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SC Court of Appeals

Case No. 2023-001733

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

v.

The Medical University of South Carolina, Respondent

VOLUME III.

VOLUME III.

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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 RESPONSE TO PLAINTIFF'S MOTION TO AMEND**
)	
vs.)	
)	
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.

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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

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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), SCRCP, 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), SCRCP. *See* Rule 77(d), SCRCP (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), SCRCP (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.*

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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'ys & 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.

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Hiller, 307 S.C. 331, 334, 415 S.E.2d 117, 118 (Ct. App. 1992) (recognizing notice from the clerk under Rule 77, SCRCP, 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, SCRCP, 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, SCRCP. The purpose of summary judgment is to expedite disposition of cases that do not require the services of a fact

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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.

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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.

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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

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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), SCRCP, 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), SCRCP ("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), SCRCP, 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.

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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 it 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.

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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.

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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.

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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
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ATTORNEY FOR DEFENDANT

August 16, 2023
Charleston, South Carolina

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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

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Exhibit A

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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
[redacted]

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

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, SCRCP.

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

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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.

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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

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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

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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 (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.

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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.

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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.

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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

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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.

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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]."**

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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-propogation by Dr. Dong and will attempt to locate written, enduring, hard-copy records which have been lost. This will occur**

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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."**

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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**

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> **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.

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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.

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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

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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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(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, 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.

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Charleston Common Pleas

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Case Number:	2016CP1006683
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So Ordered

Jean H. Toal

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Exhibit B

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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

cposwal@sccourts.org

[redacted]

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Exhibit C

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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:	Defendant's Attorney:
John Dong, pro se, Bar No. ____ Address: 71 Delahow Street, Charleston, SC 29492 Phone: 843-991-2332Fax ____ E-mail: johny.dong@me.comOther: ____	Bob J. Conley, Bar No. ____ Address: 171 Church Street, Suite 310 Charleston, SC 29401 Phone: 843-577-9626 Fax____ E-mail: bconley@clevelandlaborlaw.comOther: ____

☒ **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: 1hour 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, 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: $ ____

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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
)	
John Dong, M.D., Ph.D.,)	
)	
– Plaintiff,)	**Motion for Amendment Order Granting Defendant's Summary Judgement**
v.)	
)	
The Medical University of South Carolina,)	
)	
– Defendant,)	

FILED
2023 JUL 28 PM 4:10
JULIE ARMSTRONG
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 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

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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

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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

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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.

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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 ARGUENT

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

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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)

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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)*.

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> "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

SCRCP 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

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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

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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

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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:

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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. CONCLUSTION

For the reasons stated above and in accordance with SCRCP 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: johny.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

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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: johny.dong@gmail.com
[redacted]

FILED
2023 JUL 28 PM 4:31
JULIE J. ARMSTRONG
CLERK OF COURT

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Exhibits

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 108
CHARLESTON, SC 29401-2256
RETURN SERVICE REQUESTED

CHARLESTON COUNTY
SOUTH CAROLINA

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Dong, John M D Ph D
71 Delahow St
Charleston, SC 29492

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRCP

Order/Rehearing of Dfs Motion for Summary Judgment is 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.

1820102.20230705473O1.00078

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2256
RETURN SERVICE REQUESTED

CHARLESTON COUNTY
SOUTH CAROLINA

clerkofcourt.charlestoncounty.org

78

DONG, JOHN M D PH D
71 DELAHOW ST
DANIEL ISLAND SC 29492-7957

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRCP

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.

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Exhibit D

Bob Conley

From: My Cases Notification <Notifications@Courtplus.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 AMENDEDMENT ORDER GRANTING SUMMARY JUDGMENT FILED ON 07/28/2023

If you do not wish to continuing 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.

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Exhibit E

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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
[redacted]

From: Poswal, Chukwuzitelu
Sent: Friday, May 5, 2023 5:24 PM
To: 'John Dong' <johny.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
[redacted]

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Exhibit F

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Bob Conley

From: John Dong <johny.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 SCRCP. 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

cposwal@sccourts.org

[redacted]

From: John Dong <johny.dong@gmail.com>
Sent: Tuesday, May 23, 2023 1:58 PM
To: Poswal, Chukwuzitelu <cposwal@sccourts.org>
Cc: Bob Conley <bconley@clevelandlaborlaw.com>; Toal, Jean <JToal@sccourts.org>; Mark Dundervill <mdundervill@clevelandlaborlaw.com>
Subject: Re: Dong v. MUSC - 2016CP1006683 - May 11th Hearing and Other Timelines

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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

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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> 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

[redacted]

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From: Poswal, Chukwuzitelu
Sent: Friday, May 5, 2023 5:24 PM
To: 'John Dong' <johny.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

[redacted]

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Exhibit G

CLEVELAND & CONLEY, L.L.C.
LABOR AND EMPLOYMENT DEFENSE

ONE SEVENTY ONE CHURCH STREET, SUITE 310
CHARLESTON, SOUTH CAROLINA 29401
WWW.CLEVELANDANDCONLEY.COM

CAROLINE WRENN CLEVELAND †
BOB J. CONLEY

†CERTIFIED SPECIALIST,
LABOR & EMPLOYMENT LAW

TELEPHONE: (843) 577-9626
FACSIMILE: (843) 577-6672

May 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 Notice of Trial and a Notice of Hearing, which were filed on May 8, 2023.

Sincerely,

CLEVELAND & CONLEY, LLC

Bob J. Conley

BJC/md

ELECTRONICALLY FILED - 2023 Aug 16 4:04 PM - 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 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]

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ELECTRONICALLY FILED - 2023 Aug 16 4:04 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1006683
ELECTRONICALLY FILED - 2023 May 08 10:03 AM - CHARLESTON - COMMON PLEAS - CASE#2016CP1006683

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

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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 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]

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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

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Exhibit H

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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
[redacted]

From: John Dong <johny.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

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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.
[redacted]

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) 577-9626

Facsimile: (843) 577-6672

www.clevelandlaborlaw.com

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Exhibit I

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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
[redacted]

-----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

ELECTRONICALLY FILED - 2023 Aug 16 4:04 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1006683

Bob Conley

From: Bob Conley
Sent: Friday, June 9, 2023 3:29 PM
To: Toal, Jean
Cc: Poswal, Chukwuzitelu; Johnny.dong@gmail.com; Mark Dundervill
Subject: Dong v. MUSC
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 Dundervill <mdundervill@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 Dundervill
Paralegal

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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CLEVELAND & CONLEY, L.L.C.
LABOR AND EMPLOYMENT DEFENSE

ONE SEVENTY ONE CHURCH STREET, SUITE 310
CHARLESTON, SOUTH CAROLINA 29401
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CAROLINE WRENN CLEVELAND †
BOB J. CONLEY

†CERTIFIED SPECIALIST,
LABOR & EMPLOYMENT LAW

TELEPHONE: (843) 577-9626
FACSIMILE: (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

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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,	)	**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, SCRCP.

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

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

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President for Medical Affairs and College of Medicine Dean, signed the Agreement on May 3, 2010.

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.

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 (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).

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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

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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/rescind the Agreement. June 18, 2010, is day forty-six after May 3, 2010.

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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 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

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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.

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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.

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12. **"Mr. Scott Reid and Mr. Ronald Bycroft will attempt to locate an vectors or similar materials shared with other investigators for re-propogation 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.

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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.

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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.

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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.

Honorable Jean Hoefer Toal
Special Circuit Court Judge
Ninth Judicial Circuit

Charleston, South Carolina
June 9, 2023

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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 Dundervill
Paralegal

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Exhibit K

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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: DeopsitionRubinchik.pdf; DeopsitionReves.pdf; DeopsitionSaladin.pdf; DeopsitionSchmidt.pdf; DeopsitionSothmann.pdf; DeopsitionChrisJohnson.pdf; DeopsitionReads.pdf; DeopsitionRoozen.pdf; DeopsitionGladden.pdf; DeopsitionCole.pdf; DeopsitionTomilson.pdf; DeopsitionNorris.pdf; Deopsiion Sothmann.pdf; DeopsitionLanier.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.
[redacted]

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

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Bob Conley

From: Bob Conley
Sent: Thursday, December 22, 2022 8:37 AM
To: John Dong
Cc: johny.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.

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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
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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,
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Please let me know your thoughts as soon as possible.
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[redacted]

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Exhibit M

ELECTRONICALLY FILED - 2023 Aug 16 4:04 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1006683

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
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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]

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Exhibit N

ELECTRONICALLY FILED - 2023 Aug 16 4:04 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1006683

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:

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Subject: Motion for protective order

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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.

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[redacted]

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Exhibit O

ELECTRONICALLY FILED - 2023 Aug 16 4:04 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1006683

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 <johny.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 <johny.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.

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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

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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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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,

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[redacted]

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Exhibit P

ELECTRONICALLY FILED - 2023 Aug 16 4:04 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1006683

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 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 <johny.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

CLEVELAND & CONLEY, L.L.C.

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Dr. Dong:

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Bob J. Conley

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Sincerely,

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

[redacted]

ELECTRONICALLY FILED - 2023 Aug 16 4:04 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1006683

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: 843-991-2332Fax _____ E-mail: johny.dong@me.comOther: _____	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.comOther: _____

☒ **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: 1hour 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, 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 Amendment Order Granting Defendant's Summary Judgement**

FILED
2023 JUL 28 PM 4:10
JULIE J. ARMSTRONG
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 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 ARGUENT

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

SCRCP 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. CONCLUSTION

For the reasons stated above and in accordance with SCRCP 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: johny.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 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: johny.dong@gmail.com
Phone: 843-991-2332

FILED
2023 JUL 28 PM 4:31
JULIE J. ARMSTRONG
CLERK OF COURT

Exhibits

FKJ-SHB 25492

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258
RETURN SERVICE REQUESTED

CHARLESTON COUNTY
SOUTH CAROLINA

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 SCRCP

Order/Rehearing of Dfs Motion for Summary Judgment is 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.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258
RETURN SERVICE REQUESTED

CHARLESTON COUNTY
SOUTH CAROLINA

clerkofcourt.charlestoncounty.org

78

DONG, JOHN M D PH D
71 DELAHOW ST
DANIEL ISLAND SC 29492-7957

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRCP

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.

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.,)	**MOTION AND ORDER INFORMATION**
Plaintiff,)	**FORM AND COVERSHEET**
vs.)	
)	
THE MEDICAL UNIVERSITY OF SOUTH CAROLINA,)	
Defendant.)	

Plaintiff's Attorney:	Defendant's Attorney:
John Dong, pro se, Bar No. _____	Bob J. Conley, Bar No. _____
Address:	Address:
71 Delahow Street,	171 Church Street, Suite 310
Charleston, SC 29492	Charleston, SC 29401
Phone: 843-991-2332Fax _____	Phone: 843-577-9626 Fax_____
E-mail: johny.dong@me.comOther: _____	E-mail: bconley@clevelandlaborlaw.comOther: _____

☐ **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: Plantiff's Memorandum Supporting Response to Motion for Summary Judgment
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.

_____ June ~~May~~ 25th, 2023
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, 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: _____

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 Rehearing on Plaintiff's Response in Opposition to Defendant's Motion for Summary Judgment**

FILED
2023 JUN 27 AM 9:42
JULIE J. ARMSTRONG
CLERK OF COURT
WCL

Plaintiff John Dong hereby respectfully requests the Court to grant this Motion for Rehearing of Defendant's Motion for Summary Judgement 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)

(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

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.

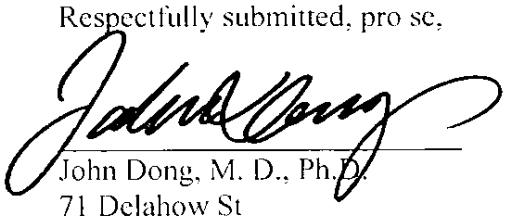
5. Finally, under Rule 56(f), the Court may not apply the [summary] judgment and may order a continuance to allow additional discovery and depositions in order for the opposition to obtain affidavits or supporting evidence. In this case, the Court limited my deposition in scope and time by orders. I 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,



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

2016-CP-10-06083

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
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

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	)	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:	Defendant's Attorney:
John Dong, pro se, Bar No. _____ Address: 71 Delahow Street, Charleston, SC 29492 Phone: 843-991-2332Fax _____ E-mail: johny.dong@me.comOther: _____	Bob J. Conley, Bar No. _____ Address: 171 Church Street, Suite 310 Charleston, SC 29401 Phone: 843-577-9626 Fax_____ E-mail: bconley@clevelandlaborlaw.comOther:

☐ **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: Plantiff'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.

_____ May 25th, 2023
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, 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	)	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,	)	**MOTION FOR CONTINUANCE**
v.	)	
	)	
The Medical University of South Carolina,	)	
	)	
– Defendant,	)	

FILED
2023 MAY 26 PM 4:15
JULIE J. ARMSTRONG
CLERK OF COURT

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 SCRCP, 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.

Respectfully submitted, pro se,

May 25, 2023
Charleston, South Carolina

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

FILED
2023 MAY 26 PM 4:45
JULIE J. ARMSTRONG
CLERK OF COURT

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 29492 Phone: 843-991-2332Fax _____ E-mail: johny.dong@me.comOther: _____	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.comOther:

☐ **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 0
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 — PlFebruary 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 PROTECTIVE ORDER

FILED
2023 MAY -1 PM 2:43
JULIE J. ARMSTRONG
CLERK OF COURT

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.

Respectfully submitted, pro se,

April 26, 2023
Charleston, South Carolina

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 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 MAY -1 PM 2:43
JULIE J. ARMSTRONG
CLERK OF COURT

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

-0500-

ATTACHEMENT

– Supporting Medical Records

CAROLINA EYECARE PHYSICIANS, LLC

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 Dr Solomon
1101 Clarity Road
Mount Pleasant, SC 29464-3138
(843) 881-3937

05/11/23 11:30 A
CEP-West Ashley Dr. Clark
2060 Charlie Hall Blvd St. 201
Charleston, SC 29414-6066
(843) 722-2010

05/09/23 [redacted] A
Physicians Eye Surgery Center (Prof)
2060 Charlie Hall Blvd St. 301
Charleston, SC 29414-6066
(843) 571-4800

05/09/23 03:30 P
CEP-West Ashley Dr Clark
2060 Charlie Hall Blvd St. 201
Charleston, SC 29414-6066
(843) 722-2010

05/10/23 [redacted] A
Physicians Eye Surgery Center (Prof)
2060 Charlie Hall Blvd St. 301
Charleston, SC 29414-6066
(843) 571-4800

Kindly give 48 hours' notice for cancellations.

Date Printed: 04/24/23

CAROLINA EYECARE PHYSICIANS

A US EYE COMPANY

Cataract Surgery Drop Instructions

-0503-

Lid 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**

Prednisolone, Moxifloxacin, Bromfenac
1 drop 3 times a day

Day of Surgery	○	○	○
Day 2	○	○	○
Day 3	○	○	○
Day 4	○	○	○
Day 5	○	○	○
Day 6	○	○	○
Day 7	○	○	○

Post-Op **WEEK 2**

Prednisolone, Moxifloxacin, Bromfenac
1 drop 3 times a day

Day 8	○	○	○
Day 9	○	○	○
Day 10	○	○	○
Day 11	○	○	○
Day 12	○	○	○
Day 13	○	○	○
Day 14	○	○	○

Post-Op **WEEK 3**

Prednisolone, Moxifloxacin, Bromfenac
1 drop 2 times a day

Day 15	○	○
Day 16	○	○
Day 17	○	○
Day 18	○	○
Day 19	○	○
Day 20	○	○
Day 21	○	○

Post-Op **WEEK 4**

Prednisolone, Moxifloxacin, Bromfenac
1 drop at bedtime

Day 22	○
Day 23	○
Day 24	○
Day 25	○
Day 26	○
Day 27	○
Day 28	○

SWEETGRASS PHARMACY & COMPOUNDING

If you have any questions regarding your drops, please call Sweetgrass Pharmacy at 843-800-7007.

KERRY SOLOMON, MD
(843) 881-3937

CAROLINA EYECARE PHYSICIANS

1101 Clarity Road, Mount Pleasant, SC 29464 • 843-588-4198 • 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 Sclerosis OU.

Secondary: Diabetes, Type II, No Ocular Complications, Not Insulin Dependent.

HPI: CC: Decreased Vision. Location: OU. Quality: blurry. Quality: 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: driving at night/daytime. Quality: glare. Context Onset/Aggravation: playing tennis. Activity Affected: having trouble seeing people/ball when playing.. Patient states in the last few years, he has tried many different glasses/CL rxs 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 **HA1c:** 7.1-a few months ago

PSFH/ROS Updated Date: 4/24/23

Medical Hx: Diabetes Type II. **Surgical Hx:** Negative.

Systemic Meds: Azithromycin 250 MG. Trulicity (dulaglutide) 3 mg/0.5 mL pen injector:, Disp. 2 ml NR ml. prednisoln sp-moxiflox-bromfen (prednisoln sp-moxiflox-bromfen) 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. GlareLP. BCVA20/80. **OS:** Dsc20/80. GlareLP. BCVA20/50.
IOP: TP **OD:** 16 **OS:** 18 9:00 AM
Pachymetry:
Dominant Eye: OS

AR Dry

	Sph	Cyl	Axis	Other
OD				error
OS				error

Systemic Meds: Azithromycin 250 MG. Trulicity (dulaglutide) 3 mg/0.5 mL pen injector:, Disp. 2 ml NR ml.

MR Dry

	Sph	Cyl	Axis	Add	Glare	Distance
OD	-0.75	+1.50	105		LP	20/80
OS	-0.25	+0.75	130		LP	20/50

Dilation:
Location: OU. **Tech:** HCline. **Time:** 9:01 AM. **Drops:** Discussed effects of drops; Tropicamide 1%.

Keratometry:
OD: K1 43.50 @ 96 K2 44.00 @ 6 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	Round. Brisk. Equal Size. No RAPD.	Round. Brisk. Equal Size. No RAPD.
• Motility	Full. Orthotropic.	Full. Orthotropic.
• CVF	Full.	Full.
• Adnexa	Normal Ocular Adnexa.	Normal Ocular Adnexa.

Anterior	**Right Eye**	**Left Eye**
• General		
• L/C/S	White and Quiet.	White and Quiet.
• Cornea	Epithelium Intact. Normal Tear Film.	Epithelium Intact. Normal Tear Film.
• Anterior Chamber	Deep. Quiet.	Deep. Quiet.
• Iris	Flat.	Flat.
• Lens	Cortical Changes. 2+ NS.	Cortical Changes. 2+ NS.

Posterior	**Right Eye**	**Left Eye**
• General	Good Dilation. Clear View of Posterior Segment.	Good Dilation. Clear View of Posterior Segment.
• Nerve	CDR 0.3. No Clinical NFL Defects.	CDR 0.3. No Clinical NFL Defects.
• Vitreous	Posterior Vitreous Detachment.	Posterior Vitreous Detachment.
• Retinal Vessels	Normal Caliber.	Normal Caliber.
• Macula	Normal Macula. No Retinopathy.	Normal Macula. No Retinopathy.
• Periphery	Attached 360 Degrees. No Holes or Tears.	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. Pt educated on lens that provide 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 following. It was explained that when the patients 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 Vivity MF IOL) While the majority of patients do not find this limit's 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 back lit 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 success rate 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 the 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 9:58:37 AM

John Dong

DOB: [redacted]

MRN:1440392

Informed 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 if you have taken medications known as steroids. Cataracts may cause blurred vision, dulled vision, sensitivity to light and glare, and/or ghost images. 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 continue to 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 eyeglass prescription (refraction), measurement of your vision with and without glasses (visual acuity), measurement of the pressures inside your eye (tonometry), measurement of the curvature of your cornea (keratometry), ultrasonic measurement of the length of your eye (axial length), intraocular lens calculation (biometry) to determine the best estimate of the proper power of the implanted IOL, microscopic examination of the front part of your eye (slit-lamp examination), and examination of the retina of your eye with your pupils dilated. All of these tests are reviewed to determine the best type of IOL for you based on your visual preferences. Even with the best 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 the 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 treat astigmatism are called TORIC IOLs.

What is astigmatism? Are there other treatments for it?

Patients with nearsightedness 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:

1) you can have a STANDARD IOL for near or distance vision and continue to wear glasses or contact lens to correct your astigmatism;

2) 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 higher out of pocket expense as the additional cost of this IOL is not covered by insurance. A TORIC IOL will reduce but not always completely eliminate your astigmatism, in which case, your surgeon may choose to also perform a procedure called an LRI, at no cost to you, to further eliminate any residual astigmatism.

In some cases your surgeon may only recommend an LRI. A Limbal Relaxing Incision (LRI) is a small cut or incision the ophthalmologist makes into your cornea to make its shape rounder. 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.

Presbyopia and Alternatives for Near Vision After Surgery

Patients who have cataracts have, or will eventually develop 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 separate (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 review your options and ask questions.

-GLASSES

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 could implant IOLs with two different powers, one for near vision in one eye, and one for distance vision in the other eye. This combination of a distance eye and a reading eye is called monovision. It can allow you to read without glasses. Many patients who wear contacts or who have had refractive 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 could choose to have a "MULTIFOCAL" IOL. This is a newer, "premium" type of IOL that provides distance vision AND restores some or all of your eye's ability to focus. It corrects for both distance vision and other ranges, such as near or intermediate. Choosing this option will usually lead to higher out-of-pocket expenses since most insurance companies only pay for a MONOFOCAL (single focus) lens. You may still need glasses for your best vision after cataract surgery even if you have elected to have a Multi-Focal IOL.

Anesthesia, Procedure, and Postoperative Care

The ophthalmologist or anesthesiologist will make your eye numb 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 to drive you home.

A tiny incision, or opening, is then made in the eye. This is usually self-sealing but it may require closure with a very fine stitch (suture) which will be removed at a later time. The natural lens in your eye will then be removed by a technique called phacoemulsification, which uses a tiny ultrasonic probe to dissolve 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 rare 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 in approximately 3 weeks. During the immediate recovery period, you will place drops in your eyes for about 2 to 4 weeks, depending on your individual rate of healing. If you have chosen monovision with standard IOL (s) or multifocal IOL 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 which time glasses or contact lenses may be prescribed by your referring ophthalmologist, optometrist or Dr. Solomon.

What are the major risks of cataract surgery?

All operations and procedures have some degree of risk and can result in unsuccessful results, complications and injury, from both known and unknown causes. 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 operation itself, or pieces of the lens that cannot be removed, high eye pressure, a detached retina, a droopy eyelid, and swelling in the retina called Cystoid Macular Edema. The major risks of a limbal relaxing incision are similar to those for cataract surgery, but also include loss of vision, damage to the cornea, and scarring; under- or over-correction could occur.

Depending upon your eye and the type of IOL, you may have increased night glare or halos, double vision, ghost images, impaired depth perception, blurry vision, and trouble driving at night. The ophthalmologist might not be able to put in the IOL you choose. In addition, the IOL may later need to be repositioned or replaced. 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 the 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 poor vision, total loss of vision, or even loss of the eye in rare situations. 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 implant may shift slightly forward or backward 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 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 this consent form, and that I understand and accept the risks, benefits, and alternatives of cataract surgery, with a femtosecond laser.

I give my permission to proceed with surgery and I wish to have the operation with a femtosecond laser as part of my premium package for OCT imaging purposes and/or for correction of my astigmatism on my: left eye

Dr. Solomon routinely monitors his surgical outcomes in an effort to provide the best services to his patients. In order to do this, preop and postoperative clinical information needs to be collected. 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 at scientific meetings and/or in journals. In these cases, your protected health information will not be disclosed because you cannot be identified. A member of Dr. Solomon'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 medical device that can be used for many purposes; it was recently approved by the Food and Drug Administration to perform some of the steps of surgery to remove a cataract or cloudy lens (approved use). It is also being used to perform some of the steps of surgery to remove a clear lens or refractive lens exchange (RLE), and to make arcuate incisions in the cornea (AK) to reduce astigmatism (off-label uses). 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 surgeon (ophthalmologist) to use the laser to perform parts of the cataract/refractive lens surgery or to reduce astigmatism.

How does surgery with the laser differ from traditional surgery to remove the lens? What are the benefits?

Traditionally, the eye surgeon uses blades to create the incisions in the cornea (the front window of the eye), and other special instruments to create the capsulotomy (the circular incision in the outer layer of the cataract or clear lens). The surgeon also uses a phacoemulsification device that utilizes ultrasound 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 centered capsulotomy, and to pre-soften the cataract so less ultrasound energy is necessary with the phacoemulsification device.

How is the laser used to treat astigmatism?

Patients with astigmatism have several choices for the reduction of astigmatism. Nonsurgical options for astigmatism correction include glasses and contact lenses. Surgical correction of astigmatism can be achieved through a toric intraocular lens, a limbal 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 shape and size of incisions made with the laser may be more precise. Medicare 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 monofocal 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 femtosecond laser?

Use of the laser could 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 at the surgery center. It could also lead to complications, which include but are not limited to: decentration of the corneal or capsulotomy incisions; incomplete or interrupted capsulotomy, fragmentation, or corneal incision procedure; anterior capsular tear; posterior capsular tear with lens/lens fragment dislocation into the vitreous; corneal abrasion or defect; pain; infection; bleeding; damage to intraocular structures; anterior chamber fluid leakage; anterior chamber collapse; and elevated eye pressure. In the case of an interrupted or incomplete corneal incision, the laser can be recentered and the incisions repeated at a different location, or the incisions 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 incomplete or interrupted fragmentation, the procedure can be repeated after recentration or the surgeon may elect to complete fragmentation using conventional phacoemulsification treatment. In the case of loss of lens fragments into the vitreous, a separate procedure called a vitrectomy may be necessary to remove the vitreous and lens fragments.

Patient's Acceptance of Risks

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 this consent form, and that I understand and accept the risks, benefits, and alternatives of cataract surgery with a femtosecond laser.

I give my permission to proceed with surgery and I wish to have the operation with a femtosecond laser as part of my premium package for OCT imaging purposes and/or for correction of my astigmatism on my: ***left eye***

Dr. Solomon routinely monitors his surgical outcomes in an effort to provide the best services to his patients.
In order to do this, preop and postoperative clinical information needs to be collected. 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 at scientific meetings and/or in journals. In these cases, your protected health information will bot 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/SURROGATE 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 considerate, respectful and dignified care.
- To be provided privacy and security during the delivery of patient care service.
- To receive information from his/her physician about his/her illness, his/her course of treatment and his/her prospects for recovery in terms that he/she can understand.
- To receive as much information about any proposed treatment or procedures as he/she may need in order to give informed consent prior to the start of any procedure or treatment.
- When it is medically inadvisable to give such information to a patient, the information is provided to a person designated by the patient, or to a legally authorized person.
- 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 patient has the right to be told what effect this may have on their health, and the reason shall 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 consideration of privacy concerning his/her medical care. Case discussion, consultation, examination and treatment are confidential and shall be conducted discretely.
- Confidential treatment of all communications and records pertaining to his/her care and his/her stay in the facility. His/her written permission shall be obtained before his/her medical records can be made available to anyone not directly concerned with his/her care. The facility has established policies to govern access and duplication of patient records.
- To have care delivered in a safe environment, free from all forms of abuse, neglect, harassment or reprisal.
- Reasonable continuity of care and to know in advance the time and location of appointment, as well as the physician providing the care.
- Be informed by his/her physician or a delegate of his/her physician of the continuing health care requirements 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 providers if other qualified providers are available.
- To know which facility rules and policies apply to his/her conduct while a patient.
- To have all patients' rights apply to the person who may have legal responsibility to make decisions regarding medical care on behalf of the patient. All personnel shall observe these patient's rights.
- To be informed of any research or experimental treatment or drugs and to refuse participation without compromise to the patient's care. The patient'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.

PATIENT RESPONSIBILITIES:

- To provide complete and accurate information to the best of their ability about their health, any medications, including over-the-counter products and dietary supplements and any allergies or sensitivities.
- To follow the treatment plan prescribed by their provider, including pre-operative and discharge instructions.
- To provide a responsible 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 advance healthcare directive 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

If you need an interpreter:

If you will need an interpreter, please let us know and one will be provided for you. If you have someone who can translate confidential, medical and financial information for you please make arrangements to have them accompany you on the day of your procedure.

Rights and Respect for Property /Person Privacy and Safety

The patient has the right to:

- Exercise his or her rights without being subjected to discrimination or reprisal.
- Personal privacy
- Voice a grievance regarding treatment or care that is, or fails to be, furnished.
- Receive care in a safe setting
- Be fully informed about a treatment or procedure and the expected outcome before it is performed.
- Be free from all forms of abuse or harassment
- Confidentiality of personal medical information.

Statement of Nondiscrimination:

Physicians' Eye Surgery Center complies with applicable Federal civil rights laws and does not discriminate on the basis of race, color, national origin, age, disability, or sex.

Physicians' Eye Surgery Center cumple con las leyes federales de derechos civiles aplicables y no discrimina por motivos de raza, color, nacionalidad, edad, discapacidad o sexo.

Physicians' Eye Surgery Center respecte les lois fédérales en vigueur relatives aux droits civiques et ne pratique aucune discrimination basée sur la race, la couleur de peau, l'origine nationale, l'âge, le sexe ou un handicap.

Physicians' Eye Surgery Center 遵守適用的聯邦民權法律規定，不因種族、膚色、民族血統、年齡、殘障或性別而歧視任何人。

Advance Directives

An "Advance Directive" is a general term that refers to your instructions about your medical care in the event you become unable to voice these instructions yourself. Each state regulates advance directives differently. STATE laws regarding Advanced Directives are found in South Carolina Statutes §44-77-10-160. In the State of South Carolina and federal law 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 or treatment to accept, reject or discontinue. If certain treatments 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 name as their agent, you can sign a living will.

You have the right to informed decision making regarding your care, including information regarding Advance Directives and this facility's policy on Advance Directives. Applicable state forms will also be provided upon request. A member of our staff will be discussing Advance Directives with the patient (and/or patient's representative or surrogate) prior to the procedure being performed.

Physician's 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 end of life 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 at the surgery center, the personnel at the center will initiate resuscitative or other stabilizing measures. The patient will be transferred to an acute care hospital, where further treatment decisions will be made.

If the patient has Advance Directives which have been provided to the surgery center that impact resuscitative 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/Grievances: If you have a problem or complaint, please speak to one of our staff to address your concern. If necessary, your problem will be advanced to center management for resolution. You have the right to have your verbal or written grievances investigated and to receive written notification of actions taken.

The following are the names and/or agencies you may contact:

Center Director

2060 Charlie Hall Blvd.

Charleston, SC 29414

843-571-4800

You may contact the state to report a complaint:

South Carolina Health & Human Services

PO Box 8206

Columbia, South Carolina 29202

888.549.0820

State Web site: https://www.scdhhs.gov/

Medicare beneficiaries may also file a complaint with the Medicare Beneficiary Ombudsman. Medicare Ombudsman Web site

http://www.medicare.gov/claims-and-appeals/medicare-rights/get-help/ombudsman.html

Medicare: 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:

5250 Old Orchard Road, Suite 200

Skokie, IL 60077

(847) 853-6060 or email: info@aaahc.org

Physician Ownership

Physician Financial Interest and Ownership: Physician Financial Interest and Ownership: The center is owned, in part, by the physicians. The physician(s) who referred you to this 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.

THE FOLLOWING PHYSICIANS HAVE A FINANCIAL INTEREST IN THE CENTER: Eric Jablon; John Boatwright; Charlene Grice; Leslie Scarlett; Berdine Burger; John Thompson; Kerry Solomon; Paul Herring; Robert Reuther; Thomas Newland

Statement of consent:

I understand that cataract surgery is performed to alleviate visual impairments attributable to lens opacity. My vision (even with glasses) is unsatisfactory. I acknowledge that surgical intervention is medically indicated and I am ready to proceed with cataract surgery.

I have read this release and 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 these services.

Your physician believes that the following service(s), although 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 insuranceplan, should you choose to receive these 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 these items or services.

The services recommended by your physician are listed below:

Custom Vision/ Elective/ Non Covered by Medicare/Insurance - Cost $2865 per eye

Items included with Custom Vision:

ADVANCED VISION TESTING (AVT)

IMAGE GUIDANCE

REFRACTIVE PLAN/INTERP

FS ARC INCISIONS

FS OCT

LRI CALCS

**LASER ASSISTED SX (LenSx) WITH ARCS AND/OR A MANUAL LRI

*TORIC IOL

*TRIAL FRAME

*CL TRIAL FITTING

*AXIS MARKING

*AXIS ORIENTATION

*ARC LENGTH MARKING

*ORA

*LASIK ENHANCEMENT(up to 1 year after Surgery)

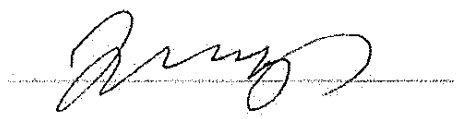
*INDICATES WHEN NECESSARY

**INDICATES WHEN ABLE

By signing this form, I acknowledge that I have been informed in advance of receiving these services, that 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.

Patient:



John Dong

Date: April 24, 2023
Time: 10:10 AM

PATIENT NAME: _____ Date: _____

KERRY SOLOMON, MD

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: Astigmatic correcting incisions and lenses, multi-focal, extended depth of focus and accommodative lenses, LenSx® (LAser Cataract Surgery) VERION™ and ORA™, for those patients who qualify. **If you have had previous refractive surgery, calculation of your surgical plan is more complicated and ORA™ 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 elect 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. Astigmatism will be corrected with a Toric lens, LenSx, LRI or any combination there of. 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 / tri-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 ORA technology will be available when necessary. ORA provides a total refraction 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 indicated 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: _____ **Witness:** _____

Carolina Eye Physicians

Insurance Verification

Patient Name: Dong, John MRN : _____

First Eye		Second Eye	
Patient Responsibility After Insurance/Physician: $	0	Patient Responsibility After Insurance/Physician: $	0
Patient Responsibility Elective/Physician: $	1895	Patient Responsibility Elective/Physician: $	1895
Patient Responsibility after Insurance/Facility: $	250	Patient Responsibility after Insurance/Facility: $	250
Patient Responsibility Elective/Facility: $	970	Patient Responsibility Elective/Facility: $	970
Other: $	1week	Other: $	1week
Total Payment Due ~~2-3 Days~~ Prior to Surgery: $	1895 / 1220	**Total Payment Due ~~2-3 Days~~ Prior to Surgery: $**	1895 / 1220
Comanage Elective- to be collected by CM Dr: $	~~Total~~ $3115	Comanage Elective- to be collected by CM Dr: $	$3115
Verification Prepared By:	k camus	Date:	5/1/23

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 (AAOC) 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.

Jean H. Toal
Ninth Judicial Circuit

Charleston, South Carolina

_____, 2023

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.)	**PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGEMENT**
)	
The Medical University of South Carolina,)	
)	
– Defendant,)	
)	

FILED
2023 APR 24 PM 3:42
CLERK OF COURT

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 Judgement 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.

Respectfully submitted, pro se,

April 21, 2023
Charleston, South Carolina

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 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

FILED
2023 APR 24 PM 3:42
JULIE J. ARMSTRONG
CLERK OF COURT

April 21, 2023

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)	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,)	**PLAINTIFF'S MEMORANDUM IN SUPPORT OF HIS OPPOSITION TO SUMMARY JUDGEMENT**
v.)	
)	
The Medical University of South Carolina,)	
)	
– Defendant,)	
)	

2023 JUN 27 AM 9:42
JULIE J. ARMSTRONG
CLERK OF COURT
BY: WCL

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.

1. 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 statutes 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 Colleague and Vice President for Medical Affairs, Dr. Jerry G. Reves, 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. Lanier 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 homeroom 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 worded 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: "[a]cording 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 excise "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. <u>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.</u>

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 short 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 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, P6-7. 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 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. Aabstract 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)).
>
> [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...."

1. 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, not 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 directories, 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.

II. 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

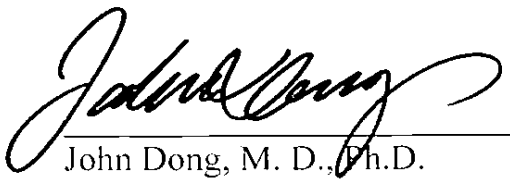
and may set a trial date to resolve the controversy by a jury. Defendant's motion for summary judgment is not supported by any of the required evidence and must be denied as a matter of law.

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 Judgement as a matter of law.

Respectfully submitted, pro se,

June 16, 2023
Charleston, South Carolina



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2016-CP-10-06083

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
JULIE J. ARMSTRONG
CLERK OF COURT
BY

June 26, 2023

John Dong, M. D., Ph. D.
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Email: johny.dong@gmail.com
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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 (John) 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 listening 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 excess 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 were there 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 Colleague and Vice President for Medical Affairs, Dr. Jerry G. Reves. Dr. Reves proposed a cooling period by separating the conflicting parties in order for me to timely resume my research. Dr. Reves proposed that MUSC would transfer all my assets and research operations to GenPhar, 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 Reves to sign the final Agreement in his office on May 3, 2010.

16. Out of deep respect and trust for Dr. Jerry Reves, 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;

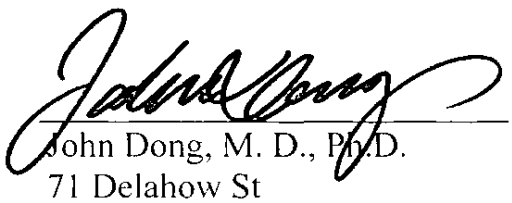
(7) Assisted and participated in a hostile takeover by one of the Company's investors who laid all the legal liability of the Company's using federal contract funds for a research facility on I and made him suffer all the legal consequences for what the Company had done while the investors cashed out 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 potion 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



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Appendix Two:

John Dong's Deposition

ELECTRONICALLY FILED - 2023 Mar 31 11:26 AM - CHARLESTON - COMMON PLEAS - CASE#2016CP1006683

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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

ELECTRONICALLY FILED - 2023 Mar 31 11:26 AM - CHARLESTON - COMMON PLEAS - CASE#2016CP1006683

Page 2

APPEARANCES OF COUNSEL:

PRO SE PLAINTIFF
JIAN-YUN (JOHN) DONG, M.D., Ph.D.:
[redacted]

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PROCEEDINGS

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JIAN-YUN (JOHN) DONG, M.D., Ph.D.
being first duly sworn, 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. I understand.
Q. The reason is, Dr. Dong, is we want to make sure, both you and I, that she is able to make an accurate transcript of the questions I ask

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and, maybe more importantly, the answers you give. She can only do that if you and I do a few things that I'll talk to you about that are meant to help to do that, okay?
A. All right.
Q. The first one is if I ask you a question today that you don't understand, don't hesitate to ask me to -- say, Bob, Mr. Conley, can you restate that? Can you ask it again? I'm not sure I understand what you were saying. Okay?
A. All right.
Q. If you will do that, I'm happy to rephrase the question, break it into small parts, whatever I need to do so that I don't confuse you with the question, because it's not meant to confuse you. That doesn't do you or I any good to confuse you, all right?
A. All right.
Q. So just make sure, if you don't understand something -- and I know you will anyway. I just tell people, don't be bashful about saying I don't understand what you're asking me, and I'll try to rephrase it, okay?
A. Okay.
Q. The second one is people, when they

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ask and answer questions, have a tendency sometimes to speak over one another. Usually that's because we all start to think with our brains about our answer before someone is finished asking the question. So what I generally tell witnesses is if you can agree to let me ask my entire question before you begin to speak with an answer, I will, likewise, agree I'm not going to ask you another question until I'm sure you're done with your answer.

It becomes very hard for her, if you and I start to talk over one another, to get an accurate record. So if from time to time I might ask you, Hey, wait, let me finish asking my question, I'm not doing that to be rude. It just means you have done what we all tend to do, and that is sometimes start to give an answer before somebody is finished asking a question; is that fair enough?
A. That's fair.
Q. The other item is, is that -- I don't have a tendency to do this. I think, if anything, I probably speak too slow, not too fast. But it is important that you do talk at a sort of a measured pace. Again, for the convenience of the

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court reporter, to make sure she gets your answers correctly. It's generally helpful, too, if, you know, you're in a good posture. Right now she can sort of see your face. That's fine. That helps her make sure she's getting correct testimony on the record as well. If we can do all of those things, that will really help do this efficiently; is that fair enough?

A. All right.

Q. If you have any questions as we go along today, don't hesitate to ask them. Meaning, you're a pro se party; you have never been through a deposition in this posture before, so if you have a question, you're free to ask me a question at any point.

A. All right.

Q. Whether I can answer it or not, I'd have to know what the question is, but if you do have a question, just ask. The process isn't designed or meant to confuse you. It's solely a discovery tool so that I can get your testimony about your claims in this case, all right?

A. All right.

Q. A couple other items. One, I generally take a break every hour because I get

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tired of asking questions, and I presume the witness is probably, likewise, tired of answering my questions. So I try to take a ten-minute break or so every hour. However, with that said, you're welcome to take a break at any time. You can look at me at any moment and say, You know, can I take ten minutes? That's fine, we'll take ten minutes. The only thing I would ask is that if I have a question I have asked you, that you go ahead and finish answering before we take the break. Otherwise, you can take a break whenever you want all right?

A. All right.

Q. One of the things you have to agree to abide by, since you're the witness that's being deposed, is until the deposition is over, you're not allowed to speak to anybody about your testimony. Meaning, you know, if we take a break, you can't call somebody on the phone and talk to them about your testimony. You can't text somebody about your testimony until the deposition is concluded. Obviously, once it's concluded, talk to whoever you want about it, okay?

A. I understand.

Q. The other thing I want to go ahead and

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ask you now -- I generally save this to the end of the deposition to ask the witness, but I'll go ahead and do this with you now because I think it's more efficient to do it this way.

You, as the witness in the case, have the option to do under the rules what's called "reading and signing your deposition transcript."

A. Right.

Q. In its most simplistic terms, what that means is after the deposition is concluded today and the court reporter prepares a transcript of it, you can elect to tell the court reporter "I want to read and sign my transcript." If you do that, what she will do is once it's prepared, she will email it or mail it to you -- you can work out with her how you want to get it -- and she will provide you with a copy of it. At that point in time you have 30 days to review it under the rules, okay?

A. All right.

Q. I presume you probably want to read and sign your transcript; is that right?

A. Yes, I do.

Q. So that's good. Once the transcript is prepared, the court reporter will take care of

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getting that to you, and you can look at the rules. The rule lays out what your obligations are once you receive it, okay?

A. All right.

Q. Any questions about any of those things?

A. No.

Q. Any questions before we sort of get started about sort of the general methodology of doing this?

A. No. Just remind me to silence my phone.

Q. Yes, I have to remember to do that as well.

Can you give me your full name for the record?

A. It's J-i-a-n - Y-u-n. I go by John. Last name, Dong, D-o-n-g.

Q. Can you give us your current residential address?

A. [redacted]

Q. I'm not looking for exact dates, Dr. Dong, but approximately how long have you lived at that address, generally?

A. [redacted].

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Q. Do you need to finish something on your phone?
A. I'm trying to silence it.
Q. So you have lived at the [redacted] address since [redacted]?
A. Yes.
Q. Just prior to your address on [redacted] where did you reside? What was your residential address?
A. I lived there briefly -- well, actually, let me give you the [redacted]
Q. I think it's [redacted].
A. Yes, exactly right, [redacted].
Q. That is the address you were residing at before you started living on [redacted]?
A. Right. I also lived briefly in [redacted]. I could not remember the address.
Q. [redacted] being [redacted]?
A. Right.
Q. Over in [redacted] on [redacted]?
A. Right.
Q. The address or the residence you lived in in [redacted], did you live there alone, or did

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someone live there with you?
A. I lived there alone. I was divorced.
Q. What about the address you gave us up in [redacted], did you live there with someone, or did you live there alone?
A. I lived there alone.
Q. What about the address on [redacted], do you live there alone, or do you live there with someone else?
A. I live with my wife, my second marriage.
Q. Can you give us your current wife's name?
A. It's officially P-e-n-g. Last name Z-h-a-o. She goes by Allison Dong.
Q. I don't need exact dates, but about how long have you and your current spouse been married?
A. 2015 or '16 -- 2016.
Q. I think you mentioned just a minute ago that this is your second marriage; is that right?
A. Correct.
Q. Can you give me the name of your first spouse?

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A. D-a-n-h-e-r. Last name W-a-n-g.
Q. Any other marriages, other than the two you mentioned?
A. No.
Q. That reminds me of something else I need to mention to you that I didn't. Sometimes when you're answering questions, we have a tendency to nod our head or something. The court reporter, as you might imagine, can only take down verbal responses.
A. I see.
Q. So try to remember to say yes or no and not nod your head. And I will remind you if you nod your head, is that a yes or no. I'm not doing that to be rude. I just want to make sure she gets your testimony correctly.
A. All right.
Q. Your first spouse, do you remember what year you were divorced?
A. I have a problem with my memory of dates.
Q. Just general.
A. I think it was -- dates and years, because I suffer from memory suppression due to when I grew up under the communist rule, and my

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parents was persecuted all their life.
Q. So do you remember what year you were divorced?
A. Because it's bad events, I think. So I don't know. If I remember, I think -- let me guess. It's about 2012.
Q. Do you remember if that divorce was in [redacted]?
A. Yes.
Q. Did you have a lawyer who represented you in that divorce?
A. No.
Q. Do you know if your ex-spouse had a lawyer?
A. She did.
Q. Do you remember who her lawyer was in that divorce?
A. No.
Q. You have to say no.
A. No. But actually, I did have a lawyer, but just for the -- not for the whole process. It was -- I could not remember his name, but it may come back.
Q. That's fine. It sounds to me like your memory is you had a lawyer for part of the

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divorce process, but perhaps not all of it?
A. Just the -- right.
Q. And your recollection is you don't recall your ex-spouse having a lawyer at any time during the process?
A. She had lawyer for the entire file.
Q. She did?
A. Right.
Q. The entire time, but you just don't remember that person's name?
A. No, because I was completely removed from the process. So basically I agreed to everything they asked for. Actually, I never met her lawyer.
Q. Do you and your first wife have any children?
A. Yes, we have a daughter.
Q. Can you give us her name?
A. Deanna, D-e-a-n-n-a, Dong.
Q. Any children by your second marriage?
A. No.
Q. Your ex-spouse, does she still live in the greater [redacted] area? Do you know where she lives?
A. She still lives in the [redacted]

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That's [redacted].
Q. Is that the house in [redacted]?
A. No.
Q. No, it's not?
A. No. It's at [redacted].
Q. You describe that as the [redacted] Is that a residence where you lived at one time?
A. Yes.
Q. The address you gave at [redacted]?
A. Yes, during the marriage.
Q. We have to be careful about talking over one another.
A. Sorry, about that.
Q. That's okay. You've given me a couple of addresses: the [redacted] address, the [redacted] address, the address in [redacted] that you don't remember the exact address, and then you also gave us a fourth address where you've resided, which is the [redacted] address; is that right?
A. Right. Correct.
Q. Your ex-spouse, do you know if she's employed anywhere? Do you know if she works?
A. She should be retired, too.

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Q. She what?
A. She should have been retired, too.
Q. But do you know if she works anywhere? You can just tell me if she doesn't or if you don't know.
A. I do not know for sure.
Q. Your daughter, does she live in [redacted]?
A. She is a surgeon in -- somewhere in [redacted]. I don't remember the name of the hospital or the area.
Q. Your current wife, does she work anywhere? Is she employed?
A. No. She's retired, too.
Q. She's retired?
A. Right.
Q. What did she do before she retired?
A. She was a teacher in medical college in Beijing.
Q. To your knowledge, has she ever held a job here in the local area?
A. No.
Q. Dr. Dong, is she a U.S. citizen? Has she been naturalized? What is her status?
A. She's permanent resident based on

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marriage.
Q. Other than your current wife and your ex-wife, anybody else in South Carolina that you're related to in any way?
A. No.
Q. No other family members?
A. No.
Q. At all?
A. No.
Q. Are you currently employed anywhere?
A. No. I'm retired.
Q. When you say retired, that can mean a lot of different things to different people. What does that mean when you tell me you're retired?
A. I reached the age of retirement.
Q. How old are you?
A. I'm 65, going on 66.
Q. When I hear someone say they're 65 and they're retired, in my mind, I'm generally thinking they're drawing Social Security. Are you drawing Social Security at this point?
A. Yes.
Q. Are you receiving any other retirement benefits other than Social Security? Meaning, do you have any other retirement benefits that are

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providing you, like most retirees, with income on a monthly basis?
A. I've been working at many universities where I've been a professor and doctor my whole life.
Q. That's what I'm trying to find out. What other sources of retirement income do you have? You told me Social Security. Do you receive retirement income by way of your employment at the Medical University of South Carolina?
A. Yes, I do.
Q. So that's probably through the South Carolina Public Employee Benefits --
A. Deferred.
Q. We can't talk over each other. You have to let me finish.
A. Sorry.
Q. It's okay. But just wait.
I presume that retirement you receive in respect to your work at MUSC, you receive that by way of what's called the South Carolina Public Employee Benefits Association. Do you receive a retirement check each month?
A. No, I don't. Actually, I haven't

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activated it yet.
Q. So you're not receiving any retirement benefits you accrued as a result of your work at MUSC?
A. No.
Q. So where are you -- what other sources of income do you have right now, other than your Social Security that you receive each month?
A. I also rented out my house in [redacted].
Q. The house, is that the house at the address that you told us about earlier?
A. Right. That's my house.
Q. When you say you rent it, does that mean -- rent nowadays can mean a lot of things. It may mean you rent it Airbnb, or you can rent it permanently to somebody.
A. No. I rent it permanently to someone.
Q. Your sources of income right now are your Social Security, whatever rent you receive on the house on [redacted]. Any other sources of income right now.
A. No.
Q. Do you receive any sources of income from any other places where you've worked in the

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past?
A. I'm not clear how the system works, because I believe all the work, the pensions that I had at differing universities all follow me to MUSC in the end. So I worked at UCSF before. I worked in California. That has the best pension system nationwide.
Q. To your knowledge, are you receiving any kind of pension through -- from California right now?
A. I think I'm not quite sure, because I never take care of my financial before, and I didn't follow up. I believe it was all transferred, combined into MUSC.
Q. So sitting here this morning, the only sources of income you can identify right now are your rent income from your house on [redacted] and your Social Security income?
A. That's correct.
Q. The house on [redacted], is that a house you own outright, or is there a mortgage on it? Do you know?
A. Actually, that's my wife's house.
Q. So you don't own the house at all?
A. No, I don't own that house.

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Q. Have you ever had an ownership interest in that house on [redacted]?
A. No.
Q. Since your employment ended at MUSC, have you applied for positions at any other universities or colleges?
A. I did not actually actively look for, but I did look at -- monitor employment opportunities from number of universities out of science journal. The reason is I have no way because I have no academic -- no more academic background. I do not have academic research anymore, because all my material was taken away. All my research material was taken away. I have no equipment.
Unless you start from over again, from my position, if you don't have facility, research materials and research -- active research projects going, you do -- you are not hirable, unless I want to be janitor.
So actually, being full professor like what I did at MUSC, they recruited me from UCSF, a much prestigious university. That actually was done great move on my side, but I could, because I have active research project and a lab full of

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technician, post-docs, and trainees, and I have my research funding. And that's -- all the equipment was transferred with me. So I have means to conduct academic research. When all of those was taken away from me, I have no means to conduct academic research, and I have no way to apply a position lab work.

Q. So the answer would be no, since your employment with MUSC ended, you could not --

A. I could not.

Q. You have to let me finish with the question. I promise you I will sit here and let you give your full answer before I ask another question. But for the court reporter's benefit, you have to let me ask my question before you give an answer.

So the answer would be you have not applied for any other academic positions since your employment at MUSC ended?

MR. DONG: Objection.

Can I give my answer instead of you give me the answer and let me say yes or no?

MR. CONLEY: You can say whatever you want, Dr. Dong.

THE WITNESS: I could not because of

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reason I stated above.

BY MR. CONLEY:

Q. Because you could not, does that mean you have not?

A. I could not. That means I could not.

Q. Setting aside academic positions, have you applied for any positions in private industry since your employment at MUSC ended?

A. I'm not employable for private industries because I have no, so, industrial background experience.

Q. Can you identify any jobs you have applied for anywhere with any type of employer since your employment with MUSC ended?

A. The only option for me was to find academic background, as I said. As I say, because of those limitations, I could not apply for academic background, academic professorship. I'm not applying for trainee. I'm not applying for start or technician. So I could not do anything I want to do.

If you take away a surgeon's equipment, ability to perform operation, you ask the surgeon have you applied for any other jobs, the answer will be, obviously, no, you cannot.

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Q. I'm going to ask you about -- generally, about the eleven people you have asked to depose in the case. Mark Sothmann, can you tell me just generally? I'm looking for a rough idea so I have some knowledge of what connection Mr. or Dr. Sothmann has to your claims against MUSC in the case.

A. Basically there's no connection. MUSC limited my discovery only to Mark Sothmann, and I think he was interim provost or whatever for brief period of time. He was not involved before or after the real events, what happening -- what happened. He was not involved.

I never met him before. I don't remember. He was not -- I did not remember -- I do not remember. He might be copied on some emails. I do not remember actually seeking him out for the problems I had at MUSC.

Q. Do you remember having any meetings with Mr. Sothmann or him being involved in any meetings before you signed the agreement --

A. No.

Q. -- with MUSC?

A. No.

Q. Do you ever remember meeting with him

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after you signed the agreement in regard to anything related to it?

A. No.

Q. Beth Gladden, can you give me a general idea of what it is you believe she knows about your claims in the case?

A. She should have known everything because she's the business administrator for Dr. James Norris, who was the chairman at the time, and she basically included James Norris on everything they done to me. I don't know if she's honest or not, if she can tell the truth, or whether she will be a material witness.

Q. Do you recall ever having any conversations with Ms. Gladden in regard to the agreement that you entered into with MUSC?

A. No. She wasn't at that level.

Q. Do you remember her ever being involved in any meetings or conversations leading up to you entering into that agreement with MUSC?

A. She was involved, deeply involved, in the events taking away my research material, spending my money by Dr. James Norris. And actually, she was there when I was blocked from entering my laboratory, and she was claiming --

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she was claiming there was a criminal investigation because somebody stole my genetic material.

That was the excuse at the time to block me entering my lab, tell me there was an auditing ongoing. So, therefore, I could not enter my lab. That's the first event I find that, really, Dr. Norris basically just stop from hiding, basically wanted to take away my genetic material, my money and equipment for his own use.

Q. Thank you for telling me that. Do you remember Ms. Gladden ever being involved in discussions about the written agreement that you signed with MUSC?

A. No, she wasn't.

Q. That's all I'm asking. You don't remember her being involved in that agreement?

A. No, I do not. But she is behind all the events that's transpired to the agreement which compromised between the administration and me regarding to -- to prevent me from actually reporting to what James Norris did.

What he did was he -- actually what I've been accused of and charged with, because he misusing contract grant fund of another person for

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his own use. That can trigger the auditing in all of the MUSC grants, as well as disqualify MUSC from applying for federal grants if that's actually be proven.

That's why I have intention not to harm MUSC, not to harm all my colleagues. So that's a compromise position to reach the agreement so I can get my research material and lab equipment back quickly, because I have a career to follow, instead of fighting with MUSC at the time and also causing severe damage to MUSC.

Q. What about Michael G. Schmidt? He's someone you indicated you wanted to take his deposition. What does he know, or what is it you believe he knows that has some connection to your claims in this lawsuit?

A. Of course, he knows the actual events. At least he knows some of the actual events. He was vice president -- no, no -- vice chairman of the department, and I believe he let James Norris did what he did, but he wasn't helping me in any way. But he knows a lot of details.

Also, he was on the biosafety committee and being used against me to auditing me for biosafety violations. So I was put through

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many, many of the biosafety committee auditing examination and filing reports, and in the end I did not violate anything.

Q. Was Dr. Schmidt involved, to your recollection, in any way in the agreement that you reached -- entered into with MUSC?

A. It's not agreement per se, but it was the old events transpired the agreement. The agreement is, retrospect, is in bad faith, just try me get off MUSC. So that's why the agreement -- actually, the discussion and background of the agreement was way beyond the agreement, which at the time I was just desperately trying to get my research projects going, because in my career if you stop doing research, and your career will be severely damaged.

Q. Do you recall ever having any discussions with Dr. Schmidt about that written agreement?

A. No.

Q. Dr. Stephen -- Stephen, with a P-h, Tomlinson, he was someone else. You indicated you wanted to take Dr. Tomlinson's deposition. Can you tell me why it is you want to take

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Dr. Tomlinson's deposition, including what it is you think he knows that relates to your lawsuit?

A. He knows -- well, he was one of the collaborators of mine. He definitely knows the event and also all the activities transpired to the agreement.

Q. Do you recall ever having any conversations with Dr. Tomlinson about the actual written agreement you entered into with MUSC?

A. No. He doesn't have the -- any part in the written agreement, but it was -- he have significant knowledge of the events that have transpired to the agreement, and also he was one of my scientific collaborators when I was the professor at the department, and he was actually -- I was on his recruitment committee when I was at the department.

And his career was not impacted, because I do not believe Dr. Norris was interested in his research. And he also very experienced. He will protect his money from being abused by Dr. James Norris.

Q. What about Christina Voelkel-Johnson, Dr. Voelkel-Johnson? Can you give me some idea of what it is you believe she may know that pertains

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to your lawsuit, Dr. Dong?
A. Also involved in the activities, and she used to be a trainee of Dr. James Norris. Actually, Dr. James Norris take my material and giving to one of the person in his laboratory, Christy or Christina, sorry, and she will get the benefit of obtaining my material, conducting her research, advance her career while -- without giving me credit.
So she was the one in a way indirectly benefitted from Dr. James Norris taking my genetic material and research resources and for her to advance her career, which will be under James Norris. So when she had publication, James Norris will be the correspondent author, who will be the ultimate person in charge on the research projects and obtain federal funding based on those research.
And she was one of them took my research material and my research projects for her benefit as the beneficiary or recipient of Dr. Norris illegally and immorally taking my genetic material and lab research, as well as equipment for his own use.
Q. Do you know of any involvement that

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Dr. Johnson directly had in the agreement that you entered into with at MUSC?
A. This is not only agreement. This is the event taking my genetic material and research projects and research funding from me and research equipment from me and block my research advantage, block my career in order to advance James Norris's career, funding. So that's -- actually, the agreement is one small part of the equation.
Q. I understand that's your position. I'm just asking if Dr. Johnson, to your knowledge, had any involvement in the written agreement. That's all I'm asking.
A. She does not.
Q. You also indicated you wanted to depose Lisa Saladin. That's S-a-l-a-d-i-n. Can you give me a general idea of what you believe Dr. Saladin may know about your lawsuit and the claims you make?
A. She's current provost, if I'm correct, and she will have to -- I assume, because I never met her before -- assume she will know the general policy of MUSC.
The administration policy of MUSC, the faculty handbooks was governed -- governed the

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relationship between the Medical University and all of the faculty members. And she will also have knowledge, direct knowledge, of how a tenureship worked at MUSC.
Q. Have you ever met Dr. Saladin?
A. No, I have not.
Q. I don't believe she was the provost when your time at MUSC ended; is that right? She wasn't the provost then, was she?
A. No, she wasn't. She is now. The provost at the time was John Raymond.
Q. To your knowledge, did Dr. Saladin have any involvement in the written agreement you reached with MUSC?
A. She represented MUSC, now. She actually should be able to testify about the -- how the -- as I said, how the MUSC system works as a continuous process between a faculty member and MUSC.
Q. Do you recall ever having any communications with Dr. Saladin prior to entering into the --
A. No.
Q. -- agreement with MUSC?
A. No.

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Q. You have to let me finish my question, Dr. Dong.
A. All right.
Q. David J Cole, current president at MUSC, can you give me some idea of why you identified Dr. Cole as someone who you want to depose?
A. He was one of my close collaborator on assignment of projects, and we have joined the research projects. I also trained his graduate student as post-doc fellows, and he intimately knows my -- the value of my research and, in general, how research and medical practice was conducted as a professor, as a faculty member, and he has certain knowledge of the importance of the biomedical research materials and projects taken away from me.
And so actually, he was one of my close -- closest collaborators and one of the close collaborators at MUSC, and so he will be able to shed some lights on how the events transpired.
Q. To my knowledge, Dr. Cole was not the president of MUSC when your time there ended; is that right?

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A. No. I wasn't depose him as a president. I would depose him as one of my colleagues, close -- had a close relationship with me during my research, during my tenure at MUSC and all of the research events and the importance of my materials and was taken away from me by Dr. James Norris.

Q. Dr. Jerry Reves, can you tell me why he's someone that you had -- or you want to depose in the case and what he may know about your lawsuit?

A. Actually, he was the one single person negotiated with me on the so-called compromised position, and he made a lot of -- sorry, I probably used she. He.

Q. It's okay.

A. He promised me a lot, but it was not in the final agreement. And he was the one tends to be, for lack of better way, the good one, good person, wearing the white hat during the negotiation.

Q. I think what you just said to me is your impression was he was playing what we might call "the good guy" during his negotiation with you?

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A. Yes. Basically he was explaining to me this is just provide a mechanism to hold down so I can continue my research at different location, one I -- if I can prove I can do good research, especially get funding to MUSC -- get more funding to MUSC, and MUSC will bring me back.

And also he promised me to continue my research, as well as teaching graduate students, training post-docs fellows, do all the academics research as I have done before.

Q. You also indicated you wanted to take the deposition of somebody by the name of Scott "Reid or "Reids."

A. Scott Reids (sic).

Q. Can you tell me, in general, what -- I don't know if it's Mr. or Dr. Reid may know about your claims in the lawsuit?

A. He was in charge to implement the material transfer. He was the business manager, the counterpart of Beth Gladden, but he was in the department of biochemistry and more like biology. He was under Dr. Yusuf Hannun, which is my second appointment.

But one of the piece of equipment missing, not on the list, he was the go-to person

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to find out if that piece of equipment exists, where it was located, and he was given -- on the paper, he was given the authority to oversee the smooth transfer my laboratory documents, my genetic material, my lab equipment, and doing all the administrative matters during my research, so-called, off campus.

Q. Dr. Steven Lanier, he's also someone who you indicated you wanted to take Dr. Lanier's deposition. Can you, like you've been good enough to do with the other witnesses, give me a general idea of what you believe Dr. Lanier may know about the claims in your lawsuit?

A. Dr. Lanier was the, ultimately, responsible person, because he was close friend of Dr. James Norris while he was the chairman -- no, he was not the chairman. He was a faculty of department of biochemistry while he was competing for the chairmanship of biochemistry, which eventually given to Yusuf Hannun, and he left university, moved to --

Q. Wayne State maybe?

A. No. He was -- at that time he left for Tulane or university somewhere Louisiana, and he was recruited back when Dr. John Raymond left

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or somewhere about and become the executive vice president for research. Maybe he had other title, but he was ultimately in charge of the research activities at the MUSC, and he backed up for Dr. James Norris.

He was the one, as vice president, block me from entering my laboratory. He was the one actually take away from my research laboratory, my office using his authority as the vice president of the university, and he was the one I reported to administration what Dr. Norris was doing to me, as well other problems Dr. Norris may have in terms of misusing grant money of other people, and he was appointed to be the person in charge.

And I'll skip that. I don't want to give that. He was the one ultimately tricked me into the agreement and eventually breached the agreement and benefitted, actually, for MUSC, as well as for James Norris, to take my research projects, technologies, and research documents and lab equipment.

Q. Dr. Dong, in the lead-up to you entering into the written agreement with MUSC, did you have a lawyer representing you?

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A. No, I did not.
Q. You did not?
A. No. I understand there was a sentence slipped into the agreement before I signed it, but at the time I was more anxious to -- I believed Dr. -- Dean Reves or -- because I have tendency to believe every -- my colleagues, because they are doctors, they are all highly ethical professions -- professionals, with the exception of James Norris and Steven Lanier.
I can't remember if I also noticed Dr. Rosen.
Q. Can you spell the last name? I'm not sure I caught that.
A. Rosen, R-o-s-e-n. Ken Rosen.
Q. Dr. Rosen?
A. Right. He is the director of FRD, Foundation For Research and Development, of MUSC.
Q. What is it Dr. Rosen knows about your lawsuit or the claims you made?
A. He was involved actually, as well as Dr. John Raymond, involved in setting up the company, GenPhar, with New York investors, and he was also involved -- played a part recruiting me from UCSF to specifically help MUSC to develop

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biotech industries for MUSC under the mandate of State of South Carolina.
So he will know how the interplay works between the company which lend me the lab space and also the -- how I actually got involved with the biotech company on behalf of MUSC.
Q. Is Rosen R-o-s-e-n?
A. R-o-s-e-n, or I think R-o-s-o-n. But he was director FRD for a long time, and anybody will know his...
Q. There are some other people you listed in responses to our interrogatories. I want to ask you about a few of these people. You listed Dr. John Raymond --
A. He was the provost, sorry.
Q. That's all right. So Dr. Raymond was the provost at the time you entered into the agreement -- the signed agreement?
A. That's where the -- because that's my report to administration started that -- when John was the provost, and -- but I had a good collaboration relationship with Dr. Raymond. But once I started the complaint, that potentially can cause serious problem for MUSC, and so he -- and we did not have any communications, but I think he

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was involved in my complaint and also tried to follow the process before he actually transferred to become the president or vice president of another university.
Q. Do you have any recollection of Dr. Raymond being involved with the written agreement you entered into in this --
A. He was not.
Q. You have to let me finish.
Do you have any recollection of Dr. Raymond being involved in the written agreement that you entered with MUSC?
A. He was not directly involved in the written agreement. Only person directly involved in written agreement was Joe Goodman, was the general counsel of MUSC, and Dean Reves and Steven Lanier, but Steven Lanier is kind of in the shadow because he knows he was -- he is the one that was the dirty work.
Q. You mentioned the name at the hearing two weeks ago of Samyon Rubinchick. Samyon is S-a-m-y-o-n, and Rubinchick is R-u-b-i-n-c-h-i-c-k.
Can you tell me what Dr. Rubinchick knows or you believe he knows about the claims

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you're making?
A. He knows all of the actual events. He was the assistant professor, work under me in my laboratory. But because Dr. Norris hold the bacon, in a way, to promote him any further, so he was basically using Dr. Rubinchick to do his work while Dr. Rubinchick was on my payroll and using -- have access to all my research materials.
And also the words that Dr. Norris once said, "I like this because I can take money out of one pocket, put into the other; I got all the work done."
Guess who was the one being taken advantage of? That was me.
So actually, Dr. Rubinchick did all, everything, including doing the auditing, transfer my genetic material, and he was involved at the time.
Q. Do you know if Dr. Rubinchick had any involvement in the agreement you reached with MUSC, the written agreement?
A. He does not have the agreement. The agreement only small part of it. It's not the whole thing. The agreement covers a lot, which is because that's the compromise for what Dr. Norris

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did to me so I can start my research at a different -- continue my research at a different location, while the breach of the agreement completely stop me from conducting my research, stopped my career cold because I have no genetic material, no research equipment, no personnel and no documents.

Because research is not done by one person. It's all of the lab notes and everything, everything done by the people working for you. So I will not enter lab notes. So without lab notes I will not know what happen, and I will not know how to repeat some of the experiments. So I'm the scientific engineer in a way, but I do not do the construction. I do not do the work.

Q. To go back to my question: Do you know of any involvement Dr. Rubinchick had in the written agreement? That's all I'm asking.

A. That's -- the answer is no.

Q. What about Dr. Brian Hole, H-o-l-e? You listed him. Can you tell me who Dr. Hole is and what you believe he may know about your claims in this lawsuit?

A. He does not. He's one of the graduate students sent to my lab by Dr. Norris as a condition for my promotion, and basically that -- so legitimize he using my research material to Dr. Hole's research project, graduation project, which become Dr. Norris project. So that's the setup.

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Q. You have a Dr. Kenneth Roozen, R-o-o-z-e-n. Who is that?

A. I think that's what I'm saying.

Q. That must have been the "Rosen" or "Roson" we were talking about earlier?

A. Roozen.

Q. I don't know how you spell it either, but we know who we're taking about.

Then you have Mr. Chip Hood listed in your interrogatories, too. Can you tell me what Mr. Hood knows about your claims in this lawsuit?

A. He was the director of our FRD following Dr. Roozen left. He has intimate knowledge of my research project and technologies, and he was trying to ask me to file patent disclosures so he will know the value of the technologies and the importance of the technology I had that was being taken by Dr. Norris.

Q. Do you know if Mr. Hood was involved at all in the written agreement that you entered into with MUSC?

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A. No.

Q. You also listed a Dr. Jennifer Schepps, S-c-h-e-p-p-s.

A. Yes.

Q. Do you know what she may know about your lawsuit and the claims in it?

A. She does not know lawsuit, but she was my graduate student. She will know what events transpired before the agreement was signed, why actually I signed the agreement, and what's the agreement for.

Q. I'm not going to be able to pronounce this last name. I'll do the best I can. Dr. Woraratanadharm?

A. Woraratanadharm.

Q. It's spelled W-o-r-a-r-a-t-a-n-a-d-h-a-r-m. Do you know who I'm speaking about?

A. She involved with --

Q. Can you tell me what you believe she may know about the claims in the lawsuit, Dr. Dong?

A. She was also one of my graduate students. So she knew what I went through.

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Q. You also listed a Dr. Stephanie Smith-Johnson. Do you know, or can you tell me what you believe she knows about your lawsuit and the claims in it?

A. Stephanie.

Q. It says "Stephanie Smith-Johnson."

A. I think that's a misspelling. I think that's Christy Johnson.

Q. The same person we talked about earlier?

A. Yes.

Q. Very good.

A. Sorry.

Q. That's fine. Dr. Steve London is someone you listed in your interrogatories. Can you tell me, in general, what it is you believe that Dr. London may know about the claims in your lawsuit?

A. He was one of my colleagues. He actually had a dispute with Dr. Norris on the same or similar issues, and, basically, I think the university covered it up and promoted him to, I think, even the vice president. So put him away from the department.

I think for the same issue that what

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James Norris did, could have a major impact on the overall funding of MUSC, but I wasn't ready to be a whistleblower. I wasn't going to do anything to harm the university or harm any of my colleagues, opposite from what they did to me.

Q. Did Dr. London, to your knowledge, have any involvement with the written agreement you entered into with MUSC?

A. No. No.

Q. Looks like the last person I have here is a Dr. Lucile "Landon," L-u-c-i-l-e, "L-a-n-d-o-n."

A. That's the husband, sorry.

Q. Can you tell me, in general, what Dr. Landon may know about your lawsuit and the claims in it?

A. Lucile, actually, is Dr. London's wife, and she also -- I think she went to professor.

Q. So this should be Lucile London, not Landon?

A. Right. Same person.

Q. So that's Dr. Steve London's spouse?

A. Wife, right.

Q. Tell me what you believe she may know

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about your lawsuit and the claims in it.

A. She actually work next door with me in the laboratory position, and actually, she -- Dr. Norris actually tried to start some dispute over equipment, over sharing facilities between me and Dr. Lucile London and to distract me from actually reporting what he did.

So Dr. London will have knowledge what transpired during the process, what the problem had with Dr. James Norris, which he eventually transpired to or lead to me to signing the agreement.

Q. Was Dr. Norris directly involved, to your knowledge, in the written agreement that you entered into with MUSC?

A. He didn't actually -- he cannot sign agreement with me because he is the target of my complaint, and I think he was taken off the picture, but he worked closely with Steve London -- Steve Lanier. Actually, the two conspired to took my material, research material, equipment, everything for his own use.

And Dr. Steve Lanier actually came to GenPhar, talk to me, wanted me to give him something. I did not know what. I thought what

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he meant was on behalf MUSC, but now I think back, that may not be true.

Q. Did you and Dr. Norris ever have any conversations about the written agreement you entered into at MUSC?

A. He was the target. He was the transpirer(sic). That's how the -- that agreement was reached.

Q. I understand that. My question was did you ever have any conversations with Dr. Norris about the written agreement?

A. I have all the conversations regarding to the problems I had, and that was transpired to the agreement. So how -- he was the -- intimately involved with the agreement was about.

That's actually -- he probably set up the -- he would be the one provide the list of equipment, and there is many pieces missing from the list. And also actually, he took some of the equipment and my contract, but -- and over -- so for center grant, and he considered that was his. Yet he wasn't signing any part of it.

He was intimately involved, because Dr. Reves doesn't know anything directly. He was just the representative MUSC to do the -- also was

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the dean of medical school. So he was the one actually presented as white hats, being good person, and try to calm down the situation and so I can quickly continue my research instead of go through the process at the time which will be -- end up with serious damage to my career.

Because research is a competition, that 100-meter dash. If you stop in the middle working on the logistics, you will -- for sure will be losing.

Q. You also listed -- the last person is Joe Good. Obviously, I know Mr. Good. He was the former in-house counsel at MUSC.

Did you have conversations with Mr. Good about the written agreement before it was entered into?

A. I do not have direct conversation, but I had some emails copying him. I believe he was the one drafted the agreement, and he also had a close communication with James Norris. So there are a lot of things sort of sneaked into the agreement before I sign it, and that is -- all the legal languages, that is all from Dr. Joe Good -- Mr. Good.

Q. But you understand what I'm asking?

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Have you had any direct conversations with Mr. Good? Did you --
A. I -- I did not. I did not have direct conversation with him.
Q. Thank you.
A. I don't remember. I might, but I don't remember.
MR. CONLEY: This is a good place to take ten minutes and get some more coffee.
(A recess was taken.)
MR. CONLEY: Back on the record.
(Exhibit 1, Civil Action, Dong v. MUSC, marked for identification.)
BY MR. CONLEY:
Q. Dr. Dong, I'm going to hand you what I have marked as Exhibit 1 to your deposition. And I'll just represent to you that is the lawsuit that you filed, including the two exhibits that were attached to the last. You can take a minute to look at it, though, before we talk about it at all.
A. Yes.
Q. Just keep it in front of you.
Dr. Dong, I asked you earlier if you were represented by a lawyer before you signed the

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written agreement with MUSC, and you indicated, I think, that you did not have a lawyer; is that right?
A. Correct.
Q. Obviously, at the time you filed the lawsuit initially in 2014, you did have a lawyer, which was Mr. Holmes, directly down below us?
A. Yes.
Q. Do you remember when in that time span you actually hired Mr. Holmes to represent you? I mean, obviously, it was sometime before September 2, 2014, when the lawsuit was filed. Do you remember if it was days before the lawsuit was filed, months before it was filed, that you hired Allen?
A. It was almost a year or maybe even more than a year.
Q. Meaning you think it might have been a year or more before you filed the lawsuit that you retained Mr. Holmes's law firm?
A. Correct.
Q. Nonetheless, Mr. Holmes did not represent you at the time you entered into that written agreement with MUSC?
A. That's correct.

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Q. Before you signed that written agreement with MUSC that we'll talk about in a minute, did you take it to a lawyer to review with you and discuss at all?
A. No. I was being a good faculty member. I didn't want to cause any problems for MUSC, also any of my colleagues. I was going to resolve the problem so I can -- I have a career to take care of at the time. So I wasn't interested in getting in a dispute with my employer, with the university.
Q. After you entered into the written agreement with MUSC, was Mr. Holmes the first lawyer you took the agreement to?
A. Yes.
Q. In other words, other than Mr. Holmes, you never took it to any other attorney to review or discuss with you after you signed it?
A. Right. I do not -- I could not remember how I ended up with Mr. Holmes. I think maybe at the suggestion of Mr. Joe Good. I think that the delay was -- I should probably not have read it at the time (sic), and Mr. Joe Good was leaving, and Holmes actually put his hat into the ring for potential general counsel for MUSC. So

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he did not tell me at the time, but he keep delaying, delaying, delaying it until he knew he was out of the competition, and then he filed the lawsuit for me.
Q. Can you turn to Exhibit 1 that's a part of Defendant's Exhibit 1? Just turn back to it and go to Exhibit 1.
A. Oh, Exhibit 1?
Q. Yes. You just went by it, Dr. Dong.
A. Oh, here?
Q. Yes.
A. I have early stage of cataracts, so I have my glasses, but I have hard time to read it.
Q. That's fine. You take your time. Defendant's Exhibit 1 contains Exhibit 1 that we're looking at right now. That is a five-page document that's entitled "Final Separation Agreement between the Medical University of South Carolina, including its College of Medicine, and Dr." -- I'll just say -- "Dr. Dong, professor of microbiology and immunology," correct?
A. Correct. That's my first appointment.
Q. If you look back on the fifth page of that document, Dr. Dong, there is a signature line with your name below it and then a signature above

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it. Is that your signature?
A. Yes.
Q. Do you recall if May 3rd, 2010, is the date you signed it?
A. I can't recall, but this is -- clearly, that's the date, 2010, yes.
Q. The rest of my questioning, to make it simple for the record, I'm going to refer to this five-page document as the agreement, all right?
A. Okay.
Q. So if I reference the agreement, I'm talking about this five-page document, all right?
A. All right.
Q. And you can use the same label for it.
If you would also look at each page of the five-page document, Dr. Dong. Other than the last page where your signature appears, in the other preceding four pages there are some initials down in the bottom right-hand corner of each page. Can you tell me if any of those initials on each page are yours?
A. Yes.
Q. Is that your initials that appear on each page?
A. Yes.

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Q. Do you recall how this agreement was given to you to sign? What I'm asking in that regard, for clarity, Dr. Dong, so I don't confuse you, is I'm really asking how did you physically get it? Was it emailed to you? Was it given to you in hard copy by somebody to sign? Do you remember how you got the copy that you actually signed?
A. I could not remember, but likely to be email.
Q. If it was emailed, I presume you would have then printed it out in order to sign it?
A. I could not remember I printed out or Dr. Reves printed out. I think I was asked to sign, so I went to Dr. Reves's office. I believe I signed -- was on the -- was print out, official print out by Dr. Reves. I believe there was two copies on the MUSC paper, not the white paper.
Q. Did I understand you correctly, correct me if I'm wrong, that your recollection is you actually signed it in Dr. Reves's office?
A. I believe so, yes. I was specifically went to Dr. Reves's office.
Q. Was Dr. Reves there when you signed it?

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A. I believe so, yes.
Q. Do you remember if anybody else was there, Dr. Dong, or just the two of you?
A. Of course, his secretary.
Q. Other than his -- what I might call his administrative staff, anyone else who was there, other than you and Dr. Reves, that you remember?
A. No, I don't believe there was anybody else.
Q. Do you remember if Dr. Reves signed it during the same meeting?
A. I could not remember. Must be actually, this -- it was quite formal.
Q. Let me ask a follow-up to that that might help. When you left Dr. Reves's office that day, do you remember leaving with a fully-signed copy of it just as it appears in front of you today?
A. I could not remember. What I can remember was print out two copies. I think I might have an original copy. I believe I give to Mr. Holmes, and then he could not find it anymore and give me a scanned copy. I remember that all the papers then was MUSC official paper.

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Q. Before you signed this agreement in Dr. Reves's office on that day, did you read it before you signed it?
A. I probably scanned through. I was more interested looking to the equipment. I find a few missing. Actually, I did talk to Scott Reid, and he eventually located those equipment that was not on list and still after signing. So the equipment, he find them. He said he was going to work on it, and never got anything back from Reid -- Reid, Scott.
At the time my focus, everything is how to -- because I was extremely anxious to get my research started, and that completely block my ability to do research. So I wasn't paying much of interest -- attention to the formality or even reading documents because I was not an order. I was a faculty member, a professor, and I was more interested to research, and I believe Dr. Dean Reves, and I believe all my colleagues, except James Norris and Steve Lanier.
Q. Do you remember, do you have any substantive memory of any conversation you and Dr. Reves had that day in his office before you signed the agreement?

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A. Before I signed agreement I had extensive discussion with Dr. Reves.
Q. That day in his office?
A. On that day I do not think so. I thought he had reached agreement. I am not very clear, but I remember I walked into his office and he was -- and I was waiting in the room, and he was -- his secretary brought two copies, identical copies. I signed, I believe, and I -- based on my memory, he signed, initial everything else, and he said that's he's glad to get everything put behind us and let's continue and he believe that I have a bright career and that I continue my research.
Q. Anything else you remember about the meeting with Dr. Reves that day?
A. No. I just remember he was -- I still believed Dr. Reves is a good dean. Actually, people say Dean Reves, Dean Reves. I think here is also vice president of medical affairs.
Q. What I was going to ask you was -- this may sound weird, but was Dr. Reves mean that day when you met with him? I mean --
A. No. No.
Q. -- was he congenial? Nice? Professional?

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A. Never.
Q. If you look on the first page of the treatment, Dr. Dong, and if you go down to the fifth paragraph on the first page, and you see that paragraph? You can take a minute to look at it.
(The witness reviews the document, as requested.)
THE WITNESS: Right. I did not read this, but at the time I think it was somebody -- actually, I did. I was told I have a right to seek legal advice. I didn't think I needed to because it's just an internal matter with MUSC, and I didn't pay much attention to this, but I did -- also did not have any attorney.
BY MR. CONLEY:
Q. Am I correct that --
A. I believe this Dr. Joe Good is responsible, too, for everything.
Q. Am I correct that within the 45 days after you signed the agreement you did not take it to a lawyer to have any lawyer look at it?
A. No.
Q. I haven't seen this anywhere, but is it also correct that in the 45 days after you

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signed the agreement you didn't ask to revoke it or rescind it?
A. No, because, actually, I was just waiting for them to transfer my material, continue my research.
Q. If you go up to the second paragraph on that first page -- and you can read the whole thing. I just have a couple of questions for you on it.
(The witness reviews the document, as requested.)
THE WITNESS: Yes, I read.
BY MR. CONLEY:
Q. A couple of questions about that paragraph. Was your official title or position at MUSC at the time you entered the agreement, Dr. Dong, "Professor of "Microbiology and Immunology"?
A. I'm just a professor. Actually, the department is microbiology and immunology. So I had the second -- actually, I could not remember which one, second appointment at department of medicine, and also have a more active role in department of biochemistry and microbiology. I was also member -- full member of Strom Thurmond

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Cancer -- Hollings Cancer Research in the Strom Thurmond Building.
Q. Did you have any kind of formal written grievance pending at the time that you entered into this agreement? I haven't seen one, so I'm asking.
A. No. Actually, in my emails -- we only communicate through emails. But my email was turned off abruptly, and also I was deleted from the website. That's the whole violation of the agreement for me to continue my research and teaching.
So actually, they also shut off my Homeroom, which is all the storage, equipment storage. So it's internal storage. It's called "Homeroom." So all my communication, everything would be stored in the Homeroom. So the acting -- Steve Lanier ordered everything was turned off.
Q. I probably didn't ask the question well. I'm just trying to find out did you have any kind of formal written grievance pending at the time that you signed the agreement?
A. No, I did not. If you -- actually, if you -- including the complaint to the administration of MUSC, yes, I do. But if you

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think other legal agreements, no.
Q. I didn't see where you had filed -- had yet filed a formal grievance, for instance, under the faculty handbook at that point. Had you done that at that point?
A. What is formal? Once you send emails? I communicated with the administration, yes. Those considered formal.
Q. Nonetheless, any form of grievance that you had pending at the time you signed this agreement would have been in the form of your email communications with --
A. Right.
Q. -- MUSC personnel?
A. Right. You write to administration. Those would not be included with Steve Lanier. Probably would be John Raymond, and maybe include Ray Greenberg at the time.
Q. If you go down to the last paragraph, Dr. Dong, on the first page. Last paragraph on the first page, Dr. Dong. I'm still on the first page. I'll try to go page by page so you don't have to flip back and forth.
A. All right.
Q. Did MUSC pay you your monthly

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compensation all the way through March 31, 2012?
A. That's my salary.
Q. Yes. Did they pay that through March 31, 2012?
A. Yes.
Q. We can go over to Page 2 now. I think I'm done with Page 1 for now.
A. All right.
Q. Let's look at the first paragraph. You can read it first.
(The witness reviews the document, as requested.)
THE WITNESS: Yes.
BY MR. CONLEY:
Q. The last sentence, Dr. Dong, says: "The university, in turn, acknowledges that Dr. Dong will work predominantly offsite in the Charleston area and will travel for academic and commercial purposes."
When this says "work predominantly offsite," where was that? What was your understanding of where that work was to predominantly occur?
A. I think they reached agreement with the company, FRD, established with GenPhar.

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That actually, in a way, kept me close by. It would be to the benefit of the company, because I was the one providing technology, advice on behalf of MUSC to the company. That would be the company GenPhar.
Q. At the time you signed this agreement, which we're in May of 2010, Dr. Dong, where was GenPhar's facility here locally?
A. It's just in Mount Pleasant, Sea Coast Parkway.
Q. That's where GenPhar would have been --
A. Physically located.
Q. -- physically located in May of 2010?
A. Yes, the research lab.
Q. Of 2010?
A. Yes. It has been all the time until it was closed 2018.
Q. At the time you signed this agreement in May 2010, Dr. Dong, what was your position with GenPhar?
A. Official position, I was the consultant on behalf of MUSC, but I was also the principal investigator of the contracts based on the technologies. I was consulting with

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Department of Defense.
Q. Did you have any other title at GenPhar? President? Anything like that?
A. They give you empty title at the time, president, because the company is run by CEO and the chairman of the board. So just make me feel good, but I didn't feel good or anything about it because my -- if I was interested in company, I would have done so in California, San Francisco, which funding was plentiful, and the company get full support from the state, eventually become public companies, and here it was basically a desert of biotech companies and funding.
Q. Were you on the GenPhar board in May 2010?
A. Yes, I was board, because I was assigned it. There was five members. Five board members has to be investors except the -- me was the exception, because I was -- would present what the -- the technical directions for the companies.
Q. In May of 2010, you were both the president --
A. No, I wasn't that. Actually, I probably jumped too early. I wasn't anything other than consultant.

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Q. In May 2010?
A. Right. I do not know when. I could not remember the time. All of the executives resigned, and then I was given the -- so-called, the titles. They have to actually have somebody to...
Q. Were you on the board in May 2010 at GenPhar?
A. I could not remember. I could not remember when, but I will also say so. Mostly they question me about the technologies and what is the potentials and everything by the board members, because they are the one actually own the company and invested over $13 million their own money, not institution money, to own the company.
Q. In May 2010, were you an employee of GenPhar?
A. No. I was a consultant.
Q. So in May of 2010, it's your recollection you didn't hold any particular title or position with GenPhar, you weren't employed by GenPhar, and you weren't on the GenPhar board; is that right?
A. That's my best recollection, but I was also asked by the board to answer questions, and I

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did attend some of the board meetings. But mostly I do not have a say-so about financials in-house, other than they ask me about the technology. So I basically -- I was basically -- I still a scientist, not for the company -- to the company.
Q. Were you ever on the GenPhar board?
A. Later. As I said, later. I could not remember when. There was a board split, and the company -- I think there is a agreement settlement, actually, both sides, there is -- basically the investors divide into two, and both sides basically make the executive resign, so basically make the company to only exclusively operate -- provide contract service to the Department of Defense.
So there's no more investment money coming in. So they can't be paid with DoD contract funds, and also their share disagreement of who was in control of the company with one of the now deceased local billionaire, Jerry Zucker.
That's all above my involvement how the company run, how the investor runs. So I don't know.
Q. That's the full extent of your involvement with GenPhar?

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A. Yes.
Q. What you just told me?
A. Yes.
Q. Did you testify at either criminal trial you were involved in? Did you testify at those trials?
A. Yes.
Q. You testified at both of them?
A. No. One.
Q. Which one, the first one or the second one?
A. The second one, the bench trial.
Q. The bench trial with Judge Norton?
A. Yes.
Q. You actually testified at that trial?
A. Yes, but they -- well, hopefully, this is irrelevant. But I was convicted because Judge Norton's law clerk was negotiating U.S. attorney's position in the U.S. Attorney's Office during the time while she was doing everything for Judge Norton, and Judge Norton recuse himself afterwards, and they transferred to another judge. And the judge basically wasn't involved in the trial and everything else.
Q. If you turn over to the third page of

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the five-page agreement, please.
A. Sorry?
Q. Turn to the third page of the five-page agreement, please, Dr. Dong. So we're on Page 2. I'm asking you to turn over to the third page of it. The next page, Dr. Dong.
A. All right.
Q. Let's take a look at the first paragraph. If you can read that first paragraph, and I'll ask you some questions about it.
(The witness reviews the document, as requested.)
THE WITNESS: Yeah, but that's already taken away from me.
BY MR. CONLEY:
Q. The agreement says: "Dr. Dong agrees to relinquish his future use of approximately 700 square foot of laboratory space."
What 700 square feet is this talking about? Is that a specific place down at MUSC?
A. That's my --
Q. Your lab?
A. -- lab and the --
Q. Where was that? Do you remember the building?

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A. Second floor, BHS.
Q. And it says: "Dr. Dong agrees to relinquish his future use of approximately 700 square feet of laboratory space after the listed equipment and materials" -- and in parens it says "(inventory list is attached as Exhibit A) has been transferred to his new space."
A. Right.
Q. My question is do you know what the reference to new space is? Do you know what new space that's referencing?
A. That's actually transfer the new space to GenPhar.
Q. At that point in time that would be GenPhar's facility on Sea Coast Parkway?
A. Yes. But it was taken away from me, but the material was never transferred. So this is -- this is also one of the breach. At the time back then they already took away from me.
Q. Let's go to the second paragraph, Dr. Dong. Actually, let me take that back. The first paragraph references "attached Exhibit A," which is an inventory list. If you turn over to Exhibit A, Exhibit A is attached to the agreement we're talking about.

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A. Right.
Q. I think, if you look on the inventory list, which is four pages long, down in the bottom right-hand corner it has a set of initials. Are those your initials? Are one of those sets of initials yours?
A. Right, it has my initials.
Q. On all four pages, right?
A. Right.
Q. Did you review this inventory list at the time you signed the agreement?
A. I did not, but I think I just trusted it was generally accurately based on the record. And I was also later find out some of the equipment was not included, and then I called -- because Scott Reid was the person appointed to administratively take charge of the transfer of equipment and material.
So I contacted him and had a conversation. I pointed out one of the -- some of the material -- the equipment, where it was, and he went to verify that. He said, "Those will be moved to you."
Q. Did you prepare this list of equipment that's a four-page exhibit to the agreement, or

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did somebody else prepare it?
A. Somebody else prepared it. I didn't do any administrative work at MUSC. I believe actually at the time this, the equipment I transferred with me from UCSF. So the only listed equipment transferred from UCSF they put in a box with my grants at MUSC.
They all considered equipment MUSC, which is not -- no, but there was a small room for them to claim that. In general, as principle, all equipment follow the faculty members, because the grants awarded through the institution to the faculty members.
Q. If you go to the second paragraph on Page 3 of the agreement. We just talked about the first paragraph, so now I've moved down to the second paragraph. So it's Page 3 of the agreement, Dr. Dong, second paragraph from the top.
(The witness reviews the document, as requested.)
THE WITNESS: I believe I did provide a list through the emails. That's all the Vector Core facility, and also they wanted to keep the Vector Core facility at MUSC because based on that

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will not disvalue MUSC. It turn out, actually, my money, Vector Core facility, everything was used James Norris.
BY MR. CONLEY:
Q. Let me ask a question about that second paragraph. I have never seen it, and it wasn't attached to the agreement that's attached to your complaint, which is what we're looking at right now, any kind of Exhibit B approved by the university.
A. It's just what -- it disappeared, actually. That's why they breach the entire contract once it done. Basically giving a person to direct contact was Scott Reid, and that he said he was not authorized to do this and do that. So basically, I run into a stonewall.
Q. My question is, is it your testimony today that you did submit an additional list of this Vector Core equipment?
A. Yes.
Q. You submitted it within ten days of May 3rd, 2010?
A. I could not remember the date I submit it, but I did submit it with the email. And actually, I was asking for the Vector Core

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facilities, and I think at the time I was told do not interrupt Vector Core facility operation. So actually, I was allowed to continue Vector Core operation at MUSC. I think that was the communication to me, so, based on the Vector Core facility was essential for the funded products, which I was the director.

So actually, I don't know how they took away my Vector Core facility and kick me out of MUSC. At beginning, as it says, I will continue in my function research actually using the Vector Core facility as here. So this only can be transferred, but not to interrupt the operation and the damage to the function Vector Core facility.

Q. I'm asking about Exhibit B. Do you have an Exhibit B that you can produce to me? Have you ever seen it?

A. Because they actually locked down my -- completely locked down my emails and block my Homeroom. At the time that's the only way of communication I had. I don't actually write physical letters. No faculty members does that at the time.

Q. Do you have any recollection of

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whether you submitted this within ten days of May 3rd, 2010?

A. I do not have recollection of exact date.

Q. Do you have any recollection of if you did submit it within ten days that the university actually approved it?

A. The university did not respond. Actually, after the signing they basically become stonewalling.

Q. If you look down at the third paragraph on that page, you can go ahead and read it. I have a couple of questions for you about it.

(The witness reviews the document, as requested.)

THE WITNESS: Yes.

BY MR. CONLEY:

Q. The first sentence says: "In lieu of rental payments for space in the GenPhar building" -- in parens, it says "(once occupied)."

Do you know why it says "once occupied"? Weren't y'all already occupying the building on Sea Coast Parkway?

A. Once the equipment, everything been

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transferred. So actually, I will occupy that part on behalf MUSC. So actually, right now -- before that MUSC is still charging costs into my contract while not providing me nothing.

Q. I'm just trying to figure out what GenPhar building this is referencing in the contract or the agreement.

A. It's development. GenPhar actually loan me a space.

Q. I'm asking if you know. Do you know --

A. GenPhar is not a party.

Q. Dr. Dong, I understand that. My question is what's your understanding of what GenPhar building that is referencing; the GenPhar building on Sea Coast Parkway or the GenPhar building that was under construction?

A. It could not be under construction because it was not finished.

Q. Was it under construction? Was there another GenPhar building under construction?

A. It's not GenPhar -- the space GenPhar was operating out of.

Q. So GenPhar -- did GenPhar lease or own the building on Sea Coast Parkway?

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A. GenPhar leased.

Q. Did GenPhar have another building that it was building in Mount Pleasant in May 2010?

A. Yes. That's how the problems started with GenPhar, because they -- actually, the investor put in $13 million, including the facility, and the facility cost $5 million.

Q. Did you believe that your equipment was supposed to be transferred to the Sea Coast Parkway location, or was it supposed to be transferred to the new building that was under construction?

A. That's not material with regard to the contract.

Q. I'm asking you what your understanding was. I'm not asking whether it was material or not.

A. My understanding, it was transferred to GenPhar, the space we already used.

Q. Which was where at the time?

A. Have nothing to do where, which would be at Sea Coast, where GenPhar operating. They transfer me to a parking lot.

Q. Did you read that paragraph at the time you signed this agreement?

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A. I did not read it very carefully in any of the so-called legal jargons and all the details, but I signed it based on spirit they allowed me to quickly restart my research in the other space in GenPhar, transfer all the materials timely so I can continue my research. That's all I cared about.

Q. How much time do you think you spent reading this five-page agreement before you signed it?

A. I can't remember, but I probably scanned it through. It sounds all right in the superficially. I don't want to dig in too much into one specific words. In the context, I think this is all consistent with what Dr. Reves presented to me.

Q. If you look down at the fifth paragraph, Dr. Dong, you can read that whole fifth paragraph, and I've got a few questions to ask you.

(The witness reviews the document, as requested.)

THE WITNESS: Yes.

BY MR. CONLEY:

Q. If you look down at the very -- the last full sentence of that paragraph, Dr. Dong, it says: "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 square foot laboratory space, including listed freezers and/or refrigerators also located in nearby equipment rooms of CSB, shall be relocated to GenPhar in 30 days from the effective date."

A. They didn't do that.

Q. That's what I was going to ask you. I think you are already told me that. They did not -- they -- I shouldn't say "they."

MUSC did not relocate the equipment in Exhibit A within 30 days of May 3, 2010?

A. Correct. Also did not relocate the research grants, including the Vector Core. Very specific, Vector Core they were talking about it.

Q. We'll get to those things. I'm talking about the equipment right now.

Your testimony is that MUSC within 30 days of May 3, 2010, did not relocate the equipment in Exhibit A?

A. And B.

Q. Per the agreement?

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A. And the contract money.

Q. Correct, they also --

A. They relocated nothing.

Q. They also didn't relocate any other equipment, to the extent it would have been listed in Exhibit B, right?

A. Which should be Vector Core facility.

Q. So you and I would agree that within 30 days of May 3rd, 2010, MUSC did not relocate any equipment, as required by this agreement?

A. Correct.

Q. That's your testimony, correct?

A. That's correct.

Q. Is it, likewise, your position that the agreement required MUSC to relocate all of this equipment, both the equipment listed in Exhibit A, and to the extent there was Vector Core equipment, they were required to do that within 30 days of May 3rd, 2010?

A. That's what the agreement.

Q. That's what the agreement requires, right?

A. Yes. And I was presented they will do it as soon as they can, as soon as they can, and also was -- Scott Reid was in charge of the logistics.

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Q. I'm trying to find -- just make sure I understand that -- strike that. Better way to ask.

I think I understand you correctly that one of the breaches of this agreement, just one, that you claim MUSC engaged in was failing to relocate this equipment within 30 days of May 3rd of 2010?

A. One of them.

Q. That's what I said. I said "one." I didn't say "all." I said "one." That is one of the breaches, right?

A. Correct. As well as none of my research material, documents, and funding. It was a complete breach. After that was the, basically, stonewalling. I could not reach anybody, and nobody respond to my emails other than at the time they want to send me.

Q. If you go up to the fourth paragraph on that same page -- so we're going to go back up one paragraph. It's actually just a one-sentence paragraph, Dr. Dong.

A. One, two, three, four.

Q. Exactly. It's very short.

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(The witness reviews the document, as requested.)
THE WITNESS: Yes. Actually, MUSC --
MR. CONLEY: Let me ask you --
Dr. Dong, part of the deposition is I'm going to ask you questions, and you can give me answers. It's not an opportunity for you just to go on narratives. I'll ask you a question, and you can then give me as lengthy of an answer as you want, but --
THE WITNESS: Ask a question.
MR. CONLEY: -- there needs to be a question before we just go with some narrative.
THE WITNESS: You ask me if I see the paragraph. I'm telling you I see the paragraph, what it means.
MR. CONLEY: I haven't asked you what it means. I've just asked you to take a look at --
THE WITNESS: Strike my answer.
MR. CONLEY: -- look at it, and then I'll ask you some questions.
THE WITNESS: Please do.
BY MR. CONLEY:
Q. Did you have any grants, active

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grants, on May 3rd, 2010, when you signed this agreement?
A. Yes, the Vector Core grants. And also I actually start a fund as reserve. I never had to need to dip into it.
Q. So what active grants did you have at the time you signed this on May 3rd?
A. The Vector Core grants.
Q. Any others?
A. I could not remember, but also I had my start-up fund.
Q. The Vector Core grants, where are those grants provided by? Are those provided by the federal government somehow? NIH?
A. Correct.
Q. Was there more than one Vector Core grant, or was there just one? You used plural. I'm just trying to find out. I don't know. Was there, like, one Vector Core grant, or were there multiple Vector Core grants?
A. I could not remember, but actually, Vector Core can be used in multiple grants, but I was the -- I think there was a center grant or program project grants.
Q. Do Vector Core grants have a PI?

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A. I was the PI. I was the director.
Q. I'm no expert on grants, but my presumption is on -- to your recollection, on May 3rd, 2010, there was still existing funding to be spent under this Vector Core grant or grants, right?
A. Yes.
Q. Because you were the -- I'm just trying to understand. Because you were the PI on the Vector Core grants, in my mind that would indicate you were also the person who applied for those grants?
A. Yes.
Q. Is that right?
A. Correct.
Q. It wasn't somebody else at MUSC who applied for them and they just got assigned to you? You actually applied for and were awarded those grants?
A. Correct. No one else can assign someone else's grants to you, or you can't use anyone else's grants.
Q. Was anybody else a co-PI on those grants, or was it just you as the sole PI, if you remember? I don't know. I'm just asking you.

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A. I don't remember, because I'm the person.
Q. Turn over to the fourth page, Dr. Dong. We'll skip around on this page. Not to confuse you, but --
A. Here is --
Q. -- if you can go down to the bottom of Page 4, the next-to-last paragraph, where it starts off with: "MUSC will cover." Do you see that paragraph?
A. Last paragraph?
Q. Next-to-last paragraph, Dr. Dong. Excuse me. Take a look at that for me for a minute.
(The witness reviews the document, as requested.)
THE WITNESS: Yes.
BY MR. CONLEY:
Q. Did MUSC ever make this one-time $20,000 payment?
A. I could not remember.
Q. Then if you look up at the third paragraph on the page, Dr. Dong. So if you count three down.
A. Right.

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Q. Take a minute and read that paragraph. I have a couple of quick questions.
(The witness reviews the document, as requested.)
THE WITNESS: Yes.
BY MR. CONLEY:
Q. Do you have any recollection of whether that $30,000 payment was ever made?
A. I think so. Actually, but that's less than my salary portion in Vector Core, which is funded by NIH, not the department.
Q. My question is was the $30,000 payment made?
A. I believe so, yes.
Q. Just to go back to make clear, you don't know, sitting here today, if the $20,000 payment was made in that -- towards attorneys' fees or legal fees in that paragraph down towards the bottom of Page 4?
A. Correct, because I did not believe I claimed it. I didn't have attorney involved.
Q. That was going to be my next question about that. You had earlier told me that you wouldn't have had any legal fees at this point in time because you never obtained --

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A. That's what I'm saying.
Q. -- never obtained a lawyer?
A. That's what they write in -- written in. So actually, I have no involvement. I did not claim legal fees from them.
Q. That's because you didn't incur any legal fees, right, because you didn't take it to a lawyer before you signed it?
A. No, I didn't. Correct.
Q. And you didn't take it to a lawyer -- we've already talked about you didn't take it to a lawyer for much, much later after you had signed it, which would have been when you took it to Mr. Holmes?
A. Right. Correct.
Q. You didn't take it to a lawyer within 50 days of signing this agreement, did you, to review the agreement with you?
A. I'm sorry?
Q. We've already talked about that. You --
A. I think you already asked me the question.
Q. I mean, you indicated earlier that you don't have recollection of taking it to a lawyer

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within 45 days of signing it.
Do you have any recollection of taking it to a lawyer within 50 days of signing it?
A. No. I never took it to any lawyer or anything for almost a year later or over a year later.
Q. That would have been when you took it to Mr. Holmes?
A. Correct. He's the first lawyer I talked to.
Q. If you can go up to the paragraph above the next paragraph, directly above that, that says: "Enduring grant materials." Take a minute to read that, Dr. Dong.
(The witness reviews the document, as requested.)
THE WITNESS: Right.
BY MR. CONLEY:
Q. Did you ever -- have you ever -- well, before you brought the lawsuit, did you ever ask the office of general counsel, the legal office at MUSC, if you could see or make copies of, you know, lab books and things like that?
A. Actually, that is verbally presented to me, they will provide all the document --

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copies of the documents. Didn't say I have to go to copy myself. So that would be too cumbersome for me to make copies, because, actually, it says by law. Actually, there's no law suggest that general counsel keep my scientific notebooks.
Q. My question is simply this --
A. No law, no regulation to allow general counsel to keep my scientific notebooks, and they should provide me the copy, based on my reading this paragraph. So if there was a law, there was regulations, yes, they can keep it. But if there's no law, no regulations to allow MUSC to keep my notebooks, that is especially after repeated requests, did not provide my copies.
So without the scientific documents, without notebooks, I will not be able to continue my research.
Q. Did you ever ask MUSC if you could make copies?
A. I asked MUSC provide me the copies. Actually, they did not say I have -- they give me the notebook, I made copy myself. They said copy will be provided to me. I agreed, but at least that allow me to continue my research.
And I did not think the legal office

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have any use of the document, and if there -- and I didn't have no -- I did not believe -- I still don't believe there was any law or regulations to allow general office to keep my scientific documents.

Q. Did you read that document on Page 4 before you signed the agreement?

A. I signed the agreement with understanding there has to be law and regulation. They have law and regulation to keep it. When there is no law, no regulation, they should not keep my scientific notebooks, and they should also at least provide me copies of my scientific notebooks.

Q. My question is simply this: Did you read that paragraph on Page 4 of the agreement before you signed the agreement?

A. I cannot remember whether I read the agreement. It was a long time ago. But as I said, I scanned through the entire document.

Q. What does scanned mean when you use the word "scan"?

A. I just read superficially, not each words, like what you did as a lawyer. So I basically, general understanding, the spirit of

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the agreement. So I don't want to split hairs with one phrase, one terminology. You probably do as a professional, but that's not my profession.

Q. If you look up at the next paragraph above that, where it says: "The university agrees to relinquish," next paragraph right above the one we were just speaking about, Dr. Dong.

(The witness reviews the document, as requested.)

THE WITNESS: Right.

BY MR. CONLEY:

Q. At the time you -- so I asked you about grants you had at the time you signed the agreement. Did you have any commercially-funded research awards at the time you signed this agreement, if you recall?

A. I believe there was some funding from GenPhar to MUSC and FRD. Actually, those funding I never see a penny. Those GenPhar agreed to funding my research in the laboratory in exchange for me being the consultant at the GenPhar. I think either FRD, I believe is mostly Steve -- sorry, James Norris spent all the money.

Q. The second sentence in that paragraph says: "Actively federally-funded research awards

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received will be relinquished back to the federal agencies as obligated in the award agreements."

A. That should not be the language, because -- and also, I do not believe they were ever relinquished back to the funding agencies, but they spent them themselves -- not themself, but James Norris.

Q. Did you read that paragraph before you signed the document?

A. As I said, I only read the spirit of the entire agreement. I did not split hair on any phrases. Also, I do not believe they relinquish a penny back to funding agencies, but spent the money by James Norris. If you want to split hair, those are just plain lies.

Q. Go up to the paragraph above that one, Dr. Dong.

A. Above?

Q. Yes, the next paragraph up. It says: "At the direction of."

A. Dr. Yusuf Hannun.

Q. Correct.

THE WITNESS: Mr. Scott Reid, that's another person we were talking about, and Mr. Ronald Bycroft. I don't even -- they didn't do

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any of those. Also Yusuf Hannun was- --

MR. CONLEY: Again, Dr. Dong, I need to ask you a question. This isn't an opportunity for you just to sit in a deposition and tell me everything you want to say. I haven't even asked you a question yet.

THE WITNESS: You asked me if I see this. I tell you what I see.

MR. CONLEY: I asked you to review the paragraph, and then --

THE WITNESS: Yes, I did. I told you what my impression was.

MR. CONLEY: I didn't ask you your impression. I haven't asked you your impression. I haven't asked you a single question.

THE WITNESS: Ask me a question.

MR. CONLEY: The way the deposition works, Dr. Dong --

THE WITNESS: Don't give me lessons.

MR. CONLEY: I'm not giving you lessons. There is a set of rules that apply, and it requires that I ask you a question. I'll ask you a question, and you can give an answer.

THE WITNESS: Go ahead.

THE REPORTER: I can only get one

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person at a time, please.
THE WITNESS: So he speak too fast.
BY MR. CONLEY:
Q. Dr. Dong, this paragraph says: "At the direction of Yusuf and Mr. Scott Reid and Mr. Ronald Bycroft will attempt to locate any vectors or similar materials shared with other investigators for repropagation by Dr. Dong, and will attempt to locate written enduring hardcopy records which have been lost?"
Did you read that sentence before you signed the agreement?
A. As I said, you are splitting hair again. I do not know other than the spirit of the agreement is they're going to locate the vectors and give me back for propagation.
Q. Does that paragraph say they're going to locate or they're going to attempt to locate?
A. As I said, it's not my profession to split the hairs. I think that means they going to locate it.
Q. That paragraph goes on to say: "This" -- meaning the attempt to locate this information -- "will occur within the 45-day" -- "within the 45-day window above."

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A. They didn't do it.
Q. It would be one of your contentions in this lawsuit that that is another -- that is one of another -- of other breaches of the agreement, right?
A. Anything in the agreement they breached will be point of complaint.
Q. Correct. But that's one of them, correct? They didn't do this within this 45-day window, right?
A. They didn't do any of those.
Q. And then it says: "Any additional items located after that time and search will also be provided to Dr. Dong."
Do you know if any of those three gentlemen ever located any information after the 45-day period ran?
A. I don't know if they did or didn't do. Actually, I did contact Scott Reid a number of times. He was the chairman, so he would be very busy. I didn't think it would be proper to bother him for the details. But Scott Reid is very capable person, and he is also the base manager. He was a good person. He used to be the business manager at the department of biochemistry until

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they had fallout with James Norris.
I do not know who is Ronald Bycroft.
Q. If you go up to what would be, Dr. Dong, the second paragraph on that page, so the second paragraph from the top. It starts with: "Dr. Dong." If you could read that, and then I'll have some questions for you about it.
(The witness reviews the document, as requested.)
THE WITNESS: Right.
BY MR. CONLEY:
Q. Have you read it, sir?
A. Yes.
Q. That paragraph says: "You will transfer any research material, including genetic materials, DNA constructions, viral and plasma 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."
Did you do that? Did you make -- did you transfer those material?
A. They took the material from me. They locked me from the lab. Are you going to split

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words again? How do I transfer when they took the position, lock me out of my lab? Those my materials should be transferred.
Q. So, again, I wasn't there when any of this happened, so I'm just asking you. Do I understand you correctly that you couldn't transfer it yourself because they locked you?
A. Out of my office.
Q. They locked it in a fashion that you couldn't access it, right?
A. Correct. They changed the lock. They never done nothing in the history of United States in any universities, certainly not in the history of MUSC. That's completely illegal. Actually, I was funded by NIH. That's complete violation of NIH rules. If I was any administrator, I was part of NIH.
Q. As I understand what you're telling me is you couldn't transfer it yourself because you couldn't even access it; is that correct?
A. Yes.
Q. Did you ask for access to it?
A. Of course. That's the whole thing I've been asking for. That's whole agreement. It was in order for me to get access to my research

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materials to continue my career.
Q. What were you told when you asked for access to it so you could move it? What were you told?
A. After I signed this agreement, everything will be available, everybody will cooperate with me to make the transfer. Once this signed, it become a stonewall. I could not contact anybody. Nobody respond to me.
And I talk to Scott Reid. He is going to ask for my permissions, and then there is no response.
Q. If you go up to the top paragraph, first paragraph, you can read it, and I'll have a few questions for you about it.
(The witness reviews the document, as requested.)
THE WITNESS: Correct.
BY MR. CONLEY:
Q. Again, same question: Did you read that paragraph before you signed the agreement?
A. I as -- again, I did not -- I read in the context of the agreement. I did not try to split the meaning of each specific words.
Q. That paragraph says: "Equipment

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relocated to GenPhar under this agreement," which would, apparently, be everything listed in Exhibit A or Exhibit --
A. No, actually --
Q. Let me finish my question.
A. Sure.
Q. -- which, apparently, would be everything listed in Exhibit 1 to the agreement -- or A to the agreement, excuse me, and presuming there were or was an Exhibit B, would be returned to MUSC at its expense at the end of your appointment in March 2012, right?
A. That's not right. My understanding is, based on otherwise permitted by existing university policy or extra -- sorry, external sponsor policies and approvals.
So actually, there is no university policy or external sponsor policy, especially NIH, they will not allow to take my equipment back to university. However, there is a narrow gap; if the Vector Core continues and function at MUSC, those equipment should be returned to MUSC to continue any funded research. I will not be able to take them away from MUSC, which is consistent with external policies, which I agreed. However,

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those equipment as well as my equipment never been transferred.
Q. If you can look at what is Exhibit A to the agreement, which is the list of equipment.
A. Right.
Q. I have a couple of questions about the middle column, Dr. Dong. I don't know if you can shed some light on this or not. But the middle column is titled "Funding." Do you see that?
A. Right.
Q. Then it's got various labels, as I read under here. So I see one says "Startup." Do you know what that references? Why it says "Startup"? What does that mean, if you know?
A. It's the startup funds.
Q. I don't know what those are. Maybe you can explain?
A. As a condition to recruit me from MUSC, I think MUSC offer me -- I could be wrong -- $65,000 startup funds. That means the money for me to spend.
Q. On equipment?
A. On equipment, set up lab, everything else, and also the expenses of transfer my equipment, laboratory, personnel, and everything

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for you to start a new location.
Q. Then there is another label under that same "Funding" column. Some of them say "No Tags." Do you know what that means?
A. It's because those are my equipment, and it's already lost track where the funding come from, but those are my equipment.
Q. Everything that says "No Tags"?
A. Correct. It's just that no longer have track where it -- the initial funding was from.
Q. Then there is another label under that column that says "UCSF." I assume that's equipment you brought from the University of California, San Francisco when you moved to MUSC?
A. I think all of the equipment, including no tag, was transferred from -- either from MUSC or the university before that.
Q. I'm asking -- we have talked about no tag. I'm asking you about the UCSF tag now. Is that tag -- where it says "UCSF" under that "Funding" column, Dr. Dong, does that mean that that's a piece of equipment that came from UCSF when you moved to MUSC?
A. That means, actually, that tag was not

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removed. 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 to the PIs, which most universities would do. They remove the tag. However, one of the equipment they forgot to remove or failed to remove, the tag will still be on 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 condition for me to transfer.
Q. I get that. But I'm just asking, startup equipment would be equipment that you got once you got here by way of startup funds?
A. Yes.
Q. What is "Paddock? There is a label under this that says "Paddock" on some of the equipment.
A. Actually, those are -- I bought from Dr. Paddock. Dr. Paddock also let me have -- he actually had his own company as a faculty of MUSC.

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So that's James Norris himself. So when he left, the equipment move with him. However, he retire. He has no use of it. And actually, he sold to me. So that was...
Q. So Paddock 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 assume that's like Paddock. It's A-r-r-i-g-o.
A. Where?
Q. If you read on down that "Funding" column, you see some that say "Arrigo," A-r-r-i-g-o. Is that a former MUSC professor, like Paddock?
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.

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Q. Then some are labeled "Vector Core." I presume that means they were --
A. Vector Core equipment.
Q. -- that equipment -- let me finish my question, Dr. Dong.
I presume that is equipment that was purchased with Vector Core grant funds?
A. Correct.
Q. Do you have any idea why the Vector Core equipment all seems to have an MUSC tag number and most of the other stuff doesn't? Any idea?
A. Because I applied Vector Core on behalf of MUSC. I was at MUSC. For example, you apply the grant at UCSF; in addition to my name, there's also UCSF on it.
Q. If you go over to the second page of this list, Dr. Dong, there's some on there that say "GenPhar." So under that same column, 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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A. Some of them, actually, the funding is provided by GenPhar on my behalf. For example, computer is most difficult equipment to adjust -- to justify in the academic grant because most 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-line computer at the time.
Q. If I see GenPhar, that, to me, as a layperson, not knowing how grants work, that would indicate to me that that piece of equipment was purchased by way of monies 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. Dong, there's some that have a very weird tag that say "TOR Core=3," and then "DongNIH=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 actually, this is internal designation which grants coming from. Regardless, those my money, my funding

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bought under my name.
Actually, so there is meaningless for you or any layman. It's -- the equipment is mine, bought under my name, but originally there may be designation to trace which grant that money coming from. So you are not supposed to mix the grants by spending grants on different research projects. That's just a designation at that time.
For the purpose of this contract, it is meaningless. But at that time, yes, there is meaning for which grants that equipment came from, so that equipment will be charged to that grant and serve the purpose for that grant specifically, predominantly.
Vector Core is generally used on facilities, or can be served for multiple grants.
MR. CONLEY: Let's take about 45 minutes for lunch, and then we'll come back. This is a good point to take a break.
(A lunch recess was taken.)
MR. CONLEY: Back on the record.
BY MR. CONLEY:
Q. Do you still have the exhibit in front of you, Dr. Dong?
A. Yes, I do.

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Q. Great. We're going to go back to Exhibit 1, which is the agreement itself, not the list of property, Dr. Dong. I'll skip through here and ask you a few questions that I jumped over initially.
So if you can first go to Page 2 of the agreement, the second paragraph on that page says: "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."
My question is after you entered into this agreement with MUSC, did you do any more teaching, lecturing, or what you and I might call instruction down at MUSC?
A. I was blocked. Actually, that was part of the violation of the agreement, because I was presented I could continue my research, teaching, because my whole career was being a professor, and then I was deleted from the department website, and I was given no access to any graduate students or candidates.
I blocked from attending any of the faculty meetings and any function, for example,

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and also blocked my email, Homeroom. So I completely blocked from my function as a professor. That's part of the breach.
Q. The next paragraph down is a one-sentence paragraph that says: "During this period, Dr. Dong may use the title, quote, 'Director of Biotherapeutics and Vaccine Development,'" end quote.
After you entered into this agreement with MUSC did you use that title any longer?
A. I don't remember, but that's the part of the agreement. Because as a condition, actually have to expand my research area, and, in a way, actually for the benefit of MUSC, so I can differentiate my research area from those being taken away from me by James Norris.
Q. Sitting here today, do you ever recall using that title after you entered into the agreement?
A. I can't remember, but I did get, in fact, research grant in the amount of $4.5 million by MUSC and was denied by Steven Lanier, which actually one of the conditions, at least presented to me, if I get more grants, I would be back for MUSC.

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Q. If you look down at the fifth paragraph, it starts with: "Dr. Dong agrees and commits."
It says: "Dr. Dong agrees and commits to submitting an irrevocable letter of resignation no later than March 31, 2021."
You and I would agree that letter -- such a letter was never submitted by you, right?
A. No, because I could not apply for any job. I had been professor, and entire ability of my scientific career had been abruptly stopped.
Q. Go over to the next page, Page 3. The next page, Dr. Dong, Page 3. I think you're still on Page 2, sir. Page 3, fourth paragraph down. I asked you about this earlier, but I'll circle back to it. It's a one-sentence paragraph.
It says: "The university will continue to provide the customary physical support and oversight for research awards received through MUSC in the division of basic science?"
A. They never did.
Q. My question is you just mentioned some type of one -- excuse me, $4.5 million grant you received. Is that something that MUSC agreed to provide physical support and oversight for, or did

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they say they would not do that?
A. They agreed to support and provide. And actually, it was one of the conditions presented to me: If I get more grant for MUSC, they will definitely support.
Q. My question is the $4.5 million grant you mentioned, was that an NIH grant?
A. Yes.
Q. Were you actually awarded the grant?
A. Yes.
Q. Do you remember what year and month it was, Dr. Dong?
A. I could not. That's why, actually, I wanted the more material, discovery material. None of this I could give you the exact date.
Q. I presume it was after you entered into the agreement, you were awarded this NIH grant, correct?
A. Yes. As a part of the agreement, they will provide -- basically, not only accept the grants, but they provide administrative management of grants. That's part of the essential components for anybody, professor, to receive NIH grants.
Q. Go to the bottom paragraph on the same

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page, Dr. Dong. It says: "Dr. Dong's access to campus facilities and their use shall not be limited during his remaining years of employment."
I think you've already told me earlier they did limit your access to campus facilities and such, right?
A. They didn't give me any access.
Q. Just so I know the timeline, when you say they didn't give you any access, did they cut your access off immediately upon you signing this agreement, or was it sometime after --
A. They -- they --
Q. Let me finish. You will get to answer.
-- or was it sometime after -- weeks or months after you signed the agreement that they cut off all your access to facilities and email?
A. They cut off my -- all my access to my research laboratory, to my office, to my material, to my personnel basically by locking me out and changing the locks. Never done to any faculty member at MUSC, not -- there was a precedence at any university, especially funded by -- faculty member is funded by NIH.
They are obligated to support me, to

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support my research. As part of my agreement, I was receiving NIH grants. Actually, that's not only violation of all faculty rules; they also violate the regulations with NIH, the admission.
If I was mean-spirited, I would file report with NIH, and all of their grants will be under review and would be freezed. So actually, I was never intending to harm MUSC in any way. I was only interested to continue my research.
Q. My question was when did they cut off your access? You said they cut it off. I'm just trying to figure out when, Dr. Dong. Was it immediately upon you signing the agreement, or was it weeks or months after that they cut off your access to your lab and to email? I'm trying to figure out when it occurred, not why or how, but when.
A. That was before we sign agreement. That's why, actually, I reached the agreement, try to reinitiate my research.
Q. Maybe this will help me. Before you signed the agreement, had you already been -- I'll use the word "locked out" --
A. Yes.
Q. Dr. Dong, you've got -- for the court

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reporter's benefit, you have to let me finish my questions. You're going to know when I finish my questions.
A. Go ahead.
Q. Let me finish. I'll let you give whatever answer you want to give. But you have to let me -- it's becoming very difficult for the court reporter. I'm not going to interrupt you. Just don't interrupt me.
Was it before you signed the agreement that they -- I'll use the word "locked" you out of your lab?
A. Yes.
Q. Before May 3rd, 2010, you had already been locked out of your laboratory?
A. Correct.
Q. After you signed the agreement, they never gave you renewed access to your laboratory?
A. Correct.
Q. It continued? In other words, the lack of access continued?
A. Right. Part of the agreement is to give me back my research ability, give me access to my equipment, personnel, funding, but they actually continued the lockout. Once the signed

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agreement, that they -- they thought they were done, actually they asked me to chasing -- whatever, chasing tails, and I go around, talk to everybody supposedly being charged, and they will say I will report. I will do -- I'll find out what I need to do next.

So they were basically stonewalling me. They did not give me any access to my research laboratory, and I was -- happen before, actually.

Q. After you signed the agreement, were you ever given access to your office again?

A. No.

Q. Was your access to your office cut off before you signed the agreement?

A. Yes. The agreement, it was to re-allow me to enter my office and my research material. They never did.

Q. I wasn't there when all of this happened, so I'm trying to educate myself here a little bit by way of this.

What I hear you telling me is after you signed this agreement on May 3rd, 2010, MUSC never allowed you access again ever to your office or your lab space?

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A. That's correct.

Q. Did they ever allow you -- that's a bad way to ask.

By way of not allowing you access to your lab space and your office again, did that same prohibition on access cut you off from access to your -- to other material that might have been yours, equipment, that sort of thing?

A. That's everything I have. That was in my laboratory and in my office and also my core facilities, my collaborations, my teaching ability, my research ability, and also my communications.

I lost contact with all my colleagues throughout the university. I don't remember the email address, and I can't contact anybody once they turn off my email system.

Q. Let's talk about your email for a minute. Was your email access cut off before or after you signed the agreement?

A. I could not remember clearly, but I think there was a period of time during this I'm supposedly working at MUSC, but actually at the time they already cut off my Homeroom. Because that's where a lot of my research documents and

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also protocols and everything was stored.

Q. What I hear you saying is you're unsure whether your email was cut off before you entered the agreement or sometime after; is that right?

A. That's correct.

Q. You're unsure?

A. The actual only the email part of it, but the most of the information, my laboratory, technical information, everything else stored in Homeroom, but I was stopped.

Q. When was your Homeroom access cut off, before or after you entered into the agreement?

A. I could not remember, but everything was cut off without a notice. I suddenly realize I don't have anything. Although, I could make a copy, but I don't know technically how to do that at the time. It was all -- I got a so-called IT support from MUSC, but at least they cut off my -- all my access to MUSC's system.

Q. When your access to your lab and office were cut off to you, did that also cut you off from your logbooks and things of that nature?

A. Yes, everything.

Q. Meaning all of your materials,

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documents, paperwork, that would have all been in your lab and office; is that right?

A. As well, in the Homeroom.

Q. I understand.

A. Correct. It was all stored.

Q. After you signed the agreement, just for clarification, no one ever allowed you to go back into your office or lab space after that?

A. Correct.

Q. This is just by way of a question 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 requirement for documents to produce.

Q. I'm not asking you about requirements. I'm asking whether you know if they do or don't still have them. It may be you just don't know.

A. I don't know. I have no access to it. How do I know what they did to it? I know they continued to publish using the material I have. That's all my technology. They continue using it in periodicals and publications, continue using them to apply for grants. Those are my material.

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My research projects.
Q. Dr. Dong, if you look at your -- just, if you turn back to the first page of that document, and I'll direct you where to go. First page of the whole document, I'm sorry. Dr. Dong, just flip the whole thing over back to the first page.
Now go to the second page of your complaint, Dr. Dong. No, that's not the complaint. That's just the cover. Keep going. That's the first page of it. Now go to the second page. Go down to that Subparagraph F, and read that for me. And then I have a couple of questions for you.
(The witness reviews the document, as requested.)
THE WITNESS: Yes.
BY MR. CONLEY:
Q. So that paragraph appears to have a claim that's unrelated to the written agreement we've been talking about. If that's the case, can you explain the allegation in Paragraph F to me? I'm not sure I really understand it.
A. I think this was suggested by the attorney.

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Q. Wait just a minute. Don't tell me anything that your lawyers have ever said to you. Anything your lawyers have talked to you about or said to you, that's privileged information. I don't want to know about it. I don't want you to tell me.
A. I appreciate it. There was a time actually MUSC actually actively interfered. Not only block my position, but actually interfered my position at GenPhar to allow me continuing my research actually at the time, because there was agreement. I was a consultant. Although, I didn't have my research equipment and everything else.
So actually, the MUSC FRD obtained some shares -- actually, it's options from GenPhar. By agreement, I will have 1/3 of those shares, and the 2/3 I think goes to FRD and goes to the department, the value.
And then actually, for whatever the agreement, a German national, he was later investor, he actually purchase some shares, and he got participate a few other investors saying he was going to invest more, but -- and then he was -- in order for him to get control of the

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company, he has -- need a majority of shares.
Whatever the agreement he made between him and MUSC, MUSC transferred all MUSC shares to the German investor, and that will be including 1/3 of my share awarding to FRD and MUSC, because based on the faculty agreement, when there is a contract -- commercial contract signed with a commercial company, there is a formula to divide the income.
So not actually only they give the entire MUSC portion to the German national, but also including my 1/3 of the share obtained from MUSC in order for the German to majority control, and then complete disrupt the -- so he can better fight the other investors and seeking control of the company.
And it turn out even with the MUSC shares he didn't have the majority. So that's -- and then actually once he had control, not only I was kicked out from MUSC, I was also kicked out from GenPhar. So I have no place to go. I had no place to go.
Q. This transfer of shares you're discussing, did that occur before or after you signed this agreement with MUSC?

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A. After I signed the agreement.
Q. After you signed the agreement?
A. Yes. But MUSC still hold their shares through my so-called helping FRD to start the company, provide technologies and consulting to the company, and for that FRD actually got significant amount of shares.
Q. So, in other words, generally, what I hear you saying is after you entered into this agreement you and I have been talking about today, MUSC transferred whatever shares the FRD held in GenPhar to this German national; is that right?
A. Correct.
Q. And what you're telling me is that 1/3 of whatever -- however many shares MUSC transferred to the German national, 1/3 of their shares, according to you, didn't really belong to MUSC at that point; they belonged to you?
A. No. No. It's the -- there was a rule at MUSC -- rules how to encourage faculties to sponsor biotech companies. I wasn't the only one, but I was one of a few that was successful, including James Norris himself. He has his own company. Also Yusuf Hannun and other members in other departments. There are multiple faculty

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members started companies.
There was a university policy and formulation, how the benefit derived from commercial companies divided within university, including the person who actually contribute the technology computation. There was a formulation how much share, how much percentage the person get.
Q. What I hear you saying is there is a percentage of whatever shares MUSC gave to this German national that actually under MUSC's rules should have belonged to you, not MUSC?
A. Not only damages done to me, because --
Q. I'm just asking you if my understanding is correct. I'm not asking if you were damaged by it. Is that correct? Are you claiming that a piece of these shares moved -- given back to this German national actually belong to you and not MUSC? Is that what I hear you saying?
A. If you will let me make my statement, and I think we'll be better off in many ways.
Q. Go ahead.
A. Based on -- that's what I said, based

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on MUSC formulation, the benefit to faculties, there is a percentage share owned by MUSC will be awarded to the person who will be responsible for the income by MUSC.
So based on that formulation and that policy of MUSC, I wasn't the only faculty members to benefit the shares of the financial income from a company that I consulting with, helped to start.
So that share should be mine, awarded from MUSC. Just like salary I awarded from MUSC or bonus I awarded from MUSC, that will be mine.
Q. How many shares were supposed to be yours? Do you know?
A. I don't know. So I never got it. But the damage to me was not only the value of the shares, but actually they use my share, the percentage of share I brought to MUSC, to participate a conspiracy for one of the investors to fire the other investors and then in order to seek control of the company.
Of course, I was on the side of the company as well, so they can kick me out of the company as well. So basically, I left not only not be able to continue my research at MUSC, but also actually block me from continuing my job, my

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research at GenPhar.
Q. Did GenPhar eventually kick you out?
A. During that period of time, GenPhar was kick -- did kick me out.
Q. What period of time are we talking about?
A. I don't remember. That's why, actually, I need to get the documents from MUSC to document what kind of agreement it made or actually the timeframe they made.
Q. Did you continue to do work for GenPhar after you signed this agreement 2010?
A. I was on a consulting role. They allowed me to do the research, but I have nothing else to do but to continue my consulting with GenPhar so I can have a position.
Q. Was there ever a time when you were the CEO of GenPhar?
A. No. Actually, at the end when everybody left, so they have to be a person carrying the name, but during this entire process the company was run by chairman of the board, which is Steve Hutchinson, also who was the CEO, and once after the -- they started fighting, actually installed the guy. It was Kevin Die

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(sic), who was the CEO.
Once, after the fight, everybody is gone, there is no CEO -- no official CEO. I was only functioning as the principle investor, but one -- actually, there was somebody even sign, for example, lease agreement, anything else. Because I was the sole principal investigator, I signed it, but I was never officially named by the board CEO or otherwise.
I was the chief scientific officer as a consultant, and also at the time GenPhar insists on me being the president, which is only title, and that was rejected by FRD. So they didn't want me to have any non-scientific function because I could not function as non-scientist. I do not do any -- even at MUSC, I am treated role is through business management. I never manage money. I never manage role in regulatory affairs. Only science.
Q. You never managed money at GenPhar?
A. No. I don't sign checks. I don't review grants. I don't review accounts. It's all so-called insulated from me.
Q. Did you ever send letters to investors about the finance status of GenPhar?

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A. Yes. I was the only person left as the -- to -- actually, as the secretary or business manager, draft the financial report with approval of Steve Hutchinson, and I will be the one sign it because Steve Hutchinson officially resigned as the agreement between the investor disputes.

So neither party actually owned the company, could not install anybody in the company except the management the grants that's report by the Department of Defense and NIH.

Q. Did you oversee the building of GenPhar's new construction building over in Mount Pleasant?

A. I wasn't, because I was the scientist, but there was -- no one else was there as the general contractor oversees it. So actually, I was -- I would have input only for the scientific requirement, and I was the -- solely responsible designing the clean rooms, the research laboratories for DoD, but other than that I have no knowledge of any construction or no expertise how they do construction.

Q. Do you know Deborah Owens?

A. Deborah Owens was the finance manager

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of the company.

Q. Do you know Elaine van Borst?

A. Elaine van Borst was the part-time secretary who was the whistleblower, and also the internal accounting. So all of the accounting was done by accounting firm, audited by another firm, all hired by the board. That's their money. They got to watch for it.

All of the financials, still actually Steve Hutchinson was the person out of Wall Street. He is the financial person. So even he superficial resign. He was still not after he hired the auditing firm and select the CPA accounting firms on behalf the investors.

Q. Did the Fourth Circuit Court of Appeals recently affirm your conviction?

A. Yes. But actually, they only looking for one issue at a time. So they vacate the financial penalty against me.

Q. Did they affirm Judge Norton's conviction of you?

A. Yes. They didn't -- basically did not review it. And those actually have no relevance whatsoever. They're years after, and those -- Judge Toal have more information than I do and

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made several comments that's not true.

So actually, the indictment was unsealed I think early 2015. Before it unsealed is a felony of anybody who disclose it. I don't think United States Attorney will -- would, but they could. This goes to MUSC before even I knew it.

So actually, there is a year limit, a nine-months limit -- time limit for speedy trial. So it's about a year in 2015. That's years after. I will never sign agreement if there's a problem at GenPhar. So those all -- first of all, is irrelevant. Second of all, they're excuses to they breach the contract years after the contract has been breached. Those have no relevance whatsoever.

It has relevance because they push me to GenPhar, and they have to find somebody responsible, because I was the principal investigator on those contracts. They prosecute the company for using money inconsistent with the terms and conditions of the contract by building a facility.

What benefit do I get out of it? What is the violation of contract terms, conditions

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become criminal? So we can't litigate those, and we should not be actually include that information. Completely irrelevant to this case.

Q. What about the illegal campaign contributions you were found guilty of? Did you have any involvement in those campaign contributions to Lindsey Graham?

A. Yes. That's also years after.

Q. Tell me about that. What involvement did you have in those?

A. No. Actually, it's from the same German person. I was on the -- he wanted to -- in addition to the auditing done by the company, he wanted additional auditing by himself, and he want the company -- he initially want the company to pay for the auditing. The existing investor did not agree. So in order for me to compromise between the investors, because they are the key control interest of a company, so I agree for him to do his auditing, but he also agreed to pay for it.

Once the actual -- also, there is a time while I was on the around-world travel, paid by a family member, and I was costing $90,000 for my wife and on the charter flight. It's travel

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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 event and cost $90,000. He said, Don't worry about it; I'll pay for it.

He's a billionaire himself, all right. So once the dispute come about, he said he would not pay for it. He only pay 40 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 around-the-world travel since he said so.

But I did not think that the auditing was for the company regardless who wanted to do it, so I did not think it was appropriate for me to take $35,000. At the same time, the consultant for government relationship set up by Jerry Zucker, which also multibillionaire locally, as a requirement, we have to hire this law firm, the consulting firm to so-called establish government relationship. I was signed it. I never wanted to.

The consultant form asked me to contribute to Lyndsey Graham's contribution. I said, Why don't you do it? He said, We can't do

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it anymore 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 I would say, Okay, I will write a check, because 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 profit for me personally take the money, because the auditing is behalf of company.

And that money was returned from my, saying demand -- exceed the limits, your limit. So I thought there was -- each person out of communist China, I thought because you buy me flowers there is quotant (sic), and everybody live by quotant. I thought I reached my quotant. And I said, We have a company. I said, Everybody else has contributes 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 grant, if he agree, you can take the money, talk to Katie and make contribution.

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I didn't know that was over the limit, was so-called legal limit, and then the -- by giving the money to the other people, that's called straw-whatever donation. So I was convicted for contribution using strawman. I have no -- I think the criminal has to be mens rea. You have to have intention to break the -- no -- the violation of the low. I did not. I wasn't a political person.

So I just -- money was given to me by the German investor that actually tried to -- I was the conduit for foreign invest contribution, and there is clear agreement he is giving the money to me personally to compensate me personally, but that's just how the conviction occurred.

It had 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 GenPhar, nothing like this would happen to me because I wasn't manager at any time. I have no experience in managing a company, political contribution, I have none.

Q. It looks like the political contributions were all made years before the

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agreement was signed.

A. No, it could not be.

Q. I'm seeing lobbying fees going all the way back to 2007 as part of your charges.

A. That's not my -- lobbying fee is not -- actually, it's the political agreement was as set up by Jerry Zucker. I have nothing to do with the company. They call it lobbying fee, but that's the government relation consultant company. That's what presented. The company called American Defense. So I am no knowledge whatsoever about what's at the time. And I only learn new word, lobbyist, why they called lobbyist.

When I receiving the company that, actually, is the word in place. It 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 -- to me, that's rumor. All I know is the company called American Defense. It supposedly have the business as to how to breach the gap between defense companies and the Department of Defense.

Q. Is Vaxima, Inc. still in operation, Dr. Dong?

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A. No. It was just a paper company. When I was kicked out from GenPhar, I was -- I thought I failed MUSC because the -- there was no -- I was charged to start a biotech company and bring high-paid jobs to South Carolina. And Ray Greenberg specifically had a conversation with me, who was the president of the university. So I thought I failed, and I tried to start another one, but basically I could not raise a single dollar in terms of funding.

But then the -- after the two parts are fighting, we -- actually, they brought me back to in charge of the assignment. They know they could not -- neither party could do it. So they brought me back.

So that was -- Vaxima was basically incorporated, become a subsidiary of GenPhar, only they call it service division, which only using GenPhar's technology to serve other companies, and the companies never exist as individual company or actually have a single dollar investment, but just become a name under GenPhar to provide a service to other companies.

Because GenPhar is a product development company, and when you have product

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development, you can't do service for the other clients because they afraid you may use their technology to help your products. So you have to have a separate entity and agreement that technologies never transfer.

There is also no relevance whatsoever to the current case. The only relevance is if I wasn't pushed to GenPhar with the -- they take my research and material and push to GenPhar, I would never be in trouble.

Q. What do you mean push you to GenPhar?

A. Of course, this agreement, because they took away all my research. The only opportunity for me to -- and being enticed to a cool-down period. At the time my only concern is my academic career.

I agreed on everything in order for me to continue my research. That's my livelihood. That's my career. Everything depend on it. So I agree to everything in rush in order for me to continue my research. Not only threw away my research, actually they try to block me from doing my research at GenPhar and also actually as a result and I'm being the only person in charge, because everybody officially resign.

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Q. Your relationship to GenPhar goes all the way back to 2002, right?

A. That's under the contract of FRD and GenPhar. It was on behalf of MUSC. So I always been full-time professor. That's -- actually, all the other faculty members doing the same.

University encourage faculty members to sponsor biotechnology. It's not only MUSC. It's all over the country, exemplified by MIT, Hopkins, UCSF. Of course, Massachusetts is the hotspot biotech companies. And of course, California is hotspot biotech companies. So that's all national trend, and they actually tried to mimic UCSF.

UCSF got more than $300 million a year from industry support, a lot more than $300 million. At the time it was $300 million from NIH. And the common saying is there's almost same or twice the amount from industry. So many universities try to mimic, and also it was the initiative of high-tech university under the government. That's actually the single purpose I was recruited to MUSC, and I think Ken Roozen can testify to it.

(Exhibit 2, 3/14/11 Letter to Dr. Dong

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from MUSC, marked for identification.)

BY MR. CONLEY:

Q. Dr. Dong, I'll hand you what I've marked as Exhibit 2 and ask you to take a look at it, please.

A. This letter is fake in a way because this person actually was regarded one of the worst, whatever, the vice president of affairs at MUSC. She didn't last long. She had no involvement from the beginning to the end, but she took responsibility. Inventory was done by her. No, it was done by Steven Lanier, long before this agreement was signed. This is a false statement.

Q. Did you receive this letter, which is Defendant's Exhibit 2?

A. I believe I might. I might. I can't remember.

Q. Did you attend this inventory that occurred March 24th and 25th?

A. Which year is this?

Q. It says "March 14, 2011," Dr. Dong.

A. No, I was never asked.

Q. My question is simply this: Did you attend in any shape, form, or fashion an inventory on either March 24th or March 25th, 2011?

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A. No. I don't remember.
Q. Well, that's different. My question is -- you need to tell me you either didn't attend or you don't remember whether you attended.
A. I don't remember there was ever a requirement, and also I do not remember. The -- actually, the inventory was done long before she was the, whatever, with medical. I never met her. I never -- and she sent this letter, was completely false, based on false information.
Q. Dr. Dong, my question is about March 24th and 25, 2011: Did you attend on either of those days any kind of inventory related to your materials or equipment? You either did, you didn't, or you don't remember.
A. I don't remember.
Q. Thank you.
A. Likely, I didn't, but if I did, I would remember it. Where was this letter sent to, this confirmation -- confidential information supposedly? The only person I could recognize this name is Steve Lanier. He's the one under the false statement of inventory.
What is the reason for inventory? It's not after I leave -- I left, but this is

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already long past the -- over due of the transfer of the document -- the material documents. They just follow up to cover up for their actions.
(Exhibit 3, Email Correspondence, re: Inventory of Laboratory Material, marked for identification.)
BY MR. CONLEY:
Q. Let me ask you to take a look at Defendant's Exhibit Number 3 for me, Dr. Dong.
A. Oh, I remember the event, but that's long after they breached the contract.
Q. Tell me what you remember about the event. That's what I want to ask you about.
A. They actually wanted me to bring the keys. They ask me to bring the keys to the freezers, but when I got there they already break up the freezer and everything else.
Q. Why did they want you to bring the keys to the freezer, Dr. Dong?
A. Because the freezer belongs to me. It was locked, but the -- first of all, they removed the freezer. So I have no access to my freezers. So immaterial.
They locked into a separate room. They asked me to bring the keys, but when I got

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there, they already break the locks, and they are actually in process of transfer everything out, but they are not doing any inventory. They just took the material out of those freezers and transferred somewhere else so they would not be in that location anymore.
Those keys already -- those actually locks already being broken. I don't know when, but clearly they did not need me, didn't need the key. So I was standing there. Actually, no one talked to me, and so...
Q. So you didn't stay for the entire event; is that right? You left?
A. Correct, but that's the -- outside the agreement. Why do I -- because they -- first of all, they only -- I was informed, I do remember, informed to bring the key.
Q. Your position is as of March 24th/25th, when this inventory occurred, I think what I heard, your position is MUSC had already breached the agreement at that point?
A. Of course. Have nothing to do with it. They are not transferring material to me, and they said they are going to do inventory because they -- first of all, they removed all of my

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equipment freezers to a secret location, locked by James Norris. So I -- with a key, I will not be able to get access to it. Then they said they were going to do inventory, asked me to bring the keys, so in a way I will give them consent, but when I got there, all of the locks had been long broke.
(Exhibit 4, 9/20/11 Letter to Dr. Dong from MUSC, marked for identification.)
MR. CONLEY: I hand you Defendant's Exhibit 4, Dr. Dong.
THE WITNESS: So why -- first of all, why is it you only have the documents your benefit and you deny any of my documents?
MR. CONLEY: Because this is my deposition, so I get to choose what documents I want to ask you about.
THE WITNESS: But I don't have -- I didn't have this document.
MR. CONLEY: Yes, you did. This was produced to you, along with all of the others. The Bates numbers on there indicate so.
THE WITNESS: It's 2011, right, a year later -- September, a year and a half later. So whatever happened to it is no relevance, but...

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This is absolutely false. Actually, I would not be -- I would not know I was indicted by 2011. The indictment was -- actually, there is sequential indictment within the months by the same grand jury. Actually, each -- I was told each indictment was only narrowed down. Instead of superseding or adding more, they narrowed down from broadly indictment from paying illegal aliens to whatever. So no one actually saw the first and second, except the third.

The only legally effective third indictment should be 2013, all right. And there was not unsealed until 20- -- late 2014 or early 2015. So there's nine-months period, based on law, for speedy trial. Otherwise, they violate -- that's a constitutional violation. So there's no way they knew it.

It is a felony violation by anybody if disclose information, and there's no way they would know 2011 there was indictment. I don't believe this email -- this information is real or just a coverup act.

BY MR. CONLEY:

Q. Did you receive Defendant's Exhibit 4?

A. I don't remember how they sent to me.

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Q. They mailed it to your address on [redacted]. In September 2011, were you living at [redacted] in [redacted]?

A. I think I was separated long before that. I live in [redacted].

Q. Is that your testimony, you weren't living at that address then?

A. I believe so, because I was separated three years before my divorce.

(Exhibit 5, 9/29/11 Letter to Dr. Dong from MUSC, marked for identification.)

BY MR. CONLEY:

Q. This is Defendant's Exhibit 5, Dr. Dong. Take a look this Exhibit 5, Dr. Dong.

A. Whatever they are, revision is not without my signature and is not -- is violating, but if they say revised, but I wouldn't even read -- I have not seen it, but I don't even need to read it.

Q. You have never seen Defendant's Exhibit 5?

A. No.

Q. Well, it's attached to your lawsuit, Dr. Dong.

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A. Sorry?

Q. That same document is Exhibit 2 to your lawsuit. You have, obviously, seen it before. You must have seen it back in at least 2014, when you filed your lawsuit.

A. It was attached to my lawsuit?

Q. Yes, sir, it is. If you look at the complaint, it's attached to it as Exhibit 2.

A. That's already after the agreement been breached. What's the benefit? What's the fact they put it on --

Q. I'm only asking if you recall receiving the document, Dr. Dong. You either do or you don't.

A. I do not, actually.

Q. Would you at least look at your complaint and agree with me that that's Exhibit 2 to your complaint? It looks like the same document to me.

(The witness reviews the document, as requested.)

THE WITNESS: Yes, I see it.

BY MR. CONLEY:

Q. You filed your lawsuit September 2014, right?

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A. That late?

Q. Yes, sir. Look at the filing date on it.

A. I think I don't -- I can't remember how exactly. I don't remember seeing it. But actually, I do -- I know Allan Holmes got some documents from MUSC as well.

MR. CONLEY: Let's take a short break.

(A recess was taken.)

MR. CONLEY: I don't have anything further.

(The deposition was concluded at 2:23 p.m.)

(The witness, after having been advised of the right to read and sign this transcript, does not waive that right.)

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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 cause pending or interested 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

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REQUESTED INFORMATION INDEX
(No Information Requested)

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JIAN-YUN (JOHN) DONG, M.D., Ph.D. - Witness
johny.dong@me.com
October 27, 2022
RE: Dong, MD, Jian- Yun (John) v. The Medical University Of South Carolina
10/18/2022, Jian-Yun John Dong (#5516370)
The above-referenced transcript is available for review.

Within the applicable timeframe, the witness should read the testimony to verify its accuracy. If there are any changes, the witness should note those with the reason, on the attached Errata Sheet.

The witness should sign the Acknowledgment of Deponent and Errata and return to the deposing attorney. Copies should be sent to all counsel, and to Veritext at cs-southeast@veritext.com.

Return completed errata within 30 days from receipt of testimony.

If the witness fails to do so within the time allotted, the transcript may be used as if signed.

Yours,
Veritext Legal Solutions

Dong, MD, Jian- Yun (John) v. The Medical University Of South Carolina
Jian-Yun John Dong (#5516370)

ERRATA SHEET

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Jian-Yun John Dong Date

Appendix Three:

Final Separation Agreement

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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.

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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.

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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.

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The Parties have set their hand and seal this 3rd day of May 2010.

Medical University of South Carolina

Witness

By: _____
J.G. Reves, 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

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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	
Compac computer	UCSF	
Igloo Cooler Blue and White	No tags	
Imac broken Two each	Startup	
Lamp for Luminator Mod vf15H	No tags	
Picker	Paddock	
Power Mac G5	GenPhar	
rotor buckets 3 each	No tags	
Two foot stools	No tags	
UVP Trans Luminator	Paddock	83009591
Apple Personnel Lazer Writer	No tags	
BRL Mod 250 Electrophoross systems	No tags	
Corning Stirrer PC-353	Arrigo	
Cylinder Regulator Gauges (3 each)	No tags	
Fisher FB 105 Electrophoross 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	
Fellows Shredder	Startup	
Two Book cases Mahogany each	Startup	
-86C ULT Freezer two door	Vector Core	83083054
Barnstead NanoPure-Diamond	Vector Core	83085260
Bell Stirrer	No tags	
Bio-Rad Biologic BioFrac Fraction collector	Vector Core	
Bio-Rad Bio-logic LP part of 31 above	Vector Core	
Boekel Microcooler	Paddock	83023135
Cryo Biological Storage System JR not in use	No tags	
Fisher Biotech Hybridization Incubator	Startup	
Fisher Dry Bath Incubator...;	No tags	83075059
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 Lat file cabinet (HON)	No tags	
ALPS Printer and box of ribbins Mod 2300	No tags	
Amana Microwave Range	82027-01	
Apple I book	Genphar	83082919
Apple I book no battery	Genphar	
Apple monitor	Startup	
Bio-Rad Gene Pulser	Arrigo	83075041
BMG Fluostar with Dell computer	Vector Core	83072286
Bockel Microcooler	Paddock	83075052
Boekel Microcooler	Arrigo	83025050
Boi-Rad Trans Blot SD	No tags	
Branson 450 Sonofoer	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	
Deluxe Mixwe S8220	No tags	
Desk And Chair	Startup	
Eppendorf Centrifuge 5402	Paddock	83022926
Eppendorf Centrifuge 5415C	Paddock	83031565
Eppendorf Centrifuge 5415C	Arrigo	83031566
Eppendorf Centrifuge 5417C	Paddock	83056787
Eppendorf Centrifuge 5417R	Paddock	83052851
Eppendorf Easypet Pipette	Vector Core	
Eppendorf Easypet Pipette	UCSF	
Eppendorf pipette P10 =10 each	tor Core=3 Dong NIH=4	
Eppendorf pipette P100 = 1 each	No tags	
Eppendorf pipette P1000 =3 each	No tags	
Eppendorf pipette P20 =7 each	tor Core=5 Dong NIH=4	
Eppendorf pipette P200 = 5 each	vector Core=4	
Equathon Temp Blok	UCSF	
File Cabinet	Startup	
Finnpipette 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 Manathon 16 KM	vector core	
Fisher Mini Vortexer	UCSF	
Fisher PH Meter Mod AB15	UCSF	
Fisher Regular Mod 10-572-E	No tags	
Fisher Sterrer/ 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	Kalivas	
Fotodyne UV	No tags	

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Gallen Kamp Orbital Incubator	Genphar	
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 Centrx CL3R	Paddock	83073686
IEC HN-SII Centrifuge	UCSF	
IEC Micromax	UCSF	
IEC Micromax	No tags	83073687
IEC micromax	UCSF	
IMAC	Startup	83074995
IMAC	Startup	83075045
IMAC /keyboard	Startup	
Imac and Keyboard S/N YMO1112QJ88	Donation/26000	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 Carsusel 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	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 # 21576	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 = 9 each	No tags	
Pipetman Pipette P20 = 20 each	vector Core=3	
Pipetman 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	83031568
Precision Waterbath	Paddock	83075039
Precision Waterbath	Paddock	83075042
Precision Waterbath Mod 181	Paddock	83075047
Printer	Startup	
Safety Glass two pair	No tags	
Savant SpeedVAC SC100	Paddock	83075049

Sears Seal n Save	No tags	
Spenger	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	83075060
Wooden 6 shelf book case	Startup	
Zeiss Microscope 200 and power supply	Vector Core	83082917
Zip 250 drive 3 each	Startup	

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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:	Defendant's Attorney:
John Dong, pro se, Bar No. _____ Address: 71 Delahow Street, Charleston, SC 29492 Phone: 843-991-2332Fax _____ E-mail: johny.dong@me.comOther: _____	Bob J. Conley, Bar No. _____ Address: 171 Church Street, Suite 310 Charleston, SC 29401 Phone: 843-577-9626 Fax_____ E-mail: bconley@clevelandlaborlaw.comOther: _____

☐ **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 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.

_____ February 20, 2023
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, 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: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____