

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT

MIDDLESEX, ss.

Middlesex Superior Court
Civil Action Number: 21-1904

BABAK BABAKINEJAD

Plaintiff

v.

MASSACHUSETTS INSTITUTE OF TECHNOLOGY

Defendant

PLAINTIFF’S RESPONSE TO MIT’S STATUS REPORT CONCERNING DISCOVERY

Pursuant to the Superior Court’s hearing on September 27, 2023, Babak Babakinejad “Plaintiff”, *pro se* hereby responds to Defendant “Massachusetts Institute of Technology (MIT)” status report ordered during September 27, 2023 hearing.

1. The Court instructed Defendant on September 27, 2023 to submit a report about its document production, after which Plaintiff was to respond. Defendant filed its status report on November 3rd without serving it upon Plaintiff which Plaintiff only discovered by looking at the docket for unrelated reason several days ago.
2. Plaintiff expresses serious concerns regarding Defendant's misrepresentations of facts to the court throughout these proceedings, and instead of providing details of their first set of document production, Defendant continues to advance misleading and unwarranted arguments, relating to it’s internal research misconduct investigation(s), and other matters, apparently in violation of the court's instruction on September 27, 2023 to Defendant, against doing so.
3. Defendant's November 3, 2023 status report, contains inaccuracies in chronological details¹ and consistent with their previous filings, exhibits a pattern of misleading representations. These inaccuracies undermine the credibility of Defendant’s statements and further reinforces concerns regarding the integrity of MIT’s disclosures.

¹ The MIT status report filed on November 3, 2023, references for instance, court Orders dated September 23, 2023, and November 23, 2023. Plaintiff notes that these dates do not correspond to any known court Orders, casting doubt on the accuracy and reliability of the information presented in the report by Defendant.

MIT DOCUMENT PRODUCTION

4. While Defendant claims it's document production includes 2,271 pages from 10 out of 19 custodians. However, many of these pages are empty or irrelevant, Moreover, this initial production is notably deficient, incomplete, missing crucial information pertinent to this case, particularly regarding Plaintiff's employment and environmental harm, that appear to be key subjects of this production.
5. Defendant's deliberate and strategic pattern of selective disclosure – favouring their misleading arguments while suppressing documents beneficial to Plaintiff – is manifestly clear.
6. Documents are indiscriminately marked as 'confidential,' obstructing the discovery process rather than protecting sensitive information. This blanket confidentiality also appears aimed at hiding crucial documents. While the Defendant's initial production includes a few documents that could reveal the Defendant's past misrepresentations to the court, and support the sought depositions, the Plaintiff's ability to address these is hindered by issues relating to the existing confidentiality order (*See*: Paragraph #21).
7. It has become evident that achieving significant discovery by the end of the year, as the Court had hoped, is impossible due to the ongoing circumstances as MIT persists in withholding documents that are directly relevant to Plaintiff's claims. Plaintiff seeks the Court's assistance and enforcement of appropriate sanctions to address these ongoing disclosure issues, which were previously highlighted by Plaintiff in earlier pleadings and hearings.

MIT IN CAMERA SUBMISSION

8. On October 19, 2023, the Court ordered MIT to provide five examples of its research for *in-camera* review. These include documents reflecting MIT's investigation into any research misconduct by Caleb Harper or OpenAg, which are withheld from production on grounds of privilege, relevance, or confidentiality. While the Court's decision for *in-camera* review of examples from Defendant's research misconduct report(s) or investigation(s) relating to Caleb

Harper and/or OpenAg is appreciated, it is crucial to emphasize that this approach is insufficient given concerns over MIT's credibility.²

9. The significant involvement of individuals described as "third parties" in the research misconduct reports, as indicated by MIT in their status report, only reinforces Plaintiff's arguments about systemic issues at the MIT organization, which are pertinent to Plaintiff's claims and MIT's motivations in Plaintiff's wrongful termination in violation of public policy.
10. **None of the policies Defendant cites in their "status report" carry the force of law.** Where information is relevant to the case and not privileged, the court should compel the production of this report for its direct relevance to his claims and necessary for discovery in this lawsuit.
11. The fact that MIT did not commence an "initial inquiry" until May 1, 2020, as MIT claims, 19 months following Plaintiff's wrongful termination, or its misleading claim of receiving the first allegation related to OpenAg on August 28, 2019, a full year after Plaintiff's wrongful termination, and concluding it on July 14, 2021, is highly pertinent. The delay in these actions and the misleading nature of MIT's statements do not diminish the relevance of this information to Plaintiff's claims.
12. It is clear that the documents essential to this case are not limited to those directly mentioning Plaintiff and such arguments must be dismissed. The timing, and in some cases the absence, of MIT's investigations plays a crucial role in uncovering Defendant's misconduct and underlying motives. This directly pertains to Plaintiff's claims and highlights MIT's institutional complicity.
13. Contrary to Defendant's false statement to the court, Plaintiff never stated that all named individuals named in the research misconduct report were directly involved in his wrongful termination. However, this does not imply that these individuals or complainants were unaware of relevant fraudulent activities, Plaintiff's whistleblowing, Plaintiff's fraudulent inducement to

² Concerns about protecting the privacy of what MIT claims as "unrelated" "third parties" should not impede the examination of relevant facts and evidence to this lawsuit and scrutinising five examples will inadvertently aid Defendant in its endeavours to conceal information that is both relevant and essential.

employment, or his subsequent wrongful termination. Nor does it mean they did not contribute to the fraud and misconduct or were in fact critics of it. Information regarding these individuals and their actions or knowledge is crucial and directly relevant to Plaintiff's claims.

14. In cases where the information contains Personally Identifiable Information (PII), confidentiality order or protective orders where justified could restrict disclosure, except as evidence in court. **This measure would safeguard sensitive information while still allowing for a full examination of the facts.**
15. The Court must prevent Defendant from using internal processes, investigations, or the absence thereof, as a means to hide or shield information pertinent to Plaintiff's claims, especially under the pretext of protecting the privacy of third party. This is particularly important given the allegations of fraud and criminal conduct against Defendant, that are highly relevant to Plaintiff claims. Relying solely on excerpts or summaries as Defendant now requests, must be rejected as it would inadequately represent the complexity of the issues involved and could certainly lead to misinterpretation or oversight of vital information.
16. There is a critical need for the information Defendant has withheld – that it is relevant and admissible to allow Plaintiff to present his case and prove his claims.
17. Possessing extensive knowledge and expertise, Plaintiff asserts that full access to all relevant research misconduct inquiries and reports is crucial to prevent the abuse of the discovery process and to ensure its efficiency. Denying discovery into the research misconduct which is directly relevant to Plaintiff claims, is *severely prejudicial* to the case, effectively denying Plaintiff a fair opportunity to inspect relevant documents presenting the full and accurate scope of their claims. Discovery should encompass all information pertinent to research misconduct or related matters to Plaintiff's claims. Accessing complete report is both efficient and essential for a fair resolution of the dispute. Plaintiff must be allowed to prove his claims and counter false and fabricated documents resulting or relating to his whistleblowing, MIT's motives and intent relevant to his claims of wrongful termination.

18. An expert witness, specialising in research integrity, is also essential for accurately interpreting the investigation and report(s). Without complete access, expert's ability to provide a detailed and accurate analysis is significantly hindered, thereby impeding the court's ability to make a fully informed decision.
19. Plaintiff respectfully requests the court to: expeditiously grant discovery of documents relating to MIT's research misconduct investigation(s) and other relevant investigations and documents (*See*: Plaintiff's Supplemental Memorandum of Legal Authority, *See*: Docket #30).
20. Plaintiff requests the court to: include the *in-camera* documents reviewed by the court as part of the record for the purpose of fair judicial process, even if sealed to promote accountability and serve in the public interest through future legal or policy changes and for completeness of record.
21. Defendant's biased and restrictive disclosure profoundly undermines Plaintiff's ability to build an effective case. It is therefore imperative, for the sake of justice and fairness, that the Court mandates a more thorough discovery process and reevaluates the confidentiality order (*See*: Defendant's Proposed Confidentiality Document ordered by the Court on August 2, 2022, Docket #15, Paragraph H item 1), to prevent its abuse in concealing crucial information, ensuring an equitable discovery landscape.³
22. It is imperative that the Court be hypersensitive to existing imbalances between a self litigant and MIT as a powerful Defendant from taking advantage of legal loopholes, delays, abuse of confidentiality order, and discovery by continual withholding of relevant information, that are prejudicial to Plaintiff throughout this proceedings to ensure the progress of this case and the fair administration of justice without causing unnecessary delays.
23. Plaintiff respectfully urges the Court to schedule an urgent hearing to address these critical issues in order to ensure the integrity and fairness of the legal process.

Respectfully submitted,

³ Please also see Docket # 12.1, Attachment A: Plaintiff's Opposition to Defendant's Confidentiality Order and Plaintiff's Alternative Confidentiality Order.

Plaintiff Babak Babakinejad, *pro se*

/s/ Babak Babakinejad

Babak Babakinejad
280 Western Avenue, Apt #3
Cambridge MA 02139
857-206-1359
Babak.babakinejad@gmail.com

Date: Nov 29, 2023

CERTIFICATE OF SERVICE

I, Babak Babakinejad, hereby certify that on this 29th day of November, 2023, I served a copy of the foregoing document upon counsel for all other parties to this action by eFiling and electronic mail.

/s/ Babak Babakinejad

Babak Babakinejad