

IN THE CHANCERY COURT FOR COFFEE COUNTY, 14<sup>TH</sup> JUDICIAL  
DISTRICT, AT MANCHESTER, TENNESSEE

BLAKE MOORE MD, )  
HENRY BUTLER MD, )  
GEORGE HOLMES, PHD )  
 )  
vs. )  
 )  
SEMMELWEIS SOCIETY )  
INTERNATIONAL, INC., )  
ROLAND CHALIFOUX DO, )  
SAUNDRA COUNCE RN, TERRY )  
BENNETT MD, and CLARK )  
BAKER, individually and as )  
Board Members or alleged )  
Board Members )

DOCKET NO. 08-430

MOTION TO DISMISS, COMPLAINT FOR TEMPORARY AND PERMANENT  
INJUNCTION TO PRESERVE CORPORATE FUNDS, MAINTAIN THE WEBSITE,  
AND PREVENT FALSE REPRESENTATION AS SEMMELWEIS SOCIETY  
INTERNATIONAL, INC.

COME now, the Defendants CLARK BAKER et al on behalf of Semmelweis Society International, Inc., (SSI) move to dismiss Plaintiff's frivolous and unsupported complaint and request for injunctive and other relief would show as follows:

1. SSI is a non-profit organization incorporated in Tennessee with the intent to assist physicians that are victims of bad faith peer review (BFPR), also call sham peer review (SPR), and to assist lawmakers to understand and correct deficiencies in the Health Care Quality Improvement Act of 1986 (HCQIA) in 2003.

2. SSI's address of record, according to the Tennessee Department of State is 276 Whitebridge Road #36, Nashville, TN 37209-3229. The address submitted in Attorney Bard's complaint is his own and was changed by the SSI Board after he was relieved of his duties as SSI's agent of service. (DEFENSE "A")
3. Attorney Ralph Bard is a licensed attorney, former member, Board member, and president of SSI. The SSI Board revoked his membership on August 10, 2008 (DEFENSE "B").
4. [TBA Rule 1.9](#) prevents Attorney Bard from representing the Plaintiffs in this lawsuit. Additionally, his active representation of Kuritzky while advising the SSI Board violated the same ethical prohibitions. Even if Bard had quit his association with SSI last June, this fundamental conflict of interest rule prevents him from representing anyone who makes any complaint against SSI.
5. SSI's other former Board members include North Carolina Attorney William Hinnant and Texas Attorney Robert Liles. All were actively seeking clients through SSI's website in 2008 and all should have known that their conduct violated numerous state and federal laws. Despite these ongoing conflicts, both Bard and Hinnant retained their influence as ad hoc and ex-officio Board members. The SSI Board was unaware of these conflicts because they relied exclusively on their legal expertise to avoid conflicts of interest. When discovered on August 10, 2008, both Bard and Hinnant were removed from the Board and Attorney Bard was removed from the SSI membership roles. His removal, and that of the Plaintiffs, is the foundation of

Plaintiff's complaint. None warned the others, nor did they report the conflicts are required by numerous Bar rules that include [NC Bar Rule 8.3](#), [TDRPC 1.09](#), & [8.03](#).

6. Some basic nonprofit tax law and penalties: *Private inurements* are prohibited in all nonprofits. It happens when an insider — an individual who has *significant influence over the organization* — enters into an arrangement with the nonprofit and receives benefits greater than she or he provides in return. The most common example is excessive compensation, which the IRS condemns through intermediate sanctions (significant excise taxes). Insiders — referred to in IRS parlance as "disqualified persons" — can be high-level managers, board members, founders, major donors, highest paid employees, family members of any of the above, or a business where the listed persons own a substantial interest.
  
7. According to SSI Corporate records (DEFENSE "V"), Bard filed the SSI Charter in May 2003 and installed Plaintiff Butler as President and Attorney Hinnant as Secretary in June 2003. Because Plaintiff Holmes and Attorney Hinnant still control all of the SSI financial records, Defendants have no idea how much personal income that Plaintiffs and Bard derived from the control and operation of their non-profit corporation between May 2003 and August 2008. Because Hinnant, Butler, Bard and Holmes all exercised tremendous influence over the Board members, no Board members sense any ethical challenge until June 2008 – and even then Bard and Hinnant were not removed until August 10 2008 because of their insistence that no conflict of interest existed.

8. *Private inurement* is an absolute term. There is no *de minimis* restriction. If a nonprofit is organized to benefit an individual, even while fulfilling its tax-exempt purpose, it cannot be treated as a tax-exempt organization. Nonprofit status drops away, and all of the money brought in through the organization can be claimed by the federal government and/or by Tennessee tax and nonprofit organization enforcement authorities. Until the SSI Board removed Bard and Plaintiffs, their misconduct represented an existential threat to the tax-exempt organization.
9. As a Board member, Attorney Bard also led SSI members to believe that he was a victim of sham peer review when he and the other Plaintiffs knew, or should have known, the exact number of people he had maimed and killed before he surrendered his license (DEFENSE “U”) in 2004. The Tennessee Medical Board accused Bard of “*Unprofessional, dishonorable, or unethical conduct; Gross malpractice, or a pattern of continued or repeated malpractice, ignorance, negligence or incompetence in the course of medical practice,*” that caused the preventable permanent injury and deaths of at least five of his patients.<sup>1</sup>
10. Defendants possess two signed affidavits that attest to Attorney Bard’s violation of [TBA Rule 8.4 \(e\)](#). Both individuals heard Bard specifically declare his ability to influence a tribunal or a governmental agency or official on grounds unrelated to the merits of (his Client’s case).”

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<sup>1</sup> Tennessee Department of Health Docket 17.18-053162A, Sep 21 2004

11. Since October 2, 2008 and presently, the SSI Board is comprised of four members (Defendants) Roland Chalifoux, DO (President), Saundra Counce (Vice President), Terry Bennett MD MPH, (Board Member) and Clark Baker (Secretary/Treasurer). Baker also serves SSI as its current webmaster. (DEFENSE "C")
12. Roland Chalifoux is a practicing surgeon in West Virginia. He was elected as President at SSI's annual meeting in May 2007. His two-year term expires in May 2009. (DEFENSE "C")
13. Saundra Counce is a registered nurse and resident of Nashville Tennessee. She was unanimously elected as Vice President at SSI's annual meeting in May 2008. Her one-year term expires in May 2009. (DEFENSE "C")
14. Terry Bennett MD MPH is a practicing physician in New Hampshire. He was appointed to the SSI Board by unanimous Board decision in August 2008 after Attorney Hinnant's forced removal by the SSI Board. Bennett's seat expires in May 2009. (DEFENSE "C")
15. Clark Baker is a licensed private investigator and honorably retired officer of the Los Angeles Police Department. Baker was appointed to the Board by unanimous decision in July 2008 to fill the seat vacated by former SSI member Patrick Campbell, who voluntarily resigned in June 2008. Baker's appointment expires in May 2009. (DEFENSE "C")

16. Before this complaint, no Board member received any official notice or challenge regarding the legitimacy of the May 2008 elections, nor was any challenge raised before, during, or after the elections. Since Bard failed to raise this issue until seven months later (now) – and since Bard and the other Plaintiffs have not been SSI members since August 10, 2008 - Plaintiff's allegations are moot, and lack foundation and standing.

17. SSI is named after Vienna physician Ignaz Semmelweis (1818-1865). Dr. Semmelweis was ridiculed, attacked, lost his clinical privileges, and was ultimately beaten to death in an asylum after spending much of his medical career trying to convince other physicians that they could significantly reduce patient mortality by simply washing their hands before treating patients. At the time, the overwhelming "medical consensus" disagreed with Dr. Semmelweis and considered him crazy. Years later, Louis Pasteur proved his theory correct.<sup>2</sup>

18. SSI presents annual "Semmelweis Clean Hands Awards" to deserving recipients who, in the spirit of academic, medical, or scientific practice, refuse to compromise their research or medical practice to appease the established consensus.

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<sup>2</sup> Of "scientific consensus," Michael Crichton MD said: "(T)he work of science has nothing whatever to do with consensus. Consensus is the business of politics. Science, on the contrary, requires only one investigator who happens to be right, which means that he or she has results that are verifiable by reference to the real world. In science consensus is irrelevant. What is relevant is reproducible results. The greatest scientists in history are great precisely because they broke with the consensus... There is no such thing as consensus science. If it's consensus, it isn't science. If it's science, it isn't consensus. Period."

19. Because retaliation and attacks are still used to silence medical professionals, academics, and scientists, SSI was created to end the practice.
20. As of December 31, 2008, SSI recognized 148 individuals as members.
21. During the period between 2004 and August 10, 2008, Attorneys Bard and Hinnant used their influence as SSI members and Board members to use SSI's website to direct SSI members and victims of "sham peer review" to their personal law practices. This resulted in an ongoing conflict of interest. Although other Board and SSI members were aware of some of Bard and Hinnant's practices, the SSI Board also relied on Bard and Hinnant's opinion that their activities did not constitute any conflict. (DEFENSE "B")
22. Hinnant and Bard also used SSI's website and non-profit status to solicit vulnerable physicians to generate profits for themselves. In Stern v. Lucy Webb Hayes National Training School for Deaconess and Missionaries, 367 F. Supp. 1003 (D.D.C. 1973), the federal district court for the District of Columbia ruled "that the defendant trustees conspired to enrich themselves and certain financial institutions with which they were affiliated by favoring those institutions in financial dealings with the Hospital, and that they breached their fiduciary duties of care and loyalty in the management of [the Hospital's] funds."

23. Because the SSI Bylaws are silent regarding the removal of disruptive members, the SSI Board is guided by Tennessee Title 48. Chapter 56 of Title 48 (§48-56) is broken down into five parts that include 1) Admission of Members, 2) Types of Memberships, Members' Rights and Obligations, 3) Resignation and Termination, 4) Derivative Suits, and 5) Delegates. Title 48 answers takes precedence in all of the questions raised by Bard's lawsuit.
24. Regarding paid or unpaid memberships (or as Bard's complaint describes as *active* and *inactive* members), the SSI Bylaws were silent on the topic of "membership classes" and discipline until October 31, 2008, when the SSI Board unanimously updated and approved Bylaw changes with regards to membership and discipline. When Bard and Plaintiffs executed their alleged vote to remove Defendants Baker and Chalifoux from the Board; and when the SSI Board revoked the members of Bard and Plaintiffs on August 10, 2008, Tennessee §48-56-101 did not require or differentiate between paid and unpaid membership classes.
25. On August 10, 2008, Tennessee § 48-56-101 allowed SSI to admit any person as a member, paid or unpaid. Before October 31, 2008, the SSI Bylaws only required the SSI Board to review and approve or disapprove admissions. Neither the Bylaws nor Title 48 established any timeline or procedure other than the doctrines of reasonableness, fairness, and good faith.
26. Before October 31, 2008, Bard had established Bylaws and convinced the membership that relied on his legal opinion, to an

unreasonable and untenable appellate process for rejected membership applicants. That process was rejected by the SSI Board on October 31, 2008 after the Board decided not to delegate its authority to unelected non-member third parties. The Board decided that it was reasonable for members to expect its duly elected and appointed Board members to make decisions regarding membership.

*§ 48-56-102: Except as provided in its charter or bylaws, a corporation may admit members for no consideration or for such consideration as is determined by the board.*

NOTE: SSI Membership dues are currently \$125 annually.

*§ 48-56-103: A corporation is not required to have members.*

*§ 48-56-201: All members have the same rights and obligations with respect to voting, dissolution, redemption and transfer, unless the charter or bylaws establish classes of membership with different rights or obligations. All members have the same rights and obligations with respect to any other matters, except as set forth in or authorized by the charter or bylaws.*

NOTE: SSI's Bylaws did not differentiate membership classes until October 31, 2008, when the Board updated and unanimously approved the updated SSI Bylaws.

*§ 48-56-203. Members of a corporation are not, as such, personally liable for the acts, debts, liabilities, or obligations of the corporation.*

§ 48-56-204: (a) *A member may become liable to the corporation for dues, assessments or fees by consenting (expressly or impliedly) to such obligation; provided, that a charter or bylaw provision or a resolution adopted by the board authorizing or imposing dues, assessments or fees does not, of itself, create liability.*

§ 48-56-204: (b) *Nothing in this section shall prevent a corporation from terminating or suspending a member's membership for nonpayment of dues, assessments or fees, even though the member is not liable to the corporation, pursuant to this section, for payment of such dues, assessments or fees.*

§ 48-56-301: (a) *A member may resign at any time. (b) The resignation of a member does not relieve the member from any obligations the member may have to the corporation.*

NOTE: As SSI's Treasurer, Webmaster, and Board member, Plaintiff Holmes had a fiduciary, legal, and ethical responsibility to the SSI Board to support SSI's mission and goals. Holmes was required to make changes as directed and disclose all pertinent information and assets regarding his duties and obligations as a Board member. Holmes and Bard failed to disclose that former SSI Board member Attorney William Hinnant maintained an escrow account for SSI in which Hinnant received, managed, and distributed SSI assets at least until May 2008. As of this time, Holmes, Hinnant, and Bard failed to provide any information related to those assets or accounts. As former Board members, all knew, or should have known, that those accounts belong to the SSI Board.

§ 48-56-302: (a) *Unless the charter provides for the removal of a member and termination of a membership without cause, no member may be expelled or suspended, and no membership or memberships may be terminated or suspended except pursuant to a procedure which is fair and reasonable and is carried out in good faith.*

NOTE: Before October 31, 2008, the SSI Bylaws provided no process by which to investigate, warn, discipline, or remove disruptive members. As a result, the SSI Board was required to abide by Tennessee Title 48, which states:

§ 48-56-302: (b) *A procedure is fair and reasonable when... (B) An opportunity for the member to be heard, orally or in writing, not less than five (5) days before the effective date of the expulsion, suspension, or termination by a person or persons authorized to decide that the proposed expulsion, suspension, or termination not take place; **OR** (2) It is fair and reasonable taking into consideration all of the relevant facts and circumstances.*

§ 48-56-302: (c) **A procedure is NOT necessarily unfair nor unreasonable:**

- (1) *If a member's attorney is excluded from the hearing;*
- (2) *If the member is not allowed to cross-examine adverse witnesses, or:*
- (3) *If the person or persons authorized to make the decision consider matters and evidence which would be inadmissible in a court of law.*

NOTE: After his removal on August 10, 2008, and without citing **ANY** legal precedence or authority, Attorney Bard repeatedly demanded that the SSI Board and the ex-member's advocates should appoint an agreed-upon third party to hold a hearing where all of the evidence against the accused member would be heard. Since SSI 1) has few assets to create a formal hearing venue and 2) membership exists on several continents and throughout virtually every US state, the most efficient hearing is one where appellants email or mail their defense and the Board reviews that defense and evidence, discusses the merits of the appeal in a conference call and by email before responding to the appellant. Any other kind of hearing is not administratively or economically reasonable. Additionally, because the Board had directly witnessed many of the acts related to Murtagh, Kuritzky, Bard, Holmes, Hinnant, Moore, Butler, and Vuyyuru, (usually in the form of widely disseminated libelous emails that misrepresented individuals, facts, and events) there was no point for the Board to present all of its evidence to an unelected third party – nor did the SSI Bylaws or Tennessee Title 48 require it. Any such demand was unreasonable, making the SSI Board's refusal to subordinate itself to such an unprecedented process reasonable. When Bard continued to demand "due process," Baker urged Bard to seek competent counsel and a court to pursue the matter. Unfortunately, Bard did so and now further wastes the SSI Board's time and the time of this Court with this meritless complaint.

*§ 48-56-302: (d) Any written notice given by mail must be given by first class or certified mail sent to the last address of the member shown on the corporation's records.*

NOTE: No written notices were mailed by postal services. Baker sent repeated notices and warnings to Bard, Murtagh, Vuyyuru, Butler, Moore,

and Kuritzky by registered email. Baker tracked many of those emails using the service [WWW.READNOTIFY.COM](http://WWW.READNOTIFY.COM), which established the time, location, and IP address where the emails were opened and which email accounts opened them. For MANY weeks, these individuals and Plaintiffs were given ample, repeated, and continuous opportunities to discontinue their behavior before their removal, and to appeal the SSI Board decision after their removal. Plaintiffs had no reasonable expectation to believe that the SSI Board and its membership would permit the interminable and sustained attacks against its membership, its name, its board, and its affiliates. If anything the SSI Board waited too long – crippled by its reliance on Attorneys Bard and Hinnant who, as ex-officio and ad hoc advisors, they believed would provide competent, sound, and conflict-free advice to the Board.

*§ 48-56-302: (e) Any proceeding challenging an expulsion, suspension or termination, including a proceeding in which defective notice is alleged, must be commenced within one (1) year after the effective date of the expulsion, suspension or termination.*

NOTE: All Plaintiffs were given the opportunity to appeal the SSI Board's decision by email within thirty days. Their responses were either not forthcoming or not compelling.

*§ 48-56-302: (f) A member who has been expelled or suspended may be liable to the corporation for dues, assessments or fees.*

NOTE: None of the Plaintiffs were liable to the corporation for dues, assessments, or fees when removed. The SSI Board will apply all previously

received dues and fees from Plaintiffs and their associates toward the defense of this complaint.

§ 48-56-302: (g) *The provisions of this section shall not apply to any amendment of the charter or bylaws meeting the requirements of chapters 51-68 of this title and § 48-60-302.*

NOTE: At this point, the SSI Board has found no other provisions of this section or Tennessee law that apply in this matter.

27. Nothing in *Bard's Bylaws* (Plaintiff's Exhibit 2) restrains the Board or prevents it from taking any action against Board members who violate their fiduciary responsibilities and loyalty to the corporation.

28. As fiduciaries, SSI Board members are entrusted with the running of the corporation and they must exhibit the utmost loyalty. This principle has never been stated more clearly than by the Delaware decision, *Guth v. Loft, Inc.*, 5 A.2d 503 (1939): "*The rule that requires an undivided and unselfish loyalty to the corporation demands that there shall be no conflict between duty and self-interest.*" When one then deals "on the side," whether to benefit oneself, or a third party, a conflict of interest exists.

29. The SSI Board recognizes that while not all conflicts are inherently bad, or wrong, it is important that specific legal guidelines be followed to avoid unnecessary conflicts and what is often termed the "appearance of impropriety" that can arise from certain conflict

situations. For even the hint of impropriety can be as destructive to public confidence and goodwill as any real conflict of interest. Most state corporation statutes, both for-profit and nonprofit, acknowledge that conflicts of interest will arise from time to time and provide a procedure to deal with them. The statutory procedure basically involves a requirement that conflicts be disclosed and that the interested Board member not participate in the vote of the board on a transaction affecting the conflicting interest. Those statutes also provide that the transactions will be valid if approved by a majority of the noninterested directors on the board, even if that majority is less than what otherwise would be required for a quorum.

30. The SSI Board Adherence to IRS guidelines on conflicts of interest are especially important to protect SSI's Board members and non-profit corporation from being held personally liable for excise taxes under the provisions of the Taxpayer Bill of Rights Act of 1996 if they permit "excess benefit transactions" to take place with organization insiders.
  
31. The SSI Board (Defendants) recognize that their duty is no different than that of directors of other corporations. This principle was well-articulated by the Minnesota Supreme Court in Ray v. Homewood Hospital, 27 N.W.2d 409 (1947): "*The trustees of a charitable corporation, as members of its managing body, are charged with the same fidelity in the performance of functional duty as the directors of a private business corporation. Directors may not agree to exercise their official duties for the benefit of any individual or interest other than the corporation itself.*" This duty is at once passive and active. It is

passive in that it exists by law and board members must comply; it is active in that board members must participate in board meetings and other functions and take part not only in the Board's decision-making process, but in guiding the corporation through its planned development as well.

## FACTUAL BACKGROUND

32. On or about June 1, 2008, former SSI Members James Murtagh MD and Kevin Kuritzky made repeated email and telephonic claims to the SSI Board, full membership, active and former members of Congress and various advocacy groups and associates alleging, among other things, that UC Berkeley Professor Peter Duesberg was guilty of genocide in Africa, and that journalist Celia Farber fabricated evidence, was mentally disturbed, and a *whore*. Because Duesberg and Farber were recipients of SSI's 2008 "Clean Hands Awards", the SSI Board took the allegations seriously and requested Defendant Baker, a licensed private investigator, to investigate the allegations. An honorably retired member of the Los Angeles Police Department (1980-2000), Baker has conducted thousands of criminal and civil investigations. From the onset of his investigation, a core group of members comprised of then-SSI members James Murtagh, Kevin Kuritzky, Ralph Bard, Blake Moore, Henry Butler, and Lokesh Vuyyuru (Murtagh et al) attempted to persuade, coerce, harass, molest, badger, Baker into discontinuing his investigation. Baker refused.

33. On June 19, 2008, Baker conclusively identified Kuritzky's computer (IP address 70.187.188.51) as the one used to commit an identity theft using Baker's name and email address. This resulted in thousands of unwanted spam emails flooding into Baker's computer email address (LAPD report 08-0619018) with the intent to interfere with Baker's ability to communicate with witnesses and interfere with Baker's investigation. So severe was the attack that Baker lost many important emails and had to kill his existing email account. Although the criminal case is still active, LAPD Detective Gene Tapia stated that limited resources prevent Los Angeles prosecutors from filing cases that represent losses below \$100,000.
34. When Baker filed criminal charges against Murtagh and Kuritzky, Plaintiff's attorney Ralph Bard began representing himself as Kuritzky's attorney. Bard's decision to represent Kuritzky occurred while acting as an "ad-hoc advisor" to the SSI Board. Because Bard and Hinnant advised the Board, both failed to report Bard's conflict of interest.
35. Based upon the evidence collected in his investigation, Defendant Baker found no evidence that supported any of Murtagh and Kuritzky's allegations and that evidence actually existed that Murtagh and Kuritzky had recklessly and deliberately libeled both Duesberg and Farber before more than 200 SSI members and associates with the intent to discredit and harm their professional careers. Because the SSI goals and mission is to end the false allegations that often accompany "sham peer review," (SPR) it became clear to the SSI Board that Kuritzky and Murtagh had both violated SSI's mission to end SPR. Their willfully libelous misconduct, along with the ongoing

support of Bard, Butler, Moore, Vuyyuru and Holmes (between June 1 and October 31, 2008) is inconsistent with the mission and goals of SSI.

36. SSI and its Board are under no moral, ethical, or legal obligation to retain individuals who use their diplomas to render credibility to libelous, uncivil, or criminal behavior. Unlike Plaintiff's counsel, Baker found no evidence that Peter Duesberg ever deliberately, negligently, recklessly, or incompetently caused injury or death to anyone. Baker did find, however, many individuals who willfully attack Professor Duesberg and his supporters while directly or indirectly receiving or controlling millions of dollars in pharmaceutical research funding. Baker identified multiple direct ties between Murtagh, the Treatment Action Group (NYC), and the Treatment Action Campaign (South Africa), Foundation for Integrative AIDS Research (FIAR), Cornell University, and Los Alamos National laboratory – all recipients of Pharmaceutical companies that are openly hostile to Professor Duesberg. Baker determined that hundreds of billions of dollars are at stake in research funding and civil liability. Baker was not compensated for his investigation or the hundreds of hours of pro bono service he has provided to SSI.

37. Outraged by Baker's investigation, Baker's conclusions, and the wide transmission of Baker's investigation throughout the Internet after July 14, 2008, Murtagh et al generated hundreds of additional, inappropriate, unsolicited, unwelcome, hostile and libelous emails (called *flaming*) and phone calls to the SSI Board, its membership, and its professional associates and affiliations. Bard and the Plaintiffs

repeatedly threatened to sue Defendants unless 1) they attacked Baker and distanced themselves from Baker's investigation, 2) rescinded the awards presented to Farber and Duesberg, or 3) abdicated and surrendered their duties and offices to Murtagh et al (Plaintiffs). During this entire period (May-Dec 2008), Murtagh et al represented no more than a tiny fraction of the SSI membership.

38. On or about July 20, 2008, and as a result of the sustained attacks by Murtagh et al, the Board unanimously appointed Baker to fill former Board member Campbell's seat as Secretary. At this point, the Board was comprised of Hinnant, Chalifoux, Counce, Baker, and Holmes. (DEFENSE "C")

39. On or about July 20, 2008, Murtagh et al demanded the removal of Baker from the Board, alleging that the majority of SSI members supported the move. Because their demands appeared to the Board to represent only themselves, the Board repeatedly directed ex-member Murtagh et al to discontinue their disruptive demands, email and telephonic attacks and libel throughout the SSI membership and associates (*flaming*, also known as "poisoning the well.")

40. From June 1 through August 10, 2008, the SSI Board repeatedly demanded Murtagh et al to discontinue their unauthorized emails and calls to the membership. Murtagh et al (including Bard and Plaintiffs) refused and, instead, claimed to set a date for an official meeting at the end of August to hold a vote to remove Baker and Chalifoux from their positions as Board members.

41. On or about August 10, 2008, SSI Board members also learned that Attorney William Hinnant and Ralph Bard, who still represented themselves as SSI's "ad hoc committee", both suffered from serious conflicts of interest. (DEFENSE "B")
42. Not only did Bard represent Kuritzky in a criminal matter while advising the SSI Board through August 10, but Hinnant failed to disclose until August 10 that Plaintiff Moore owed him \$100,000 in unpaid legal fees. These fatal conflicts prevented the Board from receiving impartial good faith advice from Bard or Hinnant and violated their fiduciary responsibilities to the Board by not reporting their undisclosed relationships with Plaintiffs before August 10, 2008. In response, the Board relieved Hinnant of his Board duties and revoked the memberships of Bard, Moore, and Butler. The Board notified the SSI membership and associates by email on 11 August 2008.<sup>3</sup>
43. On August 10, 2008, Bard sent an email to the SSI membership and associates that Murtagh et al was orchestrating a recall vote to remove Chalifoux and Baker from the Board. In one email, Bard stated that the recall vote would be taken during the weekend of August 30<sup>th</sup> and that the only members who could vote were dues-paying members – a condition not supported anywhere in SSI Bylaws or Tennessee Title 48 at that time. Dues paying and "hardship" non-dues paying SSI members have participated in elections at annual meetings in 2004, 2005, 2006, 2007, and 2008.

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<sup>3</sup> Given this duty, board members may be called fiduciaries. A fiduciary is "a person holding the character of a trustee, or a character analogous to that of a trustee, in respect to the trust and confidence involved in it and the scrupulous good faith and candor which it requires." Black's Law Dictionary, P. 625 (6th Ed. 1990).

NOTE: In Plaintiff's complaint to the Court, Bard makes an issue that SSI only had 34 dues-paying members. Citing SSI's Bylaws, Bard claimed that a majority of SSI's 34 dues-paying members (17+1) could remove Chalifoux and Baker, while Baker and the SSI Board noted the Bylaw requirement that the majority included all members, dues-paying and not, as per the Bylaws (DEFENSE "D" and "E"). It should be noted that SSI's 2008 annual meeting was attended by both dues-paying and non-dues paying members. Defendant Saundra Counce and Patrick Campbell were elected unanimously to the SSI Board by paying and non-paying members. Defendant Counce was elected despite having never paid any membership dues in 2007 or 2008. (If Plaintiffs wish to dispute this fact, former Treasurer-Plaintiff Holmes will be able to provide to the Court a cancelled check or other evidence that proves otherwise.) Additionally, Plaintiffs all offered to elevate Counce to SSI President if she voted to support Bard, Murtagh, and Plaintiffs. These facts should put to rest any arguments regarding SSI membership classes that Bard alleges. Additionally, Defendant Baker was accepted by the Board majority (including Plaintiff Holmes and attorney Hinnant) as a member despite not having paid any actual membership dues. Baker's fee was waived because of the hours he spent recording, editing, and producing a video of the 2008 Annual meeting. Despite not having paid dues, Baker was unanimously appointed to the Board by Counce and other Board members, including Plaintiff Holmes and ex-officio William Hinnant.

44. During the recall vote, SSI Member Timothy Goosby RN telephoned Baker to report that he had received several calls from Murtagh et al, warning Goosby that if he did not vote to remove Chalifoux and Baker that Murtagh et al would render no more

assistance to Goosby. After years of retaliation and attacks, Goosby, like many SSI members, felt extremely vulnerable in the loss of support from SSI. Murtagh's (et al) threats to Goosby corroborated those received by Defendant Counce, who was promised to replace Chalifoux as President if she supported the recall and removed if she did not. This misbehavior further tainted Bard's attempted recall vote as null and void. To ally Goosby's fears and because Murtagh et al were intimidating other members to vote – and with the exclusive intent to stop the harassing emails and phone calls received by members like Goosby, Baker advised Goosby to tell Murtagh et al that Goosby **supported** the recall vote. Goosby later thanked and reported to Baker that he had voted in favor of the recall. Goosby also reported that the threats stopped.

45. On August 10, 2008, after more than two months of sustained attacks against the Board by Bard, Moore, and Butler, ex-officio Board Member Hinnant disclosed to the Board that, while advising the SSI Board regarding how to respond to Bard, Moore, and Butler's ongoing libelous email and telephonic attacks, that Moore was "judgment proof" and that Moore owed Hinnant \$100,000 in legal fees. Hinnant expressed concern to the Board members that, if the Board upset Moore too much, Hinnant's legal fees would be jeopardized. Until that moment, neither Bard nor Hinnant had ever disclosed those conflicts until weeks after advising the Board about how to respond to Moore, et al. As duly licensed officers of the court, both Bard and Hinnant knew, or should have known, that their previously undisclosed and ongoing financial and personal relationships represented a gross violation of their fiduciary, operational, ethical, and legal responsibilities to their fellow Board members, the corporation, and its

membership. Recognizing the gravity of Bard and Hinnant's ethical lapse, the SSI Board immediately relieved them of all responsibilities to the Board. (DEFENSE "B")

46. The SSI Board revoked Bard's SSI membership because, as the legal representative of criminal suspects Kevin Kuritzky and James Murtagh (LAPD 08-0619018) whose ongoing disruption and criminal attacks and libel against Baker, the Board, and the SSI membership, represented *ultra vires* conduct that interfered with Bard's ability to support the SSI mission and goals. (DEFENSE "B")

47. William Hinnant was permitted to remain as a member because the Board found less evidence that Hinnant was actively supporting individuals (Plaintiffs Moore and Butler) who repeatedly attacked the SSI Board and membership. Hinnant's membership was allowed to expire on January 1, 2009 and is not expected to be renewed. (DEFENSE "B")

48. Both Bard and Hinnant repeatedly and deliberately engaged in serious conflicts of interest as well as repeated and ongoing *ultra vires* violations of their fiduciary responsibility, the mission and goals of SSI, and their duty and loyalty to the Board in favor of their own personal financial interests. This civil complaint by Bard and Plaintiffs against the SSI Board (Defendants) is merely an uninterrupted continuation of Bard's ongoing misconduct against SSI and represents a gross abuse of the Tennessee legal system.

49. Because the SSI Bylaws remains silent regarding the retention of disruptive and antagonistic members; and because *Tennessee Title 48* provides wide latitude to non-profit corporations regarding the retention or removal of disruptive and antagonistic members; and because the Board had repeatedly requested and demanded that Bard, Plaintiffs, and Murtagh et al discontinue their ten-week libelous email and telephonic assault on SSI's members, Board, and associates, the SSI Board (Defendants) revoked the memberships of Bard and the Plaintiffs. Bard, Lokesh Vuyyuru, and Plaintiffs Moore and Butler have not been SSI members since August 10, 2008. The SSI Board (Defendants) pray that the Court will take judicial notice that Bard and Plaintiffs have no standing; that their complaint has no legal merit and that the Court will dismiss their complaint with prejudice.

50. Plaintiff Henry Butler is a former member of SSI. His membership was revoked on August 10, 2008 after he repeatedly committed the aforementioned serious *ultra vires* violations of the mission and goals of SSI and supported the documented criminal behavior of other former SSI members. Because Butler has not been an SSI member since August 10, 2008, he has no standing and his complaint has no merit.

51. Plaintiff Blake Moore is a former member of SSI. His membership was revoked on August 10, 2008 after he repeatedly committed serious *ultra vires* violations of the mission and goals of SSI and supported the aforementioned documented criminal behavior and libelous behavior of other former SSI members. Because Moore has

not been an SSI member since August 10, 2008, he has no standing and his complaint has no merit.

52. Plaintiff George Holmes is a former SSI Board member. His membership was allowed to expire in January 2009. Holmes was removed from the SSI Board on October 2, 2008 by unanimous decision of the remaining SSI Board members (Defendants) after he committed serious repeated flagrant *ultra vires* violations of the mission and goals of SSI and supported the documented criminal and libelous behavior of other former SSI members. Additionally, Holmes committed serious fiduciary violations that jeopardized and undermined SSI's non-profit corporation and the credibility of the SSI Board. Because Holmes was appropriately removed from the SSI Board and because his membership has lapsed, he has no standing and his complaint has no merit.

53. SSI cannot fully describe how Bard et al continue to "poison the well." In one such exchange, James Murtagh MD suggested that one of SSI's best advocates, Alan Ullberg, was sympathetic to Plaintiffs. Professor Ullberg teaches trust and non-profit law at Georgetown University and is a good friend of the SSI corporation. Ullberg makes himself available free of charge to physicians who hope to end SPR. In an email from November 2, 2008 to Professor Ullberg (DEFENSE "F"), Dr. Murtagh alleges, among other things, that Ullberg supports Bard et al in their effort to remove the SSI Board. Ullberg's strongly worded reply (DEFENSE "G") refutes Murtagh's allegations and fully dismisses Murtagh and Plaintiff's efforts as "twisted" and questions Murtagh's *cognitive mental capacity*.

54. DEFENSE "H" is also from Murtagh from August 9, 2008. SSI member Joe Flores RN, JD replies that he doesn't want to receive unsolicited email (DEFENSE "I"). Flores' email is one of dozens received from SSI members and associates who no longer wished to receive SSI communications because of Bard and Plaintiff's unrelenting poisonous attacks. Bard and Plaintiff's did incalculable harm and damage to the good will and relationships between SSI, its membership and associates.
55. In DEFENSE "J" Bard Describes, on August 10, 2008, that Murtagh is "incorrect" in some aspects and details the legal gymnastics Bard uses to recall Chalifoux and Baker. In the end, Bard gives Defendant Bennett an ultimatum to decide which way to vote. Bard also describes how Plaintiff Holmes (then Treasurer) is cooperating with Murtagh to unilaterally reestablish Murtagh's membership without consulting the entire SSI Board, in violation of SSI Bylaws and Title 48.
56. Four days after the SSI Board (Defendants Bennett, Chalifoux, Counce, and Baker) removed Bard, Vuyyuru, Butler, and Moore (DEFENSE "B"), Bard emailed a copy of his appeal to the entire SSI membership. In his appeal, Bard claimed that the SSI Bylaws provide for an appellate process for individuals whose membership has been revoked under the unwritten theory that disruptive members who are repeatedly warned and removed have the same rights as new applicants who are denied membership. Bard concludes: *Thus, as a former member who has been denied membership, I am asserting my*

*right of hearing in accordance with the SSI bylaws Article III, section 3 i, which states in part "Any Member refused membership has the right to an appeal of three Members of the Semmelweis society selected one by the Board, one by the potentially excluded Member and one Member agreed to by both, with due process protections. These are to be established by the Board and are to be consistent with the due process requirements supported in general by the Semmelweis Society."* Bard then describes in elaborate detail exactly how the hearing should be conducted, how Bard planned to call witnesses, secure evidence, and declared his intention to call each Board member as *hostile witnesses*. The Board did not view Bard's appeal in a vacuum, but in the larger context of a corporation that had spent over two months and hundreds of hours attempting to end Murtagh's (et al) and Plaintiffs' libelous allegations, Kuritzky's criminal misconduct, and Bard's meddling in SSI Board affairs – while representing a client who was openly hostile to the Board, all while making the previously naïve Board believe that no real conflict existed.

57. The Supreme Court of the United States places significant restrictions in the amount of time and pages that someone can issue an appeal. Appeals cannot be made ad nauseam and no corporate board is required to explore the twisted gymnastics of a conflicted lawyer caught *in flagrante delicto*. After more than two months of warnings and conflicts, the Board reasonably and fairly determined that Bard brought no new information in his appeal that would require further Board consideration. Based upon those considerations, the SSI Board (Defendants) dismissed Bard's appeal based upon Tennessee Title 48 and the SSI's Bylaws as they existed on August 14, 2008.

## BOARD CHANGES - 2008

58. On May 15, 2008, SSI convened its annual meeting in Washington DC. At the conclusion of that meeting the SSI Board members included Attorney William Hinnant, Roland Chalifoux, Sandra Counce, Patrick Campbell, and George Holmes. (DEFENSE "C")
59. By July 2008, Patrick Campbell resigned his position. The SSI Board unanimously appointed Clark Baker to replace Campbell. (DEFENSE "C")
60. During August 2008, the SSI Board relieved attorney William Hinnant of his duties as Board member after the Board learned of a serious violation of his fiduciary duties and his questionable loyalty to the Board and SSI membership. The SSI Board then replaced Hinnant with Terry Bennett. (DEFENSE "C")
61. In October 2008, the SSI Board relieved George Holmes of his duties as Treasurer and Webmaster after he violated his fiduciary obligations and the trust of his fellow Board members. (DEFENSE "C")
62. In December 2008, the SSI Board consisted of Defendants Roland Chalifoux DO, (President), Sandra Counce RN (Vice President), Terry Bennett, MD MPH (Secretary), and Clark Baker (Treasurer and Webmaster). (DEFENSE "C")

63. On or about the weekend of August 31, Murtagh et al claimed to have held a majority vote of the membership to remove Defendants Baker and Chalifoux from the Board. Because 1) the core group managing the alleged vote were not members and 2) because the Board had not authorized such a meeting to take place and 3) because the Board received no corroborative evidence that suggested that a legitimate vote had been taken by the majority of SSI's 130+ members as per the Bylaws, the SSI Board dismissed their claims as unfounded.
64. On or about 15 August 2008, the SSI Board unanimously appointed SSI member and Defendant Terry Bennett MD to fill Hinnant's vacated seat. At this point, the Board was comprised of Defendants 1) Chalifoux, 2) Counce, 3) Baker, 4) Bennett, and 5) Holmes (Plaintiff). (DEFENSE "C")
65. From June through September 2008, Plaintiff Holmes continued to serve the SSI Board as Treasurer and webmaster. During that period, Holmes began to resist the Board's lawful directions to make required changes to the SSI website. Holmes also refused to disclose all of the assets he controlled by Holmes. Additionally, Holmes provided Murtagh et al with inside information related to confidential SSI business. By controlling the website, Holmes unilaterally solicited membership applications, advertised for legal services against Board decisions, and inappropriately granted numerous memberships to applicants who had not been fully vetted and approved by the Board as required by the SSI Bylaws. The SSI Board later learned that

several of these unvetted individuals voted with Murtagh et al. When confronted by the SSI Board on these and other lapses from August through October, 2008, Holmes repeatedly refused to comply with Board directions and failed to act as required by his fiduciary and Board responsibilities.<sup>4</sup> Based upon numerous statements and interviews, the SSI Board (Defendants) has probable cause to believe that SSI's treasury and assets were in jeopardy and that action had to be taken without alarming Plaintiff Holmes'.

66. On October 2, 2008, the SSI Board (e.g. Chalifoux, Counce, Baker, and Bennett) issued three Resolutions to Bank of America (DEFENSE "M"), Apollo Hosting (DEFENSE "N"), and ItsYourDomain (DEFENSE "O") to secure control of SSI's Treasury and website. After a careful review of the Resolutions and SSI's corporate records and charter, the legal departments of all three corporations delivered control of SSI's Treasury and assets to the SSI Board (Defendants) despite the protestations of Holmes, Butler, and Moore.

67. Upon securing those assets, Baker discovered that Holmes had used the SSI website to host inappropriate photographs belonging to Plaintiff Butler. Based upon Holmes' aforementioned *ultra vires* misconduct and his failure to abide by his fiduciary responsibilities to SSI, the SSI Board unanimously removed Holmes from the Board.

68. Bard repeatedly and deliberately misleads the Court. For example, in line 27 he states that Chalifoux appointed Baker to the Board. Chalifoux could not have unilaterally appointed Baker without

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<sup>4</sup> Ibid.

the agreement of the Board majority. Bard knows, or should have known, that Baker was nominated and appointed by unanimous decision of the Board. No single Board member can appoint another Board member without a Board's majority approval. Counce, Hinnant, Holmes, and Chalifoux all stated to Baker their support for his appointment to the Board.

69. In line 28, Bard accuses Baker of being an "AIDS *denialist*." Before May 2008, Baker had never heard of any controversy regarding the causative relationship between HIV and AIDS. It wasn't until Bard's client, Kevin Kuritzky and James Murtagh, made their allegations in June 2008 that SSI requested an investigation. During his investigation, Baker determined that the words *Denialist* and *Denialism* are epithets used by pharmaceutical supporters to attack those who question Dr. Robert Gallo's claims that HIV attacks cells and causes AIDS. Bard libels Baker as a *Denialist* to misrepresent Baker's unbiased investigation to the Court. Baker's report is available at:

<http://www.cwbpi.com/GallosEgg-17Jul08.pdf>

70. In Line 29, Bard misrepresents the facts. Except where Tennessee §48-56 describes board members who abstain because of conflicts of interest, no single Board member or Board minority has the authority to remove any member without majority approval from the Board - nor is there any Bylaw or legal precedence that requires the SSI Board to retain any disruptive members in its organization.

WHEREFORE THE DEFENDANT PRAYS THAT:

71. Proper process should be issued and served upon the Plaintiffs;
72. The Court will dismiss, with prejudice, their false and misleading, charges;
73. An immediate cease and desist order be issued restraining Plaintiffs and Bard and any of their associates (who include William Hinnant, Ralph Bard, Lokesh Vuyyuru, Henry Butler, Blake Moore, Kevin Kuritzky, James Murtagh, George Holmes), from making any claims that they, together or independently, represent Semmelweis Society International Inc. or that of any subsidiary or associate of SSI's corporate identity or membership in any electronic, telephonic, or terrestrial form;
74. A temporary injunction be issued preventing anyone except the duly elected and appointed Board members (Chalifoux, Counce, Bennett, Baker) from having access to the funds and bank account of SSI;
75. The Court makes a finding that the actions of the Plaintiffs were *ultra vires* for which individual liability attaches;
76. The Court takes judicial notice that, after careful deliberation, the legal departments of Bank of America, Apollo Hosting, and ItYourDomain all correctly found that the Defendants had probable cause to believe that SSI's assets and treasury were endangered by Plaintiff Holmes' *ultra vires* misconduct;

77. The Court orders George Holmes and attorney William Hinnant to disclose all papers, records, materials, account information, corporate documents, related to SSI and Hinnant's undeclared escrow fund to Clark Baker within 30 days;
78. The Court takes judicial notice that all actions taken by the SSI Board (Defendants) were appropriately made in accordance with SSI's Bylaws and Tennessee Title 48, and that the Defendants' decisions and actions were made in good faith and with great restraint;
79. The Court recognizes that there was a need for the SSI Board (Defendants) to establish investigative and disciplinary amendments to the Bylaws so that the Board and membership will have a clearer understanding of how future misconduct and other related administrative processes will be reported, investigated, and resolved;
80. The Court dismisses all other Plaintiff demands of SSI and its officers (Defendants) and reaffirms Defendants' positions as SSI's bona fide, duly elected and duly appointed Board.
81. The Court orders Plaintiffs and their associates from contacting the SSI Board or its members without the SSI Board and membership's explicit written permission.
82. Plaintiffs not be permitted to modify their complaint.

83. Plaintiffs shall be individually and collectively charged for time and damages and the hundreds of hours used to defend the Corporation from Plaintiff's misconduct. Baker's investigative fees are billed at \$150 per hour, plus costs, half of which are to be donated to SSI;
84. The Court will notify the State Bar of Tennessee of Bard's ineffective counsel and misconduct;
85. Other general relief as required in the interests of justice.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'C. Baker', with a long horizontal stroke extending to the right.

Clark Baker (Defendant)  
SSI Secretary/Treasurer  
2645 Greenvally Road  
Los Angeles, CA 90046-1412  
(323) 650-4801