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March 9, 2017

By ECF and Fax

Hon. Paul G. Gardephe  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, New York 10007  
Fax: (212) 805-7986

**Re: *Goldman v. Barrett*, 15 Civ. 9223 (S.D.N.Y.) (PGG) (HBP)**

Dear Judge Gardephe:

I write on behalf of defendant Dr. Stephen J. Barrett to request leave to file a motion for sanctions against the plaintiffs and their counsel for having filed, and refusing to abandon, this factually baseless lawsuit.<sup>1</sup> We have already drafted and served (but not yet filed) the motion, as required under Rule 11(c)(2), and the 21-day period for the plaintiffs to withdraw their complaint has elapsed without them having done so.

The grounds for the motion are briefly summarized below.

As the Court may recall, the case was brought by two multi-millionaire promoters of anti-aging “medicine” who, in their original complaint, sought to bully Dr. Barrett into deleting an article from a nonprofit consumer advocacy website he operates called “Quackwatch.” The article truthfully reported that the State of Illinois disciplined and fined the plaintiffs for falsely using the term “M.D.” after their names. The plaintiffs have degrees from a school in Belize that is not recognized as a basis for an M.D. license under Illinois law. The Court dismissed all the claims in the original complaint because (among other reasons), the article was not alleged to have said anything false. *Goldman v. Barrett*, 15 Civ. 9223, 2016 WL 5942529 (S.D.N.Y. Aug. 24, 2016).

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<sup>1</sup> Alternatively, if the Court prefers, we would respectfully request a pre-motion conference.

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The Court granted leave to amend, *id.* at \*11, and the plaintiffs have filed an Amended Complaint based on different allegations that were suspiciously omitted from the original complaint. The plaintiffs now claim that, sometime in the spring of 2015 or earlier, Dr. Barrett spoke by phone with government officials from China and Malaysia who were conducting due diligence for business ventures with the plaintiffs, and he allegedly told the officials various defamatory falsehoods about the plaintiffs, including that the plaintiffs were likely face criminal prosecution in the U.S. (ECF 26 ¶¶ 41-62.) According to the Amended Complaint, these conversations caused the projects to be cancelled. (*Id.*) The plaintiffs have brought claims for (1) defamation, (2) tortious interference, and (3) civil conspiracy. (*Id.* ¶¶ 63-86.)<sup>2</sup>

We have moved to dismiss the Amended Complaint because (among other reasons) it is untimely. That motion is pending.

Separate and apart from the legal flaws with the Amended Complaint detailed in our pending motion, the core factual allegations in the Amended Complaint are a complete fabrication and are wildly implausible. Dr. Barrett never spoke to any government officials or made the statements attributed to him in the Amended Complaint. And it is simply unbelievable that government officials would, based solely on the say so of a retired doctor with no relationship to the plaintiffs, cancel otherwise lucrative business projects — apparently without even giving the plaintiffs an chance to defend themselves. It is especially suspicious that the alleged phone calls and cancellation of these lucrative contracts were not mentioned in the earlier complaint, or in any of the parties' discussions before the complaint was filed.

We have provided the plaintiffs with his home and cell phone records, which reveal no calls to or from China or Malaysia during the relevant timeframe, as well as a sworn statement from Dr. Barrett that these conversations never happened. We have implored plaintiffs' counsel to set forth some factual basis for believing these conversations actually happened, or, at a minimum, to set forth what discovery they might seek that could indicate whether the conversations happened. They have refused to provide anything.

Under Rule 11, "sanctions are appropriate where an attorney or party declines to withdraw a claim upon an express request by his or her adversary after learning that [the claim] was groundless." *Fuerst v. Fuerst*, 832 F. Supp. 2d 210, 220 (E.D.N.Y. 2011). Further, under 28 U.S.C. § 1927, a lawyer can be personally liable for prolonging the litigation for claims that the lawyer learns are groundless. *See, e.g., Baker v. Urban Outfitters, Inc.*, 431 F. Supp. 2d 351, 362 (S.D.N.Y. 2006).

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<sup>2</sup> The Amended Complaint mentions the allegations concerning the Quackwatch article (*id.* ¶¶ 26-39), but does not actually assert any claims based on the article. (*Id.* ¶¶ 63-86.)

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We thank the Court for its attention to this matter.

Respectfully,

A handwritten signature in black ink, appearing to read "Charles Michael".

Charles Michael