ALTERNATIVE RESOLUTION CENTERS
HONORABLE VINCENT J. O'NEILL, JR.
ARC NO. 78M8839
CAL. SUP. CT. NO. 2024CUPA031167

DR. JAMES STUDNICKI, ET AL.

Claimants,

v.

SAGE PUBLICATIONS, INC.,

Respondent.

CLAIMANTS' MOTION FOR DISCOVERY

Philip A. Sechler*
Matthew C. Ray*
ALLIANCE DEFENDING FREEDOM
44180 Riverside Pkwy
Lansdowne, Virginia 20176
(571) 707-4655

David A. Shaneyfelt (SBN 240777)
THE ALVAREZ FIRM
760 Paseo Camarillo, Suite 315
Camarillo, CA 93010
(805) 823-4200

Patrick Strawbridge*
Steven C. Begakis (SBN 314814)
CONSOVOY MCCARTHY PLLC
1600 Wilson Boulevard, Suite 700
Arlington, VA 22209
(703) 243-9423

**OSAAC Application Pending*[1]

Counsel for Claimants

[1] Counsel for Claimants submitted OSAAC applications to the Arbitrator for approval on March 10, 2025.

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INTRODUCTION

Sage does not want any discovery in this arbitration. Its desire to keep the Authors and now the Arbitrator in the dark is consistent with how Sage has treated the Authors since this dispute began. Sage has never revealed to the Authors the key details about its decision to retract their articles. After receiving a complaint from a pro-abortion activist about the Authors' 2021 article, Sage sent a summary of the complaint to the Authors but not the complaint itself. The Authors responded to Sage with a detailed letter, but Sage ignored their letter. Sage also ignored their repeated requests for more details about the complaint, Sage's decision to investigate, and the investigation itself. Sage then surprised the Authors by retracting three of their articles, even though the complaint concerned only the 2021 article and Sage had not raised any concerns about the other articles. Sage argued that a peer reviewer it selected to review the articles compromised its double-blind peer-review process, but it never identified the reviewer or explained how the double-blind review was compromised. And Sage claimed that it hired two post-publication reviewers to analyze the articles, but it concealed the identity of those reviewers, did not disclose their potential conflicts of interest, kept the details of their review secret, and—contrary to the normal peer review process—did not let the Authors respond to their review. In short, Sage's entire process for retracting the articles occurred in a black box, and Sage wants to keep it that way.

For months, Sage refused to submit to arbitration unless the Authors agreed to surrender their discovery rights. Sage argued that discovery was prohibited because California Code of Civil Procedure §1283.1 limited discovery to arbitrations

of claims involving "injury to … a person." The Authors disagreed and argued that they have a right to discovery because they are asserting statutory claims and personal injuries. When Sage wouldn't budge, the Authors petitioned the California Superior Court to compel Sage into arbitration.

While the Authors have a right to discovery under §1283.1, a new California law leaves no question that the Authors are entitled to discovery. In September 2024, California enacted S.B. 940, which repealed §1283.1. *See* CA S.B. 940, Cal. 2023-2024 Reg. Sess., bit.ly/3R5BDkq. S.B. 940 "expands the ability for *all parties* to seek discovery and conduct depositions in *all types of arbitration proceedings*." Assembly Floor Analysis at 4 (Aug. 21, 2024), bit.ly/3FsqXKl. S.B. 940 applies here because it governs every arbitration regardless of when the arbitration agreement was signed. It also applies because Sage's publishing agreements with the Authors incorporate "the laws of the State of California," including S.B. 940. The Arbitrator should therefore grant the parties leave to take discovery and permit the Authors to take depositions, which will shed further light on Sage's wrongdoing.

BACKGROUND

A. Sage's Retraction of the Authors' Scientific Articles

The full background of this case is set forth in Claimants' arbitration demand. In short, Claimants co-authored three scientific studies in 2019, 2021, and 2022 about abortion. Authors' Demand for Arbitration ("Demand") ¶¶2, 27-32. Sage published the articles in its journal *Health Services Research and Managerial Epidemiology* ("HSRME"). *Id.* The Authors signed publishing agreements drafted by Sage for each article. *Id.* ¶48, Exs. E, F, G. After Sage published the articles and praised them for

their scientific rigor, Sage later reversed itself, retracted the articles for pretextual reasons in bad faith and in violation of the agreements, smeared the authors by publishing its pretextual reasons online, and punished the lead author by removing him from the editorial board of HSRME. *Id.* ¶¶2-11, 61-101. These actions have caused enormous reputational and economic harm to the Authors. *Id.* ¶¶12, 102-17.

Sage left the Authors in the dark throughout the entire retraction process. *See id.* ¶¶61-101. After the Authors' 2021 and 2022 articles were cited by a federal court in a decision restricting access to chemical abortion drugs, a pro-abortion activist filed a complaint with Sage about the Authors' 2021 article, and Sage sent the Authors a bullet-point summary of the complaint. *Id.* ¶¶56, 60, 70. The Authors responded to the summary with a detailed letter to Sage, but Sage ignored their response. *Id.* ¶¶70-75. Sage then posted an "Expression of Concern" ("EOC") on its website announcing its investigation into the 2021 article for "potential issues regarding the representations of data in the article and author conflicts of interest," but the EOC did not provide more detail. *Id.* ¶76. The Authors made repeated requests for information about the complaint, the decision to proceed with an investigation, and the investigation itself, but Sage made almost no response to their correspondence. *Id.* ¶¶78-83; *see, e.g.*, Ex. A (August 14, 2023 letter to Sage); Ex. B (November 1, 2023 email to Sage).

Sage also never revealed to the Authors key details about its decision to retract the articles. For example, Sage retracted all three articles, not just the 2021 article, but it never explained how or why it made this decision. Demand ¶¶85-86. Sage also

hired two post-publication reviewers to find a basis for retracting the articles. *Id.* ¶93. But Sage concealed the identity of those reviewers, their potential conflicts of interest (which a peer reviewer must disclose just like an Author, *see* Sage, *What Conflicts of Interests Are Authors Required to Declare?* (Jul. 17, 2024), bit.ly/41LwTFE), and the details of their review, which prevented the Authors from responding to the review as they would in a normal peer review process. *Id.* Sage also asserted that the peer review process for the articles had been compromised because one of Sage's hand-picked double-blind peer reviewers shared with the Authors an "affiliation" with the Charlotte Lozier Institute. *Id.* ¶92.[2] But Sage never identified this reviewer or explained how the double-blind review had been compromised. *Id.* Finally, Sage blatantly violated its own rules and industry guidelines by drafting the retraction notice without consulting the Authors and by removing the articles from its website, but it never explained to the Authors why it took these extreme steps. *Id.* ¶¶98-101.

Because Sage kept so much information secret during the retraction process, key evidence supporting the Authors' claims remains solely in Sage's possession and is inaccessible without discovery.

B. The Authors' Need for Discovery

Discovery will be critical for proving the Authors' claims. The Authors expect discovery to show that, by retracting the articles, Sage breached the publishing agreements, acted in bad faith, acted negligently, and engaged in invidious religious and political discrimination. Discovery will reveal the inner workings of Sage's

[2] In a double-blind peer review, the author does not know the identity of the reviewer, and the reviewer does not know the identity of the author.

retraction process and how Sage carried out that process in the Authors' case, which will help answer important questions, such as:

- How Sage retracted the Authors' articles;
- Why Sage ignored the Authors' attempts to cooperate with Sage;
- Why Sage suddenly expanded the retraction from one article to three;
- How Sage conducted its secret internal review of the articles to justify retraction;
- Whether Sage considered the Authors' rebuttals of Sage's accusations;
- Why Sage refused to consider any alternatives to retraction, such as correction; and
- Whether and why Sage treated the Authors and their articles differently from similarly situated authors and articles.

Importantly, the Authors seek only reasonably limited and targeted discovery that will shed light on these issues. For example, the Authors will seek documents related to the Authors' articles—the pre-publication peer review, any third-party complaints against the articles, the pre-retraction investigation, the expression of concern, the post-publication review, the retractions, and the removal of Dr. Studnicki from HSRME's editorial board. The Authors will also seek documents related to Sage's general policies and procedures for taking corrective actions against published articles and will request information about how Sage has applied those policies to other articles. And the Authors will make tailored requests for documents and information relating to how Sage treats other articles dealing with abortion and similarly controversial issues, such as whether Sage applies the same "conflict of interest" standard to similarly situated authors of such articles, how Sage responds to complaints against those articles, and how often it responds with various forms of corrective action.

These targeted discovery requests will not be a dragnet approach. 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 (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 ("[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 (expressions of concern are "rare"); AIP Publishing, *Correcting the Literature*, 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 the retractions of the Authors' papers and whether Sage has taken similar corrective actions against other similarly situated authors would not be burdensome for Sage, which has known that the Authors wanted arbitration since November 2023 and has since then been preserving, collecting, and likely analyzing relevant documents.

C. The Publishing Agreements

Sage's publishing agreements say nothing about discovery. They have a short arbitration clause that provides: "Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, which the parties cannot settle themselves or through mediation, shall be settled by arbitration." Demand Ex. E at 3; Ex. F at 3; Ex. G at 3. The agreements also state that the "validity, interpretation, performance

and enforcement of this Agreement shall be governed … by the laws of the State of California." *Id.* The agreements are silent about how an arbitration should be conducted. *See generally id.* They don't select an arbitrator or arbitral forum. They don't choose specific rules for arbitration or define the relief that can be obtained. Most important for this motion, they don't say whether or to what extent a party may receive discovery. They leave those issues to be decided by the arbitrator, as even Sage has acknowledged. *Studnicki v. Sage Publ'ns Inc.*, Sage's Resp. to Authors' Pet. to Compel Arbitration at 6 ¶26, 7 ¶28, 2024CUPA031167 (Cal. Sup. Ct.) (the arbitration clause "does not establish a chosen arbitration organization, arbitration rules, or a procedure for selecting an arbitrator," and "contains no requirement or agreement for discovery").

While there is no prohibition on discovery, Sage has fiercely resisted any effort by the Authors to arbitrate in a context where the arbitrator might grant discovery. When the Authors first asked to arbitrate with the American Arbitration Association, Sage refused because AAA's rules "allow[ed] for discovery." Ex. C, Letter from C. Gately to S. Begakis & P. Sechler (Jun. 20, 2024). At the time, CCP §1283.05 provided that "[d]epositions may be taken and discovery obtained in arbitration proceedings," and §1283.1 stated that these discovery rights are "incorporated into, made a part of, … [or] applicable to … [an] agreement to arbitrate [only a] 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." Sage argued that the limitations in §1283.01 prohibited discovery here, because the arbitration did not involve "medical

malpractice cases, automobile collisions, and the like." Ex. C. So Sage would not even agree to arbitrate unless the Authors preemptively waived their discovery rights or agreed to seek only discovery that Sage approved. *See id.*

The Authors could not agree to Sage's demands. They believed they were entitled to discovery under CCP §1283.1 and explained this repeatedly to Sage. And the Authors obviously could not agree to let Sage be the sole arbiter of what they could seek in discovery. The Authors tried to negotiate with Sage for months, and they assured Sage they would seek only targeted discovery to prevent any delay of an arbitration hearing. But Sage wouldn't budge, and the Authors were eventually forced to file a petition in California Superior Court to compel this case into arbitration. *See Studnicki v. Sage Publ'ns Inc.*, 2024CUPA031167 (Cal. Sup. Ct.).

D. Senate Bill 940

On September 29, California enacted Senate Bill No. 940, which repealed CCP §1283.1 and gave parties to all commercial arbitrations, no matter what claims or injuries are asserted, access to discovery under §1283.05. *See* CA S.B. 940, Cal. 2023-2024 Reg. Sess., bit.ly/3R5BDkq. Unlike some provisions of the bill that specifically applied only to "contract[s] entered into, modified, or extended on or after January 1, 2025," *id.* §§2(e), 3(b), S.B. 940 broadly "repealed" Section 1283.1 for all arbitrations, no matter when the parties formed the contract, *id.* §8. This new law went into effect on January 1, 2025. *See* CCP §1283.1 ("Repealed by Stats. 2024, c.986 (S.B. 940), §8, eff. Jan. 1, 2025").

On November 21, 2024, the Superior Court granted the Authors' petition to compel arbitration. On January 29, 2025, after S.B. 940 went into effect, the Superior

Court issued an order appointing the Arbitrator. The arbitration proceeding began in February 2025 after the Arbitrator accepted the appointment on February 12 and the Authors paid their arbitration filing fees.

On February 14, the Arbitrator held an Arbitration Management Conference. The Authors explained that they intended to seek discovery under CCP §1283.05, which gives the Authors the right to "[d]epositions … and discovery … in arbitration proceedings." Sage objected. The Arbitrator ordered the Authors to file a motion by March 21 that explained their entitlement to discovery under S.B. 940, established a briefing schedule, and set a hearing on April 23 for argument on the motion.

ARGUMENT

California law, including the recently passed S.B. 940, entitles the parties to discovery. S.B. 940 guarantees discovery to all parties in every arbitration. It applies here because it governs every arbitration no matter when the arbitration agreement was signed. It also applies because the publishing agreements incorporate "the laws of the State of California," which include S.B. 940. And the Authors are entitled to discovery under California law before January 2025 because they are asserting statutory claims and are seeking compensation for personal injuries caused by the "wrongful act[s] or neglect" of Sage. CCP §1283.1(a).

To provide for adequate discovery, the Arbitrator should also order depositions of Sage's corporate representative and the key persons involved in Sage's publication and retraction of the Authors' articles. Depositions will be helpful to the Arbitrator in determining whether Sage improperly retracted the three articles at issue.

I. The Authors are entitled discovery.

A. S.B. 940 unequivocally permits discovery in every arbitration.

Starting on January 1, 2025, discovery is now available in every California arbitration under CCP §1283.05. California law used to limit discovery to arbitrations of disputes involving "injury to, or death of, a person caused by the wrongful act or neglect of another." CCP §1283.1(a). But last year California enacted S.B. 940, which repealed that limitation. *See* CA S.B. 940, Cal. 2023-2024 Reg. Sess., bit.ly/3R5BDkq ("Sec. 8. Section 1283.1 of the Code of Civil Procedure is repealed."). Now the parties to every arbitration have "the same ability to obtain discovery that they would have in the trial court" under CCP §1283.05. *Cox v. Bonni*, 30 Cal. App. 5th 287, 304 (2018). The Legislative Counsel's Digest makes clear that S.B. 940 "authorizes depositions to be taken and discovery obtained in arbitration proceedings," and it "repeal[s] the provisions [limiting] deposition and discovery provisions … [to] specified disputes." CA S.B. 940, Cal. 2023-2024 Reg. Sess., bit.ly/3R5BDkq. Unlike other provisions of the bill that are limited to contracts "entered into, modified, or extended on or after January 1, 2025," *id.* §§2(e), 3(b), 4(a)(7)(A), S.B. 940 simply "repeal[s]" Section 1283.1 for all arbitration proceedings, no matter when the parties formed the contract, *id.* §8.

The legislative history confirms the clear meaning of the text. The legislature repeatedly stated that S.B. 940 "allows for depositions to be taken in *any arbitration*, not just ones resulting from any injury to, or death of, a person caused by the wrongful act or neglect of another, and also allows discovery to be conducted as provided under Section 1283.05 of the Code of Civil Procedure." Sen. Floor Analysis at 7-8 (Aug. 28,

2024), bit.ly/3FsqXKl (emphasis added); *see, e.g.*, Assembly Floor Analysis at 4 (Aug. 21, 2024), bit.ly/3FsqXKl ("[T]he bill expands the ability for *all parties* to seek discovery and conduct depositions in *all types of arbitration proceedings*." (emphasis added)); Assembly Committee on Judiciary at 2 (June 7, 2024), bit.ly/3FsqXKl ("[T]his measure would authorize discovery and depositions to be taken in *all matters subject to arbitration*." (emphasis added)). This history also shows that the "Legislature was … aware that a multitude of [arbitrations]" would "be governed" by S.B. 940 even though the arbitrations arose out of contracts that "*had already been drafted*." *Bank of Am. v. Angel View Crippled Children's Found.*, 72 Cal. App. 4th 451, 457 (1999).

S.B.940 went into effect on January 1. *Supra* 8. Thus, since January 1, California law has provided that "[d]epositions may be taken and discovery obtained in arbitration proceedings"—period. CCP §1283.05. This arbitration proceeding was initiated in February 2025, so the parties have a statutory right to obtain discovery. And this is an unqualified right, unlike the right to take depositions, which requires additional permission from the Arbitrator. *See id.* §1283.05(e); *infra* 14.

B. The publishing agreements incorporate S.B. 940.

S.B. 940 also applies to this arbitration because the parties agreed to it. The publishing agreements state that the "validity, interpretation, performance and enforcement" of the agreements are governed by "the laws of the State of California." Demand Ex. E at 3; Ex. F at 3; Ex. G at 3. And S.B. 940 is now the law of California and has been the law of California since January, before the arbitration began. The Arbitrator must follow the terms of the contract, so it must apply "the laws of the State of California," which now include S.B. 940 and do not include prior repealed

statutes like §1283.01 that are no longer in effect. *See, e.g.*, *Saheli v. White Mem'l Med. Ctr.*, 21 Cal. App. 5th 308, 319-20 & n.6 (2018) ("'[R]eferences to California law' … refe[r] only to valid state law." (quoting *DIRECTV, Inc. v. Imburgia*, 577 U.S. 47, 55 (2015))); *Gallo v. Wood Ranch USA, Inc.*, 81 Cal. App. 5th 621, 642 (2022) ("To be sure, sections 1281.97 and 1281.99 were not part of the CAA at the time plaintiff agreed to the arbitration policy," but the arbitration clause expressly "incorporated the 'California Arbitration Act,'" which also incorporated "postcontract changes to that law.").

Applying S.B. 940 to this arbitration effectuates the parties' contractual intent. *Gallo*, 81 Cal. App. 5th at 642. The parties knew that California law could and likely would change over time, and they intended for only valid California laws to govern the agreements' "interpretation" and "enforcement." Demand Ex. E at 3; Ex. F at 3; Ex. G at 3; *see Saheli*, 21 Cal. App. 5th at 319-20 (citing *DIRECTV*, 577 U.S. at 55). "[W]here, as here, the parties to a contract incorporate[d] a law that [was] to be used at some time in the future (here, at the time the arbitration takes place), the parties are deemed to have contemplated—and hence, consented to—the incorporation of postcontract changes to that law." *Gallo*, 81 Cal. App. 5th at 642.

C. The Authors are entitled to discovery for statutory claims.

Even before S.B. 940, California law provided for discovery in arbitration when the claimant brought a "statutory claim." *Vo v. Tech. Credit Union*, 329 Cal. Rptr. 3d 435, 442 (Cal. App. 2025) (quoting *Armendariz v. Found. Health Psychcare Servs., Inc.*, 24 Cal. 4th 83, 106 (2000)); *see, e.g.*, *Fitz v. NCR Corp.*, 118 Cal. App. 4th 702, 712, 715-19 (2004). Here, the Authors are asserting multiple statutory claims, such

as negligence, Cal. Civ. Code §1714, and discrimination, *id.* §51 *et seq.* Thus, the Authors are "'entitled to … discovery sufficient to adequately arbitrate their statutory claim, including access to essential documents and witnesses, as determined by the arbitrato[r].'" *Vo*, 329 Cal. Rptr. 3d at 442 (quoting *Armendariz*, 24 Cal. 4th at 106).

D. The Authors were entitled to discovery under §1283.1.

Finally, even under California law before January 2025, the Authors had a right to discovery under CCP §1283.01 because this arbitration concerns "injury to … a person." Section 1283.01 permitted 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." This does not merely apply to "medical malpractice cases, automobile collisions, and the like," as Sage argues. Ex. C. Rather, California courts interpret "injury" broadly to encompass a variety of personal harms, including discrimination and reputational harm. *See, e.g.*, *Armendariz*, 24 Cal. 4th at 105. 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 (1991) (concluding that "invasion of the interest in reputation and good name" was "personal injury" for purposes of prejudgment interest).

Here, the Authors seek compensation for personal injuries suffered in the form of discrimination and reputational harm. *See* Demand ¶¶126-68. Because the Authors are asserting that Sage's retractions caused "injury to … a person" from "wrongful act[s] or neglect," §1283.01 incorporates the discovery provisions of

§1283.05 into Sage's "agreement to arbitrate [the] … controversy … arising out of or resulting from [that] injury." And under §1283.05, "[d]epositions may be taken and discovery obtained in [the] arbitration proceedings."

II. The Arbitrator should permit depositions under §1283.05(e).

The Arbitrator should also grant the Authors leave to depose Sage's corporate representative and the key figures involved in the publication and retraction. The Arbitrator may grant "leave" for the parties to take "[d]epositions for discovery," CCP §1283.05(e), and has "great latitude and discretion when deciding" whether to do so. *Wyer v. Tesla, Inc.*, 2024 WL 2795433, at *4-5 (Cal. Ct. App. May 31). "'Depositions play an important role in litigation and trial preparation.'" *Serrano v. Stefan Merli Plastering Co., Inc.*, 52 Cal. 4th 1018, 1029 (2011). Their "fundamental purpose … is to obtain information, to give a party the advantage of knowing prior to the trial what his opponent's testimony will be, and to … limi[t] the need of proof of issues … [at] trial." *Ahern v. Sup. Ct. In & For L.A. Cty.*, 112 Cal. App. 2d 27, 31 (1952); *see, e.g.*, *Berroteran v. Sup. Ct.*, 12 Cal. 5th 867, 893 (2022) ("[T]he deposition … reveals the witness's likely testimony and provides material for impeachment."); *EEOC v. Pinal Cty.*, 714 F. Supp. 2d 1073, 1079 (S.D. Cal. 2010) (deposition testimony may help distill documentary evidence). Depositions are often essential to "establish a fact or facts" that "cannot be established" by "an adverse party who has denied" them, *Ahern*, 112 Cal. App. 2d at 31, and to show that the respondent's conduct was discriminatory, pretextual, or done in bad faith. *See, e.g.*, *Heyne v. Caruso*, 69 F.3d 1475, 1479-80 (9th Cir. 1995); *In re Facebook, Inc. Consumer Priv. User Profile Litig.*, 655 F. Supp. 3d 899, 932-33 (N.D. Cal. 2023); *see also* Assembly Committee on Judiciary at 2 (June 7,

2024), bit.ly/3FsqXKl (S.B. 940 provides for depositions in every arbitration because they are "an important tool in resolving civil matters, whether in court or through an alternative means of dispute resolution").

Here, depositions would accomplish much:

First, because Sage undertook the retractions in secret without engaging the Authors, the details of that entire process remain almost entirely unknown. *Supra* 3-4. Who was involved? What decisions did they make and why? What information and other factors were considered? Were Sage's decisions consistent with the way it has treated similarly situated authors? Why did Sage reach entirely different conclusions about the articles when it first agreed to publish them? Answers to these and other important questions could be readily obtained by deposing Sage's corporate representative and key figures involved in the publication and retraction of the articles. And this testimony would assist the Arbitrator by allowing the Arbitrator to review the "testimony of percipient witnesses of the underlying events and the presentation of admissible documentary evidence" instead of having to "sort through … documents." *EEOC*, 714 F. Supp. 2d at 1079; *see also LAOSD Asbestos Cases*, 87 Cal. App. 5th 939, 948 (2023) (a corporate representative deposition "is intended to simplify discovery").

Second, because so much is unknown to the Authors and so much evidence is held in Sage's exclusive possession, depositions are necessary to ensure fairness to the Authors. Sage "'has in its possession many of the documents relevant to [the dispute] as well as … many of the relevant witnesses.'" *Fitz*, 118 Cal. App. 4th at 716.

And the Authors have no other way of discovering the contents of oral discussions between Sage's personnel that were not reduced to writing. *See, e.g.*, *In re BM Brazil 1 Fundo de Investimento em Participações Multistratégia*, 2024 WL 555780, at *17 (S.D.N.Y. Jan. 18), *R&R adopted*, 2024 WL 554302 (S.D.N.Y. Feb. 12). This clear "imbalance of information" is "'good cause'" for giving the Authors access to Sage's evidence through depositions. *Fitz*, 118 Cal. App. 4th at 718 n.2.

Third, depositions will streamline the arbitration hearing, conserving party and Arbitrator resources. By deposing Sage's corporate representative, the Authors will be able to "test the truth of [Sage's] contention[s]," *Stewart v. Colonial W. Agency, Inc.*, 87 Cal. App. 4th 1006, 1013 (2001), and obtain key evidence to "rebut" Sage's arguments, *Stewart v. Sup. Ct.*, 2007 WL 883262, at *5 (Cal. Ct. App. Mar. 26), which the Authors can raise in briefing before the hearing. Deposing Sage's trial witnesses will also "revea[l] [their] likely testimony," "provid[e] material for impeachment if the witness departs from that testimony at trial," and "preserve testimony" if "the deponent [is] not later … called at trial." *Berroteran*, 12 Cal. 5th at 893-94.

CONCLUSION

The Arbitrator should thus grant the parties leave to take discovery and permit the Authors to depose Sage's corporate representative and the key figures involved in the publication and retraction of the articles at issue.

Dated: March 21, 2025

Respectfully submitted,

/s/ Philip A. Sechler
Philip A. Sechler*
Matthew C. Ray*
ALLIANCE DEFENDING FREEDOM
44180 Riverside Pkwy
Lansdowne, Virginia 20176
(571) 707-4655
psechler@ADFlegal.org
mray@adflegal.org

/s/ Steven C. Begakis
Patrick Strawbridge*
Steven C. Begakis (SBN 314814)
CONSOVOY MCCARTHY PLLC
1600 Wilson Boulevard, Suite 700
Arlington, VA 22209
(703) 243-9423
patrick@consovoymccarthy.com
steven@consovoymccarthy.com

David A. Shaneyfelt (SBN 240777)
THE ALVAREZ FIRM
760 Paseo Camarillo, Suite 315
Camarillo, CA 93010
(805) 823-4200
DShaneyfelt@alvarezfirm.com

**OSAAC Application Pending*

Counsel for Claimants

CERTIFICATE OF SERVICE

I hereby certify that on March 21, 2025, this Motion for Discovery was served on Respondents via email, as follows:

Caroline Petro Gately
Max N. Wellman
Jasmine Vidaurri Martinez
[redacted]

Counsel for Respondent

Dated: March 21, 2025

/s/ Steven C. Begakis
Steven C. Begakis

Exhibit A

Tessa Longbons

From: James Studnicki
Sent: Monday, August 14, 2023 2:49 PM
To: SageResearchIntegrity; [redacted]
Cc: Donna Harrison; Ingrid Skop; Dave Reardon; John Fisher; Maka Tsulukidze; [redacted] Tessa Longbons; [redacted]
Subject: Update requested: Studnicki et al. 10.1177/23333928211053965
Attachments: CLI - HSRME and SAGE Communication Draft - August 14 2023.docx.docx

August 14, 2023

[redacted]
SAGE Publications

[redacted]

[redacted]

Re: Studnicki J, Harrison DJ, Longbons T, et al. "A Longitudinal Cohort Study of Emergency Room Utilization Following Mifepristone Chemical and Surgical Abortions, 1999–2015." *Health Services Research and Managerial Epidemiology*. 2021;8. doi:10.1177/23333928211053965.

Dear [redacted]:

This correspondence issues on behalf of the authors of the 2021 study published in *Health Services Research and Managerial Epidemiology* (HSRME) – "A Longitudinal Cohort Study of Emergency Room Utilization Following Mifepristone Chemical and Surgical Abortions, 1999-2015". It serves as a follow-up to our July 13, 2023 communication directed to [redacted] of SAGE and to our August 4, 2023 email directed to the three of you regarding the nature of the ongoing review of our publication by HSRME and SAGE in accordance with applicable publishing policies and procedures.

We are reaching out to the three of you today as a means of facilitating some form of active communication from HSRME and SAGE regarding the status of the present review process and for the purpose of expediting a rapid conclusion to this assessment. As HSRME and SAGE are aware, we received an email communication from Ms. Bhattacharya on June 28 indicating that Dr. Garrison and SAGE were contacted by a third party expressing alleged concerns regarding our paper's representation of data and its disclosure of purported conflicts of interest by the authors. While that communication from SAGE delineated particular issues identified by the third-party complainant and invited us to respond to each, [redacted] email itself offered no detail regarding a number of important items, including:

- the identity of the complainant;

- the precise language of the complaint itself;

- the extent and nature of any due diligence that was performed on the legitimacy of complainant's assertions prior to choosing to conduct an investigation of the allegations and, in particular, prior to issuing and publicly announcing an "Expression of Concern" (EOC);

- the extent and nature of any due diligence that was performed to ascertain whether the complainant may have personal or professional motivations for submitting a complaint to HSRME and SAGE nearly two years following the publication of our piece;

- the degree to which HSRME and SAGE consulted its peer-review records to ascertain whether any of our paper's peer reviewers identified any of the allegations at issue and which, if any, of those allegations had been previously noted in the pre-publication review process (and with what outcome);

- the extent to which you have criticized or questioned the work done by the peer reviewers of our paper and what their responses have been to such criticism;

- the reasoning behind issuing an EOC determination prior to contacting or communicating with the authors of the paper, or assessing any substantive responses from the authors regarding the complainant's relevant allegations;

- the expected timeline for completion of the present review; and

- other pertinent information regarding the various steps/stages of the investigative process.

Nearly seven weeks have passed since June 28th when we were first made aware of the relevant complaint, and we find ourselves having to specifically request the above information from HSRME and SAGE when fairness and due process, in our view, would have required that each of these issues would already have been identified and addressed by both parties. In fact, here in the middle of August, we still find ourselves patiently anticipating any meaningful communication from HSRME and SAGE regarding the present review. While awaiting resolution, the cloud of the EOC looms over us, which we regard as wholly unfair and unjust, and a problem that is exacerbated with each passing day.

As scientists and professionals, we are extremely grateful for the substantive platform that HSRME and SAGE provide to researchers for the publishing of meaningful and groundbreaking studies across various scientific focus areas. We also take very seriously the scientific method, the foundational principles of data analytics, the peer-review and publication vetting process, and the values of research integrity and scrutiny. To this end, it was our pleasure to provide SAGE with a fulsome and timely response to [redacted] inquiry regarding the issues raised by the complainant concerning our work. At present, we also stand ready to provide any further information or data that HSRME and/or SAGE might require to complete their review in a timely fashion.

As should be readily apparent from the content of our July 13th submission, the standard pre-publication review process that HSRME and SAGE applied to our paper, and the peer-review files associated with our work, the complainant's assertions in this matter are baseless, and – based on material recently appearing in various online media reports – quite likely motivated by political and policy considerations rather than scientific ones. In turn, it is paramount that HSRME and SAGE bring this review to a rapid close and issue their findings on an expedited basis.

As noted in our communication of August 4th, the dynamics of the present review stretch far beyond the four corners of our research paper. Setting aside the substance of the alleged complaints raised against our work, which strike us as spurious at best, it is clear that ideologically aligned media outlets are utilizing the mere existence of the present complaint and SAGE's issuance of the present EOC as weapons to undermine the veracity of our work and inflict harm on the reputation of each member of our professional research group. We realize that HSRME and SAGE cannot control the winds of politics and the whims of partisan interests seeking to influence matters far beyond the statistical findings contained in our study, but in the face of such realities it is incumbent upon all academic journals and publishers to conduct their review on an expedited basis, to adhere to the spirit of due process, and to communicate openly and even-handedly with all of the parties involved. In the present case, we are beginning to have concerns that all three of these mandates are not being met.

In turn, we would ask the following of HSRME and SAGE at this time:

(1). Please contact us immediately if there are particular questions or issues that remain outstanding in regard to your ongoing review of our paper. We stand ready to provide supplemental information as needed to bring your assessment to a rapid conclusion. If there are steps you do not wish to take, including those that we have identified in this letter, please identify what those might be and your reasons for omitting them from your process and how you think omitting those steps would enhance public confidence in your findings.

(2). Please expedite your ongoing review and the issuance of your investigative findings, which we are confident will lead to the removal of the present EOC and vindication of our methodology and published results.

(3). Please provide us, in accordance with the fundamental principles of due process, with all relevant information in your possession regarding the various bullet point items listed above concerning the present investigation, and in particular any information you might have bearing on the motivations and credibility of the complainant. While we would have expected such data to be made available to our professional research group in the early stages of any review triggered by a third-party complaint filed with HSRME and SAGE, such information is necessary to each of us at this stage of the ongoing review to monitor and guarantee the integrity of your process. We would be happy to discuss the logistics of gathering this information from HSRME and SAGE at your earliest convenience.

Thank you in advance for your time and consideration of this correspondence. We look forward to hearing in short order from both HSRME and SAGE with a status update concerning the ongoing review of our paper, as well as a response to each of three specific requests set forth above.

Sincerely,

James Studnicki, Sc.D., MPH, MBA
Donna Harrison, MD
Tessa Longbons
Ingrid Skop, MD, FACOG
David C Reardon, Ph.D.
John W Fisher, Ph.D., J.D., M.S., M.A.
Maka Tsulukidze, M.D., Ph.D., M.P.H.
Christopher Craver
(names of authors listed signify their electronically authorized concurrence with the text of this letter; emails to that effect available on request)

CC:

[redacted]
SAGE Publications

[redacted]
SAGE Publications

[redacted]
SAGE Publications

[redacted]
SAGE Publications

Lozier Institute • 2800 Shirlington Rd.
Suite 1200 • Arlington, VA 22206

Exhibit B

Tessa Longbons

From: Dave Reardon [redacted]
Sent: Wednesday, November 1, 2023 11:54 AM
To: [redacted]
Cc: James Studnicki; Donna Harrison; Tessa Longbons; Ingrid Skop; [redacted] Maka Tsulukidze; [redacted]; [redacted] SageResearchIntegrity; [redacted]
Subject: Re: Update requested: 10/12/2023

Dear [redacted]

Can you tell us, then, **what exactly is involved in this investigation** that could require such lengthy delays?

What is there to investigate? The matter is simple. In essence, the complaining party. a pharmacist, simply asserted that the use of two y-axes in Figure 1 were unfamiliar to him and potentially confusing. He also admitted, however, that any potential confusion was clarified by reference to Table 1 which allowed him to construct multiple graphs of the data, each using a single y-axis.

In short, the data was fully presented and clear, even to a reader who had difficulty understanding the use of two y-axes. We chose to use two axes due to the magnitude of difference in the outcome variables because this choice allowed readers to more immediately compare the trend of relative change in all three variables over time. **That choice was reasonable and was supported by the reviewers and editor.** End of story. A pharmacist's temporary confusion does not warrant a permanent "expression of concern."

So I repeat: What more possibly needs to be "investigated"? And how can it possibly take so long that you need even more time?!!

Please provide more clarity as to why there is any reasonable basis for (1) continued delays in removing the expression of concern, or (2) in the alternative, publishing the complaint and our response.

I am deeply deeply concerned,
David C. Reardon, Ph.D.

On Wed, Nov 1, 2023 at 5:59 AM [redacted] wrote:

> Dear Dr Studnicki
>
> Please be advised our investigation is ongoing and we will be in touch as soon as we have an update for you. Thank you for your patience.

Best wishes,

[redacted]

From: James Studnicki [redacted]
Sent: Tuesday, October 31, 2023 3:50 AM
To: [redacted]
Cc: Donna Harrison [redacted] ; Tessa Longbons [redacted] ; Ingrid Skop [redacted] ; Maka Tsulukidze [redacted] ; SageResearchIntegrity [redacted]
Subject: Re: Update requested: 10/12/2023

Dear [redacted] Despite our urgent request for resolution of the insubstantial and fatuous letter regarding our paper, the EOC continues to inflict unjust harm on the reputation of the authors.In fairness, and in the absence of a decision from Sage, we urgently request that both the original complaint letter and our complete response to the complaint be published along with the EOC in HSRME. We have evidence of the accumulating and unwarranted damage to the reputations of the authors caused by the EOC and Sage's decision to post it without our response in full.

Thank you ,

Dr. James Studnicki

> On Oct 13, 2023, at 6:35 AM, [redacted] wrote:
>
> Dear Dr Studnicki
>
> Thank you for your letter. I will obtain an update on the investigation and will be in contact again shortly.
>
> With best wishes,
> [redacted]

[redacted]

[redacted]

1 Oliver's Yard

55 City Road

London, EC1Y 1SP

UK

www.sagepublications.com

From: James Studnicki [redacted]
Sent: Thursday, October 12, 2023 8:41 PM
To: [redacted]
Cc: Donna Harrison [redacted] Tessa Longbons [redacted] Ingrid Skop [redacted]; Maka Tsulukidze [redacted]; [redacted]; [redacted]; [redacted]; SageResearchIntegrity [redacted]
Subject: Update requested: 10/12/2023

[EXTERNAL]

October 12, 2023

[redacted]

[redacted]

SAGE Publications

Re: Studnicki J, Harrison DJ, Longbons T, et al. "A Longitudinal Cohort Study of Emergency Room Utilization Following Mifepristone Chemical and Surgical Abortions, 1999–2015." *Health Services Research and Managerial Epidemiology*. 2021;8. doi:10.1177/23333928211053965.

Dear [redacted] et al.:

It has been nearly three months since an Expression of Concern (EOC) was placed on our publication in *HSRME*.

In our response to the complaint which prompted the SAGE decision to impose the EOC, we conclusively demonstrated that the concerns expressed were scientifically non-existent, lodged entirely without merit, and actually voiced no specific challenge to either our methods or findings. In fact, the unique results in our paper have contributed consequential seminal findings to a matter of continuing and keen public concern. We have also asked that your review of our paper be completed quickly since the very existence of the hastily and improvidently imposed EOC poses a continuing and serious threat to the established reputations of the authors.

To an objective and competent scientist, the fatuous nature of the complaint is easily apparent. With a sense of heightened urgency, we therefore again request that the investigation be completed, that the EOC be eliminated through a prompt public retraction, and that a suitable apology, approved in advance by the undersigned, be posted in conjunction with the EOC's removal.

Respectfully,

Dr. James Studnicki
Vice President and Director of Data Analytics

CC:

Donna Harrison, M.D.

Tessa Longbons

Ingrid Skop, M.D., FACOG

David C Reardon, Ph.D.

John W Fisher, Ph.D., J.D., M.S., M.A.

Maka Tsulukidze, M.D., Ph.D., M.P.H.

Christopher Craver

[redacted]

[redacted]

[redacted]

SAGE Publications

[redacted]

SAGE Publications

[redacted]

SAGE Publications

[redacted]

[redacted]

SAGE Publications

[redacted]

[redacted]

SAGE Publications

Exhibit C

VENABLE LLP

600 MASSACHUSETTS AVE., NW WASHINGTON, DC 20001
T 202.344.4000 F 202.344.8300 www.Venable.com

Caroline Petro Gately
[redacted]

June 20, 2024

BY EMAIL

Steven C. Begakis
Consovoy McCarthy PLLC
1600 Wilson Boulevard, Suite 700
Arlington, VA 22209
steven@consovymccarthy.com

Philip A. Sechler
Alliance Defending Freedom
44180 Riverside Parkway
Lansdowne, VA 20176
psechler@adflegal.org

Re: Studnicki *et al*. / Sage Publications, Inc.

Dear Steven and Phil:

I am writing in response to your clients' request to arbitrate their dispute with Sage Publications, Inc. by joint submission to the American Arbitration Association, to be administered in the District of Columbia under the AAA Commercial Rules. I appreciate the time you have spent with me discussing this issue. If the parties do not reach agreement on submission terms then, as we read the agreements, arbitration would occur by default in California without any administrator. Sage has no objection to AAA, or to the hearing in the District of Columbia, if we agree too on the applicable rules. We are also willing to work with you to expedite the hearing, since this is important to your clients. However, Sage will not agree without limits to the AAA Commercial Arbitration Rules, which allow for discovery, since the default under California rules would be no discovery.

We acknowledge your view that a California arbitration of these claims would include discovery, but there is simply no authority for this contention. The default rule in California is no discovery, unless the case involves "injury to, or wrongful death of, a person caused by the wrongful act or neglect of another." This provision has been applied to medical malpractice cases, automobile collisions, and the like but not to a purely business dispute involving a claim of reputational harm, as this one is. We disagree that the *Armendariz* changes this result. In *Armendariz*, the court concluded that an employee's unwaivable statutory right to bring a sexual harassment or discrimination claim against its employer would be vitiated, that is, effectively waived in violation of the statute, if the employee had no access to the discovery necessary to

meaningfully exercise its right. That is not this case. If you clients have a good faith basis to allege discrimination, then they must already have evidence they believe supports this claim. But even if the *Armendariz* holding were applicable to their Unruh Act claim, 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.

Over the past five years, Sage has published over 1,000 journals at any one time. An initial search using the search term "abortion" among its content generates approximately 60,000 hits, the majority of which are research articles. Almost 1,000 of the hits are in a journal owned by the Catholic Medical Association and published by Sage. Your clients alone are authors in 27 published articles that respond to the search term abortion. Without proper limitations on discovery, this proceeding will quickly spin out of control and make a prompt hearing impossible.

There are two possible paths forward. First, we could proceed to select a California arbitrator for a California arbitration and address with the arbitrator whether the claimants have no right to discovery at all, as Sage believes, or what limited discovery is necessary for claimants to try to prove discrimination. Second, we could agree to submit the dispute to AAA for a hearing in the District of Columbia, but in order to do so the parties would have to agree in their joint submission to substantive limitations on discovery, which we remain open to discuss. In either case, your clients will have to frame their desired discovery.

Please let us know how you would like to proceed, and thank you for your cooperation.

Sincerely,

Caroline Petro Gately