

# Exhibit M

June 26, 2024

Caroline Petro Gately  
Venable LLP  
600 Massachusetts Ave., NW  
Washington, DC 20001

Re: *Response to June 20 Letter from Sage Publications, Inc.*

Dear Caroline,

Thank you for your June 20 letter, and we hope the following response can provide the basis for an agreement to submit the Authors' May 28 arbitration demand to AAA for a hearing in the District of Columbia.

We first need to set the record straight. You say in your letter, "I have invited you to articulate the discovery that you believe is necessary from Sage to prove discrimination. You have declined to do that, which is perplexing because you will have to do it anyway in the not distant future." That is not correct. At no point in our email correspondence or phone conversations on March 28 and June 14 did you ask us to specify the discovery that we will need to prove our discrimination claim against Sage. Our discussion instead focused on Sage's request that the parties agree on discovery limits as a condition of AAA submission without getting into the details of any party's discovery needs.

Nor is it correct to say that there is "simply no authority" for our position that we have a right to pre-hearing discovery in arbitration. We provided you with ample such authority on our June 14 call. Among other bases for discovery, California law confers a right to pre-hearing discovery in arbitrations over "any dispute, controversy, or issue arising out of or resulting from any injury to, or death of, a person caused by the wrongful act or neglect of another." Cal.C.C.P. §1283.1. California courts have interpreted the term "injury" broadly to encompass a variety of different personal harms, including discrimination and reputational harm. *See, e.g., Armendariz v. Found. Health Psychcare Servs., Inc.*, 24 Cal. 4th 83, 105 (2000); *Roman v. Superior Ct.*, 172 Cal. App. 4th 1462, 1476 n.3 (2009); *Riebert v. Barker*, No. B193471, 2007 WL 4201091, at \*12 (Cal. Ct. App. Nov. 29, 2007). A "personal injury" encompasses anything that "impairs the well-being or the mental or physical health of the victim." *Bihun v. AT&T Info. Sys., Inc.*, 13 Cal. App. 4th 976, 1004-05 (1993); *see, e.g., O'Hara v. Storer Commc'ns, Inc.*, 231 Cal. App. 3d 1101, 1117-18 (Ct. App. 1991). Moreover, "when parties agree to arbitrate statutory claims"—such as a discrimination claim under the Unruh Act—"they also implicitly agree, absent express language to the contrary, to such procedures as are necessary to vindicate that claim," including pre-hearing discovery. *Armendariz*, 24 Cal. 4th at 105-06; *see, e.g., Fitz v. NCR Corp.*, 118 Cal. App. 4th 702, 712 (2004). Sage must disregard this substantial body of precedent to claim that pre-hearing discovery is limited to, as you say, "medical malpractice cases, automobile collisions, and the like."

Despite these disagreements, it appears that we are close to reaching common ground that would allow us to jointly submit this case to AAA for a hearing in D.C. We understand Sage's position to be that it will not object to the Authors seeking pre-hearing discovery in arbitration on any topic

that is relevant to proving their claims—except on the topic of how Sage allegedly treated the Authors differently than other similarly situated authors. There, Sage seems to believe that the Authors want dragnet discovery into “over 1,000 journals” and “approximately 60,000” journal articles “[o]ver the past five years,” which would “make a prompt hearing impossible.” For that reason, Sage insists on “substantive limitations on discovery” into this specific topic.

To start, the Authors obviously cannot agree to let Sage be the sole arbiter of what is reasonable discovery on this topic. No claimant would allow the defendant to unilaterally determine what documents are relevant to proving their claims. But just as the Authors shared their draft arbitration demand with Sage on May 28 to facilitate cooperation, the Authors are willing to share with Sage their draft discovery requests on the topic of unfair treatment. Apart from generic requests applicable to both sides (*e.g.*, “All documents you intend to use at the arbitration hearing”), the Authors intend to submit reasonably limited and targeted discovery requests, like:

1. Please provide all documents related to the Authors’ retracted articles, including, but not limited to, documents related to the pre-publication peer review, any third-party complaints, the post-publication investigation, the expression of concern, the post-publication review, and the retractions.
2. Please provide all documents related to any third-party complaints (*i.e.*, outside complaints from someone other than the author(s)) against other articles on abortion or other controversial issues published in Sage journals, including both the complaints and Sage’s correspondence with the complainants.
3. Please provide how many third-party complaints against articles on abortion or other controversial issues published in Sage journals have led to a public-facing expression of concern, post-publication review, retraction, and/or correction, and the reason Sage took these corrective actions.
4. Please provide all documents related to any expressions of concern, post-publication reviews, retractions, and/or corrections for other articles published in Sage journals to address concerns about how data is gathered, selected, or presented, or how authors have disclosed their conflicts of interest, including both the expressions of concern, post-publication reviews, retractions, and/or corrections, and Sage’s correspondence with the authors about such actions.
5. Please provide how often concerns about how data is gathered, selected, or presented, or how authors have disclosed their conflicts of interest, have led to a public-facing expression of concern, post-publication review, retraction, and/or correction, the reason for these corrective actions, and how often Sage has taken these corrective actions when the complained-of article espoused a pro-abortion viewpoint.
6. Please provide all documents concerning Sage’s policies and procedures for conflict-of-interest disclosures.
7. Please provide all conflict-of-interest disclosures for authors affiliated with pro-abortion organizations such as, for example, the Guttmacher Institute, ANSIRH, Ibis Reproductive Health, Planned Parenthood, Physicians for Reproductive Health, Gynuity, and Danco Laboratories.
8. Please provide all documents related to Sage’s removal of Dr. Studnicki from HSRME’s editorial board.

9. Please provide how often Sage has removed individuals from the editorial board of a Sage journal and why in each case Sage took such corrective action.

The Authors may also propound additional, reasonably tailored follow-up discovery requests depending on what Sage discloses in response to these initial questions or what Sage asserts in its response to the Authors' arbitration demand.

These targeted discovery requests are not the dragnet approach to discovery that Sage fears. Expressions of concern, post-publication review, correction, and retraction are all rare occurrences. *See, e.g.*, Bob Howard, Executive Vice President of Research at Sage Publishing, *Our Investigation Into Paper Published And Retracted In Qualitative Research*, Sage Perspectives (Sept. 15, 2022), [perma.cc/YU2M-ALHB](https://perma.cc/YU2M-ALHB) (full removal of an article is "extremely rare"); Jeffrey Brainard & Jia You, *What a Massive Database of Retracted Papers Reveals About Science Publishing's 'Death Penalty'*, Science (Oct. 25, 2018), [bit.ly/3VAHbFA](https://bit.ly/3VAHbFA) ("[R]etractions appea[r] to be relatively rare, involving only about two of every 10,000 papers."); Committee on Publication Ethics, *Expressions of Concern* (Feb. 26, 2018), [bit.ly/3xurIyJ](https://bit.ly/3xurIyJ) (expressions of concern are "rare"); AIP Publishing, *Correcting the Literature*, [bit.ly/3VSS1b8](https://bit.ly/3VSS1b8) ("a formal correction of the published literature" is "rare"). Of these rare occurrences, only some involve similar issues or subject matter as the Authors' retracted papers. Seeking discovery into whether Sage took similar corrective actions against other similarly situated authors would not be burdensome for Sage, which has known that the Authors may file this arbitration since November 2023 and has since then begun preserving, collecting, and likely analyzing relevant documents.

Sage may have objections to the Authors' requests above, but any objections should be settled by the arbitrator. The Authors will not agree to preemptively address discovery objections now before the case is submitted to arbitration and an arbitrator is appointed. It is improper for Sage to ask that the Authors obtain Sage's permission to conduct discovery before agreeing to arbitrate; no such condition was included in the contract with the Authors, which mandates arbitration but left permissible discovery unaddressed. Thus, the decision on whether and what discovery is allowed is for the arbitrator alone to decide.

Finally, as we have repeatedly emphasized in our phone conversations (both on March 28 and June 14), the Authors want this arbitration resolved expeditiously. Not only will the Authors seek only documents and information that are relevant to prove their claims, but as explained in our June 14 conversation, the Authors are willing to agree in advance to reciprocal limits on the scope of discovery, including:

- a date range for discovery requests;
- limits on the type of discovery, such as foregoing the right to take depositions; and
- limits on the scope of discovery, such as a numerical limit on discovery requests.

But as noted in our June 14 call, the Authors would consider these limits only if Sage agreed in advance to conducting the arbitration within an expeditious time frame.

We believe that Sage's concerns about discovery "spin[ning] out of control" are based on a basic misunderstanding of the Authors' goals in this arbitration, and we hope that this letter convinces

Sage that the Author's objectives in discovery are modest and reasonable and that this case should be promptly submitted to arbitration for an arbitrator to decide these issues.

Sincerely,



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