

Michael R. Hugo, *Pro Hac Vice*

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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

:

JUDY ANNE MIKOVITS

*Plaintiff,*

vs.

ADAM GARCIA, JAMIE MCGUIRE, RICHARD  
GAMMICK, GEOFF DEAN, THREE  
UNIDENTIFIED VENTURA COUNTY DEPUTY  
SHERRIFFS, F. HARVEY WHITTEMORE,  
ANNETTE F. WHITTEMORE, CARLI WEST  
KINNE, WHITTEMORE-PETERSON  
INSTITUTE, a Nevada corporation, UNEVX  
INC., a Nevada corporation, MICHAEL  
HILLERBY, KENNETH HUNTER, GREG PARI  
and VINCENT LOMBARDI,

*Defendants.*

**Case No. 2:14-cv-08909-SWV-PLA**

**PLAINTIFF'S FIRST AMENDED  
COMPLAINT And  
JURY TRIAL DEMAND**

**Plaintiff, Judy A. Mikovits, complains and alleges as follows:**

**NATURE OF THE ACTION**

1. This is a civil action brought as a claim for breach of Civil Rights, pursuant to 28 USC §§ 1981 and 1983, violation of the Plaintiff's First, Fourth, Fifth, Sixth, Seventh and Eighth Amendments to the Constitution of the United States and other ancillary tort claims.

**THE PARTIES**

2. Plaintiff Judy Mikovits, Ph.D. ("MIKOVITS" or "PLAINTIFF") was at all times material herein a citizen of the United States and a resident of Oxnard, California. MIKOVITS currently resides in Carlsbad, California.

3. Defendant, F. Harvey Whittemore ("HW") was an attorney duly licensed to practice law before the bar of the Supreme Court of Nevada, and who is a Citizen of the State of Nevada, although he is currently residing in a Federal Correctional Institution in California. H. Whittemore was at all times material herein the President of the UNR Foundation, a controlling equity owner of Defendant UNEVX, a registered lobbyist and the spouse of Defendant AW, *infra*. HW, widely described during that period as the most powerful lobbyist in Nevada, and is currently serving time in connection with an illegal campaign contribution scheme, where his illegal contributions were given to the Campaign Committee for U.S. Senator Harry Reid.

4. Defendant. Annette Whittemore (A. Whittemore) was at all times material herein the President of Defendant WPI and, together with her husband H. WHITTEMORE, was a controlling equity owner of UNEVX. A. Whittemore is a citizen of the state of Nevada.

5. Defendant Carli West KINNE ("KINNE") was at all times material herein a Vice President of WP Biotechnologies, Inc., Legal Counsel for Defendant WPI, a registered attorney admitted to practice in the State of Nevada, and the WHITTEMORE'S niece. H. WHITTEMORE, A. WHITTEMORE and KINNE are sometimes referred to here as the "WHITTEMORE PRINCIPALS."

6. Defendant Michael Hillerby ("HILLERBY") was at all times material herein a corporate officer of WPI and an agent of HW, AW, WPI (*infra*), and UNEVX.

7. Defendant The Whittemore-Peterson Institute, is a Nevada corporation ("WPI"), which was at all times material herein housed within, shared employees with, and was subject to an Affiliation Agreement with UNR.

8. Defendant UNEVX, Inc., a Nevada corporation, formerly known as VIPdx Inc. ("UNEVX"), was at all times material herein a for-profit enterprise associated with the WHITTEMORE PRINCIPALS.

9. Defendant Adam Garcia ("GARCIA") was at all times material herein a duly appointed and acting officer and Chief of Police of the Police Services Department of

the University of Nevada at Reno ("UNR"). Garcia is a resident of the State of Nevada. At all times relevant hereto, Garcia was acting under color of the law, pursuant to his duties as a law enforcement officer.

10. Defendant Jaime McGuire ("McGUIRE") was at all times herein a duly appointed agent and officer of the Police Services Department of UNR. McGuire is a resident of the State of Nevada. At all times relevant hereto, McGuire was acting under color of the law, pursuant to his duties as a law enforcement officer.

11. Defendant Richard Gammick ("GAMMICK") was at all times material herein the District Attorney of Washoe County, Nevada. Gammick is a resident of the State of Nevada. At all times relevant hereto, Gammick was acting under color of the law, pursuant to his duties as an elected law enforcement officer and prosecutor.

12. Defendant Geoff Dean ("DEAN") was at all times material herein the Sheriff of Ventura County, California. Dean is a resident of the State of California. At all times relevant hereto, Dean was acting under color of the law, pursuant to his duties as a duly elected law enforcement officer.

13. Defendants Three Unidentified Ventura County Deputy Sheriffs ("DEPUTIES") were at all times material herein, duly appointed and acting as deputies of the Sheriff's Department of Ventura County. The Deputies are residents of the State of California. At all times relevant hereto, the Deputies were acting under color of the law, pursuant to their duties as a law enforcement officers.

14. Defendant Kenneth Hunter, Sc.D. ("HUNTER") was at all times material herein a Professor of Immunology at UNR School of Medicine, and was the Chairman of the Scientific Advisory Board of WPI. At all times relevant hereto, Hunter was acting under color of the law, and as an employee and agent of UNR and as an agent and/or employee of WPI.

15. Defendant Vincent Lombardi, Ph.D. ("LOMBARDI") was at all times material herein an employee of WPI and Director of Operations for UNEVX.

16. Defendant Greg Pari, Ph.D. ("PARI") was at all times material herein is a Professor of Immunology at UNR, Chairman of that Department, and a member of the Scientific Advisory Board of WPI. At all times relevant hereto, Hunter was acting under color of the law, and as an employee and agent of UNR and as an agent and/or employee of

WPI.

17. At all times relevant to the allegations of this Complaint, and in all of their actions alleged herein, Defendants GARCIA, McGUIRE, DEAN, GAMMICK, H. WHITTEMORE, A. WHITTEMORE, KINNE, UNEVX, WPI, HUNTER, PARI, LOMBARDI and HILLERBY were acting in active conspiracy with one another to cause the unlawful arrest, false imprisonment, unlawful detention, commission of fraud, intentional and negligent infliction of emotional distress, infliction of pain and suffering of mind and body, and other illegal and tortious actions claimed hereinbelow.

18. Each of the above-named Defendants is being sued in both their individual and official capacities.

#### **JURISDICTION AND VENUE**

19. Jurisdiction is conferred upon this Court by Federal Question Jurisdiction, 28 U.S.C. §§ 1331, 1332 and 1343(3), inasmuch as it alleges violation of the Plaintiff's Civil Rights, under 42 U.S.C. §1983, which explicitly authorizes a private remedy for acts that are taken under color of state law and violate rights secured by federal law. This Complaint alleges breaches of the Plaintiff's rights under the First, Fourth, Fifth, Sixth, Seventh and Eighth Amendments to the Constitution of the United States.

20. Jurisdiction over this matter is further granted under 28 U.S.C. § 1367, Supplemental Jurisdiction, as the additional non-federal question vested tort and common law causes of action contained hereinbelow are so related as to form part of the same case or controversy and arise from the same set of operative facts as the statutory causes of action alleged in this case. This case does not raise a novel issue of state law; the common law counts do not substantially predominate over the statutory causes of action; and there are no compelling reasons for declining jurisdiction.

21. Jurisdiction over all parties is conferred in this Honorable Court by virtue of the fact that various acts alleged to have been committed below were in furtherance of one or another conspiratorial acts by two or more of the below parties, which occurred in this Judicial District, and the out of state parties traveled across the state borders, and into this District to commit the violations of Civil, Constitutional and common law rights of the Plaintiff. The fact that some of the acts complained of below occurred outside

this District is without consequence, as the predicate acts causing harm to the Plaintiff were brought to fruition in this District. Conspiratorial actors are saddled by the bad acts of their co-conspirators.

22. This Court is the proper venue for this action as the culmination of the civil rights violations occurred within the Central District of California.

#### **FACTUAL RECITATION**

23. Prior to the events leading to this lawsuit, Plaintiff was among the elite of our country's molecular virologists. Her work in genomic diversity at the National Cancer Institute is the foundation of much of today's notorious cancer research. Her work on HIV is the cornerstone of today's HIV/AIDS treatment.

24. Her notoriety in the scientific community attracted the attention of the Whittemores, who were searching desperately for a cure for their daughter's illness. Mikovits met AW and Dr. Peterson at a medical conference in Barcelona, Spain. With the release of several papers on the link between xenotropic murine retrovirus (XMRV) and chronic fatigue syndrome (CFS), Dr. Mikovits had been noticed by the Whittemores who were on a mission to find the cure for their daughter.

25. A meeting was set up for the Plaintiff to meet HW at an office of the Wingfield Nevada Group, a company co-owned by HW and two members of the Seeno Family, with whom HW was co-venturing a massive real estate deal.

26. On or about November 6, 2006, Plaintiff accepted a position as Director of Research at the Whittemore Peterson Institute, a research facility to be housed on the campus of the University of Nevada – Reno (UNR), which the Whittemores were a major benefactor to.

27. As Research Director at WPI, the Plaintiff was also given an adjunct professorship at the UNR in the Department of Microbiology. The term of this position was originally intended to run from April of 2007 to May of 2012.

28. Under her direction, WPI grew to a position of international renown in the study of neuro-immune disease, and was awarded grants by the National Institutes of Health, the National Institute of Allergy and Infectious Disease and the Department of Defense.

29. Upon joining WPI, the Plaintiff brought certain personal property, including

intellectual property with her to WPI, including her scientific journals going back as far as her graduate studies, her library, and papers she had written. Those were housed in her office at room 320 in the UNR Applied Research Facility, in her office at the center for molecular medicine, and elsewhere at WPI. These documents were the product of over 30 years of her work.

30. Defendant Harvey Whittemore was an attorney and a lobbyist for the gaming industry as well as the tobacco and alcohol industries in Nevada. His representation of these clients gave him the reputation of “one of the most powerful men in Nevada.” HW was known as an aggressive and highly respected, yet feared member of the legal community in Reno. HW was a political force, which led to his downfall and eventual present incarceration in the US Bureau of Prisons.

31. Among closest friends of HW was U.S. Senator Harry Reid, to whose political campaigns HW contributed the maximum amounts. Upon information and belief, Senator Reid promised AW in writing on at least one occasion, tens of millions of dollars in funds to support the work of WPI.

32. Upon information and belief, he was indicted on charges that he made unlawful campaign contributions to an elected member of Congress, caused false statements to be made to the Federal Election Commission (FEC) and lied to the FBI.

33. According to various sources including the U.S. Department of Justice, HW allegedly caused an employee to transmit \$138,000 in contributions to Senator Harry Reid’s campaign committee, the vast majority of which were conduit contributions that Whittemore had personally funded through various employees and family members as his conduit, in order to satisfy his pledge. Dr. Mikovits was one of the unwitting conduits for HW’s scheme, which he assured her, as a member of the Bar of the State of Nevada, was totally legal. The campaign committee then unknowingly filed false reports with the FEC stating that the conduits had made the contributions, when in fact Whittemore had made them. Upon his conviction on three of the four charges brought against him, Whittemore was sentenced to two years in prison and was also given a \$100,000 fine, along with two years supervision after his incarceration and 100 hours community service.

34. HW became involved in a major real estate deal, into which he poured massive

personal resources. He had business partners who were extremely tough businessmen, and whose methods were less than conventional. This venture consisted of developing a \$30 Billion golf community just outside of Las Vegas. His plan was to erect a community of 160,000 homes, 12 golf courses and several casino hotel complexes on a 43,000 acre stretch of desert. The project was fraught with regulatory issues.

35. Whittemore obtained land in the Coyote Springs Valley from a private owner but was unable to acquire all of the land or build on what he owned because of regulatory obstacles. The desert land included a sanctuary for the desert tortoise, an endangered species, and some of the adjacent land was designated a wilderness study area. A federal easement for utilities was also present, and the United States Environmental Protection Agency (EPA) would not allow building due to the presence of stream beds in the area. Water rights agreements were also needed to procure large amounts of water. It would take a monstrous effort to navigate the hallways of the various regulatory agencies, and there was much speculation that it was only Whittemore's strong ties to his U.S. Senator, that was able to erase so many roadblocks.

36. The United States Environmental Protection Agency initially refused to grant permits based on the projected environmental impact of destroying stream beds in the Coyote Springs Valley. In what EPA officials called an "unusual" move, Senator Harry Reid contacted the EPA administrator after a process including a phone call from his son Leif, Whittemore's personal attorney. Soon thereafter, the EPA came to an agreement with HW and also awarded Whittemore's company an environmental sensitivity award. The prize was accepted by Leif Reid. Senator Reid's office denied any wrongdoing, but acknowledged that Leif Reid should not have called his father on behalf of his employer.

37. In order to find a cure for his daughter, HW founded a research laboratory and clinic at his and his wife's *alma mater*, University of Nevada – Reno (UNR), and endowed the Whittemore-Peterson Institute. He stocked the laboratories with the best minds he could entice, including the very virologist who was credited with discovering that there was a retrovirus found in rodents that appeared to be the – if not one of the – causes of CFS, the Plaintiff in this case. He made Dr. Mikovits his Institute's first Research Director.

38. In addition to the above referenced duties as director, the plaintiff was responsible for establishing a translational research program aimed at identifying biomarkers and underlying causes of chronic fatigue syndrome and other debilitating neuro-immune diseases with overlapping symptoms such as fibromyalgia, chronic Lyme disease, atypical multiple sclerosis and autism spectrum disorder.

39. As research director she was responsible for planning, establishing and directing the institute's scientific research program including the selection training and supervision of staff, writing, and managing grants and collaborating with other scientific organizations. The WPI under her direction grew from a small foundation to an internationally recognized center for the study of neuro-immune diseases in which she obtained investigator-initiated grant money as described above, and brought international attention to chronic fatigue syndrome as a physiological disease.

40. Dr. Mikovits' work was heralded in the media across the globe. The media had frenzy as she began to link her newly discovered XMRV to many of the world's most perplexing and insidious diseases. Mr. & Mrs. Whittemore's investment appeared to be working out. Their daughter was improving on a daily basis, and patients came great distances to participate in the seemingly successful studies.

41. Unbeknownst to the Plaintiff, HW, AW, Lombardi, Hillerby, Kinne, Hunter, and Pari were taking her research and misusing the grants that were awarded to her, to commercialize and sell her work under the name of a different company, UNEVX. The Whittemore greed got in the way of scientific integrity, and in this case, integrity had no chance of prevailing.

42. All was wonderful with one notable exception. In the summer of 2011, Dr. Mikovits discovered that the experiments that her work could not be replicated. This is usually the death knell to a scientific hypothesis.

43. Dr. Mikovits shared her concern with defendant Lombardi, a collaborator in her research and a scientist under her supervision. He could not account for the discrepancies in his numbers and Dr. Mikovits attempted to terminate him from the

study.

44. Plaintiff told HW about her concerns about the potential for the WPI being charged with scientific fraud on or about July 8, 2011. HW threatened her, if she were to tell anyone else.

45. Her decision to terminate Lombardi was immediately over-ridden by AW. When she confronted AW with the impropriety of protecting Lombardi, the person responsible for the statistical breakdown, AW instructed Dr. Mikovits to change the numbers in her assumptions. When Dr. Mikovits refused to participate in this scientific fraudulent scheme, she was immediately terminated by AW.

46. Unbeknownst to Dr. Mikovits, the Whittemores and Lombardi were taking her research and misusing the grants that were awarded to her, to commercialize and sell her work under the name of a different company, UNEVX. UNEVX and its agents have defrauded the U.S. Government in the misdirection of various grant monies, and has harmed the Plaintiff by continuing to utilize federal moneys improperly, and attributing the improper use to the Plaintiff, as she is the Principal Investigator listed on those grants.

47. Dr. Mikovits began to take steps to publicize the flaws in her scientific model, in order to maintain her impeccable standing in the scientific community.

48. HW was depending upon the proceeds of the commercialization of Mikovits's work to invest in the Coyote Springs development.

49. Unbeknownst to Mikovits, HW had been accused of embezzling tens of millions of dollars from the Coyote Springs development project by his partners, the Seeno family. According to a lawsuit filed against his partners, Albert J. Seeno, Jr. and his son, Albert J. Seeno III, threatened his life, and had engaged in racketeering, extortion, grand larceny and making threats. According to HW's lawsuit against the Seeno Family, the Seenos broke into HW and AW's home, forced a safe open and threatened to break both of HW's legs if he did not repay the debt.

50. HW was depending on the proceeds of the commercialization of Plaintiff's research in part to finance the Coyote Springs real estate development, and in part to repay the Seeno family, in order to remain alive and healthy.

51. Upon information and belief, On March 6, 2011, Whittemore reported to the Reno police that he was afraid of being killed; there was a phone call from Albert Seeno III who threatened Whittemore physically. Reno police took recorded statements from Whittemore in March and November. None of this was known to the Plaintiff at that time.

52. Having the scientific community invalidate the work his Institute had just invested in and which was helping his daughter cope with her illness would have been catastrophic. HW had to stop Mikovits however he could as he was in fear for his life, and without the asset of the product of the Mikovits' work, HW feared the Seenos would make good on their promises.

53. During the exit process, Dr. Mikovits confronted Lombardi, whom she believed to be her laboratory assistant, but came to learn was also the Director of Operations for UNEVX; Mr. & AW; Carli Kinne who was a Vice President and general counsel to WPI; and Michael Hillerby, an employee of WPI; and informed them that she intended to report the misappropriation of the grant money which was awarded to her and for which she was accountable, to the NIH and the Department of Defense. The defendants mentioned here, fought her as if at least one of their lives depended upon it.

54. Dr. Mikovits discovered the scientific discrepancies and the fact that the Whittemores were profiting from her research at the same time that HW was being threatened. The key to repaying the allegedly embezzled money was to be found in the potentially astronomical profits the XMRV treatments would have generated. The news of the scientific uncertainty could not have come at a worse time for HW, who was in fear for his life. She was terminated by AW, the President of the WPI, on September 30, 2011, during this turbulent period for the Whittemores.

55. From and after September 29, 2011, at the time she was informed that she was terminated by AW, Plaintiff never set foot in any facility owned or operated by WPI.

56. At the time of her termination, Plaintiff had certain intellectual property, including without limitation laboratory notebooks that she had been maintaining throughout her career as a scientist which predated her involvement at WPI by decades. Those notebooks were stored on the premises under the control of WPI, Lombardi, Hillersby, Kinne, HW and AW.

57. Upon her termination from WPI, Plaintiff was denied any further access to the premises where her intellectual property was stored.

58. Lombardi, HW and AW falsely accused the Plaintiff of stealing materials from the WPI facility including various computer hardware, software and her laboratory notebooks.

59. They brought their political influence to the District Attorney, Richard Gammick, who allowed the charade to be given face value with no due diligence to ascertain the veracity of the information. Gammick allowed Garcia and Maguire to travel to California and to advance a false case, that would never have been allowed had Gammick looked into the full circumstances prior to complying with the wishes of Garcia and Maguire, who was acting in concert with AW, HW, Kinne, Lombardi, Hillerby, Hunter and Pari.

60. Kinne, Hillerby, Lombardi, AW and HW combined and conspired to fabricate falsities about and against the Plaintiff, by intentionally falsely and fraudulently spreading the word amongst themselves and to third parties that Plaintiff had stolen materials and secreted them from WPI and the defendants named in this paragraph.

61. During the Fall of 2011, Plaintiff began to uncover evidence of misappropriation of government grant funds and improper use of those funds. She concluded that Hillerby, Lombardi, Kinne, HW and AW were colluding and conspiring to defraud the US. Department of Defense, NIAID and NIH by misdirecting the grants from

those agencies.

62. The defendants named in the above paragraph refused to comment about their misuse of the funds and stonewalled the presently-departing Plaintiff.

63. In addition to defendants Hillerby, Lombardi, Kinne, HW and AW conspiring to defraud the Plaintiff and the Federal Government, Defendants Pari and Hunter were also complicit in the misdirection and cover-up of the use of the Federal Funds.

64. As professors at UNR they participated in the Scientific Advisory Board of WPI. As such, they were in a position to avert the activities of the other Nevada based defendants. They could have chosen to team up with Dr. Mikovits and those who were concerned by the newly discovered breaches of scientific integrity when Dr. Mikovits first questioned the validity of their work. Instead, these two defendants decided to turn a deaf ear on the crucial issues, and joined the conspiracy to cover up the questionable findings, and to continue to move forward with what amounted to a fraud on the FDA/NIH and the DoD.

65. Had Pari and Hunter objected to what was transpiring, they would have incurred the wrath of the Whittemores, but they showed that they lacked courage to do that which was right and that they were willing to throw Dr. Mikovits under the bus. Their credentials were utilized to attempt to keep the flow of government grants coming, and to lend some measure of credibility to the commercial venture, and they knowingly participated in this dishonest scheme.

66. This was the beginning of an interstate conspiracy to do anything it took to stop Mikovits from destroying the name of WPI. HW, AW, Kinne, Hillerby and Lombardi combined their ideas and set out to destroy Mikovits before she could credibly end their charade.

67. Because of her desire to keep her reputation as an ethical scientist, Dr. Mikovits retracted her scientific paper on XMRV and CFS.

68. On or about November 2, 2011, Plaintiff was notified that a lawsuit would be

filed against her for her allegedly fraudulent conduct, and for return of all copies of all data during her tenure.

69. Plaintiff replied stating that, in fact, Defendants had locked down her lab and taken control of its contents within an hour of her termination. She had no access to her office, lab or her notebooks or other intellectual property, and kept nothing. Plaintiff also provided evidence that she had returned to her home within 12 hours of her termination and never returned to her lab or offices. This lawsuit is discussed in greater detail below.

70. Upon her return to her home in California, the actions of the defendants focused upon her in that location, and the acts of all defendants subject them to the *in personam* jurisdiction of this Court as set forth below.

71. Defendants Hillerby, Lombardi, AW and/or HW by acts and statements of two or more of them, conspired to give mis and disinformation to the UNR police department (UNRPD) about the actions and possessions of the Plaintiff.

72. Members of the UNRPD, including Defendant Garcia and Jaime McGuire traveled to Ventura CA, and stalked Plaintiff for several days in an obvious manner intended to harass and scare her.

73. Members of the Ventura City Police Department and/or Ventura County Sheriff's Department agents or employees under the supervision of defendant Dean; then obtained a search warrant based upon representations made by Garcia and Maguire, which representations Defendants knew to be false.

74. Garcia and Maguire obtained a search warrant from a Ventura Justice of the Peace, went to Plaintiff's home, and then, at approximately 1:00 PM on Friday, November 18, 2011, with at least one Ventura County Deputy and one Ventura City policeman overseeing the search, placed the Plaintiff under arrest and handcuffed her hands behind her back and took her to a detention facility of the Ventura County Sheriff's Office ("VCSO") on Todd Road in Ventura.

75. At no time was Plaintiff shown an Arrest Warrant or a Search Warrant. Nor was Plaintiff's husband ever shown such documents at the time of the search and arrest.

76. The Plaintiff was never told what her charges were, was denied reasonable access to counsel and to a judicial tribunal, and until the hearing on her release five days after her warrantless arrest, was unaware of what she was charged with.

77. During her incarceration, the Plaintiff's husband spoke to a bail bondsman who told him that he had never seen a situation like this in his life.

78. Plaintiff's husband, then 73 years of age, was placed upon a chair in his and Plaintiff's home and ordered by a UNRPD policeman not to move. He was forced to watch as the UNRPD completely ransacked their home, finally taking all of their personal electronic items, which were then held by the Ventura Police for almost a year.

79. On several occasions, Plaintiff's husband was told that HW would have the "charges" against her dropped if she would return her laboratory notebooks. He was informed that the keys to the jail cell were in his hands in the form of the "stolen" laboratory notebooks.

80. The Plaintiff and her husband could not return the notebooks, as they were not in their custody or control. The Plaintiff's husband reiterated that he would give the notebooks up in exchange for his wife's release, but that he did not have them at all. This series of conversations with HW, AW, Kinne, Lombardi and Hillersby's representative continued through the weekend, as the Plaintiff's husband continued cleaning up items strewn all over the house in the warrantless search.

81. The clean-up process was slow and methodical, as Plaintiff's Husband attempted to return everything to the correct place. He was paying close attention to details.

82. On November 21, 2011, The Plaintiff's husband received a phone call from the representative of HW, AW, Kinne, Lombardi and Hillersby, to discuss the fact that the

Plaintiff would likely remain in jail through the Thanksgiving Holiday, which was in two days, unless he returned the notebooks.

83. Having nearly completed the entire task of reorganizing all the materials, clothing, books, papers, and other possessions that had been strewn about the house by the UNRPD officers in the warrantless and illegal search, the Plaintiff's husband assured the representative of HW, AW, Kinne, Lombardi and Hillersby, that he had been through the entire house and that the notebooks were not there. He assured the representative that if the Plaintiff had the notebooks, neither she nor he were aware of it, and that they were not in the house.

84. At that time, the representative of HW, AW, Kinne, Lombardi and Hillersby told the Plaintiff's husband, "David, listen very close to what I am about to tell you. Those notebooks are in your house. You DO have them, I am telling you. Now go and find them and return them to get Judy out of jail!"

85. The men hung up the phone and the Plaintiff's husband sat in complete perplexity at the entire conversation, knowing that he had scoured the entire house as he replaced items in drawers, closets, shelves and table tops.

86. The following morning, the Plaintiff's husband awoke and reinitiated his search, looking for places that the Plaintiff may have secreted the notebooks, all the while replaying the conversation with the representative of HW, AW, Kinne, Lombardi and Hillerby, in his mind.

87. As the Plaintiff's husband began to look through cabinets, book shelves and drawers for the notebooks that the representative of HW, AW, Lombardi and Hillersby insisted were in their house, he came up empty. Repeatedly doubting his sanity as he continued the same search that he and the police had each previously conducted, somehow expecting or hoping for a different outcome, he was rapidly becoming disheartened as he began to dread the following day – Thanksgiving – which he knew would be the loneliest day of his life.

88. While searching through one of the guest room closets, the Plaintiff's husband discovered a canvass beach bag with JAM embroidered on the side, that he had not seen previously, and that was not inventoried as part of the search. Even more suspicious was the fact that the bag was sitting in the front and center of the closet as if it were the last item placed therein. Inside the bag were all of the Plaintiff's notebooks.

89. The notebooks were planted in the closet by the representative of HW, AW, Kinne, Lombardi and Hillersby, or by other agents of HW, AW, Lombardi and Hillersby.

90. After five days without access to a criminal attorney or a judge, Plaintiff was charged with being a fugitive from justice.

91. While the Plaintiff was in Reno working at WPI, she was living in a condo that was owned by HW in the same building as the penthouse suite that the Whittemores lived in. When she was terminated by AW, as set forth above, she returned to her condo and packed up her belongings and left for California. While packing, she literally threw many items into bags, boxes, bins and suitcases. She owned two canvass beach bags with her initials "JAM" embroidered on them. As she left the condo for the last time, she left several items in the place that she no longer needed, wanted or had room for in her already fully packed car. Among the items that were left in the condo was one of the two embroidered canvass beach bags. That was to be the very last time that she saw that bag.

92. In addition to that condo, the Plaintiff owned her own condo in Reno, but it had problems requiring mold remediation and she was unable to live there. That was how she came to live in HW's extra condo, as the Whittemores had an empty condo that they wanted her to move into to remain healthy. She had a lab assistant who was living in her condo, as he was not sensitive to the mold spores.

93. On or about October 17, 2011, upon returning from a trip to Ireland, the Plaintiff was picked up in the early morning hours by her assistant, at the airport, and driven to her condo that he was living in. She observed her notebooks in a striped birthday gift bag, in his possession. The plaintiff told her assistant that she wanted the

notebooks back and he insisted that if she were to take them, they would both be killed by HW in order for him to get them from her. They discussed the plan for her to take them to Kinko's after they slept for a while, and get them photocopied in the morning. The assistant protested telling her that HW would have her killed if he saw her with them, and he could not allow that to happen.

94. The Plaintiff went to her room and slept for a couple of hours.

95. When she awoke, the assistant and the notebooks were gone. The gift bag was there still, but empty. The associate returned home before 7 AM and refused to discuss the whereabouts of the notebooks.

96. The Plaintiff assumed that they had been taken out of the bag and buried among the boxes of clothing and possessions she was to put into a car and drive back to California in.

97. Upon returning to her house in California later on October 17, 2011, she discovered that the notebooks were not there, that her lab assistant had retained them in Reno.

98. To this day, the last time the Plaintiff saw her notebooks was October 17, 2011, in her assistant's apartment.

99. Upon her termination, Dr. Mikovits was accused of stealing a laptop and 19 laboratory notebooks which were all her own property. She would have refused to return any of these items to WPI, inasmuch as they were her intellectual property, there was no claim to that property by WPI, and the laboratory notebooks represented the totality of her work including that while at NIH, which preceded her employment at WPI – except they were already in the hands of WPI, as she left them in her desk before she knew she would be forever locked out of her office.

100. On November 4, 2011, two days after the notice of intent to sue, supra, WPI filed a lawsuit against Dr. Mikovits. In that suit they alleged breach of contract, trade secret misappropriation, conversion, breach of implied covenant of good faith and fair

dealing, seeking specific performance and replevin against Dr. Mikovits.

101. On November 7, 2011, WPI filed a motion for a TRO seeking the return of the computer and lab books. Judge Brent Adams entered a TRO against her.

102. On November 9, 2011, service was made of the complaint and TRO. Dr. Mikovits was not home, she was away taking care of her elderly mother. She returned to her home on November 13, 2011, to find the summons and complaint taped to the wall on the porch of her house. The next morning she contacted Atty. Dennis Jones and hired him.

103. On November 18, 2011, while on her way to meet with her new attorney, she was arrested as set forth above.

104. On that same day her attorneys filed in opposition to the motion for preliminary injunction asserting that she did not have possession or control of any misappropriated property. In fact, when the Ventura County officers searched her house and took her family members' computers, tablets and phone, they did not find a single notebook. As set forth above, her former lab assistant, who was an agent of HW, AW, Lombardi, Kinne and Hillersby was holding them in his possession without informing any of the WPI principals.

105. On November 22, 2011, there was a hearing on her civil case while she was in jail and unrepresented. At this time she and her attorney, Dennis Jones, had never spoken personally to one another so he could not take any steps to bind or make any representations for her in open court. In addition Dr. Mikovits did not have counsel retained yet for the criminal proceedings. She eventually retained an attorney by the name of Scott Freeman, who is now a sitting judge in Reno.

106. At the November 22, 2011, hearing, Dr. Mikovits was not present as she was in jail and while her attorney was clear that he could not speak for her until he met her, there was an in chambers "agreement" struck. She was ordered to return seven categories of documents.

107. On that same evening at about 7:00pm, Dr. Mikovits was released from custody in Ventura County California.

108. At that time the judge in Ventura County who ordered her release on bail denied the opportunity to a reporter by the name of Jon Cohen from *Science Magazine*, to attain a mug shot or photograph of Dr. Mikovits. Cohen argued that a message needed to be sent to scientists so this doesn't happen again and urged the judge to allow him access to the mug shot so he could publish it in *Science*. This request was denied if for no other reason than the fact that there was no mug shot because Dr. Mikovits was never charged, never photographed, not fingerprinted and never properly processed before going into the jail cell for five days.

109. The civil case charade continued for some time. After some motion practice over the next month, on December 15, 2011, there was an order entered by the court denying Dr. Mikovits' emergency motion to stay and for reconsideration.

110. Hearing on the show cause order occurred on December 19, 2011. At that hearing, her attorney, Mr. Freeman, told the court that any and all of the apparent missteps and misdeeds of the client were done on his advice. In addition, Dr. Mikovits refused to give up her personal Gmail as it would have put thousands of study participants at risk for confidentiality issues impacting bias, losing jobs and/or insurance.

111. Mr. Freeman made an offer of proof that Dr. Mikovits was only following the advice of counsel and that if that advice was erroneous she could still fully comply with the preliminary injunction within days. Judge Adams struck her answer, and entered the default over the protest of Mr. Freeman.

112. On January 24, 2012, the judge entered the default judgment, stating that he was doing so for willful and wanton disregard of the orders of this court in a manner which flaunts and otherwise mocks and ignores the essential discovery of the very information which is the subject of this lawsuit.

113.He issued a permanent injunction and scheduled a damages hearing for January 25, 2012. That hearing did not go forward.

114.Notwithstanding the fact that the damages assessment hearing did not go forward, HW, who is an attorney and knows the process well, has repeatedly and fraudulently asserted that Judge Adams assessed a \$5.5 million dollar sanction on Dr. Mikovits.

115.Dr. Mikovits heard this from HW and not fathoming that an attorney who was litigating a case against her and who was well acquainted with judicial process would make this up, she believed him that he had a judgment against her.

116.As a result of this fraudulent misrepresentation, and because she believed that she owed HW \$5,500,000.00, and that he had a judgment and intended to collect what he could from it, filed for bankruptcy protection on March 1, 2013.

117.It is on that date and in furtherance of his conspiracy with AW, Kinne, Lombardi, Hillerby, that Mr. & Mrs. Whittemore filed a fraudulent claim in the Bankruptcy Court asserting a judgment that was false, fraudulent and fictitious against Dr. Mikovits.

118.This fraudulent act, committed on March 1, 2013, has triggered the statute of limitations as of that date, and has mooted all defenses by WPI, Mr. & Mrs. Whittemore, Vincent Lombardi, Carli Kinne, and Michael Hillerby, each of whom conspired to defraud Dr. Mikovits through their wrongful acts.

119.On March 14, 2012, Judge Adams, just prior to hearing a Motion for Reconsideration, recused himself on this case.

120.Prior to going on record there was a long conversation between the judge and the attorney for Whittemore. The judge began his commentary by stating that he had seen a television story about the Congressman who warned anyone who ever accepted a campaign contribution from Harvey Whittemore to donate that contribution immediately to charity within two weeks. He added that these statements presented a

problem for him personally because he lives on his salary and he used the contributions from Harvey Whittemore, his family members and the affiliated Whittemore companies on his campaign as a judge.

121.A discussion ensued in which the judge asked Dr. Mikovits' lawyers whether they were planning on filing a motion to disqualify. When they answered in the affirmative, he asked them not to file that motion immediately as he was going on vacation and he did not want to disturb his vacation with this issue. That was all mooted the next day when the judge issued a decision recusing himself.

122.As a result of the conspiracy between Garcia, Gammick, HW, AW, Kinne, Hillerby, Hunter and Pari, Dr. Mikovits has very recently been forced to liquidate all of her property and to turn over the proceeds to the WPI, by order of the US Bankruptcy Court, in March of 2014, all based upon a fraudulent filing.

123.Neither HW, AW, Lombardi, Gammick, Dean, the Three Unidentified VCSD Deputies, Kinne, the WPI, Hillersby, Hunter or Pari have ever made a public statement that the Plaintiff was terminated for no good cause; had ownership of the laboratory notebooks; owned the intellectual property, hardware and software she was accused of stealing; was falsely accused of committing criminal acts; was not a fugitive from justice; was unlawfully arrested; was unlawfully detained in jail with no charges; was held in jail without due process; had not misspoken about the scientific validity of the work of WPI; or had otherwise wronged any of the defendants.

124.This failure to retract statements, actions, and false assertions has, and will continue to cause harm to the Plaintiff every day, until her name is cleared and she is once again eligible to participate in procurement and execution of US. Government and other governmental unit grants and support. At this time, because of the failures of the defendants in the above paragraph, as more fully described hereinabove, the Plaintiff is an unemployable scientific treasure.

125.The harm to the Plaintiff, as an ongoing tort, does not avail itself to a measurement of a start and stop date of a statute of limitations, and all claims asserted

below are timely and ongoing under prevailing California law of “Continuing Violation.”

**COUNT ONE**  
**Civil Rights and Constitutional Claims**

126.Plaintiff repeats, realleges, reavers and incorporates all statements above, as if specifically set forth herein.

127.This allegation runs against the above named defendants, insofar as they are not entitled to protection of the Eleventh Amendment to the US Constitution.

128.All actors involved in this Count acted under color of state law or the Constitution of the United States in the deprivation of the Plaintiff’s rights under the First, Fourth, Fifth, Sixth, and Eighth Amendments to the Constitution of the United States, by imposition of incarceration upon her, and detaining her without cause.

- a. First Amendment: by prohibiting the petitioning for a governmental redress of grievances, and forbidding her to express concerns about fraud upon the FDA, DOD and NIAID.
- b. Fourth Amendment: by an unreasonable search and seizure of the Plaintiff and her property, the issuance of a judicial warrant without probable cause, and exceeding the bounds of permissible search.
- c. Fifth Amendment: by depriving the Plaintiff of her due process, and failing to inform her of her charges and rights, and thereafter denying those rights. This violation continues to this day, unabated, as her “charges” which were never formally filed were never dismissed with prejudice, and the Plaintiff continues to live in fear of being re-arrested on whatever the unknown charges are.
- d. Sixth Amendment: She has never been properly informed of her charges, which issue persists to the present day; has been denied an opportunity to defend herself in a court of law at trial, which still persists; has been deprived of her right to confront witnesses; has been denied her right to a jury trial of her

criminal “charges;”and was denied effective counsel in her criminal proceeding.

- e. Eighth Amendment: The Plaintiff has been denied an opportunity to meet bail, when she provided not a scintilla of being a flight risk. She was held for 5 days in a jail cell with no charges, no explanation and no perceptible end of her term.

129. The deprivation of the rights complained hereinabove was carried out under color of state law and this deprived the Plaintiff of her rights, privileges and immunities under state law.

130. Furthermore, the Plaintiff alleges that Garcia, McGuire, Dean’s Agents including the Three Unknown Deputies used force in arresting and detaining her.

131. The Plaintiff further alleges that the force used by Garcia, McGuire, Dean, Dean’s Agents including the Three Unknown Deputies was excessive.

132. That Garcia, McGuire, Dean, Dean’s Agents including the Three Unknown Deputies were acting in furtherance of their official duties.

133. That the Plaintiff was harmed.

134. That the acts if Garcia, McGuire, Dean, Dean’s Agents including the Three Unknown Deputies in the use of excessive force was a substantial factor in causing Plaintiff harm.

135. That the above referenced acts were done in furtherance of intense political power yieded by HW, AW, Lombardi, Kinne, Gammick and Hillerby as part of their conspiratorial activity.

## **COUNT TWO**

### **Unreasonable Search and Seizure Without a Warrant**

136. The Plaintiff repeats, realleges, reavers and incorporates all statements above, as if

specifically set forth herein.

137. Garcia, McGuire, Dean, Dean's Agents including the Three Unknown Deputies, and as controlled by HW, AW, Lombardi, Hillerby and Gammick searched the Plaintiff's home and home office without producing or obtaining a valid search warrant.
138. Garcia, McGuire, Dean, Dean's Agents including the Three Unknown Deputies, and as controlled by HW, AW, Lombardi, Hillerby and Gammick conducted an unreasonable search, knowing that the objects of the search were either not present or were the lawful property of the Plaintiff.
139. Garcia, McGuire, Dean, Dean's Agents including the Three Unknown Deputies, and as controlled by HW, AW, Lombardi, Hillerby and Gammick were acting or purporting to act while performing their official duties.
140. The Plaintiff was harmed.
141. That Garcia, McGuire, Dean, Dean's Agents including the Three Unknown Deputies, and as controlled by HW, AW, Lombardi, Hillerby and Gammick's unreasonable search was a substantial factor in causing Plaintiff's harm.
142. At all times incident to the Warrant, HW, AW, Kinne, Lombardi and Hillerby knew or should have known that the Plaintiff was not in possession of most of the materials being sought.

### **COUNT THREE**

#### **False Arrest With a Warrant (Alternatively pled Cause of Action)**

143. The Plaintiff repeats, realleges, reavers and incorporates all statements above, as if specifically set forth herein.
144. Garcia, McGuire, Dean, Dean's Agents including the Three Unknown Deputies, and as controlled by HW, AW, Lombardi, Hillerby and Gammick arrested and/or intentionally caused the Plaintiff to be arrested and/or to be wrongfully arrested.

145. As set forth with particularity in the Factual Recitations in this Complaint, there was a fraudulently procured warrant, if there was one at all, inasmuch as no warrant was served before, at or around the time of the search, and all elements of the warrant that would have given it validity were based on falsities and fraudulent statements calculated to harass the Plaintiff.

146. The Plaintiff was harmed by the arrest complained of herein.

147. The actions of Garcia, McGuire, Dean, Dean's Agents including the Three Unknown Deputies, and as controlled by HW, AW, Lombardi, Hillerby and Gammick as described in the Factual Recitations were a substantial factor in causing the Plaintiff harm.

#### **COUNT FOUR**

##### **Unnecessary Delay in Processing and Releasing**

148. Plaintiff repeats, realleges, reavers and incorporates all statements above, as if specifically set forth herein.

149. Defendants Garcia, McGuire, Dean, Dean's Agents including the Three Unknown Deputies, and as controlled by HW, AW, Lombardi, Hillerby and Gammick held or caused the Plaintiff to be held in custody.

150. There was an unreasonable and unnecessary delay in taking the Plaintiff before a judge or in releasing the Plaintiff from custody, as set forth above.

151. The conduct of Garcia, McGuire, Dean, Dean's Agents including the Three Unknown Deputies, and as controlled by HW, AW, Lombardi, Hillerby and Gammick was a substantial factor in causing the Plaintiff harm.

#### **COUNT FIVE**

##### **False Arrest Without a Warrant by a Peace Officer (Alternatively Pled Cause of Action)**

152. Plaintiff repeats, realleges, reavers and incorporates all statements above, as if

specifically set forth herein.

153. Garcia, McGuire, Dean, Dean's Agents including the Three Unknown Deputies, and as controlled by HW, AW, Lombardi, Hillerby and Gammick arrested Plaintiff without a warrant;

154. Plaintiff was actually harmed; and

155. That Garcia, McGuire, Dean, Dean's Agents including the Three Unknown Deputies, and as controlled by HW, AW, Lombardi, Hillerby and Gammick's conduct was a substantial factor in causing Plaintiff's harm.

#### **COUNT SIX**

#### **False Arrest Without a Warrant by Private Citizens**

156. Plaintiff repeats, realleges, reavers and incorporates all statements above, as if specifically set forth herein.

157. HW, AW, Lombardi, Hillerby and Gammick caused the Plaintiff to be arrested without a warrant.

158. The Plaintiff was actually harmed as set forth above, by this arrest.

159. The wrongful acts as set forth in the factual recitations above, of HW, AW, Lombardi, Hillerby and Gammick were a substantial factor in causing Plaintiff's harm.

#### **COUNT SEVEN**

#### **Abuse of Process**

160. Plaintiff repeats, realleges, reavers and incorporates all statements above, as if specifically set forth herein.

161. The defendants, HW, AW, WPI and UNEVX initiated process against the Plaintiff in Nevada for purposes of harassment and defamation through court process, knowing that certain privileges attach in litigation.

162. The within defendants used this abusive process as a means to disparage and destroy the career of the Plaintiff intentionally and with malice.

163. The Plaintiff was harmed by this abuse.

164. The abuses as described in the recitation of facts above, were a substantial factor in causing the Plaintiff's harm.

**COUNT EIGHT**

**Fraud**

165. Plaintiff repeats, realleges, reavers and incorporates all statements above, as if specifically set forth herein.

166. As set forth in the recitation of facts in great particularity and detail, the Defendants in this action acted in concert in a false and fraudulent manner. They hatched a scheme that would cast the Plaintiff in a poor light and that would forever discredit her as a scientist.

167. The Acts constituting this fraud were calculated to overwhelm the Plaintiff in such a manner as to cause her to seek bankruptcy protection, to sell her assets and to cease employability.

168. The within defendants used this fraudulent scheme as a means to disparage and destroy the career of the Plaintiff intentionally and with malice.

169. The Plaintiff was harmed by this abuse.

170. The fraudulent acts as described in the recitation of facts above, were a substantial factor in causing the Plaintiff's harm.

**COUNT NINE**

**Civil Conspiracy**

171. Plaintiff repeats, realleges, reavers and incorporates all statements above, as if specifically set forth herein.

172. There was an agreement between all defendants in this case to break the law as set forth in the recitation of facts hereinabove.

173. As co-conspirators, each defendant became an agent of each other defendant in the furtherance of the activities calculated to harm the plaintiff.

174. The acts of the co-conspirators were calculated to deceive the Plaintiff and to carry out illegal objectives as set forth in the Factual Recitations.

175. The Plaintiff was harmed by this conspiracy.

176. The conspiracy related acts as described in the recitation of facts above, were a substantial factor in causing the Plaintiff's harm.

**COUNT TEN**

**Infliction of Emotional Distress**

177. Plaintiff repeats, realleges, reavers and incorporates all statements above, as if specifically set forth herein.

178. The actions of the defendants have caused the Plaintiff to suffer great emotional and resulting physical damage, as set forth in the recitation of facts hereinabove.

179. The Plaintiff was harmed by the actions of the defendants.

180. The wrongful acts as described in the recitation of facts above, were a substantial factor in causing the Plaintiff's harm.

**COUNT ELEVEN**

**Defamation**

181. Plaintiff repeats, realleges, reavers and incorporates all statements above, as if specifically set forth herein.

182. Each defendant in this case spoke, wrote or acted in such a way as to defame the name, reputation and standing of the plaintiff.

183. Those statements were false and defamatory.

184. Those statements were published in an unprivileged publication to one or more third persons.

185. The Plaintiff was harmed by this defamation.

186. The defamation related acts as described in the recitation of facts above, were a substantial factor in causing the Plaintiff's harm.

**PRAYER FOR RELIEF**

**WHEREFORE,** The Plaintiff seeks the following relief from this Honorable Court:

1. injunctive relief in the immediate return of all her intellectual property including, without limitation, her scientific notebooks and journals as described above;
2. Judgment in an amount sufficient to compensate her for the emotional harm caused

- by the defendants;
3. A retraction of all statements that have defamed the Plaintiff, by each defendant, to the extent that defendant caused the harm;
  4. Judgment in an amount sufficient to compensate the Plaintiff for her loss of Civil Rights, and her loss of dignity;
  5. Judgment in an amount sufficient to compensate the Plaintiff for her loss of opportunity to perform work;
  6. Punitive damages in an amount sufficient to punish the defendants for their wrongful, negligent and intentional acts; and
  7. Such other relief as this Honorable Court shall deem just.

**PLAINTIFF DEMANDS TRIAL BY JURY**

DATED July 27, 2015.

LAW OFFICES OF HUGO & ASSOCIATES, LLC

By /S/ Michael R. Hugo  
Michael R. Hugo, *Pro Hac Vice*  
BBO # 243890

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