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COMMONWEALTH OF MASSACHUSETTS

SUPERIOR COURT

MIDDLESEX, ss.

Middlesex Superior Court
Civil Action Number: 21-1904

BABAK BABAKINEJAD

RECEIVED

Plaintiff

v.

02/23/2024

MASSACHUSETTS INSTITUTE OF TECHNOLOGY

Defendant

MOTION FOR DEFAULT JUDGMENT
(Mass R. Civ P. 55(b)(2)) & MOTION TO COMPEL DISCOVERY
WITH REQUEST TO EXTEND TRACKING ORDER

Babak Babakinejad “Plaintiff”, proceeding *pro se*, moves this Court for a default judgment against Defendant, Massachusetts Institute of Technology (MIT), due to Defendant’s continued non-compliance with Court orders, notably those dated June 23 and December 6, 2023. MIT's refusal to provide essential documents has severely compromised Plaintiff’s ability to discover facts about his claims and present a fair case, particularly with the discovery deadline of February 29, 2024 fast approaching.

This persistent defiance of Court orders necessitates a decisive Court action, including the entry of a default judgment. If however the Court disagrees, Plaintiff alternatively seeks an immediate and enforceable deadline to avoid stalling on the part of Defendant, and a 60-day extension to the tracking order following compliance.

br

Plaintiff submits the following in support of this motion:

1. This case centres on allegations that Plaintiff, a former Research Scientist and Research Lead at MIT's Open Agriculture Initiative (OpenAg), wrongfully terminated in violation of public policy, as well as other serious and illegal matters. Plaintiff raised concerns about research misconduct, fraudulent fundraising, and other illegal activities at MIT, including endangering public health and safety through illegal chemical discharges into the sources of drinking waters of Massachusetts residents.
2. A critical element of Plaintiff's case is the connection between his employment, termination, and fraudulent fundraising activities by MIT. Plaintiff asserts that their termination was not merely a reaction to whistleblowing, but also a consequence of the institutional complicity and potential impact of these disclosures on MIT's officers and senior leadership who had been leveraging the OpenAg for years as a key tool in their fundraising and promotional activities, underlying Defendant's motives. Such consequences were critical in precipitating Plaintiff's termination, and egregiousness of MIT's conduct and continued complicity, to improperly obscure essential details important for Plaintiff in this lawsuit.
3. This Court is duly informed that Defendant possesses information crucial to Plaintiff's claims, including MIT's internal research misconduct investigation, financial records, and documents concerning environmental discharges, yet Defendant continues to withhold it improperly; Despite Court's orders on June 23, 2023 and December 6, 2023, Defendant has continuously refused to produce the required documents.
4. On June 23, 2023, the Court ordered Defendant, reserving all rights with respect to a demonstrated need for additional custodians, an initial list of custodians established by MIT; as well as production of documents sufficient to identify: i) any fundraising goal(s) ii) the total amount raised for the project (*See*: Docket #28).

5. Subsequently, On December 6, 2023 following a review of *in camera* documents submitted by Defendant, Court denied MIT's motion for a protective order to avoid discovery of documents and information pertaining to MIT's investigation of research misconduct (*See*: Docket #35).
6. Defendant has now persisted for over 200 days, excluding all public holidays, in failing to comply with the court order to produce core custodian documents specifically those of Caleb Harper and Maria Zuber, and financial information by MIT.
7. Further, the incomplete and selective nature of the custodian information that has been produced thus far¹ exacerbates concerns regarding Defendant's improper withholding of relevant information from the custodians it claims to have produced.
8. MIT's defiance of, and persistent refusal to adhere to Court rulings pertaining to the research misconduct report is a flagrant violation of the Court's authority. This defiance, excluding all public holidays observed in Massachusetts, has extended over a period of more than 50 days.
9. Plaintiff wishes to emphasize that MIT fully possesses the capability to produce the required documents. This fact is particularly evident in the case of the research misconduct report, which, as the Court is aware, was concluded in 2021. This report's existence and MIT's failure to produce it, is the clearest possible indication that MIT's omissions are deliberately and willfully disobedient.
10. While Plaintiff has diligently pursued resolutions independent of judicial intervention, there has been a consistent pattern of non-cooperation from counsels representing Defendant, particularly and most recently actions of Manatt, Phelps & Phillips, LLP, specifically by the white-collar defense attorney Mr. Martin F. Murphy (lead counsel for Defendant).

¹ Update on rolling production:

- a. Plaintiff's ongoing document production, last updated on January 31, 2024, encompasses over 14,000 pages of discovery documents, 9,410 Bates-numbered items, and in excess of 70 video recordings.
- b. In contrast, Defendant has produced 8,304 pages across three email submissions, with the most recent being on December 19, 2023. Among other deficiencies, Defendant's production is noted to lack key searches from custodians such as Caleb Harper and Maria Zuber.

11. A few examples of MIT's counsels' failures to properly engage with Plaintiff include:
 - a. Failure to respond to Plaintiff's communications regarding Mr. Barak Berkowitz's representation, a key custodian and witness, followed by apparent removal of his recent MIT appointment from MIT Connection Science website and restricting access to his profile (*See*: Exhibit A)
 - b. Failure to respond to Plaintiff's communications regarding adherence to Court orders (*See*: Exhibit B)
 - c. Systematic refusal to serve MIT's Court filings with Plaintiff, despite requests (*See*: Exhibit C)
 - d. Disregard, procrastination, and significant delay in maintaining current Court records regarding counsel representation (*See*: Exhibit D)²
12. Such evasive behavior, compounded by Defendant's refusal to follow court orders, disrupts the fair and efficient operation of the judicial process.
13. Furthermore, the protracted nature of MIT's delays and non-compliances has functioned as a time-depleting strategy, effectively exhausting the allocated time for discovery set on June 23, 2023, for discovery to be completed by February 29, 2024. This unjustly deprives Plaintiff of the opportunity for appropriate discovery, leaving them in a position of significant disadvantage, rendering the current deadline untenable.
14. Given the developments in the current case, Plaintiff humbly submits to the court's consideration that a default judgment, or at least the credible threat thereof, might be the sole effective means to contend with the existing circumstances, the more so in light of MIT's persistent defiance of Court orders and noncompliance. Nonetheless, Plaintiff maintains the importance of a comprehensive discovery process to fully present the facts of the case to a jury.

²In accordance with the details in the exhibited communications, Defendant's counsel failed to promptly inform the court of Attorney Lancey's departure, despite indications that she ceased representing Defendant as early as November 16, 2023. Instead of promptly updating the court record, Defendant's counsel procrastinated until January 8, 2024, to inform the court, failing to serve Plaintiff as their usual practice.

For the foregoing reasons, Plaintiff respectfully requests that this Court enter a judgment of default against Defendant. Plaintiff further requests the Court to schedule a trial for the purpose of determining the appropriate amount of damages to be awarded.

If the Court, however, determines that a default judgment is not warranted at this juncture; In the alternative, Plaintiff urges the Court to establish a definitive deadline for Defendant to comply with its orders, to prevent any further stalling, otherwise facing a default judgment. In this scenario, Plaintiff respectfully requests the Court to provide without delay Defendant's *in camera* filings retained by the Court, under the existing confidentiality, for Plaintiff's examination. Plaintiff further requests the Court to extend the deadline for document production by 60 days subsequent to Defendant's full compliance with the Court's directives.

Respectfully submitted,

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: February,1 2024

CERTIFICATE OF SERVICE

I, Babak Babakinejad, hereby certify that on this 1st day of February, 2024, I served a copy of the foregoing document upon counsel for all other parties to this action by electronic mail.

/s/ Babak Babakinejad

Babak Babakinejad

EXHIBIT A



Representation Inquiry - Barak Berkowitz (Babakinejad vs. MIT)

Babak Babakinejad <babak.babakinejad@gmail.com>

16 May 2023 at 09:18

To: Manousos Gregory <GManousos@morganbrown.com>, "Collins, Jeffrey" <jcollins@morganbrown.com>

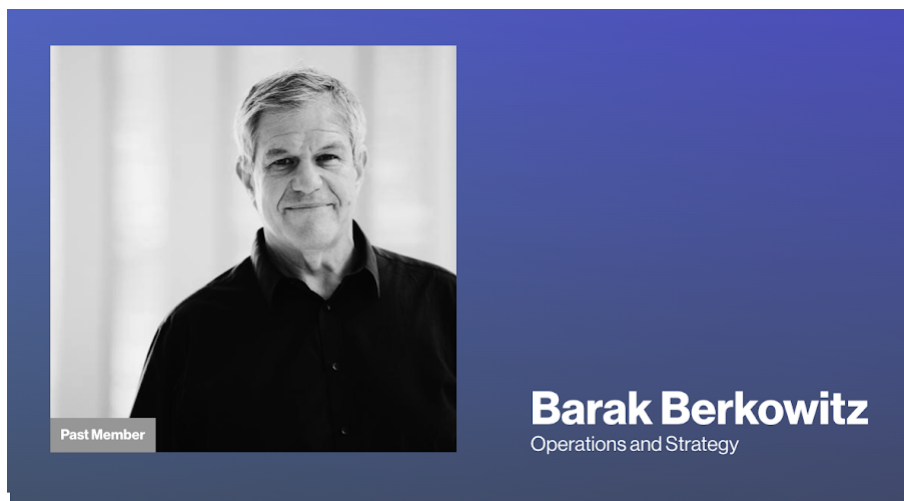
Please, Attorney Manousos and Attorney Collins, kindly acknowledge my previous email and provide a timely response.

Thank you.
Sincerely,

Babak Babakinejad
857-206-1359

"Truth will ultimately prevail where there is pains taken to bring it to light." -George Washington

On Mon, 15 May 2023 at 07:35, Babak Babakinejad <babak.babakinejad@gmail.com> wrote:



Gentlemen,

I hope this email finds you well. I am reaching out to inquire if you are currently representing Barak Berkowitz. As discussed in the information provided below, I have a compelling reason to believe that Mr. Berkowitz possesses crucial knowledge that is highly relevant to this lawsuit.

Barak Berkowitz, until recently, held the position of Director of Operation and Strategy at MIT Media Lab and had a longstanding business association with the disgraced Director of the Media Lab, Joi Ito. As a member of MIT Media Lab leadership, has been actively involved with Joi Ito, Joe Paradiso, other Media Lab Jeffrey Epstein's associates, as well as Martha Collins.

Mr. Berkowitz possesses unique personal knowledge regarding the relationship between the Open Agriculture Foundation, OpenAg Inc. (formerly known as Fenome Inc.), Jeffrey Epstein, Caleb Harper, and MIT OpenAg's fraudulent fundraising activities, wrongful fundraising practices at MIT, their connection to Epstein. the involvement of MIT Leadership in OpenAg fundraising. He has relevant information on Jeffrey Epstein's funding of the Media Lab and projects related to OpenAg.

During his tenure, Mr. Berkowitz helped establish and served as a director of OpenAg Inc. until 2017 and has unique relevant knowledge about the failures of the Food Computers project and false representations relating to the functionality and deployment of the Food Computers.

Moreover, Barak Berkowitz has intimate knowledge concerning concerns raised about OpenAg and Caleb Harper, as well as fraudulent misrepresentations of the Food Computers and fraudulent fundraising practices.

Mr. Berkowitz has unique first-hand knowledge about the connection between OpenAg Inc. (Fenome Inc), Open Agriculture Foundation, and Open Agriculture Initiative, and has unique, firsthand knowledge of the establishment of MIT Media Lab initiatives, and related fraudulent enterprises. Despite being aware of the failures associated with the Food Computers, Plaintiff's whistleblowing, environmental noncompliance, and other personnel's whistleblowing, Mr. Berkowitz continued, to support Caleb Harper and the OpenAg fundraising.

Based on information and belief, Mr. Berkowitz played a supervisory role for Caleb Harper. Mr. Berkowitz possesses relevant and unique knowledge regarding Plaintiff's whistleblowing activities. Furthermore, Barak Berkowitz has unique and relevant knowledge of mistreatment and retaliation against Plaintiffs and other employees as a result of their internal whistleblowing.

Significantly, Mr. Berkowitz has maintained a close connection with Martha Collins, who served as the Director of Media Lab HR. On 05-04-2018, Barak Berkowitz, Martha Collins, and Morgan Binswanger established Yarnlabs, another MIT-related nonprofit organization. This timing coincided with Plaintiff's whistleblowers and raised concerns regarding Open Agriculture and interactions involving Martha Collins and Caleb Harper.

Both Barak Berkowitz and Martha Collins resigned from their directorship positions, and Yarnlabs as the OpenAg and Epstein scandals emerged. Yarnlabs is currently managed by associates of Joi Ito and MIT and Media Lab Advisory Council Members.

Significantly, MIT has recently appointed Mr. Berkowitz as a fellow on [MIT Connection Science](#). FYI, MIT Connection Science involves individuals with knowledge of Plaintiff's whistleblowing, and the involvement of Jeffrey Epstein's association with MIT, who continue to maintain extensive and close ties with Joi Ito.

Given Mr. Berkowitz's involvement and extensive knowledge of matters relating to Plaintiff's claims, Mr. Berkowitz is a highly important witness whose deposition would be valuable to establish facts surrounding Plaintiff's claims.

Given the significance of Mr. Berkowitz's knowledge and insights, it is imperative that I ascertain his current legal representation.

I look forward to hearing from you,

Sincerely,
Babak

Babak Babakinejad
857-206-1359



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Barak Berkowitz

Connection Science Fellow



Barak has been a leader in the use of technology to solve human problems for his whole career. He is currently researching how Federated Learning could unlock the knowledge hidden in failed drug trial data.

Barak is the founder of MarketCentrix, a consumer strategy consultancy for tech companies. Barak consults to start-ups, VCs, and large companies and serves as a board member or advisor to start-ups.

Most recently, Barak was the Director of Operation and Strategy at the MIT Media Lab. Prior to the Media Lab, Barak was CEO of Evi, the virtual personal assistant acquired by Amazon, and is now the intelligence in Amazon Alexa. Over his 30 years + in consumer technology, Barak established a broad range of businesses. He was the founder or senior executive in many start-ups, including Wolfram Alpha, Six Apart, OmniSky, The Go Network, and Logitech. Before Logitech, Barak spent over nine years at Apple USA and Apple Japan in several roles leading consumer marketing, and he was the founding manager of Macy's Computer Stores.

Barak got involved in technology as an operational manager at the New York Public Interest Research Group.

Starting in the late 1970s, Barak perceived how personal technologies could connect individuals and organizations, putting the power of computers and networks in everyone's hands. He has dedicated his career to making that a reality.

Contact: connections@mit.edu

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EXHIBIT B



Babakinejad Production 1

Babak Babakinejad <babak.babakinejad@gmail.com>
To: ALancey@manatt.com, mfmurphy@manatt.com


27 September 2023 at 15:26

Resending this since it seems you haven't received it.

Thanks,
Babak

Dear Attorneys Lancey and Murphy,

I recently learned of your appointment representing MIT. Please find a link to a folder with documents related to discovery and the court order dated June 23, 2023.


Further, if there are any reasons for not having produced information related to the court order's item 2 (Financial Information regarding Fundraising for the Food Computer Project), please provide those reasons. Otherwise, I will be filing a motion for sanctions.

Please feel free to reach out with any questions.

Kind regards,

Babak Babakinejad

EXHIBIT C



Babakinejad vs MIT - re: Defendant's Status Report

Babak Babakinejad <babak.babakinejad@gmail.com>

29 November 2023 at 09:08

To: "Lancey, Alex" <ALancey@manatt.com>, "Murphy, Martin" <mfmurphy@manatt.com>

Dear Attorney Lancey and Attorney Murphy,

Pursuant to the court order from September 27, 2023, please find attached the Plaintiff's response to MIT's Discovery Status Report e-filed this morning with the Superior Court.

I was not served with your report, which I later found was filed on November 3rd. Please ensure all future filings and reports are shared with me promptly as this is crucial for case management.

Thank you for your attention to this matter.

Regards,
Babak

Babak Babakinejad
857-206-1359


 **BB vs MIT re MIT Status Report 29 Nov 2023.pdf**
128K

EXHIBIT D



re: 2181CV01904 Babakinejad vs MIT

Babak Babakinejad <babak.babakinejad@gmail.com>
To: alexandra.lancey@lockelord.com
Cc: "Murphy, Martin" <mfmurphy@manatt.com>

9 December 2023 at 09:18

Dear Attorney Lancey,

I recently learned that you have moved to a different law firm. To ensure accurate management of case-related documents and communications, could you please confirm whether you are still representing MIT, and update the court records accordingly if there have been changes?

Thank you for your attention to this matter,

Kind regards,
Babak



Babak Babakinejad <babak.babakinejad@gmail.com>

Automatic reply: Babakinejad vs MIT - re: Defendant's Status Report

Lancey, Alex <ALancey@manatt.com>
To: Babak Babakinejad <babak.babakinejad@gmail.com>

29 November 2023 at 09:08

As of 11/16/2023 Alex Lancey is no longer with Manatt Phelps & Phillips LLP. For immediate assistance, please contact Jovita Bennett at JBBennett@manatt.com

Massachusetts Institute of Technology - Defendant

Alias

Party Attorney

Attorney	Lancey, Esq., Alexandra G
Bar Code	709895
Address	Manatt, Phelps and Phillips 177 Huntington Ave Suite 2500 Boston, MA 02115
Phone Number	(617)646-1399
Attorney	Murphy, Esq., Martin F
Bar Code	363250
Address	Manatt Phelps and Phillips LLP 177 Huntington Ave Suite 2500 Boston, MA 02115
Phone Number	(617)646-1447

[More Party Information](#)

Babak Babakinejad PhD
857-206-1359



re: 2181CV01904 Babakinejad vs MIT

Babak Babakinejad <babak.babakinejad@gmail.com>

26 December 2023 at 07:09

To: alexandra.lancey@lockelord.com, "Lancey, Alex" <alancey@manatt.com>, "Murphy, Martin" <mfmurphy@manatt.com>

Hello,

I hope this message finds you well. I wanted to follow up on the email I sent on December 9th, inquiring about the status of Attorney Lancey's representation of MIT and the accuracy of MIT representation on the docket.

While I fully appreciate that we all have busy schedules, the lack of response in this case, among other things, is unprofessional and is impeding the discovery process. Since Attorney Lancey continues to have access to my files on Google Drive under her personal Gmail account, I urgently require clarification regarding your ongoing access and permissions in this regard, before proceeding to add any more files to the folder.

Thank you for your attention to this matter.



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Done

Regards,
Babak

[Quoted text hidden]



re: 2181CV01904 Babakinejad vs MIT

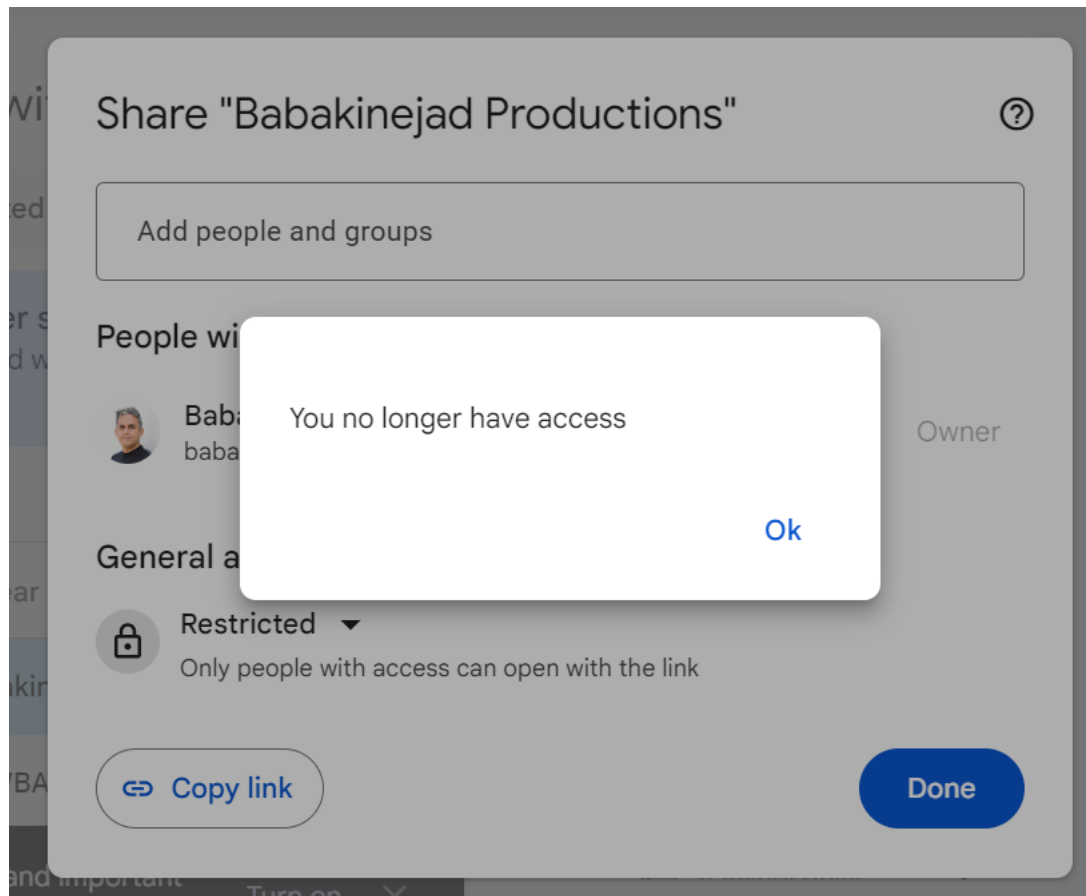
Lancey, Alex <Alexandra.Lancey@lockelord.com>

26 December 2023 at 09:06

To: Babak Babakinejad <babak.babakinejad@gmail.com>, "Lancey, Alex" <alancey@manatt.com>, "Murphy, Martin" <mfmurphy@manatt.com>

Good morning, Babak,

I believe Marty and his team are handling this, but in the meantime, I've removed myself from the Google folder. I no longer have access. You'll need to share access with other folks on the legal team at Manatt in order to allow them to view any additional files that you may add.



Thanks,

Alex

Alex Lancey | **Locke Lord LLP** | 802-999-7505



re: 2181CV01904 Babakinejad vs MIT

Babak Babakinejad <babak.babakinejad@gmail.com>
To: "Lancey, Alex" <Alexandra.Lancey@lockelord.com>
Cc: "Lancey, Alex" <alancey@manatt.com>, "Murphy, Martin" <mfmurphy@manatt.com>

26 December 2023 at 09:33

Dear Alex,

Thank you very much for getting back to me.

I'm concerned about whether the court is aware of your withdrawal, as it appears to have been several weeks since you left Manatt / withdrawn(?). Unless I'm mistaken, it is the responsibility of the attorney who has withdrawn to formally withdraw their representation or keep their information on the docket accurate. This action should not be contingent upon Attorney Murphy's decision (who has been cc'd in all communications). Could you please clarify if this has been done?

Regards,
Babak

[Quoted text hidden]

[Quoted text hidden]

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4 attachments

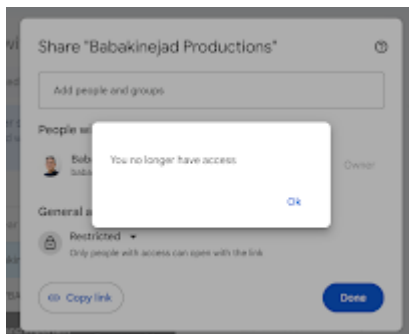


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