

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT

HAKIM DJABALLAH, PhD,

Plaintiff,

vs.

Case No. D-202-CV-2023-04008

UNIVERSITY OF NEW MEXICO BOARD
OF REGENTS and NANCY JOSTE, MD.,
in her official capacity as interim chair of
the University of New Mexico's Health
Sciences Center's Department of Pathology,

Defendants.

COMPLAINT FOR WHISTLEBLOWER PROTECTION ACT VIOLATIONS

Plaintiff Hakim Djaballah, PhD, through his counsel, Ives & Flores, PA, hereby brings this action against Defendants for violations to the Whistleblower Protection Act, NMSA 1978, § 10-16C-1 *et seq.* In August 2020, the University of New Mexico's Health Science Center hired Dr. Djaballah to rebuild the Department of Pathology's Center for Molecular Discovery. After Dr. Djaballah raised the alarm about improper and possibly fraudulent laboratory practices under Dr. Djaballah's predecessor, Defendants retaliated, terminating his employment.

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter, because Plaintiff Hakim Djaballah, PhD, asserts claims pursuant to the laws of New Mexico.
2. Venue is proper in this district, because Plaintiff asserts claims against officers or employees of state educational institution whose principal office is located in Bernalillo County.

See NMSA 1978, § 38-3-1(G).

PARTIES

3. Plaintiff Hakim Djaballah, PhD (“Dr. Djaballah”), is a biochemist. He served as director of the Center for Molecular Discovery from August 2020 until his termination a year later.
4. Defendant University of New Mexico Board of Regents (“UNMBOR”) “manage[s] and control[s]” the University of New Mexico (“UNM”), NMSA ¶1978, § 21-7-3, including the UNM Health Sciences Center (“HSC”). *See* NMSA ¶1978, § 21-7-4 (stating that the UNMBOR bears “the right . . . of suing and being sued”).
5. Defendant Nancy Joste, MD (“Dr. Joste”), was, at all relevant times, the interim chair of the HSC’s Department of Pathology (“Pathology Department”).

FACTUAL ALLEGATIONS

6. In 2018, officials from the HSC’s Pathology Department and the UNM Comprehensive Cancer Center (“Cancer Center”) began searching for a new director of the Center for Molecular Discovery (“CMD”) to replace its outgoing director, Dr. Larry Sklar, who was retiring.
7. The Pathology Department provided the CMD with a lab space, and the Cancer Center provided CMD with most of its funding.
8. The CMD’s purpose was to discover new cancer-fighting drugs for the Cancer Center to use in its research and treatment.
9. Cancer Center officials were hopeful that a new director could revive the CMD, which had languished under Dr. Sklar’s direction.
10. As one Cancer Center official put it, Dr. Sklar’s CMD had been in “slow decline” for some time. Over the years, CMD’s staff had shrunk, outside funding decreased, and it performed less and less work for other UNM departments.

11. Many in the Cancer Center were also concerned that the CMD had been employing poor laboratory practices, such as by failing to keep comprehensive records and allowing the lab space to become a “total mess,” cluttered with old equipment. One Cancer Center official later recalled that he had “seen many laboratories” in his career, and CMD’s “was one of the worst.”

1. The Pathology Department and the Cancer Center began recruiting Dr. Djaballah to serve as CMD’s new director.

2. To many Cancer Center scientists, Dr. Djaballah was an ideal candidate to rebuild the CMD.

3. Dr. Djaballah – a biochemist – had nearly thirty-years’ experience in drug discovery and development and executive management. He had served as the director of the High throughput Core Facility at the Memorial Sloan Kettering Cancer Center in New York City, NY, and as the founder and CEO of Keren Therapeutics, a startup company in Scarsdale, NY.

4. The recruiting process began in 2018 and dragged on for so long that Dr. Djaballah withdrew his application the following year. The recruiters persisted, and Dr. Djaballah finally agreed.

5. Dr. Djaballah’s offer letter set forth the Pathology Department’s and the Cancer Center’s expectations for him as CMD director:

[Y]ou will implement your strategic vision for the UNM Center for Molecular Discovery that will build upon the groundbreaking work by Dr. Larry Sklar in establishing this center and program and sustaining it as a nationally-funded center for many years. In the first year, this will involve upgrading, modernizing, and integrating existing equipment, as well as establishing new technologic infrastructure and capabilities for the facility, and establishing more rigorous standard operating procedures that meet [Good Laboratory Practice] standards.

6. Dr. Djaballah began as CMD director in August 2020.

7. Although Dr. Djaballah understood he was hired to rebuild a languishing department, he was nonetheless shocked when he began to take stock of the state of the CMD's budget, research equipment, data storage, and laboratory practices.

8. CMD scientists had, for years, apparently not been using formal lab notebooks to record their daily experimental activity. Lab notebooks are critical tools for laboratory research, helping ensure the integrity of the experimental process and results.

9. The CMD did not maintain an electronic database for storing the results of the lab's experiments. Electronic databases preserve raw data in a manner that ensures the data's integrity and permits other researchers to easily review that data.

10. When Dr. Djaballah reviewed his predecessor's grant requests to the National Institutes of Health ("NIH") for CMD's funding, he was shocked to see that Dr. Sklar had falsely represented to NIH that CMD maintained an electronic database, and that funding was required to compensate a particular CMD scientist to manage it.

11. Dr. Djaballah was concerned that Dr. Sklar had committed fraud by making false representations to NIH in those grant requests, and that that CMD's poor data management practices violated NIH's grant awards' terms.

12. Dr. Djaballah realized that the CMD could face severe consequences from the NIH for these discrepancies, such as being subjected to a NIH audit and possibly having to return funds.

13. When Dr. Djaballah reviewed the CMD's budgets and pay records, he saw that some CMD scientists had been paid pursuant to funding for projects for which they had not performed any work.

14. Dr. Djaballah told Dr. Joste, the interim chair of the Pathology Department, about these concerns, but Dr. Joste ignored them.

15. Dr. Djaballah was so concerned about the possible consequences that he asked Dr. Joste for a letter stating that he bore no responsibility for Dr. Sklar's and CMD's conduct pursuant to those grant awards.
16. Although Dr. Sklar had retired, he remained involved in CMD matters in an emeritus role, attending meetings and maintaining contact with CMD scientists.
17. Dr. Djaballah's efforts to address Dr. Sklar's misconduct and poor laboratory practices created friction between him those in the Pathology Department and in the CMD who had worked for many years with or for Dr. Sklar.
18. Given what Dr. Djaballah learned about Dr. Sklar's and CMD's laboratory and data retention practices, Dr. Djaballah took a closer look at an article that Dr. Sklar and other CMD scientists had recently authored in collaboration with another UNM scientist not working in the CMD.
19. The article had been published in SLAS Discovery, a journal for which Dr. Djaballah had previously served as an editor.
20. The article purported to demonstrate the efficacy of Dr. Sklar's HT flow cytometry method for detecting chemical compounds that could inhibit development of certain cancers.
21. Dr. Djaballah asked one of Dr. Sklar's co-authors (who was still working at the CMD) to provide the raw data underlying CMD's contribution to the article.
22. All that the co-author could provide was a PowerPoint presentation and a Microsoft Excel spreadsheet.
23. The PowerPoint presentation did little to assuage Dr. Djaballah's concerns. It featured tables and graphs that omitted key ranges of data results, reached conclusions that did not follow from the limited data presented, and excluded apparent assay failures from its analysis.

24. The Microsoft Excel spreadsheet was also concerning. Some of the spreadsheet's data was different from data presented in the article. For example, some chemical compounds were recorded as "inactive" in the spreadsheet, but were reported as "active" in the article.

25. Dr. Sklar's HT flow cytometry method also failed to identify certain basic chemical compounds that it should have easily identified, raising the possibility that the spreadsheet's data was not accurate, or had been manually changed.

26. While a Microsoft Excel spreadsheet's data values could be manually changed, a proper laboratory database could not be so altered. Without a database, it was impossible for Dr. Djaballah (or anyone else) to confirm the research's integrity.

27. On January 30, 2021, Dr. Djaballah sent a "Letter of Concern" to the Editor-in-Chief of SLAS Discovery regarding Dr. Sklar's article.

28. In the letter, Dr. Djaballah stated that his review of the article and its underlying research raised concerns of "data falsification, defined as manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record."

29. Dr. Djaballah provided the Editor-in-Chief with a copy of the co-author's PowerPoint presentation, and set forth a detailed account of the research's dubious methods and conclusions.

30. Dr. Djaballah asked the Editor-in-Chief to investigate the paper and retract it, warning that the article "is significantly misleading the research community" regarding the viability of the authors' method for detecting cancer-fighting chemical compounds.

31. On February 1, 2021, Dr. Djaballah sent a letter to Richard Larson, MD, PhD, who was the Vice President of Research at UNM Health Sciences Center.

32. As VP of Research, Dr. Larson was tasked with ensuring the integrity of HSC's laboratories and research.

33. In the letter, Dr. Djaballah set forth, in detail, his concerns regarding the integrity of the CMD's research and laboratory practices under Dr. Sklar. Specifically, he reported that:

- a. CMD scientists had not maintained lab notebooks or electronic databases, violating HSC and NIH data retention policies, and contradicting CMD's representations in NIH grant applications;
- b. Two CMD scientists (whom CMD still employed) had been paid out of grants for projects on which the scientists performed no work;
- c. Dr. Sklar misrepresented CMD data in the SLAS Discovery article to overstate the HT flow cytometry method's efficacy, and Dr. Sklar sought additional research funding based on those misrepresentations; and
- d. Dr. Sklar and other CMD scientists were attempting to impede Dr. Djaballah's efforts to perform his duties as CMD director in order to conceal their roles in research misconduct.

34. Dr. Djaballah requested that Dr. Larson conduct a "full and speedy investigation" into the issues raised in his letter.

35. As Dr. Larson was supposedly investigating the issues raised in Dr. Djaballah's letter, Dr. Sklar filed a complaint with Dr. Larson alleging that Dr. Djaballah had made misconduct allegations against him in bad faith.

36. Dr. Djaballah's concerns regarding Dr. Sklar presented problems for Dr. Joste, Dr. Larson, and many others at HSC who had worked with Dr. Sklar for so long. Revealing Dr. Sklar's misconduct and mismanagement might invite a costly and embarrassing NIH audit.

Acknowledging that the CMD maintained poor laboratory practices under Dr. Sklar would reflect poorly on anyone at the HSC who had allowed it to happen. And a retraction of the SLAS Discovery article regarding Dr. Sklar's signature HT flow cytometry method would be embarrassing for UNM and everyone involved in its publication.

37. In response to Dr. Djaballah's concerns about the SLAS Discovery article, Dr. Larson took the co-author's PowerPoint presentation at face value, content that the PowerPoint presentation's data matched the data in the article. He did not consider any of the other problems raised, or expect Dr. Sklar or his co-authors to provide the raw data.

38. Dr. Larson ignored all other issues raised in Dr. Djaballah's letter, not addressing Dr. Djaballah's concerns about the years of poor laboratory practices, misrepresentations in funding requests, violations of NIH and HSC data retention policies, and budget discrepancies.

39. When SLAS Discovery asked UNM about the matters raised in Dr. Djaballah's Letter of Concern, Dr. Larson responded that HSC had conducted a review and found no issues.

40. Based on Dr. Larson's representations, SLAS Discovery took no further action.

41. Had Dr. Larson not provided that assurance, SLAS Discovery would have conducted a full investigation into the article, scrutinizing its findings more thoroughly than in peer review, such as by reviewing the authors' database and lab journals.

42. Dr. Sklar's paper would not have withstood such close scrutiny, because neither he nor his CMD co-authors had maintained lab notebooks, nor did they store data in an electronic database.

43. On May 28, 2021, Dr. Joste informed Dr. Djaballah in a letter that the Pathology Department was terminating his employment.

44. Dr. Joste explained that the Pathology Department was terminating Dr. Djaballah's employment "[d]ue to significant philosophical and managerial differences with the professional and business standards of the Department of Pathology."

45. Cancer Center officials were blindsided with the decision to terminate Dr. Djaballah. Even though the Cancer Center had helped recruit Dr. Djaballah, and provided CMD with most of its funding, they had been left out of the decision to terminate his employment.

46. In the weeks that followed Dr. Djaballah's termination, Cancer Center officials expressed shock and disappointment with the decision.

47. A professor in the Cancer Center's Chemistry and Biology department who had helped recruit Dr. Djaballah wrote in an email to a vice president of research that

UNM was very lucky to hire him. Dr. Djaballah has an exceptional reputation, and he [was] well positioned to transform the CMD. The CMD has unfortunately been in a slow decline and was in complete disarray upon the arrival of Dr. Djaballah. From my perspective, I had witnessed Dr. Djaballah reinvigorate the CMD, and I was extremely hopeful that the CMD could return to national prominence.

48. One professor and researcher stated in a letter to HSC leadership that Dr. Djaballah shared her vision "to bring UNM to the forefront of research excellence," and had "shown a level of engagement that was missing prior to his assuming leadership." She remarked that it appeared Dr. Djaballah had been "maligned and had his contract terminated" out of "retaliation" for his statements regarding Dr. Sklar.

49. A Cancer Center official stated in a letter to HSC leadership that "[w]e were fortunate enough to hire a person with an outstanding track record and reputation to revitalize the CMD," but that "his efforts have been undermined right from the start by Dr. Sklar and his group through false claims, lack of cooperation[,] and harassment . . . of Dr. Djaballah's staff." He added that Dr. Djaballah's termination "effectively eliminates the drug discovery efforts of the Cancer

Center . . . and disrupts growing collaborations with the main campus and investigators across the HSC campus as well as ongoing recruitments.”

50. Another Cancer Center official wrote to HSC leadership expressing the Cancer Center’s “extreme objection to this decision and how it was handled,” adding that “this action severely harms, if not fully eliminates, the drug discovery programs and infrastructure in the UNM Health Sciences Center.”

51. Since Dr. Djaballah’s termination, the CMD has continued to languish. It performs very little collaborative work for other UNM departments, and the Cancer Center has stopped funding CMD research altogether.

COUNT I: VIOLATIONS TO THE WHISTLEBLOWER PROTECTION ACT

52. Defendants are public employers under NMSA 1978, Section 10-16C-2(C).

53. Dr. Djaballah was a public employee under Section 10-16C-2(B).

54. Dr. Djaballah communicated information to Defendants about actions that he believed in good faith were unlawful or improper, including that: (i) Dr. Sklar and other CMD scientists had maintained poor laboratory practices, made misrepresentations in grant requests, failed to comply with NIH and HSC data retention policies, and misrepresented their research in a published journal article; and (ii) that grant funds were used to pay two CMD scientists who performed no work on the project for which the grant was awarded.

55. Dr. Djaballah communication information to a third party – SLAS Discovery’s Editor-in-Chief – about actions that he believed in good faith were unlawful or improper, namely that Dr. Sklar and other CMD scientists misrepresented their research in a published article.

56. Dr. Djaballah’s communications to Defendants and to SLAS Discovery’s Editor-in-Chief were protected speech.

57. Defendants retaliated against Dr. Djaballah for his protected speech by terminating his employment.

58. Dr. Djaballah suffered damages as a result of his termination.

PRAYER FOR RELIEF

WHEREFORE, Dr. Hakim Djaballah is entitled to actual damages, reinstatement to the same seniority status, two times backpay with pre- and post-judgment interest, special damages, costs, and attorneys' fees, pursuant to NMSA 1978, § 10-16C-4(A).

Respectfully submitted,

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