COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss. SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT

DR. DAVID M. SABATINI,
Plaintiff,
v.

DR. KRISTIN A. KNOUSE,
Defendant and Counterclaim Plaintiff
and
DR. RUTH LEHMANN, AND WHITEHEAD INSTITUTE FOR BIOMEDICAL RESEARCH,
Defendants.

Civil Action No.: 2284CV01449

PLAINTIFF'S MOTION (I) FOR SANCTIONS IN CONNECTION WITH KNOUSE'S PRODUCTION OF HER TEXT MESSAGES WITH SABATINI AND (II) TO COMPEL KNOUSE TO PRODUCE *COMPLETE* TEXT MESSAGES WITH PERSONS SHE PROVIDED PARTIAL TEXT MESSAGES TO THE HAS INVESTIGATORS
(Memorandum Incorporated)

For over two years, the defendant, Kristin Knouse, resisted producing her text messages with the plaintiff, David Sabatini. For literally months, Dr. Knouse refused to produce the messages in any form and submitted to the Court pleadings and correspondence designed to obstruct her production. Dr. Knouse ultimately did not produce the unredacted entirety of her text communications with Dr. Sabatini until just days before her deposition, forcing Dr. Sabatini to incur additional attorneys' fees identifying the unredacted versions of key communications which had already been produced.

Now, she is at it again. As set forth in the HAS Investigative Report, Dr. Knouse produced to the investigators "selected texts" with about a dozen persons. *See* **Exhibit 1.**[1] These 'selected' messages frequently consisted of Dr. Knouse's self-serving complaints about how poorly Dr. Sabatini had treated her. But Dr. Knouse has steadfastly refused to produce the entirety of her text messages with many of these individuals. Instead, history is repeating itself.

[1] Exhibit 1 consists of pages of Appendix C to the HAS Report and lists the text messages and emails Dr. Knouse provided to the HAS investigators (e.g. "Select text messages between Whitehead Fellow I and MIT Faculty I"). The impounded version contains counsel's notations with the actual names of the individuals penciled in next to their pseudonym.

She has recently produced text messages where a few lines from the conversation are redacted, supposedly as 'non-responsive'—exactly the same tactic she used before. For good measure, she has also massively redacted text messages with one of her friends, Dr. Isabella Pena, on the grounds of 'attorney-client privilege,' even though neither of them are lawyers. The apparent claim is that because these two lay witnesses were talking *about* lawyers or legal advice, the texts are privileged. Accordingly, Dr Sabatini seeks an order compelling the production of those documents.

Dr. Sabatini also seeks sanctions in the form of attorney's fees that he expended to obtain unredacted copies of the texts between him and Knouse. Disobedience to a court order is not to be taken lightly. Given the considerable delays and additional work caused by Dr. Knouse's conduct, Dr. Sabatini incurred additional expenses related to reviewing and identifying documents that should have been produced in unredacted form in the first instance.

Facts

Dr. Sabatini and Dr. Knouse began a consensual sexual relationship in April 2018. Shortly after Dr. Knouse began working at the Whitehead in June 2018, Dr. Sabatini asked Dr. Knouse via text message, "where do we stand re consults [a term used for sexual encounters] given your employment status?" **Exhibit 2** at KK4895. She wanted to continue the relationship: "I personally (albeit without unbiased external validation) feel that acoustics and optics have been well-managed so …". *Id.* Throughout their relationship, both parties initiated sexual encounters, as evidenced by text messages between the two, and both expressed mutual feelings of attraction and desire on multiple occasions. For example, Dr. Knouse twice initiated sex during the Whitehead retreat in September 2018. In one text she wrote, "I hadn't reached out but sick of looking at retreat talk so would be up for drink/consult though 10 kinda late for drinks." *See id.* at KK4541.[2] On another occasion at the same retreat, she asked to visit Dr. Sabatini's

[2] Dr. Sabatini initially declined this request, indicating "I still have to put together my talk and am not sure consult conducive to that. Let's see if lands early but may pull an OG." Ex. 2 at KK4541. This part of that exchange was omitted in the 'selection' of texts Dr. Knouse provided

room in the early morning hours. *Id.* at KK3810. Dr. Knouse's Counterclaim directly flips the narrative, falsely claiming that Dr. Sabatini initiated sex while at the retreat. *See* Counterclaim, December 7, 2021, Docket #13, at ¶ 174 (Dr. Sabatini "demanded sex repeatedly while they were at the function. When Knouse expressed hesitation about the setting and in light of her status, Sabatini pursued her nonetheless.").

On another occasion, in November 2018, Dr. Knouse wrote in a text message to Dr. Sabatini "every time I walk past Sue's door I get further revved beyond my disabling high baseline," an apparent reference to an encounter they shared in the vacant office of a former Whitehead colleague. Ex. 2 at KK4159. Dr. Knouse would later make Dr. Sabatini's suggestion of a second rendezvous at this office a feature of her allegations against him, Counterclaim at ¶ 176, even though her text messages betrayed that she became "revved" whenever she walked past it.

The text messages evidence an intimate relationship where both parties shared familial and health concerns, and directly undermine Dr. Knouse's allegations that Dr. Sabatini leveraged his position as Dr. Knouse's 'mentor" to force sex from an unwilling naif. Nearly a year into their relationship, in February 2019, when Dr. Knouse was asked by then-Whitehead president, David Page, who she wanted as her Whitehead mentor, she wrote in a text message to Dr. Sabatini that, "I'd want it to be you and Peter. No one else knows me better or can advise me appropriately." Ex. 2 at KK4491. After initially responding "[n]ot me ☺," Dr. Sabatini agreed, but advised that "[i]n practice will not mean much of your time if any," to which Dr. Knouse playfully responded, "[t]hank you for doing this. May we never have a formal meeting." *Id.* at KK4492. Immediately afterwards she said "[k]eep getting revved up thinking about yesterday's climactic developments." *Id.*

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to HAS investigators. Instead, in the portion provided, Dr. Sabatini indicates that he worked that evening, but that he might try to "entice [her] to a discrete consult Friday." The 'selection' which gave the appearance that Dr. Sabatini had initiated the rendezvous. HAS4387, attached as **Exhibit 3.**

In January 2020, Dr. Sabatini ended his relationship with Dr. Knouse in order to pursue a relationship with another woman. Several months later, Dr. Knouse began to revise her view of their relationship. She told associates that it was not consensual, and she told at least one MIT professor that she wanted to get Dr. Sabatini fired. *See* First Amended Complaint ("FAC"), May 20, 2022, Docket # 31, at ¶ 89. She consulted an ombudsperson at MIT, who told her that she would have significant difficulties proving a violation of Title IX. *See* **Exhibit 4** at HAS-WHI-1028610 ("as long as he has a shred of evidence that he never held my career up against consent to anything it's not technically sexual harassment."). [3] Dr. Knouse also contacted Dr. Ruth Lehmann to lay the groundwork for Dr. Sabatini's separation from Whitehead. Dr. Lehmann was a sympathetic ear. Dr. Knouse left their conversation with the impression that "[Lehmann] knows she must fire him to keep her promise to the improved culture … she basically said that … 'you put in my lap the ultimate test of my commitment to a better Whitehead and now I must prove it."[4] *See id.* at HAS-WHI-1024289.

In late October 2020, Dr. Knouse approached a member of Dr. Sabatini's lab, Dr. Nora Kory, and encouraged Dr. Kory to complain about Dr. Sabatini directly to Whitehead. *See* **Exhibit 5** at KORY528-29. Following this conversation with Dr. Knouse, Dr. Kory spoke to Dr. Lehmann. Dr. Kory understood from Dr. Lehmann that the Diversity, Equity and Inclusion (DEI) survey commissioned by Whitehead would be used as a "cover up" to initiate an investigation into Dr. Sabatini. Excerpts of Dr. Kory Production, Ex. 5 at KORY693-94; *see also* **Exhibit 6** (excerpts of Kory Dep.) at 79:16-82:23; Ex. 5 at 745.

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[3] Notably, the HAS Report – flawed as it was – failed to find any evidence that Dr. Sabatini engaged in retaliation against Dr. Knouse or anyone else for that matter. *See* HAS Report included as Attachment 15 to Affidavit of Dilkushi "Dilly" Wilson ("HAS Report"), May 27, 2024, docket # 72, at 53, text at subhead C ("We did not find any evidence that Sabatini actually retaliated against or punished any person for speaking out against him or raising concerns outside the lab.").

[4] Although HAS had collected Dr. Knouse's communications on this subject, HAS apparently did not consider them in connection with their investigation or the Report.

With the understanding from Dr. Lehmann that the DEI survey was directed against Dr. Sabatini, Dr. Knouse and a member of her lab, Kristina ("Tina") Lopez, responded to the survey with false statements about the environment in Dr. Sabatini's Lab, although neither Dr. Knouse nor Ms. Lopez had ever worked in it. *See* **Exhibit 7** (Excerpts of Lopez Dep.) at 124:6-130:12; 131:20-133:19; DEI Excerpts from Whitehead Cultural Assessment Excerpts and Recommendations" **Exhibit 8**. The day before the DEI survey results were announced to Whitehead faculty, Dr. Knouse's lawyers learned of the impending investigation. Ex. 4 at HAS-WHI-1113813. By contrast, Dr. Sabatini only learned about it *after* the survey results were presented. FAC at ¶ 114-16; **Exhibit 9** at SABATINI000056. Whitehead did not provide Dr. Sabatini with the reasons for the investigation beyond stating that it related to the "culture" of his lab. FAC at ¶ 106; Ex. 9 at SABATINI000053 (explaining the investigation concerned "a lab environment that makes individuals uncomfortable due to frequent conversations that are sexual in nature and statements that anyone who complaints (sic) will be ruined."). Whitehead did not tell Dr. Sabatini that allegations of sexual harassment or any concerns about his relationship with Dr. Knouse were being investigated. Ex. 9 at SABATINI000053.

During the course of the investigation, Dr. Knouse provided only cherry-picked and manipulated documents to HAS investigators. She repeatedly made clear that she had compiled text messages that placed Dr. Sabatini in an unflattering light (while entirely omitting text messages that showed the consensual nature of their relationship). Indeed, she told one friend, Dr. Kory, "[f]unny think [sic] is David conveniently deleted all texts from me before January 2020 so basically I come in with all these messages about him needing help with his raging boner, asking me to meet him in Sue's empty office for sex … it's right there in writing you can't argue around it." Ex. 5 at KORY656.

According to Dr. Knouse, HAS investigators never asked for any of the messages which might have undermined her claims – a choice seemingly designed only to uncover unfavorable evidence against Dr. Sabatini. Excerpts of Knouse Dep. **Exhibit 10,** at 293:22-294:1, 358:19-361:4. As she explained to a friend at the beginning of July 2021, just a month before the

investigation concluded, "[t]hey want some specific texts from me to corroborate the extent of abuse and damage. Seems they're indeed trying to nail him …" Ex. 5 at KORY663. Because of the apparent aim of the investigation, HAS investigators did not receive (and apparently did not request) any of the messages in which Dr. Knouse had initiated sexual encounters (*e.g.*, asking Dr. Sabatini if he was "flexible [for] consult" – the term they used to discuss sexual encounters – and indicating that the "last consult was 😈") (*e.g.*, Ex. 2 at KK4819), or any messages where Dr. Sabatini declined sexual encounters with Dr. Knouse (Ex. 2 at KK4354, for example). Certainly, Dr. Knouse and her allies appear to have done everything in their power to manipulate the findings of the report,[5] especially with respect to Dr. Knouse's production of her text messages with Dr. Sabatini.

Relevant Procedural Background

After being publicly branded a sexual harasser by Whitehead (primarily based on false allegations from Dr. Knouse), Dr. Sabatini filed his complaint on October 20, 2021. Dr. Knouse filed her Counterclaim on December 6, 2021, which included the assertion that Dr. Sabatini required her to endure his harassment "in exchange for his support and the ability to move with the scientific projects she loved." Counterclaim at ¶132.

Dr. Sabatini served his First Request for Production of Documents on Dr. Knouse on March 11, 2022. *See* **Exhibit 11**. Request No. 2 sought "[a]ll communications between you and Sabatini." Over *two years* later, on September 15, 2023, Dr. Knouse responded. *See* **Exhibit 12.**

[5] As late as August 14, 2021, just days before the investigative report came out, Dr. Kory relayed a conversation she had with Dr. Lehmann to Dr. Knouse and Dr. Izabella Pena. Ex. 5 at KORY767-68. Dr. Lehmann reportedly disclosed that Whitehead was in conversation with MIT and HHMI about whether and when to terminate Dr. Sabatini, and that Dr. Knouse's story alone was enough for Dr. Lehmann to move forward. *Id.* Dr. Kory also indicated that while Lehmann could not explicitly say Dr. Sabatini would be fired, Dr. Kory understood Lehmann to mean that it was only a matter of time. *Id.* Just two days later, Dr. Kory indicated Dr. Lehmann had sought as much information as she could to strengthen Whitehead's case. *Id.* at KORY772-73. In response, Dr. Knouse complained that they were being used as investigators, just as they had been in the "original HR 'investigation.'" *Id.* at KORY773.

She agreed only to produce a very limited subset of communications. See Ex. 12 at Response 2, also reproduced in the Appendix to this Motion.

When Dr. Knouse refused to produce all text messages between her and Dr. Sabatini, he served a four-page motion to compel on Dr. Knouse that was specifically targeted to the Knouse-Sabatini texts and nothing else. See Docket #132. In opposing the motion, Dr. Knouse did not specifically object to producing the text messages between the two, but she didn't produce the messages, either. *See* Docket #133. Instead, she complained that the motion was premature since Dr. Sabatini's attorneys had supposedly not complied with Rule 9C. *Id.* at 7-8.[6]

On November 9, 2023, this Court ordered the parties to confer further with respect to Dr. Sabatini's motion to compel, but specifically found that "[n]o action is needed on this motion since the defendant in her opposition does not dispute that she must … produce the text messages." Endorsement on Docket # 132. Following that conference, Dr. Knouse wrote to the Court to say that while she had "withdrawn her global objection to *searching* text messages between the two parties," she had not given up objections to producing the documents. Docket # 137, **Exhibit 13**, at ¶ 3, emphasis supplied.[7] Knouse indicated that, following a review for confidentiality, the messages would be produced by January 5, 2024. *Id.* at ¶ 5.

When January 5, 2024 passed without production of any of the messages she had promised, Dr. Sabatini requested a Rule 16 status conference. Docket #141. At a hearing on February 7, 2024, Dr. Knouse's lawyer yet again asked for more time to review the text

[6] That same motion acknowledged (i) that Dr. Sabatini had spoken with the primary associate on the case, Chrisopher Wurster, about the texts, and (ii) that the lead partner, Ellen Zucker, had been essentially unavailable for almost the entire month of February due to family medical issues. *Id.* at 4-6.

[7] At the time Dr. Knouse's attorneys wrote their letter to the Court, the documents had been requested over a year and a half before; Dr. Knouse's attorneys had tendered written responses; they had participated in 9C conferences and had received multiple emails about the texts; and they had filed with the Court an opposition to a motion that was directly and specifically targeted to the Sabatini-Knouse text messages – but they had not, if their own letter to the Court is to be believed, actually reviewed the documents for confidentiality and relevance, and would need six weeks to do so. *See* Ex. 13 at ¶ 5 ("We ask that the court allow us to engage in the review to which we have agreed . . .").

messages, over and above the six weeks sought in her November 24 letter. As her lawyer told the Court, "we have concerns about where these documents are going and so we would like to be able, your Honor, judiciously and carefully and mindful of our obligations … so that we can do our job with respect to confidentiality." *See* **Exhibit 14** (Excerpt of Feb. 7, 2024 Tr.) at 9:4-9:9. Dr. Knouse's counsel then asserted that they sought to shield from production the names of "third parties that have nothing to do with this," but that they would "make sure the general subject matter is there but the names of the individuals have no bearing on this case, and we would likely from the court to shield that information – that narrow band of information, your Honor." *Id.* at 9:4-17. The Court made it clear that it was skeptical about the justification for any redactions:

> [I]t's hard for me to envision anything that should be redacted from these communications but there may be something, okay. So I'm going to require that all non-privileged texts be turned over by February 16 and I'm going to also require that a log be produced also by the 16th of any document that's redacted or not turned over explaining why it's been redacted or not turned over. If it's a claim of privilege fine, but it's not conceivable to me that it's a claim of privilege because these are communications between the two parties. But it may be some other argument that somebody's personal safety is at risk, or something else. I don't know. So I'm going to not prejudge that, but I'm going to require the log to be produced.

Transcript of Hearing (Krupp, J.), Feb. 7, 2024, at 10:18- 11:4.

On February 20, 2024, Dr. Knouse produced the redacted texts with an eight-page log of redactions. *See* **Exhibit 15**. None of the redactions were for privilege. Instead, Dr. Knouse claimed the redactions obscured "[s]ensitive information not relevant to matters in this case" including, at times, "health information". *Id.* The vast majority of the redactions were described as "[t]hird party name(s) and/or messages to the extent they concern sensitive matters related to third parties". *Id.* at 5-6.

Upon receipt of Knouse's production, counsel immediately requested that the text messages be produced in unredacted form. Dr. Knouse's counsel did not attempt to justify the redactions beyond the conclusory labels in the privilege log and took the position that the Court had allowed the redactions and no further action would be taken. *See* **Exhibit 16.**

At a hearing on February 21, 2024, Dr. Sabatini again raised the issue. Dr. Knouse's counsel continued to object, insisting that the redactions were limited in scope:

> We've left in names where there were third party – third party are directly at issue in this case. This is an example. There's been a discussion about Dr. Knouse's graduate student. Texts about her supervision of her. We left those in … . And they also have messages related to the third parties where those incidents are directly at issue.

Exhibit 17 (Excerpt of Feb. 21, 2024 Tr.) at 14:12-16, 15:20-22 (C. Wurster). Dr. Knouse's counsel also claimed that they had been "surgical" about the redactions. *See Id.* at 21:7-10 (Zucker). The Court ordered that the documents be produced in unredacted form by February 26, 2024, so Dr. Sabatini's counsel could review them before Dr. Knouse's February 29 deposition. Docket at #160, Ex. 17, at 26:3-26:16.

When the documents finally arrived (around 9:30PM on February 26, 2024), it became evident that the redactions went far beyond the scope that Dr. Knouse had acknowledged, and were entirely unsupportable on any legitimate grounds. For example, Dr. Knouse redacted the following:

Kristin Knouse [redacted] 8/1/2019, 10:10 PM
[redacted] her harvest cardiomyocytes yesterday!

Kristin Knouse [redacted] 8/1/2019, 10:11 PM
[redacted] can thread a needle in an orifice of any size. She's pulled off injections into the left anterior descending artery of a neonatal mouse. Truly amazing.

See **Exhibit 18** (KK2512). In the unredacted version, it is clear that Dr. Knouse refers to her graduate student, a subordinate, in a particularly unflattering way:

Kristin Knouse [redacted] 8/1/2019, 10:10 PM
Tina helped her harvest cardiomyocytes yesterday!

Kristin Knouse [redacted] 8/1/2019, 10:11 PM
Flawed hispanic can thread a needle in an orifice of any size. She's pulled off injections into the left anterior descending artery of a neonatal mouse. Truly amazing.

Id. at KK3873.

She made similar redactions in other places:

KK Kristin Knouse [redacted] 8/7/2019, 7:14 AM

Re in vivo size screen—presumably you have some mTor component you could stain heps for and then sort based on that and then by size so as to readily distinguish between sensing need to change size (though presumably you already know all of these) and the machinery required to trim yourself down? [redacted] and I are working to see if we can get lenti into neonatal heart via LAD injection so could do size screen in CMs—could be even more interesting.

Exhibit 19 at KK3075. Compare the unredacted version:

KK Kristin Knouse [redacted] 8/7/2019, 7:14 AM

Re in vivo size screen—presumably you have some mTor component you could stain heps for and then sort based on that and then by size so as to readily distinguish between sensing need to change size (though presumably you already know all of these) and the machinery required to trim yourself down? Flawed Hispanic and I are working to see if we can get lenti into neonatal heart via LAD injection so could do size screen in CMs—could be even more interesting.

Id. at KK4442. In other words, the insensitive banter that Dr. Knouse accused Dr. Sabatini of tolerating was a part of her everyday interchanges.

During her interview with HAS investigators, Dr. Knouse alleged that Dr. Sabatini called her subordinate the "defective Mexican" version of Dr. Knouse, yet it was Dr. Knouse, and not Dr. Sabatini, who used that term in their text messages. *See* **Exhibit 20** (excerpts of HAS Interview Notes with Knouse), HAS4288. Likewise, after claiming in public filings that Dr. Sabatini encouraged Dr. Knouse to engage in crude banter. *See* Counterclaim at ¶¶ 58, 132. Dr. Knouse redacted evidence that she needed no encouragement. For example:

KK Kristin Knouse [redacted] 12/19/2019, 9:12 PM
Ha bring kid over after to video game and vape like true stoners

DS David Sabatini [redacted] 12/19/2019, 9:13 PM
Next time. He is passing out

KK Kristin Knouse [redacted] 12/20/2019, 1:33 PM
[redacted] Prohibited us from using the door closest to our lab to move equipment bc it would pass through the far corner of the TC room. [redacted]

DS David Sabatini [redacted] 12/20/2019, 1:47 PM
Sorry it has been so hard with her and the move. [redacted]

KK Kristin Knouse [redacted] 12/20/2019, 1:48 PM
She [redacted]

KK Kristin Knouse [redacted] 12/20/2019, 1:50 PM
You have my permission to call [redacted] in exchange for that accusation as spades are spades.

Exhibit 21 at KK2362. The unredacted version:

KK Kristin Knouse [redacted] 12/19/2019, 9:12 PM
Ha bring kid over after to video game and vape like true stoners

DS David Sabatini [redacted] 12/19/2019, 9:13 PM
Next time. He is passing out

KK Kristin Knouse [redacted] 12/20/2019, 1:33 PM
Pulin is to HeLa cells what Adolf Hitler was to the Aryan race. Prohibited us from using the door closest to our lab to move equipment bc it would pass through the far corner of the TC room. Here's hoping she goes on to cure all the diseases with DMEM.

DS David Sabatini [redacted] 12/20/2019, 1:47 PM
Sorry it has been so hard with her and the move. She seems weak minded

KK Kristin Knouse [redacted] 12/20/2019, 1:48 PM
She is an anencephalic cunt

KK Kristin Knouse [redacted] 12/20/2019, 1:50 PM
You have my permission to call Hazel stupid in exchange for that accusation as spades are spades.

Id. at KK3723.

Similarly, she redacted the following:

Kristin Knouse [redacted] 3/11/2019, 12:39 PM
Shame you had to leave early a[redacted] post-novocaine.

DS David Sabatini [redacted] 3/11/2019, 12:10 PM
Finally genotype-phenotype correlation

Kristin Knouse [redacted] 3/11/2019, 12:11 PM
Attached URL: https://p29-content.icloud.com/MA3A4B940C3CB3D78CB472B423C8A7EB5CD2E563F62E91D92004BEDDB39B94398.C01USN0

CONFIDENTIAL KK003325

0Attachment Title: IMG_2935.jpeg

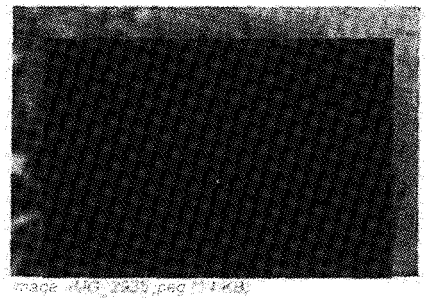

image: IMG_2935.jpeg (1.1 MB)

As with other redactions, the unredacted version shows that Dr. Knouse needed no prompting:

Kristin Knouse <[redacted] 3/11/2019 12:09 PM
Shame you had to leave early as I'm rocking large chromosome germline aneuploidy face in the office post-novocaine.

DS David Sabatini <[redacted] 3/11/2019 12:10 PM
Finally genotype-phenotype correlation

Kristin Knouse [redacted] 3/11/2019 12:11 PM
Attached URL https://p29-content.icloud.com/MA3A4B940C3CB3D78CB472B423C8A7EB5CD2E563F62E91D92004BEDDB39B94398.C01USN0

CONFIDENTIAL KK004803

0Attachment Title IMG_2935.jpeg

See **Exhibit 22** at KK003325-26, KK004803-04. In her privilege log, the redactions KK003325 were described as "[h]ealth information; Third party name(s) and/or messages to the extent they concern sensitive matters related to third parties; photograph of third party." Ex. 15 at 6. But these redactions did not (and were not intended to) protect the identities of known third parties or legitimate health information. They were plainly intended to shield unfavorable evidence under a veneer of formulaic legalisms.[8] These handful of redactions are only a small subset of the inappropriate redactions in which Dr. Knouse engaged; further examples are provided in **Exhibits 23-33**.

During her deposition, Dr. Knouse disclaimed any personal involvement in the suppression of unfavorable evidence:

> Q. And you also fought producing those text messages without redactions, did you not?
>
> MS. ZUCKER: Objection.

[8] Indeed, the description is all the worse for dressing up the obstructionism in the customary language of privilege. Courts correctly respect the wishes of parties who do not want their medical problems on the public record. Withholding a text because it references novocaine in passing or in jest is subterfuge, particularly where the party is producing it under a court order. The same is true or redacting a widely-circulated internet GIF based on "privacy interests."

A. Again, I did not fight it. I deferred to my counsel to make decisions about what to produce.

BY MS. ARROWOOD:
Q. And again, you had nothing to do with that?

MS. ZUCKER: Objection.

A. As I said, I deferred to my counsel to make decisions about what to produce.

Exhibit 10 (Excerpt of Knouse Dep.) at 237:2-12.

ARGUMENT

I. Dr. Knouse's attempts to prevent Dr. Sabatini from obtaining relevant evidence, including efforts undertaken in defiance of a court order, justify sanctions

Dr. Knouse understood full well what the text messages between Dr. Sabatini and Dr. Knouse show, and nevertheless engaged in a series of delaying tactics designed to prevent Dr. Sabatini from ever accessing those exchanges. After a series of stalling tactics intended to drag out the process, and even after being ordered to produce those exchanges, her attorneys interposed baseless "relevancy" redactions designed to prevent Dr. Sabatini from accessing evidence that undermines her claims.

Mass. R. Civ. P. 37(b)(2) authorizes the Court to award sanctions for violation of a court order, and makes sanctions the default rule for failure to comply. The Court ordered Dr. Knouse to produce documents, and specifically warned against any continuing efforts to suppress her text messages to Dr. Sabatini. Dr. Knouse's inappropriate relevancy redactions – if they can even be called that – were not even arguably intended to serve any legitimate purpose, and were precisely the sort of redactions that the Court had previously ruled was inappropriate. Rule 34 requires that documents be produced "as they are kept in the usual course of business". Mass. R. Civ. P. 34(c). Under any circumstance, redaction is an inappropriate tool for excluding alleged irrelevant information from documents that are otherwise responsive to a discovery request. "It is a rare document that contains only relevant information. And irrelevant information within a document

that contains relevant information may be highly useful to providing context for the relevant information. … courts view 'documents' as relevant or irrelevant; courts do not, as a matter of practice, weigh the relevance of particular pictures, graphics, paragraphs, sentences, or words, except to the extent that if one part of a document is relevant then the entire document is relevant for the purposes of" Rule 34. *Bartholomew v. Avalon Capital Group, Inc.*, 278 F.R.D. 441, 451-452 (D. Minn. 2011) (discussing Fed. R. Civ. P. 34). Obviously, these concerns are heightened where the producing party is under an order to produce.

If violation of a court order were not enough – and it is more than enough – the conduct leading up to the violation is also sanctionable. Dr. Knouse must be held to account for attempting to misuse the discovery process to shield information which is simply unfavorable to her, but which is relevant in the context of this case. "The discovery process is not a game of cat and mouse, and [parties] may not evade … inquiries into relevant and discoverable material." *Wojcik v. Boston Herald, Inc.*, 60 Mass. App. Ct. 510, 515-16 (2004). Dr. Knouse's conduct is precisely the sort of gamesmanship that the cases universally recognize as inappropriate. "Discovery is not a game of '*hide the ball*' until your opponent is forced to take you to task on inappropriate or baseless objections. Our system of discovery was designed to increase the likelihood that justice will be served in each case, not to promote principles of gamesmanship and deception in which the person who hides the ball most effectively wins the case." *O'Brien v. American Medical Response of Massachusetts, Inc.*, 2013 WL 7760826, *2 (Mass. Super. Sept. 12, 2013). Dr. Knouse repeatedly strung out the process, including avoiding the entry of a specific production order by (i) not opposing production, but complaining about the 9C process, then (ii) opposing the production of all documents (the relief requested in the original motion) by saying that production would be made by January 5 after the documents were reviewed, then (iii) ignoring that our deadline for production, and (iv) representing in open court that more time was needed to review the documents. *See Atlantic Resort Dev. L.P. v. Curran Management Servs. Inc.*, 86 Mass, App. Ct. 1110, 2014 Mass. App. Unpub. LEXIS 965 *1-5 (Sept. 8, 2014)

(imposing sanctions even in absence of a court order where defendants repeatedly asserted at a Superior Court Rule 9C conference that they would provide requested information).[9]

The observation has particular force in the context of this dispute, where the nature of the relationship between Dr. Knouse and Dr. Sabatini, particularly the allegedly abusive nature of that relationship, has been placed front and center by Dr. Knouse's own Counterclaim. Dr. Knouse's counsel knew full-well what the unaltered text messages contained, yet willfully misrepresented to the Court and opposing counsel that the information they had "surgical[ly]" redacted was merely identifying information of third parties or other irrelevant information.[10] As a comparison of the redacted and unredacted materials shows, the redactions go directly to matters Dr. Knouse raised in her Counterclaim or in her communications with HAS. Thus, it cannot reasonably be doubted that the misrepresentations, both to the Court in oral argument and in the redaction log itself, were both material and intentional.

Rule 37(d) allows a court to consider an award of attorneys' fees "caused" by the failure of a party to appropriately respond to discovery. Dr. Knouse's repeated refusal to produce the text exchange between her and Dr. Sabatini – initially causing delays and subsequently requiring motion practice to get the unredacted versions of relevant text exchanges – constitutes a willful failure to engage in discovery, as does her deliberate, and unilateral redaction of relevant material. It can only be described as designed to interfere with the proper fact-finding function of this Court, and sanctions should be awarded to both punish this behavior and deter Dr. Knouse from engaging in similar misconduct going forward in this case. *Cuppels v. Mountaire Corp.*, 2020 Del. Super. LEXIS 330, *14 ("Sanctions may serve one or more of three proper purposes:

[9] Mass. R. Civ. P. 37(a)(4) permits sanctions for failure to respond to discovery, and Mass. R. Civ P. provides that "evasive or incomplete" answers are deemed a failure to respond. 'Evasive and incomplete' would seem to aptly characterize the entire course of dealing.

[10] The Court acknowledged that Dr. Sabatini was entitled to discover his texts with Dr. Knouse, including the type of texts that Dr. Knouse ultimately withheld: "I see the relevance in it. If she is talking about highly personal issues with respect to her family to Dr. Sabatini, it suggests a certain intimacy between them and a certain trust between them and a certain confidence she has in them… I don't see a basis to withhold it from discovery." Ex. 17 (J. Krupp, 24:8-24:13).

punishment, deterrence, or coercion," and awarding attorneys' fees as sanction where party made unilateral relevancy redactions).

Rule 37 provides the court with an array of potential sanctions. If the Court chooses to impose monetary sanctions – which clearly appear to be the appropriate sanction for Dr. Knouse's attempts to string out the process – Dr. Sabatini will promptly provide a fee petition setting out the time charges incurred in chasing down these documents.

II. KNOUSE SHOULD BE REQUIRED TO PRODUCE *FULL* TEXT MESSAGE CHAINS WITH THE SAME FRIENDS AND COLLEAGUES WITH WHOM SHE PROVIDED *SELECTED* TEXT MESSAGE CHAINS TO THE HAS INVESTIGATORS

A. Knouse has continued to engage in the practice of improperly redacting texts for 'relevance' and based on spurious privilege claims

Perhaps the worst part of this unlovely saga is that it is happening all over again. Attached as **Exhibit 34** are excerpts from Dr. Knouse's May 10, 2024 production of her texts with Dr. Izabella Pena, a former co-worker at the Whitehead.[11] As these excerpts clearly show, Dr. Knouse has claimed the attorney client privilege for text messages where no lawyer is part of the exchange. *Id.*[12] That is, Dr. Knouse is claiming privilege not for texts *with* her lawyers, but rather for texts *about* them. There is no case law whatsoever recognizing this absurd expansion of the privilege. Compare *Matter of the Reorganization of Elec. Mut. Liab. Ins. Co. (Bermuda)*, 425 Mass. 419, 421 (1997), listing the elements of the privilege and discussing waiver by failure to maintain the advice of counsel in confidence. Indeed, the disclosure of legal advice to a third

[11] Ex. 34 includes pages between KK14827 and KK15053; some few pages without "ACP" or "non-responsive" designations are provided to contextualize those with the designations.

[12] Particularly egregious examples of this include the use of the "ACP" designation to block out words within a text message (see Ex. 36 at KK14883), to obscure conversations seemingly about key interactions and individuals covered in the HAS Report (*see id.* at KK14861, right before Dr. Pena discusses why she thinks she might have a case against Dr. Sabatini or the Whitehead, *see id.* at KK14965. See also *id.* at KK14997-99, where Dr. Knouse appears to be discussing her attempts to connect with an undergraduate student she and others accused Dr. Sabatini of grooming), and to remove whole pages of conversation days before the report was provided to Dr. Sabatini and his resignation from the Whitehead was announced (*see id.* at KK15010-13).

person waives the privilege. *Id.* at 422-23. Thus, all texts with "ACP" redactions should be ordered produced.

Dr. Knouse has also heavily redacted other portions of the chats, labeling them as "non-responsive." The vast majority of these 'redactions' are improper on their face. For example, an exchange between Dr. Knouse and her friend and subordinate, Tina Lopez, is suddenly interrupted by a "non-responsive" designation. **Exhibit 35** at 13693-94. Their conversation resumes, seemingly spontaneously, about how nasty they should be when filling out the forthcoming DEI survey from Jones Diversity. *See id.* at KK13694-5. Further examples of these 'relevance' redactions are included in **Exhibit 36**. It is plain from the efforts of Dr. Knouse's counsel to snip out relevant portions of their client's conversations with Ms. Lopez and Dr. Pena that history is repeating itself.

It should not be allowed. The 'attorney client privilege' redactions are frivolous on their face given the fact that no lawyer was involved in the communications. Given the existence of a Protective Order in this case that permits the designation of these documents as "Confidential," there is no reason why any materials need to be redacted at all. And given the defendants' track record of attempting to expunge embarrassing material under the guise of privilege or relevance, there can be no presumption of good faith. Nor would such a presumption be appropriate where, as here, there appears the facially improper practice of excising a few lines in a longer chain.[13] Dr. Knouse should be ordered forthwith to reproduce unredacted copies of all chains of text messages featuring redactions similar to those found in Exhibit 36. In the alternative, the Court should order an in camera review of all "ACP" and 'relevance' redactions, to be conducted either by the Court or by a special master with the power to allocate fees if the redactions are deemed improper. The task will not be onerous. Although they are spread across many pages, there are typically only a few lines of text at issue on any given page. The better course, however, is to

[13] We understand that at some point, a text chain stops being about relevant subjects, and that it may be proper to stop the production there. Reaching into text chains containing relevant information to excise particular comments is another matter altogether.

recognize that there can be no valid purpose for these redactions given that the Protective Order fully protects the parties' privacy and to order the immediate production of all redacted texts and emails in unredacted form.

B. *The Court should overrule Knouse's objections to producing complete emails and text messages wherever she produced a 'selected' version to the HAS investigators*

By way of necessary background, Dr. Knouse provided the HAS investigators with cherrypicked *excerpts* of her texts and emails with friends and colleagues. The HAS Report lists her correspondents in its Appendix C, Part III, reproduced here as Ex. 1.[14] In total, she gave the investigators "select texts" (as the Report phrases it) or emails with 13 separate individuals, whose identifiers are listed in the margin.[15]

The Whitehead has produced the "select texts" that Knouse gave them, but Dr. Sabatini wants the *complete* text message chains. Those can only come from Dr. Knouse. But—along with redacting out large swaths of the texts, in effect producing a re-selected version of the "select texts" - -Dr. Knouse has objected on various other grounds to producing them. Dr. Knouse's attorneys made clear in the 9C conferences preceding this motion that she stands by those objections, and her productions have been made subject to them.

There is no question that these complete text message chains are responsive to multiple requests. Request 1 seeks "All communications between you and any person concerning Sabatini and the Sabatini Lab." Ex. 11 at 5. Request 4 seeks "All documents and communications concerning working conditions at the Whitehead." *Id.* Request 5 asks for "All

[14] Specifically, on July 1, 2021, Dr. Knouse handed over "Select text messages" and "Select email communications" with eleven separate individuals, including with Lopez and Dr. Pena. *See* Exhibit 1 at 161-62, subhead III(C). Later, on July 26, she produced another set of "Select text messages" with eight individuals, some of whom overlap with the prior production. *Id.* at 162.

[15] The identifiers are Whitehead Director (Ruth Lehmann); MIT Faculty members 1 and 4; Whitehead Faculty Members 1, 3, and 4; Visiting Post Docs 1, 2, and 3; Postdoc 6; and MIT Graduate Students 13, 19, and 20. This list combines the individuals in HAS' description of Dr. Knouse's July 1 and July 26 productions. *Supra*, note 15.

communications between you and any other person concerning your relationship with Sabatini." *Id.* Request 7 asks for communications with specified individuals about "Dr. Sabatini, the Sabatini Lab, or the allegations of your Counterclaim" with nine specified individuals, all of whom are among the 13 individuals that were party to the 'select' texts and emails Dr. Knouse provided to the investigators. *Id.* at 6. There are many other such requests, but there can be no doubt that her communications with those 13 individuals fall squarely within multiple requests.

Dr. Knouse has objected to all of these requests, typically with the same shopworn objections—undue burden, relevance, and the like. Pursuant to Superior Court Rule 9C(c)[16] the complete document requests are attached as Ex. 11 and the responses as Ex. 12, and the Appendix to this brief sets out in full Requests 1, 4, 5, and 7 with Knouse's objections. But the documents at issue are so plainly central to the case that no extended argument is really needed, and the objections—at least as they are applied to the 13 individuals that Dr. Knouse dragged into the investigation—are meritless, inapplicable, or both. If it wasn't an undue burden to slice and dice the texts and self-evidently give them to the investigators in that form, it surely cannot be an undue burden to provide Dr. Sabatini with the entire chain. Claims that the texts are 'unlikely to lead to the discovery of admissible evidence' cannot be credited: whether Dr. Knouse used representative samples of her texts to mislead the investigators is obviously a key issue in the case.[17] Thus, none of the objections can justify Knouse's recalcitrance, at least as they apply to producing complete copies of text communications with these individuals.

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[16] Under Rule 9C(c), "All motions arising out of . . . a party's response to, or asserted failure to comply with, a request for production of documents" should set forth the text of request, the response, and an argument. "Alternatively, the text of the interrogatory or request and the opponent's response may be provided in an appendix to the brief." .e attach the relevant Requests and Answers as an Appendix,

[17] The texts that have been produced appear to show conclusively that many of the incriminating texts that Dr. Knouse sent were confected specifically for her planned lawsuit against Dr. Sabatini. As Dr. Knouse put it in one exchange with Lopez in October 2020, five months before the investigation began:

KK: Need a break from organize my file of incriminating screenshots

Accordingly, the Court should (i) overrule Knouse's objections, as applied to communications with the 13 individuals identified in the Report as receiving 'selected' texts, and (ii) as to those same individuals, order the production of any non-privileged text messages responsive to Requests 1, 4, 5 and 7 that have been withheld based upon those objections.

RELIEF REQUESTED

For each of the reasons set forth above, this Court should:

(A) Award Dr. Sabatini reasonable attorneys' fees in connection with work required as a result of Dr. Knouse's initial refusal to timely produce the text messages between her and Dr. Sabatini, and her subsequent unilateral and willful redaction of information relevant to this case; and

(B) Grant Dr. Sabatini leave to provide a fee petition detailing those time charges; and,

(C) In connection with Dr. Knouse's most recent production, order that all Knouse-Pena texts redacted for attorney client privilege must be produced, or, alternatively, conduct an in camera inspection to review Dr. Knouse's privilege claims;

(D) As to all text messages redacted for relevance or non-responsiveness, hold that such interlineal redactions are not appropriate and order complete, unredacted copies of the text chains produced; or, alternatively, order that Knouse provide unredacted texts for in camera inspection; and

(E) As to the 13 individuals named in the HAS Report at Appendix C, (i) overrule all of Knouse's objections except as to privilege and order her to supply complete, non-redacted texts with all such persons and (ii) order the production of any non-privileged text messages responsive to Requests 1, 4, 5 and 7 with these 13 individuals.

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* * *

TL: Did you at least get to celebrate being done before diving into the lawsuit
KK: That is the celebration
TL: Haha makin your lil scrapbook

Exhibit 37 at KK014472.

Respectfully submitted,

DR. DAVID M. SABATINI

By his Attorneys

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Dated: May 24, 2024

CERTIFCATE OF COMPLIANCE WITH RULE 9C

I, Edward Foye, herewith certify that on Wednesday, May 8, 2024, I spoke with the attorneys for Dr. Knouse with regard to the issues raised in this motion but we were unable to resolve any of the issues.

/s/ Edward Foye

Edward Foye (BBO #562375)

CERTIFICATE OF SERVICE

I, Edward Foye, hereby certify that on this 24th day of May, 2024 a true and correct copy of the above document was served upon the attorneys of record by electronic delivery.

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APPENDIX

Pursuant to Super. Ct. R. 9C(c), Dr. Sabatini herewith sets forth the full text of the document requests at issue, with Dr. Knouse's responses.

REQUEST NO. 1:

All communications between you and any person concerning Sabatini or the Sabatini Lab.

RESPONSE NO. 1:

Knouse objects to this Request on the grounds that it: (1) fails to state the documents to be produced with reasonable particularity as required by Mass. R. Civ. P. 34(b)(1); (2) is overbroad as to time and scope, unduly burdensome and oppressive, including to the extent that this request may be read to seek communications between Knouse and Sabatini that the Plaintiff has himself destroyed; (3) calls for the production of electronic communications that were in the possession of the Plaintiff but which were impermissibly destroyed through his own acts; (4) seeks information which is not relevant nor reasonably calculated to lead to the discovery of admissible evidence; (5) is vague and ambiguous; (6) seeks the disclosure of irrelevant information which would constitute an unwarranted invasion of the affected non-parties' constitutional, statutory and/or common law rights to privacy and confidentiality; (7) seeks the disclosure of information protected by the psychotherapist-patient privilege, the confidentiality afforded the physician-patient relationship, or information which is otherwise privileged; (8) seeks the disclosure of confidential settlement communications; (9) seeks the potential disclosure of information protected by the attorney-client privilege and/or work product doctrine; (10) seeks the potential disclosure of information related to institutional internal investigations that is protected by attorney-client privilege. See Upjohn Co v. United States, 449 U.S. 383, 389 (1981).

Subject to and without waiving her objections and subject to the scope of the search defined above, Knouse will produce relevant, non-privileged communications between Knouse and members of the Sabatini Lab relating to Sabatini's conduct or the culture within the Lab from January 1, 2016 to the date the Whitehead Investigate Report from Hinckley, Allen & Snyder LLP ("the Report") issued in August of 2021. Further responding, Knouse refers Sabatini to her responses to Request Nos. 2, 3, 5 and 6.

RE●UEST N●. 4:

All documents and communications concerning working conditions at the Whitehead.

RESPONSE NO. 4:

Knouse objects to this Request on the grounds that it: (1) fails to state the documents to be produced with reasonable particularity as required by Mass. R. Civ. P. 34(b)(1); (2) is overbroad as to time and scope, unduly burdensome and oppressive, including to the extent that this request may be read to seek communications between Knouse and Sabatini that the Plaintiff has himself destroyed; (3) calls for the production of electronic communications that were in the possession of the Plaintiff but which were impermissibly destroyed through his own acts; (4) seeks information which is not relevant nor reasonably calculated to lead to the discovery of admissible evidence; (5) is vague and ambiguous as to the phrase "working conditions;" and is otherwise duplicative; (6) seeks documents already in Plaintiff's possession or more readily accessible to him; (7) seeks the disclosure of information which would constitute an unwarranted invasion of the affected non-parties' constitutional, statutory and/or common law rights to privacy and confidentiality; (8) seeks the disclosure of information protected by the psychotherapist-patient privilege, the confidentiality afforded the physician-patient relationship, or information which is otherwise privileged; (9) seeks the disclosure of confidential settlement communications; (10) seeks the potential disclosure of information protected by the attorney- client privilege and/or work product doctrine; (11) seeks the potential disclosure of information related to Whitehead's internal investigation that is protected by Whitehead's attorney-client privilege. See Upjohn Co v. United States, 449 U.S. 383, 389 (1981).

Subject to and without waiving these objections and subject to the scope of the search as defined above, Knouse will produce relevant and non-privileged documents relating to the culture in the Sabatini Lab and her compensation and evaluation as a Whitehead Fellow.

Request 5 ("All communications with any other person concerning your relationship with Sabatini");

REQUEST NO. 5:

All communications between you and any other person concerning your relationship with Sabatini.

RESPONSE NO. 5:

Defendant objects to this Request on the grounds that it: (1) fails to state the documents to be produced with reasonable particularity as required by Mass. R. Civ. P. 34(b)(1); (2) is overbroad as to time and scope, unduly burdensome, oppressive and otherwise duplicative; (3) seeks information which is not relevant

nor reasonably calculated to lead to the discovery of admissible evidence; (4) seeks documents already in Plaintiff's possession or more readily accessible to him; (5) seeks the disclosure of information which would constitute an unwarranted invasion of the affected non-parties' constitutional, statutory and/or common law rights to privacy and confidentiality; (6) seeks the disclosure of information protected by the psychotherapist-patient privilege, the confidentiality afforded the physician-patient relationship, or information which is otherwise privileged; (7) seeks the potential disclosure of information protected by the attorney-client privilege and/or work product doctrine; (8) seeks the potential disclosure of information related to institutional internal investigations that is protected by attorney-client privilege. See Upjohn Co v. United States, 449 U.S. 383, 389 (1981).

Subject to and without waiving these objections and subject to the scope of search defined above, Knouse will produce relevant, non-privileged communications with faculty at Whitehead or MIT concerning her professional, training and personal interactions with Sabatini from Jan. 1, 2016 to the date the Report issued in August of 2021. Further responding, Knouse refers the Plaintiff to her responses to Request Nos. 1, 2, 3, 5 and 6.

Request 7 (a)-(h) (all communications about Sabatini, the Sabatini Lab, or the allegations in Dr. Knouse's Counterclaim with 8 specified individuals; the HAS got 'selected texts' from all of them).

REQUEST NO. 7:

All communications between you and any of the following concerning Sabatini, the Sabatini Lab, or the allegations in your Counterclaim:

a. Izabella Pena
b. Christina (Tina) Lopez
c. Shaye Carver
d. Nora Kory
e. Heather Keys
f. Sebastian Lourido
g. Tobiloba Oni
h. Martin Taylor
i. Ruth Lehmann

RESPONSE NO. 7:

Defendant objects to this Request on the grounds that it: (1) fails to state the documents to be produced with reasonable particularity as required by Mass. R. Civ. P. 34(b)(1); (2) is overbroad as to time and scope, unduly burdensome,

oppressive and duplicative; (3) seeks information which is not relevant nor reasonably calculated to lead to the discovery of admissible evidence; (4) is vague and ambiguous as to the phrase "concerning Sabatini [or] the Sabatini Lab"; (5) seeks the disclosure of information which would constitute an unwarranted invasion of the affected non-parties' constitutional, statutory and/or common law rights to privacy and confidentiality; (6) seeks the potential disclosure of information related to Whitehead's internal investigation that is protected by Whitehead's attorney-client privilege. See Upjohn Co v. United States, 449 U.S. 383, 389 (1981).

Subject to and without waiving these objections and subject to the search defined above, Knouse will produce relevant, non-privileged communications with the individuals identified above, concerning Sabatini's conduct, the culture in the Sabatini Lab, or specific factual allegations in her Counterclaim that relate directly to such individual(s).