

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT

HAKIM DJABALLAH, PhD,

Plaintiff,

v.

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.

**UNM DEFENDANTS' ANSWER TO PLAINTIFF'S
COMPLAINT FOR WHISTLEBLOWER PROTECTION ACT VIOLATIONS**

COME NOW, University of New Mexico Board of Regents and Nancy Joste, MD (collectively "UNM Defendants"), by and through their undersigned counsel, STIFF, GARCIA & ASSOCIATES, LLC (Kathy L. Black, Esq., Nicole Werkmeister, Esq., and John S. Stiff, Esq.), and for their Answer to Plaintiff's Complaint for Whistleblower Protection Act Violations ("Plaintiff's Complaint"), state as follows:

RESPONSE TO "JURISDICTION AND VENUE"

1. The allegations in Paragraph 1 of Plaintiff's Complaint are conclusions of law to which no response from UNM Defendants is required. To the extent a response is deemed required, UNM Defendants deny the allegations in Paragraph 1 of Plaintiff's Complaint and demand strict proof thereof.
2. The allegations in Paragraph 2 of Plaintiff's Complaint are conclusions of law to which no response from UNM Defendants is required. To the extent a response is

deemed required, UNM Defendants deny the remaining allegations in Paragraph 2 of Plaintiff's Complaint and demand strict proof thereof.

RESPONSE TO "PARTIES"

3. UNM Defendants have insufficient information to admit or deny the allegations in Paragraph 3 of Plaintiff's Complaint, and therefore deny the same and demand strict proof thereof.

4. UNM Defendants admit the allegations in Paragraph 4 of Plaintiff's Complaint.

5. In response to the allegations in Paragraph 5 of Plaintiff's Complaint, UNM Defendants admit that Dr. Joste served as interim chair of the Department of Pathology beginning September 2019, and deny that she served as interim chair "at all relevant times" and demand strict proof thereof.

RESPONSE TO "FACTUAL ALLEGATIONS"

6. In response to the allegations in Paragraph 6 of Plaintiff's Complaint, UNM Defendants admit that in 2018 Dr. Larry Sklar provided notice of his intent to retire at an unspecified time in the future and step down as director of the Center for Molecular Discovery. UNM Defendants deny any remaining allegations in Paragraph 6 of Plaintiff's Complaint and demand strict proof thereof.

7. In response to the allegations in Paragraph 7 of Plaintiff's Complaint, UNM Defendants admit that the Center for Molecular Discovery uses lab space provided by the Department of Pathology, and that at least a portion of its funding comes from the UNM Comprehensive Cancer Center, among other sources, including grants from the National Institutes of Health and the National Cancer Institute. UNM Defendants deny any

remaining allegations in Paragraph 7 of Plaintiff's Complaint and demand strict proof thereof.

8. In response to the allegations in Paragraph 8 of Plaintiff's Complaint, UNM Defendants assert that the Center for Molecular Discovery provides industry standard molecular screening services that enable investigators to perform chemical biology discovery research. UNM Defendants deny any remaining allegations in Paragraph 8 of Plaintiff's Complaint and demand strict proof thereof.

9. UNM Defendants deny the allegations in Paragraph 9 of Plaintiff's Complaint and demand strict proof thereof.

10. UNM Defendants deny the allegations in Paragraph 10 of Plaintiff's Complaint and demand strict proof thereof.

11. UNM Defendants deny the allegations in Paragraph 11 of Plaintiff's Complaint and demand strict proof thereof.

NOTE: Plaintiff's Complaint is incorrectly numbered, going back to Paragraph 1 from this point forward

1. In response to the allegations in Paragraph 1 of Plaintiff's Complaint, UNM Defendants admit that a search committee for a new Director of the Center for Molecular Discovery communicated with Plaintiff about the position. UNM Defendants deny any remaining allegations in Paragraph 1 of Plaintiff's Complaint and demand strict proof thereof.

2. UNM Defendants deny the allegations in Paragraph 2 of Plaintiff's Complaint and demand strict proof thereof.

3. In response to the allegations in Paragraph 3 of Plaintiff's Complaint, UNM Defendants admit that Plaintiff's characterization of his professional experience is

consistent with the CV he provided to the search committee for a new Director of the Center for Molecular Discovery.

4. In response to the allegations in Paragraph 4 of Plaintiff's Complaint, UNM Defendants admit that the search process for a new Director of the Center for Molecular Discovery began in 2018, that Plaintiff at one point indicated that he was no longer interested in seeking the position, and that the search process concluded in 2020 with an offer of employment to Plaintiff.

5. In response to the allegations in Paragraph 5 of Plaintiff's Complaint, UNM Defendants admit that the UNM School of Medicine provided an offer letter to Plaintiff, dated August 12, 2020, which is the best evidence of its content, and UNM Defendants deny any allegations in Paragraph 5 not consistent with the text of that letter and demand strict proof thereof.

6. UNM Defendants admit the allegations in Paragraph 6 of Plaintiff's Complaint.

7. UNM Defendants have insufficient information to admit or deny the allegations in Paragraph 7 of Plaintiff's Complaint, and therefore deny the same and demand strict proof thereof.

8. UNM Defendants deny the allegations in Paragraph 8 of Plaintiff's Complaint and demand strict proof thereof.

9. UNM Defendants deny the allegations in Paragraph 9 of Plaintiff's Complaint and demand strict proof thereof.

10. In response to the allegations in Paragraph 10 of Plaintiff's Complaint, UNM Defendants have insufficient information to admit or deny whether Plaintiff was "shocked."

UNM Defendants deny the remaining allegations in Paragraph 10 of Plaintiff's Complaint, and specifically deny that Dr. Sklar made false representations and demand strict proof thereof.

11. In response to the allegations in Paragraph 11 of Plaintiff's Complaint, UNM Defendants have insufficient information to admit or deny what concerns Plaintiff may have had. UNM Defendants deny the remaining allegations in Paragraph 11 of Plaintiff's Complaint, and specifically deny that Dr. Sklar made false representations and that the terms of any grants from the National Institutes of Health were violated, and demand strict proof thereof.

12. In response to the allegations in Paragraph 12 of Plaintiff's Complaint, UNM Defendants have insufficient information to admit or deny what Plaintiff may have "realized." UNM Defendants admit that the National Institutes of Health has oversight authority for its grants. UNM Defendants deny the remaining allegations in Paragraph 12 of Plaintiff's Complaint, and specifically deny any discrepancies related to grants from the National Institutes of Health, and demand strict proof thereof.

13. UNM Defendants deny the allegations in Paragraph 13 of Plaintiff's Complaint and demand strict proof thereof.

14. In response to the allegations in Paragraph 14 of Plaintiff's Complaint, UNM Defendants admit that Plaintiff met with Dr. Joste, and that she reported Plaintiff's allegations to the appropriate investigatory office. UNM Defendants deny the remaining allegations in Paragraph 14 of Plaintiff's Complaint and demand strict proof thereof.

15. In response to the allegations in Paragraph 15 of Plaintiff's Complaint, UNM Defendants admit that Plaintiff asked Dr. Joste for a letter stating that he bore no

responsibility for the conduct of Dr. Sklar and the Center for Molecular Discovery prior to the start of Plaintiff's employment. UNM Defendants have insufficient information to admit or deny Plaintiff's level of concern about possible consequences.

16. UNM Defendants admit the allegations in Paragraph 16 of Plaintiff's Complaint.

17. In response to the allegations in Paragraph 17 of Plaintiff's Complaint, UNM Defendants admit that Plaintiff's behavior led to friction between Plaintiff and various people in the Department of Pathology and the Center for Molecular Discovery, with such friction leading to complaints filed against Plaintiff, for which management counseled him on his unacceptable behavior. UNM Defendants deny any remaining allegations in Paragraph 17 of Plaintiff's Complaint and demand strict proof thereof.

18. UNM Defendants have insufficient information to admit or deny the allegations in Paragraph 18 of Plaintiff's Complaint, and therefore deny the same and demand strict proof thereof.

19. In response to the allegations in Paragraph 19 of Plaintiff's Complaint, UNM Defendants admit that Dr. Sklar and other researchers had published an article in SLAS Discovery. UNM Defendants have insufficient information to admit or deny the remaining allegations in Paragraph 19 of Plaintiff's Complaint, and therefore deny the same and demand strict proof thereof.

20. In response to the allegations in Paragraph 20 of Plaintiff's Complaint, UNM Defendants state that the article is the best evidence of what it demonstrates and deny any allegations not consistent with the content of the article and demand strict proof thereof.

21. UNM Defendants have insufficient information to admit or deny the allegations in Paragraph 21 of Plaintiff's Complaint, and therefore deny the same and demand strict proof thereof.

22. UNM Defendants have insufficient information to admit or deny the allegations in Paragraph 22 of Plaintiff's Complaint, and therefore deny the same and demand strict proof thereof.

23. In response to the allegations in Paragraph 23 of Plaintiff's Complaint, UNM Defendants state that the PowerPoint presentation is the best evidence of its content and deny any allegations not consistent with the content of that presentation. UNM Defendants have insufficient information to admit or deny the remaining allegations in Paragraph 23 of Plaintiff's Complaint, and therefore deny the same and demand strict proof thereof.

24. In response to the allegations in Paragraph 24 of Plaintiff's Complaint, UNM Defendants state that the Microsoft Excel spreadsheet is the best evidence its content and deny any allegations not consistent with the content of that spreadsheet and demand strict proof thereof.

25. UNM Defendants deny the allegations in Paragraph 25 of Plaintiff's Complaint and demand strict proof thereof.

26. UNM Defendants deny the allegations in Paragraph 26 of Plaintiff's Complaint and demand strict proof thereof.

27. UNM Defendants have insufficient information to admit or deny the allegations in Paragraph 27 of Plaintiff's Complaint, and therefore deny the same and demand strict proof thereof.

28. In response to the allegations in Paragraph 28 of Plaintiff's Complaint, UNM Defendants state that if Plaintiff sent a letter dated January 30, 2021, then it is the best evidence of its content. UNM Defendants deny any allegations not consistent with the text of any such letter, and specifically deny that Dr. Sklar or other researchers falsified data and demand strict proof thereof.

29. UNM Defendants have insufficient information to admit or deny the allegations in Paragraph 29 of Plaintiff's Complaint, and therefore deny the same and demand strict proof thereof.

30. UNM Defendants have insufficient information to admit or deny the allegations in Paragraph 30 of Plaintiff's Complaint, and therefore deny the same and demand strict proof thereof.

31. UNM Defendants admit the allegations in Paragraph 31 of Plaintiff's Complaint.

32. UNM Defendants admit the allegations in Paragraph 32 of Plaintiff's Complaint.

33. In response to the allegations in Paragraph 33 of Plaintiff's Complaint, UNM Defendants state that the letter dated February 1, 2021, is the best evidence of its content and deny any allegations not consistent with the text of that letter and demand strict proof thereof.

34. UNM Defendants have insufficient information to admit or deny the allegations in Paragraph 34 of Plaintiff's Complaint, and therefore deny the same and demand strict proof thereof.

35. In response to the allegations in Paragraph 35 of Plaintiff's Complaint, UNM Defendants admit that Dr. Sklar filed a complaint alleging bad faith on behalf of Plaintiff. UNM Defendants deny that Dr. Larson was "supposedly investigating" the issues raised by Plaintiff and instead assert that Dr. Larson appointed an independent panel that conducted a thorough investigation. UNM Defendants deny any remaining allegations in Paragraph 35 of Plaintiff's Complaint and demand strict proof thereof.
36. UNM Defendants deny the allegations in Paragraph 36 of Plaintiff's Complaint and demand strict proof thereof.
37. UNM Defendants deny the allegations in Paragraph 37 of Plaintiff's Complaint and demand strict proof thereof.
38. UNM Defendants deny the allegations in Paragraph 38 of Plaintiff's Complaint and demand strict proof thereof.
39. UNM Defendants admit the allegations in Paragraph 39 of Plaintiff's Complaint.
40. UNM Defendants have insufficient information to admit or deny the allegations in Paragraph 40 of Plaintiff's Complaint, and therefore deny the same and demand strict proof thereof.
41. UNM Defendants have insufficient information to admit or deny the allegations in Paragraph 41 of Plaintiff's Complaint, and therefore deny the same and demand strict proof thereof.
42. UNM Defendants deny the allegations in Paragraph 42 of Plaintiff's Complaint and demand strict proof thereof.

43. In response to the allegations in Paragraph 43 of Plaintiff's Complaint, UNM Defendants admit that Dr. Joste provided Plaintiff a letter dated May 28, 2021, which is the best evidence of its content. UNM Defendants deny any allegations not consistent with the text of the letter and demand strict proof thereof.

44. In response to the allegations in Paragraph 44 of Plaintiff's Complaint, UNM Defendants admit that Dr. Joste provided Plaintiff a letter dated May 28, 2021, which is the best evidence of its content. UNM Defendants deny any allegations not consistent with the text of the letter and demand strict proof thereof.

45. UNM Defendants deny the allegations in Paragraph 45 of Plaintiff's Complaint and demand strict proof thereof.

46. UNM Defendants deny the allegations in Paragraph 46 of Plaintiff's Complaint and demand strict proof thereof.

47. In response to the allegations in Paragraph 47 of Plaintiff's Complaint, UNM Defendant states that there is no Chemistry and Biology Department within the UNM Cancer Center. UNM Defendants have insufficient information to admit or deny the remaining allegations in Paragraph 47 of Plaintiff's Complaint, and therefore deny the same and demand strict proof thereof.

48. UNM Defendants have insufficient information to admit or deny the allegations in Paragraph 48 of Plaintiff's Complaint, and therefore deny the same and demand strict proof thereof.

49. UNM Defendants have insufficient information to admit or deny the allegations in Paragraph 49 of Plaintiff's Complaint, and therefore deny the same and demand strict proof thereof.

50. UNM Defendants have insufficient information to admit or deny the allegations in Paragraph 50 of Plaintiff's Complaint, and therefore deny the same and demand strict proof thereof.

51. UNM Defendants deny the allegations in Paragraph 51 of Plaintiff's Complaint and demand strict proof thereof.

RESPONSE TO "COUNT I: VIOLATIONS TO THE WHISTLEBLOWER PROTECTION ACT"

52. The allegations in Paragraph 52 of Plaintiff's Complaint are conclusions of law to which no response from UNM Defendants is required. To the extent a response is deemed required, UNM Defendants deny the allegations in Paragraph 52 of Plaintiff's Complaint and demand strict proof thereof.

53. The allegations in Paragraph 53 of Plaintiff's Complaint are conclusions of law to which no response from UNM Defendants is required. To the extent a response is deemed required, UNM Defendants deny the allegations in Paragraph 53 of Plaintiff's Complaint and demand strict proof thereof.

54. In response to the allegations in Paragraph 54 of Plaintiff's Complaint, UNM Defendants have insufficient information to admit or deny what actions Plaintiff "believed in good faith were unlawful or improper," and further state that these allegations are conclusions of law to which no response from UNM Defendants is required. To the extent a response is deemed required, UNM Defendants deny the allegations in Paragraph 54 of Plaintiff's Complaint and demand strict proof thereof.

55. In response to the allegations in Paragraph 55 of Plaintiff's Complaint, UNM Defendants state that this paragraph is incomprehensible as written, and UNM

Defendants deny the allegations in Paragraph 55 of Plaintiff's Complaint and demand strict proof thereof.

56. The allegations in Paragraph 56 of Plaintiff's Complaint are conclusions of law to which no response from UNM Defendants is required. To the extent a response is deemed required, UNM Defendants deny the allegations in Paragraph 56 of Plaintiff's Complaint and demand strict proof thereof.

57. UNM Defendants deny the allegations in Paragraph 57 of Plaintiff's Complaint and demand strict proof thereof.

58. UNM Defendants deny the allegations in Paragraph 58 of Plaintiff's Complaint and demand strict proof thereof.

GENERAL DENIAL

UNM Defendants deny any allegations in the numbered paragraphs of Plaintiff's Complaint and the Prayer for Relief not expressly admitted herein.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff's Complaint fails to state a claim for which relief can be granted, either in whole or in part, thereby barring recovery.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims, either in whole or in part, are barred by the applicable statute of limitations.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's alleged damages are barred by the doctrines of waiver and estoppel.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by necessity.

FIFTH AFFIRMATIVE DEFENSE

UNM Defendants acted at all times for legitimate non-retaliatory reasons. To the extent the jury determines that UNM Defendants' actions were improper, which is specifically denied, UNM Defendants acted without retaliatory motivation or animus in any employment action.

SIXTH AFFIRMATIVE DEFENSE

UNM Defendants had a legitimate business purpose for their acts or omissions.

SEVENTH AFFIRMATIVE DEFENSE

To the extent discovery so warrants, Plaintiff may have failed to mitigate his damages, thereby barring recovery herein or reducing such recovery in an amount proportionate.

EIGHTH AFFIRMATIVE DEFENSE

To the extent discovery so warrants, the after-acquired evidence doctrine may bar or limit Plaintiff's recovery.

NINTH AFFIRMATIVE DEFENSE

UNM Defendants state that Plaintiff suffered no damages as a result of UNM Defendants' actions as alleged in the Complaint, thereby barring recovery herein.

TENTH AFFIRMATIVE DEFENSE

UNM Defendants state that Plaintiff's recovery is barred by an independent and intervening cause or act, thereby barring recovery herein.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff did not engage in protected activity as contemplated by the New Mexico Whistleblower Protection Act, thereby barring his claims in whole or in part.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff was not subjected to an adverse employment action as contemplated by the New Mexico Whistleblower Protection Act, thereby barring his claims in whole or in part.

THIRTEENTH AFFIRMATIVE DEFENSE

There is no causal connection between any alleged protected activity and any alleged adverse employment action as is required to prove a violation of the New Mexico Whistleblower Protection Act, thereby barring Plaintiff's claims in whole or in part.

FOURTEENTH AFFIRMATIVE DEFENSE

UNM Defendants' actions do not constitute an "unlawful or improper act", as defined by the New Mexico Whistleblower Protection Act, thereby barring Plaintiff's claims in whole or in part.

FIFTEENTH AFFIRMATIVE DEFENSE

UNM Defendants' actions do not constitute a "retaliatory act," as defined by the New Mexico Whistleblower Protection Act, thereby barring Plaintiff's claims in whole or in part.

SIXTEENTH AFFIRMATIVE DEFENSE

UNM Defendants owed no duty to Plaintiff, breached no duties owed to Plaintiff, and Plaintiff's damages claims may be barred in whole or in part by other causes,

contributing factors and circumstances, proximate causes, and/or independent and intervening causes, including all acts and conduct of Plaintiff.

SEVENTEENTH AFFIRMATIVE DEFENSE

To the extent Plaintiff seeks punitive damages, Plaintiff's claim for punitive damages may be barred by the U.S. and New Mexico Constitutions and the New Mexico Whistleblower Protection Act.

EIGHTEENTH AFFIRMATIVE DEFENSE

UNM Defendants state that to the extent further discovery indicates additional affirmative defenses, UNM Defendants may raise additional matters through motion or in such other manner the Court deems just to avoid manifest injustice.

WHEREFORE, UNM Defendants, having answered Plaintiff's Complaint, pray that Plaintiff's Complaint be dismissed with prejudice, for an award of costs and attorneys' fees, and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

STIFF, GARCIA & ASSOCIATES, LLC

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of July, 2023, the foregoing was electronically filed through the Odyssey File & Serve system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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