

BakerHostetler

Baker&Hostetler LLP

Washington Square, Suite 1100
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5403

T 202.861.1500
F 202.861.1783
www.bakerlaw.com

June 21, 2021

Mark I. Bailen
direct dial: 202.861.1715
MBailen@bakerlaw.com

VIA ECF

The Honorable Vincent L. Briccetti
United States District Judge
United States District Court for the Southern District of New York
300 Quarropas Street Courtroom 620
White Plains, NY 10601

Re: *Kurin v. Balter*, No. 7:20-cv-4613 (VB) (SDNY) Letter Requesting Additional Issues To Be Addressed At Motion's Conference

Dear Judge Briccetti:

We are counsel to Defendant Michael Balter and we write to request that two more items be added for a motions conference in addition to those referenced in our letter of June 15, 2021.

After filing our June 15 letter, we received additional documents from the University of California Santa Barbara ("UCSB") that showed that Plaintiff Danielle Kurin and her attorney improperly sought to block from disclosure the Letter of Censure that UCSB issued against Dr. Kurin on February 28, 2018. The Letter of Censure is a critical piece of evidence that Dr. Kurin has sought to conceal from the outset of this matter (and successfully did so until June 4). She omitted any reference to the Letter in her original or amended Complaints, thereby providing an extremely misleading and false representation of the facts of this case. The Letter has been marked "confidential" subject to the Protective Order of February 18, 2021 ("Feb. 18 Order") and thus cannot be described in detail in this public filing, but a copy can be provided in camera at the Court's request.

Accordingly, we seek to file motions requesting that 1) the Court remove the confidentiality designation from the Letter of Censure (and other documents produced by UCSB that evidence Dr. Kurin's misconduct related to the allegations in this lawsuit) as permitted under Paragraph 11 of the Feb. 18 Order; and 2) that Dr. Kurin be sanctioned, including through dismissal of this lawsuit, for intentionally seeking to destroy or conceal the Letter of Censure—key evidence in this case.

The Honorable Vincent L. Briccetti

June 21, 2021

Page 2

There is no dispute that the Letter of Censure is responsive to both the discovery requests to Dr. Kurin and the subpoena to UCSB.¹ Yet it was only produced on June 4, 2021 by UCSB after our extensive prodding for both Dr. Kurin and UCSB to produce it (and even then UCSB's production was incomplete—it did not include the two attachments to the letter). Remarkably, Dr. Kurin claimed that she did not have a copy of the Letter, supposedly because she gave it to her father, Dr. Richard Kurin. UCSB provided no legitimate explanation for its delayed production which did not occur until months after it completed its document production in March 2021. The suspicious conduct by both Dr. Kurin and UCSB prompted counsel for Mr. Balter to inquire whether Dr. “Kurin and her counsel manipulated or interfered with UCSB's response to a lawfully issued subpoena in order to perpetuate a fraud on the defendant, the mediator, and the Court.”²

Mr. Balter thereafter immediately subpoenaed UCSB for its communications with Dr. Kurin and her counsel on June 15 and last week UCSB produced this correspondence. The emails—which can be submitted to the Court in camera—confirmed concerns that Dr. Kurin was interfering with lawfully-issued discovery. Because Dr. Kurin withheld the Letter of Censure from her production and actively attempted to interfere with the University's obligations to produce it in response to the subpoena, that conduct alone warrants dismissal of the case. *See, e.g., Altschuler v. Samsonite Corp.*, 109 F.R.D. 353, 357 (E.D.N.Y. 1986) (“In this circuit, courts have dismissed actions . . . where a party has demonstrated willful disrespect for discovery obligations”); *Banco de Ponce v. Buxbaum*, No. 90 CIV 6334 (SWK), 1991 WL 258768, at *6 (S.D.N.Y. Nov. 27, 1991) (recognizing that “willful, tactically motivated obstruction of discovery” warranted imposition of sanctions). There can be no dispute that the Letter of Censure was subject to the litigation hold letter served on UCSB and Dr. Kurin and the subpoena to UCSB.

At a minimum, both Dr. Kurin and UCSB should not be permitted to continue to shroud the UCSB documents in secrecy. There is no legitimate basis for any of the UCSB documents and in particular, the Letter of Censure and communications with Dr. Kurin and her counsel, to be restricted from public disclosure. Dr. Kurin filed this lawsuit in open court and publicly accused Mr. Balter of inaccurately reporting her wrongdoing. She should not be permitted to shield from public disclosure the very documents that evidence her wrongdoing and belie her allegations. The confidentiality restrictions also prejudice and hinder the defendant in the defense of this case, which can be explained further to the Court when discussing the specific contents of the documents that have been marked confidential.³

¹ The Letter of Censure is just the tip of the iceberg. The Letter was the culmination of a charging process against Dr. Kurin based in part on the Title IX findings as well as other evidence. These documents were kept hidden by the University and Dr. Kurin until this month.

² Email from M. Bailen to M. Goldstein, June 7, 2021. Copies of the correspondence between and among counsel for Mr. Balter, Dr. Kurin, and UCSB can be filed with the motions contemplated by this request or upon request by the Court for in camera review.

³ On June 7, 2021 the undersigned counsel inquired of UCSB's counsel as to whether the University would agree to remove the confidentiality designation on the Letter of Censure. Despite follow-up with the University's counsel over the last two weeks, UCSB has not indicated as to whether it agrees to remove the confidentiality designation. In separate communications with her counsel, Dr. Kurin has insisted on confidentiality for this document.

The Honorable Vincent L. Briccetti

June 21, 2021

Page 3

By putting her conduct at issue in this lawsuit, she has opened the door to disclosure of all information regarding that conduct—including evidence that undermines her case. A central theme of Mr. Balter’s reporting was that Dr. Kurin, along with UCSB, purposefully hid information from the public concerning her handling of the 2015 incident in Peru which then enabled her to run a separate field school for the Institute for Field Research (“IFR”) in 2018. It was at this IFR program directed by Dr. Kurin that her husband, Enmanuel Gomez, again engaged in sexual misconduct, putting at risk students who likely would not have attended if they had known otherwise. There is no good cause for Dr. Kurin or UCSB to be permitted to shroud in secrecy the evidence in this lawsuit.

Further, the relief sought here concerning the Letter of Censure—dismissal of the case—is dispositive which presents an even stronger basis for public disclosure. *See Saks Inc. v. Attachmate Corp.*, No. 14 CIV. 4902 CM, 2015 WL 1841136, at *14 (S.D.N.Y. Apr. 17, 2015) (“There is a strong presumption that the public should be able to access every single document filed with this court of law” and “that presumption is even stronger when the documents relate to dispositive motions.”).

Wherefore, we respectfully request that the issues of 1) removal of confidentiality designations of UCSB documents concerning Dr. Kurin’s misconduct (including the Letter of Censure); and 2) Dr. Kurin’s improper attempts to conceal evidence (including the Letter of Censure) be addressed at the pre-motions conference.

Sincerely,

/s/ Mark I. Bailen

Mark I. Bailen

cc: David Scher, Esq. and David Fullernborn, Esq. (via ECF)
Michael Goldstein, Esq., Senior Counsel, University of California Office of the General Counsel (via email)