

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

DR. ROBERT M. GOLDMAN and  
DR. RONALD KLATZ,

Plaintiffs,

*—against—*

DR. STEPHEN J. BARRETT and  
QUACKWATCH, INC.,

Defendants.

15 Civ. 9223 (PGG) (HBP)

**DR. STEPHEN J. BARRETT'S MEMORANDUM OF LAW  
IN SUPPORT OF HIS MOTION FOR SANCTIONS**

STEPTOE & JOHNSON LLP  
1114 Avenue of the Americas  
New York, New York 10036  
(212) 506-3900

February 14, 2017

**TABLE OF CONTENTS**

INTRODUCTION ..... 3

BACKGROUND ..... 4

DISCUSSION..... 5

    I.        THE COURT SHOULD SANCTION THE PLAINTIFFS AND THEIR  
            COUNSEL FOR FILING AND REFUSING TO DROP THEIR BASELESS  
            ALLEGATIONS..... 5

CONCLUSION..... 7

# **TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>CASES</b>	
<i>Baker v. Urban Outfitters, Inc.</i> , 431 F. Supp. 2d 351 (S.D.N.Y. 2006).....	6
<i>Fuerst v. Fuerst</i> , 832 F. Supp. 2d 210 (E.D.N.Y. 2011) .....	6
<i>Gambello v. Time Warner Commc'ns., Inc.</i> , 186 F. Supp. 2d 209 (E.D.N.Y. 2002) .....	7
<i>Goldman v. Barrett</i> , No. 15 Civ. 9223, 2016 WL 5942529 (S.D.N.Y. Aug. 24, 2016) .....	4
<i>Midlock v. Apple Vacations West, Inc.</i> , 406 F.3d 453 (7th Cir. 2005) .....	7
<i>O'Malley v. N.Y.C. Transit Auth.</i> , 896 F.2d 704 (2d Cir. 1990).....	6
<i>T.B.I. Indus. Corp. v. Emery Worldwide</i> , 900 F. Supp. 687 (S.D.N.Y. 1995).....	7
<b>STATUTES</b>	
28 U.S.C. § 1927.....	6, 7
<b>RULES</b>	
Fed. R. Civ. P. 11(b)(3).....	5
Fed. R. Civ. P. 11(c)(1).....	6

## INTRODUCTION

This motion seeks sanctions against the plaintiffs and their attorney for having filed and having refused to drop this baseless lawsuit.

The plaintiffs are two “anti-aging” specialists who filed this suit accusing Dr. Stephen J. Barrett of defaming them via an article on his website, “Quackwatch,” reporting that they were fined by the State of Illinois for falsely holding themselves out as “M.D.s.” The Court dismissed the case on the pleadings because (among other reasons) the article is true.

The plaintiffs have now brought an Amended Complaint accusing Dr. Barrett of disparaging them in calls with unnamed officials of the Chinese and Malaysian governments, apparently to sabotage the plaintiffs’ multi-million dollar business deals. The phone calls allegedly occurred before this suit was originally filed, yet were mentioned nowhere in the original complaint or in any of the parties’ discussions. Further, these calls supposedly led to the complete cancellation of the projects without any chance for the plaintiffs to defend themselves, solely on the word of a retired doctor that these officials had never met.

Dr. Barrett has moved to dismiss the claims on various legal grounds (such as the statute of limitations) that are pending before the Court and that do not depend on the truth or falsity of the plaintiffs’ wildly implausible allegations. But those allegations supply independent grounds for dismissal—along with additional sanctions—because they are pure fiction and never should have been presented before this Court.

In fact, Dr. Barrett has never spoken to any government official in China or Malaysia, and his phone records confirm that he never placed or received calls to these countries. He provided his phone records to the plaintiffs, but they have refused to drop their claims or explain their factual basis for believing that this incredible set of events actually occurred. This is unethical, and the Court should not hesitate to impose sanctions as set forth below.

## BACKGROUND

This 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.” (ECF 26 ¶¶ 17-21, 29.) The article truthfully reported that the State of Illinois disciplined and fined the plaintiffs for falsely using the term “M.D.” after their names. (*Id.* ¶ 30.) The plaintiffs have degrees from a school in Belize that does not qualify for “M.D” licensure under Illinois law. (*Id.* ¶¶ 3, 6.)

On August 24, 2016, the Court dismissed all the claims in the original complaint because (among other reasons) the Quackwatch article is true. *Goldman v. Barrett*, No. 15 Civ. 9223, 2016 WL 5942529, at \*11 (S.D.N.Y. Aug. 24, 2016).

On October 7, 2016, the plaintiffs filed an Amended Complaint based on different allegations that were suspiciously omitted from the original complaint. The plaintiffs now allege 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 they were likely face criminal prosecution in the U.S. (ECF 26 ¶¶ 41-62.) These conversations allegedly caused the projects to be cancelled. (*Id.*)

These allegations are not only implausible, but they are false. Dr. Barrett has never spoken with officials from either China or Malaysia regarding the plaintiffs. (Barrett Decl. ¶ 2.)

On October 16, 2016, counsel for Dr. Barrett called plaintiffs’ counsel to understand the factual basis for these dramatically changed — and facially dubious — allegations. (Michael Decl. ¶ 5.) Plaintiffs’ counsel reported the information traced back to another “anti-aging” specialist named Stephanie Kuo who heads the Chinese branch of the plaintiffs’ organization.

(*Id.* ¶¶ 6-7 & Ex. A.) Ms. Kuo allegedly heard about the conversations with Dr. Barrett from someone in the Chinese Ministry of Zoning. (*Id.* ¶ 6.)

On November 29, 2016, Dr. Barrett moved to dismiss the complaint on various legal grounds, including that the claims are untimely. (ECF 32.) As required, the motion takes the allegations at face value and assumes they are true. The motion remains pending.

In the meantime, Dr. Barrett sought to gather the evidence confirming that the allegedly phone calls never occurred. (Barrett Decl. ¶ 3.) During the relevant time, he used a home phone and a cell phone. (*Id.*) He downloaded his cell phone records, but was forced to subpoena his home phone records because he had recently cancelled service. (*Id.*; Michael Decl. ¶¶ 9-10.) The records confirm that Dr. Barrett never called or received a call from China or Malaysia during the relevant time. (Barrett Decl. ¶ 4; Michael Decl. Ex. D, at Ex. A, B.)

On January 25, 2017, after receiving the subpoenaed records, counsel for Dr. Barrett wrote a letter to the plaintiffs demanding that they drop this case. (Michael Decl. Ex. D.) Counsel for the plaintiffs initially suggested that he would provide more information about the factual basis for the claims, but ultimately provided nothing. (Michael Decl. ¶¶ 13-15.)

## **DISCUSSION**

### **I. THE COURT SHOULD SANCTION THE PLAINTIFFS AND THEIR COUNSEL FOR FILING AND REFUSING TO DROP THEIR BASELESS ALLEGATIONS**

This Court should sanction the plaintiffs and their counsel because the claims in the Amended Complaint have no basis in fact, and because they have refused to drop their claims in the face of evidence showing that their claims are untrue.

Rule 11 requires the signing attorney to certify that “the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.” Fed. R. Civ. P. 11(b)(3). The

Rule authorizes sanctions against both attorneys and parties for violations of this standard. Fed. R. Civ. P. 11(c)(1).

Further, a lawyer can be personally liable for “multipl[ying] the proceedings in any case unreasonably and vexatiously,” 28 U.S.C. § 1927, which includes 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).

Under these standards, sanctions are awarded where “after a reasonable inquiry, a competent attorney could not form a reasonable belief that the pleading is well grounded in fact,” *O’Malley v. N.Y.C. Transit Auth.*, 896 F.2d 704, 705-06 (2d Cir. 1990), as well as “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).

Those are precisely the circumstances here. The story told in the Amended Complaint should have immediately raised a red flag. It is extremely implausible that government officials would cancel profitable business ventures based on the say so of a retired doctor, and without verifying the truth of what he allegedly said. There was no reasonable basis to lodge these allegations in the first place.

But even if the initial filing could be justified, Dr. Barrett has now submitted sworn testimony that the conversations never happened, and testimony is confirmed by the contemporaneous phone records. (Barrett Decl. ¶¶ 2-3; Michael Decl. Ex. D, at Ex. A, B.) In the face of this evidence, the plaintiffs have put forth nothing to indicate how their claims could possibly be true. Their stubborn refusal to drop this case is sanctionable.

Plaintiffs' counsel cannot hide behind his clients: "A lawyer who pursues frivolous litigation cannot defend himself by arguing that his client made him do so. A lawyer is under a legal duty *not* to yield to such importunings, and he opens himself to sanctions if he does." *Midlock v. Apple Vacations West, Inc.*, 406 F.3d 453, 458 (7th Cir. 2005) (emphasis in original).

There is no shortage of cases where parties and their attorneys have been sanctioned for engaging in precisely the same conducts as the plaintiffs and their counsel have here. *See, e.g., Gambello v. Time Warner Commc'ns., Inc.*, 186 F. Supp. 2d 209, 229-30 (E.D.N.Y. 2002) (plaintiff sanctioned after refusing to withdraw complaint despite being informed that the conduct alleged in the complaint never occurred); *T.B.I. Indus. Corp. v. Emery Worldwide*, 900 F. Supp. 687, 696 (S.D.N.Y. 1995) (plaintiff sanctioned for refusing to withdraw complaint after being provided with documentation demonstrating the claims were meritless).

Consistent with these authorities, this Court should grant Dr. Barrett's motion for sanctions and issue the relief requested below.

### **CONCLUSION**

For the foregoing reasons, Defendant Stephen J. Barrett respectfully requests that the Court grant this motion for sanctions and:

1. Enter an Order dismissing this action with prejudice;
2. Enter an Order requiring Plaintiffs and/or their counsel to reimburse Dr. Barrett's fees and costs incurred in defending this action and filing this motion, pursuant to Rule 11 and 28 U.S.C. § 1927. Dr. Barrett requests ten (10) days from entry of an Order to file evidence in support of the amount of costs and attorneys' fees claimed; and
3. Grant Dr. Barrett such other relief as the Court deems appropriate to deter repetition of such conduct or comparable conduct by others similarly situated.



Dated: New York, New York  
February 14, 2017

Respectfully submitted,

By: /s/ Charles Michael  
Charles Michael  
Michael A. Keough  
STEPTOE & JOHNSON LLP  
1114 Avenue of the Americas  
New York, New York 10036  
(212) 506-3900  
cmichael@steptoe.com  
mkeough@steptoe.com

*Counsel for Dr. Stephen J. Barrett*