

Kevin Kurtsky
3315 Roswell Road NE
Atlanta, Georgia 30329

James J. Murtaugh
511 Calibre Woods Drive NE
Atlanta, Georgia 30329

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

-----X
CELIA FARBER,

Plaintiff,

-against -

**RICHARD JEFFERYS, KEVIN D. KURITZKY and
JAMES J. MURTAGH MD,**

Defendants.
-----X

Index No. _____/2009

COMPLAINT

PLAINTIFF CELIA FARBER, by her attorneys Nesenoff & Miltenberg. LLP, as and for her Complaint, respectfully alleges as follows:

THE GRAVAMEN OF THE ACTION

1. This is a libel action brought by the Plaintiff Celia Farber ("Plaintiff Farber"), an investigative journalist, who was the victim of a campaign of defamation by the named Defendants.

2. The campaign of defamation was launched by an e-mail communication in May 2008 by Defendant Richard Jefferys in response to the scheduling of testimony by Dr. Peter Duesberg, Ph. D ("Dr. Duesberg"), and Plaintiff Farber to be given during "Whistleblower Week in Washington" held May 11-14, 2008, and the award of the Clean Hands Award by the Semmelweis Society International, a non-profit corporation dedicated to the protection of whistleblowers, to Dr. Duesberg for his scientific work challenging onco-viral paradigms and to Plaintiff Celia Farber for her reporting in *Harper's Magazine*, in March of 2006, on corruption in pharmaceutical industry funded AIDS research.

3. Since Plaintiff Farber began reporting and writing in 1986, she has been published in major magazines including *Harper's*, *Rolling Stone*, *Esquire*, *Vogue*, and others. No

periodical for which Plaintiff Farber has written has found error in her reporting, nor has any ever had reason to retract or repudiate her work.

4. The aforementioned campaign of defamation was continued by e-mail communication in June 2008 by Defendant Murtagh and Defendant Kuritzky after the Clean Hands Award was given to Dr. Duesberg and Plaintiff Farber.

THE PARTIES

5. Plaintiff Farber is an individual who resides at 216 West 102nd Street - Apt. 7A, New York, New York 10025.

6. Defendant Richard Jefferys ("Defendant Jefferys") is an individual who resides at in care of Treatment Action Group, 611 Broadway - Suite 308, New York, New York 10012.

7. Defendant Kevin D. Kuritzky ("Defendant Kuritzky") is an individual who resides at 3315 Roswell Road NE, Atlanta, Georgia 30305.

8. Defendant James J. Murtagh ("Defendant Murtagh") is an individual who resides at 511 Calibre Woods Drive NE, Atlanta, Georgia 30329.

VENUE

9. Venue lies in New York County under New York CPLR § 503 based on the place of residence of Plaintiff Farber and Defendant Jefferys.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

10. Plaintiff Farber began her work as a print journalist in high school in her native Sweden and continued as a print journalist while attending college in New York, starting to write for the US rock magazine *SPIN* in 1986. Her first "beat" was AIDS, a subject she reported on between 1986 and 1994. She edited and frequently wrote *SPIN*'s AIDS column which she created, called "Words From The Front." These "columns" often grew into lengthy, investigative

feature articles that required global travel, including across Sub-Saharan Africa and across Europe. In 1987-88, the column featured the second print interview in the U.S. media of virologist Peter Duesberg, allowing him to explain his published contention that retroviruses, including HIV, are harmless. The following month, *SPIN* published a response from virologist Dr. Robert Gallo, in which Dr. Gallo, in colorful but abusive terms, declared why he felt Dr. Duesberg was wrong and he was right, about HIV being the cause of AIDS. This argument soon bloomed into extensive coverage of the burgeoning "HIV debate" which Plaintiff Farber was assigned to cover assiduously over the coming decade.

11. Dr. Duesberg, one of the youngest members ever voted into the National Academy of Sciences ("NAS") at age 50, mapped the genetic structure of retroviruses and identified the first putative onco-gene (cancer gene) in the 1970s, reaping top NIH grant awards, including the highly coveted "Outstanding Investigator Grant." Before that work, Dr. Duesberg had been hand-picked by the National Institutes of Health ("NIH") in the 1960s from Germany's Max Planck Institute. Dr. Duesberg has published 151 scientific papers on retroviruses and three books on HIV/AIDS.

12. Plaintiff Farber, after leaving *SPIN* in 1995 and becoming a free-lance journalist, was commissioned by numerous periodicals nationally and internationally, to cover a range of subjects. In 1997, *Esquire* dispatched her to Los Angeles for several months to obtain a story about recently acquitted O.J. Simpson's post trial life. That work resulted in a 1998 *Esquire* cover story called "Whistling In The Dark", which broke publicity records at *Esquire* and was syndicated in over 20 foreign countries including China. It was also included in a "Best of *Esquire* Love and Murder" anthology published the following year in 1999.

13. Plaintiff Farber, prior to 2006, wrote publications for numerous periodicals, including *Rolling Stone*, *(German) Vogue*, *Interview*, *New York Post*, *New York Press*, *Salon*, *The Herald on Sunday (Scotland)*, *Stop Smiling*, *Alive*, *Media Post*, as well as numerous online literary and journalistic outlets. She was invited to lecture on journalism around the world, including London, Buenos Aires, Nairobi, Amsterdam, Los Angeles and elsewhere. In 1994, she spoke at the American Association For The Advancement of Science (“AAAS”) on a panel that included Nobel Laureate Dr. Kary Mullis and other distinguished scientists. Her writings were used as course material in several college media and science courses, and she continues to lecture to journalism students to this day. She also wrote scripts for VH-1, BBC radio, Swedish Radio (Sverige's Radio) and co-produced a documentary film for BBC, in addition to appearing on numerous radio and TV shows, including CNN, The Today Show, Politically Correct with Bill Maher, The Charlie Rose Show, ESPN, and the Keith Olbermann Show on MSNBC.

14. In 2004, then *Harper's* editor Lewis H. Lapham invited Plaintiff Farber to propose a science story to him at *Harper's*, which she did. Plaintiff Farber's proposal was accepted, and the subsequent article “Out of Control: AIDS And The Corruption of Medical Science” was published in March of 2006.

15. Plaintiff Farber's article in *Harper's* was developed over a period of over a year and a half, and fact-checked for over three months prior to publication. The terms of the fact checking were that Farber had to supply *Harper's* with original source material to confirm each fact and quotation in the article of *Harper's* to the complete satisfaction and Plaintiff Farber satisfied those terms. *Harper's* accorded an unusually long and arduous fact checking period in order to ensure the accuracy of the text. The final published version was an 11,000 word article which detailed the corrupt and repressive science culture emanating from the NIH and centered

on the first hand testimony of NIH whistle-blower and Clinical Trials Safety Officer Dr. Jonathan Fishbein. Dr. Fishbein confirmed the accuracy of the sections pertaining to his experience, prior to publication. To illustrate the punitive culture of NIH, *Harper's* requested the inclusion of a brief synopsis of the plight of Dr. Duesberg, whose funding and professional life were blighted following publication of his first dissenting article on HIV in 1987. The original assignment was to cover Dr. Duesberg's cancer work and the abuses he has suffered as a scientist. That article was accepted for publication, and later, was compressed to one long section that comprised one third of the larger, more expansive story that was published. The published story also covered the death of Joyce Ann Hafford, a pregnant single mother from Memphis who died of acute toxicities resulting from the AIDS drug Nevirapine, given to her as a participant in an experimental trial in which she was enrolled.

16. Plaintiff Farber's article in *Harper's* triggered attacks by a group of AIDS activists and researchers who were associated with the Treatment Action Group ("TAG"), a non-profit corporation that has maintained an address at 611 Broadway, Suite 308, New York, New York 10012. TAG holds itself out to the public as an independent AIDS research and policy think tank that fights for better treatment, a vaccine and a cure for AIDS and that works to help people receive life saving treatment, care and information. TAG is openly, by its own admission and from its inception, funded by pharmaceutical companies profiting from the manufacture and sale of drugs for HIV. TAG has engaged in vicious and relentless attack on anyone who highlights the toxicities of the ARV drugs that are the basis of its business operations in the United States and around the world, particularly the developing world.

17 Dr. Gallo lent his name to the document entitled "56 Errors", which purports to identify errors in the *Harpers* article by Plaintiff Farber; however, a review of the "56 Errors"

document by a group of nine scientists and medical doctors not working in the AIDS industry found the "56 Errors" an absurdly biased document containing character assassination, but finding no significant errors in Plaintiff Farber's article. More significantly, *Harper's* itself carefully reviewed "56 Errors" and concluded that it found no reason to retract or amend anything in Plaintiff Farber's article.

18. Dr. Gallo has been the subject of more investigations than any scientist in recent memory. Between 1990 and 1995 there were five major investigations of possible fraud surrounding Gallo's lab, and the research that led to the publication of his 4 papers in *Science* in 1984 that laid the foundation for the hypothesis that he had isolated a new pathogenic retrovirus in his lab and that it was the causative agent in AIDS. After an 18 month investigation conducted by the NIH, as reported in 1991 in the *Chicago Tribune*, it was found that Dr. Gallo's 1984 report on the isolation of the "AIDS Virus was ... riddled with fabrication, falsification, misleading statements and errors" (*Chicago Times*, Nov. 6, 1991). A panel that supervised the numerous Gallo investigations--the Richards Panel, comprised of eminent NAS and Institute of Medicine scientists--concluded that there was a "...pattern of behavior on Dr. Gallo's part that repeatedly misrepresents, suppresses, and distorts data and their interpretation in such a way as to enhance Gallo's claim to priority. (*Chicago Tribune*, May 27, 1992, John Crewdsen, "Criminal Inquiry Urged in AIDS, Lab Scandal"). In 1994, a criminal prosecution of Dr. Gallo was aborted due to the applicable five year statute of limitations hearing expired.

19. The Semmelweis Society International is a non-profit corporation organized under the law of Tennessee and maintaining an address at 276 Whitebridge Road #36, Nashville, Tennessee 37209-3229. The Semmelweis Society International is dedicated to ending the practice of "sham peer review" in which hospitals and physicians use false pretexts to attack and

destroy healthcare professionals who compete with, or report dangerous conditions within, those hospitals. The Semmelweis Society International regularly honors individuals who report medical or scientific corruption at great personal and professional risk. In April 2008, Plaintiff Farber received a telephone call from the Semmelweis Society International member Gil Mileikowsky MD, who informed Plaintiff Farber that her article in *Harper's* "Out Of Control: AIDS and The Corruption of Medical Science" had earned her the Semmelweis Clean Hands Award to be presented during "Whistleblower Week in Washington." At Dr. Mileikowsky's request, Plaintiff Farber prepared two presentations, one of 40 minutes and one of 10 minutes duration, to present in Washington D.C., at the Whistleblowers Conference.

20. For the week of May 11-14, 2008, there was scheduled "Whistleblower Week in Washington." Walter E. Fauntroy, a former Congressman, was the Director of "Whistleblower Week in Washington. Along with Mr. Fauntroy, a number of interested organizations coordinated the scheduling of testimony to be by various individuals with experiences in whistle blowing and retaliation against whistleblowers. The coordinating organizations included: the Semmelweis Society International (Dr. Roland Chalifoux, President); the office of Congresswoman Sheila Jackson-Lee; Alliance for Patient Safety (Dr. Gil Mileikowsky, M.D., President); and "No Fear Coalition" (Marsha Coleman Adebayo, Ph.D., Director). Among those originally scheduled to testify to the U.S. Congress at hearings as part of "Whistleblower Week in Washington" were Dr. Duesberg and Plaintiff Farber.

21. On May 12, 2008, TAG operative Defendant Jefferys sent an e-mail to Walter Fauntroy, who was a coordinator of testimony for the "Whistleblower Week in Washington." Defendant Jefferys stated in his email:

"It is my understanding that you have accepted Celia Farber and Peter Duesberg to give testimony at your tribunal. These individuals are not whistleblowers, they are

simply *liars* who for many years have used *fraud* to argue for Duesberg's long-discredited theory that drug use and malnutrition -- not HIV -- cause AIDS. I can provide many, many examples, including their *altering of quotes* from the scientific literature, *false representations* of published papers, etc. They use instances of genuine medical malpractice simply as ammunition to support their erroneous ideas about HIV and AIDS (which Duesberg has said is 'caused by a lifestyle that was criminal twenty years ago'). The inclusion of these individuals will, regrettably, discredit and demean your efforts to support the very real issues of recrimination against legitimate whistleblowers.

"Sincerely,

"Richard Jefferys"

(Emphasis supplied.)

22. In his e-mail dated May 12, 2008, Defendant Jefferys libeled Plaintiff Farber with non-privileged defamatory false statements of fact that were culpably published and that were damaging. Plaintiff Farber is not a liar, did not engage in fraud, did not alter quotations from scientific literature and did not make false representations from published papers; and Dr. Duesberg is not a liar, did not engage in fraud, did not alter quotations from scientific literature and did not make false representations from published papers. Defendant Jefferys' e-mail dated May 12, 2008, was, however, circulated to Congresswoman Jackson-Lee, who shared it with the coordinating organizations. As a result, Dr. Duesberg and Plaintiff Farber were dropped from the list of persons who were to testify and did not in fact testify as had been originally scheduled. This news was immediately published to damaging effect in a pharmaceutical funded HIV/AIDS periodical "The Body." Major newspapers were also alerted, at least one of which (*The Washington Post*) contacted Dr. Mileikowsky for comment, but never published its story upon learning that the awards to Plaintiff Farber and Dr. Duesberg were intact. The Semmelweis Society International did present the Clean Hands Award to Dr. Duesberg and Plaintiff Farber as announced, in a private setting, at the end of the conference.

23. Several weeks after the “Whistleblower Week in Washington,” on June 7, 2008, Dr. Patrick Campbell, M.D., the Secretary of the Semmelweis Society International, sent an e-mail to, among others, Dr. Roland Chalifoux and Dr. Gil Mileikowsky, M.D., politely stating “[w]ith all due respect, I do not agree with the ‘Duesberg hypothesis.’”

24. That same day, June 7, 2008, Defendant Murtagh, a co-chair of the International Association of Whistleblowers, sent an e-mail to Dr. Patrick Campbell and copied to the recipients of Dr. Campbell’s June 7 e-mail, including Dr. Roland Chalifoux and Dr. Gil Mileikowsky, agreeing with Dr. Campbell’s rejection of the “Duesberg hypothesis” and asserting that the “Duesberg hypothesis” had no support and did damage because people who are told myths do not get treatment and if people did not get treated with anti-retrovirals, they would die from AIDS. Defendant Murtagh further stated that the “fact that HIV causes AIDS is beyond dispute,” that the Semmelweis Society International loses credibility if “anti-scientific” positions are backed and that the Semmelweis Society International should only make awards to “persons based on fact in the future.” On June 9 2008, Defendant Murtagh called Dr. Pigott at home to tell her that their friendship was “over,” and that she “would be attacked.” Pigott replied, “OK, if that’s how you operate,” to which Defendant Murtagh replied, “That’s how I operate.”

25. In the subsequent week, numerous e-mails were exchanged, including by Defendant Kuritzky and Defendant Murtagh, about the awards by the Semmelweis Society International to Dr. Duesberg and Plaintiff Farber.

26. In one e-mail dated June 11, 2008, to among others Dr. Roland Chalifoux, Defendant Kuritzky falsely represented himself as a student of Dr. Duesberg. Defendant Kuritzky’s June 11 e-mail denounced Dr. Duesberg, asserting among other things that Dr. Duesberg had failed to defend his thesis in class, that Dr. Duesberg “has indirectly killed many

human beings through his complicity in South Africa's limits on antiretroviral medications given to pregnant women," that Dr. Duesberg was run out of South Africa "as a murderer," that Dr. Duesberg's positions were "sick" like anti-Semitism and that he (Defendant Kuritzky) had difficulty being part of the Semmelweis Society International given the award to Dr. Duesberg. These statements were knowingly false, as Defendant Kuritzky never attended any of Dr. Duesberg's college courses and was expelled from Emory Medical School for misconduct and plagiarism.

27. Defendant Murtagh sent an e-mail dated June 11, 2008, stating that patients in South Africa were not truthfully told their options and that Dr. Duesberg "has a great deal to answer for." In another e-mail dated June 13, 2008, Defendant Murtagh stated that Dr. Duesberg is "a liar." In two other e-mails dated June 13, 2008, Defendant Murtagh complained that the Semmelweis Society International was being attacked by AIDS activists, that a number of members of the Semmelweis Society could not belong to an organization associated with the "Duesberg hypothesis" and blaming the award made to Dr. Duesberg and Plaintiff Farber.

28. In response to the controversy, on June 13, 2008, the other co-chair of the International Association of Whistleblowers, Michael McRay, sent an e-mail to members of the Semmelweis Society International, stating that he was "disturbed" by the recent e-mail traffic, that as the co-chair of the International Association of Whistleblowers he denied any official position concerning the matters discussed in the e-mail traffic, that "certain individuals" had expressed their personal opinions concerning Dr. Duesberg and that the International Association of Whistleblowers was an "open and democratic organization." Mr. McRay then stated that he "personally deplore[d] the disharmony and spectacle within the whistleblowing and public health communities which recent events have occasioned."

29. Despite Mr. McRay's plea for harmony, on June 15, 2008, Defendant Kuritzky and Defendant Murtagh kept the acrimonious e-mail communications going, descending into further libeling Plaintiff Farber.

30. In Defendant Kuritzky's e-mail dated June 15, 2008, at 8:23 AM, to Semmelweis Society International Society members, including Dr. Shirley Piggott, M.D., and to Dr. Patrick Campbell, Dr. Roland Chalifoux, Dr. Gil Mileikowsky and Plaintiff Farber, Defendant Kuritzky communicated his resignation from the Semmelweis Society International, asserting that "Duesberg/Farber's work" is "indirectly causing people to die" based on "false evidence, manipulating data," that, quoting Dr. Gallo, "there is no room for the propagation of shallow and sensationalist thinking" and that the Farber article in *Harper's* contained "falsities, misleading statements." To date, *Harper's* magazine has stated that it found no errors in its article authored by Plaintiff Farber, and it continues to stand by it, as stated in *New York Times* article "An Article in *Harper's* ignites a controversy over H.I.V." by Lia Miller, March 13, 2006. In said article, the editor of the Farber article, now the editor of *Harper's*, Roger D. Hodge, said: "The fact that she's been covering this story does not make her a crackpot, it makes her a journalist. She's a courageous journalist. I believe, because she has covered the story at great personal cost." The article also stated: "Mr. Hodge said the magazine stood behind the article and Ms. Farber." (*New York Times*, March 13, 2006, "An Article in *Harper's* Ignites a Controversy over H.I.V.")

31. In Defendant Murtagh's e-mail dated June 15, 2008, at 10:35 AM, to Semmelweis Society International Society members, including Dr. Shirley Piggott, M.D., and to Dr. Patrick Campbell, Dr. Roland Chalifoux, Dr. Gil Mileikowsky and Plaintiff Farber, Defendant Murtagh asserted that while he (Defendant Murtagh) was no longer a member of the Semmelweis Society

International, he stated he hoped all agree to “fairness to medical students is important,” that Defendant Kuritzky was a “valued member of our coalitions,” that Defendant Kuritzky had been a student of Dr. Duesberg (a false representation), that Defendant Kuritzky should be kept out of the line of attack, that people who “deny” that HIV causes AIDS prevent adequate prevention, education and treatment of AIDS, that Defendant Kuritzky should be thanked for “rounding up the facts,” and that Defendant Kuritzky should not be subject to attack.

32. Defendant Kuritzky, however, continued that day, June 15, 2008, to send more e-mails attacking Plaintiff Farber to Semmelweis Society International Society members, including Dr. Shirley Pigott, M.D., and to Dr. Patrick Campbell, Dr. Roland Chalifoux, Dr. Gil Mileikowsky and Plaintiff Farber. At 9:14 PM, 9:33 PM and 9:34 PM, on June 15, 2008, Defendant Kuritzky’s e-mails mocked the award of the Clean Hands Award to Plaintiff Farber and engaged in personal attack on Plaintiff Farber.

33. June 15, 2008, at 9:14 PM, Defendant Kuritzky sent an e-mail suggesting Nominations for the next year’s Clean Hands Awards. These suggestions included Holocaust denier and fraud David Irving, former KKK leader David Duke, and Nazi torturer Dr. Josef Mengele -- all implying to a reasonable ordinary person that Plaintiff Farber was a mendacious liar and complicit in murder.

34. Plaintiff Farber was moved to reply in an e-mail on June 15, 2008, at 9:39 PM, to Semmelweis Society International Society members, including Dr. Shirley Pigott, M.D., and to Dr. Patrick Campbell, Dr. Roland Chalifoux and Dr. Gil Mileikowsky. Plaintiff Farber defended her reporting on AIDS as going back to 1986, the damning history of the drug AZT and Dr. Duesberg’s (and her own) critiques of AZT, and urged a “close reading of relevant historical texts.”

