UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, *ex rel.* ROBERT BAUCHWITZ, M.D., PH.D. Plaintiff, v. WILLIAM K. HOLLOMAN, Ph.D., *et. al.*, Defendants	CIVIL ACTION No. 04-2892 (TJS) JURY TRIAL DEMANDED

AFFIDAVIT OF MISCONDUCT

Concerning Defense Counsel
John C. Grugan
and All Others Relevant
DRAFT

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A. Timeline

On **March 19, 2010**, Stephen R. Bolden, attorney for the Plaintiff, wrote to the Court to request a ninety-day delay in the Plaintiff's second deposition, scheduled for March 23, 2010. He did so in order to allow a new attorney, James J. West, to take over the case. Defense counsel had refused to agree to the delay, despite our having just granted a delay to them for the same deposition[1].

On **March 22, 2010**, defense counsel John C. Grugan of Ballard Spahr wrote a letter to the Court "in response to [Bolden's] March 19, 2010 letter to the Honorable Timothy J. Savage". This letter was also sent to Attorney West. The contents of this letter are discussed below (The "Letter".)

On **March 22, 2010**, I wrote to Attorney Bolden that, "I believe that the Ballard Spahr letter is meant to deny me counsel and contains highly unreasonable threats. I cannot believe that counsel are allowed to say anything they wish without consequence during such proceedings. It is really quite shocking."

On **March 23, 2010**, James J. West wrote an email to Plaintiff stating, "Ballard Spahr is threatening legal action if I read their last letter correctly".

On **March 30, 2010**, the law firm of Owens, Barcavage, and McInroy (OBM), made an Entry of Appearance into the case (document 131). On that same date, they entered a motion to enlarge the case management deadlines (document 132).

In response, on **March 30, 2010**, defense firm Ballard Spahr introduced a motion, signed by Grugan, opposing OBM's motion to enlarge the case deadlines. This motion was largely based upon the letter Grugan had written on March 22, 2010. The contents of the motion are also discussed below (The "Motion").

On **March 31, 2010**, the Court produced an Order denying any extension of case management deadlines, citing "the defendants' objection and the history of the case" (Document No. 134). This effectively ended the case.

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B. Misrepresentations, False Statements, and Threats

[1] The Defense counsel were so unreasonable that after we allowed them to postpone expert discovery (March 12, 2010) for two weeks (most likely because of the difficulty they would have had in making an expert assessment in their favor based on the facts at hand), AND we allowed them to postpone the Plaintiff's SECOND deposition to suit Attorney Grugan's schedule and Attorney Sarachan's injury, they nonetheless refused to postpone Plaintiff's second deposition to allow Plaintiff's potential new attorneys, OBM, time to prepare.

The definition of "misrepresentation" being used here is derived from the Pennsylvania Rules of Professional Conduct (PRPC), which state that **"Misrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of false statements."** Comment to Rule 4.1, "Truthfullness in Statements to Others".

I. **Misrepresentation**: Grugan claimed that the theory of liability, implying the sole theory, was based upon a 1994 paper; he deliberately ignored the ***clear references throughout the court record identifying a 2001 paper*** as the basis for the allegation specific to Grant 42482-12A2 and its Progress Reports.

a. Letter:

> "Second, your client's theory of liability with respect to Grant 42482-12A2 ***is based on the supposed falsity of an article published in 1994***."

b. Motion:

> "Relator's theory of liability with respect to Grant 42482-12A2 is based on the supposed falsity ***of an article published in 1994***."

Grugan and his associates knew, or should have known, that there were three classes of false statements, and that the second was based upon false statements originally made in a **2001 publication**. Searching for "2001" in the following case records (Amended Complaint, Plaintiff's First Declaration, Plaintiff's Second Declaration, and Additional Facts Precluding Summary Judgment), showed ***eighteen extensive statements*** on this point. The statements found are excerpted in Exhibit 1 to Affidavit of Misconduct - Attorney John Grugan.

Therefore, given these numerous and substantial references to the 2001 publication in just these four documents of the court record, the Plaintiff contends Grugan's claims to the Court and prospective attorneys that the Plaintiff's case was based solely upon a 1994 publication represents a serious misrepresentation of facts which knew or should have known.

Indeed, the 2001 grant, RO1 GM42482-12A2, is the very *first* grant in which the *entire basis of the second category of false claims is alleged*, i.e. that involving falsification of DNA sequence.

II. **Material False Statement**: Grugan claimed that it was ***"undisputed"*** that the ***"science" at issue*** was ***proven to be correct in 2001, even though the court record clearly disputes this***. By "material false statement" it is meant that there is no truth to the claim and it is a very important claim with respect to the case.

a. Letter:

> "***It is undisputed, however, that the science at issue was proven to be correct in 2001***."

However, the written record clearly showed that the Plaintiff disputed this. For example, from the Plaintiff's Second Declaration (Document No. XX):

> [subheading B]: Response to the "**Bennett Defense**" that alleged fraud 3 is negated by information published by Bennett and Holloman concerning Rec2 activity in a 2001 publication.
>
> [par 40]: The Bennett publication of 2001 has no direct bearing on any of the allegations in this case. Indeed, it **in no way addresses claims one (Rec1 amino acid sequence fabrication) or two (rec2-1 DNA sequence falsification) at all**. It is *topically related* to claim three, which involves what we allege were false statements related to image(s) presented in a paper produced by the defendants in 1994, and used repeatedly as of foundational importance to several subsequent grants, including through last year (2007).
>
> [par 42]: First, I note that defendant Holloman himself actually backed away from the validity of the methodology in the Bennett Paper one year after renewal of a $1.7 million grant for project GM42482, *i.e.* GM42482-12A2. In that competitively renewed, and twice amended grant, Holloman claimed, "We have **only just recently succeeded in being able to produce sufficient amounts** of both Rec2 and Rad51 …" (p. 14) [at RPG 00842]. However, in the next year's Progress Report, it is stated that, ""Isolation of Rec2 protein has **continued to be a formidable problem** … yields of active protein were low and **the method was not *reliable***."
>
> [par 46]: It is my suspicion, for many reasons to be further elaborated, but not germane to the current motions, that the Bennett and Holloman publication of 2001 is likely part of a continuing fraud. Its lack of scientific value in terms of reproducibility are strongly suggested by Defendant Holloman's own statements in GM42482-13.

Therefore, I had provided evidence from the Defendant's grants that showed the "science", which I wrote was not relevant to disproving the frauds alleged, was also termed "***not reliable***" and dropped ***by the Defendants themselves***. Grugan clearly knew or should have known this given the written record.

III. **Material False Statement**: In a related attempt to conflate the entire case as being about only the third category of fraud involving protein activity, Grugan ***falsely claims some "acknowledgement" by the Relator*** in his motion in opposition to enlargement of case deadlines:

b. Motion

> "***Relator acknowledged*** in his First Declaration that ***his case*** ultimately is about whether Defendants were "guessing correctly" in 1994. See Bauchwitz First Decl. at par. 32 n.14."

What was actually stated in the Declaration cited was, in pertinent part:

> "Holloman was faced with the need to transform the disputed Rec1 protein activity claimed by himself and Kmiec into the Rec2 protein, which undoubtedly did exist and would be predicted to have recombinase activities. ***It is three specific fraudulent actions that the Defendants took to effect this transformation of irreproducible Rec1 into the predictable Rec2 recombinase that are the focus of this case***."
>
> [FN14] "It should be noted that it would not be surprising for the Rec2 protein to have some or all of ***the activities*** claimed in the Kmiec et. al. MCB 1994 paper. That is the very point that motivated the attempt by the Defendants to change Rec1 into Rec2. The production of data purportedly showing that the REC1 gene was associated with recombinase activity would be an example of an incorrect guess by the Defendants (who nevertheless profited from this claim for several years). With sequence knowledge of the REC2 gene, the odds of such an error could be reduced, as it would be known that REC2 has physical features in common with known recombinase proteins. ... we emphasize that it is a fraud to publish falsified data, even if it is later shown that one guessed correctly."

First, it should be noted that this footnote discusses *only* Rec1 and Rec2 *protein activity*. ***The footnote has no bearing on the first two allegations of data falsification and fabrication*** with respect to the purported amino acid sequence obtained from Harvard University or the *rec2-1* DNA sequence reported in 2001. This is the primary point of Grugan's deception - he generalizes to all counts a comment clearly and specifically made for only one of the three.

Second, the footnote's premise is sound - it is a fraud to pretend to have obtained a result even if it were subsequently shown to be obtainable. The data image which a member of Defendant Holloman's laboratory claimed was used to imply activity was not properly disclosed as being inactive, nor were the failures to produce such activity from the laboratory of the senior author, Holloman, disclosed to readers or grant reviewers. Defendant Holloman was operating under the pretense of relying upon a man, Kmiec, whom he knew to have been involved in major retractions of scientific papers and whose earlier work with Holloman could also not be reproduced by Holloman's own laboratory members.

Third, as noted above, even this state of affairs was not deemed to be "reliable" by the Defendants themselves after they used it to obtain further grant funding in 2001. Therefore, contrary to anything having been proven, we have no idea to this day whether

the production of Rec2 protein from the bacterium *E. coli* by the methods claimed by the Defendants actually works. (Or ever worked: It was not possible, due to the failure to conduct any depositions for the Plaintiff, to depose the student involved in the belatedly disclaimed "proof" to see why he failed to take precautions to inactivate a known artifact (*E. coli* helicase II) as a prior member of the Holloman laboratory had done. See Rubin Thesis at page XX.) Nevertheless, the limited discovery performed has provided evidence that claims Defendant Holloman made in the 2001 grant remaining at issue were clearly misleading to NIH grant reviewers as to the Rec2 protein he had on hand with which to do the funded work[2].

The Plaintiff took all of the above-specified statements by Attorney Grugan, and several others not detailed here, as ***an attempt to negatively influence new attorneys*** for the Plaintiff by challenging Plaintiff's credibility in presenting facts.

Just as important, ***these misrepresentations were a part of the Defendants' "objection" cited by Judge Savage in denying an extension of discovery, which effectively ended the case***.

IV. **Unfounded threats**: Most importantly, citing the above misrepresentations and false statements, Grugan went on to make ***serious, unfounded allegations and threats against the Relator*** and any new counsel considering entering the case.

a. Letter:

> "Your client's continued pursuit of this matter, ***notwithstanding these facts*** and repeated withdrawals of counsel and together with ***bizarre and, at times, illegal***, manner in which ***he "investigated" his claims over more than fourteen years***, demonstrates that he is continuing his prosecution of this matter ***for an improper purpose***."
>
> "We accordingly write to notify you, your client, and ***any substitute counsel*** of Defendants' intention to pursue all available legal remedies available for ***abuse of process***, as well as fees and expenses authorized under 31 U.S.C. § 3730(g)."

Although Grugan does not specify what was "bizarre" or "illegal", it is worth noting that the recordings I made of conversations with various individuals did not violate any federal laws or those of the state in which I resided. Furthermore, ***the claims in this case could not possibly have existed for fourteen years prior to 2004***, since the first paper in which they appeared was in 1994, and the first grant after that. The first grant that had a false statement relevant to the second category of false claims first appeared in 2001.

[2] An Amended Complaint to add a claim on this point was intended, but attorneys for the Plaintiff failed to produce it.

Attorney West told me on March 25, 2010 that he took Grugan's letter to him to mean that he as counsel would be sued if he joined the case, not only the Plaintiff. He then decided not to get involved. His specific comments to me on the these issues, as I reported them in an email of the same day to Attorneys Bolden and Ferroni were (with emphasis added):

> 1) The judge's clerk told him that he MAY give him no more than 60 days;
>
> 2) His reading of the most recent Ballard Spahr letter [from Grugan of March 22, 2010] is that ***they are going to sue not only me but also any attorneys who represent me***. He said that alone is not worth it, even if we were to win. I said I strongly believed it was a bluff but he replied that if so, "they've succeeded";
>
> 3) The Ballard Spahr [Grugan] letter ***led him to believe that there was something ethically wrong in representing me***. Furthermore, he said that for him to make a determination would require his going to your offices for several days to examine the case file. He also noted that ***he has been litigating for 40 years and that this was not normal behavior in a suit***; … (from "F&S to re Jim West conversation 032510 A.pdf").

b. Motion:

> "Realtor has continued to prosecute this matter ***not for legitimate purposes***, but because of personal animosity toward Defendants."

Attorney Grugan presented no evidence of personal animosity. ***The Plaintiff does not even know Defendant Kmiec personally***, and has two graduate degrees from Defendant Cornell, such that its long-term well-being and proper function are in his interests; this Plaintiff strongly believes that inability or failure to handle long-festering faculty misconduct are not in the best interests of Defendant Cornell, nor of the society of which it is a part.

Even were it to be that one party had "animosity" toward another, the Plaintiff is aware of no requirement that antagonistic persons are precluded by law from taking legal actions against one another; (it is perhaps even to be expected). More significantly, Grugan then repeats the threat from his letter of March 19:

> "***Because he is pursuing this suit for improper purposes***, Defendants previously notified Relator and his counsel of Defendants' intention to pursue all available legal remedies available for abuse of process, as well as fees and expenses authorized under 31 U.S.C. § 3730(g)."

It is and was the Plaintiff's firm belief that Grugan, by making all these false statements and threats, was negatively influencing the Court and attempting to deny the Plaintiff new counsel. In support of these conclusions, as noted above:

i. The Court referred to the objections raised by the Defendants in opposition to Plaintiff's request for an extension of case management deadlines in denying the request, which effectively ended the case.

ii. Furthermore, Attorney West clearly stated to me that he felt Grugan and his associates had succeeded in the use of their threats to dissuade him from entering the case (both because he did not want to have to defend such a suit if it occurred, and also because of substantial additional efforts he would need to make to determine that I there was not "some ethical problem" with me, as he stated it.

On March 26, 2010, Attorney West wrote to the Plaintiff:

"I truly regret to inform you that my decision is final that I cannot become involved in your pending *qui tam* action. I have substantial pending commitments to other clients that make it impossible for me to get this matter ready for trial in sixty (60) days. The threat of a lawsuit by the defense counsel would demand, at a minimum, that I travel to Philadelphia and review the entire case file personally before I commit to the case. This in itself would make it impossible for me to meet my existing commitments to other clients."

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C. Defamatory Impacts

It is the Plaintiff's belief that the statements made by Grugan also have a high potential to cause damage to the Plaintiff, as they are in a public record that will be associated with the Plaintiff for the rest of his life, including to damage business prospects and attempts to obtain funding, most especially as the statements have not been, until this time, countered in the record.

It is of particular concern that the documents originally chosen by Westlaw to be made available by hyperlink with the case appear to have been changed within a short time after the case was first published there. The company would not confirm or deny to me that this had occurred. The changes appeared to involve removing documents produced by Plaintiff and adding those produced by the Defendants. I am very interested in compelling Westlaw to disclose any communications for any attorney or other official involved in the case about the documents they provide with that case[3]. A similar assessment of Lexis-Nexis is also in order.

[3] Of note, in August 2011, I found on the WestlawNext website a new feature called "Case Correction" [], which touted the ability to alter the case information presented based on XX.

The dissemination of the Grugan motion and related information on Westlaw will likely make it extremely difficult, if not nearly impossible, for Plaintiff to obtain support, especially significant financial support, in any business, and indeed will make it relatively easy for adversaries to damage any support Plaintiff might obtain. In short, the motion, without rebuttal, is in effect as defamatory as could possibly be imagined with respect to any business (or even legal) prospects.

In summary, if the statements and arguments Grugan and his firm[4] has made about me are valid, then it is reasonable for them to remain unchallenged. If I am a frivolous lawsuit bringer who had no legitimate reason for bringing the suit, then the truth is a defense to my claims.

But if Grugan and his associates made material misrepresentations in the court record and derivative records, then the situation should be corrected and the wrongdoers penalized.

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D. Standards of Professional Conduct

The Plaintiff/Relator is aware of standards by which behavior such as alleged here have been assessed in legal settings. The **Pennsylvania Rules of Professional Conduct** (PRPC) are based on the ABA's Model Rules of Professional Conduct. The following quotes are from the PRPC:

Rule 3.3 Candor Toward the Tribunal

"A lawyer shall not knowingly:

(1) make ***a false statement of material fact*** or law to a tribunal …

Comments by the Pennsylvania Supreme Court on **Rule 3.3: "Candor Toward the Tribunal"** include the following:

> "[2] This rule set forth the special **duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process**. … The lawyer ***must not allow the tribunal to be misled by false statements of law or fact or evidence that the lawyer knows to be false***."
>
> "[3] ***an assertion purporting to be on the lawyer's own knowledge***, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true ***on the basis of a reasonably diligent inquiry***."

[4] The statements made here are not meant to relieve from responsibility any other counsel or firm who are represented by or on the documents at issue. John C. Grugan is specified in this affidavit because he was the sole signatory of the Letter and the apparent author and signatory of the Motion.

Rule 4.1 Truthfulness in Statements to Others

In the course of representing a client a lawyer shall not knowingly:

> (a) **make a false statement of material fact** or law to a third person; or

From Comments by the Pennsylvania Supreme Court on **Rule 4.1:**

> **"Misrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of false statements."**
>
> "For dishonest conduct that does not amount to a false statement or for misrepresentations by a lawyer other than in the course of representing a client, see Rule 8.4."

Rule 8.4 Misconduct

"It is professional misconduct for a lawyer to:

> (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
>
> (d) engage in conduct that is prejudicial to the administration of justice

The Plaintiff also notes that the **Federal Rules of Civil Procedure, Rule 11(b)** states (with emphasis of pertinent parts):

> **Representations to the Court.** By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief ***formed after an inquiry reasonable under the circumstances***,
>
> (1) it is ***not being presented for any improper purpose*** such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions therein are ***warranted*** by existing law or ***by a nonfrivolous argument*** for the extension, modification, or reversal of existing law or the establishment of new law'
>
> (3) the ***allegations and other factual contentions have evidentiary support*** or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the ***denials of factual contentions are warranted on the evidence*** of, if specifically so identified, are reasonably based on a lack of information or belief.[5]

By the facts submitted in this affidavit, the Plaintiff/Relator is alleging that John C. Grugan, and all others associated with him on the Letter and Motion referenced above, have violated Rule 11(b) by making misrepresentations, false statements, and threats that could not have been proper after reasonable inquiry of the court record, and that such statements were very likely made with the improper purpose to deny the Plaintiff effective counsel and fair consideration of the Court.

I, Robert P. Bauchwitz, signed this affidavit on _____ at Hershey, PA.

_____

Robert P. Bauchwitz

SUBSCRIBED AND SWORN TO BERFORE ME on _____ at Hershey, PA.

[5] 11(d) Inapplicability to Discovery. Subdivisions (a) though (c) of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 26 through 37.
Grugan's letter and motion at issue were not part of discovery but rather related to my attempt to retain new counsel. They did, however, impact the discovery process and the outcome of the case. Therefore, the impact of Rules 26 through 37 will be further assessed here.
There is nothing in those Rules which appears relevant to the type of letters and motions discussed here. However, Rule 37 deals with "Failure to Make Disclosure or Cooperate in Discovery; Sanctions". This would be relevant to the affidavit against Holloman.

Exhibit 1 to Affidavit of Misconduct - Attorney John Grugan

Note: The search term, "2001", has been placed in **bold** font so that the numerous records listed below can be more quickly scanned if desired.

Amended Complaint (Document No. XX):

> [par. 38]: False and misleading statements and figures were published in the article Kojic, M., Thompson, C. W., and Holloman, W. K., **2001**, "Disruptions of the *Ustilago maydis REC2* gene identify a protein domain important in directing recombinational repair of DNA", Molecular Microbiology 40(6): 1415-1426 (hereinafter Kojic et. al. **2001**).
>
> [par. 39]: The publication Kojic et. al., **2001** was cited in the application listed below which was submitted by Cornell in the course of applying for additional funds from the NIH and/or reporting on the results of research conducted under the grants: a. 2 RO1 GM42482-12A2.

Plaintiff's First Declaration (Document No. XX):

> [par. 17]: False Claim 2 alleges data falsification of the rec2-1 DNA sequence. In Kojic et. al., **2001** and related grants, Defendant Holloman specifically made false statements about a rec2 mutant gene sequence in furtherance of the common goal linking these three false claims, i.e. to explain to colleagues, reviewers, and other scientists how it would have been reasonable for a Rec1 protein to emanate from the REC2 gene, given data to the contrary they had presented in their prior publications.
>
> [par. 21]: Furthermore, I note that, as a result of my investigations as detailed in the Original Complaint, it will be shown that Defendant Holloman knew of the true state of the mutant gene in question prior to his false statements in **2001**. Therefore, we are alleging a material fraud as the basis of this claim.
>
> [par. 26]: Regarding the events which specifically led to this legal action, I provide the following timeline: On February 9, 2002, science journalist Taubes brought to my attention a new article published by Defendant Holloman (Kojic et. al., MCB, **2001**, hereinafter, Kojic et. al. **2001**) which pertained to a mutant DNA sequence of interest in this case ("rec2-1"). After eventually obtaining and reading Kojic et. al., **2001**, I saw what I knew to be a

clearly false statement made by Defendant Holloman regarding the mutant sequence …

[par. 36]: As detailed above, in Kojic et. al., **2001**, and the relevant grant applications and progress reports, Holloman made specific false statements about the rec2 mutant gene sequence in furtherance of his goal of linking the three false claims, i.e., to explain to his colleagues, reviewers, and other scientists how it would have been reasonable for a Rec1 protein to emanate from the REC2 gene, given data to the contrary they had presented in the research articles that he and Kmiec had published previously.

[par. 38]: Furthermore, according to information elicited by me from Rubin, Holloman knew of the true state of the mutant gene in question prior to his false representations in **2001**. Therefore, we are alleging a material fraud as the basis of this claim, not a "mere scientific dispute." Holloman either had the sequence data to support the representations made in his article, or he did not. I contend that he did not. This too is an objectively verifiable claim.

[par. 43]: In conclusion, despite the prodigious attempts of the Defense at bombast, obfuscation, and misdirection in their Motions to Dismiss, my allegations remain as follows: (i) Neither Holloman nor Kmiec submitted materials to contractor laboratories as claimed in Kmiec et. al. 1994 and in federal grants incorporating the same article and information, (ii) Holloman falsified the results shown in figures shown in Kmiec et. al., 1994, and in federal grants incorporating the same article and information, (iii) Holloman knowingly, or in reckless disregard for the truth, made false claims regarding the rec2-1 sequence, in Kojic et. al., **2001**, and in federal grant applications and progress reports incorporating the same article and information by claiming that he had produced specific sequence data for the mutant gene when he had not; and (iv) Holloman and Kmiec acted in conspiracy to cause and permit Cornell and Jefferson to make false claims to the federal government for funding; (v) that Corn ell and Jefferson obtained federal funding under false pretenses by not providing adequate oversight of employee Holloman and Kmiec's research yet certifying that they would do so and had done so.

[par. 46]: In particular, it is my understanding that the public disclosures which defendants contend operate to deprive this Court of jurisdiction consist of: (i) the published research articles (including Kmiec, et al., 1994, and Kojic, et al., **2001**) cited in the original Complaint and in the First Amended Complaint …

Plaintiff's Second Declaration (Document No. XX):

> [par. 9]: False Claim 2 is based on false statements made by the Cornell Defendants and introduced into grants in order to obtain grant funding based in part on false or fraudulent claims or certifications as to the nature of rec2-1 DNA sequence obtained in Holloman's laboratory, specifically that the sequence of the *rec2* mutant gene version *rec2-1* indicates that it is capable of producing protein as described in the **2001** Paper. *See* First Bauchwitz Declaration, ¶¶ 17-18, 26, 36, 38. False Claim 2 is based on the Cornell's Defendants' citation of and reliance on an article published in **2001** by Holloman and other, Kojic, M., Thompson, C. W., and Holloman, W. K., 2001, "Disruptions of the *Ustilago maydis REC2* gene identify a protein domain important in directing recombinational repair of DNA", Molecular Microbiology 40(6): 1415-1426 (the "2001 Paper" or "Kojic et. al. **2001**") *See* First Amended Complaint, ¶¶ 38-39.
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> [par. 22]: What I eventually did, after learning of the later false claim published by defendant Holloman in the **2001** Paper, and deciding to investigate further, was to reconsider and analyze the circumstances of the Rec1 protein sequence in more detail.
>
> [par. 29]:. … ***These numerous omissions by defendant Holloman made me suspicious enough*** that I endeavored to produce the sequence myself, which I published in the federal Genbank database in 1999. Again, suspicion led to investigation. Investigation led to information that put me in a position to perceive a lie (fraud) when it was eventually published in **2001**.
>
> [par. 30]: Why was Holloman seemingly hiding the relevant rec2-1 sequence? Neither Rubin nor I knew in 1995 that ***in 2001 Holloman would publish an explicit falsified statement about that sequence*** as part of a cover-up of the Rec1 is Rec2 situation. *See* Bauchwitz First Declaration, ¶ 26.
>
> [par. 31]: In fact, if I had not produced and by 1999 published my own relevant rec2-1 sequence, ***in 2002 I still would only have had suspicions and concerns about what Defendant Holloman had written in 2001***, since I would not have had access to any sequence from Rubin (1994 Paper or 1995 sequence) or Holloman (Genbank database – no actual entry; *e.g. see* Exhibit 7 to Plaintiff's Statement of Additional Facts [Doc. 90]). Therefore, it was my

own investigation of the rec2-1 sequence which gave me the specialized knowledge that enabled me to detect and understand the patent lie published in the **2001** Paper. It was at that moment that this *qui tam* case began. *See* Bauchwitz First Declaration, ¶¶ 26-28.

[par. 33]: Once I developed solid evidence of lies -- of frauds -- as I understood them, in the spring of 2002, I took ***very timely*** action to obtain relevant grants by the end of 2002. My continued investigation led to additional findings of fraud in 2003 and 2004, resulting in the filing of my original Complaint on June 30, 2004, ***less than two and a half years*** after I first saw what I knew to be a published false statement by one of the defendants (in the **2001** Paper).

[par. 51]: Two aspects of the FSRs are significant to the limitations issue before the Court. First, the FSR for GM42482-11 was accepted by the "Chief Government Accounting Branch" on **9/5/2001**. This is ***less than three years*** prior to filing of the original complaint on June 30, 2004[vi].

[par. 61]: After I read the **2001** Paper and saw the false statements about rec2-1 sequence, I contacted the same attorney, and noted that this could be a very important aspect of such a *qui tam* case. It was noted that the false statements would had to have been used to obtain payment of grant funding, which in turn required obtaining getting copies of the grants. This the attorney did, beginning in June 2002. By early 2003, I saw that the rec2-1 sequence false claims had been introduced into grants. I did not know, and could not possibly have known, that Defendant had made or would make false claims in grant applications based on the **2001** Paper before the false statements were made in the **2001** Paper.

Additional Facts Precluding Summary Judgment (Document No. XX):

[par. 22]: False statements relevant to this case were alleged to have been made in no less than two publications by the Defendants:

1) Kmiec, E.B., Cole, A., and Holloman, W.K., Molecular and Cellular Biology 14(11): 7163-7172, 1994.

2) Kojic, M., Thompson, C.W., and Holloman, W.K., Molecular Microbiology 40(6): 1415-1426, **2001**.

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