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*Application to Appear Pro Hac Vice Forthcoming

Attorneys for Petitioners Dr. James Studnicki et al.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF VENTURA

DR. JAMES STUDNICKI; DR. DONNA J. HARRISON; DR. DAVID C. REARDON; DR. JOHN W. FISHER; DR. INGRID SKOP; DR. MAKA TSULUKIDZE; DR. CHRISTINA CIRUCCI; DR. SHARON J. MACKINNON; CHRISTOPHER CRAVER; and TESSA COX,

Petitioners,

v.

SAGE PUBLICATIONS, INC.,

Respondent.

Case No.: 2024CUPA031167

PETITION TO COMPEL ARBITRATION

[CCP §§1281.2, 1290, 1290.2, 1291.2]

INTRODUCTION

1. Petitioners are ten professional researchers who together co-authored three scientific studies in 2019, 2021, and 2022.[1] Sage Publications, Inc. conducted thorough peer reviews of the Articles, accepted them for publication in one of its medical journals, *Health Services Research and Managerial Epidemiology* (HSRME), and publicly praised them for their scientific rigor.

2. But Sage's commitment to science disappeared in 2023 after a critic of the Authors filed a complaint with Sage about the 2021 Article and the Authors' affiliations. Sage responded in bad faith and in violation of its Publishing Agreements by retracting all three Articles for pretextual and discriminatory reasons on February 5, 2024, and removing the lead Author, Dr. James Studnicki, from HSRME's editorial board. Sage's retractions and firing of Dr. Studnicki violated California contract, tort, and civil rights law.

3. Sage's wrongdoing has been causing enormous and incalculable harm to the Authors' professional reputations, as Sage intended. Because of Sage's retractions, the Authors and their research have been attacked by the media and by other authors, and the Authors have had new research proposals inexplicably turned away by other publications that now fear associating with them. The Authors have years—even decades—of fruitful research ahead of them, but they are now being treated as pariahs.

4. The Authors have thus been urging Sage to submit their claims to arbitration, as required by Sage's Publishing Agreements, making repeated offers to Sage to begin the process, and bending over backwards to make concessions to incentivize Sage to cooperate.

5. Instead of cooperating, Sage has engaged in a months-long campaign of cat-and-mouse negotiations apparently designed to delay arbitration and pressure the Authors into waiving their discovery rights as a condition of arbitrating. Indeed, Sage has rebuffed every compromise proposed by the Authors, from a general submission to the American Arbitration Association (AAA) to a joint submission to one of five esteemed California arbitrators with unimpeachable reputations. Sage has thus left the Authors with no choice but to seek judicial intervention.

[1] For ease of reference, Petitioners are referred to as "the Authors," and the three scientific studies at issue are referred to as "the Articles."

6. In light of Sage's long and unduly prejudicial delay, and pursuant to the California Arbitration Act, the Court should decide the Authors' petition "in a summary way," setting an expedited schedule and the earliest possible hearing date and affording a "preference" to this case "over all other civil actions or proceedings." CCP §§1290.2, 1291.2.

PARTIES

7. The Authors—Dr. James Studnicki, Sc.D., M.P.H., M.B.A., Dr. Donna J. Harrison, M.D., Dr. David C. Reardon, Ph.D., Dr. John W. Fisher, Ph.D., J.D., M.S., M.A., Dr. Ingrid Skop, M.D., FACOG, Dr. Maka Tsulukidze, M.D., Ph.D., M.P.H., Dr. Christina Cirucci, M.D., FACOG, Dr. Sharon J. MacKinnon, Ph.D., RN, FNP, Christopher Craver, M.A., and Tessa Cox (née Longbons)—are nationally recognized and credentialed scientists who have authored or contributed to hundreds of peer-reviewed articles in the areas of biomedicine and public health systems.

8. Respondent Sage Publications, Inc. is a New York corporation with its principal place of business located in Thousand Oaks, California. It is an academic publisher and the proprietor of over 1,000 professional journals, including the scientific journal *Health Services Research and Managerial Epidemiology*.

JURISDICTION AND VENUE

9. Jurisdiction is proper in the Superior Court of the State of California for the County of Ventura pursuant CCP §410.10.

10. Venue is proper in Ventura County pursuant to CCP §1292 because HSRME is published by Sage's offices in Ventura County. Moreover, the Publishing Agreements between the parties provide that "[t]he validity, interpretation, performance[,] and enforcement of this Agreement shall be governed … where the Journal is published by Sage's offices in the United States, by the laws of the State of California and subject to the jurisdiction and venue of the courts of the State of California located in Ventura County." Exh. A at 3; Exh. B at 3; Exh. C at 3.

FACTUAL ALLEGATIONS

I. Sage retracts the Authors' Articles and fires Dr. Studnicki, causing enormous harm to the Authors' reputations.

1. In 2019, six of the Authors submitted an article to HSRME (the "2019 Article"). In

2021, eight of the Authors submitted a second article to HSRME (the "2021 Article"). In 2022, nine of the Authors submitted a third article to HSRME (the "2022 Article"). After accepting each Article, and before publishing them, Sage entered a Publishing Agreement with the Authors. The Publishing Agreements for the 2019, 2021, and 2022 Articles are identical in substance and attached as Exhibits A, B, and C, respectively.

2. The Authors complied with all submission guidelines and all requirements in Sage's Publishing Agreements. Following each submission, HSRME conducted a double-blind peer review of each Article, which Sage claims is thorough and rigorous. After peer review, HSRME accepted all three Articles for publication.

3. Upon HSRME's acceptance of the 2021 and 2022 Articles for publication, the Editor-in-Chief emailed the lead author, Dr. James Studnicki, thanking him and praising both Articles as "fine contribution[s]" to the journal. The 2021 Article was widely circulated and read online, and it remains the second most-read article in HSRME's history. In 2022, HSRME's Editor-in-Chief, Dr. Gregory M. Garrison, publicly praised the 2021 Article for fulfilling the journal's scientific "vision."

4. In April 2023, a professor at South University who was an opponent of the Authors' scientific perspective submitted a complaint to HSRME about the 2021 Article. After receiving the complaint, Sage decided for discriminatory reasons that it would retract the Authors' Articles. Sage appears to have made up its mind to retract the Articles—and ruled out any lesser measure—before it even began the retraction process.

5. On July 25, 2023, Sage published a public "Expression of Concern" (EOC) asserting pretextual concerns about the 2021 Articles. The Authors responded to Sage to address its putative concerns, but Sage ignored the Authors' extensive correspondence.

6. On November 13, 2023, Sage then issued a retraction notice for all three Articles for similar pretextual reasons. Sage initially gave the Authors until November 16, or just three days, to respond.

7. On November 14, 2023, the day after Sage issued its retraction notice, Dr. Garrison, HSRME's Editor-in-Chief, sent an email to the lead author of the Articles, Dr. Studnicki, removing him from the HSRME editorial board. Dr. Studnicki's termination came without any prior notice,

conversation, or expression of dissatisfaction from Dr. Garrison or anyone else about Dr. Studnicki's service during his four years on the board. In his email, Dr. Garrison cited "the decision to retract [the Articles]" as the reason for Dr. Studnicki's removal, even though the retractions had not been finalized and were discriminatory and pretextual.

8. On November 16, the Authors responded to Sage's retraction notice, this time through legal counsel. The Authors' counsel criticized the "unreasonable, unrealistic, and highly prejudicial" nature of Sage's initial three-day deadline. This letter is attached as Exhibit D.

9. On November 21, Sage's attorney Ronni Sander responded with a blistering letter that accused the Authors of defamation for challenging Sage's conduct but agreed to extend the deadline to November 29. This letter is attached as Exhibit E.

10. The Authors then responded to the retraction notice with a detailed scientific response, but Sage ignored the response.

11. On February 5, 2024, Sage retracted all three Articles for the pretextual reasons asserted in its retraction notice without addressing the Authors' responses. To this day, Sage has never responded to the Authors' scientific rebuttal.

12. By retracting the Articles without justification and acting in bad faith and for discriminatory and improper reasons, Sage breached its Publishing Agreements and also violated the retraction guidelines published by the Committee on Publication Ethics (COPE) that it claims its journals follow. Sage also treated the Authors differently than other similarly situated Authors. Sage violated California contract, tort, and civil rights law.

13. The harm caused by Sage's July 25 EOC, its February 5 retraction of all three Articles, and its decision to post its pretextual claims about the Articles on its website, has been profound, immediate, and foreseeable. Various news outlets reporting on the retractions referred to the Articles as "junk science." Most of the coverage quoted Sage's unsubstantiated claims in the Retraction Notice. And the professor who initially complained to Sage about the 2021 article was emboldened to co-author an article accusing the Authors of "deception."

14. This highly publicized retraction has foreseeably resulted in the ongoing loss of subsequent business and scientific publishing opportunities. For example, on March 26, 2024, a free

online archive and distribution server for complete but unpublished, non-peer-reviewed manuscripts ("preprints") in the medical, clinical, and related health sciences, refused to post one of the Authors' manuscripts. Such rejections are unheard of for researchers with the Authors' well-earned reputations as researchers and scientists. Similarly, on April 9, 2024, a journal rejected the same manuscript, citing similar pretextual reasons that HSRME used in its retraction. The HSRME retraction has thus encouraged and created a template for other journals to refuse to publish the Authors' scholarly work.

15. These rejections are just the tip of the iceberg but reveal the enormous and incalculable harm that Sage's retraction has inflicted on the Authors' reputations and their ability to publish research and scholarship. As scientists, the Authors' credibility is their lifeblood, but Sage has destroyed the Authors' hard-earned professional reputations.

II. Sage delays arbitration and pressures the Authors into waiving their discovery rights.

16. Because of this ongoing harm to the Authors' reputations, the Authors have earnestly sought relief in arbitration, as required by the Publishing Agreements. *See* Exh. A at 3; Exh. B at 3; Exh. C at 3. Unfortunately, Sage drafted the Publishing Agreements in the vaguest possible terms, making it unclear which arbitrator or arbitration provider would serve as the forum for a dispute. The Publishing Agreements simply say that "[a]ny controversy or claim arising out of or relating to this Agreement, or the breach thereof, which the parties cannot settle themselves or through mediation, shall be settled by arbitration." *Id.*

17. Sage has unfairly used this ambiguity to its advantage by refusing to agree to any arbitrator or arbitration provider unless the Authors first agree to certain extra-contractual conditions. Sage first required the Authors to provide to Sage, in advance, a detailed description of their claims. This was not required by any arbitration rules, but the Authors complied with Sage's demand. Then Sage demanded that the Authors waive their discovery rights in advance. This was also not required by any law, so the Authors refused Sage's demand. Then Sage required that the Authors produce a list of individual arbitrators. The Authors complied, creating a slate of five arbitrators, but Sage refused to respond to the Author's slate. Then Sage demanded that the Authors abandon their slate of arbitrators and submit to Sage's own preferred arbitration provider. Because

this was unreasonable, the Authors refused to do so until Sage first responded to its slate of proposed arbitrators. Sage refused to do so.

18. By placing extra-contractual conditions on arbitration—and then making up new conditions whenever the authors attempted to comply—Sage has delayed arbitration for months on end. Even more concerning, Sage has used its intransigence as a weapon to try to pressure the Authors into unilaterally surrendering their discovery rights. Sage's egregious actions require this Court's intervention to compel arbitration.

A. The Authors immediately request arbitration, but Sage delays by asking for more details.

19. On February 6, the day after Sage retracted the Authors' articles, the Authors sent a letter to Sage requesting a submission to arbitration. This letter is attached as Exhibit F. The letter explained that arbitration would address Sage's "'February 5, 2024 retraction of [the Authors'] three articles,'" "public statements that [Sage has] made about the Authors or their work, including in th[e] Retraction Notice, th[e] Expression of Concern and elsewhere," and "the removal of Dr. Studnicki from the Journal's Editorial Board." *Id.* The letter also explained that the Authors would seek "all appropriate relief arising from Respondents' improper conduct, including all appropriate monetary damages and equitable relief." *Id.* The letter concluded that because the Authors and Sage have already "exhausted all reasonable efforts to settle this dispute," the case should proceed immediately to arbitration. *Id.*

20. Sage immediately began its strategy of delay. Sage's counsel, Caroline Petro Gately, responded the same day with an accusatory letter faulting the Authors for not providing Sage with enough information. This letter is attached as Exhibit G. Ms. Gately wrote, "Your letter does not assert any claims, does not identify any conduct they allege is 'improper,' and does not request any relief. In order to meaningfully respond to your request, Sage asks that you identify, at a minimum, the conduct that your clients allege is improper and their claims, if not also the relief your clients request." Exh. G.

21. Ms. Gately's letter was improper for multiple reasons. First, Sage already knew the conduct that the Authors were complaining about from prior correspondence with the Authors. *See*

supra ¶¶5, 8-10, 19. Moreover, nothing in the Agreements conditioned arbitration on the Authors providing Sage with details about their claims before submitting those claims to arbitration. *See* Exh. A at 3; Exh. B at 3; Exh. C at 3. Sage thus had no right to refuse a request to arbitrate until the Authors provided such details.

22. Despite the unreasonableness of Sage's request, the Authors complied with it, hoping to foster a spirit of cooperation.

23. Counsel for the Authors then conducted further research on their clients' claims and the relief to which the Authors were entitled. After finishing this research, the Author's counsel emailed Ms. Gately on March 27, asking for a meeting to discuss a potential joint submission to AAA. This email is attached as Exhibit H. Attached to this email was a copy of a joint submission laying out the Authors' specific claims and relief requested. This joint submission is attached as Exhibit I. The Authors' proposed joint submission provided the level of detail required by AAA rules. *See* Exh. I.

24. The next day, on March 28, the parties held a conference call to discuss the matter. *See* Exh. H. During that call, counsel for the Authors asked Sage if it would be open to a joint submission to AAA, to venue in the District of Columbia (where counsel for both parties are located), and to using AAA's expedited arbitration procedures, which limited discovery. AAA Commercial Rules E-5, bit.ly/3TzdWTn.

25. Sage continued its strategy of delay. Ms. Gately did not agree to any of the Authors proposals or suggest an alternative arbitration provider. Instead, she indicated that Sage might be willing to agree to the Authors' requests if they provided more details about their case.

26. Sage was again acting unreasonably. While Sage was not required to agree to AAA, a DC venue, or expedited procedures, it had no grounds in the Agreements to delay a joint submission to arbitration—particularly to a nationwide arbitration provider like AAA that has experienced arbitrators in both D.C. and California.

27. Unfortunately, the Authors were still under the misimpression that Sage was willing to cooperate, so they once again attempted to comply with Sage's demands.

B. Sage delays by demanding the Authors waive discovery in arbitration.

28. Over the next two months, between March 28 and and May 28, counsel for the Authors drafted a 57-page "speaking" arbitration demand, laying out in detail their claims, the factual allegations supporting them, and the relief that they would be seeking under them. This was an unprecedented gesture on behalf of the Authors. Neither AAA nor any other arbitration provider requires a claimant to file a detailed speaking demand for an arbitrator to be assigned to the parties' case. Because arbitration is not litigation and not governed by judicial pleading rules, an arbitration demand typically requires only a few sentences explaining the "nature of [the] dispute." *E.g.*, AAA, *Submission to Dispute Resolution*, bit.ly/4bt1Jqh.

29. On May 28, the Authors emailed the draft demand to Sage, along with a new joint submission. *See* Exh. H. This draft demand and proposed joint submission are attached as Exhibits J and K, respectively. The Authors's proposed joint submission dropped the request for expedited procedures, proposing instead to submit the case under the default AAA commercial rules. *See* Exh. K.

30. After Sage reviewed the demand, the parties held a conference call on June 6. *See* Exh. H. Once again, Sage delayed. This time, Sage requested—as a condition of agreeing to a joint submission to AAA—that the Authors agree on discovery limits to avoid burdensome productions. Ms. Gately explained for the first time that it was Sage's position that California law would prohibit all discovery in the Authors' arbitration.

31. After this call, counsel for the Authors researched Sage's argument and determined that it was specious. California law confers a right to pre-hearing discovery in arbitrations over "any dispute, controversy, or issue arising out of or resulting from any injury to, or death of, a person caused by the wrongful act or neglect of another." CCP §1283.1. California courts have interpreted the term "injury" broadly to encompass a variety of different personal harms, including discrimination and reputational harm. *See, e.g.*, *Armendariz v. Found. Health Psychcare Servs., Inc.*, 24 Cal. 4th 83, 105 (2000); *Roman v. Superior Ct.*, 172 Cal. App. 4th 1462, 1476 & n.3 (2009); *Riegert v. Barker*, No. B193471, 2007 WL 4201091, at *12 (Cal. Ct. App. Nov. 29, 2007). A "personal injury" encompasses anything that "'impairs the well-being or the mental or physical

health of the victim.'" *Bihun v. AT&T Info. Sys., Inc.*, 13 Cal. App. 4th 976, 1004-05 (1993); *see, e.g.*, *O'Hara v. Storer Commc'ns, Inc.*, 231 Cal. App. 3d 1101, 1117-18 (Ct. App. 1991). Moreover, "when parties agree to arbitrate statutory claims"—such as a discrimination claim under California's civil rights laws—"they also implicitly agree, absent express language to the contrary, to such procedures as are necessary to vindicate that claim," including pre-hearing discovery. *Armendariz*, 24 Cal. 4th at 105-06; *see, e.g.*, *Fitz v. NCR Corp.*, 118 Cal. App. 4th 702, 712 (2004).

32. The parties thus held another call on June 14. *See* Exh. H. Counsel for the Authors explained that the Authors were entitled to pre-hearing discovery in arbitration and cited authorities. However, in the spirit of cooperation, and recognizing that Sage had expressed concerns about the scope of discovery, counsel explained that the Authors might be willing to agree to reciprocal limits on the scope of discovery—such as date ranges and caps on the number of discovery requests, among other things.

33. All of this was conciliatory on the part of the Authors, as Sage had no basis for refusing to arbitrate the case unless the Authors agreed to discovery limits. The Publishing Agreements required Sage to submit the case to arbitration, and once in arbitration, the Publishing Agreements did not prohibit Sage from asking the arbitrator for discovery limits. Indeed, any arbitrator would likely require the parties to agree to reasonable limits on discovery.

34. Sage rejected this proposal in a letter sent by Ms. Gately on June 20. This letter is attached as Exhibit L. Sage's letter asserted that there was "simply no authority" for discovery in arbitration. Exh. L. And she concluded her letter by complaining that "[w]ithout proper limitations on discovery, this proceeding will quickly spin out of control and make a prompt hearing impossible." *Id.* She offered "two possible paths forward": "select a California arbitrator for a California arbitration and *address with the arbitrator* whether the claimants have no right to discovery at all," or "agree to submit the dispute to AAA" and "agree in th[e] joint submission to substantive limitations on discovery, which [Sage] remain[s] open to discuss." *Id.* (emphasis added).

35. This letter was confusing and contradictory. On the one hand, Sage was suggesting that it was willing to let a California arbitrator be appointed to decide the issue of discovery instead of forcing the Authors to waive discovery in advance. On the other hand, Sage was refusing to submit

the case to AAA, which could appoint a California arbitrator to decide on discovery.

36. Ms. Gately's letter also appears to have been misleading. It indicated that Sage would be willing to agree to some discovery if the parties could simply reach a reasonable agreement on scope. It turns out that this willingness was illusory, but the Authors believed Sage and decided to try to placate Sage.

C. Sage delays by demanding unspecified limitations on discovery.

37. On June 26, the Authors made another extraordinary concession. The Authors sent a letter to Sage addressing its concerns about discovery into "the topic of how Sage allegedly treated the Authors differently than other similarly situated authors." This letter is attached as Exhibit M. The Authors explained that they "obviously cannot agree to let Sage be the sole arbiter of what is reasonable discovery on this topic," as "[n]o claimant would allow the defendant to unilaterally determine what documents are relevant to proving their claims." Exh. M. But to "facilitate cooperation," the Authors disclosed to Sage a list of draft discovery requests on this topic that the Authors intended to serve on Sage in the arbitration. *Id.* The Authors hoped to prove to Sage that they would pursue only "targeted" discovery and "not the dragnet approach to discovery that Sage fears." *Id.* This was an unprecedented gesture, not required by the rules of any arbitration provider, and not required by the Publishing Agreements. The Authors also formally offered to agree ahead of time to "a date range for discovery requests; limits on the type of discovery, such as foregoing the right to take depositions; and limits on the scope of discovery, such as a numerical limit on discovery requests." *Id.*

38. Sage delayed for yet another month by appearing interested in the Authors' proposal. But Sage refused to accept the proposal and repeatedly demanded that the Authors place additional limits on discovery. Sage never specified what additional limits would satisfy Sage and enable it to agree to arbitration.

39. The parties held follow-up calls on July 1, July 2, and July 8. But on each call, Ms. Gately remained vague and non-committal. On the July 1 call, Ms. Gately said that Sage's answer to the June 26 letter was "not yes" and "not no," but she did not provide any additional detail. On the July 2 call, Ms. Gately indicated that the Authors' draft discovery requests on the topic of unfair

treatment were too broad because the volume of production would be too large, but she did not say how large the production would be or specify how any discovery requests on the topic would need to be narrowed. On the July 8 call, Ms. Gately explained that the draft requests on unfair treatment would result in the production of "hundreds" of case files, but offered no detail on how large those case files were. When counsel for the Authors asked Ms. Gately whether there was a certain size of production that would be acceptable to Sage—*i.e.*, 100 case files, or 50 case files—she declined to offer any specific number.

40. Even more concerning, on the July 8 call Ms. Gately explained that Sage could not assure the Authors that Sage would agree to a joint submission even if the size of production was reduced to a sufficiently small volume (whatever that volume may be). At that point, she explained, Sage may still refuse to disclose documents, such as case files that concern "non-public" inquiries or disciplinary actions against similarly situated authors or publications. In other words, Sage admitted that it would not hand certain documents over, even if the Authors bent over backwards to make concessions that limit their discovery rights.

41. These phone calls left the Authors in an intolerable position of negotiating in a void. The Authors had not seen Sage's response to their draft arbitration demand and did not have a clear idea of what Sage wanted in terms of concessions. And while the Authors showed an unprecedented willingness to meet Sage half-way, Sage declined to even say where "half-way" was.

D. Sage delays by demanding the Authors produce a list of individual arbitrators.

42. At this point, five months had passed since Sage retracted the articles and the Authors had requested a joint submission. The Authors still had no assurance that they were any closer to a final resolution with Sage. Thus, the Authors sent a letter proposing that all remaining discussions on discovery take place "in arbitration—with an appointed arbitrator to resolve any disputes—and not [beforehand], with Sage holding the entire arbitration process hostage to a one-sided negotiation." This letter is attached as Exhibit N. This request embraced Ms. Gately's June 20 proposal to "select a California arbitrator for a California arbitration and *address with the arbitrator* whether the claimants have no right to discovery at all." Exh. L (emphasis added).

43. Sage refused. In a short letter on July 22, Sage explained that the "next step to move

the arbitration forward is to exchange proposed California arbitrators." This letter is attached as Exhibit O. Sage promised to "get to work and send [the Authors] our list as soon as possible" and asked the Authors to "do the same." Exh. O.

44. As of this filing, Sage has still not provided a list of arbitrators to the Authors.

45. The Authors once again dutifully complied. Counsel for the Authors spent a month, between July 22 and August 23, preparing a list of arbitrators to propose to Sage. The Authors compiled a slate of slate of five distinguished California arbitrators with esteemed judicial and arbitral careers, spotless reputations, wide experience, and proven neutrality. Two of these arbitrators were associated with Judicate West (JW), two with ADR Services, Inc., and one with Alternative Resolution Centers (ARC). The Authors proposed this slate to Sage in a letter on August 23. This letter is attached as Exhibit P. The Authors wrote, "We respectfully ask that Sage select one or more of these arbitrators as an agreed neutral. If Sage would like to make multiple selections, we ask that Sage provide a ranking of its choices. If Sage cannot agree to any of these selections, we ask that Sage explain why it cannot do so and provide specific reasons why each of these five arbitrators is unacceptable." Exh. P. The Authors requested a response by September 4. *Id.*

46. Sage never responded to this request.

E. Sage delays by demanding the Authors use its preferred arbitration provider.

47. Sage had no basis for rejecting all five of the Authors' proposed arbitrators, but it appears that Sage had no intention of cooperating with the Authors. So once again, Sage delayed. Sage's new tactic was to demand that the Authors dispense with their slate of proposed arbitrators and instead agree to Sage's preferred arbitration provider.

48. On September 3, Ms. Gately sent a brief email to the Authors that read as follows: "Of the five arbitrators on your list, only one is with an organization that does not impose discovery beyond what California law requires, to which Sage is unwilling to voluntarily submit. We are working on a slate of arbitrators for you to consider. I am not sure it will be ready by tomorrow, but this week seems possible. Thanks." This email correspondence is attached as Exhibit Q.

49. This was a delay tactic, as Sage never provided the Authors with a slate of arbitrators.

50. Ms. Gately's September 3 email was also another unfair attempt to move the goal posts. Sage asked the Authors on July 22 to propose the names of individual arbitrators. Sage never asked the Authors to select arbitrators who were not associated with an arbitration provider. Indeed, such a request would be unreasonable, as most experienced arbitrators are associated with a provider, and every provider permits their arbitrators to limit (or even prohibit) discovery as required by law. *See, e.g.*, ADR Servs., Inc. Arb. Rule 4, bit.ly/4egjeLV ("If any of these rules … is determined by the arbitrator to be in conflict with applicable law, the provision of law will govern, and no other rule will be affected."); Judicate West Com. Arb. Rule 3.1.2, bit.ly/4dmCuWz ("When a contract specifies that a dispute between the parties will be resolved under rules or laws other than these JW Commercial Arbitration Rules … JW will administer the arbitration under the rules or laws designated in the contract or selected by the parties."); Alt. Resolution Ctrs. Arb. Rule 1, bit.ly/4gFfDIC ("If any Rule or modification is determined to conflict with applicable law, then the applicable law shall govern over the conflicting Rule and no other Rules shall be affected.").

51. The next day, on September 4, Ms. Gately sent another short email that said the following: "To preliminarily assess arbitrator bias, please identify which religion claimants contend Sage discriminated against. Thank you." Exh. Q.

52. The implication of this outrageous request was clear. Sage wanted to know "which religion" the Authors believed that Sage discriminated against so that Sage could research whether the proposed arbitrators belonged to that religion and thus have a "bias" in favor of it. Screening the religious beliefs of an arbitrator for "bias" is inappropriate and itself reflects religious discrimination.

53. The Authors responded to this email by "reiterat[ing] [their] request" that Sage "provide a meaningful response to our five proposed neutrals." *Id.* Sage did not do so. Instead, Ms. Gately responded with a curt email blaming the Authors for any delay. She wrote, "If delay is a concern for you, then you might have given more thought to the consequences of proposing a slate with four out of five arbitrators affiliated with organizations that have their own discovery rules." *Id.*

54. Two days later, on September 6, Ms. Gately sent another brief email explaining that Sage was still working on preparing a slate of arbitrators. *Id.* Again, Sage has never produced this

slate to the Authors.

55. Then, on September 9, Sage suddenly changed all of its positions. Ms. Gately sent an email that said as follows: "The parties could … jointly submit to arbitration with ARC, but the submission would have to be made without prejudice to each party's position on the availability of discovery. In other words, Sage would expressly retain the right to argue for no discovery, and the Authors would expressly retain the right to argue for discovery, with the decision to be made by the arbitrator without regard to ARC's discovery rule. Let me know if this is acceptable." *Id.*

56. Counsel for the Authors were dumbfounded, because this ran exactly counter to what Sage had suggested in its July 22 letter. *See* Exh. O. Counsel responded to Ms. Gately on September 11 noting this absurdity, and asking Ms. Gately, "***What happened to the slate of proposed arbitrators we proposed?***" Exh. Q. The parties exchanged several emails like this—Ms. Gately would demand a general submission to ARC, completely ignoring the Authors' proposed arbitrators, and the Authors would reply by reiterating their request that Sage respond to the slate of arbitrators. *See id.*

57. On September 13, after going back and forth with Sage, counsel for the Authors emailed Ms. Gately to clarify the Authors' position. They wrote: "Sage initially proposed that the parties exchange a list of arbitrators, which the Authors did, and now Sage is ignoring the Author's proposed arbitrators and counter-proposing a general submission to ARC (which the authors have never proposed and have never agreed to). In other words, Sage is trying to dictate terms. The authors do not accept that." *Id.*

58. Ms. Gately responded with a defiant email on September 16. She mocked the idea of exchanging individual names of arbitrators, saying, "I know of no arbitration in which the parties exchange dialogue on specific proposed arbitrators." *Id.* And she accused the Authors of causing delay and making "unreasonable demands," claiming that the Authors were trying to force Sage to "relinquis[h] … its contract right" to have "no discovery." *Id.*

III. The Court should expeditiously decide the Authors' petition and compel arbitration.

59. In light of Sage's numerous unjustified delays in this proceeding, this Court should not allow Sage to delay arbitration any longer.

60. The California Arbitration Act requires the Court to hear and decide on petitions to compel arbitration expeditiously and give them priority "over all other civil actions or proceedings." CCP §§1290.2, 1291.2. The reason for this command is clear: when violators like Sage delay and resist arbitration, they should not be rewarded or allowed to drag their heels in court. Arbitration must be ordered quickly to effectively counteract their resistance.

61. The Court should thus set an expeditious schedule and hold a hearing on the Authors' petition at the earliest available date.

62. To further expedite arbitration, the Court should order that arbitration be submitted to an arbitrator within 14 days of the Court's decision.

CONDITIONS PRECEDENT TO FILING ACTION

63. The Authors have complied with all required conditions precedent prior to filing this action.

64. The Authors have complied with the provisions of the Publishing Agreements requiring the parties to "first make a good-faith effort" to resolve among themselves a dispute arising out of or relating to the Publishing Agreements. Exh. A at 3; Exh. B at 3; Exh. C at 3.

65. The parties have agreed to waive the Publishing Agreements' mediation prerequisite requiring that the parties "shall engage in non-binding mediation." *Id.*

PRAYER FOR RELIEF

66. For the reasons stated herein, the Authors respectfully request that the Court grant the following relief:

a. Order an expedited schedule and the earliest possible hearing date, giving a preference to this case over all other civil actions or proceedings;

b. Declare that Sage materially breached the arbitration clauses of its Publishing Agreements with the Authors by unreasonably refusing to arbitrate and by conditioning arbitration on the Authors surrendering their right to pre-hearing discovery in arbitration;

c. Compel Sage to participate in arbitration before one of the five arbitrators that the Authors proposed to Sage at Sage's request;

d. Order that this dispute be submitted to arbitration no more than 14 days from an order compelling Sage to participate in arbitration, and

e. Order all other relief the Court finds just and proper.

Dated: October 2, 2024

By: /s/ *David A. Shaneyfelt*

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