francisco and other places, and that's
9 how Gentex got started; right?

10 DR. DONG: I was the -- provided, on behalf of MSCC --

11 THE COURT: Right.

12 DR. DONG: -- as a professor. I have no ownership in the
13 company --

14 THE COURT: I understand.

15 DR. DONG: -- except the 1% or 2% ownership. The
16 investors -- about 150 investors who put over \$50 million
17 there

18 THE COURT: I understand.

19 DR. DONG: -- was the owner.

20 THE COURT: I understand.

21 DR. DONG: So I was trying to be the good faculty sponsor
22 technology, helping FRC to support the company. In the end,
23 actually because the fighting -- the big dispute over my
24 technology and money, and they pushed me to a cool-off period
25 of time, saying you can -- now you can completely go to

1 GenPac, conduct your research for MUSE, getting grants. Once
2 you're getting more grants for MUSE, we'll hire you back,
3 bring you back to the campus.

4 So, actually, that was a promise given to me, although
5 they played word game in the agreement, because, at the time,
6 I was tired of it, for years of fighting with the chairman and
7 the --

8 THE COURT: Okay. I got all that.

9 MR. PONG: Right.

10 THE COURT: So, at a certain point in time, you say
11 during the time this contract -- the final separation
12 agreement was in force --

13 MR. PONG: Right.

14 THE COURT: -- and before it came to an end, your
15 contention in this lawsuit is that MUSE breached this
16 contract?

17 MR. PONG: Not transfer any of the genetic
18 material.

19 THE COURT: By not transferring any of your

20 MR. PONG: Not transfer any genetic material, any of the
21 documents, any of the equipment.

22 THE COURT: Right, right, right. And all of that was
23 specified in a very long Exhibit A --

24 MR. PONG: Yes.

25 THE COURT: -- that's attached to the complaint.

1 DR. DONG: Right.

2 H. COURT: Basically, this is a breach of contract.
3 action, as far as you are concerned, that concerns that KUSC
4 violated this agreement by not transferring listed items that
5 they were supposed to transfer to who? To you or to GenPhar?

6 DR. DONG: To me.

7 THE COURT: To you personally?

8 DR. DONG: Right. Because, actually, that's -- the
9 reason is, I have agreement at GenPhar to allow me the space
10 to conduct my research on behalf of KUSC, use my genetic
11 material, grants, and the equipment, all that -- including my
12 document notebook.

13 THE COURT: I got it. I understand very clearly exactly
14 what you're saying. It's a breach because of the failure to
15 transfer to you personally listed equipment that was listed on
16 this agreement.

17 DR. DONG: Those are my equipment, actually.

18 THE COURT: And, at that time, your intention was to set
19 up your operation at GenPhar with this equipment; right?

20 DR. DONG: Yes, because

21 THE COURT: In their physical -- they had a physical --

22 DR. DONG: In their physical space. I relinquish the
23 physical space, which is right at KUSC. I understand that.

24 THE COURT: Okay. Let me first ask one question. That's
25 2013 when the agreement began. That was the idea that these

1 equipment's would be transferred at the end of the agreement,
2 which would be 2012, with the agreement, and that equipment
3 would be transferred to you personally, and you would be at
4 GenPhar, operating with that --

5 DR. DONG: Understood, but they value as in both?

6 THE COURT: That -- I'm just trying to figure out what
7 was breached about this. And this contract entitled you to a
8 trans- -- as you see it -- to a transfer of a -- this equipment
9 at the -- when the contract came to an end in 2012?

10 DR. DONG: Don't remember that, but if you're saying
11 that, but that was not represented to me at the time. How I
12 conduct my research on behalf of MUSC without equipment,
13 without document -- that contradicts what I'm using different
14 space.

15 THE COURT: It looks to me like the contract contains a
16 provision on page 3 that describes the material and where it
17 should be transferred, and your contention is that that
18 equipment was supposed to be transferred before the agreement
19 came to an end --

20 DR. DONG: As I can --

21 THE COURT: -- to the fact, Alex at GenPhar, right?

22 DR. DONG: Right. Everything need to be transferred.

23 THE COURT: And that is or is not what the agreement
24 says. I'm saying that's what you nowhere it says.

25 DR. DONG: Unless how I conduct research on behalf of

1 XOSC at a different location without any equipment, without
2 documents?

3 THE COURT: And then what was going to happen after the
4 agreement came to an end and you were no longer with XOSC?

5 DR. DONG: No, actually, they played word game, but --
6 with -- but --

7 THE COURT: I'm just trying to ask you what you
8 understood was what would happen to the equipment, and --

9 DR. DONG: These are my equipment I brought from XOSC.

10 THE COURT: So you would continue to retain the
11 equipment.

12 DR. DONG: That's my personal property.

13 THE COURT: And you would continue to be located at
14 GenPhar, right?

15 DR. DONG: That's correct.

16 THE COURT: That was your understanding of the agreement?

17 DR. DONG: My understanding is a transition period. They
18 used the word they will have right to retire me, brought me
19 back to campus. That's actually presented.

20 THE COURT: Well, let's -- for goodness' sakes, let's not
21 get into that. Right now, let's just go on the agreement and
22 what they did to breach it during the time you --

23 DR. DONG: Right. They did not transfer all the
24 essential materials for me to conduct my research, continue my
25 project. But, in fact, they took all my research projects,

1 continued being used by Dr. Morris.

2 THE COURT: Now, the letter that they sent you after you
3 were indicted was sent while the agreement was -- the
4 separation agreement was still in effect, and it put you on
5 administrative leave, and it said, "We have attempted to
6 relocate your equipment to the GenPhar building, but due to a
7 change in ownership, we have been unable to relocate the
8 equipment." What was the situation there?

9 DR. DONG: There was never change of -- there was never a
10 change of owner, but that's a long time after. So that's what
11 they tried to -- before the end. First of all, I did not --
12 do not remember that letter -- I received the letter. But,
13 second of all, there's no so called ownership change, and
14 actually

15 THE COURT: So it is --

16 DR. DONG: They never actually -- I repeatedly request
17 they never transferred my genetic material and the equipment.
18 The genetic material documents was supposedly given to me,
19 because that's how I conduct my research. So, basically, they
20 shut down my career cold.

21 THE COURT: Did you continue to have an office at
22 GenPhar?

23 DR. DONG: That has nothing to do with MJSC with my
24 career.

25 THE COURT: Well, I'm just trying to figure out where

1 would they have transferred the equipment, in your view, if it
2 was your equipment and should be transferred. If you didn't
3 have an office at GenPhar, where were they supposed to
4 transfer it?

5 DR. DONG: It's not office but research laboratory, yes.
6 We have research laboratory at GenPhar. And the GenPhar did
7 agree for us -- of course, they would be glad to, let me to
8 pay some as a professor and work on-site and have a better
9 collaboration scientific ly.

10 So, GenPhar did agree to provide space for me to locate
11 the equipment at the

12 THE COURT: And that's where it was supposed to be
13 placed?

14 DR. DONG: Right.

15 THE COURT: And they say they didn't place it there
16 because GenPhar changed ownership, but you say

17 DR. DONG: No, GenPhar never changed ownership. GenPhar
18 always have the operational lab research lab.

19 THE COURT: Okay. Just one more question then: Did you
20 still have an office there?

21 DR. DONG: No. GenPhar actually closed down because of
22 the prosecution.

23 THE COURT: Well, then, in order for them to honor this
24 separation agreement, if GenPhar had closed down, where do you
25 say the equipment should have been transferred?

1 DR. DONG: That's years later, because I was stuck in
2 GenPhar without equipment, almost being able to work on the
3 university.

4 THE COURT: Okay.

5 DR. DONG: - without the opportunity to transfer to
6 another university with my research grant equipment. So my
7 career would be shut down cold.

8 THE COURT: Okay. I understand that.

9 DR. DONG: And that would give me no option. I end up
10 with GenPhar because, once they indicted GenPhar under the qui
11 tam, which is single procedure but managed by the ex-U.S.
12 attorney, who actually used his subordinate he promoted,
13 actually, criminally prosecuted GenPhar, and then they found
14 out we have to have a warm body -

15 THE COURT: Mr. Dong -- or Dr. Dong, we can go into all
16 those things in more detail at the proper time.

17 DR. DONG: Right.

18 THE COURT: I think I got the picture, though. GenPhar
19 was indicted just like you were indicted, and it had been shut
20 down. Right?

21 DR. DONG: It wasn't shut down until two years later.
22 Because, first of all, the indictment was not known for
23 another year or so.

24 THE COURT: I'm going to the time when you knew about it.

25 DR. DONG: When I knew about it, it was unveiled. When

1 it's unsealed.

2 THE COURT: Right. And that was 2011.

3 DR. CONG: No. The indictment in 2013 was sealed --

4 THE COURT: That's a superseding sealed indictment.

5 DR. CONG: The indictment -- they haven't --

6 THE COURT: That letter is dated September the 28th of
7 2011, and it said, after notification of your indictment by
8 the United States Government, MSC is saying that, in 2011,
9 at your notification from the United States Government, the
10 federal authorities and the U.S. attorney, that you had been
11 indicted, and that is why they sent this letter saying we have
12 been trying -- we have tried to relocate this equipment, but
13 we're unable to.

14 GenDmar was indicted just as you were indicted; right?

15 DR. CONG: Right. But GenDmar is still operational at
16 the time, two years after that. So they had nothing to do
17 with not being able to transfer and also before that, nothing
18 to do with --

19 THE COURT: Well, it's just a big, internal controversy,
20 then, between the two of you about that, but I think I
21 understand what your position is about it.

22 All right. Then you go on forward. At some point, you
23 were tried. Apparently, you had a jury trial. You had some
24 reversals. You had a bench trial. You had some reversals,
25 and then you served, what, about six years or so?

1 DR. DONG: Five years.

2 THE COURT: Five years. All right.

3 And you had brought this lawsuit before you -- well, it
4 was after some of the activity in terms of your criminal side
5 was in place. When did you --

6 DR. DONG: I brought the lawsuit a year -- at least a
7 year before I knew anything about the --

8 THE COURT: I don't. So your position is that breach of
9 contract action had to do with the time when neither you nor
10 PLSC knew that you were indicted or anything else, and they
11 violated that agreement before --

12 DR. DONG: Not before that. My indictment was
13 invalidated. As a result, they push me into off-site Confab
14 to conduct my research. So I was the only so-called war room
15 in charge for Confab issue the fund for research for city
16 deal. So I was indicted the same, which I was just a
17 so artist being a consultant. So, actually, the --

18 THE COURT: And, of course, I can't relinquish that.

19 DR. DONG: That's why, actually, we should not actually
20 touch the case --

21 THE COURT: Well, I think it looks as a factor in all of
22 this, but I can't really find out, of course. The final word
23 has been spoken on that.

24 DR. DONG: But if you brought in the indictment as the
25 issue, which they use it as the issue after 1995, which was a

1 so --

2 THE COURT: Well, that's what we're going to --
3 apparently, that, itself, is a factual dispute.

4 DR. DONG: And then allow me to add on a claim because
5 they basically used this situation, pushed me into a company,
6 eventually end up with a problem, or they may knew there was a
7 problem --

8 THE COURT: So the better line of this summary is you
9 want to amend your complaint?

10 DR. DONG: Yes. Actually, after discovery, I need to
11 establish where my documents -- why my documents were seized to
12 begin with.

13 THE COURT: Okay. I understand that. Now --

14 DR. DONG: And where the documents were.

15 THE COURT: What discovery has taken place so far?

16 DR. DONG: Nothing. Actually, basically -- actually,
17 I'll say the discovery -- first of all, I followed the request
18 for production for documents. Right? Basically, COURT denied
19 all the document with one line, was clearly --

20 THE COURT: Okay. You filed a request for production.
21 The defendant denied --

22 DR. DONG: Produce anything.

23 THE COURT: Production. All right. And then did you
24 file interrogatories?

25 DR. DONG: Haven't yet, because, actually, it was still

1 -- we're in the process to what can be produced, what cannot
2 be produced, and, so far, I can say the document was limited
3 under condition, can be extended at any time to --

4 THE COURT: You don't need to give me the end notation.
5 Just the end piece of discovery you have filed is a request
6 for production, and they have denied that, right?

7 DR. BOND: Right. The judge did agree conditions,
8 limiting the first round for production to the
9 communications.

10 THE COURT: Was that Cochran's order -- Judge Cochran's
11 order, Counsel?

12 DR. BOND: Judge, the issue he speaks of was actually
13 addressed by two different circuit court judges.

14 THE COURT: Okay. I'll get to the history with you in
15 little bit. Thank you so much. All right.

16 So the request for production was denied. There has been
17 some judicial action on that issue. And I also understand
18 that this matter has been designated as trial set before
19 November 1st, and that is rapidly approaching. And I can tell
20 you, I'm going to sign a scheduling order that, first of all,
21 deals with all this discovery and sets some firm dates for
22 when things have to be proposed and answered by each party so
23 we won't have any confusion about that. I'm going to set that
24 today before I leave.

25 DR. BOND: Yes.

1 THE COURT: And, then, I'm going to set the trial date.
2 And I'm going to set it as soon as I possibly can. Now, the
3 trial may or may not take place, depending on what happens
4 with the motions, but I'm going to set all of that before we
5 depart from each other today.

6 DR. DONG: Yes, Your Honor. I think to virtually smooth
7 out the process without a dispute --

8 THE COURT: Sure.

9 DR. DONG: -- I think it would be prudent for the Court
10 to issue a standing discovery order like this.

11 THE COURT: What do you have there?

12 DR. DONG: This is the standing discovery order. This is
13 issued by Judge Roger Young, but that's accepted by a number of
14 judges.

15 THE COURT: Would you hand that up to me and let me just
16 look at it?

17 DR. DONG: Yes.

18 THE COURT: I'll give it right back to you.

19 DR. DONG: No, actually, I will submit it. I'll file a
20 motion to adopt this order.

21 THE COURT: Okay. Well, that's -- you're just verbally
22 making that motion at this time. All right. This is Judge
23 Roger Young's -- this is his standing order.

24 DR. DONG: Right.

25 THE COURT: It's not specific to this case. It's his

standing order.

2 DR. DONG: Right. You can see the title.

3 THE COURT: And I will tell you right now that I intend
4 to make a specific scheduling order for this case. And I
5 thank you for giving me this. I'll certainly be guided by
6 Judge Young. I'm familiar with his standing order. It's a
7 good one. And I will be mindful of that. But in terms of the
8 deadlines and so forth here, we're going to talk about those
9 and deal with those today.

10 DR. DONG: Right. Actually, I have nothing against it,
11 but I was requesting, instead of stonewalling me on every
12 step, allow me to conduct discovery if they timely --

13 THE COURT: Well, they're going to have to do the same
14 thing. They're going to be allowed to conduct discovery as
15 well.

16 DR. DONG: Yes.

17 THE COURT: They may have some dispositive motion that
18 will be heard before that, which is their motion to dismiss.
19 I don't know exactly what they're going to say about that, but
20 you and I will find out, and then I'll tell you what I'm going
21 to do.

22 DR. DONG: Yes. I think that the normal process is
23 normal. First, discovery and mediation and dispositive

24 THE COURT: Well, I don't know that we're going to file
25 all that normal process here. This case has been pending

1 since 2016. There's been a lot of exchange back and forth
2 about the case. I'm going to compress all that as much as I
3 can, because this case needs to be dealt with.

4 DR. DENG: I understand. But I think the schedule will
5 be

6 THE COURT: Well, there's no sense in debating in the
7 abstract.

8 Let me hear first from defense counsel about his position
9 about the case, and then I'll talk to both of you about
10 scheduling. Okay?

11 DR. DENG: Yes, Your Honor. I would just state that
12 discovery is the -- accused of my constitutional rights --

13 THE COURT: Yes, sir. It's not a constitutional
14 provision. It's a practice and procedure. But, yes, we
15 follow it. A trial judge has the authority to set a special
16 scheduling order for any kind of case, and I'm going to do
17 that.

18 DR. DENG: Yes, Your Honor.

19 THE COURT: Okay. Mr. Conley?

20 MR. CONLEY: Good morning, Judge. I'm not sure where you
21 would like me to start. I don't want to go over what you have
22 already heard about.

23 THE COURT: The first thing, Mr. Conley, what would be
24 subject is you-all have filed an answer, which is basically a
25 motion to dismiss -- a general denial and a motion to dismiss.

1 MR. CONLEY: That is correct.

2 THE COURT: All right. And that matter -- it's just been
3 filed, but it hasn't been briefed or -- at least I have not
4 seen anything to indicate exactly how we would proceed. A
5 motion to dismiss, as we know, is something that's based on
6 the pleadings. And I have not seen the initial complaint.
7 I would have to examine to see exactly what you contend about
8 the pleadings, looking at them in the light most favorable to
9 the non-moving party that would give me the basis for
10 dismissing it, just based on the pleadings.

11 Has something been submitted like that?

12 MR. CONLEY: It has not, Your Honor. And I think the
13 reason is, is because I think, collectively, my client and
14 decided this case is more of a summary judgment case --

15 THE COURT: I agree with you.

16 MR. CONLEY: -- in light of discovery than it is a
17 12(b)(6) motion --

18 THE COURT: Sure.

19 MR. CONLEY: -- just based on the four corners.

20 So to go directly to your question, this is not a case
21 where we're going to pursue a 12(b)(6) motion.

22 THE COURT: Very good.

23 MR. CONLEY: I don't want to tell the Court that on the
24 record on behalf of my client and NASC. So this is a case
25 that is a summary judgment case from a dispositive motion

1 standpoint, Judge.

2 THE COURT: All right. Now, very little has been done
3 with discovery, take it.

4 MR. CONLEY: Let me give a small piece of background on
5 discovery.

6 THE COURT: Sure. Sure.

7 MR. CONLEY: So, at the outset of the case, on behalf of
8 MISC, we served both interrogatories and requests for
9 production on Dr. Dong. Dr. Dong responded to those
10 interrogatories and requests for production. He produced both
11 documents and responded to interrogatories.

12 To my recollection, there was no motion to compel in
13 regard to Dr. Dong's responses. As he has indicated to you,
14 he, likewise, served MISC with requests for production. Those
15 requests for production were subject to what I would call
16 various contested issues in what he was asking for in regard
17 to documents.

18 And I want to make sure I get my date right here, Judge.
19 In March of 2019, Dr. Dong actually filed a motion to compel
20 regarding MISC's responses to his request for production.
21 That motion was heard by Circuit Court Judge Craig Brown on
22 or Florence. Judge Brown held a hearing. He actually ended
23 up holding two hearings, and I'll explain that in a moment.

24 Dr. Dong attended both of these hearings by phone. Of
25 course, he was in -- I'm not sure where he was incarcerated at

1 the line, but he was --

2 THE COURT: But, regardless, he was still in federal
3 custody.

4 MR. CONLEY: That is correct. But the Court made
5 arrangements for him to appear by phone each time.

6 The result of his motion to compel was that Judge Brown
7 issued an order that really contained two things in general,
8 Judge. One, it contained a very ex- -- fairly explicit,
9 detailed order as to what MUSC was required to produce in
10 regard to documents, and in addition to that, what we were not
11 required to produce.

12 I don't want to be sold to this, but my recollection is
13 -- ended up being about somewhere in the nature of 500 pages
14 of documents, including in emails -- many emails and other
15 related documents.

16 THE COURT: As the required production was about 500
17 pages?

18 MR. CONLEY: Somewhere in that neighborhood. That's my
19 recollection, Judge.

20 Those documents were all produced to Dr. Song. Even
21 though he was incarcerated at the time, we made arrangements
22 to be able to produce those to him and did produce those to
23 him.

24 Judge Brown's order also contained another component too.
25 A little unusual but Judge Brown determined it was the right

1 thing to do at the time. He also built into that order a
2 scheduling order because he ever recognized that, even at that
3 point in 2018, obviously, the case had a lot of age on it
4 already. And so, in order to try and move it along, he put a
5 scheduling order into that order. So if the Court were to
6 look at his first order, it's got the motion to compel
7 component and the production of records, and it's also got
8 this component regarding scheduling.

9 The other thing that Judge Brown did in that order was he
10 built into the order that he was going to stay the case until
11 Dr. Dong was released from federal custody. NUSC filed a
12 motion to alter or amend that order with Judge Brown in only
13 one respect, and that was his order that the case was going to
14 be stayed while Dr. Dong was in federal custody.

15 As a consequence of that motion to alter or amend, Judge
16 Brown issued a new order, and the only thing he changed about
17 the new order was he removed the stay component --

18 DR. DONG: Your order --

19 THE COURT: Just -- no -- I'll get back to you. Don't
20 worry. Just make a note of what you want to say, and I'll get
21 back to you. Just like I didn't let him interrupt, I'll treat
22 you the same way.

23 THE COURT: So Brown altered by removing the stay?

24 MR. CONNER: Correct. So, in other words, what we were
25 left with at the end of Judge Brown's involvement, as I will

1 phrase in, was an order that ordered us to produce the
2 records, which MUST did, and had the scheduling order that
3 applied going forward. And the scheduling order included the
4 typical things we would see, such as a discovery deadline, a
5 dispositive motion deadline. I think it has a mediation
6 deadline, and I believe it's got a trial before deadline, just
7 speaking from memory.

8 So that's what we operated under going forward. One of
9 the things

10 CHA. COOPER: Let me just interrupt you, Mr. Conley, to
11 say, I'm going to get you to prepare for me, before it's all
12 over, a little notebook that gives me all these orders.

13 MR. CONLEY: Sure. So we --

14 THE COURT: You operated under this order.

15 MR. CONLEY: We operated under Judge Brown's built-in
16 scheduling order, and when we got into early 2020, one of the
17 things that Judge Brown's order had in it was it had a
18 discovery deadline built in that I believe was the end of
19 February of 2020.

20 We actually, in advance of that deadline, worked with the
21 federal correctional facility in Salter, South Carolina, where
22 Mr. Long was at the time, to take Mr. Long's deposition. It
23 was scheduled to occur at Salter, at the correctional
24 facility. It was so scheduled, set up. And in the days
25 before we were scheduled to go take Mr. Long's deposition, he

1 filed a motion with the Court seeking to delay his deposition.

2 So as a consequences of him filing

3 THE COURT: What was the basis?

4 MR. CONLEY: I don't have it in front of me, but I
5 believe the basis of his motion was something to the effect of
6 he wasn't ready to be deposed, he didn't feel like he had been
7 produced as the documents he was entitled to.

8 THE COURT: Right. Okay.

9 DR. JONG: Because of COVID, actually.

10 THE COURT: No, no. I'll get back to you.

11 MR. CONLEY: So that's --

12 THE COURT: Was COVID mentioned?

13 MR. CONLEY: To my knowledge, no, but if you look at the
14 dates, Judge --

15 THE COURT: That's right when COVID is striking.

16 MR. CONLEY: That's exactly right. It's within days of
17 that.

18 THE COURT: So that's not unreasonable that you would
19 have done that because of COVID. That's what I thought. It was
20 going to be, the end result, because a lot of what Craig Brown
21 put forward would have been interfered with, to some extent,
22 by COVID.

23 MR. CONLEY: That is, Judge, particularly anything with the
24 discovery deadline that ended the end of February because, as
25 we all remember, it's mid-February that COVID begins to raise

1 his ugly head.

2 So, yes, there is a DNY D component there. Nonetheless,
3 the combination of Dr. Dong's motion, if you will, he files to
4 delay it and then, subsequently, DNYB, where we couldn't ever
5 go to Salts at that point -- I mean, there's just no -- it
6 was just shut down -- that just shut down the case, as best I
7 can put it, Judge.

8 Dr. Dong had also filed some other motions that will
9 give to the Court in a notebook in the interim. He filed a
10 motion to expand the discovery period in January of 2020.

11 And so, in summary, we get into March of 2020 and the
12 courts are shut down, and Dr. Dong -- we can't really do
13 anything with the case without taking his deposition.

14 On September 2nd, 2020 -- so we're roughly seven months
15 later, Judge -- Dr. Dong filed a notice of change of address
16 indicating that he had, at that point, been released from
17 confinement at Salts and was back in his residence on Santa
18 Island, living in, apparently -- I can let him speak to
19 that -- completing the remainder of his sentence.

20 Obviously, that was not unusual at that point that the
21 federal correctional system was releasing a lot of people at
22 that point to lay and reduce capacity.

23 THE COURT: Yes. And that was September etc.?

24 MR. CONLEY: I think it was filed on or about
25 September 2nd, 2020, was when --

1 THE COURT: All right.

2 MR. CONLEY: We get notice by way of his change of
3 address that he was no longer in Salt Lake.

4 THE COURT: Right.

5 MR. CONLEY: Three months, four months later on
6 January 11th, 2021, Dr. Dong filed a motion again to expand
7 and discovery schedule due to COVID-19, and on January 20 of
8 2021, he filed a second motion to compel production.

9 What occurred --

10 THE COURT: To expand production?

11 MR. CONLEY: Exactly. Both expand it, and as I'll get to
12 in a minute, sort of reinstate his prior motion to compel
13 that Judge Brown had resolved a year and a half or so prior.

14 Those motions languished. Again, I don't like to blame
15 everything on COVID, but the fact of the matter is, it did
16 languish due to COVID.

17 And so, on December 15th of 2021, Judge Cochran heard
18 Dr. Dong's then pending motions, and the pending motions were
19 a motion to amend the discovery schedule and a second motion
20 to compel production, which the second motion to compel
21 production was, as I mentioned a minute ago, effectively a
22 renewal of his prior motion that Judge Brown had ruled on.

23 Judge Cochran held a hearing on December 15th, 2021, and
24 Dr. Dong appeared. I appeared on behalf of MUSC. The sum
25 result of that is a fairly detailed order. It's about eight

pages long that Judge Cochran issued. It really contains two components. It's much like Judge Brown's prior order from 2013. The two only components are what I would call a denial of -- a re-denial of Dr. Dong's motion to compel the production of any further records. Judge Cochran said, "I'm not ordering KUCB to produce any further records at this point."

And, then, like Judge Brown, recognizing the case had languished and recognizing the Court needed to do something to sort of move it forward, Judge Cochran, like Judge Brown, built in a scheduling order into it.

We conducted ourselves under that scheduling order, and one of the components of it was a discovery deadline that ended -- I think it's June 28th or 30th. The end of June, I'll just put it. Judge Neal.

In mid-June, with that date approaching, I had scheduled Dr. Dong's deposition, and it was conducted in my office, and Dr. Dong, of course, appeared for it. A court reporter was there. That deposition never went forward, Judge. And the reason it did not go forward was Dr. Dong asked if he could record the deposition on his phone in addition to the stenographic reporter that was there.

THE COURT: Our rules don't allow that. You have a stenographic reporter. The reporter is to take it down.

MR. CONLEY: That was my position, Judge. Dr. Dong did

1 not agree with that at the time. I suggested, as I always do
2 in dealing with pro se plaintiffs, that we take a pause, and
3 he look at the rules or perhaps seek some legal advice on his
4 own. I did not want to debate him on what the rules required.
5 So what I agreed to do, in light of his position, was delay
6 his deposition once again.

7 So the other thing that happened in conjunction with that
8 is Dr. Long, leading up to the June discovery deadline, had
9 served a number of deposition notices himself. I counted this
10 morning; it's 11 or total deposition notices. In general, he
11 had noticed most of all those depositions to occur by video,
12 meaning he wanted to videotape the deposition, not a virtual
13 deposition, but he wanted to videotape each deposition.

14 THE COURT: That's not provided for in the rules.

15 MR. CONLEY: And he also, Judge, wanted to -- the
16 deposition notices indicate that a number of them were
17 scheduled to take place at his residence, at his house on
18 Daniel Island.

19 Because of the issues that arose at his deposition in mid
20 June, as I described, and the issues that I had with his
21 deposition notices in regard to the 11 individuals he had
22 asked to depose, several who don't ever work at M&B any
23 longer and, I think, who live out of state, I filed a very
24 brief motion for a protective order simply to make sure I had
25 made a record of what was occurring with respect to these

1 depositions, which, since that occurred, Judge, nothing has
2 happened with the case. My motion for protective order has
3 remained pending and not heard, and that's where we are in
4 terms of discovery.

5 From my standpoint, as I mentioned a minute ago, Dr. Bong
6 has responded to our request for production and
7 interrogatories. We have not moved to compel anything
8 further. I need to take his deposition in the case.

9 THE COURT: That is the remaining -- from your
10 standpoint, you have received production and interrogatory
11 responses, and, from your standpoint, you need to take his
12 deposition.

13 MR. CONLEY: That is correct.

14 THE COURT: Right.

15 MR. CONLEY: And unless he were to tell me something at
16 his deposition that was, you know, sort of wholly unknown, I
17 don't know of anyone else I would need to depose in the case,
18 Judge. So, in other words, standing here this morning before
19 you, I only know of a single deposition I need to take in this
20 case, as Dr. Bong, with one footnote to that.

21 As I mentioned, there are several of those MUSC witnesses
22 who either don't work -- well, don't work for us anymore, and
23 some are no longer residing in South Carolina. It may be
24 necessary for me to take de bene esse depositions of one or
25 two of those individuals to make sure I have that testimony.

1 given them, over the years, since 2010, departures from MUSC
2 and moving on to other institutions or retired. So that's the
3 one caveat to what I would need to do.

4 But, to summarize that, I believe I can do that fairly
5 efficiently, and -- for the Court, I can do it fairly
6 efficiently. Again, I was prepared to take his deposition in
7 June, so taking his deposition now can happen right away.

8 THE COURT: So you can provide me with a list -- the
9 deposition of the plaintiff is one and possible de bene esse
10 depositions of several other MUSC former employees that are
11 not currently with MUSC?

12 MR. CONLEY: Correct. And live out of state.

13 THE COURT: And live out of state.

14 MR. CONLEY: Yeah, they're living elsewhere. One name
15 that comes up is Steve Lanier. That was mentioned by
16 Dr. Bong. My understanding is -- I mean, Dr. Lanier has been
17 gone from MUSC for probably close to a decade now, Judge. I
18 believe he lives up in the Northeast somewhere.

19 THE COURT: Right.

20 MR. CONLEY: That's just by way of an example.

21 And, then, of course, there's the depositions that
22 Dr. Bong wants to take, and --

23 THE COURT: Have you got a list with you?

24 MR. CONLEY: I do. I have a -- well, I printed out the
25 email that I had gotten from MUSC when I was asking them,

1 specifically, who is still active and who is no longer at
2 MISC. There's 11 names. I counted it this morning. I think
3 all but three of the 11, most of them are still with us.
4 Those people are giving scheduling issues. For instance, he
5 wants to depose Mr. Cole. Well, as you might imagine,
6 scheduling Mr. Cole does take a little bit of time and effort,
7 just given he's the president of MUEC. So it's not as if we
8 can sort of be scheduled on a quick turn.

9 Another one, by way of example, is Lisa Saladin.
10 believe she's now the provost.

11 So there's -- you know, all of these people are fairly
12 senior people within the institution that he wants to depose,
13 so from my standpoint in trying to schedule these people for
14 him, that does take some time to try and find

15 THE COURT: Yeah, I understand. And we're going to take
16 a look at this list and see what needs to be done about it. I
17 take it that, while Brown and Contran dealt with issues, both
18 what could be and what could not be produced, no one yet has
19 dealt with the issue of who he can depose, correct?

20 MR. CONLEY: No. No one has dealt with that issue.

21 THE COURT: So that hasn't been dealt with yet.

22 MR. CONLEY: No, it has not.

23 And, then, the secondary issue that ties in to who he can
24 depose, Judge, there's the secondary issue of -- I believe
25 it's going to be in the Court's assistance in any kind of

1 order or putting some very clear constraints on what -- how
2 depositions have to occur.

3 As you noted a minute ago, there's a stenograph or
4 reporter. You can't be recording the deposition on an iPhone
5 as well.

6 Dr. Dong, at some point -- I don't know if this is his
7 intent now -- at some point, he mentioned to me, when I was
8 speaking to him about what the rules require in terms of
9 video --

10 DR. DONG: Would you let me --

11 THE COURT: Dr. Dong, please do not interrupt counsel.
12 Thank you, sir.

13 MR. CONLEY: As the Court knows, under Rule 20, if you're
14 going to take a video deposition, it's a very methodical
15 process you have to go through to do that. You have got to
16 have specific people do the videography and that sort of
17 thing.

18 I don't know what Dr. Dong's intent on that issue is now,
19 but, at some point, he mentioned to me that he was going to
20 video those on his iPhone, and I simply indicated to him that
21 I did not believe, under the rules, that's something --

22 THE COURT: No, that's not the way we're going to conduct
23 any of these.

24 MR. CONLEY: What I don't want to have happen and I want
25 to guard against, to the extent we can, is once Dr. Dong and I

1 have depositions set that the depositions will occur and that
2 we're not going to have --

3 THE COURT: Another disagreement about how they're going
4 to be conducted. I agree.

5 MR. CONLEY: Correct, Your Honor.

6 THE COURT: I think that needs to be done.

7 MR. CONLEY: And the second component of that, I would
8 suggest -- and it's one of the reasons -- suggested in to Judge
9 Young several few weeks ago, that a specific judge be assigned
10 to this case, is I think it might be helpful if, once those
11 depositions are set, if the Court were provided a list of the
12 dates and times that those depositions are going to occur, in
13 the event that something did arise that there might be an
14 opportunity to communicate with the Court in real-time to try
15 and resolve any issues so something doesn't have to completely
16 get rescheduled.

17 THE COURT: Yeah, I'm not going to attend all these
18 depositions for sure, and I have other trials that I have got
19 to deal with. This is not, by any means -- but just one of --
20 I manage the whole asbestos docket, and the mediator --
21 federal mediator in a big multi-district litigation case, so
22 I've got a pretty full schedule myself.

23 MR. CONLEY: That wasn't to suggest you attend. It was
24 to suggest that at least the Court were aware of when
25 depositions were scheduled.

1 THE COURT: Sure. So that, if an email or a text comes
2 to me saying we're having a disagreement, I can figure out a
3 way to resolve it.

4 MR. CONLEY: If you were available, you might be able to
5 resolve it on the spot so that we don't have to stop a
6 deposition and reschedule it.

7 THE COURT: Right. I understand.

8 All right. So that's kind of your point of view about
9 discovery. Do you have any recommendations about an actual
10 time schedule?

11 MR. CONLEY: Yeah, I have thought about that a little
12 bit, Judge. And I realize and I appreciate that the Court
13 wants to -- because of the age of this case -- wants and needs
14 to move it. You know, I always get concerned as we get into
15 November and December, it just becomes exceedingly hard.

16 THE COURT: Yeah, you have got seasonal holidays and
17 things of that nature.

18 MR. CONLEY: Sure. My general thought -- and I thought
19 in terms of discovery not really -- I mean, we can talk about
20 mediation and that sort of thing, but --

21 THE COURT: I can tell you about mediation, that I'm
22 going to retain very strict control over mediation and how it
23 occurs, because I am not going to have that turn into a
24 ritual. That's not going to happen. If this thing can't
25 be mediated successfully, then we're going to recognize that

1 spin that out into something that prolongs
2 this case.

3 MR. CONLEY: Understand. My suggestion

4 THE COURT: But, of course, mediation won't even think
5 about taking place until close to the trial. What will happen
6 before that is a motion for summary judgment. will be heard.
7 That's the way I run my docket.

8 In asbestos, sometimes I will have mediations occur
9 before summary judgment is actually heard, but that is only if
10 it's a real straightforward kind of thing. But, in this case,
11 I'm not going to put you through mediation before we hear this
12 motion for summary judgment. That's going to come first.

13 MR. CONLEY: Thank you.

14 My suggestion on discovery, given this is October the
15 4th, is that we consider putting a discovery deadline at the
16 end of February, and that may initially strike the Court as a
17 bit long but, again, my thinking on that is --

18 THE COURT: No, I think that's reasonable.

19 MR. CONLEY: I think if we put it at the end of February,
20 even accounting for holidays and that sort of thing, that
21 should be

22 THE COURT: But coupled with that is going to have to be
23 -- the discovery deadline is the end of February, and then I'm
24 going to also consult the powers that be on when this can be
25 set for trial. And I'm going to set it for trial, and I'm

1 going to set a pretrial in the scheduling order so that
2 everything will be in there that needs to be in there to move
3 the case along. That's the one thing I can't do on my own as
4 I sit here today. I've got to consult and see what other
5 schedulers are in Charleston to set a time to try the case.

6 MR. CONLEY: My other only suggestion is dovetail the

7 THE COURT: But we don't need to just put an end to
8 discovery. We need to do some setting of specifics of
9 depositions, when they're going to take place and the like,
10 and we're going to start with Dr. Dong's deposition. That's
11 going to be the first one to be taken, and it's going to be
12 taken pretty immediately and it's going to be taken according
13 to the rules of court, with a court reporter, and all of what
14 is required to have that deposition done. It's not going to
15 be somebody privately videotaping or anything like that. That's
16 not permitted, and I'm not going to vary it from this.

17 DR. DONG: That's a misrepresentation --

18 THE COURT: Right.

19 DR. DONG: That's a misrepresentation, Your Honor, on
20 the --

21 THE COURT: Right. Well, we're going to hear to you.

22 But I'm just saying, Dr. Dong's deposition needs to be
23 set today before we leave here.

24 MR. CONLEY: Certainly.

25 THE COURT: Have you got a suggestion?

1 MR. CONLEY: I would suggest we have it sometime here in
2 October.

3 THE COURT: All right. I'm going to look at my calendar
4 right now.

5 Okay. What are you suggesting?

6 MR. CONLEY: Are you asking me, Your Honor?

7 THE COURT: I'm asking Mr. Conley first. I'm going to
8 come to you. I'm not going to set it based on what he says
9 without asking you, of course.

10 MR. CONLEY: Judge, I would suggest we do it the week of
11 October 17th mainly because I just settled a case at mediation
12 yesterday and a number of depositions that week have fallen
13 off my calendar. So the next two weeks

14 THE COURT: Okay. Let me just tell you, in terms of my
15 availability. You know, I can't have to be there, obviously,
16 but my availability is some dispute arises.

17 MR. CONLEY: Sure.

18 THE COURT: October 17th or 18th are completely clear for
19 me. On October the 18th, I have a 3:00 conference call on the
20 National Law Enforcement accreditation group that I serve on.
21 We have our hearings for the accreditation for the agencies
22 I'm responsible for, 3 p.m. on the 18th.

23 And just to be safe about it, that generally takes a
24 couple of hours. I would just -- I'd skip the 19th. The
25 20th, I have a pretrial in two big asbestos cases. So that

1 week, the 17th would work for me, the 18th would work for me,
2 or the 21st would work with me.

3 MR. CONLEY: I suggest the 18th.

4 THE COURT: All right. That's a Tuesday.

5 I'm going to turn to you, Dr. Dong. October the 18th at
6 9:30 a.m. [verbatim].

7 MR. CONLEY: 9:30 a.m.

8 THE COURT: 9:30 a.m. in the offices of your law firm?

9 MR. CONLEY: Right. And I'll notice it just like we did
10 with the other one.

11 THE COURT: Now, let's turn to him and see if what he
12 feels about it.

13 Dr. Dong?

14 DR. DONG: That's agreeable, Your Honor.

15 THE COURT: Sir?

16 DR. DONG: That's agreeable, Your Honor.

17 THE COURT: That's great. Thank you so much.

18 All right. You then -- while we have got you up.

19 Mr. Conley -- I'm coming back to you for your discovery, of
20 course -- you also have a list of hotels that are out of state
21 -- that no longer work for MHSO and live out of state that you
22 want to do de bene esse.

23 And let me just -- frankly, somebody with a Ph.D. and the
24 kind of education Dr. Dong has, I know I'm speaking to someone
25 of big education, so you probably know what a de bene esse

1 deposition is, but I'll put it on the record and explain to
2 you that that is a deposition to preserve testimony and that
3 is why he is going to wherever these people are located to
4 take that deposition. You can go and participate in that
5 deposition if you care too. We cannot video that and allow
6 you to participate by video unless we set up, under the rules,
7 for video depositions. My guess is that Mr. Conley will go to
8 where these individuals are to take the depositions.

9 Mr. Conley, I'm just going to ask you: How do you feel
10 about any video piece of this thing by Mr. Dong? Or do you
11 think he should have to be there? How many people are we
12 talking about?

13 MS. CONLEY: Yeah, I'm looking at the list now. There's
14 a couple of them I haven't verified where they are. It looks
15 to look to me like I have -- it looks to me like I've got
16 somewhere from two to four who are no longer -- who are no
17 either -- who are both no longer at WUSC --

18 THE COURT: And not in South Carolina.

19 MS. CONLEY: -- and appears to live out of state. So
20 there's either two or four.

21 THE COURT: Where are they, do you know?

22 MS. CONLEY: One of them, I know, and I mentioned
23 Dr. Lanier. I believe Dr. Lanier is somewhere in the
24 Northeast perhaps. I think the last time maybe he was at
25 Wayne State. I'm not sure where Wayne State is.

1 THE COURT: Wayne State's in Detroit.

2 MR. CONLEY: Then I believe that's where Dr. Lerner still
3 is.

4 The witness, I am not for sure, and I've asked MISC to
5 inquire about that, but I don't have a response back yet. One
6 person is just a former grant administrator of NUSC, and
7 she's, I think, maybe retired now, and I'm not sure where
8 she's living.

9 THE COURT: Okay. Two to four, you're going to have to
10 let us know, and we would then be able to deal with de bene
11 esse.

12 How do you feel about his videotaped appearance if it's
13 done according to the rules of videotaping?

14 MR. CONLEY: Sure, Judge. I have no problem if he wants
15 to attend by way of Zoom or some virtual platform. We can
16 make that arrangement so he could attend.

17 THE COURT: Okay. You feel comfortable about arranging
18 some kind of virtual platform where he could attend?

19 MR. CONLEY: That's correct.

20 THE COURT: And I will explain the rules of the road
21 about depositions before we leave here today to make sure
22 everybody understands how those matters are conducted.

23 All right. Now, what other depositions besides the de
24 bene esse and the deposition of Dong? Anything else?

25 MR. CONLEY: He's got somewhere from six to seven other

1 depositions that he's asked to take of MIAC personnel who, to
 2 my knowledge, based upon information I got yesterday, are
 3 still at or associated with --

4 THE COURT: All right. And what are the names?

5 MR. CONLEY: So one of them is Mark Sothman. And that's
 6 Sothman.

7 THE COURT: S o

8 MR. CONLEY: --t-h--

9 THE COURT: --t-h--

10 MR. CONLEY: t-h--

11 THE COURT: --a-a-a.

12 MR. CONLEY: James Morris, who Dr. Dong spoke about.

13 He's also asked to take the deposition of a Michael
 14 Schmal. And that last name is S c h m a l.

15 He also asked to take the deposition of Steven -- and
 16 that's Steven, S t e v e n --

17 THE COURT: p h e r ?

18 MR. CONLEY: S-t-e-v-e-n.

19 THE COURT: And what's the last name?

20 MR. CONLEY: The last name is Tomlinson.
 21 T-o-m-l-i-n-s-o-n.

22 He's also asked to take the deposition of a Christina --
 23 and that's C-h-r-i-s-t-i-n-a. And I'm not sure I'm going to
 24 pronounce the last name correctly.

25 THE COURT: Spell it.

1 MR. CONLEY: I think it Voelkel. V-o-e-l--

2 THE COURT: All right. Say it again.

3 MR. CONLEY: Was in "Victor," v-o-e-l-k-e- hyphen
4 Johnson.

5 THE COURT: Okay.

6 MR. CONLEY: He's also asked to take the deposition of
7 Mr. Cole, who is the president of YUSC. And he's also asked
8 to take the deposition of Miss Saladin. And that's
9 S-a-l-a-d-i-n, who, I think her current position is the
10 provost.

11 THE COURT: All right. Is that all?

12 MR. CONLEY: Based on the notices that he had previously
13 given, that's it, Judge. I think that's a total of 11 I
14 counted this morning.

15 THE COURT: There's seven more and then the 30 hours
16 essses would take it up to 11.

17 MR. CONLEY: Yes.

18 THE COURT: All right. Now, let's talk about how those
19 depositions will be conducted. They are not going to be just
20 conducted at his residence. I'm not going to have any kind of
21 confidence that that kind of location would entail -- and I'm
22 going to make the suggestion -- and you don't have to do it if
23 your firm can't accommodate it, but I would prefer to have all
24 these depositions taken Williams & Conley. Or not Williams &
25 Conley; that's the one in Washington. Cleveland and Conley.

1 MR. CONLEY: Judge, I believe, at some point, I already
2 suggested that perhaps just verbally to Dr. Long, at some
3 point, he is welcome to take his depositions at our office, in
4 our conference room.

5 THE COURT: I think that's the better way to do it. All
6 right. Set up the conference room. If Dr. Long's need to attend
7 by virtual, you're set up to do that. That's what I would do.
8 And you are amenable if he is?

9 MR. CONLEY: Absolutely. He's welcome to take those
10 depositions at our office.

11 THE COURT: Okay. Now, is there anything else by means
12 of -- when you say, then, think, if we could get those
13 depositions -- the rest of these depositions taken? The 31
14 February is going to be a trial target. Those depositions
15 need to be taken very soon, here in the fall, and not run into
16 Christmas, if you can avoid it.

17 MR. CONLEY: I guess what I was -- and maybe I mispoke.
18 I think what I was thinking when I said the end of February --

19 THE COURT: Is the deadline for discovery?

20 MR. CONLEY: Exactly, Judge.

21 THE COURT: So you would anticipate some taken now and
22 some taken after the holidays?

23 MR. CONLEY: That's correct, just because I think some of
24 these would be more easily scheduled --

25 THE COURT: That's fine.

1 MR. CONLEY: -- than others.

2 THE COURT: I'm amenable to that.

3 MR. CONLEY: But I had full cooperation of KUBARK's
4 in-house counsel to get these scheduled for depositions,
5 whether it's this case or any other I might be involved in.
6 So that coordination.

7 THE COURT: And, then, that would mean something -- if
8 can arrange it -- something in a -- would then have a summary
9 judgment hearing after that. And then mediation to trial, if
10 we're going to do mediation.

11 MR. CONLEY: Sure. In my mind, I would -- I do so much
12 work in federal court, Judge, I was sort of thinking along the
13 lines of, you know, typically in federal court, a scheduling
14 order might have a discovery deadline, and, then, what I'm
15 accustomed to dealing with is a dispositive summary judgment
16 deadline that's 30 days after that discovery deadline.

17 THE COURT: Yes.

18 MR. CONLEY: Because that allows adequate time to prepare
19 the motion and the brief but also to get in any discovery
20 transcripts or anything like that. So I'm thinking,
21 generally, if we had a discovery deadline at the end of
22 February --

23 THE COURT: At the end of March would be the time for
24 submission of summary judgment motions and, of course,
25 adequate time for Dr. Dong to answer those summary judgment

1 motions, and then I would schedule a summary judgment -- a big
2 pretrial hearing. If that's the end of March, then I'd
3 probably set a pretrial hearing -- of course, he has ten days
4 to respond to a motion. So he would have ten days or whatever
5 to work out about that.

6 I could then have, at the end of April, a hearing and
7 then try for sometime in early May for trial. I generally
8 like pretrial, and if you're going to mediate, it's going to
9 be one day, some day shortly thereafter. If it can't be
10 mediated, presuming the trial is going forward, we'd try it in
11 May.

12 Okay. That just at least gives me the framework to look
13 at it as I work down in setting these things. And, again, I
14 can't do what I really love to do and announce it from the
15 bench this morning, but I will attempt to very quickly after I
16 consult with various court administration in Charleston County
17 to see when I can set these various things.

18 Okay. Let's go back to you, now, Mr. Tong, and let's
19 talk about the discovery. First of all, I take it that the
20 end of February for a discovery deadline is suitable?

21 MR. TONG: Yes, Your Honor.

22 THE COURT: Good.

23 MR. TONG: Under the condition they do provide the
24 documents.

25 THE COURT: Well, he says he's given you all the

1 documents these orders require.

2 DR. DORG: That's why I was going to respond.

3 THE COURT: Okay. Well, why don't we do that first.

4 Tell me what he's not given you that the orders of Judge Brown
5 and Judge Cochran entitle you to have.

6 DR. DORG: Right. Okay. Under the rules, actually
7 Judge --

8 THE COURT: Can you just hold on for a minute? I'm not
9 refusing to let you go forward.

10 MR. CONLEY, do you happen to have a copy of those two
11 orders?

12 MR. CONLEY: I have a copy of -- I have a copy of one. I
13 may have a copy of both. Actually, I do have a copy of both.

14 THE COURT: I'll give them back to you.

15 MR. CONLEY: No, that's fine. May I approach?

16 THE COURT: You certainly may. Thank you so much.

17 MR. CONLEY: So the top one is Judge Brown's order.

18 THE COURT: All right.

19 MR. CONLEY: The second one is Judge Cochran's order.

20 DR. DORG: May I --

21 THE COURT: If you'd just give me a moment, Dr. Dorg, and
22 let me just take a peek at these.

23 (Pause in the proceedings while the Court reviews
24 documents.)

25 THE COURT: Okay. I have now read both of those orders,

1 particularly the part that deals with discovery, and what I
2 understand from Judge Brown's order is that he limited the
3 scope of discovery -- of materials to be produced by the
4 defendant as follows:

5 "The first request for production to the defendant,
6 Plaintiff's First Request for Production to the defendant, the
7 scope of discoverable materials shall be limited to relevant
8 documents generated or created no earlier than April 1, 2019.
9 Either party may, at any time prior to the discovery deadline,
10 for good cause, petition the Court to expand its limitation."

11 Then, in responding to Plaintiff's First Request for
12 Production to the defendant, the scope of discoverable
13 materials shall further will be limited to relevant documents
14 generated or created by or sent to or received from Dr. Dong;
15 Mark Solomon, Ph.D.; or Steven Linder, Ph.D. Either party
16 may, at any time prior to discovery deadline, for good cause,
17 petition the circuit court to expand this limitation as
18 discovery progresses."

19 So those are the two categories Brown limited for
20 production to Dr. Dong by MUSC. There was an order filed on
21 October the 4th, 2019. And, then, Judge Coleman filed an
22 order on February the 7th, 2022, earlier this year, and he,
23 again, looked at the scope of discoverable materials. And he
24 says that: "On October the 14th, 2019, consistent with Judge
25 Brown's orders, MUSC produced documents to Dr. Dong. Dr. Dong

1 did not subsequently move to further compel production under
2 Judge Brown's October 4th, 2019, order or otherwise assert
3 YUSC failed to comply with Judge Brown's October 4th, 2019,
4 order concerning the documents produced. Instead, Dr. Dong,
5 in January 2020, filed his motion to expand discovery and
6 serve Plaintiff's Second Request for Production. On March 16,
7 2020, YUSC served its responses to Plaintiff's Second Request
8 to Production.

9 "As noted in YUSC's responses to Plaintiff's Second
10 Request to Production, Plaintiff's Second Request to
11 Production are subject to objection and rejection by the Court
12 for two particular reasons: First, Dr. Dong did not obtain
13 leave of the Court to request materials beyond those expressly
14 acquired by Judge Brown's prior orders; however, even if
15 Dr. Dong's Second Request for Production can be viewed as
16 implied and requesting the Court's permission to request the
17 materials beyond expressed parameters in Judge Brown's October
18 4th, 2019, order, the Court denies Dr. Dong's request.

19 "Dr. Dong, neither in his submission to the Court nor his
20 arguments at the December 10th, 2021, hearing, provided
21 sufficient basis, reason, or good cause for expanding the
22 scope of discovery.

23 "Moreover, and importantly, the request contained in
24 Plaintiff's Second Request for Production and the very same,
25 i.e., identical or virtually identical requests, contained in

1 Plaintiff's First Request for Production, being the request
2 previously ruled upon by Judge Brown in his October 2019
3 order. In particular, Request for Productions 1 through 16 --
4 Request to Production 1 and 16 through 40 in the Plaintiff's
5 Second Request for Production are also in the Plaintiff's
6 First Request for Production. In other words, 26 of the 40
7 requests contained in Plaintiff's Second Request for
8 Production that Dr. Long moves to compel MDSC to respond to
9 were previously reviewed and limited by Judge Brown in his
10 October 4th, 2019, order.

11 "Finally, even in respect to the remaining 14 requests
12 being Requests 2 through 15 that do not appear to be identical
13 to those contained in Plaintiff's First Request for
14 Production, the noted request seek the very same broad
15 materials sought by Dr. Long's 1st Plaintiff's First Request
16 for Production.

17 "For the reasons stated, and based on the submission of
18 the parties and the arguments presented at the hearing on
19 December the 13th, 2021, Dr. Long's second motion to compel is
20 denied."

21 And that is signed by R. Farrell Coleman, Jr., Circuit
22 Court Judge, filed February the 1st, 2022.

23 Now, based on that, Dr. Long, I am not going to vary from
24 these previous judges' orders. I am going to take the same
25 position that they took. So, on the issue of production, "

1 find that MUSC has produced to you all of what is required by
2 the orders that I have just read from.

3 DR. DONG: Could I just briefly comment on --

4 THE COURT: Yes, you can comment, but I tell you, when I
5 rule. I rule. The rules say, when I rule, there's no further
6 argument. You can comment very briefly, but I don't want to
7 spend time on something that has already been decided by two
8 judges before me.

9 DR. DONG: I understood. The first order, actually,
10 Judge Brown's order issued -- granted a motion to compel, asks
11 MUSC to --

12 THE COURT: And I limited the production to the things
13 that were contained in Judge Brown's order --

14 MR. DONG: Your honor --

15 THE COURT: -- and if said that a motion to expand could
16 be made. It didn't say it would be granted. It was made, and
17 Judge Cochran, for the reasons I just read and put on the
18 record out of his order, denied your second motion to compel.

19 Your first motion to compel was granted on a limited
20 basis. They produced what was granted by Judge Brown's order.
21 Now, you came back and asked Judge Cochran to expand that. He
22 denied that motion. I am not going to vary from that.

23 DR. DONG: Actually, if Your Honor may, let me just make
24 a comment of what my concern was. First of all, the -- Judge
25 Brown did granted the motion to compel --

1 THE COURT: Please don't repeat what you just said about
2 Judge Brown's order. I just read the whole thing.

3 DR. DONG: No, that's the second order. Under the
4 conditions, what they presented was --

5 THE COURT: That is the effective order, the one I just
6 read from -- by Judge Craig Brown. That is the order that
7 decides the limitations on production. He did not change that
8 in any respect. That was his order. And Judge Cochran chose
9 to follow that order.

10 DR. DONG: I would make a brief comment. Judge Cochran
11 did comment, granting extension of the --

12 THE COURT: The dates are not what I'm talking about.

13 DR. DONG: That actually was under the order to -- they
14 submitted a proposed order, but all of the things that was
15 discussed was not discussed in the courtroom, was not --

16 THE COURT: I don't need what was discussed in the
17 courtroom. The judge signed an order. That is what is before
18 me.

19 DR. DONG: Right. And that's

20 THE COURT: And that order limited the production in two
21 ways, that I just read into the record.

22 DR. DONG: I understand.

23 THE COURT: And MUSIC produced those materials, about 500
24 pages. When you moved to compel for the second time and asked
25 to expand beyond Judge Brown's order, and Judge Cochran heard

1 argument on that, and he denied your motion.

2 DR. DONG: That's actually the -- I would just comment.
3 That's the motion, subject to motion for reconsideration and
4 was denied -- I think was denied just a couple of days ago.
5 And, actually, based on the rule, the prior discovery is one
6 of the very reasons for interlocutory appeal --

7 THE COURT: No, let me tell you. I sat on the Supreme
8 Court for 27 years. Discovery matters are not directly
9 appealable. You can appeal them after the case is over. If
10 you lose, that can be a grounds for appeal, but you cannot
11 immediately appeal that or stop this trial or anything else.
12 That's what the rules provide. And I'm real familiar with
13 them. I have practiced for 27 years on that Court.

14 DR. DONG: I understand that.

15 O-R COURT: So, if I'm wrong about that, you'll just note
16 that for any future use of any appeal you take from what
17 happens with this case, but no, sir, the discovery limitation
18 is collective, it's been ruled on by two judges. Choose, as
19 the third judge, to handle this matter to follow what they
20 have ruled, and we're not going to discuss that matter
21 anymore. They have produced what those judges required them
22 to produce, and that's the end of it in terms of production
23 of documents. Do you understand?

24 DR. DONG: Understand what Your Honor is saying --

25 THE COURT: And you cannot directly appeal that to the

1 Supreme Court. If you try that, they're going to deny it.

2 But you can't stop these proceedings by appealing a discovery
3 motion.

4 DR. DONG: My reading -- excuse me, sorry. I'm not
5 trying to argue, but my reading was, the interlocutory appeal
6 is something depriving discovery --

7 THE COURT: It's a grounds for appeal, Dr. Dong, when the
8 case is appealable at the end of the whole case. It is not
9 immediately appealable, meaning you cannot go and appeal it
10 right now and have it be heard and stop these proceedings. It
11 doesn't work that way. You can note it, and it can be a
12 grounds for appeal if you lose this case.

13 If you win this case, you won't care. If you lose this
14 case, it can be an ultimate grounds for appeal. But it is not
15 a grounds for stopping these proceedings. We're going to go
16 forward with the trial on the limitations of the documents
17 that two judges have ruled upon. Do you understand?

18 DR. DONG: I understand what you're saying.

19 THE COURT: Very good. All right.

20 Now, let's turn -- now, we've got the document production
21 out of the way, let's turn to these depositions. Now, we've
22 got yours scheduled. Your deposition is scheduled October the
23 18th, 2022 at 9:30 a.m. in the offices of Cleveland and Corley
24 here in Charleston, and you are amenable to that, and I
25 appreciate it and thank you for it.

1 Now, we come to -- and that's the only deposition he's
2 taking other than the preservation of testimony, de bene esse
3 depositions. Let's talk about those next.

4 He will go to the location of where those witnesses are
5 and he will take their deposition, but he will allow you to
6 participate by Zoom.

7 Now, let me explain something to you about that. You
8 cannot interrupt these witnesses. You cannot try to stop the
9 deposition. This is a preservation of testimony. If there
10 are problems that you have with that deposition, you may
11 present those to me after the deposition is concluded and it's
12 typed up and you have a copy of it and can look at it. If
13 there are objections that you have, you don't have to note
14 those objections at the time; you can make those objections on
15 the record afterwards. But during the Zoom, you will be
16 listening to him preserve the testimony. Do you understand
17 how that works?

18 DR. DONG: I understand.

19 THE COURT: And that's not something -- you're familiar
20 with that? That's not something that is a problem for you, is
21 long as you have good information about participating by Zoom.

22 DR. DONG: I don't know if Zoom changed the situation
23 because I was supposed to raise objections during the
24 deposition.

25 THE COURT: No, sir. You do not raise depositions --

1 objections during the depositions. The rules of discovery are
2 clear about that. And it's really a good thing for an
3 objecting party. You can look at this thing after it's typed
4 up and scrutinize it and you can then make your objections.
5 The only thing you can object to is the form of the question,
6 which is rarely done because that doesn't have anything to do
7 with what information is coming in.

8 DR. DONG: Yes, Your Honor.

9 THE COURT: So you're completely protected in terms of
10 objections, and that is why it's not permitted to put
11 objections on the record during a deposition. But you have
12 got the full ability to do that afterwards, and you certainly
13 will be listened to by me on your objections to anything that
14 goes on in these de bene esse depositions. Do you understand
15 that?

16 DR. DONG: Yes, Your Honor.

17 THE COURT: All right. What I would suggest with these
18 de bene esse depositions, Mr. Corley, is that you propose --
19 copy me, please, on anything y'all are doing with each other.
20 You propose to Mr. -- to Dr. Dong now you're going to line up
21 these depositions, and he's going to cooperate with you as
22 best he can, of course. And I believe that about him; he's
23 going to be cooperative. I can't think there's any problem
24 about that.

25 You know, if he's got some pressing medical appointments

1 or something else that interests, he'll tell you. And
2 Mr. Conley is a very accommodating lawyer. So he's going to
3 work with you on developing a schedule for those two or four
4 depositions. And those will be the first ones you're taking,
5 and those you can probably get done pretty quickly after your
6 own deposition.

7 And, then, we have got the live depositions of those
8 seven witnesses. And I'm just going to read the names on the
9 record again. That is Mark Bohman, James Morris, Michael
10 Schmidt, Stever Tomlinson, Christina Voelzel-Johnson, Dr. --
11 what is Dr. Cole's first name?

12 DR. CONG: David.

13 THE COURT: David?

14 DR. CONG: Yes.

15 THE COURT: David Cole. And Lisa Saladin.

16 MR. CONLEY: Yeah, Saladin.

17 THE COURT: Saladin. Very good.

18 All right. And what Mr. Conley will do for you is this
19 -- and this is probably the easiest way to get this up. He
20 will communicate with those folks to see when they
21 depositions will be taken. I think he'll do that promptly.

22 DR. CONG: And, also, give me some time to arrange the
23 stenographer.

24 THE COURT: The stenographer part is all right. And they'll be
25 taken at the offices of Cleveland and Conley. And please pay

1 attention to the fact that this has to be a certified court
2 reporter. You know the rules about who can take -- what kind
3 of court reporter can take a deposition.

4 DR. DONG: There's no dispute over that.

5 THE COURT: Very good.

6 So y'all will work together and get up a schedule of
7 these depositions. Some of them may not take place, I
8 understand fully, until after the first of the year. So we
9 have a February deadline, end of February, February 28th or
10 29th, whichever it is, for it -- for all discovery to be
11 completed. So you-say, within that time frame, work out
12 yourselves how to take the depositions.

13 DR. DONG: If they can actually provide a --

14 THE COURT: Sir?

15 DR. DONG: If HUSC can provide the proper date

16 THE COURT: Exactly. And they'll do that for you.
17 They'll be sent out, you know, in an orderly way during the
18 time period we're talking about from now in October until the
19 end of February. We'll get them up and get them taken and so
20 forth.

21 DR. DONG: Thank you, Your Honor.

22 THE COURT: I would very much like to be advised of these
23 deposition dates so I can target my calendar in case I need to
24 be available. I pay close attention to my phone and to texts
25 and this kind of thing, and I'll try to be as available as ..

can whenever any of those matters are taken care of.

2 DR. DONG: Your Honor, one more thing.

3 THE COURT: Yes, sir.

4 DR. DONG: Actually, Mark Rothman --

5 THE COURT: Mark Rothman?

6 DR. DONG: Rothman, correct.

7 THE COURT: Yes, sir.

8 DR. DONG: The reason I never -- I do know -- I did not
9 know him, I just knew him by name, the reason is, I was taking
10 the deposition in case he knew something about it, he was not
11 directly involved, but the MOBC request my communication
12 limited to him. He has nothing to do with it.

13 So a judge, actually Rothman, made comment during the
14 hearing and said you can go ahead and do the deposition. With
15 the new deposition, you can decide what documents you're going
16 to require.

17 THE COURT: I'm not going to get into any more documents
18 than what documents have --

19 DR. DONG: Correct.

20 THE COURT: So, please --

21 DR. DONG: So I can -- can I actually substitute Mark
22 Rothman with another -- with another witness?

23 THE COURT: Who is it?

24 DR. DONG: Just anybody --

25 THE COURT: No, no. We're going to decide the witnesses

1 right now today, so you need to tell me --

2 DR. DONG: With his time slot, I will provide them --

3 THE COURT: No, no, no. You've got to provide -- if I'm
4 going to strike a witness that was identified as the witness
5 before, I'm not going to let you substitute them unless you
6 tell me who it is now so that I will know --

7 DR. DONG: Semyon Rabinchik.

8 THE COURT: Six?

9 DR. DONG: Dr. Semyon Rabinchik. E-n-b-

10 THE COURT: E-n-b- --

11 DR. DONG: E-n-b- --

12 THE COURT: V?

13 DR. DONG: C.

14 THE COURT: C.

15 DR. DONG: E-n-b- -- E-n-b- C-h-i-k. Yes.

16 THE COURT: All right. I'm going to hear from Mr. Conley
17 on the subject of whether you can do that. It's well beyond
18 the notice of -- we've not into complete discovery. We're not
19 into adding to discovery at this point. That's been set.

20 So I'm going to have to inquire of Mr. Conley as far as
21 striking Seidman and adding Rabinchik as something he will
22 agree to; otherwise, I'm not doing to do it. So hold there
23 for a minute.

24 MR. Conley?

25 MR. CONLEY: Judge, I can't know anything about this new

1 witness he's identified, but with that said, I don't have a
2 problem with him telling us today he's not going to make Mark
3 Seidman's deposition and he wants to take this other
4 individuals.

5 What I will tell the Court is, as I was able to
6 articulate some of these witnesses, where they are, whether
7 they still work for us or whether they're elsewhere, I don't
8 know anything about this witness.

9 THE COURT: Who is this person, Dr. Song?

10 DR. DONG: He was the person -- he worked for me in my
11 laboratory, and he was named associate director of gene --

12 THE COURT: Where is he now?

13 DR. DONG: I think he moved to Chicago. I think actually
14 in the University of Chicago.

15 THE COURT: So that would have to be a de bene esse
16 deposition.

17 Can you answer today or do you want to give me an answer,
18 Mr. Conley?

19 MR. CONLEY: Again, I don't have a problem giving you the
20 answer today, Judge. We're going to submit to this doctor
21 for Dr. Seidman.

22 THE COURT: Okay. Very good. It's done.

23 DR. DONG: Thank you, Your Honor.

24 THE COURT: We will strike Mark Seidman and we will add
25 Sanyon Rabinovich.

1 DR. BORG: Correct.

2 THE COURT: All right. That's done.

3 DR. BORG: Thank you, Your Honor.

4 THE COURT: Now, let's see --

5 MR. CONLEY: Judge, the only thing I want to be clear
6 about is we're striking Sothman as somebody who is going to be
7 deposed. I'm not striking him -- he's not being struck as a
8 potential witness.

9 THE COURT: Oh, I understand. We're simply doing
10 depositions and trying to get that up. This is discovery. We
11 get the witness list way or down the road. Okay.

12 Judge's what I want to do now. It's 11:15. Our court
13 reporter has been very patiently taking all this down. I
14 would like to take a break and get the documents that both
15 sides have given me copied, which I can get done while I take
16 a break, and let y'all take a break, and then we'll come back
17 and conclude our hearing and see what else we've got left that
18 needs attention. Is that suitable to everyone?

19 DR. BORG: Yes, Judge.

20 MR. CONLEY: Yes.

21 THE COURT: Let's take a 15-minute recess, and we will
22 reconvene at a quarter of.

23 MR. CONLEY: Judge, if you'd like some kind of a newspaper
24 put together --

25 THE COURT: I would very much.

1 And, of course, Dr. Dong, please understand that anything
2 Mr. Conley gives me by way of a judge's notebook, you'll be
3 supplied with a copy of it, of course.

4 MR. CONLEY: That's correct.

5 THE COURT: But, yes, that would be very, very helpful.

6 And the same is true of you, Dr. Dong. If there are
7 things that you have that will assist me before we move
8 forward, certainly, you may have them.

9 And just for the record, let me give you my contact
10 information. Do you need an extra sheet of paper? I got it
11 one.

12 MR. CONG: Got one. Thank you.

13 THE COURT: Okay. It's Chief Justice Retired Lear,
14 James W., middle initial H, last name Lear. I go in "Thomas,"
15 Thomas-L. My P.O. box is P.O. Box 12656, Columbia, 29211.

16 I have chambers in the Richland County Courthouse, but
17 lawyers quite frequently mail me or deliver to me at my home,
18 documents, so I'm going to give you my home address, and I'll
19 be happy to -- if something is just so big you don't know if
20 it's going to fit in a mailbox at the post office, it will be
21 mailed to my home, which is, 2418 Walnut Street, Suite 200
22 Street, in Columbia. The ZIP is 29205.

23 Now, my email address is JThomas@scourus.org. And my cell
24 phone I use for everything -- and don't mind y'all having it
25 and I can be texted or called -- (803) 536-6457.

1 And let me explain to you what you'd be using those
2 contact points for. If you contact me, you'll always let the
3 other side know that you've contacted me by copying the email
4 and copying the mail. If you text me, you'll be sure that
5 they know you've done that. It's probably better that I not
6 receive phone conversations except for just technical matters,
7 in other words, not communicating about rulings on the case or
8 things of that nature, because everybody needs to be included
9 when I do anything in that regard.

10 But all my lawyers at home will know all my contact, and
11 it facilitates getting things to me since I am supposedly
12 part time active but seems like I'm more active sometimes than
13 just part time.

14 But, in any event, that information is yours to make use
15 of as you need to.

16 DR. DUNC: Thank you.

17 THE COURT: Okay. I'm going to take a little break.

18 (A brief recess was taken at 11:22 a.m. to 11:57 a.m.)

19 DR. DUNC: I gave the wrong name to Geryon Rubinchik
20 twice. Sorry. It's a different spelling. It's S-e-r-g-y-o-o-
21 S-e-r-g-y-o-o-.

22 COURT REPORTER: Thank you.

23 (Pause in the proceedings.)

24 THE COURT: Thank you for your indulgence. I'm sorry to
25 delay, but that's where I was, just saying hello to Julia, the

1 clerk of court, Julie Armstrong, who was one of my eight lands
2 when I was chief. And came by to visit for a moment, so I'm
3 sorry for the delay, but that's where I was, just saying hello
4 to her.

5 Okay. It looks to me like -- and I spoke with her. She
6 said she can make a May date happen for trial and she can
7 certainly accommodate pretrial hearings in April or so. I
8 think we've just got to look at the schedule that Court
9 Administration gives me. I will select something very, very
10 shortly. Let us just ask on the front end: Is there anything
11 that you two know now that you have planned in May?

12 MR. CONLEY: I do not, Judge.

13 THE COURT: How about you, Dr. Dong?

14 DR. DONG: I have nothing planned.

15 THE COURT: Wonderful. Well, the sooner I get this to
16 you, then, the better, because you can then plan around those
17 kind of dates. So I will get that plugged in pretty quickly.

18 So I almost think we're done in terms of having a
19 schedule of how we go. We have got discovery going until the
20 end of February. We have got Dr. Dong's deposition set.
21 We've got a plan of action for deposing the other witnesses,
22 both the out of state ones and the in state ones.

23 You'll get the schedule when you have it and who is
24 going to be deposed when. I'll plug that into my calendar in
25 case I need to be reached, and I will let you know if any of

1 these dates coincide with other things I'm doing so you'll
2 know kind of where I am if I'm needed.

3 I have ruled on the discovery matters, and we now know
4 that discovery of documents is complete. All right. Not to
5 everybody's satisfaction, but discovery of documents is done.
6 So discovery -- interrogatories are done. So all we're
7 talking about in discovery

8 14. LONG: haven't submitted interrogatories.

9 THE COURT: What's that?

10 14. LONG: I have not submitted interrogatories yet.
11 because all the delays in the --

12 THE COURT: You have not submitted interrogatories --

13 14. LONG: Correct.

14 THE COURT: -- to MURPHY

15 The time for submitting interrogatories has long since
16 passed, even under exceptions. Why have you not?

17 14. LONG: Because, actually, all the other issues have
18 been complete --

19 THE COURT: Okay. Well, let's talk right now about
20 interrogatories. The interrogatories are really one of the
21 first things you do in a lawsuit. It doesn't really depend on
22 all these other issues that develop. But let's just...

23 Mr. Conley, what were the deadlines on interrogatories?

24 MR. CONLEY: The most recent deadline under Judge
25 Coleman's order, June 30th --

1 THE COURT: I mean, that was the deadline. It doesn't
2 depend on any other discovery matters, Dr. Wong.

3 DR. WONG: That was not the deadline, my understanding --

4 THE COURT: Sir?

5 DR. WONG: Your Honor, what's the June 30th deadline?

6 MR. CONLEY: Judge, June 30th was --

7 THE COURT: Sir?

8 MR. CONLEY: June 30th, 2022, was the discovery deadline
9 set by Judge Cochran.

10 THE COURT: By Carroll Cochran. That's what --

11 DR. WONG: He extended --

12 MR. CONLEY: So other than depositions which this Court
13 has allowed -- as I understand it, I should say, my
14 understanding is you have allowed the extension of the
15 discovery deadline

16 THE COURT: For these depositions.

17 MR. CONLEY: -- so take those depositions.

18 THE COURT: That's correct.

19 MR. CONLEY: Any interrogatories and that sort of thing
20 should have been done by June 30th. There would have been no
21 -- that I know -- there would have been no impediment to
22 those.

23 DR. WONG: That's not in the order.

24 THE COURT: Sir?

25 DR. WONG: There is no statute of limitations

1 THE COURT: No, this is not a statute. This is --

2 DR. DORG: That order was --

3 THE COURT: Dr. Dorg, scheduling orders are orders that
4 schedule and define the dates for things to be done in
5 pre-trial discovery. In Charleston, they do it in a standing
6 order of Judge Young -- I mean, you, from Judge Roger Young,
7 that talks about preparation for discovery and things of that
8 nature.

9 In this case, discovery has been set several different
10 times with deadlines not just for depositions but for
11 interrogatories and production. Brown did it the first time.
12 Brown did a modification. And, then, Farrell Coleman, in
13 December of this last year -- I think that was -- or February
14 of this year, set the dates one more time for the completion
15 of discovery, and that date was June of 2020 -- June 30th of
16 2020.

17 That doesn't change -- there's no other rule that changes
18 that. An order of the Court is an order of the Court. And
19 when the order is made, that is the deadline. That's why you
20 had to get those things changed. That's why you moved to
21 reschedule.

22 So I don't understand what you're saying that you don't
23 understand that was the deadline.

24 DR. DORG: Actually, that was -- all the delays was
25 because they filed a motion or, actually, filed a motion was

1 not hearing way past the deadline before actually the pending
2 motion was dealt with, and also, none of the deadline came due
3 to maturation because the very issue, MISC refused to produce
4 the document, and I was asking --

5 THE COURT: MISC -- I'll repeat one more time -- has not
6 refused to produce documents. The same discovery orders we're
7 talking about now that deal with deadlines for
8 interrogatories, set limitations on the production that MISC
9 was required to make. There's no dispute of things they
10 didn't give you. They have given you everything that is
11 required they give you pursuant to two judges' orders, and I
12 have denied your motion to expand that.

13 So production of documents is complete. And the same is
14 true on depositions and on interrogatories or any other
15 discovery mechanisms. Cochran set some deadlines. I've have
16 moved to expand those deadlines with respect to these
17 depositions, and I have set depositions and a new deposition
18 date, which is February -- end of February of next year.

19 There has been no motion by you to expand the
20 interrogatory deadlines. So I don't understand how that is
21 you can't just kind of decide, "Hey, once I take these
22 depositions, I'm going to go back and take some more
23 interrogatories."

24 DR. CONG: How about the amendment of the complaint?
25 Actually, that was supposedly

1 THE COURT: The amendment of the complaint can only be
2 made if I grant your motion to amend your complaint. If you
3 amend your complaint, which you have not come so far --

4 MR. DONG: And that has to be based on information that
5 I'm getting through the discovery.

6 THE COURT: Well, I may or may not grant your motion to
7 amend.

8 DR. DONG: I understand that. I understand that.

9 THE COURT: But that's something you'll have to do at
10 that time. But with respect to your interrogatories, the time
11 has passed for the interrogatories.

12 DR. DONG: Thank you, Your Honor.

13 THE COURT: All right. Mr. Conley, anything further?

14 MR. CONLEY: I do not. Thank you, Judge.

15 THE COURT: Here what I want done: I would like an
16 order that reflects the guidelines we just talked about to be
17 prepared by you, Mr. Conley, with a copy to you, Dr. Dong.

18 DR. DONG: When you get this proposed order, if it does
19 not comport with what you think I ruled in this hearing, you
20 let me know immediately. I am not going to sign anything
21 until I have received your comments, and then we'll have
22 something that's in the record. That's the main thing I was
23 is to have something that's on file so that, when you look
24 your case up, you'll see exactly what's going to happen. And
25 that is going to depend on these -- scheduling of these

1 depositions. And I'd like that to be in the order.

2 So it's going to be a couple of days before -- or maybe a
3 little bit more than that before Mr. Conley can give us some
4 information about what these things can be scheduled.

5 So, Mr. Conley, what I'm talking you with is, after you
6 have completed the consultations you need to see how the
7 depositions can be scheduled and how the in persons can be
8 scheduled, then you will prepare an order with regard to them.
9 Separately from that and -- gotten to us more immediately --
10 is the general order for the deadline for discovery, the
11 pretrial, the fact that a pretrial will take place, the fact
12 that a mediation will take place, the fact that a trial will
13 take place, and the notice that those things will take place,
14 and I will plug in the deadline -- the actual dates as soon as
15 I get that information.

16 So the first thing is just a general outline of the
17 schedule, and then, the second thing is, once you get the
18 listing of all these witnesses and exactly when the
19 depositions can be scheduled, then -- and that's going to take
20 some consultation with him because Dr. Borg is going to be the
21 one to do the question-asking for his witnesses that are MSC
22 people. You'll coordinate when those are going to take place.

23 And I suggest this, Dr. Borg: let him get some times
24 from these people when they can be available, consult with
25 you, and then we can get it plugged in in a way that suits

1 both of you. And, Mr. Conley, I think, will work with you to
2 make that happen.

3 DR. DONG: That's fair, Your Honor.

4 THE COURT: And we'll go from there. But that will be a
5 separate order.

6 And just do that, frankly, to protect y'all. I mean,
7 these witnesses are not voluntary witnesses by any means, but
8 an order from me saying that their depositions will be taken
9 pursuant to this agreed upon schedule, I think, will protect
10 everybody. So that's what we'll do.

11 DR. DONG: Yes, Your Honor.

12 THE COURT: Anything further, Dr. Dong?

13 DR. DONG: Not at this time, Your Honor.

14 THE COURT: Thank you so much.

15 DR. DONG: Thank you.

16 THE COURT: Anything further, Mr. Conley?

17 MR. CONLEY: No, Judge. Thank you very much.

18 THE COURT: All right. Gentlemen, I appreciate your
19 attention in these details, I appreciate the very professional
20 way you have conducted yourself in these proceedings, and I
21 promise you, I'll try to meet your standard of professionalism
22 in how I conduct our hearings and the trial of this case.

23 Thank you so much. This matter is adjourned.

24 At 12:09 p.m., the above hearing concluded.:
25

CERTIFICATE OF COURT REPORTER

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)
County of Charleston)

Re: John Song v. #980

I, Bobbi J. Fisher, Registered Professional Reporter
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Carolina, on the 1st of October, 2022.

Submitted: November 2, 2022

Bobbi Fisher

/s/ Bobbi Fisher

Bobbi J. Fisher, RPR

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STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
	)
COUNTY OF CHARLESTON	) Case No.: 2016CP1006689
	)
Jian Yun Dong,	)
	)
Plaintiff,	)
	)
v.	)
	)
Medical University of South	)
Carolina,	)
	)
Defendant.	)
_____	) May 25, 2023

TRANSCRIPT OF MOTION

BEFORE THE HONORABLE JEFF BOTTEN ROA,
Special Acting Circuit Court Judge, presiding

APPEARANCES:

For Plaintiff:	Jian Yun Dong, M.D., Ph.D. Pro Se
For Defendant:	Robert Conley, Esquire Attorney at Law

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Greenville, S.C. 29602

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EXHIBITS PAGE

NO.

DESCRIPTION

ID EY

(No exhibits offered.)

P R O C E E D I N G S

THE COURT: All right. Please be seated.

Dr. Long?

MR. DONG: Thank you, Your Honor.

THE COURT: Yes, sir.

MR. DONG: Before I start to address VUSC's motion for summary judgment, I have a couple of issues of my own I would like to present to the Court.

THE COURT: Okay. Speak up so we could all hear you.

MR. DONG: Yes.

Before I start addressing the summary judgment filed by VUSC, I have a few issues I would like to present to the Court and to at least put on record.

First of all, I understand Your Judge -- Your Honor already denied my motion for continuance, but I'd like to say, under due process, I am entitled to be heard. And also, the reasons for continuance also have kept coming for the following response. With -- with -- with regard to VUSC's claim, there was no evidence provided, no depositions taken, no, actually, affidavits provided. And all of this

1 because the strict -- the strict time lines,
2 short time lines set at the request by KJCC
3 without any conference -- status conference to
4 get reports from both side with regard to the due
5 process progress.

6 And secondly, I would like to request the
7 Court to give me leeway and latitude in
8 presenting my case and following less stringent
9 standard and -- in term of scheduled dead lines
10 as well as the context, for -- for better way to
11 say it. I can quote numerous cases from Supreme
12 Court to Appellate Court of United States as
13 well as the appellate court -- Court of Appeals
14 of South Carolina.

15 Give me a minute. I can try to locate the
16 -- the cases and also as well as provide by the
17 Court -- South Carolina's Rule of Civil
18 Procedures. Particularly, actually, even the
19 one at issue, Rule 26. There is actually
20 a early statutes when the party cannot provide
21 affidavit of sufficient evidence, the Court may
22 order continuance for this affidavit for this
23 affidavits to be obtained or depositions to be
24 taken or discovery to be had. One may ask: --
25 one may make such order as a judge.

1 So actually there's -- rules of discovery
2 as assured by due process, arbitrary timelines
3 is at the Court's convenience after due process
4 has been satisfied. So there is plenty of rulings
5 from Supreme Court down to Court of Appeals of
6 South Carolina. The due process interests
7 overweigh the deadline -- (laughable) deadline
8 interest of the Court, even when the deadline is
9 authorized by statute. But the scheduling order
10 is not authorized by statute, is in the
11 discretion of the Court: when the due process has
12 been fully satisfied.

13 Actually, I can read some of the -- with
14 your permission, I can read some of the cases --
15 also some of the cases from Supreme Court as
16 well as to -- they are circuit courts as well as
17 due process -- the Court of Appeals of South
18 Carolina.

19 All right. In *Haines versus Kerner* --
20 *Kerner*, U- --

21 THE COURT: Spell that for me, please.

22 MR. DONG: *Haines* versus *Kerner*, A-0
23 -- --

24 THE COURT: All right.

25 MR. DONG: It's 404 U.S. 1 -- 179.

1 THE COURT: All right.

2 MR. DONG: In this case, the United States
3 Supreme Court held pleadings -- pleadings should
4 be held with less stringent standards than those
5 drafted by attorneys, it says contact. And also
6 this extent to the entire presentation and
7 process in prosecuting her case. The Court
8 explains pro se complaint, however informally
9 pleaded, must be held less stringent standards
10 than formal pleadings drafted by lawyers.

11 In *Estelle versus Gorbis*, F-3-a-b-1-1-a
12 *versus Gorbis*, G-a-b-1-a (sic), 429 U.S. 97, in
13 this case, Supreme Court held that pro se
14 pleadings in civil rights cases should be given
15 certain degree of latitude in presenting their
16 cases. And there's -- there's at least four,
17 five, six cases I don't have too.

18 In *Erickson versus Pardus*, E-r-1-u-a-g-o-n
19 *versus Pardus*, G-1-a-b-1-a, 501 U.S. 89, in this
20 case, Supreme Court reaffirmed the principal
21 that pro se pleadings should be held less
22 stringent standards than those drafted by
23 attorneys. And the Court stated pro se
24 complaint must be -- complaint must be literally
25 construed and held to less stringent standards

1 than formal pleadings drafted by lawyers. And
2 there is also rulings literally construed means
3 even in the pleadings do not artificially represent
4 the case, the Court has to consider as if the
5 pleader for why they write argument, because
6 based on the issue the pleader raised. And
7 actually there is also specificity regarding to
8 the procedural latitude.

9 In *Good versus Bowland*, *Bowland versus Koo-*
10 *wil-a-n-d*, 154 Fed. 3d Edition, 192, this is
11 Ninth Circuit. In this case, Ninth Circuit
12 Court of Appeals held pro se litigants should be
13 held to the -- should not be held to the same
14 stringent standards as attorneys with respect to
15 procedural requirements such as filing
16 guidelines. Actually, this occurs in many
17 cases.

18 The Fourth Circuit, which is more relevant
19 to -- to this circuit, also held that pro se
20 litigants should be given leeway in complying
21 with procedural rules and guidelines,
22 particularly where the litigant is incarcerated,
23 but this does not apply here, as well has
24 limited access to legal resources. But as the
25 system is well-established rules by Supreme

1 Court. And no matter how much education the
2 person may have, would not be able to comprehend
3 the

4 **THE COURT:** What's the name of the Fourth
5 Circuit case?

6 **MR. DONG:** All right. Sorry.

7 *Anderson versus Angelone, Anderson*
8 *[sic], Anderson versus Angelone*, 88 Fed. 3d.
9 Edition, 932. It's Fourth Circuit, 1996.
10 tracing this, particularly, there's plenty
11 rulings. The pro se pleadings should not
12 layman should not be asked for following or
13 should give lockways to in term the deadlines
14 with -- even with the statute authorization, for
15 example, the appeal -- appellate deadlines,
16 because the due process outweigh the procedural
17 deadlines.

18 So in -- in this case, actually, the
19 overall scheme of the entire case is the
20 defendant seek to the limitations for discovery,
21 limiting the scope and the timeline. for
22 example, as ridiculous as limiting discovery
23 only to e-mail from or to the plaintiff during a
24 certain period of time. That's unheard of.
25 Absolutely no legal basis for -- for the

1 defendant to ask the Court to limit the scope of
2 discovery. And then they follow it by limiting
3 the time for discovery. So everything --
4 there's a scheduling order. That order has not
5 -- not been able to change. But at the expense,
6 the plaintiff cannot conduct discovery. For
7 example, in this case, the notice deposition
8 we did not abandon the notice deposition.
9 That's after a series of delay, give me -- give
10 me very little time. Then, I have
11 uncontrollable situations.

12 I had to file the motion to extend the
13 discovery. The motion was clear denied without
14 stating a rule or a reason. And basically,
15 because the -- it's complex, where the very
16 issue we're talking is the scheduling order.

17 So -- and also with regard to protection
18 order, when I filed the protection order with my
19 eye surgeries, I will -- I will not be able to
20 schedule my eye surgery with both my eyes just
21 to cause delay for the -- for filing report of
22 summary judgment. And I was trying to -- with
23 my eyes and the operation, actually, I still
24 feel sand in my eyes. But my vision is a day-
25 and-night different after surgery. But I could

1 not right now, it's getting a lot better. I
2 could not open my eye for a long period of time
3 because I feel like sand in my eyes, and any
4 clicking will cause hurt, irritation, and
5 tearing. So I had to close my eye for a period
6 of time. So I have not followed did not
7 reading. And essentially I'm a pro se pleader, I
8 have not been able to read and write effectively
9 without my -- my vision fully restored.

10 And then, I can address the issue -- to
11 save time, address the issue of breach of
12 contract. All right. And that's -- yes,
13 summary judgment. Okay. Summary judgment,
14 based on Rule 56, has to be supported by
15 pleadings, evidence, and interrogatories, and
16 most importantly, affidavit. The defendant
17 claimed the plaintiff does not have affidavit
18 and did not file any memorandum. It's not
19 without trying. Because I was given a short
20 time. And during the time, I was not able to do
21 so and have a half-way finished memorandum
22 prepared. But I was preparing it until I got
23 into surgery, and then I could not do it.

24 And also the timeline was at least 10 days
25 not 10 days. MISC asked for 10 days. The

1 Court first deadline granted for 10 days. And
2 after the a though the Court changed the date
3 of hearing after -- in essence, granted the
4 motion for protection, but only gave me one day
5 after protection to come to this hearing. So
6 basically I was -- if I'm protected during the
7 period of time, I'm not able to attend any legal
8 proceedings.

9 But after that period, I only get one day
10 to prepare for this hearing. I think that's,
11 for lack of a better word, is a violation of due
12 process, especially considering the Court
13 rulings. I should be given latitude and leeways
14 and more time to support to prepare for the
15 response and argument.

16 So I will not -- I do not have the -- as
17 MUSA -- MUSA said, I could not conduct the
18 deposition, not because I
19 couldn't. Because I filed the motion for
20 protection and also filed the the motion to
21 extend the discovery. And during the motion
22 filing period, the dead. he should be
23 automatically extended until ruling, even the
24 Court -- the -- the motion being denied. And in
25 those cases, it was not.

1 And also for same reason, I know MUSC is
2 not the moving party of the complaint. Therefore
3 MUSC filed the motion for summary judgment, this
4 summary judgment. MUSC as the moving party, has
5 the burden to support the supporting documents
6 as required as is by Rule 56. MUSC provided
7 none. The reason is they could not provide it
8 because MUSC did not want to produce any of the
9 victim's I'm sorry -- victim -- witness. Because
10 they denied the witness to me, and they said
11 they could not produce the witness to provide
12 affidavits to -- to verify the documents of the
13 claims MUSC has made by -- by counsel.

14 Even if he saying my client said that, the
15 client did not testify. The client did not say
16 under oath on the record what testified by the
17 counsel. So those test -- testimony was made by
18 counsel, mostly false. Not only without
19 support, but was false. Did not actually cite
20 any evidence, even citing the deposition
21 every -- the deposition taken of me. So the --
22 the -- first of all, the summary judgment has to
23 be supported by the documents as required as in
24 Rule 56. And MUSC provided none.

25 All right. Secondly, the -- are bases for

1 summary judgment, is there's no genuine issue
2 that's controversy -- for trial. And MISC
3 failed to say there was no -- to prove with the
4 support of the documents there was no genuine
5 issue. That burden is not MISC's.

6 Secondly, the MISC raised two issues. One
7 is blanket of limitations. Made extensive
8 statements, a significant portion of those are
9 false to claim the statute of limitation barred
10 the claim.

11 First of all, it's foregone conclusion.
12 The Court has nowhere complained. And actually,
13 the complaint was filed on the basis of the
14 agreement as a whole, not each particular item
15 was attacked separately.

16 And also, the agreement is under the
17 obligation by the employer of the clause in
18 honesty and fair dealing. Plaintiff clearly, as
19 corroborated by MISC counsel, try to -- try to
20 provide alternative interpretations of wording,
21 which was done by a professional attorney of
22 MISC. It -- it faced with a faculty member at
23 the time, only goal was to get back to research.
24 It got into the -- the agreement a little
25 time.

1 And also, the agreement should be treated
 2 as a whole, as far with specific date when, for
 3 example, the breach is not on the date of
 4 signing. The date is when the MUSC failed to
 5 honor each and every one of the agreement,
 6 right? It's not barred because one of the
 7 breach agreement, one of the 20 conditions may
 8 or may not be breached at certain time and the
 9 rest of the other -- entire agreement. Breach
 10 will be following that schedule and also has to
 11 be knowingly -- the breach has to be known to
 12 the party or should have known when the MUSC
 13 engaging a continued discussion working of the
 14 process.

15 So the -- the -- whether or not the good
 16 faith or not, maybe party believe MUSC is
 17 working on it, is in the process. So that
 18 breach has not been -- that agreement has not
 19 been breached. Especially in the entire
 20 document as a whole, the -- the -- the condition
 21 has not been breached. Until the date the
 22 contract expire, MUSC did not honor most of, if
 23 not any, of the conditions that are in favor of
 24 Dr. Tong.

25 The -- secondly, I'll -- I'll get into

1 specifics. Secondly, MISC keep relying on --
2 the plaintiff cannot fail to not be able to
3 present sufficient evidence. I think that by
4 nature, there's a case to be determined by
5 trial. Sufficient evidence should be determined
6 by trial, not by summary judgment.

7 And with the record so if there is
8 sufficient evidence, there -- there are. But
9 some of the lack of documents because the -the
10 plaintiff was never given any chance for
11 discovery, all because the MISC's wishlist to
12 limit the discovery in terms of scope only to
13 for e-mails to and from the plaintiffs that
14 complete defeat the purpose of discovery. And
15 again, discovery is assured by law under the
16 constitution as a due process right -- due
17 process rights of each side.

18 And -- and secondly is the short and rigid
19 timelines for discoveries. The timelines should
20 be changed at the request for motion -- based on
21 motion. And especially for pro se pleadings and
22 for conditions out of the control of the
23 parties. But in this case, the -- all the
24 delays was caused by MISC.

25 The record will show they would not provide

1 response or not provide the date for discovery
2 notices at a time. Sometimes the discovery
3 request was given a year later. MUSC did not
4 provide a response or provide the response by
5 law. Clearly inadequate. That's a general
6 overall denial.

7 So those are all violations of the law and
8 violations of due process. So therefore, up to
9 date, Plaintiff have not been able to conduct
10 any meaningful discovery all because the the
11 deadlines and the orders to limit the scope of
12 discovery without any statute authorization,
13 without any established case law, but in
14 contrary, completely against the statutes and
15 the case numerous case case laws.

16 So actually, there are plenty evidence to
17 support -- sufficient evidence to support there
18 is a violation breach of violations as well as
19 admitted by the MUSC defendant. The major one
20 is the MUSC failed to transfer any of the
21 research material essential for -- for Dr. Dong
22 to continue his research and education, his
23 career, and his income -- maintain his income at
24 MUSC.

25 I will not I will give two answers to

1 each of the specific terms MUSE just presented
2 argued about.

3 I can't have the -- sorry. I can't locate
4 the...

5 I can't -- I only can (inaudible) stack --
6 I will -- If I try to -- if you give me a
7 minute, I will -- if Your Honor give me a
8 minute, I'll locate the collection, the agreement.

9 MR. CONLEY: (Inaudible) the agreement is?

10 MR. DONG: The original agreement.

11 MR. CONLEY: It's attached to your complaint,
12 Dr. Dong. It's attached to our memorandum as well.
13 It's in two different locations.

14 MR. DONG: Right. But where is it located in
15 this stack here?

16 MR. CONLEY: I don't know what that stack is,
17 Dr. Dong.

18 MR. DONG: This is your Exhibit 2.

19 MR. CONLEY: If you let me see it, I'll look at
20 it. What are you wanting to -- (inaudible)
21 agreement, contract agreement?

22 MR. DONG: Thank you.

23 And I can argue MUSE breached nearly all the
24 terms listed in the -- in the contract. First of
25 all, actually is a matter of honesty and fair

1 dealing class by the employer versus employee,
2 which is the individual. And there is laws, plenty

3 case laws, suggesting it's a fraud when the employer

4 abandon the principle of honesty and fair dealing

5 when dealing with the employees, especially with the

6 employment contract issues.

7 But first of all, this -- the title of

8 agreement is -- have a different meaning from what

9 NUSC tried to --

10 **THE COURT:** Let me go. -- we've got two things
11 going on here. We've got the agreement, and then we've
12 got the way Mr. Donley framed his argument.

13 **MR. DONG:** Right.

14 **THE COURT:** He went through 20 different

15 obligations that he contended were the essence of

16 the agreement.

17 **MR. DONG:** Yes.

18 **THE COURT:** Now, are you going -- are you

19 looking at the agreement itself or are you looking

20 at the list he gave of the 20 things?

21 **MR. DONG:** I will -- list -- basically, the two

22 are the same, but I will point out.

23 **THE COURT:** Hang on for a minute. I've got a

24 list of the 20 things. Let me see if I can get my

25 hands to the agreement. I've got it right here.

1 MR. DONG: Right.

2 THE COURT: It's attached to your complaint.

3 MR. DONG: Right.

4 THE COURT: What you are looking at is
5 something called a Moral Separation Agreement
6 Between Medical University of South Carolina
7 including its College of Medicine and Dr. Jian You
8 Dong, Professor of Microbiology and Immunology. To
9 that what you've been talking about? And the date
10 is May 3, 2010.

11 MR. DONG: Yes, Your Honor.

12 THE COURT: All right.

13 MR. DONG: I think the -- it's basically the
14 same order, but the reason I

15 THE COURT: Sure. But you do -- however you
16 want to do it is fine with me. I've got what you've
17 talking about.

18 MR. DONG: Yes, Yes, Your Honor. The reason I
19 tried to bring the two together is because there is
20 a lot of misrepresentations in --

21 THE COURT: All right. Well, just go ahead and
22 go down the list of things.

23 MR. DONG: Right.

24 THE COURT: The first one is payment of faculty
25 compensation.

1 MR. DONG: Yeah. I want to address the title
2 first.

3 THE COURT: The title: Final Separation
4 Agreement?

5 MR. DONG: Right.

6 THE COURT: All right, sir. What about it?

7 MR. DONG: The title of Final Separation
8 Agreement was presented to me as what the discussion
9 led to the agreement. There was extensive
10 discussion. Plenty events happened what led to the
11 agreement. He learned faculty after years
12 education, research, and career in the end give me
13 tenure. There's a --

14 THE COURT: What does that have to do with this
15 -- this thing says a Final Separation Agreement.
16 Between HUSB and Dr. Dong. That doesn't say
17 anything about anything other than it's a final
18 separation agreement. You signed it, right?

19 MR. DONG: I understand.

20 THE COURT: Okay. So --

21 MR. DONG: If -- if -- if I may --

22 THE COURT: -- what's the problem with the
23 title?

24 MR. DONG: Right. There is two
25 explanations of the title. And we can read

1 through the -- what MJSC tried -- tried to
2 present is the final severance agreement, which
3 is not the wording. But that appeared to be
4 this title was drafted by attorney did leave
5 room for misinterpretation of title. The title,
6 final, referring to several versions of the
7 separation agreement until we reached the time
8 to be signed is not a final

9 **THE COURT:** Okay. I get what you're
10 saying. He hasn't said anything one way or
11 another about that.

12 **MR. DONG:** Let me let me actually present
13 the way I said. The secondly is separation, a
14 separation of the two parties. Moving and going
15 out of MJSC to for a cool down period is not
16 separation from MJSC. Not severance. It's
17 the way that counsel presented is interpreted as
18 a severance. It's not severance as what the
19 word say is the separation, physical separation,
20 and also illustrated in the entire agreement as
21 to transfer a faculty to off campus, you know,
22 to separate the two parties, because the other
23 party is the chairman of the department and also
24 the provost.

25 **THE COURT:** Dr. Dong, this agreement says

1 in a number of different places that it is an
2 agreement and you've got the final separation
3 agreement. Go down two -- two, three more
4 paragraphs. It says during the term of this
5 final agreement, the University will continue
6 Dr. Dong's employment, faculty appointment, and
7 make scheduled salary payments to him until
8 non-disclosure. Dr. Dong acknowledges that this
9 final agreement constitutes his irrevocable
10 resignation of his current faculty appointment
11 to be effective no later than March 31, 2017.
12 Dr. Dong will retain his faculty appointment,
13 tenure, and title until the effective date of
14 his resignation. You signed that, did you not?

15 MR. DONG: I understand.

16 THE COURT: All right.

17 MR. DONG: Before you Your Honor arguing
18 with with me, provide argument for MD&C, --
19 -- if you may allow me to actually -- some
20 leeway to --

21 THE COURT: I'm going to give you I'm
22 going to give you plenty of chance to do it.

23 MR. DONG: Right.

24 THE COURT: But you're saying this is not a
25 shutdown, not a severance and so forth. That's

1 not what that person says, is --

2 MR. DONG: That's -- well, there's the
3 under the conditions. I, under the condition, I
4 have a chance to move to another university,
5 obtain a position, I will formally resign.
6 Actually, that's part of the agreement
7 continuous -- continuous is -- is an integral
8 part of the same agreement. So if I there's
9 clearly says support my continuous research and
10 I have the right to find another employment.

11 And also there was a statement they termed
12 as they have a right to rehire me, but that
13 wasn't presented to me as their right. Because
14 once it that goes back to another honesty and
15 fair dealings.

16 And also the reason to what lead to this
17 agreement is also critically important. We
18 can't just take it -- extract it in a vacuum and
19 say, Well, you signed this, the agreement, and
20 now you're gone. So there's all conditions
21 listed for me to honor the agreement at the same
22 time for MUSC to honor agreement.

23 So the -- the -- what's presented to me as
24 a kind is a separation, physical separation.
25 Yes, there is terms for me to resign, but after

1 I was able to obtain another -- another faculty
2 employment at other universities or MUSC, based
3 on all they're saying, if you continue
4 performing as you have, we'll rehire you --
5 rehire you. So they -- that's -- the clause
6 would not -- so my resignation would not take
7 effect because MUSC (inaudible) has the right to
8 retain my employment. Even if -- if I interpret
9 it literally, MUSC have the right to renege
10 my employment. Even (inaudible) leave, that's
11 the right of MUSC. That's would not do -- that
12 could not be used.

13 So MUSC expressed the intent and the
14 promise to rehire me if I perform continuous as
15 what I have seen at MUSC. And not in the term
16 -- in the contract say anything that I had poor
17 performance.

18 In the -- in the discovery, I requested
19 specific request my record, faculty record, my
20 performance, my evaluations, all denied in a way
21 by the limiting scope, because that's not the
22 scope. (Inaudible) my performance, my -- my
23 evaluations was given to me and kept at MUSC,
24 and MUSC failed to produce it.

25 So the -- the -- the reason that -- that's

what I'm saying. The whole spirit of this agreement presented to me as I understood at the time was a temporary separation with a continuing employment gave me opportunity to -- to -- to perform the same or the better. And MUSC will

after the period of time, MUSC will, in a way, reinstate my position or continue my employment at MUSC, although it's worded as MUSC's right by -- by lawyer. So I was a layman at the time.

But regardless, that's the spirit of MUSC saying with the agreement give me the opportunity to continue doing my research. If I improve my performance the same level or better, then I will be continued employed at MUSC. I will also resign as a faculty member based on the clause. If I get a chance to be recruited by another university, I will resign from MUSC. That's also consistent with the spirit of the -- the temporary separation and allow me to continue my research and education.

So actually the first clause is the, of course, during the employment -- I don't even see how this is -- actually, the third paragraph is -- is Dr. Jong employment will continue

1 doctor's employment facility employment,
2 making scheduled salary payments. In
3 consideration, Dr. Song acknowledges that final
4 agreement constitute his the same paragraph:
5 you just made, right? But the employment the
6 the only obligation MUSC has honored is -- in
7 a way, is the continued salary for the period of
8 time until I have a reason to resign or be
9 continued employed by MUSC.

10 In this case, I did not have a reason to
11 resign. I did not have MUSC did not continue
12 continue to employ me, and also in violation
13 many of the terms. So the first term is not
14 just a salary. It's a continued employment.
15 That comes all my activities of teaching,
16 especially research, because -- sorry --
17 teaching and education, because my research
18 would be conducted at the company established by
19 MUSC, IAD, and a group of investors from New
20 York.

21 All right. The so they they do not
22 honor is my employment because I have to have
23 all the faculty activities at MUSC. Access to
24 graduate students, teaching graduate students,
25 and teaching graduate students in published

1 articles are actually leading post docs -- one
2 person's achievement, academic achievement.
3 When you're a professor, you doctors' nation,
4 taking away your students -- taking your teaching
5 ability, taking your access to postdoctoral
6 fellows, that's not employment -- that's a
7 violation of term.

8 Okay. I do not know the second -- MUSC
9 retained the rights -- actually, what's -- those
10 are lawyer's terms, what reasonable are MUSC will
11 continue my employment --

12 **THE COURT:** Where are you -- where are you
13 reading, Dr. Dong?

14 **MR. DONG:** One, two, three, four, fourth
15 paragraph on the first page.

16 **THE COURT:** Oh, okay. He hasn't numbered
17 it like that. His numbers were --

18 **MR. DONG:** Right.

19 **THE COURT:** His obligation --

20 **MR. DONG:** Right. So I cannot completely
21 follow his order --

22 **THE COURT:** Okay.

23 **MR. DONG:** - because it's not only
24 misrepresentations are also is extracted to his
25 interest.

1 And yes, there's faculty compensation.
2 And I may have to add actually my salary was
3 reduced before by the chairman as well as by the
4 Vice President for Research, Dr. Stephen Lanier,
5 as a pressure for me to leave MDC and while
6 taking all my research material, research
7 projects, research data, and also spending my
8 research money and taking over my records to
9 graduate students and employees.

10 But as I said, yes, the only thing they did
11 was pay me a reduced salary for the for the
12 duration of the the contract. So that part,
13 specific part item was not violated and
14 testified truthfully.

15 The retention of faculty employment and
16 faculty duties, the appointment is not empty
17 as what Mr. -- Mr. Conley stated. It was
18 named Mr. Conley a lawyer but prevented him from
19 practicing, that title is meaningless. And I --
20 when I give you a faculty appointment,
21 actually give also faculty duties. That's the
22 part of the agreement. I have to my appointment
23 -- I have to continue my faculty activities at
24 the University in terms teaching, education,
25 leading postdoc -- training postdoc fellows and

1 access to all facilities. MUSC give me none,
2 except they did not openly say take -- take away
3 my title. And also MUSC removed my faculty
4 profile on their website, closed my home room,
5 and stopped me from using faculty member e-
6 mails. That stopped all my communications as a
7 faculty member with my peers, with colleagues,
8 with funding agencies. Those are violation,
9 clear violation of terms by MUSC.

10 Right. Specifically, doctor agrees to
11 carry his customary shares of teaching,
12 lecturing, intellectual responsibilities as we
13 are assigned -- communicated him in writing the
14 chairman of each department. Those are taken
15 away from me.

16 Basically, I was not allowed to come on
17 campus. My lab my lab was completely closed.
18 All my employees was taken away by the chairman.
19 That's a complete violation of term agreement.

20 And during this period, Dr. Dong may use
21 the title of Director of Biotherapeutics and
22 Vaccine Development, because I have a sonder at
23 MUSC. It's not just using the title. I have to
24 (readable) are ... I have to do my duties
25 for the biotherapeutics and vaccine development.

1 That was -- that's -- it's not the title. It's
2 not -- Mr. Conley is the title of attorney but
3 not allowed to practice. Take away his take
4 away his office, take away his staff, not allow
5 him to practice. Surgeons need equipment;
6 researchers need all the equipment documented
7 with their materials in order to conduct
8 research.

9 The the type of medical research I was
10 conducting is not to study someone else data,
11 not study someone results. Has to be done to
12 test you, hands-on, all -- with all the
13 materials, priority review and also my
14 intellectual procedures. You can't start --
15 advanced research start from scratch. You rely
16 on all the knowledge and materials and the
17 technologies and protocols are data you
18 accumulate through hard work over the years.
19 Not only is just hard work. Without funding,
20 it's also impossible. So these are the result
21 of tens of millions of dollars academic funding,
22 federal funding, grants, and contract obtained
23 through competition. The funding rate in age
24 was less than 10 percent, not general
25 population, out of nationwide top scientists.

1 Did - did did counsel get get two
2 and 30 -- two hour and 30 minutes?

3 THE COURT: What's that?

4 MR. DONG: HLSC got two hours two hours
5 and 30 minutes.

6 THE COURT: Mr. Dong, you need to
7 concentrate on what you're doing and not worry
8 where I'm looking.

9 MR. DONG: At right. Sorry.

10 THE COURT: All right, sir. But what
11 you're doing here is something that you could
12 have done by filing a document that said what
13 you're saying right now. You're going through
14 this contract and trying to say that you
15 disagree with about the contract.

16 MR. DONG: So is --

17 THE COURT: The contract is something you
18 signed.

19 MR. DONG: I understand. That's why --

20 THE COURT: Yes, sir.

21 MR. DONG: I'm going --

22 THE COURT: And now you're going through
23 trying to say how unfair you think all of it is
24 and now you shouldn't have been required to do
25 that. That's what -- you just got to finally

1 duties.

2 MR. DONG: I

3 THE COURT: So keep on going, but please
4 understand that there -- there is nothing that
5 you have filed so far that details what you're
6 now standing up doing. You could have well done
7 that before.

8 MR. DONG: I did not have time, because I
9 was

10 THE COURT: I -- I don't -- you have said
11 that so many times, I think I understand what
12 your position is about that.

13 MR. DONG: All right.

14 THE COURT: All right, sir.

15 MR. DONG: May I -- may I continue,
16 Your Honor?

17 THE COURT: Yes, you may.

18 MR. DONG: And also there is -- "Dr. Dong
19 is free to seek academic research collaborations
20 including secondary employment within MDC
21 during the remainder of the agreement." And -- may
22 I complete my statement? I try to conduct my
23 research, what I'm going to use for -- for
24 continuing my collaboration. I cannot even do
25 my own research. The whole purpose of the

1 agreement is for me to have a separation period
2 so I can continue continue my research and
3 education. That's the major part of the
4 agreement for the entire duration for me to
5 continue my research, not each specific payment,
6 not each specific time within how many days
7 they're going to start, or the attempt. So now
8 we define attempt?

9 MUSC was did they attempt that's
10 actually obviously obviously dishonestly and
11 in bad faith. Right. That's actually the
12 clause. MUSC is obligated when dealing with
13 employees. They have to under the clause --
14 honesty and fair dealing clause, to -- for --
15 for any agreement for them to -- to claim they
16 have honored. So actually, they did not of
17 course, all of these are conditions we talked
18 we discussed prior to my separate myself
19 physically from MUSC from the fighting with the
20 department chairman about his taking over my
21 research and water n , research projects and
22 employees, fundings and completely blocked me
23 from conducting my research, not because I did
24 badly, because I was (inaudible).

25 I gained -- I obtained more federal funding

1 than the chairman and I published more papers
2 than the chairman. I led more graduate students
3 and post-doc fellows than the chairman at the
4 time. That's why he took over my research
5 projects. In the end, he has to rely on the
6 research material as well because that's
7 accumulated my years of work. So he has took
8 them from me with help of Stephen Lanier, which
9 is my close friend when they both working
10 try to compete for chairmanship during the time.
11 And that's -- that's how -- how they reach
12 agreement.

13 Breaching the agreement enabled Sir Norziz,
14 the chairman of department, and Stephen Lanier
15 to take over my research projects, my ability to
16 conduct research. And not only they took -- it
17 wasn't enough for them to take over my research
18 ability and research, they actively have to
19 block me from competing with him. Because I was
20 the expert; he's not. That's why they shut me
21 off from my --

22 THE COURT: Mr. Dong, we're going to spend
23 a lot more time arguing about the very specific
24 nature of your disagreements with MISC. What
25 you need to do is to talk about how they

1 breached this agreement. What you're talking
2 about is all the things that happened that led
3 to this agreement.

4 MR. DONG: Actually, Your Honor, that's
5 where actually I failed to make my point
6 clear --

7 THE COURT: I -- -- I'm not following it.

8 MR. DONG: Right.

9 THE COURT: I can tell you that.

10 MR. DONG: I appreciate you asked the same
11 question as counsel. I'm -- I'm going to
12 explain. Right? The breach of the contract is
13 in the terms -- what the terms mean to me or to
14 a faculty member to assign him based on this
15 agreement different way to a legal profession
16 or actually to a -- to a layman. But that's not
17 the spirit of the term. If we know the meaning
18 of the term what it -- what it says by
19 maintaining employment, not by paying a salary.

20 I'm like an ordinary hourly worker with
21 payment salary, I'd go home. I'd be happy. But
22 I'm a scientist, I'm a doctor. I have a
23 career. My career is in the trending upward
24 path. It's -- my career, my future all depends
25 on how I perform. So it's not a success, you

1 take away his ability to perform surgery and you
2 name him surgeon that

3 THE COURT: Your paraphrase of Lums is now
4 lined up with my understanding with what I'm
5 here to look at, which are the terms of this
6 agreement

7 MR. DONG: Right.

8 THE COURT: -- and whether they were
9 violated. So I look on the language of the
10 Lums, and they say --

11 MR. DONG: Maintain my employment.

12 THE COURT: -- they say you commit to
13 submitting and irrevocable letter of
14 recommendation -- of resignation effective no
15 later than March 31, 2012. It doesn't say this
16 is some kind of temporary situation. It says

17 MR. DONG: I understand, but there's other
18 conditions, Your Honor. There's other
19 conditions. You --

20 THE COURT: Well, then let's go through
21 that without going through every argument and
22 disagreement you've got or suspicion you have
23 about Dr. Janter or Dr. Morris and all that kind
24 of thing. That -- that doesn't help us go
25 through this agreement and figure out whether

1 There are branches of the agreement. And that's
2 what you're suing for. You're suing for
3 branches of this agreement.

4 MR. DONG: Right, but actually MUSS
5 provide their version of the interpretation

6 THE COURT: No, sir.

7 MR. DONG: -- and you allowed them to do
8 so, while I'm saying what is the employment --
9 maintain employment means.

10 THE COURT: And -- and -- and --

11 MR. DONG: It's --

12 THE COURT: what I want you to --

13 MR. DONG: -- not paying salary.

14 THE COURT: I want you to look at this
15 agreement, Dr. Dong, and tell me how they
16 breached.

17 MR. DONG: Right. They denied me the
18 giving me the ability to continue my research as
19 part of the employment. So employment by MUSS
20 for a scientist, for a doctor, is not give him a
21 little, give him payment. They have -- they
22 allowed him to conduct research and have access
23 to the facilities and function normally as any
24 faculty members will do at MUSS.

25 THE COURT: Well, I thought the -- the --

1 the termination of this agreement would be that
2 you would be at GenPhar and you would have your
3 labs there and not at MUSC. Am I wrong about
4 that?

5 MR. DONG: I'm also talking about academic
6 teaching and training postdoctoral fellows.
7 Actually, I cannot do at MUSC -- at GenPhar
8 because that's a commercial company, have strict
9 standards what they can tolerate on. They only
10 lend me laboratory space for me to perform the
11 -- the duties of MUSC. That's what the contract
12 says. They didn't ask me to -- say, "Well, go
13 work for GenPhar. Tell us bye-bye. We'll call
14 the end of it," right?

15 It clearly says I'm given the continuous
16 appointment obligations, duties, as a faculty
17 member, tenured professor at MUSC. So I will be
18 have -- have to be able to do what any regular
19 faculty members, tenured professor could do at
20 MUSC. They took that away. So with taking that
21 away, I would not be able to honor the final
22 resignation. Take that away because I could
23 not, as I said, seeking -- actually seeking
24 employment at another university, not at another
25 packing facility, butchering facility, ginger

1 facility to seek second employment. It has to
2 be universities for medical doctors for research
3 scientists to obtain grants. Without -- taking
4 away my ability, I could not conduct any any
5 of those. That's the violation of the contract.

6 **THE COURT:** Let me ask you this: Post
7 May 3, 2010, when you signed this

8 **MR. DONG:** Yes.

9 **THE COURT:** were were you teaching at
10 HUSB?

11 **MR. DONG:** No. That was that was
12 they taking away my ability to teach WISC.
13 Actual y, my graduate students, even during the
14 graduation, chairman took over the mentorship he
15 graduate student as one of his graduates.

16 **THE COURT:** I understand that. So your
17 contention is that they -- this agreement would
18 have allowed you to continue to teach and
19 perform normal faculty duties, right?

20 **MR. DONG:** Correct. Like -- like any
21 other

22 **THE COURT:** You said they immediately shut
23 those off.

24 **MR. DONG:** No. They actually -- it's
25 actual y a negotiation process. So they was

1 They gave -- for the period of time of the
2 agreement, they can't start what they want
3 they choose -- it's a complicated operation. So
4 even if they say, well, you can do it today, how
5 -- how can I get access to the graduate
6 students? There's no new graduate students
7 coming in. I will not be able to interview
8 graduate students.

9 It's complicated more than a layman can
10 understand. But it's -- that needs to be
11 determined as a fact. What is the extent of
12 agreement? What is the appointment of
13 faculty appointments? It's just a little or a
14 salary? Or is it lot more than that?

15 **THE COURT:** Well, you're explaining that
16 it's a lot more than that. I'm just trying to
17 figure out when they breached the agreement.

18 **MR. DONG:** They breached the agreement at
19 end of this agreement. They terminate re -- my
20 employment. Actually, they -- but they did not
21 do anything during this period of time as they
22 specified.

23 **THE COURT:** Well, you -- so you're saying
24 that from the time they signed -- y'all signed
25 this agreement in 2010, they did not allow you

1 no touch on XJSC? Are you saying that?

2 MR. DONG: It's in the process. They did
3 not say, well, the process, I have to research.
4 It's not -- it's not a day one, let's do
5 research. Until I I realized the new coming
6 graduate student, they didn't allow me to
7 interview them. So I would not be I wasn't
8 assigned to the course. Maybe not the first
9 quarter, not the second quarter, maybe not the
10 third quarter. But it's the process, until they
11 completely (inaudible) -- even during this time,
12 I wasn't the agreement is the -- the is
13 not practically implemented on one day. It's a
14 negotiation process.

15 THE COURT: Okay. I understand what you're
16 saying now. All right. All right. I
17 understand what you're talking about now about
18 faculty duties. And you say it was something
19 that happened over time, but the bottom line
20 was, you never got any graduate -- any students
21 assigned to you or that you could interact with
22 after this agreement was signed, right?

23 MR. DONG: That's limited. If you want an
24 example of what's the faculty duties. Faculty
25 appointment encodes a huge amount of

1 responsibility activities academically that's
2 closely associated with any faculty members

3 **THE COURT:** Okay. I get all that. But
4 what you're saying is that after you signed this
5 agreement with them, they didn't allow you to
6 have these normal kinds of interactions of
7 family duties including

8 **MR. DONG:** I understand what Your Honor
9 wants me to give a specific date, I could not
10 but it's a continuing process.

11 **THE COURT:** Right. But -- obviously, if
12 you look back on it now, it started when you
13 signed this agreement, right?

14 **MR. DONG:** No, it started before

15 **THE COURT:** Or even before it?

16 **MR. DONG:** Right. Because that's -- the
17 contract has not -- for example, they took my
18 materials, the contract is within the period of
19 time give me a set period of time to
20 leave usual in -- in the research, restart my
21 research until actually they continue my
22 employment or I find another employment and
23 permanently resign from MUSC. That's the spirit
24 of the

25 **THE COURT:** So even before this agreement

1 was signed, they

2 MR. DONG: I'm not saying

3 THE COURT: they were blocking your
4 ability to

5 MR. DONG: Part of it was the blocking.
6 That's why I settled with the agreement. And I
7 give them the process, a time period --

8 THE COURT: Okay.

9 MR. DONG: -- to resolve the issue, to allow
10 me to (inaudible). That's the purpose of the
11 contract.

12 THE COURT: I understand. I got it now. And
13 then by -- as it turned out, you were never at a
14 job -- you were never allowed to go back and
15 start interacting with students or do things
16 that a normal faculty member would do, am I
17 right?

18 MR. DONG: That's correct.

19 THE COURT: Okay. All right. Keep on
20 going. This -- we're going to take forever on
21 this thing if we need at this point's end. I
22 understand the teaching thing now. Keep on
23 going.

24 MR. DONG: Right.

25 THE COURT: The next

1 MR. DONG: Also -- also not only teaching.
2 It says research obligations -- collaborations.

3 THE COURT: I understand all that.

4 MR. DONG: And to take away my equipment, I
5 can't do research.

6 THE COURT: Okay. I understand that.

7 MR. DONG: But this is what was supposedly
8 a process. During this time, they allow me to
9 reestablish my research. And those are the --
10 there was bad faith negotiations. One, there is
11 none. I contact MISC and I was negotiating when
12 they start. So it become a stonewalling. They
13 say, Well, we'll do this, talk to this, talk to
14 so and so until it back circle.

15 We didn't get the order. It didn't tell me
16 what to do. So actually it's a delay tactic, a
17 stonewalling, and a delay tactic by MISC because
18 I was given the bad -- bad faith negotiation.
19 That's go back again they violate the contract
20 and fair dealing clause when dealing with the
21 employees.

22 And usually, the faculty have a faculty
23 contract, there are faculty books. And tenure
24 has tenure. (Inaudible) tenure. Tenure has
25 rights. Everybody was competing for tenure.

1 Right? You can't terminate a contract, even new
2 regulations, within seven years.

3 So actually, that's all part of the breach.
4 If you allow me to -- to explain what is the
5 breach, not what MUSC [was] saying that could be
6 interpreted, "You have the title. You have the
7 payment. That's all." That's not all.

8 And also, there is a party -- there is --
9 it says there was -- the Vector Core equipment
10 will be moved. So -- will have -- before the
11 equipment moved as opposed to operating Vector
12 Core as part of the Center of Biotherapeutics.
13 So actually, the language for layman is hard to
14 understand. And I'll have to -- that's why --
15 need to explain what -- is based on my
16 understanding and the parties signing.

17 So what is the -- MUSC can testify what is
18 the Vector Core and what's the vector equipment
19 for? And why the Vector Core equipment has to
20 be transferred. And that has to be -- I
21 explained my understanding, unless they find
22 somebody else to explain otherwise, because I'm
23 a party --

24 **THE COURT:** Well, what's preventing you
25 from doing that or having it be something?

1 That's Exhibit B.

2 MR. DONG: Because the timing. Because the
3 timing.

4 THE COURT: No, no, no, no. This suit has
5 been going on since 2014. There could have been
6 plenty of time since 2014 for you to sit down
7 and explain what your position is about this
8 contract.

9 MR. DONG: Without discovery?

10 THE COURT: What's that?

11 MR. DONG: Without deposition? I was
12 trying -- trying to file the process to do
13 deposition. I was trying to file -- file the
14 process to get the documents from -- through
15 discovery, and it was all denied by the Court:
16 limiting the scope of discovery to the only
17 information I had. And then they did not
18 provide all the information.

19 THE COURT: Well, Dr. Dong, by the time I
20 got in this case, the Craig Brown orders, the
21 Laurell Cochran orders, and a whole bunch of
22 other orders had already been issued in this
23 case about discovery that were not something I
24 asked -- was asked to change, nor would I

25 MR. DONG: I did file motions.

1 **THE COURT:** No, sir. Not on a 1 line
2 discovery that had been done beforehand. All I
3 was asked to do was take this case as it was
4 then presented to me and deal with moving it
5 forward for trial, which is what I did.

6 Now, I don't know what went on in the
7 background about discovery. But I asked you a
8 very simple question about this contract when
9 you began to talk about Vector Core, and that
10 is, a lot of the contract related to, in terms
11 of your ability to keep us with that contract

12 **MR. DONG:** Right.

13 **THE COURT:** -- The material in Exhibit B.
14 Why was Exhibit B never made a part of this
15 contract to facilitate the transfer of that
16 material to you at your new location?

17 **MR. DONG:** No, that's -- that's a clerical
18 error. (Inaudible). Exhibit B was transferring
19 the research materials. That's actually in the
20 Exhibit -- Exhibit A. There was specific
21 material things -- Exhibit B is the listing
22 material to be transferred. Research material
23 document and everything else.

24 So you allowed MUSC counsel basically to
25 explain their version of the agreement.

1 Actual y, that's why --

2 THE COURT: Dr. Dong, please still doing
3 that.

4 MR. DONG: Sorry.

5 THE COURT: All right. Your approach this
6 case has so many times been when you're asked a
7 question, to run around and attack the
8 questioner, whether it be the lawyer, whether it
9 be the judge involved or something like that.
10 Please don't do that.

11 We're here to go through this contract and
12 I'm allowing you as much time as you need to go
13 through this contract and give your impression
14 of it. What I don't need is this constant
15 interjection of comments about the other
16 lawyer and about the other judges and about me
17 as a judge. Just explain what your position is
18 about this contract, and we'll do fine.

19 MR. DONG: All right. Thank you,
20 Your Honor.

21 So actually, each one of -- has significant
22 implications in the -- in my performance, for
23 example, the Vector Core equipment, because

24 THE COURT: All right. Just a second.

25 THE COURT REPORTER: He has paper covering

1 my microphone. If he could move that, please.

2 THE COURT: All right.

3 Dr. Dong, please take the paper off from
4 covering her microphone. Otherwise, it won't
5 pick up what she's trying to pick up.

6 MR. DONG: Thank you.

7 THE COURT: All right.

8 MR. DONG: Sorry.

9 THE COURT: All right.

10 MR. DONG: And the additional Vector Core
11 equipment, actually, that was the -- asked me to
12 submit to be attached in Exhibit B, which I did
13 not submit additional Vector Core equipment.
14 That means they did not violate whatever the
15 additional list I'm supposed to provide. But my
16 understanding, this -- this Vector Core list is
17 part of my equipment as well.

18 This actually equipment is not MUSC's
19 equipment while I'm an emp. agent -- employee at
20 MUSC. Those -- yes, those are MUSC equipment.
21 When I'm not longer employed at MUSC, those are
22 my equipment. Because

23 THE COURT: Well, I -- I got the impression
24 with the listing on Exhibit A that a lot of it
25 was equipment that you bought when you, was your

1 equipment, not them. They were agreeing to move
2 all of it to Conshar.

3 MR. DONG: Yes, Your Honor.

4 THE COURT: And I assume that would mean
5 what you're talking about right now. Their -
6 their agreement wasn't limited to just what was
7 their equipment. They were going to move
8 everything in your lab to this new location;
9 isn't that right?

10 MR. DONG: That's correct.

11 THE COURT: Okay.

12 MR. DONG: Any any equipment, my
13 equipment.

14 THE COURT: That's right. Anything that
15 you used, anything that was either your
16 equipment or their equipment which you were
17 using, it was all going to your new location as
18 I understand it.

19 MR. DONG: There is no "other" equipment
20 in use to use and belongs to me. The equipment
21 was to be purchased under my grant.

22 THE COURT: Well, that's fine. But
23 everything that you were using equipment wise
24 was supposed to be moved to your new location,
25 right?

1 MR. DONG: Correct. They did not do, as
2 as they admit it. But that also is not a
3 one day thing. It's continued

4 THE COURT: And they they say they
5 didn't do it because the location was never able
6 to receive it for the lack of government
7 permits, occupation certificates, and this kind
8 of thing. Was that so or not so?

9 MR. DONG: Not so. Actually, the the
10 company has all the certificate and documents in
11 order to receive federal contract. The company
12 did receive tens of millions federal contract.
13 So those are already in place, and they knew it.
14 That was to say, as a formality matter, we have
15 to -- we could only transfer the material
16 research equipment, some of the biological
17 material, to a location that you have to show us
18 there is a permit to do so. Otherwise, they
19 violate the law law by transfer the material,
20 the biological material, to a site was not
21 approved. They know they knew it, and it
22 wasn't presented to them. GenStar had all the
23 necessary approvals and certificates.

24 THE COURT: Okay. The -- under the federal
25 approvals, and that in addition to that, there

1 are certificates of occupancy. That's
2 construction certificates that are issued by a
3 local government. There are --

4 MR. DONG: I understand that.

5 THE COURT REPORTER: -- insurance things.
6 GarPhar, did they have all of that?

7 MR. DONG: Of course, they had. Now they
8 -- how they have that many employees in the room
9 operating without actually

10 THE COURT: All right.

11 MR. DONG: -- completing the contract.

12 THE COURT: (Inaudible) the same. You
13 could have done that much sooner by filing some
14 sort of affidavit saying that that was --

15 MR. DONG: I was working on it until
16 actually --

17 THE COURT: Continue.

18 MR. DONG: MUSC still haven't filed any
19 affidavits, Your Honor.

20 THE COURT: I asked you please don't phrase
21 it that way again. They took your caption
22 and filed that sworn document as part of their
23 earlier filing. That's what they did.

24 MR. DONG: But I wasn't allowed to.

25 THE COURT: No, sir. I'm not going to get

1 into that argument right now. You stay on this
2 agreement and what your position is about it.

3 MR. DONG: And here -- here is this --
4 there's no argument. MUSC agreed to relocate
5 the equipment as listed in Exhibit B Exhibit
6 A. So actually

7 THE COURT: Yeah. We know that. And they
8 say that they don't relocate it because the
9 no certificate of occupancy was ever given to
10 them. You say that you had the certificate of
11 occupancy. You haven't said yet whether they
12 were ever presented to MUSC. I don't know.

13 MR. DONG: Actually word. Actually, the
14 information came to Your Honor. Actually, I did
15 not know.

16 THE COURT: Sir

17 MR. DONG: MUSC did not actually even say
18 that. I didn't say that.

19 THE COURT: This is exasperating, Mr. Dong.
20 Whenever you disagree with something, you just
21 try to turn it on somebody else.

22 MR. DONG: No, actually you --

23 THE COURT: This contract --

24 MR. DONG: -- made the statement

25 THE COURT: This contract - wait a minute.

1 Just one minute.

2 This contract specified that certificates
3 of occupancy, insurance coverage, and the like,
4 will be given to MUSC. And in that event, they
5 will transfer your equipment to Constar. They
6 say they were never given those certificates of
7 occupancy and insurance and the like. And now
8 you -- I don't know what you're saying. But
9 it's mostly attacking them because you say may
10 be it's not in the contract. I don't know. But
11 the contract says that specifically, and all I'm
12 asking you is, was MUSC given those
13 certificates?

14 **MR. DONG:** Yes. They actually -- the
15 the fact they want to reassess they have
16 those certificates. Those certificates is
17 assets of the company. So actually, the company
18 operates -- as I said

19 **THE COURT:** They're just asking for a
20 photocopy of the certificates, Mr. Dong. And
21 they are asking for them from whoever has them,
22 certificates of occupancy, government permits,
23 and insurance coverage. And they are in the
24 plans of that site. That's what this contract
25 says is to be provided to MUSC. And when it's

provided to them, they will then move the Vector
Core equipment in addition to all the stuff in
Exhibit A.

And all I'm asking is, you know, what's --
how are they (inadmissible), were they supplying,
what is XJSC, supply those things I read out of
the contract?

MR. DONG: Yes. Actually, they did not
specifically what I am. Actually, I destroyed
(inadmissible) they know it, how the company can
operate without those certificates, how the
company being awarded federal contract without
the certificate. Those are given. There's
actually not only -- there's documents to show
that. Actually, there is public information to
say -- now they have the Office of Science
Research conducting this vaccine development
against Ebola and Marburg for the military
personnel under a facility. There is no
certificate. How the government will issue a
contract to -- to a company without any
certificate? Those actually was given. You
prevent me from discovering, prevent me to

THE COURT: I did not prevent you from any
discovery. No, sir. Please do not say that to

1 me again. Orders were in effect about this
2 thing long before I came in the case. I saw no
3 a scheduling order. You noticed the taking of
4 depositions, and then you withdrew those
5 notices. Why? I don't know. But I did not
6 interpose one order whatsoever to prevented you
7 from engaging in discovery.

8 MR. DONG: The schedule limitation

9 THE COURT: No, sir. No, sir.

10 MR. DONG: Yes, there is.

11 THE COURT: No, sir. The limitations on
12 other discovery by the way of interrogatories
13 and everything else has been put in place long
14 before I came into this case. I have an order
15 that said scheduling discovery, depositions
16 only. That's all I had to deal with.

17 MR. DONG: Right. But, and also I actually
18 thought, because the circumstances were all of my
19 control --

20 THE COURT: I don't go on to get into that
21 argument again. Go on and finish what you've
22 got to say about the sentence, please, sir.

23 MR. DONG: I would respectfully --
24 respectfully ask to have the opportunity to be
25 heard when you addressing I did not file this --

1 file those documents, I can say why I did not
2 file the document. So that's actually -- I'm
3 entitled to -- now you are -- Your Honor is
4 saying I did not file this. You have -- you had
5 the right to file this. You didn't file this, so
6 it's all yours.

7 THE COURT: That's exactly what I'm saying.

8 MR. DONG: Right. But that's not fair.

9 THE COURT: It is fair. It's true.

10 MR. DONG: Because actually what I'm
11 saying, that's why I'm -- I'm -- I'm entitled to
12 be heard --

13 THE COURT: You're -- you're -- you're
14 being heard at great length here. And that's
15 what I'm asking you to do is to get back on this
16 contract that you said you wanted to do and go
17 through the provisions of it.

18 MR. DONG: Right. Actually, you asked me
19 why I did not file it. Because I -- the reason
20 stated. I could not file because my motion upon
21 denied. So they -- they -- during this time,
22 actually is the spirit of the agreement. It's
23 not a one day thing. As long -- (Inaudible) my
24 material. The significance is not transferring
25 my material. It is taking away my ability to

1 conduct my research, taking away my -- taking
2 away my ability to advance my career, which is so
3 (truncated) my income. But they did terminate
4 my income without -- without giving me the
5 opportunity to find new employment, without
6 actually giving me opportunity to -- to
7 obtain \$4 million contract for MUSC, Stephen
8 Linnier specifically rejected, because that will
9 actually bring me back to MUSC.

10 Without any -- that's a complete violation
11 of faculty rights as specified at MUSC and also
12 against MUSC interests. Those are federal
13 grants awarded to -- to me under the application
14 at MUSC by the National Institutes of Health.
15 That's the vast majority of university grants
16 coming from. Actually, I don't know if I have
17 anything to do with its departure, but that's
18 against MUSC interests as well.

19 So -- and there's specific email
20 communications the step re using a bar date,
21 because the awarding came up after the contract.
22 A proposal the contract was submitted during the --
23 is taken over a year, year and a half to obtain
24 federal contract. So I obtained the federal
25 contract for four and half million dollars for

1 HJSC and awarding time is after the agreement
2 terminally. And he sent me an e-mail telling me
3 stop using the facility, appointment title, can't
4 use HJSC, as HJSC declined receiving any animals
5 awarded to you. To that effect. I'm not
6 quoting exactly.

7 And I'm supposed to have campus facility
8 access to campus facilities. When I'm a faculty
9 member, I should have facility access to
10 facilities. But at the same time, it's not as
11 simple as say, Well, you can walk in. Because I
12 have to have a research project to use the
13 facilities, actually give another notice.
14 Actually, Stephen Senior specifically denied a
15 federal grant of mine and had a contract contract
16 with a director for animal facility to use
17 animal facilities. So that has come out from
18 discovery. That's actually -- that's also a
19 violation of the access to the facility. That's
20 one example.

21 And also

22 **THE COURT REPORTER:** Excuse me, Doctor

23 **MR. DONG:** Also, as specified -- specified
24 on page 2, second paragraph, doctor "will
25 transfer any... material including genetic

1 rater s , DNA constructs, viral and plasmid
2 vectors, antibodies, enzymes... doctors now
3 research location from his continued research,
4 including the materials which were provided by
5 Dr. Dong to Vector Core for services while
6 Dr. Dong was the director. Any vectors provided
7 to the faculty members during the period
8 operation of Vector Core will remain with the
9 respective faculty members who acquire the
10 products."

11 So those are all very specific terms, but
12 without laboring through, I can say all the
13 terms were violated. If Your Honor wants me to
14 name the date, I cannot.

15 And even the third paragraph from the top,
16 "In recognition of his offer to perform Vector
17 Core services for his off-campus location, for
18 the proximity approximately 23 month interval
19 - interval above, so it's 23 months, University
20 will pay Dr. Dong sum of \$30 -- \$30,000 directly
21 to -- from chairman's budget in the Department
22 of Microbiology to pay no later than 30
23 following the signing - day 30 following the
24 signing of the agreement."

25 The only thing they agreed to is to pay me

1 \$30,000, which I used on graduate students. And
2 but didn't honor the rest of the loans, the
3 \$30 -- the \$30,000 was for me to operate the
4 Vector Core facility off-campus. So that's also
5 breach. But they -- they did not breach the 30
6 -- 30 days to pay it. They did pay it. But
7 they breached the agreement for me to operate
8 the Vector Core facility off-campus.

9 This actually at the direction of Dr. Yasut
10 Hannun, who is the Chairman of the Department of
11 Biochemistry, which also would be the chairman
12 of my second appointment. And those material
13 would be transferred. Again, they insert
14 attempt. So "attempt," that no they all the
15 other -- all the other terms, because they just
16 attempt. They have no obligation. They just
17 make attempt. Who define attempt? That's
18 create bad faith and dishonest dealings. And
19 any additional will be provided by Dr. Dong was
20 never provided.

21 They also provide active grant service.
22 They did not. They actually declined. So
23 actually, honestly, I had to use the company
24 resources for submission to grant on behalf of
25 MORC to all grant. The company has different --

1 research projects has to be clearly separated
2 from the -- by MUSC activities. So they did not
3 provide any financial services in the grant and
4 management offices. These grant have to be
5 submitted through using resources, which
6 honestly, it was not appropriate from the
7 company. And eventually, when I obtained the
8 grants, that take up to a year and a half
9 (financially) worked because the contract was
10 terminated. Stephen Langer declined receiving
11 the four-and-a-half-million dollar R01 grant.

12 : THE COURT: This -- this grant was was
13 this affected by the events that took place on
14 September 19, 2011, when the revision letter was
15 sent to you from MUSC.

16 : MR. DONG: Actually, there is a question
17 about the revision letter.

18 THE COURT: Well, I'm asking a pretty
19 direct question. You're talking about a grant,
20 and in this revision letter, it says in part we
21 understand that you have received positive
22 feedback regarding a pending grant application
23 that you submitted to NIH. Is that what you're
24 talking about, this four-million dollar grant?

25 MR. DONG: Could be. Because I had

1 received --

2 THE COURT: Because apparently interrupted

3 that, at least from what this letter says is the

4 notification of your indictment by the United

5 States Government.

6 MR. DONG: First of all, there is no test

7 -- witness to testify that that letter is true.

8 Basically, actually I will say --

9 THE COURT: You put this letter in your --

10 MR. DONG: I was provided --

11 THE COURT: You -- you put this letter in

12 your complaint.

13 MR. DONG: Wait -- wait a minute. Let me

14 actually present my case first if you --

15 THE COURT: Well, did you not put this very

16 letter with that --

17 MR. DONG: That was included by the counsel

18 at the time who was conducting for the General

19 Counsel at KLMC.

20 THE COURT: All right. Dr. Dong --

21 Dr. Dong --

22 MR. DONG: What I'm saying --

23 THE COURT: Your complaint was filed with

24 this letter attached to it and your answer is

25 not addressing that. Your answer is attacking

1 the bona fides of your counsel.

2 MR. DONG: No, no, no.

3 THE COURT: This case is not about that.

4 MR. DONG: Let me finish -- let me finish,
5 Your Honor, please.

6 THE COURT: Well, yes, answer my question.

7 MR. DONG: Right. The letter was included
8 to show the bad faith from MUST because that
9 letter was generated at the time we actually
10 filed the complaint. That's three years before
11 the indictment the company misse of the contract.
12 If I wasn't pushed -- pushed to the company, I
13 would not be indicted with the co-conspirator.

14 Not the -- the thing is the indictment is
15 within -- first of all, happened in 2013 by a
16 grand jury within a month, whereas -- the third
17 indictment was within a month. After the
18 indictment, there is a sealed order by a federal
19 judge for a year and a half because they -- once
20 they release the indictment, there is speedy
21 trial.

22 So this is all beyond this case. Just that
23 was -- the timeline doesn't match. The timeline
24 clearly indicate that letter was generated by
25 Stephen Lavier to cover up his mis -- misdeed.

-- wrongdoing and put excuse whether you like --
Your Honor believe or not. And Your Honor is
shaking your head. But that has to be based on
fact.

The indictment is released in 2014. The
trial was 2015. So there is a speedy trial
clause under the constitution. So it is a
federal crime, is any crime, for anybody who
disclose the indictment before it actually was
publicly released. And anybody advising a
federal prosecutor, actually violate the law
actually violates the direct federal judge's
order, maybe they do -- did it. But the the
-- the people who signed the letter testify.
They said on oath that letter was not generated
-- generated after the fact. Who informed them
of the indictment?

I disclose indictment. All it says is
contract -- the company misused the contract
funding for an improper purpose, including build
new facility. That's all. I wasn't taking any
money, doing any conspiracy to get -- get rich
myself. I would not have any interest for the
for the company to build facility for the
DOD. I would be indicted for for for

1 crimes. If we want to introduce this evidence,
2 actually that has to be in trial.

3 THE COURT: In 2014, September 2, 2014,
4 you placed that letter as an exhibit to your
5 complaint filed September 2, 2014.

6 MR. DONG: Right. Because --

7 THE COURT: I don't know this other
8 background you're talking about. But I do know
9 --

10 MR. DONG: Right. But -- but --

11 THE COURT: -- you filed what is a
12 complaint. You authorize the filing.

13 MR. DONG: There other things in the
14 contract to allege --

15 THE COURT: I'm not alleging anything. I'm
16 not reading --

17 MR. DONG: No. I'm saying the complaint
18 allege. There is actually a bad faith and also
19 wrongdoing in the contract -- bad faith and
20 unfair dealings. Actually, there's -- there's
21 other things.

22 THE COURT: You know this one -- good faith
23 and fair dealing is one of the honest means
24 there is from Veithard versus Sulman. I'm very
25 aware of that. It doesn't explain each and

1 everything that's involved in this case. But
2 let's go on forward and get to the end of this
3 contract please, sir.

4 MR. DONG: Right.

5 THE COURT: I think you're just about
6 there. You just finished with access to campus
7 research laboratory --

8 MR. DONG: Right. Actually, that's what
9 actually --

10 THE COURT: And now, you're at active
11 grants at the time of resignation.

12 MR. DONG: Right. Actually, they -- they
13 did not actually transfer any money to me. They
14 did not do any transfer any (inaudible)
15 that I need to have is to continue the grants.
16 So they did not reimburse me -- the grants.
17 Basically, the chairman, Jim Kassis, kept them
18 on -- So actually (inaudible) didn't receive
19 anything. It was the genetic material, was the
20 DNA, was the plasmid, was the vector now
21 transferred. It means a lot for me to offer it.
22 We don't have to understand what's the scaffold,
23 what's the framework. But actually to to
24 understand, if you take away the surgeon's
25 ability to perform surgery, he can't advance his

1 career.

2 And this the \$20,000 on law legal fee, and
3 the money I obtained from VUSC was used on the
4 graduate students. Because at the time, I was
5 obligated to pay them, even my money was taken
6 away by the chairman. I have no access to the
7 money I got from the grants, so they did not
8 relinquish the grant or financials. So
9 actually, that -- I'm not alleging they did not
10 pay me \$20,000. That was not a violation.

11 The violation is the spirit of the contract
12 to allow me to reestablish my research ability
13 at a different location. That's the spirit of
14 separation so I will continue to have full
15 employment at VUSC to function as any normal
16 faculty member would do and advance my career
17 and also I have the opportunity to obtain
18 employment from other universities and then I
19 will find -- find -- (inadmissible) resign. Because
20 that's a condition. It does not say out the
21 blue, "We didn't -- we don't want to do anything
22 for you. You go ahead and resign, and I will
23 pay you, whatever, 18 months." That's not what
24 the contract said.

25 The contract spirit was said a separation

1 period allow me to conduct research at different
2 location and continued to advance my career and
3 obtain federal contract. And it -- especially
4 obtained federal grants, if I obtained the
5 grants, VJSC will continue my my end benefit.
6 And in the event I find another location
7 sorry -- employment, I will resign and terminate
8 my employ -- employ -- employ -- employment at
9 VJSC, so MUSC won't no longer have any
10 obligation to fulfill the remainder of the the
11 agreement.

12 But MUSC was -- obligated to do what
13 VJSC did, which is satisfy my requirement to
14 allow me to continue my research and -- and
15 education to advance my career. In that sense,
16 the MUSC completely breached the contract at the
17 end of the contract. And also there was a so
18 through the continued negotiation leading the
19 pathway after certain time -- time limit. But
20 that's not material. None of this -- they have
21 to transfer it within 30 days. They can't
22 transfer it on the same day of the materials.
23 They have to locate it, or everything.

24 To be honest, the vice president Hirsch
25 would not be able to transfer. Certain

1 equipment requires installation, requires
2 improvement fund, or at the location in order to
3 generate reliable data for women, for
4 therapeutics that potentially used in clinical
5 trials for patients is more complicated than what
6 -- just provide advice and provide payment.

7 So there is -- there has to be the same
8 function, some access to education, to
9 performance by a regular faculty member and
10 tenured professor with multiple federal grants
11 and with a large number of graduate students
12 still under my obligation and the postdoctoral
13 fellows.

14 And my -- my conclusion is, I cannot find
15 -- I'm sorry. My conclusion is MUSC violated
16 the majority part of the contract, caused
17 extensive damage, and there is a truly
18 genuine issues to be determined by a jury. I
19 bring the list in just a second. (Pause.)

20 I cannot find my list. But I will say
21 there's -- basically, there is no dispute
22 there's no dispute MUSC has violated the
23 contract, breached the contract. As they
24 admitted, they did not transfer all the genetic
25 research materials and equipment to -- to -- to

1 the agreement.

2 Also, they try to nail it down a single
3 day, especially tried to nail on certain days
4 that they signed the contract. That's not --
5 that's not the case. The equipment has to be
6 moved through a process. And also during this
7 process, MUSC engaged in negotiation -- had
8 faith negotiation and dragged out the entire
9 contract. Because the equipment not only just
10 transferred, it has to be installed and
11 certified and become operational and accurate
12 enough to generate research data that's reliable
13 to publish. Otherwise, there would be wasted
14 data, wasted time, wasted money.

15 So it's a continuous process. Also during
16 this time, I was led into continuous negotiation
17 until the time period they set, Well, you're
18 gone. The the time -- the contract take
19 time.

20 So there's no dispute. As MUSC already
21 admitted, they did not transfer material. They
22 tried to say they -- they provided -- actually,
23 there's a clause -- clause to transfer -- to
24 give me the money. They did give us the money.
25 But they give us the money to duplicate the --

1 some of the vendors -- are research materials
2 and copy notebooks. But they have to give me
3 the notebooks to copy. They have to give me
4 materials to duplicate. I can't create the notes
5 from the beginning. That cut me back 30 years.
6 I can't have 30 years to -- to continue my
7 research.

8 So there is no question the Breach
9 there's other issues, mostly, the continued
10 employment that lasts until -- until they say,
11 well, we don't want to employ you anymore. And
12 that's our right. That's (inaudible) our right
13 to employ you. And you -- you already signed
14 the irrevocable resignation. But that's a
15 condition to find new employment at another
16 university, not a simulation facility somewhere,
17 also not McDonald. So that I require my -- my
18 ability to conduct my research, publish
19 scientific articles and contribute to science
20 and carry on my existing funding projects. They
21 stopped all of that.

22 And also, I would like to say, my -- they
23 reached their agreement is not because of my
24 poor performance. That's -- I wanted to show my
25 performance. How was -- how I was a rising

1 star. I was leading scientists in the research
2 research field of gene therapy for cancer and
3 genetic disease and developing biological
4 factors to transfer therapeutic genes to
5 patients for the purpose of therapy. And the
6 extension of that and also has the ability to
7 have a number of patents, patent disclosures for
8 commercial commercially-viable therapeutic
9 approaches. And that has been utilized by IRB,
10 which I was not able to. So they took -- so
11 genetic material including those technologies,
12 (financial) technologies -- developed at MUSC.
13 They took them all.

14 So they breached the contract. It was not
15 for the facilities which was \$5 million at that
16 time. But what they take is all my research
17 inventions, the patents, everything generated
18 during -- during my time as faculty at the
19 University. I had the most graduate students,
20 most postdoctoral fellows, more grants, and more
21 publications than the chairman and most of the
22 faculty members at MUSC. That is why he
23 gradually took over my research facilities. And
24 in the end, come and with help of Stephen
25 Langer, shut me off, prevent me from competing

1 while him.

2 And he was in a double curve as the
3 research. He was conducting chemical oncology
4 at the time. So all of this with I hear something
5 to expert, but to legal profession, to a lawyer
6 say what what is that the contract violated.
7 The contract basically violated to the degree --
8 complete -- continued block in my career
9 development, my ability to do research at MISC,
10 not because I did something wrong, because my
11 performance was excellent as rated -- evaluated
12 by the chairman himself. He had no other ways
13 to really evaluate my research.

14 And that was accommodated by Dean -- Dean
15 Reyes for my contribution to the University
16 under the state mandate to developing
17 high-paying jobs, create biotech company
18 to create companies for the state to create jobs
19 for trained doctors, scientists, so they don't
20 have to graduate and move on to another school.
21 And I believe I did as to every bit in the best
22 interest of the University. I did try hard to
23 contribute to the science, to the -- to the --
24 to the community, to the faculty member and also
25 brought my expertise and know-how, the

1 biotechnology companies development in
2 subsequent area because I was recruited from the
3 medical university -- I'm sorry -- from the
4 University of California in San Francisco to the
5 medical university of South Carolina. I wasn't
6 somebody they picked me up off the street and
7 kicked me out the door.

8 So my career was completely destroyed by
9 him -- by his illegal activity against me as a
10 faculty member. And I will not be able to
11 provide -- again, I will -- gave me some time.
12 I would like to provide response and also based
13 on the rule when I could not provide affidavit,
14 provide -- the remedies continues, allow me to
15 have discovery under Rule 36(f).

16 **THE COURT:** Yes, sir. All right.

17 **MR. DONG:** So I will plead to the Court to
18 allow me time to submit supplements.
19 I already submitted the motion in
20 time. And also I would plead to the Court to
21 give me some leeways if actually in dealing with
22 this timeline and deadlines for me to actually
23 do something. I have not had an opportunity

24 **THE COURT:** I understand your position
25 about time, Mr. Dong.

1 MR. DONG: And I would also like to submit,
 2 when Your Honor is in charge of whole case,
 3 Your Honor is responsible for all the events
 4 that happened in this case.

5 THE COURT: I'm responsible for what says

6 MR. DONG: All the events happened, present
 7 -- the rulings, previous rulings of the other
 8 judges. Actually, that's --

9 THE COURT: I'm responsible for all of
 10 these other rulings.

11 MR. DONG: You have the discretion to
 12 correct --

13 THE COURT: I was not asked to correct
 14 anything in that regard, Mr. Dong. When we sat
 15 right here in this courtroom in October of last
 16 year and -- or in September of last year, all I
 17 was asked to do was to schedule from that time
 18 forward. I was not -- I had to read a whole lot
 19 of stuff about this case on the backside. I --
 20 I -- I got that hearing done within a very short
 21 time. I was appointed on this case just to get
 22 it moving with discovery.

23 There had been a small lot of water under
 24 the bridge before. And neither you nor
 25 Mr. Conley asked me to get back into

1 interrogatories or anything else. My order
2 because you-all -- that's what you asked me to
3 do was to schedule depositions, and that's what
4 I did. So please don't go there with me.

5 MR. DONG: Your Honor, seriously, I

6 THE COURT: Don't go there with me,
7 Mr. Dong.

8 MR. DONG: I think -

9 THE COURT: This business of your whole
10 approach to this case is to attack other people

11

12 MR. DONG: No. Your Honor --

13 THE COURT: Rather than to talk about
14 what you've done.

15 MR. DONG: I'm just --

16 THE COURT: I'm not going. I'm not going
17 to (inaudible) that anymore.

18 MR. DONG: I'm not attacking anybody.

19 THE COURT: Yes, you are.

20 MR. DONG: I'm stating a fact. I did raise
21 the issue of the order to limit the time
22 limit the scope of discovery and due process. I
23 I think I did order the transcripts.

24 Your Honor said, That's done by other Judge.

25 I'm not going to --

1 **THE COURT:** That's correct. That's exactly
2 what I said.

3 **MR. DONG:** Right. That's all I'm saying.

4 **THE COURT:** We have an agreement about
5 that.

6 **MR. DONG:** Yes.

7 **THE COURT:** I said I would not go where
8 other judges have gone with the length of time
9 this case has been pending. I absolutely do
10 say that.

11 **MR. DONG:** Yes. My -- my proposition is
12 when -- once Your Honor take over the case, I
13 think Your Honor is in charge of the whole case.

14 **THE COURT:** All right.

15 **MR. DONG:** Thank you.

16 **THE COURT:** All right, sir.

17 **MR. DONG:** Thank you.

18 **THE COURT:** Mr. Conley, any reply?

19 **MR. CONLEY:** Your Honor, I'm going to be --
20 I'm going to be very brief, Judge.

21 **THE COURT:** Yes, sir.

22 **MR. CONLEY:** I want to harken back to what
23 I said and I think what some of your questions
24 were directed at. Despite Dr. Dong's two hours
25 -- just spent at two hours of standing up here.

1 most of what he represented to the Court does
2 not appear in the record at this point.

3 His argument today cannot stand in the
4 place of him submitting evidence and by way of
5 affidavits or otherwise under Rule 56. His
6 standing here and making factual
7 representations, etc., today to the Court is
8 just not sufficient under Rule 56.

9 The cases Dr. Bong cited -- and again, I'm
10 sorry if I jump around. I just made my notes.
11 I'm just going to quickly go through them,
12 Judge. Dr. Bong cited several federal cases to
13 you, a Ninth Circuit case --

14 **THE COURT:** These cases are about
15 pleadings. The first line of cases he cited say
16 that we have to be flexible about the pleadings
17 of a pro se litigant. Nobody has been anything
18 no request has been made of us to deal with
19 any defects in the pleadings. The pleadings
20 were drawn by an attorney, and it's -- that's
21 not the problem here.

22 **MR. CONLEY:** Correct.

23 **THE COURT:** The problem here is whether or
24 not the statute of limitations has run because
25 of when the breaches occurred. But the the

1 cases he cited, that original line of Federal
2 cases, Erickson and the like, are about
3 the same.

4 **MR. CONLEY:** Correct. In the Ninth Circuit
5 case, Judge, I actually pulled in to while I was
6 sitting there, that deals with closings of
7 prisoner facilities.

8 **THE COURT:** That's correct.

9 **MR. CONLEY:** Dr. Dong said -- talked about
10 a lack of honesty and fair dealing. I only want
11 to point out something that I mentioned during
12 my recitation of those old gallons that MISC had,
13 and within that agreement itself was a 45-day
14 period for Dr. Dong to revoke the agreement. In
15 other words, he had 45 days -- 45 days after
16 May 10 to revoke the agreement.

17 Just deal with me, Judge. I've got a lot
18 of notes. But I'm going to -- I'm not going to
19 touch on all of them.

20 Judge, Dr. Dong, by way of his argument,
21 today, appears to me to -- this is just my
22 perception obviously. He's trying to create an
23 ambiguity of certain provisions of the contract
24 by way of his argument. It's simply our
25 position that he just cannot do that. This goes

1 back to the lack of affidavits, the lack of
2 evidence that would create the ambiguity.

3 In regard to the statute of limitations
4 issue, it appears to me, Judge, that Dr. Dong's
5 position is that his ability to do many of the
6 things he did as a professor, as a tenured
7 professor, as a researcher, were taken away
8 immediately in May 3, 2010, or immediately after
9 May 2, 2010. I even heard him in -- I even
10 heard him in response to some of your questions
11 or at least one of them, indicate that perhaps
12 some had occurred even prior to entering into
13 the agreement May 3, 2010.

14 Dr. Dong mentioned several times during his
15 argument the fact that he is not a lawyer, that
16 he is a layman, that he is reexamining himself.
17 I only want to mention to the Court something I
18 didn't mention during my initial presentation
19 because I don't think it was germane to the
20 central issues in terms of whether they were
21 breached or not, but Dr. Dong made very clear in
22 his deposition, and I note this in a footnote
23 actually in my memorandum, that Dr. Dong admitted
24 before signing the agreement he did not read it.
25 According to Dr. Dong, he only scanned it

1 briefly.

2 I want to touch on the General
3 certification for a moment, Judge. You had
4 you asked Dr. Long about those. I talked about
5 them. The bottom line as we stand here today
6 is, there is no evidence Dr. Long has given to
7 this Court other than his representation during
8 argument today that somehow he ever provide MISC
9 with any certificates of occupancy, any
10 insurance policies or -- I'm trying to think of
11 the other. There's a -- there's a third
12 component of that. I don't have

13 **THE COURT:** Governmental permit.

14 **MR. CONLEY:** Governmental permits. There's
15 no evidence in the record before the Court that
16 Dr. Long ever provided those things to MISC. He
17 certainly made that representation during
18 argument today, but that's not sufficient under
19 Rule 56.

20 **THE COURT:** I understood his argument to
21 really be that those were a matter of public
22 record and could be researched as public
23 knowledge and things of that nature. Your
24 argument is the contract provides that those
25 certificates should be provided to MISC.

1 **MR. CONLEY:** Correct.

2 **THE COURT:** And that's what you say did not
3 happen.

4 **MR. CONLEY:** Exactly. And -- and the other
5 component of that, Judge, is -- is on some
6 level, it doesn't matter. And the reason it
7 doesn't matter is that part of the contract,
8 that part of the agreement, XUSC was required to
9 do that explicitly within 45 days of the signing
10 of the agreement. Taking that into account, the
11 statute of limitations as to that component of
12 the agreement, and Dr. Dong's knowing they
13 didn't do it within 45 days, would have expired
14 in June 2013, Judge, 18 months -- 16 months
15 before Dr. Dong filed his complaint.

16 Those are the main topics I wanted to
17 mention just in -- in reply, Judge. Otherwise,
18 I won't stand upon our initial presentation
19 to the Court -- unless the Court has particular
20 inquiry.

21 **THE COURT:** I do not.

22 **MR. CONLEY:** Thank you, Judge.

23 **MR. DONG:** Brief rebuttal?

24 **THE COURT:** There is no such thing as that.
25 Understand.

1 **MR. DONG:** I understand. But you give him
2 the opportunity --

3 **THE COURT:** Mr. Dong, there is no such
4 thing as a rebuttal to his argument. We are now
5 -- I am saying very hard to get this thing done
6 without having to take any kind of break.

7 Elizabeth, how are you feeling?

8 **THE COURT REPORTER:** I'm okay.

9 **THE COURT:** You're okay?

10 All right. It is 1:30. I will give you
11 five minutes in rebuttal. That's it.

12 **MR. DONG:** Thank you, Your Honor.

13 Actually, the counsel was saying 45 days to
14 revoke. I was -- I wasn't revoke. That does
15 not mean the contract was not -- I wasn't revoke
16 the contract -- the agreement, because I gave
17 the impression that MUSC was (inaudible) to
18 honor it. That's No. 1.

19 So No. 2, I was not able to provide the
20 document I provide to MUSC because those
21 documents was under the exclusion order.
22 Because other than direct e-mails I sent
23 (handled) to MUSC and everything is outside
24 the scope of the discovery.

25 Secondly, that document has to be provided

1 by MJSC. So XUSC asked for the document.
2 failed to provide it. These actually that's
3 -- that's the the document was provided. And
4 during the negotiation, I was leading to
5 continuous negotiate negotiate
6 negotiation. As I said, it's unrealistic say --
7 someone say, well, transfer started no later
8 than 45 days. You can't transfer all the
9 equipment, can't certify, can't do everything.
10 You just can't jump in somebody's parking lot
11 and be done with it.

12 So it is a process. You start 45 days.
13 You still have to -- to -- to do the process.
14 It may take longer; it may take shorter. But
15 the process, transfer biological equipment and
16 materials' research equipment has -- has to
17 so called has to be calculated to the point
18 not accurate enough. And that has to be
19 document and verified. So it's a process that
20 only scientists can understand. So it's a
21 continuous process until we -- they're clear
22 they're not going to do it, but they're going to
23 do otherwise all the things they're going to do
24 against you. That is where the contract was
25 breached.

1 And also, during the process, I could not
2 know they had no intention to honor the contract
3 because they were continually engaging in
4 discussion, continuous effort, they're going to
5 do this, do that, to -- to establish the
6 contract.

7 And also -- actually, I lost track of what
8 the counsel said.

9 You remember what she -- the other two
10 said?

11 MR. CONLEY: I don't remember.

12 MR. DONG: All right. So what they -- I
13 cannot provide the affidavit because I could not
14 do the -- the contract. I'm not attack anybody.
15 I'm just saying I -- I was unable to answer
16 the timeline to file -- to conduct discovery
17 when they refused to give me dates to king about
18 they have to discuss with their clients. Right?
19 They have to get dates, coordinate with their
20 clients because it involved too many people. I
21 have e-mails to show that. That's not beyond my
22 control when the -- the owner says when they are
23 available. The owners to be to give deposition
24 is the date. I have to give the date, the
25 deposition on that date. And the order for XUSC

1 to give deposition is when they able and
2 available.

3 So -- and what happened, MUSC was not
4 giving me sufficient time to conduct the
5 deposition until events happened that I would
6 not be able to conduct deposition, because I
7 have more important things to do. I did file
8 show cause -- good cause motion. I was
9 expecting when the motion been filed the process
10 would be continued until the motion has been
11 ruled. So I will have time until the motion
12 denied and actually in the -- the standard is to
13 show good cause.

14 I do believe my cause is better than MUSC's
15 cause, career -- course are make vacations. My
16 cause is essential surgeries and also, more
17 prominently, appeal under the order of the US
18 Court of Appeals. So I provide those documents
19 and also my causes of illness with lung
20 infection. I have provided the letter for -- to
21 -- to the Court, the referee allows to refer
22 me to a nonspecialist. So I was not -- not able
23 to conduct the deposition, not I canceled it,
24 not I recused it, but because I was not able
25 under the circumstances. That's all I have.

1 Thank you.

2 **THE COURT:** All right.

3 Ruling of the Court is as follows: I will
4 grant a motion for summary judgment on the basis
5 that the lawsuit concerning this matter was brought
6 on September 2, 2014, after the statute of
7 limitations had expired on the continued
8 breaches of the agreement between the parties
9 dated May 3, 2010.

10 I will direct Mr. Conley to prepare a
11 proposed order granting summary judgment of this
12 matter on the basis of the case's outline as
13 contained in KUSC's memorandum accompanying his
14 March 31 motion for summary judgment. That --
15 that proposed order should be filed with the
16 Court by June 6 -- the proposed order shall be
17 sent to me, copied to Dr. Bong, filed by June 9.
18 Dr. Bong will have until June 23, which is two
19 weeks from -- which is a week from the ninth --
20 excuse me, two weeks from the ninth to serve and
21 file his objections.

22 **MR. CONLEY:** The 23rd? Your Honor, the
23 23rd?

24 **THE COURT:** This is June 23. This matter
25 is scheduled for trial on July 22. I will keep

1 this date, in effect, because my final decision
2 and my final order would not be effective until
3 filed. And I reserve the right to change this
4 ruling if a filing from Dr. Dong persuades me
5 otherwise.

6 Dr. Dong is also, from the very beginning
7 of this matter, in the setting of the initial
8 deadlines in the scheduling order in this
9 matter, filed a notice of civil appeal of a
10 nonappealable order which was remitted to the
11 Court of Appeals about a month and a half, to
12 his motions, so called motions for protective
13 order, which were really motions for scheduling,
14 changes, delays or continuances. There has not
15 been one deadline I have set that has not
16 resulted in a motion or other form of filing by
17 Dr. Dong attempting to delay the requirements
18 that I have set forth.

19 I was appointed in this very old case to
20 try to move it along in an expeditious way.
21 I've tried to do that. I'm going to continue to
22 try to do that, because that's what I've been
23 assigned to do. I think that has been done with
24 due regard for everyone's rights to be fully
25 heard, and I will continue to do that.

1 But cases must have a beginning and end.
2 This is a very old case. Things that Dr. Dong
3 had recited on the record today could very
4 easily have been developed long ago and reduced
5 to some sort of affidavit or filing, but they
6 had not been.

7 This motion for summary judgment was filed
8 in March of this year. There's been plenty of
9 time around about to do what was done today in
10 filing some sort of response. The contention
11 that somehow or another Dr. Dong is
12 disadvantaged because of his status pro se is
13 not so. He is very much (inaudible) by the
14 record in this matter.

15 I did grant Dr. Dong a stay with regard to
16 his cataract surgery, even though that surgery
17 was not scheduled until after this matter was
18 scheduled. I myself had my first cataract
19 removed two days ago and I am sitting here in
20 this hearing with the ability to participate.
21 I'm 79. Dr. Dong is about 86.

22 The constant assertion of medical issues
23 and the like, in my view, is an attempt to delay
24 these proceedings, and I'm not quite sure I
25 understand that. I don't know whether Dr. Dong

1 thinks that there is some other activity that's
2 going to take place in his other litigation and
3 will affect this litigation. But as I look at
4 the filings from the Fourth Circuit about his
5 litigation there that is related to the
6 conviction and sentencing and service of the
7 seven year sentence in connection with his
8 federal criminal matters, I don't know exactly
9 what that Fourth Circuit filing now is about,
10 but I observe with interest that despite
11 discussion of that since early this year, he is
12 still requesting and receiving delays from
13 having to respond and deal with his obligations
14 to his other filings. I think if you've got
15 litigation you're trying to proceed with in good
16 faith, then you've got some obligation to attend
17 to your business in good faith.

18 I think I've dealt with everything that's
19 outstanding. I will say to you that I
20 considered carefully what I regarded as
21 unreasonable delay by Mr. Bond in these
22 proceedings. And that's what I meant in my
23 communication of Friday, May 3, in the e-mail
24 where I discussed this hearing and rescheduled it and
25 said I would consider whether I should take any

1 further action regarding the violation of my
2 order setting this hearing at an earlier time.
3 I will not take any further action in that
4 regard. But the deadlines that I set on a going
5 forward basis need to be observed and move this
6 case along. I think that completes what I need
7 to place upon the record.

8 Anything further, Mr. Conley?

9 **MR. CONLEY:** I have one quick question,
10 Judge, in regards to the proposed order you
11 desire that I provide you. Do I understand the
12 Court that you want that proposed order to be
13 based upon, in general, the things set forth in
14 MQSC's memorandum?

15 **THE COURT:** Yes.

16 **MR. CONLEY:** And the corollary to that,
17 because I probably misheard, that -- that
18 proposed order shouldn't solely be listed
19 as a y or n limited -- excuse me, to the statute
20 of limitations, it should encompass the other
21 issues?

22 **THE COURT:** That is correct.

23 **MR. CONLEY:** Thank you, Judge.

24 **THE COURT:** That is correct. That is
25 correct.

1 **MR. CONLEY:** Thank you.

2 **THE COURT:** With regard to -- what --
3 tried to make clear is that with regard to the
4 matter of the statute of limitations issue, that
5 is in part a review of the contract provision by
6 provision. And that's what I say should be a
7 part of the order. Of course, there are
8 encompassing issues as well. Those should be
9 covered as well.

10 **MR. CONLEY:** Thank you, Judge. That's what
11 I wanted to know.

12 **THE COURT:** Okay. All right.
13 Anything further, Dr. Dong?

14 **MR. DONG:** I would just like to make a
15 comment and ask a question of MUSC counsel.

16 **THE COURT:** Come -- stand up and come up
17 the podium. Yes, sir.

18 **MR. DONG:** I would like to make a comment
19 that MUSC counsel just made. I think the
20 question was a suggestion of indication and that
21 was not in the -- Your Honor's order describing
22 the Court

23 **THE COURT:** Dr. Dong, don't go there. I
24 asked him to prepare a proposed order for me.
25 And all he's trying to do is get straight

1 whether it should be a broad encompassing order
2 with all the issues we've talked about, and I
3 said yes to that. I want to be sure that as
4 part of that, he tick down the provisions of the
5 contract as he did.

6 That's not my order. I will make my own
7 order. I will look at that, and I will look
8 very carefully at what you file as well. This
9 is a means of getting it front of me. I am one
10 judge with one law clerk when I share with other
11 judges. This facilitates my ability to get this
12 order out within about a month, which is what
13 I'm trying to do now.

14 MR. DONG: I understand.

15 THE COURT: Any suggestion that Mr. Conley
16 is somehow trying to do something that's
17 improper by his question is something I will
18 reject.

19 MR. DONG: Yes, Your Honor. I also would
20 like to explain myself. I wasn't have any
21 intention to so-called delay this process.
22 Doesn't --

23 THE COURT: What that is -- that is
24 certainly not in keeping with what's happened so
25 far, Mr. Dong. I hope you live up to that --

1 **MR. DONG:** Would you, Your Honor, let me
2 finish? Because the delay -- any delay does not
3 actually to my benefit. So -- I -- I have the
4 right to file now and. I did not have the
5 intention -- I did not have any intention to
6 violate your Judge order. I was only asking
7 Your Honor to consider the timeline, the short
8 timeline to please litigant not as hard to
9 follow.

10 Under the circumstances, I've cancelled
11 myself and I have stated the reasons of myself
12 in my motions. So I will say I was not
13 intending to violate Your Honor's order, because
14 I followed every -- every order -- schedule
15 order, I filed a motion, but the same -- it's
16 long, every motion, every request filed by MISC
17 was 100 percent granted by the Court.

18 **THE COURT:** Dr. Dong, let me tell you
19 something: Half the time you sent things
20 saying, "I didn't get this" or "I didn't see
21 that" or something wasn't filed or something. I
22 don't know whether somebody else was helping you
23 that develops those arguments for you or whether
24 you develop those yourself. But I'm going to
25 tell you, I send those things every time to

1 accordance with the way they're supposed to be
2 done. My law clerk, when there are orders,
3 files them also in the filing system.

4 You get -- you reply to the e-mails you
5 want to reply to. But when you don't want to
6 reply, you take the position you haven't
7 received them. That's not borne out by my
8 records about the thing, and that's what I want
9 to stop now. That's tripping with the court.

10 You may have your good faith reasons why
11 you think you want a delay. I can't really
12 understand myself why you continue to delay
13 every single deadline. And I particularly don't
14 understand why you would notice 13 depositions
15 and then not take as much as one of them. But
16 that's a --

17 **MR. DONG:** For the reason I

18 **THE COURT:** But that's

19 **MR. DONG:** the reason I filed --

20 **THE COURT:** Well, a minute. That's your
21 decision. No one's forcing down on you. That's
22 your decision as to how you want to handle this.

23 **MR. DONG:** I do not have time with the
24 delays by the counsel, I will not have the time
25 to take the deposition. And also I was ordered

1 to take deposition only in his office. And --

2 **THE COURT:** Yes, sir. I did not allow you
3 to take depositions in your home. I think that
4 is --

5 **MR. DONG:** It can be anywhere else. It
6 could be --

7 **THE COURT:** No, sir. That's not what you
8 proposed. You proposed --

9 **MR. DONG:** I did not propose.

10 **THE COURT:** to take depositions in your
11 house.

12 **MR. DONG:** That was the presentation,
13 again, by MLSC counsel, not by me. Thank you,
14 Your Honor.

15 **THE COURT:** Well, all right, sir. All
16 right.

17 Okay. Court -- court will be adjourned.

18 - END OF TRANSCRIPT

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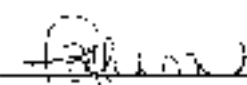
CERTIFICATE

99

I, the undersigned, Teresa L. Johnson, Official Court Reporter, do hereby certify that I transcribed the electronic recording of the remote hearing in this matter; and that the foregoing is a true transcript of said electronic recording.

I do further certify that I am not a relative, employee, attorney, or counsel of any of the parties connected with the action, nor am I financially interested in the action.

Dated: June 20, 2023



Teresa L. Johnson, CVR X CX, RVR, FVR-K
Official Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

John Dong, M.D., Ph.D.,

- Plaintiff,

v.

The Medical University of South
Carolina,

- Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-10-06683

**Reply to Defendant's Response
to Plaintiff's Motion for
Amendment**

FILED
2017 SEP 28 AM 11:00
CLERK OF COURT
J. D. DONG

REPLY

1. Defendant's argument about Dr. Dong's motion untimely is meritless.

Dr. Dong's motion is filed within 10 days after the Court's order was entered as provided by the statute. Defendant's attorney claims that Dr. Dong's motion is untimely, because from "July 17th to 28th are eleven days." This is false. The first day after the July 17th was the 18th, and the tenth day was the 28th. It would have been comically entertaining, if such a statement were not made by a seasoned attorney on such a serious matter.

Furthermore, Dr. Dong does not have access to the Electronic Court Filing (ECF) system. Based on the common law and the standard practice (mailbox rule), the date Dr. Dong being noticed is when he receives a stamped copy of the filing in the mail sent by the court; the effective date that he filed a motion is the date he signed the motion.

Email is not considered by courts as proper notice. Therefore, neither the email from judge's clerk nor the one from defendant's attorney served as proper notice. Dr. Dong received the court notice at a much later time than July 17. Dr. Dong completed and dated his motion on the 27th, instead of mailing it that would take 2 to 3 days for the court to enter into the ECF, Dr. Dong hand-delivered a copy to the court and entered into the ECF on the 28th. Based on the legal standard, the motion was filed on the 27th.

Even to assume, were the defendant's attorney's claim correct, but it is not; email sent by the judge's clerk were a proper notice; were a per se litigant not entitled to the extra mailing time, from July 17 to July 28 are exactly 10 days which is strictly within the timeline provided by the statute. Therefore, the Attorney's claim that Dr. Dong did not file or serve the motion within 10 days of July 17, 2023, is patently false.

The remainder of the defendant's argument is also meritless. Because defendant's attorney has access to the courts electronic filing system, the proper notice he receives is the electronic notification sent by the court electronically, no written notice is required. However, for a party who has no access to the electronic filing system, the only proper notice is a copy of the written notice sent by the court using "first class mail" of the United States Postal Service.

Here, the defendant's attorney attempts to mislead the court by first claiming July 28 is 11 days after July 17; second, claiming Defendant was not properly noticed because Dr. Dong did not mail a written notice to the defendant after filing the motion; thirdly, claiming email to a party who does not have access to the ECF system serves as proper notice and "the written notice sent by court shall not be necessary to parties who have already received notice."

In contrary, this argument is self-defeating because the attorney received proper notice from the court through the CF system; Dr. Dong should be noticed with "a written copy sent by court through first-class mail" as required by law. (Because the nature of email, such as easily lost, caught in filters, modifiable, and automatically deleted by the server after a period, it has never be legally recognized as a proper notice.)

Therefore, Defendant's argument that Dr. Dong's motion is untimely fails.

II. The Defendant's Response is untimely as statutorily prescribed.

The Defendant did not file a Response withing the statutorily prescribed 10-day limit and did not file a motion for extension of time based on good cause. Therefore, Dr. Dong's motion should be granted as unopposed motion under the standard established by the United State Supreme Court and the South Carolina Court of Appeals. See Dr. Dong's Motion for argument and citations. Here, Dr. Dong also adopts Defendant's argument as its admission that Defendant, who is

represented by attorney, did not file a timely response within the 10-day limitation prescribed by the Rules. The Defendant has abandoned its procedural right to file a response, and the Court does not have the jurisdiction to grant a response that is filed outside the statutory limitation or the authority to grant Defendant a second chance to file the response outside the statutory limit. (The Court erroneously granted defendant extra time *sua sponte* and without the Defendant filing a motion for extension prior to the deadline.) Therefore, the Defendant's Response is untimely, and Dr. Dong's motion should be granted as unopposed motion under the authority established by the Supreme Court of the United States and the South Carolina Court of Appeals. See motion for argument and citations.

III. Defendant's response is unresponsive to plaintiff's motion.

Dr. Dong stands by his motion for amendment and the arguments made within. Without a valid response, the Defendant twisted Dr. Dong's arguments by summarily "paraphrasing" them without citing Dr. Dong's motion and argued against its self-made statements. For this reason alone, the Court should Grant Dr. Dong's Motion for Amendment based on the issues raised to which Defendant failed to make a response.

Here, Dr. Dong would not reiterate what have been stated in his motion but only to cite a few examples of the defendant's tactics of substituting principals to mislead the court.

Example 1.

Dr. Dong's first issue is that court is obligated to enforce the statute as written. The statute governing summary judgment, Rule 56(c) requires the party seeking summary judgment to prove "there is no genuine issue as to any material fact with pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits." In this case, the Defendant raised two issues, "if the statute of limitation applies" and "if the plaintiff can provide sufficient evidence to show the breach of a contract." These do not prove "there is no genuine issues as to any material fact" and cannot be the basis for summary judgment. In contrary, these are questions of material fact need to be determined by a jury.

Secondly, MUSC did not produce any witness, deposition, answers to interrogatories, admissions on file, and affidavits to support its summary judgment as required by the law. These are undisputable effects.

Instead of responding to the issue, the Defendant substituted the principal of the question with a false and conclusive statement, saying "it is undisputable MUSC provided evidence in support his motion for summary judgment. Most notably, MUSC provided the court with Dr. Dong's deposition testimony and the contract." *Response, P4, pp4.* This is false because none of Dr. Dong's testimony supports the two issues raised by the defendant, and the contract itself does not support the defendant's argument that Dr. Dong could not produce sufficient evidence to show

the breach of contract. As the result, Defendant failed to cite any Dr. Dong's testimony or the contract to support its argument. Instead, the attorney made up the statement and testified for it without any witness.

Furthermore, the defendant admits it failed to prove the lack of genuine issue of fact by stating that "to the extent either party failed to provide the court with deposition testimony, affidavits, interrogatory responses, or responses to requests for admission." See Response, P4.pp5. Defendants further attempted to mislead the court by shifting the burden of proof to Dr. Dong by saying "it is Dr. Dong who failed to provide the court with such materials in opposition to MUSC's motion for summary judgment." *Id.* Such statement is erroneous because the law requires the moving party, the party who is seeking a summary judgment, to provide such statutorily required materials. In this case, it is MUSC who is seeking the summary judgment, and who has the burden to prove the lack of genuine issue of fact, not Dr. Dong.

The fact is undisputed, MUSC violated the contract by not returning Dr. Dong's research assets, depriving Dr. Dong's rights to his assets to conduct research and advance his career. MUSC also did not allow Dr. Dong to continue his academic operation on campus at a tenured professor and director for biopharmaceutical development. MUSC admitted that it did not transfer Dr. Dong's research assets to

Dr. Dong based on the Agreement. However, MUSC erroneously claims that MUSC “did not take away his title for director.” This claim is false, because MUSC did not allow Dr. Dong to operate under the title, and there was nothing more to take away from Dr. Dong.

Example 2:

Defendant’s Response to the court violated the statutes and Dr. Dong’s due process right is misleading and erroneous.

As stated in Dr. Dong’s motion, the Supreme Court of United States has a long-established: the essential elements of due process of law and opportunity to defend.

Here, the Defendant’s Response is misleading for several reasons.

First, email has not been recognized as “proper notice” by judicial system. The notice from the court is the minimally required official notice.

Secondly, once a motion to alter a timeline is filed, the timeline is suspended until the motion is decided. Therefore, even were the emails to qualify as proper notice, the date was continued until the Court granted Dr. Dong’s motion for protective order due to his eye surgeries. Record show that the Court only follows this rule in favor of MUSC, but not Dr. Dong. For example, when MUSC filed a protection motion for the allegedly that Dr. Dong want to record his deposition, and

to take MUSC's deposition at his home office, while there is no rules against such practice, the dates of the deposition were suspended and delayed for months at the expenses of taking away Dr. Dong's already shortened discovery time.

Thirdly, the statute requires the motion for summary judgment to be filed at least 10 days before the hearing so that the nonmoving party have sufficient time to be prepared. Furthermore, the parties can file extensions for good cause. In this case, Dr. Dong did file motions for extension, and for protection. However, these motions were denied by the Court without the defense attorney to file an opposition and without a legitimate reason but accusing Dr. Dong "delaying due process" and "will not be tolerated." As the defendant admitted, an email was sent three days before the hearing date informing Dr. Dong that his motion for protection was finally "granted", but the date of hearing was set only one day after the protected time for surgery. This gave no time for Dr. Dong to prepare for his hearing, no time to complete his opposition to the summary judgment, and no time to file his memorandum and affidavit. If this is not a violation of due process, then nothing is.

Example 3.

Defendant did not directly respond to court's violation rule 56, which requires MUSC to provide the statutorily required evidence "along with affidavits to show there is no genuine issue of material fact." Further, Response failed to argue against the fact the Court violated Rule 56(1) which prescribes that "when affidavits are

unavailable”, such as in this case, “the court may refuse the application for judgment or may order continuance to permit affidavits to be obtained, or depositions to be taken or discovery to be had.”

Rule 56(f) specifically applies to the current situation because the reason that Dr. Dong could not provide this material is because the unreasonably stricture time limitations the Court has enforced on Dr. Dong only. Under the Rule, Dr. Dong should have been allowed additional time to conduct discovery, deposition, and submit affidavit. Under the authority of this Rule, Dr. Dong did submit this memorandum and affidavit along with a motion for a rehearing of the summary judgment. However, once again, the court denied Dr. Dong's motion without a legal basis or the defendant's opposition and did not conduct a hearing on Dr. Dong's motion and newly submitted memorandum and affidavit. The Defendant's Response provides no argument for why these conducts are not violations of statutes and Dr. Dong's due process rights.

VI. It is undisputable that MUSC violated the Agreement.

Most importantly, Defendant's Response failed to address the issue that MUSC violated the Contract by not returning and transferring Dr. Dong's research assets in order for him to continue his research off campus. These are Dr. Dong's personal assets, which were illegally taken from Dr. Dong by the chairman of the department, James Norris for his personal benefit. The Defendant openly admits that

Dr. Dong's research assets "were not transferred," but blames such breach of contract on Dr. Dong. The Defendant's attorney claims that Dr. Dong did not show any evidence that "he provided MUSC with the prerequisite certificates for such transfer." This statement is false because there is no requirement to return Dr. Dong's personal assets. The stipulation that Dr. Dong would provide MUSC with the certificates for biological research operation at GenPhar was for protecting MUSC from violating regulations when Dr. Dong conducting his research on behalf of MUSC at the off campus location. However, as Dr. Dong stated under oath, these certificates had been provided to MUSC when Dr. Dong submitted research proposals on behalf of MUSC to the federal agencies. Furthermore, MUSC did not provide any proof that Dr. Dong failed to provide these certificates; the burden to prove is on MUSC even if were such certificates a prerequisite for returning Dr. Dong's assets, but it is not. MUSC did admit that it did not return and transfer Dr. Dong's assets, deprived Dr. Dong's right to use his assets to conduct research and advance his career. As Dr. Dong testified in his deposition, by these actions, MUSC prevented Dr. Dong from obtaining a professorship at other universities and destroyed Dr. Dong's career. Obtaining a professorship at other universities is the prerequisite for Dr. Dong to resign from MUSC. However, after blocking Dr. Dong's ability to obtain a position at other universities, MUSC unilaterally terminated Dr.

Dong's tenure professorship, which cannot be terminated unless with proven causes through the due process specified in the faculty handbook and the University Policy.

The second undisputed violation of the agreement was that MUSC did not give Dr. Dong the access to MUSC facilities for academic operations, including the authority under the title of Director for Center of Biopharmaceutical Development. Defendant attorney does not deny that it did not allow Dr. Dong to conduct academic operations at MUSC but claims that "MUSC did not take away Dr. Dong's title." This defense is meritless because MUSC did not allow Dr. Dong to operate under such title to begin with.

Furthermore, MUSC provides no evidence as required by the statute to support its claim. The defendant's attorney made such claim by himself without any witness or the required evidence. It is an allimentary error for the Court to allow the defense attorney to testify and rely on the attorney's testimony for the court's decision. In this case, as the defendant admitted, both the court and the defendant's attorney joined the defense by criticizing Dr. Dong for not be able to submit his affidavits in time and making the false claim that MUSC did not return Dr. Dong's research materials and equipment because of that. Dr. Dong did not prove that he provided the operating certificates. Response, P7, pp4.

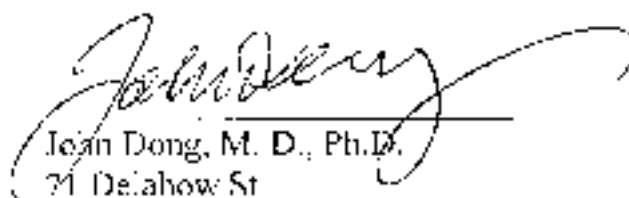
These are not only violations of due process, but also the courts obligation to be impartial and equally enforce the law.

CONCLUSION

For reasons stated above and those stated in Plaintiff's Motions, Dr. Dong respectfully requests the honorable Court to Grant the Motion to Amend the decision of granting the defendant's Motion for Summary Judgment in the interest of justice.

Sept 5, 2023
Charleston, South Carolina

Respectfully submitted, pro se.



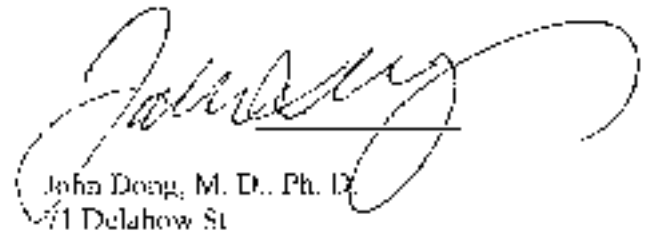
Jean Dong, M. D., Ph.D.
71 Delahow St
Charleston, SC 29492
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CERTIFICATE OF SERVICE

This is to certify that I have on this 5th day of July 2023, served a copy of the Plaintiff's Reply to Defendant's Response to Motion for Amendment to the ECL system, which will notify all parties electronically. In addition, a copy of this motion is served via email at bconley@clevelandlaborlaw.com and United States Mail Services addressed to the following:

Bob J. Conley, Esq.
Cleveland & Conley LLC
171 Church Street, suite 310
Charleston, South Carolina 29401

FILED
2023 SEP 28 AM 11:51
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-06683
	)	
Jian-Yun (John) Dong, M.D., Ph.D.,	)	
	)	
Plaintiff,	)	DEFENDANT MEDICAL UNIVERSITY
	)	OF SOUTH CAROLINA'S
vs.	)	RESPONSE TO PLAINTIFF'S MOTION
	)	TO AMEND
Medical University of South Carolina,	)	
	)	
Defendant.	)	
_____	)	

RESPONSE

Plaintiff Jian-Yun (John) Dong, M.D., Ph.D. ("Dr. Dong"), pursuant to Rule 52(b) of the South Carolina Rules of Civil Procedure, filed his "Motion for Amendment Order Granting Defendant's Summary Judgement" (the "Motion") and moved for an order amending the Court's order granting summary judgment dated July 17, 2023, and entered by the Court on July 17, 2023 (the "Order").¹ Dr. Dong and Defendant Medical University of South Carolina ("MUSC") received written notice of entry of the Order on July 17, 2023, by email from the Court.²

In the Motion, Dr. Dong contends the Court misinterpreted the law, violated due process, and engaged in a pattern of due process violations. Consequently, Dr. Dong asserts the Court should amend the Order in the following manner: 1) conduct a hearing and consider arguments asserted by Dr. Dong in his Memorandum Supporting Plaintiff's Opposition to Defendant's Motion for Summary Judgement; and 2) amend the Order after a rehearing.

¹ Exhibit A.

² Exhibits A and B.

LEGAL STANDARD

South Carolina Rule of Civil Procedure 52(b) allows a party “not later than 10 days after receipt of written notice of entry of judgment” to request the court “amend its findings or make additional findings and may amend the judgment accordingly . . .” Rule 52(b), SCRCP, further requires “[a] party filing a written motion under this rule shall provide a copy of the motion to the judge within ten (10) days after filing the motion.”

ARGUMENT

I. Dr. Dong’s Motion is Untimely.

Dr. Dong and MUSC received the Order on July 17, 2023, by email from the Court.³ Thereafter, Dr. Dong filed the Motion on July 28, 2023.⁴ According to the certificate of service attached to the Motion, Dr. Dong served the Motion on MUSC’s counsel by email and regular mail on July 27, 2023.⁵

MUSC’s counsel received notice of the filing of the Motion on July 28, 2023.⁶ However, MUSC’s counsel did not receive the Motion by either email or regular mail as shown on the certificate of service attached to the Motion.⁷ Consequently, Dr. Dong failed to file or serve the

³ Exhibits A and B.

⁴ Exhibit C.

⁵ Exhibit C.

⁶ Exhibit D.

⁷ If, consistent with the certificate of service, Dr. Dong sent an email to MUSC’s counsel on July 27, 2023, attaching the Motion, Dr. Dong should file and submit the email to the Court for review and consideration in support of his Motion and for the record. Additionally, if Dr. Dong mailed the Motion to MUSC’s counsel on July 27, 2023, as indicated on the certificate of service, MUSC requests the Court require Dr. Dong submit an affidavit containing the particulars of when and from where he mailed the Motion to MUSC’s counsel on July 27, 2023. MUSC request the Court require Dr. Dong provide such particulars by way of an affidavit and otherwise because the certificate of service is incorrect in at least one material respect: Dr. Dong did not serve a copy to

Motion on or before July 27, 2023, resulting in the Motion being untimely because Dr. Dong did not “make” – he neither filed nor served – the Motion within ten days of July 17, 2023. To the contrary, Dr. Dong did not file, and no notification of the Motion was received by counsel for MUSC, until July 28, 2023 - eleven days after July 17, 2023.

Rule 52(b), SCRCF, states “[u]pon motion of a party *made* not later than 10 days after receipt of written notice of entry of judgment the Court may amend its findings or make additional findings and may amend the judgment accordingly . . .” (emphasis added.) It is indisputable Dr. Dong received “written notice of entry of” the Order (i.e., a “judgment”) on July 17, 2023.⁸ Notably, on July 17, 2023, Dr. Dong responded to the email from the Court containing the filed Order, thereby confirming his receipt of the Order on that day.⁹ Nonetheless, Dr. Dong did not file or serve the Motion within ten days of July 17, 2023.

The Court’s July 17, 2023, email to the parties attaching the Order constitutes “receipt of written notice of entry of judgment [the Order] . . .” Rule 52(b), SCRCF. *See* Rule 77(d), SCRCF (requiring service of the notice of the entry of a judgment or order by “first class mail” but stating such “mailing . . . shall not be necessary to parties who have already received notice”); Rule 59(e), SCRCF (stating a motion to alter or amend judgment under Rule 59 must be served not later than ten days after “receipt of written notice of the entry of the order.”); *Rosen, Rosen & Hagood v.*

the “ECF system, which will notify all parties electronically” on July 27, 2023, because, according to the stamp on the Motion, including the certificate of service, he did not file the Motion with the Charleston County Clerk of Court until 4:31 p.m. on July 28, 2023. Counsel for MUSC received notification of the filing at or about 4:35 p.m. on July 28, 2023. (Exhibit E.) Moreover, the current South Carolina Electronic Filing Policies and Guidelines only allow attorneys to act as authorized electronic filers. *See In re S.C. Elec. Filing Pol’y & Guidelines (SCEF)*, Section 4, 415 S.C. 1, 7–8, 780 S.E.2d 600, 603 (2015).

⁸ Exhibits A and B.

⁹ Exhibit B.

Hiller, 307 S.C. 331, 334, 415 S.E.2d 117, 118 (Ct. App. 1992) (recognizing notice from the clerk under Rule 77, SCRCPP, is not required where a party otherwise has notice of the order or judgment). *See also, e.g., Wells Fargo Bank, N.A. v. Fallon Properties South Carolina, LLC*, 422 S.C. 211, 217, 810 S.E.2d 856, 859 (2018) (holding an email may constitute “written notice of entry of the order or judgment” under Rule 203(b)(1), SCACR.)

In summary, Dr. Dong neither filed nor served the Motion on or before July 27, 2023. For the reasons discussed, Dr. Dong’s Motion is untimely and the Court should deny the Motion for this reason alone.

II. The Court Did Not Misinterpret Summary Judgment Law Applicable to Dr. Dong’s Sole Cause of Action for Breach of Contract.

A. Summary Judgment Standard.

Dr. Dong contends the Court misapplied Rule 56, SCRCPP, for two reasons. First, Dr. Dong asserts MUSC failed to provide witnesses, depositions, interrogatories, admissions, or affidavits to support MUSC’s Motion for Summary Judgment. Second, Dr. Dong contends the evidence (i.e., Dr. Dong’s deposition testimony and the contract) MUSC provided to the Court, and that the Court relied upon for the Order, failed to show no genuine issue of material fact exists.

Dr. Dong’s assertions are incorrect for several reasons. First, it is indisputable MUSC provided evidence in support of its Motion for Summary Judgment. Most notably, MUSC provided the Court with Dr. Dong’s deposition testimony and the contract. Moreover, to the extent either party failed to provide the Court with deposition testimony, affidavits, interrogatory responses, or responses to requests for admission, it is Dr. Dong who failed to provide the Court with such materials in opposition to MUSC’s Motion for Summary Judgment.

Second, Dr. Dong misconstrues and misunderstands Rule 56, SCRCPP. The purpose of summary judgment is to expedite disposition of cases that do not require the services of a fact

finder. Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003). Summary judgment is proper where there is no genuine issue as to any material fact and MUSC is entitled to judgment as a matter of law. Id. Granted, in determining whether summary judgment is appropriate, the evidence must be viewed in the light most favorable to Dr. Dong. Id. Moreover, MUSC has the initial responsibility of demonstrating the absence of a genuine issue of material fact. Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991).

However, what Dr. Dong gets wrong, and, more important, failed to do regarding his burden at summary judgment, is the following: “[w]ith respect to an issue on which the nonmoving party [Dr. Dong] bears the burden of proof, this initial responsibility [of MUSC] may be discharged by ‘showing’ – that is, pointing out to the [trial] court – that there is absence of evidence to support the non-moving party’s case.”” Baughman at 115, 410 S.E.2d at 544 (*quoting Celotex Corporation v. Catrett*, 477 U.S. 317, 325 (1986)). In that case, the “moving party [MUSC] need not ‘support its motion with affidavits or other similar materials *negating* the opponent’s claim.”” Id. (*quoting Celotex*, 477 U.S. at 323) (emphasis in original). “Once the moving party [MUSC] has carried its initial burden, the opposing party [Dr. Dong] must . . . ‘do more than simply show that there is some metaphysical doubt as to the material facts,’ and ‘must come forward with ‘specific facts [in the form of admissible evidence (i.e., deposition testimony, affidavits, etc.)] showing there is a genuine issue for trial.’” Id. (*quoting Matsushita Electrical Ind. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87(1986)).

In summary, Dr. Dong failed to meet his burden at summary judgment, and Dr. Dong’s own testimony, along with the unambiguous contract, provided the Court more than sufficient reason for the Court’s Order. For this reason, the Court should deny Dr. Dong’s Motion.

III. The Court Did Not Violate Dr. Dong's Due Process Rights.

Due process requires that no person shall be deprived of life, liberty, or property without due process of law. U.S. Const. amend. XIV, § 1; S.C. Const. art. I, § 3. In his Motion, Dr. Dong contends the Court violated his due process rights in the following respects: 1) failing to provide proper notice of the summary judgment hearing held on May 26, 2023; 2) otherwise depriving Dr. Dong of an opportunity to be heard regarding MUSC's Motion for Summary Judgment. Dr. Dong's contentions are unsupportable.

First, Dr. Dong contends he first "learned about the [summary judgment] hearing date [May 26, 2023] from an email sent by the Judge's law clerk" sent "three days before the hearing, which was sent at only one day after his protected period due to eye surgery." However, an email was sent to Dr. Dong on May 5, 2023, regarding the hearing, and Dr. Dong acknowledges receiving the email.¹⁰ Consequently, Dr. Dong was notified of the hearing no later than May 5, 2023. Dr. Dong's contention otherwise is inconsistent with the record.

Second, Dr. Dong contends the Court deprived him of an opportunity to be heard regarding MUSC's Motion for Summary Judgment. A review of the record shows this contention by Dr. Dong is wrong. For example, the Court extended Dr. Dong's time to respond to MUSC's Motion for Summary Judgment from the deadline in the Scheduling Order, April 21, 2023, to May 1, 2023.¹¹ Moreover, Dr. Dong attended a hearing regarding MUSC's Motion for Summary Judgment; a hearing that lasted several hours, including considerable time for Dr. Dong to present argument to the Court. Additionally, the Court provided Dr. Dong with time to respond to and

¹⁰ Exhibits E and F. Additionally, on May 9, 2023, MUSC's counsel mailed the Notice of Trial and Notice of Hearing to Dr. Dong. (Exhibit G.)

¹¹ Exhibit H.

comment upon the proposed order granting MUSC summary judgment that MUSC's counsel prepared and submitted to the Court. Finally, Dr. Dong was provided time to provide, and did provide, this Motion.

For these reasons, the Court did not deny Dr. Dong due process and Dr. Dong was provided, and took advantage of, the multiple avenues the Court and the South Carolina Rules of Civil Procedure provided him an opportunity to be heard regarding MUSC's Motion for Summary Judgment.

IV. The Court Did Not Engage in a Pattern of Due Process Violations.

Dr. Dong asserts the Court engaged in a pattern of due process violations in the following respects: 1) "joined the Defendant in arguing and criticizing Dr. Dong for not submitting an affidavit;" 2) "granted the Defendant's motion for summary judgment without announcing its legal and factual bases in the open Court;" (emphasis in original) 3) "allowed the Defendant's attorney to write the order, in essence, giving the Defendant's attorney the authority to issue the order at will;" 4) "[w]ithout the Defendant's opposition and a hearing, the Court denied the motion for rehearing on the same day of issuing the final order granting Defendant's summary judgment as word by word written by Defendant's attorney;" 5) "the Court did not stay its order [the Order] and did not conduct an hearing but denied Dr. Dong's motion [Motion for Rehearing on Plaintiff's Response in Opposition to Defendant's Motion for Summary Judgment];" and 6) "repeatedly denying Dr. Dong's this and other motions without the Defendant's opposition."

A. Alleged Criticism for Failure to Provide an Affidavit in Opposition to MUSC's Summary Judgment Motion.

The record of the hearing held on May 26, 2023, will show both counsel for MUSC and the Court discussed and noted Dr. Dong's failure to provide an affidavit, or other admissible evidence, in opposition to MUSC's Motion for Summary Judgment. However, to the extent any

discussion of the issue on the record could be labeled as criticism of Dr. Dong, it does not constitute a violation of due process because any such discussion, regardless how it might be labeled or characterized, did not deprive Dr. Dong of due process (i.e., the right to be heard). To the contrary, any discussion of Dr. Dong's failure to provide an affidavit was part of the due process Dr. Dong was provided by way of a lengthy hearing regarding MUSC's Motion for Summary Judgment.

B. Failure of Court to Announce at the Summary Judgment Hearing the Legal or Factual Basis for Granting MUSC Summary Judgment.

The South Carolina Rules of Civil Procedure did not require the Court state either the legal or factual basis for granting MUSC summary judgment at the conclusion of the hearing on May 26, 2023. Notably, according to Rule 52(a), SCRCPP, the Court was not required to provide findings of fact or conclusions of law in the Order, including at the conclusion of the May 26, 2023, hearing. Rule 52(a), SCRCPP ("Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 and 56 or any other motion except as provided in Rule 41(b)."). *See Woodson v. DLI Properties, LLC*, 406 S.C. 517, 526-27, 753 S.E.2d 428, 433 (2014) (recognizing the language of Rule 52(a), SCRCPP, and holding "findings and conclusions" in a summary judgment order "are not required for appellate review. . .").

C. Allowing Counsel for MUSC to Prepare and Submit a Proposed Order Granting MUSC Summary Judgment.

Although Dr. Dong, as pro se litigant, may not be aware, it is commonplace and routine for the South Carolina circuit courts in civil actions to request the prevailing party on a motion to draft a proposed order for the Court's review, consideration and, most notably, modification. The Court's directive that MUSC's counsel provide the Court with a draft, proposed order is consistent with the common, routine practice in South Carolina circuit courts.

Moreover, the Court allowed Dr. Dong twenty-four days to submit his response, contentions or objections to the proposed order prepared by MUSC’s counsel, and Dr. Dong did respond on June 27, 2023, by filing the following: Motion for Rehearing on Plaintiff’s Response in Opposition to Defendant’s Motion for Summary Judgment (“Motion for Rehearing”) and Plaintiff’s Memorandum in Support of His Opposition to Summary Judgment.¹² Finally, the Order does not mirror the proposed order provided to the Court by MUSC’s counsel. To the contrary, the Court made its own substantive modifications to the Order before signing and filing it.¹³

D. Denying Dr. Dong’s Motion for Rehearing.

Dr. Dong disagreed with the Court denying his Motion for Rehearing. However, disagreeing the Court’s ruling does not equate to a denial of due process (i.e., the right to be heard). The Court provided Dr. Dong with due process – the process required by the South Carolina Rules of Civil Procedure and the South Carolina Supreme Court’s Order: Operation of the Trial Courts During the Coronavirus Emergency (As Amended effective February 4, 2022) (the “Coronavirus Order”) - with respect to his Motion for Rehearing. Neither the South Carolina Rules of Civil Procedure nor the Coronavirus Order required the Court hold a hearing as to Dr. Dong’s Motion for Rehearing or required MUSC file a response to the Motion for Rehearing.

E. Denying Dr. Dong’s Motion for Rehearing Without Holding a Hearing.

Pursuant to the Coronavirus Order, Section (d), the Court was not required to hold a hearing.

¹² The Court originally gave Dr. Dong fourteen days to comment on or respond to MUSC’s proposed order. However, the Court later extended Dr. Dong’s time to comment or respond by ten days. Exhibit I.

¹³ Compare Exhibit J to the Order.

F. Denying Dr. Dong's Motion for Rehearing, and Other Motions, Without Opposition Filed by MUSC.

Dr. Dong cites the following South Carolina cases for his contention that an unopposed motion is admitted and must be granted by the Court: Crowe v. AAA Construction Co., 387 S.C. 183, 692 S.E.2d 542 (Ct. App. 2010); Hanebrink v. Seale, 534 S.E.2d 700 (Ct. App. 2000); and Spartanburg County v. Riddle, 616 S.E.2d 415 (Ct. App. 2005). However, as an initial issue, a search for these cases using both the case names and the case citations indicates no such cases exist, or at least not with the case names and citations cited in the Motion.¹⁴

Regardless of any issues pertaining to the legal support for his assertion, Dr. Dong's contention is wrong. For example, as noted above, under Section (d) of the Coronavirus Order, the Court was not required to hold hearings. Moreover, Section (d) of the Coronavirus Order allows the Court to rule on a motion "without waiting for a return or other response from the opposing party" when the Court "determines the motion is without merit."

V. General Inaccuracies in Dr. Dong's Motion.

Although neither bearing directly on Dr. Dong's Motion nor MUSC's response to the Motion, Dr. Dong's Motion contains various inaccurate statements and contentions, in addition to the inaccuracies previously discussed above, and it is important to draw the Court's attention to some of the other, general inaccuracies in Dr. Dong's Motion. Some of the various inaccuracies, by way of example only, are briefly addressed below.

¹⁴ The quoted language in the parenthetical cited by Dr. Dong regarding Spartanburg County does not seem to appear in any reported, or unreported, South Carolina appellate case. Because Dr. Dong is a pro se litigant, he may have mis-cited the cases inadvertently due to a lack of understanding proper case citation. However, in their current citation form, counsel for MUSC could not locate the listed cases.

A. MUSC Filed Its Summary Judgment Motion Immediately After the Close of Discovery.

The Scheduling Order required each party complete depositions no later than February 28, 2023. Thereafter, and consistent with the Scheduling Order, MUSC filed its Motion for Summary Judgment on March 31, 2023. To the extent Dr. Dong contends there was some error regarding the timing of MUSC's Motion for Summary Judgment, Dr. Dong's contentions are misplaced and wrong.

B. The Court Set the Hearing Date for MUSC's Motion for Summary Judgment for Ten Days After Filing.

Like other allegations in Dr. Dong's Motion, this assertion is inaccurate. Consistent with the Scheduling Order, MUSC filed and served its Motion for Summary Judgment on March 31, 2023. The Scheduling Order allowed Dr. Dong until April 21, 2023, to file a response, and the Court extended the time for Dr. Dong to respond until May 1, 2023.¹⁵

Although the Scheduling Order allowed the Court to schedule a hearing regarding MUSC's Motion for Summary Judgment on or after April 27, 2023, the hearing did not occur until May 26, 2023. Dr. Dong's assertion in this Motion is inconsistent with the Scheduling Order and, more notable, inconsistent with the sequence of events reflected in the record.

C. Dr. Dong Did Not Receive Notice of the Initial Date for the Summary Judgment Hearing.

See Section III above.

D. Scheduling Order Contained a Short Time to Conduct Discovery.

The Scheduling Order shows this contention is wrong. Dr. Dong was provided with almost five months to take depositions, the only discovery allowed by the Scheduling Order. However, Dr. Dong did not take depositions.

¹⁵ Exhibit H.

E. Scheduling Order Restricted Dr. Dong's Ability to Take Depositions.

A review of the Scheduling Order demonstrates this assertion is inaccurate. Other than requiring Dr. Dong to take depositions of current MUSC employees at MUSC's counsel's office, no other restrictions were imposed, other than those requirements, restrictions and limitations contained in South Carolina Rules of Civil Procedure that apply to all civil lawsuits.

F. MUSC's Counsel Interfered with Dr. Dong Taking Depositions.

Exhibits K through P, generally, show MUSC's counsel did not interfere with Dr. Dong taking depositions. To the contrary, Dr. Dong's failure to take depositions was his decision.¹⁶

1. MUSC's Counsel Used Tactics to "Hamper" Dr. Dong.

Contrary to Dr. Dong's assertions in his Motion, Dr. Dong's failure to take depositions was by his choice and not the result of some "tactic" used by MUSC's counsel that deprived Dr. Dong of adequate time. This allegation by Dr. Dong is an example of Dr. Dong making allegations that are inconsistent with the record.

2. MUSC's Counsel's Protective Orders Deprived Dr. Dong of Adequate Time to Take Depositions.

Like other allegations in Dr. Dong's Motion, this allegation is wrong. On Tuesday, October 4, 2022, the Court held a status conference and, thereafter, on October 7, 2022, issued the Scheduling Order. The Scheduling Order required depositions be completed no later than Tuesday, February 28, 2023.

Between October 7, 2022, and February 28, 2023, Dr. Dong did not take a deposition. More notable as to Dr. Dong's allegation of interference is that during the same time, MUSC's counsel

¹⁶ On January 5, 2023, in response to an email from counsel for MUSC regarding rescheduling depositions of MUSC employees, Dr. Dong stated the following: "Please give me a a [sic] couple of days to look into my schedule in February. Thanks for the follow up." (Exhibit P.) However, there is no record of Dr. Dong making subsequent requests to MUSC's counsel to reschedule depositions.

neither requested nor obtained protection from the Court. To the contrary, since October 7, 2022, MUSC's counsel requested and received court protection on a single occasion, for the period of March 27, 2023, through April 12, 2023; protection that did not begin until almost 30 days after the time to take depositions expired. Consequently, based on the record, it is inaccurate that protection granted to MUSC's counsel interfered with Dr. Dong taking depositions.

CONCLUSION

For all the noted reasons, MUSC requests the Court deny Dr. Dong's Motion.

s/Bob J. Conley
Bob J. Conley
CLEVELAND & CONLEY, LLC
171 Church Street, Suite 310
Charleston, South Carolina 29401
Telephone: (843) 577-9626
bconley@clevelandlaborlaw.com

ATTORNEY FOR DEFENDANT

August 16, 2023
Charleston, South Carolina

CERTIFICATE OF SERVICE

This is to certify that on August 16, 2023, I caused to be served a copy of Defendant Medical University of South Carolina's Memorandum in Support of Motion for Summary Judgment by regular mail and by email, addressed as follows:

Jian-Yun Dong, M.D., Ph.D.
71 Delahow Street
Daniel Island, SC 29492
johny.dong@gmail.com
johny.dong@me.com

s/ Mark Dundervill
Mark Dundervill
Paralegal

Exhibit A

Bob Conley

From: Poswal, Chukwuzitelu <cposwal@sccourts.org>
Sent: Monday, July 17, 2023 3:37 PM
To: John Dong; John DONG; Bob Conley
Cc: Toal, Jean
Subject: Dong v. MUSC - 2016CP1006683 - Final Orders
Attachments: Dong - Filed SJ Order.pdf; Dong - Filed Form 4 - Motion for Rehearing.pdf

Good afternoon,

That attached Orders were signed and filed by the Court this afternoon:

- Order denying Plaintiff's Motion for Rehearing
- Order granting Defendant's Motion for Summary Judgment

These rulings conclude this case. As such, the trial scheduled to begin next week on July 24, 2023 will not be moving forward.

Best,

Zitel Poswal

Judicial Law Clerk
 South Carolina Court Administration
 1220 Senate Street, Suite 221
 Columbia, SC 29201
cposwal@sccourts.org

~~~~~ CONFIDENTIALITY NOTICE ~~~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

|                                       |   |                                |
|---------------------------------------|---|--------------------------------|
| STATE OF SOUTH CAROLINA               | ) | IN THE COURT OF COMMON PLEAS   |
|                                       | ) | FOR THE NINTH JUDICIAL CIRCUIT |
| COUNTY OF CHARLESTON                  | ) | CASE NO.: 2016-CP-10-06683     |
|                                       | ) |                                |
| Jian-Yun (John) Dong, M.D., Ph.D.,    | ) |                                |
|                                       | ) |                                |
| Plaintiff,                            | ) | <b>ORDER GRANTING SUMMARY</b>  |
|                                       | ) | <b>JUDGMENT</b>                |
| vs.                                   | ) |                                |
|                                       | ) |                                |
| Medical University of South Carolina, | ) |                                |
|                                       | ) |                                |
| Defendant.                            | ) |                                |

This case came before the Court for hearing on May 26, 2023, regarding Defendant Medical University of South Carolina's ("MUSC") Motion for Summary Judgment (the "Motion"). In general, MUSC asserted Plaintiff Jian-Yun (John) Dong, M.D., Ph.D. ("Dr. Dong") could not show MUSC breached a contract with him and/or, even if Dr. Dong could provide evidence of a breach, Dr. Dong could not present evidence of damage and Dr. Dong did not file his Complaint before the expiration of the applicable statute of limitations. Therefore, MUSC contended summary judgment is appropriate under Rule 56, SCRPC.

Bob J. Conley appeared at the hearing on behalf of MUSC. Dr. Dong appeared pro se. Based upon the record, submissions of the parties, and the arguments made by the parties at the hearing, the Court grants MUSC's Motion for Summary Judgment.

#### RELEVANT FACTS

Dr. Dong and MUSC had a long professional relationship beginning in 1998 when Dr. Dong left a position at the University of California San Francisco to become a tenured Professor of Microbiology and Immunology at MUSC. With MUSC's support, Dr. Dong was successful in obtaining several large grants under the auspices of the United States National Institutes of

Health and other funding agencies to support his research. At a certain point, Dr. Dong formed an association with GenPhar, Inc., a private biotech firm, to conduct research.

Contentious disagreements arose between Dr. Dong and MUSC. On May 3, 2010, Dr. Dong and MUSC entered into a written agreement (hereinafter, the "Agreement"); "A Final Separation Agreement between The Medical University of South Carolina, including its College of Medicine, and Dr. Jian-Yun Dong, Professor of Microbiology and Immunology." Dr. Dong, along with J. G. Reves, M.D. ("Dr. Reves"), MUSC's then Vice President for Medical Affairs and College of Medicine Dean, signed the Agreement on May 3, 2010.

The first two paragraphs of the Agreement contain the following key provisions:

By their entering into this final agreement, the University agrees that Dr. Dong's compensated appointment as Professor of Microbiology and Immunology will continue through March 31, 2012. Dr. Dong agrees to withdraw any and all pending or future grievance(s) for actions prior to the date of this agreement (above) and agrees that this final separation constitutes full settlement of any and all past grievances or claims that Dr. Dong may have against the University, its employees and against any and all of its affiliated entities up to and including the date of this agreement.

During the term of this final agreement, the University will continue Dr. Dong's employment, faculty appointment and make scheduled salary payments to him. In consideration, Dr. Dong acknowledges that this final agreement constitutes his irrevocable resignation of his tenured faculty appointment to be effective no later than March 31, 2012. Dr. Dong will retain his faculty appointment, tenure and title until the effective date of his resignation.

Dr. Dong and Dr. Reves signed the Agreement on May 3, 2010, in Dr. Reves' office. According to Dr. Dong, prior to signing the Agreement, he did not read the Agreement but, instead, Dr. Dong "scanned through" the Agreement. Dr. Dong acknowledged Dr. Reves did not pressure him to sign the Agreement.

The Agreement imposed obligations and benefits on Dr. Dong and MUSC. (A discussion of MUSC's obligations is contained in Section I.B.) According to Dr. Dong, MUSC breached the Agreement no later than June 17, 2010, no more than forty-five days after the Agreement was signed on May 3, 2010. Dr. Dong did not file his Complaint until September 2, 2014.

Approximately eighteen months after the Agreement was signed, on September 20, 2011, MUSC was notified that Dr. Dong had been indicted by the United States government for alleged misconduct in connection with his federal grants. On September 29, 2011, Dr. Dong was notified that he would be placed on administrative leave. None of his financial payments as set forth in the Agreement were affected by the administrative leave. On December 19, 2014, three months after filing the Complaint in this matter, Allen R. Holmes, attorney for Dr. Dong, and Annette Drachman, attorney for MUSC, filed a joint Motion for Stay which provided:

Plaintiff and Defendant move jointly to stay this matter until June 1, 2015, pending the criminal matters that have a direct correlation to this litigation.

This stay was granted. Over the years, this stay continued to be renewed, during which time Dr. Dong was tried and convicted in federal court, served a sentence in the federal penitentiary, and was ultimately released after service of his sentence. This case was ultimately dismissed and subsequently restored to the docket with a new civil action number. This matter was reactivated in 2019 with many disputes regarding pretrial discovery handled by several different circuit court judges. On September 20, 2022, the undersigned was assigned exclusive jurisdiction to hear and dispose of this case. On October 4, 2022, the undersigned conducted a status conference and discussed with both parties the establishment of the scheduling order. On October 7, 2022, the undersigned issued a Scheduling Order providing for deadlines for the scheduling of discovery



depositions, the filing of dispositive motions, and if necessary, the scheduling of mediation and trial.

Although this matter has had a lengthy and complicated procedural history, in the final analysis, this matter can be decided on straight forward principles of South Carolina law governing civil procedure and the law of contracts.

### LEGAL STANDARD

The purpose of summary judgment is to expedite disposition of cases that do not require the services of a fact finder. Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003). Summary judgment is proper where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Id. In determining whether summary judgment is appropriate, the evidence must be viewed in the light most favorable to the nonmoving party. Id. The party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact. Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991).

However, "[w]ith respect to an issue on which the nonmoving party bears the burden of proof, this initial responsibility may be discharged by 'showing' – that is, pointing out to the [trial] court – that there is absence of evidence to support the non-moving party's case." Baughman at 115, 410 S.E.2d at 544 (quoting Celotex Corporation v. Catrett, 477 U.S. 317, 325 (1986)). In that instance, the "moving party need not 'support its motion with affidavits or other similar materials negating the opponent's claim.'" Id. (quoting Celotex, 477 U.S. at 323) (emphasis in original). "Once the moving party has carried its initial burden, the opposing party must . . . 'do more than simply show that there is some metaphysical doubt as to the material facts,' and 'must come

forward with 'specific facts showing there is a genuine issue for trial.'" *Id.* (quoting Matsushita Electrical Ind. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87(1986))

### FINDINGS

MUSC met the burden imposed on it by Rule 56, SCRCP, and Baughman. However, Dr. Dong failed to oppose MUSC's Motion in any meaningful, sufficient manner, and Dr. Dong failed to meet the well-recognized requirements of Baughman and Rule 56, SCRCP. Notably, and important, Dr. Dong provided no deposition transcripts, affidavits, documents or other admissible, material evidence in opposition to MUSC's Motion.

"It is a fundamental rule that 'if the plaintiff relies solely upon the pleadings, files no counter-affidavits, and makes no factual showing in opposition to a motion for summary judgment, the [trial] court is required under Rule 56, to grant summary judgment, if, under the facts presented by the defendant, he [it] was entitled to judgment as a matter of law,'" Higgins v. Medical University of South Carolina, 326 S.C. 592, 598, 486 S.E.2d 269, 272 (Cl. App. 1997) (quoting Humana Hospital-Bayside v. Lightle, 305 S.C. 214, 216, 407 S.E.2d 637, 638 (1991)). As a pro se litigant, Dr. Dong's statements and argument at the hearing are not evidence in opposition to MUSC's Motion. See e.g., South Carolina Dept. of Transp. V. Thompson, 357 S.C. 101, 105, 590 S.E.2d 511, 513 (Cl. App. 2003) (recognizing "[a]rguments made by counsel are not evidence" and collecting other, similar cases).

#### I. Breach of Contract.

In his Complaint, Dr. Dong asserts a single cause of action for breach of contract. Dr. Dong's Complaint contains no other causes of action, and Dr. Dong's Complaint stands without amendment. Specifically, Dr. Dong alleges MUSC breached the Agreement.



Dr. Dong, along with Dr. Reyes, MUSC's then Vice President for Medical Affairs and College of Medicine Dean, signed the Agreement on May 3, 2010. Dr. Dong filed his Complaint on September 2, 2014.

In this action for breach of contract, the burden is on Dr. Dong to prove the contract [Agreement], its breach, and damages caused to him by such breach. Marr v. Lewis, 389 S.C. 216, 222, 697 S.E.2d 684, 688 (Ct. App. 2010). Additionally, the law imposes an obligation on Dr. Dong to file and serve his Complaint alleging breach of contract within the applicable statutes of limitation. As discussed below, Dr. Dong did not present sufficient material evidence to show MUSC breached the Agreement, to show damages accrued as to him regarding alleged breaches, or to show he filed and served the Complaint within the applicable three-year statute of limitations.

**A. Dr. Dong's Breach of Contract Claim is Barred by the Statute of Limitations.**

The statute of limitations for actions pursuant to contract is three years. Poly-Med, Inc. v. Novus Scientific PTE. LTD., 437 S.C. 343, 347, 878 S.E.2d 896, 898 (2022) (citing S.C. Code Ann. § 15-3-530(1) (2005)). Consequently, the statute of limitations applicable to Dr. Dong's allegations regarding the Agreement is three years. Applying the three-year statute of limitations to Dr. Dong's Complaint, any breach of the Agreement is time barred for several reasons.

First, Dr. Dong did not present material evidence any alleged breach occurred after September 1, 2011 – three years prior to Dr. Dong filing the Complaint. Second, Dr. Dong did not present material evidence any alleged breach first occurred after September 1, 2011, or occurred more than three years after he knew or should have known (i.e., discovered) a cause of action for breach of contract existed. See Poly-Med at 350, 878 S.E.2d at 899 (“The limitations period begins to run when a party knows or should know, through the exercise of due diligence, that a cause of action might exist.”) (quoting Anonymous Taxpayer v. S.C. Department of Revenue, 377 S.C.

425, 439, 661 S.E.2d 73, 80 (2008)). In Poly-Med, the South Carolina Supreme Court confirmed "South Carolina does not recognize the continuing breach theory in applying the statute of limitations to breach of contract claims." Poly-Med at 355, 878 S.E.2d at 902. Therefore, the three-year statute of limitations accrued as to each breach of the Agreement Dr. Dong alleges when Dr. Dong either knew, or should have known by exercising due diligence, MUSC breached the Agreement. For the reasons discussed below, Dr. Dong did not present material evidence to overcome application of the three-year statute of limitations and resulting bar of his claims.

**1. Dr. Dong Did Not Present Material Evidence MUSC First Breached the Agreement After September 1, 2011.**

According to Dr. Dong, MUSC breached the Agreement soon after entering into the Agreement. For example, Dr. Dong claims MUSC failed to meet the terms of the Agreement addressed in Section B.12 below. However, the Agreement required MUSC meet the terms of the Agreement in that respect within forty-five days of entering into the Agreement, on or before June 17, 2010. By way of further example, the Agreement required MUSC meet the terms of the Agreement addressed in Sections B.18 and B.20 below. However, the Agreement required MUSC meet the terms of the Agreement in those respects within thirty days of the effective date of the Agreement – no later than July 18, 2010.<sup>1</sup> Additionally, Dr. Dong testified "of course" MUSC breached the Agreement prior to March 25, 2011.

In summary, taking Dr. Dong's deposition testimony as true, Dr. Dong knew or should have known as early as June 17, 2010, that MUSC breached the Agreement. Therefore, the three-year statute of limitations accrued and began to run as to Dr. Dong's breach of contract claim as early as June 18, 2010, but no later than July 18, 2010. Moreover, Dr. Dong testified he believed

<sup>1</sup> The phrase "effective date" in the Agreement refers to June 18, 2010, because Dr. Dong had forty-five days from May 3, 2010, to revoke/rescind the Agreement. June 18, 2010, is day forty-six after May 3, 2010.

MUSC breached the Agreement prior to March 25, 2011. Regardless of which date the statute of limitations accrued as to Dr. Dong's claim MUSC breached the Agreement, Dr. Dong waiting until September 2, 2014, to file his Complaint results in his claim falling outside the statute of limitations. Consequently, Dr. Dong's breach of contract claim is time barred.

**2. Dr. Dong Either Knew of or Should Not Have Known of MUSC's Alleged Breaches of the Agreement Through the Exercise of Due Diligence Prior to September 2, 2011.**

See Section A.1.

**B. Dr. Dong Did Not Present Sufficient Evidence MUSC Breached the Agreement.**

"It is fundamental that, in the construction of the language of a contract, it is proper to read together the different provisions therein dealing with the same subject matter, and where possible, all the language used should be given a reasonable meaning." Blaffton Towne Ctr., LLC v. Gilicland-Prince, 412 S.C. 554, 569, 772 S.E.2d 882, 890 (Ct. App. 2015) (quoting Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC, 374 S.C. 483, 498-99, 649 S.E.2d 494, 502 (Ct. App. 2007)). "In construing and determining the effect of a written contract, the intention of the parties and the meaning are gathered primarily from the contents of the writing itself, or, as otherwise stated, from the four corners of the instrument." Silver v. Abstract Pools & Spas, Inc., 376 S.C. 585, 591, 658 S.E.2d 539, 542 (Ct. App. 2008) (quoting McPherson v. J.E. Siring & Co., 206 S.C. 183, 204, 33 S.E.2d 501, 509 (1945)). The Agreement is unambiguous and, therefore, the Court must enforce it "according to its terms regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully." S.C. Dep't of Transp. v. M & T Enterprises of Mt. Pleasant, LLC, 379 S.C. 645, 655, 667 S.E.2d 7, 13 (Ct. App. 2008).

It is a question of law for the Court whether the language of the Agreement is ambiguous. South Carolina Dep't of Natural Res. v. Town of McClellanville, 345 S.C. 617, 623, 550 S.E.2d



299, 302-03 (2001). After reviewing the Agreement, the Court finds the Agreement "is unambiguous, clear, and explicit, it must be construed according to the terms the parties have used, to be taken and understood in their plain, ordinary, and popular sense." C.A.N. Enters., Inc. v. South Carolina Health and Human Services Commission, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988). Because the Agreement is "clear and capable of legal construction," the Court's "only function is to interpret its lawful meaning and the intention of the parties as found within" the Agreement "and give effect to it." Ebert v. Ebert, 320 S.C. 331, 338, 465 S.E.2d 121, 125 (Ct. App. 1995). The Court is "without authority to alter" the unambiguous Agreement "by construction or to make" a new agreement for the parties." C.A.N. Enters., Inc., 296 S.C. at 378, 373 S.E.2d at 587.

The Court finds the Agreement contains unambiguous obligations as to both MUSC and Dr. Dong. However, Dr. Dong did not present sufficient evidence MUSC breached its obligations in the Agreement. MUSC's obligations, as contained in the Agreement, are each addressed sequentially below:

1. Continue "compensated appointment [of Dr. Dong] as Professor of Microbiology and Immunology will continue through March 31, 2012."

Dr. Dong presented no material evidence MUSC breached this provision in the Agreement. To the contrary, the material evidence in the record shows MUSC did not breach this provision of the Agreement. First, Dr. Dong acknowledged the payments were made to him by MUSC. Second, the letter from Mark Sothmann, Ph.D. ("Dr. Sothmann"), MUSC's then Vice President for Academic Affairs and Provost, to Dr. Dong on September 29, 2011, placed Dr. Dong on paid administrative leave, and MUSC continued to pay Dr. Dong. Third, there is no evidence Dr. Sothmann removed Dr. Dong's faculty appointments.

2. "[C]ontinue Dr. Dong's employment, faculty appointment and make scheduled salary payments to him [through March 31, 2012]."

See Section B.1 above. Additionally, Dr. Dong provided no evidence MUSC either failed to employ him until March 31, 2012, or make the scheduled salary payments to him through March 31, 2012. Additionally, Dr. Dong provided no evidence MUSC did not allow him to continue his faculty appointments, tenure, or title or that MUSC otherwise removed Dr. Dong's faculty appointments, tenure, or title until after March 31, 2012.

3. Allow Dr. Dong to "retain his faculty appointment, tenure and title until the effective date [March 31, 2012] of his resignation."

See Sections B.1 and B.2 above.

4. Allow Dr. Dong "forty-five (45) days after the execution of the agreement to revoke it [the Agreement]."

Dr. Dong provided no evidence MUSC breached the Agreement in respect to the revocation provision. Moreover, Dr. Dong acknowledged he did not request to revoke the Agreement, including within the forty-five-day period.

5. "[P]ay Dr. Dong his current level of monthly salary compensation through March 31, 2012. This amount will equal but not exceed his effective annual rate of pay (\$105,313.00/year) at November 1, 2009."

See Sections B.1 and B.2 above.

6. "Primary [MUSC faculty] appointment will be in the Department of Biochemistry with a secondary appointment in the Department of Microbiology and Immunology [through March 31, 2012]."

See Sections B.1 and B.2 above.

7. "Dr. Dong may use the title 'Director of Biotherapeutics and Vaccine Development' [through March 31, 2012]."

See Section B.1 and B.2 above. Additionally, Dr. Dong acknowledged no recollection of ever using the title. Moreover, Dr. Dong provided no material evidence MUSC told him to not use the title, or otherwise prohibited or prevented Dr. Dong's use of the title, through March 31, 2012.

8. "Any and all MUSC academic appointments are understood to be term limited, not to extend beyond March 31, 2012, or the date of his employment at another institution or company, whichever may come first."

See Sections B.1, B.2 and B.7 above.

9. "University [MUSC] will waive the direct charging of Dr. Dong's salary to any grants or contracts he receives during the period of this agreement. University [MUSC] will cost-share this expense in compliance with federal rules and regulation."

Dr. Dong provided no evidence MUSC breached the Agreement in respect to this provision.

10. "University [MUSC] will continue to provide customary fiscal support and oversight for research awards received through MUSC and the Division of Basic Science."

Dr. Dong provided no evidence MUSC breached the Agreement in respect to the provision requiring "customary fiscal support and oversight for research awards received through MUSC and the Division of Basic Science."

11. "University [MUSC] will pay Dr. Dong a sum of \$30,000 directly from the Chairman's budget in the Department of Microbiology and Immunology, to be paid no later than day 50 following the signing of this agreement."

According to Dr. Dong, the amount was paid by MUSC. Consequently, Dr. Dong acknowledged MUSC did not breach this provision in the Agreement.

12. "Mr. Scott Reid and Mr. Ronald Bycroft will attempt to locate an vectors or similar materials shared with other investigators for re-propagation by Dr. Dong and will attempt to locate written, enduring, hard-copy records which have been lost. This will occur

**in the 45-day window above. Any additional items located after that time of search will also be provided Dr. Dong."**

Dr. Dong provided no evidence MUSC, specifically its then employees Scott Reid and Ronald Bycroft, failed to "attempt" to "locate" the "vectors and similar materials." Moreover, Dr. Dong provided no evidence MUSC failed to provide him with "additional items located after that time of search" by Mr. Reid and Mr. Bycroft or evidence such "additional items" were located at all.

**13. "University [MUSC] agrees to relinquish any all active, commercially funded research awards received by Dr. Dong to Dr. Dong as permitted by the sponsor upon his resignation."**

Dr. Dong provided no evidence MUSC breached the Agreement in respect to the provision regarding relinquishment of "commercially funded research awards."

**14. "Active, federally funded research awards received will be relinquished [by MUSC] directly back to the federal agencies as obligated by the award agreements."**

Dr. Dong provided no evidence MUSC breached the Agreement in respect to the relinquishment provision.

**15. "Enduring grant materials, records, lab books and any other documentation required by law or University policy, will be secured, catalogued and maintained by MUSC, in the office of General Counsel." "Dr. Dong may make copies of his enduring grant materials, records, and lab books."**

Dr. Dong provided no evidence MUSC breached the Agreement in respect to this provision.

**16. "MUSC will cover Dr. Dong's legal fees and other costs in this matter, through a second one-time payment of \$20,000, also to be made to Dr. Dong no later than day 50 following the signing of this agreement."**



Dr. Dong provided no evidence MUSC breached the Agreement in respect to this provision. Dr. Dong acknowledged he does not have knowledge whether MUSC paid the \$20,000.00. Dr. Dong also acknowledged no recollection of incurring or claiming legal fees, including attorney fees, related to the Agreement because Dr. Dong did not have an attorney involved, and Dr. Dong did not believe he claimed the \$20,000.00 for legal fees and other costs.

- 17. "[A]ccess to campus facilities and to their use [by Dr. Dong] shall not be limited during his remaining years of appointment and employment."**

Dr. Dong provided no evidence MUSC breached the Agreement in respect to the access provision. Moreover, although a letter from Dr. Sothmann to Dr. Dong on September 29, 2011, placed Dr. Dong on paid administrative leave, Dr. Dong provided no evidence Dr. Sothmann prohibited him from accessing "campus facilities" or limited Dr. Dong's use of "campus facilities."

- 18. "[A]ny equipment purchased through extramural grants written by Dr. Dong as the sole PI and which was in Dr. Dong's laboratory at the time of relocation to the 700 sf laboratory space (including freezers and refrigerators also located nearby in equipment rooms of CSB) shall be relocated to GenPhar in 30 days of the effective date."**

MUSC acknowledges it never relocated "equipment" subject to this provision of the Agreement. However, as discussed in Section I above, to the extent Dr. Dong could have asserted a claim for breach regarding this provision, the three-year statute of limitation accrued thirty days after the effective date of the Agreement – no later than July 18, 2010. Therefore, the statute of limitations expired no later than July 18, 2013 – over a year before Dr. Dong filed his Complaint.

- 19. "Relocate at its [MUSC's] expenses such Exhibit B equipment as it [MUSC] may evaluate from the remaining Vector Core equipment which can be temporarily relocated without jeopardizing other on-going funded faculty researchers," including "equipment which Dr. Dong purchased from UCSF [University of California – San**



Francisco] and for grants on which Dr. Dong was the named original PI ["Primary Investigatory"] as permitted by law and University [MUSC] policy to the GenPhar location, provided that all certificates of occupancy, governmental permits and insurance coverages are in place for that site." "All equipment shall remain within the MUSC property accounting system."

Dr. Dong provided no evidence MUSC breached the Agreement in respect to this provision for several reasons. First, Dr. Dong provided no evidence he ever provided MUSC with an "Exhibit B" to the Agreement and no "Exhibit B" was attached to the Agreement. The Agreement required Dr. Dong provide MUSC with "Exhibit B" no later than "10 days after the date of entry into" the Agreement – by May 13, 2010. Second, Dr. Dong provided no evidence the "GenPhar location" received "certificates of occupancy, governmental permits, and insurance coverages," as required by the Agreement.

**20. "University [MUSC] agrees to relocate at its expense the equipment listed in Exhibit A."**

MUSC acknowledges it never relocated the equipment listed in Exhibit A to the Agreement. However, Dr. Dong provided no evidence the "GenPhar location" received "certificates of occupancy, governmental permits, and insurance coverages," as required by the Agreement. In the absence of such certificates, permits, and insurance coverages, the Agreement did not require MUSC relocate the equipment listed in Exhibit A to the Agreement. Additionally, as discussed in Section I above, to the extent Dr. Dong could have asserted a claim for breach regarding this provision, the three-year statute of limitation began to run after thirty days of the effective date of the Agreement – no later than July 18, 2010. Therefore, the statute of limitations expired no later than July 18, 2013 – over a year before Dr. Dong filed his Complaint.

In summary, Dr. Dong provided no substantive, admissible, and/or material evidence sufficient to support his allegations MUSC breached the Agreement.

### C. Dr. Dong Did Not Present Sufficient Evidence of Damages.

"The general rule is that for a breach of contract the defendant is liable for whatever damages follow as a natural consequence and a proximate result of such breach," Id. (quoting Fuller v. E. Fire & Cas. Ins. Co., 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962)). "In a breach of contract action, damages serve to place the nonbreaching party in the position he would have enjoyed had the contract been performed." Id. (quoting S.C. Fed. Sav. Bank v. Thornton-Crosby Dev. Co., 303 S.C. 74, 77, 399 S.E.2d 8, 10 (Ct. App. 1990)). "The measure of damages for breach of contract is the loss actually suffered by the contractee as the result of the breach," S.C. Fin. Corp. of Anderson v. W. Side Fin. Co., 236 S.C. 109, 122, 113 S.E.2d 329, 335 (1960).

"Generally, in order for damages to be recoverable, the evidence should be such as to enable the court or jury to determine the amount thereof with reasonable certainty or accuracy." Austin v. Stokes-Craven Holding Corp., 387 S.C. 22, 43, 691 S.E.2d 135, 146 (2010) (quoting Whisenant v. James Island Corp., 277 S.C. 10, 13, 281 S.E.2d 794, 796 (1981)). "While neither the existence, causation nor amount of damages can be left to conjecture, guess or speculation, proof with mathematical certainty of the amount of loss or damage is not required." Id. (quoting Whisenant, 277 S.C. at 13, 281 S.E.2d at 796).

Dr. Dong did not provide any material evidence of damages associated with any alleged breach of the Agreement by MUSC.

### CONCLUSION

Dr. Dong failed to present evidence sufficient to show: 1) he filed his Complaint within the applicable statute of limitations; 2) MUSC breached the Agreement; and/or 3) he incurred any damages because of alleged breaches of the Agreement. For all the noted reasons, the Court grants MUSC summary judgment as to Dr. Dong's claims and cause of action.

**IT IS SO ORDERED.**



Charleston Common Pleas

**Case Caption:** Jian Yun Dong M D , plaintiff, et al VS Medical University of South Carolina The  
**Case Number:** 2016CP1006683  
**Type:** Order/Summary Judgment

So Ordered

Jean H. Toal

Electronically signed on 2023-07-17 12:15:17 page 16 of 16

FORM 4

STATE OF SOUTH CAROLINA  
 COUNTY OF Charleston  
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2016CP1006683

Jian Yun Dong, M D et al  
 PLAINTIFF(S)

Medical University of South Carolina The  
 DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);  
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):  
☐ Affirmed; ☐ Reversed; ☐ Remanded;  
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiff's June 27, 2023 Motion for Rehearing of Defendant's Motion for Summary Judgment is DENIED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/17/2023 .

Dong, John M D Ph D for Dong, John M D Ph D  
 John Dong, M D  
 Dong, Jian Yun M D Ph D  
 Dong, John M D Ph D for Dong, John M D Ph D  
 Jian Yun Dong, M D

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

**Court Reporter:**

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

---



Charleston Common Pleas

**Case Caption:** Jian Yun Dong M D , plaintiff, et al VS Medical University of South Carolina The  
**Case Number:** 2016CP1006683  
**Type:** Order/Electronic Form 4

So Ordered

Jean H. Toal

Electronically signed on 2023-07-17 12:04:31 page 3 of 3



## Exhibit B

**Bob Conley**

---

**From:** John Dong <johny.dong@gmail.com>  
**Sent:** Monday, July 17, 2023 4:53 PM  
**To:** Poswal, Chukwuzitelu  
**Cc:** John DONG; Bob Conley; Toal, Jean  
**Subject:** Re: Dong v. MUSC - 2016CP1006683 - Final Orders

Thank you for the update.

When you have a judge who does not follow the law and is corrupted with bias, it destroys the very fiber - maintaining equal justice, and public perception of the fairness of the judicial system. I will give the appeal court a chance to correct the malfeasance.

Sincerely,

John Dong, M.D., Ph.D.

On Mon, Jul 17, 2023 at 3:37 PM Poswal, Chukwuzitelu <cposwal@sccourts.org> wrote:

Good afternoon,

That attached Orders were signed and filed by the Court this afternoon:

- Order denying Plaintiff's Motion for Rehearing
- Order granting Defendant's Motion for Summary Judgment

These rulings conclude this case. As such, the trial scheduled to begin next week on July 24, 2023 will not be moving forward.

Best,

**Zitel Poswal**

Judicial Law Clerk

South Carolina Court Administration

1220 Senate Street, Suite 221



Columbia, SC 29201

[cpowal@sccourts.org](mailto:cpowal@sccourts.org)



~~~~ CONFIDENTIALITY NOTICE ~~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

Exhibit C

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JIAN-YUN (JOHN) DONG, M.D., Ph.D.,

Plaintiff,

vs.

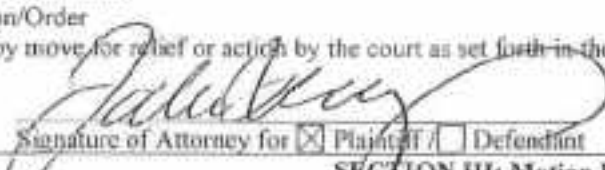
THE MEDICAL UNIVERSITY OF SOUTH
CAROLINA,

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 16-CP-10-06683

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: John Dong, pro se, Bar No. _____ Address: 71 Delahow Street, Charleston, SC 29492 Phone: 843-991-2332 Fax _____ E-mail: johnny.dong@me.com Other: _____	Defendant's Attorney: Bob J. Conley, Bar No. _____ Address: 171 Church Street, Suite 310 Charleston, SC 29401 Phone: 843-577-9626 Fax _____ E-mail: bconley@clevelandlaborlaw.com Other: _____																
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)																	
SECTION I: Hearing Information Nature of Motion: Motion to Amend Order under Rule 52(b) Estimated Time Needed: 1 hour Court Reporter Needed: ☐ YES ☒ NO																	
SECTION II: Motion/Order Type ☐ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☒ Plaintiff / ☐ Defendant July 27th, 2023 Date submitted																	
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$ _____ ☐ EXEMPT: (check reason) <table border="0" style="margin-left: 20px;"> <tr> <td>☐ Rule to Show Cause in Child or Spousal Support</td> <td>☐ State Agency v. Indigent Party</td> </tr> <tr> <td>☐ Domestic Abuse or Abuse and Neglect</td> <td>☐ Post-Conviction Relief</td> </tr> <tr> <td>☐ Indigent Status</td> <td>☐ Motion for Stay in Bankruptcy</td> </tr> <tr> <td>☐ Sexually Violent Predator Act</td> <td>☐ Motion for Execution (Rule 69, SCRPC)</td> </tr> <tr> <td colspan="2">☐ Proposed order submitted at request of the court; or,</td> </tr> <tr> <td colspan="2">reduced to writing from motion made in open court per judge's instructions</td> </tr> <tr> <td colspan="2">Name of Court Reporter: _____</td> </tr> <tr> <td colspan="2">☐ Other: _____</td> </tr> </table>		☐ Rule to Show Cause in Child or Spousal Support	☐ State Agency v. Indigent Party	☐ Domestic Abuse or Abuse and Neglect	☐ Post-Conviction Relief	☐ Indigent Status	☐ Motion for Stay in Bankruptcy	☐ Sexually Violent Predator Act	☐ Motion for Execution (Rule 69, SCRPC)	☐ Proposed order submitted at request of the court; or,		reduced to writing from motion made in open court per judge's instructions		Name of Court Reporter: _____		☐ Other: _____	
☐ Rule to Show Cause in Child or Spousal Support	☐ State Agency v. Indigent Party																
☐ Domestic Abuse or Abuse and Neglect	☐ Post-Conviction Relief																
☐ Indigent Status	☐ Motion for Stay in Bankruptcy																
☐ Sexually Violent Predator Act	☐ Motion for Execution (Rule 69, SCRPC)																
☐ Proposed order submitted at request of the court; or,																	
reduced to writing from motion made in open court per judge's instructions																	
Name of Court Reporter: _____																	
☐ Other: _____																	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____																
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____																	

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
John Dong, M.D., Ph.D.,)
- Plaintiff,)
v.)
The Medical University of South)
Carolina,)
- Defendant,)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-10-06683

**Motion for Amendment Order
Granting Defendant's
Summary Judgement**

FILED
2023 JUL 28 PM 4:10
CLERK OF COURT

Motion for Amendment under SCRCP 52(b)

Plaintiff, John Dong, appearing pro se, hereby respectfully submits this Motion for Amendment under South Carolina Rules of Civil Procedure (SCRCP) 52(b). Pursuant to SCRCP 52(b), this motion seeks an amendment to the order granting Defendant's Motion for Summary Judgement.

I. BACKGROUND

1. This case is about a Complaint filed by John Dong, M.D., Ph.D., the Plaintiff, against the Medical University of South Carolina (MUSC), the Defendant. The Complaint alleged, inter alia, that the Defendant breached a contract between Dr. Dong and MUSC after the chairman of the Department of Microbiology and Immunology, Dr. James Norris, illegally took over Dr. Dong's research operation, including the documents, protocols, technologies, grant funds, biological materials, and equipment for Dr. Norris' benefit. As a temporary solution to mitigate the damages done to Dr. Dong, Dr. Dong and MUSC reached an Agreement, which in

general, separates the conflicting parties in order to allow Dr. Dong to reinstate his research off-campus at a company established by the Foundation for Research and Development of MUSC and to continue his rest academic activities on campus at MUSC. Among the major terms of the Agreement, MUSC is to return all of Dr. Dong's research assets taken by Norris and transfer Dr. Dong's assets to the Company for him to conduct his research. By breaching the Agreement, MUSC caused severe damage to Dr. Dong's career and financial being.

2. During the discovery, Dr. Dong faithfully answered Defendant's Request for Documents and Interrogatories. However, Defendant blocked Dr. Dong's discovery by not answering Dr. Dong's interrogatory and refusing to produce the requested documents.

3. The Court repeatedly denied Dr. Dong's Motion to Compel without citing an authority. Instead, the Court granted Defendant's motion to limit the scope of Dr. Dong's discovery to only communications from or to Dr. Dong, Dr. Lanier, and Dr. Mark Southmann within a narrow time window.

4. While the issue of limiting Dr. Dong's discovery was under litigation, the retired Justice, Hon. Jean Toal, was appointed as the judge overseeing the case.

5. At the first status hearing, Judge Toal announced that her mission was "to have a speedy resolution" of the case and that the "case will not go to trial." Judge Toal further denied Dr. Dong's motions related to the unlawful restrictions of

Dr. Dong's discovery, accepted the Defendant's proposed timeline, and signed a scheduling order written by the Defendant's attorney.

6. The scheduling order proscribed a short timeline and specifically ordered Dr. Dong to be deposed at the date requested by Defendant's attorney. However, it only allowed Dr. Dong to take depositions of MUSC witnesses when they were "willing and available." The scheduling order further required that the deposition be taken in the Defendant's attorney's office so that the Defendant's attorney had full control over how and when Dr. Dong could depose the witnesses.

7. After deposing Dr. Dong, the Defendant's attorney deployed a series of tactics to hamper Dr. Dong from deposing MUSC witnesses. Dr. Dong's discovery was further complicated by his health issues and other issues with a higher priority. Dr. Dong filed Motions to extend the discovery timeline or for a protective order. The Court denied all of Dr. Dong's motions based on the standard that the motion violated the scheduling order. In contrast, the Court granted numerous Motions for protective orders filed by the Defendant's attorneys for "prescheduled vacations," which took away many weeks from Dr. Dong's time for scheduling the deposition. As a result, Dr. Dong could not take the deposition of a single witness until the deadline arbitrarily set by the Court.

8. The Defendant immediately filed a motion for summary judgment. Judge Toal set the hearing date exactly 10 days thereafter, the minimum required

time before the hearing. However, Judge Toal did not give any consideration for the time required for Dr. Dong to file a response, for which the minimally required 10 days before the hearing also applies. In addition, the court did not give notice to Dr. Dong about the hearing.

9. Dr. Dong only found out about the hearing through an email sent by Defendant's attorney only days before the hearing. Dr. Dong rushed to file a response in opposition and a motion for continuance. However, Dr. Dong did not have time to prepare the memorandum in support of his response. Furthermore, Dr. Dong found out that the hearing date conflicted with his scheduled eye surgeries to remove his advanced-stage cataracts to restore his vision. Dr. Dong immediately filed a motion for a protective order.

10. Instead of granting Dr. Dong's motion for a protective order based on the good cause standard, judge toll indicated through an email that the motion would be denied unless Dr. Dong could provide the medical record to prove the surgeries when necessary. Judge Toal further accused Dr. Dong of scheduling his eye surgeries to delay the due process and threatened to take action if Dr. Dong continued to submit motions in conflict with the scheduling order.

11. Dr. Dong timely submitted the detailed medical record documenting his advanced cataract, and the pre-surgery examinations and the scheduling of his

surgeries were completed before Defendant filed its motion for summary judgment and the set hearing date.

12. Judge Toal did not make a formal ruling on Dr. Dong's Motion for a Protective Order, which would require the Judge to continue the hearing and allow additional time for Dr. Dong to submit his Memorandum supporting his opposition to summary judgment and prepare for the hearing. Instead, Judge Toal sent an email a few days before the requested recovery time ended. Judge Toal made lengthy extrajudicial comments on Dr. Dong's health conditions based on her misunderstanding of medicine, such as Dr. Dong's advanced stage of type II diabetes "was not insulin-dependent" and "there was no retinal abnormality" to reiterate her opinion that Dr. Dong planned his eye surgeries in order to delay justice. At the end of the email, Judge Toal informed Dr. Dong that the hearing date was reset to one day after the required surgery recovery time, and he must be present at the hearing. Therefore, Dr. Dong did not have time to complete his Memorandum and prepare for the hearing due to his difficulties in reading and writing during his the eye surgeries and recovery period.

13. At the hearing, the court granted the Defendant's motion for summary judgment despite the fact that Defendant failed to present any evidence to prove the lack of genuine issue of material fact. The court did not announce the legal or factual basis for this decision but requested the Defendant's attorney to draft the order.

14. Pursuing rule 56(f), Dr. Dong submitted the memorandum supporting his opposition to Defendant's motion for summary judgment and his affidavit and filed a Motion for Rehearing of Defendant's motion for summary judgment in light of the new findings.

15. The Court did not stay its order as required by Rule 52(c) and did not conduct a hearing on Dr. Dong's motion. The Court finally denied Dr. Dong's motion without the Defendant raising an opposition and issued the final order granting summary judgment as written by the Defendant's attorney.

II. LEGAL ARGUMENT

A. Standard of Review

Under SCRCP 52(b), this Honorable Court has the discretion to amend a final judgment to correct any error or oversight. Rule 52(b) states: "Upon motion of a party filed not later than 10 days after entry of judgment, the court may amend its findings or make additional findings and may amend the judgment accordingly." The purpose of this rule is to ensure that justice is served and to rectify any mistakes or omissions in the original judgment.

The courts have long established that it is imperative for the judiciary to faithfully interpret and apply the law as it is written. The role of a judge is not to

legislate from the bench or impose personal beliefs but rather to faithfully adhere to the text of the law and the intent of the legislature.

The Supreme Court of the United States has consistently emphasized: "The first and fundamental rule in the interpretation of statutes is to ascertain the intention of the legislature." *United States v. Detroit Timber & Lumber Co.* (1906).

The South Carolina Court of Appeals has underscored the significance of giving effect to the plain language of statutes. The Court stated that "when the statutory language is plain and unambiguous, there is no room for judicial construction or interpretation, and the court must apply the statute according to its literal meaning," and "the cardinal rule of statutory construction is to ascertain and effectuate the intention of the legislature." *State v. Smith*, 322 S.C. 225 (Ct. App. 1996); *First Union Nat'l Bank v. Soden*, 328 S.C. 525 (Ct. App. 1997).

B. Grounds for Amendment

1. Misinterpretation of Law:

The statute governs the summary judgment, SCRCP Rule 56 (c) states:

The [summary] judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. (emphasis added)

The Two-pronged tests for summary judgment are that 1) the party seeking summary judgment must provide sufficient evidence, including depositions, answers to interrogatories, and admissions file, together with the affidavits; and 2) the evidence must prove there is no genuine issue as to any material facts.

In this case, Defendant failed both of these tests. First, Defendant produced no witness, deposition, interrogatories, admission, or affidavits to support its motion. Secondly, instead of showing no genuine issue of fact, Defendant raised two issues of facts as the basis for the summary judgment: if the facts support the statute of limitations and if Plaintiff provided sufficient evidence to prove the breach of the contract by Defendant. By definition, these issues are questions of material fact and must be determined by a jury.

Furthermore, there are numerous issues of material fact to be decided. Therefore, the Defendant's Motion for Summary did not meet the essential elements of the statutes.

Therefore, the Court granted the Defendant's Motion for Summary Judgement in violation of the statutes and therefore is invalid.

2. Violation of Due Process

The Supreme Court of the United States has long established:

"The essential elements of due process of law are notice and opportunity to defend." *Simon v. Craft*, 21 S. Ct. 836 (1901).

"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

Under these Commands, the Appellate Courts emphasized that "notice and an opportunity to be heard are the hallmarks of due process." See *Doe v. Chao*, 306 F.3d 170, 182 (4th Cir. 2002). Because of the Constitutional importance of insuring proper notice, courts will not forgive improper notice even where a party receives the actual notice, as The Supreme Court addressed in *Jones v. Flowers*, 126 S. Ct. 1708 (2006).

In this case, the Court violated Dr. Dong's due process rights by failing to provide proper notice and depriving his opportunity to be heard. Dr. Dong learned about the hearing date from an email sent by the Judge's law clerk. The email was sent three days before the hearing, which was set at only one day after his protected period due to eye surgeries. Therefore, Dr. Dong did not have time to complete his Memorandum in support of his Response in opposition to Defendant's Motion for summary judgment and Affidavit or be prepared for the hearing. Such "notice" by

email was legally and constitutionally insufficient, and without allowing Dr. Dong sufficient time to prepare for the hearing, thus deprived his due process right to be heard. Furthermore, Dr. Dong filed the motion for continuance pursuant to Rule 56(f) before the hearing and raised the motion at the hearing. The Court denied both motions without Defendant's opposition and without stating a legal or factual basis.

3. Pattern of Due Process Violation

SCRCF Rule 56(c) requires the party seeking summary judgment to prove with "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits that there is no genuine issue as to any material fact."

Rule 56(f) specifically states:

"When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such order as is just."

At the hearing, despite the fact that Defendant failed its burden to prove the lack of genuine issues of fact, the Court joined the Defendant in arguing and criticizing Dr. Dong for not submitting an affidavit (It was because he was not allowed the time to complete his Memorandum and be prepared for the hearing.) and

granted the Defendant's motion for summary judgment without announcing its legal and factual bases in the open Court. Furthermore, the Court allowed the Defendant's attorney to write the order, in essence, giving the Defendant's attorney the authority to issue the order at will.

For these reasons alone, the Order violated the statutes governing summary judgment and Dr. Dong's right to due process.

Pursuant to Rule 56(f), Dr. Dong submitted his Memorandum in Support of his Opposition to Defendant's motion for summary judgment and an affidavit. Based on these newly submitted documents, Dr. Dong filed a Motion to Rehear the Defendant's motion for summary judgment and requested a hearing on the Motion.

Without the Defendant's opposition and a hearing, the Court denied the motion for rehearing on the same day of issuing the final order granting Defendant's summary judgment as word by word written by Defendant's attorney. Therefore, the Court erred in violation of the statutes and want of due process.

First, under Rule 52(c), a judgment is stayed once a party submits a motion to alter or amend a court's decision. In this instance, as well as in several similar instances previously, the Court did not stay its order and did

not conduct a hearing but denied Dr. Dong's motion. Therefore, the Court deprived Dr. Dong's due process right to be heard.

The Due Process Clause of the Fifth Amendment to the Constitution assures Dr. Dong's right to be heard. Depriving Dr. Dong's right to be heard is a structural error.

Second, the court and the judge are obligated to be fair and impartial and apply the law equally under the Constitution. Violation of such obligation removes the Court's legitimacy in adjudicating a case.

The Court is not a party and cannot raise a defense *sua sponte* for the Defendant. The Supreme Court of the United States have long established the principle: courts have the authority to grant unopposed motions when the opposing party fails to respond or does not raise any objections. The Court emphasized that the responsibility lies with the court to "take the consequences" and grant the unopposed motion if it is meritorious and supported by the applicable law. In *Link v. Wabash Railroad Co.*, 370 U.S. 626 (1962); "A motion unopposed and uncontroverted is ordinarily deemed to have been admitted and should be granted without delay." In *Smith v. Sperling*, 354 U.S. 91 (1957).

The South Carolina Court of Appeals held that when a motion is unopposed, it is considered admitted, and the court may grant the relief sought in the motion

without further proceedings. *Crowe v. AAA Constr. Co.*, 387 S.C. 183, 692 S.E.2d 542 (Ct. App. 2010).

The South Carolina Court of Appeals emphasized that when a motion is unopposed, it is deemed admitted and may be granted, provided it is supported by the law and facts. *Hanebrink v. Seale*, 534 S.E.2d 700 (S.C. Ct. App. 2000); also see *Spartanburg County v. Riddle*, 616 S.E.2d 415 (S.C. Ct. App. 2005), (Stating “unopposed motions may be granted without a formal hearing when the record sufficiently supports the requested relief.”)

When a party fails to raise a meaningful opposition, the Court has the authority to grant the unopposed motion because the fact and the argument presented are so overwhelmingly in favor of the moving party.

Therefore, this Court’s repeatedly denying Dr. Dong’s this and other motions without the Defendant’s opposition is an abuse of discretion and a breach of the Court’s constitutional obligation to be neutral and violated Dr. Dong’s rights to due process as assured by the Fifth Amendment to the Constitution.

III. PRAYER FOR RELIEF

In light of the foregoing, Plaintiff respectfully requests that this Honorable Court grants the following relief:

1. Grant the unopposed motion for rehearing based on the newly filed Memorandum supporting Plaintiff's Opposition to Defendant's Motion for Summary Judgement.

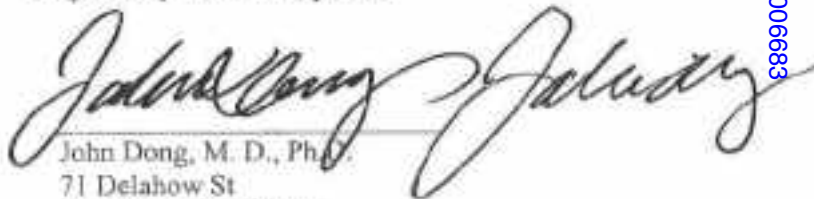
2. Alter and amend the order granting Defendant's Summary Judgement after the rehearing based on the law and the fact presented at the hearing to correct the errors and oversights identified in this motion;

IV. CONCLUSION

For the reasons stated above and in accordance with SCRPC 52(b), Plaintiff respectfully requests the honorable Court to alter and amend its Order granting Defendant's motion for summary judgment to correct the errors and oversights identified herein in the interest of justice.

Respectfully submitted, pro se,

July 27, 2023
Charleston, South Carolina



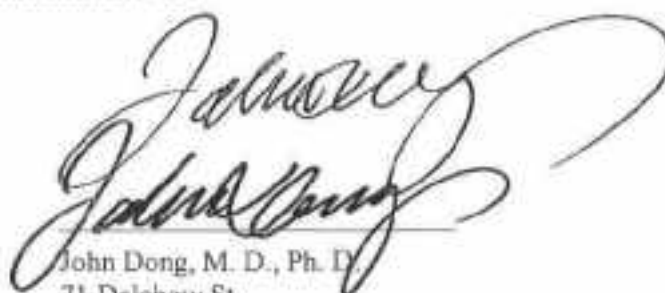
John Dong, M. D., Ph.D.
71 Delahow St
Charleston, SC 29492
Email: johnv.dong@gmail.com
[REDACTED]

- Attachment:**
1. Envelop used to sending Notice Entry dated on July 19th, and received on July 21, 2023
 2. Notice of Entry of Order Denying Motion for Rehearing
 3. Notice of Entry of Order Granting Summary Judgement

CERTIFICATE OF SERVICE

This is to certify that I have on this 27th day of July 2023, served a copy of the Plaintiff's Motion for Amendment Order Granting Motion for Summary Judgement under SCRCP 52(b) to the ECF system, which will notify all parties electronically. In addition, a copy of this motion is served via Email at bconley@clevelandlaborlaw.com and United States Mail Services addressed to the following:

Bob J. Conley, Esq.
Cleveland & Conley LLC
171 Church Street, suite 310
Charleston, South Carolina 29401



John Dong, M. D., Ph. D.
71 Delahow St
Charleston, SC 29492
Email: johnv.dong@gmail.com

[REDACTED]

FILED
2023 JUL 28 PM 4:31
JUL 28 2023
CLERK OF COURT
JP

Exhibits



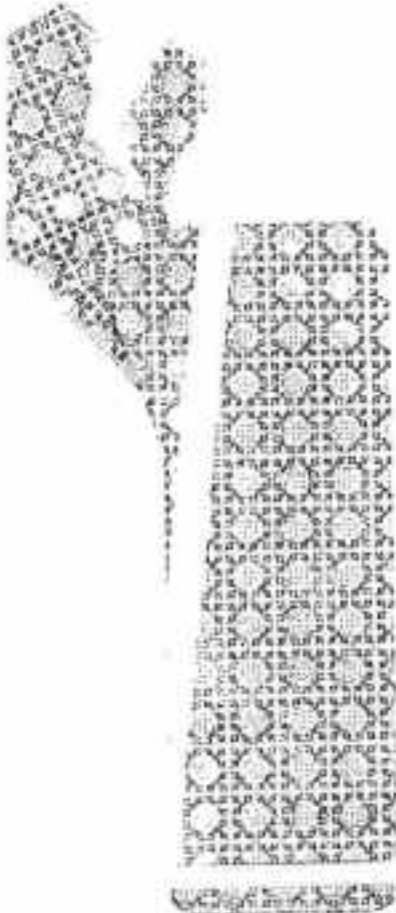
FXJ-SMB 29492

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Printed
on Demand
Postage



JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & C.E.
188 BROAD STREET, SUITE 108
CHARLESTON, SC 29401-2258
RETURN SERVICE REQUESTED



clerkofcourt.charlestoncounty.org

Dong, John M D Ph D
71 Delahow St
Charleston, SC 29492

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Order/Rehearing of Dfs Motion for Summary Judgment is Denied

CASE NO: 2016CP1006683

Jian Yun Dong M D , plaiatiff, et al VS Medical University of South Carolina The

This judgment was entered on the 17th day of July, 2023, and notice mailed first class on Tuesday, July 18, 2023, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at <http://clerkofcourt.charlestoncounty.org> or obtain a copy in person at the Clerk of Court's Office during regular Charleston County business hours.

ELECTRONICALLY FILED - 2023 Aug 16 4:04 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1006683

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & S.S.
100 BROAD STREET, SUITE 100
CHARLESTON, SC 29401-3308
RETURN SERVICE REQUESTED



clerkofcourt.charlestoncounty.org

75



DONG, JOHN M D PH D
71 DELAHOW ST
DANIEL ISLAND SC 29492-7957

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Order Granting Motion for Summary Judgment

CASE NO: 2016CP1006683

Jian Yun Dong M D , plaintiff, et al VS Medical University of South Carolina The

This judgment was entered on the 17th day of July, 2023, and notice mailed first class on Tuesday, July 18, 2023, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at <http://clerkofcourt.charlestoncounty.org> or obtain a copy in person at the Clerk of Court's Office during regular Charleston County business hours.

Exhibit D

Bob Conley

From: My Cases Notification <Notifications@Court-pa.us.org>
Sent: Friday, July 28, 2023 4:35 PM
To: Bob Conley
Subject: My Cases Notification

List of notifications for User Account: LARIAT1

[2016CP1006683](#)

Jian Yun Dong M.D., plaintiff, et al VS Medical University of South Carolina The

MOTION FOR AMENDMENT ORDER GRANTING SUMMARY JUDGMENT FILED ON 07/25/2023



If you do not wish to continue receiving notifications for a case, remove it from your My Cases list.

Note: This is an auto-generated e-mail sent from an unmonitored account. Therefore, please do not reply to this e-mail.

Exhibit E

Bob Conley

From: Poswal, Chukwuzitelu <cposwal@sccourts.org>
Sent: Monday, May 22, 2023 12:39 PM
To: John Dong; Bob Conley
Cc: Toal, Jean; Mark Dundervill
Subject: RE: Dong v. MUSC - 2016CP1006683 - May 11th Hearing and Other Timelines

Good afternoon,

Please be reminded that a motion for summary judgment hearing has been set in this matter for this Friday, May 26, 2023, at 10:00 am. The hearing will take place at the Charleston County Judicial Center in courtroom 4B.

Best,

Zitel Poswal

Judicial Law Clerk
 South Carolina Court Administration
 1220 Senate Street, Suite 221
 Columbia, SC 29201
 cposwal@sccourts.org


From: Poswal, Chukwuzitelu
Sent: Friday, May 5, 2023 5:24 PM
To: 'John Dong' <johnny.dong@gmail.com>; Bob Conley <bconley@clevelandlaborlaw.com>
Cc: Toal, Jean <JToal@sccourts.org>; Mark Dundervill <mdundervill@clevelandlaborlaw.com>
Subject: Dong v. MUSC - 2016CP1006683 - May 11th Hearing and Other Timelines

Good afternoon,

Please see the message below from Chief Justice Toal:

At a future time, I will respond more fully to Dr. Dong's May 1, 2023 Motion for Protective Order requesting delay of all proceedings in this matter from May 8, 2023 through May 25, 2023. This motion was made after the Defendant's pending Motion for Summary Judgment was set for a hearing for May 11, 2023 at the Charleston County Courthouse. Plaintiff Dr. Dong was notified of this hearing, as was Mr. Bob Conley, counsel for Defendant MUSC on April 20, 2023. This notification was made by email and by electronically filing a Notice of Hearing at 3:24 pm on April 20th. Thereafter, on April 24, 2023, Dr. Dong scheduled a series of appointments with Carolina Eye Care including an appointment for cataract surgery for May 9, 2023 and follow-up visits for May 10, 2023 and May 11, 2023. Thereafter, on May 1, 2023, Dr. Dong moved for a protective order from legal proceedings from May 8, 2023 through May 25, 2023. This motion was accompanied by medical records from Carolina Eyecare Physicians. On page three of the medical records it is stated that Dr. Dong has "Diabetes, Type II, No Ocular Complications, Not Insulin Dependent." Dr. Dong has deliberately scheduled medical appointments without first making any motion to continue previously scheduled proceedings. At a later date I will consider whether further actions on my part are warranted regarding this violation of my Order setting the hearing

on Defendant's Motion for Summary Judgement. I am cancelling the May 11, 2023 hearing and have so notified the Charleston Clerk of Court. This hearing will be rescheduled for 10:00 am on May 26, 2023, at the Charleston County Judicial Center. The specific courtroom has yet to be assigned, and it may be that the hearing will take place at the Charleston County Historic Courthouse, which is located at the corner of Broad and Meeting streets, adjacent to the Charleston County Judicial Center and a part of the judicial complex. Additionally, I am setting this matter for trial, if needed, for the week of July 24, 2023, at the Charleston County Judicial Center, beginning at 9:30 am with jury qualification. I will not entertain any motions for continuance of these proceedings.

Respectfully,
Jean H. Toal

Zitel Poswal

Judicial Law Clerk
South Carolina Court Administration
1220 Senate Street, Suite 221
Columbia, SC 29201
cposwal@sccourts.org

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# Exhibit F

**Bob Conley**

---

**From:** John Dong <johnny.dong@gmail.com>  
**Sent:** Thursday, May 25, 2023 10:47 AM  
**To:** Poswal, Chukwuzitelu  
**Cc:** Bob Conley; Toal, Jean; Mark Dundervill  
**Subject:** Re: Dong v. MUSC - 2016CP1006683 - May 11th Hearing and Other Timelines

Ms. Poswal,

I just read this email. The email I received on May 5th was neither an order nor a ruling, and it was not entered into the record. It looked like an extra-judicial opinion. It certainly is not a proper notice under the SCRCF. Justice Toal denied my request for electronic filing using the ECF. Therefore, I do not get electronic notices, but normally get them by US mail. However, I have not received any notice, and the record also does not show that a notice has been sent.

Furthermore, I did not receive any of the correspondence between Defendant and the Court in setting up the timelines without a status conference with both parties' presence.

Yes, Justice Toal does have the authority to set and change the date of a hearing, but notice should be sent out in advance to allow parties to be prepared and find out if there is a schedule conflict. Even more importantly, the Court should remain neutral and treat both parties equally.

Respectfully,  
 John Dong

On Wed, May 24, 2023 at 10:13 AM Poswal, Chukwuzitelu <cposwal@sccourts.org> wrote:

Good morning, Dr. Dong:

You received notice of this hearing via email on May 5, 2023, as well as the Court's filing on May 8, 2023. Justice Toal rescheduled this hearing at her discretion, as she is permitted to. As you have been correctly and timely notified, Justice Toal expects all parties to be present at Friday's hearing.

Best,

**Zitel Poswal**

Judicial Law Clerk

South Carolina Court Administration

1220 Senate Street, Suite 221

Columbia, SC 29201

[cpowal@sccourts.org](mailto:cpowal@sccourts.org)

From: John Dong <[johny.dong@gmail.com](mailto:johny.dong@gmail.com)>

Sent: Tuesday, May 23, 2023 1:58 PM

To: Poswal, Chukwuzitelu <[cpowal@sccourts.org](mailto:cpowal@sccourts.org)>

Cc: Bob Conley <[bconley@clevelandlaborlaw.com](mailto:bconley@clevelandlaborlaw.com)>; Toal, Jean <[JToal@sccourts.org](mailto:JToal@sccourts.org)>; Mark Dundervill <[mdundervill@clevelandlaborlaw.com](mailto:mdundervill@clevelandlaborlaw.com)>

Subject: Re: Dong v. MUSC - 2016CP1006683 - May 11th Hearing and Other Timelines

\*\*\* **EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. \*\*\*

Dear Justice Toal:

I have not received any court notice for the hearing or any status hearing on how this date was set. I did receive an email and a mail from the Defendant's attorney stating the dates were entered by the Court, which shows somehow the defendant's attorneys are in control of the court proceedings. Once again, I have not received



any filing or communications with the Court from the defendant's attorney, and the Court has not yet addressed any of the issues I raised in my letters to the Court, as the Court promised to address the issues "more fully" "at a future time."

I had my surgeries done and am still in recovery, the Court, once again, deprived my due process rights by setting a short timeline and not allowing me sufficient time to respond or prepare for the defendant's motion.

Respectfully,

John Dong

On Mon, May 22, 2023 at 12:38 PM Poswal, Chukwuzitelu <[cposwal@sccourts.org](mailto:cposwal@sccourts.org)> wrote:

Good afternoon,

Please be reminded that a motion for summary judgment hearing has been set in this matter for this Friday, May 26, 2023, at 10:00 am. The hearing will take place at the Charleston County Judicial Center in courtroom 4B.

Best,

**Zitel Poswal**

Judicial Law Clerk

South Carolina Court Administration

1220 Senate Street, Suite 221

Columbia, SC 29201

[cposwal@sccourts.org](mailto:cposwal@sccourts.org)

**From:** Poswal, Chukwuzitelu  
**Sent:** Friday, May 5, 2023 5:24 PM  
**To:** 'John Dong' <[johny.dong@gmail.com](mailto:johny.dong@gmail.com)>; Bob Conley <[bconley@clevelandlaborlaw.com](mailto:bconley@clevelandlaborlaw.com)>  
**Cc:** Toal, Jean <[JToal@sccourts.org](mailto:JToal@sccourts.org)>; Mark Dundervill <[mdundervill@clevelandlaborlaw.com](mailto:mdundervill@clevelandlaborlaw.com)>  
**Subject:** Dong v. MUSC - 2016CP1006683 - May 11th Hearing and Other Timelines

Good afternoon,

Please see the message below from Chief Justice Toal:

At a future time, I will respond more fully to Dr. Dong's May 1, 2023 Motion for Protective Order requesting delay of all proceedings in this matter from May 8, 2023 through May 25, 2023. This motion was made after the Defendant's pending Motion for Summary Judgment was set for a hearing for May 11, 2023 at the Charleston County Courthouse. Plaintiff Dr. Dong was notified of this hearing, as was Mr. Bob Conley, counsel for Defendant MUSC on April 20, 2023. This notification was made by email and by electronically filing a Notice of Hearing at 3:24 pm on April 20th. Thereafter, on April 24, 2023, Dr. Dong scheduled a series of appointments with Carolina Eye Care including an appointment for cataract surgery for May 9, 2023 and follow-up visits for May 10, 2023 and May 11, 2023. Thereafter, on May 1, 2023, Dr. Dong moved for a protective order from legal proceedings from May 8, 2023 through May 25, 2023. This motion was accompanied by medical records from Carolina Eyecare Physicians. On page three of the medical records it is stated that Dr. Dong has "Diabetes, Type II, No Ocular Complications, Not Insulin Dependent." Dr. Dong has deliberately scheduled medical appointments without first making any motion to continue previously scheduled proceedings. At a later date I will consider whether further actions on my part are warranted regarding this violation of my Order setting the hearing on Defendant's Motion for Summary Judgement. I am cancelling the May 11, 2023 hearing and have so notified the Charleston Clerk of Court. This hearing will be rescheduled for 10:00 am on May 26, 2023, at the Charleston County Judicial Center. The specific courtroom has yet to be assigned, and it may be that the hearing will take place at the Charleston County Historic Courthouse, which is located at the corner of Broad and Meeting streets, adjacent to the Charleston County Judicial Center and a part of the judicial complex. Additionally, I am setting this matter for trial, if needed, for the week of July 24, 2023, at the Charleston County Judicial Center, beginning at 9:30 am with jury qualification. I will not entertain any motions for continuance of these proceedings.

Respectfully,

Jean H. Toal

**Zitel Poswal**

Judicial Law Clerk

South Carolina Court Administration

1220 Senate Street, Suite 221

Columbia, SC 29201

[cposwal@sccourts.org](mailto:cposwal@sccourts.org)

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Exhibit G

CLEVELAND & CONLEY, L.L.C.
LABOR AND EMPLOYMENT EXPERTS

One Seventy One Church Street, Suite 310
Charleston, South Carolina 29401
WWW.CLEVELANDCONLEY.COM

Caroline Warren Cleveland †
Bob J. Conley

*CERTIFIED SPECIALIST,
LIFE & INTENSIVE CARE

Tel: (843) 577-6675
Fax: (843) 577-6672

May 9, 2023

Jian-Yun (John) Dong, M.D., Ph.D.
71 Delahoy Street
Charleston, South Carolina 29492

Re: *Jian Yun (John) Dong, M.D., Ph.D. v. The Medical University of South Carolina*
Case No.: 2016-CP-10-06683

Dear Dr. Dong:

In connection to the above named matter, enclosed please find a Notice of Trial and a Notice of Hearing, which were filed on May 8, 2023.

Sincerely,

CLEVELAND & CONLEY, L.L.C.


Bob J. Conley

BJC/md

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Jian Yun Dong, M.D., Ph.D.,)
)
Plaintiff,)
)
v.)
)
Medical University of South Carolina,)
)
Defendant.)
)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-10-06683

NOTICE OF HEARING

A hearing has been set in the above-captioned action for 11:00 am on May 26, 2023, at the Charleston County Judicial Center Complex.

[JUDGE'S SIGNATURE PAGE FOLLOWS]



Charleston Common Pleas

Case Caption: Jian Yun Dong M.D., plaintiff, et al VS Medical University of South
Carolina The
Case Number: 2016CP1006683
Type: Notice/Notice of Hearing

So Ordered

Jean H. Toal

Electronically signed on 2023-05-08 08:32:54 page 2 of 2

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Jian Yan Dang, M.D., Ph.D.,)
)
Plaintiff,)
)
v.)
)
Medical University of South Carolina.)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-10-06683

NOTICE OF TRIAL

A trial has been set in the above-captioned action beginning at 9:30 am on July 24, 2023,
at the Charleston County Judicial Center.

[JUDGE'S SIGNATURE PAGE FOLLOWS]



Charleston Common Pleas

Case Caption: Jian Yun Dong M.D., plaintiff, et al VS Medical University of South Carolina The
Case Number: 2016CP1006683
Type: Notice/Order

So Ordered.

Jean H. Tual

Electronically signed on 2023 05 03 09:48:07 page 2 of 2

Exhibit H

Bob Conley

From: Poswal, Chukwuzitelu <cposwal@sccourts.org>
Sent: Monday, April 24, 2023 3:07 PM
To: John Dong; Mark Dundervill
Cc: Bob Conley; Toal, Jean
Subject: RE: Dong - Motion for Summary Judgment

Good afternoon, Dr. Dong,

On behalf of Chief Justice Toal, your attempt to move for summary judgment in your Motion for Extended Time for Response comes too late, per the Court's Scheduling Order, and will not be considered. However, you will have until May 1, 2023 to file a response to MUSC's Motion for Summary Judgment. If Mr. Conley wishes to respond, he may do so no later than May 8, 2023.

Best,

Zitel Poswal

Judicial Law Clerk
 South Carolina Court Administration
 1220 Senate Street, Suite 221
 Columbia, SC 29201
 cposwal@sccourts.org

From: John Dong <johnny.dong@gmail.com>
Sent: Saturday, April 22, 2023 6:36 PM
To: Mark Dundervill <mdundervill@clevelandlaborlaw.com>
Cc: Poswal, Chukwuzitelu <cposwal@sccourts.org>; Bob Conley <bconley@clevelandlaborlaw.com>
Subject: Re: Dong - Motion for Summary Judgment

*** **EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Mr. Conley,

Please find the Plaintiff's Opposition to MUSC's Motion for Summary Judgement attached.

I will keep the option to file a memorandum within the next few days.

I have also filed a motion for an extension of time for the response.

Sincerely,
John Dong, M.D., Ph.D.

On Fri, Mar 31, 2023 at 11:59 AM Mark Dundervill <mdundervill@clevelandlaborlaw.com> wrote:

Good afternoon, Ms. Poswal, I hope you are doing well. Please see attached, Defendant Medical University of South Carolina's Motion for Summary Judgement and Memorandum in support of Summary Judgment. These documents were filed today, **March 31, 2023**, in the Court of Common Pleas for the Ninth Judicial Circuit. Please do not hesitate to reach out if you have any questions or concerns.

Thank you,

Mark Dundervill

Paralegal

CLEVELAND & CONLEY, L.L.C.

171 Church Street, Suite 310

Charleston, South Carolina 29401

Telephone: (843) 577-9526

Facsimile: (843) 577-6672

www.clevelandlaborlaw.com

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# Exhibit I

**Bob Conley**

**From:** Poswal, Chukwuzitelu <cposwal@sccourts.org>  
**Sent:** Tuesday, June 20, 2023 4:50 PM  
**To:** John DONG; Toal, Jean  
**Cc:** Bob Conley  
**Subject:** RE: Motion for Equal Time

Dr. Dong,  
 Please see the below message from Justice Toal. A Form 4 Order granting your Motion for Equal Time has been signed and filed.

Dear Dr. Dong:

The hearing on Motions for Summary Judgment in this matter was held on May 26, 2023. After lengthy oral arguments were presented by Mr. Conley for defendant MUSC and you, pro se, for yourself as plaintiff, I announced from the bench that I would grant defendant's motion for summary judgment. At that time, I set June 9, 2023 as the deadline for defendant to submit a proposed order granting summary judgment, and June 23, 2023 as the deadline for plaintiff to submit his objections to the proposed order. Defendant's proposed order was submitted June 9, 2023.

You did not make any arrangements with the Court reporter for a transcript. Later you were advised that the transcribing court reporter required payment in advance. You did not make advance payment until last Friday at 5:00pm.

I will reset the deadline for filing plaintiff's objections to the defendant's proposed order for July 3, at 5:00pm. No further extensions will be granted.

Sincerely yours,  
 Jean H. Toal

Zitel Poswal  
 Judicial Law Clerk  
 South Carolina Court Administration  
 1220 Senate Street, Suite 221  
 Columbia, SC 29201  
 cposwal@sccourts.org

-----Original Message-----

**From:** John DONG <johny.dong@me.com>  
**Sent:** Thursday, June 15, 2023 4:51 PM  
**To:** Poswal, Chukwuzitelu <cposwal@sccourts.org>; Toal, Jean <JToal@sccourts.org>  
**Cc:** Bob Conley <bconley@clevelandlaborlaw.com>  
**Subject:** Motion for Equal Time

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Ms. Poswal,

Please find the enclosed the Motion/Request for Justice Toal to consider.

Please let me know if you have any questions.

Regards,

John Dong, M.D., Ph.D.

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Exhibit J

Bob Conley

From: Bob Conley
Sent: Friday, June 9, 2023 3:29 PM
To: Toal, Jean
Cc: Poswal, Chukwazi Tolu; Johnny.dong@gmail.com; Mark Dunderwill
Subject: Dong v. MLSC
Attachments: Dong - Proposed Order Granting Summary Judgment (Mail Copy) 6/9/2023.pdf; Dong Order Granting Summary Judgment (Final Draft).docx

Justice Toal:

Attached for the Court is the proposed Order Granting Summary Judgment in MS Word. Additionally, attached is a copy of proof of mailing/service of the attached, proposed order to Dr. Dong today. Dr. Dong is copied on this email also.

Bob J. Conley
 CLEVELAND & CONLEY, L.L.C.
 171 Church Street, Suite 310
 Charleston, South Carolina 29401
 Telephone: (843) 577-9626
 Facsimile: (843) 577-6672
www.clevelandlaborlaw.com

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From: Mark Dunderwill <mdunderwill@clevelandlaborlaw.com>
Sent: Friday, June 9, 2023 3:25 PM
To: Bob Conley <bconley@clevelandlaborlaw.com>
Subject: Dong - Proposed Order Granting Summary Judgment

Please see attached, the letter, proposed Order Granting Summary Judgment, and Certificate of Service that were mailed to Dr. Dong today, June 9, 2023.

Best,

Mark Dunderoff
Fara oga

CLEVELAND & CONLEY, L.L.C.
171 Church Street, Suite 310
Charleston, South Carolina 29401
Telephone: (843) 577-9826
Facsimile: (843) 577-6672
www.clevelandlaw.com

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CLEVELAND & CONLEY, L.L.C.
LABOR AND EMPLOYMENT DEFENSE

ONE SPOFFORD ONE CHURCH STREET, SUITE 310
CHARLESTON, SOUTH CAROLINA 29401
WWW.CLEVELANDANDCONLEY.COM

CAROLINE WHEAT CLEVELAND
HR & CONLEY

CHARLESTON
LABOR & EMPLOYMENT DEFENSE

TRIPLEX (843) 577 9626
FAX (843) 577 6672

June 9, 2023

Jian-Yun (John) Dong, M.D., Ph. D.
71 Delahow Street
Charleston, South Carolina 29492

Re: *Jian-Yun (John) Dong, M.D., Ph. D., v. The Medical University of South Carolina*
Case No.: 2016-CP 10-06683

Dear Dr. Dong:

In connection to the above-named matter, enclosed please find a proposed Order Granting Summary Judgment filed with the court today.

Sincerely,

CLEVELAND & CONLEY, LLC



Bob J. Conley

BJC/mad

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016 CP-10-06683
	)	
Jian-Yun (John) Dong, M.D., Ph.D.,	)	
	)	
Plaintiff,	)	ORDER GRANTING SUMMARY
	)	JUDGMENT
vs	)	
	)	
	)	
Medical University of South Carolina,	)	
	)	
Defendant.	)	

This case came before the Court for hearing on May 26, 2023, regarding Defendant Medical University of South Carolina's ("MUSC") Motion for Summary Judgment (the "Motion"). In general, MUSC asserted Plaintiff Jian-Yun (John) Dong, M.D., Ph.D. ("Dr. Dong") could not show MUSC breached a contract with him and/or, even if Dr. Dong could provide evidence of a breach, Dr. Dong could not present evidence of damage and Dr. Dong did not file his Complaint before the expiration of the applicable statute of limitations. Therefore, MUSC contended summary judgment is appropriate under Rule 56, SCRPC.

Bob J. Conkey appeared at the hearing on behalf of MUSC, Dr. Dong appeared pro se. Based upon the record, submissions of the parties, and the arguments made by the parties at the hearing, the Court grants MUSC's Motion for Summary Judgment.

RELEVANT FACTS

On May 3, 2010, Dr. Dong and MUSC entered into a written agreement (hereinafter, the "Agreement"): "A Final Separation Agreement between The Medical University of South Carolina, including its College of Medicine, and Dr. Jian-Yun Dong, Professor of Microbiology and Immunology." Dr. Dong, along with J. G. Reyes, M.D. ("Dr. Reyes"), MUSC's then Vice

President for Medical Affairs and College of Medicine Dean, signed the Agreement on May 3, 2010.

Dr. Dong and Dr. Reyes signed the Agreement on May 3, 2010, in Dr. Reyes' office. According to Dr. Dong, prior to signing the Agreement, he did not read the Agreement but, instead, Dr. Dong "scanned through" the Agreement. Dr. Dong acknowledged Dr. Reyes did not pressure him to sign the Agreement.

The Agreement imposed obligations and benefits on Dr. Dong and MUSC. (A discussion of MUSC's obligations is contained in Section I.B.) According to Dr. Dong, MUSC breached the Agreement no later than June 17, 2010, no more than forty-five days after the Agreement was signed on May 3, 2010. Dr. Dong did not file his Complaint until September 2, 2014.

LEGAL STANDARD

The purpose of summary judgment is to expedite disposition of cases that do not require the services of a fact finder. Davkins v. Fieldg., 354 S.C. 58, 69, 580 S.E.2d 435, 438 (2003). Summary judgment is proper where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Id. In determining whether summary judgment is appropriate, the evidence must be viewed in the light most favorable to the nonmoving party. Id. The party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact. Baughman v. Am. Tel. & Tel. Co., 536 S.C. 101, 115, 410 S.E.2d 537, 545 (1991).

However, "[w]ith respect to an issue on which the nonmoving party bears the burden of proof, this initial responsibility may be discharged by 'showing'—that is, pointing out to the [trial] court—that there is absence of evidence to support the non-moving party's case." Baughman at 115, 410 S.E.2d at 544 (quoting Colotex Corporation v. Catlett, 477 U.S. 317, 325 (1986)). In that

instance, the “moving party must not ‘support its motion with affidavits or other similar materials negating the opponent’s claim.’” *Id.* (quoting *Celotex*, 477 U.S. at 323) (emphasis in original). “Once the moving party has carried its initial burden, the opposing party must . . . ‘do more than simply show that there is some metaphysical doubt as to the material facts,’ and ‘must come forward with ‘specific facts showing there is a genuine issue for trial.’” *Id.* (quoting *Matsushita Electrical Ind. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87(1986)).

FINDINGS

MUSC met the burden imposed on it by Rule 56, SCRCP, and *Baughman*. However, Dr. Dong failed to oppose MUSC’s Motion in any meaningful sufficient manner, and Dr. Dong failed to meet the well-recognized requirements of *Baughman* and Rule 56, SCRCP. Notably, and important, Dr. Dong provided no deposition transcripts, affidavits, documents or other admissible, material evidence in opposition to MUSC’s Motion.

“It is a fundamental rule that, ‘if the plaintiff relies solely upon the pleadings, files no counter-affidavits, and makes no factual showing in opposition to a motion for summary judgment, the [trial] court is required under Rule 56, to grant summary judgment, if, under the facts presented by the defendant, he [it] was entitled to judgment as a matter of law.’” *Higgins v. Medical University of South Carolina*, 326 S.C. 592, 598, 486 S.E.2d 266, 272 (Cir. App., 1997) (quoting *Humana Hospital-Bayside v. Lightle*, 305 S.C. 214, 216, 407 S.E.2d 637, 638 (1991)). As a pro se litigant, Dr. Dong’s statements and argument at the hearing are not evidence in opposition to MUSC’s Motion. See e.g., *South Carolina Dept. of Transp. V. Thompson*, 357 S.C. 101, 105, 590 S.E.2d 511, 512 (Cir. App. 2003) (recognizing “[a]rguments made by counsel are not evidence” and collecting other, similar cases).

I. Breach of Contract.

In his Complaint, Dr. Dong asserts a single cause of action for breach of contract. Dr. Dong's Complaint contains no other causes of action, and Dr. Dong's Complaint stands without amendment. Specifically, Dr. Dong alleges MUSC breached the Agreement.

Dr. Dong, along with Dr. Reyes, MUSC's then Vice President for Medical Affairs and College of Medicine Dean, signed the Agreement on May 3, 2010. Dr. Dong filed his Complaint on September 2, 2014.

In this action for breach of contract, the burden is on Dr. Dong to prove the contract (Agreement), its breach, and damages caused to him by such breach. Mato v. Lewis, 389 S.C. 216, 222, 697 S.E.2d 664, 688 (Cl. App. 2010). Additionally, the law imposes an obligation on Dr. Dong to file and serve his Complaint alleging breach of contract within the applicable statute of limitation. As discussed below, Dr. Dong did not present sufficient material evidence to show MUSC breached the Agreement, to show damages accrued as to him regarding alleged breaches, or to show he filed and served the Complaint within the applicable three-year statute of limitations.

A. Dr. Dong's Breach of Contract Claim is Barred by the Statute of Limitations.

The statute of limitations for actions pursuant to contract is three years. Poly-Med, Inc. v. Novum Scientific PTE, LTD., 437 S.C. 343, 347, 878 S.E.2d 896, 898 (2022) (citing S.C. Code Ann. § 15-3-530(f)) (2005). Consequently, the statute of limitations applicable to Dr. Dong's allegations regarding the Agreement is three years. Applying the three-year statute of limitations to Dr. Dong's Complaint, any breach of the Agreement is time barred for several reasons.

First, Dr. Dong did not present material evidence any alleged breach occurred after September 1, 2011 - three years prior to Dr. Dong filing the Complaint. Second, Dr. Dong did not present material evidence any alleged breach first occurred after September 1, 2011, or occurred

more than three years after he knew or should have known (i.e., discovered) a cause of action for breach of contract existed. See Poly-Med at 350, 878 S.E.2d at 899 (“The limitations period begins to run when a party knows or should know, through the exercise of due diligence, that a cause of action might exist.”) (quoting Anonymous Taxpayer v. S.C. Department of Revenue, 377 S.C. 425, 439, 661 S.E.2d 73, 80 (2008)). In Poly-Med, the South Carolina Supreme Court confirmed “South Carolina does not recognize the continuing breach theory in applying the statute of limitations to breach of contract claims.” Poly-Med at 355, 878 S.E.2d at 902. Therefore, the three-year statute of limitations accrued as to each breach of the Agreement Dr. Dong alleges when Dr. Dong either knew, or should have known by exercising due diligence, MUSC breached the Agreement. For the reasons discussed below, Dr. Dong did not present material evidence to overcome application of the three-year statute of limitations and resulting bar of his claims.

1. Dr. Dong Did Not Present Material Evidence MUSC First Breached the Agreement After September 1, 2011.

According to Dr. Dong, MUSC breached the Agreement soon after entering into the Agreement. For example, Dr. Dong claims MUSC failed to meet the terms of the Agreement addressed in Section B.12 below. However, the Agreement required MUSC meet the terms of the Agreement in that respect within forty-five days of entering into the Agreement, on or before June 17, 2010. By way of further example, the Agreement required MUSC meet the terms of the Agreement addressed in Sections B.18 and B.20 below. However, the Agreement required MUSC meet the terms of the Agreement in those respects within thirty days of the effective date of the Agreement – no later than July 18, 2010.¹ Additionally, Dr. Dong testified “of course” MUSC breached the Agreement prior to March 25, 2011.

¹ The phrase “effective date” in the Agreement refers to June 18, 2010, because Dr. Dong had forty-five days from May 3, 2010, to revoke/renound the Agreement. June 18, 2010, is day forty-six after May 3, 2010.

In summary, taking Dr. Dong's deposition testimony as true, Dr. Dong knew or should have known as early as June 17, 2010, that MUSC breached the Agreement. Therefore, the three-year statute of limitations accrued and began to run as to Dr. Dong's breach of contract claim as early as June 18, 2010, but no later than July 18, 2010. Moreover, Dr. Dong testified he believed MUSC breached the Agreement prior to March 25, 2011. Regardless of which date the statute of limitations accrued as to Dr. Dong's claim MUSC breached the Agreement, Dr. Dong waited until September 2, 2014, to file his Complaint results in his claim falling outside the statute of limitations. Consequently, Dr. Dong's breach of contract claim is time barred.

2. Dr. Dong Either Knew of or Should Not Have Known of MUSC's Alleged Breaches of the Agreement Through the Exercise of Due Diligence Prior to September 2, 2011.

See Section A, 1.

B. Dr. Dong Did Not Present Sufficient Evidence MUSC Breached the Agreement.

"It is fundamental that, in the construction of the language of a contract, it is proper to read together the different provisions therein dealing with the same subject matter, and where possible, all the language used should be given a reasonable meaning." Bluffton Towne Ctr., LLC v. Gilleland-Prince, 412 S.C. 554, 569, 772 S.E.2d 882, 890 (Ct. App. 2015) (*quoting* Ecclesiastes Prod. Ministries v. Outpaceel Assoc., LLC, 374 S.C. 483, 498-99, 649 S.E.2d 494, 502 (Ct. App. 2007)). "In construing and determining the effect of a written contract, the intention of the parties and the meaning are gathered primarily from the contents of the writing itself, or, as otherwise stated, from the four corners of the instrument." Silver v. Abstract Pools & Spas, Inc., 376 S.C. 585, 591, 658 S.E.2d 539, 543 (Ct. App. 2008) (*quoting* McPherson v. J.E. Strine & Co., 206 S.C. 183, 204, 33 S.E.2d 501, 509 (1945)). The Agreement is unambiguous and, therefore, the Court must enforce it "according to its terms regardless of its wisdom or folly, apparent

unavoidability, or the parties' failure to guard their rights carefully." S.C. Dep't of Transp. v. M & T Enterprises of Mt. Pleasant, LLC, 379 S.C. 645, 655, 567 S.E.2d 7, 13 (Ct. App. 2008).

It is a question of law for the Court whether the language of the Agreement is ambiguous. South Carolina Dep't of Natural Res. v. Town of McClellanville, 345 S.C. 617, 623, 550 S.E.2d 299, 303-03 (2001). After reviewing the Agreement, the Court finds the Agreement "is unambiguous, clear, and explicit, it must be construed according to the terms the parties have used, to be taken and understood in their plain, ordinary, and popular sense." C.A.N. Enters., Inc. v. South Carolina Health and Human Services Commission, 296 S.C. 375, 377, 373 S.E.2d 584, 586 (1988). Because the Agreement is "clear and capable of legal construction," the Court's "only function is to interpret its lawful meaning and the intention of the parties as found within" the Agreement "and give effect to it." Ebert v. Ebert, 320 S.C. 541, 548, 455 S.E.2d 121, 125 (Ct. App. 1995). "The Court is "without authority to alter" the unambiguous Agreement "by construction or to make" a new agreement for the parties," C.A.N. Enters., Inc., 296 S.C. at 378, 373 S.E.2d at 587.

The Court finds the Agreement contains unambiguous obligations as to both MUSC and Dr. Dong. However, Dr. Dong did not present sufficient evidence MUSC breached its obligations in the Agreement. MUSC's obligations, as contained in the Agreement, are each addressed sequentially below:

1. Continue "compensated appointment [of Dr. Dong] as Professor of Microbiology and Immunology will continue through March 31, 2012."

Dr. Dong presented no material evidence MUSC breached this provision in the Agreement. To the contrary, the material evidence in the record shows MUSC did not breach this provision of the Agreement. First, Dr. Dong acknowledged the payments were made to him by MUSC. Second,

the letter from Mark Suthmann, Ph.D. ("Dr. Suthmann"), MUSC's then Vice President for Academic Affairs and Provost, to Dr. Dong on September 29, 2011, placed Dr. Dong on paid administrative leave, and MUSC continued to pay Dr. Dong. Third, there is no evidence Dr. Suthmann removed Dr. Dong's faculty appointments.

2. "[C]ontinue Dr. Dong's employment, faculty appointment and make scheduled salary payments to him [through March 31, 2012]."

See Section B.1 above. Additionally, Dr. Dong provided no evidence MUSC either failed to employ him until March 31, 2012, or make the scheduled salary payments to him through March 31, 2012. Additionally, Dr. Dong provided no evidence MUSC did not allow him to continue his faculty appointments, tenure, or title or that MUSC otherwise removed Dr. Dong's faculty appointments, tenure, or title until after March 31, 2012.

3. Allow Dr. Dong to "retain his faculty appointment, tenure and title until the effective date [March 31, 2012] of his resignation."

See Sections B.1 and B.2 above.

4. Allow Dr. Dong "forty-five (45) days after the execution of the agreement to revoke it [the Agreement]."

Dr. Dong provided no evidence MUSC breached the Agreement in respect to the revocation provision. Moreover, Dr. Dong acknowledged he did not request to revoke the Agreement, including within the forty-five-day period.

5. "[P]ay Dr. Dong his current level of monthly salary compensation through March 31, 2012. This amount will equal but not exceed his effective annual rate of pay (\$105,313.00/year) at November 1, 2009."

See Sections B.1 and B.2 above.

6. "Primary [MUSC faculty] appointment will be in the Department of Biochemistry with a secondary appointment in the Department of Microbiology and Immunology [through March 31, 2012]."

See Sections B.1 and B.2 above.

7. **"Dr. Dong may use the title 'Director of Biotherapeutics and Vaccine Development' [through March 31, 2012]."**

See Section B.1 and B.2 above. Additionally, Dr. Dong acknowledged no recollection of ever using the title. Moreover, Dr. Dong provided no material evidence MUSC told him to not use the title, or otherwise prohibited or prevented Dr. Dong's use of the title, through March 31, 2012.

8. **"Any and all MUSC academic appointments are understood to be term limited, not to extend beyond March 31, 2012, or the date of his employment at another institution or company, whichever may come first."**

See Sections B.1, B.2 and B.7 above.

9. **"University [MUSC] will waive the direct charging of Dr. Dong's salary to any grants or contracts he receives during the period of this agreement. University [MUSC] will cost-share this expense in compliance with federal rules and regulation."**

Dr. Dong provided no evidence MUSC breached the Agreement in respect to this provision.

10. **"University [MUSC] will continue to provide customary fiscal support and oversight for research awards received through MUSC and the Division of Basic Science."**

Dr. Dong provided no evidence MUSC breached the Agreement in respect to the provision requiring "customary fiscal support and oversight for research awards received through MUSC and the Division of Basic Science."

11. **"University [MUSC] will pay Dr. Dong a sum of \$30,000 directly from the Chairman's budget in the Department of Microbiology and Immunology, to be paid no later than day 30 following the signing of this agreement."**

According to Dr. Dong, the amount was paid by MUSC. Consequently, Dr. Dong acknowledged MUSC did not breach this provision in the Agreement.

12. "Mr. Scott Reid and Mr. Ronald Bycroft will attempt to locate an vectors or similar materials shared with other investigators for re-propagation by Dr. Dong and will attempt to locate written, enduring, hard-copy records which have been lost. This will occur in the 45-day window above. Any additional items located after that time of search will also be provided Dr. Dong."

Dr. Dong provided no evidence MUSC, specifically its then employees Scott Reid and Ronald Bycroft, failed to "attempt" to "locate" the "vectors and similar materials." Moreover, Dr. Dong provided no evidence MUSC failed to provide him with "additional items located after that time of search" by Mr. Reid and Mr. Bycroft or evidence such "additional items" were located at all.

13. "University [MUSC] agrees to relinquish any all active, commercially funded research awards received by Dr. Dong to Dr. Dong as permitted by the sponsor upon his resignation."

Dr. Dong provided no evidence MUSC breached the Agreement in respect to the provision regarding relinquishment of "commercially funded research awards."

14. "Active, federally funded research awards received will be relinquished [by MUSC] directly back to the federal agencies as obligated by the award agreements."

Dr. Dong provided no evidence MUSC breached the Agreement in respect to the relinquishment provision.

15. "Enduring grant materials, records, lab books and any other documentation required by law or University policy, will be secured, catalogued and maintained by MUSC, in the office of General Counsel." "Dr. Dong may make copies of his enduring grant materials, records, and lab books."

Dr. Dong provided no evidence MUSC breached the Agreement in respect to this provision.

16. "MUSC will cover Dr. Dong's legal fees and other costs in this matter, through a second one-time payment of \$20,000, also to be made to Dr. Dong no later than day 50 following the signing of this agreement."

Dr. Dong provided no evidence MUSC breached the Agreement in respect to this provision. Dr. Dong acknowledged he does not have knowledge whether MUSC paid the \$20,000.00. Dr. Dong also acknowledged no recollection of incurring or claiming legal fees, including attorney fees, related to the Agreement because Dr. Dong did not have an attorney involved, and Dr. Dong did not believe he claimed the \$20,000.00 for legal fees and other costs.

17. "[A]ccess to campus facilities and to their use [by Dr. Dong] shall not be limited during his remaining years of appointment and employment."

Dr. Dong provided no evidence MUSC breached the Agreement in respect to the access provision. Moreover, although a letter from Dr. Sothmann to Dr. Dong on September 29, 2011, placed Dr. Dong on paid administrative leave, Dr. Dong provided no evidence Dr. Sothmann prohibited him from accessing "campus facilities" or limited Dr. Dong's use of "campus facilities."

18. "[A]ny equipment purchased through extramural grants written by Dr. Dong as the sole PI and which was in Dr. Dong's laboratory at the time of relocation to the 700 sf laboratory space (including freezers and refrigerators also located nearby in equipment rooms of CSB) shall be relocated to GenPhar in 30 days of the effective date."

MUSC acknowledges it never relocated "equipment" subject to this provision of the Agreement. However, as discussed in Section I above, to the extent Dr. Dong could have asserted a claim for breach regarding this provision, the three-year statute of limitation accrued thirty days after the effective date of the Agreement – no later than July 18, 2010. Therefore, the statute of limitations expired no later than July 18, 2013 – over a year before Dr. Dong filed his Complaint.

19. "Relocate at its [MUSC's] expenses such Exhibit B equipment as it [MUSC] may evaluate from the remaining Vector Core equipment which can be temporarily relocated without jeopardizing other on-going funded faculty researchers," including "equipment which Dr. Dong purchased from UCSF [University of California - San Francisco] and for grants on which Dr. Dong was the named original PI ["Primary Investigator"] as permitted by law and University [MUSC] policy to the GenPhar location, provided that all certificates of occupancy, governmental permits and insurance coverages are in place for that site." "All equipment shall remain within the MUSC property accounting system."

Dr. Dong provided no evidence MUSC breached the Agreement in respect to this provision for several reasons. First, Dr. Dong provided no evidence he ever provided MUSC with an "Exhibit B" to the Agreement and no "Exhibit B" was attached to the Agreement. The Agreement required Dr. Dong provide MUSC with "Exhibit B" no later than "10 days after the date of entry into" the Agreement – by May 13, 2010. Second, Dr. Dong provided no evidence the "GenPhar location" received "certificates of occupancy, governmental permits, and insurance coverages," as required by the Agreement.

20. "University [MUSC] agrees to relocate at its expense the equipment listed in Exhibit A."

MUSC acknowledges it never relocated the equipment listed in Exhibit A to the Agreement. However, Dr. Dong provided no evidence the "GenPhar location" received "certificates of occupancy, governmental permits, and insurance coverages," as required by the Agreement. In the absence of such certificates, permits, and insurance coverages, the Agreement did not require MUSC relocate the equipment listed in Exhibit A to the Agreement. Additionally, as discussed in Section I above, to the extent Dr. Dong could have asserted a claim for breach regarding this provision, the three-year statute of limitation began to run after thirty days of the effective date of the Agreement – no later than July 18, 2010. Therefore, the statute of limitations expired no later than July 18, 2013 – over a year before Dr. Dong filed his Complaint.

In summary, Dr. Dong provided no substantive, admissible, and/or material evidence sufficient to support his allegations MUSC breached the Agreement.

C. Dr. Dong Did Not Present Sufficient Evidence of Damages.

"The general rule is that for a breach of contract the defendant is liable for whatever damages follow as a natural consequence and a proximate result of such breach." *Id.* (quoting Puller v. E. Fire & Cas. Ins. Co., 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1952)). "At a breach of contract action, damages serve to place the nonbreaching party in the position he would have enjoyed had the contract been performed." *Id.* (quoting S.C. Fed. Sav. Bank v. Thornton-Crosby Dev. Co., 303 S.C. 74, 77, 399 S.E.2d 8, 10 (Cl. App. 1990)). "The measure of damages for breach of contract is the loss actually suffered by the contractor as the result of the breach." S.C. Fin. Corp. of Anderson v. W. Side Fin. Co., 216 S.C. 109, 122, 113 S.E.2d 329, 335 (1960).

"Generally, in order for damages to be recoverable, the evidence should be such as to enable the court or jury to determine the amount thereof with reasonable certainty or accuracy." Austin v. Stokes-Craven Holding Corp., 387 S.C. 22, 43, 691 S.E.2d 135, 146 (2010) (quoting Whitman v. James Island Corp., 277 S.C. 10, 13, 281 S.E.2d 794, 796 (1981)). "While neither the existence, causation nor amount of damages can be left to conjecture, guess or speculation, proof with mathematical certainty of the amount of loss or damage is not required." *Id.* (quoting Whitman, 277 S.C. at 13, 281 S.E.2d at 796).

Dr. Dong did not provide any material evidence of damages associated with any alleged breach of the Agreement by MUSC.

CONCLUSION

Dr. Dong failed to present evidence sufficient to show: 1) he filed his Complaint within the applicable statute of limitations, 2) MUSC breached the Agreement; and/or 3) he incurred any

damages because of alleged breaches of the Agreement. For all the noted reasons, the Court grants MUSC summary judgment as to Dr. Dong's claims and cause of action.

IT IS SO ORDERED.

Honorable Jean Hooper Teal
Special Circuit Court Judge
Ninth Judicial Circuit

Charleston, South Carolina
June 9, 2023

CERTIFICATE OF SERVICE

This is to certify that I have this 9th day of June 2023, caused to be served a copy of proposed Order Granting Summary Judgment via United States Mail, with proper postage affixed, and addressed as follows:

John Dong, M.D., Ph.D.
71 Delahow St.
Charleston, SC 29492



Mark Dunderbill
Paralegal

Exhibit K

Bob Conley

From: John Dong <johny.dong@gmail.com>
Sent: Monday, December 19, 2022 9:28 AM
To: Bob Conley
Cc: johny.dong@me.com
Subject: Re: Schmidt and Voelkel-Johnson Depositions
Attachments: DeopositionRubinchik.pdf; DeopositionReves.pdf; DeopositionSaladin.pdf; DeopositionSchmidt.pdf; DeopositionSothmann.pdf; DeopositionChrisJohnson.pdf; DeopositionReads.pdf; DeopositionRoozen.pdf; DeopositionGladden.pdf; DeopositionCole.pdf; DeopositionTomilson.pdf; DeopositionNorris.pdf; DeopositionSothmann.pdf; DeopositionLanier.pdf

Mr. Conley,

Please accept the service of the Notices of Deposition as attached. However, I will file a motion for an amendment of the discovery schedule for a 45 days extension because of the delays caused by your difficulties in providing me with the schedule in time and the issues of if MUSC is obligated to produce the key witnesses who have left MUSC. If you agree with the extension, I will file a simple consented motion for extension.

Please let me know your thoughts as soon as possible.

Sincerely,

John Dong, M.D., Ph.D.

On Thu, Dec 8, 2022 at 8:03 AM Bob Conley <bconley@clevelandlaborlaw.com> wrote:

Dr. Dong:

Please let me know if you intend to go forward with these two depositions next week (Dr. Schmidt on 12/14 at 10 a.m. and Dr. Voelkel-Johnson at 10 a.m. on 12/15), as shown on the deposition list I previously provided. If so, please forward deposition notices to me for both Dr. Schmidt and Dr. Voelkel-Johnson.

Thank you.

Bob J. Conley

CLEVELAND & CONLEY, L.L.C.

171 Church Street, Suite 310

Charleston, South Carolina 29401

Telephone: (843) 577-9626

Facsimile: (843) 577-6672

www.clevelandlaborlaw.com

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Exhibit L

Bob Conley

From: Bob Conley
Sent: Thursday, December 22, 2022 8:37 AM
To: John Dong
Cc: johnny.dong@me.com
Subject: Depositions

Dr. Dong:

I have reviewed the deposition notices you sent. Although there appear to be some "scrivener" errors in respect to the captions to several of the notices, I understand the notices to schedule the following:

- 1) Semyon Robinchik, Ph. D., scheduled for February 1, 2023, beginning at 10 a.m. (The notice states in the caption that it is for Dr. Sothmann, but the body of the notice references Dr. Robinchik.) Dr. Robinchik no longer works for MUSC, so you will need to locate him and arrange for his appearance at my office. (Based upon information on the internet, Dr. Robinchik lives/works in Illinois.) You will need to schedule a court reporter for that date and time.
- 2) Jerry Reves, M.D., scheduled for January 11, 2023, beginning at 10 a.m. (The notice states in the caption that it is for Dr. Lanier, but the body of the notice references Dr. Reves.) Dr. Reves is scheduled to appear at that date and time at my office for his deposition. You will need to schedule a court reporter for that date and time.
- 3) Lisa Saladin, Ph.D., scheduled for January 9, 2023, beginning at 1 p.m. (The notice states in the caption that it is for Dr. Lanier, but the body of the notice references Dr. Saladin.) Dr. Saladin is scheduled to appear at that date and time at my office for her deposition. You will need to schedule a court reporter for that date and time.
- 4) Scott Reads, scheduled for January 25, 2023, beginning at 10 a.m. (The notice states in the caption that it is for Dr. Lanier, but the body of the notice references Mr. Reads.) Mr. Reads no longer works for MUSC, so you will need to locate him and arrange for his appearance at my office. You will need to schedule a court reporter for that date and time.

- 5) Kenneth Roozen, Ph.D., scheduled for January 27, 2023, beginning at 10 a.m. (The notice states in the caption that it is for Dr. Lanier, but the body of the notice references Dr. Roozen.) Dr. Roozen no longer works for MUSC, so you will need to locate him and arrange for his appearance at my office. You will need to schedule a court reporter for that date and time.
- 6) Beth Gladden, scheduled for January 26, 2023, beginning at 10 a.m. (The notice states in the caption that it is for Dr. Lanier, but the body of the notice references Ms. Gladden.) Ms. Gladden no longer works for MUSC, so you will need to locate her and arrange for her appearance at my office. You will need to schedule a court reporter for that date and time.
- 7) David Cole, M.D., scheduled for January 20, 2023, beginning at 10 a.m. (The notice states in the caption that it is for Dr. Lanier, but the body of the notice references Dr. Cole.) Dr. Cole is scheduled to appear at 12 p.m., instead of 10 a.m., at my office for his deposition which is consistent with my prior correspondence about his availability on January 20. You will need to schedule a court reporter for that date and time.
- 8) Stephen Tomilson, Ph.D., scheduled for January 13, 2023, beginning at 10 a.m. (The notice states in the caption that it is for Dr. Lanier, but the body of the notice references Dr. Tomilson.) Dr. Tomilson is scheduled to appear at that date and time at my office for his deposition. You will need to schedule a court reporter for that date and time.
- 9) James Norris, Ph.D., scheduled for January 18, 2023, beginning at 10 a.m. (The notice states in the caption that it is for Dr. Lanier, but the body of the notice references Dr. Norris.) Dr. Norris is scheduled to appear at that date and time at my office for his deposition. You will need to schedule a court reporter for that date and time.
- 10) Mark Sothmann, Ph.D., scheduled for January 9, 2023, beginning at 10 a.m. (The notice states in the caption that it is for Dr. Lanier, but the body of the notice references Dr. Sothmann.) I am verifying whether Dr. Sothmann is available on that date and at that time. If so, you will need to schedule a court reporter for that date and time.
- 11) Michael Schmidt, Ph.D., scheduled for January 31, 2023, beginning at 10 a.m. (The notice states in the caption that it is for Dr. Lanier, but the body of the notice references Dr. Schmidt.) I am verifying whether Dr.

Schmidt is available on that date and at that time. If so, you will need to schedule a court reporter for that date and time.

- 12) Christina Voelkel-Johnson, Ph.D., scheduled for January 30, 2023, beginning at 10 a.m. (The notice states in the caption that it is for Dr. Lanier, but the body of the notice references Dr. Voelkel-Johnson.) I am verifying whether Dr. Voelkel-Johnson is available on that date and at that time. If so, you will need to schedule a court reporter for that date and time.
- 13) Stephen Lanier, Ph. D., scheduled for January 23, 2023, beginning at 10 a.m. Dr. Lanier no longer works for MUSC, so you will need to locate him and arrange for his appearance at my office. (Based upon information on the internet, Dr. Lanier lives/works in Michigan.) You will need to schedule a court reporter for that date and time.

Regarding your request to extend the discovery deadline by 45 days, MUSC does not consent to doing so.

I have these depositions on my calendar. As noted above, I will confirm the availability of Dr. Voelkel-Johnson, Dr. Schmidt, and Dr. Sothmann for the dates and times in your deposition notices, and let you know if they are unavailable those dates. If so, I will provide alternative, proposed dates for each of them.

Bob J. Conley
 CLEVELAND & CONLEY, L.L.C.
 171 Church Street, Suite 310
 Charleston, South Carolina 29401
 Telephone: (843) 577-9626
 Facsimile: (843) 577-6672
www.clevelandlaborlaw.com

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Immediately notify us by return e-mail and destroy any copies, electronic, paper or otherwise, which you may have of this communication.

From: John Dong <johny.dong@gmail.com>
Sent: Monday, December 19, 2022 9:28 AM
To: Bob Conley <bconley@clevelandlaborlaw.com>
Cc: johny.dong@me.com
Subject: Re: Schmidt and Voelkel-Johnson Depositions

Mr. Conley,

Please accept the service of the Notices of Deposition as attached. However, I will file a motion for an amendment of the discovery schedule for a 45 days extension because of the delays caused by your difficulties in providing me with the schedule in time and the issues of if MUSC is obligated to produce the key witnesses who have left MUSC. If you agree with the extension, I will file a simple consented motion for extension.

Please let me know your thoughts as soon as possible.

Sincerely,

John Dong, M.D., Ph.D.


On Thu, Dec 8, 2022 at 8:03 AM Bob Conley <bconley@clevelandlaborlaw.com> wrote:

Dr. Dong:

Please let me know if you intend to go forward with these two depositions next week (Dr. Schmidt on 12/14 at 10 a.m. and Dr. Voelkel-Johnson at 10 a.m. on 12/15), as shown on the deposition list I previously provided. If so, please forward deposition notices to me for both Dr. Schmidt and Dr. Voelkel-Johnson.

Thank you.

Bob J. Conley

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Exhibit M

Bob Conley

From: Bob Conley
Sent: Thursday, December 22, 2022 10:30 AM
To: John Dong
Cc: Poswal, Chukwuzitelu
Subject: Dong v. MUSC
Attachments: RE: Deposition Schedule; Depositions

Dr. Dong:

See the attached email sent to you on December 15 providing the last known addresses for Dr. Lanier, Mr. Reads, and Ms. Gladden. Until your deposition notices provided earlier this week, I was not aware you intended to depose Dr. Roozen. I will obtain and provide Dr. Roozen's last known address. I have also attached the email I sent to you yesterday regarding your deposition notices to make sure you received it.

Thank you for emailing a copy of your Motion for Protective Order filed yesterday, December 21, 2022.

Bob J. Conley
CLEVELAND & CONLEY, L.L.C.
171 Church Street, Suite 310
Charleston, South Carolina 29401
Telephone: (843) 577-9626
Facsimile: (843) 577-6672
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From: John Dong <johny.dong@gmail.com>

Sent: Thursday, December 22, 2022 10:15 AM

To: Poswal, Chukwuzitelu <Cposwal@sccourts.org>; Bob Conley <bconley@clevelandlaborlaw.com>; Toal, Jean <jtoal@sccourts.org>

Subject: Motion for protective order

Dear Mr. Conley,

I have filed a motion for a protective order because of a time-sensitive appeal, see attached.

In addition, please provide me with the last known addresses of Lanier, Reads, Gladden, and Roozen. They all receive benefits from MUSC, and they do have employment relationships with MUSC, especially since Lanier was a tenured professor. Their employments with MUSC are no different from those of Dr. Reves and Dr. Norris. I will get a formal ruling from the Court and have the issue preserved.

Sincerely,

John Dong, M.D., Ph.D.

[REDACTED]

Exhibit N

Bob Conley

From: John Dong <johny.dong@gmail.com>
Sent: Thursday, December 22, 2022 11:37 AM
To: Bob Conley
Cc: Poswal, Chukwuzitelu
Subject: Re: Dong v. MUSC

Thank you, Mr. Conley.
I will correct the errors in the notice and send them to you.
I wish you to have a merry Christmas.
John Dong

On Thu, Dec 22, 2022 at 10:29 AM Bob Conley <bconley@clevelandlaborlaw.com> wrote:

Dr. Dong:

See the attached email sent to you on December 15 providing the last known addresses for Dr. Lanier, Mr. Reads, and Ms. Gladden. Until your deposition notices provided earlier this week, I was not aware you intended to depose Dr. Roozen. I will obtain and provide Dr. Roozen's last known address. I have also attached the email I sent to you yesterday regarding your deposition notices to make sure you received it.

Thank you for emailing a copy of your Motion for Protective Order filed yesterday, December 21, 2022.

Bob J. Conley

CLEVELAND & CONLEY, L.L.C.

171 Church Street, Suite 310

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Telephone: (843) 577-9626

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From: John Dong <johnny.dong@gmail.com>

Sent: Thursday, December 22, 2022 10:15 AM

To: Poswal, Chukwuzitelu <Cposwal@sccourts.org>; Bob Conley <bconley@Clevelandlaborlaw.com>; Toal, Jean <jtoal@sccourts.org>

Subject: Motion for protective order

Dear Mr. Conley,

I have filed a motion for a protective order because of a time-sensitive appeal, see attached.

In addition, please provide me with the last known addresses of Lanier, Reads, Gladden, and Roozen. They all receive benefits from MUSC, and they do have employment relationships with MUSC, especially since Lanier was a tenured professor. Their employments with MUSC are no different from those of Dr. Reves and Dr. Norris. I will get a formal ruling from the Court and have the issue preserved.

Sincerely,

John Dong, M.D., Ph.D.



Exhibit O

Bob Conley

From: Bob Conley
Sent: Tuesday, January 3, 2023 11:04 AM
To: John Dong
Subject: RE: Dong v. MUSC

Dr. Dong:

I will contact Justice Toal today regarding your Motion for Protective Order and depositions, so we can get those issues resolved. Regarding depositions, pursuant to Justice Toal's prior order it is your responsibility to schedule a court reporter for any depositions you notice, and the depositions are to occur at my office. Finally, I have provided you with the last address MUSC has for Dr. Lanier, Ms. Gladden and Dr. Reads. Any benefits provided post-employment with MUSC are provided by the South Carolina Public Employee Benefit Authority (SCPEBA) and MUSC does not have access to SCPEBA records, such as current addresses.

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From: John Dong <johnny.dong@gmail.com>
Sent: Tuesday, January 3, 2023 10:50 AM
To: Bob Conley <bconley@Clevelandlaborlaw.com>
Subject: Re: Dong v. MUSC

Mr. Conley,

I have already filed the motion for protective order. The due process dictates that the schedule is stayed until a ruling on the motion. If it is denied, the issue will be preserved. In addition, there is a nationwide shortage of court reporters and it is difficult for me to arrange a court report according to the specific schedules as you demanded. It will be helpful if you could arrange the court reporter, since the depositions are at your office. I understand this is not required of you, so it is not required to take depositions at your office. I do not know how much effort it takes to have those employees come for a deposition.

Again, please provide the address of Lanier, Reads and Gladden known to MUSC. The employee benefit office has their current addresses as they all receive benefits from MUSC.

On Tue, Jan 3, 2023 at 10:30 AM Bob Conley <bconley@clevelandlaborlaw.com> wrote:

Dr. Dong:

I will discuss your email below with MUSC and then follow up with you. However, we will likely request Justice Toal's involvement given the existing scheduling order and the effort that has gone into scheduling the depositions. In the interim, and until Justice Toal is involved and provides direction, the depositions will remain on my calendar and those of the current MUSC personnel as noticed.

Bob J. Conley

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From: John Dong <john.dong@gmail.com>
Sent: Thursday, December 22, 2022 4:04 PM
To: Bob Conley <bconley@clevelandlaborlaw.com>
Subject: Re: Dong v. MUSC

Mr. Conley,

In light of the brief order by the US Appellate court and my motion for a protective order, regardless if it is granted by the court of common pleas, I will have to postpone the depositions of MUSC witnesses. I will give you the same courtesy to send me a schedule of the depositions starting from Jan. 31.

Sincerely,

John Dong

On Thu, Dec 22, 2022 at 3:26 PM Bob Conley <bconley@clevelandlaborlaw.com> wrote:

Dr. Dong:

The last known address for Dr. Roozen is the following: 316 Glen Eagle, Johns Island, SC 29455.

Bob J. Conley

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From: John Dong <johnny.dong@gmail.com>
Sent: Thursday, December 22, 2022 11:37 AM
To: Bob Conley <bconley@Clevelandlaborlaw.com>
Cc: Poswal, Chukwuzitelu <Cposwal@sccourts.org>
Subject: Re: Dong v. MUSC

Thank you, Mr. Conley.

I will correct the errors in the notice and send them to you.

I wish you to have a merry Christmas.

John Dong

On Thu, Dec 22, 2022 at 10:29 AM Bob Conley <bconley@clevelandlaborlaw.com> wrote:

Dr. Dong:

See the attached email sent to you on December 15 providing the last known addresses for Dr. Lanier, Mr. Reads, and Ms. Gladden. Until your deposition notices provided earlier this week, I was not aware you intended to depose Dr. Roozen. I will obtain and provide Dr. Roozen's last known address. I have also attached the email I sent to you yesterday regarding your deposition notices to make sure you received it.

Thank you for emailing a copy of your Motion for Protective Order filed yesterday, December 21, 2022.

Bob J. Conley

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From: John Dong <johny.dong@gmail.com>

Sent: Thursday, December 22, 2022 10:15 AM

To: Poswal, Chukwuzitelu <Cposwal@sccourts.org>; Bob Conley <bconley@clevelandlaborlaw.com>; Toal, Jean <jtoal@sccourts.org>

Subject: Motion for protective order

Dear Mr. Conley,

I have filed a motion for a protective order because of a time-sensitive appeal, see attached.

In addition, please provide me with the last known addresses of Lanier, Reads, Gladden, and Roozen. They all receive benefits from MUSC, and they do have employment relationships with MUSC, especially since Lanier was a tenured professor. Their employments with MUSC are no different from those of Dr. Reves and Dr. Norris. I will get a formal ruling from the Court and have the issue preserved.

Sincerely,

John Dong, M.D., Ph.D.

[REDACTED]

Exhibit P

Bob Conley

From: John Dong <johny.dong@gmail.com>
Sent: Thursday, January 5, 2023 1:21 PM
To: Bob Conley
Subject: Re: Dong v. MUSC

Please give me a couple of days to look into my schedule in February. Thanks for the follow up.

On Thu, Jan 5, 2023 at 1:19 PM Bob Conley <bconley@clevelandlaborlaw.com> wrote:

Dr. Dong:

In follow up to emails below, please provide all your available dates in February so I may begin working to reschedule the depositions of MUSC employees you previously noticed. Because it will take some time an effort, and because my calendar the calendars of those you wish to depose will begin to fill for February, I need all your available dates as soon as possible. In the interim, and consistent with your December 22 email below, I have notified the current MUSC employees that their depositions will be rescheduled.

Thank you and I look forward to receiving your available dates in February.

Bob J. Conley

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From: Bob Conley
Sent: Wednesday, January 04, 2023 2:54 PM
To: John Dong <johnny.dong@gmail.com>
Subject: RE: Dong v. MUSC

Dr. Dong:

Considering Justice Toal's order issued earlier today, and in follow up to your email below, do you intend to go forward with any of the 13 depositions you noticed for the month of January? If you do not intend to go forward with them as currently noticed, please confirm so I can note the cancellations on my calendar and notify those who still work for MUSC.

If you want to re-notice the 13 depositions, please provide me with all your available dates before March 1 so I can check on the availability of those individuals who still work for MUSC. I will compare with my availability in February as well.

Thank you.

Bob J. Conley

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Subject: Re: Dong v. MUSC

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Cc: Poswal, Chukwuziteu <Cposwal@sccourts.org>
Subject: Re: Dong v. MUSC

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To: Poswal, Chukwuzitelu <Cposwal@sccourts.org>; Bob Conley <bconley@clevelandlaborlaw.com>; Toal, Jean <jtoal@sccourts.org>

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Sincerely,

John Dong, M.D., Ph.D.



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JIANG-YUN (JOHN) DONG, M.D., Ph.D.,

Plaintiff,

vs.

THE MEDICAL UNIVERSITY OF SOUTH
CAROLINA,

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO: 16-C2-10-06685

**MOTION AND ORDER INFORMATION
FORM AND COVER SHEET**

Plaintiff's Attorney:

John Dong, pro se, Bar No. _____
Address:
71 Delahow Street,
Charleston, SC 29402
Phone: 843-331-2332 fax _____
E-mail: johny.dong@me.com Other: _____

Defendant's Attorney:

Bob J. Conley, Bar No. _____
Address:
171 Church Street, Suite 310
Charleston, SC 29401
Phone: 843-577-9626 Fax _____
E-mail: bconley@clevelandlaborlaw.com Other: _____

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)
☐ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Amend Order Under Rule 52(a)

Estimated Time Needed: 1 hour

Court Reporter Needed: ☐ YES ☒ NO

SECTION II: Motion/Order Type

- ☐ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney For ☒ Plaintiff ☐ Defendant

July 27th, 2023

Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: \$**

☐ **EXEMPT:**

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status | State Agency v. Indigent Party
☐ Sexually Violent Predator Act | Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or,
referred to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

☐ Motion fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE: _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ **MOTION FEE COLLECTED: \$**

☐ **CONTESTED - AMOUNT DUE: \$**

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
John Dong, M.D., Ph.D.,)
- Plaintiff,)
v.)
The Medical University of South)
Carolina,)
Defendant,)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-13-06685

**Motion for Amendment Order
Granting Defendant's
Summary Judgement**

Motion for Amendment under SCRPC 52(b)

Plaintiff John Dong, appearing pro se, hereby respectfully submits this Motion for Amendment under South Carolina Rules of Civil Procedure (SCRPC) 52(b). Pursuant to SCRPC 52(b), this motion seeks an amendment to the order granting Defendant's Motion for Summary Judgement.

I. BACKGROUND

1. This case is about a Complaint filed by John Dong, M.D., Ph.D., the Plaintiff, against the Medical University of South Carolina (MUSC), the Defendant. The Complaint alleged, inter alia, that the Defendant breached a contract between Dr. Dong and MUSC after the chairman of the Department of Microbiology and Immunology, Dr. James Norris, illegally took over Dr. Dong's research operation, including the documents, protocols, technologies, grant funds, biological materials, and equipment for Dr. Norris' benefit. As a temporary solution to mitigate the damages done to Dr. Dong, Dr. Dong and MUSC reached an Agreement, which in

general, separates the conflicting parties in order to allow Dr. Dong to reinitiate his research off-campus at a company established by the Foundation for Research and Development of MUSC and to continue his rest academic activities on campus at MUSC. Among the major terms of the Agreement, MUSC is to return all of Dr. Dong's research assets taken by Norris and transfer Dr. Dong's assets to the Company for him to conduct his research. By breaching the Agreement, MUSC caused severe damage to Dr. Dong's career and financial being.

2. During the discovery, Dr. Dong faithfully answered Defendant's Request for Documents and Interrogatories. However, Defendant blocked Dr. Dong's discovery by not answering Dr. Dong's interrogatory and refusing to produce the requested documents.

3. The Court repeatedly denied Dr. Dong's Motion to Compel without citing an authority. Instead, the Court granted Defendant's motion to limit the scope of Dr. Dong's discovery to only communications from or to Dr. Dong, Dr. Lanier, and Dr. Mark Southmann within a narrow time window.

4. While the issue of limiting Dr. Dong's discovery was under litigation, the retired Justice, Hon. Jean Toal, was appointed as the judge overseeing the case.

5. At the first status hearing, Judge Toal announced that her mission was "to have a speedy resolution" of the case and that the "case will not go to trial." Judge Toal further denied Dr. Dong's motions related to the unlawful restrictions of

Dr. Dong's discovery, accepted the Defendant's proposed timeline, and signed a scheduling order written by the Defendant's attorney.

6. The scheduling order proscribed a short timeline and specifically ordered Dr. Dong to be deposed at the date requested by Defendant's attorney. However, it only allowed Dr. Dong to take depositions of MUSC witnesses when they were "willing and available." The scheduling order further required that the deposition be taken in the Defendant's attorney's office so that the Defendant's attorney had full control over how and when Dr. Dong could depose the witnesses.

7. After deposing Dr. Dong, the Defendant's attorney deployed a series of tactics to hamper Dr. Dong from deposing MUSC witnesses. Dr. Dong's discovery was further complicated by his health issues and other issues with a higher priority. Dr. Dong filed Motions to extend the discovery timeline or for a protective order. The Court denied all of Dr. Dong's motions based on the standard that the motion violated the scheduling order. In contrast, the Court granted numerous Motions for protective orders filed by the Defendant's attorneys for "prescheduled vacations," which took away many weeks from Dr. Dong's time for scheduling the deposition. As a result, Dr. Dong could not take the deposition of a single witness until the deadline arbitrarily set by the Court.

8. The Defendant immediately filed a motion for summary judgment. Judge Toal set the hearing date exactly 10 days thereafter, the minimum required

time before the hearing. However, Judge Toal did not give any consideration for the time required for Dr. Dong to file a response, for which the minimally required 10 days before the hearing also applies. In addition, the court did not give notice to Dr. Dong about the hearing.

9. Dr. Dong only found out about the hearing through an email sent by Defendant's attorney only days before the hearing. Dr. Dong rushed to file a response in opposition and a motion for continuance. However, Dr. Dong did not have time to prepare the memorandum in support of his response. Furthermore, Dr. Dong found out that the hearing date conflicted with his scheduled eye surgeries to remove his advanced-stage cataracts to restore his vision. Dr. Dong immediately filed a motion for a protective order.

10. Instead of granting Dr. Dong's motion for a protective order based on the good cause standard, judge toll indicated through an email that the motion would be denied unless Dr. Dong could provide the medical record to prove the surgeries when necessary. Judge Toal further accused Dr. Dong of scheduling his eye surgeries to delay the due process and threatened to take action if Dr. Dong continued to submit motions in conflict with the scheduling order.

11. Dr. Dong timely submitted the detailed medical record documenting his advanced cataract, and the pre-surgery examinations and the scheduling of his

surgeries were completed before Defendant filed its motion for summary judgment and the set hearing date.

12. Judge Toal did not make a formal ruling on Dr. Dong's Motion for a Protective Order, which would require the Judge to continue the hearing and allow additional time for Dr. Dong to submit his Memorandum supporting his opposition to summary judgment and prepare for the hearing. Instead, Judge Toal sent an email a few days before the requested recovery time ended. Judge Toal made lengthy extrajudicial comments on Dr. Dong's health conditions based on her misunderstanding of medicine, such as Dr. Dong's advanced stage of type II diabetes "was not insulin-dependent" and "there was no retinal abnormality" to reiterate her opinion that Dr. Dong planned his eye surgeries in order to delay justice. At the end of the email, Judge Toal informed Dr. Dong that the hearing date was reset to one day after the required surgery recovery time, and he must be present at the hearing. Therefore, Dr. Dong did not have time to complete his Memorandum and prepare for the hearing due to his difficulties in reading and writing during his the eye surgeries and recovery period.

13. At the hearing, the court granted the Defendant's motion for summary judgment despite the fact that Defendant failed to present any evidence to prove the lack of genuine issue of material fact. The court did not announce the legal or factual basis for this decision but requested the Defendant's attorney to draft the order.

14. Pursuing rule 56(f), Dr. Dong submitted the memorandum supporting his opposition to Defendant's motion for summary judgment and his affidavit and filed a Motion for Rehearing of Defendant's motion for summary judgment in light of the new findings.

15. The Court did not stay its order as required by Rule 52(c) and did not conduct a hearing on Dr. Dong's motion. The Court finally denied Dr. Dong's motion without the Defendant raising an opposition and issued the final order granting summary judgment as written by the Defendant's attorney.

II. LEGAL ARGUMENT

A. Standard of Review

Under SCRCP 52(b), this Honorable Court has the discretion to amend a final judgment to correct any error or oversight. Rule 52(b) states: "Upon motion of a party filed not later than 10 days after entry of judgment, the court may amend its findings or make additional findings and may amend the judgment accordingly." The purpose of this rule is to ensure that justice is served and to rectify any mistakes or omissions in the original judgment.

The courts have long established that it is imperative for the judiciary to faithfully interpret and apply the law as it is written. The role of a judge is not to

legislate from the bench or impose personal beliefs but rather to faithfully adhere to the text of the law and the intent of the legislature.

The Supreme Court of the United States has consistently emphasized: "The first and fundamental rule in the interpretation of statutes is to ascertain the intention of the legislature." *United States v. Detroit Timber & Lumber Co.* (1906).

The South Carolina Court of Appeals has underscored the significance of giving effect to the plain language of statutes. The Court stated that "when the statutory language is plain and unambiguous, there is no room for judicial construction or interpretation, and the court must apply the statute according to its literal meaning," and "the cardinal rule of statutory construction is to ascertain and effectuate the intention of the legislature." *State v. Smith*, 322 S.C. 235 (Ct. App. 1996); *First Union Nat'l Bank v. Soden*, 328 S.C. 525 (Ct. App. 1997).

B. Grounds for Amendment

I. Misinterpretation of Law:

The statute governs the summary judgment, SCRPC Rule 56 (c) states:

The [summary] judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. (emphasis added)

The Two-pronged tests for summary judgment are that 1) the party seeking summary judgment must provide sufficient evidence, including depositions, answers to interrogatories, and admissions filed together with the affidavits; and 2) the evidence must prove there is no genuine issue as to any material facts

In this case, Defendant failed both of these tests. First, Defendant produced no witness, deposition, interrogatories, admission, or affidavits to support its motion. Secondly, instead of showing no genuine issue of fact, Defendant raised two issues of facts as the basis for the summary judgment: if the facts support the statute of limitations and if Plaintiff provided sufficient evidence to prove the breach of the contract by Defendant. By definition, these issues are questions of material fact and must be determined by a jury.

Furthermore, there are numerous issues of material fact to be decided. Therefore, the Defendant's Motion for Summary did not meet the essential elements of the statutes.

Therefore, the Court granted the Defendant's Motion for Summary Judgment in violation of the statutes and therefore is invalid.

2. Violation of Due Process

The Supreme Court of the United States has long established:

"The essential elements of due process of law are notice and opportunity to defend." *Simon v. Cral*, 21 S. Ct. 836 (1901).

"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

Under these Commands, the Appellate Courts emphasized that "notice and an opportunity to be heard are the hallmarks of due process." See *Doe v. Chau*, 306 F.3d 170, 182 (4th Cir. 2002). Because of the Constitutional importance of insuring proper notice, courts will not forgive improper notice even where a party receives the actual notice, as The Supreme Court addressed in *Jones v. Flowers*, 126 S. Ct. 1708 (2006).

In this case, the Court violated Dr. Dong's due process rights by failing to provide proper notice and depriving his opportunity to be heard. Dr. Dong learned about the hearing date from an email sent by the Judge's law clerk. The email was sent three days before the hearing, which was set at only one day after his protected period due to eye surgeries. Therefore, Dr. Dong did not have time to complete his Memorandum in support of his Response in opposition to Defendant's Motion for summary judgment and Affidavit or be prepared for the hearing. Such "notice" by

email was legally and constitutionally insufficient, and without allowing Dr. Dong sufficient time to prepare for the hearing, thus deprived his due process right to be heard. Furthermore, Dr. Dong filed the motion for continuance pursuant to Rule 56(f) before the hearing and raised the motion at the hearing. The Court denied both motions without Defendant's opposition and without stating a legal or factual basis.

3. Pattern of Due Process Violation

SCRPC Rule 56(e) requires the party seeking summary judgment to prove with "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits that there is no genuine issue as to any material fact."

Rule 56(f) specifically states:

"When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such order as is just."

At the hearing, despite the fact that Defendant failed its burden to prove the lack of genuine issues of fact, the Court joined the Defendant in arguing and criticizing Dr. Dong for not submitting an affidavit (It was because he was not allowed the time to complete his Memorandum and be prepared for the hearing.) and

granted the Defendant's motion for summary judgment without announcing its legal and factual bases in the open Court. Furthermore, the Court allowed the Defendant's attorney to write the order, in essence, giving the Defendant's attorney the authority to issue the order at will.

For these reasons alone, the Order violated the statutes governing summary judgment and Dr. Dong's right to due process.

Pursuant to Rule 56(f), Dr. Dong submitted his Memorandum in Support of his Opposition to Defendant's motion for summary judgment and an affidavit. Based on these newly submitted documents, Dr. Dong filed a Motion to Rehear the Defendant's motion for summary judgment and requested a hearing on the Motion.

Without the Defendant's opposition and a hearing, the Court denied the motion for rehearing on the same day of issuing the final order granting Defendant's summary judgment as word by word written by Defendant's attorney. Therefore, the Court erred in violation of the statutes and want of due process.

First, under Rule 52(e), a judgment is stayed once a party submits a motion to alter or amend a court's decision. In this instance, as well as in several similar instances previously, the Court did not stay its order and did

not conduct a hearing but denied Dr. Dong's motion. Therefore, the Court deprived Dr. Dong's due process right to be heard.

The Due Process Clause of the Fifth Amendment to the Constitution assures Dr. Dong's right to be heard. Depriving Dr. Dong's right to be heard is a structural error.

Second, the court and the judge are obligated to be fair and impartial and apply the law equally under the Constitution. Violation of such obligation removes the Court's legitimacy in adjudicating a case.

The Court is not a party and cannot raise a defense *sua sponte* for the Defendant. The Supreme Court of the United States have long established the principle: courts have the authority to grant unopposed motions when the opposing party fails to respond or does not raise any objections. The Court emphasized that the responsibility lies with the court to "take the consequences" and grant the unopposed motion if it is meritorious and supported by the applicable law. In *Link v. Wabash Railroad Co.*, 370 U.S. 626 (1962): "A motion unopposed and uncontroverted is ordinarily deemed to have been admitted and should be granted without delay." In *Smith v. Sperling*, 354 U.S. 91 (1957).

The South Carolina Court of Appeals held that when a motion is unopposed, it is considered admitted, and the court may grant the relief sought in the motion

without further proceedings. *Crowe v. AAA Constr. Co.*, 387 S.C. 183, 692 S.E.2d 542 (Ct. App. 2010).

The South Carolina Court of Appeals emphasized that when a motion is unopposed, it is deemed admitted and may be granted, provided it is supported by the law and facts. *Hanebrink v. Seale*, 534 S.E.2d 700 (S.C. Ct. App. 2000); also see *Spartanburg County v. Riddle*, 616 S.E.2d 415 (S.C. Ct. App. 2005), (Stating “unopposed motions may be granted without a formal hearing when the record sufficiently supports the requested relief.”)

When a party fails to raise a meaningful opposition, the Court has the authority to grant the unopposed motion because the fact and the argument presented are so overwhelmingly in favor of the moving party.

Therefore, this Court’s repeatedly denying Dr. Dong’s this and other motions without the Defendant’s opposition is an abuse of discretion and a breach of the Court’s constitutional obligation to be neutral and violated Dr. Dong’s rights to due process as assured by the Fifth Amendment to the Constitution.

III. PRAYER FOR RELIEF

In light of the foregoing, Plaintiff respectfully requests that this Honorable Court grants the following relief:

1. Grant the unopposed motion for rehearing based on the newly filed Memorandum supporting Plaintiff's Opposition to Defendant's Motion for Summary Judgment.

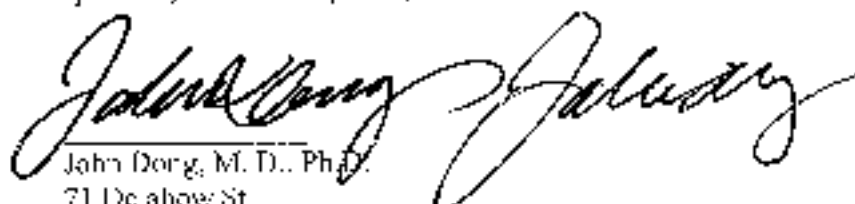
2. Alter and amend the order granting Defendant's Summary Judgment after the rehearing based on the law and the fact presented at the hearing to correct the errors and oversights identified in this motion;

IV. CONCLUSION

For the reasons stated above and in accordance with SCRPC 52(b), Plaintiff respectfully requests the honorable Court to alter and amend its Order granting Defendant's motion for summary judgment to correct the errors and oversights identified herein in the interest of justice.

Respectfully submitted, pro se,

July 27, 2023
Charleston, South Carolina

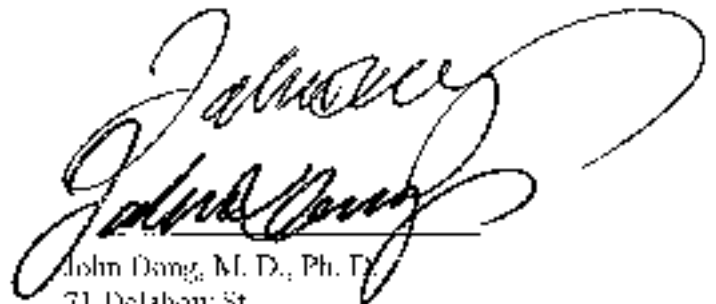

John Dong, M.D., Ph.D.
71 De ahaw St
Charleston, SC 29492
Email: john.dong@gmail.com
Phone: 843-991-2332

Attachment: 1. Envelop used to sending Notice Entry dated on July 19th and received on July 21, 2023
2. Notice of Entry of Order Denying Motion for Rehearing
3. Notice of Entry of Order Granting Summary Judgment

CERTIFICATE OF SERVICE

This is to certify that I have on this 27th day of July 2023, served a copy of the Plaintiff's Motion for Amendment Order Granting Motion for Summary Judgement under SCRCP 52(b) to the ECF system, which will notify all parties electronically. In addition, a copy of this motion is served via Email at bconley@clevelandlaborlaw.com and United States Mail Services addressed to the following:

Bob L. Conley, Esq.
Cleveland & Conley LLC
171 Church Street, suite 310
Charleston, South Carolina 29401



John Dang, M.D., Ph.D.
71 Delahoy St
Charleston, SC 29403
Email: johny.dang@gmail.com
Phone: 843-991-2332

FILED
2023 JUL 28 PM 6:31
CLERK OF COURT
JR

Exhibits

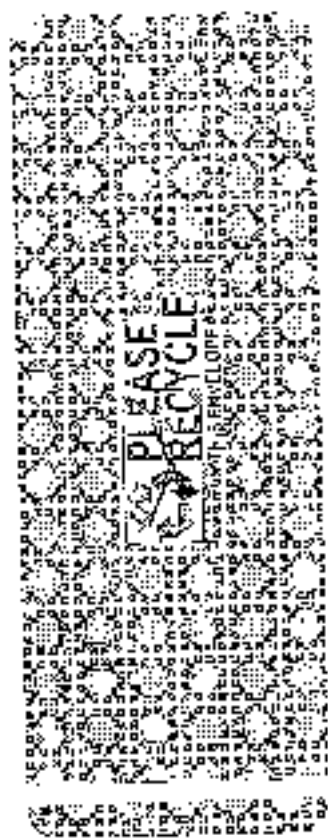
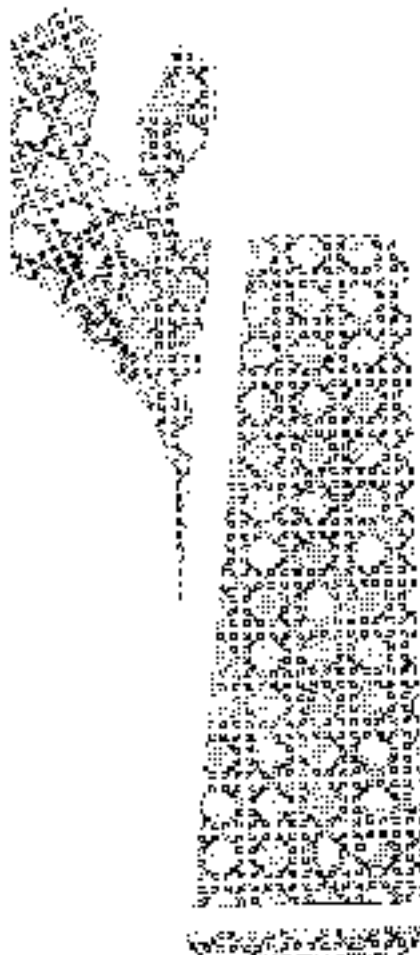


EXHIBIT 1

EXHIBIT 2

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & C.S.
103 BROAD STREET, SUITE 101
CHARLESTON, SC 29401-2228
RETURN SERVICE REQUESTED



clerkofcourt.charlestoncounty.org

Dong, John M D Ph D
71 Delanow St
Charleston, SC 29492

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Order/Rehearing of Dfs Motion for Summary Judgment's Denied

CASE NO: 2016CP1006683

Jian Yun Dong M D , plaintiff, et al VS Medical University of South Carolina The

This judgment was entered on the 17th day of July, 2023, and notice mailed first class on Tuesday, July 18, 2023, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at <http://clerkofcourt.charlestoncounty.org> or obtain a copy in person at the Clerk of Court's Office during regular Charleston County business hours.

JULIE J. ARMSTRONG
CLERK OF COURT, C.A. & S.A.
143 BROAD STREET, SUITE 100
CHARLESTON, SC 29401-3332
RETURN SERVICE REQUESTED



clerkofcourt.charlestoncounty.org

VS. **RECEIVED**

DONG, JOHN M D PH D
71 DELAHOW ST
DANIEL ISLAND SC 29492-7857

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Order Granting Motion for Summary Judgment

CASE NO: 2016CP1006683

Jian Yun Dong M.D., plaintiff, et al VS Medical University of South Carolina The

This judgment was entered on the 17th day of July, 2022, and notice mailed first class on Tuesday, July 18, 2023, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at <http://clerkofcourt.charlestoncounty.org> or obtain a copy in person at the Clerk of Court's Office during regular Charleston County business hours.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JOHN-YUN (JOHN) DONG, M.D., Ph.D.

Plaintiff,

vs

THE MEDICAL UNIVERSITY OF SOUTH CAROLINA,

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 16-C2-10-06683

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

John Dong, pro se, Bar No. _____

Address:

71 Delahow Street,
Charleston, SC 29402

Phone: 843-991-2332 Fax _____

E-mail: johny.dong@me.com Other _____

Defendant's Attorney:

Rob L. Conroy, Bar No. _____

Address:

171 Church Street, Suite 310
Charleston, SC 29401

Phone: 843-577-9626 Fax _____

E-mail: rconroy@clevelandlaboraw.com Other _____

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Plaintiff's Memorandum Supporting Response to Motion for Summary Judgment

Estimated Time Needed: 1

Court Reporters Needed

☐ YES ☒ NO

SECTION II: Motion/Order Type

☐ Written motion attached☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff ☐ DefendantDate
June 25th, 2023

Date Submitted

SECTION III: Motion Fee

☒ PAID - \$ AMOUNT: \$☐ EXEMPT:

(check reason)

☐ Rape or Sexual Cause in Child or Spousal Support☐ Domestic Abuse or Abuse and Neglect☐ Indigent Status ☐ State Agency or Indigent Party☐ Sexually Violent Predator Act ☐ Post Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)☐ Proposed order submitted at request of the court, or

reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____☐ CONTESTED AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

John Dong, M.D., Ph.D.,

– Plaintiff,

v.

The Medical University of South
Carolina,

– Defendant,

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-1B-06685

**Motion for Rehearing on Plaintiff's
Response in Opposition to
Defendant's Motion for Summary
Judgment**

FILED
2023 JUN 27 AM 9:42
CLERK OF COURT
WCL

Plaintiff John Dong hereby respectfully requests the Court to grant this Motion for Rehearing of Defendant's Motion for Summary Judgment pursuant to SCRCP Rule 56.

For good reasons, I respectfully submit the following:

THE STATUTE:

The relevant parts of the SCRCP Rule 56 state:

(c) The summary judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. (emphasis added)

(c) Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and

shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits.

(f) When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such order as is just.

ARGUMENT

1. Defendant failed to prove that: “there is no genuine issue as to any material fact” with “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits.”

2. Defendant showed no evident support for its Motion for summary judgment, no interrogatories, admissions on file, and no affidavits.

3. Without any testimony or verified evidence by a witness, Defendant’s counsel falsely testified about facts, including Dr. Dong’s statement in his deposition without any citation or reference of the document or fabricated Dr. Dong’s

statement. As a counsel, knowing presented incorrect facts is a fraud upon the court.

4. Without a single witness, the Defendant's counsel testified extensively about "MUSC's position," the interpretation of the Agreement, and the "facts" about how MUSC did not breach the contract. Counsel is not allowed to testify, and any statement about material facts by counsel should be struck off the records as a matter of law.

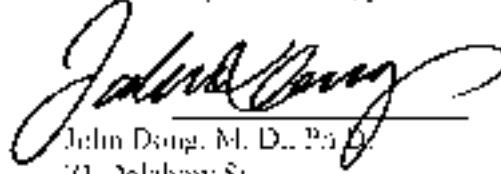
5. Finally, under Rule 56(f), the Court may not apply the [summary] judgment and may order a continuance to allow additional discovery and depositions in order for the opposition to obtain affidavits or supporting evidence. In this case, the Court limited my deposition in scope and time by orders. I only had one day before the hearing to submit a memorandum and affidavit to support my Response in Opposition to Defendant's Motion for Summary Judgment prepared by a team of attorneys.

CONCLUSION

For the reasons stated above, Dr. Dong respectfully requests the Court to Grant this Motion for Rehearing Defendant's Motion For Summary Judgment and Plaintiff's Response and Memorandum in Opposition.

June 26, 2023
Charleston, South Carolina

Respectfully submitted, *pro se*,

A handwritten signature in black ink, appearing to read "John Doug", written over a horizontal line.

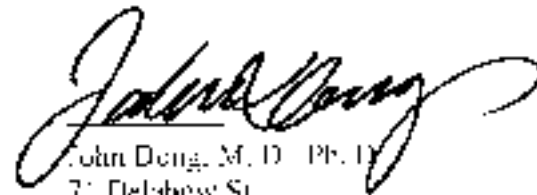
John Doug, M. D., Ph.D.
71 Delahoy St
Charleston, SC 29402
Email: john.doug@gmail.com
Phone: 843-991-2532

CERTIFICATE OF SERVICE

This is to certify that I have, on this 26th day of June 2023, served a copy of the Plaintiff's Motion For Rehearing to the ECF system, which will notify all parties electronically. In addition, a copy of this motion is served via Email at bconley@clevelandlaborlaw.com, and United States Mail Services addressed to the following:

Bob J. Conley, Esq.
Cleveland & Conley LLC
171 Church Street, suite 310
Charleston, South Carolina 29401

FILED
2023 JUN 27 AM 9:42
U.S. DISTRICT COURT
SOUTH CAROLINA
BY _____



John Deng, M.D. Ph.D.
71 Delahow St
Charleston, SC 29492
Email: johny.deng@gmail.com
Phone: 843-991-2322

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

LIAN-YUN (JOHN) DONG, M.D., Ph.D.,

Plaintiff,

vs.

THE MEDICAL UNIVERSITY OF SOUTH
CAROLINA,

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 16-CP-10-06683

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET****Plaintiff's Attorney:**

John Dong, pro se, Bar No. _____

Address:

71 Delahow Street,

Charleston, SC 29492

Phone: 843-991-2332 Fax _____

E-mail: johny.dong@me.com Other: _____

Defendant's Attorney:

Bob J. Conley, Bar No. _____

Address:

171 Church Street, Suite 310

Charleston, SC 29401

Phone: 843-577-0626 Fax _____

E-mail: bconley@clevelandlaborlaw.com Other: _____

☐ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)☒ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)**SECTION I: Hearing Information**

Name of Motion: Plaintiff's Motion for Continuance

Estimated Time Needed: 0

Court Reporter Needed: ☐ YES ☒ NO**SECTION II: Motion/Order Type**☐ Written motion attached☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff /

Defendant

May 25th, 2023

Date submitted

SECTION III: Motion Fee☒ **PAID AMOUNT: \$** _____☐ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support☐ Domestic Abuse or Abuse and Neglect☐ Indigent Status ☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act ☐ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)☐ Proposed order submitted at request of the court, or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____**JUDGE'S SECTION**☐ Motion fee to be paid upon filing of the attached
order.

JUDGE CODE: _____

☐ Other: _____

Date: May 25th 2023

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ **MOTION FEE COLLECTED: \$** _____☐ **CONTESTED - AMOUNT DUE: \$** _____

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

John Dong, M.D., Ph.D.,
Plaintiff,

v.

The Medical University of South
Carolina,
Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-16-06683

MOTION FOR CONTINUANCE

Honorable Justice Toal:

I am writing to respectfully request a continuance of the hearing scheduled to take place on May 26th, 2023, in the aforementioned case. I apologize for any inconvenience this may cause and appreciate your understanding in considering this motion.

I am a layman and represent myself against a team of experienced legal professionals who represent the Defendant, MUSC that has unlimited resources. I believe that a continuance is necessary for the following reasons:

1. The Supreme Court of the United States has long established that courts should give "more leeway", or a "certain degree of latitude to pro se litigants in the presentation of their cases" and "should be held to less stringent standards" for both the contents and the procedures and "due process concerns can outweigh rigid procedural rules," in this case, arbitrary deadlines set by

judges. See *Beckles v. United States*, 137 S. Ct. 886 (2017); Also see: *Landell v. Sorrell*, 382 F.3d 91 (2d Cir. 2004); *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998)

2. **The complexity of the Case:** This case involves complex legal issues and a significant amount of documentary evidence. The Plaintiff has been unable to complete the discovery due to the Court's order to limit the scope and enforce rigid timelines. The parties require additional time to thoroughly review and analyze the evidence on hand and to adequately prepare for filing depository motions. Granting a continuance would ensure that both parties have a fair and equal opportunity to present their arguments.
3. **Unavailability of Key Witness:** None of the key witnesses crucial to presenting our case have been made unavailable due to Defendant's delaying tactic and the Court's denial to extend the arbitrary and short deadlines. The witness's testimonies are essential to Plaintiff's position, and it would be unjust to proceed without their testimony.
4. **Mediation:** Courts should encourage, facilitate, and allow sufficient time for parties to resolve the dispute through good faith mediation. However, using the short and rigid timelines, Defendant has rejected Plaintiff's good faith efforts to resolve the dispute through mediation. Although these attempts have been unsuccessful thus far, there is a possibility that further negotiations and

discussions could lead to a settlement. Granting a continuance would allow the parties additional time to explore this option and potentially avoid the need for a trial.

5. Unable to prepare for a response: Due to reasons beyond the control of the Plaintiff, Plaintiff has filed Motions for an extension of time for discovery, or protective orders, all have been denied without stating a legal reason by the Court. Due to these circumstances and the rigid and short timeline, Plaintiff did not have time to complete a response to Defendant's motion for summary judgment. The hearing date was set without a status conference by the parties to brief the Court on the progress in due process, and readiness for the next phase.
6. Due process requirements: The Plaintiff also did not receive proper notice under the SCRCF, and Due Process. Plaintiff did not receive formal order or notice from the Court but only got to know the hearing date through an informal email reminder or heard from the Defendant. These are not proper notice, which needs to be sent by the Court in advance and with sufficient information about the hearing.

The Supreme Court has long established:

"The essential elements of due process of law are notice and opportunity to defend." *Simon v. Craft*, 21 S. Ct. 836 (1901).

"An elementary and fundamental requirement of due process

in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

"At a minimum, due process requires that the recipient be given timely and adequate notice detailing the reasons for the intended adverse action and an opportunity to present objections...." "This Court emphasized that 'notice and an opportunity to be heard are the hallmarks of due process.'" *Mathew v. Eldridge*, 424 U.S. 319, 333, 335, S. Ct.

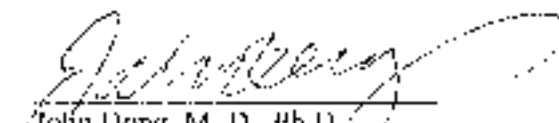
These Supreme Court commands are implemented by appellate courts:

"[b]ecause of the Constitutional importance of insuring proper notice, courts will not forgive improper notice even where a party receives the actual notice." See *Doe v. Chao*, 306 F.3d 170, 182 (4th Cir. 2002); See also *Jones v. Flowers*, 126 S. Ct. 1708 (2006).

For the reasons stated above, I respectfully request that the hearing on Defendant's motion for summary judgment be continued for 30 days, allowing all parties involved ample time to prepare and present their case effectively.

May 25, 2023
Charleston, South Carolina

Respectfully submitted, pro se,


John Dong, M. D., Ph.D.
71 Delahow St
Charleston, SC 29492
Email: johny.dong@gmail.com
Phone: 843-991-2332

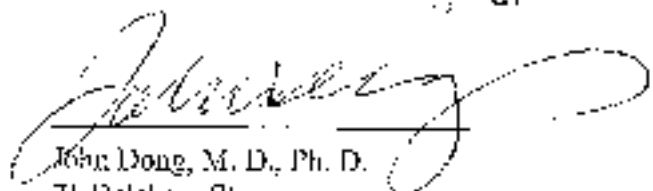
2016-CP-10-06683

CERTIFICATE OF SERVICE

This is to certify that I have on this 25th day of May 2023, served a copy of the Plaintiff's Motion for Continuance to the ECF system, which will notify all parties electronically. In addition, a copy of this motion is served via Email at bconley@clevelandlaborlaw.com and United States Mail Services addressed to the following:

Bob J. Conley, Esq.
Cleveland & Conley LLC
171 Church Street, suite 310
Charleston, South Carolina 29401

2023 MAY 26 PM 4:45
U.S. DISTRICT COURT
SOUTH CAROLINA
JF


John Dong, M. D., Ph. D.
71 Delahow St
Charleston, SC 29492
Email: johny.dong@gmail.com
Phone: 843-991-2332

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JIAN-YUN (JOHN) DONG, M.D., Ph.D.,

Plaintiff,

vs.

THE MEDICAL UNIVERSITY OF SOUTH
CAROLINA,

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 16-CP-10-06683

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

John Dong, pro se, Bar No.

Address:

71 Delahow Street,

Charleston, SC 29402

Phone: 843-931-2332 Fax

E-mail: johny.dong@me.com Other:

Defendant's Attorney:

Bob J. Conley, Bar No.

Address:

171 Church Street, Suite 310

Charleston, SC 29401

Phone: 843-577-9626 Fax

E-mail: bconley@clevelandlaborlaw.com Other:

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**SECTION I: Hearing Information**

Nature of Motion: Plaintiff's Motion for Protective Order due to Eye Surgeries &

Estimated Time Needed: 0

Court Reporter Needed: ☐ YES ☒ NO**SECTION II: Motion/Order Type**☐ Written motion attached☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff ☐ Defendant

February 20, 2023

Date submitted

SECTION III: Motion Fee☒ PAID - AMOUNT: \$☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support☐ Domestic Abuse or Abuse and Neglect☐ Indigent Status ☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act ☐ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)☐ Proposed order submitted at request of the court; or,

reduced to writing from motion made in open court per judge's instructions.

Name of Court Reporter:

☐ Other:**JUDGE'S SECTION**☐ Motion Fee to be paid upon filing of the attached
order☐ Other:

JUDGE CODE:

Date:

CLERK'S VERIFICATION

Collected by: Date Filed:

☐ MOTION FEE COLLECTED: \$☐ CONTESTED - AMOUNT DUE: \$

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
John Dong, M.D., Ph.D.,)
Plaintiff,)
v.)
The Medical University of South)
Carolina,)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-10-06683

**MOTION FOR PROTECTION
ORDER**

FILED
2023 MAY -1 PM 2:43
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

Plaintiff in the above-captioned case, John Dong, M. D., Ph.D., hereby moves this court for protection from legal proceedings and court appearances in the Charleston County Court of Common Pleas from Monday, May 8th, through Thursday, May 25th, 2023.

For good cause, Dr. Dong pleads the following:

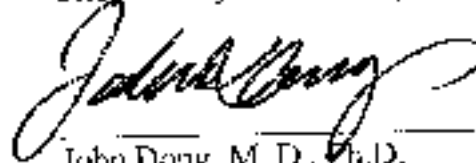
Due to his advanced stage of diabetes and age, Dr. Dong has been suffering from impaired vision due to progressive cataracts in both eyes. He now can only read or write with the aid of computer-enhanced large texts on a large, specialized screen for a short period each day before suffering headaches and discomforts. He had been under a series of diagnoses and treatment procedures, with a couple more in recent days. Dr. Dong is given a schedule for two consecutive surgeries to remove cataracts and implant lenses in both eyes to restore his vision. The two surgeries will

be consecutive and one week apart, starting on May 9th and ending on May 24th, 2023, including minimum recovery periods. If everything goes well, Dr. Dong would need at least three extra days to be prepared for any legal proceedings and court appearances.

This protection is necessary for Dr. Dong to have his vision restored by the surgeries and recovery period and is not intended to cause any delay in the legal proceedings.

April 26, 2023
Charleston, South Carolina

Respectfully submitted, pro se,

A handwritten signature in black ink, appearing to read "John Dong", written over a horizontal line.

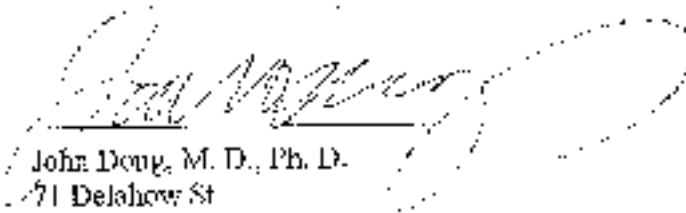
John Dong, M. D., Ph.D.
71 Delahow St
Charleston, SC 29492
Email: johny.dong@gmail.com
Phone: 843-991-2332

CERTIFICATE OF SERVICE

This is to certify that I have on this 26th day of April 2023, served a copy of the Plaintiff's Opposition to Defendant MUSC's Motion for Summary Judgment to the ECF system, which will notify all parties electronically. In addition, a copy of this motion is served via Email at bcconley@clevelandlaborlaw.com and United States Mail Services addressed to the following:

Bob J. Conley, Esq.
Cleveland & Conley LLC
171 Church Street, suite 310
Charleston, South Carolina 29401

FILED
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JOHN J. ARNONE
CLERK OF COURT


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Charleston, SC 29402
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ATTACHEMENT

– Supporting Medical Records



FUTURE APPOINTMENTS

We look forward to seeing you at your next appointments!

Patient Name: John Dong

05/01/23 10:30 A

CEP-Mount Pleasant

1101 Clarity Road

Mount Pleasant, SC 29464-3738

(843) 881-3937

Dr. Solomon

05/11/23 11:30 A

CEP-West Ashley

2060 Charlie Hall Blvd

Charleston, SC 29414-6066

(843) 722-2010

Dr. Clark

05/05/23 6:00 A

Physicians Eye Surgery Center (Pro)

2060 Charlie Hall Blvd

Charleston, SC 29414-6066

(843) 571-4600

St. 301

05/09/23 03:30 P

CEP-West Ashley

2060 Charlie Hall Blvd

Charleston, SC 29414-6066

(843) 722-2010

Dr. Clark
St. 201

05/10/23 6:00 A

Physicians Eye Surgery Center (Pro)

2060 Charlie Hall Blvd

Charleston, SC 29414-6066

(843) 571-4600

St. 301

Kindly give 48 hours' notice for cancellations.

Date Printed: 04/24/23



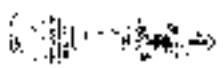
Cataract Surgery Drop Instructions

A US EYE COMPANY



Use Scrubs (any brand)
May be purchased over
the counter.
May be substituted with
baby shampoo.

Instructions: Begin 3 days before
surgery, 2 times per day AM and PM



1 day before surgery
(in operative eye)

Day 1 ☐ ☐ ☐

****No eating or drinking after midnight the day before surgery.****

Shake bottle well before each use.

Post-Op WEEK 1

Prescriptions: Moxifloxacin, Brimonidine
1 drop 3 times a day

Post-Op WEEK 2

Prescriptions: Moxifloxacin, Brimonidine
1 drop 3 times a day

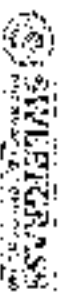
Post-Op WEEK 3

Prescriptions: Moxifloxacin, Brimonidine
1 drop 2 times a day

Post-Op WEEK 4

Prescriptions: Moxifloxacin, Brimonidine
1 drop at bedtime

Day of Surgery	☐	☐	☐	Day 8	☐	☐	☐	Day 15	☐	☐	☐	Day 22	☐
Day 2	☐	☐	☐	Day 9	☐	☐	☐	Day 16	☐	☐	☐	Day 23	☐
Day 3	☐	☐	☐	Day 10	☐	☐	☐	Day 17	☐	☐	☐	Day 24	☐
Day 4	☐	☐	☐	Day 11	☐	☐	☐	Day 18	☐	☐	☐	Day 25	☐
Day 5	☐	☐	☐	Day 12	☐	☐	☐	Day 19	☐	☐	☐	Day 26	☐
Day 6	☐	☐	☐	Day 13	☐	☐	☐	Day 20	☐	☐	☐	Day 27	☐
Day 7	☐	☐	☐	Day 14	☐	☐	☐	Day 21	☐	☐	☐	Day 28	☐



If you have any questions regarding
your drops, please call Sweetgrass
Pharmacy at 843-900-7007.



KERRY SOLOMON, MD

(843) 881-3937



1101 Clarity Road, Mount Pleasant, SC 29464 • 843-585-5198 • CarolinaEyecare.com

Name	Chart#	DOB	Refer Doctor
John Dong	1440392	[REDACTED]	
Date	Location	PCP	Insurance
4/24/2023	Mount Pleasant		Aetna PPO

Reason For Visit: New Patient - Nuclear Sclerotic OU.

Secondary: Diabetes, Type II, No Ocular Complications, Not Insulin Dependent.

HPI: CC: Decreased Vision, Location: OU. Quality: blurry. Quantity: cloudy. Severity: moderate. Timing: all the time. Duration of Problem: 1-2 years. Context Onset/Aggravation: while reading. Activity Affected: fine print. Difficult. Context Onset/Aggravation: While watching TV. Activity Affected: Captions on TV. Context: Onset/Aggravation: while driving. Activity Affected: crying at night/daytime. Quality: glare. Context: Onset/Aggravation: playing tennis. Activity Affected: having trouble seeing people/opponent when playing. Patient states in the past few years, he has tried many different glasses/CLs and they have never improved VA. Patient prefers to be less dependent on glasses. HPI obtained by Kerry Solomon, MD

Specialty Meds (Initial): None.

Mental Status: Alert and oriented x 3, appropriate mood/affect. Hx Source: Patient LBS: 140-yesterday

HAIs: 2-1-4 a few months ago

PSFH/ROS Updated Date: 4/24/23

Medical Hx: Diabetes Type II, **Surgical Hx:** Negative.

Systemic Meds: Azithromycin 250 MG. Triject (dulaglutide) 3 mg/0.5 mL pen injector, Disp. 2 mL NR mL, prednisolone sp-moxiflox-bromfenil (prednisolone sp-moxiflox-bromfenil) 1-0.5-0.075% drops: 1 drop into affected eye three times a day, Refills: 0 1 gtt.

Allergies: NKDA.

Family Hx: Negative, **Social Hx:** Alcohol: Occasional/Social, Smoking/Tobacco: Never Smoker. Fall Risk: No.

ROS: Allergy/Immunology: Negative. Cardiovascular: Negative. HENT: Negative. Endocrine: Negative. Gastrointestinal: Negative. Genitourinary: Negative. Hematology/Oncology: Negative. Integumentary: Negative. Musculoskeletal: Negative. Neurologic: Negative. Psychiatric: Negative. Respiratory: Negative. Constitutional: Well-Nourished, Healthy Appearing Patient, No Acute Distress.

VA: OD: Dsc20/100. Glare LR. BCVA20/50. OS: Dsc20/80. Glare LR. BCVA20/50.

TOP: TF OD: 16 OS: 18

9:00 AM

Pachymetry:

Dominant Eye: OS

AR Dry:

SpH	Cyl	Axial	Other
OD			error
OS			error

MR Dry

	Sph.	Cyl.	Axis	Add	Glare	Distance
OD	-0.75	+1.50	105		LP	20/80
OS	-0.25	+0.75	150		LP	20/50

Dilatation:

Location: OU. Techs: JG/He. Time: 9:01 AM. Drops: Discussed effects of drops; Tropicamide 1%.

Keratometry:

OD: K1 43.50 @ 96 K2 44.00 @ 8 Astig: 0.5 OS: K1 43.00 @ 115 K2 44.00 @ 25 Astig: 1

H&P: BP: 151/88, Pulse: 52, Heart: Regular Heart Rate and Rhythm, Lungs, Lungs Clear to Auscultation,

Secondary: Diabetes, Type II, No Ocular Complications, Not Insulin Dependent.

External**Right Eye****Left Eye**

- General
- Pupils
- Motility
- CVP
- Adnexa

Round, Brisk, Equal Size, No RAPD.
Full, Orthotropic.
Full.
Normal Ocular Adnexa.

Round, Brisk, Equal Size, No RAPD.
Full, Orthotropic.
Full.
Normal Ocular Adnexa.

Anterior**Right Eye****Left Eye**

- General
- L/C/S
- Cornea
- Anterior Chamber
- Iris
- Lens

White and Quiet.
Epithelium Intact, Normal Tear Film.
Deep, Quiet.
Flat.
Cortical Changes, 2+ NS.

White and Quiet.
Epithelium Intact, Normal Tear Film.
Deep, Quiet.
Flat.
Cortical Changes, 2+ NS.

Posterior**Right Eye****Left Eye**

- General
- Nerve
- Vitreous
- Retinal Vessels
- Macula
- Periphery

Good Dilation, Clear View of Posterior Segment.
CDR 0.3, No Clinical NFL Defects.
Posterior Vitreous Detachment.
Normal Caliber.
Normal Macula, No Retinopathy.
Attached 360 Degrees, No Holes or Tears.

Good Dilation, Clear View of Posterior Segment.
CDR 0.3, No Clinical NFL Defects.
Posterior Vitreous Detachment.
Normal Caliber.
Normal Macula, No Retinopathy.
Attached 360 Degrees, No Holes or Tears.

IOL Master/Lenstar: Findings OD: Diagnostic Testing Ordered by Physician. Interpretation: See Surgical Plan. Reason for Test: Ordered to Determine Biometric Measurements for Cataract Surgery and IOL Selection.
Findings OS: Diagnostic Testing Ordered by Physician. Interpretation: See Surgical Plan. Reason for Test: Ordered to Determine Biometric Measurements for Cataract Surgery and IOL Selection.

Imp/Plan:

1. Nuclear Sclerosis OU. Visually significant. Schedule cataract surgery OD then OS if visual symptoms persist.
2. Refractive Error. Educated on lens that provides vision to decrease dependence on glasses. Pt states he does not mind wearing glasses for reading and the most important thing for him is distance. Plan to return for AVT with a goal of custom vision aiming for plano sph in both eyes.
3. Posterior Vitreous Detachment OU. Retinal tear and detachment warning symptoms reviewed and patient instructed to call immediately if increasing floaters, flashes, or decreasing peripheral vision. No retinal detachment or retinal tear noted.
4. Diabetes, Type II, No Ocular Complications, Not Insulin Dependent. Recommended yearly dilated eye examinations. Retinal exam findings communicated to Physician managing diabetes. Blood sugar control advised.

Other Discussion: VISUALLY SIGNIFICANT: I have discussed the option of glasses versus cataract surgery versus nothing. It was explained that when the patient's vision no longer meets their visual needs and a glasses prescription does not improve visual symptoms, the option of cataract surgery is a reasonable next step. It was explained that there is no guarantee that removing the cataract will improve their visual symptoms, however, it is believed that the cataract is contributing to the patient's visual impairment and surgery may improve both the visual and functional status of the patient. The risks, benefits and alternatives of surgery were discussed with the patient. After this discussion, the patient desires to proceed with cataract surgery with implantation of an Intraocular lens to improve vision. **REFRACTIVE (CATARACT SURGERY):** Refractive error / Presbyopic Correction Counseling: Refractive Error - a problem focusing light accurately onto the retina due to the shape of the eye. Presbyopia is a gradual, age-related loss of the eye's ability to focus actively on nearby objects. The most common types of refractive error are near-sightedness, far-sightedness, astigmatism, and presbyopia. I have discussed the options for refractive surgery to decrease dependency on glasses and/or contact lenses after surgery. Multifocal, Trifocal and Extended depth-of-focus lens (EDOF) - It was explained that multifocal/trifocal and extended depth of focus lenses split light and this can be associated with a decrease in contrast sensitivity, depth of focus, a double image and ghosting which may or may not resolve over time. Multifocal/trifocal lenses are lighting dependent. In low or dim lighting, glasses may be needed for optimal near vision. It was explained that rings, halos, starbursts or spider webs around point sources of light (headlights, tail lights, street lights, neon signs, the moon, stars, etc.) will be present indefinitely after multifocal/trifocal/EDOF lens implantation (with the exception of the Vivify MP IOL). While the majority of patients do not find this limits their night time activities to include driving, in rare instances, it can. It was explained that these lenses are designed to satisfy a defined area of near vision, or "sweet spot", that requires some adaptation and flexibility and the degree of near vision achieved can vary from patient to patient. It was discussed that these lenses provide satisfactory vision for near and/or near and intermediate when reading backlit items such as a cell phone, kindle, etc. where fonts can be made larger and contrast is high; yet performance is still variable from patient to patient and there is no guarantee that they will not need glasses for printed material and activities such as computers and cell phones. I have discussed the options of a multifocal/trifocal and extended-depth-of-focus lens. It was explained that these options provide vision at either distance/intermediate or distance/near or distance/intermediate/near; however, compromises to achieve vision at varying distances do exist and these compromises may result in a reduced quality of vision. It was explained to the patient that the visual performance and dependence on

glasses varies from patient to patient and while some may perform activities without glasses there are others who need glasses for most or all of their activities. It was emphasized to the patient that multifocal/trifocal and EDOF options do not eliminate the need for glasses at all times. It was emphasized to the patient that the goal of refractive cataract surgery is reducing spectacle dependence not complete spectacle freedom. It was discussed that while the process of cataract surgery is high success being defined as removing a lens and replacing it with an artificial lens, the success rate of getting the prescription corrected to meet or approximate the patients goals is lower than it is with LASIK (about 75-80%). These options include: correction of astigmatism with limbal relaxing incision(s), LenSx arcuate incision(s) and/or a toric IOL, monovision, nanovision, multifocal/trifocal IOL, and EDOF IOL. The patient was advised that if refractive cataract surgery does not meet their expectations and glasses provide an increased quality of vision, glasses would be prescribed and if this patient is a candidate, a LASIK touch up may be offered. However, if the lenses are limiting their vision or activities and the vision is neither correctable nor satisfactory with glasses, then an IOL exchange may be considered. **For patient's undergoing cataract surgery- In the event you decline a refractive package, traditional cataract surgery will be performed and a monofocal IOL will be implanted. Patient understands that they will need glasses for distance, intermediate and near vision. Laterality Counseling: It has been explained that in the event cataract surgery is medically indicated in both eyes and each eye is equally visually significant the patient is offered to choose which eye he/she would prefer to be operated on first. If the patient does not have a preference, the surgery on the dominant eye will be performed first as a standard of care.

Specialty Meds (Final): None.

Follow Up: Dr. Solomon - Cataract Extraction with IOL #1 OD, Cataract Extraction with IOL #2 OS (AVT IF PREMIUM).



Signed:

Electronically signed by Kerry Solomon, MD
4/24/2023 9:58:07 AM

John Dong

DOD

Med-1440129

Informal Consent For Cataract Surgery

What is a cataract and how is it treated?

The lens in the eye can become cloudy and hard, a condition known as a cataract. Cataracts can develop from normal aging, from an eye injury, or from long-term use of certain drugs known as steroids. Cataracts may cause blurry vision, faded vision, sensitivity to light and glare, or double vision. If the cataract changes vision so much that it interferes with your daily life, the cataract may need to be removed. Surgery is the only way to remove a cataract. You can decide not to have the cataract removed. If you don't have the surgery, your vision loss from the cataract will typically get worse.

How will removing the cataract affect my vision?

The goal of cataract surgery is to correct the decreased vision that was caused by the cataract. During the surgery, the ophthalmologist (eye surgeon) removes the cataract and puts in a new artificial lens called an intraocular lens or IOL. Cataract surgery will not correct other causes of decreased vision, such as glaucoma, diabetes, or age-related macular degeneration.

You may still need glasses or contact lenses for your best vision after cataract surgery.

Examinations Prior to Surgery

If you decide to have cataract surgery, you will undergo a complete eye examination by your surgeon. This may include an examination to determine your eyes' refraction (refraction), measurement of your vision with and without glasses (visual acuity), measurement of the maximum height of your eye (ocular length), measurement of the curvature of your cornea (keratometry), measurement of the height of your eye (axial length), intraocular lens calculation (axiality) to determine the best estimate of the optical power of the implanted IOL, microscopic examination of the back part of your eye (retinal examination), and examination of the retina of your eye with your pupil dilated. All of these tests are reviewed to determine the best type of IOL for you, based on your visual preferences. Even with the latest technology, post-operative outcomes can vary and your vision will probably continue to change as you age.

You may still need glasses or contact lenses for your best vision after cataract surgery.

What types of IOLs are available?

Your ophthalmologist will help you decide on a best type of IOL for you. There are IOLs available to treat nearsightedness (myopia), farsightedness (hyperopia), astigmatism, and presbyopia. Standard IOLs provide either near or distance vision; these single focus lenses are called MONOFOCAL IOLs. Some newer IOLs can provide for near, intermediate, and distance vision; these multiple focus lenses are called MULTIFOCAL IOLs. IOLs that have multiple foci are called TORIC IOLs.

What is astigmatism? Are there other treatments for it?

Patients with nearsighted and farsightedness often also have astigmatism. An astigmatism is caused by an irregularly shaped cornea, instead of being round like a basketball, the cornea is shaped like a football. This can make your vision blurry for both distance and near. There are several treatment options for astigmatism:

***You can have a STANDARD IOL for near or distance vision and continue to wear glasses or contact lens to correct your astigmatism;**

***You can have a TORIC IOL placed in your eye. A TORIC IOL will reduce your astigmatism and thus improve your vision. However, you still may need glasses for your best vision even after receiving a TORIC IOL. Choosing a TORIC IOL will lead to a significant amount of expense, as the majority of this IOL is not covered by insurance. A TORIC IOL will not, however, not always completely eliminate your astigmatism, in which case your surgeon may choose to use a perfective procedure called an LRI, at no cost to you, to correct astigmatism by reshaping the cornea.**

In some cases your surgeon may only reshape your LRI. A Limbal Relaxing Incision (LRI) is a small cut in the cornea that the ophthalmologist makes into your cornea to make it more regular. More than one incision may be required. This is considered an elective procedure and is not covered by insurance and will therefore lead to an additional out-of-pocket cost.

Purpose and Alternatives for Near Vision After Surgery

Patients who have cataracts have a difficulty with developing presbyopia, which is a condition caused by aging that develops when your eye loses its ability to shift from distance to near vision. Presbyopia is the reason that reading glasses become necessary, typically after age 40, even for people who have excellent distance and near vision without glasses. Presbyopic individuals require bifocals or some other different prescription reading glasses in order to see clearly at close range. There are several options available to you to achieve distance and near vision after cataract surgery. This is probably the most important decision you need to make about your cataract surgery, so please take the time to discuss your options and ask questions.

GLS825

You can choose to have a MONOFOCAL (single focus) IOL implanted for distance vision and wear separate reading glasses, or have the IOL implanted for near vision and wear separate glasses for distance.

MONOVISION

The ophthalmologist can implant a IOL with two different powers, one for near vision in one eye and one for distance vision in the other eye. This combination of a dominant eye and a reading eye is called monovision. It can allow you to read without glasses. Many patients who wear monovision or who have had cataract surgery have monovision and are happy with it. Your surgeon will discuss and demonstrate this option to see if it might work for you.

MULTIFOCAL IOL

You can choose to have a "MULTIFOCAL" IOL. This is a newer, "hybrid" type of IOL that provides distance vision AND restores some of your eye's ability to focus. It corrects for both distance vision and close ranges, such as near or intermediate. Choosing this option will usually lead to higher out-of-pocket expenses; thus most insurance companies may pay for a MONOFOCAL (single focus) lens. You may still need glasses for your best vision after cataract surgery even if you have chosen to have a Multi-Focus IOL.

Anesthesia, Procedure, and Postoperative Care

The ophthalmologist or anesthesiologist will numb your eye with drops. You also undergo light IV sedation administered by an anesthesiologist. While it is not traditional sedation through an IV, you will still need someone in the operating room.

After incision or opening, a thin flap is made in the eye. This is usually self-healing but it may require closure with a very fine suture (sutures) which will be removed at a later time. The natural lens in your eye will then be removed by a technique called phacodisruption, which uses a very ultrasonic probe to disintegrate the lens into small pieces. These pieces are gently washed out of your eye. After your cataract is removed, the IOL is placed inside your eye. In some cases, it may not be possible to implant the IOL you have chosen, or any IOL at all.

Your eye will be examined the day after surgery by your surgeon and then again approximately 3 weeks. During the immediate recovery period, you will close drops in your eyes for at least 2 to 4 weeks, depending on your individual rate of healing. If you have chosen monovision with standard IOLs, or multifocal IOLs, to reduce your dependency on glasses or contacts, you may still need glasses for some activities. You should be able to resume your normal activities within 1-2 days, and your eye will usually be stable within 2-3 weeks. At that time glasses or contact lenses may be prescribed by your referring ophthalmologist, optometrist or Dr. Seaman.

Risks and the Major Risks of Cataract Surgery?

All operations and procedures have some degree of risk and can result in a successful result, complications and injury. Complications can be mild or severe. The major risks of cataract surgery include, but are not limited to: bleeding, infection, injury to parts of the eye and nearby structures from the anesthesia, the anesthesia itself, or irritation of the lens that cannot be removed, high eye pressure, a detached retina, a floppy eyelid, and swelling in the vitreous called "Vitreous Membrane Ectasia". The major risks of a lens relaxing reaction are similar to those for cataract surgery, but also include loss of vision, cataract to the cornea, and tearing; under- or over-correction; dyspareunia.

Depending upon your eye and the type of IOL you may have an unusual light glare or halos, double vision, ghost images, impaired depth perception, blurry vision, and trouble seeing at night. The ophthalmologist might not be able to put in the IOL you choose. In addition, the IOL may start to move or become dislocated. Depending upon the type of anesthesia, other risks are possible including cardiac and respiratory problems, and, in very rare cases, death.

There is no guarantee that cataract surgery will improve your vision. As a result of a surgery and/or anesthesia, it is possible that your vision could be made worse. In some cases, complications may occur weeks, months or even years later. These and other complications may result in pain, vision loss, loss of sight, or loss of use of the eye in later activities. You may need additional treatment or surgery to treat these complications. This additional treatment is not included in the fee for this procedure.

Depending on how your eye heals, the incision may still slightly leak fluid or become dry in your eye. This may result in an unexpected visual outcome requiring you to wear glasses or contact lenses for your best vision.

Patient's Acceptance of Risks

I understand that it is impossible for the doctor to remove all away possible complication that may occur. By signing below, I agree that my doctor has explained to me all of the risks, that I have been offered a copy of this consent form, and that I understand and accept the risks, benefits, and alternatives of cataract surgery, with a second second later.

I hereby give my consent to cataract surgery and I wish to have the operation with a (hyperbolic) laser as part of my treatment plan for OCT imaging purposes and/or for correction of my refractive error on my left eye.

Dr. Seaman routinely monitors his surgical outcomes in an effort to provide the best services to his patients. In order to do this, proper and prompt collection of patient information needs to be obtained. This information is deidentified and your health information remains private. The data collected may or may not be used for research purposes and/or publication of scientific findings and/or in journals. In these cases, your protected health information will not be disclosed because you cannot be identified. A member of Dr. Seaman's team may contact you if he thinks you may qualify for any studies we are currently conducting. Your participation is voluntary.

Informed Consent for Use of a Femtosecond Laser During Cataract Refractive Lens Exchange Surgery Or To Treat Astigmatism

What is the femtosecond laser?

The femtosecond laser is a small device that can be used for many purposes. It has been approved by the Food and Drug Administration (FDA) for the treatment of cataracts and for the treatment of astigmatism. The femtosecond laser is used to create a series of small incisions in the cornea (the front window of the eye) and to make a series of small incisions in the lens. These incisions are used to remove a clear lens of refractive lens exchange (RLE), and to make a series of small incisions in the cornea (AK) to reduce astigmatism (astigmatism). There are benefits and risks associated with the use of the laser, and there may be additional costs. This section of the consent document will provide information to help you decide if you would like your eye surgery (ophthalmology) to use the laser to perform parts of the cataract refractive lens exchange or to reduce astigmatism.

What does surgery with the femtosecond laser involve? Surgery to remove the lens? What are the benefits?

First, the eye surgeon will need to create the incisions in the cornea (the front window of the eye) and either one of the incisions to create the capsulotomy (the outer layer of the lens) or clear lens. The surgeon also uses a phacoemulsification device that utilizes ultrasonic power to break up the lens and remove it from the eye. The femtosecond laser can be used to perform some or all of these steps. The possible benefits of the laser include the ability to make more precise and consistent incisions in the cornea, a more circular and anterior capsulotomy, and to perform the incisions with less discomfort and injury to the eye. The phacoemulsification device,

What is the benefit to treat astigmatism?

Patients with astigmatism have several choices for the reduction of astigmatism. Non-surgical options for astigmatism correction include glasses and contact lenses. Surgical correction of astigmatism can be achieved through a toric intraocular lens, a lens relaxing incision (LRI) made manually with a blade, or an arcuate incision made with the femtosecond laser (AK). Refractive surgery such as LASIK or PRK can also treat astigmatism. The use of the laser to correct astigmatism with the femtosecond laser does not pay for the surgical correction of astigmatism. If you choose a toric IOL, you will be responsible for the difference between the cost of a standard monovision IOL and a toric IOL. If you choose LRI, AK, or refractive surgery you will be responsible for paying the fees associated with it.

What are the complications associated with the task-based laser?

One of the advantages is to increase the time needed to perform the surgery, and you may need to have the procedure performed in two different locations or two different rooms of the surgery center. It could also lead to complications, which include but are not limited to: disruption of the external or capsulotomy incisions; incomplete or interrupted capsulotomy, fragmentation; or corneal incision procedure; anterior capsular tear; posterior capsular tear with nucleus fragment displacement into the vitreous; corneal streaks or defects; pupil infection; bleeding; due to the use of a task-based laser in a chamber tube leakage; anterior chamber collapse; and elevated eye pressure. In the case of an interrupted or incomplete corneal incision, the laser can be rechecked and the incision repeated at a different location, or the incision can be completed using hand-held blades.

In the case of an incomplete or interrupted capsulotomy, the procedure may be immediately repeated with a slightly larger diameter to complete the capsulotomy or the surgeon may elect to complete the procedure using traditional manual capsulotomy methods. In the case of an interrupted or fragmented fragmentation, the procedure can be repeated after resection of the surgeon may elect to complete the procedure using hand-held blades to remove the vitreous and lens fragments. In the case of lens of lens fragments in the vitreous, a vitrectomy procedure could be necessary to remove the vitreous and lens fragments.

Patient's Acceptance of Risk

I understand that it is impossible for the doctor to inform me of every possible complication that may occur. By signing below, I agree that my doctor has answered all of my questions, that I have been offered a copy of the patient form and that I understand and accept the risks, benefits, and alternatives of having surgery with a task-based laser.

I am not being asked to perform any surgery and I wish to have the operation with a task-based laser as part of my premium package for DGT Imaging purposes either for correction of my myopia or for my DGT eye.

Dr. Goldman routinely reports his surgical outcomes in an effort to provide the best results to his patients. In order to do this, pre and postoperative clinical information needs to be collected. This information is considered and your health information remains private. The data collected may or may not be used for research purposes and/or publication at scientific meetings and/or journals. In your consent, your protected health information will not be disclosed because you cannot be identified.

Patient's Rights and Notification of Physician Ownership:

EVERY PATIENT HAS THE RIGHT TO BE TREATED AS AN INDIVIDUAL AND TO ACTIVELY PARTICIPATE IN AND MAKE INFORMED DECISIONS REGARDING HIS/HER CARE. THE FACILITY AND MEDICAL STAFF HAVE ADOPTED THE FOLLOWING PATIENT RIGHTS AND RESPONSIBILITIES, WHICH ARE COMMUNICATED TO EACH PATIENT OR THE PATIENT'S REPRESENTATIVE BEFORE PRIOR TO THE PROCEDURE/SURGERY.

PATIENT'S RIGHTS:

- To receive treatment without discrimination as to race, color, religion, sex, national origin, disability, or source of payment.
- To receive accurate, responsible and dignified care.
- To be provided privacy and security during the delivery of patient care services.
- To receive information from his/her physician about health issues, clinical aspects of treatment and his/her prognosis for recovery in a prompt, honest and understandable manner.
- To receive prompt information about any proposed treatment or procedure and make a decision in order to give a signed consent prior to the start of any procedure or treatment.
- When it is medically undesirable to give such information to a patient, the information is provided to a person designated by the patient, or to a legally authorized surrogate.
- To make decisions regarding the health care that is recommended by the physician. Accordingly, the patient may accept or refuse any recommended medical treatment. If treatment is refused, the physician has a right to be told what effect this may have on the health and the reason should be reported to the physician and documented in the medical record.
- To be free from mental and physical abuse, or exploitation during the course of patient care.
- Full participation in decisions regarding his/her medical care. Case discussion, consultation, explanation and treatment are confidential and shall be conducted discreetly.
- Confidentiality of all confidential information and records pertaining to his/her care and his/her stay in the facility. His/her written permission shall be obtained before a patient's medical records can be made available to anyone not directly concerned with his/her care. The facility has established policies to prevent access and duplication of patient records.
- To have complaints and grievances addressed, free from all forms of abuse, neglect, harassment or retaliation.
- To be informed of the right of care and to know in advance the time and location of appointment, as well as the physician providing the care.
- To be informed by his/her physician or a designee of his/her physician of the continuing health care requirements for following his/her discharge from the facility.
- To know the identity and professional status of individuals providing services to them, and to know the name of the physician who is primarily responsible for coordination of his/her care.

- To be informed of their right to change physicians if other qualified physicians are available
- To know when faculty rules and policies apply to his/her conduct while a parent.
- To have a medical right apply to the doctor who may have legal responsibility of making decisions regarding medical care on behalf of the subject. All personnel shall observe these patients rights.
- To be informed of any research or experimental treatment of drugs and to refuse participation without compromise to the patient's care. The subject's written consent for participation in research shall be obtained and retained in his/her patient record.
- To examine and receive an explanation of his/her bill regardless of source of payment.
- To appropriate assessment and management of pain.
- To be advised if the physician providing care has a financial interest in the surgery center.

WILKINSON, R. S. 1993.

- To provide complete and accurate information to the best of his ability about their health, any medical care, including over-the-counter products and dietary supplements, and any other areas of sensitivity.
- To follow the framework of physician orders, including pre-operative and discharge instructions.
- To provide a reasonable adult to transport them home from the facility and remain with them for 24 hours if required by their provider.
- To inform their provider about any living will, medical power of attorney, or other advanced healthcare directives in effect.
- To accept personal financial responsibility for any charges not covered by their insurance.
- To be respectful of all healthcare professionals and staff, as well as other patients.

11. የገንዘብ ሥጦታ በሥራ ላይ ማግኘት

If you will need a: interview, please let us know and one will be provided for you. If you have someone who can transmit confidential, medical, and financial information, for you please make arrangements to meet them personally prior to the day of your testimony.

Article and Request for Privacy Pledge and Safety

The authors have declared that no competing interests exist.

- Exercise the authority while subject to discipline or review.
- Personal or venge
- Work a grievance regarding treatment in court that is, or fails to be, furnished.
- Receive credit in a safe setting.
- In fully informed consent procedure and the expected outcome before it is performed.
- The law enforcement officer of the state or jurisdiction.
- Confidentiality of personal medical information.

Element of $\mathcal{M}$ denoted by $\mathbf{e}$.

*Applicants' Eye Surgery Center complies with applicable Federal civil rights laws that prohibit discrimination on the basis of race, color, national origin, sex, disability, or age.

Pharmacol Eye Surg and Ophthalmol en las aguas termales de darjuth chiles aplicable y no discriminada por motivos de raza, color, nacionalidad, edad, discapacidad o sexo.

Diagnosis and Eye Surgery Center respects the rights of individuals with disabilities and will make reasonable accommodations to ensure that all individuals are able to participate in its programs and services. If you have a disability and need accommodations, please contact the Center at 202-462-1000.

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Amesbury Church, Mass.

An Advance Directive is a legal term that refers to your instructions about your medical care in the event you become unable to voice those instructions yourself. Each state regulates advance directives differently. RSMK has regarding Advance Directives is found in South Carolina Statutes §44-71-207 CD. Under Statute of South Carolina and to each to give all competent adults, 18 years or older, the right to make their own health care decisions, including the right to decide what medical care/treatment to accept, reject, or discontinue. If certain individuals are not wanted, they have the right to tell their doctor, either orally or in writing, they do not want them. If they want to refuse treatment, but they do not have someone to communicate with, you can sign a living will.

You have the right to informed decision making regarding your care, including information regarding Advance Directives and the facility's policy on Advance Directives. Applicable state law will be so provided upon request. A member of our staff will be discussing Advance Directives with the patient and/or patient's representative and will sign the procedure being performed.

Physician & Eye Surgery Center respects the right of patients to make informed decisions regarding their care. The Center has adopted the position that an ambulatory surgery center setting is not the most appropriate setting for and/or its decisions. Therefore, it is the policy of this surgery center that in the absence of an applicable properly executed Advance Directive, if there is deterioration in the patient's condition during treatment or the surgery during the procedure at the center will in data representative of our ambulatory surgery center. The patient will be transferred to an acute care hospital, where further treatment and decisions will be made.

If the patient has Advance Directives which have been provided to the surgery center that impact representative measures being taken, we will discuss the treatment plan with the patient and his/her physician to determine the appropriate course of action to be taken regarding the patient's care.

Complaints/Disputes: If you have a problem or complaint, please ask to speak to our staff to address your concern. If necessary your problem will be addressed to appropriate staff for resolution. You have the right to have your complaint written, reviewed, investigated and to receive written notification of actions taken.

The following are the names and/or agencies you may contact:

Consumer Division

2000 Charlie Hall Blvd.

Columbia, SC 29414

803-671-4000

You may contact the state to report a complaint:

South Carolina Health & Human Services

PO Box 6208

Columbia, South Carolina 29902

803-542-0020

State Web site: <http://www.hhs.sc.gov/>

Medicare beneficiaries may also file a complaint with the Medicare Beneficiary Ombudsman, Medicare Ombudsman Web site:

<http://www.medicare.gov/olhsp-senior-projects/mocpage-09/01/2009/ombudsman.htm>

Medicaid: www.medicare.gov or call 1-800-MEDICARE (1-800-633-4227)

Office of the Inspector General: <http://oig.hhs.gov>

This facility is accredited by the Accreditation Association for Ambulatory Health Care (AAAHC). Complaints or grievances may also be filed through AAAHC:

3930 Oak Leaf Road, Suite 200

Chicago, IL 60677

(847) 353-5600 or email: info@aaaahc.org

Physician Ownership

Physician Financial Interest and Ownership: Physician Financial Interest and Ownership: The center is owned in part, by the physicians. The physicians who referred you to the center and who will be performing your procedure(s) may have a financial and ownership interest. Patients have the right to be treated at another health care facility of their choice. We are making this disclosure in accordance with federal regulations.

4/24/23 10:19 AM

ghou, Mary

THE FOLLOWING PHYSICIANS HAVE A FINANCIAL INTEREST IN THE CENTER: Eric Jackson; John Bowdoin; Chandra Stone; Leah Davis; Brenda Burger; Jay Thompson; Katy Sorenson; Paul Henley; Robert Rutherford; Thomas Kowalski;

Statement of capacity:

I understand that cataract surgery is performed to allow the visual system to see more clearly. My vision (even with glasses) is not adequate. I acknowledge that surgical intervention is medically indicated and I am ready to proceed with cataract surgery.

I have read this release and I understand its meaning.

PATIENT DISCLOSURE FOR NON-COVERED SERVICES

Your insurance plan does not pay for all of your healthcare costs. Some items and services are not considered "covered benefits" under your insurance plan and as such, your insurance will not pay for those services.

Your physician believes that the following service(s) are/are not covered by your health insurance, is the best option available to help you achieve your visual goals. However, since the services listed are not considered to be a covered benefit under your insurance plan, should you choose to receive those services, you will be personally responsible for the payment of such services. The purpose of this notice is to help you make an informed choice about whether or not you want to receive those items or services.

The services most commonly by your physician are listed below:

Custom Vision Erection Not Covered by Medicare Insurance - Cost \$2855 per eye

Items Included with Custom vision:

ADVANCED VISION TESTING (per eye)

MADE GULLMACH

REFRACTIVE PLANNING

FS ARC INCISIONS

FS OCT

LRI CALUS

*LASER-ASSISTED EXPLANTATION WITH ARCS AND/OR A MANUAL LRI

*TORIC IOL

*TRIAL FRAMES

*COL TRIAL FITTING

*LASER MARKING

*LASER ORIENTATION

*ARC LENGTH MARKING

*ORA

*LASER ENHANCEMENT (up to 1 year after surgery)

*INDICATES WHEN NECESSARY

*INDICATES WHEN APPROPRIATE

By signing this form, I acknowledge that I have been informed in advance of receiving these services, and these services are not covered by my health insurance plan. I have chosen to receive these services and understand that I will be financially responsible for the charges indicated above.

This form must be signed by the patient or legal guardian PRIOR to receiving any non-covered services or items and must be maintained in the patient's medical record.

Page 1

Schm: April 24, 2023

Time: 10:19 AM

Mary Ghou

aboutblank

0/5



KERRY SOLOMON, MD

PATIENT NAME: John J. Kelly Date: 6/10/20

LENS IMPLANT INFORMATION

As part of your cataract surgery an artificial lens is implanted inside the eye to provide for normal vision. It is important that you understand the consequences of your decision regarding your vision after cataract surgery.

The standard lens provided with traditional cataract surgery does not correct astigmatism or near vision. Glasses will be required for optimal distant and near vision.

Today, there are advanced lifestyle lenses and technologies that offer additional benefits to our patients. These lenses and technologies help reduce your dependency on glasses and optimize your outcome. These options offer you the best opportunity to gain visual freedom to enhance your active lifestyle. Lens implants and technologies include: Aspheric correcting incisions and lenses, multi-focal, extended depth of focus and accommodative lenses, LenixSM (LASER Cataract Surgery) VERIQTM and OHATM, for those patients who qualify. If you have had previous refractive surgery, calculation of your surgical plan is more complicated and OHATM technology is recommended.

YOUR SURGICAL OPTIONS

Vision with Glasses After Surgery

A. I choose traditional cataract surgery. I understand, I will need glasses to correct astigmatism, near and distance vision or a combination of all after cataract surgery. I understand that if I choose refractive surgery at a later date, I will be fully responsible for associated cost.

Vision with Less Dependency on Glasses After Surgery

Insurance plans do not cover the added cost associated with these advanced options. Should you select an advanced option, in addition to the associated cost, your insurance plan will be billed for the traditional portions of cataract surgery and are subject to co-insurance and deductibles.

B. I choose Mono-vision. I wish to have my (circle one) RIGHT OR LEFT eye corrected for distant vision. I wish to have my RIGHT or LEFT eye corrected for near vision.

C. I choose Custom Vision. Dr. Solomon and staff will target my outcome to provide me the best possible distance vision without glasses unless I request otherwise. I understand that I will need glasses for reading and intermediate vision. I understand that I will need glasses for reading and intermediate vision.

D. I choose Advanced Vision. Dr. Solomon and staff will target my outcome to provide me vision without glasses for the majority of my activities by implanting a Multi-focal / extended depth of focus / accommodative / bi-focal lens. I understand these lenses may be lighting dependent and that I may need glasses for some activities after surgery.

E. I choose a Light Adjustable Lens (LAL). I understand Dr. Solomon and staff will target my outcome to provide me the best possible distance vision without glasses unless I request otherwise. I understand that I will need glasses for reading and intermediate vision. I further understand compliance with UV protection is required for an optimal outcome and non-compliance could result in further surgery to include a IOL exchange. I understand that 3-4 adjustments may be necessary before my final prescription is locked in.

Options B-E OHA technology will be available when necessary. OHA provides a total refractor while in the operating room after the cataract has been removed which allows for real time refractive adjustments and/or correction of astigmatism that was not induced pre-operatively. Should additional refractive surgery be necessary to meet your planned visual target, LASIK/PRK or a manual LRI will be provided at no additional cost for up to 1 year after surgery. After 1-year, additional refractive surgery may be subject to associated cost(s).

 I understand if I choose to participate in a research study, my surgical plan may change and/or be void.

 I understand that cataract surgery is indicated in my RIGHT LEFT (BOTH) eye(s). I choose to have my RIGHT LEFT eye performed first.

By signing below, you agree that cataract surgery, mono-focal and advanced lens options and technologies have been explained to you, that you understand your options and that your questions have been answered to your satisfaction.

Signature: [Signature] Witness: [Signature]

Carolina Eye Physicians

Insurance Verification

Patient Name: Donna John MRM : _____

First Eye	Second Eye
Patient Responsibility After Insurance/Physician: \$ <u>0</u>	Patient Responsibility After Insurance/Physician: \$ <u>0</u>
Patient Responsibility Elective/Physician: \$ <u>1895</u>	Patient Responsibility Elective/Physician: \$ <u>1895</u>
Patient Responsibility after Insurance/Facility: \$ <u>250</u>	Patient Responsibility after Insurance/Facility: \$ <u>250</u>
Patient Responsibility Elective/Facility: \$ <u>970</u>	Patient Responsibility Elective/Facility: \$ <u>970</u>
Other: \$ <u>None</u>	Other: \$ <u>None</u>
Total Payment Due <u>30</u> Days Prior to Surgery: \$ <u>1895 / 1720</u>	Total Payment Due <u>30</u> Days Prior to Surgery: \$ <u>1895 / 1720</u>
Coinmanage Elective- to be collected by CMS Dr: \$ <u>total \$3115</u>	Coinmanage Elective- to be collected by CMS Dr: \$ <u>\$3115</u>
Verification Prepared By: <u>k camus</u>	Date: <u>5/1/23</u>

Notes:

The amounts listed above are estimates and not a guarantee of coverage. Your actual cost may vary depending on your individual care, actual procedures performed, time spent in anesthesia and variances in insurance allowances, deductibles, and payments. Please contact your insurance company regarding your cost-sharing responsibilities. You may pay more or less for the same services at another facility or health care setting. Anesthesia Associates of Charleston (AAC) will bill your insurance separately, if any deductible, co-pay, or coinsurance is due, they will send a bill after surgery.

Amounts listed are payable to Carolina Eyecare Physicians prior to your surgery. We accept Visa, Mastercard, Discover, American Express, Alphaeon, Care Credit, & Cashier's Checks.

STATE OF SOUTH CAROLINA	}	IN THE COURT OF COMMON PLEAS
	}	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	}	CASE NO.: 2016-CP-10-06683
	}	
John Dong, M.D., Ph.D.,	}	
	}	
-- Plaintiff.	}	
v.	}	ORDER FOR PROTECTION
	}	
The Medical University of South	}	
Carolina,	}	
	}	
-- Defendant.	}	
_____	}	

IT APPEARING that Plaintiff, John Dong, pro se, is requesting and should be granted for good reason being shown, an order protecting him from court appearances and proceedings in the Charleston County Court of Common Pleas from Monday, May 8th, through Thursday, May 25th, 2023, for two consecutive eye surgeries and recoveries that are necessary to restore his vision.

ORDERED that Plaintiff, John Dong is hereby granted protection from May 8th through May 27th, 2023.

AND IT IS SO ORDERED.

Jeann H. Toal
Ninth Judicial Circuit

Charleston, South Carolina
 , 2023

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
John Dong, M.D., Ph.D.,)
- Plaintiff,)
v.)
The Medical University of South)
Carolina,)
- Defendant,)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-10-06683

**PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION FOR
SUMMARY JUDGEMENT**

WCL

CLERK OF COURT

2023 APR 24 PM 3:42

FILED

TO: THE MEDICAL UNIVERSITY OF SOUTH CAROLINA, DEFENDANT:

PLEASE TAKE NOTE that Plaintiff, John Dong, M.D., Ph.D. moves before the Court for an order denying Defendant's Motion for Summary Judgment and pleads the following:

Under Rule 56, a court may grant a motion for summary judgment at the request of the moving party if there are no genuine issues of material fact, and the moving party is entitled to judgment as a matter of law.

Plaintiff, Dr. Dong, opposes Defendant's Motion for Summary Judgment on the following bases:

1. Defendant's claim of statute limitation is baseless.

The applicable statute of limitations in South Carolina for breach of contract claims is three years from the date of the breach, not the date of signing the contract. Plaintiff filed this lawsuit within three years of the alleged breach, and the Claim is

fully reinstated by the Court. Therefore, Plaintiff's Claim is not time-barred under the statute; and Defendant's argument for statute limitation lacks merit and should be denied.

2. Defendant's assumption that Plaintiff cannot present sufficient evidence has no merit.

Defendant's assumption that Plaintiff cannot present sufficient evidence for Defendant's breach of contracts or incur any damage is a misinterpretation of the facts and the law.

First, it is not a ground for summary judgment by assuming the Plaintiff cannot present sufficient evidence under Rule 56. The very question of sufficiency of the evidence is the function of a trial by jury under the Due Process Clause and Article III of the Constitution; it is not a proper question for a judge or a ground for summary judgment.

Secondly, the facts are undisputed that Defendant, MUSC, breached multiple, if not all of, the substantive terms of the contract. The breaches include but are not limited to, not transferring Dr. Dong's research materials, equipment, intellectual properties, notebooks, records, and research data, not allowing him to continue his research and teaching, and blocking his ability to find a job in his fields and to advance his academic and medical career. These breaches caused substantial damage to Plaintiff's career, income, and financial well-being.

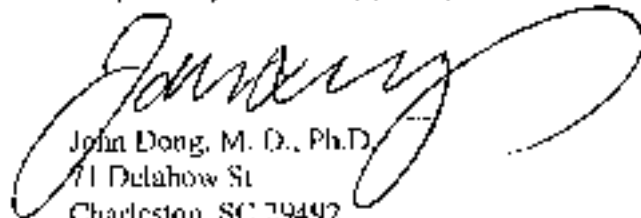
The judgments on the sufficiency of the evidence and the amount of damage are the very functions of trial by jury under the law.

WHEREFORE, Plaintiff respectfully moves this Court to deny Defendant's motion for summary judgment because Defendant failed to plead a ground for summary judgment and there are genuine issues of material fact that must be resolved at trial.

Alternatively, Plaintiff moves the Court to grant a summary judgment in favor of Plaintiff based on the undisputed facts that Defendant has breached the contract and order an arbitration or mediation to resolve the question of the amount of damage caused by the breach and the relief to be awarded to Plaintiff without a trial.

April 21, 2023
Charleston, South Carolina

Respectfully submitted, pro se,



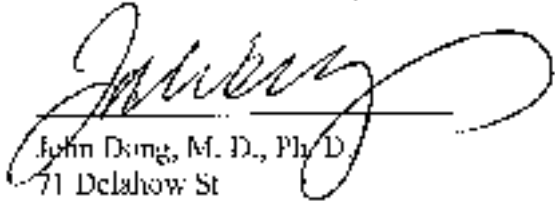
John Dong, M. D., Ph.D.
71 Delahow St
Charleston, SC 29492
Email: johnny.dong@gmail.com
Phone: 843-991-2332

CERTIFICATE OF SERVICE

This is to certify that I have on this 21st day of April 2023, served a copy of the Plaintiff's Opposition to Defendant MUSC's Motion for Summary Judgement to the ECF system, which will notify all parties electronically. In addition, a copy of this motion is served via Email at bconley@clevelandlaborlaw.com and United States Mail Services addressed to the following:

Bob J. Conley, Esq.
Cleveland & Conley LLC
171 Church Street, suite 310
Charleston, South Carolina 29401

April 21, 2023


John Dong, M. D., Ph.D.
71 Delahow St
Charleston, SC 29492
Email: john.dong@gmail.com
Phone: 843-991-2332

2023 APR 24 PM 3:42
CLERK OF COURT
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
John Dong, M.D., Ph.D.,)
- Plaintiff,)
v.)
The Medical University of South)
Carolina,)
- Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2016-C9-10-06683

PLAINTIFF'S MEMORANDUM
SUPPORT OF HIS OPPOSITION
TO SUMMARY JUDGMENT

2016 JUN 27 AM 9:42
FILED
CLERK OF COURT
JUL 1 2016

STATEMENT OF THE CASE

Plaintiff John Dong, M.D., Ph.D. ("Dr. Dong") filed a Complaint on September 2, 2014, against the Defendant, the Medical University of South Carolina (MUSC), for breaching the contract and committing bad-faith fraud against Dr. Dong.

I. The Basis of the Contract

The Complaint is based on that the Chairman of the Department of Microbiology and Immunology, Dr. James S. Norris, with the help of his friend, then Vice President for Research, Dr. Stephen M. Lanier, took over Dr. Dong's entire research operations that included Dr. Dong's research funding, personnel, biological materials, reagents, equipment, research protocols, research results, and records in order to revitalize Dr. Norris' declining research operations and to advance his academic career. Eventually, Norris and Lanier conspired to completely shut down

Dr. Dong's laboratories and blocked his abilities to academic activities that included but were not limited to research, teaching, and mentoring graduate students and postdoctoral fellows. Dr. Norris' actions caused Dr. Dong's career to a dead stop.

Dr. Dong made complaints to the Administration of MUSC to resolve the illegal takeover and violations of Dr. Dong's faculty rights. However, Lanier was the Vice President for Research and was in charging academic Affairs related to research and teaching, and he was the very person who conspired with James Norris in taking over Dr. Dong's research operations. After nearly a year of struggling with Lanier's stonewalling, Dr. Dong could not get his research materials back and research and teaching operations restarted, while time was critical in his research, competing for grant funding, and advancing his career.

2. The Terms and Conditions of the Contract

With the mediation of, then, the Dean of Medical College and Vice President for Medical Affairs, Dr. Jerry G. Reeves, Dr. Dong agreed to what was presented to him as a cooling period by separating the conflicting parties and allowing Dr. Dong to continue his research off campus in a company established by the MUSC's Foundation for Research and Development, (FRD), and to continue the rest of his academic activities at MUSC under the Chairman of the Department of Biochemistry, Dr. Yusuf Hannun. One of the essential components of the Agreement

is to return all Dr. Dong's research materials and equipment, which are his properties, to Dr. Dong.

Based on this spirit, Dr. Dong agreed to sign a "temporary separation agreement" to be drafted by MUSC's general counsel, Mr. Joe Good. After several revisions, Dr. Dong was informed that the "final version" with all that had been discussed was completed" and come to the Dean's office to sign the final Agreement on May 3, 2010. Out of deep respect and trust for Dr. Jerry Rese, who represented the Administration of MUSC, Dr. Dong did not scrutinize some of the words inserted or utilized by MUSC's legal counsel and agreed to the Agreement as he was explained and understood.

3. The Breaches of the Contract

In his position as the vice president for research, Dr. Lantier was in charge of the agreement implementation. However, he continued his stonewalling tactic and directed Dr. Dong to several MUSC management personnel for implementing the terms of the agreement. After numerous delays, sometimes up to several months, the general answers to Dr. Dong were that they have not received the specific authorization but would continue to make efforts to resolve the issues. Furthermore, the University blocked his access to the university email systems and all his research information stored electronically in the University homepage without prior notice and deleted his faculty information as if Dr. Dong never existed at the University.

These not only deprived of him any research and academic documents but also blocked his communications with his colleagues at other universities and research institutes.

Without the ability to conduct his research and teaching, Dr. Dong ran out of his option to find a position at other universities but had to work with MUSC to re-establish his career. However, until the end of the agreement, nothing in the agreement that favors Dr. Dong was implemented and it became clear that MUSC had no intention to implement the terms in favor of Dr. Dong.

The breaches included, but were not limited to, the failure to transfer any of the research materials, notebooks, protocols, and equipment to Dr. Dong. Dr. Dong was also continually blocked from any academic activities at MUSC.

In contrast, MUSC implemented numerous activities detrimental to Dr. Dong's career. These included but were not limited to:

- (1) Did not transfer any of the research materials, essential documents, and equipment that are essential for Dr. Dong to continue his research and advance his career;
- (2) Withheld Dr. Dong's multiple intellectual properties;
- (3) Continually blocked from any academic activities at MUSC;
- (4) Terminated his tenure at the University;
- (5) Terminated his salary and benefits, including his and his family's health benefits;

- (6) Terminated his retirement pensions;
- (7) Assisted and participated in a hostile takeover by one of the company's investors who laid all the legal liability of the Company's using federal contract funds for a research facility on Dr. Dong and made him suffer all the legal consequences for what the company had done while the investors cashed out and abandoned the Company.

As a result of this breach of contract, Dr. Dong's stellar career and entire financial well being were destroyed, and the damages were irreparable.

STATEMENT OF FACT

1. It is undisputed that from 2008 to 2009, the chairman of the Department of Microbiology and Immunology, Dr. James Norris, with the help of his friend, the newly promoted vice president for research, Stephen Lanier, illegally took over Dr. Dong's research operations, which include research materials, records, protocols, equipment, and intellectual properties for the benefit of James Norris himself.

2. After Dr. Dong filed a complaint to the administration, Lanier himself was in charge to resolve the issues because of his position. To punish Dr. Dong for filing the complaint, Lanier blatantly locked up Dr. Dong's laboratory and office and confiscated everything in them for "auditing." After months of struggling with Lanier, and failing to get his operations back, Dr. Dong agreed to a proposal mediated by Dr. Reves, the Dean of the College of Medicine, to separate the two conflicting parties for a cooling period for Dr. Dong to get back to his research.

3. After several revisions, the final version of the separation agreement outlined the terms and conditions for 18 months that allowed Dr. Dong to continue his research off campus at a company established by the Foundation for Research of MUSC and continue his other academic activities at MUSC. Among the major terms of the Agreement are to transfer all of Dr. Dong's research material, documents, and equipment to the company, and give full access of Dr. Dong to the University for his academic activities. At the end of the 18 months, either Dr. Dong resigns from MUSC after he has obtained a position at another university, or MUSC would bring back Dr. Dong to continue his research and education at MUSC.¹ The reason for this clause was that Dr. Dong did not do anything wrong, even if he did, there is no MUSC regulation or policy or any legal basis for MUSC to take away Dr. Dong's research material and equipment and lock down his laboratory and office.

4. However, at the end of the 18 months, it became clear to Dr. Dong that MUSC had no intention to honor the Agreement, and MUSC's attorney drafted the agreement in bad faith. The MUSC admits it did not allow Dr. Dong to continue his academic activities at MUSC but only paid him a salary out of Dr. Dong's own grant funds and "did not take away his title." MUSC further admits that it did not transfer

¹ This clause was shrewdly written by the General Counsel as "MUSC maintains the right to rehire Dr. Dong." This was explained to Dr. Dong as MUSC has a strong wish to bring back Dr. Dong for his successful research, especially when he obtained more grant funds on behalf of MUSC.

any of the essential research material, documents, intellectual properties, and equipment to Dr. Dong, which completely blocked Dr. Dong from conducting his research off-campus.²

5. Without active research and teaching, Dr. Dong had no chance to obtain a position at another university. However, Dr. Dong did obtain research grants from NIH based on his cutting-edge research prior to his laboratory being shut down. The two grants in the total amount of \$8 million were rejected by Lanier on behalf of MUSC in order to prevent Dr. Dong from coming back to MUSC and reestablishing his research.

6. MUSC finally breached all the terms of the agreement by not exercising his right to rehire Dr. Dong, but terminated his tenure, professorship, salary, and all benefits including health insurance to his family and his retirement benefit.

The breach of the agreement, completely destroyed Dr. Dong's career, earning potential, and financial well-being.

² The defendant's attorney, without any witness, claims MUSC did not transfer the equipment because Dr. Dong did not provide copies of various permits for Dr. Dong to operate biomedical research at the company on behalf of MUSC. This is a farce because: (1) MUSC never initiated or was ready to transfer Dr. Dong's material and equipment to him and asked for or waited for the permits. (2) The permit is not required for MUSC to transfer Dr. Dong's materials and equipment to him as the owner, but only when Dr. Dong conducting the research as part of MUSC. (3) Dr. Dong did submit copies of the permit directly to Lanier and to the grant management office when he applied for NIH grants in which the company and MUSC were collaborators.

LEGAL STANDARD

THE STATUTE:

The relevant parts of the SCRCP Rule 56 state:

(c) The [summary] judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. (emphasis added)

(e) Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits.

(f) When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such order as is just.

ARGUMENT

Contrary to the law, Defendant failed its burden to prove the lack of genuine issues but raised two issues, neither of which serves the basis for summary judgment. When and if a contract is breached or if the evidence presented is sufficient are questions of material fact that must be decided in a trial. See Rule 56(d).

A. Defendant's claim that Dr. Dong's breach of contract claim is barred by the statute of limitations is meritless.

1. Defendant's claim of the statute of limitations is without any evidential support.

Defendant failed to produce any witness, testimony, interrogatory, or affidavit to support his claim that the breach occurred prior to September 2, 2011, and was barred by the statute of limitations. Therefore, the claim of the statute of limitations fails on the first test.

2. Defendant's argument is false and intentionally misleading.

Defendant's claim that: "[u]ncorring Dr. Dong, MUSC breached the Agreement soon after entering into the Agreement" is false. Dr. Dong maintained throughout his deposition that the agreement in its entirety was breached at the end of the specified 18 months when MUSC demonstrated it was not going to honor the terms, including did not continue his employment or exercise "the right to rehire him," even he had obtained eight-million-dollar grants on behalf of MUSC, and instead, MUSC terminated his tenure, professorship, and all benefits.

In order to fabricate the support for the false statement that the breach happened early, Defendant's attorney misrepresented facts. Without a witness, Defendant's attorney falsely testifies that "the Agreement required MUSC meet the terms of the Agreement in that respect within forty-five days of entering into the Agreement, on or before June 17, 2010." Further, the Attorney misrepresented Dr. Dong's testimony by stating "Dr. Dong testified 'of course' MUSC breached the Agreement." The Attorney cited: Exhibit 2, P. 139, L. 4 – P. 140, L. 21; P. 144, L. 2 – P. 145, L. 7. However, the testimony was about MUSC wanting to conduct "an auditing" of Dr. Dong's biological research agents "in order to transfer them to Dr. Dong." Dr. Dong answered a tricky and confusing question by saying: "of course [these] have nothing to do with it." See transcript P140, L. 22. There is no such a statement as "of course, MUSC breached the Agreement prior to March 25, 2011." This statement by the attorney is simply false.

It is a fundamental principle under the law that attorneys are not witnesses and cannot testify about the fact. Furthermore, making false representation to the Court is a fraud upon the Court, and should not be tolerated by the Court under the neutrality obligation.

3. The Defendant's argument that if one of the terms could be breached at the earlier time, it constituted the date for breaching all the terms and the entire Agreement is meritless.

In addition to false representation of the facts, the defendant's counsel argues for the statute of limitations based on the theory that if one of the terms was breached at an earlier time, all the terms and the entire agreement were breached. This argument is without factual and legal support.

Foremost, the Separation Agreement is to provide a period of separation between the conflicting parties that allow Dr. Dong to conduct his research off campus and allow his other academic activities at the University. Each of the specific terms, such as transferring Dr. Dong's research materials, documents, and equipment is to assure that Dr. Dong's ability to continue his research without any obstruction and interference; at the same time, to ~~our~~ ^{not} ~~short~~ ^{hinder} Dr. Dong's ability to carry out his other academic activities within MUSC. At the end of the period, Dr. Dong either resign from MUSC after he secured a professorship at another university or continue his professorship by being rehired, especially if he can obtain federal funding on behalf of MUSC. MUSC will have the right to rehire Dr. Dong. Viewing the agreement as a whole, the final breach of the contract was when MUSC stopped ~~deploying~~ ^{using} its delaying tactics, indicated it had no intention to honor any of the terms allowing Dr. Dong to continue his career, not rehiring him even though he obtained two multimillion dollars grants for MUSC, but terminated his tenure professorship, salaries, health and retirement benefits. These acts constituted a breach of the agreement in its entirety.

Furthermore, even to assume that violation of a single specific term were to constitute the violation of the entire agreement, but it does not, there is no evidence or testimony of a specific date for such a violation other than the willful misrepresentation of Dr. Dong's testimony by Defendant's attorney. Certainly, Defendant's attorney cannot produce an affidavit by Dr. Dong or any witness to verify the Defendant's attorney's statement.

B. Defendant's claim that Dr. Dong cannot present sufficient evidence MUSC breached the Agreement is meritless.

Here, Defendant deployed a typical tactic of "substituting principles," also known as "the strawman fallacy," to support its meritless argument.

First of all, the "sufficiency of evidence," especially, when the question is framed as "whether Dr. Dong can present sufficient evidence to prove MUSC breached the Agreement," is a question of fact and must be decided by the jury in a trial. It is not a ground for summary judgment under the law, SCRCP, Rule 56.

Second, Defendant's argument is meritless, because Defendant substituted the question of "if Dr. Dong can present sufficient evidence" with the argument of "clarity of the contract." See MUSC's memo, 1'6-7. Defendant went on arguing the Agreement was "unambiguous" and should be "read together with the different provisions therein dealing with the same subject matter," and the Court does not have the authority for its own interpretation. *Id.*

Ironically, it is Defendant who requested the Court to read and interpret each term separately in its argument for the statute of limitations, claiming if one of the terms could be interpreted as being violated at an earlier time, it would constitute the date for violation of the entire agreement.

Here, Dr. Dong agrees with Defendant's citations of the law that

"It is fundamental that, in the construction of the language of a contract, it is proper to read together the different provisions therein dealing with the same subject matter, and where possible, all the language used should be given a reasonable meaning." *Bluffton Towne Cir., LLC v. Gilleland-Prince*, 412 S.C. 334, 569, 772 S.E.2d 882, 890 (Ct. App. 2013) (quoting *Ecclesiastes Prod. Ministries v. Outpace, Assoc., LLC*, 374 S.C. 483, 498-99, 649 S.E.2d 494, 502 (Ct. App. 2007)).

"In construing and determining the effect of a written contract, the intention of the parties and the meaning are gathered primarily from the contents of the writing itself, or, as otherwise stated, from the four corners of the instrument." *Silver v. Abstract Pools & Spas, Inc.*, 376 S.C. 585, 591, 658 S.E.2d 539, 542 (Ct. App. 2008) (quoting *McPherson v. J.L. Sirrine & Co.*, 206 S.C. 183, 201, 33 S.E.2d 501, 509 (1945)).

[Court must enforce the contract] "according to its terms regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully." *S.C. Dep't of Transp. v. M & T Enterprises of Mt. Pleasant, LLC*, 379 S.C. 645, 655, 667 S.E.2d 7, 13 (Ct. App. 2008).

These case laws command that a contract must be read as a whole, and "the intention of the parties and the meaning are gathered primarily from the contents of the writing itself." The Court must enforce a contract "according to its terms regardless of its wisdom. . . ."

I. Evidence is sufficient that MUSC breached the Agreement

Here, the Agreement is clear in its entirety. It is the final version of the agreement that separates the conflicting parties for 18 months. The Agreement contained three essential clauses: (1) to allow Dr. Dong to continue his research off campus at the accompany established by MUSC through its FRD, (2) to allow Dr. Dong to continue his other academic activities at the MUSC, and (3) at the end of the 18 months if Dr. Dong obtained a position at another university, he would resign from MUSC; however, "MUSC retains the right to rehire Dr. Dong," especially, if Dr. Dong obtained additional grants from MUSC. See Complaint, Exhibit 1.

The fact is undisputed by MUSC that each of the three essential clauses was breached by MUSC. Examples include, but are limited to:

1. MUSC did not transfer Dr. Dong's essential materials, equipment, and grant funds to him at the company location. Therefore, MUSC blocked Dr. Dong from continuing his research off campus, as admitted by Defendant. See MUSC Memo, P13. However, Defendant argued that "Dr. Dong can present no evidence the 'GenPhar location' received certificates, permits and insurance coverages, the Agreement did not require MUSC relocate the equipment listed in Exhibit A to the Agreement."

This argument is baseless because:

(1) MUSC presented no testimony or evidence that such certificates were "in the absence." Contrarily, evidence shows that the company was in full operation under the funding of the Department of Defense and had submitted all the essential documents to MUSC for several collaborative research projects funded by NIH.

(2) MUSC presented no evidence that MUSC was ready to transfer the equipment and requested Dr. Dong to provide copies of the permits because MUSC had them in the joint grant applications.

(3) There is no such language as stated by the Defendant in the Agreement. The research materials, documents, equipment, intellectual properties were Dr. Dong's assets and MUSC had no authority to take away his assets under any circumstances.

(4) The equipment and research materials belong to Dr. Dong. There can be no condition to transfer Dr. Dong's belongings to him. The language about have the permits in place was explained to Dong as the protection of MUSC from violating any regulations when Dr. Dong operate outside the campus on behalf of MUSC. Because GenPhar had been fully operational under the funding of the Department of Defense, the company was fully accredited with the certificates and insurance.

The Defendant show no evidence there was a concern or a request of Dr. Dong to show the company was accredited, nor any evidence that MUSC was ready to transfer or return Dr. Dong's assets to Dr. Dong.

Defendant is the moving party for the summary judgment and has the burden to prove there are no genuine issues. Here, Defendant presents no evidence to support its argument.

2. MUSC continued blocking Dr. Dong from faculty activities by excluding him from all academic events, such as faculty meetings, teachings, and access to graduate students. MUSC also removed Dr. Dong from faculty directorates, and websites, and blocked Dr. Dong from accessing the MUSC email system, digital Homeroom, library, and other MUSC facilities. Dr. Dong testified in his deposition, while Defendant provide no evidence to dispute Dr. Dong's statements under oath.

3. MUSC prevented Dr. Dong from seeking a position at other universities by blocking his research and academic activities. By blocking Dr. Dong's scientific research and academic activities, MUSC deprived Dr. Dong of any chance to obtain a tenured professorship at any other university to prevent Dr. Dong from transferring his research and teaching operations to another university. Therefore, MUSC allowed Norris and Lanier illegally take Dr. Dong's research programs and achievements for their benefits and destroy Dr. Dong's career.

4. In order to prevent Dr. Dong to come back to MUSC, Lanier rejected two eight-million-dollar grants that Dr. Dong obtained on behalf of MUSC, and eventually terminate his tenure professorship and all financial benefits after completely destroying Dr. Dong's career. These breaches were testified by Dr.

Dong in detail during his deposition. See Dr. Dong's deposition Transcript on each of the terms of the Agreement.

11. Defendant's Argument is without any evidential support and irrelevant to the fact that MUSC breached the Agreement.

Dr. Dong testified consistently throughout his deposition that MUSC breached all three clauses of the Agreement by continued blocking his research off campus, and his academic activities at MUSC, doing so prevented Dr. Dong from obtaining a position at other universities, and finally MUSC terminated his tenure professorship and all his financial benefits, by "not exercising the right to rehire Dr. Dong."³

Contrary to MUSC's argument, Dr. Dong did not allege that MUSC failed to pay him the salary or due payment during the separation period, and these payments were not MUSC's only obligations to the Agreement. Therefore, MUSC's argument about it made those payments is a typical strawman fallacy – it is irrelevant to the Complaint that MUSC breached the Agreement by continued blocking Dr. Dong's research off-campus and academic activities at MUSC.

Defendant firstly misinterprets each specific term and then, without any evidential support, argues that "Dr. Dong can present no evidence MUSC breached the Agreement." See the MUSC memo, discussing terms 1-20. Even if were

³ As a contract matter, MUSC's right to rehire Dr. Dong gives Dr. Dong the equal right to be rehired.

"whether Dr. Dong can present sufficient evidence" a question of law, it is not, the argument is without evidential support and insufficient to show there are no more genuine issues.

Furthermore, the "material evidence," such as the letters allegedly sent by Stephen Lanier or Mark Sothmann are not verified or authenticated by any witness. They are inadmissible as evidence under the law. In contrast, Dr. Dong testified under oath that he did not remember ever seeing or receiving the letters. Dr. Dong also testified that the copy of the letter included in the Complaint was obtained by his attorney from MUSC to show the conspiracy of covering up because the event referred to in the letter happened in 2014, more than three years after the letter's date, and both Lanier and Sothmann signed the letter in their titles in 2014, not in 2011. It is obvious that the letter was generated in 2014 and back-dated in 2011 to cover up the breach of the contract. Without Lanier and Sothmann to testify under oath, Defendant cannot prove the authenticity and truthfulness of the letter.

In summary, the question Defendant raised is whether "Dr. Dong can[] present sufficient evidence [to prove] MUSC breached of the Agreement." By law, the sufficiency of evidence is a question of fact and must be decided by a jury at trial. SCRCP Rule 56 commands that when the party seeking the summary judgment failed this burden to prove the lack of genuine issues supported with evidence, interrogatories, testimonies, and affidavits, the court may not apply the judgment

and may set a trial date to resolve the controversy by a jury. Defendant's motion for summary judgment is not supported by any of the required evidence and must be denied as a matter of law.

CONCLUSION

For the reasons stated above, MUSC failed to prove the lack of genuine issues with the required evidence under SCRCP Rule 56. Plaintiff respectfully requests the Court **DENY** Defendant's request for Summary Judgment as a matter of law.

Respectfully submitted, pro se,

June 16, 2023
Charleston, South Carolina


John Dong, M. D., Ph.D.
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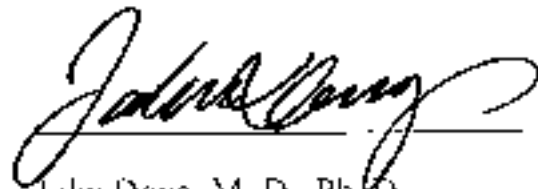
CERTIFICATE OF SERVICE

This is to certify that I have on this 26th day of June 2023, served a copy of the Plaintiff's Opposition to Defendant MUSC's Motion for Summary Judgement to the ECF system, which will notify all parties electronically. In addition, a copy of this motion is served via Email at bconley@clevelandlaborlaw.com and United States Mail Services addressed to the following:

Bob J. Conley, Esq.
 Cleveland & Conley LLC
 171 Church Street, suite 310
 Charleston, South Carolina 29401

FILED
 2023 JUN 27 AM 9:43
 U.S. DISTRICT COURT
 DISTRICT OF SOUTH CAROLINA
 CHARLESTON

June 26, 2023



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APPENDIXES

Appendix One: John Dong's Affidavit

Appendix Two: John Dong's Deposition

Appendix Three: Final Separation Agreement

Appendix One:
John Dong's Affidavit

AFFIDAVIT

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON

I, Jian-Yun (Joan) Dong, do solemnly affirm, under penalty of perjury, that the following statements are true and correct based on my direct knowledge, experience, and information:

1. I was recruited to the medical University of South Carolina in 1998 from the University of California in San Francisco. I was appointed associate professor at the Department Microbiology and Immunology, with the second appointment at the Department of Medicine. Subsequently, I also became a member of the Hollins Cancer Research Institute. I led the frontier research on gene therapy for cancer and genetic diseases and established extensive collaborations with faculty members across several departments including the Department of Surgery.

2. I routinely taught graduate courses, mentored many graduate students, and trained post-doctoral fellows, and conducted leading edge research. I published about 100 articles in national and international peer-reviewed scientific journals, and was invited for over 100 seminars, speeches, and presentations at national and international scientific conferences or university symposiums. I established himself as one of the leading scientists in the field of gene therapy and was invited as reviewer or member of the editorial boards of scientific journals.

3. I obtained numerous research grants, including NIH grants totaling over ten million dollars, and was invited to serve on several NIH or DoD grant reviewing committees.

4. My research resulted several invention disclosures and United States and International patents that obtained licensing agreements with companies through MUSC Foundation for Research and Development (FRD) and generated hundreds of thousands of dollars of financial payments to MUSC.

5. Because of his academic achievements, I was promoted to a tenured full professor at the Department of Microbiology and Immunology, and a joint full professorship at the Department Biochemistry and Molecular Biology.

6. During the same period of time, then, the chairman of the Department of Microbiology and Immunology, Dr. James S. Norris had his research funding and academic activities in a rapidly declining path. He wanted to transition his research into the new and rapidly developing fields of gene therapy for cancer. Norris did so by initially blocking My tenure promotion by claiming that I was required to establish more collaborations with other faculty members such as himself. Even though I had already established extensive collaborations with numerous colleagues at the university and worldwide, I had to agree to collaborate with Norris by co-mentoring Norris' graduate students and training them to conduct gene therapy research and sharing his research projects with Norris.

7. Through the initial collaboration, Norris gradually took over many of My research projects by collecting the information and the research results from not only the graduate students he co-mentored with I, but also from My graduate students, postdoctoral fellows, and junior faculties using his position as the chairman of the department. Norris published these research results as his own and only acknowledged I as his collaborator, and even sometimes failed to do so in order to get the full credit of My research for Norris himself. Norris, further used My research projects and the results to submit grant proposals to get government funding for his laboratory.

8. Because the research projects were developed and funded by My research funds and conducted by My employees, Dr. Norris, in fact, took over My research funding, personnel, technologies, equipment, and intellectual properties.

9. In order to further block I from conducting his research, Norris first claim that one of My deep freezers containing the biological materials was sabotaged by someone, so that he needed to transfer all the contents to his laboratory for safe keeping. After I requested Norris to return the biological materials, Norris accused me of mishandling biological materials. Norris requested and initiated a series of biosafety committee investigations of my laboratory practice looking for violation of biosafety regulations. Under this false pretense, conspired with his long-time friend, Stephen Lanier, who was newly promoted to Vice President for Research and

Academic Affairs, ordered confiscating all my essential biological research materials under the pretense of transferring them to a secured location for "evidence keeping" and "future auditing."

10. After I made the complaint to the MUSC administration, I was informed that Lanier, in his position as the vice president for research and academic affairs, would be in charge of investigating and resolving the issues, even though Lanier was the very reason who conspired with Norris in the illegal taking over my research and shutting down my operations.

11. To punish me for complaining, Lanier ordered changing locks of my laboratories and office and completely cut me off from access to my research material, equipment, records, computers, and all the facilities essential to my research. Lanier further blocked my access to the digital information storage server, HomeRoom, where the personnel of my entire laboratory stored all the data, protocols, research documents, and grant proposals. Under Lanier's protection, Norris openly took over my graduate students, post-doctoral research fellows, and junior faculty members who were paid with my grant money to work in his laboratory on the research projects taken over from me. Norris claimed that I was under investigation by the university.

12. Although it was evident that Lanier and Norris took all my research materials, shut down my laboratories, and locked me out of my office, Lanier

claimed that the University authorized him to investigate my claims of Norris' taking my materials and research fund.

After several months of stonewalling, Lanier finally informed me that he found no evidence that Norris took any of my biological materials or spent my research funding. However, Lanier could not show any proof that an audit was conducted. Lanier also refused to explain how and why Norris published scientific papers and applied for grant funding based on my research projects or where his funds came from for the research (his laboratory was not funded for the research projects), which in fact, was done in my laboratory, by my personnel, and with my grant funds.

13. Lanier could not explain why and under what authority he ordered transferring my biological materials to "a secured location," confiscated my documents and equipment, and eventually locked down my laboratories and office. However, Lanier refused to return my assets and allow me to return to my laboratory but claimed that he needed to conduct an audit of my assets in order to return them to me. This claim was false because he did not have any authority to take a faculty member's assets or conducting an audit, even if there were a legitimate concern.

14. After nearly a year of struggling with Lanier's stonewalling, I could not get his research materials back, and research and teaching operations restarted while

time was critical in my research, competing for grant funding, and advancing my career.

Without any other options, I agreed to an "arrangement" mediated by the Dean of Medical College and Vice President for Medical Affairs, Dr. Jerry G. Reyes. Dr. Reyes proposed a cooling period by separating the conflicting parties in order for me to timely resume my research. Dr. Reyes proposed that MUSC would transfer all my assets and research operations to GenPair, a company established by the MUSC's Foundation for Research and Development (FRD). During the separation, I would continue my other academic activities at MUSC under the Chairman of the Department of Biochemistry, Dr. Yusuf Hannun.

One of the essential components of the Agreement is to return all my research assets that include my biological materials, documents, protocols, technologies, equipment, and grant funds.

15. Based on this spirit, I agreed to sign a "temporary separation agreement for a period of 18 months." I also agreed to that MUSC's general counsel, Mr. Joe Good was to draft the Agreement.

After several revisions, I was informed that the "final version of the agreement with what had been discussed was completed," and an appointment was made with Dean Reyes to sign the final Agreement in his office on May 3, 2010.

16. Out of deep respect and trust for Dr. Jerry Reyes, I believed that MUSC was in good faith. I did not scrutinize some of the words inserted or utilized by MUSC's legal counsel, such as "Final" Separation Agreement only meant the last version, and agreed to the Agreement as I was explained and understood.

17. In his position as the vice president for research, Dr. Lanier was in charge of the agreement implementation. While promising he would fully implement the Agreement, he deployed a delaying tactic. Lanier directed me to several MUSC management personnel for implementing the terms of the Agreement. After numerous delays, sometimes up to several months, the general answers to I were that they had not received the specific authorization for what to do but would continue to make efforts to resolve the issues.

18. Furthermore, the University blocked my access to the university email systems and all my research information stored electronically in the University HomeRoom without prior notice and deleted my faculty information from the University's website as if I never existed at the University. These deprived me of any research and academic documents and blocked my communications with colleagues at other universities and research institutes.

19. Without the ability to conduct his research and teaching, I could not find a position at other universities but had to work with MUSC to re-establish my career.

20. During this time, Norris continued using my research projects, assets, and resources for his research, publications, and applications for funding.

21. Lanier, on behalf of MUSC, declined two of my grants awarded by NIH totaling eight million dollars to block me from ever coming back to MUSC.

22. Until the end of the Agreement, none of the terms in the Agreement that favored me was implemented. It became clear that MUSC made the Agreement in bad faith and did not intend to implement it.

23. The breaches included, but were not limited to, the failure to transfer any of my research funds, materials, notebooks, protocols, and equipment to me. I was also continually blocked from any academic activities at MUSC.

24. In contrast, MUSC implemented numerous activities detrimental to My career under dubious languages inserted by the MUSC legal counsel. These included but were not limited to:

- (1) Did not transfer any of the research materials, essential documents, and equipment that are essential for me to continue my research and advance my career;
- (2) Withheld my multiple intellectual properties;
- (3) Continually blocked me from any academic activities at MUSC;
- (4) Terminated my tenure at the University, which under the faculty contract, it would take seven years for MUSC to terminate my tenure by not renewing it for poor performance;

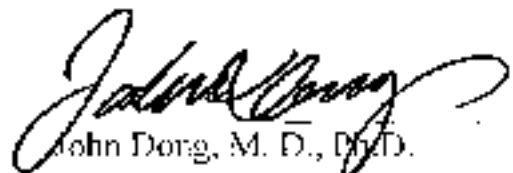
- (5) Terminated his salary and benefits, including his and his family's health benefits;
- (6) Terminated his retirement pensions;
- (7) Assisted and participated in a hostile takeover by one of the Company's investors who laid all the legal liability of the Company's using federal contract funds for a research facility on I and made him suffer all the legal consequences for what the Company had done while the investors cashed out and abandoned the Company.

25. I further state that I did not receive the letter allegedly sent to me by Lanier and Sothmann informing me that I had been put on administrative leave based on an event that happened in 2014, almost three years after the Agreement expired. Furthermore, Lanier and Sothmann signed the letter in their portion of 2014, not in 2011. These showed that the letter was generated no earlier than 2014 and backdated to 2011 to cover up their violation of the Agreement.

26. Due to these breaches of contract, my stellar career and entire financial well-being were destroyed, and the damages were irreparable.

I hereby affirm, under penalty of perjury, that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

June 15, 2023
Charleston, South Carolina


John Dong, M. D., D.D.
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Appendix Two:
John Dong's Deposition

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL
CIRCUIT

JIAN-YUN (JOHN) DONG, M.D., Ph.D.

Plaintiff,

vs. CASE NO. 2016-CP-10-06683

THE MEDICAL UNIVERSITY OF SOUTH CAROLINA,

Defendant.

DEPOSITION OF: JIAN-YUN (JOHN) DONG, M.D., Ph.D.

DATE: October 18, 2022

TIME: 10:00 a.m.

LOCATION: 171 Church Street
Charleston, SC

TAKEN BY: Counsel for the Defendant

REPORTED BY: Roxanne Easterwood, RPR

Page 2	Page 3
APPEARANCES OF COUNSEL PROSECUTOR HANNY H. LINDSAY, JR., MD, PhD [REDACTED] ATTORNEYS FOR DEFENDANT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA Cleland & Conley, LLC 46 Broadway 17 Church Street, Suite 200 Charleston, SC 29401 hannylindsay@charleston.com 843.577.9625 INDEX AT REAR OF TRANSCRIPT	1 and, maybe more importantly, the answers you give. 2 She can only tell that if you don't do a few things 3 that I talk to you about that are meant to help 4 to do that, okay? 5 A. All right. 6 Q. The first one is if I ask you a 7 question today that you don't understand, don't 8 hesitate to ask me to -- say, "No, Mr. Conley, can 9 you restate that? Can you ask it again? I'm not 10 sure I understand what you were saying. Okay?" 11 A. All right. 12 Q. If you've told that, I'm happy to 13 rephrase the question, break it into small parts 14 whatever I need to do so that I don't confuse you 15 with the question, because it's not meant to 16 confuse you. That doesn't do you or hurt good to 17 confuse you, all right? 18 A. All right. 19 Q. So just make sure if you don't 20 understand something -- and I assure you will 21 anyway -- I just tell people, don't be bashful 22 about saying, "I don't understand what you're asking 23 me, and I'll try to rephrase it, okay?" 24 A. Okay. 25 Q. The second one is people, when they
Page 4	Page 5
PROSECUTOR'S ***** JIAN-YUN (JOHN) DONG, M.D., PH.D. being first called upon, testified as follows: EXAMINATION BY MR. CONLEY: Q. Good morning, Dr. Dong. A. Good morning. Q. Nice to see you today. You and I have met on a number of occasions, so we're familiar with each other. A. Yes. Q. Have you ever been deposed before? Have you ever sat in a room with a lawyer and a court reporter and had questions asked? A. No. No. Q. I'm going to go over a few things with you that you need to know about about the process, since you've never done it before. Most of these things are really meant to help this lady at the end of the table. A. Understood. Q. "The reason is, Dr. Dong, as we want to make sure, both you and I, that she is able to make an accurate transcript of the question I ask	1 ask and answer questions, have a tendency 2 sometimes to speak over one another. Usually 3 that's because we all start to give our 4 brains about our answer before someone is finished 5 asking the question. So what I generally tell 6 witnesses is if you don't agree to let me ask my 7 entire question before you begin to speak with an 8 answer, I will, otherwise, agree I'm not going to 9 ask you another question until I'm sure you've 10 come with your answer. 11 It becomes very hard for her, if you 12 and I start to talk over one another, to get an 13 accurate record. So if from time to time I might 14 ask you, "Hey, wait, let me finish asking my 15 question. Let me make sure that we're clear. It just 16 means you may be done when we'll tend to use, and 17 that is sometimes start to give an answer before 18 somebody is finished asking a question, is that 19 fair, or not?" 20 A. That's fair. 21 Q. The other item is, is that -- I don't 22 have a tendency to do this. I think, if anything, 23 I probably speak too slow and too fast. But it 24 is important that you do talk at a sort of a 25 measured pace. Again, for the convenience of the

Page 6	Page 8
1 court reporter to make sure she gets your answers 2 correctly. It's generally helpful, and, if you 3 know, you're in a good position. Right now, she can 4 sort of ease your face. That's fine. That helps 5 her make sure she's getting correct testimony on 6 the record as well. If we can do a lot of those 7 things, that will really help do this efficiently. 8 Is that fair enough? 9 A: All right. 10 Q: If you have any questions as we go 11 along today, don't hesitate to ask them. Meaning, 12 you're a private party; you have not been through 13 a deposition in this posture before, so if you 14 have a question, you're free to ask me a question 15 at any point. 16 A: All right. 17 Q: Whether I can answer it or not. I 18 have to know what the question is, and if you do 19 have a question, just ask. The process isn't 20 designed to mean to confuse you. It's solely a 21 discovery tool so that I can get your testimony 22 about your claims in this case, all right? 23 A: All right. 24 Q: A couple other things. One, I 25 generally take a break every hour. Because I get	1 ask you now -- I generally save this to the end of 2 the deposition to ask my witness, but I'll go 3 ahead and do this with you, have been used I think 4 it's more efficient to do it this way. 5 You, as the witness in the case, have 6 the option to do under the rules what's called 7 "reading and signing your deposition transcript." 8 A: Right. 9 Q: In its most simplistic terms, what 10 that means is after the deposition is concluded 11 today, and the court reporter prepares a transcript 12 of it, you can elect to tell the court reporter "I 13 want to read and sign my transcript." If you do 14 that, what she will do is once it's prepared, she 15 will email it or mail it to you -- you can work 16 out with her how you want to get it -- and she 17 will provide you with a copy of it. At that point 18 in time you have 30 days to review it under the 19 rules, okay? 20 A: All right. 21 Q: I presume you probably want to read 22 and sign your transcript, is that right? 23 A: Yes, I do. 24 Q: So that's good. Once the transcript 25 is prepared, the court reporter will have a copy of
Page 7	Page 9
1 final of asking questions, and I presume the 2 witness is probably, like, the tired of answering 3 my questions. So, try to take a ten-minute break 4 or so every hour. However, with that said, you're 5 welcome to take a break at any time. You can look 6 at me at any moment and say, "You know, can I take 7 ten minutes?" That's fine, we'll take ten minutes. 8 The only thing I would ask is that if I have a 9 question I have asked you, that you go ahead and 10 finish answering before we take the break. 11 Otherwise, you can take a break whenever you want 12 all right? 13 A: All right. 14 Q: One of the things you have to agree to 15 abide by, since you're the witness that's being 16 deposed, is until the deposition is over, you're 17 not allowed to speak to anybody about your 18 testimony. Meaning, you know, if we take a break, 19 you can't call somebody on the phone and talk to 20 them about your testimony. You can't text 21 somebody about your testimony until the deposition 22 is concluded. Obviously, once it's concluded, 23 talk to whoever you want about it, okay? 24 A: I understand. 25 Q: The other thing I want to prohibit, and	1 getting that to you, and you can look at the 2 rules. The rule lays out what your obligations 3 are once you receive it, okay? 4 A: All right. 5 Q: Any questions about any of those 6 things? 7 A: No. 8 Q: Any questions before we sort of get 9 started about any of the general methodology of 10 doing this? 11 A: No. Just reminding me to silence my 12 phone. 13 Q: Yes, I have to remember to do that as 14 well. 15 Can you give me your full name for the 16 record? 17 A: It's Jian-Yue Dong, I go by John. 18 Last name, Dong, D-O-N-G. 19 Q: Can you give us your current 20 residential address? 21 [REDACTED] 22 Q: I'm not looking for exact street, 23 Dr. Dong, I am approximately how long have you 24 lived at that address, generally? 25 A: [REDACTED]

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1 Q Do you need to finish something on 2 your phone? 3 A I'm trying to silence it. 4 Q So you have lived at the [REDACTED] 5 address since [REDACTED]? 6 A Yes. 7 Q Just prior to your address on [REDACTED] 8 [REDACTED] where did you reside? What was your 9 residential address? 10 A I lived there briefly -- well, 11 actually, let me give you the [REDACTED] 12 [REDACTED] 13 Q I think it's [REDACTED] 14 A Yes, exactly right, [REDACTED] 15 Q That is the address you were residing 16 at before you signed living on [REDACTED]? 17 A Right. I've so lived briefly in 18 [REDACTED]. I would not remember the address. 19 Q [REDACTED] using [REDACTED] 20 [REDACTED] 21 A Right. 22 Q Over in [REDACTED] or [REDACTED]? 23 A Right. 24 Q The address of the residence you lived 25 in [REDACTED], did you live there alone, or did	1 A Do you know, last name Wang. 2 Q Any other arrangements, other than the 3 two you mentioned? 4 A No. 5 Q That reminds me of something else I 6 need to mention to you that I did. Sometimes 7 when you're answering questions, we have a 8 tendency to nod our head or something. The court 9 requires as you might imagine, can only take down 10 verbal responses. 11 A I see. 12 Q So try to remember to just yes or no 13 and nod your head. And I will remind you if 14 you nod your head, is that yes or no. I'm not 15 doing that to be rude. I just want to make sure 16 she gets your testimony correctly. 17 A All right. 18 Q Your first spouse, do you remember 19 what year you were divorced? 20 A I have a problem with my memory of 21 dates. 22 Q Just general. 23 A I think it was -- dates and years. 24 because I suffer from memory suppression due to 25 when I grew up under the communist rule, and my
Page 11	Page 13
1 someone live there with you? 2 A I lived there alone. I was divorced. 3 Q What about the address you gave me up 4 in [REDACTED], did you live there with someone, or 5 did you live there alone? 6 A I lived there alone. 7 Q What about the address on [REDACTED] 8 [REDACTED], do you live there alone, or do you live 9 there with someone else? 10 A I live with my wife, my second 11 marriage. 12 Q Can you give us your current wife's 13 name? 14 A As officially -- yes -- last name 15 Z-h-o-n-g. She goes by Allison Dong. 16 Q I don't recall exact dates, but about 17 how long have you and your current spouse been 18 married? 19 A 2013 or '16 -- 2016. 20 Q I think you mentioned just a minute 21 ago that this is your second marriage, is that 22 right? 23 A Correct. 24 Q Can you give me the name of your first 25 spouse?	1 parents was interrupted at their life. 2 Q So do you remember what year you were 3 divorced? 4 A Because it's bad events, I think. So 5 I've forgotten. If I remember, I think -- let me 6 guess, I believe 2012. 7 Q Do you remember if that divorce was in 8 [REDACTED]? 9 A Yes. 10 Q Did you have a lawyer who represented 11 you in that divorce? 12 A No. 13 Q Do you know if your ex-spouse had a 14 lawyer? 15 A She did. 16 Q Do you remember who her lawyer was in 17 that divorce? 18 A No. 19 Q You have to say no. 20 A No. But actually, I did have a 21 lawyer, but just for the -- not for the whole 22 process. It was -- I could not remember his name, 23 but it may come back. 24 Q That's fine. It sounds to me like 25 your marriage is you had a lawyer for part of the

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diocese process, but perhaps not all of it? 2 A: Just the -- right. 3 Q: And your recollection is you don't 4 recall your response having -- longer in any time 5 during the process? 6 A: She had lawyer for the entire life. 7 Q: Should it? 8 A: Right. 9 Q: The entire time, but you just don't 10 remember that person's name? 11 A: No, because I was completely removed 12 from the process. So basically I agreed to 13 everything they asked for. Actually, I never met 14 her lawyer. 15 Q: Do you and your last wife have any 16 children? 17 A: Yes, we have a daughter. 18 Q: Can you give us her name? 19 A: Berna, B-e-r-n-a, Dong. 20 Q: Any children by your second marriage? 21 A: No. 22 Q: Your ex-spouse, does she still live in 23 the greater [REDACTED] area? Do you know where 24 she lives? 25 A: She still lives in the [REDACTED]	1 Q: She what? 2 A: She should have been retired, too. 3 Q: But do you know if she works anywhere? 4 You can just tell me if she doesn't or if you 5 don't know. 6 A: I do not know for sure. 7 Q: Your daughter, does she live in [REDACTED]? 8 [REDACTED]? 9 A: She's a surgeon in -- somewhere in 10 [REDACTED], I don't remember the name of the 11 hospital is the name. 12 Q: Your current wife, does she work 13 anywhere? Is she employed? 14 A: No. She's retired, too. 15 Q: She's retired? 16 A: Right. 17 Q: What did she do before she retired? 18 A: She was a teacher in middle college 19 in Beijing. 20 Q: To your knowledge, has she ever held a 21 job here in the United States? 22 A: No. 23 Q: Dr. Dong, is she a U.S. citizen? Has 24 she been naturalized? What is her status? 25 A: She's permanent resident based on
Page 16	Page 17
1 The [REDACTED] 2 [REDACTED]. 3 Q: Is that the house in [REDACTED]? 4 A: No. 5 Q: No, it's not? 6 A: No, it's in [REDACTED]. 7 Q: You describe that as the [REDACTED] 8 Is that a residence where you lived at one time? 9 A: Yes. 10 Q: The address you gave in [REDACTED] 11 [REDACTED]? 12 A: Yes, during the marriage. 13 Q: We have to be careful about talking 14 even one another. 15 A: Sorry, about that. 16 Q: That's okay. You've given me a couple 17 of addresses: the [REDACTED] address, the [REDACTED] 18 address, the address in [REDACTED] that you don't 19 remember the exact address, and then you also gave 20 us a fourth address where you've resided, which is 21 the [REDACTED] address, is that right? 22 A: Right. Correct. 23 Q: Your ex-spouse, do you know if she's 24 employed anywhere? Do you know if she works? 25 A: She should be retired, too.	1 marriage. 2 Q: Other than your current wife and your 3 ex-wife, anybody else in South Carolina that 4 you're related to in any way? 5 A: No. 6 Q: No other family members? 7 A: No. 8 Q: At all? 9 A: No. 10 Q: Are you currently employed anywhere? 11 A: No, I'm retired. 12 Q: When you say retired, that can mean a 13 lot of different things in different people. What 14 does that mean when you tell me you're retired? 15 A: I reached the age of retirement. 16 Q: How old are you? 17 A: I'm 65, going on 66. 18 Q: When I hear someone say they're 65 and 19 they're retired in my mind, I'm generally 20 thinking they're drawing Social Security. Are you 21 drawing Social Security at this point? 22 A: Yes. 23 Q: Are you receiving any other retirement 24 benefits other than Social Security? Meaning, do 25 you have any other retirement benefits that are

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1 providing you, like most retirees, with income at 2 a monthly basis? 3 A: I've been working at many universities 4 where I've been a professor and doctor my whole 5 life. 6 Q: That's what I'm trying to find out. 7 What other sources of retirement income do you 8 have? You told me Social Security. Do you 9 receive retirement income by way of your 10 employment at the Medical University of South 11 Carolina? 12 A: Yes, I do. 13 Q: So that's probably through the South 14 Carolina Public Employee Benefits -- 15 A: Deferred. 16 Q: We can talk over each other. You 17 agree in let me finish. 18 A: Sorry. 19 Q: It's okay. But just wait. 20 I presume that retirement you receive 21 in respect to your work at MUSC, you receive that 22 by way of what's called the South Carolina Public 23 Employee Benefits Association. Do you receive a 24 retirement check each month? 25 A: No, don't. Actually, I have a	1 part. 2 A: I'm not clear how the system works. 3 Because I believe all the work, the pension that 4 that an differing universities all feed into to 5 MUSC in the end. So I worked at UCSF before. I 6 worked in California. That has the best pension 7 system in the world. 8 Q: To your knowledge, are you receiving 9 any kind of pension through -- from California 10 retirement? 11 A: I think I'm not quite sure, because I 12 never take care of my financial life, and I 13 didn't follow up. I believe it was all 14 transferred combination into MUSC. 15 Q: So staying here this morning, the only 16 sources of income you can identify right now are 17 your retirement from your house and [REDACTED] 18 and your Social Security income? 19 A: That's correct. 20 Q: The house on [REDACTED] is that a 21 house you own outright, or is there a mortgage on 22 it? Do you know? 23 A: Actually, that's my wife's house. 24 Q: So you don't own the house at all? 25 A: No, I don't own the house.
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1 activated it yet. 2 Q: So you're not receiving any retirement 3 benefits you accrued as a result of your work at 4 MUSC? 5 A: No. 6 Q: So where are you -- what other sources 7 of income do you have right now, other than your 8 Social Security that you receive each month? 9 A: I also rented out my house in [REDACTED] 10 [REDACTED]. 11 Q: The house is that the house at the 12 address that you told us about earlier? 13 A: Right. That's my house. 14 Q: When you say you rent it, does that 15 mean -- rent nowadays can mean a lot of things. 16 It may mean you rent it Airbnb, or you can rent it 17 permanently to somebody. 18 A: No. I rent it permanently to someone. 19 Q: Your sources of income right now are 20 your Social Security, while or until you receive on 21 the house on [REDACTED]. Any other sources of 22 income right now? 23 A: No. 24 Q: Do you receive any sources of income 25 from any other places where you've worked in the	1 Q: Have you ever had any ownership 2 interest in that house on [REDACTED]? 3 A: No. 4 Q: Since your employment ended at MUSC, 5 have you applied for positions at any other 6 medical centers or colleges? 7 A: I did not actually, I only looked for 8 faculty or look at -- in union or employment 9 opportunities from number of the publication of 10 science journals. The reason I have no way 11 because I have no academic -- no more academic 12 background. I do not have pending research 13 anymore, because all my research was taken away. 14 All my research material was taken away. I have 15 no manuscript. 16 He has you start from over again, from 17 my position. If you don't have the lines, research 18 material and research -- so you can't start projects 19 going, so you -- you are not hireable, unless I 20 want to be a junior. 21 So actually, being full professor like 22 what I did at MUSC, they recruited me from UCSF -- 23 much prestige and respect. That actually was 24 done grant money on my side, but I could, as usual 25 have a big research project and a lab full of

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1 each thing, post doc, and fellows, and I have my 2 research funding. And that's -- all the equipment 3 was transferred with me. So I have means to 4 conduct academic research. Whereas if those was 5 taken away from me, I have no means to conduct 6 academic research, and I have no way to apply to 7 position elsewhere. 8 Q: So the answer would be no, since your 9 employment with MUSC ended, you could not 10 A: I could not. 11 Q: You have to let me finish with the 12 question. I promise you I will let here and let 13 you give your full answer before I ask another 14 question. But for the court reporter's benefit, 15 you have to let me ask my question before you give 16 an answer. 17 Q: So the answer would be you have not 18 applied for any other academic positions since 19 your employment at MUSC ended? 20 MR. DONG: Objection. 21 Can I give my answer instead of you 22 give me the answer and let me give yes or no? 23 MR. CONLEY: You can say whatever you 24 want, Dr. Dong. 25 THE WITNESS: I could not become off	1 Q: I'm going to ask you, and 2 generally, about the eleven papers you have asked 3 to deposit in the case. Mark Sotthmann, can you 4 tell me just generally? I'm looking for a rough 5 idea so I have some knowledge of what connection 6 Mr. or Dr. Sotthmann has to your claims against 7 MUSC in the case. 8 A: Basically there's no connection. MUSC 9 limited my access only to Mark Sotthmann, and I 10 think he was involved in process of whatever for brief 11 period of time. He was not involved before or 12 after the real events, what happening -- what 13 happened. He was not involved. 14 I never met him before, I don't 15 remember. He was not -- I did not remember -- 16 do not remember. He might be copied on some 17 emails, I do not remember actually seeing him 18 out for the problems I had at MUSC. 19 Q: Do you remember having any meetings 20 with Mr. Sotthmann or him being involved in any 21 meetings before you signed the agreement -- 22 A: No. 23 Q: -- with MUSC? 24 A: No. 25 Q: Do you ever remember meeting with him
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reason I was able to 1 BY MR. CONLEY: 2 Q: Because you could not, does that mean 3 you have not? 4 A: I could not. That means I could not. 5 Q: Setting aside academic positions, have 6 you applied for any positions in private industry 7 since your employment at MUSC ended? 8 A: I'm not employable in private 9 industry because I have no actual industrial 10 background experience. 11 Q: Can you identify any jobs you have 12 applied for anywhere with any type of employer 13 since your employment with MUSC ended? 14 A: The only option for me was to find 15 academic background, as I said. As I say, because 16 of those limitations, I could not apply for 17 academic background, academic professorship. I 18 not applying for practice. I'm not applying for 19 patent or tech ideas. So I could not do anything, 20 way to do. 21 If you take away a surgeon's 22 equipment, ability to perform operation, you ask 23 the surgeon have you applied for any other jobs. 24 The answer would be, obviously, no, you cannot	after you signed the agreement in regard to 1 anything related to it? 2 A: No. 3 Q: Beth Gladden, can you give me a 4 general idea of what it is you believe she knows 5 about your claims in the case? 6 A: She should have known everything 7 because she's the business administrator for 8 Dr. James Norris, who was the chairman of the 9 time, and she basically handled James Norris on 10 everything they done to me. I don't know if she's 11 honest or not, if she can tell the truth, or 12 whether she will be a material witness. 13 Q: Do you recall ever having any 14 conversations with Ms. Gladden in regard to the 15 agreement that you entered into with MUSC? 16 A: No. She wasn't at that level. 17 Q: Do you remember her ever being 18 involved in any meetings or conversations leading 19 up to you entering into that agreement with MUSC? 20 A: She was involved, especially in what in 21 the events taking away my research material, 22 spending my money by Dr. James Norris. And 23 actually, she was there when I was blocked from 24 entering my laboratory, and she was claiming --

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1 she was thinking there was a criminal 2 investigation because somebody stole my genetic 3 material. 4 That was the excuse at the time to 5 block me entering my lab, tell me there was an 6 something ongoing. So, therefore, I could not 7 enter my lab. That's the first event I find that, 8 really, Dr. Norris basically just your team 9 hiding, basically wanted to take away my genetic 10 material, my money and equipment for his own use. 11 Q. Thank you for telling me that. Do you 12 remember Mr. Chadden ever being involved in 13 discussions about the written agreement and you 14 signed with MUSC? 15 A. No, she wasn't. 16 Q. Thomas is I'm asking. You don't 17 remember her being involved in that agreement? 18 A. No, I do not. But she is behind all 19 the events that's happened to the agreement 20 which is a compromise between the administration and 21 me regarding to -- to prevent me from actually 22 repeating to what James Norris did. 23 What he did, was he -- actually what 24 I've been accused of and charged with, because he 25 misusing contract grant fund of another person for	1 many many of the biosafety committee and the 2 examination are. I thought, you know, he should 3 didn't violate anything. 4 Q. Why Dr. Kenneth's conduct, in your 5 recollection, in any way in the agreement that you 6 reached -- after -- and with MUSC? 7 A. It's not agreement per se, but it was 8 the old events transpired the agreement. The 9 agreement is, transparent is in two parts just 10 try me get it MUSC. So that's why the 11 agreement is actually the disclosure of the 12 background, at the agreement was way beyond the 13 agreement, which at the time I was just 14 especially trying to get my research projects 15 going, because in my career if you stop doing 16 research, and your career will be severely 17 impacted. 18 Q. Do you recall ever talking any 19 discussions with Dr. Subramaniam about that written 20 agreement? 21 A. No. 22 Q. Dr. Stephen -- Stephen -- Tom -- 23 Tomlinson, he was someone else. You indicated you 24 agreed to work for Tomlinson's department. Can 25 you tell me about it, you were to take
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1 his own use. That can trigger the nothing at all 2 is the MUSC grants, as well as disqualify MUSC 3 from applying for federal grants if that's 4 actually be prevent. 5 That's why I have to argue with -- 6 from MUSC, now is from all my colleagues. So 7 that's a very promise position to reach the 8 agreement and I am getting my research material and 9 lab equipment back quickly, because I have a 10 career to follow, instead of fighting with MUSC at 11 the time and also causing severe damage to MUSC. 12 Q. What about Michael G. Subramaniam? He's 13 someone you indicated you wanted to hire as a 14 deposition. What does he know, or what is it you 15 believe he knows that has some connection to your 16 claims in this lawsuit? 17 A. Of course he knows the actual events. 18 At least he knows some of the actual means. He 19 was vice president -- no, not -- vice chairman of 20 the department, and I believe he let James Norris 21 did what he did, but he wasn't helping me in any 22 way. But he crosses a lot of mine. 23 Also, he was on the biosafety 24 committee and he was sending stuff me to auditing -- 25 or biosafety violations. So I was put through.	1 Dr. Tomlinson's Department, including what it is 2 you think is wrong, he claims to you in house, if 3 A. He claims as well, he was one of the 4 outside -- of -- of -- he definitely knows the 5 event and also all the actions that's going to 6 the agreement. 7 Q. Do you recall ever having any 8 conversations with Dr. Subramaniam about the actual 9 written agreement you entered into with MUSC? 10 A. No. He doesn't have the -- very part 11 in the written agreement, but I was -- he had 12 significant knowledge of the events that you 13 transpired to the agreement, and at the time I was 14 trying to recruit collaborators when I was the 15 professor at the department, and he was actually 16 -- I was on his recruitment committee when I was 17 at the department. 18 And his career was not impacted. 19 Because I do not believe Dr. Norris was interested 20 in his research. And he also was a protected. 21 He will protect his money from being abused by Dr. 22 James Norris. 23 Q. What about Christian Voelkel-Johnson? 24 Dr. Voelkel-Johnson? Can you give me some idea of 25 what his job, he was doing as he was the -- pertains

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1 to your lawyer, Dr. Dong? 2 A: Also involved in the activities, and 3 she used to be a trainee of Dr. James Norris. 4 And if Dr. James Norris take my material and 5 giving to one of the professor's laboratory, 6 Christy or Christina, sorry, and she will get the 7 benefit of obtaining my material, conducting her 8 research, advance her career while I will be 9 giving no credit. 10 So she was the one in a way, indirectly 11 benefiting from Dr. James Norris taking my genetic 12 material and research resources and for her to 13 advance her career, which will be under James 14 Norris. So when she and publication, James Norris 15 will be the corresponding author, who will be the 16 ultimate person in charge on the research projects 17 and obtain federal funding based on those 18 research. 19 And she was one of them took my 20 research material and my research projects on her 21 behalf as the beneficiary or recipient of 22 Dr. Norris legally and ethically taking my 23 genetic material and lab research, as well as 24 equipment for his own use. 25 Q: Do you know of any involvement that	1 relationship between the Medical University and 2 all of the faculty members. And she will also 3 have knowledge, direct knowledge, of how a 4 tenured professor worked at MUSC? 5 Q: Have you ever met Dr. Saladin? 6 A: No, I have not. 7 Q: I don't believe she was the provost 8 when your time at MUSC ended, is that right? She 9 wasn't the provost then, was she? 10 A: No, she wasn't. She is now. The 11 provost at the time was John Raymond. 12 Q: To your knowledge, did Dr. Saladin 13 have any involvement in the written agreement you 14 reached with MUSC? 15 A: She represented MUSC, now. She 16 actually should be able to testify about the -- 17 how the -- I said, how the MUSC system works as 18 a non-mus process between a faculty member and 19 MUSC. 20 Q: Do you recall ever having any 21 communications with Dr. Saladin prior to making 22 the the -- 23 A: No. 24 Q: Agreement with MUSC? 25 A: No.
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1 Dr. Johnson really had in the agreement that you 2 entered into with MUSC? 3 A: This is a verbal agreement. This is 4 the event taking my genetic material and research 5 projects and research funding from me and using the 6 equipment that I had block my research advantage, 7 block my career in order to advance James Norris's 8 career, funding. So that's -- not only the 9 agreement, one small part of the equation. 10 Q: I am confused, but your position is 11 not asking if Dr. Johnson, to your knowledge, 12 had any involvement in the written agreement. 13 That's all I'm asking. 14 A: She did not. 15 Q: You also indicated you were able to 16 deposit it at Saladin. That's Saladin, right? Can 17 you give me a general idea of what you believe 18 Dr. Saladin may know about your material and the 19 claims you make? 20 A: She is current provost of the university 21 and she will have, as I know, examine funding 22 and her lab -- because she will know the general 23 policy of MUSC. 24 For accreditation policy at MUSC, the 25 faculty handbook was governed -- governed the	1 Q: You have to let me finish my question. 2 Dr. Dong. 3 A: All right. 4 Q: David L. Cole, current president of 5 MUSC, can you give me some idea of why you 6 identified Dr. Cole as someone who you want to 7 report? 8 A: He was one of my close co-laborator on 9 assignment of projects, and we have turned the 10 research projects. He is turned his graduate 11 student as post-doc fellows, and he intimately 12 knows my -- the value of my research and in 13 general, how research and medical practice was 14 conducted as a professor, as a faculty member, and 15 he has certain knowledge of the importance of the 16 biomedical research materials and projects taken 17 away from me. 18 And so generally, he was one of my 19 close -- close co-laborators and one of the 20 close co-laborers at MUSC, and so he will be 21 able to shed some light on how the events 22 transpired. 23 Q: To my knowledge, Dr. Cole was not the 24 president of MUSC when your time there ended, is 25 that right?

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1 A: No, I wasn't depose him as a 2 president. I would depose him as one of my 3 colleagues, close -- had a close relationship with 4 me during my research, during my tenure at MUSC 5 as part of the research efforts and the importance 6 of my materials and was taken away from me by 7 Dr. James Norris. 8 Q: Dr. Jerry Reeves, can you tell me why 9 he's someone that you can -- or you want to depose 10 in the case and what he may know about your 11 lawsuit? 12 A: Actually, he was the one single person 13 negotiated with me on this so-called compromised 14 position, and he made a lot of -- sorry, I 15 probably used the -- the -- 16 Q: It's say -- 17 A: He promised me a lot, but it was not 18 in the final agreement. And he was the one ready 19 to be, for lack of better way, the good one, good 20 person, wearing the white hat during the 21 negotiation. 22 Q: I think what you just said to me is 23 your impression was he was playing what we might 24 call "the good guy" during his negotiation with 25 you?		1 to find out if that piece of equipment exists, 2 where it was located, and he was given -- on the 3 paper, he was given the authority to receive the 4 smooth transfer the laboratory documents, my 5 genetic material, my lab equipment, and doing all 6 the administrative matters during my research, 7 so-called, all samples. 8 Q: Dr. Steven Langer, he's a -- someone 9 was you indicated you wanted to see Dr. Langer's 10 deposition. Can you take you've been good enough 11 to do with the other witnesses, give me a general 12 idea of what you believe Dr. Langer may know about 13 the claims in your lawsuit? 14 A: Dr. Langer was incredibly 15 responsible person, because he was close friend of 16 Dr. James Norris while he was the chairman -- so, 17 he was not the chairman. He was a faculty of 18 department of biochemistry where he was competing 19 for the chairmanship of biochemistry, which 20 eventually given to Yusuf Hamman, and he left 21 university, moved to 22 Q: Wayne State maybe? 23 A: No. He was -- at that time he left 24 the Tulane university, moved here to Louisiana, and 25 he was recruited back when Dr. John Ray was in left
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1 A: Yes. Basically he was expecting to 2 me that is just pretend to make an effort to lead down 3 -- from outside my research in different 4 locations, and -- I can prove I can do good 5 research, especially get funding at MUSC -- get 6 more funding to MUSC, to MUSC, working the back. 7 And also the potential to continue my 8 research as well as teaching graduate students, 9 training postdoctoral fellows, do all the necessities 10 research could have done before. 11 Q: You also indicated you wanted to take 12 the deposition of somebody by the name of Sean 13 Reid or Reid -- 14 A: Sean Reid (sic). 15 Q: Can you tell me, in general, what -- I 16 don't know if Dr. Reid or Dr. Reid may know about 17 your claims in the lawsuit? 18 A: He was in charge to implement the 19 master, Dr. Reid -- He was the business manager 20 the counterpart of Bern Gladden, but he was in the 21 department of biochemistry and molecular biology. 22 He was under Dr. Yusuf Hamman, which is my second 23 argument. 24 But, one of the pieces of equipment 25 missing not on the list, he was the person		1 or somewhere else, and becoming the executive vice 2 president for research. My -- he had other title, 3 but he was ultimately in charge of the research 4 activities at the MUSC, and he backed up for 5 Dr. James Norris. 6 He was the one, as vice president, 7 block me from entering my laboratory. He was the 8 one actually take away from my research 9 laboratory, my office using his authority as the 10 vice president of the university, and he was the 11 one I reported to administer when Dr. Norris 12 was going to me, as well other problems Dr. Norris 13 may have in terms of misusing grant money of other 14 people, and he was appointed to be the person in 15 charge. 16 And I'd say that, I -- I want to 17 give that. He was the one ultimately tricked me 18 into the agreement and eventually breached the 19 agreement and benefited, actually, for MUSC -- as 20 well as for James Norris, to take my research 21 projects, became regular research documents and 22 lab equipment. 23 Q: Dr. Dong, in the last one to you, 24 entering into the written agreement with MUSC, did 25 you have a lawyer representing you?

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1 A: No, did not. 2 Q: Yes, did you? 3 A: No. I understand the process at MUSC. 4 stepped out the agreement before I signed it, but 5 at the time I was not, because -- I believed 6 Dr. John Raymond -- because I have tendency to 7 believe every -- my colleagues, because they are 8 doctors, they are all highly skilled. 9 professors -- professors, as well as -- regulation 10 of James Nantz and Steven Lamm. 11 I even mentioned if I was present Dr. 12 Rosen. 13 Q: Can you spell the last name? I cannot 14 sure I caught that. 15 A: Kenneth Rosen or Dr. Ken Rosen. 16 Q: Dr. Rosen? 17 A: Right, he is the director of -- HHS, 18 Foundation for the Development and Health of the MUSC. 19 Q: What is Dr. Rosen know about your 20 business at the time you made? 21 A: He was involved heavily, as well as 22 Dr. John Raymond, involved in setting up the 23 company, GenPhar, with New York University, and he 24 was also involved in -- probably not from the gene 25 from -- CSF to specify -- the MUSC, to develop	1 was involved in my complaint, and I would not 2 follow the process before -- actually -- I would not 3 -- become the president or a consultant at 4 another university. 5 Q: Do you have any recollection of 6 Dr. Raymond being involved with the wider 7 government government, and in this 8 A: Yes, was not. 9 Q: You have to let me finish. 10 Do you have any recollection of 11 Dr. Raymond being involved with -- when 12 concerned -- only indirectly with -- MUSC? 13 A: He was not directly involved in the 14 written agreement. Only person directly involved 15 in writing agreement was Dr. Raymond, as the 16 general counsel of MUSC, and Dean Rosen and Steven 17 Lamm, Dr. Steven Lamm, I think, in the scenario 18 because he knows -- was -- he is the one that was 19 the dirty work. 20 Q: You went and did it -- in the hearing 21 two weeks ago of -- Surgeon General -- Samson is 22 -- Surgeon General -- Rubinstein is 23 Rubinstein is the -- 24 Can you tell me what Dr. Rubinstein 25 knew or you believe he knows about the change
1 biotech initiatives for MUSC under the guidance of 2 State of South Carolina. 3 So he will know how the interplay 4 works between the company which had me the last 5 speaker and also the -- how I actually got involved 6 with the biotech company on behalf of MUSC. 7 Q: Is Rosen Rosen? 8 A: Rosen or Dr. Rosen. But 9 he was director PRD for a long time, and anybody 10 will know his -- 11 Q: There are some other people you found 12 in responses to our interrogatories. I want to 13 ask you about a few of these people. You listed 14 Dr. John Raymond. 15 A: He was the provost, sorry. 16 Q: That's all right. So Dr. Raymond was 17 the provost at the time you entered into the 18 agreement -- the signed agreement? 19 A: That's where the -- because that's my 20 report to the administration stated that -- when John 21 was the provost, and -- but I had a good 22 collaborative relationship with Dr. Raymond. But 23 once I started the company -- that potentially can 24 cause serious problem for MUSC, and so he -- and 25 we did not have any communications, but I think he	1 you're raising? 2 A: He knows all of the actual covers. He 3 was the assistant professor work under me in my 4 laboratory. So because Dr. Norris told the 5 board, in a way, to terminate him, my father, so he 6 was basically using Dr. Norris' look to do his work 7 while Dr. Rubinstein was on my payroll and 8 using -- have access to all my research materials. 9 And also the words that Dr. Norris 10 once said, "I like this because I can take money 11 out of one pocket, put into the other; I want all 12 the work done." 13 Guess who was the one being taken 14 about age of? That was me. 15 So actually, Dr. John Clark -- all 16 everything, including doing the funding, transfer 17 into genetic material, and he was involved at the 18 time. 19 Q: Do you know if Dr. Rubinstein had any 20 involvement in the agreement you reached with 21 MUSC, the written agreement? 22 A: He does not have the agreement. The 23 agreement only state part of it. That's the 24 whole thing. The agreement covers a lot, which is 25 because that's the compromise for what Dr. Norris

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1 d. He has said that starting research in a 2 d. He has said that starting research in a 3 location, within the limits of the agreement 4 immediately stop the team conducting any research. 5 I stopped my career and because I have no genetic 6 material, no research equipment, no personnel and 7 no documents. 8 Because research is not done by one 9 person. It's all of the thoughts and everything. 10 everything do it by the people working together. So 11 I will not enter anybody. So we can't continue 12 I will not know what happen, and I will not know 13 what to happen, some of the experiments. So for the 14 scientific engineer in a way, I will do the design 15 construction. I do not do the work. 16 Q. To go back to my question. Do you 17 know of any members on Dr. Rubin's committee 18 who might appear at that? That's all I'm asking. 19 A. I don't know the answer to that. 20 Q. What about Dr. Brian Kake-Harst? 21 You listed him. Can you tell me what Dr. Kake is 22 and what you believe he may know about your claims 23 in this lawsuit? 24 A. He does not. He's one of the graduate 25 students sent away by Dr. Norris as a	1 into with MUSC? 2 A. No. 3 Q. You also listed a Dr. Jennifer 4 Schappas, N-e-h-o-p-p-a-s. 5 A. Yes. 6 Q. Do you know what she may know about 7 your lawsuit and the claims in it? 8 A. She does not know lawsuit, but she was 9 my graduate student. She will know what even we 10 discussed before the agreement was signed, why 11 actually I signed the agreement, and what's the 12 agreement for. 13 Q. I'm not going to be able to pronounce 14 this last name. I'll do the best I can. Dr. 15 Wierumamulhama? 16 A. Wierumamulhama. 17 Q. Is spelled. 18 W-e-i-r-u-m-a-m-u-l-h-a-m-a. Do you know who 19 I'm speaking about? 20 A. She involved with us. 21 Q. Can you tell me what you believe she 22 may know about the claims in the lawsuit. 23 Dr. Dung? 24 A. She was a, so one of my graduate 25 students. So she knew what I went through
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1 condition for my promotion, and basically that is 2 so legitimate being my research material in 3 Dr. Hole's research project, graduation project, 4 which he gave Dr. Morris' project. So that's the 5 trap. 6 Q. You have a Dr. Kenneth Rosen. 7 Rosen-zen. Who is that? 8 A. I think that's what I'm saying. 9 Q. That must have been the "Rosen" or 10 "Rosen" we were talking about earlier? 11 A. Rosen. 12 Q. I don't know how you spell it either. 13 but we know who we're talking about. 14 Then you have Mr. Chip Hood listed in 15 your interrogatories, too. Can you tell me what 16 Mr. Hood knows about your claims in this lawsuit? 17 A. He was the director of our F&D 18 following Dr. Rosen left. He has intimate 19 knowledge of my research project and technologies, 20 and he was trying to ask me to file patent 21 disclosures so he will show the value of the 22 technologies and the importance of the technology. 23 I said that was being taken by Dr. Norris. 24 Q. Do you know if Mr. Hood was involved 25 at all in the written agreement that you entered	1 Q. You also listed a Dr. Stephanie 2 Smith Johnson. Do you know, or can you tell me 3 what you believe she knows about your lawsuit and 4 the claims in it? 5 A. Stephanie. 6 Q. It says "Stephanie Smith Johnson." 7 A. I think that's misspelling. I think 8 that's Lindsay Johnson. 9 Q. The state person we picked about 10 earlier? 11 A. Yes. 12 Q. Very good. 13 A. Sorry. 14 Q. That's fine. Dr. Steve London is 15 someone you listed in your interrogatories. Can 16 you tell me, in general, what it is you believe 17 that Dr. London may know about the claims in your 18 lawsuit? 19 A. He was one of my colleagues. He 20 actually had a dispute with Dr. Norris in the same 21 or similar issues, and, besides by, I think the 22 university involved him up and promoted him to a 23 think over the vice president. So put him away 24 from the department. 25 I thank for this opportunity and what

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1 James Norris did, could have a major impact on the 2 overall funding of MUSC, but I wasn't ready to be 3 a whistleblower. I wasn't going to do anything to 4 harm the university or harm any of my colleagues, 5 especially from when they did harm. 6 Q. Did Dr. London, to your knowledge, 7 have any involvement with the written agreement 8 you entered into with MUSC? 9 A. No. No. 10 Q. Looks like the last person I have here 11 is a Dr. Lucile "Lantern," L-a-n-t-e-r-n. 12 "L-a-n-t-e-r-n." 13 A. That's his husband, sorry. 14 Q. Can you tell me, in general, when 15 Dr. London may know about your lawsuit and the 16 claims in it? 17 A. I am not actually Dr. London's 18 wife, and she is not -- I think she went to 19 professor. 20 Q. So this should be "Lantern," correct, not 21 "Landon?" 22 A. Right. Same person. 23 Q. So that's Dr. Steve London's spouse? 24 A. Wife, right. 25 Q. Tell me what you believe she may know	1 he meant was on behalf of MUSC, but now I think back, 2 that may not be true. 3 Q. Did you and Dr. Norris ever have any 4 conversations about the written agreement you 5 entered into with MUSC? 6 A. He was the target. He was the 7 target, right. That's how he -- that agreement 8 was reached. 9 Q. I am confused. My question was 10 did you ever have any conversations with 11 Dr. Norris about the written agreement? 12 A. I have had the conversations regarding 13 to the problem -- kind, and that was before the 14 agreement. So now, he was the -- ultimately, 15 involved with the agreement, yes, I don't. 16 That's actually -- he probably set up 17 the -- he would be the one provide the list of 18 equipment, and there is -- may, you are taking from 19 the -- And also actually, he took some of the 20 equipment and my contract, but -- and over -- so 21 for extra grant, and he considered that was -- 22 Yes, he would sign any -- of it. 23 He was ultimately involved in it, I know. 24 Dr. Reeves does not know anything in it. He was 25 just the representative of MUSC in the -- and was
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1 about your lawsuit and the claims in it. 2 A. She actually work next door with me in 3 the laboratory position, and actually, she -- 4 Dr. Norris actually tried to start some dispute 5 over equipment, over sharing the files, between me 6 and Dr. Lucile London, and to distract me from 7 actually reporting what he did. 8 So Dr. London will have investigated what 9 transpired during the process, what the problem 10 had with Dr. James Norris, which he eventually 11 transpired to or lead to me to signing the 12 agreement. 13 Q. Was Dr. Norris directly involved, to 14 your knowledge, in the written agreement that you 15 entered into with MUSC? 16 A. He didn't actually -- he cannot sign 17 agreement with me because he is the target of my 18 complaint, and I think he was taken off the 19 premises, but he worked closely with Steve London 20 -- Steve Lantern. Actually, the two conspired to 21 took my materials, research material, equipment -- 22 everything for his own use. 23 And Dr. Steve Lantern actually came to 24 Glen Plonk, talk to me, wanted me to give him 25 something. I did a net, so we other -- I thought what	1 the data of medical school. So he was the one 2 actually presenting as well as being being good 3 person, and he -- he explained the situation and all 4 I am generally not the -- my, establish a medical 5 thing, the project at the time which will be 6 end up with serious damage to my career. 7 He was a research, is a target, that's 8 that information, that's -- you stop in the middle 9 working on the logistics, you will -- for sure 10 will be losing. 11 Q. You also stated -- the last person is 12 Joe Good. Did you -- know Mr. Good. He was the 13 former in-house counsel at MUSC. 14 A. Did you have conversations with 15 Mr. Good about the written agreement, before it was 16 entered into? 17 A. I did not, have a direct conversation, but 18 I had some emails engaging him -- believe he was 19 the one dictated the agreement, and he also had a 20 close communication with James Norris. So then, 21 are a lot of things sort of sneak into the 22 agreement, I believe I signed, and that is -- all the 23 legal language, that is all from Dr. Joe Good. 24 Mr. Good. 25 Q. But you understand what I'm asking?

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1 have not had any direct conversations with 2 Mr. Good? Is that right? 3 A. I think so. I did not have direct 4 conversation with him. 5 Q. Thank you. 6 A. I don't remember that, though, but I 7 don't remember. 8 MR. CONLEY: This is a good place to 9 take ten minutes and get some more coffee. 10 (A recess was taken.) 11 MR. CONLEY: Back on the record. 12 (Exhibit L, Civil Action, Dong v. MUSC, 13 marked for identification.) 14 BY MR. CONLEY: 15 Q. Dr. Dong, I'm going to change your exhibit 16 have marked as Exhibit L to your deposition. And 17 I'd just represent to you that is the law suit 18 that you filed, including the two exhibits that 19 were entered into the suit. You can take a minute 20 to look at it, though, before we talk about it at 21 all. 22 A. Yes. 23 Q. Last week in front of you 24 Dr. Dong, I asked you earlier if you 25 were represented by a lawyer before you signed the	1 Q. If so, you signed that written 2 agreement with MUSC that we'll talk about in a 3 minute. Did you take it to a lawyer to review with 4 you and discuss it all? 5 A. No. I was being a good family 6 member. I didn't want to cause any problems for 7 MUSC, also any of my colleagues. I was going to 8 resolve the problem on my own. I have a career to 9 take care of at the time, so I wasn't interested 10 in getting into a dispute with my employer, with the 11 university. 12 Q. After you entered into the written 13 agreement with MUSC was Mr. Holmes the last 14 lawyer you took the agreement to? 15 A. Yes. 16 Q. In other words, other than Mr. Holmes, 17 you never took it to any other attorney to review 18 and sense with you after you signed it? 19 A. Right. I do not -- I could not 20 remember how I ended up with Mr. Holmes. I think 21 maybe at the suggestion of Mr. Joe Good. I think 22 that the day was -- I should probably not have 23 read it at the time (sighs). Mr. Joe Good was 24 looking, and Holmes actually put his hat and the 25 ring for potential general counsel for MUSC. So
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1 written agreement with MUSC, and you indicated, I 2 think, that you did not have a lawyer at that 3 right? 4 A. Correct. 5 Q. One lastly, at the time you filed the 6 lawsuit initially in 2014, you did have a lawyer, 7 which was Mr. Holmes, directly across below us? 8 A. Yes. 9 Q. Do you remember when in that time span 10 you actually hired Mr. Holmes to represent you? I 11 mean, obviously, it was sometime before 12 September 2, 2014, when the lawsuit was filed. Do 13 you remember if it was days before the lawsuit was 14 filed, months before it was filed, that you hired 15 Allen? 16 A. It was a most of a year or maybe even 17 more than a year. 18 Q. May I say you think it might have been a 19 year or more before you filed the lawsuit that you 20 retained Mr. Holmes's law firm? 21 A. Correct. 22 Q. Nonetheless, Mr. Holmes did not 23 represent you at the time you entered into that 24 written agreement with MUSC? 25 A. That's correct.	1 he did not tell me at the time, but he kept 2 delaying, delaying, delaying it until he knew he 3 was out of the competition, and then he filed the 4 lawsuit for me. 5 Q. Can you turn to Exhibit L that's a 6 part of Defendant's Exhibit L? Take them back to 7 it and go to Exhibit L. 8 A. Oh, Exhibit L? 9 Q. Yes. You just went by it, Dr. Dong. 10 A. Oh, sure? 11 Q. Yes. 12 A. I have only single characters, so I 13 have my glasses, and I have had time to read it. 14 Q. That's fine. You take your time. 15 Defendant's Exhibit L contains Exhibit L that 16 we're looking at right now. That's a five-page 17 document that's entitled "Final Separation 18 Agreement between the Medical University of South 19 Carolina, including its College of Medicine, and 20 Dr. -- Plaintiff -- "Dr. Dong, professor of 21 microbiology and immunology," correct? 22 A. Correct. That's my first appointment. 23 Q. If you look back on the fifth page of 24 that document, Dr. Dong, there is a signature line 25 with your name below it and a signature above

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1 Q. Is that your signature? 2 A. Yes. 3 Q. Do you recall if May 3rd, 2010, is the 4 date you signed it? 5 A. I can't recall, but this is - 6 okay, that's the date, 2010, yes. 7 Q. The rest of my questioning, to make it 8 simple for the record, I'm going to refer to this 9 five-page document as the agreement, all right? 10 A. Okay. 11 Q. So if I reference the agreement, I'm 12 talking about this five-page document, all right? 13 A. All right. 14 Q. And you can use the same label for it. 15 If you would also look at each page of 16 the five-page document, Dr. Dong. Other than the 17 last page where your signature appears, on the 18 other preceding four pages there are some initials 19 down in the bottom right-hand corner of each page. 20 Can you tell me if any of those initials on each 21 page are yours? 22 A. Yes. 23 Q. Is that your initials that appear on 24 each page? 25 A. Yes.	1 A. I believe so, yes. 2 Q. Do you remember if anybody else was 3 there, Dr. Dong, on just the two of you? 4 A. Of course, his secretary. 5 Q. Other than his -- what I might call 6 his administrative staff, a general secretary was 7 there, rather than you and Dr. Reeves, that you 8 remember? 9 A. No, I don't believe there was anybody 10 else. 11 Q. Do you remember if Dr. Reeves signed it 12 during the same meeting? 13 A. I could not remember. Must be 14 actually, this -- it was quite formal. 15 Q. Let me ask a follow-up to that that 16 might help. When you left Dr. Reeves's office that 17 date, do you remember leaving with a fully signed 18 copy of it, just as it appears in front of you 19 today? 20 A. I could not remember. What I can 21 remember was print out two copies. I think I 22 might have an original copy. I believe I gave to 23 Mr. Holmes, and then he could not find it anymore 24 and give me a scanned copy. I remember that all 25 the papers then was MUSC official paper.
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1 Q. Do you recall how this agreement was 2 given to you to sign? What I'm asking is not 3 regard for clarity, Dr. Dong, so I can't elaborate 4 you, is I'm really asking how did you physically 5 get it? Was it emailed to you? Was it given to 6 you in hard copy by somebody to sign? Do you 7 remember how you got the copy that you actually 8 signed? 9 A. I could not remember, but likely to be 10 email. 11 Q. That was emailed, I presume you would 12 have then printed it out in order to sign it? 13 A. I could not remember I printed out or 14 Dr. Reeves printing out. I think I was asked to 15 sign, so I went to Dr. Reeves's office. I believe 16 I signed -- was out the -- was printed, official 17 print out by Dr. Reeves. I believe there was two 18 copies on the MUSC paper, not the white paper. 19 Q. Did I understand you correctly, 20 correct me if I'm wrong, that your recollection is 21 you actually signed it in Dr. Reeves's office? 22 A. I believe so, yes. I was specifically 23 went to Dr. Reeves's office. 24 Q. Was Dr. Reeves there when you signed 25 it?	1 Q. So, you signed this agreement in 2 Dr. Reeves's office on that day, did you need it 3 before you signed it? 4 A. I probably scanned through. I was 5 more interested looking to the equipment. It was 6 a few minutes. Actually, I did talk to Scott 7 Stead, and he eventually located those equipment 8 that was not on list and still after signing. So 9 the equipment, he find them. He said he was going 10 to work on it, and never got anything much from 11 Reuben Reed, Scott. 12 At the time my focus, everything is 13 how to -- because I was extremely anxious in getting 14 my research started, and that completely took my 15 ability to do research. So I was not paying much 16 of attention to the formality or even 17 reading documents because I was not in order. I 18 was a faculty member, a professor, and I was more 19 interested in research, and I believe Dr. Dean 20 Reeves, and I believe all my colleagues except 21 James Morris and Simon Lanier. 22 Q. Do you remember, do you have any 23 substantive memory of any conversation you had 24 Dr. Reeves had that day in his office before you 25 signed the agreement?

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1 A: Before I signed agreement I had 2 extensive discussion with Dr. Reeves. 3 Q: That day in his office? 4 A: On that day I do not think so. I 5 thought he had time and a moment. I am not very 6 clear, but I remember I walked into his office and 7 he was – and I was waiting in the room, and he 8 was – his secretary brought two copies, identical 9 copies, I signed, I did, yes, and I – based on my 10 memory, I signed, initial everything else, and he 11 said that's his job to get everything on, behind 12 us and let's continue on, he believe you have a 13 bright career and that I want to see my research. 14 Q: Anything else you remember about that 15 meeting with Dr. Reeves that day? 16 A: No, I just remember he was – I still 17 believed Dr. Reeves is a good person. Actually, 18 people say Dean Reeves, Dean Reeves, I think here 19 is also vice president of medical affairs. 20 Q: What I was going to ask you was – 21 this may sound weird, but was Dr. Reeves wear that 22 day when you met with him? I mean 23 A: No. No. 24 Q: Was he congenial? Nice? 25 Professional?	1 signed the agreement you didn't ask to revoke it 2 or reading it? 3 A: No, because, actually, I was just 4 waiting for them to transfer my material continue 5 my research. 6 Q: If you go up to the second paragraph 7 on that first page – and you can read the whole 8 thing, I just have a couple of questions for you 9 on it. 10 (The witness reviewed the document, as 11 requested.) 12 THE WITNESS: Yes, I can. 13 BY MR. CONLEY: 14 Q: A couple of questions about that 15 paragraph. Was your official title or position at 16 MUSC at the time you entered the agreement, 17 Dr. Dong, "Professor of Microbiology and 18 Immunology"? 19 A: I'm just a professor. Actually, the 20 department is microbiology and immunology. So I 21 had the second – actually, I could not come after 22 which one, second appointment at department of 23 medicine, and I will have a more active role in 24 department of biochemistry and immunology. I 25 was also member – full member of Sigma Tau Honor
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1 A: Never. 2 Q: If you look on the first page of the 3 agreement, Dr. Dong, and if you go down to the 4 fifth paragraph on the first page, and you see 5 that paragraph? You can take a minute to look at 6 it. 7 (The witness reviewed the document, as 8 requested.) 9 THE WITNESS: Right, I did not read 10 this, but at the time I think it was somebody – 11 actually, I did. I was told I have a right to 12 seek legal advice. I didn't think I needed to 13 because it's just a general matter with MUSC, 14 and I didn't pay much attention to this, but I 15 did – also, I did not have any attorney. 16 BY MR. CONLEY: 17 Q: Am I correct that – 18 A: I believe this Dr. Liu Guo is 19 responsible, not for everything. 20 Q: And I correct, but within the 45 days 21 after you signed the agreement, you did not take it 22 to an lawyer to have any lawyer look at it? 23 A: No. 24 Q: I have not seen this anywhere, but is 25 it also correct that in the 45 days after you	1 Cancer – Biology Cancer Research in the Sasser 2 Hammond Building. 3 Q: Did you have any kind of formal 4 written guarantee pending at the time that you 5 entered into this agreement? I haven't seen one, 6 so I'm asking. 7 A: No. Actually, in my e-mails – one only 8 communicate through e-mails. But my e-mails was 9 turned off completely, and also I was deleted from 10 the website. That's one whole violation of the 11 agreement for me to continue my research and 12 teaching. 13 So actually, they also shut off my 14 Home.com, which is all the storage, equipment 15 storage. So it's internet storage. It's called 16 "Home.com." So all my communication, everything 17 would be stored in the Home.com. So the writing, 18 Steve Lerner online, everything was turned off. 19 Q: I probably didn't ask the question 20 well, but just trying to find out did you have 21 any kind of formal written guarantee pending at 22 the time that you signed the agreement? 23 A: No, I did not. If you – actually, if 24 you – including the complaint to the 25 administration of MUSC, yes, I do. But if you

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1 look other legal agreements, no. 2 Q. I didn't see where you had filed 3 had you filed a formal grievance for insurance 4 under the faculty handbook at that point? Had you 5 done that at any point? 6 A. What is it called? Grievance? No, I didn't 7 even mediated with the union at that point, just 8 those would be handled 9 Q. Nevertheless, any form of grievance 10 that you had pending at the time you signed this 11 agreement would have been in the form of your 12 email communications with -- 13 A. Right. 14 Q. -- MUSC personnel? 15 A. Right. Yes, some to admit situation. 16 Those would not be included with Steve Linder. 17 It is solely outside his, John Raymond, and maybe include 18 Ray Gier there at the time. 19 Q. If you go down to the last paragraph, 20 Dr. Deng, on the first page -- last paragraph on 21 the first page, Dr. Deng, that will be the last 22 page. If you go page by page so you read 23 line at the back and forth. 24 A. All right. 25 Q. Did MUSC pay you your salary	1 That is really, in a way, kept me close by, it 2 would be to the benefit of the company, because I 3 was working on emerging technology, and we're in line 4 of MHSI in the company. That would be the company of 5 GenPhar. 6 Q. At the time you signed this agreement, 7 which was in May of 2010, Dr. Deng, where was 8 GenPhar's facility here -- locally? 9 A. It's just in Mount Pleasant, Sea Chan 10 Park area. 11 Q. That's where GenPhar would have 12 been -- 13 A. Physically located. 14 Q. Physically located in May of 2010? 15 A. Yes, the research lab. 16 Q. Of 2010? 17 A. Yes, I had been at the time that 18 I was closed 2018. 19 Q. At the time you signed this agreement 20 in May 2010, Dr. Deng, what was your position with 21 GenPhar? 22 A. Official position, I was the 23 consultant on behalf of MUSC, but I was also the 24 principal investigator of the nanomaterials research on 25 the technologies. I was consulting with
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1 compensation all the way through March 31, 2012? 2 A. That's my salary. 3 Q. Yes. Did they pay that through 4 March 31, 2012? 5 A. Yes. 6 Q. We can go over to Page 2 now. I think 7 Pre does with Page 1 for now. 8 A. All right. 9 Q. Let's look at the first paragraph. 10 You can read it first. 11 (The witness reviewed the document, as 12 requested.) 13 THE WITNESS: Yes. 14 BY MR. CONLEY: 15 Q. The last sentence, Dr. Deng, says 16 "The University, in turn, acknowledges that 17 Dr. Deng will work predominantly offsite in the 18 Charleston area and will limit off-campus and 19 commercial purposes." 20 When this says "work predominantly 21 related," where was that? What was your 22 understanding of where that work was to 23 predominantly occur? 24 A. I think they reached agreement 25 with the company, UFRD, established with GenPhar	1 Department of Defense. 2 Q. Did you have any other official 3 GenPhar? President? Anything like that? 4 A. They give you empty title at the time 5 president, because the company is run by CEO and 6 the chairman of the board. So just make me feel 7 good, but I didn't feel good on anything about it 8 because if -- if I was interested in company, I 9 would have done so in California, San Francisco, 10 where funding was plentiful, and the company get 11 full support from the state, eventually, across 12 public companies, and here it was basically a 13 demand of biotech companies and funding. 14 Q. Were you on the GenPhar board in 15 May 2010? 16 A. Yes, I was board, because I was 17 assigned it. There was five members. Five board 18 members has to be investors except the -- one was 19 an exemption, because I was -- would present what 20 the -- the technical discussions for the companies. 21 Q. In May of 2010, you were both the 22 president -- 23 A. No, wasn't that. Actually, I 24 probably jumped in early. I wasn't anything 25 other than consultant.

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1 Q. In May 2010? 2 A. Right. I do not know when I could 3 not remember the time. All of the executives 4 resigned, and then I was given the -- so-called, 5 the roles. They have to actually have somebody 6 to -- 7 Q. Were you on the board in May 2010? 8 GenPhar? 9 A. I could not remember. I can't even 10 remember when, but I will not say no. Mostly 11 they question me about the technologies and what 12 is the potentials and everything for the board 13 members, because they are the one actually own the 14 company and invested over \$13 million their own 15 money, not institution money, to own the company. 16 Q. In May 2010, were you an employee of 17 GenPhar? 18 A. No. I was a consultant. 19 Q. So in May of 2010, it's your 20 recollection you didn't hold any particular title 21 or position with GenPhar, you weren't employed by 22 GenPhar, and you weren't on the GenPhar board, is 23 that right? 24 A. That's my best recollection, but I was 25 also asked by the board to answer questions, and I	1 A. Yes. 2 Q. What you just told me? 3 A. Yes. 4 Q. Did you testify at a criminal 5 trial or were involved in? Did you testify at 6 those trials? 7 A. Yes. 8 Q. You testified at both of them? 9 A. No. One. 10 Q. Which one, the first one or the second 11 one? 12 A. The second one, the bench trial. 13 Q. The bench trial with Judge Norton? 14 A. Yes. 15 Q. You actually testified at that trial? 16 A. Yes, but they -- well, fortunately, it is 17 not relevant. But I was convicted because Judge 18 Norton's law clerk was negotiating U.S. Attorney's 19 position at the U.S. Attorney's Office during the 20 time while she was doing everything for Judge 21 Norton, and Judge Norton turned himself 22 afterwards, and they transferred to another judge. 23 And the judge basically wasn't involved in the 24 trial and everything else. 25 Q. If you turn over to the third page of
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1 and attend some of the board meetings. But mostly 2 I do not have a say so about financials or house, 3 other than they ask me about the technology. So I 4 basically -- I was basically -- I still -- 5 scientist, not for the company -- to the company. 6 Q. Were you ever on the GenPhar board? 7 A. Later. As I said, later, I could not 8 remember when. There was a board split, and the 9 company -- I think there is an agreement 10 settlement, actually, both sides, there is -- 11 usually the investors divide into two, and both 12 sides basically make the executive resign, so 13 usually take the company to only exclusively 14 operate -- provide contract service to the 15 Department of Defense. 16 So there's no more investments, money 17 coming in. So they can't be paid with DOD 18 contract funds, and also then share management 19 of who was in control of the company with one of 20 the now deceased GenPhar's vice -- Jerry Zucker. 21 That's all above my involvement here 22 the company run, how the investor runs. So I 23 don't know. 24 Q. That's the full extent of your 25 involvement with GenPhar?	1 the five-page agreement, please. 2 A. Sorry? 3 Q. Turn to the third page of the 4 five-page agreement, please, Dr. Dong. So we're 5 on Page 2. Paraphrasing you to turn over to the 6 third page of it. The next page, Dr. Dong. 7 A. All right. 8 Q. Let's take a look at the first 9 paragraph. If you can read the first paragraph, 10 and tell us your some questions about it. 11 (The witness reviews the document, as 12 requested.) 13 THE WITNESS: Yes, but then I've already 14 taken away from me. 15 BY MR. CONLEY: 16 Q. The agreement says "Dr. Dong agrees 17 to relinquish his future use of approximately 700 18 square feet of laboratory space." 19 When 700 square feet is this talking 20 about? Is that a specific place down at MUSC? 21 A. That's my -- 22 Q. Your lab? 23 A. -- Let me be -- 24 Q. Where was that? Do you remember the 25 building?

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1 A. Seminar Room, MUSC. 2 Q. And it says, "Dr. Dong agrees to 3 relinquish all future use of approximately 4 700 square feet of laboratory space after the 5 listed equipment and materials" -- are in parentheses 6 it says, "University list is attached as Exhibit 7 A; has been transferred to his new space." 8 A. Right. 9 Q. My question is do you know what the 10 reference to new space is? Do you know what new 11 space that's referencing? 12 A. That's actually transfer the new space 13 to GenPhar. 14 Q. At that point in time that would be 15 GenPhar's facility on New Green Park way? 16 A. Yes. But it was taken away from me, 17 but the material was never transferred. So this 18 is -- this is also one of the breaches. At the time 19 back then they already took away from me 20 Q. Let's go to the second paragraph. 21 Dr. Dong. Actually, at the after then back "The 22 first paragraph references 'attached Exhibit A,' 23 which is an inventory list. If you turn over to 24 Exhibit A, Exhibit A is attached to the agreement, 25 we're talking about.	1 did somebody else prepare it? I didn't 2 A. Somebody else prepared it. I didn't 3 do any administrative work at MUSC. I believe 4 actually at the time this document I 5 transferred with me from UCSF. So the only listed 6 equipment transferred from UCSF they put it a box 7 with my grants at MUSC. 8 They all considered equipment MUSC, 9 which is not -- no, but even more so not even for 10 them to claim that. In general, as generally all 11 equipment below the faculty members, because the 12 grant is awarded through the institution to the 13 faculty members. 14 Q. If you go to the second paragraph on 15 Page 3 of the agreement. We just talked about the 16 first paragraph, so if we move down to the 17 second paragraph. So it's Page 3 of the 18 agreement, Dr. Dong, second paragraph from the 19 top. 20 The witness reviews the document, as 21 requested. 22 THE WITNESS: I believe I did provide 23 list through the counsel. That's all the Vector 24 Core facility, and also they wanted to keep the 25 Vector Core facility at MUSC because based on that
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1 A. Right. 2 Q. I think if you look on that inventory 3 list, which is four pages long, down in the bottom 4 right hand corner it has a set of initials. Are 5 those your initials? Are one of those sets of 6 initials yours? 7 A. Right. It has my initials. 8 Q. On all four pages, right? 9 A. Right. 10 Q. Did you see me this document, is at 11 the time you signed the agreement? 12 A. I did not, but I think I just trusted 13 it was generally accurately copied to the record. 14 And I was not taken out of some of the 15 equipment was not included, and then I called -- 16 because Scott Rem was the person appointed to 17 administratively take charge of the transfer of 18 equipment and material. 19 So I contacted him and had a 20 conversation. I pointed out one of the -- some of 21 the material -- the equipment, where it was, and 22 he went to verify that. He said, "Those will be 23 moved to you." 24 Q. Did you prepare this list of equipment 25 that's a four page exhibit to the agreement, or	1 will not this at MUSC. At that point, actually my 2 money, Vector Core facility, everything was used 3 James Norris 4 BY ME, CONLEY 5 Q. Let me ask a question about that 6 second paragraph. That's never seen in, and it 7 wasn't attached to the agreement that's attached 8 to your central aim, which is what we're looking at 9 right now, any kind of Exhibit B approved by the 10 university. 11 A. It's just what -- it disappeared 12 actually. That's who they match the entire 13 contract here is done. Basically giving a person 14 to direct contact was Scott Rem, and last he said 15 he was not authorized to do this and do that. So 16 basically I run into a stone wall. 17 Q. My question is, is it your testimony 18 today that you did submit an additional list of 19 this Vector Core equipment? 20 A. Yes. 21 Q. You submitted it within ten days of 22 May 3rd, 2010? 23 A. I could not remember the date I submit 24 it, but I did submit it with the email. And 25 actually, I was asking for the Vector Core

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1 facilities, and I think at the time I was told do 2 not interrupt Vector Core facility operation. So 3 actually, I was allowed to continue Vector Core 4 operation at MUSC. I think that was the 5 arrangement. And to me, so, based on the Vector Core 6 facility was essential for the funded projects, 7 which I was the director. 8 So actually, I don't know how they 9 took away my Vector Core facility and did the act 10 of MUSC. At beginning, as it goes, I will 11 continue in my function research actually using 12 the Vector Core facility as here. So this only 13 can be transferred, but not to interrupt the 14 operation and the change to the future Vector 15 Core facility. 16 Q. I'm asking about Exhibit B. Do you 17 have an Exhibit B that you can produce to me? 18 Have you ever seen it? 19 A. Because they actually closed down 20 my completely focused down my research and block 21 my home room. At the time that's the only way of 22 contact, for me I had. I even actually write 23 physical letters. No faculty members does that at 24 the time. 25 Q. Do you have any recollection of	1 transferred. So actually, it will occupy that part 2 in behalf of MUSC. So actually, right now, before 3 that MUSC is still charging costs in my contract 4 while not providing me anything. 5 Q. I'm just trying to figure out what 6 GenPhar building this is referencing in the 7 contract or the agreement. 8 A. It's development. GenPhar actually 9 learn me a space. 10 Q. I'm asking if you know. Do you know 11 12 A. GenPhar is not a party. 13 Q. Dr. Deng, I understand that. My 14 question is what's your understanding of what 15 GenPhar building that is referencing the GenPhar 16 building on Sea Coast Parkway or the GenPhar 17 building that was under construction? 18 A. I could not be more consistent on 19 because it wasn't finished. 20 Q. Was it under construction? Was there 21 another GenPhar building under construction? 22 A. It's not GenPhar -- the space GenPhar 23 was operating out of. 24 Q. So GenPhar -- did GenPhar name or call 25 the building on Sea Coast Parkway?
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1 whether you submitted this within ten days of 2 May 3rd, 2010? 3 A. I do not have recollection of exact 4 date. 5 Q. Do you have any recollection or if you 6 did submit it within ten days that the university 7 actually approved it? 8 A. The university did not respond. 9 Actually, after the signing they basically became 10 at new building. 11 Q. If you look down at the third 12 paragraph on that page, you can go ahead and read 13 it. I have a couple of questions for you about 14 it. 15 (The witness reviews the document as 16 requested.) 17 THE WITNESS: Yes. 18 BY MR. CONLEY: 19 Q. The first sentence says "In lieu of 20 rental payments for space in the GenPhar building" 21 -- in parentheses it says "former equipment" 22 -- Do you know why it says "former 23 equipment"? Weren't you already occupying the 24 building on Sea Coast Parkway? 25 A. Once the equipment, everything from	1 A. GenPhar, tested. 2 Q. Did GenPhar have another building that 3 it was building in Mount Pleasant in May 2010? 4 A. Yes. That's how the procedure started 5 with GenPhar because they -- actually, the 6 amount was put in \$12 million, including the 7 facility, and the facility cost \$5 million. 8 Q. Did you believe that your equipment 9 was supposed to be transferred to the Sea Coast 10 Parkway location, or was it supposed to be 11 transferred to the new building that was under 12 construction? 13 A. That's next question with regard to the 14 contract. 15 Q. I'm asking you what your understanding 16 was. I'm not asking whether it was material or 17 not. 18 A. My understanding, it was transferred 19 to GenPhar, the space was already used. 20 Q. Which was where at the time? 21 A. Have nothing to do where, which would 22 be in Sea County, where GenPhar operating. They 23 transferred to a parking lot. 24 Q. Did you read that paragraph in the 25 time you signed this agreement?

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1 A: I did not read it very carefully in 2 any of the so-called legal papers and all the 3 details, but I signed it based on what they 4 offered me to quickly restart my research in the 5 other space at GenPhar, transfer all the materials 6 timely so I can continue my research. That's all 7 I learned about. 8 Q: How much time did you think you spent 9 reading this five-page agreement before you signed 10 it? 11 A: I can't remember, but I probably 12 skimmed it through. It sounds all right on the 13 superficially. I don't want to dig in too much 14 into one specific words in the context. I think 15 this will consistent with what Dr. Reeves 16 presented to me. 17 Q: If you look down at the fifth 18 paragraph, Dr. Dong, you can find that would tell a 19 person that you've got a few questions to ask 20 you. 21 (The witness reviews the document, as 22 requested.) 23 THE WITNESS: Yes. 24 BY MR. CONLEY: 25 Q: If you look down at the very -- that	1 A: And the contract money. 2 Q: Correct, they also. 3 A: They released nothing. 4 Q: They also didn't relocate any other 5 equipment, to the extent it would have been listed 6 in Exhibit B, right? 7 A: Which would be Vector Core facility. 8 Q: So you and I would agree that within 9 30 days of May 3rd, 2010, MUSC did not relocate 10 any equipment, as required by this agreement? 11 A: Correct. 12 Q: That's your testimony, correct? 13 A: That's correct. 14 Q: Is it, likewise, your position that 15 the agreement required MUSC to relocate all of 16 this equipment, both the equipment listed in 17 Exhibit A, and to the extent there was Vector Core 18 equipment, they were required to do that within 30 19 days of May 3rd, 2010? 20 A: That's what the agreement. 21 Q: That's what the agreement requires, 22 right? 23 A: Yes. And I was presented that and do 24 it as soon as they can, as soon as they can, and 25 this was -- Scott Kelly was in charge of the
Page 19	Page 20
1 last full sentence of that paragraph, Dr. Dong, it 2 says: "I acknowledge equipment purchased through 3 extramural grants written by Dr. Dong as the sole 4 IP and which was in Dr. Dong's laboratory at the 5 time of relocation to the 700 square foot 6 laboratory space, including listed freezer storage 7 refrigerators and located in nearby equipment 8 rooms of CSB, shall be relocated to GenPhar in 9 30 days from the effective date." 10 A: They didn't do that. 11 Q: That's what I was going to ask you -- 12 think you are already telling me that. They did 13 not -- they -- should do any "they." 14 MUSC did not relocate the equipment in 15 Exhibit A within 30 days of May 3, 2010? 16 A: Correct. Also did not relocate the 17 research grants, including the Vector Core. Very 18 specific, Vector Core they were talking about it. 19 Q: We'll get to these things. I'm 20 talking about the equipment right now. 21 Your testimony is that MUSC within 22 30 days of May 3, 2010, did not relocate the 23 equipment in Exhibit A? 24 A: And B. 25 Q: Per the agreement?	1 testimony. 2 Q: I'm trying to find -- just make sure I 3 understand that -- strike that. Better way to 4 ask. 5 I think I understand you correctly 6 that one of the branches of this agreement, just 7 one, that you claim MUSC engaged in was failing to 8 relocate this equipment within 30 days of May 3rd 9 of 2010? 10 A: One of them. 11 Q: That's what I said. I said "one." I 12 didn't say "all." I said "one." That's one of 13 the branches, right? 14 A: Correct. As well as none of my 15 research material, documents, and funding. It was 16 a complete breach. After that was the, basically, 17 an ongoing -- I could not reach any body, and 18 nobody respond to my emails after that at the time 19 they want to send me. 20 Q: If you go up to the bottom paragraph 21 on that same page -- so we're going to go back up 22 one paragraph. It's actually just one sentence 23 paragraph, Dr. Dong. 24 A: One, two, three, four. 25 Q: Exactly. It's very short.

21 (Pages 18 - 21)

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1 The witness reviews the document as	1 A. I was the PI. I was the director.
2 requested.)	2 Q. You're expert on grants, but my
3 THE WITNESS: Yes. Actually, MUSC --	3 prescription is on -- to your recollection, on
4 MR. CONLEY: Let me ask you.	4 May 31, 2010 there was still existing funding to
5 Dr. Dong, part of the deposition is I'm going to	5 be spent under this Vector Core grant, or grants,
6 ask you questions, and you can give me answers.	6 right?
7 It's got an opportunity for you just to go on	7 A. Yes.
8 sometimes. I'll ask you a question and you can	8 Q. Because you were the PI, just
9 then give me as briefly or as much or as you want,	9 trying to understand. Because you were the PI on
10 just --	10 the Vector Core grants, in my mind that would
11 THE WITNESS: Ask a question.	11 indicate you were also the person who applied for
12 MR. CONLEY: -- there needs to be a	12 those grants?
13 question before we start going with some narrative.	13 A. Yes.
14 THE WITNESS: You ask me if I see the	14 Q. Is that right?
15 paragraph. I'm telling you, I see the paragraph,	15 A. Correct.
16 what it means.	16 Q. It wasn't somebody else at MUSC who
17 MR. CONLEY: I haven't asked you what	17 applied for them and they just got assigned to
18 it means. I've just asked you to take a look at.	18 you? You actually applied for and were awarded
19	19 those grants?
20 THE WITNESS: Strike my answer.	20 A. Correct. No one else can assign
21 MR. CONLEY: -- look at it, and then	21 someone else's grants to you, or you can't use
22 I'll ask you some questions.	22 anyone else's grants.
23 THE WITNESS: Please do.	23 Q. Was anybody else a PI on those
24 BY MR. CONLEY:	24 grants, or was I just you as the sole PI, did you
25 Q. Did you have any grants, active	25 remember? I don't know. I'm just asking you.
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1 grants, on May 31, 2010 when you signed this	1 A. I don't remember, because I'm not
2 agreement?	2 person.
3 A. Yes, the Vector Core grants. And also	3 Q. -- turn over to the Court page.
4 I actually start a time narrative. I have had	4 Dr. Dong: We'll skip around on the page. Not to
5 to need to dip into it.	5 confuse you, but
6 Q. So what are the grants did you have at	6 A. Here's --
7 the time you signed this on May 31st?	7 Q. -- if you can go down to the bottom of
8 A. The Vector Core grants.	8 page 4, the very last paragraph, where it
9 Q. Any others?	9 starts off with "MUSC will cover." Do you see
10 A. I could not remember, but also I had	10 that paragraph?
11 my start-up fund.	11 A. Last paragraph?
12 Q. The Vector Core grants, when are	12 Q. Next-to-last paragraph, Dr. Dong.
13 those grants provided by? Are those provided by	13 Excuse me. Take a look at that for me for a
14 the federal government somehow? NIH?	14 minute.
15 A. Correct.	15 THE WITNESS: Yes.
16 Q. Was there more than one Vector Core	16 requested.)
17 grant, or was there just one? You used plural.	17 THE WITNESS: Yes.
18 I'm just trying to find out. I don't know. Was	18 BY MR. CONLEY:
19 there, like, one Vector Core grant, or were there	19 Q. Did MUSC ever make this one-time
20 multiple Vector Core grants?	20 \$22,000 payment?
21 A. I could not remember, but actually	21 A. I could not remember.
22 Vector Core can be used in multiple grants, but I	22 Q. Then, you look up at the third
23 was the -- I think there was a center grant or	23 paragraph on the page, Dr. Dong. So if you come
24 program, project grants.	24 it up down.
25 Q. Do Vector Core grants have a PI?	25 A. Right.

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1 Q Take a minute and read that paragraph. 2 I have a couple of quick questions. 3 [The witness reviews the document, as 4 requested.] 5 THE WITNESS: Yes. 6 BY MR. CONLEY: 7 Q Do you have any recollection of 8 whether the \$30,000 payment was ever made? 9 A I think yes. Actually, but that's less 10 than any salary payment in Vector Care, which is 11 funded by NIH, not the corporation. 12 Q My question is was the \$30,000 payment 13 made? 14 A I believe so, yes. 15 Q Just to get back to make clear, you 16 don't know, sitting here today, if the \$20,000 17 payment was made in that -- towards attorneys 18 fees or legal fees in that paragraph doesn't cover 19 the bottom of Page 4? 20 A Correct, because I did not believe I 21 claimed it. I didn't have an attorney involved. 22 Q That was going to be my next question 23 about that. Your legal counsel told me that you 24 wouldn't have had any legal fees at this point in 25 time because you never obtained --	1 within 45 days of signing it. 2 Do you have any recollection of taking 3 out a lawyer within 30 days of signing it? 4 A No. I never took it to any lawyer or 5 anything for almost a year later or over a year 6 later. 7 Q That would have been when you took it 8 to Mr. Helmes? 9 A Correct. He is the first lawyer I 10 talked to. 11 Q If you can go on to the paragraph 12 above the next paragraph, directly above that, 13 that says, "Enrolling grant materials." Take a 14 minute to read that, Dr. Dong. 15 [The witness reviews the document, as 16 requested.] 17 THE WITNESS: Right. 18 BY MR. CONLEY: 19 Q Did you ever -- have you ever -- well 20 before you brought the lawsuit, the year ever was 21 the office of general counsel, the legal office at 22 MUSC, if you could see or make copies of, you 23 knew, brochures and things like that? 24 A Actually, that is actually presented 25 to me, they will provide all the documents --
Page 88	Page 89
1 A That's what I'm saying. 2 Q -- never contacted a lawyer? 3 A That's what they wrote in -- written 4 in. So actually, I have no involvement. I did 5 not claim legal fees from them. 6 Q That's because you didn't incur any 7 legal fees, right, because you didn't take it to a 8 lawyer before you signed it? 9 A No, I didn't. Correct. 10 Q And you didn't take it to a lawyer 11 we've already asked about you didn't take it to a 12 lawyer for much, much later after you had signed 13 it, which would have been when you took it to 14 Mr. Helmes? 15 A Right. Correct. 16 Q You didn't take it to a lawyer within 17 30 days of signing this agreement, did you, to 18 review the agreement with you? 19 A I'm sorry? 20 Q We've already talked about that. 21 You 22 A I think you already asked me the 23 question. 24 Q I mean, your legal counsel said that you 25 don't have recollection of taking it to a lawyer --	1 copies of the documents. Didn't say I have to go 2 to copy myself. So they would be too cumbersome 3 for me to make copies, because, actually, it was 4 by law. Actually, there's no law suggests that 5 parental consent keep any scientific notebooks. 6 Q My question is simply this. 7 A No law, no regulation to allow general 8 counsel to have my scientific notebooks, and they 9 should provide me the copy, based on my reading 10 it is paragraph. So if there was some -- there was 11 regulations, yes, they can keep it. But if 12 there's no law, no regulations to allow MUSC to 13 keep my notebooks, that is especially after 14 repeated requests, did not provide my copies. 15 So without the scientific documents, 16 without notebooks, I will not be able to continue 17 my research. 18 Q Did you ever ask MUSC if you could 19 make copies? 20 A I asked MUSC, provide me the copies. 21 Actually, they didn't say I have -- they gave me 22 the notebooks, I made copy myself. They said copy 23 will be provided to me. I agreed, but at least 24 they allow me to continue my research. 25 And I did not take it to legal office.

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1 have any use of the document, and if there are 2 I didn't have no -- I did not believe -- I don't 3 don't believe there was any law or regulations to 4 a law general office to keep my scientific 5 documents. 6 Q. Did you read that document on Page 4 7 before you signed the agreement? 8 A. I signed the agreement with 9 understanding there has to be law and regulation. 10 They have law and regulation to keep it. When 11 there was law, no regulation, they should not 12 keep my scientific notebooks, and they should also 13 at least provide me copies of my scientific 14 notebooks. 15 Q. My question is simply this: Did you 16 read that paragraph on Page 4 of the agreement 17 before you signed the agreement? 18 A. I cannot remember whether I read the 19 agreement. It was a long time ago. It was I 20 said, I scanned through the entire document. 21 Q. What does scanned mean when you use 22 the word "scan"? 23 A. I just read superficially, not each 24 words, like what you did as a lawyer. So I 25 basically, general understanding, the spirit of	1 received will be relinquished back to the Federal 2 agencies as obligated in the above agreement." 3 A. This should not be the language. 4 because -- and I don't believe they want 5 ever relinquished back to the funding agencies 6 but they spent their themselves -- not themselves, 7 for James Norris. 8 Q. Did you note that paragraph before you 9 signed the document? 10 A. As I said, I only read the spirit of 11 the entire agreement. I did not split hairs on any 12 phrases. Also, I do not believe they relinquish 13 money back to funding agencies, but spent the 14 money by James Norris. If you want to split hair, 15 those are just phrases. 16 Q. Go up to the paragraph above that one. 17 Dr. Dong. 18 A. Above? 19 Q. Yes, the next paragraph up, it says, 20 "At the direction of" 21 A. Dr. Yusuf Harman. 22 Q. Correct. 23 THE WITNESS: Mr. Scott Reid, that's 24 another place we were talking about, and Mr. 25 Ronald Byers. I don't even -- they didn't do
Page 83	Page 84
1 agreement. So, don't start to split hairs 2 with one phrase, one terminology. You, probably do 3 as a professional, but that's not my profession. 4 Q. If you look up to the next paragraph 5 above that, where it says, "The University, grants 6 to defendant," next paragraph right above the one 7 we were just speaking about, Dr. Dong. 8 "The witness reviews the document as 9 requested." 10 THE WITNESS: Right. 11 BY MR. CONLEY: 12 Q. At the time you -- so I asked you 13 about grant you had in the time you signed the 14 agreement. Did you have any grant awards for the 15 research awards at the time you signed the 16 agreement, if you recall? 17 A. I do not, there was some funding from 18 Center for MBS and FBD. Actually, those funding 19 I just saw a penny. Those Center agree to 20 funding my research in the laboratory in exchange 21 for me being the consultant at the Center. 22 Frankly, FBD, I believe is mostly there -- 23 sorry, James Norris spent all the money. 24 Q. The second sentence in that paragraph 25 says, "Only my federally-funded research awards	1 any of these. Also Yusuf Harman was -- 2 MR. CONLEY: Again, Dr. Dong, I need 3 to ask you a question. This isn't an opportunity 4 for you just to sit in a deposition and tell me 5 everything you want to say. I haven't even asked 6 you a question yet. 7 THE WITNESS: You asked me if I see 8 this. I told you what I see. 9 MR. CONLEY: I asked you to review the 10 paragraph, and that -- 11 THE WITNESS: Yes, I did. I told you 12 what my impression was. 13 MR. CONLEY: I did ask you your 14 impression. I haven't asked you your impression. 15 I haven't asked you a single question. 16 THE WITNESS: Ask me a question. 17 MR. CONLEY: The way the deposition 18 works, Dr. Dong. 19 THE WITNESS: Don't give me lessons. 20 MR. CONLEY: I'm not giving you 21 lessons. There's a set of rules that apply, and 22 it requires that I ask you a question. I'll ask 23 you a question, and you can give an answer." 24 THE WITNESS: Go ahead. 25 THE REPORTER: I can't get one.

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1 person at a time, please. 2 THE WITNESS: So he speak too fast. 3 BY MR. CONLEY: 4 Q. Dr. Dong, this paragraph says: "A. 5 the director of Yusef and Mr. Scott Reid, and 6 Mr. Ronald Bycroft will attempt to locate any 7 vectors or similar materials shared with other 8 investigators for repropagation by Dr. Dong, and 9 will attempt to locate written and/or digital backup 10 records which have been lost?" 11 Did you read that sentence before you 12 signed the agreement? 13 A. As I said, you are speaking fast 14 again. I do not know other than the spirit of the 15 agreement is they are going to locate the vectors 16 and give me back for propagation. 17 Q. Does that paragraph say they're going 18 to locate or they're going to attempt to locate? 19 A. As I said, it is my profession to 20 split the hairs. I think that means they're going to 21 locate it. 22 Q. That paragraph goes on to say: 23 "This -- meaning the attempt to locate has 24 information -- will occur within the 45-day -- 25 'within the 45-day window above.'"	1 they had fallen with James Norris 2 I do not know who is Ronald Bycroft. 3 Q. You go up to what would be, 4 Dr. Dong, the second paragraph on that page, so 5 the second paragraph from the top. It starts 6 with: "Dr. Dong." If you could read that, and 7 then I'll have some questions for you about it. 8 (The witness reviews the document, as 9 requested.) 10 THE WITNESS: Right. 11 BY MR. CONLEY: 12 Q. Have you read it, sir? 13 A. Yes. 14 Q. That paragraph says: "You will 15 transfer any research material, including genetic 16 materials, DNA constructions, viral and plasmid 17 vectors, antibodies, and enzymes, in Dr. Dong's new 18 research location for his continued research, 19 including the materials which were provided by 20 Dr. Dong to the Vector Core for services while 21 Dr. Dong was the director." 22 Did you do that? Did you make -- did 23 you transfer those materials? 24 A. They took the material from me. They 25 locked me from the lab. Am you going to split
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1 A. They didn't do it. 2 Q. It would be one of your conventions in 3 this lawsuit that that is another -- that is one 4 of another -- of other branches of the agreement, 5 right? 6 A. Anything in the agreement they 7 breached will be point of compliance. 8 Q. Correct. But that's one of the -- 9 correct? They didn't do this within this 45-day 10 window, right? 11 A. They didn't do any of these. 12 Q. And Exhibit says: "Any additional 13 items located after that time and search will also 14 be provided to Dr. Dong." 15 Do you know if any of those three 16 gentlemen ever located any information after the 17 45-day period ran? 18 A. I don't know if they did or didn't do. 19 Actually, I did contact Scott Reid a number of 20 times. He was the chairman, so he would be very 21 busy. I didn't think it would be proper to bother 22 him for the details. But Scott Reid is very 23 capable person, and he is a -- the boss man, get. 24 He was a good person. He used to be the business 25 manager at the department of biotechnology and	1 works again? How do I transfer when they took the 2 position, lock me out of my lab? These my 3 materials should be transferred. 4 Q. So, again, I wasn't there when any of 5 this happened, so I'm just asking you. Don't 6 understand you correctly that you couldn't 7 transfer it yourself because they locked you? 8 A. Out of my office. 9 Q. They locked it in a fashion that you 10 couldn't access it, right? 11 A. Correct. They changed the lock. They 12 never done nothing in the history of United States 13 in any universities, certainly not in the history 14 of MUSC. That's completely illegal. Actually, I 15 was funded by NIH. That's complete violation of 16 NIH rules. I was my administrator, I was part 17 of NIH. 18 Q. As I understand when you're locking me 19 is you couldn't transfer it yourself because you 20 couldn't even access it is that correct? 21 A. Yes. 22 Q. Did you ask for access to it? 23 A. Of course. That's the whole thing. 24 I've been asking for. That's whole agreement. It 25 was in order for me to get access to my research

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1 materials to continue my career. 2 Q: What were you told when you asked for 3 access to it so you could move it? What were you 4 told? 5 A: After I signed his agreement, 6 everything will be available, everything will 7 cooperate with me to make the transfer. Once that 8 signed, it became a memorial. I could not 9 contact anybody. Nobody respond to me. 10 And I talk to Scott Reed. He is going 11 to ask for my permissions, and then there is no 12 response. 13 Q: If you go up to the top paragraph, 14 first paragraph, you can read it and I'll have a 15 few questions for you about it. 16 (The witness reviews the document, as 17 impaled.) 18 THE WITNESS: Correct. 19 BY MR. CONLEY: 20 Q: Again, same question: Did you read 21 that paragraph before you signed the agreement? 22 A: I -- again, I did not. I read in 23 the context of the agreement, I did not try to 24 split the meaning of each sentence words. 25 Q: That paragraph says: "Equipment	1 that equipment as well as my equipment never be 2 transferred. 3 Q: If you can look at what is Exhibit A 4 to the agreement, which is one is an equipment 5 A: Right. 6 Q: I have a couple of questions about the 7 middle column, Dr. Dong. I don't know if you can 8 understand right or this or not. But here it is, 9 column is titled "Funding." Do you see that? 10 A: Right. 11 Q: There it goes, various labels as I 12 read under here. So I see one says "Startup." Do 13 you know what that reference? Why it says 14 "Startup"? What does that mean, if you know? 15 A: It's the startup funds. 16 Q: I don't know what that means. May be 17 you can explain? 18 A: As we called it, a start-up fund. 19 DR. SCOTT: I think MUSC offer me -- I could be wrong -- 20 \$25,000 startup funds. That means the money for 21 me to spend. 22 C: On equipment? 23 A: On equipment, so up to everything, 24 salary and also the expenses of transferring 25 equipment, laboratory personnel, and everything
Page 100	Page 101
1 related to GenStar under this agreement," which 2 would, apparently, be every thing listed in Exhibit 3 A or Exhibit 4 A: No, actually. 5 Q: Let me finish my question. 6 A: Sure. 7 Q: -- which, apparently, would be 8 everything listed in Exhibit 1 to the agreement -- 9 or A in the agreement, excuse me, and particularly 10 there were or was an Exhibit B, would be returned 11 to MUSC at the expense at the end of your 12 appointment in March 2012, is that? 13 A: That's not right. My understanding 14 is, based on otherwise permitted by existing 15 university policy or external sponsor, external 16 sponsor policies and approvals. 17 So actually, there is no university 18 policy or external sponsor policy, especially NIH, 19 they will not allow to take my equipment back to 20 university. However, there is a narrow gap, if 21 the Vector Core continues and function at MUSC, 22 those equipment should be returned to MUSC to 23 continue my funded research. I will not be able 24 to take them away from MUSC, which is consistent 25 with external policies, which I agreed. However,	1 for you to start a new venture. 2 Q: Then there is another label under that 3 same "Funding" column. So, and then say "Bio 4 Tags." Do you know what that means? 5 A: It's from our house are my equipment, 6 and it's already lost areas where the funding came 7 from, so, those are my equipment. 8 Q: Everything that says "Bio Tags?" 9 A: Correct. It's just that you guys 10 have track when it -- the label of funding was 11 from. 12 Q: Then there is another label under that 13 column that says "UCSF." Do you know what 14 equipment you brought over the University of 15 California, San Francisco when you moved to MUSC? 16 A: I brought all of my equipment. 17 including nothing was transferred from -- either 18 from MUSC or the university policy that 19 Q: I'm asking -- we have talked about my 20 tag. I'm asking you about the UCSF tag now. Is 21 that tag -- when it says "UCSF" under that 22 "Funding" column, Dr. Dong, does that mean that 23 that's a piece of equipment that came from UCSF 24 when you moved to MUSC? 25 A: That means, actually, that tag was not

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connected. So UCSF tag was still on it.

Q. But you brought it here with you from UCSF?

A. All of the equipment I brought with me from UCSF, because actually when they transfer to you, relinquish the right in the PLA, when meso devices would do. They remove the tag. However, one of the equipment they forgot to remove or failed to remove, the tag was still on it, the equipment.

Q. The startup equipment you would not have brought here with you? That's something you would have gotten once you got here?

A. Awarded to me as a coordinator for the transfer.

Q. I get that. But I'm just saying, startup equipment would describe it that you got once you got here by way of startup funds?

A. Yes.

Q. What is "Fadlock"? There is a label under it is that says "Fadlock" on some of the equipment.

A. Actually, those are -- I bought from

Dr. Fadlock. Dr. Fadlock is also let me know -- I

actually had -- I was company as a faculty of MUSC

Q. Then some are "Vector Vector Core"

I presume that means they were --

A. Vector Core equipment.

Q. -- that equipment -- for me the history question, Dr. Deng.

I presume that is equipment that was purchased with Vector Core grant, right?

A. Correct.

Q. Do you have any idea why the Vector Core equipment would seem to have an MUSC tag number and most of the other stuff doesn't? Any idea?

A. Because -- applied Vector Core grant.

What is MUSC -- was at MUSC. For example, was applied the grant at MUSC in addition to my name, the whole so UCSF on it.

Q. If you go over to the personal equipment list, Dr. Deng, there's some of them that say "GenPhar." So under that, under equipment, the "Funding" column, there are some that show GenPhar.

A. Right.

Q. I don't know. So that's why I'm asking. Why would some of them be labeled

GenPhar?

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So that's James Norris himself. So when he left, the equipment move with him. However, he never. He has no use of it. And actually, he sold to me. So that was --

Q. So Fadlock just means that's from a former professor at MUSC?

A. Correct.

Q. That you bought the equipment from him?

A. Correct.

Q. I'm just trying to figure out what the label is.

A. That's what tells you the equipment follows the person. It belongs with a person.

Q. What about "Arrigo"? So there's some on there that say -- I just mean that's like Fadlocks. It's Arrigo.

A. Where?

Q. If you read on down that "Funding" column, you see some that say "Arrigo."

A. Arrigo -- is that a former MUSC professor, like Fadlock?

A. No. Arrigo is -- I think was -- I do not remember. Actually, I can't remember, but I don't think Arrigo was a person at MUSC.

A. Some of them, actually, the funding is provided by GenPhar in my behalf. For example, computer is most difficult equipment to adjust -- to justify in the academic grant because other people like to buy computers actually. So instead, simplify the process, GenPhar provide the money for me to buy the computer. So that's one of the top I've mentioned at the time.

Q. If I see GenPhar, that to me, as a lay person, not knowing how grants work, that would indicate to me that that piece of equipment was purchased by way of money given to MUSC by GenPhar --

A. Under my name, correct.

Q. -- correct?

A. Yes.

Q. On that same page, if you go down about the middle of the page, Dr. Deng, there's some that have a very weird tag that say "TOR Core=3" and then "DengNH=4".

Do you know -- I'm on the second page.

A. Those are -- that's what I'm saying. Vector Core is for several grants. So normally, that is a lateral designation which grants coming from -- Regardless, these my money, my funding

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1 brought into my name. 2 Actually, so there is no money for 3 you or my department. But the agreement is mine. 4 I brought into my name, but originally there may be 5 two grants or three which grant the money coming 6 from. So you are not supposed to mix the grants 7 by spending grants on different research projects. 8 That's just a convention at MUSC. 9 For the purpose of this contract, it 10 is correct, yes. But at that time, yes, there is 11 something for which grants that are separate from 12 so that any patient will be charged to that grant 13 and have the purpose for that grant specified, but 14 predominantly 15 Vector Care is generally used on 16 facilities, or can be served for multiple uses. 17 MR. CONLEY: Let's take about 18 45 minutes for lunch, and then we'll come back. 19 This is a good point to take a break. 20 (A lunch recess was taken.) 21 MR. CONLEY: Back on the record. 22 BY MR. CONLEY: 23 Q. Dr. Dong, still have the exhibit in front 24 of you, Dr. Dong? 25 A. Yes, I do.	1 and also blocked my entire Department. So I 2 completely blocked from my function as a 3 professor. That's part of the breach. 4 Q. The next paragraph, now, is a 5 one-sentence paragraph that says: "During this 6 period, Dr. Dong may use the title, quote, 7 "Director of Biotherapeutics and Vaccine 8 Development," end quote. 9 After you entered into this agreement 10 with MUSC, did you use that title any longer? 11 A. I do? Remember, but that's the part 12 of the agreement. Because as a condition, 13 actually have to expand my research area and do it 14 a way, actually for the benefit of MUSC, so I can 15 differentiate my research area from those being 16 near away from me by James Norris. 17 Q. Sitting here today, do you ever recall 18 using that title after you entered into the 19 agreement? 20 A. I can't remember. I might do that 21 last research grant in the amount of \$45 million 22 by MUSC and was done by Steven Johnson, which 23 actually one of the conditions, at least presented 24 to me, if I get more grants, I would be back for 25 MUSC.
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1 Q. Great. We're going to go back to 2 Exhibit 1, which is the agreement itself, and the 3 list of property, Dr. Dong. I'll skip through 4 here and ask you a few questions that I jumped 5 over initially. 6 So if you can first go to Page 2 of 7 the agreement, the second paragraph on that page 8 says: "Dr. Dong agrees to carry his customary 9 share of teaching, lecturing, and instructional 10 responsibilities as assigned and committed to 11 him in writing by the chairman of each 12 department." 13 My question is after you entered into 14 the agreement with MUSC, did you do any more 15 teaching, lecturing, or what you and I might call 16 instruction down at MUSC? 17 A. I was blocked. Actually, that was 18 part of the violation of the agreement, because I 19 was prevented to continue my research, 20 teaching, because my whole career was being a 21 professor, and then I was defunct from the 22 department website, and I was given no access to 23 any grant or students or candidates. 24 I blocked from attending any of the 25 faculty meetings and any function, for example	1 Q. If you look down at the fifth 2 paragraph, it starts with: "Dr. Dong agrees and 3 commits" 4 It says: "Dr. Dong agrees and commits 5 to submitting an irrevocable letter of resignation 6 no later than March 31, 2021." 7 You and I would agree that letter -- 8 such a letter was never submitted by you, is that right? 9 A. No, because I could not apply for any 10 job. I had been professor, and entire ability of 11 my entire career had been abruptly stopped. 12 Q. Go over to the next page, page 3. The 13 next page, Dr. Dong, Page 3. I think you're still 14 on Page 2, is it? Page 3, fourth paragraph down. I 15 asked you about this earlier, and I'll circle back 16 to it. It's a one-sentence paragraph. 17 It says: "The university will 18 even make payments for customary physical support 19 and oversight for research awards received through 20 MUSC in the division of basic science." 21 A. They never did. 22 Q. My question is you just mentioned some 23 type of one -- even make, \$4.5 million grant, you 24 received. Is that something that MUSC agreed to 25 provide physical support and oversight for, and I

Page 10

Page 10

1 they say they would not conduct
2 A: They agreed to a grant and provide.
3 And actually, it was one of the conditions
4 presented to me: If I get more grant for MUSC,
5 they will definitely support.
6 Q: My question is the \$4.5 million grant
7 you mentioned, was that an NIH grant?
8 A: Yes.
9 Q: Were you actually awarded the grant?
10 A: Yes.
11 Q: Do you remember what year and month it
12 was, Dr. Dong?
13 A: I could not. That's why, actually, I
14 wanted the more material, just very material.
15 None of this I could give you the exact date.
16 Q: I presume it was after you entered
17 into the agreement, you were awarded this NIH
18 grant, correct?
19 A: Yes. As a part of the agreement, they
20 will provide -- basically, not only accept the
21 grants, but they provide administrative management
22 of grants. That's part of the essential
23 components for anybody, professor, to receive NIH
24 grants.
25 Q: Go to the bottom paragraph on the same

1 support my research. As part of my agreement, I
2 was receiving NSF grants. Actually, that was not
3 only violation of all faculty rules; they also
4 violated the regulations with NIH, the admission
5 -- If I was mean spirited, I would file
6 report with NIH, and all of their grants will be
7 under review and would be freeze. So actually, I
8 was never intending to have MUSC in any way. I
9 was only interested to continue my research.
10 Q: My question was when did they cut off
11 your access? You said they cut it off. For just
12 trying to figure out when, Dr. Dong. Was it
13 immediately upon signing the agreement, or was it
14 a few weeks or months after that they cut off your
15 access to your lab and to email? You trying to
16 figure out when it occurred, not why or how, but
17 when?
18 A: That was before we sign agreement.
19 That's why, actually, I reached the agreement, try
20 to continue my research.
21 Q: Maybe that will help me. Before you
22 signed the agreement, had you already been -- I'll
23 use the word "locked out" --
24 A: Yes.
25 Q: Dr. Dong, you've got -- for the court

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1 page, Dr. Dong. It says: "Dr. Dong's access to
2 campus facilities and their use shall not be
3 limited during his remaining years of employment."
4 I think you've already told me earlier
5 they did limit your access to campus facilities
6 and such, right?
7 A: They didn't give me any access.
8 Q: First, I know the outcome, when you
9 say they didn't give you any access, did they cut
10 your access off immediately upon you signing this
11 agreement, or was it sometime after --
12 A: They -- they --
13 Q: Let me finish. You will get to
14 an hour
15 -- or some time after -- weeks
16 or months after you signed the agreement that they
17 cut off all your access to facilities and such --
18 A: They cut off my -- all my access to my
19 research laboratory, to my office, to my material,
20 to my personal basically by locking me out and
21 changing the locks. Never done to any faculty
22 member at MUSC, not -- there was a precedent at
23 any university, especially funded by -- faculty
24 member is funded by NIH.
25 They are obligated to support me, to

1 research's benefit, you have to let me finish my
2 research. You're going to know when I finish my
3 research.
4 A: Go ahead.
5 Q: Let me finish. If -- if you give
6 whatever answer you want to give. But you have to
7 let me -- it's becoming very difficult for the
8 court reporter -- he's not going to interrupt you
9 just don't interrupt me.
10 Was it before you signed the agreement,
11 that they -- I'll use the word "locked" you out of
12 your lab?
13 A: Yes.
14 Q: Before May 3rd, 2019, you had already
15 been locked out of your laboratory?
16 A: Correct.
17 Q: After you signed the agreement, they
18 never gave you renewed access to your laboratory?
19 A: Correct.
20 Q: Is continued? In other words, has
21 link to access continued?
22 A: Right. Part of the agreement is to
23 give me back my research ability, give me access
24 to my equipment, personnel, funding, but they
25 actually minimize the lockout. Once the signal

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1 agreement -- that they -- they thought they were 2 done, actually they asked me to chasing 3 whatever, chasing tails, and I go around, talk to 4 everybody supposedly being charged, and they will 5 say I will report, I will do -- I find out 6 what I need to do next. 7 So they were basically stonewalling 8 me. They did not give me any access to my 9 research laboratory, and I was -- began to believe, 10 actually.	1 also protocols and everything was stored 2 Q. What I hear you saying is your 3 first is whether your email was cut off by once you 4 entered the agreement or something like that, is that 5 right? 6 A. That's correct. 7 Q. You're unsure? 8 A. The actual only the email part of it, 9 but the most of the information, my laboratory, 10 technical information, everything else stored in 11 Home room, but I was supposed.
11 Q. After you signed the agreement, were 12 you ever given access to your office again? 13 A. Yes. 14 Q. Was your access to your office cut off 15 before you signed the agreement? 16 A. Yes. The agreement, it was in 17 no allow me to enter my office and my research 18 material. They never did. 19 Q. I wasn't there when all of this 20 happened, so I'm trying to educate myself here -- 21 but only by way of this. 22 What I need you telling me is after 23 you signed this agreement on May 3rd, 2010, MUSC 24 never allowed you access again even to your office 25 or your lab space?	10 When was your Home room access cut off, 11 before or after you entered into the agreement? 12 A. I could not remember, but everything 13 was cut off without a notice, I suddenly realize 14 I could have anything. A though, I could make a 15 copy, but I don't know technically how to do that 16 at the time. It was still -- I got so-called IT 17 support from MUSC, but at least they cut off my -- 18 all my access to MUSC's system. 19 Q. When your access to your lab and 20 office were cut off, to you, did that also cut you 21 off from your logbooks and things of that nature? 22 A. Yes, everything. 23 Q. Meaning all of your materials.
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1 A. That's correct. 2 Q. Did they ever allow you -- times a 3 and way to ask. 4 By way of not allowing you access to 5 your lab space and your office again, if I find 6 some prohibition on access and your office access 7 to you -- to other material that might have been 8 yours, equipment, that sort of thing? 9 A. That's everything I have. That was in 10 my laboratory and in my office and also my core 11 facilities, my collaborations, my teaching 12 activities, my research ability, and also my 13 communications. 14 I lost contact with all my colleagues 15 throughout the university. I don't remember the 16 email address, and I can't even remember anybody once 17 they turn off any email system. 18 Q. Let's talk about your email -- for a 19 minute. Was your email access cut off before or 20 after you signed the agreement? 21 A. I could not remember clearly, but I 22 think there was a period of time during this I'm 23 supposedly working at MUSC, but actually at the 24 time they already cut off my Home room. Because 25 that's where a lot of my research documents and	documents, paperwork, that would have -- been in your Home room, is that right? A. As well as the Home room. Q. Understood. A. Correct, it was a storage. Q. After you signed the agreement, just for a moment, to see even allowed you to go back to your office or lab space after that? A. Correct. Q. That is just by way of exclusion from me. Do you even know whether MUSC still has your lab books and that kind of documentation that was in your office when you were locked out? Do you even know if they still have it? A. That would be a real hard to say documents to procure. Q. I'm not asking you about requirements. I'm asking whether you know if they do or do not still have it. -- I'm not asking you don't know. A. I don't know, I have no access to it. How do I know what they did with it? I know they continued to publish using the material I have I have all my technology. They're not using it in periodicals and publications, and not using them to apply for grants. I'm not using material.

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1 My research projects.
2 Q. Dr. Dong, if you look at your -- just
3 if you turn back to the first page of that
4 document, and I'll direct you where to go. First
5 page of the whole document. The song -- Dr. Dong,
6 just flip the whole thing over back to the first
7 page.
8 Now go to the second page of your
9 complaint. Dr. Dong -- No, that's not the
10 complaint. That's just the cover. Keep going.
11 That's the first page of it. Now go to the second
12 page. Go down to that Subparagraph E, and read
13 that letter. And then I have a couple of
14 questions for you.
15 The witness reviews the document as
16 requested.
17 THE WITNESS: Yes.
18 BY MR. CONLEY:
19 Q. So that paragraph appears to have a
20 claim that's attributed to the written agreement
21 we've been talking about. If that's the case, can
22 you explain the allegation in Paragraph E to me?
23 I'm not sure I really understand it.
24 A. I think this was suggested by the
25 attorney.

1 company, in this -- need a majority of shares.
2 Whatever the agreement he made between
3 him and MUSC, MUSC transferred all MUSC shares to
4 the German investor, and that with the existing
5 1/3 of my share awarded -- ERD and MUSC, because
6 based on the faculty agreement, when there is a
7 contract -- commercial contract signed with a
8 commercial company, there is a formula to divide
9 the income.
10 So not actually, only they give the
11 entire MUSC portion to the German national, but
12 also including my 1/3 of the agreement and from
13 MUSC in order for the German -- first of the total
14 and then you -- this is the -- stock can be sold,
15 1/3 of the other investors and seeking control of
16 the company.
17 And that time was when with the MUSC,
18 shares -- didn't have the majority. So that's
19 not then actually once he had control, but only
20 was kicked out from MUSC, I was asked, and
21 from Charleston -- have no share to go. That was
22 place to go.
23 Q. This transfer of shares page
24 discussing, did that occur before or after you
25 signed this agreement with MUSC?

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1 Q. Wait just a minute. Don't tell me
2 anything that your lawyers have ever said to you.
3 Anything your lawyers have talked to your client or
4 said to you, that's privileged information. I
5 don't want to know about it. I don't want you to
6 tell me.
7 A. I appreciate it. There was a time
8 actually MUSC actually actively interfered. Not
9 only blocking my position, but actually interfere my
10 position at the time to allow me continuing my
11 research actually at the time, because there was
12 agreement. I was a consultant. Although, I
13 didn't have my research equipment and everything
14 else.
15 So actually, the MUSC ERD obtained
16 some shares -- actually, it's options from
17 GenPhar. By agreement, I will have 1/3 of those
18 shares, and the 2/3 -- think goes to ERD and goes
19 to the department. For value.
20 And the actually, for whatever the
21 agreement, a German national, he was later
22 investor, he actually purchase some shares, and he
23 got participate a few other investors saying he
24 was going to invest more, but -- and the time
25 was -- in order for him to get control of the

1 A. After he signed the agreement.
2 Q. After you signed the agreement?
3 A. Yes. But MUSC still held their shares
4 through my so-called helping ERD to run the
5 company, provide technology and consulting for
6 the company, and for that ERD actually got
7 significant amount of shares.
8 Q. So in other words, generally, what
9 from your saying is that you entered into this
10 agreement -- and I have been asking about this --
11 MUSC transferred whatever shares the ERD had when
12 GenPhar or this German national, -- that my 1/3
13 A. Correct.
14 Q. And when you're telling me that 1/3
15 or whatever -- however many shares MUSC
16 transferred to the German national, 1/3 of them
17 shares, according to you didn't actually belong to
18 MUSC at that point, they belonged to you?
19 A. Yes. No. It's the -- there was a rule
20 in MUSC -- rules how to encourage people to
21 sponsor biotech companies. I wasn't the only one
22 but I was one of a few that was successful
23 including James Morris from the -- his own
24 company, also Yusef -- I remember at one time in
25 other departments. There is a multi-pharmacy

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1 members started companies.
2 There was a university policy and
3 circulation on how the benefit derived from
4 commercial companies derived within university
5 including the person who actually contribute the
6 technology comparison. There was a formulation
7 how much share how much percentage the person
8 get.
9 Q. What I hear you saying is there is a
10 percentage of whatever shares MUSC gave to this
11 German national that actually under MUSC's rules
12 should have belonged to you, not MUSC?
13 A. Not only damages done to me,
14 because --
15 Q. I'm just asking you if my
16 understanding is correct. Just asking if you
17 were damaged by it. Is that correct? Are you
18 claiming that a piece of these shares needed to
19 given back to this German national actually belong
20 to you and not MUSC? Is that what I hear you
21 saying?
22 A. If you will let me make my statement,
23 and I think we'll be better off in many ways.
24 Q. Go ahead.
25 A. Based on -- that's what I said -- based

1 research at GenPhar.
2 Q. Did GenPhar eventually kick you out?
3 A. During that period of time, GenPhar
4 was kick -- did kick me out.
5 Q. What period of time are we talking
6 about?
7 A. I don't remember. That's why
8 actually, I need to get the documents from MUSC to
9 document what kind of agreement I made or
10 actually the timeframe they made.
11 Q. Did you continue to do work for
12 GenPhar after you signed this agreement 2010?
13 A. I was on a consulting role. They
14 allowed me to do the research, but I have nothing
15 easy to do but to continue my consulting with
16 GenPhar as I have a position.
17 Q. Was there ever a time when you were
18 the CEO of GenPhar?
19 A. No. Actually, at the end when
20 everybody left, so they have to be a person
21 carrying the name, but during this entire process
22 the company was run by chairman of the board,
23 which is Steven Hultman, also who was the CEO,
24 and once after that they started fighting,
25 actually it stated the guy -- it was Kevin Fair

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1 on MUSC formulation, the benefit to faculties,
2 there is a percentage share owned by MUSC, will be
3 awarded to the person who will be responsible for
4 the income to MUSC.
5 So based on the formulation and that
6 policy of MUSC, I wasn't the only faculty members
7 to benefit the shares of the financial income from
8 a company that I consulting with, helped to start.
9 So that share should be prima awarded
10 from MUSC. Just like salary I awarded from MUSC
11 or bonus I awarded from MUSC, that will be mine.
12 Q. How many shares were supposed to be
13 yours? Do you know?
14 A. I don't know. So I am even in -- But
15 the damage to me was not only the value of the
16 shares, but actually they use my share, the
17 percentage of share, I brought to MUSC, to
18 participate a conspiracy for one of the investors
19 to fire the other investors and then in order to
20 seek control of the company.
21 Of course I was on the side of the
22 company as well, so they can kick me out of the
23 company as well. So basically, I left not only
24 not be able to continue my research at MUSC, but
25 also actually block me from continuing my job, as

1 (sic), who was the CEO.
2 Then, after the fight, everybody is
3 general there is no CEO -- no official CEO. I was
4 only functioning as the principal investor, but
5 not -- actually, there was somebody even signing for
6 example, lease agreement, anything else. Because
7 I was the sole principal investigator, I signed
8 it, but -- was never officially named by the board
9 CEO or otherwise.
10 I was the chief scientific officer as
11 a consultant, and also at the time GenPhar insists
12 on me being the president, which is only title,
13 and time was rejected by FDA. So they didn't want
14 me to have any non-scientific function because I
15 could not function as non-scientist. I do not do
16 any -- even at MUSC, I am treated role is through
17 business management. I never manage money. I
18 never manage risk, regulatory affairs. Or y
19 success.
20 Q. You never managed money at GenPhar?
21 A. No, I don't sign checks. I don't
22 review grants. I don't review manuscripts. It's all
23 so-called regulated from me.
24 Q. Did you ever send letters to investors
25 about the financial status at GenPhar?

32 (Pages 122 - 125)

Page 26	Page 28
1 A: Yes. I was the only person left as 2 the -- to -- actually, as the secretary or 3 business manager, craft the financial report with 4 approval of Steve Hutchinson, and I will be the 5 one sign it because Steve Hutchinson officially 6 resigned his the agreement between the investor 7 disputes. 8 So neither party actually owned the 9 company, could not recall anybody in the company 10 except the management of the grant, half report by 11 the Department of Defense, and NIH. 12 Q: Did you oversee the building of 13 GenPhar's new construction building over in Mount 14 Pleasant? 15 A: I wasn't, because I was the scientist, 16 but there was -- no one else was there as the 17 general contractor oversees it. So actually, I 18 was -- I would have input only for the scientific 19 requirement, and I was the -- solely responsible 20 designing the clean rooms, the research 21 laboratories for DoD, but other than that I have 22 no knowledge of any construction or no expertise 23 how they do construction. 24 Q: Do you know Deborah Owens? 25 A: Deborah Owens was the finance manager	1 made several comments that not true. 2 So actually, the indictment 3 was created I think early 2015. Before it 4 was created, it is a copy of anybody who disclose it 5 I don't think United States Attorney will -- 6 would, but they could. This goes to MUSA before 7 even I knew it. 8 So currently, there is a year limit, a 9 nine-month limit -- time limit for speedy trial. 10 So it's about a year in 2015. That's years after 11 I would never sign agreement if there's a problem 12 at GenPhar. So those all -- first of all, it's 13 less even. Second of all, they're expenses to 14 they break the contract years after the contract 15 has been breached. Those have no relevance 16 whatsoever. 17 It has no relevance because they push me 18 to GenPhar, and they have to find somebody 19 responsible because I was the principal 20 investigator on those contracts. They prosecute 21 the company for using money inconsistent with the 22 terms and conditions of the contract by building a 23 facility. 24 What benefit do I get out of it? What 25 is the violation of contract terms, conditions
Page 127	Page 129
1 of the company. 2 Q: Do you know Elaine van Bors? 3 A: Elaine van Bors was the part-time 4 secretary who was the whistleblower, and also the 5 internal accounting. So all of the accounting was 6 done by accounting firm, audited by another firm, 7 all hired by the board. That's the money. They 8 got to watch for it. 9 All of the financials, said actually 10 Steve Hutchinson was the person out of Wall 11 Street. He is the financial person. So even he 12 superficial resign. He was still monitor he 13 hired the auditing firm and select the CPA 14 accounting firms on behalf the investors. 15 Q: Did the Fourth Circuit Court of 16 Appeals recently affirm your conviction? 17 A: Yes -- but actually, they only looking 18 at one issue at a time. So they vacate the 19 financial, partially against me. 20 Q: Did they affirm Judge Norman's 21 conviction of you? 22 A: Yes. They didn't. Basically did not 23 review it. And those actually have no relevance 24 whatsoever. They're years after, and those -- 25 Judge Tol have more information than I do and	1 how is criminal? So we can't litigate those, and 2 we should not be actually include that 3 information. Completely irrelevant to this case. 4 Q: What about the legal campaign 5 contributions you were found guilty of? Did you 6 have any involvement in those campaign 7 contributions to Lindsey Lamm? 8 A: Yes. That's also years after. 9 Q: Tell me about that. What involvement 10 did you have in those? 11 A: No. Actually, it's -- not the same 12 German person. I was on the -- he wanted to -- in 13 addition to the auditing done by the company, he 14 wanted additional auditing by himself, and he want 15 the company -- he initially want the company to 16 pay for the auditing. The existing investors did 17 not agree. So in order for me to compromise 18 he was on the investors, because they are the key 19 owners in most of a company, so I agree for him 20 to do his auditing, but he also is passed to pay for 21 it. 22 GenPhar not a -- so, there is a 23 time while I was on the ground, was I meet, paid 24 by a family member, and I was costing \$90,000 for 25 my wife and on the charter flight -- criminal

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around the world. So he wanted me to answer the
question. I said could you -- to make a long
story short, could you wait until I come back,
because this lifetime even and most \$50,000. He
said, Don't worry about it. I'll pay for it.

He's a little more himself, all right.
So once the dispute came out, he said he would
not pay for it. He only pay 10 percent,
50 percent of cost, which equivalent to \$35,000,
and he did not want to reimburse the company. He
said, That's reimbursement for you to take the
time from the world was almost he said so.

But I did not think that the auditing
was for the company's parallel who wanted to do
it, so I did not think it was appropriate for me
to make \$35,000. At the same time, the consultation
for government relationship set up by Jerry
Zucker, which is some kind of advisory, locally, as a
requirement, we have to hire this law firm. The
consulting firm is so-called establish government
relationship. I was signed it. I never wanted
it.

The consultant firm asked me to
contribute to Lyndsey Graham's contribution. I
said, Why don't you do it? He said, We can't do

I didn't know that was over the limit.
was so-called legal limit, and then they by
giving the money to the other people, that's
called straw-woman or donation. So I was
convinced for contribution using straw-woman. I have
now. I think the criminal has to be proved.
You have to have intention to break the -- no --
the violation of the law. I did not. I was a
political person.

So I just -- money was given to me by
the German investor that actually tried to -- I
was the agent for foreign investment contribution,
and there is clear agreement he is giving me
money to me personally to compensate me
personally, but that's just how the corruption
occurred.

I have nothing to do with -- that also
happened years, years after the breach of
contract. Have nothing to do with anything. If I
didn't sign agreement, go to third party, nothing like
this would happen to me because I wasn't making
at any time. I have no experience in managing a
company, political contribution. I have to do

Q. It looks like the political
contributions were all made years before the

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in Europe because we're going to -- because April
month of the event. So there is overzealous
looking for the law firms who make a contribution
on behalf of the others. So he can't do it.

So, would say, Okay, I will write a
check, here we that's was given to me personally
by this German investors. So I had to say, Well,
okay, I'll just donate this for Lyndsey Graham,
because I was asked to donate Lyndsey Graham. I
did not think was a motif for me personally take
the money, because the auditing is behalf of
company.

And that money was returned from my
saying demand -- exceed the limit, your limit.
So I thought there was -- each person out of
government China. I thought because you buy the
Hewlett there is quarter (sic), and everybody I've
by quarter. I thought I reached my quota. And
I said, We have a company. I said, Every policy case
has contributed to Lyndsey Graham. They said, No.
I say, Okay, if you support Lyndsey Graham because
he support our contract about defense program, he
support Department of Defense, support our defense
group, if he agree, you can take the money, talk
to Katie and make a contribution.

agreement was signed.

A. No, I could not do.

Q. I'm asking lobbying fees going all the
way back to 2012 as part of your charges.

A. That's correct. Lobbying fees.

Now, actually, it's the political government who
is set up by Jerry Zucker. I have nothing to do
with the company. They said lobbying fees, but
that's the government relationship, not lobbying.
There was presented. The company called

American Defense. So I had to know edge, and so over
also, I don't at the time. And I only learn new
word, lobbyist, why they called lobbyist.

Was I receiving the company that,
totally at the word in place. I was set up by
Jerry Zucker through one of his friends. I think,
Ben Sasse. He was deputy secretary for Reagan.

I'm talking about beyond my knowledge.
That's just -- no, that's -- I don't know. Is
the company called American Defense. It
so, actually have the business as a how to bridge
the gap between defense companies and the
Department of Defense.

Q. Is Vladimir, but still in operation.

A. Don't

Tab. 35

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A. No. It was just a paper company.
2 When I was kicked out from GenPhar, I was
3 thought I failed MUSC because I was there was
4 no -- I was charged to start a biotech company and
5 bring high-paid jobs to South Carolina. And Ray
6 Greenberg specifically had a conversation with me,
7 who was the president of the university. So I
8 thought I failed, and I tried to start another
9 one, but basically I could not raise a single
10 dollar in terms of funding.
11 But later they -- later the two parts
12 are fighting, we -- actually they brought me back
13 to in charge of the new program. They know they
14 could not -- neither party could do it. So they
15 brought me back.
16 So that was -- Musana was basically
17 incorporated, became a subsidiary of GenPhar, only
18 they call it service division, which only using
19 GenPhar's technology -- serve other companies, and
20 the companies never exist as individual company or
21 actually have a single dollar investment, but just
22 become a name under GenPhar to provide a service
23 to other companies.
24 Because GenPhar is a product
25 development company, and when you have product

13. Your relationship to GenPhar goes all
2 the way back to 2000, right?
3 A. That's under the corner of FRD and
4 GenPhar. It was on behalf of MUSC. So I always
5 been full-time professor. That's -- actually, all
6 the other family members doing the same.
7 University ownership basically the whole
8 to sponsor biotech things. It's not only MUSC
9 but all over the country, even up here by MIT
10 Hopkins, UCSF. Of course, Massachusetts is the
11 biotech biotech economies. And of course,
12 California is biotech biotech companies. So
13 that's all national program, they actually tried
14 to mimic UCSF.
15 UCSF put more than \$500 million a year
16 down in very support, a lot more than
17 \$200 million. At the time it was \$190 million
18 from NIH. And the common saying is there's a host
19 same as twice the amount from industry. So many
20 universities try to mimic, and also it was the
21 initiative of biotech university under the
22 government. That's actually the single purpose I
23 was recruited to MUSC, and I think Ken Reizen was
24 really in it.

(Exhibit 2, 4/14/11 Letter to Dr. Dong)

Tab. 35

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1 development, you can only serve for the other
2 clients because they afraid you may use their
3 technology to help your products. So you have to
4 create a separate entity and agree that
5 technologies never transfer.
6 There is also no relevance whatsoever
7 to the current case. The only relevance is if I
8 ever's pushed to GenPhar with the -- they take my
9 research and material and push to GenPhar, I won't
10 never be involved.
11 Q. What do you ever do with you in GenPhar?
12 A. Of course, this agreement, because
13 they took away all my research. The only
14 opportunity for me -- and being limited to a
15 cool-down period. At the time my only concern is
16 my academic career.
17 I agreed on everything in order for me
18 to continue my research. That's my intention.
19 That's my career. Everything dependent on. So I
20 agree to everything in order for me to
21 continue my research. Not only they take away my
22 research, actually they try to block me from doing
23 my research at GenPhar, so also actually as a
24 result and I'm being the only person in charge,
25 because every body officially resign.

1 from MUSC, married for a while, died;
2 KENNETH CONLEY;
3 Q. Dr. Dong, I'll hand you what I've
4 marked as Exhibit 2 and ask you to take a look at
5 it, please.
6 A. This letter is false in a way because
7 this person actually was regarded one of the
8 worst -- whatever, the vice president of affairs at
9 MUSC. She didn't last long. She had no
10 involvement from the beginning to the end, but she
11 took responsibility. Her story was damn my life.
12 No, it was done by Steven Lurie, long before this
13 agreement was signed. This is a false statement.
14 Q. Did you receive that letter, which is
15 Exhibit 2, Exhibit 2?
16 A. That's right, I might I don't
17 remember.
18 Q. Did you attend this meeting that
19 occurred March 24th and 25th?
20 A. Which year is that?
21 Q. It says "March 1-1, 2011." Dr. Dong
22 A. No, was never asked.
23 Q. The question is simply this: Did you
24 appear in any shape, form, or fashion on any day
25 on either March 24th or March 25th, 2011?

35 (Pages 134 - 137)

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1 A: No, I don't remember. 2 Q: Well, that's different. My question 3 is -- you need to tell me you didn't attend 4 or you don't remember whether you attended. 5 A: I don't remember there was even a 6 requirement, and also I do not remember. The -- 7 actually, the inventory was done long before she 8 was here, whatever, with medical. I never met her. 9 I mean -- and she sent this letter, was 10 completely false, based on false information. 11 Q: Dr. Dong, my question is about 12 March 24th and 25, 2017. Did you attend on either 13 of those days any kind of inventory related to 14 your materials or equipment? You either did or 15 didn't, or you don't remember. 16 A: I don't remember. 17 Q: Thank you. 18 A: Lately, I didn't, but I think I 19 would remember it. Where was this letter sent to, 20 this confirmation -- confidential information 21 supposedly? The only person I can recognize 22 his name is Steve Lander. He's the one under the 23 false statement of inventory. 24 What is the reason for inventory? 25 It's not after I leave -- I left, but this is	1 there, they already break the locks, and they are 2 actually in process of transfer away being gone. 3 But they are not doing any inventory. They just 4 took the material out of those freezers and 5 transferred somewhere else, so they would not be in 6 our facility anymore. 7 Those keys already -- those already 8 locks already being broken. I don't know when, 9 but clearly they did not need me, didn't need the 10 key. So I was handling there. Actually, no one 11 talked to me, and so. 12 Q: So you didn't say for the entire 13 event, is that right? You left? 14 A: Correct, but that's the -- and the 15 agreement. Why do I -- because they -- first of 16 all, they only -- I was informed, I do remember, 17 in a need to bring the key. 18 Q: Your position is as of 19 March 24th/25th, when this inventory occurred, I 20 think what I heard, your position is MUSC had 21 already breached the agreement at that point? 22 A: Of course. Have nothing to do with 23 it. They are not transferring material to me, and 24 they said they are going to do inventory because 25 they -- first of all, they removed all of my
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1 already being paid, the -- even due of the transfer 2 at the document -- the material documents. They 3 just follow it to cover up for their actions. 4 Exhibit 1, Email Correspondence, re: 5 Inventory of Laboratory Material, marked for 6 identification; 7 BY MR. CONLEY. 8 Q: Let me ask you to take a look at 9 Defendant's Exhibit Number 1 for me, Dr. Dong. 10 A: Oh, I remember the event, but that's 11 long after they breached the contract. 12 Q: Tell me what you remember about the 13 event. That's what I want to ask you about. 14 A: They actually wanted me to bring the 15 keys. They ask me to bring the keys to the 16 freezers, but when I got there they already break 17 up the freezer and everything else. 18 Q: Why did they want you to bring the 19 keys to the freezer, Dr. Dong? 20 A: Because the freezer belongs to me. It 21 was locked, but the -- first of all, they removed 22 the freezer. So I have no access to my freezers. 23 So I'm alone. 24 They locked into a separate room. 25 They asked me to bring the keys, but when I got	1 equipment freezer to a secret location, locked by 2 James Norton. So I -- with a key, I will not be 3 able to get access to it. Then they said they 4 were going to do inventory, asked me to bring the 5 keys, so in a way I will give them consent, but 6 when I got there, all of the locks had been long 7 broken. 8 Exhibit 1, 9/27/17, Letter to Dr. Dong 9 from MUSC, marked for identification; 10 MR. CONLEY: I hand you Defendant's 11 Exhibit 1, Dr. Dong. 12 THE WITNESS: So why -- first of all, 13 why isn't you only have the documents your benefit 14 and you deny any of my documents? 15 MR. CONLEY: Because this is my 16 deposition, so I get to choose what documents I 17 want to ask you about. 18 THE WITNESS: But I don't have -- I 19 didn't have this document. 20 MR. CONLEY: Yes, you did. This was 21 provided to you, along with all of the others. 22 The Blue numbers on there indicate so. 23 THE WITNESS: It's 2017, right, a year 24 later -- September, a year and a half later. So 25 whatever happened to it is irrelevant, but...

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1 This is absolutely false. Actually, I
2 would not be -- I would not know I was indicted by
3 2011. The indictment was -- actually, there's
4 sequential indictment within the months by the
5 same grand jury. Actually, each -- I was told
6 each indictment was only narrowed down. It went
7 of superseding or adding more, then narrowed down
8 from broadly indictment from paying illegal dues
9 to whatever. So no one actually saw the first and
10 second, except the third.

11 The only legally effective third
12 indictment should be 2014, all right. And there
13 was not a sealed until 20-- late 2014 or early
14 2015. So there's time-lagging period, based on
15 law, for speedy trial. Otherwise, that's what --
16 that's a constitutional violation. So there's no
17 way they knew it.

18 It is a felony violation by anybody if
19 disclose information, and there's no way they
20 would know 201 -- there was indictment. I don't
21 believe this email -- this information is just for
22 just a covering up.

23 BY MR. CONLEY:

24 Q Did you receive Defendant's Exhibit 4?

25 A I don't remember how they sent to me.

1 A. Seen?

2 Q "You same document -- Exhibit 2 to
3 your lawsuit. You have obviously seen it
4 before. You must have seen it back in at least
5 2014, when you filed your lawsuit."

6 A. It was attached to my lawsuit?

7 Q. Yes, sir, it is. If you look at the
8 complaint, it's attached to it as Exhibit 2.

9 A. That's already after the agreement.

10 You're checked. What's the benefit? What's the
11 fact they put in on.

12 Q. I'm only asking if you recall

13 receiving the document, Dr. Dong. You either do
14 or you don't.

15 A. I do not, actually.

16 Q. Would you at least look at your
17 complaint and agree with me that that's Exhibit 2
18 to your complaint? It looks like the same
19 document to me.

20 (The witness reviews the document as
21 requested.)

22 THE WITNESS: Yes, I see it.

23 BY MR. CONLEY:

24 Q. You filed your lawsuit September 2014,
25 right?

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1 Q. They mailed it to your address on
2 [REDACTED]. In September 2011, was you
3 living at [REDACTED] in [REDACTED]
4 [REDACTED]?

5 A. I think I was separated long before
6 that. I live at [REDACTED].

7 Q. Is that your testimony, you weren't
8 living at that address then?

9 A. I believe so, because I was separated
10 three years before my divorce.

11 (Exhibit 5, 9/20/11 Letter to Dr. Dong
12 from MUSC, marking for identification.)

13 BY MR. CONLEY:

14 Q. This is Defendant's Exhibit 5,
15 Dr. Dong. Take a look this Exhibit 5, Dr. Dong.

16 A. Whatever they are -- redaction is not
17 without my signature and is not -- is violating,
18 but if they say yes, and I wouldn't even read
19 -- I have not seen it, but I don't even need to
20 read it.

21 Q. You have never seen Defendant's
22 Exhibit 5?

23 A. No.

24 Q. Well, it's attached to your lawsuit,
25 Dr. Dong.

1 A. That late?

2 Q. Yes, sir. Look at the filing date on
3 it.

4 A. I think I don't -- I don't remember
5 how exactly. I don't remember seeing it. But
6 actually, I do -- I know. A lot. Holmes got some
7 documents from MUSC as well.

8 MR. CONLEY: Let's take a short break.
9 (A recess was taken.)

10 MR. CONLEY: I don't have anything
11 further.

12 The deposition was concluded at 2:21
13 p.m.

14 (The witness, after having been advised
15 of the right to read and sign this transcript,
16 does not waive that right.)

CERTIFICATE OF REPORTER

I, Roxanne M. Easterwood, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the matter pending or intended in the events thereof.

Witness my hand. I have hereunto affixed my official seal this 18th day of October 2022 at Charleston, Charleston County, South Carolina.



Roxanne M. Easterwood, RPR
My Commission expires
February 1, 2025

1 HAN-YUN (JOHN) DONG, M.D., Ph.D. - Witness
2 jhdong@musc.edu
3 October 27, 2022
4 ER Dong, M.D., Han-Yun (John) v. The Medical University Of
5 South Carolina
6 10/18/2022, Han-Yun John Dong (#1516370)
7 The above-entitled transcript is available for
8 review.
9 Within the applicable timeframe, the witness should
10 read the transcript to verify its accuracy. If there are
11 any changes, the witness should note those with the
12 reason, on the attached Error Sheet.
13 The witness should sign the Acknowledgment of
14 Deposition and Return and return to the deposing attorney.
15 Copies should be sent as set forth, and to Veritext at
16 tx-southsc@veritext.com.
17 Return completed within 30 days from
18 receipt of transcript.
19 If the witness fails to do so within the time
20 stated, the transcript may be used as if signed.

Veritext,
Veritext Legal Solutions

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24 Han-Yun John Dong Date
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Appendix Three:
Final Separation Agreement

A Final Separation Agreement between
The Medical University of South Carolina including its College of Medicine,
and Dr. Jian-yun Dong, Professor of Microbiology and Immunology

This Final Separation Agreement between The Medical University of South Carolina including its College of Medicine (the "University"), and Jian-yun ("John") Dong, MD, PhD, ("Dr. Dong") Professor of Microbiology and Immunology, is entered into this 22 day of May, 2010.

By their entering into this final agreement, the University agrees that Dr. Dong's compensated appointment as Professor of Microbiology and Immunology will continue through March 31, 2012. Dr. Dong agrees to withdraw any and all pending or future grievance(s) for actions prior to the date of this agreement (above) and agrees that this final separation constitutes full settlement of any and all past grievances or claims that Dr. Dong may have against the University, its employers and against any and all of its affiliated entities up to and including the date of this agreement.

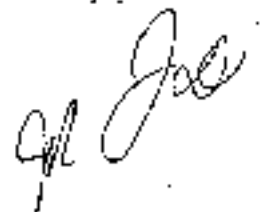
During the term of this final agreement, the University will continue Dr. Dong's employment, faculty appointment and make scheduled salary payments to him. In consideration, Dr. Dong acknowledges that this final agreement constitutes his irrevocable resignation of his tenured faculty appointment to be effective no later than March 31, 2012. Dr. Dong will retain his faculty appointment, tenure and title until the effective date of his resignation.

The University retains the right to provide him a modified, non-tenure faculty appointment and title after March 31, 2012, in light of any continuing mutual benefits that may accrue to the parties.

In his execution of this final separation agreement, Dr. Dong understands that he is advised to seek legal advice before signing any final document, and shall have forty-five (45) days after the execution of the agreement to revoke it.

Payment of Faculty Compensation

The University will pay Dr. Dong his current level of monthly compensation through March 31, 2012. This amount will equal but not exceed his effective annual rate of pay (\$165,313.00/year) at November 1, 2009.



Retention of Faculty Appointment and Faculty Duties

The University agrees that Dr. Dong will retain his current appointment and rank through March 31, 2012. Dr. Dong's primary appointment will be in the Department of Biochemistry with a secondary appointment in the Department of Microbiology and Immunology. During this time he will receive annual evaluations and receive and respond to critical inputs and comply with reasonable faculty duties and requests. The University, in turn, acknowledges that Dr. Dong will work predominantly off site in the Charleston area and will travel for academic and commercial purposes.

Dr. Dong agrees to carry his customary share of teaching, learning and instructional responsibilities as assigned and communicated to him in writing by the chairman of each department.

During this period Dr. Dong may use the title "Director of Biotransformation and Vaccine Development."

Dr. Dong is free to seek academic and research collaborations, including secondary appointments, within MUSC during the remainder of this agreement. Dr. Dong may consult with Drs. Yusuf Hannun and James Norris regarding any proposed change of primary department. Any and all MUSC academic appointments are understood to be term limited, not to extend beyond March 31, 2012 or the date of his employment at another institution or company, whichever may come first.

Irrevocable Resignation effective no later than March 31, 2012

Dr. Dong agrees and commits to submitting an Irrevocable Letter of Resignation effective no later than March 31, 2012. He may submit this letter at any time. Should Dr. Dong accept fulltime employment, including a faculty appointment, at another institution or company prior to March 31, 2012, then the agreed upon payments and continuing appointment will cease at the time of his first day of paid employment. Dr. Dong may request the University's continuation of a modified, non-tenure appointment. The University retains the right to bestow upon him such appropriate title after that time in light of any continuing mutual benefits that may accrue to the parties.

Irreversible Resignation under this agreement

Should Dr. Dong not elect to send a formal letter of resignation either upon assuming full-time employment at another institution or company or at the end of March 31, 2012, this agreement is recognized by Dr. Dong and the University as an irrevocable resignation effective the time of his first day of paid employment at another institution or March 31, 2012, whichever is sooner.



Access to Campus Research Laboratories and Resources

Dr. Dong agrees to relinquish his future use of approximately 700 sq. ft. of laboratory space after the listed equipment and materials (inventory list is attached as Exhibit A) have been transferred to his new space. This allows the University to reassign space unused or underused for the needs of other researchers during a time of building renovations.

Dr. Dong must submit an additional list of Vector Core equipment items (to be attached as Exhibit B and approved by the University) he is requesting no later than 10 days after the date of entry into this agreement. The University intends to equip a temporary Vector Core facility in so far as the temporary relocation of that equipment does not disadvantage the grant-funded research of other faculty members.

In lieu of rental payments for space in the GenPhar Building (once occupied), the University will waive the direct charging of Dr. Dong's salary to any grants or contracts he receives during the period of this agreement. The University will cost-share this expense in compliance with federal rules and regulations.

The University will continue to provide the customary fiscal support and oversight for research awards received through MUSC and the Division of Basic Science.

The University agrees to relocate at its expense the equipment listed in Exhibit A. It will also relocate at its expenses such Exhibit B equipment as it may evaluate from the remaining Vector Core equipment which can be temporarily relocated without jeopardizing other on-going funded faculty researchers. This includes equipment which Dr. Dong purchased from UCSF and for grants on which Dr. Dong was the named original PI as permitted by law and University policy to the GenPhar location, provided that all certificates of occupancy, governmental permits and insurance coverages are in place for that site. Other items purchased and owned by MUSC with Vector Core NIH and HCC funding shall remain on MUSC's campus, except as listed in Exhibit A, or in the approved Exhibit B request. All equipment shall remain within the MUSC property accounting system. Likewise, any equipment purchased through extramural grants written by Dr. Dong as the sole PI and which was in Dr. Dong's laboratory at the time of relocation to the 700 sq laboratory space (including listed freezers and refrigerators also located in nearby equipment rooms of CSB) shall be relocated to GenPhar in 30 days from the effective date.

Dr. Dong's access to campus facilities and to their use shall not be limited during his remaining years of appointment and employment. All normal laboratory policies and safety practices are to be followed by all faculty members and technicians, including Dr. Dong and his team. All parties acknowledge that this agreement does NOT supersede the University's normal laboratory policies and safety practices.



Equipment relocated to GenPhar under this agreement will be returned to the MUSC campus at the University's expense at the end of Dr. Dong's appointment, unless otherwise permitted by existing university policies and external sponsor policies and approvals.

Dr. Dong will transfer any research material including genetic materials, DNA constructs, viral and plasmid vectors, antibodies, and enzymes to Dr. Dong's new research location for his continued research, including the materials which were provided by Dr. Dong to the Vector Core for services while Dr. Dong was the Director. Any vectors provided to faculty members during the operation of the Vector Core will remain with the respective faculty members who acquired the product.

In recognition of his offer to perform Vector Core services from his off-campus location for the approximate twenty-three month interval above, the University will pay Dr. Dong a sum of \$30,000 directly from the Chairman's budget in the Department of Microbiology and Immunology, to be paid no later than day 50 following the signing of this agreement. These payments will enable him to perform Vector Core functions and to begin to replicate and to re-propagate vectors which have been lost.

At the direction of Dr. Yusuf Hannan, Mr. Scott Reid and Mr. Ronald Sycraft will attempt to locate any vectors or similar materials shared with other investigators for re-propagation by Dr. Dong and will attempt to locate written, enduring, hard-copy records which have been lost. This will occur in the 45 day window above. Any additional items located after that time of search will also be provided Dr. Dong.

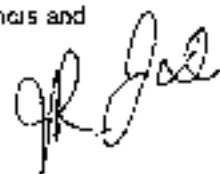
Active Grants at the Time of Resignation

The University agrees to relinquish any and all active, commercially funded research awards received by Dr. Dong to Dr. Dong as permitted by the sponsor upon his resignation. Active, federally funded research awards received will be relinquished directly back to the federal agencies as obligated in the award agreements.

Enduring grant materials, records, lab books and any other documentation required by law or University policy, will be secured, catalogued and maintained by MUSC, in the office of its General Counsel. Dr. Dong may make copies of his enduring grant materials, records, and lab books. Listed laboratory equipment and computers, printers may be released to Dr. Dong, only as permitted under existing university policies and guidelines.

MUSC will cover Dr. Dong's legal fees and other costs in this matter, through a second one-time payment of \$20,000, also to be made to Dr. Dong no later than day 50 following the signing of this agreement.

All parties enter this agreement in good faith and with respect for the intellectual property and scientific contributions of all current, past or future students, faculty researchers and university administrators.



The Parties have set their hand and seal this 3rd day of May 2010.

Medical University of South Carolina

Witness

By:

I. G. Reeves, MD
Vice President for Medical Affairs
and Dean, College of Medicine

Witness

By:

Henry Dong, MD, PhD, MEd

Exhibit A is to be attached and is to be initialed and dated by both parties.

Exhibit B to be provided by Dr. Dong no later than 60 after the signing of this agreement

Descriptions Inventory BSB 21.1 Lab	Funding	MUSC tag #
Desk chairs 4 each	Startup	
Regulator in use on CO2 cylinder	No tags	
Epson scanner	No tags	
Compaq computer	UCSF	
Agco Cooler Blue and White	No tags	
Imac broken Two each	Startup	
Lamp for Luminator Mod w/15H	No tags	
Picker	Paddock	
Power Mac G5	GenPhar	
rotor brackets 3 each	No tags	
Two foot stools	No tags	
UVP Thermo Luminator	Paddock	33009591
Apple Personal Laser Writer	No tags	
BRL Mod 250 Electrophoresis systems	No tags	
Gomling Stirrer PC-353	Arrigo	
Cylinder Regulator Gauges (2 each)	No tags	
Fisher FB 165 Electrophoresis systems	No tags	
Fisher microprobe	No tags	
SCA Precision Water bath	No tags	
Imac and Keyboard and two mice	Startup	
Pipet-Aid Lot # 276	No tags	
Pipet-Aid Lot 221	Arrigo	
keyboards 4 and 4 mice	No tags	
Book cases Mahogany 72" high	Startup	
Fellows Shredder	Startup	
Two Book cases Mahogany each	Startup	
-80C ULT Freezer two door	Vector Core	83085054
Barnstead Nanopure-Diamond	Vector Core	83085260
dot 500el	No tags	
Bio-Rad BioLogic BioFreeze Fraction collector	Vector Core	
Bio-Rad BioLogic LP part of 50 slave	Vector Core	
Boekel Microcycler	Paddock	83023135
Cryo Biological Storage System JR not in use	No tags	
Fisher Biorich Hybridization incubator	Startup	
Fisher Dry Bath Incubator...	No tags	83075059
Fisher ISO temp 1250	Vector Core	
Fisher ISO temp 205	Vector Core	
Fisher Vortex Gentle	No tags	
Fisher Vortex-gene	Paddock	
Forma Scientific -80 Freezer	UCSF	
Forma Water Jacketed Incubator	Startup	
G3 computer Keyboard/Monitor	Startup	
Kenmore Chest Freezer Large	Dang NIH	
Kenmore Freezer	Dang NIH	
Kennmore Microwave Quiet touch	Dang NIH	
Kennmore Refrigerator/Freezer	Startup	
Kennmore under the counter refrigerator	UCSF	
Parameter Select SN 0311	No tags	
Power Mac G4/monitor/keyboard	Startup	
VWR Under the counter refrigerator	UCSF	
Precision Water Bath	UCSF	



3 drawer Lab file cabinet (100)	No tags	
ALPS Printer and box of ribbons Mod 2300	No tags	
Amana Microwave Range	UCSF	
Apple I book	Genphar	83052919
Apple I book no battery	Genphar	
Apple monitor	Startup	
Bio-Rad Gene Pulser	Arrigo	83075041
DMG Fluorimeter with Dell computer	Vector Core	83072285
Bockel Microscoper	Paddock	83075082
Bockel Microscoper	Arrigo	83025050
Bio-Rad Trans Blot SD	No tags	
Branson 450 Sonifier	UCSF	
Camera connected to Scope above (HBO 100)	Vector Core	
Computer in Office	No tags	
Coring Stainer/Plato	UCSF	
Cryo Biological Storage System 0 Plus	Vector Core	
Cryo Biological Storage System 6 plus not in use	Startup	
Dell Computer & monitor 17"	No tags	
Dell monitor 24"	Genphar	
DeLuxe Mikve 88220	No tags	
Desk And Chair	Startup	
Eppendorf Centrifuge 5402	Paddock	83022826
Eppendorf Centrifuge 5415C	Paddock	83031565
Eppendorf Centrifuge 5415C	Arrigo	83031568
Eppendorf Centrifuge 5417C	Paddock	83056757
Eppendorf Centrifuge 5417R	Paddock	83052451
Eppendorf Easytip Pipette	Vector Core	
Eppendorf Easytip Pipette	UCSF	
Eppendorf pipette P10 -10 each	for Core=3 Dong NIH=4	
Eppendorf pipette P100 - 1 each	No tags	
Eppendorf pipette P1000 -3 each	No tags	
Eppendorf pipette P20 -7 each	for Core=5 Dong NIH=4	
Eppendorf pipette P200 - 5 each	vector Core=4	
Equation Temp Blk	UCSF	
File Cabinet	Startup	
Fluorimeter Digital 6-50 u	UCSF	
Fisher Dry bath Incubator	Vector Core	
Fisher Electrophoresis Systems	UCSF	
Fisher ISO Temp	No tags	
Fisher ISO Temp 1250	No tags	
Fisher Manihon 18-KW	vector core	
Fisher Mini Vortexer	UCSF	
Fisher PH Meter Mod AB15	UCSF	
Fisher Regular Mod 10-572-E	No tags	
Fisher Sorren/boate	UCSF	
Fisher Water bath 205	UCSF	
Fisher Waterbath	Vector Core	83075057
Fisher Waterbath 220	UCSF	
Forma Chest freezer (locked)	UCSF	
Forma Orbital Shaker	UCSF	
Forma Water Jacketed Incubator	Kalva	
Photodyne UV	No tags	

Gallen Kanto Oupel Incubator	Gemphar	
General Electric Reader	No tags	
Harvard Trip Balance (2kg - 5 lb) two each	1-UCSF	
Hot Plate	Paddock	83075048
Hot Plate Nuova II	No tags	
HP 4050N printer	Startup	
IEC Centrifuge GLXR	Paddock	83073666
IEC HN-SII Centrifuge	UCSF	
IEC Micromax	UCSF	
IEC Micromax	No tags	83073637
IEC micromax	UCSF	
IMAC	Startup	83074996
IMAC	Startup	83075045
IMAC Keyboard	Startup	
Imec and Keyboard S/N YMD1112DJEB	Donation/26UCO	83075053
Kenmore 18 Freezer (locked)	Dong NIH	
Kenmore Chest Freezer small (1)	Dong NIH	
Kenmore Freezer Chest Small (2)	UCSF	
Kenmore refrigerator	Vector Core	
Kenmore Refrigerator	No tags	
Kenmore Refrigerator / Freezer	No tags	
Kenmore Refrigerator/Freezer	No tags	
Kenmore refrigerator/Freezer 293	UCSF	
Kodak Carousel 80	No tags	
MJ Research PTC-200 DNA Peltier Thermal Cycler	Vector Core	
Ohaus Balance	UCSF	
Olympus CK2 Microscope	Vector Core	83037762
Opti-Culp Mod 1200 power supply	Paddock	83075035
Orbit Shaker	Paddock	83075037
Panasonic Phone with Answering machine	No tags	
Perkin Elmer Gene AMP PCR system 2400	Paddock	83049405
Perkin Elmer Gene AMP PCR system 9600	Startup	83027077
Picker Reader	Paddock	
Pipet Aid Lot 206	Startup	
Pipet Aid Lot 205	TAL (Ker's)	
Pipet Aid pipette S/N 35452	UCSF	
Pipet Aid S/N # 21676	UCSF	
Pipetman pipette P10 = 1 each	No tags	
Pipetman Pipette P100 = 1 each	No tags	
Pipetman Pipette P1000 = 9 each	No tags	
Pipetman Pipette P1000 = 8 each	No tags	
Pipetman Pipette P20 = 20 each	vector Core=3	
Pipetman Pipette P200 = 5 each	No tags	
Power PC & monitor plus old scanner and CD Rom	Startup	
Power PC and 5 keyboards in a box	No tags	
Precision Standard Balance	Paddock	83081560
Precision Waterbath	Paddock	83075039
Precision Waterbath	Paddock	83075042
Precision Waterbath Mod 181	Paddock	83075047
Printer	Startup	
Safety Glass two per	No tags	
Savant SpeedVAC SC100	Paddock	83075049



Beats Solo n Save	No tags	
Spengor	UCSF	
Steel Carl (Lajo side Inc.)	No tags	
Stralagene RoboCycler 40	UCSF	
Survey Meter (Eudlum MD23)	UCSF	
Two Ciraxis	Startup	
Vortex	No tags	
Vortex-2 Genie	Amigo	
Vtech phone base w/3 three phones	GonPilar	
VWR 1230 Waterbath	UCSF	
VWR 60-200ul pipette	UCSF	
VWR Rocking Platform 600 100	Vector Core	83073080
Wooden 6 shelf book case	Startup	
Zoiss Microscope 200 and power supply	Vector Core	83082917
Zip 250 drive 3 each	Startup	



STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

COUNTY OF CHARLESTON

CASE NO.: 16-CP-10-06683

JIAN-YUN (JOHN) DONG, M.D., Ph.D.,

Plaintiff,

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

vs.

THE MEDICAL UNIVERSITY OF SOUTH
CAROLINA,

Defendant.

Plaintiff's Attorney:

John Dong, pro se, Bar No. _____

Address:

71 De alow Street,
Charleston, SC 29402

Phone: 843-991-2332 Fax: _____

E-mail: johny.dong@me.com Other: _____

Defendant's Attorney:

Bob J. Conley, Bar No. _____

Address:

171 Church Street, Suite 310
Charleston, SC 29401

Phone: 843-577-9626 Fax: _____

E-mail: bconley@clevelandlabor-law.com Other: _____

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and II)☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion for extension of Time for Response

Estimated Time Needed: 0

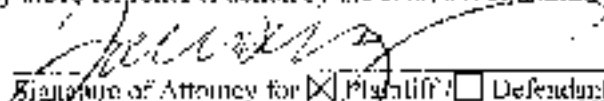
Court Reporter Needed: ☐ YES ☒ NO

SECTION II: Motion/Order Type

☒ Written motion attached

Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff ☐ Defendant

February 20, 2023

Date submitted

SECTION III: Motion Fee

☒ PAID AMOUNT: \$☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support☐ Domestic Abuse or Abuse and Neglect☐ Indigent Status ☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act ☐ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)☐ Proposed order submitted at request of the court, or,

reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached JUDGE CODE _____

order.

☐ Other: _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____☐ CONFISCATED AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 John Dong, M.D., Ph.D.,)
)
 - Plaintiff,)
 v.)
)
 The Medical University of South)
 Carolina,)
)
 Defendant,)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT
 CASE NO.: 2016-CP-10-06683

**PLAINTIFF'S MOTION FOR
 EXTENDED TIME FOR RESPONSE
 TO MOTION FOR SUMMARY
 JUDGEMENT**

Comes now John Dong, Plaintiff, appears pro se and respectfully moves this Honorable Court for an extension of time of ten (10) working days to file a Response to Defendant's Motion for Summary Judgement.

For good cause, the Plaintiff pleads the following:

The law:

It is well established by the Supreme Court of the United States and All the lower Courts of the United States that due process considerations outweigh arbitrary deadlines or strict procedural rules, and especially, "pro se litigants are held to a lower standard than licensed attorneys, and are to be given more leeway in the presentation of their case." See *John Doe v. State of South Carolina*, 334 S.C. 43, 515 S.E.2d 591 (1999). "[A] pro se litigant's due process rights outweighed a district court's interest in enforcing a filing deadline where the litigant was unable to comply due to circumstances beyond his control." *Gailbreath v. United States*, 740 F.2d

FILED
 2023 APR 21 PM 4:19
 CLERK OF COURT
 7/10

1131, 1133 (4th Cir. 1984) “[D]ue process concerns required the extension of a filing deadline where a pro se litigant was unable to comply due to a lack of legal resources.” *Barnett v. Housing Authority of City of Atlanta*, 707 F.2d 1571 (11th Cir. 1983); The U.S. Supreme Court held that due process concerns can outweigh rigid procedural rules in certain circumstances, particularly where a litigant's ability to present [the case] is compromised by the strict application of a rule. *Beckles v. United States*, 137 S. Ct. 886 (2017).

1. Limited Resources: Plaintiff is a layman who has no legal training or experience, and thus faces significant challenges in presenting his case, preparing a response that meets the standard required by this Honorable Court.

2. Unequal Experience: Defendant is a large business entity and represented by a team of seasoned lawyers who have huge financial support and extensive experience in litigating cases. Plaintiff has been working strenuously against unfair hurdles and tactics set up by the Defendant's team of attorneys.

3. Greatest Efforts to Comply: Plaintiff has been working to comply with the deadlines as proposed by the Defendant's attorneys and set by the Court. However, Plaintiff has not been able to conduct any discovery including taking depositions due to the skillful tactics deployed by the opposing attorney and the

circumstances, including illness, beyond his control, as stated in his motions for extension of time for discovery.

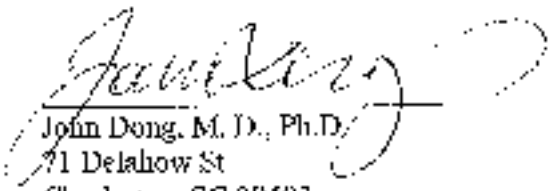
4. Complex Issues: The case involves complex legal issues, of which Plaintiff has limited legal knowledge or experience. It would be unfair to expect Plaintiff to meet the same procedural standard as the team of seasoned lawyers representing Defendant.

Based on the above reasons, John Dong respectfully requests this Honorable Court to grant an extension of time to file a response to Defendant's Motion for Summary Judgment based on a relaxed procedural standard as set by the South Carolina Court of Appeals under the Commands of the Supreme Court of the United States. John Dong requests an additional ten days to file a response.

John Dong respectfully submits that this motion is made in good faith and not for the purposes of delay.

April 20, 2023
Charleston, South Carolina

Respectfully submitted, pro se,

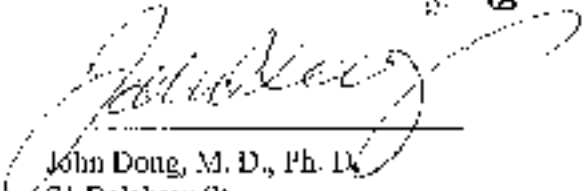

John Dong, M.D., Ph.D.
71 Delahow St
Charleston, SC 29492
Email: johny.dong@gmail.com
Phone: 843-991-2332

CERTIFICATE OF SERVICE

This is to certify that I have on this 20th day of April 2023, served a copy of the Plaintiff's Motion for Extension of Time For Response to Defendant's Motion for Summary Judgment to the ECF system, which will notify all parties electronically. In addition, a copy of the Motion is served via United States Mail Services addressed to the following:

Bob J. Conley, Esq.
Cleveland & Conley LLC
171 Church Street, suite 310
Charleston, South Carolina 29401

FILED
2023 APR 21 PM 4:19
CLERK OF COURT


John Dong, M. D., Ph. D.
71 Delbow St
Charleston, SC 29492
Email: johny.dong@gmail.com
Phone: 843-991-2332

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-06683
	)	
Jian-Yun (John) Dong, M.D., Ph.D.,	)	
	)	
Plaintiff,	)	DEFENDANT MEDICAL UNIVERSITY
	)	OF SOUTH CAROLINA'S MOTION
vs.	)	FOR SUMMARY JUDGMENT
	)	
Medical University of South Carolina,	)	
	)	
Defendant.	)	
_____	)	

TO: JIAN-YUN (JOHN) DONG, M.D., PH.D., PRO SE PLAINTIFF:

PLEASE TAKE NOTICE that under South Carolina Rule of Civil Procedure 56, the undersigned attorneys for Defendant Medical University of South Carolina ("MUSC") will move before the Honorable Jean H. Toal, the presiding judge, at the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina 29401, or at such other location as the Court may direct, after ten (10) days from the date of service hereof or at such time and place as the Court may direct, for an order granting MUSC summary judgment as to Plaintiff's claims based upon, in general, but not limited to, the following grounds:

1. Plaintiff's sole cause of action for breach of contract is barred by the applicable, three-year statute of limitations; and,
2. Plaintiff cannot present sufficient evidence MUSC breached a separation agreement it entered into with Plaintiff on May 3, 2010, or incur any damages if Plaintiff could present sufficient evidence of breach.

WHEREFORE, MUSC respectfully moves this Court for an order granting it summary judgment as to Plaintiff's sole claim for breach of contract and awarding MUSC such other and further relief as this Court may deem just and proper.

Counsel for MUSC submits a memorandum in support of this motion simultaneously to the filing of this motion.

s/ Bob J. Conley

Caroline Wrenn Cleveland
Bob J. Conley
CLEVELAND & CONLEY, LLC
One Seventy-One Church Street, Suite 310
Charleston, South Carolina 29401
Telephone: (843) 577-9626
ccleveland@clevelandlaborlaw.com
bconley@clevelandlaborlaw.com

ATTORNEYS FOR DEFENDANT

Charleston, South Carolina
March 31, 2023

CERTIFICATE OF SERVICE

This is to certify that on March 31, 2023, I caused to be served a copy of Defendant Medical University of South Carolina's Motion for Summary Judgment by regular mail and by email, addressed as follows:

Jian-Yun Dong, M.D., Ph.D.
71 Delahow Street
Daniel Island, SC 29492
johny.dong@gmail.com

s/ Mark Dundervill
Mark Dundervill
Paralegal

Exhibit 1

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JIAN-YUN (JOHN) DONG, M.D., Ph.D.,

Plaintiff(s)

vs.

THE MEDICAL UNIVERSITY OF
SOUTH CAROLINA

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

14-CP-10-5332

Submitted By: Allan R. Holmes

Address: Gibbs & Holmes, Suite 110, 171 Church Street,
Charleston, SC 29401

SC Bar #: 1576

Telephone #: 843-722-0033

Fax #: 843-722-0114

Other:

E-mail: aholmes@gibbs-holmes.com

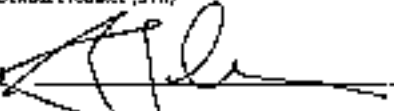
NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)**If Action is Judgment/Settlement do not complete*

- ☒ **JURY TRIAL** demanded in complaint. ☐ **NON-JURY TRIAL** demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Consumer (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☒ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Issue: Case # 20____-CP-_____ ☐ Nurses/Phys Med Mgt (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Stalking/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Chain & Delivery (400) ☐ Condemnation (410) ☐ Eminent Domain (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Equity Pleadings ☐ PCR (500) ☐ Mandamus (510) ☐ Habeas Corpus (520) ☐ Other (599)	Administrative Law/Relief ☐ Reinstatement License (600) ☐ Judicial Review (610) ☐ Relief (620) ☐ Permanent Injunction (630) ☐ Satisfaction Petition (640) ☐ Forfeiture—Consent Order (650) ☐ Other (699)	Judgments/Settlements ☐ Death Sentence (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcripts Judgment (740) ☐ Lit Feuders (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799)	Appeals ☐ Arbitration (800) ☐ Magistrate-Civil (810) ☐ Magistrate-Criminal (820) ☐ Municipal (830) ☐ Probate Court (840) ☐ SCDC (850) ☐ Worker's Comp (860) ☐ Zoning Board (870) ☐ Public Service Commission (880) ☐ Employment Security Comm (890) ☐ Other (899)
Special/Complex Other ☐ Environmental (600) ☐ Automobile Acc. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-Country Acc. (660) ☐ Sexual Predator (610)		

Submitting Party Signature: 

Date: September 2, 2014

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

JIAN-YUN (JOHN) DONG, M.D., Ph.D.,)

Plaintiff,)

vs.)

THE MEDICAL UNIVERSITY OF)
SOUTH CAROLINA,)

Defendant.)

SUMMONS

FILED
SEP 2 2 14 PM 4:29
CLERK OF COURT
JULIE A. HESTRONG

TO: THE DEFENDANT ABOVE NAMED

YOU ARE HEREBY SUMMONED and required to answer the Complaint herewith served upon you and to serve a copy of your Answer to the said Complaint on Plaintiff's attorney, Allan R. Holmes, Esquire, Gibbs & Holmes, 171 Church Street, Suite 110, Post Office Box 938, Charleston, South Carolina 29402, within thirty (30) days after the service hereof, exclusive of the day of such service.

YOU ARE HEREBY GIVEN NOTICE FURTHER that if you fail to appear and defend and fail to answer the Complaint as required by this Summons within thirty (30) days after the service hereof, exclusive of the day of such service, judgment by default will be entered against you for the relief demanded in the Complaint.

GIBBS & HOLMES

September 2, 2014

By: 
Allan R. Holmes
Suite 110, 171 Church Street
Charleston, South Carolina 29401
Phone: 843-722-0033

ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

LIAN-YUN (JOHN) DONG, M.D., Ph.D.,)
Plaintiff,)
vs.)
THE MEDICAL UNIVERSITY OF)
SOUTH CAROLINA,)
Defendants.)

COMPLAINT

FILED
2016 SEP -2 PM 4:29
CLERK OF COURT

The above-named Plaintiff, by his undersigned counsel, complains of the above-named Defendant and alleges that:

1. Plaintiff is a citizen and resident of Charleston County, South Carolina;
2. Defendant is a body corporate and politic organized under the laws of South Carolina with authority to sue and be sued.
3. Plaintiff holds Doctor of Philosophy and Doctor of Medicine degrees, is an internationally renowned scientist, and served as a tenured faculty member and employee of the Defendant from 1998 until March 31, 2012.
4. Disputes between the Plaintiff and Defendant led to their entry into an Agreement dated May 3, 2010. A copy of said Agreement is attached hereto as Exhibit On May One and its terms are incorporated herein by reference.
5. On, or about, September 29, 2011, the Defendant breached the May 3, 2010, Agreement. A summary of some of the breaches of the Agreement is provided by the September 29, 2011, letter of the Defendant authored by its agents, Mark S. Sothman, Ph.D., and Vice President for Academic Affairs and Provost, and Stephen M. Lanier, Ph.D., Associate Provost

for Research. A copy of this letter is attached as Exhibit Two and incorporated fully herein. *Inter alia*, these breaches violate the May 3, 2010, Agreement, and constitute actionable breaches of contract. They include:

a. The placement of the Plaintiff on administrative leave and denying him all his duties and responsibilities as a faculty member of the Defendant;

b. The complete failure to relocate his laboratory equipment and the destruction of his laboratory research materials thereby depriving the Plaintiff of his research, the opportunity to conduct research, the value of his research and diminished his ability to conduct research and obtain research funding and continue or advance his position at another university.

c. The denial to him of this right to conduct research under the auspices of the National Institutes of Health and other funding agencies, and the destruction of grant activities which he had already secured;

d. The failure to return to the Plaintiff various biological materials which were wrongfully taken from the Plaintiff by the Defendants and used by other employees of the Defendant;

e. The failure to support Plaintiff's applications for research funds;

f. The blocking of the Plaintiff's anticipated research at the biotech firm, GenPhar, Inc., by supporting an unlawful take over of GenPhar, Inc. *Inter alia*, the Defendant, through its agents, contributed to GenPhar shares of stock. These shares included those which the Plaintiff had obtained for the Defendant, and included shares owned by the Plaintiff. These actions caused the full control of GenPhar, Inc., to be given to a German national unlawfully, and unlawfully deprived the Plaintiff of the value of his shares while destroying his efforts to conduct research.

6. The foregoing acts and omissions of the Defendant constitute its breach of its Agreement with the Plaintiff, and have proximately caused damages to the Plaintiff in an amount to be determined at trial.

DEMAND FOR JURY TRIAL.

7. Plaintiff demands a trial by jury on all claims.

WHEREFORE, plaintiff requests that this Court:

- a. Set this case down for trial by jury;
- b. Enter Judgment in favor of the Plaintiff in an amount of damages to be determined at trial;
- c. Tax costs and fees against the Defendant;
- d. Grant such other and further relief as is deemed just and proper.

GIBBS & HOLMES

September 2, 2014

By: 
Allan R. Holmes
Suite 110, 171 Church Street
Charleston, South Carolina 29401
Phone: 843-722-0033

ATTORNEYS FOR PLAINTIFF

EXHIBIT ONE

A Final Separation Agreement between
The Medical University of South Carolina including its College of Medicine,
and Dr. Jian-yun Dong, Professor of Microbiology and Immunology

This Final Separation Agreement between The Medical University of South Carolina including its College of Medicine (the "University"), and Jian-yun ("John") Dong, MD, PhD, ("Dr. Dong") Professor of Microbiology and Immunology, is entered into this 3rd day of May, 2010.

By their entering into this final agreement, the University agrees that Dr. Dong's compensated appointment as Professor of Microbiology and Immunology will continue through March 31, 2012. Dr. Dong agrees to withdraw any and all pending or future grievance(s) for actions prior to the date of this agreement (above) and agrees that this final separation constitutes full settlement of any and all past grievances or claims that Dr. Dong may have against the University, its employees and against any and all of its affiliated entities up to and including the date of this agreement.

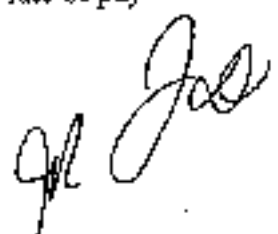
During the term of this final agreement, the University will continue Dr. Dong's employment, faculty appointment and make scheduled salary payments to him. In consideration, Dr. Dong acknowledges that this final agreement constitutes his irrevocable resignation of his tenured faculty appointment to be effective no later than March 31, 2012. Dr. Dong will retain his faculty appointment, tenure and title until the effective date of his resignation.

The University retains the right to provide him a modified, non-tenure faculty appointment and title after March 31, 2012, in light of any continuing mutual benefits that may accrue to the parties.

In his execution of this final separation agreement, Dr. Dong understands that he is advised to seek legal advice before signing any final document, and shall have forty-five (45) days after the execution of the agreement to revoke it.

Payment of Faculty Compensation

The University will pay Dr. Dong his current level of monthly compensation through March 31, 2012. This amount will equal but not exceed his effective annual rate of pay (\$105,313.00/year) at November 1, 2009.



Releation of Faculty Appointment and Faculty Duties

The University agrees that Dr. Dong will retain his current appointment and rank through March 31, 2012. Dr. Dong's primary appointment will be in the Department of Biochemistry with a secondary appointment in the Department of Microbiology and Immunology. During this time he will receive annual evaluations and receive and respond to critical inputs and comply with reasonable faculty duties and requests. The University, in turn, acknowledges that Dr. Dong will work predominantly off site in the Charleston area and will travel for academic and commercial purposes.

Dr. Dong agrees to carry his customary share of teaching, lecturing and instructional responsibilities as assigned and communicated to him in writing by the chairman of each department.

During this period Dr. Dong may use the title "Director of Biotherapeutics and Vaccine Development."

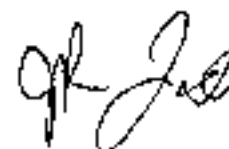
Dr. Dong is free to seek academic and research collaborations, including secondary appointments, within MUSC during the remainder of this agreement. Dr. Dong may consult with Drs. Yusuf Hannun and James Norris regarding any proposed change of primary department. Any and all MUSC academic appointments are understood to be term limited, not to extend beyond March 31, 2012 or the date of his employment at another institution or company, whichever may come first.

Irrevocable Resignation effective no later than March 31, 2012

Dr. Dong agrees and commits to submitting an Irrevocable Letter of Resignation effective no later than March 31, 2012. He may submit this letter at any time. Should Dr. Dong accept fulltime employment, including a faculty appointment, at another institution or company prior to March 31, 2012, then the agreed upon payments and continuing appointment will cease at the time of his first day of paid employment. Dr. Dong may request the University's continuation of a modified, non-tenure appointment. The University retains the right to bestow upon him such appropriate title after that time in light of any continuing mutual benefits that may accrue to the parties.

Irrevocable Resignation under this agreement

Should Dr. Dong not elect to send a formal letter of resignation either upon assuming full-time employment at another institution or company or at the end of March 31, 2012, this agreement is recognized by Dr. Dong and the University as an irrevocable resignation effective the time of his first day of paid employment at another institution or March 31, 2012, whichever is sooner.



Access to Campus Research Laboratories and Resources

Dr. Dong agrees to relinquish his future use of approximately 700 sq. ft. of laboratory space after the listed equipment and materials (Inventory list is attached as Exhibit A) have been transferred to his new space. This allows the University to reassign space unused or underused for the needs of other researchers during a time of building renovations.

Dr. Dong must submit an additional list of Vector Core equipment items (to be attached as Exhibit B and approved by the University) he is requesting no later than 10 days after the date of entry into this agreement. The University intends to equip a temporary Vector Core facility in so far as the temporary relocation of that equipment does not disadvantage the grant funded research of other faculty members.

In lieu of rental payments for space in the GenPhar Building (once occupied), the University will waive the direct charging of Dr. Dong's salary to any grants or contracts he receives during the period of this agreement. The University will cost-share this expense in compliance with federal rules and regulations.

The University will continue to provide the customary fiscal support and oversight for research awards received through MUSC and the Division of Basic Science.

The University agrees to relocate at its expense the equipment listed in Exhibit A. It will also relocate at its expenses such Exhibit B equipment as it may evaluate from the remaining Vector Core equipment which can be temporarily relocated without jeopardizing other on-going funded faculty researchers. This includes equipment which Dr. Dong purchased from UCSF and for grants on which Dr. Dong was the named original PI as permitted by law and University policy to the GenPhar location, provided that all certificates of occupancy, governmental permits and insurance coverages are in place for that site. Other items purchased and owned by MUSC with Vector Core NIH and HCC funding shall remain on MUSC's campus, except as listed in Exhibit A, or in the approved Exhibit B request. All equipment shall remain within the MUSC property accounting system. Likewise, any equipment purchased through extramural grants written by Dr. Dong as the sole PI and which was in Dr. Dong's laboratory at the time of relocation to the 700 sf laboratory space (including listed freezers and refrigerators also located in nearby equipment rooms of CSB) shall be relocated to GenPhar in 30 days from the effective date.

Dr. Dong's access to campus facilities and to their use shall not be limited during his remaining years of appointment and employment. All normal laboratory policies and safety practices are to be followed by all faculty members and technicians, including Dr. Dong and his team. All parties acknowledge that this agreement does NOT supersede the University's normal laboratory policies and safety practices.



Equipment relocated to GenPhar under this agreement will be returned to the MUSC campus at the University's expense at the end of Dr. Dong's appointment, unless otherwise permitted by existing university policies and external sponsor policies and approvals.

Dr. Dong will transfer any research material including genetic materials, DNA constructs, viral and plasmid vectors, antibodies, and enzymes to Dr. Dong's new research location for his continued research, including the materials which were provided by Dr. Dong to the Vector Core for services while Dr. Dong was the Director. Any vectors provided to faculty members during the operation of the Vector Core will remain with the respective faculty members who acquired the product.

In recognition of his offer to perform Vector Core services from his off-campus location for the approximate twenty-three month interval above, the University will pay Dr. Dong a sum of \$30,000 directly from the Chairman's budget in the Department of Microbiology and Immunology, to be paid no later than day 50 following the signing of this agreement. These payments will enable him to perform Vector Core functions and to begin to replicate and to re-propagate vectors which have been lost.

At the direction of Dr. Yusuf Hannun, Mr. Scott Reid and Mr. Ronald Bycroft will attempt to locate any vectors or similar materials shared with other investigators for re-propagation by Dr. Dong and will attempt to locate written, enduring, hard-copy records which have been lost. This will occur in the 45 day window above. Any additional items located after that time of search will also be provided Dr. Dong.

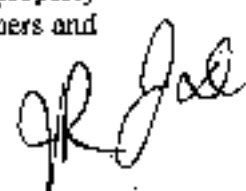
Active Grants at the Time of Resignation

The University agrees to relinquish any and all active, commercially funded research awards received by Dr. Dong to Dr. Dong as permitted by the sponsor upon his resignation. Active, federally funded research awards received will be relinquished directly back to the federal agencies as obligated in the award agreements.

Enduring grant materials, records, lab books and any other documentation required by law or University policy, will be secured, catalogued and maintained by MUSC, in the office of its General Counsel. Dr. Dong may make copies of his enduring grant materials, records, and lab books. Listed laboratory equipment and computers, printers may be released to Dr. Dong, only as permitted under existing university policies and guidelines.

MUSC will cover Dr. Dong's legal fees and other costs in this matter, through a second one-time payment of \$20,000, also to be made to Dr. Dong no later than day 50 following the signing of this agreement.

All parties enter this agreement in good faith and with respect for the intellectual property and scientific contributions of all current, past or future students, faculty researchers and university administrators.



The Parties have set their hand and seal this 3rd day of May 2010.

Medical University of South Carolina

Witness

By: 

J.G. Reeves, MD
Vice President for Medical Affairs
and Dean, College of Medicine

Witness

By: 

Dan-yun Dong, MD, PhD, MD

Exhibit A is to be attached and is to be initialed and dated by both parties.

Exhibit B to be provided by Dr. Dong no later than 10 after the signing of this agreement

Descriptions Inventory B5B 211 Lab	Funding	MUSC Tag #
Desk chairs 1 each	Startup	
Regulator in use on CO2 cylinder	No tags	
Epson scanner	No tags	
Compaq computer	UCSF	
Igloo Cooler Blue and White	No tags	
Imac broken Two each	Startup	
Lamp for Luminator Mod v16H	No tags	
Picker	Paddock	
Power Mac G5	GenPhar	
rotor buckets 3 each	No tags	
Two foot stools	No tags	
UVP Trans Luminator	Paddock	83003591
Apple Personnel Laser Writer	No tags	
BRL Mod 250 Electrophoresis systems	No tags	
Corning Stirrer PC-363	Arrigo	
Cylinder Regulator Gauges (3 each)	No tags	
Fisher FB 105 Electrophoresis systems	No tags	
Fisher microprobe	No tags	
GCA Precision Water bath	No tags	
Imac and Keyboard and two mice	Startup	
Pipet-Aid Lot # 276	No tags	
Pipet-Aid Lot 221	Arrigo	
keyboards 4 and 4 mice	No tags	
Book cases Mahogany 72" high	Startup	
Fellowe Shredder	Startup	
Two Book cases Mahogany each	Startup	
80C ULT Freezer two door	Vector Core	83083054
Barnstead NanoPure-Diamond	Vector Core	83085290
Ball Stirrer	No tags	
Bio-Rad Biologic BioFrac Fraction collector	Vector Core	
Bio-Rad Bio-Lytic LP port of 21 above	Vector Core	
Boekel Microcooler	Paddock	83023135
Cryo Biological Storage System JR not in use	No tags	
Fisher Biotek Hybridization Incubator	Startup	
Fisher Dry Bath Incubator...	No tags	83076058
Fisher ISO temp 1250	Vector Core	
Fisher ISO temp 205	Vector Core	
Fisher Vortex Genie	No tags	
Fisher Vortex-gene	Paddock	
Forma Scientific -80 Freezer	UCSF	
Forma Water Jacketed Incubator	Startup	
G3 computer /keyboard/monitor	Startup	
Kenmore Chest Freezer Large	Dong NIH	
Kenmore Freezer	Dong NIH	
Kenmore Microwave Quiet Touch	Dong NIH	
Kenmore Refrigerator/Freezer	Startup	
Kenmore under the counter refrigerator	UCSF	
Parameter Select SN 030	No tags	
Power Mac G4/monitor/keyboard	Startup	
VWR Under the counter refrigerator	UCSF	
Precision Water bath	UCSF	



3 Drawer Lab file cabinet (HON)	No tags	
ALPS Printer and box of ribbons Mod 230C	No tags	
Annara Microwave Range	82027-01	
Apple II book	Genphar	83082919
Apple II book no battery	Genphar	
Apple monitor	Startup	
Bio-Rad Gene Pulsar	Arrigo	83075041
BMG Fluostar with Dell computer	Vector Core	83072286
Boeck Microcooler	Paddock	83075052
Boeck Microcooler	Amgo	83025050
Bio-Rad Trans Slot 8U	No tags	
Branson 450 Suncofer	UAB	
Camera connected to Scope above (HBO 100)	Vector Core	
Computer in Office	No tags	
Corning Stirrer/Hot Plate	UCSF	
Cryo Biological Storage System 6 Plus	Vector Core	
Cryo Biological Storage System 6 plus not in use	Startup	
Dell Computer & monitor 17"	No tags	
Dell monitor 24"	Genphar	
Doluxa Mixye S8220	No tags	
Desk And Chair	Startup	
Eppendorf Centrifuge 5402	Paddock	83022826
Eppendorf Centrifuge 5415C	Paddock	83031565
Eppendorf Centrifuge 5415C	Arrigo	83031566
Eppendorf Centrifuge 5417C	Paddock	83066787
Eppendorf Centrifuge 5417R	Paddock	83052851
Eppendorf Easytip Pipette	Vector Core	
Eppendorf Easytip Pipette	UCSF	
Eppendorf pipette P10 = 10 each	for Core=3 Dong NIH=4	
Eppendorf pipette P100 = 1 each	No tags	
Eppendorf pipette P1000 = 3 each	No tags	
Eppendorf pipette P20 = 7 each	for Core=5 Dong NIH=4	
Eppendorf pipette P200 = 5 each	vector Core=4	
Equation Temp Blok	UCSF	
File Cabinet	Startup	
Fluoripette Digital 5-50 ul	UCSF	
Fisher Dry bath incubator	Vector Core	
Fisher Electrophoresis Systems	UCSF	
Fisher ISO Temp	No tags	
Fisher ISO temp 125D	No tags	
Fisher Marathon 16 KM	vector core	
Fisher Mini Vortexer	UCSF	
Fisher pH Meter Mod AB15	UCSF	
Fisher Regular Mod 10-572-E	No tags	
Fisher Sterno/ hotplate	UCSF	
Fisher Water bath 205	UCSF	
Fisher Waterbath	Vector Core	83075067
Fisher Waterbath 220	UCSF	
Forma Chest freezer (locked)	UCSF	
Forma Orbital Shaker	UCSF	
Forma Water Jacketed incubator	Kalivas	
Totodyno UV	No tags	

Gallen Kamp Orbital Incubator	Ganphar	
General Electric Reader	No tags	
Harvard Trip Balance (2kg - 5 lb) two each	1=UCSF	
Hot Plate	Paddock	83075048
Hot Plate Nuove II	No tags	
HP 4050N printer	Startup	
IEC Centrx GL3R	Paddock	83073688
IEC HN-SII Centrifuge	UCSF	
IEC Micromax	UCSF	
IEC Micromax	No tags	83073687
IEC micromax	UCSF	
IMAC	Startup	83074998
IMAC	Startup	83075046
IMAC /keyboard	Startup	
Imac and Keyboard S/N YMO1112QJ88	Donation/28000	83075063
Kenmore 19 Freezer (locked)	Dong NIH	
Kenmore Chest Freezer small (1)	Dong NIH	
Kenmore Freezer Chest Small (2)	UCSF	
Kenmore microwave	Vector Core	
Kenmore Ref/freezer	No tags	
Kenmore Refrigerator / Freezer	No tags	
Kenmore Refrigerator/Freezer	No tags	
Kenmore refrigerator/freezer 293	UCSF	
Kodak Carsuss 80	No tags	
MJ Research PTC-200 DNA Peltier Thermal Cycler	Vector Core	
OHAUS Balance	UCSF	
Olympus CK2 Microscope	Vector Core	83037762
Opti-Quip Mod 1200 power supply	Paddock	83075085
Orbital Shaker	Paddock	83075037
Panasonic Phone with Answering machine	No tags	
Parkin Emer Gene AMP PCR system 2400	Paddock	83049405
Parkin Emer Gene AMP PCR system 9600	Startup	83027077
Picker Reader	Paddock	
Pipet Aid Lot 205	Startup	
Pipet Aid Lot 205	TAL (Ken's)	
Pipet Aid pipette SN 35452	UCSF	
Pipet-Aid Sn # 21578	UCSF	
Pipelman pipette P10 = 1 each	No tags	
Pipelman Pipette P100 = 1 each	No tags	
Pipelman Pipette P1000 = 9 each	No tags	
Pipelman Pipette P1000 = 8 each	No tags	
Pipelman Pipette P20 = 20 each	vector Core=3	
Pipelman Pipette P200 = 9 each	No tags	
Power PC & monitor plus old scanner and CD Rom	Startup	
Power PC and 5 keyboards in a box	No tags	
Precision Standard Balance	Paddock	83081588
Precision Waterbath	Paddock	83075039
Precision Waterbath	Paddock	83075042
Precision Waterbath Mod f81	Paddock	83075047
Printer	Startup	
Safety Glass two pair	No tags	
Sevent SpeedVAC SC100	Paddock	83075049



Exhibit A

MUSC Dr. Dong Agreement

Page 4, 5/3/2010

Sears Seal n Save	No tags	
Sponger	UCSF	
Steel Cart (Lake side Inc.)	No tags	
Stratagene RoboCycler 40	UCSF	
Survey Meter (Ludlum MD23)	UCSF	
Two Chairs	Startup	
Vortex	No tags	
Vortex-2 Genie	Arrigo	
Vtech phone base with three phones	GenPhar	
VWR 1230 Waterbath	UCSF	
VWR 50-200ul pipette	UCSF	
VWR Rocking Platform Mod 100	Vector Core	83075080
Wooden 6 shelf book case	Startup	
Zolss Microscope 200 and power supply	Vector Core	83082917
Zip 250 drive 3 each	Startup	



EXHIBIT TWO



Office of the
Vice President for Academic Affairs
and Provost
Colcock Hall
179 Ashley Avenue
MSC 002
Charleston SC 29425-6020

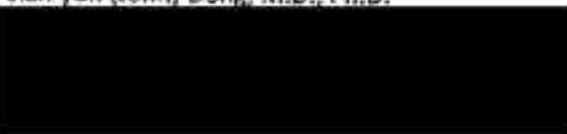
Tel 843 792 3031
Fax 843 792 5110
www.musc.edu

PERSONAL AND CONFIDENTIAL

REVISION REFLECTING CORRECTED DEPARTURE
DATE OF MARCH 31, 2012 IN PARAGRAPH #1

October 3, 2011

Jian-yun (John) Dong, M.D., Ph.D.



RE: Administrative Leave

Dear Dr. Dong:

Please find attached, revised correspondence to you dated September 29, 2011, which reflects the corrected departure date of March 31, 2012, as stipulated in the May 3, 2010 Final Separation Agreement with Dean Reves (See paragraph #1).

Sincerely,

Mark S. Sothmann, Ph.D.

Vice President for Academic Affairs and Provost

Stephen M. Lanier, Ph.D.

Associate Provost for Research

MSS/jl



Office of the
Vice President for Academic Affairs
and Provost
Colcock Hall
179 Ashley Avenue
MSC 002
Charleston SC 29425-0020

Tel 843 792 3051
Fax 843 792 5110
www.musc.edu

PERSONAL AND CONFIDENTIAL

**REVISION REFLECTING CORRECTED DEPARTURE
DATE OF MARCH 31, 2012 IN PARAGRAPH #1**

September 29, 2011

Jian-yun (John) Dong, M.D., Ph.D.

RE: Administrative Leave

Dear Dr. Dong:

After notification of your indictment by the United States Government, pursuant to MUSC policies Dean Etta Pisano notified you by letter on September 20, 2011 that you had been placed on administrative leave with pay. This administrative leave applies to all of your duties and responsibilities as a faculty member at MUSC and will continue until the charges against you are resolved, or until your agreed upon departure date of March 31, 2012 as stipulated in the May 3, 2010 Final Separation Agreement with Dean Reves.

In your Separation Agreement you relinquished use of your laboratory space at MUSC and the University agreed to relocate certain equipment to the GenPhar Building. Due to a change in ownership at GenPhar, we have been unable to relocate the equipment and it has remained in a secured space on campus. As you know, the area currently housing your laboratory equipment is scheduled for renovation beginning in October 2011. Therefore, Scott Reid in the Department of Biochemistry and Molecular Biology will coordinate an inventoried relocation of your lab equipment and freezers to a secure location. Any access to this material during the period of administrative leave can be coordinated through Scott Reid with the approval of the Associate Provost for Research.

We understand that you have received positive feedback regarding a pending grant application you submitted to the National Institutes of Health. While on administrative leave you cannot perform duties as a MUSC faculty member and according to your Separation Agreement any active federally funded research awards to MUSC would be relinquished to the funding agency upon your March 31, 2012 departure. Thus, it may be prudent to postpone accepting any grants or delaying the start date until you have made arrangements to start the grant at another institution.

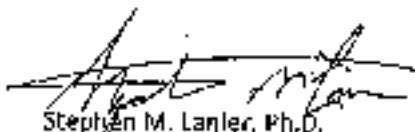
Dr. Dong
September 29, 2011
Page 2

Please contact Dr. Lanier if you have any questions.

Sincerely,



Mark S. Sothmann, Ph.D.
Vice President for Academic Affairs and Provost



Stephen M. Lanier, Ph.D.
Associate Provost for Research

MSS/SL

STATE OF SOUTH CAROLINA

COUNTY OF CharlestonJohn Dony

Plaintiff

The Medical University

Defendant

IN THE COURT OF COMMON PLEAS

____ JUDICIAL CIRCUIT

CASE NO.: 2016-CP-10-06623MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff's Attorney:

____ Bar No. ____

Address:

Phone: 843-941-2332

E-mail: ____ Other: ____

Defendant's Attorney: Bob Conley

____ Bar No. ____

Address:

Phone: ____ Fax: ____
E-mail: Bob Conley @ ClevelandKaborlaw.com Other: ____☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Protective orderEstimated Time Needed: 1 Court Reporter Needed: ☐ YES ☒ NO

SECTION II: Motion/Order Type

☒ Written motion attached☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff ☐ Defendant Date submitted: ____

SECTION III: Motion Fee

☐ PAID - AMOUNT: \$ 25.00☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support☐ Domestic Abuse or Abuse and Neglect☐ Indigent Status ☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act ☐ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)☐ Proposed order submitted at request of the court, or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: ____

☐ Other: ____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached
order.☐ Other: ____

JUDGE CODE: ____

Date: ____

CLERK'S VERIFICATION

Collected by: ____ Date Filed: ____

☐ MOTION FEE COLLECTED: \$ ____☐ CONTESTED - AMOUNT DUE: \$ ____

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

John Dong, M.D., Ph.D.,

Plaintiff,

v.

The Medical University of South
Carolina,

— Defendant,

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2016 CP 10-06683

**MOTION FOR PROTECTIVE
ORDER**

FILED

DEC 21 2022

JUL E J. ARMSTRONG
CLERK, C.P. & G.S.

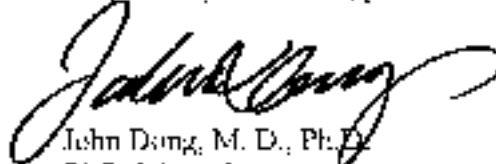
Plaintiff in the above-captioned case, John Dong, M. D., Ph.D., hereby submit this Motion for Protective Order. Plaintiff requests the Court's protection for a period of forty-five (45) days to be free of proceedings, and court process to be continued to the end of the protective period. The ground for the Court to grant this Motion is that Plaintiff is granted an appeal in the US Court of Appeals for the Fourth Circuit in an unrelated Federal case. A brief is due in forty-five (45) days.

The Appeal in the Federal Appellate Court is assured by the fundamental rights and has the priority and staying power over all lower court proceedings. The protection is necessary for Plaintiff to focus his effort on the Federal appeal.

A copy of the Transmission Sheet to the US Court of Appeals is attached for reference.

December 21, 2022
Charleston, South Carolina

Respectfully submitted, pro se,



John Dong, M. D., Ph.D.
71 Delshaw St
Charleston, SC 29403
Email: john.dong@gmail.com
Phone: 843-991-2322

CERTIFICATE OF SERVICE

This is to certify that I have on this 21st day of December 2022, served a copy of the Plaintiff's Motion for Protective Order to the ECF system, which will notify all parties electronically. In addition, a copy of the Motion is served via Email at bconley@clevelandlaborlaw.com and United States Mail Services addressed to the following:

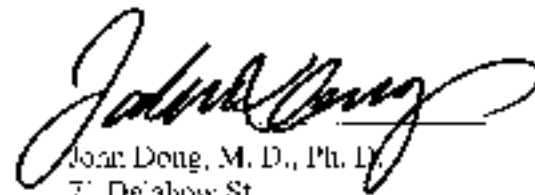
Bob J. Conley, Esq.
Cleveland & Conley LLC
171 Church Street, suite 310
Charleston, South Carolina 29401

FILED

DEC 41 2022

JULIE J. ARMSTRONG
CLERK, C.P. & G.S.

December 21, 2022



Joan Dong, M. D., Ph. D.
71 Delahow St
Charleston, SC 29492
Email: juhny.dong@gmail.com
Phone: 843-991-2332

APPEAL TRANSMITTAL SHEET (non-death penalty)

Transmitted to 4CCA of notice of appeal filed: <u>12/16/22</u> ☐ First NOA in Case ☒ Subsequent NOA-same party ☐ Subsequent NOA-new party ☐ Subsequent NOA-cross appeal ☐ Paper ROA ☐ Paper Supp. Vols. Other:	District: South Carolina Division: Charleston Caption: USA v. Jian-Yun Dong	District Case No.: 2:11-cr-00511-BHH 4CCA No(s), for any prior NOA: 17 4267, 17 4268, 18 4852, 18 4611 4CCA Case Manager: Kirsten Hancock
Exceptional Circumstances: ☐ Bail ☐ Interlocutory ☐ Recalcitrant Witness ☐ Other		
Confinement-Criminal Cases: ☐ Death row-use DP Transmittal ☐ Recalcitrant witness ☐ In custody ☐ On bond ☐ On probation Defendant Address-Criminal Cases: 41 Delano St. Charleston, SC 29402	Fee Status: ☐ No fee required (USA appeal) ☐ Appeal fees paid in full ☒ Fee not paid Criminal Cases: ☒ District court granted & did not revoke CJA status (continues on appeal) ☐ District court granted CJA & later revoked status (must pay fee or apply to 4CCA) ☐ District court never granted CJA status (must pay fee or apply to 4CCA) Civil, Habeas & 2255 Cases: ☐ Court granted & did not revoke IFP status (continues on appeal) ☐ Court granted IFP & later revoked status (must pay fee or apply to 4CCA) ☐ Court never granted IFP status (must pay fee or apply to 4CCA)	
District Judge: Hon Bruce Howe Hendricks	PLRA Cases: ☐ Proceeded PLRA in district court, no 3 strike determination (must apply to 4CCA) ☐ Proceeded PLRA in district court, determined to be 3-striker (must apply to 4CCA)	
Court Reporter (list all): Debbie Potowski Amy Diaz Lisa Smith Coordinator: Billie Goodman	Sealed Status (check all that apply): ☐ Portions of record under seal ☐ Entire record under seal ☐ Party names under seal ☐ Docket under seal	
Record Status for Pro Se Appeals (check any applicable): ☒ Assembled electronic record available upon request ☐ Additional sealed record available upon request ☐ Paper record or supplement available upon request ☐ No in-court hearings held ☒ In-court hearings held – all transcript on file ☐ In-court hearings held – all transcript not on file Other:	Record Status for Counselled Appeals (check any applicable): ☐ Assembled electronic record available upon request ☐ Additional sealed record available upon request ☐ Paper record or supplement available upon request ☐ No in-court hearings held ☐ In-court hearings held – all transcript on file ☐ In-court hearings held – all transcript not on file Other:	

 Deputy Clerk: Virginia Druce

 Phone: 843-679-1407

 Date: 12/20/2022

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JIANGYUN (JOHN) DONG, M.D., Ph.D.,

Plaintiff,

vs.

THE MEDICAL UNIVERSITY OF SOUTH
CAROLINA

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 16-CP-10-06683

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET****Plaintiff's Attorney:**

John Dong, pro se, Bar No. _____

Address:

71 Delahow Street,
Charleston, SC 29492

Phone: 843-991-23321 ax _____

E-mail: johny.dong@mc.com/Other: _____

Defendant's Attorney:

Bob J. Conley, Bar No. _____

Address:

171 Church Street, Suite 310
Charleston, SC 29401

Phone: 843-577-9626 Fax _____

E-mail: bconley@clevelandlabo-law.com/Other: _____

☐ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)☒ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)**SECTION I: Hearing Information**

Nature of Motion: Motion for Protective Order/reconsideration

Estimated Time Needed: 0

Court Reporter Needed: ☐ YES ☒ NO**SECTION II: Motion/Order Type**☒ Written motion attached☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff ☐ Defendant

January 13, 2023

Date submitted

SECTION III: Motion Fee☐ PAID - AMOUNT: \$ _____☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support☐ Domestic Abuse or Abuse and Neglect☐ Indigent Status ☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act ☐ Post Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)☐ Proposed order submitted at request of the court or:

reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____**JUDGE'S SECTION**☐ Motion Fee to be paid upon filing of the attached
order.☐ Other: _____

JUDGE CODE: _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____☐ CONTESTED AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
John Dong, M.D., Ph.D.,)
Plaintiff,)
v.)
The Medical University of South)
Carolina,)
- Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-10-06683

**MOTION FOR
RECONSIDERATION OR
RENEWED REQUEST FOR
PROTECTIVE ORDER**

2023 JAN 23 PM 12:00
CLERK OF COURT

Plaintiff in the above-captioned case, John Dong, M. D., Ph.D., hereby submit this Motion for Reconsideration or a Renewed Request for Protective Order. Plaintiff requests the Court's to reconsider its order denying Plaintiff's request for protection for a period of forty-five (45) days because Plaintiff is granted and ordered to submit his initial Brief in the United States Court of Appeals for the Fourth Circuit in an unrelated case. A brief is due in forty-five (45) days.

The Grounds for the Court to reconsider its decision is set forth as the following:

1. The court erred in not considering that the Appeal in the Federal Appellate Court is assured by the fundamental rights and has the priority and staying power over all lower court proceedings. The protection is necessary for Plaintiff to focus his effort on the Federal appeal. This sufficiently constitutes good cause for the protection sought.
2. The Court denied the Motion based on erroneous facts and reasons, none of which overweigh the reasons for protective order as stated above, or court's obligation to maintain a fair Due Process under the law.

(1) This case is not only case prior 2016 that is still pending. The extensive delays are caused by the Defendants in stonewalling the discovery, not providing required documents under

the discovery rules. Yet, the Court has granted 100% Defendant's motions, including protective orders for as trivial as Counsel's vacations.

(2) Plaintiff did not file an appeal of Honorable Justice Toel's schedule order but the previous judge's order denying Plaintiff's Motion to Compel for documents, and stopped any further discovery for documents, even though, Defendant refused to produce any of the documents requested. Hampering discovery not only should be sanctioned by the court under the rules, but also is the number one issues for an interlocutory appeal. Furthermore, the appeal did not affect the deposition schedule because this Court issued an order that "the schedule order is in full force" despite the interlocutory appeal, and the Deposition schedule provided by Defendant was for after the Christmas and New Year holidays.

In any case, excuse Plaintiff's right should not be a reason to punish him by denying his request for a protective order based on good cause.

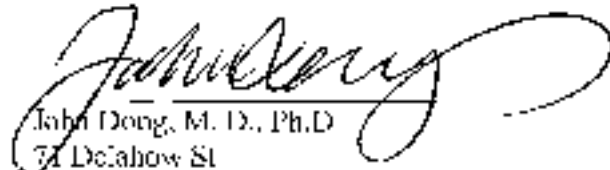
(3) The Court completely relied on Mr. Conley's misrepresentation of the fact claiming that Plaintiff noticed thirteen depositions for the month of January 2023, before filed his Motion for Protection. The Notices were sent by a mistake, and Mr. Conley was in discussion with Dr. Dong for refiling the notice with different dates. Even more importantly, Dr. Dong noticed Mr. Conley as soon as he received the Brief Order from the US Appellate court. Mr. Conley was fully aware that deposition notice for later dates will be sent in light of the Briefing Order by a high court while he misrepresented the facts to the Court. See attached email from email communications with Mr. Conley.

In summary, the Court's denying of Plaintiff's request for protective order was based on incorrect facts and failure to consider that a Brief Order by the US Court of Appeals to the Plaintiff is a **valid reason** for a protective order. Plaintiff respectfully requests the Court to reconsider its

decision and grant the Motion for Protection to maintain a fair and impractical judicial process.

January 13, 2023
Charleston, South Carolina

Respectfully submitted, pro se,

A handwritten signature in black ink, appearing to read "John Dong", written over a horizontal line.

John Dong, M. D., Ph.D
34 Delahow St
Charleston, SC 29402
Email: johny.dong@gmail.com
Phone: 843-991-2332

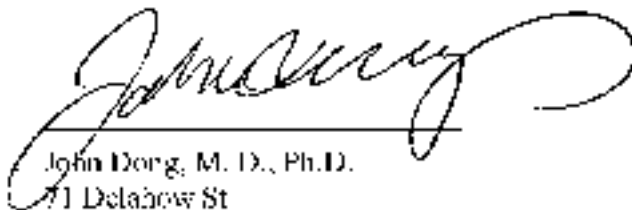
CERTIFICATE OF SERVICE

This is to certify that I have, on this 13th day of January 2023, served a copy of the Plaintiff's Motion for Protective Order to the ECF system, which will notify all parties electronically. In addition, a copy of the Motion is served via email at bconley@clevelandlaborlaw.com and United States Mail Services addressed to the following:

Bob J. Conley, Esq.
Cleveland & Conley LLC
171 Church Street, suite 310
Charleston, South Carolina 29401

FILED
2023 JAN 23 PM 12:07
CLERK OF COURT

January 13, 2023



John Dong, M. D., Ph.D.
71 Delahow St
Charleston, SC 29492
Email: johny.dong@gmail.com
Phone: 843-991-2332



Bob Conley

Jan 5, 2023, 1:19 PM
(8 days ago)

to me

Dr. Dong:

In follow up to emails below, please provide all your available dates in February so I may begin working to reschedule the depositions of MUSC employees you previously noticed. Because it will take some time an effort, and because my calendar the calendars of those you wish to depose will begin to fill for February, I need all your available dates as soon as possible. In the interim, and consistent with your December 22 email below, I have notified the current MUSC employees that their depositions will be rescheduled.

Thank you and I look forward to receiving your available dates in February.

Bob J. Conley
CLEVELAND & CONLEY, L.L.C.
171 Church Street, Suite 310
Charleston, South Carolina 29401
Telephone: (843) 577-0626
Facsimile: (843) 577-6672
www.clevelandlaborlaw.com

Dong v. MUSC

mailto:



Bob Conley

Dec 22, 2022,

10:29 AM

to me, Chukwuzitefu

Dr. Dong:

See the attached email sent to you on December 15 providing the last known addresses for Dr. Lanier, Mr. Reads, and Ms. Gladden. Until your deposition notices provided earlier this week, I was not aware you intended to depose Dr. Roozen. I will obtain and provide Dr. Roozen's last known address. I have also attached the email I sent to you yesterday regarding your deposition notices to make sure you received it.

Thank you for emailing a copy of your Motion for Protective Order filed yesterday, December 21, 2022.

Bob J. Conley
CLEVELAND & CONLEY, L.L.C.
171 Church Street, Suite 310
Charleston, South Carolina 29401
Telephone: (843) 577-9626
Facsimile: (843) 577-6672
www.clevelandiaoorlaw.com

CONFIDENTIAL & PRIVILEGED Unless otherwise indicated or obvious from the nature of the following communication, the information contained herein is attorney-client privileged and/or confidential information/work product. The communication is intended for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error or are not sure whether it is privileged, please immediately notify us by return e-mail and destroy any copies, electronic, paper or otherwise, which you may have of this communication.

From: John Dong <johnny.dong@gmail.com>
Sent: Thursday, December 22, 2022 10:15 AM
To: Poswal Chukwuzitelu <Cposwal@sccourts.org>;
Bob Conley <bconley@Clevelandlaborlaw.com>; Toal, Jean <jtoal@sccourts.org>
Subject: Motion for protective order

Dear Mr. Conley,

I have filed a motion for a protective order because of a time-sensitive appeal, see attached.

In addition, please provide me with the last known addresses of Lanier, Reads, Gladden, and Roozen. They all receive benefits from MUSC, and they do have employment relationships with MUSC, especially since Lanier was a tenured professor. Their employments with MUSC are no different from those of Dr. Reves and Dr. Norris. I will get a formal ruling from the Court and have the issue preserved.

Sincerely,

John Dong, M.D., Ph.D.

Phone: (843)-991-2332

2 Attachments • Scanned by Gmail



John Dong <johnny.dong@gmail.com>

Dec 22, 2022,
11:36 AM

To Bob, Chukwuzitelu

Thank you, Mr. Conley.

I will correct the errors in the notice and send them to you.

I wish you to have a merry Christmas.

John Dong



Bob Conley

Dec 22, 2022,
3:26 PM

to me

Dr. Dong:

The last known address for Dr. Roozen is the following: 316 Glen
Eagle, Johns Island, SC 29455.



John Dong <johnny.dong@gmail.com>

Dec 22, 2022,
4:04 PM

to Bob

Mr. Conley,

In light of the brief order by the US Appellate court and my
motion for a protective order, regardless if it is granted by
the court of common pleas, I will have to postpone the
depositions of MUSC witnesses. I will give you the same
courtesy to send me a schedule of the depositions
starting from Jan. 31.

Sincerely,

John Dong



Bob Conley

Jan 3, 2023, 10:30 AM
(10 days ago)

to me

Dr. Dong:

I will discuss your email below with MUSC and then follow up with you. However, we will likely request Justice Toal's involvement given the existing scheduling order and the effort that has gone into scheduling the depositions. In the interim, and until Justice Toal is involved and provides direction, the depositions will remain on my calendar and those of the current MUSC personnel as noticed.



John Dong <johnny.dong@gmail.com>

Jan 3, 2023, 10:50 AM
(10 days ago)

to Bob

Mr. Conley,

I have already filed the motion for protective order. The due process dictates that the schedule is stayed until a ruling on the motion. If it is denied, the issue will be preserved. In addition, there is a nationwide shortage of court reporters and it is difficult for me to arrange a court report according to the specific schedules as you demanded. It will be helpful if you could arrange the court reporter, since the depositions are at your office. I understand this is not required of you, so it is not required to take depositions at your office. I do not know how much effort it takes to have those employees come for a deposition.

Again, please provide the address of Lanier, Reads and Gladden known to MUSC. The employee benefit office has their current addresses as they all receive benefits from MUSC.



Bob Conley

Jan 3, 2023, 11:04 AM
(10 days ago)

to me

Dr. Dong:

I will contact Justice Toal today regarding your Motion for Protective Order and depositions, so we can get those issues resolved. Regarding depositions, pursuant to Justice Toal's prior order it is your responsibility to schedule a court reporter for any depositions you notice, and the depositions are to occur at my office. Finally, I have provided you with the last address MUSC has for Dr. Lanier, Ms. Gladden and Dr. Reads. Any benefits provided post-employment with MUSC are provided by the South Carolina Public Employee Benefit Authority (SCPEBA) and MUSC does not have access to SCPEBA records, such as current addresses.



John Dong <johnny.dong@gmail.com>

Jan 3, 2023, 1:24 PM
(10 days ago)

to Bob

Mr. Conley,

It is not true that the MUSC employee benefit office does not have the current records. MUSC is the owner of the accounts and has to forward those information to SCPEBA. Any change requires the MUSC benefit office's approval. Once again, please provide the address of those employees on record of the MUSC benefit office.



Bob Conley

Jan 4, 2023, 2:53 PM
(9 days ago)

to me

Dr. Dong:

Considering Justice Toal's order issued earlier today, and in follow up to your email below, do you intend to go forward with any of the 13 depositions you noticed for the month of January? If you do not intend to go forward with them as currently noticed, please confirm so I can note the cancellations on my calendar and notify those who still work for MUSC.

If you want to re-notice the 13 depositions, please provide me with all your available dates before March 1 so I can check on the availability of those individuals who still work for MUSC. I will compare with my availability in February as well.

Thank you.

Bob J. Conley
CLEVELAND & CONLEY, L.L.C.
171 Church Street, Suite 310
Charleston, South Carolina 29401
Telephone: (843) 577-9626
Facsimile: (843) 577-6672
www.clevelandlaborlaw.com

CONFIDENTIAL & PRIVILEGED Unless otherwise indicated or obvious from the nature of the following communication, the information contained herein is attorney-client privileged and/or confidential information/work product. The communication is intended for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error or are not sure whether it is privileged, please immediately notify us by return e-mail and destroy any copies, electronic, paper or otherwise, which you may have of this communication.

From: John Dong <johny.dong@gmail.com>
Sent: Thursday, December 22, 2022 4:04 PM
To: Bob Conley <bconley@Clevelandlaborlaw.com>

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
John Dong, M.D., Ph.D.)
APPELLANT(S))
VS.)
The Medical University of South Carolina)
RESPONDENT(S))

2016-CP-10-06683
COMMON PLEAS CASE NUMBER

IN THE COURT OF APPEALS
THE STATE OF SOUTH CAROLINA

NOTICE OF CIRCULAR APPEAL

FILED
2022 OCT 14 AM 10:59
CLERK OF COURT
WCL

The plaintiff John Dong, M.D., Ph.D., hereby gives notice of appeal from the judgment of the Circuit Court of Common Pleas in the above action, to the Appellate Court of the State of South Carolina.

This notice of appeal is made subsequent to personal notice of the judgment which was received on the 28th day of September 2022.

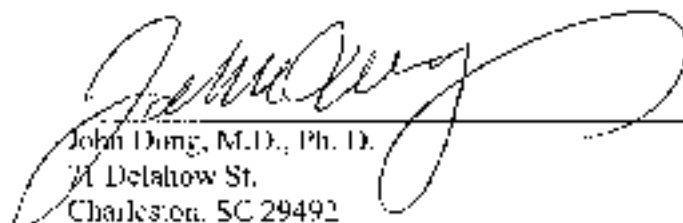
The appellant's exceptions to the judgment of the Circuit Court of Common Pleas are set forth as follows:

Pursuing to Rule 72, a judgment is appealable if it affects the Due Process and cannot be cured after the trial or a final judgment. In the forgoing case, the Circuit Judge issued a Final and Controlling Discovery Order that restricts Plaintiff's discovery to only a set of email chains "to or from" the Plaintiff and prohibits the Plaintiff from obtaining any other related documents or filing an interrogatory without citing any reason, statute, rule, or case law.

The right to discovery under the Due Process Clause of Article III of the Constitution is a fundamental right. Deprivation of the right for discovery causes a party being without the entitled evidence and unprepared for a trial. Such an error causes irreparable prejudice to the party, and the prejudice cannot be cured by trial or after a final judgement. Therefore, the error is structural. Deprivation of

discovery is the number one ground that requires review of the Appellate Court or the Supreme Court.

Dated: October 8, 2022



John Dong, M.D., Ph. D.
11 Delahow St.
Charleston, SC 29492
Phone: 843-991-2332
Email: john.dong@me.com

FORM 7
PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLETON COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr, Circuit Court Judge

Case No. ~~2016-CP-10-06683~~

The Medical University of
South Carolina

Respondent,

v.

John Dong, M.D., Ph.D.

Appellant.

FILED
2022 OCT 14 AM 11:00
JUDGE J. A. HINES, JR.
CLERK SUP. COURT

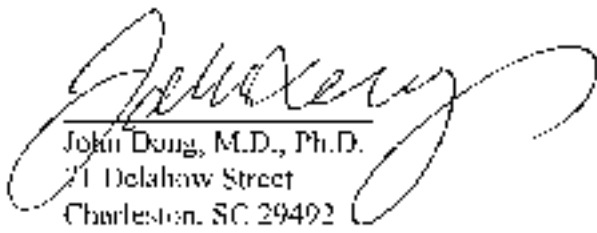
PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Bob Corley/MUSC by depositing a copy of it in the United States Mail, postage prepaid, on October 10th, 2022, to the following address:

Bob J. Corley, Esq.
Cleveland & Conley, LLC
171 Church Street, Suite 310
Charleston, South Carolina 29401

In addition, a copy of it is submitted by US Mail to the ECF system at the Court of Common Pleas and Court of Appeals, State of South Carolina, which will give notice electronically to all parties.

Monday, October 10, 2022


John Dong, M.D., Ph.D.
21 Delahaw Street
Charleston, SC 29492
(843) 991-233

STATE OF SOUTH CAROLINA

COUNTY OF CharlestonLian-Yun (John) Dong, M.D., Ph. D.

Plaintiff,

vs.

The Medical University of South Carolina

Defendant.

IN THE COURT OF COMMON PLEAS

Ninth JUDICIAL CIRCUIT

CASE NO.: 2016 CP 10-06683

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

John Dong, Bar No. pro se

Address:

71 Delahow St, Charleston, SC 29492Phone: 843-991-2332 Fax:E-mail: johnny.dong@gmail.com

Defendant's Attorney:

Bob Conley, Bar No. 81431

Address:

171 Church St. Suite 310, Charleston, SC 29401Phone: 843-577-9626 Fax: 843-577-6672E-mail: bjconley@clevelandlabbeblaw.com☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**SECTION I: Hearing Information**Name of Motion: Motion for Amendment of Scheduling OrderEstimated Time Needed: _____ Court Reporter Needed: ☐ YES ☐ NO**SECTION II: Motion/Order Type**☒ Written motion attached☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff ☐ DefendantAugust 23rd, 2022
Date submitted**SECTION III: Motion Fee**☐ PAID - AMOUNT: \$ _____☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support☐ Domestic Abuse or Abuse and Neglect☐ Indigent Status ☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act ☐ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____**JUDGE'S SECTION**☐ Motion Fee to be paid upon filing of the attached order.☐ Other: _____

JUDGE CODE: _____

Date: _____, 20____

CLERK'S VERIFICATION

Collected by: _____

Date Filed: _____, 20____

☐ MOTION FEE COLLECTED: \$ _____☐ CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
John Dong, M.D., Ph.D.,)
Plaintiff,)
v.)
The Medical University of South)
Carolina.)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-10-06683

**MOTION FOR AMENDMENT OF
SCHEDULING ORDER.**

2023 JUN 23 PM 1:16
CLERK OF COURT
COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
COLUMBIA, SOUTH CAROLINA

Plaintiff in the above-captioned case, John Dong, M. D., Ph.D., hereby submit this Motion to Amend Scheduling Order pursuant to SCRCP Rule 16. As grounds for the Court to grant this Motion, Dr. Dong pleads the following:

The amendment of schedule is necessary for Parties to complete the discovery pursuant to SCRCP Rule 26 to 37.

In the foregoing case, the previous schedule could not be met because of several issues related to discovery have been raised, and these issues remain pending in the court.

For examples:

1. Before taking the position, Defendant has Eled a Motion for Protective Order challenging the format of the depositions noticed by both Defendant and Plaintiff. Defendant requested a hearing that has not been scheduled by the court.
2. Plaintiff has filed an interlocutory appeal to the Circuit Court over a decision to restraint discovery by the magistrate judge. The appeal was denied for out of time based on Rule 59. Plaintiff has filed a Motion for Reconsideration because the governing rule for an appeal is SCRAC Rule 203. The motion is currently pending,

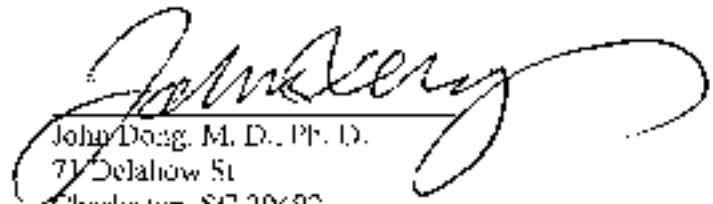
and Plaintiff maintains the right to appeal to the superior courts.

3. Parties will need time to complete the discovery including depositions of numerous witnesses of both Parties, after the court has resolved all the pending issues.
4. Parties will need time to complete the mediation process.
5. Parties will need additional time to prepare and filing depository motions and to prepare for their arguments in court hearings.

THEREFORE, for reasons stated above, plaintiff respectfully request the court to grant this motion to amend the scheduling order. (A proposed order is attached with this motion.)*

August 22, 2022
Charleston, South Carolina

Respectfully submitted, pro se,



John Doag, M. D., Ph. D.
71 Delahow St
Charleston, SC 29492
Email: johny.doag@gmail.com
Phone: 843-991-2332

* Plaintiff has communicated with the Defendant's counsel about amending the scheduling order. Plaintiff did not oppose nor explicitly consent to the proposed order.

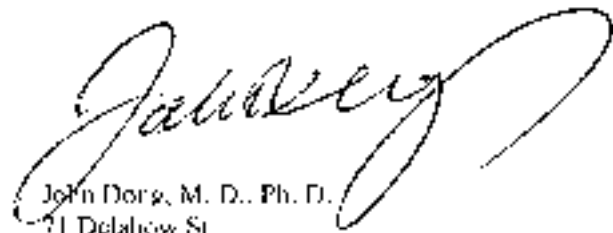
CERTIFICATE OF SERVICE

This is to certify that I have on this 23rd day of August 2022, served a copy of the Plaintiff's Motion for Amendment of Scheduling Order to the ECF system, which will notify all parties electronically. In addition, a copy of the Motion is served via Email at bconley@clevelandlaborlaw.com and United States Mail Services addressed to the following:

Bob J. Conley, Esq.
Cleveland & Conley LLC
171 Church Street, suite 310
Charleston, South Carolina 29401

FILED
2022 AUG 23 PM 1:10
CLERK OF COURT

August 23, 2022



John Dore, M. D., Ph. D.
71 Delahow St
Charleston, SC 29492
Email: jdore@jgymn.com
Phone: 843 991 2332

STATE OF SOUTH CAROLINA

COUNTY OF Charleston

Jian-Yun (John) Dong, M.D., Ph. D.

Plaintiff,

The Medical University of South Carolina

Defendant.

IN THE COURT OF COMMON PLEAS

Ninth JUDICIAL CIRCUITCASE NO.: 2016-CP-10 - 06683**MOTION AND ORDER INFORMATION
FORM AND COVER SHEET****Plaintiff's Attorney:**John Dong, M.D., Ph. D., Bar No. Pro Se**Address:**71 Delahow St. Charleston, SC 29492**Phone:** (843)-091-2332 **Fax:** _____**E-mail:** johny.dong@gmail.com **Other:** _____**Defendant's Attorney:**Bob Coney, Bar No: _____**Address:**171 Church St. Suite 310 Charleston, SC 29401**Phone:** 843-577-9626 **Fax:** 843-577-6672**E-mail:** _____ **Other:** _____☐ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)☐ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)**SECTION I: Hearing Information****Nature of Motion:** Motion for Reconsideration**Estimated Time Needed:** _____**Court Reporter Needed:** ☐ YES ☒ NO**SECTION II: Motion/Order Type**☒ **Written motion attached**☐ **Form Motion/Order**

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for

☒ Plaintiff☐ Defendant

Aug. 22

, 20 22

Date submitted

SECTION III: Motion Fee☐ **PAID** AMOUNT: \$ 0☐ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support☐ Domestic Abuse or Abuse and Neglect☐ Indigent Status ☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act ☐ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)☐ Proposed order submitted at request of the court, or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____**JUDGE'S SECTION**☐ Motion Fee to be paid upon filing of the attached order.☐ Other: _____**JUDGE CODE:** _____

Date: _____

, 20 _____

CLERK'S VERIFICATION

Collected by: _____

Date Filed: _____

, 20 _____

MOTION FEE COLLECTED: \$ _____

CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
John Dong, M.D., Ph.D.,)
)
Plaintiff,)
v.)
The Medical University of South)
Carolina,)
)
- Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2016 CP 10 06683

MOTION FOR RECONSIDERATION

FILED
2021 AUG 23 PM 1:09
CLERK OF COURT
NINTH JUDICIAL CIRCUIT

Plaintiff, John Dong, hereby respectfully submits this Motion for Reconsideration pursuant to SCRPC Rule 59. As ground for this court to grant this Motion, Dr. Dong pleads the following:

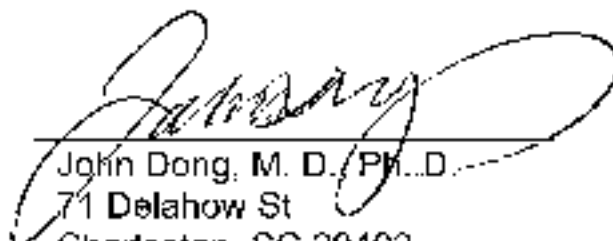
1. The court denied the Interlocutory Appeal (Petition) based on the incorrect procedural statute, rule 59. Rule 59 applies to motion to alter a judgment, or consideration. Rule 59 does not apply to appeal, which is governed under South Carolina Appellate Court Rule 203.
2. The Petition was submitted to this court under the jurisdiction that a District Court has a limited appellate jurisdiction over judgments rendered by its inferior courts, such as the magistrate.
3. The Petition was submitted pursuing the right to appeal of appealable judgments under Rule 72, which makes a judgment of appealable if it affects the due process and cannot be cured after the trial or a final judgment.
4. The introductory appeal satisfies all the requirements for an appeal as stated in page 1-2 and will not be repeated here.

5. The court has repeatedly established the presidency in this case to relax procedural rules for Defendant. Examples include that the very subject of this appeal, that Defendant failed to timely file oppositions to Plaintiff's discovery motions. Yet, after many months and after Plaintiff has filed Motion to Grand Uncontested Motions, the Court granted Defendant additional times to file an opposition and further granted Plaintiff's motion to restrict and deny Plaintiff's right for unencumbered discovery.

WHEREFORE, for reasons stated above, and those argued in the Petition, Plaintiff respectfully requests the Court to reconsider its decision and issue a ruling based on the merit of the Petition.

Respectfully submitted, pro se,

August 22, 2022



John Dong, M. D., Ph.D.
71 Delahow St
Charleston, SC 29492
Email: johnny.dong@gmail.com
Phone: 843-991-2332

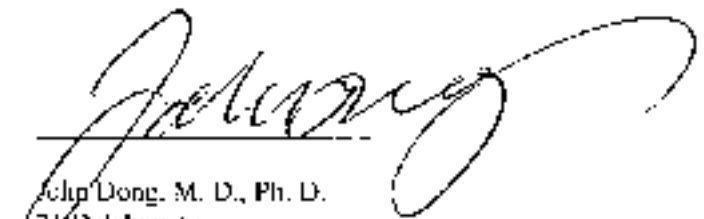
CERTIFICATE OF SERVICE

This is to certify that I have on this 22nd day of August 2022, served a copy of the Plaintiff's Motion to Reconsider to the ECF system, which will notify all parties electronically. In addition, a copy of the Motion is served via Email at bconley@clevelandlaborlaw.com and United States Mail Services addressed to the following:

Bob J. Conley, Esq.
Cleveland & Conley LLC
171 Church Street, suite 310
Charleston, South Carolina 29401

2022 AUG 23 PM 1:29
CLERK OF COURT
CLERK OF COURT

August 22, 2022


John Dong, M. D., Ph. D.
71 Delahow St
Charleston, SC 29492
Email: john.dong@gmail.com
Phone: 843-691-2322

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Jian-Yun (John) Dong, M.D., Ph.D.,)
Plaintiff,)
v.)
The Medical University of South)
Carolina.)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-19-06685

**PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION FOR
PROTECTIVE ORDER**

2022 JUL 30 10:10:16
CLERK OF COURT
COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CHARLESTON, SC

Plaintiff, John Dong, hereby submits this Opposition to Defendant's Motion for Protective Order (Motion) pursuant to South Carolina Rules of Civil Procedure (SCRCP) 26, 30 and 37. Defendant's Motion should be denied because it contradicts the Rules and factually inaccurate. For those very reasons, Defendant has yet submitted the "memorandum of law" as it promised.

First, SCRCP Rule 26, 30, and 37 are to assure an unencumbered discovery by parties. None of the rules prevent a deposing or deposed party to take note in the form of writing, audio, or video recording, so long the stenography by a court reporter serves as the official records. Further, in the first scenario, the person to be recorded is the plaintiff himself, the deposing attorney has no privacy right in a deposition to prevent such recording.

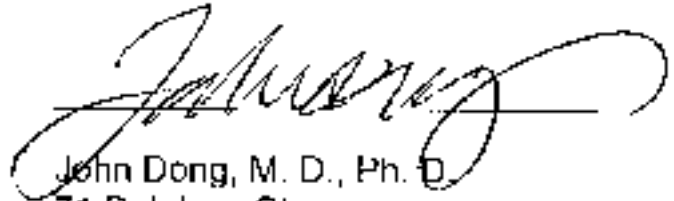
Second, Defendant's presentation of Plaintiff's intent is inaccurate. Plaintiff gave notices to take audio or video recording of the deposition as required by the rules. Plaintiff has further clarified with the Defendant's attorney, Mr. Conley, that in addition to stenographs provided by a court reporter, Plaintiff will keep the option to audio or video record the deposition so long the stenographs serve as the official document. In the event the recording to be introduced as evidence, the Defendant has the opportunity to object to it in form or in content.

There are no rules or privacy right of the parties that specifically prevent audio or video recording of a deposition, and there is no rule to prevent a party's attorney electronically recording a deposition while stenography is taken by a court reporter. Based on information and belief, such recording is often done by an attorney's office to save cost, so long the recording meets a set of standards.

THEREFORE, Plaintiff pleads the Court to deny Defendant's Motion to Protect. UNLESS Defendant can provide specific rules or case law that prevent a party from electronically recording the deposition in addition to stenographs by a court reporter.

Respectfully submitted, pro se,

June 28, 2022

A handwritten signature in black ink, appearing to read 'John Dong', with a large, sweeping flourish extending to the right.

John Dong, M. D., Ph. D.
71 Delahow St
Charleston, SC 29492
Email: johnny.dong@gmail.com
Phone: 843-991-2332

CERTIFICATE OF SERVICE

This is to certify that I have this 28th day of June 2022, caused to be served a copy of the Plaintiff's Opposition via Email at bconley@clevelandlaborlaw.com and United States Mail Services with postage and addressed as the follows:

Bob J. Conley, Esq.
Cleveland & Conley LLC
171 Church Street, suite 310
Charleston, South Carolina 29401



June 28, 2022

John Dong, M. D., Ph. D.
7 Delahow St
Charleston, SC 29492
Email: jdong.cmc@gmail.com
Phone: 843 991-2532

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-06683
	)	
Jian-Yun (John) Dong, M.D., Ph.D.,	)	
	)	
Pro Se Plaintiff,	)	
v.	)	DEFENDANT’S MOTION
	)	FOR PROTECTIVE ORDER
The Medical University of South	)	
Carolina,	)	
	)	
Defendant.	)	
_____	)	

TO: JIAN-YUN DONG, M.D., PH.D., PRO SE PLAINTIFF

PLEASE TAKE NOTICE, pursuant to South Carolina Rules of Civil Procedure (“SCRCP”) 26, 30 and 37, counsel for Defendant Medical University of South Carolina (“MUSC”) will move before this Court within ten (10) days from the date of service hereof, or as soon thereafter as counsel may be heard, for a protective order. Defendant’s Motion for Protective Order is submitted in respect to two issues.

First, Plaintiff’s desire/demand that he be allowed to audio record his deposition despite the presence of an independent court reporter retained to make a record of the deposition in accordance with Rule 30, SCRCP. Second, all Plaintiff’s recent deposition notices and Plaintiff’s apparent, related intent to take the noticed depositions without the use/presence of a court reporter and in a manner that is not in compliance with Rule 30, SCRCP.

Counsel for Defendant discussed these issues with Plaintiff prior to filing this Motion for Protective Order. Prior to a hearing, Defendant will file an appropriate memorandum of law in support of the motion.

Respectfully submitted,

s/Bob J. Conley

Caroline Wrenn Cleveland (Fed ID #5478)

Bob J. Conley (Fed ID #6791)

CLEVELAND & CONLEY, L.L.C.

One Seventy-One Church Street, Suite 310

Charleston, South Carolina 29401

(843) 577-9626 (Phone)

ccleveland@clevelandlaborlaw.com

bconley@clevelandlaborlaw.com

ATTORNEYS FOR DEFENDANT

Charleston, South Carolina
June 17, 2022

CERTIFICATE OF SERVICE

This is to certify that I have this 17th day of June 2022, caused to be served a copy of Defendant's Motion for Protective Order via United States Mail, with proper postage affixed, and addressed as follows:

Jian-Yun (John) Dong, M.D., Ph.D.
71 Delahow Street
Charleston, SC 29492

s/ Bob J. Conley
Bob J. Conley

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

COUNTY OF CHARLESTON

CASE NO.: 16-CP-10-6683

JIAN-YUN (JOHN) DONG, M.D., Ph.D.,**MOTION AND ORDER INFORMATION**

Plaintiff,

FORM AND COVER SHEET

vs.

THE MEDICAL UNIVERSITY OF SOUTH
CAROLINA.

Defendant.

Plaintiff's Attorney:

John Dong, M.D., Ph.D., Bar No. pnn 56

Address:

71 Delahos Street

Charleston, SC 29407

Phone: 843-981-7332 Fax _____

E-mail: johny.dong@gmail.com Other: _____

Defendant's Attorney:

Bob J Cunley, Bar No. _____

Address:

171 Church Street, Suite 301

Charleston, SC 29401

Phone: 843-577-9626 Fax 843-577-5672

E-mail: bcunley@clevelandlaborlaw.com Other: _____

☐ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)☒ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)**SECTION I: Hearing Information**

Nature of Motion: Interlocutory Appeal/Petition for Reconsideration

Estimated Time Needed: 1

Court Reporter Needed: ☐ YES ☒ NO**SECTION II: Motion/Order Type**☒ Written motion attached☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff ☐ Defendant

03/06/2022

Date submitted

SECTION III: Motion Fee☒ **PAID - AMOUNT: \$ 25.00**☐ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support☐ Domestic Abuse or Abuse and Neglect☐ Indigent Status ☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act ☐ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____**JUDGE'S SECTION**☐ Motion Fee to be paid upon filing of the attached
order.

JUDGE CODE: _____

☐ Other: _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____

Date Filed: _____

☐ **MOTION FEE COLLECTED: \$ _____**☐ **CONTESTED - AMOUNT DUE: \$ _____**

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Jian-Yun (John) Dong, M.D., Ph.D.,

Plaintiff,

v.

The Medical University of South
Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-10-06683

INTERLOCUTORY APPEAL OF
MAGISTRATE ORDER TO
RESTRICT DISCOVERY OR
MOTION FOR
RECONSIDERATION

FILED
2022 MAR -8 PM 3:16
CLERK OF COURT

Plaintiff, John Dong, hereby submits this Interlocutory Appeal of the Magistrate Order to Restrict Discovery issued on February 6, 2022, or Petition for Reconsideration, and respectfully requests the Court to reverse or vacate the Order.

STATEMENT OF JURISDICTION

The Circuit Court has limited appellate jurisdiction over appeals from the Probate Court, Magistrate's Court, and Municipal Court. *See South Carolina Judicial Branch: Circuit Court.*

The Magistrate's Order in limiting discovery is appealable because of:

1. The restrictions of discovery on a Party contradict to the civil statutes and violate the substantial right assured by the Due Process Clause of the Fourteenth Amendments to the Constitution.
2. The Order to restrict the discovery is not based on the merit of the Complaint.
3. The restrictions of the discovery cause irreparable harm to the Plaintiff by blocking his ability to prepare for the trial with evidence and to obtain a just outcome.

4. Plaintiff filed a timely Notice of Interlocutory Appeal with the Court.

PROCEDURAL BACKGROUND

Plaintiff John Dong, M.D, Ph.D. ("Dr. Dong") was a tenured full-professor at the Medical University of South Carolina ("MUSC") -- Defendant. Dr. Dong was recruited by MUSC from The University of California, San Francisco, in 1998. As part of his recruitment, Dr. Dong was requested to contribute to the MUSC's efforts in establish biotechnology industries under the mandate of the State of South Carolina to support high-paid jobs.

In about 2008, Dr. Dong found out that the Department Chairman, Dr. James Norris had been covertly converting Dr. Dong's research projects, funds, and laboratory equipment for Dr. Norris' use, and at the same time holding Dr. Dong's promotion and salary to coerce Dr. Dong not to raise the issues to the MUSC administration. At the same time, Dr. Norris made false claims against Dr. Dong to the MUSC administration and various committees. In or about 2009, with the help of Dr. Norris' friend, the Vice President of Research, Stephen Lanier, Dr. Norris blatantly took over all Dr. Dong's biological research materials under the falsehood of "biosafety auditing," and eventually took all Dr. Dong's research materials, technologies, equipment, and documentations by locking up Dr. Dong's laboratories

and Office and completely blocked Dr. Dong's ability to teach, research, and advance his academic career.

When Dr. Dong raised his complaint to MUSC Administration, the Administration authorized Dr. Stephen Lanier himself in charge of resolving the dispute. After a yearlong struggle, Dr. Lanier proposed a solution through then retiring Dean, Dr. Jerry Reaves. Dr. Reaves presented the solution a "cool down period," so that Dr. Dong can get back to his research. Under the Agreement, MUSC is to transfer all Dr. Dong's research materials and documents to a company established by MUSC's Foundation to Research and Development (FRD) for him to conduct his research off site and allow Dr. Dong to continue his teaching and academic activity at MUSC for 18 months. Dr. Reaves represented that MUSC would evaluate Dr. Dong's performance after the "cooling period," and allow Dr. Dong to come back, especially when he can get more grant for MUSC. In a desperate move to get his research material and equipment back and continue his research, Dr. Dong signed a "separation agreement" on May 3, 2010.

In the year following signing the Agreement, MUSC failed to honor any of the major terms of the Agreement including to continue blocking Dr. Dong's academic activity at MUSC, not to transfer any of Dr. Dong's biological research materials, equipment, records, protocols. MUSC further allowed Dr. James Norris

and other faculties to takeover Dr. Dong's research projects, to continue the use of Dr. Dong's research materials, technologies to enrich Dr. Norris, Dr. Lanier and MUSC at the expense of devastating Dr. Dong's career and livelihood. To justify his actions, and to prevent Dr. Dong from coming back, Dr. Lanier also rejected a \$3,500,000 NIH grant obtained by Dr. Dong on behalf of MUSC.

Dr. Dong filed his Complaint on September 2, 2014, for breach of contracts, bad faith, and illegally seizing Dr. Dong's research material, equipment, technologies, protocols and records, abolishing Dr. Dong's tenure, and violated Dr. Dong's faculty rights and caused serious damage to Dr. Dong's career and livelihood.

Subsequently, MUSC proceeded with discovery including its first Interrogatory and Request for Production. Dr. Dong timely filed responses to MUSC's satisfactory. However, MUSC refused to produce any information or document requested by Dr. Dong. In March 2019, Dr. Dong filed First Motion to Compel. The Motion to Compel was subsequently heard by the Honorable D. Craig Brown. As a result of the hearing, Judge Brown issued an Order on June 20, 2019, GRANTING the First Motion to Compel.

On July 3, 2019, MUSC filed a Motion to Alter or Amend as to Judge Brown's June 20, 2019, order. Thereafter, Judge Brown held a hearing where MUSC did not

present legal basis but claimed logistic or practical reasons for MUSC not being able to provide the requested information. However, MUSC stated it is ready to produce some information if the First Request for Information is limited to the communications “directly to or from Dr. Dong and Dr. Lanier no earlier than 2010,” MUSC also represented to the Judge Brown that the information is extensive, about 500 pages and can be produced immediately. Judge Brown agreed, and issued an Order on October 4, 2019, requesting MUSC to produce the limited information within 10 days, and the time and scope of the discovery “may be expanded at any time by either party.”

Under Judge Brown’s order, MUSC provided a stack of printed emails, most of which are repeats of the same email chains. It is nearly impossible to evaluate the content or authenticity of the printed materials.

Per Judge Brown’s Order, Dr. Dong filed a Motion to Expand Discovery in time and scope, on January 29, 2020, and served MUSC with the Second Request for Production. Again, MUSC refused to produce any information by claiming each of the questions “too broad and ambiguous” or “the same as the First Request for Production.”

In February or March 2020, Judge Brown Stayed the forgoing Case because of the ongoing COVID-19 pandemic and the South Carolina Supreme Court issued

an initial memorandum to close or alter the operations of certain circuits courts in South Carolina.

Not knowing the case was stayed, Dr. Dong filed Plaintiff's Second Motion to Expand time and scope of Discovery on January 11, 2021. The motion was met with no response. Finally, on January 20, 2021, Dr. Dong filed Plaintiff's Second Motion to Compel Production ("Second Motion to Compel").

MUSC failed to respond to Plaintiff's Motions to Expand Discovery for time and scope, and the Second Motion to Compel – legally leaving these Motions unopposed.

Dr. Dong filed a Motion for Granting Un-contested Motions on September 22, 2021.

Subsequently, MUSC filed a Motion for Statues Hearing blaming its nonresponse to Dr. Dong's Motions to Expand Discovery on a "clerical error" of the court which made the appearance that the case remain stayed.

On October 5, 2021, at the request of MUSC, the Court lifted the stay and allowed MUSC to file Response to Dr. Dong's Motions to Expand Discovery and Second Motion to Compel.

On December 13, 2021, the Court commissioned Magistrate Judge Cothran to conduct a hearing on Dr. Dong's pending motions. At the hearing, Magistrate

Cothran indicated that Dr. Dong's Motions to Expand Time (for a year) is "granted" and suggested that Dr. Dong to continue the discovery by taking depositions and "may request additional documents based on the information obtained through the deposition."

On January 10, 2022, by an email, Magistrate Cothran's clerk informed MUSC's counsel that "Judge Cothran DENIED all Plaintiff's discovery motions and requested the counsel to submit a proposed order."

On January 20, 2022, MUSC submitted the "proposed order" which is an ideal wish list of MUSC – permanently restricts discovery by the Plaintiff to only the mails Dr. Dong received from Dr. Lanier during 2010, allows MUSC to dictate the time line, and makes the court a proxy of MUSC's defense.

On February 3, 2022, Dr. Dong filed his "Opposition to the proposed order."

On February 7, 2022, Magistrate Cothran signed the MUSC-proposed order word by word over Plaintiff's objection and without judicial oversight.

ARGUMENT

1. Restrictions on Discovery Violate Due Process

The Discovery Rules, SCRCP 26-37, assure an unencumbered discovery by parties of a controversy. Courts are not authorized by any statute to restrict such a

fundamental right to discovery, which is assured by the statutes established by the Congress and the Due Process Clause of the Fourteenth Amendment to the Constitution. Without a statutory authorization, the Court does not have the authority to issue such an order.

The Supreme Court of the United States has long commanded;

"The Court cannot construe a statute in a way that negates its plain text" of the law. *Honeycutt*, 198 L. Ed. 2d. LEd11R19, footnote 2.

"[Courts] are not authorized to create an equitable expansion to jurisdictional requirements,' but must follow the law as it is intended by Congress, the use of the 'unique circumstances' doctrine is illegitimate." *Bowles v. Russell*, 511 U.S. 205, at 212 (2007).

Here, the statutes assure unencumbered discoveries by the parties, and there is no legal or factual basis for the court to restrict a party's Due Process Rights in favor of another, even if an opposing party claims "unique circumstances."

Specifically, the magistrate judge not only denied "all Plaintiff's Motions" for discovery without stating a reason, but also imposed new and unconditional restrictions on Plaintiff's discovery without a legal basis. The Magistrate simply issued the Defendant a "blank check" by allowing the Defendant to submit a proposed order and signed "the proposed order" over Plaintiff's objections and

without any judicial oversight. Doing so, the Magistrate served as a rubber stamp for the Defendant and abandoned the court's judicial obligation and neutrality.

Defendant misled the Magistrate by misrepresenting Judge Brown's Order issued on October 4, 2019. Defendant broadened Judge Brown's conditional restriction specifically on Plaintiff's First Request for Production by claiming and it is "the controlling order" and applied to the entire discovery process. (PO P5-7) Defendant completely ignored the fact that Judge Brown unequivocally stated the limit is specific to the "First Request for Production" and conditioned upon that "either party may, at any time may petition the circuit court to expand" the time and scope of the discovery. *See Judge Brown's Order, P2-3, a, b, and c.* Nowhere in the Order, Judge Brown indicates a intention to set a limit on the entire discovery, which would be a violation of the Due Process.

Therefore, this Court must vacate the Magistrate's Order to restrict the discovery, even if the Court intends to uphold the full force of Judge Brown's Order.

2. Imposing new matters into the proceeding without the Due Process is illegitimate.

Even were there a statute authorizing a court to restrict the right for discovery, but there is none, imposing new restrictions on Plaintiff without a motion by the

Defendant and a hearing by the court violates the Confrontation Clause of the Due Process. This violation alone is subject to reversal.

Here, the Order allowed Defendant to add not only new restrictions on Plaintiff's discovery without raising a motion to the Court, but also the languages authorizing Defendant to dictate the proceedings. Defendant wants to bypass the discovery and allow Defendant directly "to file depository motions" in order to deprive Plaintiff of the right for evidence necessary to prosecute his claim in Due Process. *See Order P5, Prg 1.*

Such an Order contradicts the law, violates Plaintiff's Due Process Right, and causes irreparable harm to the Plaintiff, therefore, must be rejected by the Court.

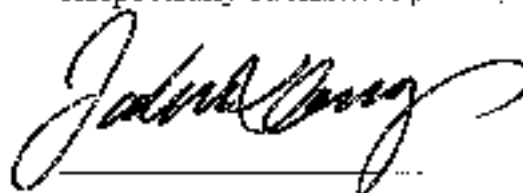
CONCLUSION

For reasons stated above, Plaintiff respectfully requests the Court to reverse and vacate the Magistrate Order.

(Signature on the following page)

March 6, 2022

Respectfully submitted, pro se,

A handwritten signature in black ink, appearing to read "John Dong", written over a horizontal line.

John Dong, M. D., Ph. D.
71 Delahow St
Charleston, SC 29492
Email: johnny.dong@gmail.com
Phone: 843-991-2332

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Jian Yun (John) Dong, M.D., Ph.D.,)
Plaintiff,)
v.)
The Medical University of South)
Carolina,)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-10-06683

**PLAINTIFF'S OPPOSITION TO
DEFENDANT'S PROPOSED
ORDER, OR MOTION FOR
RECONSIDERATION**

FILED
2022 FEB -3 AM 10:59
JULIA C. BROWN
CLERK OF COURT
WCL

Plaintiff, John Dong, hereby submits this Opposition to Defendant's Proposed Order and respectfully requests the Court to reject the "proposed order" (PO) in its entirety.

As a basis, Plaintiff pleads the follows:

Defendant abused the Court's trust and insert a set of illegal, unfair, and prejudicial restrictions on Plaintiff into the "proposed order." Such an "order" is intended to hijack the legal process and to make the Court a proxy of the Defendant's defense.

Specifically, the proposed restrictions fall vastly outside the scope of the issues and contradict the Court's opinions expressed at the hearing. These restrictions on the Plaintiff contradict the law and violate the Due Process Right of the Plaintiff, therefore, must be rejected by the Court.

1. Prejudice and derogatory information must be stricken from the record.

Defendant repeatedly injected an unrelated but highly prejudicial issue and derogatory comments into the forgoing proceedings with the intent to influence the neutrality of the Court and cause prejudice against Plaintiff. PO P2, Prg2-3; PO P4, T.2. Plaintiff's unrelated legal matter is completely irrelevant to and cannot be litigated in the foregoing civil proceedings. Defendant's assertions are incorrect, derogatory, slanderous, and prejudicial, and must be stricken off the record as a matter of law. It certainly should not be introduced into the record as an "order" by the Court.

2. Health Risks to the Parties dictate expansion of time.

Plaintiff has several high-risk factors including age, diabetes, and hypertension, and is among the vulnerable population to the Covid-induced serious morbidity and mortality. Considering the ongoing and worsened pandemics, Judge Cothran verbally granted Plaintiff's Motions for Expansion by saying "you got your expansion" before the transition to the Second Motion to Compel. However, without any basis to oppose the expansion of the time, Defendant once again tries to impose a short and rigid schedule making it impractical to follow under the difficult circumstances including Defendant's hampering tactics. In reality, Defendant is

asking the Court to deprive Plaintiff's right to discovery. Therefore, Plaintiff's Motion of Expansion of Time should be granted as submitted. In addition, the amended schedule should be accompanied by an order requesting both Parties to comply with the Discovery Rules or be sanctioned by the Court.

3. Restrictions on Discovery Violate Due Process

Defendant misinterpreted Judge Brown's Order issued on October 4, 2019. Defendant broadened Judge Brown's conditional restriction on Plaintiff's First Request for Production by claiming and it applied to the entire discovery process. (PO P5-7) Defendant completely ignored the fact, the Judge Brown unequivocally stated the limit was on the First Request and an expansion of time or scope maybe request by either party at any time. (Order P2-3, a., b., and c.) Nowhere in the Order, Judge Brown indicated to set a limit on the entire discovery, which would be a violation of the Due Process.

The Discovery Rules, SCRCP 26-37, assure unencumbered discovery. Courts do not have the authority to restrict a party's rights to discovery, which are assured by the civil statutes and the Due Process Rights under Article III of the Constitution.

The Supreme Court has long commanded:

"The Court cannot construe a statute in a way that negates its plain text" of the law. *Honeycutt*, 198 L. Ed. 2d. LEdHR19, footnote 2.

"'[Courts] are not authorized to create an equitable expansion to jurisdictional requirements,' but must follow the law as it is intended by Congress, the use of the 'unique circumstances' doctrine is illegitimate." *Bowles v. Russell*, 511 U.S. 205, at 212 (2007).

Here, the statutes assure unencumbered discoveries by the parties, and there is no statutory authorization of courts to restrict a party's due process right to favor another, even if an opposing party claims "unique circumstances."

Therefore, the proposed restrictions on the due process must be rejected by the Court, even if the Court intends to uphold the full force of Judge Brown's order¹ which is specific to the First Request for Production, and under the condition that "[e]ither party may, at any time may petition the circuit court to expand" the time and scope of the discovery. See Judge Brown's Order, P2-3, a, b, c.

4. Imposing new matters into the proceeding without due process is illegitimate.

Even were there a statute authorizing a court to restrict the right for discovery, there is none. imposing new restrictions on the plaintiff without a motion by the

¹ Judge Cochran did suggest that Plaintiff move forward with depositions and may request additional documents and information based on the information obtained through the deposition. Judge Cochran requested a list of witnesses to be deposed. Plaintiff timely submitted the list that had been filed previously with the Court.

defendant and a hearing by the court violate the Confrontation Clause of the Due Process. This violation alone is subject to appeal.

In its "proposed order," Defendant not only inserted new restrictions on Plaintiff without raising a motion to the Court but also inserted the languages authorizing Defendant to dictate the proceedings. Defendant wants to bypass the discovery and allow Defendant directly "to file depository motions." PO P5, Prg 1. There is no legal basis for Defendant to dictate the Due Process and there is such discussion at the hearing. Therefore, Defendant chooses sneakily to introduce such languages into the proposed order attempting to trick the Court into a rubber stamp. Such unethical and unprofessional behavior should not be endorsed but should be sanctioned by the Court, at minimum, by disqualifying the counsel from submitting future proposed orders in the forgoing case.

CONCLUSION

For reasons stated above, Plaintiff respectfully requests the Court to reject the Defendant's proposed order and the timetable in their entirety. Further, Plaintiff request the Court to issue an opinion on the heard Motions and to allow Plaintiff the equal opportunity to submit a proposed order before making a final decision.

(Signature is on the following page)

Respectfully submitted, pro se,

January 30, 2022

A handwritten signature in black ink, appearing to read "John Dong", written over a horizontal line.

John Dong, M. D., Ph. D.
71 Delahow St
Charleston, SC 29492
Email: john.dong@gmail.com
Phone: 843-991-2332

The objected texts in the Defendant's proposed order are highlighted with red color and underlines, as attached.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Jian-Yun (John) Dong, M.D., Ph.D.
-plaintiff

V.

The Medical University of
South Carolina
-Defendant

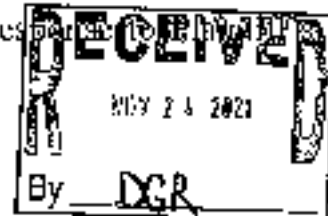
) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
)

) CASE NO: 2016-CP-10-06683
)

) PLAINTIFF'S REPLY TO
) DEFENDANT'S RESPONSE TO
) MOTIONS TO EXPAND AND COMPEL
)

COMES NOW, Plaintiff, John Dong, M. D., Ph. D. (Dr. Dong),
appearing pro se, submit this Reply to Defendant's Response to Plaintiff's
Second Motion to Compel and Other Motions.

1. **Defendant mischaracterized the lawsuit.**



Plaintiff John Dong was a tenured professor at the Medical University of South Carolina (MUSC), the Defendant. Starting from 2007 or 2008, Dr. Dong raised his concerns over that the chairman of the department of microbiology and immunology, Dr. James Norris, had been spending Dr. Dong's grant and startup funds, stealing Dr. Dong's biological materials, and taking over Dr. Dong's research projects. At the same time, Dr. Norris withheld Dr. Dong's promotions in academic positions and salaries to coerce Dr. Dong not to raise the issues to the administration. However, Dr. Norris made false complaints against Dr. Dong to the MUSC Administration and various committees, including biosafety committees.

In the about late part of 2009, with the support of then the vice president for research, Dr. Stephen M. Lanier, Dr. Norris blatantly took all Dr. Dong's essential research materials, including several vector systems, technologies for cancer gene therapies, and novel treatment for genetic diseases for Dr. Norris personal benefits. Using his authority as the Chairman of the Department, Dr. Norris locked up Dr. Dong's laboratories and office, and took over all Dr. Dong's research projects, technologies, and essential means for his research and teaching including all his research documents, notebooks, and research protocols, biological materials, and equipment. Dr. Lanier was directly involved in these actions. The MUSC Administration supported or approved Dr. Norris and Lanier's actions by stonewalling Dr. Dong's complaints to the Administration.

Instead of launching an investigation of Dr. Norris and Lanier's conduct, the Administration authorized Dr. Lanier as the Vice President for Research to handle Dr. Dong's complaint. Instead of investigating Dr. Norris, Dr. Lanier launched a series of witch-hunt investigations into Dr. Dong without any specific complaint.

After, Dr. Lanier failed to produce any justification for Dr. Norris' acts, the Dean of the Medical School, Dr. Jerry Reeves, proposed an agreement to "cool down" the confrontation and provide Dr. Dong "an opportunity to

continue his research and teaching off-campus at GenPhar, Inc.¹, with the option that Dr. Dong will be "rehired" by MUSC once he could obtain additional grant fund for MUSC.

On or about May 3, 2021, Dr. Dong and MUSC reached the Agreement, signed by Dean Reeves. The Agreement outlined the good faith understanding of five basic components: (1) Dr. Dong would continue to be a full-time tenured professor at MUSC for 18 months conducting his research and teaching; (2) within the transition period, MUSC will transfer all Dr. Dong's research biological materials and supplies to Dr. Dong at GenPhar's location; (3) MUSC will transfer all Dr. Dong's research equipment to Dr. Dong at GenPhar location; (4) MUSC will transfer all Dr. Dong's research data, records, notebooks, technologies to Dr. Dong; (5) Dr. Dong will make efforts to obtain grants for MUSC and be rehired by MUSC if Dr. Dong could achieve the goals. See the Agreement attached in the complaint, and a list of materials and equipment to be transferred.

However, MUSC Administration allowed Dr. Lanier to implement the Agreement. Dr. Lanier essentially violated every term of the Agreement. In fact, Dr. Lanier continued blocking Dr. Dong's academic activities, kept Dr.

¹ The Company, established by MUSC's Foundation for Research and Development (FRD) and a group of private investors. Dr. Dong had been the Chief Scientific Officer of GenPhar based on an agreement between FRD-MUSC and investors of GenPhar.

Dong's research projects, technologies, research materials, equipment, records, protocols, and blocked Dr. Dong's new grants awarded to MUSC. Dr. Lanier only implemented the terms detrimental to Dr. Dong and abolished Dr. Dong's tenure and got rid of Dr. Dong. Dr. Dong filed the Complaint about breach contracts and the damages to his career and financial being.

2. Introduction of unfair prejudice into the lawsuit by MUSC.

Over Dr. Dong's objections, MUSC's counsel repeatedly imposes an unrelated but highly prejudicial matter into the lawsuit in violation of civil rules and Dr. Dong's due process right. The issue has no bearing on the Complaint. MUSC's claim is misleading and cannot be litigated in the forgoing trial but pose an unfair prejudice on Dr. Dong.

Dr. Dong hereby respectfully requests the Court to disallow MUSC's introduction of such prejudice and strike it off the records as a matter of law.

3. MUSC's proposed schedule is in bad faith to deprive Plaintiff's rights for unenumerated discovery.

As the records show, Defendant has used every trick to block the discovery process. Defendant has not produced the documents or information requested in the First and the Second Plaintiff's Request for Production. The "proposed schedule" to finish the discovery in a few months while Defendant stonewalling the discovery is inconsistent with the law that governs the

discovery process as well as being impractical. It is in bad faith to deprive the plaintiff's rights for an encumbered discovery.

Plaintiff's Motions for Expansion of Time requests one year to complete the discovery due to the ongoing pandemics or until the pandemic is subsided. The defendant's claim such a schedule is "generally consistent with Dr. Dong's request for additional time to conduct discovery" is preposterous. Therefore, Defendant's request to rush into a short schedule before allowing Plaintiff to conduct an unencumbered discovery contradicts the law and should be denied by the Court.

4. Defendant's opposition to Plaintiff's Second Motion to Compel Production is unsupported by the law.

Plaintiff has the right to conduct a thorough and unencumbered discovery. Defendant's opposition to the discovery is solely based on Judge Brown's order to temporarily limit the scope of the First Request for Production. Judge Brown's order is not based on any law but solely for a practical reason raised by Defendant that no longer exists. Judge Brown specifically ordered that the scope may be expanded at the request of either party. Dr. Dong's Motion to Expand Discovery Scope specifically requests to lift the limitations and allow the discovery to proceed under the discovery

statutes. Therefore, the Second Motion to Compel must be viewed in the light the limitations on the discovery have been lifted, and Defendant is under the obligation to produce relevant material as requested.

Defendant's assertion that some of the questions are "the same as those in the First Request for Production," or "broad" cannot serve the basis for refusal to produce under the rules for discovery. Some of the questions may be the same because the requested documents have not been produced. "Broad" cannot be defined legally in the context of discovery. Plaintiff is entitled to all documents and information related to the Complaint.

However, these objections do serve the defendant's scheme to rush into an ending of the lawsuit by depriving Dr. Dong's rights for discovery and due process assured by the Constitution. This scheme must be rejected by the Court in its entirety as a matter of law.

5. Uncontested Issues must be granted as a matter of law

It is fundamental that courts must grant uncontested issues as a principle of maintaining judicial neutrality. Even after the Court has granted Defendant numerous opportunities, Defendant left several specific issues in Plaintiff's Motions to Expand uncontested. These uncontested issues must be granted by the Court in favor of Plaintiff as a matter of law.

The Defendant did not respond to the following issues:

(1) The discovered materials must be provided in their original form or copies of the original forms, such as emails, and text messages, and computer files. The discovery materials need to be provided in both electronic forms and printed PDF forms.

(2) The scope of the discovery needs to include the time at least one year before the event, in this case, it is the year 2007.

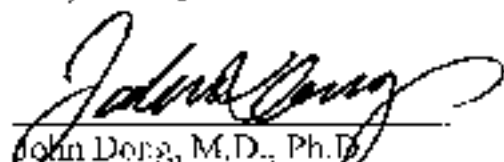
(3) Defendant to pay for the costs for the legal proceedings, since Dr. Dong is made indigent as the result of the breach of the contract by taking away Dr. Dong's ability to conduct academic research and Dr. Dong's technologies that have significant commercial values. In contrast, MUSC is a large entity with huge financial resources and insurance coverage.

CONCLUSION

For the reasons discussed above, Dr. Dong respectfully requests the Court to Grant Dr. Dong's Motions to Expand, and Second Motion to Compel and allow sufficient time to complete discovery according to the discovery statutes and the Due Process rights assured by the Constitution.

Dated: November 23, 2021

Respectfully submitted,



John Dong, M.D., Ph.D.

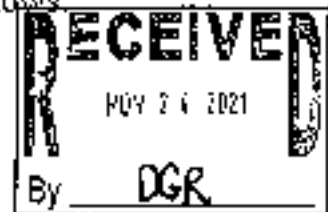
Email: john.dong@gmail.com

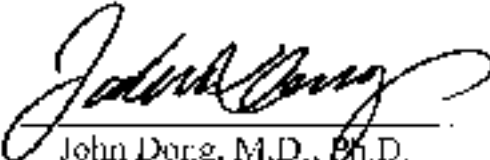
Phone: 843-991-2332

CERTIFICATE OF SERVICE

This is to certify that I have this 23rd day of November 2021, caused to be served a copy of the Plaintiff's Reply to Defendant's Response of Second Motion to Compel via Email at bconley@clevelandlaborlaw.com and United States Mail Services with postage and addressed as the following:

Bob J. Conley, Esq.
Cleveland & Conley LLC
171 Church Street, suite 310
Charleston, South Carolina 29401




John Dong, M.D., Ph.D.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-06683
	)	
Jian-Yun (John) Dong, M.D., Ph.D.,	)	
	)	DEFENDANT’S RESPONSE
Plaintiff,	)	TO PLAINTIFF’S SECOND
v.	)	MOTION TO COMPEL AND
	)	ALL OTHER PENDING
The Medical University of South	)	MOTIONS
Carolina,	)	
	)	
Defendant.	)	
_____	)	

BACKGROUND

Plaintiff Jian-Yun Dong, M.D, Ph.D. (“Dr. Dong”) and Defendant Medical University of South Carolina (“MUSC”) entered into separation agreement on or about May 3, 2010.¹ In his Complaint, Dr. Dong alleges MUSC breached the separation agreement. Dr. Dong’s sole cause of action in his Complaint is for breach of contract alleging MUSC breached the separation agreement.

Dr. Dong originally filed his Complaint on September 2, 2014. Subsequently, on October 22, 2015, Dr. Dong dismissed the lawsuit pursuant to Rule 40(j), SCRCF. Thereafter, on December 14, 2016, Dr. Dong’s lawsuit was restored to the general docket, pursuant to Rule 40(j), SCRCF, and the case was given its current case number. Although Dr. Dong was originally represented by counsel, Dr. Dong’s counsel withdrew from the matter in January 2017. Dr. Dong remains a pro se litigant.

¹ The separation agreement is attached as Exhibit A to Dr. Dong’s Complaint.

In April 2011, before Dr. Dong filed his Complaint, Dr. Dong was indicted for various federal felonies in federal district court. In April 2013, a Third Superseding Indictment was entered as to Dr. Dong. Thereafter, on August 4, 2015, before Dr. Dong's Complaint was dismissed pursuant to Rule 40(j), SCRPC, Dr. Dong was convicted in the federal district court.

On or about October 3, 2017, approximately ten months after Dr. Dong restored the case to the active roster, Dr. Dong was sentenced and committed to the custody of the Federal Bureau of Prisons for a term of seventy months and ordered to pay \$3,211,599.83.² According to the Federal Bureau of Prisons, Dr. Dong is scheduled for release in August 2022. However, based upon a recent status conference, it is understood Dr. Dong is serving the remainder of his sentence at home, and he is available to participate in discovery.³

The parties proceeded with discovery after the case was restored, including the exchange of written discovery requests and associated responses. In March 2019, Dr. Dong filed a motion to compel ("First Motion to Compel"). Dr. Dong's First Motion to Compel was subsequently heard by the Honorable D. Craig Brown. Dr. Dong appeared for the hearing by telephone. As a result of the hearing, Judge Brown issued an order on June 20, 2019, granting, in part, Dr. Dong's First Motion to Compel. Judge Brown's order also stayed the case pending Dr. Dong's release from federal confinement.

² MUSC understands Dr. Dong's criminal conviction, related sentence and associated restitution remain on appeal to the United States Court of Appeals for the Fourth Circuit.

³ A more detailed background, and related documents, pertaining to the history of Dr. Dong's federal criminal charges and related conviction is a part of MUSC's Motion for Status Conference filed January 31, 2019.

Subsequently, on July 3, 2019, MUSC filed its Motion to Alter or Amend as to Judge Brown's June 20, 2019, order. Thereafter, Judge Brown held a hearing regarding MUSC's Motion to Alter or Amend. Dr. Dong appeared for the hearing by telephone. As a result of the hearing, Judge Brown issued an order on October 4, 2019, granting MUSC's Motion to Alter or Amend. The order issued by Judge Brown on October 4, 2019, became the controlling order in this matter as to Dr. Dong's First Motion to Compel and further discovery because Judge Brown's October 4, 2019, order contains a "scheduling order" establishing various deadlines. Further, on October 4, 2019, Judge Brown approved and entered a Confidentiality Order.

In compliance with Judge Brown's October 4, 2019, order, MUSC provided discovery responses to Dr. Dong on October 14, 2019. Additionally, on November 18, 2019, counsel for MUSC sent Dr. Dong a letter inquiring about scheduling his deposition for the week of January 13, 2020, in advance of the discovery deadline established in Judge Brown's October 4, 2019, order.

On January 16, 2020, counsel for MUSC served Dr. Dong with a Notice of Taking Deposition, scheduling Dr. Dong's deposition for February 14, 2020, prior to the February 28, 2020, discovery deadline set by Judge Brown in his October 4, 2019, order. However, on January 27, 2020, Dr. Dong filed his Response to Taking Deposition, requesting, in general, his deposition be delayed until after March 15, 2020.⁴ Consequently, Dr. Dong's deposition did not go forward as noticed for February 14, 2020.

⁴ MUSC understood Dr. Dong's Response to Taking Deposition as a motion to delay his deposition.

On January 29, 2020, Dr. Dong filed his Motion to Expand Discovery. On the same date, Dr. Dong served counsel for MUSC with Plaintiff's Second Requests for Production to Defendant. Thereafter, and in response, MUSC served its responses/objections to Dr. Dong's Second Requests for Production on March 18, 2020.

By late February and early March 2020, the COVID-19 pandemic was ongoing and rapidly evolving. On or about March 4, 2020, the South Carolina Supreme Court issued an initial memorandum regarding the pandemic. By March 12, 2020, the operations of certain circuits courts in South Carolina began to close or otherwise alter operations due to the pandemic.

On or about September 2, 2020, Dr. Dong filed a Notice of Change of Address indicating he is now residing on Daniel Island, South Carolina, not in a Federal Bureau of Prisons facility. On January 11, 2021, Dr. Dong filed Plaintiff's Motion to Expand Discovery Schedule Due to COVID-19 Pandemics. Subsequently, and finally, on January 20, 2021, Dr. Dong filed Plaintiff's Second Motion to Compel Production.

Dr. Dong's motions have remained pending and not scheduled for hearing because, until recently, the Clerk of Court records continued to show the case as stayed, despite Judge Brown's October 4, 2019, order removing the stay initially entered by way of Judge Brown's June 20, 2019, order. As a result of a recent status conference with the Court, the Clerk of Court corrected its records by removing the stay.

LEGAL ARGUMENT

MUSC understands the following motions of Dr. Dong are pending resolution: 1) Response to Taking Deposition filed January 27, 2020; 2) Motion to Expand Discovery filed January 29, 2020; 3) Plaintiff's Motion to Expand Discovery Schedule Due to COVID-19 Pandemics filed

January 11, 2021; and 4) Plaintiff's Second Motion to Compel Production filed January 20, 2021. From a practical standpoint, it appears Dr. Dong's motions filed in January 2021 are the motions requiring resolution because the Response to Taking Deposition is pragmatically moot because March 15, 2020, the date Dr. Dong requested his deposition not be taken before in his Response to Taking Deposition, is now well in the past. Further, Dr. Dong's Motion to Expand Discovery Scheduled Due to COVID-19 Pandemics appears, generally, to be a resubmission/reassertion of Dr. Dong's previous Motion to Expand Discovery.

MUSC, within this framework, responds to Plaintiff's Motion to Expand Discovery Schedule Due to COVID-19 Pandemics filed January 11, 2021, and Plaintiff's Second Motion to Compel Production filed January 20, 2021. MUSC believes the resolution of these two motions should stand to effectively resolve all pending motions and place this matter on course to complete discovery and trial, if necessary.⁵

A. Plaintiff's Motion to Expand Discovery Schedule Due to COVID-19 Pandemics.

MUSC supports the Court entering an amended scheduling order allowing for the orderly progress and resolution of this matter, particularly given the circumstances created by the COVID-19 pandemic since February/March 2020.⁶ To that end, MUSC proposes the Court issue an amended scheduling order containing the following deadlines: 1) April 30, 2022, complete depositions; 2) May 31, 2022, engage in mediation or request a party or the parties be relieved

⁵ Regardless of what motions remain in need of resolution, this response should be considered a response to all Dr. Dong's pending, unresolved motions.

⁶ While no stand-alone scheduling order has been previously issued, Judge Brown's October 4, 2019, order contains, in part, a schedule for the orderly completion of the case.

from the obligation to participate in mediation; 3) June 30, 2022, file dispositive motions; and 4) case not eligible for trial until on or after July 31, 2022.⁷

MUSC believes the proposed order is, generally, consistent with Dr. Dong's request for additional time to conduct discovery.

B. Plaintiff's Second Motion to Compel Production.

Judge Brown, in both his June 2019 and October 2019 orders, expressly limited Dr. Dong's First Requests for Production (Exhibit A) as follows:

3. In responding to Dr. Dong's discovery requests, the scope of discoverable materials shall be limited to relevant documents generated or created no earlier than April 1, 2010. The parties may at any time prior to the discovery deadline, and for good cause, petition the circuit court to expand this limitation as discovery progresses.
4. In responding to Dr. Dong's discovery requests, the scope of discoverable materials shall further be limited to relevant documents generated by, created by, sent to, or received from Dr. Dong, Mark Sothman, Ph.D. or Stephen Lanier, Ph.D. The parties may at any time prior to the discovery deadline, and for good cause, petition the circuit court to expand this limitation as discovery progresses.

On October 14, 2019, consistent with Judge Brown's orders, MUSC produced documents to Dr. Dong.

Dr. Dong did not subsequently move to further compel production as to Judge Brown's orders or otherwise assert MUSC failed to comply with Judge Brown's orders with respect to the documents produced. Instead, Dr. Dong, in January 2020, filed his Motion to Expand Discovery

⁷ MUSC's suggested schedule is provided as a *proposed* schedule and understands the Court and Dr. Dong may propose/approve alternative deadlines.

and served Plaintiff's Second Requests for Production. (Exhibit B.) On March 18, 2020, MUSC served its responses to Plaintiff's Second Requests for Production. (Exhibit C.)

As noted in MUSC's responses to Plaintiff's Second Requests for Production, Plaintiff's Second Requests for Production are subject to objection for several particular reasons. First, Dr. Dong did not first obtain leave of the Court to request materials beyond those expressly required by Judge Brown's prior orders. Second, Dr. Dong did not serve Plaintiff's Second Requests for Production in a manner allowing MUSC thirty-five days to provide responses.

Moreover, and although not detailed in MUSC's responses, many requests contained in Plaintiff's Second Requests for Production are the very same (i.e. identical or virtually identical) requests contained in Plaintiff's First Requests for Production – being the requests previously ruled upon by Judge Brown. In particular, requests 1 and 16 through 40 in Plaintiff's Second Requests for Production are also in Plaintiff's First Requests for Production. In other words, twenty-six of the forty requests contained in Plaintiff's Second Requests for Production, and that Dr. Dong now moves to compel MUSC respond to, were previously reviewed, and expressly limited by Judge Brown in his orders.

Further, even in respect to the fourteen requests, being requests 2 – 15, that do not appear to be identical to those requests contained in Plaintiff's First Requests for Production, the noted requests seek the very same, broad materials sought by Dr. Dong in Plaintiff's First Requests for Production. Consequently, requests 2 – 15 in Plaintiff's Second Requests for Production constitute no more than Dr. Dong again requesting the same materials Dr. Dong broadly requested in Plaintiff's First Requests for Production.

In summary, Plaintiff's Second Requests for Production, both expressly and implicitly, requests the same materials requested in Plaintiff's First Requests for Production. Judge Brown, after two hearings, issued his October 4, 2019, order expressly placing parameters on the materials MUSC is required to produce. Because Plaintiff's First Requests for Production and Second Requests for Production, in all material respects, requests the same materials, Judge Brown's October 4, 2019, applies to, and so limits, any materials MUSC is required to provide Dr. Dong. Because MUSC previously supplied the materials required by Judge Brown's October 4, 2019, order, MUSC is not required to produce any more materials and Dr. Dong cannot and does not show otherwise.

For these reasons, Dr. Dong's Second Requests for Production should be disallowed and Dr. Dong's related Second Motion to Compel denied.

CONCLUSION

For the reasons discussed above, MUSC respectfully requests the Court deny Dr. Dong's motions and, correspondingly, establish a scheduling order allowing for the completion of discovery, the filing of dispositive motions, mediation, and, if necessary, trial.

Respectfully submitted,

s/ Bob J. Conley

Caroline Wrenn Cleveland

Bob J. Conley

CLEVELAND & CONLEY, LLC

One Seventy-One Church Street, Suite 310

Charleston, South Carolina 29401

Telephone: (843) 577-9626

Facsimile: (843) 577-6672

ccleveland@clevelandlaborlaw.com

bconley@clevelandlaborlaw.com

ATTORNEYS FOR DEFENDANT

Charleston, South Carolina
October 29, 2021

CERTIFICATE OF SERVICE

This is to certify that I have this 29th day of October 2021 caused to be served a copy of Defendant's Response to Plaintiff's Second Motion to Compel and All Other Pending Motions via email, addressed as follows:

Jian-Yun Dong, M.D., Ph.D.
johny.dong@gmail.com

s/ Bob J. Conley

STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	) FOR THE NINTH JUDICIAL CIRCUIT
Jian-Yun (John) Dong, M.D., Ph.D.	) CASE NO.: 2016-CP-10-06683
	)
plaintiff	)
V.	) PLAINTIFF'S FIRST REQUESTS
The Medical University of South	) FOR PRODUCTION TO DEFENDANT
Carolina	)
Defendants	)
_____	)

**TO: CAROLINE WRENN CLEVELAND AND BOB J. CONLEY, ATTORNEYS
FOR DEFENDANT**

Plaintiff, Dr. John Dong, hereby requests on a continuous basis, pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, the Defendant respond within (90) days after the service hereof to the following Requests and that the Defendant produce copies of each of the following documents or things which may be in the possession, custody, or control of the Defendant or its counsel:

1. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to Dr. Dong's performance or employment at MUSC.

2. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to the decision, process, instigation, initiation or in any way lead to any proposed or suggested any discipline action against Dr. Dong.

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OCT 29 2021

3. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to the decision, process, instigation, initiation or in any way that related to, lead to the pressure of, suggest of, or the request of Dr. Dong to resign from the MUSC.

4. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to the decision, event, or process of inventorying, cataloging, transferring, taking, or removing of any documents, biological material, reagents, ingredients, chemicals, DNA, research agents, records, notebooks, protocols, research methods, and any equipment, instruments, devices, tools, computers, from Dr. Dong's laboratories, offices, vector-core spaces, storage space, or shared, common spaces, computer storages, harddrives, computer files, Homeroom account, and his email accounts. Specifically, but not limited to the inventory lists of Dr. Dong's biological materials, equipment, reagents, scientific notebooks, records, protocols, copies of Dr. Dong's grant proposals submitted from MUSC.

5. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to the negotiation, discussion, decision in reaching agreement that Dr. Dong to resign from MUSC.

6. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind

from or to anybody related in any way to the discussions, decisions or suggestions of how the Agreement with Dr. Dong to be carried out, performed, including but not limited to decisions, suggestions not to transfer the biological material, equipments, reagents, scientific notebooks, records, and any conditions listed, promised, suggested in the Agreement.

7. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to the discussion, decisions or suggestion to refuse accepting Dr. Dong's grant, and not to rehire Dr. Dong back to MUSC.

8. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to the discussions, negotiations, agreement, contract, understanding, or decision to transfer, give, or sale GenPhar shares held by Dr. Dong, FRD, and MUSC to Hubner group, Timothy Scranton, or any other parity or entity, individual, company, or organization.

9. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to the relationship, association, ownership, business dealings, between Foundation for Research and Development (FRD) of MUSC and any members of MUSC may in any related to Dr. Dong, and GenPhar, Inc.

10. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind

from or to anybody related in any way to Dr. Dong, and GenPhar, Inc. including but not limited to technology disclosures, patent applications, benefit share formulas, plans held at FRD.

11. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to technology transferring, payments from GenPhar, Inc. license agreement with GenPhar, Inc.

12. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to technology transferring, patent applications, nondisclosure agreements, or license agreement with related to technologies developed in Dr. Dong's laboratory with any individuals, company, organization, or entity of every kind.

13. Any and all publications, scientific notebooks, grant applications, records, documents, reports, meeting presentations, or communications, from anyone to anyone including any organizations, government agencies, such as National Institutes of Health, National Science Foundation, Department of Defense, private foundations, publication companies, that any biological material, vectors, DNA, reagents, technology, techniques, or information, that were directly or indirectly obtained, originated from Dr. Dong's laboratories, vector cores or obtained from Dr. James S. Norris.

14. Any and all publications, scientific notebooks, grant applications, records, documents, reports, meeting presentations, or communications, from anyone to anyone

that related to mentioned of cancer gene therapy, apoptosis, or adenovirus vector that express TRAIL, FasL, or adenovirus express cancer suppressor gene, viral antigens, or any adenovirus vector contain any gene under the regulation probacin promoter, Tet-on promoter, inducible promoter, feedback promoter or any adenovirus vector contain more than one DNA insert (known as CAd, complex Adenovirus) and AAV, especially, but not limited to, the persons, staff, faculty members, students, post-doctoral fellows who had a relationship of any kind with Dr. James S. Norris.

15. Any and all financial records, accounting, and expenditure reports of Dr. Dong's funds, including his start up funds, all grants, payments from GenPhar and any other sources prior 2010.

16. Any and all financial records, accounting, and expenditure reports of Dr. James Norris funds from any source, prior 2010.

17. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to Dr. Dong's faculty evaluations, annual reports, career development plan, tenure application, tenure approval or Dr. Dong's academic performance.

18. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to any compliant, memorandums made by Dr. Dong and communicated to any members of MUSC administration or committees.

19. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to any complaint, recommendations, suggestions, and causes of actions made against Dr. Dong from anyone at MUSC.

20. Any and all documents the Defendant read, reviewed, and/or obtained relating in any way to the allegations made by Dr. Dong.

21. Copies of any and all statements made by anyone related to Dr. Dong's tenure at MUSC.

22. Any and all reports, statements prepared by anyone concerning this complaint against MUSC.

23. Any and all contents in Dr. Dong's email account (dongj@musc.edu) and in his HomeRoom account on MUSC server both in print and in electronic file on computer storage device, such as portable hard drive, or USB drive.

24. Any and all files and documents related to Dr. Dong filed at MUSC, including but not limited to Department of Microbiology and Immunology, office of grant management, and office of human resources.

25. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to any complaint, lawsuit, causes of actions, recommendations or resolutions related to any members of MUSC administrations, including Department chairs, directors, managers, deans, provost, and president, especially related to, but not limited to, Dr. James S. Norris, and Dr. Stephen Lanier.

A handwritten signature in black ink, appearing to read "John Dong", written in a cursive style.

John Dong, M.D., Ph.D.

January, 16th, 2018
LSCI, Butner,
North Carolina

CERTIFICATE OF SERVICE

This is to certify that I have this 16th day of January 2018, caused to be served a copy of Plaintiff's Response to Defendant's First Requests for Production via United States Mail Services with postage and addressed as follows:

Attention to: Bob J. Conley
Cleveland & Conley, LLC
171 Church Street, Suite 310
Charleston, South Carolina 29401



John Dong, M.D., Ph.D.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT

Jian-Yun (John) Dong, M.D., Ph.D.

CASE NO.: 2016-CP-10-06683

plaintiff

Y.

PLAINTIFF'S SECOND REQUESTS
FOR PRODUCTION TO DEFENDANT

The Medical University of South
Carolina

Defendants

TO: CAROLINE WRENN CLEVELAND AND BOB J. CONLEY, ATTORNEYS
FOR DEFENDANT

Plaintiff, Dr. John Dang, hereby requests on a continuous basis, pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, the Defendant respond within ninety (90) days or the timelines ordered by the Court, which ever is sooner, after the service hereof to the following Requests and that the Defendant produce copies of each of the following documents or things which may be in the possession, custody, or control of the Defendant or its counsel:

1. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to Dr. Dong's academic performance and evaluation at MUSC.

2. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to Dr. Dong's funded or unfunded grant proposals at MIJSC.

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3. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to the financial records of Dr. Dong's grants, start-up funds and any other monetary income at MUSC.

4. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to Dr. Dong's academic and scientific records at MUSC.

5. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to Dr. Dong's Tenure Full Professor Promotion Package at MUSC.

6. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to Dr. Dong's communications with the Chairman of Department of Microbiology and Immunology, Dr. James S. Norris in regarding to Dr. Dong's research and academic activities and issues evolving financial, compliance, personnel, scientific publications.

7. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to communications, discussions and decisions surrounding the conducting a "inventory of Dr. Dong's research materials."

8. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to communications among Dr. Norris, Dr. Stephen Lanier and any members of the MUSC Biosafety Committee or officer with regards to Dr. Dong's research and biological materials"

9. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to communications, discussions and decisions surrounding the search, seizure and transfer of Dr. Dong's research materials.

10. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to the "inventory lists" of Dr. Dong's research materials seized by the MUSC.

11. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to discussions and decisions in search and seizure of Dr. Dong's research records, methods, protocols, research plans.

12. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to Dr. Norris' communications with and Dr. Dong's employees, postdoctoral fellows, students, technicians.

13. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to Dr. Norris' communication, or discussions with the personnel, students, post doctoral fellows, technicians or any member of the Department with regard to using or taking Dr. Dong's research materials, constructs, vectors, DNA material for their research for "collaborations" with Dr. Dong.

14. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to Dr. Dong's patents, patent applications, technology disclosures at MUSC including Foundation for Research and Development (FRD).

15. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to any communications, discussions between/among Dr. Norris and members of administration, various committees, including biosafety, and faculty committees related to Dr. Dong.

16. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to communications or discussions between/among Dr. Norris, Dr. Lanier and MUSC counsel, Mr. Joseph Good with regard to Dr. Dong.

17. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to the decision, process, instigation, initiation or in any way lead to any proposed or suggested any discipline action against Dr. Dong.

18. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to the decision, process, instigation, initiation or in any way that related to, lead to the pressure of, suggest of, or the request of Dr. Dong to resign from the MUSC.

19. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to the decision, event, or process of inventorying, cataloging, transferring, taking, or removing of any documents, biological material, reagents, ingredients, chemicals, DNA, research agents, records, notebooks, protocols, research methods, and any equipment, instruments, devices, tools, computers, from Dr. Dong's laboratories, offices, vector-core spaces, storage space, or shared, common spaces, computer storages, harddrives, computer files, Homeroom account, and his email accounts. Specifically, but not limited to the inventory lists of Dr. Dong's biological materials, equipment, reagents, scientific notebooks, records, protocols, copies of Dr. Dong's grant proposals submitted from MUSC.

20. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to the negotiation, discussion, decision in reaching agreement that Dr. Dong to resign from MUSC.

21. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to the discussions, decisions or suggestions of how the Agreement with Dr. Dong to be carried out, performed, including but not limited to decisions, suggestions not to transfer the biological material, equipments, reagents, scientific notebooks, records, and any conditions listed, promised, suggested in the Agreement.

22. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to the discussion, decisions or suggestion to refuse accepting Dr. Dong's grant, and not to rehire Dr. Dong back to MUSC.

23. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to the discussions, negotiations, agreement, contract, understanding, or decision to transfer, give, or sale GenPhar shares held by Dr. Dong, FRD, and MUSC to Hubner group, Timothy Scranton, or any other party or entity, individual, company, or organization.

24. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to the relationship, association, ownership, business dealings, between Foundation for Research and Development (FRD) of MUSC and any members of MUSC may in any related to Dr. Dong, and GenPhar, Inc.

25. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to Dr. Dong, and GenPhar, Inc. including but not limited to technology disclosures, patent applications, benefit share formulas, plans held at FRD).

26. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to technology transferring, payments from GenPhar, Inc. license agreement with GenPhar, Inc.

27. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to technology transferring, patent applications, nondisclosure agreements, or license agreement with related to technologies developed in Dr. Dong's laboratory with any individuals, company, organization, or entity of every kind.

28. Any and all publications, scientific notebooks, grant applications, records, documents, reports, meeting presentations, or communications, from anyone to anyone including any organizations, government agencies, such as National Institutes of Health,

National Science Foundation, Department of Defense, private foundations, publication companies, that any biological material, vectors, DNA, reagents, technology, techniques, or information, that were directly or indirectly obtained, originated from Dr. Dong's laboratories, vector cores or obtained from Dr. James S. Norris.

29. Any and all publications, scientific notebooks, grant applications, records, documents, reports, meeting presentations, or communications, from anyone to anyone that related to mentioned of cancer gene therapy, apoptosis, or adenovirus vector that express TRIAL, FasL, or adenovirus express cancer suppressor gene, viral antigens, or any adenovirus vector contain any gene under the regulation probacin promoter, Tet-opron promoter, inducible promoter, feedback promoter or any adenovirus vector contain more than one DNA insert (known as CAd, complex Adenovirus) and AAV, especially, but not limited to, the persons, staff, faculty members, students, post-doctoral fellows who had a relationship of any kind with Dr. James S. Norris.

30. Any and all financial records, accounting, and expenditure reports of Dr. Dong's funds, including his start up funds, all grants, payments from GenPhar and any other sources prior 2010.

31. Any and all financial records, accounting, and expenditure reports of Dr. James Norris funds from any source, prior 2010.

32. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to Dr. Dong's faculty evaluations, annual reports, career development plan, tenure application, tenure approval or Dr. Dong's academic performance.

33. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to any complaint, memorandums made by Dr. Dong and communicated to any members of MUSC administration or committees.

34. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to any complaint, recommendations, suggestions, and causes of actions made against Dr. Dong from anyone at MUSC.

35. Any and all documents the Defendant read, reviewed, and/or obtained relating in any way to the allegations made by Dr. Dong.

36. Copies of any and all statements made by anyone related to Dr. Dong's tenure at MUSC.

37. Any and all reports, statements prepared by anyone concerning this complaint against MUSC.

38. Any and all contents in Dr. Dong's email account (dongj@musc.edu) and in his HomeRoom account on MUSC server both in print and in electronic file on computer storage device, such as portable hard drive, or USB drive.

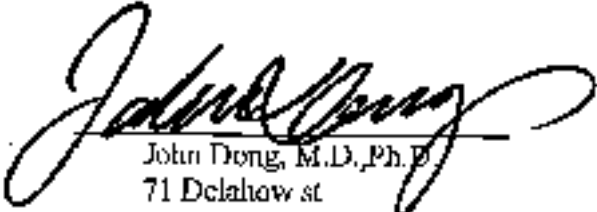
39. Any and all files and documents related to Dr. Dong filed at MUSC, including but not limited to Department of Microbiology and Immunology, office of grant management, and office of human resources.

40. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to any complaint, lawsuit, causes of

actions, recommendations or resolutions related to any members of MUSC administrations, including Department chairs, directors, managers, deans, provost, and president, especially related to, but not limited to, Dr. James S. Norris, and Dr. Stephen Lauier.

Dated: January 29, 2020

Sincerely,



John Dong, M.D., Ph.D.
71 Delahow st
Charleston, SC 29492

CERTIFICATE OF SERVICE

This is to certify that I have this *29th day of January 2020*, caused to be served a copy of ***PLAINTIFF'S SECOND REQUESTS FOR PRODUCTION TO DEFENDANT*** via United States Mail Services with postage and addressed as follows:

Attention to:
Emmanuel J. Ferguson
Cleveland & Conley LLC
171 Church Street, suite 310
Charleston, South Carolina 29401


John Dang, M.D., Ph.D.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-06683
	)	
Jian-Yun (John) Dong, M.D., Ph.D.	)	
	)	
Plaintiff	)	DEFENDANT'S RESPONSES
	)	TO PLAINTIFF'S SECOND
v.	)	REQUESTS
	)	FOR PRODUCTION TO
The Medical University of South Carolina	)	DEFENDANT
	)	
Defendant,	)	
	)	

TO: JIAN-YUN DONG, PRO SE DEFENDANT:

Defendant Medical University of South Carolina ("MUSC"), by and through its undersigned attorneys, responds to the Plaintiff's Second Requests for Production as follows:

GENERAL OBJECTIONS AND RESERVATIONS

- A. Defendant objects to any document request that seeks: (a) information prepared in anticipation of litigation or for trial; (b) information protected by the attorney-client privilege, work product doctrine, the common-interest doctrine, or any other applicable privileges; (c) information pertaining to any periods of time that are irrelevant to the issues or claims in this lawsuit; (d) disclosure of counsel's mental impressions, conclusions, opinions, or legal theories; (e) information that is in any way duplicative, over broad, annoying, oppressive, unduly burdensome, or expensive to produce; (f) information that is obtainable from some other source (i.e., as a matter of public record) that is more convenient, less burdensome, less expensive, and/or as accessible or available to Plaintiff; or (g) information that is otherwise beyond the scope of discovery under the South Carolina Rules of Civil Procedure.

- B. Defendant objects to Plaintiff's document requests to the extent that they seek information or documents not within Defendant's possession, custody, control or knowledge. Defendant objects to Plaintiff's document requests to the extent that Plaintiff seeks information or documents either already possessed by Plaintiff or already within Plaintiff's care, custody, and/or control.
- C. Defendant objects to Plaintiff's document requests to the extent that they are vague or ambiguous or fail to describe the information or documents sought with sufficient particularity to allow for a meaningful response by Defendant.
- D. Defendant objects to Plaintiff's document requests to the extent that they seek the production or disclosure of (a) information or documents that constitute Defendant's confidential, trade secret, or other proprietary information, (b) information or documents that are subject to, and governed by, a confidentiality agreement, non-disclosure agreement, or protective order in another matter or proceeding, and (c) information or documents of third parties, the unrestricted disclosure of which might violate the rights of such third parties.
- E. Defendant objects to Plaintiff's document requests to the extent that they seek documents or information relating to matters that are not raised in the pleadings on the grounds that such document requests are either irrelevant to this action or not reasonably calculated to lead to the discovery of admissible evidence.
- F. Defendant's responses are based upon the best information presently available. Defendant reserves the right to amend, supplement, correct, or clarify their responses if other or additional information is obtained.

- G. Defendant may move for an appropriate protective order if necessary to protect the confidentiality of certain documents.
- H. Defendant will not reproduce responsive documents previously provided to Plaintiff in this matter. Defendant will not reproduce responsive documents produced, or made available, by Plaintiff to Defendant in this matter.
- I. Defendant has made reasonable efforts to locate and make available for inspection all non-privileged documents responsive to Plaintiff's document requests, as Defendant understands them. Defendant generally reserves the right to amend, supplement, or withdraw any response to Plaintiff's requests as Defendant deems necessary or appropriate in light of the information or knowledge obtained during the course of discovery in this action.

SPECIFIC RESPONSES AND OBJECTIONS

- 1. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to Dr. Dong's academic performance and evaluation at MUSC.

RESPONSE: MUSC objects to this Request as it is vague and overbroad. MUSC further objects as Plaintiff's discovery requests were not served in compliance with the Court's October 4, 2019, Order. MUSC further objects to this Request to the extent it requests material and communications subject to the attorney-client privilege or that constitute attorney work product. Without waiving its objections and subject to them, MUSC provided responses to Plaintiff's First Requests for Production pursuant to the Court's October 4, 2019, Order on October 14, 2019.

2. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to Dr. Deng's funded or unfunded grant proposals at MUSC.

RESPONSE: MUSC objects to this Request as it is vague and overbroad. MUSC further objects as Plaintiff's discovery requests were not served in compliance with the Court's October 4, 2019, Order. MUSC further objects to this Request to the extent it requests material and communications subject to the attorney-client privilege or that constitute attorney work product. Without waiving its objections and subject to them, MUSC provided responses to Plaintiff's First Requests for Production pursuant to the Court's October 4, 2019, Order on October 14, 2019.

3. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to the financial records of Dr. Dong's grants, start-up funds and any other monetary income at MUSC.

RESPONSE: MUSC objects to this Request as it is vague and overbroad. MUSC further objects as Plaintiff's discovery requests were not served in compliance with the Court's October 4, 2019, Order. MUSC further objects to this Request to the extent it requests material and communications subject to the attorney-client privilege or that constitute attorney work product. Without waiving its objections and subject to them, MUSC provided responses to Plaintiff's First Requests for Production pursuant to the Court's October 4, 2019, Order on October 14, 2019.

4. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to Dr. Dung's academic and scientific records at MUSC.

RESPONSE: MUSC objects to this Request as it is vague and overbroad. MUSC further objects as Plaintiff's discovery requests were not served in compliance with the Court's October 4, 2019, Order. MUSC further objects to this Request to the extent it requests material and communications subject to the attorney-client privilege or that constitute attorney work product. Without waiving its objections and subject to them, MUSC provided responses to Plaintiff's First Requests for Production pursuant to the Court's October 4, 2019, Order on October 14, 2019.

5. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to Dr. Dong's Tenure Full Professor Promotion Package at MUSC.

RESPONSE: MUSC objects to this Request as it is vague and overbroad. MUSC further objects as Plaintiff's discovery requests were not served in compliance with the Court's October 4, 2019, Order. MUSC further objects to this Request to the extent it requests material and communications subject to the attorney-client privilege or that constitute attorney work product. Without waiving its objections and subject to them, MUSC provided responses to Plaintiff's First Requests for Production pursuant to the Court's October 4, 2019, Order on October 14, 2019.

6. Any and all records, documents, computer files, correspondence (including emails), reports,

policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to Dr. Dong's communications with the Chairman of Department of Microbiology and Immunology, Dr. James S. Norris in regarding to Dr. Dong's research and academic activities and issues evolving financial, compliance, personnel, scientific publications.

RESPONSE: MUSC objects to this Request as it is vague and overbroad. MUSC further objects as Plaintiff's discovery requests were not served in compliance with the Court's October 4, 2019, Order. MUSC further objects to this Request to the extent it requests material and communications subject to the attorney-client privilege or that constitute attorney work product. Without waiving its objections and subject to them, MUSC provided responses to Plaintiff's First Requests for Production pursuant to the Court's October 4, 2019, Order on October 14, 2019.

7. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to communications, discussions and decisions surrounding the conducting a "inventory of Dr. Dong's research materials."

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8. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every form or to kind anybody related in any way to communications among Dr. Norris, Dr. Stephen Lanier and any members of the MUSC Biosafety Committee or officer with regards to Dr. Dong's research and biological materials"

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9. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to communications, discussions and decisions surrounding the search, seizure and transfer of Dr. Dong's research materials.

RESPONSE: MUSC objects to this Request as it is vague and overbroad. MUSC further objects as Plaintiff's discovery requests were not served in compliance with the Court's October 4, 2019, Order. MUSC further objects to this Request to the extent it requests material and communications subject to the attorney-client privilege or that constitute attorney work product. Without waiving its objections and subject to them, MUSC provided responses to Plaintiff's First

Requests for Production pursuant to the Court's October 4, 2019, Order on October 14, 2019.

10. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to the "inventory lists" of Dr. Dong's research materials seized by the MUSC.

RESPONSE: MUSC objects to this Request as it is vague and overbroad. MUSC further objects as Plaintiff's discovery requests were not served in compliance with the Court's October 4, 2019, Order. MUSC further objects to this Request to the extent it requests material and communications subject to the attorney-client privilege or that constitute attorney work product. Without waiving its objections and subject to them, MUSC provided responses to Plaintiff's First Requests for Production pursuant to the Court's October 4, 2019, Order on October 14, 2019.

11. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to discussions and decisions in search and seizure of Dr. Dong's research records, methods, protocols, research plans.

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October 14, 2019.

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RESPONSE: MUSC objects to this Request as it is vague and overbroad. MUSC further objects as Plaintiff's discovery requests were not served in compliance with the Court's October 4, 2019, Order. MUSC further objects to this Request to the extent it requests material and communications subject to the attorney-client privilege or that constitute attorney work product. Without waiving its

objections and subject to them, MUSC provided responses to Plaintiff's First Requests for Production pursuant to the Court's October 4, 2019, Order on October 14, 2019.

14. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to Dr. Dong's patents, patent applications, technology disclosures at MUSC including Foundation for Research and Development (FRD).

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15. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to any communications, discussions between/among Dr. Norris and members of administration, various committees, including biosafety, and faculty committees related to Dr. Dong.

RESPONSE: MUSC objects to this Request as it is vague and overbroad. MUSC further objects as Plaintiff's discovery requests were not served in compliance with the Court's October 4, 2019, Order. MUSC further objects to this Request to

the extent it requests material and communications subject to the attorney-client privilege or that constitute attorney work product. Without waiving its objections and subject to them, MUSC provided responses to Plaintiff's First Requests for Production pursuant to the Court's October 4, 2019, Order on October 14, 2019.

16. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to communications or discussions between/among Dr. Norris, Dr. Lanier and MUSC counsel, Mr. Joseph Good with regard to Dr. Dong.

RESPONSE: MUSC objects to this Request as it is vague and overbroad. MUSC further objects as Plaintiff's discovery requests were not served in compliance with the Court's October 4, 2019, Order. MUSC further objects to this Request to the extent it requests material and communications subject to the attorney-client privilege or that constitute attorney work product. Without waiving its objections and subject to them, MUSC provided responses to Plaintiff's First Requests for Production pursuant to the Court's October 4, 2019, Order on October 14, 2019.

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RESPONSE: MUSC objects to this Request as it is vague and overbroad. MUSC further objects as Plaintiff's discovery requests were not served in compliance with

the Court's October 4, 2019, Order. MUSC further objects to this Request to the extent it requests material and communications subject to the attorney-client privilege or that constitute attorney work product. Without waiving its objections and subject to them, MUSC provided responses to Plaintiff's First Requests for Production pursuant to the Court's October 4, 2019, Order on October 14, 2019.

18. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to the decision, process, instigation, initiation or in any way that related to, lead to the pressure of, suggest of, or the request of Dr. Dong to resign from the MUSC.

RESPONSE: MUSC objects to this Request as it is vague and overbroad. MUSC further objects as Plaintiff's discovery requests were not served in compliance with the Court's October 4, 2019, Order. MUSC further objects to this Request to the extent it requests material and communications subject to the attorney-client privilege or that constitute attorney work product. Without waiving its objections and subject to them, MUSC provided responses to Plaintiff's First Requests for Production pursuant to the Court's October 4, 2019, Order on October 14, 2019.

19. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to the decision, event, or process of inventorying, cataloging, transferring, taking, or removing of any documents, biological material, reagents, ingredients, chemicals, DNA, research agents, records, notebooks, protocols, research methods, and any equipment, instruments, devices, tools, computers, from Dr. Dong's laboratories, offices, vector-core spaces, storage space, or shared, common

spaces, computer storages, hard drives, computer files, Homezon account, and his email accounts. Specifically, but not limited to the inventory lists of Dr. Dong's biological materials, equipment, reagents, scientific notebooks, records, protocols, copies of Dr. Dong's grant proposals submitted from MUSC.

RESPONSE: MUSC objects to this Request as it is vague and overbroad. MUSC further objects as Plaintiff's discovery requests were not served in compliance with the Court's October 4, 2019, Order. MUSC further objects to this Request to the extent it requests material and communications subject to the attorney-client privilege or that constitute attorney work product. Without waiving its objections and subject to them, MUSC provided responses to Plaintiff's First Requests for Production pursuant to the Court's October 4, 2019, Order on October 14, 2019.

20. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to the negotiation, discussion, decision in reaching agreement that Dr. Dong to resign from MUSC.

RESPONSE: MUSC objects to this Request as it is vague and overbroad. MUSC further objects as Plaintiff's discovery requests were not served in compliance with the Court's October 4, 2019, Order. MUSC further objects to this Request to the extent it requests material and communications subject to the attorney-client privilege or that constitute attorney work product. Without waiving its objections and subject to them, MUSC provided responses to Plaintiff's First Requests for Production pursuant to the Court's October 4, 2019, Order on October 14, 2019.

21. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to the discussions, decisions or suggestions of how the Agreement with Dr. Dong to be carried out, performed, including but not limited to decisions, suggestions not to transfer the biological material, equipment, reagents, scientific notebooks, records, and any conditions listed, promised, suggested in the Agreement.

RESPONSE: MUSC objects to this Request as it is vague and overbroad. MUSC further objects as Plaintiff's discovery requests were not served in compliance with the Court's October 4, 2019, Order. MUSC further objects to this Request to the extent it requests material and communications subject to the attorney-client privilege or that constitute attorney work product. Without waiving its objections and subject to them, MUSC provided responses to Plaintiff's First Requests for Production pursuant to the Court's October 4, 2019, Order on October 14, 2019.

22. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to the discussion, decisions or suggestion to refuse accepting Dr. Dong's grant, and not to rehire Dr. Dong back to MUSC.

RESPONSE: MUSC objects to this Request as it is vague and overbroad. MUSC further objects as Plaintiff's discovery requests were not served in compliance with the Court's October 4, 2019, Order. MUSC further objects to this Request to the extent it requests material and communications subject to the attorney-client privilege or that constitute attorney work product. Without waiving its

objections and subject to them, MUSC provided responses to Plaintiff's First Requests for Production pursuant to the Court's October 4, 2019, Order on October 14, 2019.

23. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to the discussions, negotiations, agreement, contract, understanding, or decision to transfer, give, or sale GenPhar shares held by Dr. Dong, FRD, and MUSC to Hubner group, Timothy Seranton, or any other party or entity, individual, company, or organization.

RESPONSE: MUSC objects to this Request as it is vague and overbroad. MUSC further objects as Plaintiff's discovery requests were not served in compliance with the Court's October 4, 2019, Order. MUSC further objects to this Request to the extent it requests material and communications subject to the attorney-client privilege or that constitute attorney work product. Without waiving its objections and subject to them, MUSC provided responses to Plaintiff's First Requests for Production pursuant to the Court's October 4, 2019, Order on October 14, 2019.

24. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to the relationship, association, ownership, business dealings, between Foundation for Research and Development (FRD) of MUSC and any members of MUSC may in any related to Dr. Dong, and GenPhar, Inc.

RESPONSE: MUSC objects to this Request as it is vague and overbroad. MUSC further objects as Plaintiff's discovery requests were not served in compliance with

the Court's October 4, 2019, Order. MUSC further objects to this Request to the extent it requests material and communications subject to the attorney-client privilege or that constitute attorney work product. Without waiving its objections and subject to them, MUSC provided responses to Plaintiff's First Requests for Production pursuant to the Court's October 4, 2019, Order on October 14, 2019.

25. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to Dr. Dong, and GenPhar, Inc. including but not limited to technology disclosures, patent applications, benefit share formulas, plans held at FRD.

RESPONSE: MUSC objects to this Request as it is vague and overbroad. MUSC further objects as Plaintiff's discovery requests were not served in compliance with the Court's October 4, 2019, Order. MUSC further objects to this Request to the extent it requests material and communications subject to the attorney-client privilege or that constitute attorney work product. Without waiving its objections and subject to them, MUSC provided responses to Plaintiff's First Requests for Production pursuant to the Court's October 4, 2019, Order on October 14, 2019.

26. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to technology transferring, payments from GenPhar, Inc. license agreement with GenPhar, Inc.

RESPONSE: MUSC objects to this Request as it is vague and overbroad. MUSC further

objects as Plaintiff's discovery requests were not served in compliance with the Court's October 4, 2019, Order. MUSC further objects to this Request to the extent it requests material and communications subject to the attorney-client privilege or that constitute attorney work product. Without waiving its objections and subject to them, MUSC provided responses to Plaintiff's First Requests for Production pursuant to the Court's October 4, 2019, Order on October 14, 2019.

27. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to technology transferring, patent applications, nondisclosure agreements, or license agreement with related to technologies developed in Dr. Dong's laboratory with any individuals, company, organization, or entity of every kind.

RESPONSE: MUSC objects to this Request as it is vague and overbroad. MUSC further objects as Plaintiff's discovery requests were not served in compliance with the Court's October 4, 2019, Order. MUSC further objects to this Request to the extent it requests material and communications subject to the attorney-client privilege or that constitute attorney work product. Without waiving its objections and subject to them, MUSC provided responses to Plaintiff's First Requests for Production pursuant to the Court's October 4, 2019, Order on October 14, 2019.

28. Any and all publications, scientific notebooks, grant applications, records, documents, reports, meeting presentations, or communications, from anyone to anyone including any organizations, government agencies, such as National Institutes of Health, National Science

Foundation, Department of Defense, private foundations, publication companies, that any biological material, vectors, DNA, reagents, technology, techniques, or information, that were directly or indirectly obtained, originated from Dr. Dong's laboratories, vector cores or obtained from Dr. James S. Norris.

RESPONSE: MUSC objects to this Request as it is vague and overbroad. MUSC further objects as Plaintiff's discovery requests were not served in compliance with the Court's October 4, 2019, Order. MUSC further objects to this Request to the extent it requests material and communications subject to the attorney-client privilege or that constitute attorney work product. Without waiving its objections and subject to them, MUSC provided responses to Plaintiff's First Requests for Production pursuant to the Court's October 4, 2019, Order on October 14, 2019.

29. Any and all publications, scientific notebooks, grant applications, records, documents, reports, meeting presentations, or communications, from anyone to anyone that related to mentioned of cancer gene therapy, apoptosis, or adenovirus vector that express TRIAL, FasL, or adenovirus express cancer suppressor gene, viral antigens, or any adenovirus vector contain any gene under the regulation probacin promoter, Tetopron promoter, inducible promoter, feedback promoter or any adenovirus vector contain more than one DNA insert (known as CAd, complex Adenovirus) and AAV, especially, but not limited to, the persons, staff, faculty members, students, post-doctoral fellows who had a relationship of any kind with Dr. James S. Norris.

RESPONSE: MUSC objects to this Request as it is vague and overbroad. MUSC further objects as Plaintiff's discovery requests were not served in compliance with the Court's October 4, 2019, Order. MUSC further objects to this Request to

the extent it requests material and communications subject to the attorney-client privilege or that constitute attorney work product. Without waiving its objections and subject to them, MUSC provided responses to Plaintiff's First Requests for Production pursuant to the Court's October 4, 2019, Order on October 14, 2019.

30. Any and all financial records, accounting, and expenditure reports of Dr. Dong's funds, including his start up funds, all grants, payments from GenPhar and any other sources prior 2010.

RESPONSE: MUSC objects to this Request as it is vague and overbroad. MUSC further objects as Plaintiff's discovery requests were not served in compliance with the Court's October 4, 2019, Order. MUSC further objects to this Request to the extent it requests material and communications subject to the attorney-client privilege or that constitute attorney work product. Without waiving its objections and subject to them, MUSC provided responses to Plaintiff's First Requests for Production pursuant to the Court's October 4, 2019, Order on October 14, 2019.

31. Any and all financial records, accounting, and expenditure reports of Dr. James Norris funds from any source, prior 2010.

RESPONSE: MUSC objects to this Request as it is vague and overbroad. MUSC further objects as Plaintiff's discovery requests were not served in compliance with the Court's October 4, 2019, Order. MUSC further objects to this Request to the extent it requests material and communications subject to the attorney-client privilege or that constitute attorney work product. Without waiving its objections and subject to them, MUSC provided responses to Plaintiff's First

Requests for Production pursuant to the Court's October 4, 2019, Order on October 14, 2019.

32. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to Dr. Dong's faculty evaluations, annual reports, career development plan, tenure application, tenure approval or Dr. Dong's academic performance.

RESPONSE: MUSC objects to this Request as it is vague and overbroad. MUSC further objects as Plaintiff's discovery requests were not served in compliance with the Court's October 4, 2019, Order. MUSC further objects to this Request to the extent it requests material and communications subject to the attorney-client privilege or that constitute attorney work product. Without waiving its objections and subject to them, MUSC provided responses to Plaintiff's First Requests for Production pursuant to the Court's October 4, 2019, Order on October 14, 2019.

33. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to any complaint, memorandums made by Dr. Dong and communicated to any members of MUSC administration or committees.

RESPONSE: MUSC objects to this Request as it is vague and overbroad. MUSC further objects as Plaintiff's discovery requests were not served in compliance with the Court's October 4, 2019, Order. MUSC further objects to this Request to the extent it requests material and communications subject to the attorney-client privilege or that constitute attorney work product. Without waiving its

objections and subject to them, MUSC provided responses to Plaintiff's First Requests for Production pursuant to the Court's October 4, 2019, Order on October 14, 2019.

34. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to any complaint, recommendations, suggestions, and causes of actions made against Dr. Dong from anyone at MUSC.

RESPONSE: MUSC objects to this Request as it is vague and overbroad. MUSC further objects as Plaintiff's discovery requests were not served in compliance with the Court's October 4, 2019, Order. MUSC further objects to this Request to the extent it requests material and communications subject to the attorney-client privilege or that constitute attorney work product. Without waiving its objections and subject to them, MUSC provided responses to Plaintiff's First Requests for Production pursuant to the Court's October 4, 2019, Order on October 14, 2019.

35. Any and all documents the Defendant read, reviewed, and/or obtained relating in any way to the allegations made by Dr. Dong.

RESPONSE: MUSC objects to this Request as it is vague and overbroad. MUSC further objects as Plaintiff's discovery requests were not served in compliance with the Court's October 4, 2019, Order. MUSC further objects to this Request to the extent it requests material and communications subject to the attorney-client privilege or that constitute attorney work product. Without waiving its objections and subject to them, MUSC provided responses to Plaintiff's First

Requests for Production pursuant to the Court's October 4, 2019, Order on October 14, 2019.

36. Copies of any and all statements made by anyone related to Dr. Dong's tenure at MUSC.

RESPONSE: MUSC objects to this Request as it is vague and overbroad. MUSC further objects as Plaintiff's discovery requests were not served in compliance with the Court's October 4, 2019, Order. MUSC further objects to this Request to the extent it requests material and communications subject to the attorney-client privilege or that constitute attorney work product. Without waiving its objections and subject to them, MUSC provided responses to Plaintiff's First Requests for Production pursuant to the Court's October 4, 2019, Order on October 14, 2019.

37. Any and all reports, statements prepared by anyone concerning this complaint against MUSC.

RESPONSE: MUSC objects to this Request as it is vague and overbroad. MUSC further objects as Plaintiff's discovery requests were not served in compliance with the Court's October 4, 2019, Order. MUSC further objects to this Request to the extent it requests material and communications subject to the attorney-client privilege or that constitute attorney work product. Without waiving its objections and subject to them, MUSC provided responses to Plaintiff's First Requests for Production pursuant to the Court's October 4, 2019, Order on October 14, 2019.

38. Any and all contents in Dr. Dong's email account (dongj@musc.edu) and in his HomeRoom account on MUSC server both in print and in electronic file on computer storage

device, such as portable hard drive, or USB drive.

RESPONSE: MUSC objects to this Request as it is vague and overbroad. MUSC further objects as Plaintiff's discovery requests were not served in compliance with the Court's October 4, 2019, Order. MUSC further objects to this Request to the extent it requests material and communications subject to the attorney-client privilege or that constitute attorney work product. Without waiving its objections and subject to them, MUSC provided responses to Plaintiff's First Requests for Production pursuant to the Court's October 4, 2019, Order on October 14, 2019.

39. Any and all files and documents related to Dr. Dong filed at MUSC, including but not limited to Department of Microbiology and Immunology, office of grant management, and office of human resources.

RESPONSE: MUSC objects to this Request as it is vague and overbroad. MUSC further objects as Plaintiff's discovery requests were not served in compliance with the Court's October 4, 2019, Order. MUSC further objects to this Request to the extent it requests material and communications subject to the attorney-client privilege or that constitute attorney work product. Without waiving its objections and subject to them, MUSC provided responses to Plaintiff's First Requests for Production pursuant to the Court's October 4, 2019, Order on October 14, 2019.

40. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to any complaint, lawsuit, causes of actions, recommendations or resolutions

related to any members of MUSC administrations, including Department chairs, directors, managers, deans, provost, and president, especially related to, but not limited to, Dr. James S. Norris, and Dr. Stephen Lanier.

RESPONSE: MUSC objects to this Request as it is vague and overbroad. MUSC further objects as Plaintiff's discovery requests were not served in compliance with the Court's October 4, 2019, Order. MUSC further objects to this Request to the extent it requests material and communications subject to the attorney-client privilege or that constitute attorney work product. Without waiving its objections and subject to them, MUSC provided responses to Plaintiff's First Requests for Production pursuant to the Court's October 4, 2019, Order on October 14, 2019.



Caroline Wrenn Cleveland (SC Bar #64253)
 Bob J. Conley (SC Bar #12243)
 Emmanuel J. Ferguson (SC Bar #81431)
 CLEVELAND & CONLEY, L.L.C.
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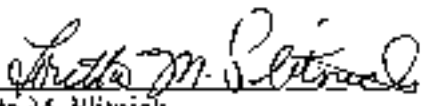
ATTORNEYS FOR DEFENDANT

Charleston, South Carolina
 March 18, 2020

CERTIFICATE OF SERVICE

This is to certify that I have this date caused to be served a copy of Defendant's Responses to Plaintiff's Second Requests for Production via U.S. mail to Plaintiff at the address below:

John Dong, 23179171
FCI Williamsburg
P.O. Box 340
Salters, SC 29590



Loretta M. Plitnick
Paralegal

This the 18th day of March 2020.

CLEVELAND & CONLEY, L.L.C.
LABOR AND EMPLOYMENT DEFENSE

ONE SEVENTY ONE CHURCH STREET, SUITE 310
CHARLESTON, SOUTH CAROLINA 29401
WWW.CLEVELANDCONLEY.COM

CHARLENE WRINEY CLEVELAND +
BOB J. CONLEY
EMMANUEL J. FERGUSON
FEDERAL DEFENSE,
LABOR & EMPLOYMENT LAW

TELEPHONE: (843) 577-9626
FACSIMILE: (843) 577-6672

March 18, 2020

John Dong, 23179171
FCI Williamsburg
P.O. Box 340
Salters, SC 29590

Re: *Jun-Yun (John) Dong, M.D., Ph.D., v The Medical University of South Carolina*
Case No.: 2016-CP-10-06683

Dear Dr. Dong:

In connection with the above-named matter, please find Defendant's Responses to Plaintiff's Second Requests for Production.

Sincerely,

CLEVELAND & CONLEY, LLC



Emmanuel J. Ferguson

EJF/imp
Enclosure

ELECTRONICALLY FILED - 2021 Oct 29 1:11 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1006683

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Jian-Yun (John) Dong, M.D., Ph.D.

plaintiff

V.

The Medical University of South
Carolina

Defendants

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2016-CP-10-06683

) PLAINTIFF'S SECOND REQUESTS
) FOR PRODUCTION TO DEFENDANT

TO: CAROLINE WRENN CLEVELAND AND BOB J. CONLEY, ATTORNEYS
FOR DEFENDANT

Plaintiff Dr. John Dong, hereby requests on a continuous basis, pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, the Defendant respond within ninety (90) days or the timelines ordered by the Court, which ever is sooner, after the service hereof to the following Requests and that the Defendant produce copies of each of the following documents or things which may be in the possession, custody, or control of the Defendant or its counsel:

1. Any and all records, documents, computer files, correspondence (including email's), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to Dr. Dong's academic performance and evaluation at MUSC.

2. Any and all records, documents, computer files, correspondence (including email's), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to Dr. Dong's funded or unfunded grant proposals at MUSC.

3. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to the financial records of Dr. Dong's grants, start-up funds and any other monetary income at MLSC.

4. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to Dr. Dong's academic and scientific records at MLSC.

5. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to Dr. Dong's Tenure Full Professor Promotion Package at MLSC.

6. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to Dr. Dong's communications with the Chairman of Department of Microbiology and Immunology, Dr. James S. Norris in regarding to Dr. Dong's research and academic activities and issues evolving financial, compliance, personnel, scientific publications.

7. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to communications, discussions and decisions surrounding the conducting a "inventory of Dr. Dong's research materials."

8. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to communications among Dr. Norris, Dr. Stephen Farber and any members of the MUSC Biosafety Committee or officer with regards to Dr. Dong's research and biological materials"

9. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to communications, discussions and decisions surrounding the search, seizure and transfer of Dr. Dong's research materials.

10. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to the "inventory lists" of Dr. Dong's research materials seized by the MUSC.

11. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to discussions and decisions in search and seizure of Dr. Dong's research records, methods, protocols, research plans.

12. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to Dr. Norris' communications with and Dr. Dong's employees, postdoctoral fellows, students, technicians.

13. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to Dr. Norris' communication, or discussions with the personnel, students, post doctoral fellows, technicians or any member of the Department with regard to using or taking Dr. Dong's research materials, constructs, vectors, DNA material for their research for "collaborations" with Dr. Dong.

14. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to Dr. Dong's patents, patent applications, technology disclosures at MUSC including Foundation for Research and Development (FRD).

15. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to any communications, discussions between/among Dr. Norris and members of administration, various committees, including biosafety, and faculty committees related to Dr. Dong.

16. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to communications or discussions between/among Dr. Norris, Dr. Lanier and MU SC counsel, Mr. Joseph Good with regard to Dr. Dong.

17. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to the decision, process, instigation, initiation or in any way lead to any proposed or suggested any discipline action against Dr. Dong.

18. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to the decision, process, instigation, initiation or in any way that related to, lead to the pressure of, suggest of, or the request of Dr. Dong to resign from the MUSC.

19. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to the decision, event, or process of inventorying, cataloging, transferring, taking, or removing of any documents, biological material, reagents, ingredients, chemicals, DNA, research events, records, notebooks, protocols, research methods, and any equipment, instruments, devices, tools, computers, from Dr. Dong's laboratories, offices, vector-core spaces, storage space, or shared, common spaces, computer storages, harddrives, computer files, Blackboard account, and his email accounts. Specifically, but not limited to the inventory lists of Dr. Dong's biological materials, equipment, reagents, scientific notebooks, records, protocols, copies of Dr. Dong's grant proposals submitted from MUSC.

20. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to the negotiation, discussion, decision in reaching agreement that Dr. Dong to resign from MLSC.

21. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to the discussions, decisions or suggestions of how the Agreement with Dr. Dong to be carried out, performed, including but not limited to decisions, suggestions not to transfer the biological material, equipments, reagents, scientific notebooks, records, and any sanctions listed, promised, suggested in the Agreement.

22. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to the discussion, decisions or suggestion to refuse accepting Dr. Dong's grant, and not to rehire Dr. Dong back to VUSC.

23. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to the discussions, negotiations, agreement, contract, understanding, or decision to transfer, give, or sale GenPac shares held by Dr. Dong, FRD, and MLSC to Huber group, Timothy Scranton, or any other party or entity, individual, company, or organization.

24. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to the relationship, association, ownership, business dealings, between Foundation for Research and Development (FRD) of MUSC and any members of MUSC may in any related to Dr. Dong, and GenPhar, Inc.

25. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to Dr. Dong, and GenPhar, Inc. including but not limited to technology disclosures, patent applications, benefit share formulas, plans held at FRD.

26. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to technology transferring, payments from GenPhar, Inc. license agreement with GenPhar, Inc.

27. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to technology transferring, patent applications, nondisclosure agreements, or license agreement with related to technologies developed in Dr. Dong's laboratory with any individuals, company, organization, or entity of every kind.

28. Any and all publications, scientific notebooks, grant applications, records, documents, reports, meeting presentations, or communications, from anyone to anyone including any organizations, government agencies, such as National Institutes of Health,

National Science Foundation, Department of Defense, private foundations, publication companies, that any biological material, vectors, DNA, reagents, technology, techniques, or information, that were directly or indirectly obtained, originated from Dr. Dong's laboratories, vector cores or obtained from Dr. James S. Norris.

29. Any and all publications, scientific notebooks, grant applications, records, documents, reports, meeting presentations, or communications, from anyone to anyone that related to mentioned of cancer gene therapy, apoptosis, or adenovirus vector that express TRIAL, FasL, or adenovirus express cancer suppressor gene, viral antigens, or any adenovirus vector contain any gene under the regulation probacin promoter, Tet-on promoter, inducible promoter, feedback promoter or any adenovirus vector contain more than one DNA insert (known as CAAd, complex Adenovirus) and AAV, especially, but not limited to, the persona, staff, faculty members, students, post doctoral fellows who had a relationship of any kind with Dr. James S. Norris

30. Any and all financial records, accounting, and expenditure reports of Dr. Dong's funds, including his start up funds, all grants, payments from GenPhar and any other sources prior 2010.

31. Any and all financial records, accounting, and expenditure reports of Dr. James Norris funds from any source, prior 2010

32. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to Dr. Dong's faculty evaluations, annual reports, career development plan, tenure application, tenure approval or Dr. Dong's academic performance.

33. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to any complaint, memorandums made by Dr. Dong and communicated to any members of MUSC administration or committees.

34. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to any complaint, recommendations, suggestions, and causes of actions made against Dr. Dong from anyone at MUSC.

35. Any and all documents the Defendant read, reviewed, and/or obtained relating in any way to the allegations made by Dr. Dong.

36. Copies of any and all statements made by anyone relative to Dr. Dong's tenure at MUSC.

37. Any and all reports, statements prepared by anyone concerning this complaint against MUSC.

38. Any and all contents in Dr. Dong's email account (dongj@musc.edu) and in his HomeRoom account on MUSC server both in print and in electronic file on computer storage device, such as portable hard drive, or USB drive.

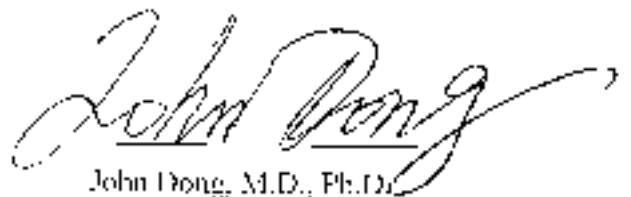
39. Any and all files and documents related to Dr. Dong filed at MUSC, including but not limited to Department of Microbiology and Immunology, office of grant management, and office of human resources.

40. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to any complaint, lawsuit, causes of

actions, recommendations or resolutions related to any members of MUSC administrations, including Department chairs, directors, managers, deans, provost, and president, especially related to, but not limited to, Dr. James S. Norris, and Dr. Stephen Lurier.

Dated: January 29, 2020

Respectfully,

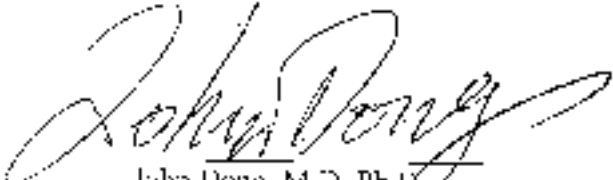
A handwritten signature in cursive script, reading "John Dong", with a long horizontal flourish extending to the right.

John Dong, M.D., Ph.D.
71 Delshaw St
Charleston SC 29492

CERTIFICATE OF SERVICE

This is to certify that I have this *29th day of January 2020*, caused to be served a copy of ***PLAINTIFF'S SECOND REQUESTS FOR PRODUCTION TO DEFENDANT*** via United States Mail Services with postage and addressed as follows:

Attention to:
Liammanuel J. Ferguson
Cleveland & Conley LLC
171 Church Street, suite 310
Charleston, South Carolina 29401


John Dong, M.D., Ph.D.

FILED
2020 JAN 30 PM 1:45
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF Charleston

IN THE COURT OF COMMON PLEAS
Ninth JUDICIAL CIRCUIT

CASE NO.: 2016 -CP- 10 - 00683

Jian Yun (John) Dong, M.D., Ph. D.

Plaintiff,

vs.

The Medical University of South Carolina

Defendant

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

Jonathan L. Dong, M.D., Ph.D., Bar No.

Address:

71 Delahow Street, Charleston, SC 29492

Phone:

Fax:

E-mail: jdongdong@gmail.com

Defendant's Attorney:

For more information, Bar No. 81431

Address:

171 Church St., Ste 310, Charleston, SC 29401

Phone: 843.727.6676

Fax: 843.727.6672

E-mail: jdongdong@gmail.com

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS I and III)☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS I and III)

SECTION I: Hearing Information

Notice of Motion:

Attached Form Needed:

Court Reporter Needed: ☐ YES ☐ NO

SECTION II: Motion/Order Type

☒ Written Motion/Order☐ Form Motion/Order

The following motion is requested by the court as set forth in the attached proposed order:

Signature of Attorney for ☒ Plaintiff ☐ Defendant

Date submitted: 01/27/2017

SECTION III: Motion Fee

☐ PAID AMOUNT: \$25.00☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spouse Support☐ Domestic Abuse or Abuse and Neglect☐ Indigent Status ☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act ☐ Post-Conviction Relief☐ Motion for Stay or Dismissal☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)☐ Proposed order submitted at request of the court or

reduced to writing with motion and supporting affidavits

Name of Court Reporter:

☐ Other:

JUDGES SECTION

☐ Motion Fee to be paid upon filing of the motion:

JUDGE CODE:

Other:

Date:

20

CLERK'S VERIFICATION

Collected by:

Date Filed: 01/27/2017

☐ MOTION FEE COLLECTED: \$☐ CONTESTED AMOUNT: \$

SCCA 215 (11/2014)

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

John Dong, M.D., Ph.D.
-plaintiff,

v.

The Medical University of South
Carolina,
-Defendant

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT

) CASE NO.: 2016-CP-10-06683

) MOTION TO EXPAND DISCOVERY

COMES NOW, Plaintiff, John Dong, hereby moves the Court to expand the time and scope of the discovery in the foregoing case.

As Grounds, the Plaintiff pleads as follows:

BACKGROUND

On January 17th, 2018, Dr. Dong filed the First Request for Production. However, after more than a year, the Defendant failed to produce any documents. On March 5th, 2019, Dr. Dong filed a Motion to Compel. On June 20th, after a hearing, the Court granted Dr. Dong's Motion to Compel, stayed the trial, but allow the discovery to continue, and ordered the Defendant to produce the documents as required.

On July 3rd, 2019, instead of producing the requested documents, the Defendant filed a Motion to Remand, *inter alia*, blaming its failure to produce the documents on that Dr. Dong is incarcerated at a Federal Camp facility for a completely unrelated issue and claimed that this caused difficulties and security concerns of MUSC. The Defendant alleges that for these reasons, Dr. Dong's discovery should be limited to a period that was after the fact, and to the people who have little or no direct knowledge of the circumstances in which the Agreement was the formulated, signed and eventually breached in bad faith by the Defendant. In addition, Defendant requested the Court to issue a "Confidential Order."

On October 4th, 2019, the Court granted Defendant's Motion with conditions that for good cause, either party may file a motion for extension of the time and scope of the discovery.

ARGUMENT

Under the Federal and State Rules of Civil Procedures, parties in a controversy are entitled to discovery to obtain relevant information to support the Complaint or Defenses of a controversy under the Due Process Clause of Article III of the Constitution. There is no legal basis or precedent that allows a Defendant in the controversy to arbitrarily limit the scope of discoverable materials and the time of discovery in order to make it unreasonable and impractical for the Plaintiff.

As requested by MUSC, the Court ordered that the materials to be produced by MUSC are limited to documents sent and received by Dr. Saicherman, Stephen Janier and Dr. John Dong." In other words the documents are limited to only those that Dr. Dong received from Dr. Saicherman who had no direct knowledge of any of the events and the circumstances in which MUSC pressured and enticed Dr. Dong into signing an Agreement to conditionally resign as a tenured-full professor from MUSC. These limitations would allow MUSC to cover up and to deprive Dr. Dong of the information of the true reasons for MUSC to breach the contract by withholding Dr. Dong's technologies, proprietary technological information, research protocols and biological materials, scientific records, search data, and all his research instruments and equipment, and by refusing to accept the Research Grants Dr. Dong obtained on behalf of MUSC. Dr. Stephen Janier was involved as a decision maker and one of the masterminds in the schemes. However, Dr. Janier would not necessarily communicate his scheme with Dr.

Saltherman, and Dr. Lanier certainly would not and did not keep Dr. Dong informed of the scheme designed to obtain Dr. Dong's intellectual properties and to block him from further developing his patent-pending technologies and research at the expenses of curtailing Dr. Dong's career. Therefore the limitations on the discovery would deprive Dr. Dong the information and evidences from the people who were directly involved, benefitted and had the interests in stealing Dr. Dong's grant money, technologies and equipment and blocking him from further advancing his technologies and his career, and from the members of the MUSC management who enabled, endorsed and showed indifference of the scheme perpetrated mainly by the Chairman of the Department of Microbiology and Immunology, Dr. James S. Norris and the Vice President for Research and Technology Development of MUSC, Dr. Stephen Lanier.

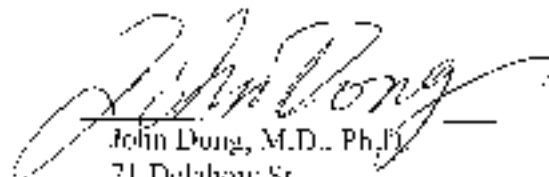
For these reasons, Dr. Dong respectfully requests the Court to lift the limitations or to expand the scope and time of the discovery to include those who directly participated, were involved or have first-hand knowledge of the circumstances in which MUSC pressured Dr. Dong into signing the Agreement by threats and trickery, and eventually MUSC obtained the contract completely for self-interest. Specifically, Dr. Dong requests that the discoverable period should start from, at minimum, two years prior to the said scheme or the Agreement was executed, and the scope of the material and information to include any and all relevant information and documents, pursuant to Dr. Dong's right for Due Process afforded by the Constitution.

Hereby, Plaintiff, Dr. Dong, respectfully moves the court to grant this Motion.

Plaintiff does not request a hearing of this motion. Plaintiff is directed by the Court, because the issues and the law are clearly on the side of the Plaintiff.

Dated: January 27, 2016

Respectfully,



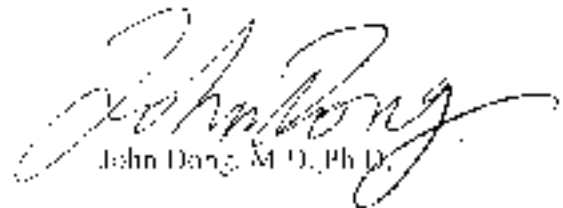
John Dong, M.D., Ph.D.
71 Delahow St
Charleston SC 29492

CERTIFICATE OF SERVICE

This is to certify that I have this *27th day of January 2020*, caused to be served a copy of ***MOTION TO EXPAND DISCOVERY*** via United States Mail Services with postage and addressed as follows:

Attention to:
 Emmanuel J. Ferguson
 Cleveland & Cooley LLC
 171 Church Street, Suite 310
 Charleston, South Carolina 29403

FILED
 2020 JAN 29 PM 2:30
 U.S. DISTRICT COURT
 DISTRICT OF SOUTH CAROLINA
 JUDGE: _____


 John Dang, M.D., Ph.D.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

John Dong, M.D., Ph.D.,
-plaintiff,
V.

The Medical University of
South Carolina
-----Defendant

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
)

) CASE NO.: 2016-CP-10-06683
)

) RESPONSE TO MOTION TO
) ALTER OR AMEND
)

COMES NOW, Plaintiff, Dr. John Dong, hereby submits this Response in
Opposition to Defendant's Motion to Alter or Amend and respectfully requests the
Court to deny Defendant's Motion because it is without merit and filed in bad faith.

As grounds, the Plaintiff pleads as follows.

I. The Defendant's Motion is filed in bad faith and ulterior intent.

The Defendant erroneously characterizes the Court Order for production
dated June 13th, 2019 by falsely claiming that the Court granted a 'stay' or
"continuance to at least August 2022 and beyond for apparently one, single reason:
his incarceration related to conviction for multiple, federal felonies." [12-1]

Such a premise is not only false, but also intended to be inflammatory. The
sole purpose of the Defendant's Motion is to further perpetrate the scheme to
deprive Dr. Dong's right for discovery by requesting the Court to set a short and firm
trial date while Defendant continues with its stonewalling of the discovery requests
and proceedings. This scheme violates Dr. Dong's right to due process afforded by
the Constitutions of the State of South Carolina and the United States of America,
and should be outrightly denied by the Court.

II. Defendant's Motion is to further its scheme of obstruction of due process

The Defendant's accusation that the Court violates its "right for speedy resolution" is meritless. Records clearly show that it is the Defendant who perpetrates a series of delaying tactics and a scheme of obstruction of due process. MUSC initially deployed the tactic of using bad-faith negotiations and tricked Dr. Dong into not timely pursuing the Complaint. After restoring the Complaint, MUSC once again, causing the year-long delays. For example, it has been well over a year since Dr. Dong filed the First Request for Information, and MUSC has not yet provided a single document as requested, even after the Court has granted the Plaintiff's Motion to Compel. Obviously, it is the Defendant who has been refusing to follow the discovery rules and willfully causing the extensive delays in the proceedings. The Defendant's allegation that the Court denied "MUSC's substantive and procedural rights" and a "speedy resolution of the case" is without any merit and simply false. MUSC does not have such "substantive and procedural rights" to disobey the discovery rules and to deprive Dr. Dong's constitutional rights for due process.

III. Defense Counsel's false claim to obstruct due process is illegal and should be sanctioned by the Court.

The Defense Counsel's accusations that the Court "stayed the case until August 2022," "solely because Dong is incarcerated" and therefore "[t]he Order denies MUSC its substantive, constitutional right to a 'speedy, efficient disposition of Dong's claim'" are knowingly false. Nowhere in the Order or in the court record it shows such a ruling by this Court. The Court inter alia, ruled that Dr. Dong has a

right for discovery and MUSC has the obligation to produce the requested material. Additionally, since it is the Defendant who repeatedly claims that it has difficulties in complying with discovery rules because Dr. Dong is "incarcerated" for a case that is completely irrelevant to the Complaint, the Court simply allowed both parties more time to resolve the "difficulties" raised by the Defendant. The Defendant's assertion that, *inter alia*, Dr. Dong's substantial due process right should be denied because of his "incarceration" and that MUSC is somehow entitled to a "speedy resolution" in its favor without due process is without merit. In contrast, the Court's Orders have been sufficiently generous in accommodating Defendants requests, including those which clearly have no merit, such as limiting the formats and scope of the documents that Plaintiff may obtain, under the pretense of security reasons.

As a matter of law, MUSC does not have such a "procedural and substantive right" to disobey the law and to deprive Dr. Dong's due process rights afforded by the Constitution. Therefore, the defense counsel's false accusation and insistence on using the issue that Dr. Dong is "incarcerated" for a unrelated and appeal-pending case to obstruct the discovery proceedings should be rejected and sanctioned by the Court.

IV. Defendant failed to give notice

To further its obstruction scheme, MUSC did not serve a notice, i.e. copy of the Motion for a Confidential Protection, to Dr. Dong to allow him sufficient time to prepare and submit a response before the hearing.

For this reason alone, the Defendant's Motion for Confidentiality Protection should be denied as a matter of law.

Furthermore, Defendant's Motion is a part of its scheme to hamper and to block Dr. Dong's right for discovery. The Defendant requested the Court, without any legal basis, to limit the scope of the discovery to (1) only persons who were not directly involved in the events related to breaching the contracts and causing financial and career damages to Dr. Dong, (2) the time period after the fact so that Defendant can cover up the evidence and facts of its wrongful acts, (3) restricted discovery to electronic format so that Defendant will have full control of content including to modify, to add or deduct contents at will; more importantly the electronic contents are not verifiable and not presentable at trial; (4) to set a "firm trial date" prior to the completion of the discovery in order to "quickly dispose the matter" in Defendant's favor without giving Dr. Dong the opportunity to conduct a thorough discovery and the procedural protection afforded by the law.

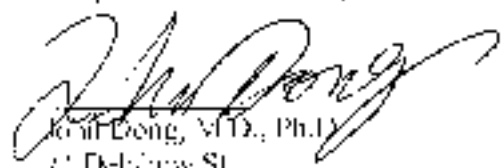
Therefore, the Motion for Confidentiality Protection should be denied as a matter of law.

CONCLUSION

For the reasons stated above, Plaintiff, Dr. Dong, respectfully request the Court to deny Defendant's Motion to Allow or Amend, and to rescind the Order for Confidentiality Protection and to deny the Motion in order to afford both parties the right to due process.

July 15, 2016

Respectfully submitted,

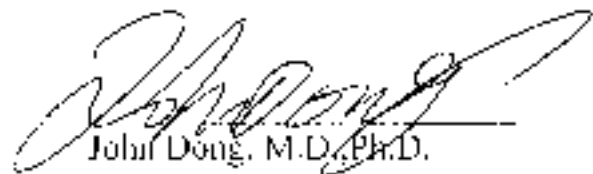

Louis Dong, M.D., Ph.D.
11 Delaware St
Charleston SC 29492

2016 CPB 4483
CERTIFICATE OF SERVICE

This is to certify that I have this 15th day of July 2019, caused to be served a copy of *RESPONSE TO MOTION TO ALTER OR AMEND* via United States Mail Services with postage and addressed as follows:

Attention to:
Emmanuel J. Ferguson
Cleveland & Conley LLC
171 Church Street, suite 310
Charleston, South Carolina 29403

FILED
2019 JUL 16 PM 10:55
CLERK OF COURT
SOUTH CAROLINA
CHARLESTON


John Dong, M.D., Ph.D.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Jian-Yun (John) Dong, M.D., Ph.D.,

Plaintiff,

vs.

The Medical University of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2016_CP 10_00683

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

Jian Yun (John) Dong, M.D., Ph.D., 23179171

Pro Se Bar No. _____

Address:

FCI Williamsburg

Satellite Camp

P.O. Box 340

Salter's, SC 29590

Phone: _____ Fax: _____

E-mail: Other: _____

Defendant's Attorney:

Bob J. Conley, Bar No. 12243

Address:

171 Church Street, Suite 310

Charleston, SC 29401

Phone: 843-577-9626 Fax 843-577-6672

E-mail: bconley@clevelandlaboraw.com Other: _____

☒ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)

SECTION I: Hearing Information

Name of Motion: Motion To Alter or Amend

Estimated Time Needed: 1 Hour

Court Reporter Needed: ☒ YES ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Bob J. Conley by Caroline Cleveland 07/3/2019

Signature of Attorney for Plaintiff ☒ Defendant Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ _____

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)

☐ Proposed order submitted at request of the court, or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order. JUDGE CODE: _____

☐ Other: _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

SCCA 253 (11/2003)

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Jian-Yun (John) Dong, M.D., Ph.D.,

Plaintiff,

v.

The Medical University of South
Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-10-06683

**MOTION TO ALTER OR
AMEND**

2019 JUL -3 4 41 PM
CLERK OF COURT
NINTH JUDICIAL CIRCUIT
COLUMBIA, SC

Defendant Medical University of South Carolina ("MUSC"), pursuant to Rules 53(b) and 59(a) of the South Carolina Rules of Civil Procedure, moves for an order amending and/or altering the Court's Order dated June 13, 2019, and entered by the Clerk of Court on June 20, 2019 (the "Order"). MUSC received written notice of entry of the Order on Monday, June 24, 2019.

The Order, citing no legal authority, summarily grants Dong a continuance for, potentially, more than three years. Although the Order discusses and refers to a "stay," the use of this term in the Order is misplaced and mischaracterizes the effect of the Order.

The Order, contrary to its use of the term "stay," does not stay the case but grants Dong a *continuance* until at least, potentially, August 2022 and beyond. Moreover, the Order grants Dong the continuance for apparently one, single reason: his incarceration related to conviction for multiple federal felonies.

The Order is issued in error and constitutes abuse of discretion. At its core, the Order denies MUSC a timely trial and disposition of this matter solely because Dong is incarcerated for federal felony convictions. Without explanation, discussion or citation to legal authority, the Order grants

all manner of deference to Dong and the impediments caused by his incarceration, while providing no indication consideration was given to the prejudice the continuance will cause MUSC.

There is no jurisprudence in the State of South Carolina supporting the Order, and the Order cites none. Moreover, the Order either expressly allows or tacitly results in consequences contrary to the South Carolina Constitution and the South Carolina Rules of Civil Procedure. The Court should enter and/or amend the Order by removing the “stay,” allow for the orderly completion of discovery, such as by way of a scheduling order, and set the case for trial. Alternatively, the Court should stay all proceedings in the case, including discovery.

STATEMENT OF THE CASE

Plaintiff, Jian-Yun Dong (“Dong”) originally filed his lawsuit against MUSC on **September 2, 2014**. Subsequently, on October 22, 2015, Dong dismissed the lawsuit pursuant to Rule 40(j), SCRPC. Thereafter, on **December 14, 2016**, Dong restored his lawsuit pursuant to Rule 40(j), SCRPC, and the case was given a new case number.

In April 2013, before Dong restored the case, Dong was indicted for various federal felonies in federal district court. Thereafter, on August 4, 2015, while this case was dismissed pursuant to Rule 40(j), SCRPC, the federal district court convicted Dong of twenty-four of the forty-four counts charged.

On October 3, 2017, ten months after Dong restored the case to this Court’s active roster, Dong was sentenced to be committed to the custody of the Federal Bureau of Prisons for a term of seventy months. According to the Federal Bureau of Prisons, Dong is not scheduled to be released on August 3, 2022.

Pursuant to Rule 40(f), SCRCP, this case was transferred to the Charleston County General Docket in December 2017 and placed in line for trial with all other cases then on the General Docket. This case, had it not been removed by way of the Order, would be in, approximately, position twenty-seven for trial on the General Docket.

LEGAL STANDARD

South Carolina Rule of Civil Procedure 52(b) allows a party "not later than 10 days after receipt of written notice of entry of judgment" to request that the court "amend its findings or make additional findings and may amend the judgment accordingly" Rule 52(b), SCRCP, further requires that "[a] party filing a written motion under this rule shall provide a copy of the motion to the judge within ten (10) days after filing the motion." Correspondingly, and similarly, South Carolina Rule of Civil Procedure 59(c) allows a party to request a court alter or amend a judgment within ten days of receiving the written notice of entry of an order.

LEGAL ARGUMENT

Citing no legal support or supporting jurisprudence, the Court protects Dong from a trial of this case, and thereby denies MUSC a resolution of the now five year old case, *for over additional three years* for one reason: Dong is incarcerated by the federal government for federal felony convictions. Moreover, the Order does not indicate the Court gave consideration – as there is no discussion about it in the Order – as to MUSC's substantive and procedural rights to have this matter proceed to a resolution. For instance, the Order does not address the applicability or implications of Rule 40, SCRCP, or Article I, § 9 of the South Carolina Constitution. In its current form, the Order results in denying MUSC the procedural protections and substantive rights afforded by the South Carolina Rules of Civil Procedure and the South Carolina Constitution.

Moreover, although referred to as a “stay,” the Order does not stay the case. To the contrary, it allows discovery to proceed for the entire time Deng remains incarcerated, and perhaps beyond. The Order should be clear as to whether it is staying the case or granting Deng a continuance from being subject to trial until August 2022 and, perhaps, beyond. If the Court is staying the case, the Order should stay the case in all respects, including staying all further discovery until Deng is released from prison.

A. MUSC’s Procedural Rights

The Order is contrary, both expressly and implicitly, to the South Carolina Rules of Civil Procedure, in particular the provisions of Rule 40(b), (f) and (j), SCRCP. In short, Rule 40 requires this case be moved toward conclusion, including trial if necessary, absent “good and sufficient cause” pursuant to Rule 40(j)(1), SCRCP. Notably, the Order does not specifically address “good and sufficient cause” and, even if the Order implicitly does so, the Order wrongly concludes Deng’s incarceration constitutes “good and sufficient cause” to continue any trial of the case until August 2022, and perhaps beyond.

Deng’s incarceration for federal felony convictions is not and cannot constitute “good and sufficient cause” to continue any trial of this case until August 2022, or beyond. Although not squarely addressed by the appellate courts in South Carolina, decisions from other jurisdictions are instructive and indicate Deng’s incarceration is not “good and sufficient cause.” See *Morris v. Koplin*, 2014 WL 4817934, *7 (Superior Ct. Connecticut, August 26, 2014) (unpublished) (concluding incarcerated defendant not entitled to continuance because actions leading to incarceration were voluntary); *Alabama River Group, Inc. v. Concoch Timber, Inc.*, 261 So.3d

336, 254-55 (Ala. 2017) (recognizing incarcerated civil litigants in Alabama have no right to continuance or to attend and testify at trial in civil lawsuit unrelated to confinement).

In summary, the Order indefinitely continuing the case is in an because the Order is contrary to the requirements of the South Carolina Rules of Civil Procedure and constitutes an abuse of discretion.

B. MUSC's Substantive Rights

"All courts shall be public, and every person shall have speedy remedy therein for wrongs sustained." S.C. Const., Article I § 9. Article I § 9 applies to "all courts," including civil courts, and it applies equally to plaintiffs and defendants, including public entities such as MUSC. The Order denies MUSC its substantive, constitutional right to a "speedy," efficient disposition of Dong's claim by "staying" the case until August 2022, or thereafter, when Dong is released from federal confinement for felony convictions. *See Morris* at *7 (referencing an almost identical provision of the Connecticut Constitution in finding a continuance was "inconceivable and highly prejudicial" in a similar circumstance).

For this reason, the Court should alter and/or amend the Order.

CONCLUSION

For the reasons discussed above, MUSC respectfully requests the Court alter and/or amend the Order.¹ The Court should alter and/or amend the Order by removing the "stay," allow for the orderly completion of discovery, such as by way of a scheduling order, and set the case for trial.

¹ MUSC requests the Court schedule and hold a hearing as to this Motion, so to allow MUSC to make a full, fair record of its assertions and positions. MUSC believes a hearing on the record is necessary in this instance to make sure a complete record discussing and considering all arguments and issues is available for consideration by the appellate court.

In the alternative, if the Court does "stay" the case, the stay should stay the case in its entirety, including all discovery, until Dang is released from confinement by federal authorities.

Respectfully submitted,



Caroline-Whitney Cleveland

Bobble Conley

Emmanuel J. Ferguson

CLEVELAND & CONLEY, LLC

One Seventy One Church Street, Suite 340

Charleston, South Carolina 29401

Telephone: (843) 577-9626

Facsimile: (843) 577-8677

ccleveland@clevelandlaborlaw.com

bconley@clevelandlaborlaw.com

eferguson@clevelandlaborlaw.com

ATTORNEYS FOR DEFENDANT

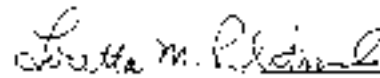
Charleston, South Carolina
July 2, 2019

2016-09-10-6683

CERTIFICATE OF SERVICE

This is to certify that I have this 3rd day of July 2019 caused to be served a copy of Defendant's Motion to Alter or Amend via United States Mail, with proper postage affixed, and addressed as follows

Jian-Yun Dong, 25179171
401 Williamsburg
Satellite Camp
P.O. Box 340
Salters, SC 29590



Loretta M. Plitnick
Paralegal

2019 JUL -3 4:11:21
U.S. DISTRICT COURT
SOUTH CAROLINA
DISTRICT OF COLUMBIA

STATE OF SOUTH CAROLINA

COUNTY OF Charleston

Jian-Yun (John) Dong, M.D., Ph. D.

Plaintiff,

vs.

The Medical University of South Carolina

Defendant.

IN THE COURT OF COMMON PLEAS
Ninth JUDICIAL CIRCUIT

CASE NO: 2016 -CP- 10 - 06683

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

Emmanuel J. Ferguson, M.D., Ph.D., Bar No. _____

Address:

71 Delahow Street, Charleston, SC 29402

Phone: _____ Fax: _____

E-mail: johny.dong@gmail.com Other: _____

Defendant's Attorney:

Emmanuel J. Ferguson, Bar No. 81431

Address:

171 Church St., Ste:310, Charleston, SC 29401

Phone: 843-577-5626 Fax: 843-577-6572

E-mail: dong.ern@charleston.com Other: _____

☐ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)

☒ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____

Estimated Time Needed: _____

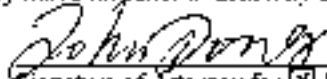
Court Reporter Needed: ☐ YES ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.



Signature of Attorney for ☒ Plaintiff ☐ Defendant

11/12/2017, 20

Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT: \$25.00

EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCCCP)

☐ Proposed order submitted at request of the court or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE

Date: _____, 20

CLERK'S VERIFICATION

Collected by: _____

Date Filed: _____, 20

☐ MOTION FEE COLLECTED: \$

☐ CONFIRMED: AMOUNT DUE: \$

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Jian-Yun (John) Dong, M.D., Ph.D.
-plaintiff

v.

The Medical University of
South Carolina

-Defendant

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT

) CASE NO: 2016-CP-10-06683

) PLAINTIFF'S MOTION TO COMPEL

FILED
MAR-5 AM 11:21
CLERK OF COURT

COMES NOW, Plaintiff, John Dong, M. D., Ph. D. (Dr. Dong), appearing pro se, respectfully moves the Court to grant this Motion to Compel the Defendant, The Medical University of South Carolina (MUSC) to produce each and all the documents and information as required in Plaintiff's First Request for Production, pursuant to South Carolina Rules of Civil Procedure 26 and 37 and Rules for discovery.

For grounds for this Court to grant his motion Plaintiff pleads as follows:

PROCEDURAL HISTORY

1. Under discovery, MUSC filed the The Defendant's First Request for Production and Interrogatory, and Dr. Dong has filed detailed answers. Defendant has not file any follow up questions.

2. On January 16th, 2018, Dr. Dong filed the *Plaintiff's First Request for Production* and gave Defendant 120 days to provide the requested documents.

3. It took Defendant's counsel over eight months, to file a "Response" to Dr. Dong the Request for Production and literally refused to give any answer or produce any document as requested by Dr. Dong.

4. On September 14, Dr. Dong sent MUSC the Plaintiff's *Objection to Defendant's Response to Plaintiff's First Request for Production*, in which Dr. Dong

requested MUSC to produce the documents and information as requested or in good faith to explain which document requested by Dr. Dong is "ambiguous" or "irrelevant." See the Attachment.

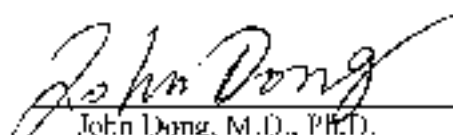
5. Once again, MUSC failed to produce any document as required or to respond to the discovery request in good faith.

CONCLUSION

For the above stated reasons, Plaintiff respectfully request the Court to compel MUSC to produce each and all the documents as requested in Plaintiff's First Request for Production within 30 days, or sanction MUSC for non-responsive to discovery requests.

Dated: February 26, 2019

Respectfully submitted,

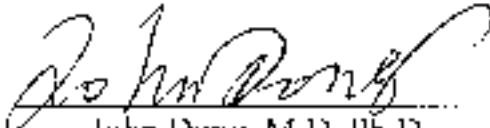

John Dong, M.D., Ph.D.
71 Delahow St

2016-CP106683

CERTIFICATE OF SERVICE

This is to certify that I have this 26th day of February 2019, caused to be served a copy of PLAINTIFF'S MOTION TO COMPEL via United States Mail Services with postage and addressed as follows:

Attention to:
Emmanuel J. Ferguson
Cleveland & Conley LLC
171 Church Street, suite 310
Charleston, South Carolina 29401


John Dong, M.D., Ph.D.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO: 2016-CP-10-06683

2.

PLAINTIFF'S OBJECTION TO
DEFENDANT'S RESPONSE TO
PLAINTIFF'S FIRST REQUEST
FOR PRODUCTION

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2016-CP-10-06683
PLAINTIFF'S OBJECTION TO
DEFENDANT'S RESPONSE TO
PLAINTIFF'S FIRST REQUEST
FOR PRODUCTION

2019 MAR -5 AM 11:21
FBI - ALBUQUERQUE
FBI - EL PASO

TO: COUNSEL FOR DEFENDANT, THE MEDICAL UNIVERSITY OF SOUTH
CAROLINA:

Plaintiff, John Dong, M.D., Ph.D. ("Dr. Dong") herby objects to the Defendant's Response made through its Counsel, Emmanuel J. Ferguson, for bad faith. Dr. Dong further demands Defendant, The Medical University of South Carolina ("MUSC") to meet its obligations and to produce in good faith all the requested documents, information enlisted in *Plaintiff's First Request For Production to Defendant* within 30 days under the South Carolina Rules of Civil Procedure.

GROUNDS FOR OBJECTIONS

4. Defendant's "General Objections and Reservations" are intended to be obstructive and in bad faith.

Dr. Dong objects to the "general objections and reservations" from "A." through "L." because these objections are overbroad, ambiguous and non-specific. Defendant failed to inform Dr. Dong to which specific request that Defendant was objecting, and what and how a specifically requested document subjected to what objection by the Defendant.

B. Defendant's "Specific Responses and Objections" are intended to be obstructive and in bad faith.

Dr. Dong objects to each of the "specific responses and objections" from "1." through "25." because these objections are willfully to be obstructive and intended to deprive Dr. Dong of the documents and information to which he is entitled under the South Carolina Rules of Civil Procedure.

Each of the "specific Response and Objections" is repeating, recycling of the same verbiage, but fails to specifically inform Dr. Dong which part of the request is "vague" for the Defendant's counsel to understand, or which part is "overbroad" that reaches what document that falls beyond the scope of the discovery as Defendant's counsel alleges.

Dr. Dong further objects to Defendant's claims that all or any of the requested documents subject to Defendant's "attorney-client privilege" or "constitute attorney work product" without providing any specifics of what and why a document is subject to such "attorney-client privilege" or constitutes such an "attorney work product."

More specifically, nearly all documents or information requested are directly related to Dr. Dong's employment and his research work, materials, results, documentation, teaching records, achievements, and administrative matters at MUSC and records related to reasons and conditions of his departure from MUSC as a tenured professor under the agreement/settlement made with MUSC. All these documents existed at MUSC, long before Defendant obtained counsel on this specific matter. However, Defendant's counsel provided no basis for how any of these

document could subject to "attorney-client privilege" or could be an "attorney work product." Nevertheless, Dr. Dong would provide more specifics or readdress the questions if Defendant's counsel can provide specifics with regard to what and how a particular document may be subject to an attorney-client privilege or may constitute an attorney work product.

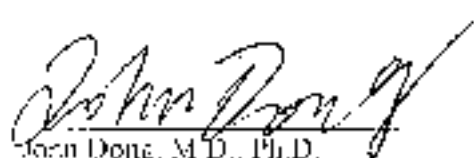
Defendant has produced no document under the Request. It simply defies credibility to conclude that none of Dr. Dong's requests, each targeted to a matter related to the Complaint and Answer, could fail to strike on a single document that exists and is preserved under the obligation at MUSC for the discovery. The Defendant is obligated to produce discoverable information and identify the withheld document subject to objection. The decision to produce no documents and to be in defiant of the procedures imposed under the South Carolina Rules for Civil Procedure is in bad faith.

This correspondence is an effort to resolve the discovery dispute prior to seeking a court order compelling discovery.

CONCLUSION

For reasons stated above, Dr. Dong believes that Defendant's Response through its counsel is willfully made to be obstructive and in bad faith in an effort to deprive Dr. Dong's discovery documents and information that he rightfully entitled under the South Carolina Rules of Civil Procedure. Dr. Dong requests Defendant to provide A.J. the documents and information enlisted in *Plaintiff's First Request For Production* within 30 days.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John Dong", with a long, sweeping horizontal stroke extending to the right.

John Dong, M.D., Ph.D.

71 Delahow St.

Charleston, SC 29492

2016 CP 10-6683

CERTIFICATE OF SERVICE

This is to certify that I have this 14th day of November 2018, caused to be served a copy of *Plaintiff's Objection to Defendant's Response to Plaintiff's First Request for Production* via United States Mail Services with postage and addressed as follows:

Attention to:
Emmanuel J. Ferguson
Cleveland & Conley LLC
171 Church Street, suite 310
Charleston, South Carolina 29401


John Dong, M.D., Ph.D.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Jian Yun (John) Dong, M.D., Ph.D.

Plaintiff

v.

The Medical University of South
Carolina

Defendants

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO. 2016-CP-16-06683

**PLAINTIFF'S FIRST REQUESTS
FOR PRODUCTION TO DEFENDANT**

FILED
2018 JAN 17 PM 1:15
CLERK OF COURT
JULIE P. HARRIS

**TO: CAROLINE WRENN CLEVELAND AND BOB L. CONLEY, ATTORNEYS
FOR DEFENDANT**

Plaintiff, Dr. John Dong, hereby requests on a continuous basis, pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, the Defendant respond within (90) days after the service hereof to the following Requests and that the Defendant produce copies of each of the following documents or things which may be in the possession, custody, or control of the Defendant or its counsel:

1. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to Dr. Dong's performance or employment at MUSC.

2. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to the decision, process, instigation, initiation or in any way lead to any proposed or suggested any discipline action against Dr. Dong

3. Any and all records, documents, computer files, correspondence (including email s), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to the decision, process, instigation, initiation or in any way that related to, lead to the pressure of, suggest of, or the request of Dr. Dong to resign from the MUSC.

4. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to the decision, event, or process of inventorying, cataloging, transferring, taking, or removing of any documents, biological material, reagents, ingredients, chemicals, DNA, research agents, records, notebooks, protocols, research methods, and any equipment, instruments, devices, tools, computers, from Dr. Dong's laboratories, offices, vector-core spaces, storage space, or shared, common spaces, computer storages, harddrives, computer files, HomeRoom account, and his email accounts. Specifically, but not limited to the inventory lists of Dr. Dong's biological materials, equipment, reagents, scientific notebooks, records, protocols, copies of Dr. Dong's grant proposals submitted from MUSC.

5. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to the negotiation, discussion, decision in reaching agreement that Dr. Dong to resign from MUSC.

6. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind

from or to anybody related in any way to the discussions, decisions or suggestions of how the Agreement with Dr. Dong to be carried out, performed, including but not limited to decisions, suggestions not to transfer the biological material, equipments, reagents, scientific notebooks, records, and any conditions listed, promised, suggested in the Agreement.

7. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to the discussion, decisions or suggestion to refuse accepting Dr. Dong's grant, and not to return Dr. Dong back to MUSC.

8. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to the discussions, negotiations, agreement, contract, understanding, or decision to transfer, give, or sale GenPhar shares held by Dr. Dong, FRD, and MUSC to Hubner group, Timothy Scrutton, or any other party or entity, individual, company, or organization.

9. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to the relationship, association, ownership, business dealings, between Foundation for Research and Development (FRD) of MUSC and any members of MUSC may in any related to Dr. Dong, and GenPhar, Inc.

10. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind

from or to anybody related in any way to Dr. Dong, and GenPhar, Inc. including but not limited to technology disclosures, patent applications, benefit share contracts, plans held at IIRD.

11. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to technology transferring, payments from GenPhar, Inc. license agreement with GenPhar, Inc.

12. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to technology transferring, patent applications, nondisclosure agreements, or license agreement with related to technologies developed in Dr. Dong's laboratory with any individuals, company, organization, or entity of every kind.

13. Any and all publications, scientific notebooks, grant applications, records, documents, reports, meeting presentations, or communications, from anyone to anyone including any organizations, government agencies, such as National Institutes of Health, National Science Foundation, Department of Defense, private foundations, pharmaceutical companies, that any biological material, vectors, DNA, reagents, technology, techniques, or information that were directly or indirectly obtained, originated from Dr. Dong's laboratories, vector cores or obtained from Dr. James S. Norris

14. Any and all publications, scientific notebooks, grant applications, records, documents, reports, meeting presentations, or communications, from anyone to anyone

that related to mentioned of cancer gene therapy, apoptosis, or adenovirus vector that express E1A/L, E2/L, or adenovirus express cancer suppressor gene, viral antigens, or any adenovirus vector contain any gene under the regulation probasin promoter, Tet-on promoter, inducible promoter, feedback promoter or any adenovirus vector contain more than one DNA insert (known as CAd, complex Adenovirus) and AAV, especially but not limited to, the persons, staff, faculty members, students, post doctoral fellows who had a relationship of any kind with Dr. James S. Norris.

15. Any and all financial records, accounting, and expenditure reports of Dr. Dong's funds, including his start up funds, all grants, payments from GenPhar and any other sources prior 2010.

16. Any and all financial records, accounting, and expenditure reports of Dr. James Norris funds from any source, prior 2010.

17. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to Dr. Dong's faculty evaluations, annual reports, career development plan, tenure application, tenure approval or Dr. Dong's academic performance.

18. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to any complaint, memorandums made by Dr. Dong and communicated to any members of MUSC administration or committees.

19. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to any complaint, recommendations, suggestions, and causes of actions made against Dr. Dong from anyone at MUSC.

20. Any and all documents the Defendant read, reviewed, and/or obtained relating in any way to the allegations made by Dr. Dong.

21. Copies of any and all statements made by anyone related to Dr. Dong's tenure at MUSC.

22. Any and all reports, statements prepared by anyone concerning this complaint against MUSC.

23. Any and all contents in Dr. Dong's email account (ddong@musced.edu) and in his HomeRoom account on MUSC server both in print and in electronic file on computer storage device, such as portable hard drive, or USB drive.

24. Any and all files and documents related to Dr. Dong filed at MUSC, including but not limited to Department of Microbiology and Immunology, office of grant management, and office of human resources.

25. Any and all records, documents, computer files, correspondence (including emails), reports, policies, memorandums, evaluations, or other materials of every kind from or to anybody related in any way to any complaint, lawsuit, causes of actions, recommendations or resolutions related to any members of MUSC administration, including Department chairs, directors, managers, deans, provost, and president, especially related to, but not limited to, Dr. James S. Norris, and Dr. Stephen Lamier.

A handwritten signature in black ink, appearing to read "John Dong". The signature is fluid and cursive, with the first name "John" being more prominent than the last name "Dong".

John Dong, M.D., Ph.D.

January 16th, 2018
LSU, Baton
Rouge, Louisiana

2016 CP10-6683

CERTIFICATE OF SERVICE

This is to certify that I have this 16th day of January 2018, caused to be served a copy of Plaintiff's Response to Defendant's First Requests for Production via United States Mail Services with postage and addressed as follows:

Attention to: Bob L. Conley
Cleveland & Conley, LLC
171 Chazen Street, Suite 300
Charleston, South Carolina 29401

FILED
2018 JAN 17 PM 1:15
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



John Dong, M.D., Ph.D.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Jian-Yun (John) Dong, M.D., Ph.D.
Plaintiff

v.

The Medical University of South
Carolina

Defendants

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT

) CASE NO.: 2016-CP-10-06683

) PLAINTIFF'S ANSWERS TO FIRST
) INTERROGATORIES OF DEFENDANT

TO: CAROLINE WRENN CLEVELAND AND BOB J. CONLEY ATTORNEYS
FOR DEFENDANT

You are hereby served with the answers to the Defendant's First Interrogatories to Plaintiff (Dr. Dong) propounded by the Defendant, Medical University of South Carolina ("MUSC"). These answers shall be deemed to continue until the time of the trial pursuant to Rule 33 of the South Carolina Rules of Civil Procedure:

1. Some of the items in Dr. Dong's possession, as requested by the Defendant, are given to Dr. Dong's previous attorney, Mr. Allan R. Homes. With his Answers, you are hereby authorized to obtain these records and items, with the exception of any privileged information, directly from Mr. Homes. Dr. Dong will also write to Mr. Homes to request him to provide the items or documents to your office.

Dr. Dong also have some records on his computer at home, to which he currently does not have the access. However, All his records are in possession of MUSC, and all electronic records and documents are on MUSC server, including in Dr. Dong's email account and Homeroom. His account were blocked by MUSC administration at the time he in or around 2011 without any advance notice to him.

FILED

JAN 02 2016

JULIE J. ARMSTRONG
CLERK, C.P. & G.S.

In addition, he has some of the records on his computers at MUSC and in his office at MUSC, and all these records and computers are taken from him along with all his equipment, and scientific records by the MUSC administration.

2. Statement of total dollar amount damages that include, but limited to the follows:

- (1) Career damages: \$1,330,000 (\$190,000 X 7 or the number of years to be employed)
- (2) Biotechnologies that have significant commercial values:
 - (a) General cancer gene therapy using regulated Fas-L adeno-vector: \$1M
 - (b) Advanced and safe CAdVax-TRIAL gene therapy for cancer: \$1M.
 - (c) Targeted prostate Cancer gene therapy: \$1M
 - (d) Regulated and positive-feedback loop amplified gene regulation from a CAdVec for cancer Gene therapy: \$1M
 - (e) Highly efficient AAV-gene therapy for genetic diseases: \$1M.
- (3) Grant money losses: \$5M (ROI, Dengue vaccine development from NIH)
- (4) Equipment replace value: \$500,000
- (5) Essential and Biological materials: \$3M
- (6) GenPhar Stocks: 51/shares x the total number of shares awarded to MUSC. MUSC given/sold these shares to Hubner group for his hostile takeover of GenPhar.
- (7) damages caused by colluding with hostile takeover of GenPhar by Hubner Group: to be determined.

3. Dr. Dong has no, and never had any, other lawsuit against anyone other than MUSC. In 2016, Dr. Dong was named a defendant in a qui tam lawsuit against GenPhar by whistleblowers and the lawsuit has been recommended for dismissal by a Federal Judge due to lack of any particularities as required by the law, the False Claim Act. Case No: 2:9-cv-0005

4. Lay Witnesses include, but not limited to, the following individuals: Dr. James S. Norris, Dr. Stephen Lurier, Dr. John Raymond, Dr. Jeremy Reed, Dr. Yusep Hunun, Dr. Michael Schmitt, Dr. Samyoun Rubinchuck, Dr. Hong Yu, Dr. Xian Liu, Dr. Brian Hule, Dr. Kenneth Ronzen, Mr. Chip Hood, Dr. Jennifer Schepps, Dr. Jau

Woratanadham, Dr. Stephanie Smith-Johnson, Dr. Steve London, Dr. Lucile London, Mr. Scott Rood, Ms. Beth Glidden, Mr. Joe Good. Members of Dr. James S. Norris laboratory

Biosafety officers, at the time (do not remember the names), the persons who conducted the search and seizure of Dr. Dong's biological materials in the freezers and scientific records (names are in emails)

5. Expert Witnesses are yet to be identified

6. The names are the same, but not limited to, as in 4. All the witness would be expected to testify individually or collectively about, but not limited to the facts, events and policies around how the Department Chairman, Dr. James S. Norris abused his authority, took over Dr. Dong's research projects, used Dr. Dong's research fund for Dr. Norris' research and operations, and pressured the GenPhar, Inc. to pay by "renting out" Dr. Dong to be the chief scientific officer for the GenPhar, Inc., and about how GenPhar was established as requested by the MUSC administration to serve the mission of the university to establish knowledge-based companies, and support local economy, and about the business relationship of Foundation for Research and Development (FRD) of MUSC and the administration of MUSC. The policy and shares-holdings of FRD and MUSC, and the dealings of FRD/MUSC with Hubner group by selling MUSC's including Dr. Dong's GenPhar shares to the Hubner group and assisted Hubner's hostile takeover of GenPhar and the damages done to Dr. Dong and GenPhar shareholders, and what and how transpired the event of forcing Dr. Dong to leave MUSC, threaten to fire him, and eventually negotiated the Agreement, and how the Agreement was completely breached.

7. There is no interview or deposition taken and no written records related to discussions. Much of the records regards to the facts exist at MUSC, and in Dr. Dong's email and hardcopies, and the email accounts of the all the witnesses at MUSC.

8. Dr. Dong do not recall that he had any discussion of the case outside the MUSC other than the members of the MUSC administrations.

9. Under the Agreement and the discussions, Dr. Dong was given the impression that as long as he continue his research and academic activities and improve his researches toward more benefits to MUSC, especially to get new research grant for MUSC and continued his publications and training graduate students for MUSC, MUSC will hire back Dr. Dong. In addition, Dr. Dong had extensive local connections. Dr. Dong did not interview for any other positions, but worked hard in continue the above mentioned academic activities on behalf of MUSC including obtained a \$5 million research grant for MUSC. The grant was obtained from NIH on a complete new topic because Dr. Dong's research projects could not continue for lack of the research material, documentation and equipment taken by MUSC. However, in order to maximize the punishment to Dr. Dong and find reasons not to rehire Dr. Dong, Dr. Stephen Langer informed NIH that MUSC refused to accept the grant because Dr. Dong no longer work at MUSC.

10. Dr. Dong had not maintained an account with any social or professional network that contained any information related to MUSC or the lawsuit. Dr. Dong had a LinkedIn account after he left MUSC.

11. Dr. Dong had never been convicted of any crime or wrong doing during or before his tenure at MUSC. In 2016, Dr. Dong was convicted for misuse grant fund to

construct the research facility" located in Mt. Pleasant, South Carolina based on the allegations of the qui tam lawsuit as described in 3. This, at least in part, is because Dr. Dong was the Principle of Investigator of a number of Research grants, and the "top manager" at GenPhar since he was pushed out of MUSC in 2010, but continued his obligation to the investors at GenPhar. Dr. Dong was not accused misuse any research fund for his personal benefit, but because the company used the fund for the research facility, which is appropriate to use the Facility and Administration Costs of the grants or the investors fund. However, the fact is that the research facility is funded by a combination of GenPhar's private fund and commercial loans. Dr. Dong has maintained his innocence throughout the trial. Dr. Dong is sentenced for 70 months and is currently serving at Low Security Correction Institute, Butner, North Carolina. The case is under direct appeal at the US Appellate Court for the Fourth Circuit. Case number 17-4268.



John Dong, M.D., Ph.D.
LSCC, Butner
P.O.Box 999
Butner, NC 27509

Butner, North Carolina,
December 27th, 2017

2016 CPD-6683

CERTIFICATE OF SERVICE

This is to certify that I have, on the 27th day of December 2017, served a copy of Plaintiff's Answers to Defendant's First Interrogatories to Plaintiff via United States Postal Service with postage and addressed as follows:

Cleveland & Conley, LLC
Att: Bob J. Conley
17 Church Street, Suite 310
Charleston, South Carolina 29401



John Dong, M.D., Ph.D.

FILED

JAN 02 2018

JULIE J. ARMSTRONG
CLERK, C.P. & G.S.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Jian-Yun (John) Dong, M.D., Ph.D.
Plaintiff

V.

The Medical University of South
Carolina
Defendants

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT

) CASE NO.: 2016-CP-10-06683

) PLAINTIFF'S RESPONSE TO
) DEFENDANT'S FIRST REQUEST
) OF PRODUCTION

TO: CAROLINE WRENN CLEVELAND AND BOB J. CONLEY ATTORNEYS
FOR DEFENDANT

Plaintiff, Dr. John Dong, M.D., Ph.D. ("Dr. Dong") hereby respond, pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, to the First Request for Production propounded by Defendant, Medical University of South Carolina ("MUSC").

The documents requested by MUSC and are currently in Dr. Dong's possession will be sent to your office for your inspection, copying or duplications.

These documents are described in Dr. Dong's Answers to MUSC's First Interrogatories and would not be repeated here. The documents are given to Mr. Alan R. Homes, who previously represented Dr. Dong in this civil action. With this response, you are therefore authorized to obtain these documents, with exceptions of privileged communications, directly from Mr. Homes. Dr. Dong will also inform Mr. Homes to provide your office with the said documents.

Dr. Dong currently do not have documents, or things other than those in Mr. Homes's possession, or not be able to have access to any additional documents, as you requested in question 1-16. However, All or most of the documents related to this lawsuit are in possession of MUSC, in the offices of the administration, faculty members, including Dr. Dong's office and laboratories. These documents include but not limited

FILED

JAN 02 2018

JULIE J. ARMSTRONG
CLERK, C.P. & G.S.

all the documents, communications, memos, evaluations, agreements, scientific notes, records, data entries, emails, proposals, applications, certificates, publications, resolutions of disputes, records of communications and journals and data entries with various administrators, faculty members, post-doctoral fellows, and students. Dr. Dong will file a request for production of these and other documents separately.

A handwritten signature in black ink, appearing to read "John Dong", written in a cursive style.

John Dong, M.D., Ph.D.

Dec. 28th, 2017
USC, Butler,
North Carolina

CERTIFICATE OF SERVICE

This is to certify that I have this 28th day of December 2017, caused to be served a copy of Plaintiff's Response to Defendant's First Requests for Production via United States Mail Services with postage and addressed as follows:

Attention to: Bob J. Conley
Cleveland & Conley, LLC
171 Church Street, Suite 310
Charleston, South Carolina 29401



John Dong, M.D., Ph.D.

FILED

JAN 02 2018

JULIE J. ARMSTRONG
CLERK, C.P. & G.S.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
Ninth JUDICIAL CIRCUIT

COUNTY OF Charleston

CASE NO.: 2016-CP-10-06683

Jian-Yun (John) Dong, M.D., Ph.D.,

Plaintiff,

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

vs.

The Medical University of South Carolina,

Defendant.

Plaintiff's Attorney:

Pro Se Plaintiff Jian-Yun Dong, M.D., Ph.D., Bar No.

Address:

71 Delahow Street, Charleston, SC 29492

Phone: _____ Fax: _____

E-mail: _____ Other: _____

Defendant's Attorney:

Emmanuel J Ferguson, Bar No. 81431

Address:

171 Church St., Ste: 310, Chas, SC 29401

Phone: 843 577-9625 Fax: 843 577-6672

E-mail: eferguson@clevelandlaborlaw.com Other: _____

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: MOTION TO COMPEL

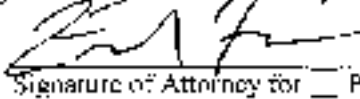
Estimated Time Needed: 1 HOUR

Court Reporter Needed: ☐ YES ☒ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff ☒ Defendant

3/27/2017

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ _____☐ EXEMPT:

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court, or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: _____

JUDGE CODE: _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____☐ CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Jian Yun (John) Dong, M.D., Ph.D.,)
Pro Se Plaintiff.)
v.)
The Medical University of South)
Carolina.)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-10-06683

MOTION TO COMPEL

FILED
2017 MAR 29 PM 12:01
JULIE L. HARRIS, CLERK
CLERK OF COURT

TO: JIAN-YUN DONG, M.D., PH.D., PRO SE PLAINTIFF

PLEASE TAKE NOTICE, pursuant to South Carolina Rules of Civil Procedure ("SCRPC") 26 and 37, counsel for Defendant Medical University of South Carolina ("MUSC") will move before this Court within ten (10) days from the date of service hereof, or as soon thereafter as counsel may be heard, for an order compelling Plaintiff Jian-Yun Dong, M.D., Ph.D. ("Dr. Dong") to provide full and complete responses to Defendant's First Interrogatories to Plaintiff¹ and Defendant's First Requests for Production to Plaintiff² (collectively, "Discovery Requests"). The grounds for this Motion to Compel ("Motion") are outlined below.

PROCEDURAL HISTORY

Dr. Dong, while represented by counsel, filed His Summons and Complaint on September 2, 2014. MUSC served Dr. Dong with MUSC's Discovery Requests on December 22, 2016. On January 25, 2017, the Court issued an order and relieved Dr. Dong's counsel from representing

¹ Exhibit A.

² Exhibit B.

Dr. Dong in his lawsuit against MUSC (the "Order").³ The Court also ordered Dr. Dong retain substitute counsel within 30 days of the Order or proceed pro se. Dr. Dong has not retained substitute counsel and, pursuant to the Court's Order, became a pro se litigant on February 25, 2017. On March 1, 2017, counsel for MUSC notified Dr. Dong by letter his responses to MUSC's Discovery Requests were delinquent and requested Dr. Dong respond to the Discovery Requests by March 14, 2017.⁴

On March 17, 2017, Dr. Dong filed a "First Extension Filing" (the "Extension Filing") with the Court.⁵ In his Extension Filing, Dr. Dong appears to request MUSC's counsel consent to a stay of all activity regarding his lawsuit for 60 days.⁶ The Extension Filing stated Dr. Dong's request is based on 1) Dr. Dong's claim he is unemployed and indigent; 2) Dr. Dong's claim he recently resigned; and, 3) Dr. Dong's claim he is undergoing a medical procedure.⁷

As of the date of this filing, Dr. Dong has not responded to MUSC's Discovery Requests.

CONCLUSION

MUSC requests the Court issue an order requiring Dr. Dong respond to Defendant's First Interrogatories to Plaintiff and Defendant's First Requests for Production of Documents to Plaintiff.

³ Exhibit C.

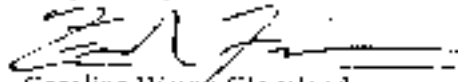
⁴ Exhibit D.

⁵ Exhibit E.

⁶ MUSC does not consent to the request in Dr. Dong's Extension Filing.

⁷ Dr. Dong does not state the position he recently resigned or the type of medical proceeding he claims he is undergoing.

Respectfully submitted,



Caroline Wrenn Cleveland

Rob J. Conley

Emmanuel J. Ferguson

CLEVELAND & CONLEY, L.L.C.

One Seventy-One Church Street, Suite 310

Charleston, South Carolina 29401

(843) 577-9626 (Phone)

ccleveland@clevelandlaborlaw.com

hconley@clevelandlaborlaw.com

eferguson@clevelandlaborlaw.com

ATTORNEYS FOR DEFENDANT

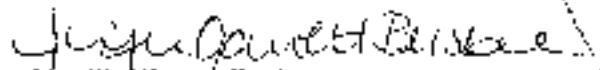
Charleston, South Carolina
March 27, 2017

2016-CR-106483

CERTIFICATE OF SERVICE

This is to certify that I have this 27th day of March 2017, caused to be served a copy of Defendant's Motion to Compel via United States Mail, with proper postage affixed, and acknowledgment received, as follows:

Jian-Yun (John) Dong, M.D., Ph.D.
71 Delahow Street
Charleston, SC 29492


Jennifer G. Bushee

FILED
MAR 29 PM 12:02
U.S. District Court
District of Columbia
BY

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016 CP 10 06653
	)	
Jian-Yun (John) Dong, M.D., Ph.D.	)	
	)	
Plaintiff,	)	
v	)	DEFENDANT'S FIRST
	)	INTERROGATORIES TO PLAINTIFF
The Medical University of South	)	
Carolina,	)	
	)	
Defendant	)	
_____	)	

TO: ALLAN R. HOLMES, ATTORNEY FOR PLAINTIFF

You are hereby required to answer in writing the following Interrogatories propounded by the Medical University of South Carolina ("MUSC") within thirty (30) days of service. These interrogatories shall be deemed to continue until the time of trial pursuant to Rule 33 of the South Carolina Rules of Civil Procedure:

1. Provide a list of photographs, plans, sketches, and/or other documents, including electronic records and documents (i.e., email and electronic data) in Plaintiff's possession that relate to Plaintiff's claims in this case.

2. Provide an itemized statement of the total dollar amount of damages, including, but not limited to, the alleged financial losses. Plaintiff seeks as a result of Defendant's alleged actions and the associated method used to calculate the alleged damages. (The response should provide a *specified amount* of alleged damage for each component of damage alleged in Plaintiff's Complaint.)

3. Identify any claims or lawsuits (including workers compensation claims) in which the Plaintiff has been or currently is a party, including the name of each, nature of each, where filed, date of filing, docket number, date of trial or disposition, and ultimate disposition thereof.

4. State the full names, addresses, and telephone numbers of all lay witnesses whose testimony Plaintiff may use at the trial of this case, and describe the factual issues to which that testimony is expected to relate.

5. Identify by full name, address, and telephone number each person whom Plaintiff expects to call as an expert witness at the trial of this case and, as to each expert so identified, state the subject matter on which (s)he is expected to testify, the substance of the facts and opinions to which (s)he is expected to testify, and a summary of the grounds for each opinion.

6. Provide the names and addresses of persons known to Plaintiff or his counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

7. For each person known to Plaintiff or his counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform Defendant of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

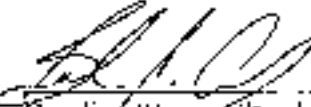
8. Provide the name, address and telephone number of each person (with the exception of Plaintiff's counsel), with whom Plaintiff has discussed his claims and allegations against Defendant including the following: (a) the date(s) the discussion(s) took place; (b) the location of the discussion(s); (c) the name(s) of anyone else present for the discussion(s); and, (d) a summary of what was discussed on each occasion. (If any of the noted communications occurred by email, or otherwise in writing, Plaintiff should provide a copy of the written communication in response to Defendant's First Set of Requests for Production.)

9. Provide the telephone number(s), name(s), and address(es) of employer(s) to which the

Plaintiff applied and/or actively sought employment during or after Plaintiff's relationship with Defendant, including the approximate dates of each such application or inquiry.

10. State whether Plaintiff, between January 1, 2010, and the present, maintained an account with any social or professional networking site. If so, please provide the name of the social networking site and the date(s) Plaintiff's account(s) was active.

11. State whether Plaintiff has ever been convicted of a crime, including, but not limited to federal felonies. If yes, provide the date of the conviction, a list of the charges for which Plaintiff was convicted, and the sentence(s) imposed.


Caroline Wrenn Cleveland
Rob J. Conley
Emmanuel E. Ferguson
CLEVELAND & CONLEY, P.L.L.C.
One Seventy-One Church Street, Suite 310
Charleston, South Carolina 29401
(843) 577-9626 (Telephone)
ccleveland@clevelandaborlaw.com
rconley@clevelandlaborlaw.com
eferguson@clevelandlaborlaw.com

ATTORNEYS FOR THE DEFENDANT

Charleston, South Carolina
This 22nd day of December 2015.

CERTIFICATE OF SERVICE

This is to certify that I have this 22nd day of December, 2016, caused to be served a copy of Defendant Medical University of South Carolina's First Set of Interrogatories to Plaintiff on counsel for Plaintiff via hand-delivery to the following address:

Allen R. Holmes, Esq
171 Church Street, Suite 110
Post Office Box 938
Charleston, South Carolina 29402

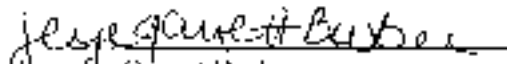

Joseph Garrett Busbee

EXHIBIT B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2016-CP-10-06683
	)	
Jan-Yun (John) Deng, M.D., Ph.D.,	)	
	)	
Plaintiff,	)	
v.	)	DEFENDANT'S FIRST
	)	REQUESTS FOR PRODUCTION
	)	TO PLAINTIFF
The Medical University of South	)	
Carolina,	)	
	)	
Defendant	)	
_____	)	

TO: ALLAN R. HOLMES, ATTORNEY FOR PLAINTIFF

Defendant Medical University of South Carolina ("MUSC") hereby requests, pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, that Plaintiff respond within thirty (30) days after the service hereof to the following Requests and that Plaintiff produce and permit counsel for MUSC to inspect, copy or photograph, at the office of MUSC's counsel located at 171 Church Street, Suite 310, Charleston, South Carolina 29401, each of the following documents or things which may be in the possession, custody, or control of Plaintiff and/or his counsel:

1. Any and all correspondence (including emails), reports, policies, or other documents or materials of every kind received from or provided to any witness whom Plaintiff expects to call as a witness at trial.
2. Any and all documents and writings of every kind in Plaintiff's or his counsel's or representatives' possession listed in, mentioned in, or used in compiling Plaintiff's answers to Defendant's First Set of Interrogatories to Plaintiff.

3. Any and all documents, records, or tangible objects upon which Plaintiff intends to rely upon to support the allegations in his Complaint and/or which he may attempt to introduce as evidence.

4. Any and all records, documents or other materials (including email) in Plaintiff's or his representatives' or counsel's possession, custody or control concerning or relating, in any way, to the allegations in Plaintiff's Complaint.

5. Any and all documents Plaintiff read, reviewed, and/or obtained (other than documents protected by the attorney-client privilege and/or the work product doctrine) relating in any way to his lawsuit and/or the causes of action raised in it.

6. Plaintiff's personal journal entries, notes, calendars, letters and/or other documents (including, but not limited to, electronic mail messages) that he created, sent, and/or received regarding, referencing, and/or otherwise discussing his claims since January 1, 2010.

7. Copies of any and all statements of witnesses given which are in the possession of the Plaintiff or his attorney, whether written or recorded or on a tape recorder or otherwise.

8. Any and all reports prepared by any witnesses concerning this litigation, specifically any expert witnesses' reports.

9. Copies of any and all other litigation pleadings and/or criminal charges/convictions involving Plaintiff.

10. All documents, including notes, correspondence and email, that discuss in any manner, refer to or otherwise mention the claims in Plaintiff's Complaint.

11. All documents, including notes, correspondence and email, regarding or related to meetings or discussions by and between Plaintiff and any employee or agent of Defendant that are related to the claims in Plaintiff's Complaint.

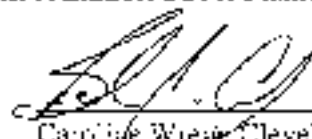
12. All email related to Plaintiff's lawsuit, including his claimed damages, regardless of who the communications were sent to or received from, this specifically includes, but is not limited to, all email sent to or received by Plaintiff in all email accounts Plaintiff currently or previously maintained.

13. All information contained on Plaintiff's personal home/laptop computer(s), including all email(s) related to his lawsuit or his claimed damages.

14. All postings by Plaintiff, regardless of the user name used to make the posting, on any blog or any social networking site or other postings by Plaintiff on any website, whatsoever, regarding, but not limited to, his lawsuit, the claims made in his lawsuit, or his claimed damages.

15. All emails Plaintiff has sent to anyone since January 1, 2010, discussing or otherwise referring to Exhibit One to his Complaint or any alleged breach of Exhibit One to his Complaint.

16. All emails and documents Plaintiff has sent to anyone or received from anyone since January 1, 2010, relating to an alleged breach of Exhibit One to Plaintiff's Complaint by Defendant.



Caroline Wren Cleveland
Bob J. Conley
Emmanuel J. Ferguson
CLEVELAND & CONLEY, L.L.C.
One Seaverry-One Church Street, Suite 310
Charleston, South Carolina 29401
(843) 577-9626 (Telephone)
ccleveland@clevelandlaborlaw.com
bconley@clevelandlaborlaw.com
eferguson@clevelandlaborlaw.com

ATTORNEYS FOR DEFENDANT

Charleston, South Carolina
This 22nd day of December 2016.

CERTIFICATE OF SERVICE

This is to certify that I have this 22nd day of December, 2016, caused to be served a copy of the Defendant Medical University of South Carolina's First Set of Requests for Production of Documents to Plaintiff or counsel for Plaintiff via hand delivery to the following address:

Alan R. Holmes, Esquire
171 Church Street, Suite 310
Post Office Box 928
Charleston, South Carolina 29402

Jennifer Gayle Busbee
Jennifer Gayle Busbee

EXHIBIT C

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	
JIAN-YUN (JOHN) DONG, M.D., Ph.D.,	)	Civil Action No. 16-CP-10-6683
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
THE MEDICAL UNIVERSITY OF	)	
SOUTH CAROLINA,	)	
	)	
Defendant.	)	
_____	)	

FILED
 2017 JAN 25 PM 8:51
 CLERK OF COURT

Upon Consent of the Parties and good cause shown, Allan R. Holmes and Timothy O. Lewis of Gibbs & Holmes, Counsel for Plaintiff, are hereby relieved as counsel in the above captioned action. Plaintiff is hereby given 30 days from the date of this Order to retain substitute counsel or proceed in this matter *pro se*.

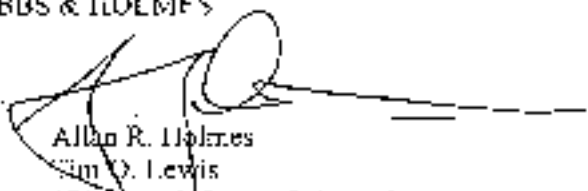
AND IT IS SO ORDERED.


 Presiding Judge of the Ninth Circuit
 J.C. Nicholson, Jr.

January 24, 2017
 Charleston, SC

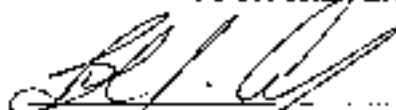
WE CONSENT:

GIBBS & HOLMES

By: 

Allan R. Holmes
Tim D. Lewis
171 Church Street, Suite 110
Post Office Box 938
Charleston, South Carolina 29402
(843) 722-0033

ATTORNEYS FOR THE PLAINTIFF



Bob J. Conley
CLEVELAND & CONLEY
171 Church Street, Suite 310
Charleston, SC 29401
Telephone: (843) 577-9626
Facsimile: (843) 577-6672

ATTORNEYS FOR DEFENDANT


Jian-Yun (John) Dong, M.D., Ph.D.
PLAINTIFF

EXHIBIT D

CLEVELAND & CONLEY, L.L.C.
LABOR AND EMPLOYMENT ATTORNEYS

One S. Market Street, Suite 1500
Columbia, South Carolina 29201
(803) 799-0000

Cleveland & Conley, L.L.C.
One S. Market Street
Suite 1500
Columbia, SC 29201

Telephone: (803) 799-0000
Fax: (803) 799-0001

March 1, 2017

Jian-Yun (John) Dong, M.D., Ph.D.
4201 Victory Point Drive
Mt. Pleasant, South Carolina 29466

Re: *Jian-Yun (John) Dong, M.D., Ph.D., v. The Medical University of South Carolina*
Case No.: 2016-CP-10-06687

Dear Dr. Dong:

I am an attorney with the law firm of Cleveland and Conley, LLC. This law firm represents the Medical University of South Carolina in the above referenced lawsuit.

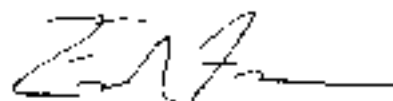
On January 25, 2017, the Court issued the enclosed Order allowing you 30 days to retain counsel or proceed pro se (on your own behalf, without an attorney). It is my understanding you have not retained counsel within the court ordered time period and are now proceeding pro se. If this is incorrect and you have retained counsel, please have your attorney contact me immediately.

On December 22, 2016, our office sent you a copy of Defendant's First interrogatories to Plaintiff and Defendant's First Requests for Production to Plaintiff, pertaining to the above referenced matter. Your responses to these discovery requests were due January 22, 2017. As of the date of this letter, I have not received a response.

Please notify me, in writing, of the status of these discovery responses. Please provide our office with complete responses to these discovery requests by March 1st, 2017, or we will move to compel a response pursuant to Rule 37, South Carolina Rules of Civil Procedure.

Sincerely,

CLEVELAND & CONLEY, L.L.C.



Eirianne A. Ferguson

EEF/jgh
Enclosures: as stated

ATTACHMENT 1

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) OR THE NINTH JUDICIAL CIRCUIT

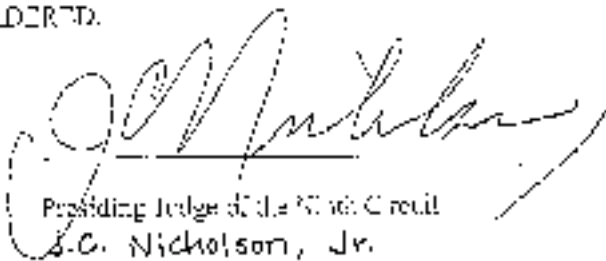
JIAN-YUN (JOHN) DUNG, M.D., Ph.D.,)
Plaintiff,) Civil Action No. 16-CF-10-6683
vs.)
THE MEDICAL UNIVERSITY OF)
SOUTH CAROLINA,)
Defendant.)

ORDER

FILED
JAN 25 AM 10:51
CLERK OF COURT

Upon Consent of the Parties and good cause shown, Allan S. Holmes and Timothy D. Lewis of O'Boe & Holmes, Counsel for Plaintiff, are hereby relieved as counsel in the above captioned action. Plaintiff is hereby given 30 days from the date of this Order to retain substitute counsel or proceed in this matter pro se.

AND IT IS SO ORDERED.


Presiding Judge of the 9th Judicial Circuit
J.C. Nicholson, Jr.

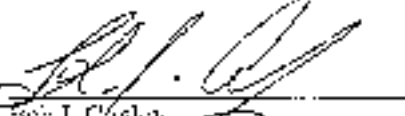
January 24, 2017
Charleston, SC

WE CONSENT:

GIBBS & HOLMES


Allan R. Holmes
Tim Q. Lewis
17 Canuch Street, Suite 110
Post Office Box 938
Charleston, South Carolina 29402
(843) 727-0033

ATTORNEYS FOR THE PLAINTIFF


Bob J. Conley
CLEVELAND & CONLEY
171 Chestnut Street, Suite 110
Charleston, SC 29401
Telephone: (843) 577-9626
Facsimile: (843) 577-6672

ATTORNEYS FOR DEFENDANT


Jerr-Yin (John) Dong, M.D., PhD
PLAINTIFF

EXHIBIT E

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)	FOR THE NINTH JUDICIAL CIRCUIT
JIAN YUN (JOHN DONG, M.D., PH.D.))	
Plaintiff,)	Civil Action No.: 2016-CP-10-6683
vs)	
THE MEDICAL UNIVERSITY OF)	FIRST EXTENSION FILING
SOUTH CAROLINA,)	
Defendant.)	
_____)	

Bob Conley
171 Church Street, Suite 310
Charleston, SC 29401

The Ninth Judicial Circuit
Charleston County Judicial Center
100 Broad Street
Charleston, SC 29401
March 5th, 2017

Honorable Judge,

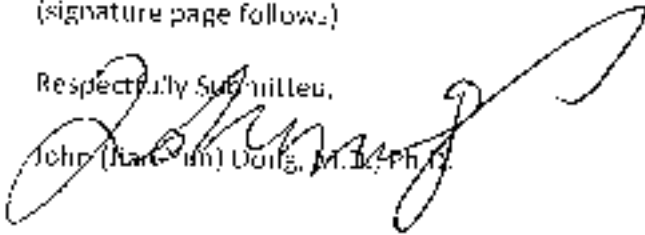
Herby, comes the Plaintiff, John (Jian-Yun) Dong, M.D., Ph.D., move the court for the first extension of time for the above referenced proceedings for reason included, but not limited to:

- 1) Due to the breach of employment contracts, and illegal taking possession of and seizing all Dr. Dong's essential research materials, scientific notes, documentations, and equipment, Dr. Dong has lost his ability to continue his academic research and teaching, and ultimately lost his employability in his professional area. Since then, Dr. Dong has exhausted his financial savings and has become indigent. Dr. Dong has neither been able to pay his attorney fees for the lawsuit based on the agreement nor has he been able to obtain a new attorney who is willing to take on MUSC who has the nearly unlimited resources.
- 2) Dr. Dong's attorney has recently resigned.
- 3) Dr. Dong is currently undergoing a medical procedure and is not able to attend the forgoing proceedings.

For these reasons, the plaintiff respectfully requests the attorney representing MUSC, Mr. Bob

Couley, to consent to, and request the court to grant him a 60 day extension
(signature page follows)

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "John" or "Hank", with a long, sweeping flourish extending to the right.

John (Hank) Dault, M.D., Ph.D.

CLEVELAND & CONLEY, LLC
LABOR AND EMPLOYMENT DEFENSE

One Seaboard Drive, Suite 210
Charleston, South Carolina 29401
www.clevelandconley.com

1000 S. W. 10th Street, Suite 100
Fort Lauderdale, FL 33315
Tel: (954) 377-9625
Fax: (954) 377-9673

1000 S. W. 10th Street, Suite 100
Fort Lauderdale, FL 33315
Tel: (954) 377-9625
Fax: (954) 377-9673

CLEVELAND & CONLEY, LLC
LABOR AND EMPLOYMENT DEFENSE

March 27, 2016

The Honorable Julie J. Armstrong
Court of Common Pleas, Charleston County
100 Broad Street, Suite 106
Charleston, South Carolina 29401-2258

Re: *Dong, M.D., Ph.D. v. The Medical University of South Carolina*,
Case No.: 2016-CP-10-06683

Dear Ms. Armstrong:

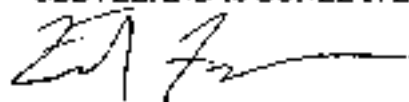
Enclosed, please find one original and one copy of Defendant's Motion to Compel, a fully executed Motion and Order Information cover sheet, and check to cover the filing fee, pertaining to the above-referenced matter.

We are requesting the original be filed with the court and a file stamped copy be returned to our attention using the envelope provided.

Your assistance with this matter is appreciated and if you have any questions, please contact me.

Sincerely,

CLEVELAND & CONLEY, LLC



Emmanuel J. Ferguson

EJF/jgb

Enc: as stated

cc: Jian-Yun (John) Dong, M.D., Ph.D., Pro Se Plaintiff

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
)
Jian-Yun (John) Dong, M.D., Ph.D.,)
) Plaintiff,)
v.)
The Medical University of South)
Carolina,)
) Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-10-06683

ANSWER

FILED
2016 DEC 28 PM 2:51
JULIE J. GRIFFIN, JUDGE
CLERK OF COURT
BY

Defendant Medical University of South Carolina ("MUSC"), by and through its undersigned attorneys, hereby answers Plaintiff's Complaint as follows:

FOR A FIRST DEFENSE

- I. MUSC moves to dismiss Plaintiff's Complaint pursuant to Rule 12(b)(6), SCRPC, because Plaintiff's Complaint fails to state facts sufficient to constitute causes of action.

FOR A SECOND DEFENSE AND BY WAY OF ANSWER

- II. Each allegation in Plaintiff's Complaint not hereinafter expressly admitted is denied.
- A. MUSC responds to the allegations in Plaintiff's Complaint by paragraph as follows:
1. MUSC lacks sufficient information to admit or deny the allegations in Paragraph 1 of Plaintiff's Complaint and, therefore, denies all allegations in Paragraph 1 of Plaintiff's Complaint.
 2. MUSC admits it is a political subdivision of the State of South Carolina and operating in Charleston, South Carolina. MUSC denies any remaining allegations in Paragraph 2 of Plaintiff's Complaint.

3. MUSC admits, upon information and belief, the Plaintiff holds a Doctor of Philosophy and Doctor of Medicine. MUSC further admits Plaintiff was previously a tenured faculty member at MUSC. MUSC denies all remaining allegations in Paragraph 3 of Plaintiff's Complaint.
4. MUSC admits it entered into a "Final Separation Agreement" with Plaintiff on or about May 3, 2010. MUSC defers to the "Final Separation Agreement" for its specific terms and conditions, and denies the allegations in Paragraph 4 of Plaintiff's Complaint to the extent the allegations in it are inconsistent with the "Final Separation Agreement."
5. Denied, including all sub-paragraphs
6. Denied.

DEMAND FOR A JURY TRIAL

MUSC denies all allegations in Plaintiff's Complaint, and expressly denies Plaintiff is entitled to any of the relief requested in his prayer for relief.

FOR A THIRD DEFENSE

- III Plaintiff's claim(s) is barred by the per se evidence rule.

FOR A FOURTH DEFENSE

- IV Plaintiff failed to mitigate his damages, and some or all of his claims are thus precluded or limited under the doctrine of avoidable consequences.

FOR A FIFTH DEFENSE

- V The actions taken by MUSC were made for legitimate business reasons, in good faith, and without malice, and are thus subject to qualified privilege.

FOR AN SIXTH DEFENSE

- VI MUSC acted in good faith, on reasonable grounds, and without malice or intent to harm.

FOR A SEVENTH DEFENSE

- VII Plaintiff is barred from recovery from MUSC by the doctrine of waiver.

FOR A EIGHTH DEFENSE

- VIII Plaintiff is barred from recovery from MUSC by the doctrine of laches.

FOR A NINTH DEFENSE

- IX Plaintiff is barred from recovery from MUSC by the doctrine of estoppel.

FOR A TENTH DEFENSE

- X Plaintiff is barred from any recovery from MUSC due to the doctrine of unclean hands.

FOR AN ELEVENTH DEFENSE

- XI Plaintiff's claims are barred under the doctrine of misrepresentation.

FOR A TWELFTH DEFENSE

- XII Any and all alleged claims as to MUSC are barred under the doctrine of mistake.

FOR A THIRTEENTH DEFENSE

- XIII Plaintiff's claims are barred by the doctrine of accord and satisfaction.

FOR A FOURTEENTH DEFENSE

- XIV Plaintiff's claims are barred by the Statute of Frauds.

FOR A FIFTEENTH DEFENSE

- XV Plaintiff's claims are barred in whole or in part by the statute of limitations.

FOR A SIXTEENTH DEFENSE

XVI MUSC pleads the provisions of the South Carolina Tort Claims Act, S.C. Code §§ 15-75-10, *et seq.*, including all the immunities, limitations, and defenses granted or preserved in the Act.

FOR A SEVENTEENTH DEFENSE

XVII Plaintiff's exclusive and preemptive remedy for any injury he claims arose out of and in the course and scope of his employment is under the South Carolina Workers' Compensation Act, and any such injuries as alleged in the Plaintiff's Complaint, if substantiated, would be barred pursuant to S.C. Code § 42-1-540.

FOR AN EIGHTEENTH DEFENSE

XVIII Plaintiff received full payment for his services during his employment with MUSC.

FOR A NINETEENTH DEFENSE

XIX Plaintiff's claims are barred by the doctrine of settlement and release.

FOR A TWENTIETH DEFENSE

XX Plaintiff's claims are barred by the doctrine of equitable estoppel.

FOR A TWENTY-FIRST DEFENSE

XXI Plaintiff's claims are barred by the doctrine of consent.

FOR A TWENTY-SECOND DEFENSE

XXII MUSC did not breach the terms of any contract(s) or agreement(s) with Plaintiff. To the extent any contract(s) or agreement(s) was breached that existed by and between Plaintiff and MUSC, Plaintiff breached said contract(s) or agreement(s).

WHEREFORE, having fully answered Plaintiff's Complaint and asserted defenses thereto, MUSC prays that this Honorable Court grant the following relief:

- (a) The dismissal of the claims against MUSC;
- (b) Award MUSC the costs of this action; and
- (c) Such additional relief as this Honorable Court deems just and proper.



Caroline Wright Cleveland

Bob J. Conley

Emmanuel J. Ferguson

CLEVELAND & CONLEY, LLC

One Seventy-One Church Street, Suite 310

Charleston, South Carolina 29401

Telephone: (843) 577-9636

Facsimile: (843) 577-6672

ccleveland@clevelandlaborlaw.com

bconley@clevelandlaborlaw.com

eferguson@clevelandlaborlaw.com

ATTORNEYS FOR DEFENDANT

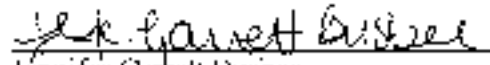
Charleston, South Carolina
December 22, 2016

2016-CP-10-6683

CERTIFICATE OF SERVICE

This is to certify that I have this date caused to be served a copy of Defendant's Answer on counsel for Plaintiff by hand delivering same to Plaintiff's counsel at the address below:

Allan Holmes, Esquire
Gibbs & Holmes
171 Church Street, Suite 110
Charleston, SC 29402


Jennifer Garrett Busbee

This 22nd day of December 2016.

FILED

2016 DEC 28 PM 2:51

JULIE J. McGRATH
CLERK OF COURT

BY _____

CLEVELAND & CONLEY, LLC
LABOR AND EMPLOYMENT DEFENSE

One Sixty Five Court Church Street, Suite 311
Charleston, South Carolina 29401
(803) 733-1200 / 733-1201

LETTER TO THE HONORABLE JULIE J.
ARMSTRONG
COURT OF COMMON PLEAS
CHARLESTON COUNTY

FILED UNDER 2016-CP-10-06683
ENCLOSURE 2016-07-06-12

CHARLOTTE, NC 28202
TEL: 704.333.1200

December 22, 2016

The Honorable Julie J. Armstrong
Court of Common Pleas, Charleston County
101 Broad Street, Suite 106
Charleston, South Carolina 29401-2258

Re: *Dong, M.D., Ph.D. v. The Medical University of South Carolina,*
Case No.: 2016-CP-10-06683

Dear Ms. Armstrong:

Enclosed, please find one original and one copy of Defendant's Answer, pertaining to the above-referenced matter.

We are requesting the original be filed with the court and a file-stamped copy be returned to our attention using the envelope provided.

Your assistance with this matter is appreciated and if you have any questions, please contact me.

Sincerely,

CLEVELAND & CONLEY, LLC



Bobby Conley

BJC/jgb
Enc: as stated
cc: Allen R. Holmes, Esquire

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JIAN-YUN (JOHN) DONG, M.D., Ph.D.,

Plaintiff(s)

vs.

THE MEDICAL UNIVERSITY OF
SOUTH CAROLINA

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

14 -CP- 10 -5332

Submitted By: Allan R. Holmes

Address: Gibbs & Holmes, Suite 110, 171 Church Street,
Charleston, SC 29401

SC Bar #: 2576

Telephone #: 843-722-0033

Fax #: 843-722-0114

Other:

E-mail: aholmes@gibbs-holmes.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is a subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts	Torts - Professional Malpractice	Torts - Personal Injury	Real Property
☐ Construction (100)	☐ Dental Malpractice (200)	☐ Assault/Battery/Tort (200)	☐ Ejectment (400)
☐ Debt Collection (110)	☐ Legal Malpractice (210)	☐ Conversion (210)	☐ Easement (410)
☐ Employment (120)	☐ Medical Malpractice (220)	☐ Motor Vehicle Accident (320)	☐ Encroachment (420)
☐ General (130)	☐ Previous Notice of Intent Case #	☐ Premises Liability (330)	☐ Eminent Domain (430)
☒ Breach of Contract (140)	☐ -CP- _____	☐ Products Liability (340)	☐ Partition (440)
☐ Other (199)	☐ Notice File Med Mal (330)	☐ Personal Injury (350)	☐ Possession (450)
	☐ Other (299)	☐ Wrongful Death (350)	☐ Unlawful Eviction (460)
		☐ Other (399)	☐ Other (499)
Judicial Petitions	Administrative Law/Relief	Judgment/Settlements	Appeals
☐ PROR (500)	☐ Rescission Div. License (600)	☐ Debt Settlement (700)	☐ Arbitration (900)
☐ Mot. Comp. (520)	☐ Judicial Review (610)	☐ Foreign Judgment (710)	☐ Magistrate Civil (910)
☐ Habeas Corpus (530)	☐ R.F. et (620)	☐ Magistrate's Judgment (720)	☐ Magistrate Criminal (920)
☐ Other (599)	☐ Permanent Injunction (630)	☐ Minor Settlement (730)	☐ Municipal (930)
	☐ Foreclosure Petition (640)	☐ Transcript Judgment (740)	☐ Probate Court (940)
	☐ Foreclosure - Consent Order (650)	☐ Un-Perfected (750)	☐ SCRPOT (950)
	☐ Other (699)	☐ Transfer of Structured Settlement Payment Rights Application (760)	☐ Worker's Comp (960)
Specialty Complaints/Other		☐ Confession of Judgment (770)	☐ Zoning Use (970)
☐ Foreclosure (600)	☐ Pharmacy License (630)	☐ Petition for Workers Compensation Settlement Approval (780)	☐ Public Service Comm. (990)
☐ Automobile Act. (610)	☐ Unfair Trade Practices (640)	☐ Other (799)	
☐ Medical (620)	☐ Out of State Deposition (650)		
☐ Other (699)	☐ Motion to Quash Subpoena at Out of County Action (660)		
	☐ Sexual Predation (610)		

Submitting Party Signature



Date: September 2, 2014

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC Rule 11, and the South Carolina Provincial Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals;
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
14-CP-10-5332
FOR THE NINTH JUDICIAL CIRCUIT

JIAN-YUN (JOHN) DONG, M.D., Ph.D.,)
Plaintiff,)
vs.)
THE MEDICAL UNIVERSITY OF)
SOUTH CAROLINA.)
Defendant..)

SUMMONS

FILED
SEP-2 PM 4:28
JULIE A. HENNING
CLERK OF COURT

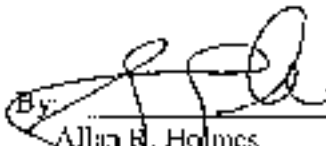
TO: THE DEFENDANT ABOVE NAMED

YOU ARE HEREBY SUMMONED and required to answer the Complaint herewith served upon you and to serve a copy of your Answer to the said Complaint on Plaintiff's attorney, Allan R. Holmes, Esquire, Gibbs & Holmes, 171 Church Street, Suite 110, Post Office Box 938, Charleston, South Carolina 29402, within thirty (30) days after the service hereof, exclusive of the day of such service.

YOU ARE HEREBY GIVEN NOTICE FURTHER that if you fail to appear and defend and fail to answer the Complaint as required by this Summons within thirty (30) days after the service hereof, exclusive of the day of such service, judgment by default will be entered against you for the relief demanded in the Complaint.

GIBBS & HOLMES

September 2, 2014

By 
Allan R. Holmes
Suite 110, 171 Church Street
Charleston, South Carolina 29401
Phone: 843 722-0033

ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
14-CP-10-5332
FOR THE NINTH JUDICIAL CIRCUIT

ILAN-YUN (JOHN) DONG, M.D., Ph.D.)
Plaintiff,)
vs.)
THE MEDICAL UNIVERSITY OF)
SOUTH CAROLINA.)
Defendants.)

COMPLAINT

FILED
2014 SEP -2 PM 4:29
CLERK OF COURT

The above-named Plaintiff, by his undersigned counsel, complains of the above-named Defendant and alleges that:

1. Plaintiff is a citizen and resident of Charleston County, South Carolina;
2. Defendant is a body corporate and politic organized under the laws of South Carolina with authority to sue and be sued;
3. Plaintiff holds Doctor of Philosophy and Doctor of Medicine degrees, is an internationally renowned scientist, and served as a tenured faculty member and employee of the Defendant from 1998 until March 31, 2012;
4. Disputes between the Plaintiff and Defendant led to their entry into an Agreement dated May 3, 2010. A copy of said Agreement is attached hereto as Exhibit One and its terms are incorporated herein by reference;
5. On, or about, September 29, 2011, the Defendant breached the May 3, 2010, Agreement. A summary of some of the breaches of the Agreement is provided by the September 29, 2011, letter of the Defendant authored by its agents, Mark S. Sotuman, Ph.D., and Vice President for Academic Affairs and Provost, and Stephen M. Lanier, Ph.D., Associate Provost

for Research. A copy of this letter is attached as Exhibit Two and incorporated fully herein. *Inter alia*, these breaches violate the May 3, 2010, Agreement, and constitute actionable breaches of contract. They include:

- a. The placement of the Plaintiff on administrative leave and denying him all his duties and responsibilities as a faculty member of the Defendant;
- b. The complete failure to relocate his laboratory equipment and the destruction of his laboratory research materials thereby depriving the Plaintiff of his research, the opportunity to conduct research, the value of his research and diminished his ability to conduct research and obtain research funding and continue or advance his position at another university.
- c. The denial to him of this right to conduct research under the auspices of the National Institutes of Health and other funding agencies, and the destruction of grant activities which he had already secured;
- d. The failure to return to the Plaintiff various biological materials which were wrongfully taken from the Plaintiff by the Defendants and used by other employees of the Defendant;
- e. The failure to support Plaintiff's applications for research funds;
- f. The blocking of the Plaintiff's anticipated research at the biotech firm, GenPhar, Inc., by supporting an unlawful take over of GenPhar, Inc. *Inter alia*, the Defendant, through its agents, contributed to GenPhar shares of stock. These shares included those which the Plaintiff had obtained for the Defendant, and included shares owned by the Plaintiff. These actions caused the full control of GenPhar, Inc., to be given to a German national unlawfully, and unlawfully deprived the Plaintiff of the value of his shares while destroying his efforts to conduct research.

6. The foregoing acts and omissions of the Defendant constitute its breach of its Agreement with the Plaintiff, and have proximately caused damages to the Plaintiff in an amount to be determined at trial.

DEMAND FOR JURY TRIAL.

7. Plaintiff demands a trial by jury on all claims.

WHEREFORE, plaintiff requests that this Court:

- a. Set this case down for trial by jury;
- b. Enter Judgment in favor of the Plaintiff in an amount of damages to be determined at trial;
- c. Tax costs and fees against the Defendant;
- d. Grant such other and further relief as is deemed just and proper.

September 2, 2014

GIBBS & HOLMES


By: Allan R. Holmes
Suite 110, 171 Church Street
Charleston, South Carolina 29401
Phone: 843-722-0033

ATTORNEYS FOR PLAINTIFF

EXHIBIT ONE

A Final Separation Agreement between
The Medical University of South Carolina including its College of Medicine,
and Dr. Jian-yun Dong, Professor of Microbiology and Immunology

This Final Separation Agreement between The Medical University of South Carolina including its College of Medicine (the "University"), and Jian-yun ("John") Dong, MD, PhD, ("Dr. Dong") Professor of Microbiology and Immunology, is entered into this 3rd day of May, 2010.

By their entering into this final agreement, the University agrees that Dr. Dong's compensated appointment as Professor of Microbiology and Immunology will continue through March 31, 2012. Dr. Dong agrees to withdraw any and all pending or future grievance(s) for actions prior to the date of this agreement (above) and agrees that this final separation constitutes full settlement of any and all past grievances or claims that Dr. Dong may have against the University, its employees and against any and all of its affiliated entities up to and including the date of this agreement.

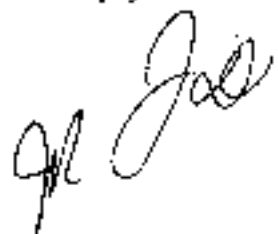
During the term of this final agreement, the University will continue Dr. Dong's employment, faculty appointment and make scheduled salary payments to him. In consideration, Dr. Dong acknowledges that this final agreement constitutes his irrevocable resignation of his tenured faculty appointment to be effective no later than March 31, 2012. Dr. Dong will retain his faculty appointment, tenure and title until the effective date of his resignation.

The University retains the right to provide him a modified, non-tenure faculty appointment and title after March 31, 2012, in light of any continuing mutual benefits that may accrue to the parties.

In his execution of this final separation agreement, Dr. Dong understands that he is advised to seek legal advice before signing any final document, and shall have forty-five (45) days after the execution of the agreement to revoke it.

Payment of Faculty Compensation

The University will pay Dr. Dong his current level of monthly compensation through March 31, 2012. This amount will equal but not exceed his effective annual rate of pay (\$105,313.00/year) at November 1, 2009.



Retention of Faculty Appointment and Faculty Duties

The University agrees that Dr. Dong will retain his current appointment and rank through March 31, 2012. Dr. Dong's primary appointment will be in the Department of Biochemistry with a secondary appointment in the Department of Microbiology and Immunology. During this time he will receive annual evaluations and receive and respond to critical inputs and comply with reasonable faculty duties and requests. The University, in turn, acknowledges that Dr. Dong will work predominantly off site in the Charleston area and will travel for academic and commercial purposes.

Dr. Dong agrees to carry his customary share of teaching, lecturing and instructional responsibilities as assigned and communicated to him in writing by the chairman of each department.

During this period Dr. Dong may use the title "Director of Biotherapeutics and Vaccine Development."

Dr. Dong is free to seek academic and research collaborations, including secondary appointments, within MUSC during the remainder of this agreement. Dr. Dong may consult with Drs. Yusuf Hannun and James Norris regarding any proposed change of primary department. Any and all MUSC academic appointments are understood to be term limited, not to extend beyond March 31, 2012 or the date of his employment at another institution or company, whichever may come first.

Irrevocable Resignation effective no later than March 31, 2012

Dr. Dong agrees and commits to submitting an Irrevocable Letter of Resignation effective no later than March 31, 2012. He may submit this letter at any time. Should Dr. Dong accept fulltime employment, including a faculty appointment, at another institution or company prior to March 31, 2012, then the agreed upon payments and continuing appointment will cease at the time of his first day of paid employment. Dr. Dong may request the University's continuation of a modified, non-tenure appointment. The University retains the right to bestow upon him such appropriate title after that time in light of any continuing mutual benefits that may accrue to the parties.

Irrevocable Resignation under this agreement

Should Dr. Dong not elect to send a formal letter of resignation either upon assuming full-time employment at another institution or company or at the end of March 31, 2012, this agreement is recognized by Dr. Dong and the University as an irrevocable resignation effective the time of his first day of paid employment at another institution or March 31, 2012, whichever is sooner.

Access to Campus Research Laboratories and Resources

Dr. Dong agrees to relinquish his future use of approximately 700 sq. ft. of laboratory space after the listed equipment and materials (Inventory list is attached as Exhibit A) have been transferred to his new space. This allows the University to reassign space unused or underused for the needs of other researchers during a time of building renovations.

Dr. Dong must submit an additional list of Vector Core equipment items (to be attached as Exhibit B and approved by the University) he is requesting no later than 10 days after the date of entry into this agreement. The University intends to equip a temporary Vector Core facility in so far as the temporary relocation of that equipment does not disadvantage the grant funded research of other faculty members.

In lieu of rental payments for space in the GenPhar Building (once occupied), the University will waive the direct charging of Dr. Dong's salary to any grants or contracts he receives during the period of this agreement. The University will cost-share this expense in compliance with federal rules and regulations.

The University will continue to provide the customary fiscal support and oversight for research awards received through MUSC and the Division of Basic Science.

The University agrees to relocate at its expense the equipment listed in Exhibit A. It will also relocate at its expenses such Exhibit B equipment as it may evaluate from the remaining Vector Core equipment which can be temporarily relocated without jeopardizing other on-going funded faculty researchers. This includes equipment which Dr. Dong purchased from UCSF and for grants on which Dr. Dong was the named original PI as permitted by law and University policy to the GenPhar location, provided that all certificates of occupancy, governmental permits and insurance coverages are in place for that site. Other items purchased and owned by MUSC with Vector Core NIH and HCC funding shall remain on MUSC's campus, except as listed in Exhibit A, or in the approved Exhibit B request. All equipment shall remain within the MUSC property accounting system. Likewise, any equipment purchased through extramural grants written by Dr. Dong as the sole PI and which was in Dr. Dong's laboratory at the time of relocation to the 700 sf laboratory space (including listed freezers and refrigerators also located in nearby equipment rooms of CSB) shall be relocated to GenPhar in 30 days from the effective date.

Dr. Dong's access to campus facilities and to their use shall not be limited during his remaining years of appointment and employment. All normal laboratory policies and safety practices are to be followed by all faculty members and technicians, including Dr. Dong and his team. All parties acknowledge that this agreement does **NOT** supersede the University's normal laboratory policies and safety practices.

Equipment relocated to GenPhar under this agreement will be returned to the MUSC campus at the University's expense at the end of Dr. Dong's appointment, unless otherwise permitted by existing university policies and external sponsor policies and approvals.

Dr. Dong will transfer any research material including genetic materials, DNA constructs, viral and plasmid vectors, antibodies, and enzymes to Dr. Dong's new research location for his continued research, including the materials which were provided by Dr. Dong to the Vector Core for services while Dr. Dong was the Director. Any vectors provided to faculty members during the operation of the Vector Core will remain with the respective faculty members who acquired the product.

In recognition of his offer to perform Vector Core services from his off-campus location for the approximate twenty-three month interval above, the University will pay Dr. Dong a sum of \$30,000 directly from the Chairman's budget in the Department of Microbiology and Immunology, to be paid no later than day 50 following the signing of this agreement. These payments will enable him to perform Vector Core functions and to begin to replicate and to re-propagate vectors which have been lost.

At the direction of Dr. Yusuf Hannun, Mr. Scott Reid and Mr. Ronald Bycroft will attempt to locate any vectors or similar materials shared with other investigators for re-propagation by Dr. Dong and will attempt to locate written, enduring, hard-copy records which have been lost. This will occur in the 45 day window above. Any additional items located after that time of search will also be provided Dr. Dong.

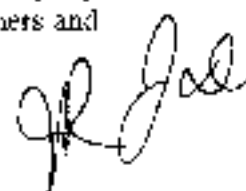
Active Grants at the Time of Resignation

The University agrees to relinquish any and all active, commercially funded research awards received by Dr. Dong to Dr. Dong as permitted by the sponsor upon his resignation. Active, federally funded research awards received will be relinquished directly back to the federal agencies as obligated in the award agreements.

Enduring grant materials, records, lab books and any other documentation required by law or University policy, will be secured, catalogued and maintained by MUSC, in the office of its General Counsel. Dr. Dong may make copies of his enduring grant materials, records, and lab books. Listed laboratory equipment and computers, printers may be released to Dr. Dong, only as permitted under existing university policies and guidelines.

MUSC will cover Dr. Dong's legal fees and other costs in this matter, through a second one-time payment of \$20,000, also to be made to Dr. Dong no later than day 50 following the signing of this agreement.

All parties enter this agreement in good faith and with respect for the intellectual property and scientific contributions of all current, past or future students, faculty researchers and university administrators.



The Parties have set their hand and seal this 3rd day of Aug 2010.

Medical University of South Carolina

Witness

By: _____


J.G. Reeves, MD
Vice President for Medical Affairs
and Dean, College of Medicine

Witness

By: _____

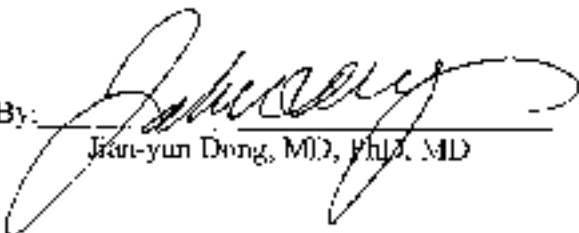

Jian-yun Dong, MD, PhD, MD

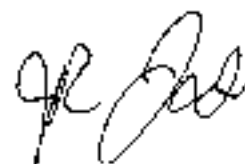
Exhibit A is to be attached and is to be initialed and dated by both parties.

Exhibit B to be provided by Dr. Dong no later than 10 after the signing of this agreement

Descriptions Inventory BSB 211 Lab	Funding	MUSC Tag #
Desk chairs 1 each	Startup	
Regulator in use on CO2 cylinder	No tags	
Epson scanner	No tags	
Compaq computer	UCSF	
Ugloo Cooler Blue and White	No tags	
Imaging Station Two touch	Startup	
Lamp for Luminator Model 15H	No tags	
Picker	Paddock	
Power Mac G5	GenPhar	
iron buckets 3 each	No tags	
Two foot stools	No tags	
UVP Trans Luminator	Paddock	83009591
Apple Personnel Lazer Writer	No tags	
BRL Mac 2501 Electrophoresis systems	No tags	
Coming Stirrer HC-253	Amigo	
Cylinder Regulator Gauges (3 each)	No tags	
Fisher FR 105 Electrophoresis systems	No tags	
Fisher microprobe	No tags	
GCA Precision Water bath	No tags	
Mouse and Keyboard and two mice	Startup	
Pipet-Aid Lot # 276	No tags	
Pipet-Aid Lot 231	Amigo	
keyboards 4 and 4 mice	No tags	
Book cases Mahogany 72" high	Startup	
Fellows Shredder	Startup	
Two Book cases Mahogany each	Startup	
-86C ULT Freezer two door	Vector Core	83083064
Bernstead Nanofure-Diamond	Vector Core	83085260
Bull Stirrer	No tags	
Bio-Rad Biologic Bio-Frac Fraction collector	Vector Core	
Bio-Rad Bio-logic LP part of 31 above	Vector Core	
Boeco Microcooler	Paddock	83023135
Cryo Biological Storage System (R not in use)	No tags	
Fisher Biotek Hybridization Incubator	Startup	
Fisher Dry Bath Incubator	No tags	83075050
Fisher ISO temp 1250	Vector Core	
Fisher ISO temp 205	Vector Core	
Fisher Vortex Genie	No tags	
Fisher Vortex-gene	Paddock	
Forma Scientific -80 Freezer	UCSF	
Thermo Water jacketed Incubator	Startup	
G3 computer (keyboard/monitor)	Startup	
Kenmore Chest Freezer Large	Dong NIH	
Kenmore Freezer	Dong NIH	
Kenmore Microwave Quiet touch	Dong NIH	
Kenmore Refrigerator/Freezer	Startup	
Kenmore under the counter refrigerator	UCSF	
Parameter Select SN 030	No tags	
Power Mac G4 (mini) for keyboard	Startup	
VWR Under the counter refrigerator	UCSF	
Precision Water bath	UCSF	



3 drawer tall file cabinet (HON)	No tags	
ALPS Printer and box of ribbons Mod 2300	No tags	
Amana Microwave Range	82027-01	
Apple I book	Gunphar	83082810
Apple I book no battery	Gunphar	
Apple monitor	Startup	
Bio-Rad Gene Filter	Arigo	83075041
BMG Fluostar with Dell computer	Vector Core	83072286
Bosch Microcycler	Padlock	83075057
Bosch Microcycler	Arigo	83025060
Bio-Rad Trans Blot SD	No tags	
Branson 450 Sonifier	UAB	
Camera connected to Scope above (HBO 100)	Vector Core	
Computer in Office	No tags	
Corning Stirrer/Hot Plate	UCSF	
Cryo Biological Storage System 6 Plus	Vector Core	
Cryo Biological Storage System 6 plus not in use	Startup	
Dell Computer & monitor 17"	No tags	
Dell monitor 24"	Gunphar	
Deluxe Mixe 83220	No tags	
Desk And Chair	Startup	
Eppendorf Centrifuge 5402	Padlock	83022926
Eppendorf Centrifuge 5415C	Padlock	83031565
Eppendorf Centrifuge 5416C	Arigo	83031566
Eppendorf Centrifuge 5417C	Padlock	83056787
Eppendorf Centrifuge 5417R	Padlock	83052851
Eppendorf Easytip P pipette	Vector Core	
Eppendorf Easytip P pipette	UCSF	
Eppendorf pipette P10 =10 each	for Core=3 Dong NIH=4	
Eppendorf pipette P100 = 1 each	No tags	
Eppendorf pipette P1000 =3 each	No tags	
Eppendorf pipette P20 =7 each	for Core=5 Dong NIH=4	
Eppendorf pipette P200 = 5 each	vector Core=4	
Equation Temp Block	UCSF	
Fic Cabinet	Startup	
Emmipette Digital 5-50 u	UCSF	
Fisher Dry bath Incubator	Vector Core	
Fisher Electrophoresis System	UCSF	
Fisher ISO Temp	No tags	
Fisher ISO temp 125C	No tags	
Fisher Marathon 10 KM	vector core	
Fisher Mini Vortexer	UCSF	
Fisher pH Meter Mod AM-5	UCSF	
Fisher Regular Mod 10-572-H	No tags	
Fisher Stirrer/Hotplate	UCSF	
Fisher Water Bath 205	UCSF	
Fisher Waterbath	Vector Core	83075057
Fisher Waterbath 220	UCSF	
Forma Chest freezer (locked)	UCSF	
Forma Orbital Shaker	UCSF	
Forma Water Jacketed Incubator	Kailbas	
Fotodyne UV	No tags	



Gallen Kamp Orbital Incubator	Genphar	
General Electric Reader	No tags	
Harvard Top Balance (2kg - 5 lb) two each	1=UCSF	
Hot Plate	Paddock	83075048
Hot Plate Nuova II	No tags	
HP 4050N printer	Startup	
IEC Centrifuge GL3R	Paddock	83073086
IEC HN-SII Centrifuge	UCSF	
IEC Micromax	UCSF	
IEC Micromax	No tags	83073687
IEC micromax	UCSF	
IMAC	Startup	83074985
IMAC	Startup	83075046
IMAC Keyboard	Startup	
Imac and Keyboard S/N YMO1112Q...R8	Duration/26000	83075093
Kenmore 18 Freezer (locked)	Dong NIH	
Kenmore Chest Freezer small (1)	Dong NIH	
Kenmore Freezer Chest Small (2)	UCSF	
Kenmore microwave	Vector Core	
Kenmore Refrigerator	No tags	
Kenmore Refrigerator / Freezer	No tags	
Kenmore Refrigerator/Freezer	No tags	
Kenmore refrigerator/freezer 293	UCSF	
Kodak Genset 80	No tags	
MJ Research PTC-200 DNA Peltier Thermal Cycler	Vector Core	
OHAUS Balance	UCSF	
Olympus CK2 Microscope	Vector Core	83037767
Opti-Quip Mod 1200 power supply	Paddock	83075065
Orbital Shaker	Paddock	83075037
Panasonic Phone with Answering machine	No tags	
Perkin Elmer Gene AMP PCR system 2400	Paddock	83049405
Perkin Elmer Gene AMP PCR system 9600	Startup	83027077
Picker Reader	Paddock	
Pipet Aid lot 205	Startup	
Pipet Aid Lot 205	TAL (Ken's)	
Pipet Aid pipette SN 35452	UCSF	
Pipet Aid Sn # 21578	UCSF	
Pipetman pipette P10 = 1 each	No tags	
Pipetman Pipette P100 = 1 each	No tags	
Pipetman Pipette P1000 = 0 each	No tags	
Pipetman Pipette P1000 = 9 each	No tags	
Pipetman Pipette P20 = 20 each	vector Core=3	
Pipetman Pipette P200 = 3 each	No tags	
Power PC & monitor plus old scanner and CD Rom	Startup	
Power PC and 5 keyboards in a box	No tags	
Precision Standard Balance	Paddock	83031638
Precision Waterbath	Paddock	83075039
Precision Waterbath	Paddock	83075042
Precision Waterbath Model 181	Paddock	83075047
Printer	Startup	
Safety Glass two pair	No tags	
Savant SpeedVAC 3C100	Paddock	83075043



Sears Seal n Save	No tags	
Spenger	UCSF	
Steel Cart (Luke side Inc.)	No tags	
Stratagene RhoCycler 40	UCSF	
Survey Meter (Lucum MD23)	UCSF	
Two Chairs	Startup	
Vortex	No tags	
Vortex-2 Gentle	Amiga	
Vtech phone base with three phones	GanPhar	
VWR 1230 Waterbath	UCSF	
VWR 50-200ul pipette	UCSF	
VWR Rocking Platform Mod 100	Vector Core	83075061
Wooden 6 shelf book case	Startup	
Zeiss Microscope 200 and power supply	Vector Core	83082917
Zip 250 drive 3 each	Startup	



EXHIBIT TWO



Office of the
Vice President for Academic Affairs
and Provost
Colbeck Hall
175 Ashley Avenue
MSC 036
Charleston, SC 29425-0020

74543 / 2001
fax 843 792 9110
www.musc.edu

PERSONAL AND CONFIDENTIAL

REVISION REFLECTING CORRECTED DEPARTURE
DATE OF MARCH 31, 2012 IN PARAGRAPH #1

October 3, 2011

Jian-yun (John) Dong, M.D., Ph.D.
4201 Victory Point Drive
Mt. Pleasant, SC 29466
Via Certified Mail #7005-1160-0004-4699-9335

RE: Administrative Leave

Dear Dr. Dong:

Please find attached, revised correspondence to you dated September 20, 2011, which reflects the corrected departure date of March 31, 2012, as stipulated in the May 3, 2010 Final Separation Agreement with Dean Reeves (See paragraph #1).

Sincerely,

Mark S. Seithmann, Ph.D.
Vice President for Academic Affairs and Provost

Stephen M. Lancer, Ph.D.
Associate Provost for Research

cc: [redacted]



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Vice President for Academic Affairs
and Provost
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Tel 843 792 5410
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PERSONAL AND CONFIDENTIAL

**REVISION REFLECTING CORRECTED DEPARTURE
DATE OF MARCH 31, 2012 IN PARAGRAPH #1**

September 29, 2011

Jian-yun (John) Dong, M.D., Ph.D.
4701 Victory Point Drive
Mt. Pleasant, SC 29456
Via Certified Mail #7005-1160-0004-4699-9335

RE: Administrative Leave

Dear Dr. Dong:

After notification of your indictment by the United States Government, pursuant to MUSC policies Dean Rita Pisano notified you by letter on September 20, 2011 that you had been placed on administrative leave with pay. This administrative leave applies to all of your duties and responsibilities as a faculty member at MUSC and will continue until the charges against you are resolved, or until your agreed upon departure date of March 31, 2012 as stipulated in the May 1, 2010 Final Separation Agreement with Dean Reeves.

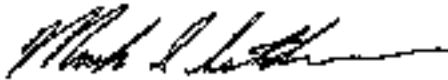
In your Separation Agreement you relinquished use of your laboratory space at MUSC and the University agreed to relocate certain equipment to the GenPhar Building. Due to a change in ownership at GenPhar, we have been unable to relocate the equipment and it has remained in a secured space on campus. As you know, the area currently housing your laboratory equipment is scheduled for renovation beginning in October 2011. Therefore, Scott Reid in the Department of Biochemistry and Molecular Biology will coordinate an envisioned relocation of your lab equipment and freezers to a secure location. Any access to this material during the period of administrative leave can be coordinated through Scott Reid with the approval of the Associate Provost for Research.

We understand that you have received positive feedback regarding a pending grant application you submitted to the National Institutes of Health. While on administrative leave you cannot perform duties as a MUSC faculty member and according to your Separation Agreement any active federally funded research awards to MUSC would be relinquished to the funding agency upon your March 31, 2012 departure. Thus, it may be prudent to postpone accepting any grants or delaying the start date until you have made arrangements to start the grant at another institution.

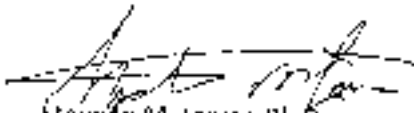
Dr. Dong,
September 28, 2011
Page 2

Please contact Dr. Lanier if you have any questions.

Sincerely,



Mark S. Sothmann, Ph.D.
Vice President for Academic Affairs and Provost



Stephen M. Lanier, Ph.D.
Associate Provost for Research

WJL

Transcripts

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2)
3 COUNTY OF CHARLESTON) TRANSCRIPT OF RECORD

4 -----x
5 JIAN-YUN (JOHN) DONG, M.D.,)
6 Ph.D.,)
7)
8 Plaintiff,)
9 vs.) Case No. 2016-CP-10-06683
10)
11 THE MEDICAL COLLEGE OF)
12 SOUTH CAROLINA,)
13)
14 Defendant.
15 -----x

October 4, 2022

16 STATUS CONFERENCE HEARING

17 B E F O R E:

18 The Honorable Jean H. Toal, Presiding Judge

19 A P P E A R A N C E S:

20 Jian-Yun "John" Dong, M.D., Ph.D.,
21 Pro Se Plaintiff

22 Bob J. Conley, Esq.
23 Attorney for the Defendant

24 Court Reporter: Bobbi Fisher, RPR
25 SC Official Court Reporter III

I N D E X

WITNESS/DESCRIPTION

PAGE

Status Conference Hearing

3

E X H I B I T S

(None)

P R O C E E D I N G S

(Whereupon, the following proceedings started at 9:30 a.m.):

THE COURT: Good morning, ladies and gentlemen. My name is Jean Toal. I am a retired Chief Justice of South Carolina, serving in the senior active status as a circuit court judge, and I have been specially assigned the following matter: John Dong, M.D., Ph.D., Plaintiff, against the Medical University of South Carolina, Defendant. This is Case No. 2016-CP-10-06683.

I am conducting this status conference this morning with a court reporter here to make note of what we do. And let me explain, by way of preliminaries, what I'd like to have happen. The goal is to set a scheduling order that sets up everything that needs to be done to bring this case to a pretrial hearing on what might be or might not be dispositive pretrials motions, and then, depending on what happens with the motion hearings, to move on to trial. And I'll schedule all of that in the scheduling order that I will develop in the course and conversation with you.

The first thing I'd like to have done is for the plaintiff, whom I understand is appearing pro se, to introduce himself to the court reporter.

And, Dr. Dong, if you would do this for me: If you would introduce yourself for the record, state your address and your contact information by way of an email address and by way of a

1 cell phone. And I just tell you in advance -- I'll introduce
2 everyone here. This is my law clerk, Zitel Poswal. And I
3 will give y'all information about our contact information as
4 well so that everybody is on the same page.

5 So if you would stand and introduce yourself and give
6 your contact information.

7 DR. DONG: Yes, Your Honor. My name is John, J-o-h-n,
8 last name Dong, D-o-n-g. I currently reside at 71 Delahow
9 Street.

10 THE COURT: Say that again.

11 DR. DONG: 71 Delahow Street. D-e-l-a-h-o-w Street.
12 That's Charleston, South Carolina 29492. My cell number is
13 (843) 991-2332. My email address is j-o-h-n-y dot d-o-n-g at
14 me.com. That's more exclusive than --

15 THE COURT: Very good. Thank you, sir. You may be
16 seated.

17 Counsel, I want you to -- I take it you represent the
18 Medical University of South Carolina.

19 MR. CONLEY: I do, Justice Toal.

20 THE COURT: Glad to see you. Please introduce yourself
21 in the same way and give your name, your firm name and contact
22 information.

23 MR. CONLEY: Certainly. Just so the Court knows, I
24 shared all my contact information with the court reporter
25 while we were waiting in the hallway.

1 THE COURT: That's great. I just want to be sure it
2 appears on the record and that we take it down.

3 MR. CONLEY: Sure. So, my name is Bob Conley. I'm with
4 the law firm of Cleveland and Conley, and it's spelled just
5 like the city. Our address is 171 Church Street, Suite 310,
6 Charleston, 29492. The office number is (843) 577-9626. My
7 work email address is BConley, just spelled like my last name,
8 at Cleveland, like the city, laborlaw.com.

9 THE COURT: Great. Thank you very much.

10 What I'd like to do first is to find out -- I have looked
11 at the pleadings, and I'd like to find out from each of you --
12 and I'll start with you, Dr. Dong -- whether -- well, whether
13 there are any amendments you intend to make to the pleadings
14 and what your view is of what has happened in discovery, if
15 anything so far, with this matter and what kind of pretrial
16 motions you have filed or intend to file.

17 So if you would begin, sir.

18 DR. DONG: Yes, Your Honor. Actually, just give a little
19 bit background with the --

20 THE COURT: Certainly, that would be helpful.

21 DR. DONG: Okay. Thank you very much.

22 The basis of the lawsuit is based on at the time -- first
23 of all, I was the tenured full professor in Medical University
24 of South Carolina. The first appointment at the Department of
25 Immunology and Microbiology. Second appointment is the

1 Department biochemist -- molecular biochemistry, and I also
2 have an appointment at the Hollis Cancer Center as member. So
3 I was recruited from UCSF by then the director Ken Drewsen
4 (ph), come to Medical University of South Carolina.

5 THE COURT: When did you come to the Medical University
6 of South Carolina?

7 DR. DONG: I'm not quite sure. I think it was 2008 or
8 2009.

9 So among the conditions I did not know at the time was --
10 asked me to help the University, under the mundane of the
11 State, to sponsor biotechnology companies and to establish
12 high-paid jobs for South Carolina, especially for the interest
13 of MUSC is to provide job opportunities to the doctoral
14 graduates to be scientists, to have employment opportunity,
15 and, also, being the first duck landing in the pond, attract
16 other biotech companies to a beautiful environment and with a
17 company with high-paid jobs that there's no pollution and
18 actually to fit an environment.

19 At the request of then-president Greenberg --
20 Dr. Greenberg -- and, actually, I did use my contact in San
21 Francisco, brought investors, and they actually joined with
22 the science research foundation of MUSC. It was called FRD.
23 Set up a company. So I was asked to help the company as a
24 consultant to --

25 THE COURT: So they joined the foundation and then

1 established a company?

2 DR. DONG: MUSC established a foundation.

3 THE COURT: Well, I understand. MUSC has a science and
4 research foundation. In addition to that, these San Francisco
5 contacts of yours, did they establish a company?

6 DR. DONG: The foundation -- FRD, Foundation Research
7 Development, established company based on the contact I
8 brought in --

9 THE COURT: What was the name of the company?

10 DR. DONG: The name of the company is GenPhar, Inc.,
11 also, basically, the person who --

12 THE COURT: And GenPhar is capital G-e-n capital P-h-a-r?

13 DR. DONG: Yes, Your Honor.

14 THE COURT: All right.

15 DR. DONG: And the major investor was from Wall Street,
16 who handles billions of dollars in private fund. So the
17 company was founded eventually by his grant's college
18 associate personally with well over \$13 million. But -- and
19 also during this time, I was requested by MUSC to collaborate
20 with them. So I obtained contracts excessive -- more than --
21 I think about \$14 million, and there was also 20- or
22 \$30 million pending. On top of that, there was \$500 million
23 contract was also pending.

24 THE COURT: Contract with who?

25 DR. DONG: With the Department of Defense and as well as

1 NIH, Department of Human --

2 THE COURT: National --

3 DR. DONG: National Institute of Health.

4 THE COURT: Oh, Health. Right.

5 DR. DONG: Sorry.

6 During this time, I actually brought a lot of research
7 money, came with me from UCSF. So, start from there, I was --
8 of course, I'd like to be a productive member for the MUSC, so
9 I actively, at the request of then the vice chair, Jim Norris,
10 actively collaborate with him and many colleagues on the
11 campus, including David Cole, who came in assistant professor
12 at the time, and now, he's the president of the university.

13 So, long story short -- and I will try to help Dr. Norris
14 with his graduate student who was from Iran, could not
15 graduate, there was no publication, no scientific project. So
16 as a help -- I helped Dr. Norris transition from chemical
17 oncology to genetic-level oncology, which is cutting edge at
18 the time; namely, gene therapy.

19 So I helped each -- nine or twelve, his graduate
20 students, based on my research project, my genetic material,
21 and my funding, graduate. And, yes, they graduate the first
22 author because the research project was mine, I should be the
23 correspondent. But Jim Norris -- Dr. Norris always put
24 himself, which he has nothing to do with the actual project
25 other than being the mentor, long story short.

1 And he was the corresponding author, put me in the middle
2 or actually deleted my name completely and put one other
3 person working in my lab into the publication. It's critical
4 for publication is for any faculty member as professors that
5 is associated with future funding as well as career
6 advancement.

7 And, also, at the same time, because he not only use his
8 graduate student, basically, come to my lab, taking materials
9 -- genetic materials, documents, and everything, and also,
10 yes, they were learning from me, from my post-doctoral fellows
11 and the scientists in my lab, paid by me, but that was all
12 appeared to be logistic, but he's supposed to acknowledge me.

13 And, also, in the end -- so long story -- he not only
14 put -- took my genetic material and everything and completely
15 transformed my research project to become his, he also dipped
16 into my grants --

17 THE COURT: And the name of this person you're talking
18 about at MUSC?

19 DR. DONG: Dr. James S. Norris.

20 THE COURT: James S. Norick?

21 DR. DONG: Norris. N-o-r-r-i-s.

22 THE COURT: Norris. Okay. Got it.

23 DR. DONG: Right. He later become the chairman. And he
24 was holding my promotion for tenure and holding my salary.
25 Actually, he reduced my salary based on he's saying the only

1 thing -- he promote everybody around me to full professor with
2 a tenure, not me. I was associate professor at MUSC -- sorry,
3 UCSF, which was a more prestigious university, with promise I
4 will be named the center of gene therapy --

5 THE COURT: Well, you ultimately got tenure at MUSC; did
6 you not?

7 DR. DONG: Yes, I did, but that was -- but that was --

8 THE COURT: How long was it? You came in 2008. When did
9 you receive tenure?

10 DR. DONG: Only 2013 or --

11 THE COURT: That couldn't be right. The trouble started
12 before that. You would have had tenure --

13 DR. DONG: Oh, right. Sorry, sorry. 2010, '09. I'm
14 sorry.

15 THE COURT: So a year or a year and a half after you
16 came, you received tenure; right?

17 DR. DONG: No, no, sorry. I messed up. Actually, I came
18 in 1998. Sorry.

19 THE COURT: You came in 1998?

20 DR. DONG: Right. 1998. So, actually, I was confused
21 with the --

22 THE COURT: And you received tenure --

23 DR. DONG: In two-thousand -- 2010.

24 THE COURT: 2010?

25 DR. DONG: Right.

1 THE COURT: So that still seems kind of off in terms of
2 the timeframe. You received tenure 11 years after you came to
3 MUSC?

4 DR. DONG: Right. About ten years.

5 THE COURT: Okay. All right.

6 DR. DONG: And including assistant professor at the
7 department and being promoted to tenure of full professor.
8 Right. Sorry. I have a problem remembering dates.

9 THE COURT: Right.

10 DR. DONG: And that came from history when I was in
11 China. My family was persecuted by the Communist party,
12 including my father.

13 THE COURT: Well, let's get back to telling me what
14 happened to MUSC.

15 DR. DONG: All right. At the MUSC, basically one of
16 the defect, he criticize -- everything was --

17 THE COURT: Well, let's not try the whole case right now.

18 DR. DONG: All right. Sorry.

19 THE COURT: Your objection was Mr. Norris took your
20 publications and your grants.

21 DR. DONG: Grant money and research material and
22 equipment --

23 THE COURT: Okay. I got that.

24 DR. DONG: So, basically, everything I had, including
25 notebooks and technologies.

1 THE COURT: And when did that happen?

2 DR. DONG: That just -- it happened gradually during the
3 entire process. Right? In the end -- and then I realize,
4 even -- he was holding the -- basically the -- holding over me
5 is the -- if you don't do so, I will not promote you. So the
6 only thing I could not --

7 THE COURT: I get that.

8 DR. DONG: Right. So, finally, I have to raise the issue
9 with the -- actually, at the same time, he's raising issues
10 with the biosafety committees and everything. So I'm
11 basically constantly being involved with defend myself --

12 THE COURT: I got that. What then happens?

13 DR. DONG: Then, eventually, with help of his friend,
14 Dr. Stephen -- sorry, sorry. Could you remind me of the name?

15 MR. CONLEY: Talking about Dr. Lanier?

16 DR. DONG: Yes, Dr. Steve Lanier. With the help of Steve
17 Lanier, they basically shut down my lab. Well, one day,
18 before I know it, they closed down my lab, took all my --

19 THE COURT: Well, now, let's stop here for a minute. Was
20 that in the time period when the federal authorities began to
21 investigate your grants and programs?

22 DR. DONG: No.

23 THE COURT: Is that when the shutdown of your lab took
24 place?

25 DR. DONG: No.

1 THE COURT: Well, when did that occur?

2 DR. DONG: That occurred during the end of the pretense
3 biosafety.

4 THE COURT: What's that?

5 DR. DONG: Biosafety. So they said because they say I
6 brought in --

7 THE COURT: I'm asking what time period are we in right
8 now when your lab -- when they shut your lab down, as you
9 claim?

10 DR. DONG: I think it's almost two years before -- more
11 than two years before 2011.

12 THE COURT: Well, two years before we'll just say --

13 DR. DONG: Two years before signing the contract.

14 THE COURT: All right. Now, there came a time when you
15 signed a contract; right? A separation agreement?

16 DR. DONG: Yes.

17 THE COURT: And why was that?

18 DR. DONG: Right. When? Why?

19 THE COURT: What was the reasoning behind --

20 DR. DONG: Right. That's what I'm going -- just about to
21 go into. So they basically shut down my lab, locked the door,
22 changed the lock from me, changed the lock from the office,
23 and under the false tense, somebody stole genetic material
24 from my freezer.

25 Because, one day, I came to the lab, and I was blocked

1 from entering my lab, and then one of my student's facial
2 expression, something serious happened, and it turned out the
3 manager worked with Jim Norris was inside the lab supervising
4 people taking material out of the freezer and basically
5 completely blocked me from my genetic material, my research
6 lab and including --

7 THE COURT: Okay. I get your contention is that, at a
8 certain point in time, they took over your lab, locked you out
9 and so forth.

10 DR. DONG: Right.

11 THE COURT: Then you have a separation agreement after
12 that; right?

13 DR. DONG: That's what actually transpired too. So I
14 have to go through an attrition, finding the most two powerful
15 person over me because they did not --

16 THE COURT: Dr. Dong, let me get you focused a little
17 bit. I just kind of need the time frame. And this is very
18 helpful, so I'm not being critical at all.

19 DR. DONG: Yes, Your Honor.

20 THE COURT: But there came a point in time when you
21 signed, on May the 3rd of 2010, a final separation agreement.
22 And this final separation agreement, I take it, was signed
23 because of the federal investigation.

24 DR. DONG: That's not true. I'm sorry. That's --

25 THE COURT: All right. Well, then, tell me what happened

1 with this May 3rd --

2 DR. DONG: That is all before, actually, the
3 investigation happened. It's about a year after that. So
4 that was actually -- the reason the separation, because I
5 raised the issue with the -- actually, before that, I did
6 raise the issue with the attrition, mainly, Dr. John Greenman
7 who was provost at the time, and also actually was writing
8 letters to Dr. Greenman and also actually was writing letters
9 to Dr. Rick Greenberg to explain --

10 THE COURT: What this -- I really don't need every detail
11 of the interactions, and that doesn't mean you can't bring
12 them out in a later court proceeding. I'm just trying to get
13 an overall view of this thing of what the agreement says. It
14 doesn't tell us why and that's what I was asking. It simply
15 says that this is an irrevocable reservation of your tenured
16 faculty appointment, effective no later than March the 31st,
17 2012. This was signed in May of 2010. So it provides that, a
18 little less than two years after this agreement is signed, you
19 irrevocably resigned your tenured appointment. You retain
20 your faculty appointment until the effective date of the
21 resignation, which is about two years from the time you signed
22 this agreement.

23 DR. DONG: I wasn't challenging those.

24 THE COURT: Sir?

25 DR. DONG: I wasn't challenging those, but I did -- yes,

1 it --

2 THE COURT: Well, I mean, this is what it says.

3 DR. DONG: I understand.

4 THE COURT: It's got your signature on it and initials on
5 it.

6 DR. DONG: Yes.

7 THE COURT: All right. It says that your primary
8 appointment is in biochemistry with a secondary appointment
9 with microbiology and immunology. You will receive annual
10 evaluations, respond to critical inputs. The University
11 acknowledges you were primarily working off-site in the
12 Charleston area, and you agreed to do teaching and writing and
13 so forth and so on.

14 And, then, it says that you relinquished your future use
15 of the lab facilities, campus research laboratories and
16 resources, and it gives some other information, but it says,
17 "The University intends to equip a temporary vector core
18 facility insofar as the temporary relocation of that equipment
19 does not disadvantage the grant funded by other -- to research
20 of other faculty members."

21 And it says, "In lieu of rental payment for the space in
22 GenPhar building, the University will waive direct charging of
23 Dr. Dong's salary to any grants or contracts."

24 And it says --

25 DR. DONG: If I may summarize --

1 THE COURT: Well, it talks about relocating some of your
2 equipment and this sort of thing.

3 DR. DONG: There's a detail --

4 THE COURT: And it lists a lot of this stuff on here.

5 DR. DONG: Right. I think, first of all, why we signed
6 the agreement, because actually --

7 THE COURT: Well, you signed the agreement. That's all I
8 can look at. You signed it.

9 DR. DONG: Right. But the reason was proposed --
10 presented to me was, instead of fighting, it's going to take a
11 long process, because that was going to affect my career, it's
12 going to --

13 THE COURT: Well, I mean, that's what people do
14 sometimes. They resolve their differences in this way. So
15 you signed this agreement?

16 DR. DONG: Yes. I signed the agreement --

17 THE COURT: And you got outside legal --

18 DR. DONG: -- under the condition --

19 THE COURT: And you got outside legal counsel. The
20 agreement says that.

21 DR. DONG: I did not -- well, that's --

22 THE COURT: You signed an agreement --

23 DR. DONG: I signed it, yes.

24 THE COURT: -- that said you got outside legal counsel.

25 DR. DONG: Yes, Your Honor.

1 THE COURT: All right.

2 DR. DONG: All right. Okay. The reason they presented
3 to me is to give me a transitional period or cool down for me
4 to look for another job.

5 THE COURT: Right. It says that in the agreement, that
6 you'll be actively pursuing other appointments.

7 DR. DONG: While I continue my research off-site, they
8 transfer all my documents, material, genetic materials, and
9 equipment on the list to me so I can continue. That's the
10 critical part of it. If a surgeon without equipment -- a
11 surgeon without equipment cannot perform surgery.

12 THE COURT: We don't need to try the case now.

13 DR. DONG: Right, I understand. So what's breached of
14 the contract, first -- actually, I would add a claim because
15 of bad faith, because they presented to me as giving me a
16 cool-down period, transitional period, and they actually said
17 -- the wording as they have is the right to rehire me --

18 THE COURT: Well, what -- is the separation agreement, is
19 that the contract you saying was breached?

20 DR. DONG: Yes.

21 THE COURT: Okay. Now, is there any other amendment to
22 this agreement, or is this -- I think there's a letter.

23 After this agreement was signed and after -- but during
24 the period the agreement was still effective, during that
25 two-year period, a letter was sent to you dated September the

1 29th of 2011, and it says administrative leave. You,
2 apparently, were notified that you had been placed on
3 administrative leave with pay. And it says your -- the
4 administrative leave applies to all your responsibilities
5 until the March 31st, 2012, deadline for the end of the
6 separation agreement. Right?

7 DR. DONG: But that's not a letter I agreed with.

8 THE COURT: It's not a question of whether you agreed
9 with it. That's why we've got cases to try. I'm just looking
10 at the agreement, and it says in the agreement that, in your
11 separation agreement, you relinquished use of your laboratory
12 space at MUSC, agreed to relocate certain equipment to the
13 GenPhar building, "due to a change in ownership of GenPhar, we
14 have been unable to relocate the equipment, and it has
15 remained in a secure place on campus. As you know, the area
16 currently housing your laboratory equipment is scheduled for
17 renovation beginning October 2011." That would be shortly
18 after the date of this letter.

19 "Therefore, Scott Reed, in the Department of Biochemistry
20 and Molecular Biology will coordinate an inventory relocation
21 of your lab equipment and freezers to a secure location. Any
22 access to this material during the period of administrative
23 leave can be coordinated through Scott Marie with the
24 Associate Provost for Research."

25 So that is the action they took after your indictment

1 on -- and when was the indictment?

2 DR. DONG: That was not -- at least a year or two before
3 the indictment.

4 THE COURT: Right. If it was a year or two before that,
5 then it was right about the time you signed the separation
6 agreement. When in relation to the separation agreement were
7 you indicted?

8 DR. DONG: At least two or three years before --

9 THE COURT: No, that can't be right. That can't be
10 correct. The final separation agreement is signed the 3rd of
11 May 2010. This letter of September 2011 says that --

12 DR. DONG: Actually --

13 THE COURT: -- you have been indicted, and you're saying
14 that occurred a year before. So it sounds to me like it
15 occurred around the time of the separation agreement. I can
16 look and find the indictment here.

17 DR. DONG: Right. But, off my memory -- because the
18 trial -- there is a speedy trial, and I think the trial
19 started --

20 THE COURT: Well, if you were indicted around the time of
21 the separation agreement --

22 DR. DONG: No, that's not true.

23 THE COURT: Well, when were you indicted?

24 DR. DONG: I couldn't give you exact date, but I think at
25 least two or three years after all of this occurred.

1 THE COURT: Okay. The indictment -- this is the third
2 superseding indictment, and that is April the 16th, 2013.

3 DR. DONG: Right. So the agreement was signed in --

4 THE COURT: Right. Well, this says the unsealed third
5 superseding indictment. You apparently were indicted before
6 that and then you had superseding indictments. That's what
7 that generally means.

8 DR. DONG: Right, actually --

9 THE COURT: I'll get to you, Counsel. I'm not going to
10 go on forever with this, but --

11 DR. DONG: We can find the date of first indictment
12 because they --

13 THE COURT: Sir?

14 DR. DONG: We can find the date of first indictment --

15 THE COURT: And we certainly can, so I won't spend any
16 more time on that. It sounds to me as if the separation -- if
17 the indictment occurred then, as complicated as this thing is,
18 it probably was the result of some investigation that went on
19 for several years before that, and at some point in time, you
20 would have been contacted and MUSC probably would have been
21 contacted at some point before the indictment was released.

22 DR. DONG: I think that's all excuses. I'll get to it if
23 you allow me to --

24 THE COURT: I want you to really briefly summarize it,
25 but I want you to -- what I'm trying to figure out is when you

1 first knew that the federal government was investigating you
2 for what ultimately became an indictment and a conviction.

3 DR. DONG: Actually, the indictment -- head indictment
4 was sealed, actually, for a long time --

5 THE COURT: Before anybody knew about it.

6 DR. DONG: Right. So the indictment --

7 THE COURT: And the indictment was maybe sealed for a
8 couple of years; right?

9 DR. DONG: Right. So I did not know. There was nothing
10 going on other than there was -- also, there was -- the whole
11 thing was based on the qui tam lawsuit, based on what GenPhar
12 did, not me. I did not take a single dollar from GenPhar,
13 because I was pushed to conduct research --

14 THE COURT: Who was the qui tam action lodged against?

15 DR. DONG: Sorry?

16 THE COURT: Who was sued in the qui tam action? If
17 you're saying the indictment was the result of the qui tam
18 matter -- I'm familiar with what qui tam cases are. They are
19 civil attempts by the government to recover misappropriated
20 funds. Did the qui tam action name you?

21 DR. DONG: No. The qui tam was claimed the company
22 billed with the contract --

23 THE COURT: GenPhar?

24 DR. DONG: Yes.

25 THE COURT: And GenPhar was your company with others;

1 right?

2 DR. DONG: No. I was the consultant before I was pushed
3 into the company based on the contract because --

4 THE COURT: Let's go back to the start. The company was
5 started because of you and the --

6 DR. DONG: No.

7 THE COURT: -- grants you were going to get and the good
8 contacts you had in San Francisco and other places, and that's
9 how GenPhar got started; right?

10 DR. DONG: I was the -- provided, on behalf of MUSC --

11 THE COURT: Right.

12 DR. DONG: -- as a professor. I have no ownership in the
13 company --

14 THE COURT: I understand.

15 DR. DONG: -- except the FRD is part ownership. The
16 investors -- about 130 investors who put over \$30 million
17 there --

18 THE COURT: I understand.

19 DR. DONG: -- was the owner.

20 THE COURT: I understand.

21 DR. DONG: So I was trying to be the good faculty sponsor
22 technology, helping FRD to support the company. In the end,
23 actually because the fighting -- the big dispute over my
24 technology and money, and they pushed me to a cool-off period
25 of time, saying you can -- now you can completely go to

1 GenPhar, conduct your research for MUSC, getting grants. Once
2 you're getting more grants for MUSC, we'll hire you back,
3 bring you back to the campus.

4 So, actually, that was a promise given to me, although
5 they played word game in the agreement, because, at the time,
6 I was tired of it, for years of fighting with the chairman and
7 the --

8 THE COURT: Okay. I get all that.

9 DR. DONG: Right.

10 THE COURT: So, at a certain point in time, you say
11 during the time this contract -- the final separation
12 agreement was in force --

13 DR. DONG: Right.

14 THE COURT: -- and before it came to an end, your
15 contention in this lawsuit is that MUSC breached this
16 contract?

17 DR. DONG: But not transfer any of the genetic
18 material --

19 THE COURT: By not transferring any of your --

20 DR. DONG: Not transfer any genetic material, any of the
21 documents, any of the equipment.

22 THE COURT: Right, right, right. And all of that was
23 specified in a very long Exhibit A --

24 DR. DONG: Yes.

25 THE COURT: -- that's attached to the complaint.

1 DR. DONG: Right.

2 THE COURT: Basically, this is a breach of contract
3 action, as far as you are concerned, that contends that MUSC
4 violated this agreement by not transferring listed items that
5 they were supposed to transfer to who: To you or to GenPhar?

6 DR. DONG: To me.

7 THE COURT: To you personally?

8 DR. DONG: Right. Because, actually, that's -- the
9 reason is, I have agreement at GenPhar to allow me the space
10 to conduct my research on behalf of MUSC, use my genetic
11 material, grants, and the equipment, but they -- including my
12 document notebook.

13 THE COURT: I got it. I understand very clearly exactly
14 what you're saying. It's a breach because of the failure to
15 transfer to you personally listed equipment that was listed on
16 this agreement.

17 DR. DONG: Those are my equipment, actually.

18 THE COURT: And, at that time, your intention was to set
19 up your operation at GenPhar with this equipment; right?

20 DR. DONG: Yes, because --

21 THE COURT: In their physical -- they had a physical --

22 DR. DONG: In their physical space. I relinquish the
23 physical space, which is tight at MUSC. I understand that.

24 THE COURT: Okay. Let me just ask one question. That's
25 2010 when the agreement began. That was the idea that these

1 equipments would be transferred at the end of the agreement,
2 which would be 2012, with the agreement, and that equipment
3 would be transferred to you personally, and you would be at
4 GenPhar, operating with that --

5 DR. DONG: I understand, but they catch me in both --

6 THE COURT: That -- I'm just trying to figure out what
7 was breached about this. And this contract entitled you to a
8 trans- -- as you see it -- to a transfer of all this equipment
9 at the -- when the contract came to an end in 2012?

10 DR. DONG: I don't remember that, but if you're saying
11 that, but that was not represented to me at the time. How I
12 conduct my research on behalf of MUSC without equipment,
13 without document -- that contradicts itself -- using different
14 space.

15 THE COURT: It looks to me like the contract contains a
16 provision on page 3 that describes the material and where it
17 should be transferred, and your contention is that that
18 equipment was supposed to be transferred before the agreement
19 came to an end --

20 DR. DONG: So I can --

21 THE COURT: -- to the facilities at GenPhar; right?

22 DR. DONG: Right. Everything need to be transferred.

23 THE COURT: And that is or is not what the agreement
24 says. I'm saying that's what you contend it says.

25 DR. DONG: Unless how I conduct research on behalf of

1 MUSC at a different location without any equipment, without
2 documents?

3 THE COURT: And then what was going to happen after the
4 agreement came to an end and you were no longer with MUSC?

5 DR. DONG: No, actually, they played word game, but --
6 with it but --

7 THE COURT: I'm just trying to ask you what you
8 understood was what would happen to the equipment and --

9 DR. DONG: Those are my equipment I brought from UCSF.

10 THE COURT: So you would continue to retain the
11 equipment.

12 DR. DONG: That's my personal property.

13 THE COURT: And you would continue to be located at
14 GenPhar; right?

15 DR. DONG: That's correct.

16 THE COURT: That was your understanding of the agreement?

17 DR. DONG: My understanding is a transition period. They
18 used the word they will have right to rehire me, brought me
19 back to campus. That's actually presented.

20 THE COURT: Well, let's -- for goodness' sakes, let's not
21 get into that. Right now, we're just on the agreement and
22 what they did to breach it during the time you --

23 DR. DONG: Right. They did not transfer all the
24 essential materials for me to conduct my research, continue my
25 project. But, in fact, they took all my research projects,

1 continued being used by Dr. Norris.

2 THE COURT: Now, the letter that they sent you after you
3 were indicted was sent while the agreement was -- the
4 separation agreement was still in effect, and it put you on
5 administrative leave, and it said, "We have attempted to
6 relocate your equipment to the GenPhar building, but due to a
7 change in ownership, we have been unable to relocate the
8 equipment." What was the situation there?

9 DR. DONG: There was never change of -- there was never a
10 change of owner, but that's a long time after. So that's what
11 they tried to -- before the end -- first of all, I did not --
12 I do not remember that letter -- I received the letter. But,
13 second of all, there's no so-called ownership change, and
14 actually --

15 THE COURT: So it all --

16 DR. DONG: They never actually -- I repeatedly request
17 they never transferred my genetic material and the equipment.
18 The genetic material documents was supposedly given to me,
19 because that's how I conduct my research. So, basically, they
20 shut down my career cold.

21 THE COURT: Did you continue to have an office at
22 GenPhar?

23 DR. DONG: That has nothing to do with MUSC with my
24 career.

25 THE COURT: Well, I'm just trying to figure out where

1 would they have transferred the equipment, in your view, if it
2 was your equipment and should be transferred. If you didn't
3 have an office at GenPhar, where were they supposed to
4 transfer it?

5 DR. DONG: It's not office but research laboratory, yes.
6 We have research laboratory in GenPhar. And the GenPhar did
7 agree for me -- of course, they would be glad to, for me to
8 pay back as a professor and work on-site and have a better
9 collaboration scientifically.

10 So, GenPhar did agree to provide space for me to locate
11 the equipment at the --

12 THE COURT: And that's where it was supposed to be
13 placed?

14 DR. DONG: Right.

15 THE COURT: And they say they didn't place it there
16 because GenPhar changed ownership, but you say --

17 DR. DONG: No, GenPhar never changed ownership. GenPhar
18 always have the operational lab -- research lab.

19 THE COURT: Okay. Just one more question then: Did you
20 still have an office there?

21 DR. DONG: No. GenPhar actually closed down because of
22 the prosecution.

23 THE COURT: Well, then, in order for them to honor this
24 separation agreement, if GenPhar had closed down, where do you
25 say the equipment should have been transferred?

1 DR. DONG: That's years later, because I was stuck in
2 GenPhar without equipment, without being able to work on the
3 university --

4 THE COURT: Okay.

5 DR. DONG: -- without the opportunity to transfer to
6 another university with my research grant equipment. So my
7 career would be shut down cold.

8 THE COURT: Okay. I understand that.

9 DR. DONG: And that would give me no option. I end up
10 with GenPhar because, once they indicted GenPhar under the qui
11 tam, which is single procedure but managed by the ex-U.S.
12 attorney, who actually used his subordinate he promoted,
13 actually, criminally prosecuted GenPhar, and then they found
14 out we have to have a warm body --

15 THE COURT: Mr. Dong -- or Dr. Dong, we can go into all
16 these things in more detail at the proper time.

17 DR. DONG: Right.

18 THE COURT: I think I got the picture, though. GenPhar
19 was indicted just like you were indicted, and it had been shut
20 down. Right?

21 DR. DONG: It wasn't shut down until two years later.
22 Because, first of all, the indictment was not known for
23 another year or so.

24 THE COURT: I'm going to the time when you knew about it.

25 DR. DONG: When I knew about it, it was unsealed. When

1 it's unsealed.

2 THE COURT: Right. And that was 2011.

3 DR. DONG: No. The indictment in 2013 was sealed --

4 THE COURT: That's a superseding sealed indictment.

5 DR. DONG: The indictment -- they haven't --

6 THE COURT: This letter is dated September the 29th of
7 2011, and it said, after notification of your indictment by
8 then United States Government, MUSC is saying that, in 2011,
9 it got notification from the United States Government, the
10 federal authorities and the U.S. attorney, that you had been
11 indicted, and that is why they sent this letter saying we have
12 been trying -- we have tried to relocate this equipment, but
13 we're unable to.

14 GenPhar was indicted just as you were indicted; right?

15 DR. DONG: Right. But GenPhar is still operational at
16 the time, two years after that. So they had nothing to do
17 with not being able to transfer and also before that, nothing
18 to do with --

19 THE COURT: Well, it's just a big, factual controversy,
20 then, between the two of you about that, but I think I
21 understand what your position is about it.

22 All right. Then you go on forward. At some point, you
23 were tried. Apparently, you had a jury trial. You had some
24 reversals. You had a bench trial. You had some reversals,
25 and then you served, what, about six years or so?

1 DR. DONG: Five years.

2 THE COURT: Five years. All right.

3 And you had brought this lawsuit before you -- well, it
4 was after some of the activity in terms of your criminal side
5 was in place. When did you --

6 DR. DONG: I brought the lawsuit a year -- at least a
7 year before I know anything about the --

8 THE COURT: I gotcha. So your position is that breach of
9 contract action had to do with the time when neither you nor
10 MUSC knew that you were indicted or anything else, and they
11 violated that agreement before --

12 DR. DONG: Not before that. My indictment was
13 invalidate. As a result, they push me into off-site GenPhar
14 to conduct my research. So I was the only so-called warm body
15 in charge for GenPhar issue the fund for research for city
16 deal. So I was indicted the same, which I was just a
17 scientist being a consultant. So, actually, that's --

18 THE COURT: And, of course, I can't relitigate that.

19 DR. DONG: That's why, actually, we should not actually
20 touch the case --

21 THE COURT: Well, I think it looms as a factor in all of
22 this, but I can't retry that case, of course. The final word
23 has been spoken on that.

24 DR. DONG: But if you brought in the indictment as the
25 issue, which they use it as the issue after facts, which would

1 be --

2 THE COURT: Well, that's what we're going to --
3 apparently, that, itself, is a factual dispute.

4 DR. DONG: And then allow me to add in a claim because
5 they basically used this situation, pushed me into a company,
6 eventually end up with a problem, or they may knew there was a
7 problem --

8 THE COURT: So the bottom line of this summary is you
9 want to amend your complaint?

10 DR. DONG: Yes. Actually, after discovery, I need to
11 establish were my documents -- why my documents were seized to
12 begin with.

13 THE COURT: Okay. I understand that. Now --

14 DR. DONG: And where the documents were.

15 THE COURT: What discovery has taken place so far?

16 DR. DONG: Nothing. Actually, basically -- actually,
17 I'll say the discovery -- first of all, I followed the request
18 for production for documents. Right? Basically, MUSC denied
19 all the document with one line, was clearly --

20 THE COURT: Okay. You filed a request for production.
21 The defendant denied --

22 DR. DONG: Produce anything.

23 THE COURT: Production. All right. And then did you
24 file interrogatories?

25 DR. DONG: I haven't yet, because, actually, it was still

1 -- we're in the process to what can be produced, what cannot
2 be produced, and, so far, I can say the document was limited
3 under condition, can be extended at any time to --

4 THE COURT: You don't need to give me the explanation.
5 Just the one piece of discovery you have filed is a request
6 for production, and they have denied that; right?

7 DR. DONG: Right. The judge did agree conditional,
8 limiting the first counter for production to the
9 communications.

10 THE COURT: Was that Cothran's order -- Judge Cothran's
11 order, Counsel?

12 MR. CONLEY: Judge, the issue he speaks of was actually
13 addressed by two different circuit court judges.

14 THE COURT: Okay. I'll get to the history with you in
15 little bit. Thank you so much. All right.

16 So the request for production was denied. There has been
17 some judicial action on that issue. And I also understand
18 that this matter has been designated as trial not before
19 November 1st, and that is rapidly approaching. And I can tell
20 you, I'm going to sign a scheduling order that, first of all,
21 deals with all this discovery and sets some firm dates for
22 when things have to be proposed and answered by each party so
23 we won't have any confusion about that. I'm going to set that
24 today before I leave.

25 DR. DONG: Yes.

1 THE COURT: And, then, I'm going to set the trial date.
2 And I'm going to set it as soon as I possibly can. Now, the
3 trial may or may not take place, depending on what happens
4 with the motions, but I'm going to set all of that before we
5 depart from each other today.

6 DR. DONG: Yes, Your Honor. I think to actually smooth
7 out the process without a dispute --

8 THE COURT: Sure.

9 DR. DONG: -- I think it would be prudent for the Court
10 to issue a standing discovery order like this.

11 THE COURT: What do you have there?

12 DR. DONG: This is the standing discovery order. This is
13 issued by Judge Roger Young, but that's adopted by a number of
14 judges.

15 THE COURT: Would you hand that up to me and let me just
16 look at it?

17 DR. DONG: Yes.

18 THE COURT: I'll give it right back to you.

19 DR. DONG: No, actually, I will submit it. I'll file a
20 motion to adopt this order.

21 THE COURT: Okay. Well, that's -- you're just verbally
22 making that motion at this time. All right. This is Judge
23 Roger Young's -- this is his standing order.

24 DR. DONG: Right.

25 THE COURT: It's not specific to this case. It's his

1 standing order.

2 DR. DONG: Right. You can see the title.

3 THE COURT: And I will tell you right now that I intend
4 to make a specific scheduling order for this case. And I
5 thank you for giving me this. I'll certainly be guided by
6 Judge Young. I'm familiar with his standing order. It's a
7 good one. And I will be mindful of that. But in terms of the
8 deadlines and so forth here, we're going to talk about those
9 and deal with those today.

10 DR. DONG: Right. Actually, I have nothing against it,
11 but I was requesting, instead of stonewalling me on every
12 step, allow me to conduct discovery if they timely --

13 THE COURT: Well, they're going to have to do the same
14 thing. They're going to be allowed to conduct discovery as
15 well.

16 DR. DONG: Yes.

17 THE COURT: They may have some dispositive motion that
18 will be heard before that, which is their motion to dismiss.
19 I don't know exactly what they're going to say about that, but
20 you and I will find out, and then I'll tell you what I'm going
21 to do.

22 DR. DONG: Yes. I think that the normal process is
23 normal. First, discovery and mediation and dispositive --

24 THE COURT: Well, I don't know that we're going to file
25 all that normal process here. This case has been pending

1 since 2016. There's been a lot of exchange back and forth
2 about the case. I'm going to compress all that as much as I
3 can, because this case needs to be dealt with.

4 DR. DONG: I understand. But I think the schedule will
5 be --

6 THE COURT: Well, there's no sense in debating in the
7 abstract.

8 Let me hear first from defense counsel about his position
9 about the case, and then I'll talk to both of you about
10 scheduling. Okay?

11 DR. DONG: Yes, Your Honor. I would just state that
12 discovery is the -- assured of my constitutional rights --

13 THE COURT: Yes, sir. It's not a constitutional
14 provision. It's a practice and procedure. But, yes, we
15 follow it. A trial judge has the authority to set a special
16 scheduling order for any kind of case, and I'm going to do
17 that.

18 DR. DONG: Yes, Your Honor.

19 THE COURT: Okay. Mr. Conley?

20 MR. CONLEY: Good morning, Judge. I'm not sure where you
21 would like me to start. I don't want to go over what you have
22 already heard about.

23 THE COURT: The first thing, Mr. Conley, what would be
24 helpful is you-all have filed an answer, which is basically a
25 motion to dismiss -- a general denial and a motion to dismiss.

1 MR. CONLEY: That is correct.

2 THE COURT: All right. And that matter -- it's just been
3 filed, but it hasn't been briefed or -- at least I have not
4 seen anything to indicate exactly how we would proceed. A
5 motion to dismiss, as we know, is something that's based on
6 the pleadings. And I have not seen the traditional memo. I
7 would have to examine to see exactly what you contend about
8 the pleadings, looking at them in the light most favorable to
9 the non-moving party what would give me the basis for
10 dismissing it, just based on the pleadings.

11 Has something been submitted like that?

12 MR. CONLEY: It has not, Your Honor. And I think the
13 reason is, is because I think, collectively, my client and I
14 decided this case is more of a summary judgment case --

15 THE COURT: I agree with you.

16 MR. CONLEY: -- in light of discovery than it is a
17 12(b)(6) motion --

18 THE COURT: Sure.

19 MR. CONLEY: -- just based on the four corners.

20 So to go directly to your question, this is not a case
21 where we're going to pursue a 12(b)(6) motion.

22 THE COURT: Very good.

23 MR. CONLEY: I don't mind telling the Court that on the
24 record on behalf of my client and MUSC. So this is a case
25 that is a summary judgment case from a dispositive motion

1 standpoint, Judge.

2 THE COURT: All right. Now, very little has been done
3 with discovery, I take it.

4 MR. CONLEY: Let me give a small piece of background on
5 discovery.

6 THE COURT: Sure. Sure.

7 MR. CONLEY: So, at the outset of the case, on behalf of
8 MUSC, we served both interrogatories and requests for
9 production on Dr. Dong. Dr. Dong responded to those
10 interrogatories and requests for production. He produced both
11 documents and responded to interrogatories.

12 To my recollection, there was no motion to compel in
13 regard to Dr. Dong's responses. As he has indicated to you,
14 he, likewise, served MUSC with requests for production. Those
15 requests for production were subject to what I would call
16 various contested issues in what he was asking for in regard
17 to documents.

18 And I want to make sure I get my date right here, Judge.
19 In March of 2019, Dr. Dong actually filed a motion to compel
20 regarding MUSC's responses to his request for production.
21 That motion was heard by Circuit Court Judge Craig Brown out
22 of Florence. Judge Brown held a hearing. He actually ended
23 up holding two hearings, and I'll explain that in a moment.

24 Dr. Dong attended both of these hearings by phone. Of
25 course, he was in -- I'm not sure where he was incarcerated at

1 the time, but he was --

2 THE COURT: But, regardless, he was still in federal
3 custody.

4 MR. CONLEY: That is correct. But the Court made
5 arrangements for him to appear by phone each time.

6 The result of his motion to compel was that Judge Brown
7 issued an order that really contained two things in general,
8 Judge. One, it contained a very ex- -- fairly explicit
9 detailed order as to what MUSC was required to produce in
10 regard to documents, and in addition to that, what we were not
11 required to produce.

12 I don't want to be held to this, but my recollection is
13 it ended up being about somewhere in the nature of 500 pages
14 of documents, including in emails -- many emails and other
15 related documents.

16 THE COURT: So the required production was about 500
17 pages?

18 MR. CONLEY: Somewhere in that neighborhood. That's my
19 recollection, Judge.

20 Those documents were all produced to Dr. Dong. Even
21 though he was incarcerated at the time, we made arrangements
22 to be able to produce those to him and did produce those to
23 him.

24 Judge Brown's order also contained another component too.
25 A little unusual but Judge Brown determined it was the right

1 thing to do at the time. He also built into that order a
2 scheduling order because he even recognized that, even at that
3 point in 2019, obviously, the case had a lot of age on it
4 already. And so, in order to try and move it along, he put a
5 scheduling order into that order. So if the Court were to
6 look at his first order, it's got the motion to compel
7 component and the production of records, and it's also got
8 this component regarding scheduling.

9 The other thing that Judge Brown did in that order was he
10 built into the order that he was going to stay the case until
11 Dr. Dong was released from federal custody. MUSC filed a
12 motion to alter or amend that order with Judge Brown in only
13 one respect and that was his order that the case was going to
14 be stayed while Dr. Dong was in federal custody.

15 As a consequence of that motion to alter or amend, Judge
16 Brown issued a new order, and the only thing he changed about
17 the new order was he removed the stay component --

18 DR. DONG: Your Honor --

19 THE COURT: Just -- no -- I'll get back to you. Don't
20 worry. Just make a note of what you want to say, and I'll get
21 back to you. Just like I didn't let him interrupt, I'll treat
22 you the same way.

23 THE COURT: So Brown altered by removing the stay?

24 MR. CONLEY: Correct. So, in other words, what we were
25 left with at the end of Judge Brown's involvement, as I will

1 phrase it, was an order that ordered us to produce the
2 records, which MUSC did, and had the scheduling order that
3 applied going forward. And the scheduling order included the
4 typical things we would see, such as a discovery deadline, a
5 dispositive motion deadline. I think it has a mediation
6 deadline, and I believe it's got a trial before deadline, just
7 speaking from memory.

8 So that's what we operated under going forward. One of
9 the things --

10 THE COURT: Let me just interrupt you, Mr. Conley, to
11 say, I'm going to get you to prepare for me, before it's all
12 over, a little notebook that gives me all these orders.

13 MR. CONLEY: Sure. So we --

14 THE COURT: You operated under this order.

15 MR. CONLEY: We operated under Judge Brown's built-in
16 scheduling order, and when we got into early 2020, one of the
17 things that Judge Brown's order had in it was it had a
18 discovery deadline built in it that I believe was the end of
19 February of 2020.

20 We actually, in advance of that deadline, worked with the
21 federal correctional facility in Salter, South Carolina, where
22 Dr. Dong was at the time, to take Dr. Dong's deposition. It
23 was scheduled to occur at Salters, at the correctional
24 facility. It was all scheduled, set up. And in the days
25 before we were scheduled to go take Dr. Dong's deposition, he

1 filed a motion with the Court seeking to delay his deposition.

2 So as a consequences of him filing --

3 THE COURT: What was the basis?

4 MR. CONLEY: I don't have it in front of me, but I
5 believe the basis of his motion was something to the effect of
6 he wasn't ready to be deposed, he didn't feel like he had been
7 produced all the documents he was entitled to.

8 THE COURT: Right. Okay.

9 DR. DONG: Because of COVID, actually.

10 THE COURT: No, no. I'll get back to you.

11 MR. CONLEY: So that's --

12 THE COURT: Was COVID mentioned?

13 MR. CONLEY: To my knowledge, no, but if you look at the
14 dates, Judge --

15 THE COURT: That's right when COVID is striking.

16 MR. CONLEY: That's exactly right. It's within days of
17 that.

18 THE COURT: So that's not unreasonable that you would
19 have done that because of COVID. That's what I thought it was
20 going be, the end result, because a lot of what Craig Brown
21 put forward would have been interfered with, to some extent,
22 by COVID.

23 MR. CONLEY: It is, Judge, particularly anything with the
24 discovery deadline that ended the end of February because, as
25 we all remember, it's mid-February that COVID begins to raise

1 its ugly head.

2 So, yes, there is a COVID component there. Nonetheless,
3 the combination of Dr. Dong's motion, if you will, he files to
4 delay it and then, subsequently, COVID, where we couldn't even
5 go to Salters at that point -- I mean, there's just no -- it
6 was just shut down -- that just shut down the case, as best I
7 can put it, Judge.

8 Dr. Dong had also filed some other motions that I will
9 give to the Court in a notebook in the interim. He filed a
10 motion to expand the discovery period in January of 2020.

11 And so, in summary, we get into March of 2020 and the
12 courts are shut down, and Dr. Dong -- we can't really do
13 anything with the case without taking his deposition.

14 On September 2nd, 2020 -- so we're roughly seven months
15 later, Judge -- Dr. Dong filed a notice of change of address
16 indicating that he had, at that point, been released from
17 confinement at Salters and was back in his residence on Daniel
18 Island, living in, apparently -- I can let him speak to
19 that -- completing the remainder of his sentence.

20 Obviously, that was not unusual at that point that the
21 federal correctional system was releasing a lot of people at
22 that point to try and reduce capacity.

23 THE COURT: Yes. And that was September what?

24 MR. CONLEY: I think it was filed on or about
25 September 2nd, 2020, was when --

1 THE COURT: All right.

2 MR. CONLEY: We got notice by way of his change of
3 address that he was no longer in Salters.

4 THE COURT: Right.

5 MR. CONLEY: Three months, four months later on
6 January 11th, 2021, Dr. Dong filed a motion again to expand
7 the discovery schedule due to COVID-19, and on January 20 of
8 2021, he filed a second motion to compel production.

9 What occurred --

10 THE COURT: To expand production?

11 MR. CONLEY: Exactly. Both expand it, and as I'll get to
12 in a minute, sort of reinstitute his prior motion to compel
13 that Judge Brown had resolved a year and a half or so prior.

14 Those motions languished. Again, I don't like to blame
15 everything on COVID, but the fact of the matter is, it did
16 languish due to COVID.

17 And so, on December 13th of 2021, Judge Cothran heard
18 Dr. Dong's then pending motions, and the pending motions were
19 a motion to amend the discovery schedule and a second motion
20 to compel production, which the second motion to compel
21 production was, as I mentioned a minute ago, effectively a
22 renewal of his prior motion that Judge Brown had ruled on.

23 Judge Cothran held a hearing on December 13th, 2021, and
24 Dr. Dong appeared. I appeared on behalf of MUSC. The sum
25 result of that is a fairly detailed order. It's about eight

1 pages long that Judge Cothran issued. It really contains two
2 components. It's much like Judge Brown's prior order from
3 2019. The two only components are what I would call a denial
4 of -- a re-denial of Dr. Dong's motion to compel the
5 production of any further records. Judge Cothran said, "I'm
6 not ordering MUSC to produce any further records at this
7 point."

8 And, then, like Judge Brown, recognizing the case had
9 languished and recognizing the Court needed to do something to
10 sort of move it forward, Judge Cothran, like Judge Brown,
11 built in a scheduling order into it.

12 We conducted ourselves under that scheduling order, and
13 one of the components of it was a discovery deadline that
14 ended -- I think it's June 28th or 30th. The end of June,
15 I'll just put it, Judge Toal.

16 In mid-June, with that date approaching, I had scheduled
17 Dr. Dong's deposition, and it was scheduled in my office, and
18 Dr. Dong, of course, appeared for it. A court reporter was
19 there. That deposition never went forward, Judge. And the
20 reason it did not go forward was Dr. Dong asked if he could
21 record the deposition on his iPhone in addition to
22 the stenographic reporter that was there.

23 THE COURT: Our rules don't allow that. You have a
24 stenographic reporter. The reporter is to take it down.

25 MR. CONLEY: That was my position, Judge. Dr. Dong did

1 not agree with that at the time. I suggested, as I always do
2 in dealing with pro se plaintiffs, that we take a pause, and
3 he look at the rules or perhaps seek some legal advice on his
4 own. I did not want to debate him on what the rules required.
5 So what I agreed to do, in light of his position, was delay
6 his deposition once again.

7 So the other thing that happened in conjunction with that
8 is Dr. Dong, leading up to the June discovery deadline, had
9 served a number of deposition notices himself. I counted this
10 morning; it's 11 in total deposition notices. In general, he
11 had noticed most of all these depositions to occur by video,
12 meaning he wanted to videotape the deposition, not a virtual
13 deposition, but he wanted to videotape each deposition.

14 THE COURT: That's not provided for in the rules.

15 MR. CONLEY: And he also, Judge, wanted to -- the
16 deposition notices indicate that a number of them were
17 scheduled to take place at his residence, at his house on
18 Daniel Island.

19 Because of the issues that arose at his deposition in mid
20 June, as I described, and the issues that I had with his
21 deposition notices in regard to the 11 individuals he had
22 asked to depose, several who don't even work at MUSC any
23 longer and, I think, who live out of state, I filed a very
24 brief motion for a protective order simply to make sure I had
25 made a record of what was occurring with respect to these

1 depositions, which, since that occurred, Judge, nothing has
2 happened with the case. My motion for protective order has
3 remained pending and not heard, and that's where we are in
4 terms of discovery.

5 From my standpoint, as I mentioned a minute ago, Dr. Dong
6 has responded to our request for production and
7 interrogatories. We have not moved to compel anything
8 further. I need to take his deposition in the case.

9 THE COURT: That is the remaining -- from your
10 standpoint, you have received production and interrogatory
11 responses, and, from your standpoint, you need to take his
12 deposition.

13 MR. CONLEY: That is correct.

14 THE COURT: Right.

15 MR. CONLEY: And unless he were to tell me something at
16 his deposition that was, you know, sort of wholly unknown, I
17 don't know of anyone else I would need to depose in the case,
18 Judge. So, in other words, standing here this morning before
19 you, I only know of a single deposition I need to take in this
20 case, is Dr. Dong, with one footnote to that.

21 As I mentioned, there are several of these MUSC witnesses
22 who either don't work -- well, don't work for us anymore, and
23 some are no longer residing in South Carolina. It may be
24 necessary for me to take de bene esse depositions of one or
25 two of those individuals to make sure I have that testimony,

1 given their, over the years, since 2010, departure from MUSC
2 and moving on to other institutions or retired. So that's the
3 one caveat to what I would need to do.

4 But, to summarize that, I believe I can do that fairly
5 efficiently, and -- for the Court, I can do it fairly
6 efficiently. Again, I was prepared to take his deposition in
7 June, so taking his deposition now can happen right away.

8 THE COURT: So you can provide me with a list -- the
9 deposition of the plaintiff is one and possible de bene esse
10 depositions of several other MUSC former employees that are
11 not currently with MUSC?

12 MR. CONLEY: Correct. And live out of state.

13 THE COURT: And live out of state.

14 MR. CONLEY: Yeah, they're living elsewhere. One name
15 that comes up is Steve Lanier. That was mentioned by
16 Dr. Dong. My understanding is -- I mean, Dr. Lanier has been
17 gone from MUSC for probably close to a decade now, Judge. I
18 believe he lives up in the Northeast somewhere.

19 THE COURT: Right.

20 MR. CONLEY: That's just by way of an example.

21 And, then, of course, there's the depositions that
22 Dr. Dong wants to take, and --

23 THE COURT: Have you got a list with you?

24 MR. CONLEY: I do. I have a -- well, I printed out the
25 email that I had gotten from MUSC when I was asking them,

1 specifically, who is still active and who is no longer at
2 MUSC. There's 11 names. I counted it this morning. I think
3 all but three of the 11, most of them are still with us.
4 Those people are giving scheduling issues. For instance, he
5 wants to depose Dr. Cole. Well, as you might imagine,
6 scheduling Dr. Cole does take a little bit of time and effort,
7 just given he's the president of MUSC. So it's not as if he
8 can sort of be scheduled on a quick term.

9 Another one, by way of example, is Lisa Saladin. I
10 believe she's now the provost.

11 So there's -- you know, all of these people are fairly
12 senior people within the institution that he wants to depose,
13 so from my standpoint in trying to schedule these people for
14 him, that does take some time to try and find --

15 THE COURT: Yeah, I understand. And we're going to take
16 a look at this list and see what needs to be done about it. I
17 take it that, while Brown and Cothran dealt with issues, both
18 what could be and what could not be produced, no one yet has
19 dealt with the issue of who he can depose; correct?

20 MR. CONLEY: No. No one has dealt with that issue.

21 THE COURT: So that hasn't been dealt with yet.

22 MR. CONLEY: No, it has not.

23 And, then, the secondary issue that ties in to who he can
24 depose, Judge, there's the secondary issue of -- I believe
25 it's going to be in the Court's assistance in any kind of

1 order on putting some very clear constraints on what -- how
2 depositions have to occur.

3 As you noted a minute ago, there's a stenographic
4 reporter. You can't be recording the deposition on an iPhone
5 as well.

6 Dr. Dong, at some point -- I don't know if this is his
7 intent now -- at some point, he mentioned to me, when I was
8 speaking to him about what the rules require in terms of
9 video --

10 DR. DONG: Would you let me --

11 THE COURT: Dr. Dong, please do not interrupt counsel.
12 Thank you, sir.

13 MR. CONLEY: As the Court knows, under Rule 30, if you're
14 going to take a video deposition, it's a very methodical
15 process you have to go through to do that. You have got to
16 have specific people do the videography and that sort of
17 thing.

18 I don't know what Dr. Dong's intent on that issue is now,
19 but, at some point, he mentioned to me that he was going to
20 video those on his iPhone, and I simply indicated to him that
21 I did not believe, under the rules, that's something --

22 THE COURT: No, that's not the way we're going to conduct
23 any of these.

24 MR. CONLEY: What I don't want to have happen and I want
25 to guard against, to the extent we can, is once Dr. Dong and I

1 have depositions set that the depositions will occur and that
2 we're not going to have --

3 THE COURT: Another disagreement about how they're going
4 to be conducted. I agree.

5 MR. CONLEY: Correct, Your Honor.

6 THE COURT: I think that needs to be done.

7 MR. CONLEY: And the second component of that, I would
8 suggest -- and it's one of the reasons I suggested it to Judge
9 Young several few weeks ago, that a specific judge be assigned
10 to this case, is I think it might be helpful if, once those
11 depositions are set, if the Court were provided a list of the
12 dates and times that those depositions are going to occur, in
13 the event that something did arise that there might be an
14 opportunity to communicate with the Court in realtime to try
15 and resolve any issues so something doesn't have to completely
16 get rescheduled.

17 THE COURT: Yeah, I'm not going to attend all these
18 depositions for sure, and I have other trials that I have got
19 to deal with. This is not, by any means -- but just one of --
20 I manage the whole asbestos docket, and the mediator --
21 federal mediator in a big multi-district litigation case, so
22 I've got a pretty full schedule myself.

23 MR. CONLEY: That wasn't to suggest you attend. It was
24 to suggest that at least the Court were aware of when
25 depositions were scheduled.

1 THE COURT: Sure. So that, if an email or a text comes
2 to me saying we're having a disagreement, I can figure out a
3 way to resolve it.

4 MR. CONLEY: If you were available, you might be able to
5 resolve it on the spot so that we don't have to stop a
6 deposition and reschedule it.

7 THE COURT: Right. I understand.

8 All right. So that's kind of your point of view about
9 discovery. Do you have any recommendations about an actual
10 time schedule?

11 MR. CONLEY: Yeah, I have thought about that a little
12 bit, Judge. And I realize and I appreciate that the Court
13 wants to -- because of the age of this case -- wants and needs
14 to move it. You know, I always get concerned as we get into
15 November and December, it just becomes exceedingly hard.

16 THE COURT: Yeah, you have got seasonal holidays and
17 things of that nature.

18 MR. CONLEY: Sure. My general thought -- and I thought
19 in terms of discovery not really -- I mean, we can talk about
20 mediation and that sort of thing, but --

21 THE COURT: I can tell you about mediation, that I'm
22 going to retain very strict control over mediation and how it
23 occurs, because I am not going to have that turn into a
24 minitrial. That's not going to happen. If this thing can't
25 be mediated successfully, then we're going to recognize that

1 up front and not spin that out into something that prolongs
2 this thing.

3 MR. CONLEY: I understand. My suggestion --

4 THE COURT: But, of course, mediation won't even think
5 about taking place until close to the trial. What will happen
6 before that is a motion for summary judgment will be heard.
7 That's the way I run my docket.

8 In asbestos, sometimes I will have mediations occur
9 before summary judgment is actually heard, but that is only if
10 it's a real straightforward kind of thing. But, in this case,
11 I'm not going to put you through mediation before we hear this
12 motion for summary judgment. That's going to come first.

13 MR. CONLEY: Thank you.

14 My suggestion on discovery, given this is October the
15 4th, is that we consider putting a discovery deadline at the
16 end of February, and that may initially strike the Court as a
17 bit long but, again, my thinking on that is --

18 THE COURT: No, I think that's reasonable.

19 MR. CONLEY: I think if we put it at the end of February,
20 even accounting for holidays and that sort of thing, that
21 should be --

22 THE COURT: But coupled with that is going to have to be
23 -- the discovery deadline is the end of February, and then I'm
24 going to also consult the powers that be on when this can be
25 set for trial. And I'm going to set it for trial, and I'm

1 going to set a pretrial in the scheduling order so that
2 everything will be in there that needs to be in there to move
3 the case along. That's the one thing I can't do on my own as
4 I sit here today. I've got to consult and see what other
5 schedules are in Charleston to set a time to try the case.

6 MR. CONLEY: My other only suggestion to dovetail the --

7 THE COURT: But we don't need to just put an end to
8 discovery. We need to do some setting of specifics of
9 depositions, when they're going to take place and the like,
10 and we're going to start with Dr. Dong's deposition. That's
11 going to be the first one to be taken, and it's going to be
12 taken pretty immediately and it's going to be taken according
13 to the rules of Court, with a court reporter, and all of what
14 is required to have that deposition done. It's not going to
15 be somebody privately videoing or anything like that. That is
16 not permitted, and I'm not going to vary it from this.

17 DR. DONG: That's a misrepresentation --

18 THE COURT: Sir?

19 DR. DONG: That's a misrepresentation, Your Honor, on
20 the --

21 THE COURT: Right. Well, we're going to get to you.

22 But I'm just saying, Dr. Dong's deposition needs to be
23 set today before we leave here.

24 MR. CONLEY: Certainly.

25 THE COURT: Have you got a suggestion?

1 MR. CONLEY: I would suggest we have it sometime here in
2 October.

3 THE COURT: All right. I'm going to look at my calendar
4 right now.

5 Okay. What are you suggesting?

6 DR. DONG: Are you asking me, Your Honor?

7 THE COURT: I'm asking Mr. Conley first. I'm going to
8 come to you. I'm not going to set it based on what he says
9 without asking you, of course.

10 MR. CONLEY: Judge, I would suggest we do it the week of
11 October 17th mainly because I just settled a case at mediation
12 yesterday and a number of depositions that week have fallen
13 off my calendar. So the next two weeks --

14 THE COURT: Okay. Let me just tell you, in terms of my
15 availability. You know, I don't have to be there, obviously,
16 but my availability if some dispute arises.

17 MR. CONLEY: Sure.

18 THE COURT: October 17th or 18th are completely clear for
19 me. On October the 19th, I have a 3:00 conference call on the
20 National Law Enforcement accreditation group that I serve on.
21 We have our hearings for the accreditation for the agencies
22 I'm responsible for, 3 p.m. on the 19th.

23 And just to be safe about it, that generally takes a
24 couple of hours. I would just -- I'd X out the 19th. The
25 20th, I have a pretrial in two big asbestos cases. So that

1 week, the 17th would work for me, the 18th would work for me,
2 or the 21st would work with me.

3 MR. CONLEY: I suggest the 18th.

4 THE COURT: All right. That's a Tuesday.

5 I'm going to turn to you, Dr. Dong. October the 18th at
6 9:30 p.m. [verbatim].

7 MR. CONLEY: 9:30 a.m.

8 THE COURT: 9:30 a.m. in the offices of your law firm?

9 MR. CONLEY: Right. And I'll notice it just like we did
10 with the other one.

11 THE COURT: Now, let's turn to him and see if -- what he
12 feels about it.

13 Dr. Dong?

14 DR. DONG: That's agreeable, Your Honor.

15 THE COURT: Sir?

16 DR. DONG: That's agreeable, Your Honor.

17 THE COURT: That's great. Thank you so much.

18 All right. You then -- while we have got you up,
19 Mr. Conley -- I'm coming back to you for your discovery, of
20 course -- you also have a list of folks that are out of state
21 -- that no longer work for MUSC and live out of state that you
22 want to do de bene esse.

23 And let me just -- frankly, somebody with a Ph.D. and the
24 kind of education Dr. Dong has, I know I'm speaking to someone
25 of big education, so you probably know what a de bene esse

1 deposition is, but I'll put it on the record and explain to
2 you that that is a deposition to preserve testimony and that
3 is why he is going to wherever these people are located to
4 take that deposition. You can go and participate in that
5 deposition if you care too. We cannot video that and allow
6 you to participate by video unless we set up, under the rules,
7 for video depositions. My guess is that Mr. Conley will go to
8 where these individuals are to take the depositions.

9 Mr. Conley, I'm just going to ask you: How do you feel
10 about any video piece of this thing by Dr. Dong? Or do you
11 think he should have to be there? How many people are we
12 talking about?

13 MR. CONLEY: Yeah, I'm looking at the list now. There's
14 a couple of them I haven't verified where they are. It looks
15 to look me like I have -- it looks to me like I've got
16 somewhere from two to four who are no longer -- who are no
17 either -- who are both no longer at MUSC --

18 THE COURT: And not in South Carolina.

19 MR. CONLEY: -- and appears to live out of state. So
20 there's either two or four.

21 THE COURT: Where are they, do you know?

22 MR. CONLEY: One of them, I know, and I mentioned
23 Dr. Lanier. I believe Dr. Lanier is somewhere in the
24 Northeast perhaps. I think the last time maybe he was at
25 Wayne State. I'm not sure where Wayne State is.

1 THE COURT: Wayne State's in Detroit.

2 MR. CONLEY: Then I believe that's where Dr. Lanier still
3 is.

4 The others, I am not for sure, and I've asked MUSC to
5 inquire about that, but I don't have a response back yet. One
6 person is just a former grants administrator of MUSC, and
7 she's, I think, maybe retired now, and I'm not sure where
8 she's living.

9 THE COURT: Okay. Two to four, you're going to have to
10 let us know, and we would then be able to deal with de bene
11 esse.

12 How do you feel about his videotaped appearance if it's
13 done according to the rules of videotaping?

14 MR. CONLEY: Sure, Judge. I have no problem if he wants
15 to attend by way of Zoom or some virtual platform. We can
16 make that arrangement so he could attend.

17 THE COURT: Okay. You feel comfortable about arranging
18 some kind of virtual platform where he could attend?

19 MR. CONLEY: That's correct.

20 THE COURT: And I will explain the rules of the road
21 about depositions before we leave here today to make sure
22 everybody understands how those matters are conducted.

23 All right. Now, what other depositions besides the de
24 bene esse and the deposition of Dong? Anything else?

25 MR. CONLEY: He's got somewhere from six to seven other

1 depositions that he's asked to take of MUSC personnel who, to
2 my knowledge, based upon information I got yesterday, are
3 still at or associated with --

4 THE COURT: All right. And what are the names?

5 MR. CONLEY: So one of them is Mark Sothman. And that's
6 Sothman.

7 THE COURT: S-o--

8 MR. CONLEY: --t-h--

9 THE COURT: --t-h--

10 MR. CONLEY: --m-a-n.

11 THE COURT: --m-a-n.

12 MR. CONLEY: James Norris, who Dr. Dong spoke about.

13 He's also asked to take the deposition of a Michael
14 Schmidt. And that last name is S-c-h-m-i-d-t.

15 He also asked to take the deposition of Steven -- and
16 that's Steven, S-t-e-v-e-n --

17 THE COURT: -p-h-e-n?

18 MR. CONLEY: S-t-e-v-e-n.

19 THE COURT: And what's the last name?

20 MR. CONLEY: The last name is Tomlinson.
21 T-o-m-l-i-n-s-o-n.

22 He's also asked to take the deposition of a Christina --
23 and that's C-h-r-i-s-t-i-n-a. And I'm not sure I'm going to
24 pronounce the last name correctly.

25 THE COURT: Spell it.

1 MR. CONLEY: I think it Voelkel. V-o-e-l--

2 THE COURT: All right. Say it again.

3 MR. CONLEY: V as in "Victor," o-e-l-k-e-l hyphen
4 Johnson.

5 THE COURT: Okay.

6 MR. CONLEY: He's also asked to take the deposition of
7 Dr. Cole, who is the president of MUSC. And he's also asked
8 the take the deposition of Lisa Saladin. And that's
9 S-a-l-a-d-i-n, who, I think her current position is the
10 provost.

11 THE COURT: All right. Is that it?

12 MR. CONLEY: Based on the notices that he had previously
13 given, that's it, Judge. I think that's a total of 11 I
14 counted this morning.

15 THE COURT: There's seven there and then the de bene
16 esses would take it up to 11.

17 MR. CONLEY: Yes.

18 THE COURT: All right. Now, let's talk about how those
19 depositions will be conducted. They are not going to be just
20 conducted at his residence. I'm not going to have any kind of
21 confidence that that kind of location would entail -- and I'm
22 going to make the suggestion -- and you don't have to do it if
23 your firm can't accommodate it, but I would prefer to have all
24 these depositions taken Williams & Conley. Or not Williams &
25 Conley; that's the one in Washington. Cleveland and Conley.

1 MR. CONLEY: Judge, I believe, at some point, I already
2 suggested that perhaps just verbally to Dr. Dong, at some
3 point, he is welcome to take his depositions at our office, in
4 our conference room.

5 THE COURT: I think that's the better way to do it. All
6 right. Set up the conference room. If there's need to attend
7 by virtual, you're set up to do that. That's what I would do.
8 And y'all are amenable if he is?

9 MR. CONLEY: Absolutely. He's welcome to take these
10 depositions at our office.

11 THE COURT: Okay. Now, is there anything else by means
12 of -- when would you, then, think, if we could get these
13 depositions -- the rest of these depositions taken? End of
14 February is going to be a trial target. These depositions
15 need to be taken very soon, here in the fall, and not run into
16 Christmas, if you can avoid it.

17 MR. CONLEY: I guess what I was -- and maybe I misspoke.
18 I think what I was thinking when I said the end of February --

19 THE COURT: Is the deadline for discovery?

20 MR. CONLEY: Exactly, Judge.

21 THE COURT: So you would anticipate some taken now and
22 some taken after the holidays?

23 MR. CONLEY: That's correct, just because I think some of
24 these would be more easily scheduled --

25 THE COURT: That's fine.

1 MR. CONLEY: -- than others.

2 THE COURT: I'm amenable to that.

3 MR. CONLEY: But I had full cooperation of MUSC's
4 in-house counsel to get these scheduled for depositions,
5 whether it's this case or any other I might be involved in.
6 So that coordination --

7 THE COURT: And, then, that would mean something -- if I
8 can arrange it -- something in a -- would then have a summary
9 judgment hearing after that. And then mediation to trial, if
10 we're going to do mediation.

11 MR. CONLEY: Sure. In my mind, I equate -- I do so much
12 work in federal court, Judge, I was sort of thinking along the
13 lines of, you know, typically in federal court, a scheduling
14 order might have a discovery deadline, and, then, what I'm
15 accustomed to dealing with is a dispositive summary judgment
16 deadline that's 30 days after that discovery deadline.

17 THE COURT: Yes.

18 MR. CONLEY: Because that allows adequate time to prepare
19 the motion and the brief but also to get in any straggler
20 transcripts or anything like that. So I'm thinking,
21 generally, if we had a discovery deadline at the end of
22 February --

23 THE COURT: At the end of March would be the time for
24 submission of summary judgment motions and, of course,
25 adequate time for Dr. Dong to answer those summary judgment

1 motions, and then I would schedule a summary judgment -- a big
2 pretrial hearing. If that's the end of March, then I'd
3 probably set a pretrial hearing -- of course, he has ten days
4 to respond to a motion. So he would have ten days or whatever
5 to work out about that.

6 I could then have, at the end of April, a hearing and
7 then try for sometime in early May for trial. I generally
8 like pretrial, and if you're going to mediate, it's going to
9 be one day, some day shortly thereafter. If it can't be
10 mediated, presuming the trial is going forward, we'd try it in
11 May.

12 Okay. That just at least gives me the framework to look
13 at it as I mark down in setting these things. And, again, I
14 can't do what I really love to do and announce it from the
15 bench this morning, but I will attempt to very quickly after I
16 consult with various court administration in Charleston County
17 to see when I can set these various things.

18 Okay. Let's go back to you, now, Dr. Dong, and let's
19 talk about the discovery. First of all, I take it that the
20 end of February for a discovery deadline is suitable?

21 DR. DONG: Yes, Your Honor.

22 THE COURT: Good.

23 DR. DONG: Under the condition they do provide the
24 documents.

25 THE COURT: Well, he says he's given you all the

1 documents these orders require.

2 DR. DONG: That's why I was going to respond.

3 THE COURT: Okay. Well, why don't we do that first.

4 Tell me what he's not given you that the orders of Judge Brown
5 and Judge Cothran entitle you to have.

6 DR. DONG: Right. Okay. Under the rules, actually
7 Judge --

8 THE COURT: Can you just hold on for a minute? I'm not
9 refusing to let you go forward.

10 Mr. Conley, do you happen to have a copy of those two
11 orders?

12 MR. CONLEY: I have a copy of -- I have a copy of one. I
13 may have a copy of both. Actually, I do have a copy of both.

14 THE COURT: I'll give them back to you.

15 MR. CONLEY: No, that's fine. May I approach?

16 THE COURT: You certainly may. Thank you so much.

17 MR. CONLEY: So the top one is Judge Brown's order.

18 THE COURT: All right.

19 MR. CONLEY: The second one is Judge Cothran's order.

20 DR. DONG: May I --

21 THE COURT: If you'd just give me a moment, Dr. Dong, and
22 let me just take a peek at these.

23 (Pause in the proceedings while the Court reviews
24 documents.)

25 THE COURT: Okay. I have now read both of these orders,

1 particularly the part that deals with discovery, and what I
2 understand from Judge Brown's order is that he limited the
3 scope of discovery -- of materials to be produced by the
4 defendant as follows:

5 "The First Request for Production to the defendant.
6 Plaintiff's First Request for Production to the defendant, the
7 scope of discoverable materials shall be limited to relevant
8 documents generated or created no earlier than April 1, 2010.
9 Either party may, at any time prior to the discovery deadline,
10 for good cause, petition the Court to expand its limitation."

11 Then, in responding to Plaintiff's First Request for
12 Production to the defendant, the scope of discoverable
13 materials shall further will be limited to relevant documents
14 generated or created by or sent to or received from Dr. Dong;
15 Mark Sothman, Ph.D.; or Steven Lanier, Ph.D. Either party
16 may, at any time prior to discovery deadlines, for good cause,
17 petition the circuit court to expand this limitation as
18 discovery progresses."

19 So those are the two categories Brown limited for
20 production to Dr. Dong by MUSC. This was an order filed on
21 October the 4th, 2019. And, then, Judge Cothran filed an
22 order on February the 7th, 2022, earlier this year, and he,
23 again, looked at the scope of discoverable materials. And he
24 says this: "On October the 14th, 2019, consistent with Judge
25 Brown's orders, MUSC produced documents to Dr. Dong. Dr. Dong

1 did not subsequently move to further compel production under
2 Judge Brown's October 4th, 2019, order or otherwise assert
3 MUSC failed to comply with Judge Brown's October 4th, 2019,
4 order concerning the documents produced. Instead, Dr. Dong,
5 in January 2020, filed his motion to expand discovery and
6 serve Plaintiff's Second Request for Production. On March 18,
7 2020, MUSC served its responses to Plaintiff's Second Request
8 to Production.

9 "As noted in MUSC's responses to Plaintiff's Second
10 Request to Production, Plaintiff's Second Request to
11 Production are subject to objection and rejection by the Court
12 for two particular reasons: First, Dr. Dong did not obtain
13 leave of the Court to request materials beyond those expressly
14 required by Judge Brown's prior orders; however, even if
15 Dr. Dong's Second Request for Production can be viewed as
16 implied and requesting the Court's permission to request the
17 materials beyond expressed parameters in Judge Brown's October
18 4th, 2019, order, the Court denies Dr. Dong's request.

19 "Dr. Dong, neither in his submission to the Court nor his
20 arguments at the December 13th, 2021, hearing, provided
21 sufficient basis, reason, or good cause for expanding the
22 scope of discovery.

23 "Moreover, and importantly, the request contained in
24 Plaintiff's Second Request for Production are the very same,
25 i.e., identical or virtually identical requests, contained in

1 Plaintiff's First Request for Production, being the request
2 previously ruled upon by Judge Brown in his October 2019
3 order. In particular, Request for Productions 1 through 16 --
4 Request to Production 1 and 16 through 40 in the Plaintiff's
5 Second Request for Production are also in the Plaintiff's
6 First Request for Production. In other words, 26 of the 40
7 requests contained in Plaintiff's Second Request for
8 Production that Dr. Dong moves to compel MUSC to respond to
9 were previously reviewed and limited by Judge Brown in his
10 October 4th, 2019, order.

11 "Finally, even in respect to the remaining 14 requests
12 being Requests 2 through 15 that do not appear to be identical
13 to those contained in Plaintiff's First Request for
14 Production, the noted request seek the very same broad
15 materials sought by Dr. Dong's in Plaintiff's First Request
16 for Production.

17 "For the reasons stated, and based on the submission of
18 the parties and the arguments presented at the hearing on
19 December the 13th, 2021, Dr. Dong's second motion to compel is
20 denied."

21 And that is signed by R. Farrell Cothran, Jr., Circuit
22 Court Judge, filed February the 7th, 2022.

23 Now, based on that, Dr. Dong, I am not going to vary from
24 these previous judges' orders. I am going to take the same
25 position that they took. So, on the issue of production, I

1 find that MUSC has produced to you all of what is required by
2 the orders that I have just read from.

3 DR. DONG: Could I just briefly comment on --

4 THE COURT: Yes, you can comment, but I tell you, when I
5 rule, I rule. The rules say, when I rule, there's no further
6 argument. You can comment very briefly, but I don't want to
7 spend time on something that has already been decided by two
8 judges before me.

9 DR. DONG: I understand. The first order, actually,
10 Judge Brown's order issued -- granted a motion to compel, asks
11 MUSC to --

12 THE COURT: And it limited the production to the things
13 that were contained in Judge Brown's order --

14 MR. DONG: Your Honor --

15 THE COURT: -- and it said that a motion to expand could
16 be made. It didn't say it would be granted. It was made, and
17 Judge Cothran, for the reasons I just read and put on the
18 record out of his order, denied your second motion to compel.

19 Your first motion to compel was granted on a limited
20 basis. They produced what was granted by Judge Brown's order.
21 Now, you came back and asked Judge Cothran to expand that. He
22 denied that motion. I am not going to vary from that.

23 DR. DONG: Actually, if Your Honor may, let me just make
24 a comment of what my concern was. First of all, the -- Judge
25 Brown did granted the motion to compel --

1 THE COURT: Please don't repeat what you just said about
2 Judge Brown's order. I just read the whole thing.

3 DR. DONG: No, that's the second order. Under the
4 conditions, what they presented was --

5 THE COURT: That is the effective order, the one I just
6 read from -- by Judge Craig Brown. That is the order that
7 decides the limitations on production. He did not change that
8 in any respect. That was his order. And Judge Cothran chose
9 to follow that order.

10 DR. DONG: I would make a brief comment. Judge Cothran
11 did comment, granting extension of the --

12 THE COURT: The dates are not what I'm talking about.

13 DR. DONG: That actually was under the order to -- they
14 submitted a proposed order, but all of the things that was
15 discussed was not discussed in the courtroom, was not --

16 THE COURT: I don't need what was discussed in the
17 courtroom. The judge signed an order. That is what is before
18 me.

19 DR. DONG: Right. And that's --

20 THE COURT: And that order limited the production in two
21 ways, that I just read into the record.

22 DR. DONG: I understand.

23 THE COURT: And MUSC produced those materials, about 500
24 pages. Then you moved to compel for the second time and asked
25 to expand beyond Judge Brown's order. And Judge Cothran heard

1 argument on that, and he denied your motion.

2 DR. DONG: That's actually the -- I would just comment.
3 That's the motion subject to motion for reconsideration and
4 was denied -- I think was denied just a couple of days ago.
5 And, actually, based on the rule, the prior discovery is one
6 of the top reasons for interlocutory appeal --

7 THE COURT: No, let me tell you, I sat on the Supreme
8 Court for 27 years. Discovery matters are not directly
9 appealable. You can appeal them after the case is over. If
10 you lose, that can be a grounds for appeal, but you cannot
11 immediately appeal that or stop this trial or anything else.
12 That's what the rules provide. And I'm real familiar with
13 them. I have practiced for 27 years on that Court.

14 DR. DONG: I understand that.

15 THE COURT: So, if I'm wrong about that, you'll just note
16 that for any future use of any appeal you take from what
17 happens with this case, but no, sir, the discovery limitation
18 is effective, it's been ruled on by two judges. I choose, as
19 the third judge, to handle this matter to follow what they
20 have ruled, and we're not going to discuss that matter
21 anymore. They have produced what these judges required that
22 they produce, and that's the end of it in terms of production
23 of documents. Do you understand?

24 DR. DONG: I understand what Your Honor is saying --

25 THE COURT: And you cannot directly appeal that to the

1 Supreme Court. If you try that, they're going to deny it.
2 But you can't stop these proceedings by appealing a discovery
3 motion.

4 DR. DONG: My reading -- excuse me, sorry. I'm not
5 trying to argue, but my reading was, the interlocutory appeal
6 is something depriving discovery --

7 THE COURT: It's a grounds for appeal, Dr. Dong, when the
8 case is appealable at the end of the whole case. It is not
9 immediately appealable, meaning you cannot go and appeal it
10 right now and have it be heard and stop these proceedings. It
11 doesn't work that way. You can note it, and it can be a
12 grounds for appeal if you lose this case.

13 If you win this case, you won't care. If you lose this
14 case, it can be an ultimate grounds for appeal. But it is not
15 a grounds for stopping these proceedings. We're going to go
16 forward with the trial on the limitations of the documents
17 that two judges have ruled upon. Do you understand?

18 DR. DONG: I understand what you're saying.

19 THE COURT: Very good. All right.

20 Now, let's turn -- now, we've got the document production
21 out of the way, let's turn to these depositions. Now, we've
22 got yours scheduled. Your deposition is scheduled October the
23 18th, 2022 at 9:30 a.m. in the offices of Cleveland and Conley
24 here in Charleston, and you are amenable to that, and I
25 appreciate it and thank you for it.

1 Now, we come to -- and that's the only deposition he's
2 taking other than the preservation of testimony, de bene esse
3 depositions. Let's talk about those next.

4 He will go to the location of where these witnesses are
5 and he will take their deposition, but he will allow you to
6 participate by Zoom.

7 Now, let me explain something to you about that. You
8 cannot interrupt these witnesses. You cannot try to stop the
9 deposition. This is a preservation of testimony. If there
10 are problems that you have with that deposition, you may
11 present those to me after the deposition is concluded and it's
12 typed up and you have a copy of it and can look at it. If
13 there are objections that you have, you don't have to note
14 those objections at the time; you can make those objections on
15 the record afterwards. But during the Zoom, you will be
16 listening to him preserve the testimony. Do you understand
17 how that works?

18 DR. DONG: I understand.

19 THE COURT: And that's not something - you're familiar
20 with that? That's not something that is a problem for you, as
21 long as you have good information about participating by Zoom.

22 DR. DONG: I don't know if Zoom changed the situation
23 because I was supposed to raise objections during the
24 deposition.

25 THE COURT: No, sir. You do not raise depositions --

1 objections during the depositions. The rules of discovery are
2 clear about that. And it's really a good thing for an
3 objecting party. You can look at this thing after it's typed
4 up and scrutinize it and you can then make your objections.
5 The only thing you can object to is the form of the question,
6 which is rarely done because that doesn't have anything to do
7 with what information is coming in.

8 DR. DONG: Yes, Your Honor.

9 THE COURT: So you're completely protected in terms of
10 objections, and that is why it's not permitted to put
11 objections on the record during a deposition. But you have
12 got the full ability to do that afterwards, and you certainly
13 will be listened to by me on your objections to anything that
14 goes on in those de bene esse depositions. Do you understand
15 that?

16 DR. DONG: Yes, Your Honor.

17 THE COURT: All right. What I would suggest with these
18 de bene esse depositions, Mr. Conley, is that you propose --
19 copy me, please, on anything y'all are doing with each other.
20 You propose to Mr. -- to Dr. Dong how you're going to line up
21 these depositions, and he's going to cooperate with you as
22 best he can, of course. And I detect that about him; he's
23 going to be cooperative. I don't think there's any problem
24 about that.

25 You know, if he's got some pressing medical appointments

1 or something else that interferes, he'll tell you. And
2 Mr. Conley is a very accommodating lawyer. So he's going to
3 work with you on developing a schedule for these two or four
4 depositions. And those will be the first ones you're taking,
5 and those you can probably get done pretty quickly after your
6 own deposition.

7 And, then, we have got the live depositions of these
8 seven witnesses. And I'm just going to read the names on the
9 record again. That is Mark Sothman, James Norris, Michael
10 Schmidt, Steven Tomlinson, Christina Voelkel-Johnson, Dr. --
11 what is Dr. Cole's first name?

12 DR. DONG: David.

13 THE COURT: David?

14 DR. DONG: Yes.

15 THE COURT: David Cole. And Lisa Saladin.

16 MR. CONLEY: Yeah, Saladin.

17 THE COURT: Saladin. Very good.

18 All right. And what Mr. Conley will do for you is this
19 -- and this is probably the easiest way to set this up. He
20 will communicate with these folks to see when their
21 depositions will be taken. I think he'll do that promptly.

22 DR. DONG: And, also, give me some time to arrange the
23 stenographer.

24 THE COURT: The stenographer part of it. And they'll be
25 taken at the offices of Cleveland and Conley. And please pay

1 attention to the fact that this has to be a certified court
2 reporter. You know the rules about who can take -- what kind
3 of court reporter can take a deposition.

4 DR. DONG: There's no dispute over that.

5 THE COURT: Very good.

6 So y'all will work together and get up a schedule of
7 these depositions. Some of them may not take place, I
8 understand fully, until after the first of the year. So we
9 have a February deadline, end of February, February 28th or
10 29th, whichever it is, for it -- for all discovery to be
11 concluded. So you-all, within that time frame, work out
12 yourselves how to take the depositions.

13 DR. DONG: If they can actually provide a --

14 THE COURT: Sir?

15 DR. DONG: If MUSC can provide the proper date --

16 THE COURT: Exactly. And they'll do that for you.
17 They'll be set out, you know, in an orderly way during the
18 time period we're talking about from now in October until the
19 end of February. We'll set them up and get them taken and so
20 forth.

21 DR. DONG: Thank you, Your Honor.

22 THE COURT: I would very much like to be advised of these
23 deposition dates so I can target my calendar in case I need to
24 be available. I pay close attention to my phone and to texts
25 and this kind of thing, and I'll try to be as available as I

1 can whenever any of these matters are taken care of.

2 DR. DONG: Your Honor, one more thing.

3 THE COURT: Yes, sir.

4 DR. DONG: Actually, Mark Sothman --

5 THE COURT: Mark Sothman?

6 DR. DONG: Sothman, correct.

7 THE COURT: Yes, sir.

8 DR. DONG: The reason I never -- I do know -- I did not
9 know him, I just know him by name, the reason is, I was taking
10 his deposition in case he knew something about it, he was not
11 directly involved, but the MUSC request my communication
12 limited to him. He has nothing to do with it.

13 So a judge, actually Cothran, made comment during the
14 hearing and said you can go ahead and do the deposition. With
15 the new deposition, you can decide what document you're going
16 to require.

17 THE COURT: I'm not going to get into any more documents
18 than what documents have --

19 DR. DONG: Correct.

20 THE COURT: So, please --

21 DR. DONG: So I can -- can I actually substitute Mark
22 Sothman with another -- with another witness?

23 THE COURT: Who is it?

24 DR. DONG: Just anybody --

25 THE COURT: No, no. We're going to decide the witnesses

1 right now today, so you need to tell me --

2 DR. DONG: With his time slot, I will provide them --

3 THE COURT: No, no, no. You've got to provide -- if I'm
4 going to strike a witness that was identified as the witness
5 before, I'm not going to let you substitute them unless you
6 tell me who it is now so that I will know --

7 DR. DONG: Semyon Rubinchik.

8 THE COURT: Sir?

9 DR. DONG: Dr. Semyon Rubinchik. R-u-b-i--

10 THE COURT: R-u-b-i--

11 DR. DONG: --i-n-c-h--

12 THE COURT: V?

13 DR. DONG: C.

14 THE COURT: C.

15 DR. DONG: H-i-c -- i-k. C-h-i-k. Yes.

16 THE COURT: All right. I'm going to hear from Mr. Conley
17 on the subject of whether you can do that. It's well beyond
18 the notice of -- we're not into complete discovery. We're not
19 into adding to discovery at this point. That's been set.

20 So I'm going to have to inquire of Mr. Conley as far as
21 striking Sothman and adding Rubinchik as something he will
22 agree to; otherwise, I'm not doing to do it. So hold there
23 for a minute.

24 Mr. Conley?

25 MR. CONLEY: Judge, I don't know anything about this new

1 witness he's identified, but with that said, I don't have a
2 problem with him telling us today he's not going to take Mark
3 Sothman's deposition and he wants to take this other
4 individual's.

5 What I will tell the Court is, as I was able to
6 articulate some of these witnesses, where they are, whether
7 they still work for us or whether they're elsewhere, I don't
8 know anything about this witness.

9 THE COURT: Who is this person, Dr. Dong?

10 DR. DONG: He was the person -- he worked for me in my
11 laboratory, and he was named associate director of gene --

12 THE COURT: Where is he now?

13 DR. DONG: I think he moved to Chicago. I think actually
14 in the University of Chicago.

15 THE COURT: So that would have to be a de bene esse
16 deposition.

17 Can you answer today or do you want to give me an answer,
18 Mr. Conley?

19 MR. CONLEY: Again, I don't have a problem giving you the
20 answer today, Judge. We're going to substitute this doctor
21 for Dr. Sothman.

22 THE COURT: Okay. Very good. It's done.

23 DR. DONG: Thank you, Your Honor.

24 THE COURT: We will strike Mark Sothman and we will add
25 Semyon Rubinchik.

1 DR. DONG: Correct.

2 THE COURT: All right. That's done.

3 DR. DONG: Thank you, Your Honor.

4 THE COURT: Now, let's see --

5 MR. CONLEY: Judge, the only thing I want to be clear
6 about is we're striking Sothman as somebody who is going to be
7 deposed. I'm not striking him -- he's not being struck as a
8 potential witness.

9 THE COURT: Oh, I understand. We're simply doing
10 depositions and trying to set that up. This is discovery. We
11 get the witness list way on down the road. Okay.

12 Here's what I want to do now. It's 11:25. Our court
13 reporter has been very patiently taking all this down. I
14 would like to take a break and get the documents that both
15 sides have given me copied, which I can get done while I take
16 a break, and let y'all take a break, and then we'll come back
17 and conclude our hearing and see what else we've got left that
18 needs attention. Is that suitable to everyone?

19 DR. DONG: Yes, Judge.

20 MR. CONLEY: Yes.

21 THE COURT: Let's take a 15-minute recess, and we will
22 reconvene at a quarter of.

23 MR. CONLEY: Judge, if you'd like some kind of a notebook
24 put together --

25 THE COURT: I would very much.

1 And, of course, Dr. Dong, please understand that anything
2 Mr. Conley gives me by way of a judge's notebook, you'll be
3 supplied with a copy of it, of course.

4 MR. CONLEY: That's correct.

5 THE COURT: But, yes, that would be very, very helpful.

6 And the same is true of you, Dr. Dong. If there are
7 things that you have that will assist me before we move
8 forward, certainly, you may have them.

9 And just for the record, let me give you my contact
10 information. Do you need an extra sheet of paper? I got it
11 one.

12 DR. DONG: I got one. Thank you.

13 THE COURT: Okay. It's Chief Justice Retired Jean,
14 J-e-a-n, middle initial H, last name Toal, T as in "Thomas,"
15 T-o-a-l. My P.O. Box is P.O. Box 12456, Columbia, 29211.

16 I have chambers in the Richland County Courthouse, but
17 lawyers quite frequently mail me or deliver to me at my home,
18 documents, so I'm going to give you my home address, and I'll
19 be happy to -- if something is just so big you don't know if
20 it's going to fit in a mailbox at the post office, it will be
21 mailed to my home, which is, 2418 Wheat Street, W-h-e-a-t
22 Street, in Columbia. The ZIP is 29205.

23 Now, my email address is JToal@sccourts.org. And my cell
24 phone I use for everything -- and don't mind y'all having it;
25 and I can be texted or called -- (803) 530-0457.

1 And let me explain to you what you'd be using these
2 contact points for. If you contact me, you'll always let the
3 other side know that you've contacted me by copying the email
4 and copying the mail. If you text me, you'll be sure that
5 they know you've done that. It's probably better that I not
6 receive phone conversations except for just technical matters,
7 in other words, not communicating about rulings on the case or
8 things of that nature, because everybody needs to be included
9 when I do anything in that regard.

10 But all my lawyers at home will know all my contact and
11 it facilitates getting things to me since I am supposedly
12 part-time active but seems like I'm more active sometimes than
13 just part time.

14 But, in any event, that information is yours to make use
15 of as you need to.

16 DR. DONG: Thank you.

17 THE COURT: Okay. I'm going to take a little break.

18 (A brief recess was taken at 11:32 a.m. to 11:57 a.m.)

19 DR. DONG: I gave the wrong name is Semyon Rubinchik
20 twice. Sorry. It's a different spelling. It's S-e-m-y-o-n.
21 S-e-m-y-o-n.

22 COURT REPORTER: Thank you.

23 (Pause in the proceedings.)

24 THE COURT: Thank you for your indulgence. I'm sorry to
25 delay, but that's where I was, just saying hello to Julie, the

1 clerk of court, Julie Armstrong, who was one of my right hands
2 when I was chief. She came by to visit for a moment, so I'm
3 sorry for the delay, but that's where I was, just saying hello
4 to her.

5 Okay. It looks to me like -- and I spoke with her. She
6 said she can make a May date happen for trial and she can
7 certainly accommodate pretrial hearings in April or so. I
8 think we've just got to look at the schedule that Court
9 Administration gives me. I will select something very, very
10 shortly. Let me just ask on the front end: Is there anything
11 that you two know now that you have planned in May?

12 MR. CONLEY: I do not, Judge.

13 THE COURT: How about you, Dr. Dong?

14 DR. DONG: I have nothing planned.

15 THE COURT: Wonderful. Well, the sooner I get this to
16 you, then, the better, because you can then plan around those
17 kind of dates. So I will get that plugged in pretty quickly.

18 So I almost think we're done in terms of having a
19 schedule of how we go. We have got discovery going until the
20 end of February. We have got Dr. Dong's deposition set.
21 We've got a plan of action for deposing the other witnesses,
22 both the out-of-state ones and the in-state ones.

23 You'll get me the schedule when you have it and who is
24 going to be deposed when. I'll plug that into my calendar in
25 case I need to be reached, and I will let you know if any of

1 those dates coincide with other things I'm doing so you'll
2 know kind of where I am if I'm needed.

3 I have ruled on the discovery matters, and we now know
4 that discovery of documents is complete. All right. Not to
5 everybody's satisfaction, but discovery of documents is done.
6 So discovery -- interrogatories are done. So all we're
7 talking about in discovery --

8 DR. DONG: I haven't submitted interrogatories.

9 THE COURT: What's that?

10 DR. DONG: I have not submitted interrogatories yet
11 because all the delays in the --

12 THE COURT: You have not submitted interrogatories --

13 DR. DONG: Correct.

14 THE COURT: -- to MUSC?

15 The time for submitting interrogatories has long since
16 passed, even under expirations. Why have you not?

17 DR. DONG: Because, actually, all the other issues has
18 been complete --

19 THE COURT: Okay. Well, let's talk right now about
20 interrogatories. The interrogatories are really one of the
21 first things you do in a lawsuit. It doesn't really depend on
22 all these other issues that develop. But let's just...

23 Mr. Conley, what were the deadlines on interrogatories?

24 MR. CONLEY: The most recent deadline under Judge
25 Cothran's order, June 30th --

1 THE COURT: I mean, that was the deadline. It doesn't
2 depend on any other discovery matters, Dr. Dong.

3 DR. DONG: That was not the deadline, my understanding --

4 THE COURT: Sir?

5 DR. DONG: Your Honor, what's the June 30th deadline?

6 MR. CONLEY: Judge, June 30th was --

7 THE COURT: Sir?

8 MR. CONLEY: June 30th, 2022, was the discovery deadline
9 set by Judge Cothran.

10 THE COURT: By Farrell Cothran. That's what --

11 DR. DONG: He extended it.

12 MR. CONLEY: So other than depositions which this Court
13 has allowed -- as I understand it, I should say, my
14 understanding is you have allowed the extension of the
15 discovery deadline --

16 THE COURT: For these depositions.

17 MR. CONLEY: -- so take these depositions.

18 THE COURT: That's correct.

19 MR. CONLEY: Any interrogatories and that sort of thing
20 should have been done by June 30th. There would have been no
21 -- that I know -- there would have been no impediment to
22 those.

23 DR. DONG: That's not in the order.

24 THE COURT: Sir?

25 DR. DONG: There is no statute of limitations --

1 THE COURT: No, this is not a statute. This is --

2 DR. DONG: That order was --

3 THE COURT: Dr. Dong, scheduling orders are orders that
4 schedule and define the dates for things to be done in
5 pretrial discovery. In Charleston, they do it in a standing
6 order of Judge Young -- I mean, yeah, from Judge Roger Young,
7 that talks about preparation for discovery and things of that
8 nature.

9 In this case, discovery has been set several different
10 times with deadlines not just for depositions but for
11 interrogatories and production. Brown did it the first time.
12 Brown did a modification. And, then, Farrell Cothran, in
13 December of this last year -- I think that was -- or February
14 of this year, set the dates one more time for the completion
15 of discovery, and that date was June of 2020 -- June 30th of
16 2022.

17 That doesn't change -- there's no other rule that changes
18 that. An order of the Court is an order of the Court. And
19 when the order is made, that is the deadline. That's why you
20 had to get those things changed. That's why you moved to
21 reschedule.

22 So I don't understand what you're saying that you don't
23 understand that was the deadline.

24 DR. DONG: Actually, that was -- all the delays was
25 because they filed a motion or, actually, filed a motion was

1 not hearing way past the deadline before actually the pending
2 motion was dealt with, and also, none of the deadline came due
3 to maturation because the very issue, MUSC refused to produce
4 the document, and I was asking --

5 THE COURT: MUSC -- I'll repeat one more time -- has not
6 refused to produce documents. The same discovery orders we're
7 talking about now that deal with deadlines for
8 interrogatories, set limitations on the production that MUSC
9 was required to make. There's no dispute of things they
10 didn't give you. They have given you everything that is
11 required they give you pursuant to two judges' orders, and I
12 have denied your motion to expand that.

13 So production of documents is complete. And the same is
14 true on depositions and on interrogatories or any other
15 discovery mechanisms. Cothran set some deadlines. Y'all have
16 moved to expand those deadlines with respect to these
17 depositions, and I have set depositions and a new deposition
18 date, which is February -- end of February of next year.

19 There has been no motion by you to expand the
20 interrogatory deadlines. So I don't understand how that is --
21 you can't just kind of decide, "Hey, once I take these
22 depositions, I'm going to go back and take some more
23 interrogatories."

24 DR. DONG: How about the amendment of the complaint?
25 Actually, that was supposedly --

1 THE COURT: The amendment of the complaint can only be
2 made if I grant your motion to amend your complaint. If you
3 amend your complaint, which you have not done so far --

4 DR. DONG: And that has to be based on information that
5 I'm getting through the discovery.

6 THE COURT: Well, I may or may not grant your motion to
7 amend.

8 DR. DONG: I understand that. I understand that.

9 THE COURT: But that's something you'll have to do at
10 that time. But with respect to your interrogatories, the time
11 has passed for the interrogatories.

12 DR. DONG: Thank you, Your Honor.

13 THE COURT: All right. Mr. Conley, anything further?

14 MR. CONLEY: I do not. Thank you, Judge.

15 THE COURT: Here what's I want done: I would like an
16 order that reflects the deadlines we just talked about to be
17 prepared by you, Mr. Conley, with a copy to you, Dr. Dong.

18 Dr. Dong, when you get this proposed order, if it does
19 not comport with what you think I ruled in this hearing, you
20 let me know immediately. I am not going to sign anything
21 until I have received your comments, and then we'll have
22 something that's in the record. That's the main thing I was
23 is to have something that's on file so that, when you look
24 your case up, you'll see exactly what's going to happen. And
25 that is going to depend on these -- scheduling of these

1 depositions. And I'd like that to be in the order.

2 So it's going to be a couple of days before -- or maybe a
3 little bit more than that before Mr. Conley can give us some
4 information about when these things can be scheduled.

5 So, Mr. Conley, what I'm taxing you with is, after you
6 have completed the consultations you need to see how the
7 de bene esses can be scheduled and how the in-persons can be
8 scheduled, then you will prepare an order with regard to them.
9 Separately from that and -- gotten to us more immediately --
10 is the general order for the deadline for discovery, the
11 pretrial, the fact that a pretrial will take place, the fact
12 that a mediation will take place, the fact that a trial will
13 take place, and the months that those things will take place,
14 and I will plug in the deadline -- the actual dates as soon as
15 I get that information.

16 So the first thing is just a general outline of the
17 schedule, and then, the second thing is, once you get the
18 listing of all these witnesses and exactly when the
19 depositions can be scheduled, then -- and that's going to take
20 some consultation with him because Dr. Dong is going to be the
21 one to do the question-asking for his witnesses that are MUSC
22 people. You'll coordinate when those are going to take place.

23 And I suggest this, Dr. Dong: Let him get some times
24 from these people when they can be available, consult with
25 you, and then we can get it plugged in in a way that suits

1 both of you. But, Mr. Conley, I think, will work with you to
2 make that happen.

3 DR. DONG: That's fair, Your Honor.

4 THE COURT: And we'll go from there. But that will be a
5 separate order.

6 And I just do that, frankly, to protect y'all. I mean,
7 these witnesses are not voluntary witnesses by any means, but
8 an order from me saying that their depositions will be taken
9 pursuant to this agreed-upon schedule, I think, will protect
10 everybody. So that's what we'll do.

11 DR. DONG: Yes, Your Honor.

12 THE COURT: Anything further, Dr. Dong?

13 DR. DONG: Not at this time, Your Honor.

14 THE COURT: Thank you so much.

15 DR. DONG: Thank you.

16 THE COURT: Anything further, Mr. Conley?

17 MR. CONLEY: No, Judge. Thank you very much.

18 THE COURT: All right. Gentlemen, I appreciate your
19 attention in these details, I appreciate the very professional
20 way you have conducted yourself in these proceedings, and I
21 promise you, I'll try to meet your standard of professionalism
22 in how I conduct our hearings and the trial of this case.

23 Thank you so much. This matter is adjourned.

24 (At 12:09 p.m., the above hearing concluded.)
25

State of South Carolina)
County of Charleston)

RE: *John Dong v. MUSC*

I, Bobbi J. Fisher, Registered Professional Reporter (RPR) and Official Court Reporter III for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the hearing of the captioned case in the *Court of Common Pleas for Charleston County, South Carolina*, on the *4th of October, 2022*.

Submitted: November 2, 2022

Bobbi Fisher

/s/ Bobbi Fisher

Bobbi J. Fisher, RPR

Official Court Reporter III

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF CHARLESTON) Case No.:2016CP1006683
)
Jian-Yun Dong,)
)
 Plaintiff,)
)
 v.)
)
Medical University of South)
Carolina,)
)
 Defendant.)
_____) May 26, 2023

TRANSCRIPT OF MOTION

BEFORE THE HONORABLE JEAN HOEFER TOAL
Special Acting Circuit Court Judge, presiding

APPEARANCES:

For Plaintiff: Jian-Yun Dong, M.D., Ph.D.
 Pro Se

For Defendant: Robert Conley, Esquire
 Attorney at Law

Transcribed by:
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Greenville, S.C. 29602

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NO.

DESCRIPTION

ID EV

(No exhibits offered.)

P R O C E E D I N G S

THE COURT: All right. Please be seated.

Dr. Dong?

MR. DONG: Thank you, Your Honor.

THE COURT: Yes, sir.

MR. DONG: Before I start to address MUSC's motion for summary judgment, I have a couple of issues of my own I would like to present to the Court.

THE COURT: Okay. Speak up so we could all hear you.

MR. DONG: Yes.

Before I start addressing the summary judgment filed by MUSC, I have a few issues I would like to present to the Court and to at least put on record.

First of all, I understand Your Judge -- Your Honor already denied my motion for continuance, but I'd like to say, under due process, I -- I'm entitled to be heard. And also, the reasons for continuance also have implications for the following response. With -- with -- with regard to MUSC's claim, there was no evidence provided, no depositions taken, no, actually, affidavit provided. And all of this

1 because the strict -- the strict timelines,
2 short timelines set at the request by MUSC
3 without any conference -- status conference to
4 get report from both side with regard to the due
5 process progress.

6 And secondly, I would like to request the
7 Court to give me leeways and latitude in
8 presenting my case and following less stringent
9 standard and -- in term of scheduled deadlines
10 as well as the content, for -- for better way to
11 say it. I can quote numerous cases from Supreme
12 Court to Appellate Court of United States as
13 well as the appellate court -- Court of Appeals
14 of South Carolina.

15 Give me a minute. I can try to locate the
16 -- the cases and also as well as provide by the
17 Court -- South Carolina's Rule of Civil
18 Procedures. Particularly, actually, even the
19 one at issue, Rule 56. There is actually
20 clearly statutes when the party cannot provide
21 affidavit of sufficient evidence, the Court may
22 order continuance for this affidavit -- for this
23 affidavits to be obtained or depositions to be
24 taken or discovery to be had. One may take --
25 one may make such order as a judge.

1 So actually there's -- rules of discovery
2 as assured by due process, arbitrary timelines
3 is at the Court's convenience after due process
4 has been satisfied. So there is plenty rulings
5 from Supreme Court down to Court of Appeals of
6 South Carolina. The due process interests
7 overweigh the deadline -- (inaudible) deadline
8 interest of the Court, even when the deadline is
9 authorized by statute. But the scheduling order
10 is not authorized by statute, is at the
11 discretion of the Court when the due process has
12 been fully satisfied.

13 Actually, I can read some of the -- with
14 your permission, I can read some of the cases --
15 cite some of the cases from Supreme Court as
16 well as to -- they are circuit courts as well as
17 due process -- the Court of Appeals of South
18 Carolina.

19 All right. In Haines versus Kermer --
20 Kerner, H- --

21 **THE COURT:** Spell that for me, please.

22 **MR. DONG:** H-a-i-n-e-s versus Kerner, K-e-
23 r-n-e-r.

24 **THE COURT:** All right.

25 **MR. DONG:** It's 404 U.S. 1- -- 119.

1 **THE COURT:** All right.

2 **MR. DONG:** In this case, the United States
3 Supreme Court held proceeds -- pleadings should
4 be held with less stringent standards than those
5 drafted by attorneys, it says contact. And also
6 this extent to the entire presentation and
7 process in prosecuting her case. The Court
8 explains pro se complaint, however inartfully
9 pleaded, must be held less stringent standards
10 than formal pleadings drafted by lawyers.

11 In *Estelle versus Gamble*, E-s-t-e-l-l-e
12 versus Gamble, G-a-b-l-e [sic], 429 U.S. 97, in
13 this case, Supreme Court held that pro se
14 pleadings in civil rights cases should be given
15 certain degree of latitude in presenting their
16 cases. And there's -- there's at least four,
17 five, six cases I don't have too.

18 In *Erickson versus Pardus*, E-r-i-c-k-s-o-n
19 versus P-a-r-d-u-s, 5- -- 551 U.S. 89, in this
20 case, Supreme Court reaffirmed the principal
21 that pro se pleadings should be held less
22 stringent standards than those drafted by
23 attorneys. And the Court stated pro se
24 complaint must be -- complaint must be literally
25 construed and held to less stringent standards

1 than formal pleadings drafted by lawyers. And
2 there is also rulings literally construed means
3 even in the pleaders do not artfully represent
4 the case, the Court has to consider as if the
5 pleader for why they write argument, because
6 based on the issue the pleader raised. And
7 actually there is also specifically regarding to
8 the procedural latitude.

9 In *Rand versus Rowland*, R-a-n-d versus R-o-
10 w-l-a-n-d, 154 Fed. 3d Edition, 592, this is
11 Ninth Circuit. In this case, Ninth Circuit
12 Court of Appeals held pro se litigant should be
13 held to the -- should not be held to the same
14 stringent standards as attorneys with respect to
15 procedural requirements such as filing
16 guidelines. Actually, this echoed in many
17 cases.

18 The Fourth Circuit, which is more relevant
19 to -- to this circuit, also held that pro se
20 litigants should be given leeway in complying
21 with procedural rules and guidelines,
22 particularly where the litigant is incarcerated,
23 but this does not apply here, as well has
24 limited access to legal resources. But as the
25 layman is well-established rules by Supreme

1 Court. And no matter how much education the
2 person may have, would not be able to comprehend
3 the --

4 **THE COURT:** What's the name of the Fourth
5 Circuit case?

6 **MR. DONG:** All right. Sorry.

7 *Anderson versus Angelone*, A-n-d-r-s-o-n
8 [sic], A- -- versus A-n-g-e-l-o-n-e, 86 Fed 3d.
9 Edition, 932. It's Fourth Circuit, 1996.
10 Tracing this, particularly, there's plenty
11 rulings. The pro se pleadings should not --
12 layman should not be asked for following -- or
13 should give leeways to in term the deadlines
14 with -- even with the statute authorization, for
15 example, the appeal -- appellate deadlines,
16 because the due process overweigh the procedural
17 deadlines.

18 So in -- in this case, actually, the
19 overall scheme of the entire case is the
20 defendant set up the limitations for discovery,
21 limiting the scope and the timeline, for
22 example, as ridiculous as limiting discovery
23 only to e-mail from or to the plaintiff during a
24 certain period of time. That's unheard of.
25 Absolutely no legal basis for -- for the

1 defendant to ask the Court to limit the scope of
2 discovery. And then they follow it by limiting
3 the time for discovery. So everything --
4 there's a scheduling order. That order has not
5 -- not been able to change. But at the expense,
6 the plaintiff cannot conduct discovery. For
7 example, in this case, the notice deposition --
8 we did not abandon the notice deposition.
9 That's after a series of delay, give me -- give
10 me very little time. Then, I have
11 uncontrollable situations.

12 I had to file the motion to extend the
13 discovery. The motion was clear denied without
14 state a rule or a reason. And basically,
15 because the -- it's complex, where the very
16 issue we're talking is the scheduling order.

17 So -- and also with regard to protection
18 order, when I filed the protection order with my
19 eye surgeries, I will -- I will not be able to
20 schedule my eye surgery with both my eyes just
21 to cause delay for the -- for filing report of
22 summary judgment. And I was trying to -- with
23 my eyes and the operation, actually, I still
24 feel sand in my eyes, but my vision is a day-
25 and-night different after surgery. But I could

1 not -- right now, it's getting a lot better. I
2 could not open my eye for a long period of time
3 because I feel the sand in my eyes, and any
4 blinking will cause hurt, irritation, and
5 tearing. So I had to close my eye for a period
6 of time. So I have not followed -- did much
7 reading. And especially I'm a pro se pleader, I
8 have not been able to read and write effectively
9 without my -- my vision fully restored.

10 And then, I can address the issue -- to
11 save time, address the issue of breach of
12 contract. All right. And that's -- yes,
13 summary judgment. Okay. Summary judgment,
14 based on Rule 56, has to be supported by
15 pleadings, evidence, and interrogatories, and
16 most importantly, affidavit. The defendant
17 claimed the plaintiff does not have affidavit
18 and did not file any memorandum. It's not
19 without trying. Because I was given a short
20 time. And during the time, I was not able to do
21 so and have a half-way finished memorandum
22 prepared. But I was preparing it until I got
23 into surgery, and then I could not do it.

24 And also the timeline was at least 10 days
25 -- not 10 days. MUSC asked for 10 days. The

1 Court first deadline granted for 10 days. And
2 after the -- although the Court changed the date
3 of hearing after -- in essence, granted the
4 motion for protection, but only give me one day
5 after protection to come to this hearing. So
6 actually I was -- if I'm protected during the
7 period of time, I'm not able to attend any legal
8 proceedings.

9 But after that period, I only get one day
10 to prepare for this hearing. I think -- that's,
11 for lack of a better word, is a violation of due
12 process, especially considering the Court
13 rulings. I should be given latitude and leeways
14 and more time to support -- to prepare for the
15 response and argument.

16 So I will not -- I do not have the -- as
17 MUSA -- MUSC said, I could not conduct the --
18 could not conduct the deposition, not because I
19 abandon it. Because I filed the motion for
20 protection and also filed the -- the motion to
21 extend the discovery. And during the motion
22 filing period, the deadline should be
23 automatically extended until ruling, even the
24 Court -- the -- the motion being denied. And in
25 those cases, it was not.

1 And also for same reason, I know MUSC is
2 not the moving party of the complaint. But once
3 MUSC filed the motion for summary judgment, this
4 summary judgment, MUSC as the moving party, has
5 the burden to support the supporting documents
6 as required as -- by Rule 56. MUSC provided
7 none. The reason is they could not provide it
8 because MUSC did not want to produce any of the
9 victim -- I'm sorry -- vic- -- witness. Because
10 they denied the witness to me, and they said
11 they could not produce the witness to provide
12 affidavits to -- to verify the documents or the
13 claims MUSC has made by -- by counsel.

14 Even if he saying my client said that, the
15 client did not testify. The client did not say
16 under oath on the record what testified by the
17 counsel. So those test -- testimony was made by
18 counsel, mostly false. Not only without
19 support, but was false. Did not actually cite
20 any evidence, even citing the deposition --
21 sorry -- the deposition taken of me. So the --
22 the -- first of all, the summary judgment has to
23 be supported by the documents as required as in
24 Rule 56. And MUSC provided none.

25 All right. Secondly, the -- the basics for

1 summary judgment is there's no genuine issue
2 that's controversy to -- for trial. And MUSC
3 failed to say there was no -- to prove with the
4 support of the documents there was no genuine
5 issue. That burden is not MUSC's.

6 Secondly, the MUSC raised two issues. One
7 is statute of limitations. Made extensive
8 statements, a significant portion of those are
9 false to claim the statute of limitation barred
10 the claim.

11 First of all, it's foregone conclusion.
12 The Court has accepted complaint. And actually,
13 the complaint was filed on the basis of the
14 agreement as a whole, not each particular item
15 was treated separately.

16 And also, the agreement is under the
17 obligation by the employer of the clause in
18 honesty and fair dealing. There's clearly, as
19 demonstrated by MUSC counsel, try to -- try to
20 provide alternative interpretations of wording,
21 which was done by a professional attorney of
22 MUSC. In -- if faced with a faculty member at
23 the time, only goal was to get back to research.
24 I'll get into the -- the agreement a little
25 time.

1 And also, the agreement should be treated
2 as a whole, as not with specific date when, for
3 example, the breach is not on the date of
4 signing. The date is when the MUSC failed to
5 honor each and every one of the agreement,
6 right? It's not barred because one of the
7 breach agreement, one of the 20 conditions may
8 or may not be breached at certain time and the
9 rest of the other -- entire agreement breach
10 will be following that schedule and also has to
11 be knowingly -- the breach has to be known to
12 the party or should have known when the MUSC
13 engaging a continued discussion working of the
14 process.

15 So the -- the -- whether or not its good
16 faith or not, maybe party believe MUSC is
17 working on it, is in the process. So that
18 breach has not been -- that agreement has not
19 been breached. Especially in the entire
20 document as a whole, the -- the -- the contract
21 has not been breached. Until the date the
22 contract expire, MUSC did not honor most of, if
23 not any, of the conditions that are in favor of
24 Dr. Dong.

25 The -- secondly, I'll -- I'll get into

1 specifics. Secondly, MUSC keep relying on --
2 the plaintiff cannot fail to not be able to
3 present sufficient evidence. I think that by
4 nature, that's a question to be determined by
5 trial. Sufficient evidence should be determined
6 by trial, not by summary judgment.

7 And with the regard to if there is
8 sufficient evidence, there -- there are. But
9 some of the lack of documents because the -the
10 plaintiff was never given any chance for
11 discovery, all because the MUSC's wishlist to
12 limit the discovery in terms of scope only to --
13 for e-mails to and from the plaintiffs that
14 complete defeat the purpose of discovery. And
15 again, discovery is assured by law under the
16 constitution as a due process right -- due
17 process rights of parties.

18 And -- and secondly is the short and rigid
19 timelines for discoveries. The timelines should
20 be changed at the request for motion -- based on
21 motion. And especially for pro se pleadings and
22 for conditions out of the control of the
23 parties. But in this case, the -- all the
24 delays was caused by MUSC.

25 The record will show they would not provide

1 response or not provide the date for discovery
2 months at a time. Sometimes the discovery
3 request was given a year later. MUSC did not
4 provide a response or provide the response by
5 law. Clearly inadequate. It's a general
6 overall denial.

7 So those are all violations of the law and
8 violations of due process. So therefore, up to
9 date, Plaintiff have not been able to conduct
10 any meaningful discovery all because the -- the
11 deadlines and the orders to limit the scope of
12 discovery without any statute authorization,
13 without any established case law, but in
14 contrary, completely against the statutes and
15 the case -- numerous case -- case laws.

16 So actually, there are plenty evidence to
17 support -- sufficient evidence to support there
18 is a violation breach of violations as well as
19 admitted by the MUSC defendant. The major one
20 is the MUSC failed to transfer any of the
21 research material essential for -- for Dr. Dong
22 to continue his research and education, his
23 career, and his income -- maintain his income at
24 MUSC.

25 I will not -- I will give two answers to

1 each of the specific terms MUSC just presented
2 -- argued about.

3 I don't have the -- sorry. I can't locate
4 the...

5 I can't -- I only can (inaudible) short --
6 I will -- I'll try to -- if you give me a
7 minute, I will -- if Your Honor give me a
8 minute, I'll locate the contract, the agreement.

9 **MR. CONLEY:** (Inaudible) the agreement is?

10 **MR. DONG:** The original agreement.

11 **MR. CONLEY:** It's attached to your complaint,
12 Dr. Dong. It's attached to our memorandum as well.
13 It's in two different locations.

14 **MR. DONG:** Right. But where is it located in
15 this stack here?

16 **MR. CONLEY:** I don't know what that stack is,
17 Dr. Dong.

18 **MR. DONG:** This is your Exhibit 2.

19 **MR. CONLEY:** If you let me see it, I'll look at
20 it. What are you wanting to -- (inaudible)
21 agreement, contract agreement?

22 **MR. DONG:** Thank you.

23 And I can argue MUSC breached nearly all the
24 terms listed in the -- in the contract. First of
25 all, actually is a matter of honesty and fair

1 dealing clause by the employer versus employee,
2 which is the individual. And there is laws, plenty
3 case laws, suggesting it's a fraud when the employer
4 abandon the principle of honesty and fair dealing
5 when dealing with the employees, especially with the
6 employment contract issues.

7 But first of all, this -- the title of
8 agreement is -- have a different meaning from what
9 MUSC tried to --

10 **THE COURT:** Let me get -- we've got two things
11 going here. We've got the agreement, and then we've
12 got the way Mr. Conley framed his argument.

13 **MR. DONG:** Right.

14 **THE COURT:** He went through 20 different
15 obligations that he contended were the essence of
16 the agreement.

17 **MR. DONG:** Yes.

18 **THE COURT:** Now, are you going -- are you
19 looking at the agreement itself or are you looking
20 at the list he gave of the 20 things?

21 **MR. DONG:** I will -- list -- basically, the two
22 are the same, but I will point out --

23 **THE COURT:** Hang on for a minute. I've got a
24 list of the 20 things. Let me see if I can get my
25 hands to the agreement. I've got it right here.

1 **MR. DONG:** Right.

2 **THE COURT:** It's attached to your complaint.

3 **MR. DONG:** Right.

4 **THE COURT:** What you are looking at is
5 something called a Final Separation Agreement
6 Between Medical University of South Carolina
7 including its College of Medicine and Dr. Jian Yun
8 Dong, Professor of Microbiology and Immunology. Is
9 that what you've been talking about? And the date
10 is May 3, 2010.

11 **MR. DONG:** Yes, Your Honor.

12 **THE COURT:** All right.

13 **MR. DONG:** I think the -- it's basically the
14 same order, but the reason I --

15 **THE COURT:** Sure. But you do -- however you
16 want to do it is fine with me. I've got what you're
17 talking about.

18 **MR. DONG:** Yes. Yes, Your Honor. The reason I
19 tried to bring the two together is because there is
20 a lot of misrepresentations in --

21 **THE COURT:** All right. Well, just go ahead and
22 go down the list of things.

23 **MR. DONG:** Right.

24 **THE COURT:** The first one is payment of faculty
25 compensation.

1 **MR. DONG:** Yeah. I want to address the title
2 first.

3 **THE COURT:** The title? Final Separation
4 Agreement?

5 **MR. DONG:** Right.

6 **THE COURT:** All right, sir. What about it?

7 **MR. DONG:** The title of Final Separation
8 Agreement was presented to me as what the discussion
9 led to the agreement. There was extensive
10 discussion. Plenty events happened what led to the
11 agreement. No tenured faculty after years
12 education, research, and career in the end give up
13 tenure. There's a --

14 **THE COURT:** What does that have to do -- this
15 -- this thing says a Final Separation Agreement
16 between MUSC and Dr. Dong. That doesn't say
17 anything about anything other than it's a final
18 separation agreement. You signed it, right?

19 **MR. DONG:** I understand.

20 **THE COURT:** Okay. So --

21 **MR. DONG:** If -- if -- if I may --

22 **THE COURT:** -- what's the problem with the
23 title?

24 **MR. DONG:** Right. There is two
25 explanations of the title. And we can read

1 through the -- what MUSC tried -- tried to
2 present is the final severance agreement, which
3 is not the wording. But that appeared to be --
4 this title was drafted by attorney did leave
5 room for misinterpretation of title. The title,
6 Final, referring to several versions of the
7 separation agreement until we reached the final
8 to be signed is not a final --

9 **THE COURT:** Okay. I -- I get what you're
10 saying. He hasn't said anything one way or
11 another about that.

12 **MR. DONG:** Let -- let me actually present
13 the way I said. The secondly is separation, a
14 separation of the two parties. Moving one party
15 out of MUSC to -- for a cool down period is not
16 separation from MUSC. Not severance. It's --
17 the way that counsel presented is interpreted as
18 a severance. It's not severance as what the
19 word say in the separation, physical separation,
20 and also illustrated in the entire agreement as
21 to transfer a faculty to off campus, you know,
22 to separate the two parties, because the other
23 party is the chairman of the department and also
24 the provost.

25 **THE COURT:** Dr. Dong, this agreement says

1 in a number of different places that it is an
2 agreement and you've got the final separation
3 agreement. Go down two -- two, three more
4 paragraphs. It says during the term of this
5 final agreement, the University will continue
6 Dr. Dong's employment, faculty appointment, and
7 make scheduled salary payments to him. In
8 consideration, Dr. Dong acknowledges that this
9 final agreement constitutes his irrevocable
10 resignation of his tenured faculty appointment
11 to be effective no later than March 31, 2012.
12 Dr. Dong will retain his faculty appointment,
13 tenure, and title until the effective date of
14 his resignation. You signed that, did you not?

15 **MR. DONG:** I understand.

16 **THE COURT:** All right.

17 **MR. DONG:** Before you -- Your Honor arguing
18 with -- with me, provide argument for MUSC, if
19 -- if you may allow me to actually -- some
20 leeway to --

21 **THE COURT:** I'm going to give you -- I'm
22 going to give you plenty of chance to do it.

23 **MR. DONG:** Right.

24 **THE COURT:** But you're saying this is not a
25 cooldown, not a severance and so forth. That's

1 not what that paragraph says, is it?

2 **MR. DONG:** That's -- well, there's the
3 under the conditions. If under the condition, I
4 have a chance to move to another university,
5 obtain the position, I will formally resign.
6 Actually, that's part of the agreement --
7 continuous -- continuous in -- in -- integral
8 part of the same agreement. So if I -- there's
9 clearly says support my continuous research and
10 I have the right to find another employment.

11 And also there was a statement they termed
12 as they have to right to rehire me, but that
13 wasn't presented to me as their right. Because
14 once it -- that goes back to another honesty and
15 fair dealings.

16 And also the reason to what lead to this
17 agreement is also critically important. We
18 can't just take it -- extract it in a vacuum and
19 say, Well, you signed this, the agreement, and
20 now you're gone. So there's all conditions
21 listed for me to honor the agreement at the same
22 time for MUSC to honor agreement.

23 So the -- the -- what's presented to me at
24 a time is a separation, physical separation.
25 Yes, there is terms for me to resign, but after

1 I was able to obtain another -- another faculty
2 employment at other universities or MUSC, based
3 on all they're saying, if you continue
4 performing as you have, we'll rehire you --
5 rehire you. So they -- that's -- the clause
6 would not -- so my resignation would not take
7 effect because MUSC (inaudible) has the right to
8 retain my employment. Even if -- if I interpret
9 it literally, MUSC have the right to reinstate
10 my employment. Even (inaudible) leave, that's
11 the right of MUSC. That's could not be -- that
12 could not be true.

13 So MUSC expressed the intent and the
14 promise to recruit me if I perform continuous as
15 what I have been at MUSC. And not in the term
16 -- in the contract say anything that I had bad
17 performance.

18 In the -- in the discovery, I request
19 specific request my record, faculty record, my
20 performance, my evaluations, all denied in a way
21 by the limiting scope, because that's not the
22 scope. (Inaudible) my performance, my -- my
23 evaluations was given to me and kept at MUSC,
24 and MUSC failed to produce it.

25 So the -- the -- the reason that -- that's

1 what I'm saying. The whole spirit of this
2 agreement presented to me as I understood at the
3 time was a temporary separation while continuing
4 my employment gave me opportunity to -- to -- to
5 perform the same or the better. And MUSC will
6 -- after the period of time, MUSC will, in a
7 way, reinstate my position or continue my
8 employment at MUSC, although it's worded as
9 MUSC's right by -- by lawyer. So I was a layman
10 at the time.

11 But regardless, that's the spirit of MUSC
12 saying with the agreement give me the
13 opportunity to continue doing my research. If I
14 improve my performance the same level or better,
15 then I will be continued employed at MUSC. I
16 will also resign as a faculty member based on
17 the clause. If I get a chance to be recruited
18 by another university, I will resign from MUSC.
19 That's also consistent with the spirit of the --
20 the temporary separation and allow me to
21 continue my research and education.

22 So actually the first clause is the, of
23 course, during the employment -- I don't even
24 see how this is -- actually, the third paragraph
25 is -- is Dr. Dong employment will continue

1 doctor's employment -- faculty employment,
2 making scheduled salary payments. In
3 consideration, Dr. Dong acknowledges that final
4 agreement constitute his -- the same paragraph
5 you just made, right? But the employment -- the
6 -- the only obligation MUSC has honored is -- in
7 a way, is the continued salary for the period of
8 time until I have a reason to resign or be
9 continued employed by MUSC.

10 In this case, I did not have a reason to
11 resign. I did not have -- MUSC did not continue
12 -- continue to employ me, and also in violation
13 many of the terms. So the first term is not
14 just a salary. It's a continued employment.
15 That comes all my activities of teaching,
16 especially research, because -- sorry --
17 teaching and education, because my research
18 would be conducted at the company established by
19 MUSC, FRD, and a group of investors from new
20 York.

21 All right. The -- so they -- they did not
22 honor as my employment because I have to have
23 all the faculty activities at MUSC. Access to
24 graduate students, teaching graduate students,
25 and teaching graduate students in published

1 articles and actually leading post-docs is one
2 person's achievement, academic achievement.
3 When you're a professor, you doctoral mentor,
4 taking way your students -- taking your teaching
5 ability, taking your access to postdoctoral
6 fellows, that's not employment -- that's a
7 violation of term.

8 Okay. I do not know the second -- MUSC
9 retained the rights -- actually, that's -- those
10 are lawyer's terms, what represent me MUSC will
11 continue my employment --

12 **THE COURT:** Where are you -- where are you
13 reading, Dr. Dong?

14 **MR. DONG:** One, two, three, four, fourth
15 paragraph on the first page.

16 **THE COURT:** Oh, okay. He hasn't numbered
17 it like that. His numbers were --

18 **MR. DONG:** Right.

19 **THE COURT:** -- his obligation --

20 **MR. DONG:** Right. So I cannot completely
21 follow his order --

22 **THE COURT:** Okay.

23 **MR. DONG:** -- because it's -- not only
24 misrepresentations and also is extracted to his
25 interests.

1 And yes, there's faculty compensations.

2 And I may have to add actually my salary was
3 reduced before by the chairman as well as by the
4 Vice President for Research, Dr. Stephen Lanier,
5 as a pressure for me to leave MUSC and while
6 taking all my research material, research
7 projects, research data, and also spending my
8 research money and taking over my records to
9 graduate students and employees.

10 But as I said, yes, the only thing they did
11 was pay me a reduced salary for the -- for the
12 duration of the -- the contract. So that part,
13 specific part item was not violated and
14 testified truthfully.

15 The retention faculty employment and
16 faculty duties, the appointment is not empty
17 title as what Mr. -- Mr. Conley stated. If we
18 named Mr. Conley a lawyer but prevented him from
19 practicing, that title is meaningless. And I --
20 when I give you a faculty appointment, I
21 actually give also faculty duties. That's the
22 part of the agreement. I have to my appointment
23 -- I have to continue my faculty activities at
24 the University in terms teaching, education,
25 leading postdoc -- training postdoc fellows and

1 access to all facilities. MUSC give me none,
2 except they did not openly say take -- take away
3 my title. And also MUSC removed my faculty
4 profile on their website, closed my homeroom,
5 and stopped me from using faculty member e-
6 mails. That stopped all my communications as a
7 faculty member with my peers, with colleagues,
8 with funding agencies. Those are violation,
9 clear violation of terms by MUSC.

10 Right. Specifically, doctor agrees to
11 carry his customary shares of teaching,
12 lecturing, intellectual responsibilities as well
13 as assigned -- communicated him in writing the
14 chairman of each department. Those are taken
15 away from me.

16 Basically, I was not allowed to come to
17 campus. My lab -- my lab was completely closed.
18 All my employees was taken away by the chairman.
19 That's a complete violation of term agreement.

20 And during this period, Dr. Dong may use
21 the title of Director of Biotherapeutics and
22 Vaccine Development, because I have a sender at
23 MUSC. It's not just using the title. I have to
24 (inaudible) the title. I have to do my duties
25 for fellow therapeutics and vaccine development.

1 That has -- that's -- it's not the title. It's
2 not -- Mr. Conley is the title of attorney but
3 not allowed to practice. Take away his -- take
4 away his office, take away his staff, not allow
5 him to practice. Surgeons need equipment;
6 researchers need all the equipment documented
7 with their materials in order to conduct
8 research.

9 The -- the type of medical research I was
10 conducting is not to study someone else data,
11 not study academic result. Has to be done to
12 test you, hands-on, all -- with all the
13 material, priority materials and also my
14 intellectual properties. You can't start --
15 advanced research start from scratch. You rely
16 on all the knowledge and materials and the
17 technologies and protocols and data you
18 accumulate through hard work over the years.
19 Not only it just hard work. Without funding,
20 it's also impossible. So those are the result
21 of tens of millions of dollars academic funding,
22 federal funding, grants, and contract I obtained
23 through competition. The funding rate in age
24 was less than 10 percent, not general
25 population, out of nationwide top scientists.

1 Did -- did -- did counsel get -- get two
2 and 30 -- two hour and 30 minutes?

3 **THE COURT:** What's that?

4 **MR. DONG:** MUSC got two hours -- two hours
5 and 30 minutes.

6 **THE COURT:** Dr. Dong, you need to
7 concentrate on what you're doing and not worry
8 where I'm looking.

9 **MR. DONG:** All right. Sorry.

10 **THE COURT:** All right, sir. But what
11 you're doing here is something that you could
12 have done by filing a document that said what
13 you're saying right now. You're going through
14 this contract and trying to say what you
15 disagree with about the contract.

16 **MR. DONG:** So is --

17 **THE COURT:** The contract is something you
18 signed.

19 **MR. DONG:** I understand. That's why --

20 **THE COURT:** Yes, sir.

21 **MR. DONG:** -- I'm going --

22 **THE COURT:** And now you're going through
23 trying to say how unfair you think all of it is
24 and how you shouldn't have been required to do
25 that. That's what -- you just got to faculty

1 duties.

2 **MR. DONG:** I --

3 **THE COURT:** So keep on going, but please
4 understand that there -- there is nothing that
5 you have filed so far that details what you're
6 now standing up doing. You could have well done
7 that before --

8 **MR. DONG:** I did not have time, because I
9 was --

10 **THE COURT:** I -- I don't -- you have said
11 that so many times, I think I understand what
12 your position is about that.

13 **MR. DONG:** All right.

14 **THE COURT:** All right, sir.

15 **MR. DONG:** May I -- may I continue,
16 Your Honor?

17 **THE COURT:** Yes, you may.

18 **MR. DONG:** And also there is -- "Dr. Dong
19 is free to seek academic research collaborations
20 including secondary employment within MUSC
21 during the remainder of the agreement." And they
22 completely blocked all my ability to conduct my
23 research, what I'm going to use for -- for
24 continuing my collaboration. I cannot even do
25 my own research. The whole purpose of the

1 agreement is for me to have a separation period
2 so I can continue -- continue my research and
3 education. That's the major part of the
4 agreement for the entire duration for me to
5 continue my research, not each specific payment,
6 not each specific time within how many days
7 they're going to start, or the attempt. So how
8 we define attempt?

9 MUSC was -- did they attempt -- that's
10 actually obviously -- obviously dishonesty and
11 in bad faith. Right. That's actually the
12 clause. MUSC is obligated when dealing with
13 employees. They have to under the clause --
14 honesty and fair dealing clause, to -- for --
15 for any agreement for them to -- to claim they
16 have honored. So actually, they did not -- of
17 course, all of these are conditions we talked --
18 we discussed prior to my separate myself
19 physically from MUSC from the fighting with the
20 department chairman about his taking over my
21 research and material, research projects and
22 employees, fundings and completely blocked me
23 from conducting my research, not because I did
24 badly, because I was (inaudible).

25 I gained -- I obtained more federal funding

1 than the chairman and I published more paper
2 than the chairman. I led more graduate students
3 and post-doc fellows than the chairman at the
4 time. That's why he took over my research
5 projects. In the end, he has to rely on the
6 research material as well because that's
7 accumulate my years of work. So he has took
8 them from me with help of Stephen Lanier, which
9 is his close friend when they both working --
10 try to compete for chairmanship during the time.
11 And that's -- that's how -- how they reach
12 agreement.

13 Breaching the agreement enabled Jim Norris,
14 the chairman of department, and Stephen Lanier
15 to take over my research projects, my ability to
16 conduct research. And not only they took -- it
17 wasn't enough for them to take over my research
18 ability and research, they actually have to
19 block me from competing with him. Because I was
20 the expert; he's not. That's why they shut me
21 off from my --

22 **THE COURT:** Mr. Dong, we're going to spend
23 a lot more time arguing about the very specific
24 nature of your disagreements with MUSC. What
25 you need to do is to talk about how they

1 breached this agreement. What you're talking
2 about is all the things that happened that led
3 to this agreement.

4 **MR. DONG:** Actually, Your Honor, that's
5 where actually I failed to make my point
6 clear --

7 **THE COURT:** I -- I -- I'm not following it.

8 **MR. DONG:** Right.

9 **THE COURT:** I can tell you that.

10 **MR. DONG:** I appreciate you asked the same
11 question as counsel. I'm -- I'm going to
12 explain. Right? The breach of the contract is
13 in the terms -- what the terms mean to me or to
14 a faculty member to assign this based on this
15 agreement different maybe to a legal profession
16 or actually to a -- to a layman. But that's not
17 the spirit of the term. If we know the spirit
18 of the term what it -- what it says by
19 maintaining employment, not by paying a salary.

20 If I'm just an ordinary hourly worker with
21 payment salary, I'd go home. I'd be happy. But
22 I'm a scientist. I'm a doctor. I have a
23 career. My career is in the trending upwards
24 path. It's -- my career, my future all depends
25 on how I perform. So it's not a surgeon, you

1 take away his ability to perform surgery and you
2 name him surgeon that --

3 **THE COURT:** Your philosophy of that is not
4 lined up with my understanding with what I'm
5 here to look at, which are the terms of this
6 agreement --

7 **MR. DONG:** Right.

8 **THE COURT:** -- and whether they were
9 violated. So I look on the language of the
10 terms, and they say --

11 **MR. DONG:** Maintain my employment.

12 **THE COURT:** -- they say you commit to
13 submitting and irrevocable letter of
14 recommendation -- of resignation effective no
15 later than March 31, 2012. It doesn't say this
16 is some kind of temporary situation. It says --

17 **MR. DONG:** I understand, but there's other
18 conditions, Your Honor. There's other
19 conditions. You --

20 **THE COURT:** Well, then let's go through
21 that without going through every argument and
22 disagreement you've got or suspicion you have
23 about Dr. Lanier or Dr. Norris and all that kind
24 of thing. That -- that doesn't help me go
25 through this agreement and figure out whether

1 there are breaches of the agreement. And that's
2 what you're suing for. You're suing for
3 breaches of this agreement.

4 **MR. DONG:** Right. But actually MUSC
5 provide their version of the interpretation --

6 **THE COURT:** No, sir.

7 **MR. DONG:** -- and you allowed them to do
8 so, while I'm saying what is the employment --
9 maintain employment means.

10 **THE COURT:** And -- and -- and --

11 **MR. DONG:** It's --

12 **THE COURT:** -- what I want you to --

13 **MR. DONG:** -- not paying salary.

14 **THE COURT:** I want you to look at this
15 agreement, Dr. Dong, and tell me how they
16 breached.

17 **MR. DONG:** Right. They denied maintain --
18 giving me the ability to continue my research as
19 part of the employment. So employment by MUSC
20 for a scientist, for a doctor, is not give him a
21 title, give him payment. They have -- they
22 allowed him to conduct research and have access
23 to the facilities and function normally as any
24 faculty members will do at MUSC.

25 **THE COURT:** Well, I thought the -- the --

1 the foundation of this agreement would be that
2 you would be at GenPhar and you would have your
3 labs there and not at MUSC. Am I wrong about
4 that?

5 **MR. DONG:** I'm also talking about academic
6 teaching and training postdoctoral fellows.
7 Actually, I cannot do at MUS- -- at GenPhar
8 because that's a commercial company, have strict
9 standards what they can operate on. They only
10 lend me laboratory space for me to perform the
11 -- the duties of MUSC. That's what the contract
12 says. They didn't ask me to -- say, "Well, go
13 work for GenPhar. Tell us bye-bye. We'll call
14 the end of it," right?

15 It clearly says I'm given the continuous
16 appointment obligations, duties, as a faculty
17 member, tenured professor at MUSC. So I will be
18 have -- have to be able to do what any regular
19 faculty members, tenured professor could do at
20 MUSC. They took that away. So with taking that
21 away, I would not be able to honor the final
22 resignation. Take that away because I could
23 not, as I said, seeking -- actually seeking
24 employment at another university, not at another
25 packing facility, butchering facility, ginger

1 facility to seek second employment. It has to
2 be universities for medical doctors for research
3 scientists to obtain grants. Without -- taking
4 away my ability, I could not conduct any -- any
5 of those. That's the violation of the contract.

6 **THE COURT:** Let me ask you this: Post
7 May 3, 2010, when you signed this --

8 **MR. DONG:** Yes.

9 **THE COURT:** -- were -- were you teaching at
10 MUSC?

11 **MR. DONG:** No. That was -- that was --
12 they taking away my ability to teach MUSC.
13 Actually, my graduate students, even during the
14 graduation, chairman took over the mentorship he
15 graduate student as one of his graduates.

16 **THE COURT:** I understand that. So your
17 contention is that they -- this agreement would
18 have allowed you to continue to teach and
19 perform normal faculty duties, right?

20 **MR. DONG:** Correct. Like -- like any
21 other --

22 **THE COURT:** You said they immediately shut
23 those off.

24 **MR. DONG:** No. They actually -- it's
25 actually a negotiation process. So they was --

1 they gave -- for the period of time of the
2 agreement, they can't start what they want --
3 they choose -- it's a complicated operation. So
4 even if they say, Well, you can do it today, how
5 -- how can I get access to the graduate
6 students? There's no new graduate students
7 coming in. I will not be able to interview
8 graduate students.

9 It's complicated more than a layman can
10 understand. But it's -- that needs to be
11 determined as a fact. What is the extent of
12 agreement? What is the appointment of --
13 faculty appointment? It's just a title or a
14 salary? Or is it lot more than that?

15 **THE COURT:** Well, you're explaining that
16 it's a lot more than that. I'm just trying to
17 figure out when they breached the agreement.

18 **MR. DONG:** They breached the agreement at
19 end of this agreement. They terminate me -- my
20 employment. Actually, they -- but they did not
21 do anything during this period of time as they
22 specified.

23 **THE COURT:** Well, you -- so you're saying
24 that from the time they signed -- y'all signed
25 this agreement in 2010, they did not allow you

1 to teach at MUSC? Are you saying that?

2 **MR. DONG:** It's in the process. They did
3 not say, well, the process, I have to restart.
4 It's not -- it's not a day one, let's do
5 research. Until I -- I realized the new coming
6 graduate student, they didn't allow me to
7 interview them. So I would not be -- I wasn't
8 assigned to the course. Maybe not the first
9 quarter, not the second quarter, maybe not the
10 third quarter. But it's the process, until they
11 completely (inaudible) -- even during this time,
12 I wasn't -- the agreement is the -- the -- is
13 not practically implemented on one day. It's a
14 negotiation process.

15 **THE COURT:** Okay. I understand what you're
16 saying now. All right. All right. I
17 understand what you're talking about now about
18 faculty duties. And you say it was something
19 that happened over time, but the bottom line
20 was, you never got any graduate -- any students
21 assigned to you or that you could interact with
22 after this agreement was signed, right?

23 **MR. DONG:** That's limited. If you want an
24 example of what's the facility duties. Facility
25 appointment embodies a huge amount of

1 responsibility activities academically that's
2 closely associated with any faculty members --

3 **THE COURT:** Okay. I get all that. But
4 what you're saying is that after you signed this
5 agreement with them, they didn't allow you to
6 have those normal kinds of interactions of
7 faculty duties including --

8 **MR. DONG:** I understand what Your Honor
9 wants me to give a specific date, I could not
10 but it's a continuing process.

11 **THE COURT:** Right. But it -- obviously, if
12 you look back on it now, it started when you
13 signed this agreement, right?

14 **MR. DONG:** No, it started before --

15 **THE COURT:** Or even before it?

16 **MR. DONG:** Right. Because that's -- the
17 contract has not -- for example, they took my
18 material, the contract is within the period of
19 time give me a set period of time to
20 transitional in -- in the research, restart my
21 research until actually they continue my
22 employment or I find another employment and
23 permanently resign from MUSC. That's the spirit
24 of the --

25 **THE COURT:** So even before this agreement

1 was signed, they --

2 **MR. DONG:** I'm not saying --

3 **THE COURT:** -- they were blocking your
4 ability to --

5 **MR. DONG:** Part of it was the blocking.
6 That's why I settled with the agreement. And I
7 give them the process, a time period --

8 **THE COURT:** Okay.

9 **MR. DONG:** -- to resolve the issue, to allow
10 me to (inaudible). That's the purpose of the
11 contract.

12 **THE COURT:** I understand. I got it now. And
13 then by -- as it turned out, you were never able
14 to -- you were never allowed to go back and
15 start interacting with students or do things
16 that a normal faculty member would do, am I
17 right?

18 **MR. DONG:** That's correct.

19 **THE COURT:** Okay. All right. Keep on
20 going. This -- we're going to take forever on
21 this thing if we need at this snail's pace. I
22 understand the teaching thing now. Keep on
23 going.

24 **MR. DONG:** Right.

25 **THE COURT:** The next --

1 **MR. DONG:** Also -- also not only teaching.
2 It says research obligations -- collaborations.

3 **THE COURT:** I understand all that.

4 **MR. DONG:** And to take away my equipment, I
5 can't do research.

6 **THE COURT:** Okay. I understand that.

7 **MR. DONG:** But this is what was supposedly
8 a process. During this time, they allow me to
9 reestablish my research. And those are the --
10 there was bad faith negotiations. One, there is
11 none. I contact MUSC and I was negotiating when
12 they start. So it become a stonewalling. They
13 say, Well, we'll do this, talk to this, talk to
14 so-and-so until it back circle.

15 We didn't get the order. It didn't tell me
16 what to do. So actually it's a delay tactic, a
17 stonewalling, and a delay tactic by MUSC because
18 I was given the bad -- bad faith negotiation.
19 That's go back again they violate the honesty
20 and fair dealing clause when dealing with the
21 employees.

22 And actually, the faculty have a faculty
23 contract, there are faculty books. And tenure
24 has tenure. (Inaudible) tenure. Tenure has
25 rights. Everybody was competing for tenure.

1 Right? You can't terminate a person, even new
2 regulations, within seven years.

3 So actually, that's all part of the breach.
4 If you allow me to -- to explain what is the
5 breach, not what MUSC just saying that could be
6 interpreted, "You have the title. You have the
7 payment. That's all." That's not all.

8 And also, there is clearly -- there is --
9 it says there was -- the Vector Core equipment
10 will be moved. So -- will have -- before the
11 equipment moved as opposed to operating Vector
12 Core as part of the Center of Biotherapeutics.
13 So actually, the language for layman is hard to
14 understand. And I'll have to -- that's why I
15 need to explain what it is based on my
16 understanding and the parties signing.

17 So what is the -- MUSC can testify what is
18 the Vector Core and what's the Vector equipment
19 for? And why the Vector Core equipment has to
20 be transferred. And that has to be -- I
21 explained my understanding, unless they find
22 somebody else to explain otherwise, because I'm
23 a party --

24 **THE COURT:** Well, what's preventing you
25 from doing that or having filed something?

1 That's Exhibit B.

2 **MR. DONG:** Because the timing. Because the
3 timing.

4 **THE COURT:** No, no, no, no. This suit has
5 been going on since 2014. There could have been
6 plenty of time since 2014 for you to sit down
7 and explain what your position is about this
8 contract.

9 **MR. DONG:** Without discovery?

10 **THE COURT:** What's that?

11 **MR. DONG:** Without deposition? I was
12 trying -- trying to file the process to do
13 deposition. I was trying to file -- file the
14 process to get the documents from -- through
15 discovery, and it was all denied by the Court
16 limiting the scope of discovery to the only
17 information I had. And then they did not
18 provide all the information.

19 **THE COURT:** Well, Dr. Dong, by the time I
20 got in this case, the Craig Brown orders, the
21 Ferrell Cothran orders, and a whole bunch of
22 other orders had already been issued in this
23 case about discovery that were not something I
24 asked -- was asked to change, nor would I --

25 **MR. DONG:** I did file motions.

1 **THE COURT:** No, sir. Not on all the
2 discovery that had been done beforehand. All I
3 was asked to do was take this case as it was
4 then presented to me and deal with moving it
5 forward for trial, which is what I did.

6 Now, I don't know what went on in the
7 background about discovery. But I asked you a
8 very simple question about this contract when
9 you began to talk about Vector Core, and that
10 is, a lot of the contract related to, in terms
11 of your ability to keep up with that contract --

12 **MR. DONG:** Right.

13 **THE COURT:** -- the material in Exhibit B.
14 Why was Exhibit B never made a part of this
15 contract to facilitate the transfer of that
16 material to you at your new location?

17 **MR. DONG:** No, that's -- that's a clerical
18 error. (Inaudible). Exhibit B was transferring
19 the research materials. That's actually in the
20 Exhibit -- Exhibit A. There was specific
21 material things -- Exhibit B is the listing
22 material to be transferred. Research material
23 document and everything else.

24 So you allowed MUSC counsel testify to
25 explain their version of the agreement.

1 Actually, that's why --

2 **THE COURT:** Dr. Dong, please quit doing
3 that.

4 **MR. DONG:** Sorry.

5 **THE COURT:** All right. Your approach this
6 case has so many times been when you're asked a
7 question, to turn around and attack the
8 questioner, whether it be the lawyer, whether it
9 be the judge involved or something like that.
10 Please don't do that.

11 We're here to go through this contract and
12 I'm allowing you as much time as you need to go
13 through this contract and give your impression
14 of it. What I don't need is this constant
15 interjection of complaints about the other
16 lawyer and about the other judges and about me
17 as a judge. Just explain what your position is
18 about this contract, and we'll do fine.

19 **MR. DONG:** All right. Thank you,
20 Your Honor.

21 So actually, each one of -- has significant
22 implications in the -- in my performance, for
23 example, the Vector Core equipment, because --

24 **THE COURT:** All right. Just a second.

25 **THE COURT REPORTER:** He has paper covering

1 my microphone. If he could move that, please.

2 **THE COURT:** All right.

3 Dr. Dong, please take the paper off from
4 covering her microphone. Otherwise, it won't
5 pick up what she's trying to pick up.

6 **MR. DONG:** Thank you.

7 **THE COURT:** All right.

8 **MR. DONG:** Sorry.

9 **THE COURT:** All right.

10 **MR. DONG:** And the additional Vector Core
11 equipment, actually, that was the -- asked me to
12 submit to be attached in Exhibit B, which I did
13 not submit additional Vector Core equipment.
14 That means they did not violate whatever the
15 additional list I'm supposed to provide. But my
16 understanding, this -- this Vector Core list is
17 part of my equipment as well.

18 This actually equipment is not MUSC's
19 equipment while I'm an employment -- employee at
20 MUSC. Those -- yes, those are MUSC equipment.
21 When I'm not longer employee at MUSC, those are
22 my equipment. Because --

23 **THE COURT:** Well, I -- I got the impression
24 with the listing on Exhibit A that a lot of it
25 was equipment that you bought with you, was your

1 equipment, not them. They were agreeing to move
2 all of it to GenPhar.

3 **MR. DONG:** Yes, Your Honor.

4 **THE COURT:** And I assume that would mean
5 what you're talking about right now. Their --
6 their agreement wasn't limited to just what was
7 their equipment. They were going to move
8 everything in your lab to this new location;
9 isn't that right?

10 **MR. DONG:** That's correct.

11 **THE COURT:** Okay.

12 **MR. DONG:** Any -- any equipment, my
13 equipment.

14 **THE COURT:** That's right. Anything that
15 you used, anything that was either your
16 equipment or their equipment which you were
17 using, it was all going to your new location as
18 I understand it.

19 **MR. DONG:** There is no "their" equipment
20 for me to use and belongs to me. The equipment
21 has to be purchased under my grants.

22 **THE COURT:** Well, that's fine. But
23 everything that you were using equipment-wise
24 was supposed to be moved to your new location,
25 right?

1 **MR. DONG:** Correct. They did not do, as --
2 as they admit it. But that also is not a
3 one-day thing. It's continued --

4 **THE COURT:** And they -- they say they
5 didn't do it because the location was never able
6 to receive it for the lack of government
7 permits, occupation certificates, and this kind
8 of thing. Was that so or not so?

9 **MR. DONG:** Not so. Actually, the -- the
10 company has all the certificate and documents in
11 order to receive federal contract. The company
12 did receive tens of millions federal contract.
13 So those are already in place, and they knew it.
14 That was to say, as a formality matter, we have
15 to -- we could only transfer the material
16 research equipment, some of the biological
17 material, to a location that you have to show us
18 there is a permit to do so. Otherwise, they
19 violate the law -- law by transfer the material,
20 the biological material, to a site was not
21 approved. They know -- they knew it, and it
22 wasn't presented to them. GenPhar had all the
23 federal approvals and certificates.

24 **THE COURT:** Okay. The -- there are federal
25 approvals, and then in addition to that, there

1 are certificates of occupancy. That's
2 construction certificates that are issued by a
3 local government. There are --

4 **MR. DONG:** I understand that.

5 **THE COURT REPORTER:** -- insurance things.
6 GenPhar, did they have all of that?

7 **MR. DONG:** Of course, they had. How they
8 -- how they have that many employees in the room
9 operating without actually --

10 **THE COURT:** All right.

11 **MR. DONG:** -- completing the contract.

12 **THE COURT:** (Inaudible) the same. You
13 could have done that much sooner by filing some
14 sort of affidavit saying that that was --

15 **MR. DONG:** I was working on it until
16 actually --

17 **THE COURT:** Continue.

18 **MR. DONG:** MUSC still haven't filed any
19 affidavits, Your Honor.

20 **THE COURT:** I asked you please don't phrase
21 it that way again. They took your deposition
22 and filed that sworn document as part of their
23 factual filing. That's what they did.

24 **MR. DONG:** But I wasn't allowed to.

25 **THE COURT:** No, sir. I'm not going to get

1 into that argument right now. You stay on this
2 agreement and what your position is about it.

3 **MR. DONG:** And here -- here is this --
4 there's no argument. MUSC agreed to relocate
5 the equipment as listed in Exhibit B -- Exhibit
6 A. So actually --

7 **THE COURT:** Yeah. We know that. And they
8 say that they couldn't relocate it because the
9 -- no certificate of occupancy was ever given to
10 them. You say that you had the certificate of
11 occupancy. You haven't said yet whether they
12 were ever presented to MUSC. I don't know.

13 **MR. DONG:** Actually were. Actually, the
14 information come to Your Honor. Actually, I did
15 not know.

16 **THE COURT:** Sir --

17 **MR. DONG:** MUSC did not actually even say
18 that. I didn't say that.

19 **THE COURT:** This is exasperating, Dr. Dong.
20 Whenever you disagree with something, you just
21 try to turn it on somebody else.

22 **MR. DONG:** No, actually you --

23 **THE COURT:** This contract --

24 **MR. DONG:** -- made the statement --

25 **THE COURT:** This contract -- wait a minute.

1 Just one minute.

2 This contract specifies that certificates
3 of occupancy, insurance coverage, and the like,
4 will be given to MUSC. And in that event, they
5 will transfer your equipment to GenPhar. They
6 say they were never given those certificates of
7 occupancy and insurance and the like. And now
8 your -- I don't know what you're saying. But
9 it's mostly attacking them because you say may
10 be it's not in the contract. I don't know. But
11 the contract says that specifically, and all I'm
12 asking you is, Was MUSC given those
13 certificates?

14 **MR. DONG:** Yes. They actually -- the --
15 the fact -- they want to reassure they have
16 those certificates. Those certificates is
17 access of the company. So actually, the company
18 operates -- as I said --

19 **THE COURT:** They're just asking for a
20 photocopy of the certificate, Dr. Dong. And
21 they are asking for them from whoever has them,
22 certificates of occupancy, governmental permits,
23 and insurance coverage. And they are in the
24 place of that site. That's what this contract
25 says is to be provided to MUSC. And when it's

1 provided to them, they will then move the Vector
2 Core equipment in addition to all the stuff in
3 Exhibit A.

4 And all I'm asking is, you know, what's --
5 how are they (inaudible), were they supplying,
6 that is MUSC, supply those things I read out of
7 the contract?

8 **MR. DONG:** Yes. Actually, they did not
9 specifically what form. Actually, I destroyed
10 (inaudible) they knew it, how the company can
11 operate without those certificates, how the
12 company being awarded federal contract without
13 the certificate. Those are given. There's
14 actually not only -- there's documents to show
15 that. Actually, there is public information to
16 say -- how they have the Office of Science
17 Research conducting this vaccine development
18 against Ebola and Marburg for the military
19 personnel under a facility. There is no
20 certificate. How the government will issue a
21 contract to -- to a company without any
22 certificate? Those actually was given. You
23 prevent me from discovering, prevent me to --

24 **THE COURT:** I did not prevent you from any
25 discovery. No, sir. Please do not say that to

1 me again. Orders were in effect about this
2 thing long before I came in the case. I set up
3 a scheduling order. You noticed the taking of
4 depositions, and then you withdrew those
5 notices. Why? I don't know. But I did not
6 interpose one order whatsoever to prevented you
7 from engaging in discovery.

8 **MR. DONG:** The schedule limitation --

9 **THE COURT:** No, sir. No, sir.

10 **MR. DONG:** Yes, there is.

11 **THE COURT:** No, sir. The limitations on
12 other discovery by the way of interrogatories
13 and everything else has been put in place long
14 before I came into this case. I have an order
15 that said scheduling discovery, depositions
16 only. That's all I had to deal with.

17 **MR. DONG:** Right. But, and also I actually
18 thought because the circumstances were out of my
19 control --

20 **THE COURT:** I'm not going to get into that
21 argument again. Go on and finish what you've
22 got to say about the contract please, sir.

23 **MR. DONG:** I would respectfully --
24 respectfully ask to have the opportunity to be
25 heard when you addressing I did not file this --

1 file those documents, I can say why I did not
2 file the document. So that's actually -- I'm
3 entitled to -- now you are -- Your Honor is
4 saying I did not file this. You have -- you had
5 the time to file this. You didn't file this, so
6 it's all yours.

7 **THE COURT:** That's exactly what I'm saying.

8 **MR. DONG:** Right. But that's not fair.

9 **THE COURT:** It is fair. It's true.

10 **MR. DONG:** Because actually what I'm
11 saying, that's why I'm -- I'm -- I'm entitled to
12 be heard --

13 **THE COURT:** You're -- you're -- you're
14 being heard at great length here. And that's
15 what I'm asking you to do is to get back on this
16 contract that you said you wanted to do and go
17 through the provisions of it.

18 **MR. DONG:** Right. Actually, you asked me
19 why I did not file it. Because I -- the reason
20 stated. I could not file because my motion been
21 denied. So they -- they -- during this time,
22 actually is the spirit of the agreement. It's
23 not a one-day thing. So they -- (inaudible) my
24 material. The significance is not transferring
25 my material. It is taking away my ability to

1 conduct my research, taking away my -- taking
2 away my ability to advance my career, which also
3 (inaudible) my income. But they did terminate
4 my income without -- without giving me the
5 opportunity to find new employment, without
6 actually giving me opportunity to -- I did
7 obtain \$4 million contract for MUSC, Stephen
8 Lanier specifically rejected, because that will
9 actually bring me back to MUSC.

10 Without any -- that's a complete violation
11 of faculty rights as specified at MUSC and also
12 against MUSC interests. Those are federal
13 grants awarded to -- to me under the application
14 at MUSC by the National Institute of Health.
15 That's the vast majority of university grants
16 coming from. Actually, I don't know if I have
17 anything to do with its departure, but that's
18 against MUSC interests as well.

19 So -- and there's specific e-mail
20 communications he stop me using after date,
21 because the awarding date is after the contract.
22 Although the comfort was submitted during the --
23 is taken over a year, year and a half to obtain
24 federal contract. So I obtained the federal
25 contract for four and half million dollars for

1 MUSC and awarding time is after the agreement
2 terminate. And he sent me an e-mail telling me
3 stop using the faculty, appointment title, can't
4 use MUSC, as MUSC declined receiving any grants
5 awarded to you. To that effect. I'm not
6 quoting exactly.

7 And I'm supposed to have campus facility --
8 access to campus facilities. When I'm a faculty
9 member, I should have faculty access to
10 facilities. But at the same time, it's not as
11 simple as say, Well, you can walk in. Because I
12 have to have a research project to use the
13 facilities, actually give another notice.
14 Actually, Stephen Lanier specifically denied a
15 federal grant of mine and had a concept contract
16 with a director for animal facility to use
17 animal facilities. So that has come out from
18 discovery. That's actually -- that's also a
19 violation of the access to the facility. That's
20 one example.

21 And also --

22 **THE COURT REPORTER:** Excuse me, Doctor --

23 **MR. DONG:** Also, as specified -- specified
24 on page 2, second paragraph, doctor "will
25 transfer any... material including genetic

1 material, DNA constructs, viral and plasmid
2 vectors, antibodies, enzymes... doctors new
3 research location from his continued research,
4 including the materials which were provided by
5 Dr. Dong to Vector Core for services while
6 Dr. Dong was the director. Any vectors provided
7 to the faculty members during the period --
8 operation of Vector Core will remain with the
9 respective faculty members who acquire the
10 products."

11 So those are all very specific terms, but
12 without laboring through, I can say all the
13 terms were violated. If Your Honor want me to
14 name the date, I cannot.

15 And even the third paragraph from the top.
16 "In recognition of his offer to perform Vector
17 Core services for his off-campus location for
18 the proximity -- approximately 23 month inter-
19 -- interval above, so it's 23 months, University
20 will pay Dr. Dong sum of \$30 -- \$30,000 directly
21 to -- from chairman's budget in the Department
22 of Microbiology to pay no later than 50
23 following the signing -- day 50 following the
24 signing of the agreement."

25 The only thing they honored is to pay me

1 \$30,000, which I used on graduate students. And
2 -- but didn't honor the rest of the terms, the
3 \$30 -- the \$30,000 was for me to operate the
4 Vector Core facility off-campus. So that's also
5 breach. But they -- they did not breach the 30
6 -- 50 days to pay it. They did pay it. But
7 they breached the agreement for me to operate
8 the Vector Core facility off-campus.

9 This actually at the direction of Dr. Yusuf
10 Hannun, who is the Chairman of the Department of
11 Biochemistry, which also would be the chairman
12 of my second appointment. And those material
13 would be transferred -- again, they insert
14 attempt. So "attempt," that nullify all the
15 other -- all the other terms, because they just
16 attempt. They have no obligation. They just
17 make attempt. Who define attempt? That's
18 create bad faith and dishonest dealings. And
19 any additional will be provided by Dr. Dong was
20 never provided.

21 They also provide active grant service.
22 They did not. They actually declined. So
23 actually, honestly, I had to use the company
24 resources for submission to grant on behalf of
25 MUSC to NIH grant. The company has different --

1 research projects has to be clearly separated
2 from the -- by MUSC activities. So they did not
3 provide any financial services in the grant and
4 management offices. Those grant have to be
5 submitted through using resources, which
6 honestly, it was not appropriate from the
7 company. And eventually, when I obtained the
8 grants, that take up to a year and a half
9 (inaudible) worded because the contract was
10 terminated. Stephen Lanier declined receiving
11 the four-and-a-half-million-dollar NIH grant.

12 **THE COURT:** This -- this grant was -- was
13 this affected by the events that took place on
14 September 29, 2011, when the revision letter was
15 sent to you from MUSC.

16 **MR. DONG:** Actually, there is a question
17 about the revision letter.

18 **THE COURT:** Well, I'm asking a pretty
19 direct question. You're talking about a grant.
20 And in this revision letter, it says in part we
21 understand that you have received positive
22 feedback regarding a pending grant application
23 that you submitted to NIH. Is that what you're
24 talking about, this four-million-dollar grant?

25 **MR. DONG:** Could be. Because I had

1 received --

2 **THE COURT:** Because apparently interrupted
3 that, at least from what this letter says is the
4 notification of your indictment by the United
5 States Government.

6 **MR. DONG:** First of all, there is no test
7 -- witness to testify that that letter is true.

8 Secondly, actually I will say --

9 **THE COURT:** You put this letter in your --

10 **MR. DONG:** I was provided --

11 **THE COURT:** You -- you put this letter in
12 your complaint.

13 **MR. DONG:** Wait -- wait a minute. Let me
14 actually present my case first if you --

15 **THE COURT:** Well, did you not put this very
16 letter with that --

17 **MR. DONG:** That was included by the counsel
18 at the time who was competing for the General
19 Counsel at MUSC.

20 **THE COURT:** All right. Dr. Dong --
21 Dr. Dong --

22 **MR. DONG:** What I'm saying --

23 **THE COURT:** Your complaint was filed with
24 this letter attached to it and your answer is
25 not addressing that. Your answer is attacking

1 the bona fides of your counsel.

2 **MR. DONG:** No, no, no.

3 **THE COURT:** This case is not about that.

4 **MR. DONG:** Let me finish -- let me finish,
5 Your Honor, please.

6 **THE COURT:** Well, just answer my question.

7 **MR. DONG:** Right. The letter was included
8 to show the bad faith from MUSC because that
9 letter was generated at the time we actually
10 filed the complaint. That's three years before
11 the indicted the company misuse of the contract.
12 If I wasn't pushed -- pushed to the company, I
13 would not be indicted with the co-conspirator.

14 But the -- the thing is the indictment is
15 within -- first of all, happened in 2013 by a
16 grand jury within a month, although -- the third
17 indictment was within a month. After the
18 indictment, there is a sealed order by a federal
19 judge for a year and a half because they -- once
20 they release the indictment, there is speedy
21 trial.

22 So this is all beyond this case. But that
23 was -- the timeline doesn't match. The timeline
24 clearly indicate that letter was generated by
25 Stephen Lanier to cover up his mis -- misdoing

1 -- wrongdoing and put excuse whether you let --
2 Your Honor believe or not. And Your Honor is
3 shaking your head. But that has to be based on
4 fact.

5 The indictment is released in 2014. The
6 trial was 2015. So there is a speedy trial
7 clause under the constitution. So it is a
8 federal crime, felony crime, for anybody who
9 disclose the indictment before it actually was
10 publicly released. And anybody accusing a
11 federal prosecutor, actually violate the law --
12 actually violates the direct federal judge's
13 order, maybe they do -- did it. But the -- the
14 -- the people who signed the letter testify.
15 They said on oath that letter was not generated
16 -- generated after the fact. Who informed them
17 of the indictment?

18 I disclose indictment. All it says is
19 contract -- the company misused the contract
20 funding for an improper purpose, including build
21 new facility. That's all. I wasn't taking any
22 money, doing any conspiracy to get -- get rich
23 myself. I would not have any interest for the
24 -- for the company to build facility for the
25 DOD. I would be indicted for -- for -- for

1 crime. If we want to introduce this evidence,
2 actually that has to be in trial.

3 **THE COURT:** In 20- -- September 2, 2014,
4 you placed that letter as an exhibit to your
5 complaint filed September 2, 2014.

6 **MR. DONG:** Right. Because --

7 **THE COURT:** I don't know this other
8 background you're talking about. But I do know
9 --

10 **MR. DONG:** Right. But -- but --

11 **THE COURT:** -- you filed that in a
12 complaint. You authorize the filing.

13 **MR. DONG:** There other things in the
14 contract to allege --

15 **THE COURT:** I'm not alleging anything. I'm
16 just reading --

17 **MR. DONG:** No. I'm saying the complaint
18 allege. There is actually a bad faith and also
19 wrongdoing in the contract -- bad faith and
20 unfair dealings. Actually, there's -- there's
21 other things.

22 **THE COURT:** You know this old -- good faith
23 and fair dealing is one of the oldest maxims
24 there is from Meinhard versus Salmon. I'm very
25 aware of that. It doesn't explain each and

1 everything that's involved in this case. But
2 let's go on forward and get to the end of this
3 contract please, sir.

4 **MR. DONG:** Right.

5 **THE COURT:** I think you're just about
6 there. You just finished with access to campus
7 research laboratory --

8 **MR. DONG:** Right. Actually, that's what
9 actually --

10 **THE COURT:** And now, you're at active
11 grants at the time of resignation.

12 **MR. DONG:** Right. Actually, they -- they
13 did not actually transfer any money to me. They
14 did not do any -- transfer any -- (inaudible)
15 that I need to have is to continue the grants.
16 So they did not relinquish the -- the grants.
17 Basically, the chairman, Jim Norris, kept them
18 all. So actually (inaudible) didn't mean
19 anything to was the genetic material, was the
20 DNA, was the plasmid, was the vector not
21 transferred. It means a lot for me to offer it.
22 We don't have to understand what's the scaffold,
23 what's the hemostat. But actually to -- to
24 understand, if you take away the surgeon's
25 ability to perform surgery, he can't advance his

1 career.

2 And this the 20,000-dollar legal fee, all
3 the money I obtained from MUSC was used on the
4 graduate students. Because at the time, I was
5 obligated to pay them, even my money was taken
6 away by the chairman. I have no access to the
7 money I got from the grants, so they did not
8 relinquish the grant or financials. So
9 actually, that -- I'm not alleging they did not
10 pay me \$20,000. That was not a violation.

11 The violation is the spirit of the contract
12 to allow me to reestablish my research ability
13 at a different location. That's the spirit of
14 separation so I will continue to have full
15 employment at MUSC to function as any normal
16 faculty member would do and advance my career
17 and also I have the opportunity to obtain
18 employment from other universities and then I
19 will find -- find -- (inaudible) resign, because
20 that's a condition. It does not say out the
21 blue, "We didn't -- we don't want to do anything
22 for you. You go ahead and resign, and I will
23 pay your, whatever, 18 months." That's not what
24 the contract said.

25 The contract spirit was said a separation

1 period allow me to conduct research at different
2 location and continued to advance my career and
3 obtain federal contract. And if I especially
4 obtained federal grants, if I obtained the
5 grants, MUSC will continue my -- my employment.
6 And in the event I find another location --
7 sorry -- employment, I will resign and terminate
8 my employ -- employ -- employ -- employment at
9 MUSC, so MUSC won't no longer have any
10 obligation to finish the remainder of the -- the
11 agreement.

12 But MUSC has to -- obligated to do what
13 MUSC did, which is satisfy my requirement to
14 allow me to continue my research and -- and
15 education to advance my career. In that sense,
16 the MUSC completely breached the contract at the
17 end of the contract. And also there was also
18 through the continued negotiation leading the
19 pathway after certain time -- timelines. But
20 that's not material. None of this -- they have
21 to transfer it within 50 days. They can't
22 transfer it on the same day of the materials.
23 They have to locate it, do everything.

24 To be honest, the vice president himself
25 would not be able to transfer. Certain

1 equipment requires installation, requires
2 improvement function at the location in order to
3 generate reliable data for vaccines, for
4 therapeutics that potentially used in clinical
5 trial for patients is more complicated than what
6 -- just provide title and provide payment.

7 So there is -- there has to be the same
8 function, same access to education, to
9 performance by a regular faculty member and
10 tenured professor with multiple federal grants
11 and with a large number of graduate students
12 still under my obligation and the postdoctoral
13 fellows.

14 And my -- my conclusion is, I cannot find
15 -- I'm sorry. My conclusion is MUSC violated
16 the majority part of the contract, caused
17 extensive damage, and there is a -- truly
18 genuine issues to be determined by a jury. I
19 bring the list in just a second. (Pause.)

20 I cannot find my list. But I will say
21 there's -- basically, there is no dispute --
22 there's no dispute MUSC has violated the
23 contract, breached the contract. As they
24 admitted, they did not transfer all the genetic
25 research materials and equipment in -- in -- in

1 the agreement.

2 Also, they try to nail it down a single
3 day, especially tried to nail on certain days
4 that they signed the contract. That's not --
5 that's not the case. The equipment has to be
6 moved through a process. And also during this
7 process, MUSC engaged in negotiation -- bad
8 faith negotiation and dragged out the entire
9 contract. Because the equipment not only just
10 transferred, it has to be installed and
11 certified and become operational and accurate
12 enough to generate research data that's reliable
13 to publish. Otherwise, those would be wasted
14 data, wasted time, wasted money.

15 So it's a continuous process. Also during
16 this time, I was led into continuous negotiation
17 until the time period they said, Well, you're
18 gone. The -- the time -- the contract take
19 time.

20 So there's no dispute. As MUSC already
21 admitted, they did not transfer material. They
22 tried to say they -- they provided -- actually,
23 there's a clause -- clause to transfer -- to
24 give me the money. They did give me the money.
25 But they give me the money to duplicate the --

1 some of the vectors -- the research materials
2 and copy notebooks. But they have to give me
3 the notebooks to copy. They have to give me
4 materials to duplicate. I can't create the note
5 from the beginning. That put me back 30 years.
6 I don't have 30 years to -- to continue my
7 research.

8 So there is no question the breach --
9 there's other issues, mostly, the continued
10 employment that lasts until -- until they say,
11 well, we don't want to employ you anymore. And
12 that's our right. That's (inaudible) our right
13 to employ you. And you -- you already signed
14 the irrevocable resignation. But that's a
15 condition to find new employment at another
16 university, not a sanitation facility somewhere,
17 also not McDonald. So that I require my -- my
18 ability to conduct my research, publish
19 scientific articles and contribute to science
20 and carry on my existing funding projects. They
21 stopped all of that.

22 And also, I would like to say, my -- they
23 reached their agreement is not because of my
24 poor performance. That's -- I wanted to show my
25 performance. How was -- how I was a rising

1 star. I was leading scientist in the research
2 -- research field of gene therapy for cancer and
3 genetic disease and developing biological
4 factors to transfer therapeutic genes to
5 patients for the purpose of therapy. And the
6 extension of that and also has the ability to
7 have a number of patents, patent disclosures for
8 commercial -- commercially-viable therapeutic
9 approaches. And that has been testified by FRD,
10 which I was not able to. So they took -- so
11 genetic material including those technologies,
12 (inaudible) technologies I developed at MUSC.
13 They took them all.

14 So they breached the contract. It was not
15 for the facilities which was \$5 million at that
16 time. But what they take is all my research
17 inventions, the patents, everything generated
18 during -- during my time of faculty at the
19 University. I had the most graduate students,
20 most postdoctoral fellows, more grants, and more
21 publications than the chairman and most of the
22 faculty members at MUSC. That is why he
23 gradually took over my research facilities. And
24 in the end, complete with help of Stephen
25 Lanier, shut me off, prevent me from competing

1 with him.

2 And he was in a decline curve as the
3 research. He was conducting chemical oncology
4 at the time. So all of this will mean something
5 to expert, but to legal profession, to a laymen
6 say what -- what is that the contract violated.
7 The contract basically violated to the degree --
8 complete -- continued black in my career
9 development, my ability to do research at MUSC,
10 not because I did something wrong, because my
11 performance was excellent as rated -- evaluated
12 by the chairman himself. He had no other ways
13 to really evaluate my research.

14 And that was accommodated by Dean -- Dean
15 Reves for my contribution to the University
16 under the state mandate to developing
17 high-paying jobs, create biotech company --
18 biotech companies for the state to create jobs
19 for trained doctors, scientists, so they don't
20 have to graduate and move on to another state.
21 And I believe I did as to every bit in the best
22 interest of the University. I did my best to
23 contribute to the science, to the -- to the --
24 to the community, to the faculty member and also
25 brought my expertise and know-hows, the

1 biotechnology companies development in
2 subsequent area because I was recruited from the
3 medical university -- I'm sorry -- from the
4 University of California in San Francisco to the
5 medical university of South Carolina. I wasn't
6 somebody they picked me up off the street and
7 kicked me out the door.

8 So my career was completely destroyed by
9 his -- by his illegal activity against me as a
10 faculty member. And I will not be able to
11 provide -- again, I will -- give me some time.
12 I would like to provide response and also based
13 on the rule when I could not provide affidavit,
14 provide -- the remedies continues, allow me to
15 have discovery under Rule 56(f).

16 **THE COURT:** Yes, sir. All right.

17 **MR. DONG:** So I will plead to the Court to
18 allow me time to submit supplements.

19 (Inaudible) already submitted the motion in
20 time. And also I would plead to the Court to
21 give me some leeways in actually in dealing with
22 this timeline and deadlines for me to actually
23 do something. I have not had an opportunity --

24 **THE COURT:** I understand your position
25 about that, Dr. Dong.

1 **MR. DONG:** And I would also like to submit
2 when Your Honor is in charge of whole case,
3 Your Honor is responsible for all the events
4 that happened in this case.

5 **THE COURT:** I'm responsible for what now?

6 **MR. DONG:** All the events happened, present
7 -- the rulings, previous rulings of the other
8 judges. Actually, that's --

9 **THE COURT:** I'm responsible for all of
10 those other rulings?

11 **MR. DONG:** You have the discretion to
12 correct --

13 **THE COURT:** I was not asked to correct
14 anything in that regard, Dr. Dong. When we sat
15 right here in this courtroom in October of last
16 year and -- or in September of last year, all I
17 was asked to do was to schedule from that time
18 forward. I was not -- I had to read a whole lot
19 of stuff about this case on the backside. I --
20 I -- I got that hearing done within a very short
21 time. I was appointed on this case just to get
22 it moving with discovery.

23 There had been a whole lot of water under
24 the bridge before. And neither you nor
25 Mr. Conley asked me to get back into

1 interrogatories or anything else. My order
2 because you-all -- that's what you asked me to
3 do was to schedule depositions, and that's what
4 I did. So please don't go there with me.

5 **MR. DONG:** Your Honor, actually, I --

6 **THE COURT:** Don't go there with me,
7 Dr. Dong.

8 **MR. DONG:** I think --

9 **THE COURT:** This business of -- your whole
10 approach to this case is to attack other people
11 --

12 **MR. DONG:** No. Your Honor --

13 **THE COURT:** -- rather than to talk about
14 what you've done.

15 **MR. DONG:** I'm just --

16 **THE COURT:** I'm not going -- I'm not going
17 to (inaudible) that anymore.

18 **MR. DONG:** I'm not attacking anybody.

19 **THE COURT:** Yes, you are.

20 **MR. DONG:** I'm stating a fact. I did raise
21 the issue of the order to limit the time --
22 limit the scope of discovery and due process. I
23 -- I think I did order the transcript.

24 Your Honor said, That's done by other judge.

25 I'm not going to --

1 **THE COURT:** That's correct. That's exactly
2 what I said.

3 **MR. DONG:** Right. That's all I'm saying.

4 **THE COURT:** We have an agreement about
5 that.

6 **MR. DONG:** Yes.

7 **THE COURT:** I said I would not go where
8 other judges have gone with the length of time
9 this case has been pending. I absolutely did
10 say that.

11 **MR. DONG:** Yes. My -- my proposition is
12 when -- once Your Honor take over the case, I
13 think Your Honor is in charge of the whole case.

14 **THE COURT:** All right.

15 **MR. DONG:** Thank you.

16 **THE COURT:** All right, sir.

17 **MR. DONG:** Thank you.

18 **THE COURT:** Mr. Conley, any reply?

19 **MR. CONLEY:** Your Honor, I'm going to be --
20 I'm going to be very brief, Judge.

21 **THE COURT:** Yes, sir.

22 **MR. CONLEY:** I want to harken back to what
23 I said and I think what some of your questions
24 were directed at. Despite Dr. Dong's two hours
25 -- just short of two hours of standing up here,

1 most of what he represented to the Court does
2 not appear in the record at this point.

3 His argument today cannot stand in the
4 place of him submitting evidence and by way of
5 affidavits or otherwise under Rule 56. Him
6 standing here and making factual
7 representations, etc., today to the Court is
8 just not sufficient under Rule 56.

9 The cases Dr. Dong cited -- and again, I'm
10 sorry if I jump around. I just made my notes.
11 I'm just going to quickly go through them,
12 Judge. Dr. Dong cited several federal cases to
13 you, a Ninth Circuit case --

14 **THE COURT:** Those cases are about
15 pleadings. The first line of cases he cited say
16 that we have to be flexible about the pleadings
17 of a pro se litigant. Nobody has been anything
18 -- no request has been made of me to deal with
19 any defects in the pleadings. The pleadings
20 were drawn by an attorney, and it's -- that's
21 not the problem here.

22 **MR. CONLEY:** Correct.

23 **THE COURT:** The problem here is whether or
24 not the statute of limitations has run because
25 of when the breaches occurred. But the -- the

1 cases he cited, that original line of federal
2 cases, Erickson and the like, are about
3 pleadings.

4 **MR. CONLEY:** Correct. In the Ninth Circuit
5 case, Judge, I actually pulled it up while I was
6 sitting there, that deals with pleadings of
7 prisoner litigants.

8 **THE COURT:** That's correct.

9 **MR. CONLEY:** Dr. Dong talk -- talked about
10 a lack of honesty and fair dealing. I only want
11 to point out something that I mentioned during
12 my rendition of those obligations that MUSC had.
13 And within that agreement itself was a 45-day
14 period for Dr. Dong to revoke the agreement. In
15 other words, he had 45 days -- 45 days after
16 May 10 to revoke the agreement.

17 Just bear with me, Judge. I've got a lot
18 of notes. But I'm going to -- I'm not going to
19 touch on all of them.

20 Judge, Dr. Dong, by way of his argument
21 today, appears to me to -- this is just my
22 perception obviously. He's trying to create an
23 ambiguity of certain provisions of the contract
24 by way of his argument. It's simply our
25 position that he just cannot do that. This goes

1 back to the lack of affidavits, the lack of
2 evidence that would create the ambiguity.

3 In regard to the statute of limitations
4 issue, it appears to me, Judge, that Dr. Dong's
5 position is that his ability to do many of the
6 things he did as a professor, as a tenured
7 professor, as a researcher, were taken away
8 immediately in May 3, 2010, or immediately after
9 May 3, 2010. I even heard him in -- I even
10 heard him in response to some of your questions
11 or at least one of them, indicate that perhaps
12 some had occurred even prior to entering into
13 the agreement May 3, 2010.

14 Dr. Dong mentioned several times during his
15 argument the fact that he is not a lawyer, that
16 he is a layman, that he is representing himself.
17 I only want to mention to the Court something I
18 didn't mention during my initial presentation
19 because I don't think it was germane to the
20 contract issues in terms of whether they were
21 breached or not, but Dr. Dong made very clear at
22 his deposition, and I note this in a footnote
23 actually in my memorandum, but Dr. Dong admitted
24 before signing the agreement he did not read it.
25 According to Dr. Dong, he only scanned it

1 briefly.

2 I want to touch on the GenPhar
3 certification for a moment, Judge. You had --
4 you asked Dr. Dong about those. I talked about
5 them. The bottom line as we stand here today
6 is, there is no evidence Dr. Dong has given to
7 this Court other than his representation during
8 argument today that somehow he ever provide MUSC
9 with any certificates of occupancy, any
10 insurance policies or -- I'm trying to think of
11 the other. There's a -- there's a third
12 component of that. I don't have --

13 **THE COURT:** Governmental permit.

14 **MR. CONLEY:** Governmental permits. There's
15 no evidence in the record before the Court that
16 Dr. Dong ever provided those things to MUSC. He
17 certainly made that representation during
18 argument today, but that's not sufficient under
19 Rule 56.

20 **THE COURT:** I understood his argument to
21 really be that these were a matter of public
22 record and could be researched as public
23 knowledge and things of that nature. Your
24 argument is the contract provides that those
25 certificates should be provided to MUSC.

1 **MR. CONLEY:** Correct.

2 **THE COURT:** And that's what you say did not
3 happen.

4 **MR. CONLEY:** Exactly. And -- and the other
5 component of that, Judge, is -- is on some
6 level, it doesn't matter. And the reason it
7 doesn't matter is that part of the contract,
8 that part of the agreement, MUSC was required to
9 do that explicitly within 45 days of the signing
10 of the agreement. Taking that into account, the
11 statute of limitations as to that component of
12 the agreement, and Dr. Dong's knowing they
13 didn't do it within 45 days, would have expired
14 in June 2013, Judge, 15 months -- 16 months
15 before Dr. Dong filed his complaint.

16 Those are the main topics I wanted to
17 mention just in -- in reply, Judge. Otherwise,
18 I would just stand upon our initial presentation
19 to the Court -- unless the Court has particular
20 inquiry.

21 **THE COURT:** I do not.

22 **MR. CONLEY:** Thank you, Judge.

23 **MR. DONG:** Brief rebuttal?

24 **THE COURT:** There is no such thing as that
25 understand.

1 **MR. DONG:** I understand. But you give him
2 the opportunity --

3 **THE COURT:** Dr. Dong, there is no such
4 thing as a rebuttal to his argument. We are now
5 -- I am trying very hard to get this thing done
6 without having to take any kind of break.

7 Elizabeth, how are you feeling?

8 **THE COURT REPORTER:** I'm okay.

9 **THE COURT:** You're okay?

10 All right. It is 1:30. I will give you
11 five minutes in rebuttal. That's it.

12 **MR. DONG:** Thank you, Your Honor.

13 Actually, the counsel was saying 45 days to
14 revoke. I was -- I wasn't revoke. That does
15 not mean the contract was not -- I wasn't revoke
16 the contract -- the agreement, because I gave
17 the impression that MUSC was (inaudible) to
18 honor it. That's No. 1.

19 So No. 2, I was not able to provide the
20 document I provide to MUSC because those
21 documents was under the exclusion order.
22 Because other than direct e-mails I sent
23 (inaudible) to MUSC and everything is outside
24 the scope of the discovery.

25 Secondly, that document has to be provided

1 by MUSC. So MUSC asked for the document. I
2 failed to provide it. Those actually -- that's
3 -- that's the -- the document was provided. And
4 during the negotiation, I was leading to
5 continuous negotiate -- negotiate --
6 negotiation. As I said, it's unrealistic say --
7 someone say, well, transfer started no later
8 than 45 days. You can't transfer all the
9 equipment, can't certify, can't do everything.
10 You just can't dump in somebody's parking lot
11 and be done with it.

12 So it is a process. You start 45 days.
13 You still have to -- to -- to do the process.
14 It may take longer; it may take shorter. But
15 the process, transfer biological equipment and
16 material -- research equipment has -- has to
17 so-called -- has to be calculated to the point
18 not accurate enough. And that has to be
19 document and verified. So it's a process that
20 only scientists can understand. So it's a
21 continuous process until the -- they're clear
22 they're not going to do it, but they're going to
23 do otherwise all the things they're going to do
24 against you. That is where the contract was
25 breached.

1 And also, during the process, I could not
2 know they had no intention to honor the contract
3 because they were continually engaging in
4 discussion, continuous effort, they're going to
5 do this, do that, to -- to establish the
6 contract.

7 And also -- actually, I lost track of what
8 the counsel said.

9 You remember what the -- the other two
10 points?

11 **MR. CONLEY:** I don't remember.

12 **MR. DONG:** All right. So what they -- I
13 cannot provide the affidavit because I could not
14 do the -- the contract. I'm not attack anybody.
15 I'm just saying I -- I was incapable to answer
16 the timeline to file -- to conduct discovery
17 when they refused to give me dates talking about
18 they have to discuss with their clients. Right?
19 They have to get dates, coordinate with their
20 clients because it involved too many people. I
21 have e-mails to show that. That's not beyond my
22 control when the -- the owner says when they are
23 available. The owners to me to give deposition
24 is the date. I have to give the date, the
25 deposition on that date. But the order for MUSC

1 to give deposition is when they able and
2 available.

3 So -- and that contract, MUSC was not
4 giving me sufficient time to conduct the
5 deposition until events happened that I would
6 not be able to conduct deposition, because I
7 have more important things to do. I did file
8 show cause -- good cause motion. I was
9 expecting when the motion been filed the process
10 would be continued until the motion had been
11 ruled. So I will have time until the motion
12 denied and actually in the -- the standard is to
13 show good cause.

14 I do believe my cause is better than MUSC's
15 cause, career -- counselors take vacations. My
16 cause is essential surgeries and also, more
17 important, appeal under the order of the US
18 Court of Appeals. So I provide those documents
19 and also my causes of illness with lung
20 infection. I have provided the letter for -- to
21 -- to the Court, the referral letters to refer
22 me to a nonspecialist. So I was not -- not able
23 to conduct the deposition, not I canceled it,
24 not I recalled it, but because I was not able
25 under the circumstances. That's all I have.

1 Thank you.

2 **THE COURT:** All right.

3 Ruling of the Court is as follows: I will
4 grant a motion for summary judgment on the basis
5 that the lawsuit pursuing this matter was bought
6 on September 2, 2014, after the statute of
7 limitations had expired on the continued
8 breaches of the agreement between the parties
9 dated May 3, 2010.

10 I will direct Mr. Conley to prepare a
11 proposed order granting summary judgment of this
12 matter on the basis of the basic outline as
13 contained in MUSC's memorandum accompanying its
14 March 31 motion for summary judgment. That --
15 that proposed order should be filed with the
16 Court by June 6 -- the proposed order shall be
17 sent to me, copied to Dr. Dong, filed by June 9.
18 Dr. Dong will have until June 23, which is two
19 weeks from -- which is a week from the ninth --
20 excuse me, two weeks from the ninth to serve and
21 file his objections.

22 **MR. CONLEY:** The 23rd? Your Honor, the
23 23rd?

24 **THE COURT:** This is June 23. This matter
25 is scheduled for trial on July 24. I will keep

1 this date, in effect, because my final decision
2 and my final order would not be effective until
3 filed. And I reserve the right to change this
4 ruling if a filing from Dr. Dong persuades me
5 otherwise.

6 Dr. Dong is also, from the very beginning
7 of this matter, in the setting of the initial
8 deadlines in the scheduling order in this
9 matter, filed a notice of civil appeal of a
10 nonappealable order which was remitted to the
11 Court of Appeals about a month and a half, to
12 his -- motions, so-called motions for protective
13 order, which were really motions for scheduling,
14 changes, delays or continuances. There has not
15 been one deadline I have set that has not
16 resulted in a motion or other form of filing by
17 Dr. Dong attempting to delay the requirements
18 that I have set forth.

19 I was appointed in this very old case to
20 try to move it along in an expeditious way.
21 I've tried to do that. I'm going to continue to
22 try to do that, because that's what I've been
23 assigned to do. I think that has been done with
24 due regard for everyone's rights to be fully
25 heard, and I will continue to do that.

1 But cases must have a beginning and end.
2 This is a very old case. Things that Dr. Dong
3 had recited on the record today could very
4 easily have been developed long ago and reduced
5 to some sort of affidavit or filing, but they
6 had not been.

7 This motion for summary judgment was filed
8 in March of this year. There's been plenty of
9 time since then to do what was done today in
10 filing some sort of response. The contention
11 that somehow or another Dr. Dong is
12 disadvantaged because of his status pro se is
13 not so. He is very much (inaudible) by the
14 record in this matter.

15 I did grant Dr. Dong a stay with regard to
16 his cataract surgery, even though that surgery
17 was not scheduled until after this matter was
18 scheduled. I myself had my first cataract
19 removed two days ago and I am sitting here in
20 this hearing with the ability to participate.
21 I'm 79. Dr. Dong is about 66.

22 The constant assertion of medical issues
23 and the like, in my view, is an attempt to delay
24 these proceedings, and I'm not quite sure I
25 understand that. I don't know whether Dr. Dong

1 thinks that there is some other activity that's
2 going to take place in his other litigation that
3 will affect this litigation. But as I look at
4 the filings from the Fourth Circuit about his
5 litigation there that is related to the
6 conviction and sentencing and service of the
7 seven-year sentence in connection with his
8 federal criminal matters, I don't know exactly
9 what that Fourth Circuit filing now is about,
10 but I observe with interest that despite
11 discussion of that since early this year, he is
12 still requesting and receiving delays from
13 having to respond and deal with his obligations
14 to his other filings. I -- I -- if you've got
15 litigation you're trying to proceed with in good
16 faith, then you've got some obligation to attend
17 to your business in good faith.

18 I think I've dealt with everything that's
19 outstanding. I will say to you that I
20 considered carefully what I regard as
21 unreasonable delay by Dr. Dong in these
22 proceedings. And that's what I meant in my
23 communication of Friday, May 5, in the e-mail
24 where I discussed this hearing and reset it and
25 said I would consider whether I should take any

1 further action regarding the violation of my
2 order setting this hearing at an earlier time.
3 I will not take any further action in that
4 regard. But the deadlines that I set on a going
5 forward basis need to be observed and move this
6 case along. I think that completes what I need
7 to place upon the record.

8 Anything further, Mr. Conley?

9 **MR. CONLEY:** I have one quick question,
10 Judge, in regards to the proposed order you
11 desire that I provide you. Do I understand the
12 Court that you want that proposed order to be
13 based upon, in general, the things outlining
14 MUSC's memorandum?

15 **THE COURT:** Yes.

16 **MR. CONLEY:** And the corollary to that,
17 because I probably misheard, that -- that
18 proposed order shouldn't solely be listed --
19 solely be limited -- excuse me, to the statute
20 of limitations, it should encompass the other
21 issues?

22 **THE COURT:** That is correct.

23 **MR. CONLEY:** Thank you, Judge.

24 **THE COURT:** That is correct. That is
25 correct.

1 **MR. CONLEY:** Thank you.

2 **THE COURT:** With regard to I -- what I
3 tried to make clear is that with regard to the
4 matter of the statute of limitations issue, that
5 is in part a review of the contract provision by
6 provision. And that's what I say should be a
7 part of the order. Of course, there are
8 encompassing issues as well. Those should be
9 covered as well.

10 **MR. CONLEY:** Thank you, Judge. That's what
11 I wanted to know.

12 **THE COURT:** Okay. All right.
13 Anything further, Dr. Dong?

14 **MR. DONG:** I would just like to make a
15 comment and ask a question of MUSC counsel.

16 **THE COURT:** Come -- stand up and come to
17 the podium. Yes, sir.

18 **MR. DONG:** I would like to make a comment
19 that MUSC counsel just made. I think the
20 question was a suggestion of indication and that
21 was not in the -- Your Honor's order declaring
22 the Court --

23 **THE COURT:** Dr. Dong, don't go there. I
24 asked him to prepare a proposed order for me.
25 And all he's trying to do is get straight

1 whether it should be a broad encompassing order
2 with all the issues we've talked about, and I
3 said yes to that. I want to be sure that as
4 part of that, he tick down the provisions of the
5 contract as he did.

6 That's not my order. I will make my own
7 order. I will look at that, and I will look
8 very carefully at what you file as well. This
9 is a means of getting in front of me. I am one
10 judge with one law clerk whom I share with other
11 judges. This facilitates my ability to get this
12 order out within about a month, which is what
13 I'm trying to do now.

14 **MR. DONG:** I understand.

15 **THE COURT:** Any suggestion that Mr. Conley
16 is somehow trying to do something that's
17 improper by his question is something I will
18 reject.

19 **MR. DONG:** Yes, Your Honor. I also would
20 like to explain myself. I wasn't have any
21 intention to so-called delay due process.
22 Doesn't --

23 **THE COURT:** What that is -- that is
24 certainly not in keeping with what's happened so
25 far, Dr. Dong. I hope you live up to that --

1 **MR. DONG:** Would you, Your Honor, let me
2 finish? Because the delay -- any delay does not
3 actually to my benefit. So I -- I -- I have the
4 right to file motions. I did not have the
5 intention -- I did not have any intention to
6 violate your judge order. I was only asking
7 Your Honor to consider the timeline, the short
8 timeline to pro se litigant not as hard to
9 follow.

10 Under the circumstances, I've controlled
11 myself and I have stated the reasons of myself
12 in my motions. So I will say I was not
13 intending to violate Your Honor's rules, because
14 I followed every -- every order -- schedule
15 order, I filed a motion. But the same -- it's
16 true, every motion, every request filed by MUSC
17 was 100 percent granted by the Court.

18 **THE COURT:** Dr. Dong, let me tell you
19 something: Half the time you sent things
20 saying, "I didn't get this" or "I didn't see
21 that" or something wasn't filed or something. I
22 don't know whether somebody else was helping you
23 that develops those arguments for you or whether
24 you develop those yourself. But I'm going to
25 tell you, I send those things every time in

1 accordance with the way they're supposed to be
2 done. My law clerk, when there are orders,
3 files them also in the filing system.

4 You get -- you reply to the e-mails you
5 want to reply to. But when you don't want to
6 reply, you take the position you haven't
7 received them. That's not borne out by my
8 records about the thing, and that's what I want
9 to stop now. That's trifling with the court.

10 You may have your good faith reasons why
11 you think you want a delay. I don't really
12 understand myself why you continue to delay
13 every single deadline. And I particularly don't
14 understand why you would notice 13 depositions
15 and then not take so much as one of them. But
16 that's a --

17 **MR. DONG:** For the reason I --

18 **THE COURT:** But that's --

19 **MR. DONG:** -- the reason I filed --

20 **THE COURT:** Wait a minute. That's your
21 decision. No one's forcing down on you. That's
22 your decision as to how you want to handle this.

23 **MR. DONG:** I do not have time -- with the
24 delays by the counsel, I will not have the time
25 to take the deposition. And also I was ordered

1 to take deposition only in his office. And --

2 **THE COURT:** Yes, sir. I did not allow you
3 to take depositions in your home. I think that
4 is --

5 **MR. DONG:** It can be anywhere else. It
6 could be --

7 **THE COURT:** No, sir. That's not what you
8 proposed. You proposed --

9 **MR. DONG:** I did not propose.

10 **THE COURT:** -- to take depositions in your
11 home.

12 **MR. DONG:** That was the presentation,
13 again, by MUSC counsel, not by me. Thank you,
14 Your Honor.

15 **THE COURT:** Well, all right, sir. All
16 right.

17 Okay. Court -- court will be adjourned.

18 - END OF TRANSCRIPT -

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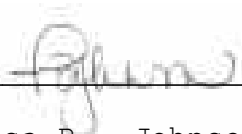
CERTIFICATE

99

I, the undersigned, Teresa B. Johnson, Official Court Reporter, do hereby certify that I transcribed the electronic recording of the remote hearing in this matter; and that the foregoing is a true transcript of said electronic recording.

I do further certify that I am not a relative, employee, attorney, or counsel of any of the parties connected with the action, nor am I financially interested in the action.

Dated: June 20, 2023



Teresa B. Johnson, CVR-M-CM, RVR, RVR-M
Official Court Reporter

1 STATE OF SOUTH CAROLINA

2 COUNTY OF CHARLESTON

COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL
CIRCUIT

3
4 JIAN-YUN (JOHN) DONG, M.D., Ph.D.

5 Plaintiff,

6 vs. CASE NO. 2016-CP-10-06683

7 THE MEDICAL UNIVERSITY OF SOUTH CAROLINA,

8 Defendant.

9
10
11
12 DEPOSITION OF: JIAN-YUN (JOHN) DONG, M.D., Ph.D.

13 DATE: October 18, 2022

14 TIME: 10:00 a.m.

15 LOCATION: 171 Church Street
16 Charleston, SC

17
18 TAKEN BY: Counsel for the Defendant

19 REPORTED BY: Roxanne Easterwood, RPR
20
21
22
23
24
25

Page 2 1 APPEARANCES OF COUNSEL: 2 3 PRO SE PLAINTIFF 4 JIAN-YUN (JOHN) DONG, M.D., Ph.D.: 5 71 Delahow Street 6 Charleston, SC 29492 7 843-991-2332 8 johny.dong@me.com 9 10 ATTORNEYS FOR DEFENDANT 11 THE MEDICAL UNIVERSITY OF SOUTH 12 CAROLINA: 13 Cleveland & Conley, LLC 14 By: Bob Conley 15 171 Church Street, Suite 310 16 Charleston, SC 29401 17 bconley@clevelandlaborlaw.com 18 843-577-9626 19 20 21 22 23 24 25 (INDEX AT REAR OF TRANSCRIPT)	Page 4 1 and, maybe more importantly, the answers you give. 2 She can only do that if you and I do a few things 3 that I'll talk to you about that are meant to help 4 to do that, okay? 5 A. All right. 6 Q. The first one is if I ask you a 7 question today that you don't understand, don't 8 hesitate to ask me to -- say, Bob, Mr. Conley, can 9 you restate that? Can you ask it again? I'm not 10 sure I understand what you were saying. Okay? 11 A. All right. 12 Q. If you will do that, I'm happy to 13 rephrase the question, break it into small parts, 14 whatever I need to do so that I don't confuse you 15 with the question, because it's not meant to 16 confuse you. That doesn't do you or I any good to 17 confuse you, all right? 18 A. All right. 19 Q. So just make sure, if you don't 20 understand something -- and I know you will 21 anyway. I just tell people, don't be bashful 22 about saying I don't understand what you're asking 23 me, and I'll try to rephrase it, okay? 24 A. Okay. 25 Q. The second one is people, when they
Page 3 1 PROCEEDINGS 2 * * * * * 3 JIAN-YUN (JOHN) DONG, M.D., Ph.D. 4 being first duly sworn, testified as follows: 5 EXAMINATION 6 BY MR. CONLEY: 7 Q. Good morning, Dr. Dong. 8 A. Good morning. 9 Q. Nice to see you today. You and I have 10 met on a number of occasions, so we're familiar 11 with each other. 12 A. Yes. 13 Q. Have you ever been deposed before? 14 Have you ever sat in a room with a lawyer and a 15 court reporter and had questions asked? 16 A. No. No. 17 Q. I'm going to go over a few things with 18 you that you need to know about about the process, 19 since you've never done it before. Most of these 20 things are really meant to help this lady at the 21 end of the table. 22 A. I understand. 23 Q. The reason is, Dr. Dong, is we want to 24 make sure, both you and I, that she is able to 25 make an accurate transcript of the questions I ask	Page 5 1 ask and answer questions, have a tendency 2 sometimes to speak over one another. Usually 3 that's because we all start to think with our 4 brains about our answer before someone is finished 5 asking the question. So what I generally tell 6 witnesses is if you can agree to let me ask my 7 entire question before you begin to speak with an 8 answer, I will, likewise, agree I'm not going to 9 ask you another question until I'm sure you're 10 done with your answer. 11 It becomes very hard for her, if you 12 and I start to talk over one another, to get an 13 accurate record. So if from time to time I might 14 ask you, Hey, wait, let me finish asking my 15 question, I'm not doing that to be rude. It just 16 means you have done what we all tend to do, and 17 that is sometimes start to give an answer before 18 somebody is finished asking a question; is that 19 fair enough? 20 A. That's fair. 21 Q. The other item is, is that -- I don't 22 have a tendency to do this. I think, if anything, 23 I probably speak too slow, not too fast. But it 24 is important that you do talk at a sort of a 25 measured pace. Again, for the convenience of the

Page 6	1 court reporter, to make sure she gets your answers 2 correctly. It's generally helpful, too, if, you 3 know, you're in a good posture. Right now she can 4 sort of see your face. That's fine. That helps 5 her make sure she's getting correct testimony on 6 the record as well. If we can do all of those 7 things, that will really help do this efficiently; 8 is that fair enough? 9 A. All right. 10 Q. If you have any questions as we go 11 along today, don't hesitate to ask them. Meaning, 12 you're a pro se party; you have never been through 13 a deposition in this posture before, so if you 14 have a question, you're free to ask me a question 15 at any point. 16 A. All right. 17 Q. Whether I can answer it or not, I'd 18 have to know what the question is, but if you do 19 have a question, just ask. The process isn't 20 designed or meant to confuse you. It's solely a 21 discovery tool so that I can get your testimony 22 about your claims in this case, all right? 23 A. All right. 24 Q. A couple other items. One, I 25 generally take a break every hour because I get	Page 8	1 ask you now -- I generally save this to the end of 2 the deposition to ask the witness, but I'll go 3 ahead and do this with you now because I think 4 it's more efficient to do it this way. 5 You, as the witness in the case, have 6 the option to do under the rules what's called 7 "reading and signing your deposition transcript." 8 A. Right. 9 Q. In its most simplistic terms, what 10 that means is after the deposition is concluded 11 today and the court reporter prepares a transcript 12 of it, you can elect to tell the court reporter "I 13 want to read and sign my transcript." If you do 14 that, what she will do is once it's prepared, she 15 will email it or mail it to you -- you can work 16 out with her how you want to get it -- and she 17 will provide you with a copy of it. At that point 18 in time you have 30 days to review it under the 19 rules, okay? 20 A. All right. 21 Q. I presume you probably want to read 22 and sign your transcript; is that right? 23 A. Yes, I do. 24 Q. So that's good. Once the transcript 25 is prepared, the court reporter will take care of
Page 7	1 tired of asking questions, and I presume the 2 witness is probably, likewise, tired of answering 3 my questions. So I try to take a ten-minute break 4 or so every hour. However, with that said, you're 5 welcome to take a break at any time. You can look 6 at me at any moment and say, You know, can I take 7 ten minutes? That's fine, we'll take ten minutes. 8 The only thing I would ask is that if I have a 9 question I have asked you, that you go ahead and 10 finish answering before we take the break. 11 Otherwise, you can take a break whenever you want, 12 all right? 13 A. All right. 14 Q. One of the things you have to agree to 15 abide by, since you're the witness that's being 16 deposed, is until the deposition is over, you're 17 not allowed to speak to anybody about your 18 testimony. Meaning, you know, if we take a break, 19 you can't call somebody on the phone and talk to 20 them about your testimony. You can't text 21 somebody about your testimony until the deposition 22 is concluded. Obviously, once it's concluded, 23 talk to whoever you want about it, okay? 24 A. I understand. 25 Q. The other thing I want to go ahead and	Page 9	1 getting that to you, and you can look at the 2 rules. The rule lays out what your obligations 3 are once you receive it, okay? 4 A. All right. 5 Q. Any questions about any of those 6 things? 7 A. No. 8 Q. Any questions before we sort of get 9 started about sort of the general methodology of 10 doing this? 11 A. No. Just remind me to silence my 12 phone. 13 Q. Yes, I have to remember to do that as 14 well. 15 Can you give me your full name for the 16 record? 17 A. It's J-i-a-n - Y-u-n. I go by John. 18 Last name, Dong, D-o-n-g. 19 Q. Can you give us your current 20 residential address? 21 A. 71 Delahow Street, D-e-l-a-h-o-w. 22 Q. I'm not looking for exact dates, 23 Dr. Dong, but approximately how long have you 24 lived at that address, generally? 25 A. 2014 or '15.

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1 Q. Do you need to finish something on
2 your phone?
3 A. I'm trying to silence it.
4 Q. So you have lived at the Delahow
5 address since 2014 or '15?
6 A. Yes.
7 Q. Just prior to your address on Delahow
8 Street, where did you reside? What was your
9 residential address?
10 A. I lived there briefly -- well,
11 actually, let me give you the 441 Lake Moultrie
12 Drive. That's Bonneau, B-o-n-n -- no, B-o-e --
13 Q. I think it's B-o-n-n-e-a-u.
14 A. Yes, exactly right, 29431.
15 Q. That is the address you were residing
16 at before you started living on Delahow Street?
17 A. Right. I also lived briefly in
18 RiverTowne. I could not remember the address.
19 Q. RiverTowne being RiverTowne Country
20 Club?
21 A. Right.
22 Q. Over in Mount Pleasant on North 17th?
23 A. Right.
24 Q. The address or the residence you lived
25 in in RiverTowne, did you live there alone, or did

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1 someone live there with you?
2 A. I lived there alone. I was divorced.
3 Q. What about the address you gave us up
4 in Bonneau, did you live there with someone, or
5 did you live there alone?
6 A. I lived there alone.
7 Q. What about the address on Delahow
8 Street, do you live there alone, or do you live
9 there with someone else?
10 A. I live with my wife, my second
11 marriage.
12 Q. Can you give us your current wife's
13 name?
14 A. It's officially P-e-n-g. Last name
15 Z-h-a-o. She goes by Allison Dong.
16 Q. I don't need exact dates, but about
17 how long have you and your current spouse been
18 married?
19 A. 2015 or '16 -- 2016.
20 Q. I think you mentioned just a minute
21 ago that this is your second marriage; is that
22 right?
23 A. Correct.
24 Q. Can you give me the name of your first
25 spouse?

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1 A. D-a-n-h-e-r. Last name W-a-n-g.
2 Q. Any other marriages, other than the
3 two you mentioned?
4 A. No.
5 Q. That reminds me of something else I
6 need to mention to you that I didn't. Sometimes
7 when you're answering questions, we have a
8 tendency to nod our head or something. The court
9 reporter, as you might imagine, can only take down
10 verbal responses.
11 A. I see.
12 Q. So try to remember to say yes or no
13 and not nod your head. And I will remind you if
14 you nod your head, is that a yes or no. I'm not
15 doing that to be rude. I just want to make sure
16 she gets your testimony correctly.
17 A. All right.
18 Q. Your first spouse, do you remember
19 what year you were divorced?
20 A. I have a problem with my memory of
21 dates.
22 Q. Just general.
23 A. I think it was -- dates and years,
24 because I suffer from memory suppression due to
25 when I grew up under the communist rule, and my

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1 parents was persecuted all their life.
2 Q. So do you remember what year you were
3 divorced?
4 A. Because it's bad events, I think. So
5 I don't know. If I remember, I think -- let me
6 guess. It's about 2012.
7 Q. Do you remember if that divorce was in
8 Charleston County?
9 A. Yes.
10 Q. Did you have a lawyer who represented
11 you in that divorce?
12 A. No.
13 Q. Do you know if your ex-spouse had a
14 lawyer?
15 A. She did.
16 Q. Do you remember who her lawyer was in
17 that divorce?
18 A. No.
19 Q. You have to say no.
20 A. No. But actually, I did have a
21 lawyer, but just for the -- not for the whole
22 process. It was -- I could not remember his name,
23 but it may come back.
24 Q. That's fine. It sounds to me like
25 your memory is you had a lawyer for part of the

Page 14	Page 16
1 divorce process, but perhaps not all of it?	1 Q. She what?
2 A. Just the -- right.	2 A. She should have been retired, too.
3 Q. And your recollection is you don't	3 Q. But do you know if she works anywhere?
4 recall your ex-spouse having a lawyer at any time	4 You can just tell me if she doesn't or if you
5 during the process?	5 don't know.
6 A. She had lawyer for the entire file.	6 A. I do not know for sure.
7 Q. She did?	7 Q. Your daughter, does she live in South
8 A. Right.	8 Carolina?
9 Q. The entire time, but you just don't	9 A. She is a surgeon in -- somewhere in
10 remember that person's name?	10 New Jersey. I don't remember the name of the
11 A. No, because I was completely removed	11 hospital or the area.
12 from the process. So basically I agreed to	12 Q. Your current wife, does she work
13 everything they asked for. Actually, I never met	13 anywhere? Is she employed?
14 her lawyer.	14 A. No. She's retired, too.
15 Q. Do you and your first wife have any	15 Q. She's retired?
16 children?	16 A. Right.
17 A. Yes, we have a daughter.	17 Q. What did she do before she retired?
18 Q. Can you give us her name?	18 A. She was a teacher in medical college
19 A. Deanna, D-e-a-n-n-a, Dong.	19 in Beijing.
20 Q. Any children by your second marriage?	20 Q. To your knowledge, has she ever held a
21 A. No.	21 job here in the local area?
22 Q. Your ex-spouse, does she still live in	22 A. No.
23 the greater Charleston area? Do you know where	23 Q. Dr. Dong, is she a U.S. citizen? Has
24 she lives?	24 she been naturalized? What is her status?
25 A. She still lives in the marriage home.	25 A. She's permanent resident based on
Page 15	Page 17
1 That's 4201 Victory Point Drive, Mount Pleasant,	1 marriage.
2 South Carolina 29466.	2 Q. Other than your current wife and your
3 Q. Is that the house in RiverTowne?	3 ex-wife, anybody else in South Carolina that
4 A. No.	4 you're related to in any way?
5 Q. No, it's not?	5 A. No.
6 A. No. It's at Patriots Point.	6 Q. No other family members?
7 Q. You describe that as the marital home.	7 A. No.
8 Is that a residence where you lived at one time?	8 Q. At all?
9 A. Yes.	9 A. No.
10 Q. The address you gave at Patriots	10 Q. Are you currently employed anywhere?
11 Point?	11 A. No. I'm retired.
12 A. Yes, during the marriage.	12 Q. When you say retired, that can mean a
13 Q. We have to be careful about talking	13 lot of different things to different people. What
14 over one another.	14 does that mean when you tell me you're retired?
15 A. Sorry, about that.	15 A. I reached the age of retirement.
16 Q. That's okay. You've given me a couple	16 Q. How old are you?
17 of addresses: the Delahow address, the Bonneau	17 A. I'm 65, going on 66.
18 address, the address in RiverTowne that you don't	18 Q. When I hear someone say they're 65 and
19 remember the exact address, and then you also gave	19 they're retired, in my mind, I'm generally
20 us a fourth address where you've resided, which is	20 thinking they're drawing Social Security. Are you
21 the Patriots Point address; is that right?	21 drawing Social Security at this point?
22 A. Right. Correct.	22 A. Yes.
23 Q. Your ex-spouse, do you know if she's	23 Q. Are you receiving any other retirement
24 employed anywhere? Do you know if she works?	24 benefits other than Social Security? Meaning, do
25 A. She should be retired, too.	25 you have any other retirement benefits that are

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1 providing you, like most retirees, with income on
2 a monthly basis?
3 A. I've been working at many universities
4 where I've been a professor and doctor my whole
5 life.
6 Q. That's what I'm trying to find out.
7 What other sources of retirement income do you
8 have? You told me Social Security. Do you
9 receive retirement income by way of your
10 employment at the Medical University of South
11 Carolina?
12 A. Yes, I do.
13 Q. So that's probably through the South
14 Carolina Public Employee Benefits --
15 A. Deferred.
16 Q. We can't talk over each other. You
17 have to let me finish.
18 A. Sorry.
19 Q. It's okay. But just wait.
20 I presume that retirement you receive
21 in respect to your work at MUSC, you receive that
22 by way of what's called the South Carolina Public
23 Employee Benefits Association. Do you receive a
24 retirement check each month?
25 A. No, I don't. Actually, I haven't

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1 activated it yet.
2 Q. So you're not receiving any retirement
3 benefits you accrued as a result of your work at
4 MUSC?
5 A. No.
6 Q. So where are you -- what other sources
7 of income do you have right now, other than your
8 Social Security that you receive each month?
9 A. I also rented out my house in Lake
10 Moultrie.
11 Q. The house, is that the house at the
12 address that you told us about earlier?
13 A. Right. That's my house.
14 Q. When you say you rent it, does that
15 mean -- rent nowadays can mean a lot of things.
16 It may mean you rent it Airbnb, or you can rent it
17 permanently to somebody.
18 A. No. I rent it permanently to someone.
19 Q. Your sources of income right now are
20 your Social Security, whatever rent you receive on
21 the house on Lake Moultrie. Any other sources of
22 income right now.
23 A. No.
24 Q. Do you receive any sources of income
25 from any other places where you've worked in the

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1 past?
2 A. I'm not clear how the system works,
3 because I believe all the work, the pensions that
4 I had at differing universities all follow me to
5 MUSC in the end. So I worked at UCSF before. I
6 worked in California. That has the best pension
7 system nationwide.
8 Q. To your knowledge, are you receiving
9 any kind of pension through -- from California
10 right now?
11 A. I think I'm not quite sure, because I
12 never take care of my financial before, and I
13 didn't follow up. I believe it was all
14 transferred, combined into MUSC.
15 Q. So sitting here this morning, the only
16 sources of income you can identify right now are
17 your rent income from your house on Lake Moultrie
18 and your Social Security income?
19 A. That's correct.
20 Q. The house on Delahow Street, is that a
21 house you own outright, or is there a mortgage on
22 it? Do you know?
23 A. Actually, that's my wife's house.
24 Q. So you don't own the house at all?
25 A. No, I don't own that house.

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1 Q. Have you ever had an ownership
2 interest in that house on Delahow Street?
3 A. No.
4 Q. Since your employment ended at MUSC,
5 have you applied for positions at any other
6 universities or colleges?
7 A. I did not actually actively look for,
8 but I did look at -- monitor employment
9 opportunities from number of universities out of
10 science journal. The reason is I have no way
11 because I have no academic -- no more academic
12 background. I do not have academic research
13 anymore, because all my material was taken away.
14 All my research material was taken away. I have
15 no equipment.
16 Unless you start from over again, from
17 my position, if you don't have facility, research
18 materials and research -- active research projects
19 going, you do -- you are not hireable, unless I
20 want to be janitor.
21 So actually, being full professor like
22 what I did at MUSC, they recruited me from UCSF, a
23 much prestigious university. That actually was
24 done great move on my side, but I could, because I
25 have active research project and a lab full of

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1 technician, post-docs, and trainees, and I have my
2 research funding. And that's -- all the equipment
3 was transferred with me. So I have means to
4 conduct academic research. When all of those was
5 taken away from me, I have no means to conduct
6 academic research, and I have no way to apply a
7 position lab work.
8 Q. So the answer would be no, since your
9 employment with MUSC ended, you could not --
10 A. I could not.
11 Q. You have to let me finish with the
12 question. I promise you I will sit here and let
13 you give your full answer before I ask another
14 question. But for the court reporter's benefit,
15 you have to let me ask my question before you give
16 an answer.
17 So the answer would be you have not
18 applied for any other academic positions since
19 your employment at MUSC ended?
20 MR. DONG: Objection.
21 Can I give my answer instead of you
22 give me the answer and let me say yes or no?
23 MR. CONLEY: You can say whatever you
24 want, Dr. Dong.
25 THE WITNESS: I could not because of

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1 reason I stated above.
2 BY MR. CONLEY:
3 Q. Because you could not, does that mean
4 you have not?
5 A. I could not. That means I could not.
6 Q. Setting aside academic positions, have
7 you applied for any positions in private industry
8 since your employment at MUSC ended?
9 A. I'm not employable for private
10 industries because I have no, so, industrial
11 background experience.
12 Q. Can you identify any jobs you have
13 applied for anywhere with any type of employer
14 since your employment with MUSC ended?
15 A. The only option for me was to find
16 academic background, as I said. As I say, because
17 of those limitations, I could not apply for
18 academic background, academic professorship. I'm
19 not applying for trainee. I'm not applying for
20 start or technician. So I could not do anything I
21 want to do.
22 If you take away a surgeon's
23 equipment, ability to perform operation, you ask
24 the surgeon have you applied for any other jobs,
25 the answer will be, obviously, no, you cannot.

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1 Q. I'm going to ask you about --
2 generally, about the eleven people you have asked
3 to depose in the case. Mark Sothmann, can you
4 tell me just generally? I'm looking for a rough
5 idea so I have some knowledge of what connection
6 Mr. or Dr. Sothmann has to your claims against
7 MUSC in the case.
8 A. Basically there's no connection. MUSC
9 limited my discovery only to Mark Sothmann, and I
10 think he was interim provost or whatever for brief
11 period of time. He was not involved before or
12 after the real events, what happening -- what
13 happened. He was not involved.
14 I never met him before. I don't
15 remember. He was not -- I did not remember -- I
16 do not remember. He might be copied on some
17 emails. I do not remember actually seeking him
18 out for the problems I had at MUSC.
19 Q. Do you remember having any meetings
20 with Mr. Sothmann or him being involved in any
21 meetings before you signed the agreement --
22 A. No.
23 Q. -- with MUSC?
24 A. No.
25 Q. Do you ever remember meeting with him

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1 after you signed the agreement in regard to
2 anything related to it?
3 A. No.
4 Q. Beth Gladden, can you give me a
5 general idea of what it is you believe she knows
6 about your claims in the case?
7 A. She should have known everything
8 because she's the business administrator for
9 Dr. James Norris, who was the chairman at the
10 time, and she basically included James Norris on
11 everything they done to me. I don't know if she's
12 honest or not, if she can tell the truth, or
13 whether she will be a material witness.
14 Q. Do you recall ever having any
15 conversations with Ms. Gladden in regard to the
16 agreement that you entered into with MUSC?
17 A. No. She wasn't at that level.
18 Q. Do you remember her ever being
19 involved in any meetings or conversations leading
20 up to you entering into that agreement with MUSC?
21 A. She was involved, deeply involved, in
22 the events taking away my research material,
23 spending my money by Dr. James Norris. And
24 actually, she was there when I was blocked from
25 entering my laboratory, and she was claiming --

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1 she was claiming there was a criminal 2 investigation because somebody stole my genetic 3 material. 4 That was the excuse at the time to 5 block me entering my lab, tell me there was an 6 auditing ongoing. So, therefore, I could not 7 enter my lab. That's the first event I find that, 8 really, Dr. Norris basically just stop from 9 hiding, basically wanted to take away my genetic 10 material, my money and equipment for his own use. 11 Q. Thank you for telling me that. Do you 12 remember Ms. Gladden ever being involved in 13 discussions about the written agreement that you 14 signed with MUSC? 15 A. No, she wasn't. 16 Q. That's all I'm asking. You don't 17 remember her being involved in that agreement? 18 A. No, I do not. But she is behind all 19 the events that's transpired to the agreement 20 which compromised between the administration and 21 me regarding to -- to prevent me from actually 22 reporting to what James Norris did. 23 What he did was he -- actually what 24 I've been accused of and charged with, because he 25 misusing contract grant fund of another person for	1 many, many of the biosafety committee auditing 2 examination and filing reports, and in the end I 3 did not violate anything. 4 Q. Was Dr. Schmidt involved, to your 5 recollection, in any way in the agreement that you 6 reached -- entered into with MUSC? 7 A. It's not agreement per se, but it was 8 the old events transpired the agreement. The 9 agreement is, retrospect, is in bad faith, just 10 try me get off MUSC. So that's why the 11 agreement -- actually, the discussion and 12 background of the agreement was way beyond the 13 agreement, which at the time I was just 14 desperately trying to get my research projects 15 going, because in my career if you stop doing 16 research, and your career will be severely 17 damaged. 18 Q. Do you recall ever having any 19 discussions with Dr. Schmidt about that written 20 agreement? 21 A. No. 22 Q. Dr. Stephen -- Stephen, with a P-h, 23 Tomlinson, he was someone else. You indicated you 24 wanted to take Dr. Tomlinson's deposition. Can 25 you tell me why it is you want to take
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1 his own use. That can trigger the auditing in all 2 of the MUSC grants, as well as disqualify MUSC 3 from applying for federal grants if that's 4 actually be proven. 5 That's why I have intention not to 6 harm MUSC, not to harm all my colleagues. So 7 that's a compromise position to reach the 8 agreement so I can get my research material and 9 lab equipment back quickly, because I have a 10 career to follow, instead of fighting with MUSC at 11 the time and also causing severe damage to MUSC. 12 Q. What about Michael G. Schmidt? He's 13 someone you indicated you wanted to take his 14 deposition. What does he know, or what is it you 15 believe he knows that has some connection to your 16 claims in this lawsuit? 17 A. Of course, he knows the actual events. 18 At least he knows some of the actual events. He 19 was vice president -- no, no -- vice chairman of 20 the department, and I believe he let James Norris 21 did what he did, but he wasn't helping me in any 22 way. But he knows a lot of details. 23 Also, he was on the biosafety 24 committee and being used against me to auditing me 25 for biosafety violations. So I was put through	1 Dr. Tomlinson's deposition, including what it is 2 you think he knows that relates to your lawsuit? 3 A. He knows -- well, he was one of the 4 collaborators of mine. He definitely knows the 5 event and also all the activities transpired to 6 the agreement. 7 Q. Do you recall ever having any 8 conversations with Dr. Tomlinson about the actual 9 written agreement you entered into with MUSC? 10 A. No. He doesn't have the -- any part 11 in the written agreement, but it was -- he have 12 significant knowledge of the events that have 13 transpired to the agreement, and also he was one 14 of my scientific collaborators when I was the 15 professor at the department, and he was actually 16 -- I was on his recruitment committee when I was 17 at the department. 18 And his career was not impacted, 19 because I do not believe Dr. Norris was interested 20 in his research. And he also very experienced. 21 He will protect his money from being abused by Dr. 22 James Norris. 23 Q. What about Christina Voelkel-Johnson, 24 Dr. Voelkel-Johnson? Can you give me some idea of 25 what it is you believe she may know that pertains

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1 to your lawsuit, Dr. Dong?
2 A. Also involved in the activities, and
3 she used to be a trainee of Dr. James Norris.
4 Actually, Dr. James Norris take my material and
5 giving to one of the person in his laboratory,
6 Christy or Christina, sorry, and she will get the
7 benefit of obtaining my material, conducting her
8 research, advance her career while -- without
9 giving me credit.
10 So she was the one in a way indirectly
11 benefitted from Dr. James Norris taking my genetic
12 material and research resources and for her to
13 advance her career, which will be under James
14 Norris. So when she had publication, James Norris
15 will be the correspondent author, who will be the
16 ultimate person in charge on the research projects
17 and obtain federal funding based on those
18 research.
19 And she was one of them took my
20 research material and my research projects for her
21 benefit as the beneficiary or recipient of
22 Dr. Norris illegally and immorally taking my
23 genetic material and lab research, as well as
24 equipment for his own use.
25 Q. Do you know of any involvement that

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1 Dr. Johnson directly had in the agreement that you
2 entered into with at MUSC?
3 A. This is not only agreement. This is
4 the event taking my genetic material and research
5 projects and research funding from me and research
6 equipment from me and block my research advantage,
7 block my career in order to advance James Norris's
8 career, funding. So that's -- actually, the
9 agreement is one small part of the equation.
10 Q. I understand that's your position.
11 I'm just asking if Dr. Johnson, to your knowledge,
12 had any involvement in the written agreement.
13 That's all I'm asking.
14 A. She does not.
15 Q. You also indicated you wanted to
16 depose Lisa Saladin. That's S-a-l-a-d-i-n. Can
17 you give me a general idea of what you believe
18 Dr. Saladin may know about your lawsuit and the
19 claims you make?
20 A. She's current provost, if I'm correct,
21 and she will have to -- I assume, because I never
22 met her before -- assume she will know the general
23 policy of MUSC.
24 The administration policy of MUSC, the
25 faculty handbooks was governed -- governed the

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1 relationship between the Medical University and
2 all of the faculty members. And she will also
3 have knowledge, direct knowledge, of how a
4 tenureship worked at MUSC.
5 Q. Have you ever met Dr. Saladin?
6 A. No, I have not.
7 Q. I don't believe she was the provost
8 when your time at MUSC ended; is that right? She
9 wasn't the provost then, was she?
10 A. No, she wasn't. She is now. The
11 provost at the time was John Raymond.
12 Q. To your knowledge, did Dr. Saladin
13 have any involvement in the written agreement you
14 reached with MUSC?
15 A. She represented MUSC, now. She
16 actually should be able to testify about the --
17 how the -- as I said, how the MUSC system works as
18 a continuous process between a faculty member and
19 MUSC.
20 Q. Do you recall ever having any
21 communications with Dr. Saladin prior to entering
22 into the --
23 A. No.
24 Q. -- agreement with MUSC?
25 A. No.

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1 Q. You have to let me finish my question,
2 Dr. Dong.
3 A. All right.
4 Q. David J Cole, current president at
5 MUSC, can you give me some idea of why you
6 identified Dr. Cole as someone who you want to
7 depose?
8 A. He was one of my close collaborator on
9 assignment of projects, and we have joined the
10 research projects. I also trained his graduate
11 student as post-doc fellows, and he intimately
12 knows my -- the value of my research and, in
13 general, how research and medical practice was
14 conducted as a professor, as a faculty member, and
15 he has certain knowledge of the importance of the
16 biomedical research materials and projects taken
17 away from me.
18 And so actually, he was one of my
19 close -- closest collaborators and one of the
20 close collaborators at MUSC, and so he will be
21 able to shed some lights on how the events
22 transpired.
23 Q. To my knowledge, Dr. Cole was not the
24 president of MUSC when your time there ended; is
25 that right?

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1 A. No. I wasn't depose him as a
2 president. I would depose him as one of my
3 colleagues, close -- had a close relationship with
4 me during my research, during my tenure at MUSC
5 and all of the research events and the importance
6 of my materials and was taken away from me by
7 Dr. James Norris.
8 Q. Dr. Jerry Reves, can you tell me why
9 he's someone that you had -- or you want to depose
10 in the case and what he may know about your
11 lawsuit?
12 A. Actually, he was the one single person
13 negotiated with me on the so-called compromised
14 position, and he made a lot of -- sorry, I
15 probably used she. He.
16 Q. It's okay.
17 A. He promised me a lot, but it was not
18 in the final agreement. And he was the one tends
19 to be, for lack of better way, the good one, good
20 person, wearing the white hat during the
21 negotiation.
22 Q. I think what you just said to me is
23 your impression was he was playing what we might
24 call "the good guy" during his negotiation with
25 you?

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1 A. Yes. Basically he was explaining to
2 me this is just provide a mechanism to hold down
3 so I can continue my research at different
4 location, one I -- if I can prove I can do good
5 research, especially get funding to MUSC -- get
6 more funding to MUSC, and MUSC will bring me back.
7 And also he promised me to continue my
8 research, as well as teaching graduate students,
9 training post-docs fellows, do all the academics
10 research as I have done before.
11 Q. You also indicated you wanted to take
12 the deposition of somebody by the name of Scott
13 "Reid or "Reids."
14 A. Scott Reids (sic).
15 Q. Can you tell me, in general, what -- I
16 don't know if it's Mr. or Dr. Reid may know about
17 your claims in the lawsuit?
18 A. He was in charge to implement the
19 material transfer. He was the business manager,
20 the counterpart of Beth Gladden, but he was in the
21 department of biochemistry and more like biology.
22 He was under Dr. Yusuf Hannun, which is my second
23 appointment.
24 But one of the piece of equipment
25 missing, not on the list, he was the go-to person

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1 to find out if that piece of equipment exists,
2 where it was located, and he was given -- on the
3 paper, he was given the authority to oversee the
4 smooth transfer my laboratory documents, my
5 genetic material, my lab equipment, and doing all
6 the administrative matters during my research,
7 so-called, off campus.
8 Q. Dr. Steven Lanier, he's also someone
9 who you indicated you wanted to take Dr. Lanier's
10 deposition. Can you, like you've been good enough
11 to do with the other witnesses, give me a general
12 idea of what you believe Dr. Lanier may know about
13 the claims in your lawsuit?
14 A. Dr. Lanier was the, ultimately,
15 responsible person, because he was close friend of
16 Dr. James Norris while he was the chairman -- no,
17 he was not the chairman. He was a faculty of
18 department of biochemistry while he was competing
19 for the chairmanship of biochemistry, which
20 eventually given to Yusuf Hannun, and he left
21 university, moved to --
22 Q. Wayne State maybe?
23 A. No. He was -- at that time he left
24 for Tulane or university somewhere Louisiana, and
25 he was recruited back when Dr. John Raymond left

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1 or somewhere about and become the executive vice
2 president for research. Maybe he had other title,
3 but he was ultimately in charge of the research
4 activities at the MUSC, and he backed up for
5 Dr. James Norris.
6 He was the one, as vice president,
7 block me from entering my laboratory. He was the
8 one actually take away from my research
9 laboratory, my office using his authority as the
10 vice president of the university, and he was the
11 one I reported to administration what Dr. Norris
12 was doing to me, as well other problems Dr. Norris
13 may have in terms of misusing grant money of other
14 people, and he was appointed to be the person in
15 charge.
16 And I'll skip that. I don't want to
17 give that. He was the one ultimately tricked me
18 into the agreement and eventually breached the
19 agreement and benefitted, actually, for MUSC, as
20 well as for James Norris, to take my research
21 projects, technologies, and research documents and
22 lab equipment.
23 Q. Dr. Dong, in the lead-up to you
24 entering into the written agreement with MUSC, did
25 you have a lawyer representing you?

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1 A. No, I did not. 2 Q. You did not? 3 A. No. I understand there was a sentence 4 slipped into the agreement before I signed it, but 5 at the time I was more anxious to -- I believed 6 Dr. -- Dean Reves or -- because I have tendency to 7 believe every -- my colleagues, because they are 8 doctors, they are all highly ethical 9 professions -- professionals, with the exception 10 of James Norris and Steven Lanier. 11 I can't remember if I also noticed Dr. 12 Rosen. 13 Q. Can you spell the last name? I'm not 14 sure I caught that. 15 A. Rosen, R-o-s-e-n. Ken Rosen. 16 Q. Dr. Rosen? 17 A. Right. He is the director of FRD, 18 Foundation For Research and Development, of MUSC. 19 Q. What is it Dr. Rosen knows about your 20 lawsuit or the claims you made? 21 A. He was involved actually, as well as 22 Dr. John Raymond, involved in setting up the 23 company, GenPhar, with New York investors, and he 24 was also involved -- played a part recruiting me 25 from UCSF to specifically help MUSC to develop	1 was involved in my complaint and also tried to 2 follow the process before he actually transferred 3 to become the president or vice president of 4 another university. 5 Q. Do you have any recollection of 6 Dr. Raymond being involved with the written 7 agreement you entered into in this -- 8 A. He was not. 9 Q. You have to let me finish. 10 Do you have any recollection of 11 Dr. Raymond being involved in the written 12 agreement that you entered with MUSC? 13 A. He was not directly involved in the 14 written agreement. Only person directly involved 15 in written agreement was Joe Goodman, was the 16 general counsel of MUSC, and Dean Reves and Steven 17 Lanier, but Steven Lanier is kind of in the shadow 18 because he knows he was -- he is the one that was 19 the dirty work. 20 Q. You mentioned the name at the hearing 21 two weeks ago of Samyon Rubinchick. Samyon is 22 S-a-m-y-o-n, and Rubinchick is 23 R-u-b-i-n-c-h-i-c-k. 24 Can you tell me what Dr. Rubinchick 25 knows or you believe he knows about the claims
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1 biotech industries for MUSC under the mandate of 2 State of South Carolina. 3 So he will know how the interplay 4 works between the company which lend me the lab 5 space and also the -- how I actually got involved 6 with the biotech company on behalf of MUSC. 7 Q. Is Rosen R-o-s-e-n? 8 A. R-o-s-e-n, or I think R-o-s-o-n. But 9 he was director FRD for a long time, and anybody 10 will know his... 11 Q. There are some other people you listed 12 in responses to our interrogatories. I want to 13 ask you about a few of these people. You listed 14 Dr. John Raymond -- 15 A. He was the provost, sorry. 16 Q. That's all right. So Dr. Raymond was 17 the provost at the time you entered into the 18 agreement -- the signed agreement? 19 A. That's where the -- because that's my 20 report to administration started that -- when John 21 was the provost, and -- but I had a good 22 collaboration relationship with Dr. Raymond. But 23 once I started the complaint, that potentially can 24 cause serious problem for MUSC, and so he -- and 25 we did not have any communications, but I think he	1 you're making? 2 A. He knows all of the actual events. He 3 was the assistant professor, work under me in my 4 laboratory. But because Dr. Norris hold the 5 bacon, in a way, to promote him any further, so he 6 was basically using Dr. Rubinchick to do his work 7 while Dr. Rubinchick was on my payroll and 8 using -- have access to all my research materials. 9 And also the words that Dr. Norris 10 once said, "I like this because I can take money 11 out of one pocket, put into the other; I got all 12 the work done." 13 Guess who was the one being taken 14 advantage of? That was me. 15 So actually, Dr. Rubinchick did all, 16 everything, including doing the auditing, transfer 17 my genetic material, and he was involved at the 18 time. 19 Q. Do you know if Dr. Rubinchick had any 20 involvement in the agreement you reached with 21 MUSC, the written agreement? 22 A. He does not have the agreement. The 23 agreement only small part of it. It's not the 24 whole thing. The agreement covers a lot, which is 25 because that's the compromise for what Dr. Norris

Page 42 1 did to me so I can start my research at a 2 different -- continue my research at a different 3 location, while the breach of the agreement 4 completely stop me from conducting my research, 5 stopped my career cold because I have no genetic 6 material, no research equipment, no personnel and 7 no documents. 8 Because research is not done by one 9 person. It's all of the lab notes and everything, 10 everything done by the people working for you. So 11 I will not enter lab notes. So without lab notes 12 I will not know what happen, and I will not know 13 how to repeat some of the experiments. So I'm the 14 scientific engineer in a way, but I do not do the 15 construction. I do not do the work. 16 Q. To go back to my question: Do you 17 know of any involvement Dr. Rubinchick had in the 18 written agreement? That's all I'm asking. 19 A. That's -- the answer is no. 20 Q. What about Dr. Brian Hole, H-o-l-e? 21 You listed him. Can you tell me who Dr. Hole is 22 and what you believe he may know about your claims 23 in this lawsuit? 24 A. He does not. He's one of the graduate 25 students sent to my lab by Dr. Norris as a	Page 44 1 into with MUSC? 2 A. No. 3 Q. You also listed a Dr. Jennifer 4 Schepps, S-c-h-e-p-p-s. 5 A. Yes. 6 Q. Do you know what she may know about 7 your lawsuit and the claims in it? 8 A. She does not know lawsuit, but she was 9 my graduate student. She will know what events 10 transpired before the agreement was signed, why 11 actually I signed the agreement, and what's the 12 agreement for. 13 Q. I'm not going to be able to pronounce 14 this last name. I'll do the best I can. Dr. 15 Woraratanadham? 16 A. Woraratanadham. 17 Q. It's spelled 18 W-o-r-a-r-a-t-a-n-a-d-h-a-r-m. Do you know who 19 I'm speaking about? 20 A. She involved with -- 21 Q. Can you tell me what you believe she 22 may know about the claims in the lawsuit, 23 Dr. Dong? 24 A. She was also one of my graduate 25 students. So she knew what I went through.
Page 43 1 condition for my promotion, and basically that -- 2 so legitimize he using my research material to 3 Dr. Hole's research project, graduation project, 4 which become Dr. Norris project. So that's the 5 setup. 6 Q. You have a Dr. Kenneth Roozen, 7 R-o-o-z-e-n. Who is that? 8 A. I think that's what I'm saying. 9 Q. That must have been the "Rosen" or 10 "Roson" we were talking about earlier? 11 A. Roozen. 12 Q. I don't know how you spell it either, 13 but we know who we're taking about. 14 Then you have Mr. Chip Hood listed in 15 your interrogatories, too. Can you tell me what 16 Mr. Hood knows about your claims in this lawsuit? 17 A. He was the director of our FRD 18 following Dr. Roozen left. He has intimate 19 knowledge of my research project and technologies, 20 and he was trying to ask me to file patent 21 disclosures so he will know the value of the 22 technologies and the importance of the technology 23 I had that was being taken by Dr. Norris. 24 Q. Do you know if Mr. Hood was involved 25 at all in the written agreement that you entered	Page 45 1 Q. You also listed a Dr. Stephanie 2 Smith-Johnson. Do you know, or can you tell me 3 what you believe she knows about your lawsuit and 4 the claims in it? 5 A. Stephanie. 6 Q. It says "Stephanie Smith-Johnson." 7 A. I think that's a misspelling. I think 8 that's Christy Johnson. 9 Q. The same person we talked about 10 earlier? 11 A. Yes. 12 Q. Very good. 13 A. Sorry. 14 Q. That's fine. Dr. Steve London is 15 someone you listed in your interrogatories. Can 16 you tell me, in general, what it is you believe 17 that Dr. London may know about the claims in your 18 lawsuit? 19 A. He was one of my colleagues. He 20 actually had a dispute with Dr. Norris on the same 21 or similar issues, and, basically, I think the 22 university covered it up and promoted him to, I 23 think, even the vice president. So put him away 24 from the department. 25 I think for the same issue that what

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1 James Norris did, could have a major impact on the 2 overall funding of MUSC, but I wasn't ready to be 3 a whistleblower. I wasn't going to do anything to 4 harm the university or harm any of my colleagues, 5 opposite from what they did to me. 6 Q. Did Dr. London, to your knowledge, 7 have any involvement with the written agreement 8 you entered into with MUSC? 9 A. No. No. 10 Q. Looks like the last person I have here 11 is a Dr. Lucile "Landon," L-u-c-i-l-e, 12 "L-a-n-d-o-n." 13 A. That's the husband, sorry. 14 Q. Can you tell me, in general, what 15 Dr. Landon may know about your lawsuit and the 16 claims in it? 17 A. Lucile, actually, is Dr. London's 18 wife, and she also -- I think she went to 19 professor. 20 Q. So this should be Lucile London, not 21 Landon? 22 A. Right. Same person. 23 Q. So that's Dr. Steve London's spouse? 24 A. Wife, right. 25 Q. Tell me what you believe she may know	1 he meant was on behalf MUSC, but now I think back, 2 that may not be true. 3 Q. Did you and Dr. Norris ever have any 4 conversations about the written agreement you 5 entered into at MUSC? 6 A. He was the target. He was the 7 transpirer(sic). That's how the -- that agreement 8 was reached. 9 Q. I understand that. My question was 10 did you ever have any conversations with 11 Dr. Norris about the written agreement? 12 A. I have all the conversations regarding 13 to the problems I had, and that was transpired to 14 the agreement. So how -- he was the -- intimately 15 involved with the agreement was about. 16 That's actually -- he probably set up 17 the -- he would be the one provide the list of 18 equipment, and there is many pieces missing from 19 the list. And also actually, he took some of the 20 equipment and my contract, but -- and over -- so 21 for center grant, and he considered that was his. 22 Yet he wasn't signing any part of it. 23 He was intimately involved, because 24 Dr. Reves doesn't know anything directly. He was 25 just the representative MUSC to do the -- also was
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1 about your lawsuit and the claims in it. 2 A. She actually work next door with me in 3 the laboratory position, and actually, she -- 4 Dr. Norris actually tried to start some dispute 5 over equipment, over sharing facilities between me 6 and Dr. Lucile London and to distract me from 7 actually reporting what he did. 8 So Dr. London will have knowledge what 9 transpired during the process, what the problem 10 had with Dr. James Norris, which he eventually 11 transpired to or lead to me to signing the 12 agreement. 13 Q. Was Dr. Norris directly involved, to 14 your knowledge, in the written agreement that you 15 entered into with MUSC? 16 A. He didn't actually -- he cannot sign 17 agreement with me because he is the target of my 18 complaint, and I think he was taken off the 19 picture, but he worked closely with Steve London 20 -- Steve Lanier. Actually, the two conspired to 21 took my material, research material, equipment, 22 everything for his own use. 23 And Dr. Steve Lanier actually came to 24 GenPhar, talk to me, wanted me to give him 25 something. I did not know what. I thought what	1 the dean of medical school. So he was the one 2 actually presented as white hats, being good 3 person, and try to calm down the situation and so 4 I can quickly continue my research instead of go 5 through the process at the time which will be -- 6 end up with serious damage to my career. 7 Because research is a competition, 8 that 100-meter dash. If you stop in the middle 9 working on the logistics, you will -- for sure 10 will be losing. 11 Q. You also listed -- the last person is 12 Joe Good. Obviously, I know Mr. Good. He was the 13 former in-house counsel at MUSC. 14 Did you have conversations with 15 Mr. Good about the written agreement before it was 16 entered into? 17 A. I do not have direct conversation, but 18 I had some emails copying him. I believe he was 19 the one drafted the agreement, and he also had a 20 close communication with James Norris. So there 21 are a lot of things sort of sneaked into the 22 agreement before I sign it, and that is -- all the 23 legal languages, that is all from Dr. Joe Good -- 24 Mr. Good. 25 Q. But you understand what I'm asking?

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1 Have you had any direct conversations with
2 Mr. Good? Did you --
3 A. I -- I did not. I did not have direct
4 conversation with him.
5 Q. Thank you.
6 A. I don't remember. I might, but I
7 don't remember.
8 MR. CONLEY: This is a good place to
9 take ten minutes and get some more coffee.
10 (A recess was taken.)
11 MR. CONLEY: Back on the record.
12 (Exhibit 1, Civil Action, Dong v. MUSC,
13 marked for identification.)
14 BY MR. CONLEY:
15 Q. Dr. Dong, I'm going to hand you what I
16 have marked as Exhibit 1 to your deposition. And
17 I'll just represent to you that is the lawsuit
18 that you filed, including the two exhibits that
19 were attached to the last. You can take a minute
20 to look at it, though, before we talk about it at
21 all.
22 A. Yes.
23 Q. Just keep it in front of you.
24 Dr. Dong, I asked you earlier if you
25 were represented by a lawyer before you signed the

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1 written agreement with MUSC, and you indicated, I
2 think, that you did not have a lawyer; is that
3 right?
4 A. Correct.
5 Q. Obviously, at the time you filed the
6 lawsuit initially in 2014, you did have a lawyer,
7 which was Mr. Holmes, directly down below us?
8 A. Yes.
9 Q. Do you remember when in that time span
10 you actually hired Mr. Holmes to represent you? I
11 mean, obviously, it was sometime before
12 September 2, 2014, when the lawsuit was filed. Do
13 you remember if it was days before the lawsuit was
14 filed, months before it was filed, that you hired
15 Allen?
16 A. It was almost a year or maybe even
17 more than a year.
18 Q. Meaning you think it might have been a
19 year or more before you filed the lawsuit that you
20 retained Mr. Holmes's law firm?
21 A. Correct.
22 Q. Nonetheless, Mr. Holmes did not
23 represent you at the time you entered into that
24 written agreement with MUSC?
25 A. That's correct.

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1 Q. Before you signed that written
2 agreement with MUSC that we'll talk about in a
3 minute, did you take it to a lawyer to review with
4 you and discuss at all?
5 A. No. I was being a good faculty
6 member. I didn't want to cause any problems for
7 MUSC, also any of my colleagues. I was going to
8 resolve the problem so I can -- I have a career to
9 take care of at the time. So I wasn't interested
10 in getting in a dispute with my employer, with the
11 university.
12 Q. After you entered into the written
13 agreement with MUSC, was Mr. Holmes the first
14 lawyer you took the agreement to?
15 A. Yes.
16 Q. In other words, other than Mr. Holmes,
17 you never took it to any other attorney to review
18 or discuss with you after you signed it?
19 A. Right. I do not -- I could not
20 remember how I ended up with Mr. Holmes. I think
21 maybe at the suggestion of Mr. Joe Good. I think
22 that the delay was -- I should probably not have
23 read it at the time (sic), and Mr. Joe Good was
24 leaving, and Holmes actually put his hat into the
25 ring for potential general counsel for MUSC. So

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1 he did not tell me at the time, but he keep
2 delaying, delaying, delaying it until he knew he
3 was out of the competition, and then he filed the
4 lawsuit for me.
5 Q. Can you turn to Exhibit 1 that's a
6 part of Defendant's Exhibit 1? Just turn back to
7 it and go to Exhibit 1.
8 A. Oh, Exhibit 1?
9 Q. Yes. You just went by it, Dr. Dong.
10 A. Oh, here?
11 Q. Yes.
12 A. I have early stage of cataracts, so I
13 have my glasses, but I have hard time to read it.
14 Q. That's fine. You take your time.
15 Defendant's Exhibit 1 contains Exhibit 1 that
16 we're looking at right now. That is a five-page
17 document that's entitled "Final Separation
18 Agreement between the Medical University of South
19 Carolina, including its College of Medicine, and
20 Dr." -- I'll just say -- "Dr. Dong, professor of
21 microbiology and immunology," correct?
22 A. Correct. That's my first appointment.
23 Q. If you look back on the fifth page of
24 that document, Dr. Dong, there is a signature line
25 with your name below it and then a signature above

Page 54 1 it. Is that your signature? 2 A. Yes. 3 Q. Do you recall if May 3rd, 2010, is the 4 date you signed it? 5 A. I can't recall, but this is -- 6 clearly, that's the date, 2010, yes. 7 Q. The rest of my questioning, to make it 8 simple for the record, I'm going to refer to this 9 five-page document as the agreement, all right? 10 A. Okay. 11 Q. So if I reference the agreement, I'm 12 talking about this five-page document, all right? 13 A. All right. 14 Q. And you can use the same label for it. 15 If you would also look at each page of 16 the five-page document, Dr. Dong. Other than the 17 last page where your signature appears, in the 18 other preceding four pages there are some initials 19 down in the bottom right-hand corner of each page. 20 Can you tell me if any of those initials on each 21 page are yours? 22 A. Yes. 23 Q. Is that your initials that appear on 24 each page? 25 A. Yes.	Page 56 1 A. I believe so, yes. 2 Q. Do you remember if anybody else was 3 there, Dr. Dong, or just the two of you? 4 A. Of course, his secretary. 5 Q. Other than his -- what I might call 6 his administrative staff, anyone else who was 7 there, other than you and Dr. Reves, that you 8 remember? 9 A. No, I don't believe there was anybody 10 else. 11 Q. Do you remember if Dr. Reves signed it 12 during the same meeting? 13 A. I could not remember. Must be 14 actually, this -- it was quite formal. 15 Q. Let me ask a follow-up to that that 16 might help. When you left Dr. Reves's office that 17 day, do you remember leaving with a fully-signed 18 copy of it just as it appears in front of you 19 today? 20 A. I could not remember. What I can 21 remember was print out two copies. I think I 22 might have an original copy. I believe I give to 23 Mr. Holmes, and then he could not find it anymore 24 and give me a scanned copy. I remember that all 25 the papers then was MUSC official paper.
Page 55 1 Q. Do you recall how this agreement was 2 given to you to sign? What I'm asking in that 3 regard, for clarity, Dr. Dong, so I don't confuse 4 you, is I'm really asking how did you physically 5 get it? Was it emailed to you? Was it given to 6 you in hard copy by somebody to sign? Do you 7 remember how you got the copy that you actually 8 signed? 9 A. I could not remember, but likely to be 10 email. 11 Q. If it was emailed, I presume you would 12 have then printed it out in order to sign it? 13 A. I could not remember I printed out or 14 Dr. Reves printed out. I think I was asked to 15 sign, so I went to Dr. Reves's office. I believe 16 I signed -- was on the -- was print out, official 17 print out by Dr. Reves. I believe there was two 18 copies on the MUSC paper, not the white paper. 19 Q. Did I understand you correctly, 20 correct me if I'm wrong, that your recollection is 21 you actually signed it in Dr. Reves's office? 22 A. I believe so, yes. I was specifically 23 went to Dr. Reves's office. 24 Q. Was Dr. Reves there when you signed 25 it?	Page 57 1 Q. Before you signed this agreement in 2 Dr. Reves's office on that day, did you read it 3 before you signed it? 4 A. I probably scanned through. I was 5 more interested looking to the equipment. I find 6 a few missing. Actually, I did talk to Scott 7 Reid, and he eventually located those equipment 8 that was not on list and still after signing. So 9 the equipment, he find them. He said he was going 10 to work on it, and never got anything back from 11 Reid -- Reid, Scott. 12 At the time my focus, everything is 13 how to -- because I was extremely anxious to get 14 my research started, and that completely block my 15 ability to do research. So I wasn't paying much 16 of interest -- attention to the formality or even 17 reading documents because I was not an order. I 18 was a faculty member, a professor, and I was more 19 interested to research, and I believe Dr. Dean 20 Reves, and I believe all my colleagues, except 21 James Norris and Steve Lanier. 22 Q. Do you remember, do you have any 23 substantive memory of any conversation you and 24 Dr. Reves had that day in his office before you 25 signed the agreement?

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1 A. Before I signed agreement I had
2 extensive discussion with Dr. Reves.
3 Q. That day in his office?
4 A. On that day I do not think so. I
5 thought he had reached agreement. I am not very
6 clear, but I remember I walked into his office and
7 he was -- and I was waiting in the room, and he
8 was -- his secretary brought two copies, identical
9 copies. I signed, I believe, and I -- based on my
10 memory, he signed, initial everything else, and he
11 said that's he's glad to get everything put behind
12 us and let's continue and he believe that I have a
13 bright career and that I continue my research.
14 Q. Anything else you remember about the
15 meeting with Dr. Reves that day?
16 A. No. I just remember he was -- I still
17 believed Dr. Reves is a good dean. Actually,
18 people say Dean Reves, Dean Reves. I think here
19 is also vice president of medical affairs.
20 Q. What I was going to ask you was --
21 this may sound weird, but was Dr. Reves mean that
22 day when you met with him? I mean --
23 A. No. No.
24 Q. -- was he congenial? Nice?
25 Professional?

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1 A. Never.
2 Q. If you look on the first page of the
3 treatment, Dr. Dong, and if you go down to the
4 fifth paragraph on the first page, and you see
5 that paragraph? You can take a minute to look at
6 it.
7 (The witness reviews the document, as
8 requested.)
9 THE WITNESS: Right. I did not read
10 this, but at the time I think it was somebody --
11 actually, I did. I was told I have a right to
12 seek legal advice. I didn't think I needed to
13 because it's just an internal matter with MUSC,
14 and I didn't pay much attention to this, but I
15 did -- also did not have any attorney.
16 BY MR. CONLEY:
17 Q. Am I correct that --
18 A. I believe this Dr. Joe Good is
19 responsible, too, for everything.
20 Q. Am I correct that within the 45 days
21 after you signed the agreement you did not take it
22 to a lawyer to have any lawyer look at it?
23 A. No.
24 Q. I haven't seen this anywhere, but is
25 it also correct that in the 45 days after you

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1 signed the agreement you didn't ask to revoke it
2 or rescind it?
3 A. No, because, actually, I was just
4 waiting for them to transfer my material, continue
5 my research.
6 Q. If you go up to the second paragraph
7 on that first page -- and you can read the whole
8 thing. I just have a couple of questions for you
9 on it.
10 (The witness reviews the document, as
11 requested.)
12 THE WITNESS: Yes, I read.
13 BY MR. CONLEY:
14 Q. A couple of questions about that
15 paragraph. Was your official title or position at
16 MUSC at the time you entered the agreement,
17 Dr. Dong, "Professor of "Microbiology and
18 Immunology"?
19 A. I'm just a professor. Actually, the
20 department is microbiology and immunology. So I
21 had the second -- actually, I could not remember
22 which one, second appointment at department of
23 medicine, and also have a more active role in
24 department of biochemistry and microbiology. I
25 was also member -- full member of Strom Thurmond

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1 Cancer -- Hollings Cancer Research in the Strom
2 Thurmond Building.
3 Q. Did you have any kind of formal
4 written grievance pending at the time that you
5 entered into this agreement? I haven't seen one,
6 so I'm asking.
7 A. No. Actually, in my emails -- we only
8 communicate through emails. But my email was
9 turned off abruptly, and also I was deleted from
10 the website. That's the whole violation of the
11 agreement for me to continue my research and
12 teaching.
13 So actually, they also shut off my
14 Homeroom, which is all the storage, equipment
15 storage. So it's internal storage. It's called
16 "Homeroom." So all my communication, everything
17 would be stored in the Homeroom. So the acting --
18 Steve Lanier ordered everything was turned off.
19 Q. I probably didn't ask the question
20 well. I'm just trying to find out did you have
21 any kind of formal written grievance pending at
22 the time that you signed the agreement?
23 A. No, I did not. If you -- actually, if
24 you -- including the complaint to the
25 administration of MUSC, yes, I do. But if you

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1 think other legal agreements, no. 2 Q. I didn't see where you had filed -- 3 had yet filed a formal grievance, for instance, 4 under the faculty handbook at that point. Had you 5 done that at that point? 6 A. What is formal? Once you send emails? 7 I communicated with the administration, yes. 8 Those considered formal. 9 Q. Nonetheless, any form of grievance 10 that you had pending at the time you signed this 11 agreement would have been in the form of your 12 email communications with -- 13 A. Right. 14 Q. -- MUSC personnel? 15 A. Right. You write to administration. 16 Those would not be included with Steve Lanier. 17 Probably would be John Raymond, and maybe include 18 Ray Greenberg at the time. 19 Q. If you go down to the last paragraph, 20 Dr. Dong, on the first page. Last paragraph on 21 the first page, Dr. Dong. I'm still on the first 22 page. I'll try to go page by page so you don't 23 have to flip back and forth. 24 A. All right. 25 Q. Did MUSC pay you your monthly	1 That actually, in a way, kept me close by. It 2 would be to the benefit of the company, because I 3 was the one providing technology, advice on behalf 4 of MUSC to the company. That would be the company 5 GenPhar. 6 Q. At the time you signed this agreement, 7 which we're in May of 2010, Dr. Dong, where was 8 GenPhar's facility here locally? 9 A. It's just in Mount Pleasant, Sea Coast 10 Parkway. 11 Q. That's where GenPhar would have 12 been -- 13 A. Physically located. 14 Q. -- physically located in May of 2010? 15 A. Yes, the research lab. 16 Q. Of 2010? 17 A. Yes. It has been all the time until 18 it was closed 2018. 19 Q. At the time you signed this agreement 20 in May 2010, Dr. Dong, what was your position with 21 GenPhar? 22 A. Official position, I was the 23 consultant on behalf of MUSC, but I was also the 24 principal investigator of the contracts based on 25 the technologies. I was consulting with
Page 63	Page 65
1 compensation all the way through March 31, 2012? 2 A. That's my salary. 3 Q. Yes. Did they pay that through 4 March 31, 2012? 5 A. Yes. 6 Q. We can go over to Page 2 now. I think 7 I'm done with Page 1 for now. 8 A. All right. 9 Q. Let's look at the first paragraph. 10 You can read it first. 11 (The witness reviews the document, as 12 requested.) 13 THE WITNESS: Yes. 14 BY MR. CONLEY: 15 Q. The last sentence, Dr. Dong, says: 16 "The university, in turn, acknowledges that 17 Dr. Dong will work predominantly offsite in the 18 Charleston area and will travel for academic and 19 commercial purposes." 20 When this says "work predominantly 21 offsite," where was that? What was your 22 understanding of where that work was to 23 predominantly occur? 24 A. I think they reached agreement 25 with the company, FRD, established with GenPhar.	1 Department of Defense. 2 Q. Did you have any other title at 3 GenPhar? President? Anything like that? 4 A. They give you empty title at the time, 5 president, because the company is run by CEO and 6 the chairman of the board. So just make me feel 7 good, but I didn't feel good or anything about it 8 because my -- if I was interested in company, I 9 would have done so in California, San Francisco, 10 which funding was plentiful, and the company get 11 full support from the state, eventually become 12 public companies, and here it was basically a 13 desert of biotech companies and funding. 14 Q. Were you on the GenPhar board in 15 May 2010? 16 A. Yes, I was board, because I was 17 assigned it. There was five members. Five board 18 members has to be investors except the -- me was 19 the exception, because I was -- would present what 20 the -- the technical directions for the companies. 21 Q. In May of 2010, you were both the 22 president -- 23 A. No, I wasn't that. Actually, I 24 probably jumped too early. I wasn't anything 25 other than consultant.

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1 Q. In May 2010? 2 A. Right. I do not know when. I could 3 not remember the time. All of the executives 4 resigned, and then I was given the -- so-called, 5 the titles. They have to actually have somebody 6 to... 7 Q. Were you on the board in May 2010 at 8 GenPhar? 9 A. I could not remember. I could not 10 remember when, but I will also say so. Mostly 11 they question me about the technologies and what 12 is the potentials and everything by the board 13 members, because they are the one actually own the 14 company and invested over \$13 million their own 15 money, not institution money, to own the company. 16 Q. In May 2010, were you an employee of 17 GenPhar? 18 A. No. I was a consultant. 19 Q. So in May of 2010, it's your 20 recollection you didn't hold any particular title 21 or position with GenPhar, you weren't employed by 22 GenPhar, and you weren't on the GenPhar board; is 23 that right? 24 A. That's my best recollection, but I was 25 also asked by the board to answer questions, and I	1 A. Yes. 2 Q. What you just told me? 3 A. Yes. 4 Q. Did you testify at either criminal 5 trial you were involved in? Did you testify at 6 those trials? 7 A. Yes. 8 Q. You testified at both of them? 9 A. No. One. 10 Q. Which one, the first one or the second 11 one? 12 A. The second one, the bench trial. 13 Q. The bench trial with Judge Norton? 14 A. Yes. 15 Q. You actually testified at that trial? 16 A. Yes, but they -- well, hopefully, this 17 is irrelevant. But I was convicted because Judge 18 Norton's law clerk was negotiating U.S. attorney's 19 position in the U.S. Attorney's Office during the 20 time while she was doing everything for Judge 21 Norton, and Judge Norton recuse himself 22 afterwards, and they transferred to another judge. 23 And the judge basically wasn't involved in the 24 trial and everything else. 25 Q. If you turn over to the third page of
Page 67	Page 69
1 did attend some of the board meetings. But mostly 2 I do not have a say-so about financials in-house, 3 other than they ask me about the technology. So I 4 basically -- I was basically -- I still a 5 scientist, not for the company -- to the company. 6 Q. Were you ever on the GenPhar board? 7 A. Later. As I said, later. I could not 8 remember when. There was a board split, and the 9 company -- I think there is a agreement 10 settlement, actually, both sides, there is -- 11 basically the investors divide into two, and both 12 sides basically make the executive resign, so 13 basically make the company to only exclusively 14 operate -- provide contract service to the 15 Department of Defense. 16 So there's no more investment money 17 coming in. So they can't be paid with DoD 18 contract funds, and also their share disagreement 19 of who was in control of the company with one of 20 the now deceased local billionaire, Jerry Zucker. 21 That's all above my involvement how 22 the company run, how the investor runs. So I 23 don't know. 24 Q. That's the full extent of your 25 involvement with GenPhar?	1 the five-page agreement, please. 2 A. Sorry? 3 Q. Turn to the third page of the 4 five-page agreement, please, Dr. Dong. So we're 5 on Page 2. I'm asking you to turn over to the 6 third page of it. The next page, Dr. Dong. 7 A. All right. 8 Q. Let's take a look at the first 9 paragraph. If you can read that first paragraph, 10 and I'll ask you some questions about it. 11 (The witness reviews the document, as 12 requested.) 13 THE WITNESS: Yeah, but that's already 14 taken away from me. 15 BY MR. CONLEY: 16 Q. The agreement says: "Dr. Dong agrees 17 to relinquish his future use of approximately 700 18 square foot of laboratory space." 19 What 700 square feet is this talking 20 about? Is that a specific place down at MUSC? 21 A. That's my -- 22 Q. Your lab? 23 A. -- lab and the -- 24 Q. Where was that? Do you remember the 25 building?

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1 A. Second floor, BHS. 2 Q. And it says: "Dr. Dong agrees to 3 relinquish his future use of approximately 4 700 square feet of laboratory space after the 5 listed equipment and materials" -- and in parens 6 it says "(inventory list is attached as Exhibit 7 A) has been transferred to his new space." 8 A. Right. 9 Q. My question is do you know what the 10 reference to new space is? Do you know what new 11 space that's referencing? 12 A. That's actually transfer the new space 13 to GenPhar. 14 Q. At that point in time that would be 15 GenPhar's facility on Sea Coast Parkway? 16 A. Yes. But it was taken away from me, 17 but the material was never transferred. So this 18 is -- this is also one of the breach. At the time 19 back then they already took away from me. 20 Q. Let's go to the second paragraph, 21 Dr. Dong. Actually, let me take that back. The 22 first paragraph references "attached Exhibit A," 23 which is an inventory list. If you turn over to 24 Exhibit A, Exhibit A is attached to the agreement 25 we're talking about.	1 did somebody else prepare it? 2 A. Somebody else prepared it. I didn't 3 do any administrative work at MUSC. I believe 4 actually at the time this, the equipment I 5 transferred with me from UCSF. So the only listed 6 equipment transferred from UCSF they put in a box 7 with my grants at MUSC. 8 They all considered equipment MUSC, 9 which is not -- no, but there was a small room for 10 them to claim that. In general, as principle, all 11 equipment follow the faculty members, because the 12 grants awarded through the institution to the 13 faculty members. 14 Q. If you go to the second paragraph on 15 Page 3 of the agreement. We just talked about the 16 first paragraph, so now I've moved down to the 17 second paragraph. So it's Page 3 of the 18 agreement, Dr. Dong, second paragraph from the 19 top. 20 (The witness reviews the document, as 21 requested.) 22 THE WITNESS: I believe I did provide a 23 list through the emails. That's all the Vector 24 Core facility, and also they wanted to keep the 25 Vector Core facility at MUSC because based on that
Page 71	Page 73
1 A. Right. 2 Q. I think, if you look on the inventory 3 list, which is four pages long, down in the bottom 4 right-hand corner it has a set of initials. Are 5 those your initials? Are one of those sets of 6 initials yours? 7 A. Right, it has my initials. 8 Q. On all four pages, right? 9 A. Right. 10 Q. Did you review this inventory list at 11 the time you signed the agreement? 12 A. I did not, but I think I just trusted 13 it was generally accurately based on the record. 14 And I was also later find out some of the 15 equipment was not included, and then I called -- 16 because Scott Reid was the person appointed to 17 administratively take charge of the transfer of 18 equipment and material. 19 So I contacted him and had a 20 conversation. I pointed out one of the -- some of 21 the material -- the equipment, where it was, and 22 he went to verify that. He said, "Those will be 23 moved to you." 24 Q. Did you prepare this list of equipment 25 that's a four-page exhibit to the agreement, or	1 will not disvalue MUSC. It turn out, actually, my 2 money, Vector Core facility, everything was used 3 James Norris. 4 BY MR. CONLEY: 5 Q. Let me ask a question about that 6 second paragraph. I have never seen it, and it 7 wasn't attached to the agreement that's attached 8 to your complaint, which is what we're looking at 9 right now, any kind of Exhibit B approved by the 10 university. 11 A. It's just what -- it disappeared, 12 actually. That's why they breach the entire 13 contract once it done. Basically giving a person 14 to direct contact was Scott Reid, and that he said 15 he was not authorized to do this and do that. So 16 basically, I run into a stonewall. 17 Q. My question is, is it your testimony 18 today that you did submit an additional list of 19 this Vector Core equipment? 20 A. Yes. 21 Q. You submitted it within ten days of 22 May 3rd, 2010? 23 A. I could not remember the date I submit 24 it, but I did submit it with the email. And 25 actually, I was asking for the Vector Core

Page 74 1 facilities, and I think at the time I was told do 2 not interrupt Vector Core facility operation. So 3 actually, I was allowed to continue Vector Core 4 operation at MUSC. I think that was the 5 communication to me, so, based on the Vector Core 6 facility was essential for the funded products, 7 which I was the director. 8 So actually, I don't know how they 9 took away my Vector Core facility and kick me out 10 of MUSC. At beginning, as it says, I will 11 continue in my function research actually using 12 the Vector Core facility as here. So this only 13 can be transferred, but not to interrupt the 14 operation and the damage to the function Vector 15 Core facility. 16 Q. I'm asking about Exhibit B. Do you 17 have an Exhibit B that you can produce to me? 18 Have you ever seen it? 19 A. Because they actually locked down 20 my -- completely locked down my emails and block 21 my Homeroom. At the time that's the only way of 22 communication I had. I don't actually write 23 physical letters. No faculty members does that at 24 the time. 25 Q. Do you have any recollection of	Page 76 1 transferred. So actually, I will occupy that part 2 on behalf MUSC. So actually, right now -- before 3 that MUSC is still charging costs into my contract 4 while not providing me nothing. 5 Q. I'm just trying to figure out what 6 GenPhar building this is referencing in the 7 contract or the agreement. 8 A. It's development. GenPhar actually 9 loan me a space. 10 Q. I'm asking if you know. Do you know 11 -- 12 A. GenPhar is not a party. 13 Q. Dr. Dong, I understand that. My 14 question is what's your understanding of what 15 GenPhar building that is referencing; the GenPhar 16 building on Sea Coast Parkway or the GenPhar 17 building that was under construction? 18 A. It could not be under construction 19 because it was not finished. 20 Q. Was it under construction? Was there 21 another GenPhar building under construction? 22 A. It's not GenPhar -- the space GenPhar 23 was operating out of. 24 Q. So GenPhar -- did GenPhar lease or own 25 the building on Sea Coast Parkway?
Page 75 1 whether you submitted this within ten days of 2 May 3rd, 2010? 3 A. I do not have recollection of exact 4 date. 5 Q. Do you have any recollection of if you 6 did submit it within ten days that the university 7 actually approved it? 8 A. The university did not respond. 9 Actually, after the signing they basically become 10 stonewalling. 11 Q. If you look down at the third 12 paragraph on that page, you can go ahead and read 13 it. I have a couple of questions for you about 14 it. 15 (The witness reviews the document, as 16 requested.) 17 THE WITNESS: Yes. 18 BY MR. CONLEY: 19 Q. The first sentence says: "In lieu of 20 rental payments for space in the GenPhar building" 21 -- in parens, it says "(once occupied)." 22 Do you know why it says "once 23 occupied"? Weren't y'all already occupying the 24 building on Sea Coast Parkway? 25 A. Once the equipment, everything been	Page 77 1 A. GenPhar leased. 2 Q. Did GenPhar have another building that 3 it was building in Mount Pleasant in May 2010? 4 A. Yes. That's how the problems started 5 with GenPhar, because they -- actually, the 6 investor put in \$13 million, including the 7 facility, and the facility cost \$5 million. 8 Q. Did you believe that your equipment 9 was supposed to be transferred to the Sea Coast 10 Parkway location, or was it supposed to be 11 transferred to the new building that was under 12 construction? 13 A. That's not material with regard to the 14 contract. 15 Q. I'm asking you what your understanding 16 was. I'm not asking whether it was material or 17 not. 18 A. My understanding, it was transferred 19 to GenPhar, the space we already used. 20 Q. Which was where at the time? 21 A. Have nothing to do where, which would 22 be at Sea Coast, where GenPhar operating. They 23 transfer me to a parking lot. 24 Q. Did you read that paragraph at the 25 time you signed this agreement?

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1 A. I did not read it very carefully in 2 any of the so-called legal jargons and all the 3 details, but I signed it based on spirit they 4 allowed me to quickly restart my research in the 5 other space in GenPhar, transfer all the materials 6 timely so I can continue my research. That's all 7 I cared about. 8 Q. How much time do you think you spent 9 reading this five-page agreement before you signed 10 it? 11 A. I can't remember, but I probably 12 scanned it through. It sounds all right in the 13 superficially. I don't want to dig in too much 14 into one specific words. In the context, I think 15 this is all consistent with what Dr. Reves 16 presented to me. 17 Q. If you look down at the fifth 18 paragraph, Dr. Dong, you can read that whole fifth 19 paragraph, and I've got a few questions to ask 20 you. 21 (The witness reviews the document, as 22 requested.) 23 THE WITNESS: Yes. 24 BY MR. CONLEY: 25 Q. If you look down at the very -- the	1 A. And the contract money. 2 Q. Correct, they also -- 3 A. They relocated nothing. 4 Q. They also didn't relocate any other 5 equipment, to the extent it would have been listed 6 in Exhibit B, right? 7 A. Which should be Vector Core facility. 8 Q. So you and I would agree that within 9 30 days of May 3rd, 2010, MUSC did not relocate 10 any equipment, as required by this agreement? 11 A. Correct. 12 Q. That's your testimony, correct? 13 A. That's correct. 14 Q. Is it, likewise, your position that 15 the agreement required MUSC to relocate all of 16 this equipment, both the equipment listed in 17 Exhibit A, and to the extent there was Vector Core 18 equipment, they were required to do that within 30 19 days of May 3rd, 2010? 20 A. That's what the agreement. 21 Q. That's what the agreement requires, 22 right? 23 A. Yes. And I was presented they will do 24 it as soon as they can, as soon as they can, and 25 also was -- Scott Reid was in charge of the
Page 79	Page 81
1 last full sentence of that paragraph, Dr. Dong, it 2 says: "Likewise, any equipment purchased through 3 extramural grants written by Dr. Dong as the sole 4 PI and which was in Dr. Dong's laboratory at the 5 time of relocation to the 700 square foot 6 laboratory space, including listed freezers and/or 7 refrigerators also located in nearby equipment 8 rooms of CSB, shall be relocated to GenPhar in 9 30 days from the effective date." 10 A. They didn't do that. 11 Q. That's what I was going to ask you. I 12 think you are already told me that. They did 13 not -- they -- I shouldn't say "they." 14 MUSC did not relocate the equipment in 15 Exhibit A within 30 days of May 3, 2010? 16 A. Correct. Also did not relocate the 17 research grants, including the Vector Core. Very 18 specific, Vector Core they were talking about it. 19 Q. We'll get to those things. I'm 20 talking about the equipment right now. 21 Your testimony is that MUSC within 22 30 days of May 3, 2010, did not relocate the 23 equipment in Exhibit A? 24 A. And B. 25 Q. Per the agreement?	1 logistics. 2 Q. I'm trying to find -- just make sure I 3 understand that -- strike that. Better way to 4 ask. 5 I think I understand you correctly 6 that one of the breaches of this agreement, just 7 one, that you claim MUSC engaged in was failing to 8 relocate this equipment within 30 days of May 3rd 9 of 2010? 10 A. One of them. 11 Q. That's what I said. I said "one." I 12 didn't say "all." I said "one." That is one of 13 the breaches, right? 14 A. Correct. As well as none of my 15 research material, documents, and funding. It was 16 a complete breach. After that was the, basically, 17 stonewalling. I could not reach anybody, and 18 nobody respond to my emails other than at the time 19 they want to send me. 20 Q. If you go up to the fourth paragraph 21 on that same page -- so we're going to go back up 22 one paragraph. It's actually just a one-sentence 23 paragraph, Dr. Dong. 24 A. One, two, three, four. 25 Q. Exactly. It's very short.

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1 (The witness reviews the document, as
2 requested.)
3 THE WITNESS: Yes. Actually, MUSC --
4 MR. CONLEY: Let me ask you --
5 Dr. Dong, part of the deposition is I'm going to
6 ask you questions, and you can give me answers.
7 It's not an opportunity for you just to go on
8 narratives. I'll ask you a question, and you can
9 then give me as lengthy of an answer as you want,
10 but --
11 THE WITNESS: Ask a question.
12 MR. CONLEY: -- there needs to be a
13 question before we just go with some narrative.
14 THE WITNESS: You ask me if I see the
15 paragraph. I'm telling you I see the paragraph,
16 what it means.
17 MR. CONLEY: I haven't asked you what
18 it means. I've just asked you to take a look at
19 --
20 THE WITNESS: Strike my answer.
21 MR. CONLEY: -- look at it, and then
22 I'll ask you some questions.
23 THE WITNESS: Please do.
24 BY MR. CONLEY:
25 Q. Did you have any grants, active

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1 grants, on May 3rd, 2010, when you signed this
2 agreement?
3 A. Yes, the Vector Core grants. And also
4 I actually start a fund as reserve. I never had
5 to need to dip into it.
6 Q. So what active grants did you have at
7 the time you signed this on May 3rd?
8 A. The Vector Core grants.
9 Q. Any others?
10 A. I could not remember, but also I had
11 my start-up fund.
12 Q. The Vector Core grants, where are
13 those grants provided by? Are those provided by
14 the federal government somehow? NIH?
15 A. Correct.
16 Q. Was there more than one Vector Core
17 grant, or was there just one? You used plural.
18 I'm just trying to find out. I don't know. Was
19 there, like, one Vector Core grant, or were there
20 multiple Vector Core grants?
21 A. I could not remember, but actually,
22 Vector Core can be used in multiple grants, but I
23 was the -- I think there was a center grant or
24 program project grants.
25 Q. Do Vector Core grants have a PI?

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1 A. I was the PI. I was the director.
2 Q. I'm no expert on grants, but my
3 presumption is on -- to your recollection, on
4 May 3rd, 2010, there was still existing funding to
5 be spent under this Vector Core grant or grants,
6 right?
7 A. Yes.
8 Q. Because you were the -- I'm just
9 trying to understand. Because you were the PI on
10 the Vector Core grants, in my mind that would
11 indicate you were also the person who applied for
12 those grants?
13 A. Yes.
14 Q. Is that right?
15 A. Correct.
16 Q. It wasn't somebody else at MUSC who
17 applied for them and they just got assigned to
18 you? You actually applied for and were awarded
19 those grants?
20 A. Correct. No one else can assign
21 someone else's grants to you, or you can't use
22 anyone else's grants.
23 Q. Was anybody else a co-PI on those
24 grants, or was it just you as the sole PI, if you
25 remember? I don't know. I'm just asking you.

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1 A. I don't remember, because I'm the
2 person.
3 Q. Turn over to the fourth page,
4 Dr. Dong. We'll skip around on this page. Not to
5 confuse you, but --
6 A. Here is --
7 Q. -- if you can go down to the bottom of
8 Page 4, the next-to-last paragraph, where it
9 starts off with: "MUSC will cover." Do you see
10 that paragraph?
11 A. Last paragraph?
12 Q. Next-to-last paragraph, Dr. Dong.
13 Excuse me. Take a look at that for me for a
14 minute.
15 (The witness reviews the document, as
16 requested.)
17 THE WITNESS: Yes.
18 BY MR. CONLEY:
19 Q. Did MUSC ever make this one-time
20 \$20,000 payment?
21 A. I could not remember.
22 Q. Then if you look up at the third
23 paragraph on the page, Dr. Dong. So if you count
24 three down.
25 A. Right.

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1 Q. Take a minute and read that paragraph.
2 I have a couple of quick questions.
3 (The witness reviews the document, as
4 requested.)
5 THE WITNESS: Yes.
6 BY MR. CONLEY:
7 Q. Do you have any recollection of
8 whether that \$30,000 payment was ever made?
9 A. I think so. Actually, but that's less
10 than my salary portion in Vector Core, which is
11 funded by NIH, not the department.
12 Q. My question is was the \$30,000 payment
13 made?
14 A. I believe so, yes.
15 Q. Just to go back to make clear, you
16 don't know, sitting here today, if the \$20,000
17 payment was made in that -- towards attorneys'
18 fees or legal fees in that paragraph down towards
19 the bottom of Page 4?
20 A. Correct, because I did not believe I
21 claimed it. I didn't have attorney involved.
22 Q. That was going to be my next question
23 about that. You had earlier told me that you
24 wouldn't have had any legal fees at this point in
25 time because you never obtained --

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1 A. That's what I'm saying.
2 Q. -- never obtained a lawyer?
3 A. That's what they write in -- written
4 in. So actually, I have no involvement. I did
5 not claim legal fees from them.
6 Q. That's because you didn't incur any
7 legal fees, right, because you didn't take it to a
8 lawyer before you signed it?
9 A. No, I didn't. Correct.
10 Q. And you didn't take it to a lawyer --
11 we've already talked about you didn't take it to a
12 lawyer for much, much later after you had signed
13 it, which would have been when you took it to
14 Mr. Holmes?
15 A. Right. Correct.
16 Q. You didn't take it to a lawyer within
17 50 days of signing this agreement, did you, to
18 review the agreement with you?
19 A. I'm sorry?
20 Q. We've already talked about that.
21 You --
22 A. I think you already asked me the
23 question.
24 Q. I mean, you indicated earlier that you
25 don't have recollection of taking it to a lawyer

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1 within 45 days of signing it.
2 Do you have any recollection of taking
3 it to a lawyer within 50 days of signing it?
4 A. No. I never took it to any lawyer or
5 anything for almost a year later or over a year
6 later.
7 Q. That would have been when you took it
8 to Mr. Holmes?
9 A. Correct. He's the first lawyer I
10 talked to.
11 Q. If you can go up to the paragraph
12 above the next paragraph, directly above that,
13 that says: "Enduring grant materials." Take a
14 minute to read that, Dr. Dong.
15 (The witness reviews the document, as
16 requested.)
17 THE WITNESS: Right.
18 BY MR. CONLEY:
19 Q. Did you ever -- have you ever -- well,
20 before you brought the lawsuit, did you ever ask
21 the office of general counsel, the legal office at
22 MUSC, if you could see or make copies of, you
23 know, lab books and things like that?
24 A. Actually, that is verbally presented
25 to me, they will provide all the document --

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1 copies of the documents. Didn't say I have to go
2 to copy myself. So that would be too cumbersome
3 for me to make copies, because, actually, it says
4 by law. Actually, there's no law suggest that
5 general counsel keep my scientific notebooks.
6 Q. My question is simply this --
7 A. No law, no regulation to allow general
8 counsel to keep my scientific notebooks, and they
9 should provide me the copy, based on my reading
10 this paragraph. So if there was a law, there was
11 regulations, yes, they can keep it. But if
12 there's no law, no regulations to allow MUSC to
13 keep my notebooks, that is especially after
14 repeated requests, did not provide my copies.
15 So without the scientific documents,
16 without notebooks, I will not be able to continue
17 my research.
18 Q. Did you ever ask MUSC if you could
19 make copies?
20 A. I asked MUSC provide me the copies.
21 Actually, they did not say I have -- they give me
22 the notebook, I made copy myself. They said copy
23 will be provided to me. I agreed, but at least
24 that allow me to continue my research.
25 And I did not think the legal office

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1 have any use of the document, and if there -- and 2 I didn't have no -- I did not believe -- I still 3 don't believe there was any law or regulations to 4 allow general office to keep my scientific 5 documents. 6 Q. Did you read that document on Page 4 7 before you signed the agreement? 8 A. I signed the agreement with 9 understanding there has to be law and regulation. 10 They have law and regulation to keep it. When 11 there is no law, no regulation, they should not 12 keep my scientific notebooks, and they should also 13 at least provide me copies of my scientific 14 notebooks. 15 Q. My question is simply this: Did you 16 read that paragraph on Page 4 of the agreement 17 before you signed the agreement? 18 A. I cannot remember whether I read the 19 agreement. It was a long time ago. But as I 20 said, I scanned through the entire document. 21 Q. What does scanned mean when you use 22 the word "scan"? 23 A. I just read superficially, not each 24 words, like what you did as a lawyer. So I 25 basically, general understanding, the spirit of	1 received will be relinquished back to the federal 2 agencies as obligated in the award agreements." 3 A. That should not be the language, 4 because -- and also, I do not believe they were 5 ever relinquished back to the funding agencies, 6 but they spent them themselves -- not themselves, 7 but James Norris. 8 Q. Did you read that paragraph before you 9 signed the document? 10 A. As I said, I only read the spirit of 11 the entire agreement. I did not split hair on any 12 phrases. Also, I do not believe they relinquish a 13 penny back to funding agencies, but spent the 14 money by James Norris. If you want to split hair, 15 those are just plain lies. 16 Q. Go up to the paragraph above that one, 17 Dr. Dong. 18 A. Above? 19 Q. Yes, the next paragraph up. It says: 20 "At the direction of." 21 A. Dr. Yusuf Hannun. 22 Q. Correct. 23 THE WITNESS: Mr. Scott Reid, that's 24 another person we were talking about, and Mr. 25 Ronald Bycroft. I don't even -- they didn't do
Page 91	Page 93
1 the agreement. So I don't want to split hairs 2 with one phrase, one terminology. You probably do 3 as a professional, but that's not my profession. 4 Q. If you look up at the next paragraph 5 above that, where it says: "The university agrees 6 to relinquish," next paragraph right above the one 7 we were just speaking about, Dr. Dong. 8 (The witness reviews the document, as 9 requested.) 10 THE WITNESS: Right. 11 BY MR. CONLEY: 12 Q. At the time you -- so I asked you 13 about grants you had at the time you signed the 14 agreement. Did you have any commercially-funded 15 research awards at the time you signed this 16 agreement, if you recall? 17 A. I believe there was some funding from 18 GenPhar to MUSC and FRD. Actually, those funding 19 I never see a penny. Those GenPhar agreed to 20 funding my research in the laboratory in exchange 21 for me being the consultant at the GenPhar. I 22 think either FRD, I believe is mostly Steve -- 23 sorry, James Norris spent all the money. 24 Q. The second sentence in that paragraph 25 says: "Actively federally-funded research awards	1 any of those. Also Yusuf Hannun was-- -- 2 MR. CONLEY: Again, Dr. Dong, I need 3 to ask you a question. This isn't an opportunity 4 for you just to sit in a deposition and tell me 5 everything you want to say. I haven't even asked 6 you a question yet. 7 THE WITNESS: You asked me if I see 8 this. I tell you what I see. 9 MR. CONLEY: I asked you to review the 10 paragraph, and then -- 11 THE WITNESS: Yes, I did. I told you 12 what my impression was. 13 MR. CONLEY: I didn't ask you your 14 impression. I haven't asked you your impression. 15 I haven't asked you a single question. 16 THE WITNESS: Ask me a question. 17 MR. CONLEY: The way the deposition 18 works, Dr. Dong -- 19 THE WITNESS: Don't give me lessons. 20 MR. CONLEY: I'm not giving you 21 lessons. There is a set of rules that apply, and 22 it requires that I ask you a question. I'll ask 23 you a question, and you can give an answer. 24 THE WITNESS: Go ahead. 25 THE REPORTER: I can only get one

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1 person at a time, please.
2 THE WITNESS: So he speak too fast.
3 BY MR. CONLEY:
4 Q. Dr. Dong, this paragraph says: "At
5 the direction of Yusuf and Mr. Scott Reid and
6 Mr. Ronald Bycroft will attempt to locate any
7 vectors or similar materials shared with other
8 investigators for repropagation by Dr. Dong, and
9 will attempt to locate written enduring hardcopy
10 records which have been lost?"
11 Did you read that sentence before you
12 signed the agreement?
13 A. As I said, you are splitting hair
14 again. I do not know other than the spirit of the
15 agreement is they're going to locate the vectors
16 and give me back for propagation.
17 Q. Does that paragraph say they're going
18 to locate or they're going to attempt to locate?
19 A. As I said, it's not my profession to
20 split the hairs. I think that means they going to
21 locate it.
22 Q. That paragraph goes on to say:
23 "This" -- meaning the attempt to locate this
24 information -- "will occur within the 45-day" --
25 "within the 45-day window above."

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1 A. They didn't do it.
2 Q. It would be one of your contentions in
3 this lawsuit that that is another -- that is one
4 of another -- of other breaches of the agreement,
5 right?
6 A. Anything in the agreement they
7 breached will be point of complaint.
8 Q. Correct. But that's one of them,
9 correct? They didn't do this within this 45-day
10 window, right?
11 A. They didn't do any of those.
12 Q. And then it says: "Any additional
13 items located after that time and search will also
14 be provided to Dr. Dong."
15 Do you know if any of those three
16 gentlemen ever located any information after the
17 45-day period ran?
18 A. I don't know if they did or didn't do.
19 Actually, I did contact Scott Reid a number of
20 times. He was the chairman, so he would be very
21 busy. I didn't think it would be proper to bother
22 him for the details. But Scott Reid is very
23 capable person, and he is also the base manager.
24 He was a good person. He used to be the business
25 manager at the department of biochemistry until

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1 they had fallout with James Norris.
2 I do not know who is Ronald Bycroft.
3 Q. If you go up to what would be,
4 Dr. Dong, the second paragraph on that page, so
5 the second paragraph from the top. It starts
6 with: "Dr. Dong." If you could read that, and
7 then I'll have some questions for you about it.
8 (The witness reviews the document, as
9 requested.)
10 THE WITNESS: Right.
11 BY MR. CONLEY:
12 Q. Have you read it, sir?
13 A. Yes.
14 Q. That paragraph says: "You will
15 transfer any research material, including genetic
16 materials, DNA constructions, viral and plasma
17 vectors, antibodies, and enzymes to Dr. Dong's new
18 research location for his continued research,
19 including the materials which were provided by
20 Dr. Dong to the Vector Core for services while
21 Dr. Dong was the director."
22 Did you do that? Did you make -- did
23 you transfer those material?
24 A. They took the material from me. They
25 locked me from the lab. Are you going to split

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1 words again? How do I transfer when they took the
2 position, lock me out of my lab? Those my
3 materials should be transferred.
4 Q. So, again, I wasn't there when any of
5 this happened, so I'm just asking you. Do I
6 understand you correctly that you couldn't
7 transfer it yourself because they locked you?
8 A. Out of my office.
9 Q. They locked it in a fashion that you
10 couldn't access it, right?
11 A. Correct. They changed the lock. They
12 never done nothing in the history of United States
13 in any universities, certainly not in the history
14 of MUSC. That's completely illegal. Actually, I
15 was funded by NIH. That's complete violation of
16 NIH rules. If I was any administrator, I was part
17 of NIH.
18 Q. As I understand what you're telling me
19 is you couldn't transfer it yourself because you
20 couldn't even access it; is that correct?
21 A. Yes.
22 Q. Did you ask for access to it?
23 A. Of course. That's the whole thing
24 I've been asking for. That's whole agreement. It
25 was in order for me to get access to my research

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1 materials to continue my career. 2 Q. What were you told when you asked for 3 access to it so you could move it? What were you 4 told? 5 A. After I signed this agreement, 6 everything will be available, everybody will 7 cooperate with me to make the transfer. Once this 8 signed, it become a stonewall. I could not 9 contact anybody. Nobody respond to me. 10 And I talk to Scott Reid. He is going 11 to ask for my permissions, and then there is no 12 response. 13 Q. If you go up to the top paragraph, 14 first paragraph, you can read it, and I'll have a 15 few questions for you about it. 16 (The witness reviews the document, as 17 requested.) 18 THE WITNESS: Correct. 19 BY MR. CONLEY: 20 Q. Again, same question: Did you read 21 that paragraph before you signed the agreement? 22 A. I as -- again, I did not -- I read in 23 the context of the agreement. I did not try to 24 split the meaning of each specific words. 25 Q. That paragraph says: "Equipment	1 those equipment as well as my equipment never been 2 transferred. 3 Q. If you can look at what is Exhibit A 4 to the agreement, which is the list of equipment. 5 A. Right. 6 Q. I have a couple of questions about the 7 middle column, Dr. Dong. I don't know if you can 8 shed some light on this or not. But the middle 9 column is titled "Funding." Do you see that? 10 A. Right. 11 Q. Then it's got various labels, as I 12 read under here. So I see one says "Startup." Do 13 you know what that references? Why it says 14 "Startup"? What does that mean, if you know? 15 A. It's the startup funds. 16 Q. I don't know what those are. Maybe 17 you can explain? 18 A. As a condition to recruit me from 19 MUSC, I think MUSC offer me -- I could be wrong -- 20 \$65,000 startup funds. That means the money for 21 me to spend. 22 Q. On equipment? 23 A. On equipment, set up lab, everything 24 else, and also the expenses of transfer my 25 equipment, laboratory, personnel, and everything
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1 relocated to GenPhar under this agreement," which 2 would, apparently, be everything listed in Exhibit 3 A or Exhibit -- 4 A. No, actually -- 5 Q. Let me finish my question. 6 A. Sure. 7 Q. -- which, apparently, would be 8 everything listed in Exhibit 1 to the agreement -- 9 or A to the agreement, excuse me, and presuming 10 there were or was an Exhibit B, would be returned 11 to MUSC at its expense at the end of your 12 appointment in March 2012, right? 13 A. That's not right. My understanding 14 is, based on otherwise permitted by existing 15 university policy or extra -- sorry, external 16 sponsor policies and approvals. 17 So actually, there is no university 18 policy or external sponsor policy, especially NIH, 19 they will not allow to take my equipment back to 20 university. However, there is a narrow gap; if 21 the Vector Core continues and function at MUSC, 22 those equipment should be returned to MUSC to 23 continue any funded research. I will not be able 24 to take them away from MUSC, which is consistent 25 with external policies, which I agreed. However,	1 for you to start a new location. 2 Q. Then there is another label under that 3 same "Funding" column. Some of them say "No 4 Tags." Do you know what that means? 5 A. It's because those are my equipment, 6 and it's already lost track where the funding come 7 from, but those are my equipment. 8 Q. Everything that says "No Tags"? 9 A. Correct. It's just that no longer 10 have track where it -- the initial funding was 11 from. 12 Q. Then there is another label under that 13 column that says "UCSF." I assume that's 14 equipment you brought from the University of 15 California, San Francisco when you moved to MUSC? 16 A. I think all of the equipment, 17 including no tag, was transferred from -- either 18 from MUSC or the university before that. 19 Q. I'm asking -- we have talked about no 20 tag. I'm asking you about the UCSF tag now. Is 21 that tag -- where it says "UCSF" under that 22 "Funding" column, Dr. Dong, does that mean that 23 that's a piece of equipment that came from UCSF 24 when you moved to MUSC? 25 A. That means, actually, that tag was not

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1 removed. So UCSF tag was still on it. 2 Q. But you brought it here with you from 3 UCSF? 4 A. All of the equipment I brought with me 5 from UCSF, because actually when they transfer to 6 you, relinquish the right to the PIs, which most 7 universities would do. They remove the tag. 8 However, one of the equipment they forgot to 9 remove or failed to remove, the tag will still be 10 on the equipment. 11 Q. The startup equipment you would not 12 have brought here with you? That's something you 13 would have gotten once you got here? 14 A. Awarded to me as a condition for me to 15 transfer. 16 Q. I get that. But I'm just asking, 17 startup equipment would be equipment that you got 18 once you got here by way of startup funds? 19 A. Yes. 20 Q. What is "Paddock"? There is a label 21 under this that says "Paddock" on some of the 22 equipment. 23 A. Actually, those are -- I bought from 24 Dr. Paddock. Dr. Paddock also let me have -- he 25 actually had his own company as a faculty of MUSC.	1 Q. Then some are labeled "Vector Core." 2 I presume that means they were -- 3 A. Vector Core equipment. 4 Q. -- that equipment -- let me finish my 5 question, Dr. Dong. 6 I presume that is equipment that was 7 purchased with Vector Core grant funds? 8 A. Correct. 9 Q. Do you have any idea why the Vector 10 Core equipment all seems to have an MUSC tag 11 number and most of the other stuff doesn't? Any 12 idea? 13 A. Because I applied Vector Core on 14 behalf of MUSC. I was at MUSC. For example, you 15 apply the grant at UCSF; in addition to my name, 16 there's also UCSF on it. 17 Q. If you go over to the second page of 18 this list, Dr. Dong, there's some on there that 19 say "GenPhar." So under that same column, the 20 "Funding" column, there are some that show 21 GenPhar. 22 A. Right. 23 Q. I don't know. So that's why I'm 24 asking. Why would some of them be labeled 25 GenPhar?
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1 So that's James Norris himself. So when he left, 2 the equipment move with him. However, he retire. 3 He has no use of it. And actually, he sold to me. 4 So that was... 5 Q. So Paddock just means that's from a 6 former professor at MUSC? 7 A. Correct. 8 Q. That you bought the equipment from 9 him? 10 A. Correct. 11 Q. I'm just trying to figure out what the 12 label is. 13 A. That's what tells you the equipment 14 follows the person. It belongs with a person. 15 Q. What about "Arrigo"? So there's some 16 on there that say -- I assume that's like Paddock. 17 It's A-r-r-i-g-o. 18 A. Where? 19 Q. If you read on down that "Funding" 20 column, you see some that say "Arrigo," 21 A-r-r-i-g-o. Is that a former MUSC professor, 22 like Paddock? 23 A. No. Arrigo is -- I think was -- I do 24 not remember. Actually, I can't remember, but I 25 don't think Arrigo was a person at MUSC.	1 A. Some of them, actually, the funding is 2 provided by GenPhar on my behalf. For example, 3 computer is most difficult equipment to adjust -- 4 to justify in the academic grant because most 5 people like to buy computers actually. So 6 instead, simplify the process, GenPhar provide the 7 money for me to buy the computer. So that's one 8 of the top-line computer at the time. 9 Q. If I see GenPhar, that, to me, as a 10 layperson, not knowing how grants work, that would 11 indicate to me that that piece of equipment was 12 purchased by way of monies given to MUSC by 13 GenPhar -- 14 A. Under my name, correct. 15 Q. -- correct? 16 A. Yes. 17 Q. On that same page, if you go down 18 about the middle of the page, Dr. Dong, there's 19 some that have a very weird tag that say "TOR 20 Core=3," and then "DongNIH=4." 21 Do you know -- I'm on the second page. 22 A. Those are -- that's what I'm saying, 23 Vector Core is for several grants. So actually, 24 this is internal designation which grants coming 25 from. Regardless, those my money, my funding

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1 bought under my name. 2 Actually, so there is meaningless for 3 you or any layman. It's -- the equipment is mine, 4 bought under my name, but originally there may be 5 designation to trace which grant that money coming 6 from. So you are not supposed to mix the grants 7 by spending grants on different research projects. 8 That's just a designation at that time. 9 For the purpose of this contract, it 10 is meaningless. But at that time, yes, there is 11 meaning for which grants that equipment came from, 12 so that equipment will be charged to that grant 13 and serve the purpose for that grant specifically, 14 predominantly. 15 Vector Core is generally used on 16 facilities, or can be served for multiple grants. 17 MR. CONLEY: Let's take about 18 45 minutes for lunch, and then we'll come back. 19 This is a good point to take a break. 20 (A lunch recess was taken.) 21 MR. CONLEY: Back on the record. 22 BY MR. CONLEY: 23 Q. Do you still have the exhibit in front 24 of you, Dr. Dong? 25 A. Yes, I do.	1 and also blocked my email, Homeroom. So I 2 completely blocked from my function as a 3 professor. That's part of the breach. 4 Q. The next paragraph down is a 5 one-sentence paragraph that says: "During this 6 period, Dr. Dong may use the title, quote, 7 'Director of Biotherapeutics and Vaccine 8 Development,'" end quote. 9 After you entered into this agreement 10 with MUSC did you use that title any longer? 11 A. I don't remember, but that's the part 12 of the agreement. Because as a condition, 13 actually have to expand my research area, and, in 14 a way, actually for the benefit of MUSC, so I can 15 differentiate my research area from those being 16 taken away from me by James Norris. 17 Q. Sitting here today, do you ever recall 18 using that title after you entered into the 19 agreement? 20 A. I can't remember, but I did get, in 21 fact, research grant in the amount of \$4.5 million 22 by MUSC and was denied by Steven Lanier, which 23 actually one of the conditions, at least presented 24 to me, if I get more grants, I would be back for 25 MUSC.
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1 Q. Great. We're going to go back to 2 Exhibit 1, which is the agreement itself, not the 3 list of property, Dr. Dong. I'll skip through 4 here and ask you a few questions that I jumped 5 over initially. 6 So if you can first go to Page 2 of 7 the agreement, the second paragraph on that page 8 says: "Dr. Dong agrees to carry his customary 9 share of teaching, lecturing, and instructional 10 responsibilities as assigned and communicated to 11 him in writing by the chairman of each 12 department." 13 My question is after you entered into 14 this agreement with MUSC, did you do any more 15 teaching, lecturing, or what you and I might call 16 instruction down at MUSC? 17 A. I was blocked. Actually, that was 18 part of the violation of the agreement, because I 19 was presented I could continue my research, 20 teaching, because my whole career was being a 21 professor, and then I was deleted from the 22 department website, and I was given no access to 23 any graduate students or candidates. 24 I blocked from attending any of the 25 faculty meetings and any function, for example,	1 Q. If you look down at the fifth 2 paragraph, it starts with: "Dr. Dong agrees and 3 commits." 4 It says: "Dr. Dong agrees and commits 5 to submitting an irrevocable letter of resignation 6 no later than March 31, 2021." 7 You and I would agree that letter -- 8 such a letter was never submitted by you, right? 9 A. No, because I could not apply for any 10 job. I had been professor, and entire ability of 11 my scientific career had been abruptly stopped. 12 Q. Go over to the next page, Page 3. The 13 next page, Dr. Dong, Page 3. I think you're still 14 on Page 2, sir. Page 3, fourth paragraph down. I 15 asked you about this earlier, but I'll circle back 16 to it. It's a one-sentence paragraph. 17 It says: "The university will 18 continue to provide the customary physical support 19 and oversight for research awards received through 20 MUSC in the division of basic science?" 21 A. They never did. 22 Q. My question is you just mentioned some 23 type of one -- excuse me, \$4.5 million grant you 24 received. Is that something that MUSC agreed to 25 provide physical support and oversight for, or did

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1 they say they would not do that?

2 A. They agreed to support and provide.

3 And actually, it was one of the conditions

4 presented to me: If I get more grant for MUSC,

5 they will definitely support.

6 Q. My question is the \$4.5 million grant

7 you mentioned, was that an NIH grant?

8 A. Yes.

9 Q. Were you actually awarded the grant?

10 A. Yes.

11 Q. Do you remember what year and month it

12 was, Dr. Dong?

13 A. I could not. That's why, actually, I

14 wanted the more material, discovery material.

15 None of this I could give you the exact date.

16 Q. I presume it was after you entered

17 into the agreement, you were awarded this NIH

18 grant, correct?

19 A. Yes. As a part of the agreement, they

20 will provide -- basically, not only accept the

21 grants, but they provide administrative management

22 of grants. That's part of the essential

23 components for anybody, professor, to receive NIH

24 grants.

25 Q. Go to the bottom paragraph on the same

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1 page, Dr. Dong. It says: "Dr. Dong's access to

2 campus facilities and their use shall not be

3 limited during his remaining years of employment."

4 I think you've already told me earlier

5 they did limit your access to campus facilities

6 and such, right?

7 A. They didn't give me any access.

8 Q. Just so I know the timeline, when you

9 say they didn't give you any access, did they cut

10 your access off immediately upon you signing this

11 agreement, or was it sometime after --

12 A. They -- they --

13 Q. Let me finish. You will get to

14 answer.

15 -- or was it sometime after -- weeks

16 or months after you signed the agreement that they

17 cut off all your access to facilities and email?

18 A. They cut off my -- all my access to my

19 research laboratory, to my office, to my material,

20 to my personnel basically by locking me out and

21 changing the locks. Never done to any faculty

22 member at MUSC, not -- there was a precedence at

23 any university, especially funded by -- faculty

24 member is funded by NIH.

25 They are obligated to support me, to

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1 support my research. As part of my agreement, I

2 was receiving NIH grants. Actually, that's not

3 only violation of all faculty rules; they also

4 violate the regulations with NIH, the admission.

5 If I was mean-spirited, I would file

6 report with NIH, and all of their grants will be

7 under review and would be freezed. So actually, I

8 was never intending to harm MUSC in any way. I

9 was only interested to continue my research.

10 Q. My question was when did they cut off

11 your access? You said they cut it off. I'm just

12 trying to figure out when, Dr. Dong. Was it

13 immediately upon you signing the agreement, or was

14 it weeks or months after that they cut off your

15 access to your lab and to email? I'm trying to

16 figure out when it occurred, not why or how, but

17 when.

18 A. That was before we sign agreement.

19 That's why, actually, I reached the agreement, try

20 to reinitiate my research.

21 Q. Maybe this will help me. Before you

22 signed the agreement, had you already been -- I'll

23 use the word "locked out" --

24 A. Yes.

25 Q. Dr. Dong, you've got -- for the court

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1 reporter's benefit, you have to let me finish my

2 questions. You're going to know when I finish my

3 questions.

4 A. Go ahead.

5 Q. Let me finish. I'll let you give

6 whatever answer you want to give. But you have to

7 let me -- it's becoming very difficult for the

8 court reporter. I'm not going to interrupt you.

9 Just don't interrupt me.

10 Was it before you signed the agreement

11 that they -- I'll use the word "locked" you out of

12 your lab?

13 A. Yes.

14 Q. Before May 3rd, 2010, you had already

15 been locked out of your laboratory?

16 A. Correct.

17 Q. After you signed the agreement, they

18 never gave you renewed access to your laboratory?

19 A. Correct.

20 Q. It continued? In other words, the

21 lack of access continued?

22 A. Right. Part of the agreement is to

23 give me back my research ability, give me access

24 to my equipment, personnel, funding, but they

25 actually continued the lockout. Once the signed

Page 114 1 agreement, that they -- they thought they were 2 done, actually they asked me to chasing -- 3 whatever, chasing tails, and I go around, talk to 4 everybody supposedly being charged, and they will 5 say I will report. I will do -- I'll find out 6 what I need to do next. 7 So they were basically stonewalling 8 me. They did not give me any access to my 9 research laboratory, and I was -- happen before, 10 actually. 11 Q. After you signed the agreement, were 12 you ever given access to your office again? 13 A. No. 14 Q. Was your access to your office cut off 15 before you signed the agreement? 16 A. Yes. The agreement, it was to 17 re-allow me to enter my office and my research 18 material. They never did. 19 Q. I wasn't there when all of this 20 happened, so I'm trying to educate myself here a 21 little bit by way of this. 22 What I hear you telling me is after 23 you signed this agreement on May 3rd, 2010, MUSC 24 never allowed you access again ever to your office 25 or your lab space?	Page 116 1 also protocols and everything was stored. 2 Q. What I hear you saying is you're 3 unsure whether your email was cut off before you 4 entered the agreement or sometime after; is that 5 right? 6 A. That's correct. 7 Q. You're unsure? 8 A. The actual only the email part of it, 9 but the most of the information, my laboratory, 10 technical information, everything else stored in 11 Homeroom, but I was stopped. 12 Q. When was your Homeroom access cut off, 13 before or after you entered into the agreement? 14 A. I could not remember, but everything 15 was cut off without a notice. I suddenly realize 16 I don't have anything. Although, I could make a 17 copy, but I don't know technically how to do that 18 at the time. It was all -- I got a so-called IT 19 support from MUSC, but at least they cut off my -- 20 all my access to MUSC's system. 21 Q. When your access to your lab and 22 office were cut off to you, did that also cut you 23 off from your logbooks and things of that nature? 24 A. Yes, everything. 25 Q. Meaning all of your materials,
Page 115 1 A. That's correct. 2 Q. Did they ever allow you -- that's a 3 bad way to ask. 4 By way of not allowing you access to 5 your lab space and your office again, did that 6 same prohibition on access cut you off from access 7 to your -- to other material that might have been 8 yours, equipment, that sort of thing? 9 A. That's everything I have. That was in 10 my laboratory and in my office and also my core 11 facilities, my collaborations, my teaching 12 ability, my research ability, and also my 13 communications. 14 I lost contact with all my colleagues 15 throughout the university. I don't remember the 16 email address, and I can't contact anybody once 17 they turn off my email system. 18 Q. Let's talk about your email for a 19 minute. Was your email access cut off before or 20 after you signed the agreement? 21 A. I could not remember clearly, but I 22 think there was a period of time during this I'm 23 supposedly working at MUSC, but actually at the 24 time they already cut off my Homeroom. Because 25 that's where a lot of my research documents and	Page 117 1 documents, paperwork, that would have all been in 2 your lab and office; is that right? 3 A. As well, in the Homeroom. 4 Q. I understand. 5 A. Correct. It was all stored. 6 Q. After you signed the agreement, just 7 for clarification, no one ever allowed you to go 8 back into your office or lab space after that? 9 A. Correct. 10 Q. This is just by way of a question from 11 me. Do you even know whether MUSC still has your 12 lab books and that kind of documentation that was 13 in your office when you were locked out? Do you 14 even know if they still have it? 15 A. That would be a requirement for 16 documents to produce. 17 Q. I'm not asking you about requirements. 18 I'm asking whether you know if they do or don't 19 still have them. It may be you just don't know. 20 A. I don't know. I have no access to it. 21 How do I know what they did to it? I know they 22 continued to publish using the material I have. 23 That's all my technology. They continue using it 24 in periodicals and publications, continue using 25 them to apply for grants. Those are my material.

Page 118 1 My research projects. 2 Q. Dr. Dong, if you look at your -- just, 3 if you turn back to the first page of that 4 document, and I'll direct you where to go. First 5 page of the whole document, I'm sorry. Dr. Dong, 6 just flip the whole thing over back to the first 7 page. 8 Now go to the second page of your 9 complaint, Dr. Dong. No, that's not the 10 complaint. That's just the cover. Keep going. 11 That's the first page of it. Now go to the second 12 page. Go down to that Subparagraph F, and read 13 that for me. And then I have a couple of 14 questions for you. 15 (The witness reviews the document, as 16 requested.) 17 THE WITNESS: Yes. 18 BY MR. CONLEY: 19 Q. So that paragraph appears to have a 20 claim that's unrelated to the written agreement 21 we've been talking about. If that's the case, can 22 you explain the allegation in Paragraph F to me? 23 I'm not sure I really understand it. 24 A. I think this was suggested by the 25 attorney.	Page 120 1 company, he has -- need a majority of shares. 2 Whatever the agreement he made between 3 him and MUSC, MUSC transferred all MUSC shares to 4 the German investor, and that will be including 5 1/3 of my share awarding to FRD and MUSC, because 6 based on the faculty agreement, when there is a 7 contract -- commercial contract signed with a 8 commercial company, there is a formula to divide 9 the income. 10 So not actually only they give the 11 entire MUSC portion to the German national, but 12 also including my 1/3 of the share obtained from 13 MUSC in order for the German to majority control, 14 and then complete disrupt the -- so he can better 15 fight the other investors and seeking control of 16 the company. 17 And it turn out even with the MUSC 18 shares he didn't have the majority. So that's -- 19 and then actually once he had control, not only I 20 was kicked out from MUSC, I was also kicked out 21 from GenPhar. So I have no place to go. I had no 22 place to go. 23 Q. This transfer of shares you're 24 discussing, did that occur before or after you 25 signed this agreement with MUSC?
Page 119 1 Q. Wait just a minute. Don't tell me 2 anything that your lawyers have ever said to you. 3 Anything your lawyers have talked to you about or 4 said to you, that's privileged information. I 5 don't want to know about it. I don't want you to 6 tell me. 7 A. I appreciate it. There was a time 8 actually MUSC actually actively interfered. Not 9 only block my position, but actually interfered my 10 position at GenPhar to allow me continuing my 11 research actually at the time, because there was 12 agreement. I was a consultant. Although, I 13 didn't have my research equipment and everything 14 else. 15 So actually, the MUSC FRD obtained 16 some shares -- actually, it's options from 17 GenPhar. By agreement, I will have 1/3 of those 18 shares, and the 2/3 I think goes to FRD and goes 19 to the department, the value. 20 And then actually, for whatever the 21 agreement, a German national, he was later 22 investor, he actually purchase some shares, and he 23 got participate a few other investors saying he 24 was going to invest more, but -- and then he 25 was -- in order for him to get control of the	Page 121 1 A. After I signed the agreement. 2 Q. After you signed the agreement? 3 A. Yes. But MUSC still hold their shares 4 through my so-called helping FRD to start the 5 company, provide technologies and consulting to 6 the company, and for that FRD actually got 7 significant amount of shares. 8 Q. So, in other words, generally, what I 9 hear you saying is after you entered into this 10 agreement you and I have been talking about today, 11 MUSC transferred whatever shares the FRD held in 12 GenPhar to this German national; is that right? 13 A. Correct. 14 Q. And what you're telling me is that 1/3 15 of whatever -- however many shares MUSC 16 transferred to the German national, 1/3 of their 17 shares, according to you, didn't really belong to 18 MUSC at that point; they belonged to you? 19 A. No. No. It's the -- there was a rule 20 at MUSC -- rules how to encourage faculties to 21 sponsor biotech companies. I wasn't the only one, 22 but I was one of a few that was successful, 23 including James Norris himself. He has his own 24 company. Also Yusuf Hannun and other members in 25 other departments. There are multiple faculty

Page 122 1 members started companies. 2 There was a university policy and 3 formulation, how the benefit derived from 4 commercial companies divided within university, 5 including the person who actually contribute the 6 technology computation. There was a formulation 7 how much share, how much percentage the person 8 get. 9 Q. What I hear you saying is there is a 10 percentage of whatever shares MUSC gave to this 11 German national that actually under MUSC's rules 12 should have belonged to you, not MUSC? 13 A. Not only damages done to me, 14 because -- 15 Q. I'm just asking you if my 16 understanding is correct. I'm not asking if you 17 were damaged by it. Is that correct? Are you 18 claiming that a piece of these shares moved -- 19 given back to this German national actually belong 20 to you and not MUSC? Is that what I hear you 21 saying? 22 A. If you will let me make my statement, 23 and I think we'll be better off in many ways. 24 Q. Go ahead. 25 A. Based on -- that's what I said, based	Page 124 1 research at GenPhar. 2 Q. Did GenPhar eventually kick you out? 3 A. During that period of time, GenPhar 4 was kick -- did kick me out. 5 Q. What period of time are we talking 6 about? 7 A. I don't remember. That's why, 8 actually, I need to get the documents from MUSC to 9 document what kind of agreement it made or 10 actually the timeframe they made. 11 Q. Did you continue to do work for 12 GenPhar after you signed this agreement 2010? 13 A. I was on a consulting role. They 14 allowed me to do the research, but I have nothing 15 else to do but to continue my consulting with 16 GenPhar so I can have a position. 17 Q. Was there ever a time when you were 18 the CEO of GenPhar? 19 A. No. Actually, at the end when 20 everybody left, so they have to be a person 21 carrying the name, but during this entire process 22 the company was run by chairman of the board, 23 which is Steve Hutchinson, also who was the CEO, 24 and once after the -- they started fighting, 25 actually installed the guy. It was Kevin Die
Page 123 1 on MUSC formulation, the benefit to faculties, 2 there is a percentage share owned by MUSC will be 3 awarded to the person who will be responsible for 4 the income by MUSC. 5 So based on that formulation and that 6 policy of MUSC, I wasn't the only faculty members 7 to benefit the shares of the financial income from 8 a company that I consulting with, helped to start. 9 So that share should be mine, awarded 10 from MUSC. Just like salary I awarded from MUSC 11 or bonus I awarded from MUSC, that will be mine. 12 Q. How many shares were supposed to be 13 yours? Do you know? 14 A. I don't know. So I never got it. But 15 the damage to me was not only the value of the 16 shares, but actually they use my share, the 17 percentage of share I brought to MUSC, to 18 participate a conspiracy for one of the investors 19 to fire the other investors and then in order to 20 seek control of the company. 21 Of course, I was on the side of the 22 company as well, so they can kick me out of the 23 company as well. So basically, I left not only 24 not be able to continue my research at MUSC, but 25 also actually block me from continuing my job, my	Page 125 1 (sic), who was the CEO. 2 Once, after the fight, everybody is 3 gone, there is no CEO -- no official CEO. I was 4 only functioning as the principle investor, but 5 one -- actually, there was somebody even sign, for 6 example, lease agreement, anything else. Because 7 I was the sole principal investigator, I signed 8 it, but I was never officially named by the board 9 CEO or otherwise. 10 I was the chief scientific officer as 11 a consultant, and also at the time GenPhar insists 12 on me being the president, which is only title, 13 and that was rejected by FRD. So they didn't want 14 me to have any non-scientific function because I 15 could not function as non-scientist. I do not do 16 any -- even at MUSC, I am treated role is through 17 business management. I never manage money. I 18 never manage role in regulatory affairs. Only 19 science. 20 Q. You never managed money at GenPhar? 21 A. No. I don't sign checks. I don't 22 review grants. I don't review accounts. It's all 23 so-called insulated from me. 24 Q. Did you ever send letters to investors 25 about the finance status of GenPhar?

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1 A. Yes. I was the only person left as 2 the -- to -- actually, as the secretary or 3 business manager, draft the financial report with 4 approval of Steve Hutchinson, and I will be the 5 one sign it because Steve Hutchinson officially 6 resigned as the agreement between the investor 7 disputes. 8 So neither party actually owned the 9 company, could not install anybody in the company 10 except the management the grants that's report by 11 the Department of Defense and NIH. 12 Q. Did you oversee the building of 13 GenPhar's new construction building over in Mount 14 Pleasant? 15 A. I wasn't, because I was the scientist, 16 but there was -- no one else was there as the 17 general contractor oversees it. So actually, I 18 was -- I would have input only for the scientific 19 requirement, and I was the -- solely responsible 20 designing the clean rooms, the research 21 laboratories for DoD, but other than that I have 22 no knowledge of any construction or no expertise 23 how they do construction. 24 Q. Do you know Deborah Owens? 25 A. Deborah Owens was the finance manager	1 made several comments that's not true. 2 So actually, the indictment 3 was unsealed I think early 2015. Before it 4 unsealed is a felony of anybody who disclose it. 5 I don't think United States Attorney will -- 6 would, but they could. This goes to MUSC before 7 even I knew it. 8 So actually, there is a year limit, a 9 nine-months limit -- time limit for speedy trial. 10 So it's about a year in 2015. That's years after. 11 I will never sign agreement if there's a problem 12 at GenPhar. So those all -- first of all, is 13 irrelevant. Second of all, they're excuses to 14 they breach the contract years after the contract 15 has been breached. Those have no relevance 16 whatsoever. 17 It has relevance because they push me 18 to GenPhar, and they have to find somebody 19 responsible, because I was the principal 20 investigator on those contracts. They prosecute 21 the company for using money inconsistent with the 22 terms and conditions of the contract by building a 23 facility. 24 What benefit do I get out of it? What 25 is the violation of contract terms, conditions
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1 of the company. 2 Q. Do you know Elaine van Borst? 3 A. Elaine van Borst was the part-time 4 secretary who was the whistleblower, and also the 5 internal accounting. So all of the accounting was 6 done by accounting firm, audited by another firm, 7 all hired by the board. That's their money. They 8 got to watch for it. 9 All of the financials, still actually 10 Steve Hutchinson was the person out of Wall 11 Street. He is the financial person. So even he 12 superficial resign. He was still not after he 13 hired the auditing firm and select the CPA 14 accounting firms on behalf the investors. 15 Q. Did the Fourth Circuit Court of 16 Appeals recently affirm your conviction? 17 A. Yes. But actually, they only looking 18 for one issue at a time. So they vacate the 19 financial penalty against me. 20 Q. Did they affirm Judge Norton's 21 conviction of you? 22 A. Yes. They didn't -- basically did not 23 review it. And those actually have no relevance 24 whatsoever. They're years after, and those -- 25 Judge Toal have more information than I do and	1 become criminal? So we can't litigate those, and 2 we should not be actually include that 3 information. Completely irrelevant to this case. 4 Q. What about the illegal campaign 5 contributions you were found guilty of? Did you 6 have any involvement in those campaign 7 contributions to Lindsey Graham? 8 A. Yes. That's also years after. 9 Q. Tell me about that. What involvement 10 did you have in those? 11 A. No. Actually, it's from the same 12 German person. I was on the -- he wanted to -- in 13 addition to the auditing done by the company, he 14 wanted additional auditing by himself, and he want 15 the company -- he initially want the company to 16 pay for the auditing. The existing investor did 17 not agree. So in order for me to compromise 18 between the investors, because they are the key 19 control interest of a company, so I agree for him 20 to do his auditing, but he also agreed to pay for 21 it. 22 Once the actual -- also, there is a 23 time while I was on the around-world travel, paid 24 by a family member, and I was costing \$90,000 for 25 my wife and on the charter flight. It's travel

Page 130 1 around the world. So he wanted me to answer the 2 question. I said could you -- to make a long 3 story short, could you wait until I come back, 4 because this lifetime event and cost \$90,000. He 5 said, Don't worry about it; I'll pay for it. 6 He's a billionaire himself, all right. 7 So once the dispute come about, he said he would 8 not pay for it. He only pay 40 percent, 9 50 percent of cost, which equivalent to \$35,000, 10 and he did not want to reimburse the company. He 11 said, That's reimbursement for you to take the 12 time around-the-world travel since he said so. 13 But I did not think that the auditing 14 was for the company regardless who wanted to do 15 it, so I did not think it was appropriate for me 16 to take \$35,000. At the same time, the consultant 17 for government relationship set up by Jerry 18 Zucker, which also multibillionaire locally, as a 19 requirement, we have to hire this law firm, the 20 consulting firm to so-called establish government 21 relationship. I was signed it. I never wanted 22 to. 23 The consultant form asked me to 24 contribute to Lyndsey Graham's contribution. I 25 said, Why don't you do it? He said, We can't do	Page 132 1 I didn't know that was over the limit, 2 was so-called legal limit, and then the -- by 3 giving the money to the other people, that's 4 called straw-whatever donation. So I was 5 convicted for contribution using strawman. I have 6 no -- I think the criminal has to be mens rea. 7 You have to have intention to break the -- no -- 8 the violation of the law. I did not. I wasn't a 9 political person. 10 So I just -- money was given to me by 11 the German investor that actually tried to -- I 12 was the conduit for foreign invest contribution, 13 and there is clear agreement he is giving the 14 money to me personally to compensate me 15 personally, but that's just how the conviction 16 occurred. 17 It had nothing to do with -- that also 18 happened years, years after the breach of 19 contract. Have nothing to do with anything. If I 20 didn't sign agreement, go to GenPhar, nothing like 21 this would happen to me because I wasn't manager 22 at any time. I have no experience in managing a 23 company, political contribution, I have none. 24 Q. It looks like the political 25 contributions were all made years before the
Page 131 1 it anymore because we're going to -- because April 2 month of the event. So there is overzealous 3 looking for the law firms who make a contribution 4 on behalf of the others. So he can't do it. 5 So I would say, Okay, I will write a 6 check, because that's was given to me personally 7 by this German investors. So I had to say, Well, 8 okay, I'll just donate this for Lyndsey Graham, 9 because I was asked to donate Lyndsey Graham. I 10 did not think was a profit for me personally take 11 the money, because the auditing is behalf of 12 company. 13 And that money was returned from my, 14 saying demand -- exceed the limits, your limit. 15 So I thought there was -- each person out of 16 communist China, I thought because you buy me 17 flowers there is quotant (sic), and everybody live 18 by quotant. I thought I reached my quotant. And 19 I said, We have a company. I said, Everybody else 20 has contributes to Lyndsey Graham. They said, No. 21 I say, Okay, if you support Lyndsey Graham because 22 he support our contract about defense program, he 23 support Department of Defense, support our defense 24 grant, if he agree, you can take the money, talk 25 to Katie and make contribution.	Page 133 1 agreement was signed. 2 A. No, it could not be. 3 Q. I'm seeing lobbying fees going all the 4 way back to 2007 as part of your charges. 5 A. That's not my -- lobbying fee is 6 not -- actually, it's the political agreement was 7 as set up by Jerry Zucker. I have nothing to do 8 with the company. They call it lobbying fee, but 9 that's the government relation consultant company. 10 That's what presented. The company called 11 American Defense. So I am no knowledge whatsoever 12 about what's at the time. And I only learn new 13 word, lobbyist, why they called lobbyist. 14 When I receiving the company that, 15 actually, is the word in place. It was set up by 16 Jerry Zucker through one of his friends, I think, 17 Ben Sasse. He was deputy secretary for Reagan. 18 I'm talking about beyond my knowledge. 19 That's just -- to me, that's rumor. All I know is 20 the company called American Defense. It 21 supposedly have the business as to how to breach 22 the gap between defense companies and the 23 Department of Defense. 24 Q. Is Vaxima, Inc. still in operation, 25 Dr. Dong?

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1 A. No. It was just a paper company.
2 When I was kicked out from GenPhar, I was -- I
3 thought I failed MUSC because the -- there was
4 no -- I was charged to start a biotech company and
5 bring high-paid jobs to South Carolina. And Ray
6 Greenberg specifically had a conversation with me,
7 who was the president of the university. So I
8 thought I failed, and I tried to start another
9 one, but basically I could not raise a single
10 dollar in terms of funding.
11 But then the -- after the two parts
12 are fighting, we -- actually, they brought me back
13 to in charge of the assignment. They know they
14 could not -- neither party could do it. So they
15 brought me back.
16 So that was -- Vaxima was basically
17 incorporated, become a subsidiary of GenPhar, only
18 they call it service division, which only using
19 GenPhar's technology to serve other companies, and
20 the companies never exist as individual company or
21 actually have a single dollar investment, but just
22 become a name under GenPhar to provide a service
23 to other companies.
24 Because GenPhar is a product
25 development company, and when you have product

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1 development, you can't do service for the other
2 clients because they afraid you may use their
3 technology to help your products. So you have to
4 have a separate entity and agreement that
5 technologies never transfer.
6 There is also no relevance whatsoever
7 to the current case. The only relevance is if I
8 wasn't pushed to GenPhar with the -- they take my
9 research and material and push to GenPhar, I would
10 never be in trouble.
11 Q. What do you mean push you to GenPhar?
12 A. Of course, this agreement, because
13 they took away all my research. The only
14 opportunity for me to -- and being enticed to a
15 cool-down period. At the time my only concern is
16 my academic career.
17 I agreed on everything in order for me
18 to continue my research. That's my livelihood.
19 That's my career. Everything depend on it. So I
20 agree to everything in rush in order for me to
21 continue my research. Not only threw away my
22 research, actually they try to block me from doing
23 my research at GenPhar and also actually as a
24 result and I'm being the only person in charge,
25 because everybody officially resign.

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1 Q. Your relationship to GenPhar goes all
2 the way back to 2002, right?
3 A. That's under the contract of FRD and
4 GenPhar. It was on behalf of MUSC. So I always
5 been full-time professor. That's -- actually, all
6 the other faculty members doing the same.
7 University encourage faculty members
8 to sponsor biotechnology. It's not only MUSC.
9 It's all over the country, exemplified by MIT,
10 Hopkins, UCSF. Of course, Massachusetts is the
11 hotspot biotech companies. And of course,
12 California is hotspot biotech companies. So
13 that's all national trend, and they actually tried
14 to mimic UCSF.
15 UCSF got more than \$300 million a year
16 from industry support, a lot more than
17 \$300 million. At the time it was \$300 million
18 from NIH. And the common saying is there's almost
19 same or twice the amount from industry. So many
20 universities try to mimic, and also it was the
21 initiative of high-tech university under the
22 government. That's actually the single purpose I
23 was recruited to MUSC, and I think Ken Roozen can
24 testify to it.
25 (Exhibit 2, 3/14/11 Letter to Dr. Dong

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1 from MUSC, marked for identification.)
2 BY MR. CONLEY:
3 Q. Dr. Dong, I'll hand you what I've
4 marked as Exhibit 2 and ask you to take a look at
5 it, please.
6 A. This letter is fake in a way because
7 this person actually was regarded one of the
8 worst, whatever, the vice president of affairs at
9 MUSC. She didn't last long. She had no
10 involvement from the beginning to the end, but she
11 took responsibility. Inventory was done by her.
12 No, it was done by Steven Lanier, long before this
13 agreement was signed. This is a false statement.
14 Q. Did you receive this letter, which is
15 Defendant's Exhibit 2?
16 A. I believe I might. I might. I can't
17 remember.
18 Q. Did you attend this inventory that
19 occurred March 24th and 25th?
20 A. Which year is this?
21 Q. It says "March 14, 2011," Dr. Dong.
22 A. No, I was never asked.
23 Q. My question is simply this: Did you
24 attend in any shape, form, or fashion an inventory
25 on either March 24th or March 25th, 2011?

Page 138	1 A. No. I don't remember. 2 Q. Well, that's different. My question 3 is -- you need to tell me you either didn't attend 4 or you don't remember whether you attended. 5 A. I don't remember there was ever a 6 requirement, and also I do not remember. The -- 7 actually, the inventory was done long before she 8 was the, whatever, with medical. I never met her. 9 I never -- and she sent this letter, was 10 completely false, based on false information. 11 Q. Dr. Dong, my question is about 12 March 24th and 25, 2011: Did you attend on either 13 of those days any kind of inventory related to 14 your materials or equipment? You either did, you 15 didn't, or you don't remember. 16 A. I don't remember. 17 Q. Thank you. 18 A. Likely, I didn't, but if I did, I 19 would remember it. Where was this letter sent to, 20 this confirmation -- confidential information 21 supposedly? The only person I could recognize 22 this name is Steve Lanier. He's the one under the 23 false statement of inventory. 24 What is the reason for inventory? 25 It's not after I leave -- I left, but this is	Page 140	1 there, they already break the locks, and they are 2 actually in process of transfer everything out, 3 but they are not doing any inventory. They just 4 took the material out of those freezers and 5 transferred somewhere else so they would not be in 6 that location anymore. 7 Those keys already -- those actually 8 locks already being broken. I don't know when, 9 but clearly they did not need me, didn't need the 10 key. So I was standing there. Actually, no one 11 talked to me, and so... 12 Q. So you didn't stay for the entire 13 event; is that right? You left? 14 A. Correct, but that's the -- outside the 15 agreement. Why do I -- because they -- first of 16 all, they only -- I was informed, I do remember, 17 informed to bring the key. 18 Q. Your position is as of 19 March 24th/25th, when this inventory occurred, I 20 think what I heard, your position is MUSC had 21 already breached the agreement at that point? 22 A. Of course. Have nothing to do with 23 it. They are not transferring material to me, and 24 they said they are going to do inventory because 25 they -- first of all, they removed all of my
Page 139	1 already long past the -- over due of the transfer 2 of the document -- the material documents. They 3 just follow up to cover up for their actions. 4 (Exhibit 3, Email Correspondence, re: 5 Inventory of Laboratory Material, marked for 6 identification.) 7 BY MR. CONLEY: 8 Q. Let me ask you to take a look at 9 Defendant's Exhibit Number 3 for me, Dr. Dong. 10 A. Oh, I remember the event, but that's 11 long after they breached the contract. 12 Q. Tell me what you remember about the 13 event. That's what I want to ask you about. 14 A. They actually wanted me to bring the 15 keys. They ask me to bring the keys to the 16 freezers, but when I got there they already break 17 up the freezer and everything else. 18 Q. Why did they want you to bring the 19 keys to the freezer, Dr. Dong? 20 A. Because the freezer belongs to me. It 21 was locked, but the -- first of all, they removed 22 the freezer. So I have no access to my freezers. 23 So immaterial. 24 They locked into a separate room. 25 They asked me to bring the keys, but when I got	Page 141	1 equipment freezers to a secret location, locked by 2 James Norris. So I -- with a key, I will not be 3 able to get access to it. Then they said they 4 were going to do inventory, asked me to bring the 5 keys, so in a way I will give them consent, but 6 when I got there, all of the locks had been long 7 broke. 8 (Exhibit 4, 9/20/11 Letter to Dr. Dong 9 from MUSC, marked for identification.) 10 MR. CONLEY: I hand you Defendant's 11 Exhibit 4, Dr. Dong. 12 THE WITNESS: So why -- first of all, 13 why is it you only have the documents your benefit 14 and you deny any of my documents? 15 MR. CONLEY: Because this is my 16 deposition, so I get to choose what documents I 17 want to ask you about. 18 THE WITNESS: But I don't have -- I 19 didn't have this document. 20 MR. CONLEY: Yes, you did. This was 21 produced to you, along with all of the others. 22 The Bates numbers on there indicate so. 23 THE WITNESS: It's 2011, right, a year 24 later -- September, a year and a half later. So 25 whatever happened to it is no relevance, but...

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1 This is absolutely false. Actually, I 2 would not be -- I would not know I was indicted by 3 2011. The indictment was -- actually, there is 4 sequential indictment within the months by the 5 same grand jury. Actually, each -- I was told 6 each indictment was only narrowed down. Instead 7 of superseding or adding more, they narrowed down 8 from broadly indictment from paying illegal aliens 9 to whatever. So no one actually saw the first and 10 second, except the third. 11 The only legally effective third 12 indictment should be 2013, all right. And there 13 was not unsealed until 20- -- late 2014 or early 14 2015. So there's nine-months period, based on 15 law, for speedy trial. Otherwise, they violate -- 16 that's a constitutional violation. So there's no 17 way they knew it. 18 It is a felony violation by anybody if 19 disclose information, and there's no way they 20 would know 2011 there was indictment. I don't 21 believe this email -- this information is real or 22 just a coverup act. 23 BY MR. CONLEY: 24 Q. Did you receive Defendant's Exhibit 4? 25 A. I don't remember how they sent to me.	1 A. Sorry? 2 Q. That same document is Exhibit 2 to 3 your lawsuit. You have, obviously, seen it 4 before. You must have seen it back in at least 5 2014, when you filed your lawsuit. 6 A. It was attached to my lawsuit? 7 Q. Yes, sir, it is. If you look at the 8 complaint, it's attached to it as Exhibit 2. 9 A. That's already after the agreement 10 been breached. What's the benefit? What's the 11 fact they put it on -- 12 Q. I'm only asking if you recall 13 receiving the document, Dr. Dong. You either do 14 or you don't. 15 A. I do not, actually. 16 Q. Would you at least look at your 17 complaint and agree with me that that's Exhibit 2 18 to your complaint? It looks like the same 19 document to me. 20 (The witness reviews the document, as 21 requested.) 22 THE WITNESS: Yes, I see it. 23 BY MR. CONLEY: 24 Q. You filed your lawsuit September 2014, 25 right?
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1 Q. They mailed it to your address on 2 Victory Point Drive. In September 2011, were you 3 living at 4211 Victory Point Drive in Mount 4 Pleasant? 5 A. I think I was separated long before 6 that. I live in Moultrie Drive. 7 Q. Is that your testimony, you weren't 8 living at that address then? 9 A. I believe so, because I was separated 10 three years before my divorce. 11 (Exhibit 5, 9/29/11 Letter to Dr. Dong 12 from MUSC, marked for identification.) 13 BY MR. CONLEY: 14 Q. This is Defendant's Exhibit 5, 15 Dr. Dong. Take a look this Exhibit 5, Dr. Dong. 16 A. Whatever they are, revision is not 17 without my signature and is not -- is violating, 18 but if they say revised, but I wouldn't even read 19 -- I have not seen it, but I don't even need to 20 read it. 21 Q. You have never seen Defendant's 22 Exhibit 5? 23 A. No. 24 Q. Well, it's attached to your lawsuit, 25 Dr. Dong.	1 A. That late? 2 Q. Yes, sir. Look at the filing date on 3 it. 4 A. I think I don't -- I can't remember 5 how exactly. I don't remember seeing it. But 6 actually, I do -- I know Allan Holmes got some 7 documents from MUSC as well. 8 MR. CONLEY: Let's take a short break. 9 (A recess was taken.) 10 MR. CONLEY: I don't have anything 11 further. 12 (The deposition was concluded at 2:23 13 p.m.) 14 (The witness, after having been advised 15 of the right to read and sign this transcript, 16 does not waive that right.) 17 18 19 20 21 22 23 24 25

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1 CERTIFICATE OF REPORTER 2 I, Roxanne M. Easterwood, Registered 3 Professional Reporter and Notary Public for the 4 State of South Carolina at Large, do hereby 5 certify that the foregoing transcript is a true, 6 accurate, and complete record. 7 I further certify that I am neither 8 related to nor counsel for any party to the cause 9 pending or interested in the events thereof. 10 Witness my hand, I have hereunto 11 affixed my official seal this 18th day of October 12 2022 at Charleston, Charleston County, South 13 Carolina. 14  15 Roxanne M. Easterwood, RPR 16 My Commission expires 17 February 1, 2025 18 19 20 21 22 23 24 25 Page 146	1 JIAN-YUN (JOHN) DONG, M.D., Ph.D. - Witness 2 johny.dong@me.com 3 October 27, 2022 4 RE: Dong, MD, Jian- Yun (John) v. The Medical University Of 5 South Carolina 6 10/18/2022, Jian-Yun John Dong (#5516370) 7 The above-referenced transcript is available for 8 review. 9 Within the applicable timeframe, the witness should 10 read the testimony to verify its accuracy. If there are 11 any changes, the witness should note those with the 12 reason, on the attached Errata Sheet. 13 The witness should sign the Acknowledgment of 14 Deponent and Errata and return to the deposing attorney. 15 Copies should be sent to all counsel, and to Veritext at 16 cs-southeast@veritext.com. 17 Return completed errata within 30 days from 18 receipt of testimony. 19 If the witness fails to do so within the time 20 allotted, the transcript may be used as if signed. 21 22 Yours, 23 Veritext Legal Solutions 24 25 Page 148
1 I N D E X 2 Page Line 3 JIAN-YUN (JOHN) DONG, M.D., 3 3 4 Ph.D. 5 EXAMINATION 3 5 6 BY MR. CONLEY 7 CERTIFICATE OF REPORTER 146 1 8 9 REQUESTED INFORMATION INDEX 10 (No Information Requested) 11 12 E X H I B I T S 13 Page Line 14 Exhibit 1, Civil Action, Dong 50 12 15 v. MUSC 16 Exhibit 2, 3/14/11 Letter to 136 25 17 Dr. Dong from MUSC 18 Exhibit 3, Email 139 4 19 Correspondence, re: Inventory 20 of Laboratory Material 21 Exhibit 4, 9/20/11 Letter to 141 8 22 Dr. Dong from MUSC 23 Exhibit 5, 9/29/11 Letter to 143 11 24 Dr. Dong from MUSC 25 Page 147	1 Dong, MD, Jian- Yun (John) v. The Medical University Of South 2 Carolina 3 Jian-Yun John Dong (#5516370) 4 E R R A T A S H E E T 5 PAGE____ LINE____ CHANGE_____ 6 REASON_____ 7 PAGE____ LINE____ CHANGE_____ 8 REASON_____ 9 PAGE____ LINE____ CHANGE_____ 10 REASON_____ 11 PAGE____ LINE____ CHANGE_____ 12 REASON_____ 13 PAGE____ LINE____ CHANGE_____ 14 REASON_____ 15 PAGE____ LINE____ CHANGE_____ 16 REASON_____ 17 PAGE____ LINE____ CHANGE_____ 18 REASON_____ 19 PAGE____ LINE____ CHANGE_____ 20 REASON_____ 21 PAGE____ LINE____ CHANGE_____ 22 REASON_____ 23 Jian-Yun John Dong Date 24 25 Page 149

1 Dong, MD, Jian- Yun (John) v. The Medical University Of South
Carolina

2 Jian-Yun John Dong (#5516370)

3 ACKNOWLEDGEMENT OF DEPONENT

4 I, Jian-Yun John Dong, do hereby declare that I
5 have read the foregoing transcript, I have made any
6 corrections, additions, or changes I deemed necessary as
7 noted above to be appended hereto, and that the same is
8 a true, correct and complete transcript of the testimony
9 given by me.

10

11 _____

12 Jian-Yun John Dong Date

13 *If notary is required

14 SUBSCRIBED AND SWORN TO BEFORE ME THIS

15 _____ DAY OF _____, 20____.

16

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19 NOTARY PUBLIC

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[& - a.m.]

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South Carolina Rules of Civil Procedure

Part V. Depositions and Discovery

Court Rule 30

(e) Submission to Witness; Changes; Signing.

When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the court holds

that the reasons given for the refusal to sign
require rejection of the deposition in whole or in
part.

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ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.
THE ABOVE RULES ARE CURRENT AS OF APRIL 1,
2019. PLEASE REFER TO THE APPLICABLE STATE RULES
OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

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COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

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