

**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 REPLY MEMORANDUM OF LAW
IN FURTHER SUPPORT OF HIS MOTION FOR SANCTIONS**

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Defendant Stephen J. Barrett respectfully submits this Reply Memorandum of Law in further support his Motion for Sanctions. In short, Plaintiffs fail to meaningfully respond to the arguments set forth in the original motion, and their opposition provides additional support for why this Court should sanction the Plaintiffs and their counsel.

DISCUSSION

I. SANCTIONS ARE APPROPRIATE BASED ON PLAINTIFFS' REFUSAL TO WITHDRAW THE AMENDED COMPLAINT DESPITE EVIDENCE DEMONSTRATING THE CLAIMS ARE BASELESS

Dr. Barrett's opening motion demonstrated that Plaintiffs and their counsel refused to withdraw their claims in the Amended Complaint even after being presented with evidence that their claims were untrue.

Specifically, Plaintiffs, who are multimillionaire "anti-aging" specialists, alleged that Dr. Barrett defamed them during due diligence phone calls from government officials in China and Malaysia, and that based on the bare say-so of Dr. Barrett (a retired doctor who has no business dealings or other unique knowledge of Plaintiffs), Plaintiffs' lucrative potential business ventures in those countries were cancelled. (Brief at 4.)¹ The phone calls allegedly occurred before this suit was originally filed, yet were suspiciously omitted from the original Complaint.

In response to these implausible allegations — seemingly invented because Plaintiffs' first version of the facts did not survive a motion to dismiss — Dr. Barrett provided Plaintiffs with his telephone records and his sworn statements confirming that the calls never occurred. (*Id.* at 5.) Plaintiffs nonetheless refused to withdraw their complaint and provided no evidence that contradicted the telephone records or otherwise demonstrated that their allegations had

¹ Citations to the "Brief" refer to Dr. Barrett's Memorandum of Law in Support of his Motion for Sanctions, ECF No. 42-1, and citations to the "Opp." refer to the Plaintiffs' Memorandum of Law in Opposition to the Motion for Sanctions, ECF No. 45.

merit, despite a promise to do so. (*Id.*) These circumstances are textbook grounds for Rule 11 sanctions. See *O'Malley v. N.Y.C. Transit Auth.*, 896 F.2d 704, 705-06 (2d Cir. 1990); *Fuerst v. Fuerst*, 832 F. Supp. 2d 210, 220 (E.D.N.Y. 2011).

II. PLAINTIFFS' RESPONSE TO THE MOTION MERELY CONFIRMS THAT SANCTIONS ARE APPROPRIATE

In response to Dr. Barrett's motion, Plaintiffs offer no defense except non-sequiturs and telling admissions that further support Dr. Barrett's sanctions motion.

First, Plaintiffs spend the vast majority of their opposition arguing about claims in the original Complaint. But Dr. Barrett's sanctions motion does not relate to the original Complaint at all. Specifically, the motion has nothing to do with whether the Quackwatch article was defamation and/or republication (Opp. 6-8), what information underpinned the claims in Plaintiffs' demand letter (*id.* at 8-9), or whether "black hat" techniques were used to produce web traffic to the Quackwatch website (Declaration of Wesley J. Paul, ECF No. 46, ¶¶ 17-20). The Court should ignore these arguments as irrelevant.

Second, Plaintiffs' opposition papers confirm they had no support for the allegations in their Amended Complaint. When given the opportunity to respond to Dr. Barrett's motion, the best they could muster was Plaintiff Goldman's secondhand speculation from Stephanie Kuo, who heads the Chinese branch of Plaintiffs' organization (Ex. A to Declaration of Charles Michael, ECF No. 42-3), that the conversations "likely" occurred, and "likely" caused the cancellation of the Chinese business venture. According to Plaintiff Goldman's declaration:

I was informed by Ms. Kuo in late 2015 that the applications [for the Chinese business ventures] were rejected. It was not until early 2016 that I was informed by Ms. Kuo that *the likely reason* for such rejections focused on concerns that resulted from the Article and communications that the government *likely* had with Dr. Barrett during diligence. Ms. Kuo informed me that it was not unusual during diligence examinations for Chinese government officials to hold formal or informal meetings or communications with a wide array of people.

(Declaration of Robert M. Goldman, ECF No. 47, ¶ 12 (emphasis added).) As for the Malaysian transaction, the Dr. Goldman speculates that, because the venture “halted unexpectedly,” the cause must have been “Dr. Barrett’s influence” in that case, as well. (*Id.* ¶ 14.)

It would be bad enough if Plaintiffs had based their Amended Complaint on this raw conjecture, but Plaintiffs took the further step of fabricating the specific, allegedly defamatory content of the hypothetical calls, and presenting them as fact in their Amended Complaint:

- “The Defendants told the Officials that Dr. Goldman and Dr. Klatz had violated numerous U.S. laws and they would likely be criminally prosecuted in the near future”;
- “The Defendants told the Officials that Dr. Goldman and Dr. Klatz had tried to silence Dr. Barrett by using physical force and other intimidation tactics but that the Defendants had the means and financial support to defeat Dr. Goldman and Dr. Klatz”;
- “The Defendants told the Officials that Dr. Goldman and Dr. Klatz were under further indictment by other countries for distributing drugs to foreign nations”;
- “The Defendants asked the Officials whether providing this information to them would allow Barrett to collect a fee or reward and whether such information might terminate Dr. Goldman and Dr. Klatz’s involvement in the China Project”; and
- “The Defendants told the Officials that they had more damning evidence against Dr. Goldman and Dr. Klatz and would provide such information if the circumstances were appropriate.”

(Amended Complaint, ECF No. 26, ¶¶ 50-54.) These allegations are not alleged “upon information and belief.” Even if they been, we now know that there is no information or belief

that could support these allegations because Plaintiffs have been unable to produce any. What actually happened is now quite clear: Plaintiffs needed to find a cause of action against Dr. Barrett, so they made up a story of Dr. Barrett defaming them via various statements invented out of thin air by Plaintiffs themselves.

Third, Plaintiffs offer no response to Dr. Barrett's telephone records beyond a bare assertion that "there are a myriad of ways of communication besides the telephone by which the Defendant could have communicated with such officials." (Opp. 12.) This ignores the fact that their own Amended Complaint alleges that the conversations occurred by phone. (Am. Compl. ¶ 75) ("The Chinese Officials clearly explained to the Defendants the purpose of their call."). And, even if the Amended Complaint had alleged that the conversations took place by means other than phone, Dr. Barrett has offered sworn testimony that he has never spoken to Chinese or Malaysian government officials, by phone or otherwise. (Declaration of Dr. Stephen J. Barrett, ECF No. 42-11, ¶ 2.)² Plaintiffs' argument that they need discovery to test their allegations (Opp. 12) is completely backwards because the "purpose of discovery is to find out additional facts about a well-pleaded claim, not to find out whether such a claim exists." *Stoner v. Walsh*, 772 F. Supp. 790, 800 (S.D.N.Y. 1991); *see also* FED. R. CIV. P. 26 advisory committee's notes (stating that there is "no entitlement to discovery to develop new claims").³

² Counsel for Plaintiffs claims that he discussed these issues with Ms. Kuo using a Chinese social media application, but, tellingly, does not attach copies of the conversations, does not summarize them, and does not explain how those conversations could possibly reveal the contents of what Dr. Barrett said during calls that Ms. Kuo did not even know had occurred. (Declaration of Wesley J. Paul, ECF No. 46, ¶¶ 21-24.)

³ Further, Plaintiff Goldman's declaration falsely claims he had requested that Dr. Barrett "modify" the article to reflect updated information (ECF No. 47, ¶ 4), but the record in this case shows that he would not be satisfied with anything short of scrubbing it entirely from the internet. (Exhibit E to Declaration of Wesley J. Paul, ECF No. 46-5, at 2 (counsel for Plaintiffs telling Dr. Barrett's counsel that "my clients won't agree to any amendment to this article")).

Finally, the cases cited by Plaintiffs in their defense involve parties that had at least some support for their claims at the time they were made. *See, e.g., CQ Int'l Co. v. Rochon Int'l Inc., USA*, 659 F.3d 53,63 (1st Cir. 2011) (pre-discovery allegations based on documents and interviews with witnesses that supported claims) (Opp. at 5); *Dubois v. U.S. Dep't. of Ag.*, 270 F.3d 77, 83 (1st Cir. 2001) (counsel relied on pre-litigation statements of technical expert) (Opp. at 5). Here, Plaintiffs possessed no actual evidence of the supposed calls—only their own conjecture that the calls *could* have happened, compounded by specific and obviously fabricated recitations of what exactly was said on the fictitious calls. Plaintiffs point to no case where a party escaped sanctions after knowingly pursuing baseless allegations.

CONCLUSION

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

1. Enter an Order finding that the sanctionable conduct by Plaintiffs and their counsel represents an independent ground to dismiss 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
September 22, 2017

Respectfully submitted,

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