

No. 20-1351

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In the  
**Supreme Court of the United States**

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PHILLIP W. HURD AND PATRICK A. JENKINS,

*Petitioners,*

v.

JOY LASKAR, PH.D.,

*Respondent.*

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**On Petition For A Writ of Certiorari  
To The United States Court of Appeals  
For The Eleventh Circuit**

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**RESPONSE TO PETITION FOR  
A WRIT OF CERTIORARI**

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April 21, 2021

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**QUESTION PRESENTED**

Whether the rule that a plaintiff must await favorable termination before bringing a Section 1983 action alleging unreasonable seizure pursuant to legal process requires the plaintiff to show that the criminal proceeding against him has “formally ended in a manner not inconsistent with his innocence,” *Laskar v. Hurd*, 972 F.3d 1278, 1293 (11<sup>th</sup> Cir. 2020), or that the proceeding “ended in a manner that affirmatively indicates his innocence,” *Lanning v. City of Glens Falls*, 908 F.3d 19, 22 (2d Cir. 2018); *see also Laskar*, 972 F.3d at 1293 (acknowledging 7-1 circuit conflict).

## **PARTIES TO THE PROCEEDING**

Petitioners Phillip Hurd and Patrick Jenkins were defendants in the district court proceedings and appellees in the court of appeals proceedings. Respondent Dr. Joy Laskar was the plaintiff in the district court proceedings and appellant in the court of appeals proceedings. Jilda Garton and Mark Allen were also defendants and appellees below, but are not parties to the Petition because the claims against them were dismissed by the court of appeals.

## **RELATED CASES**

- *Laskar v. Hurd*, No. 1:18-cv-04570, U.S. District Court for the Northern District of Georgia. Judgment entered April 3, 2019.
- *Laskar v. Hurd*, No. 19-11719, U.S. Court of Appeals for the Eleventh Circuit. Judgment entered August 28, 2020.
- *Laskar v. Hurd*, No. 19-11719, U.S. Court of Appeals for the Eleventh Circuit. Judgment entered October 23, 2020.

## **COUNSEL FOR RESPONDENT**

Michael Alan Dailey of Anderson Dailey LLP was counsel of record for Respondent in the district court and the court of appeals.

Craig A. Gillen of Gillen Withers & Lake, LLC successfully represented Respondent in the underlying criminal prosecution giving rise to his Section 1983 claim.

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## STATEMENT OF POSITION

Respondent does not oppose Petitioner's request for issuance of a writ of certiorari. But rather than holding this case pending the Court's decision in *Thompson v. Clark*, No. 20-659, Pet. for Cert. at i (U.S. Nov. 6, 2020), as Petitioner suggests, Respondent suggests instead that *this* case be consolidated for consideration and argument *together* with *Thompson v. Clark*. The Question Presented and accepted in *Thompson*, specifically notes that Supreme Court review is necessary *because of* the Eleventh Circuit's decision in *this* case. Indeed, it was Respondent who urged below adoption of the "not inconsistent with innocence" test, highlighting its relative benefits and inherent sense of justice.

Moreover, the facts of *this* case effectively highlight why this Court's forthcoming decision will be so important to criminal case defendants from *all* walks of life. The Court's decision will impact not just persons whose reported and purported unlawful conduct involves a specific confrontation *with* law enforcement, it will be just as momentous for persons subject to criminal prosecution based on false, misleading and materially incomplete investigations performed by other state actors who gather and present findings *to* law enforcement.

Dr. Laskar's extended and uncertain legal journey has captured national attention over the past decade, in part from a series of articles about his case appearing in the *New York Times* on January 8, 2015, April 9, 2017 and September 21, 2020, coupled with a

general consensus of concern over what has happened to him.

*Laskar v. Hurd* would be a perfect bookend to *Thompson v. Clark*.

### **RESPONSE TO PETITION FOR WRIT OF CERTIORARI**

Joy Laskar responds to Petitioners Phillip Hurd and Patrick Jenkins's Petition For A Writ Of Certiorari to review the Eleventh Circuit's judgment in this case.

### **OPINIONS BELOW**

The court of appeals' order denying rehearing en banc is available at Pet. App. 76-77. The opinion of the court of appeals (Pet. App. 1-60) is published and reported at 972 F.3d 1278 (11<sup>th</sup> Cir. 2020). The district court's order dismissing the first amended complaint (Pet. App. 61-75) is unreported.

Dr. Laskar's First Amended Complaint as filed in the district court is available at Resp. App. 1-100.

### **JURISDICTION**

The court of appeals entered judgment on August 28, 2020. It denied rehearing en banc on October 23, 2020. This Court has jurisdiction under 28 U.S.C. § 1254(1).

## **STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED**

The Fourth Amendment to the U.S. Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Constitution, Amend. IV.

*42 U.S.C. ¶ 1983*, Rev. Stat. § 1979, derived from § 1 of the Civil Rights Act of 1871, 17 Stat. 13, provides in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereto to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

## STATEMENT OF THE CASE

### ***I. COURSE OF PROCEEDINGS AND DISPOSITION BELOW.***

On September 28, 2018 Dr. Laskar filed a Complaint in the United States District Court for the Northern District of Georgia, Atlanta Division, alleging a claim for malicious prosecution against Petitioners pursuant to 42 U.S.C. § 1983. On November 7, 2018 Petitioners filed a Rule 12(b)(6) motion to dismiss the Complaint. Seven days later, on November 28, 2018 Dr. Laskar filed his First Amended Complaint, Resp. App. 1-101, and on December 10, 2018 Petitioners filed a second Rule 12(b)(6) motion to dismiss.

In both motions, Petitioners asserted that Dr. Laskar had failed to demonstrate an essential element to his claim – that the underlying criminal prosecution against him had terminated in his favor. The assertion was made despite Dr. Laskar having pled in both complaints that criminal proceedings against him had terminated finally and in his favor. Complaint, ¶190, Pg 79 (“On October 5, 2016, The Honorable Robert McBurney of the Superior Court of Fulton County dismissed all claims presented and filed against Dr. Laskar, terminating that legal proceeding in Dr. Laskar’s favor.”); First Amended Complaint, Resp. App., ¶197, Pg 92 (“On October 5, 2016, the criminal proceedings against [Dr. Laskar] were terminated finally and fully in his favor.”) Supporting authority was referenced in the First Amended Complaint with the case of *Williams v. Marbut*, 183 S.E. 820 (Ga. Ct. App. 1936)(“***The final termination of a criminal case favorably to the defendant and amounting to***

***a final ending of the prosecution, is such a termination favorably to the defendant as constitutes a basis for a suit for malicious prosecution.***") (emphasis supplied) Resp. App, ¶197, Pg 92.

Because the proceedings against Dr. Laskar were dismissed due to an expiration of the relevant statute of limitations, Petitioners contended that the termination provided no indication of Dr. Laskar's innocence, and for that reason Judge McBurney's order of dismissal could not be regarded as favorable for Section 1983 purposes. Dr. Laskar responded that an indication of innocence was not required, presenting authority from the United States District Court for the Northern District Court of Georgia (Atlanta Division) holding that, ***"[w]hen looking at whether the prosecution of a plaintiff terminated in his favor, courts look to whether or not the prosecution ended in a non-conviction final termination of a criminal case, such as a dismissal."*** *Hammock v. Wal-Mart Stores, LP*, 2012 U.S. Dist. LEXIS 191773 (N.D. Ga. July 26, 2012)(emphasis supplied).

The District Court entered an Order granting the motion to dismiss. Pet. App. 61-75. The clerk of court entered final judgment, and on May 1, 2019 Dr. Laskar filed a timely Notice of Appeal.

## **II. STATEMENT OF FACTS.**

The criminal prosecution of Dr. Laskar arose out of an investigation performed by Petitioners. Resp. App., ¶1, Pg 2. Petitioners were employees of the Georgia Institute of Technology ("Georgia Tech" or the

“Institute”). Dr. Laskar was an Institute faculty Professor widely known for designing and developing mixed signal integration circuits and chips used in wireless and digital communications systems. Resp. App., ¶2, Pg 3. Dr. Laskar spearheaded the development of high performance mixed signal solutions operating in low-power usage scenarios (i.e., in situations involving 100 to 1,000 times lower power outputs than had been previously accomplished). Resp. App., ¶20, Pg 16.

Dr. Laskar’s work produced substantially lower cost structures and made possible the development of technical solutions costing less than \$10.00 whereas design and build expenses previously had exceeded \$10,000.00. *Id.* Among Dr. Laskar’s other technical accomplishments were (a) the original design and development of the power amplifier (a key component of the transmitter) used in Intel Corporation’s Centrion Platform; (b) the development of high speed equalization chips (i.e., techniques to preserve information in high speed data links) used by Intersil Americas LLC for improved data connectivity in servers being deployed by Google, Microsoft Corporation and Cisco Systems; and (c) the development of technology building blocks for the miniaturization of military grade radar systems affixed to chips. Resp. App., ¶21, Pg 17.

***A. Dr. Laskar’s Sparkling Professional Record.***

Upon earning his Doctorate degree in Electrical Engineering, Dr. Laskar began work as a Research Engineer at the IBM Thomas J. Watson Research

Center in New York. Resp. App., ¶24, Pg18. There, Dr. Laskar focused on Cryogenic CMOS. Cryogenics is a branch of physics dealing with the production and effects of very low temperatures. CMOS, or complementary metal-oxide-semiconductors, is a technology used in constructing integrated circuits. The technology is employed in microprocessors, microcontrollers, static RAM and other digital logic circuits. Cryogenic CMOS are currently under evaluation as point-contact HPGe detectors (i.e., hyperpure germanium detectors) with respect to deep space dark matter search and neutrino experimentation. *Id.*

Dr. Laskar joined Tech's faculty in 1995 as an Assistant Professor. Resp. App., ¶26, Pg 18. Two years later he was promoted to Associate Professor. In 2002 he became a full Professor and was simultaneously named the Joseph M. Pettit Professor of Electronics. Resp. App., ¶27, Pg 19<sup>1</sup> Dr. Laskar's research was focused on the emerging field of mixed signal design technology.

In 2003 Dr. Laskar helped to found Tech's Georgia Electronic Design Center ("GEDC"). He became its first Director. GEDC was conceived as a cross-disciplinary electronics and photonics research center, focused on development of high-speed electronic components and signal processing. Resp. App., ¶28, Pg 18. Dr. Laskar worked to establish partnerships between GEDC and

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<sup>1</sup> Joseph Mayo Pettit was an engineer who became dean of the Stanford University School of Engineering from 1958 to 1972. He served as president of the Georgia Institute of Technology from 1972 to 1986.



prominent technology companies from around the world. These firms provided grant and/or research monies to GEDC and its affiliated Institute organizations. They did so to be able to work closely with Georgia Tech faculty members on advanced research projects. More than \$70 Million in managed grants and research contracts were secured by Dr. Laskar, either as Principal Investigator or Co-Principal Investigator. *Id.*

Dr. Laskar became one of the most productive Institute faculty members as measured by grants and research contracts received. Well-known companies such as Hewlett-Packard, Texas Instruments, General Electric, National Semiconductor Corporation, Samsung, Bellsouth, IBM, Northrop Grumman, and Microsoft Corporation funded grants and research contracts because Dr. Laskar was involved. Key governmental organizations such as NASA, the U.S. Army, the U.S. Navy and The National Science Foundation did so as well. Resp. App., ¶29, Pgs 19-20. All were eager to participate because Dr. Laskar had helped to make Georgia Tech the place to be in wireless mixed signal technology. Resp. App., ¶5, Pg 6. GEDC also provided an unparalleled learning laboratory for students interested in such research. Today, the Center has more than 15 active faculty and over 100 graduate and undergraduate students. Tech promotes the Center as “one of the world’s largest university-based semiconductor research centers.” ([www.gedc.gatech.edu](http://www.gedc.gatech.edu)). Resp. App., ¶29, Pg 20.

A key objective of both GEDC and Georgia Tech was advanced by Dr. Laskar’s charismatic leadership and

leading-edge research. Georgia Tech historically encouraged faculty to found commercial entities to advance the dissemination of their research technology to the public at large. It regarded that as part of its mission as a publicly supported educational institution. The Institute was engaged in a concerted effort to emulate and even surpass the success of peer technology institutions like Stanford and MIT in the incubation and spin-off of technology companies. Resp. App., ¶35, Pg 22. Though intellectual property created by its faculty members always remained the property of Georgia Tech, and was placed in the legal custody of an affiliated Tech entity called the Georgia Tech Research Corporation (“GTRC”), faculty members responsible for its creation could license the technology from GTRC and use their own companies to commercialize it. Resp. App., ¶37, Pgs 23.

Dr. Laskar founded several companies, and one, Sayana Wireless, LLC, was focused on the mixed signal technology space. Georgia Tech encouraged Dr. Laskar to have Sayana join GEDC as a member company. It also encouraged Sayana to apply to VentureLab for support as an internal start-up company. Resp. App., ¶35, Pg 22. Dr. Laskar owned a majority member interest in the company, and GTRC was granted a 10% member interest of its own. Resp. App., ¶34, Pg 34; ¶40, Pg 24-25. Sayana’s prospects gradually progressed to the point that Dr. Laskar was looking for investment capital and/or purchasers for the company, Resp. App., ¶41, Pg 25, making the interests of Sayana and GTRC further aligned. Sayana was scheduled to be sold by private auction on May 17, 2010 pursuant to a transaction managed and executed by Pagemill

Partners of Silicon Valley, California. Sayana had paid \$50,000 to Pagemill Partners to arrange, advertise and manage the auction sale. Seventeen (17) different companies conducted a pre-sale investigation of Sayana and were identified as potential bidders. Resp. App., ¶¶183-185, Pg 86. It was anticipated Sayana would receive bids and sales proceeds totaling approximately \$30 Million. It was understood GTRC would receive 10% of that expected sum, or approximately \$3 Million. Resp. App., ¶41, Pg 25; ¶¶183-185, Pg 86.

Dr. Laskar's several accomplishments did not go unnoticed, and he became something of an academic star. He held over 50 patents in the field of 60GHz mixed signal design. He was the author of five books and more than 600 peer review journal and conference articles. He served simultaneously as Faculty Advisor for some 50 graduate doctoral students, at the time more than any other Georgia Tech professor. Resp. App., ¶¶2-3, Pg 3. He also received numerous professional awards and honors. To cite just a very few, Dr. Laskar was named a Fellow of the Institute of Electrical and Electronic Engineers in 2005. He was the recipient of Georgia Tech's "Outstanding Faculty Research Author" Award in 2007. In 2008, he was presented with the Georgia Tech ECE's Distinguished Mentor Award. And in 2010 Dr. Laskar was named Chair of the Institute of Electrical and Electronic Engineers MTT-S Executive Committee. Resp. App.,

¶4, Pgs 3-5. These recognitions brought increased attention to GEDC and Georgia Tech.<sup>2</sup>

Students at Georgia Tech were key beneficiaries of Dr. Laskar's work. The participation of so many outstanding companies and governmental entities delivered cache to GEDC as it sought to attract the very best doctoral candidates. Once enrolled, these students sought assignment to faculty members who performed cutting-edge research work. Working closely on projects with their faculty advisors, students were able to utilize the extensive laboratory facilities made available to them by GEDC and to take advantage of the sophisticated equipment and chip technology housed within them. Students were able to make important contributions to emerging new technologies while they pursued their studies and prepared master and/or doctoral theses. Resp. App., ¶6, Pgs 7-8.

***B. The Investigation and Criminal Prosecution of Dr. Laskar.***

***1. Initiation Of The Investigation.***

In December 2009 Jilda Garton, Georgia Tech's Associate Vice Provost for Research, and the General Manager of GTRC, together with Mark Allen, the Institute's Senior Vice Provost for Research and Innovation, began discussions with Appellee Phillip Hurd, Georgia Tech's Chief Audit Executive, regarding cost overruns totaling \$644,338 related to a contract

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<sup>2</sup> A complete listing of Dr. Laskar's recognitions and awards are set forth in paragraph 4 of Appellant's First Amended Complaint. Resp. App., ¶4, Pgs. 3-5.

with National Semiconductor Corporation (“NSC”). Resp. App., ¶54, Pg 31. Ms. Garton and Mr. Allen wanted to understand how these overruns had occurred. Mr. Hurd initially reported that he thought them to be the result of some kind of “colossal accounting screwup.” Resp. App., ¶54, Pg 31.

Soon after, on January 5, 2010, but before Mr. Hurd had completed his investigation, Ms. Garton emailed Mr. Allen to report, “We need to go ahead and move GEDC’s National Semiconductor costs totaling \$644,338 off GTRC’s books in the third quarter of FY 2010.” Resp. App., ¶55A, Pgs 31-32. Ms. Garton reported that “the options to consider are to transfer the costs back to the PIs’ [Principal Investigators] schools, write them off, transfer them to GEDC, or develop a repayment plan.” Ultimately, she wrote, the costs should be brought “back to GEDC where Chris Evans [GEDC’s Director of Operations] has said that the charges are not GEDC charges but that each PI is responsible.” *Id.* Ms. Garton let Mr. Allen know that he was among the listed Principal Investigators. Mr. Allen also bore responsibility for the asserted problem because the Provost’s Office, in which he worked, had management responsibility over GEDC.

Ms. Garton was also concerned by another, larger cost overrun involving Samsung, and totaling some \$1.4 Million, which she also wanted off of GTRC’s books. *Id.* Cost overruns were sometimes carried on the books of GTRC as repayment programs were devised and executed, or carried for a period of time before being written off completely. But at this time Ms. Garton was confronting the Great Recession years of

2009 and 2010, when public university budgets were tight. Ms. Garton was worried overruns being carried on GTRC's books would reflect poorly on GTRC and on her, fueling her sense of urgency. In conversations had with Internal Audit employee Larry Webster, Ms. Garton expressed concern that research work being done by employees of Samsung, one of the companies Dr. Laskar had recruited, was becoming mixed up with work that GEDC was doing for Samsung under a separate contract. Resp. App., ¶55B, Pg 32. Ms. Garton was focused on Dr. Laskar, prompting her to inform Mr. Webster that "GEDC Director [Joy Laskar] has, or is employed by a nonGT company." She then cast doubt on his integrity by remarking that she was "unsure as to his level of effort between his GT job and his other job." Resp. App., ¶55C, Pg 32.

On January 15, 2010 Mr. Allen emailed Phillip Hurd to state, "It has come to my attention that there may be some irregularities regarding certain research accounts from National Semiconductor (sponsor) that were handled through the Georgia Electronic Design Center (GEDC) several years ago. In particular, there is concern that work was double-spent due to potential issues with invoicing through GTRC and GTF [the Georgia Tech Foundation]. The amount involved is substantial (on the order of \$600K). Multiple PIs [Principal Investigators] from the School of ECE [Electrical and Computer Engineering] expended the funds, and GEDC may have also expended the funds (thus the double-spending). In order to understand what happened, I request that Internal Audit conduct a study of this issue, determine whether or not the funds were double-spent, . . . and identify appropriate

changes and controls that will prevent these issues from occurring in the future. Jilda [Garton] has assembled a large amount of paperwork on this issue and I would ask that you or someone on your staff please get in touch wither her, understand the situation (from GTRC's point of view), collect other points of view and documentation as appropriate, and prepare a plan to determine how we can resolve the issues above, . . ." Resp. App., ¶55E, Pgs 32-33.

In January 2010, Dr. Laskar and Mr. Allen began discussions between them on the implementation of a plan to reduce the cost overruns attributed to Samsung. Dr. Laskar was eager to assist, and his dialogue with Mr. Allen involved a plan to reduce GEDC expenses, identify and secure new funding to apply against the overrun, and limit salary and other expenses so that doctoral students working at GEDC would not be terminated. The two men began proactive steps, and progress aimed at reducing the overrun was being demonstrated. Resp. App., ¶55G, Pgs 33-34.

But even as these positive developments were taking shape, Ms. Garton was seeking formal expansion of the investigation involving NSC in order to help GTRC contend with outside auditors leveling pointed questions why her organization was still booking cost overruns that remain unpaid. After attending several meetings with Ms. Garton and others, Mr. Hurd determined that he would expand his investigation into an audit of all GEDC finances. Resp. App., ¶¶55K, Pgs 35.

## ***2. Internal Audit's 2010 Report.***

Within just weeks of being issued this expanded scope, Mr. Hurd and his team produced an Official Report of Suspected Malfeasance dated April 14, 2010. Resp. App., ¶56, Pg 35. The Report was delivered to John M. Fuchko, III, then Associate Vice Chancellor for Internal Audit at the Board of Regents of the University System of Georgia, and to other officials at Georgia Tech, including the Institute's Chief Legal Officer. Through Power Point presentations, Mr. Hurd later shared the information with the State Attorney General's office and the Georgia Bureau of Investigation ("GBI"). Mr. Hurd and his team reported that Dr. Laskar had made misrepresentations to the IRS, and had misused building space, lab facilities, and equipment belonging to Georgia Tech to further the interests of Sayana. Dr. Laskar was reported to have violated Georgia Tech policies and procedures and committed violations of Georgia statutory law, which Hurd identified as falling under *O.C.G.A. § 40-10-23*, *O.C.G.A. § 40-10-25*, and *United States Code Title 18, Part I, Chapter 46, § 1001*. Resp. App., ¶57, Pgs 36. The Georgia Code does not contain either of the two provisions which Mr. Hurd cited. Mr. Hurd took it upon himself to contact the IRS to raise questions about Sayana and Dr. Laskar, which prompted the IRS to contact Dr. Laskar. But after an extended examination, the IRS concluded there were no penalties due. *Id.*

Significantly, none of the investigative findings was disclosed to Dr. Laskar prior to their report to law enforcement. Mr. Hurd also never produced a final report of his suspected findings. He referred to them



originally as part of a “preliminary audit report.” Resp. App., ¶60, Pg 37. In meetings had with Georgia Tech officials, a representative of the Board of Regents, and the Senior Assistant Attorney General for the State of Georgia, Mr. Hurd utilized a PowerPoint summary of his preliminary report to explain his findings. *Id.* These were the findings which Institute officials, representatives of the Board of Regents, the Senior Assistant Attorney General, and GBI personnel proceeded to accept.

Reporting that computers, documents and other evidence would likely be in the possession of Dr. Laskar and others, Mr. Hurd recommended that searches be made of these likely sources. A plan quickly evolved to raid Dr. Laskar’s offices, residence, vehicles and to seize computers and other evidence wherever found. On April 21, 2010 Mr. Hurd email the Institute’s Chief Legal Officer to report “the bulldozer is in full speed.” Mr. Hurd’s team actively encouraged the investigation and prosecution which followed. Mr. Hurd personally accompanied GBT Special Agent Lisa Vorassi to court appearances before Judges in the Fulton and Cobb County Superior Courts, where search warrant requests were presented. Ms. Vorassi and Mr. Hurd asked the Judges to order that non-law enforcement employees of Georgia Tech could be present when GBI search warrants were executed, and to order that computers seized during these searches did not have to be taken to the GBI computer forensic lab but could be removed to the offices of Georgia Tech’s Department of Internal Auditing. Resp. App., ¶66, Pgs 38-39. Mr. Hurd requested that GBI Special Agent Wesley Horne be specially appointed to work

with him, something which Senior Assistant Attorney General David McLaughlin typically did not do, but then did. Resp. App., ¶62, Pg 37. Mr. Hurd also tasked one of his Internal Audit officers, Patrick Jenkins, to accompany Ms. Vorassi when witnesses were questioned. Mr. Jenkins conducted a significant proportion of that questioning himself. Resp. App., ¶¶168-182, Pgs 83-85.

Search warrants subsequently executed at more than 20 different locations were based on an Affidavit submitted by GBI Agent Lisa Vorassi. Resp. App., ¶¶67-73, Pgs 39-45. Ms. Vorassi attested and declared that all substantive findings and information had come from Philip Hurd. “Unless otherwise indicated, all facts presented herein are derived from my conversations and communications with Mr. Hurd.” *Id.*

But the factual findings and charges set forth in the Affidavit were false and untrue. Notably, the entire investigation of Dr. Laskar, GEDC and other Institute personnel respecting their use of plant facilities, equipment, chip technology, and chip prototypes was unreasonably limited in scope. It was deliberately circumscribed to yield evidence pertaining only to Dr. Laskar and Sayana, making the results devoid of context and erroneous. What Dr. Laskar and Sayana were accused of improperly doing was never evaluated against what other GEDC companies and faculty members had done and were doing. Had just a reasonable degree of diligence been exercised, and had information elicited from one source been conscientiously checked against that derived from others, Mr. Hurd’s team would have known their

findings were untrue. Hurd was forced to confront and concede the lack of truth and diligence supporting the bulk of his reported findings when he later testified at Georgia Tech evidentiary hearings addressing Dr. Laskar's continued employment with the University. Even then, Petitioners took no action to correct the record with the State Attorney General's Office, letting the prosecution they had set into motion continue.

This approach likely explains why Mr. Hurd refused to give Dr. Laskar an opportunity to know he was being investigated, or a chance to respond to the findings that were about to be reported. Indeed, Mr. Hurd seemed indifferent to whether the information he was reporting was true.<sup>3</sup> Resp. App., ¶166, Pg 82. The investigation was conducted seemingly as a pre-determined exercise, aimed at placing blame on Dr. Laskar for accounting irregularities for which he was not responsible but had voluntarily worked with Mr. Allen to address.

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<sup>3</sup> On April 7, 2010, one week before his formal Report was to be delivered, Mr. Hurd emailed Mark Allen, and Jilda Garton to encourage them to review certain supporting data which he had provided in an initial briefing for them, and to do so in anticipation of a further meeting that was to be held on Friday, April 9, 2010. Dr. Laskar was to be present at that Friday meeting. Mr. Allen emailed back to ask if it wasn't "appropriate to give Joy some background prior to the meeting so he does not feel surprised," to which Mr. Hurd responded: "Probably not. I will only be touching on major issues. He should know this and his 'surprise' will give him less time to think of a 'creative' response." (Email exchange by and between Phillip W. Hurd and Mark G. Allen dated April 7, 2010).

**(a) A Snapshot of Phillip Hurd's  
False Report.**

The falsity of Mr. Hurd's Report can be demonstrated by examining one of its most important factual findings, respecting computer chips. Mr. Hurd reported that Dr. Laskar and Sayana had fraudulently deceived Georgia Tech into paying for chips manufactured by a French company called Circuits Multi-Purpose ("CMP"). Mr. Hurd reported to Agent Vorassi that Dr. Laskar had fraudulently induced Georgia Tech to pay for the chips, resulting in damages to the Institute which "may be as great as \$700,000 to \$1,470,000." Resp. App., ¶111, Pg 61. Not even one year later, Mr. Hurd was forced to acknowledge under oath he had no evidence that Dr. Laskar had taken or used any of the CMP chips for which Georgia Tech reportedly paid such sums. Resp. App., ¶112, Pg 61. Mr. Hurd had earlier reported to Agent Vorassi that Sayana had entered into several contracts for subsequent sale and delivery of the chips, including ones with a South Korean company called Electronics and Telecommunications Research Institute ("ETRI"). But these chips were not final, functional chips, as Mr. Hurd had reported; they were **chip prototypes** being delivered to ETRI pursuant to a Collaborative Research Agreement. Once delivered, ETRI would subject the chip prototypes to testing and evaluation. The chip prototypes had no value in the marketplace because they were not final, functional chips. Dr. Laskar and Sayana did not defraud Georgia Tech because they did not receive monies of any kind. Indeed, because they were chip prototypes, all were available for research by students working under GEDC's faculty and member

companies. And because they were designated for research, the chips could be acquired with unrestricted University funds. Senior Vice Provost Mark Allen specifically testified to this point. Resp. App., ¶130, Pgs 67-68. Indeed, chips from all manufacturing runs ultimately became the subject of research and written research papers by students and doctoral candidates at Georgia Tech. Confirmation that the chips were used for permissible research purposes was supplied not only by Mr. Allen but also by Georgia Tech research students in the School of Electrical and Computer Engineering. Resp. App., ¶¶119-129, Pgs 63-67.

Mr. Hurd was forced to acknowledge under oath that he had examined Sayana's VentureLab application and had learned that part of Sayana's proposed VentureLab funding was to provide chip prototypes to customers. Mr. Hurd testified that Sayana's application to VentureLab specified that funding for Phase 1 and Phase 2 would go toward chip prototypes and the testing of chips, prompting him to concede, "There's nothing wrong with GEDC making prototype chips." Mr. Hurd admitted that he now knew the chips provided by Sayana to ETRI were prototype chips and test chips so that they could be evaluated to see if their chip technology worked properly. He also stated that he now knew the chips could not be resold. Resp. App., ¶106, Pgs 58-59. Despite these several acknowledgements, Mr. Hurd never contacted State prosecutors to request that they stand down.

**(b) *A Snapshot of Patrick Jenkins's  
Incomplete And Misleading  
Investigation.***

Mr. Hurd's deputy, Petitioner Patrick Jenkins, demonstrated a lack of evidentiary support for findings which he advanced respecting Dr. Laskar and Sayana. Mr. Jenkins testified under oath that Sayana employees had used Cadence software belonging to Georgia Tech and that such usage was wrongful. Resp. App., ¶89, Pg 53. Mr. Jenkins later acknowledged he had done so because he found no written agreement between Sayana and Georgia Tech authorizing use. Resp. App., ¶89, Pg 53. Mr. Jenkins did not discover such a writing because *all* GEDC companies had electronic access to Georgia Tech's Cadence software. Resp. App., ¶92, Pg 54. Mr. Jenkins admitted that he did not pull up logs for other GEDC member companies to see if they enjoyed electronic access to Cadence software, or inquire why. He stated he "only looked at the log for the [sic] Sayana," explaining "I was not directed to look at other GEDC members. I was directed to look at Sayana." Mr. Jenkins testified he did not review GEDC policies on the subject, as any reasonable investigator would do, again because he had not been directed to do so. Resp. App., ¶96, Pg 55.

Mr. Jenkins also testified he had no evidence to show that a group of GEDC member companies whose names appeared on a map of Georgia Tech's Technology Square Research Building ("TSRB") - G-Tronix, Tepyt, Terabit, Quellan, Agilent, Microsoft, Neuromorphix, Whipper, Sienna and OFS - had contracts in place or were being billed at or through a cost center for their

use of the space, or had contracts authorizing the use of computers, CAD machines, and laboratory equipment. Had he investigated properly, he would have learned that no companies were subject to contracts or cost center processes. Jenkins explained that his evidentiary omission was due to the fact he “was only directed to look at Sayana” and no other companies whose practices might have been relevant. Resp. App., ¶93, Pg 54-55. He testified he had no evidence to show the use of a cost center because he “was not asked to look at it.” *Id.*

In a written sworn statement submitted at the hearing at which Mr. Jenkins testified, Professor Paul Hasler of the School of Electrical and Computer Engineering, and the founder of two start-up companies which became GEDC members, stated that the benefits of GEDC membership included access to and the use of space within the TSRB building when available. Resp. App., ¶78, Pg 47. Professor Hasler also reported that “some of the benefits of GEDC membership included the right to use Georgia Tech computers on a dual-use basis, access and use to laboratory equipment, space and equipment, [and] access and use of CAD and other design tools , , ,” Resp. App., ¶98, Pg 56. He noted that “Georgia Tech faculty are allowed and encouraged to utilize laboratory resources to develop technology in their lab and/or research group to where it could be commercially transitioned, either through licensing or start-up activities.” Professor Hasler also explained that “many of my colleagues . . . have utilized Institute resources for developing technology to a level for commercial transition attempt. It is my understanding that this is

standard practice or procedure at Georgia Tech.” *Id.* But again, once confronted with these contradictions Petitioner Jenkins made no revised report to his superiors, or to any members of the State Attorney General’s prosecution team.

Mr. Jenkins was well embedded with these officials; he was tasked with assisting the GBI in conducting witness interviews and did so with at least 13 such witnesses. Mr. Jenkins either assisted the GBI Agents with their questioning or conducted the questioning all by himself. Resp. App., ¶¶168-180, Pgs 83-85. Mr. Paul Freet, the Principal at VentureLab, a Georgia Tech related entity providing financial support for potential spin-out companies at Tech, reported that almost all of the questions he was asked by investigators were propounded by Georgia Tech Internal Audit employees, not the GBI agents. He also reported that Tech employees appeared to be running the questioning but did not appear to be familiar with VentureLab or the spin-out process. Resp. App., ¶180, Pg 85.

These examples are but the proverbial tip of the iceberg. Respondent’s First Amended Complaint details pages and pages of investigative findings and charges being contradicted by clear, forthright and irrefutable evidence delivered by other Georgia Tech professors, administrators, and research students. Resp. App., ¶¶67-189, Pgs 39-85. The Report of wrongdoing issued by Petitioners against Dr. Laskar and his company was extravagantly false and untrue, and the investigative methodology supporting it was remarkably deficient.

It bears noting that the GBI searches and seizures were timed to occur on the same day that Sayana



Wireless, LLC was scheduled to be sold at auction sale. Performance of the raids caused the sale's cancellation. The fact that GTRC stood to gain some \$3 Million from the sale was apparently of no moment to Petitioners. What does appear important to them was that Dr. Laskar would become tarred with the stench of criminality, the cost overruns would then be seen as Dr. Laskar's sole and exclusive responsibility, and Dr. Laskar himself, by reason of the massive legal process unleashed against him, would be helpless to respond. The Professor would instead be preoccupied with the all-consuming task of salvaging his career, sheltering his family, and preserving his personal liberty.

### ***III. REASONS FOR GRANTING THE PETITION.***

On March 8, 2021, this Court granted certiorari in *Thompson v Clark*, No. 20-659, to resolve a circuit split on the applicable favorable-termination test for Section 1983 malicious prosecution claims. The question presented and accepted in *Thompson* specifically notes that Supreme Court review is necessary *because of* the Eleventh Circuit's decision in *this* case. As noted, Respondent urged below for adoption of the "not inconsistent with innocence" test, presenting case authorities, opinions and argument highlighting the substantially more just character of that same test.

The facts of *this* case effectively highlight why this Court's forthcoming decision will be important to criminal case defendants from *all* walks of life. The Court's decision will impact not just persons whose reported and purported unlawful conduct involves a specific confrontation *with* law enforcement. It will be

just as momentous for persons who are subjected to criminal prosecution based on false, misleading and materially incomplete investigations performed by state actors who gather and present their findings to law enforcement.

Dr. Laskar's extended and uncertain legal journey has captured national attention over the past decade.<sup>4</sup> *Laskar v. Hurd* would be the perfect bookend to *Thompson v. Clark*.

***A. The “Not Inconsistent With Innocence”  
Test Is Both Just And Consistent With  
The Realities Of Prosecutorial Case  
Management.***

In the case of *Smith-Hunter v. Harvey*, 95 N.Y.2d 191, 734 N.E.2d 750 (Court of Appeals of New York, July 6, 2000), New York State's highest court explained that, under New York law, “any final termination of a criminal proceeding in favor of the accused, such that the proceeding cannot be brought again, qualifies as a favorable termination for purposes of a malicious prosecution action.” Addressing a speedy trial dismissal, the court ruled that such a dismissal was

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<sup>4</sup> Wingfield, N. (2015, January 8). ‘Former Georgia Tech Engineering Professor Indicted on Racketeering Charges’. *New York Times*, Business, Innovation, Technology Section (online only).

Wingfield, N. (2017, April 9). ‘Ex-Professor Says Dismissed Racketeering Case Is Still ‘Devastating’’. *New York Times*, B3.

Metz, C. (2020, September 21). ‘Ex-Georgia Tech Researcher Can Proceed With Lawsuit Against University Officials’. *New York Times*, B4.

“not inconsistent with innocence” and thus constituted a favorable termination.

The referenced test is different from the “indication of innocence” standard adopted by seven Circuit Courts of Appeal. In a separate concurring opinion filed by Judge Rosenblatt in *Smith-Hunter*, the Judge explains how the two rules evolved, principally because, he writes, of “infelicitous language in the *Restatement (Second) of Torts* § 660, comment a.” *Smith-Hunter*, *supra*, at 756. Judge Rosenblatt observed that an “indicative of innocence” test saddles plaintiffs with a burden often difficult if not impossible to prove in speedy trial cases. Most of the time, he wrote, speedy trial dismissals do not indicate innocence. Typically, such dismissals are “neutral and do not suggest guilt, innocence or anything other than the fact that the time ran out.” *Id.* at 757. Speedy trial dismissals “may be the product of understaffing, imperfect case management, inefficiencies in detainer filings or interstate rendition, turnover of personnel, bureaucratic delay, misunderstanding, police department or prison delays, misplaced files, demands of other States or jurisdictions or the difficulty of tracking witnesses – or simply allowing a weak case to languish – to name a few of the more common reasons.” *Id.*

A speedy trial dismissal, the Judge explained, may reflect a prosecutor’s belief that the case cannot be proved. *Id.* But even then “the reasons are not necessarily indicative of innocence,” he wrote. *Id.* In prosecuting a possessory crime, for example, the district attorney “may drop the case, unconvinced of

defendant's ever having possessed the contraband at all, or because the police seized it from defendant's possession in violation of the Fourth Amendment. Or because the contraband was lost somewhere in the evidence room, or mistagged." *Id.*

Usage of the "not inconsistent with innocence" test in speedy trial cases, explained Judge Rosenblatt, would mean that New York courts would no longer have to engage in "jurisdictional gymnastics or semantics." *Id.* The "indicative of innocence" rule, on the other hand, potentially bars recovery by deserving plaintiffs whose criminal cases are dismissed on neutral grounds. Judge Rosenblatt noted that "the cases that satisfy a malicious prosecution claim are often weak from a prosecutorial standpoint. Given that prosecutors generally will be more likely to neglect a weak case than a strong one, the 'indicative of innocence' standard creates, he said, a paradox." *Id.* In hypothetical Case One, a complainant bent on malice causes the arrest of a wholly innocent person with trumped up allegations. The accused wants vindication, but the prosecution drags its feet, believing the case lacks merit. Eventually, the criminal court grants the accused's speedy trial motion for dismissal. In Case Two, a more measured and credible complainant provides a meritorious case more likely to sustain the prosecutor's interest. He takes it to trial, but then the jury acquits. *Id.* at 758.

Judge Rosenblatt explains that, under the "indicative of innocence" rule, only the second accused gains a "favorable" termination. The first does not, "even though the accusation was trumped up and

malicious.” *Id.* “The more far-fetched the accusation, the greater the likelihood the case will be dismissed on speedy trial grounds, thereby dooming the accused’s subsequent malicious prosecution suit. In the end, the most wrongly maligned are the least likely to gain civil redress.” *Id.*

For that reason, explains Judge Rosenblatt, New York’s highest court acted correctly in applying the “not inconsistent with innocence” test, ensuring that “a potentially deserving plaintiff whose criminal case was dismissed by a neutral speedy trial termination satisfied the favorable termination element.” *Id.*<sup>5</sup>

***B. Criminal Cases Are Designed To Assess Guilt Beyond A Reasonable Doubt and Not To Adjudicate Innocence.***

“[A]xiomatic and elementary,’ the presumption of innocence of innocence ‘lies at the foundation of our criminal law.’” *Nelson v. Colorado*, 137 S. Ct. 1249, 1255-56 (2017)(quoting *Coffin v. United States*, 156 U.S. 432, 453 (1895)); see also *Taylor v. Kentucky*, 436 U.S. 478, 483 (1978) (“The *Coffin* Court traced the venerable history of the presumption from Deuteronomy through Roman law, English common law, and the common law of the United States.”). The presumption is maintained until a conviction. *Herrera v. Collins*, 506 U.S. 390, 398-99 (1993), and it applies anew once a conviction is set aside, *Nelson*, 137 S. Ct.

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<sup>5</sup> Despite the holding in *Smith-Hunter*, the Second Circuit Court of Appeals applies the indication of innocence standard. *Lanning v. City of Glen Falls*, 908 F.3d 19, 26 (2d Cir. 2018)(citing *Restatement (Second) of Torts*, § 660 comment a)

at 1255 n.8; *id.* at 1259 n.1 (Alito, J., concurring in the judgment).

Of equal foundational significance is the requirement of proof beyond a reasonable doubt. It “plays a vital role in the American scheme of criminal procedure” and “provides concrete substance for the presumption of innocence.” *In re Winship*, 397 U.S. 358, 363 (1970); *Apprendi v. New Jersey*, 530 U.S. 466, 477-78 (2000). “[T]he Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.” *In re Winship*, 397 U.S. at 364.

The large number of criminal proceedings occurring each day in the United States necessarily focus on a single question respecting liability - whether the government can show through reliable evidence that the defendant, who is presumptively innocent, is in fact guilty beyond a reasonable doubt. A criminal proceeding that fails adequately to address that question will not be permitted to stand. *Jackson v. Virginia*, 443 U.S. 307, 321-24 (1979).

Given that the American criminal system is basically disinterested in whether a defendant can prove innocence - this Court has made clear that defendants cannot be required to introduce evidence of their innocence, *Sandstrom v. Montana*, 442 U.S. 510, 524 (1979) - the existence of a rule that an individual who faces prosecution must establish that her criminal proceedings concluded in a manner indicating her innocence to be able to demonstrate a federal

constitutional violation is at extreme odds with the foundational principles just described.

***C. When Criminal Proceedings Terminate  
In Favor Of A Defendant There Is Rarely  
An Opportunity To Adjudicate  
Innocence.***

To require proof that criminal proceedings have been terminated in a manner indicating innocence ignores what actually occurs each day in criminal courtrooms across the country. Criminal cases that do not result in a judgment of conviction nearly always conclude *without* an opportunity to adjudicate a defendant's innocence.

Cases which terminate in favor of a defendant after the legal process begins but before trial occurs never present a defendant the opportunity to offer evidence of innocence. This is true where a grand jury declines to indict, as it will have considered only the evidence presented by the prosecutor. It is also true when the prosecutor dismisses charges. The reasons for such a dismissal are endless. Lost evidence, an uncooperative but necessary witness, or an order suppressing the use of essential evidence can all prompt a prosecutor to dismiss. Also, the need to focus prosecutorial resources elsewhere, the prosecutor's reevaluation of the evidence, or the compelling results of further investigation can all play a part. Whatever the reason – and this listing is by no means exhaustive - a prosecutor will rarely state it on the record. More likely to be given is a general and ambiguous statement that dismissal is being taken “in the interests of justice.” Indeed, the law requires nothing more. See e.g., N.Y.

Crim. Proc. Law §§ 170.40 & 210.40. In large jurisdictions, *most* misdemeanor and felony cases are dismissed. Surrell Brady, *Arrests Without Prosecution and the Fourth Amendment*, 59 Md. L. Rev. 1, 3 (2000). There will be a limited procedural or factual record in such cases, and the prosecutor's reasons for dismissal will likely be unknown or ambiguous.

Cases which are tried but concluded with an acquittal are effectively no different. An "acquittal on criminal charges does not prove that the defendant is innocent; it merely proves the existence of a reasonable doubt as to his guilt." *United States v. One Assortment of 89 Firearms*, 465 U.S. 354, 361 (1984); see also *Savory v. Cannon*, 947 F.3d 409, 429 (7<sup>th</sup> Cir. 2020) (en banc) (noting that the acquittal addressed in *McDonough v. Smith*, 139 S. Ct. 2149, 2161 (2019), is "another resolution that does not necessarily imply innocence"). This Court has held that a judge may acquit for reasons unrelated to innocence, *Evans v. Michigan*, 568 U.S. 313, 318-21 (2013). And while an individual defending prosecution may present strong evidence of innocence at trial, the acquittal itself does not reflect a conclusion that the individual is innocent.

Finally, relief granted following a conviction usually does not adjudicate innocence, excepting only those rare exceptions where actual innocence is established. Most commonly granted grounds for relief on appeal are trial errors, which entitle the defendant to a new trial, without an evaluation of guilt or innocence. Where convictions are reversed because the evidence is insufficient to sustain them, the decisions do not reflect a finding of innocence. *Jackson*, 443 U.S. at 310 n.13.



Collateral attacks on convictions in state or federal court can be made on a number of grounds, but these are unrelated to innocence. See, e.g. *Strickland v. Washington*, 466 U.S. 668 (1984) (ineffective assistance of counsel); *Kyles v. Whitley*, 514 U.S. 419 (1995) (suppression of exculpatory evidence). A person who is convicted might secure executive clemency, but such an act is in most instances an act of forgiveness, not an acknowledgment of innocence. *Logan v. United States*, 552 U.S. 23, 26 (2007). Only a finding of “actual innocence” in a post-conviction proceeding, or a pardon based on innocence, are the rare, post-conviction vehicles by which an adjudication of innocence occurs.

Given that innocence is never adjudicated before a criminal trial or with the factfinder’s return of an acquittal, and almost never during post-conviction proceedings, it seems highly inconsistent to condition the filing of a constitutional claim on proof that the prior criminal proceeding ended in a manner indicating innocence – inconsistent with how the American criminal justice system is designed and operates in practice.

***D. 42 U.S.C. § 1983 Was Enacted To Remedy  
And Deter Violations of the Constitution  
by State Actors During Criminal  
Proceedings.***

Section 1983 remedies deprivations of rights protected by federal law, including the Constitution. 42 U.S.C. § 1983; *Oklahoma City v. Tuttle*, 471 U.S. 808, 816 (1985). Section 1983 additionally serves to deter state actors from depriving persons of federally

guaranteed rights. *Wyatt v. Cole*, 504 U.S. 158, 161 (1992).

This Court has frequently identified Section 1983 as providing a remedy for those who have wrongly been subjected to criminal prosecution because of unconstitutional conduct. *McDonough v. Smith*, 139 S. Ct. at 2156 (respecting fabricated evidence); *Manuel v. City of Joliet*, 137 S. Ct. 911, 918-19 (2017) (respecting unlawful detention arising after the onset of criminal proceedings); *Mitchum v. Foster*, 407 U.S. 225, 242-43 (1972) (respecting section 1983 injunctive relief against state criminal proceedings entered “to prevent great immediate and irreparable loss of a person’s constitutional rights.”). These precedents highlight the fact that Section 1983 is available for persons who suffer evidence suppression or fabrication and are wrongly seized or deprived of liberty during state criminal prosecutions.

The decisions of lower courts requiring Section 1983 plaintiffs to demonstrate a prosecution against them was terminated in a manner indicating innocence undermines this important federal remedy. Requiring such an almost-impossible-to-prove element effectively eliminates Section 1983 claims and removes a major deterrent to the use of manufactured evidence or the suppression of exculpatory evidence during state criminal proceedings.

***E. This Court's Decisions Do Not Include  
Innocence As An Element Of Claims  
Challenging Unconstitutional Detention.***

To show a Fourth Amendment violation, a person need only show (1) a seizure (2) without probable cause. The violation occurs whether or not the person suspected of the crime is innocent. *McDonald v. United States*, 335 U.S. 451, 453 (1948); cf. *Miller v. United States*, 357 U.S. 301, 314 (1958).

Similarly, innocence is not an element to a constitutional claim that a criminal prosecution based on fabricated evidence was a deprivation of liberty without due process. See *Napue v. Illinois*, 360 U.S. 264, 269 (1959); *Baker v. McCollan*, 443 U.S. 137, 145 (1979) (noting that innocence “is largely irrelevant to [a] claim of deprivation of liberty without due process of law”). The same holds true when the liberty deprivation is caused by suppression of exculpatory evidence. *Wearry v. Cain*, 136 S. Ct. 1002, 1006 (2016) (holding that a person is not required to show they would have been acquitted had evidence been disclosed but “only that the new evidence is sufficient to ‘undermine confidence’ in the verdict”).

Respondent does not believe a showing of innocence has ever been required to establish a Constitutional violation.

## CONCLUSION

Respectfully, this case deserves a hearing before the Court. Unquestionably, the Court’s discretion in these matters is always preeminent, but the facts of *this* case highlight why the Court’s forthcoming

decision is so very important to criminal case defendants from *every* walk of life. It is not just those whose conduct involves a direct confrontation *with* law enforcement who will be impacted, but countless others who find themselves subject to criminal prosecution based on false investigations *reported to* police. As will others who have no say when prosecutors choose to move ahead with their case, or who may find their claims dismissed because the prosecutor waited too long to act. In each circumstance, to require a criminal defendant to demonstrate that her case was ended with an “indication of innocence” before she is granted the right to redress its constitutional deprivations is manifestly at odds with the foundational principles upon which our American criminal system is based. This case, considered jointly with *Thompson v. Clark*, will permit the Court to render a decision illustrating a broad range of factual scenarios. And it will assist the Court in educating jurists, prosecutors, defense counsel, law professors, law activists, community advocates, and the public at large what is so much revered and at stake in our American system of justice.

Respondents respectfully ask that certiorari be granted.

Respectfully submitted,

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April 21, 2021

## **APPENDIX**

**APPENDIX**

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**APPENDIX A**

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**CIVIL ACTION FILE  
NO. 1:18-cv-4570-WMR**

**[Filed: November 28, 2018]**

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JOY LASKAR, Ph.D.,	)
	)
<i>Plaintiff,</i>	)
	)
vs.	)
	)
PHILLIP W. HURD;	)
PATRICK A. JENKINS; JILDA D.	)
GARTON; and MARK G. ALLEN,	)
	)
<i>Defendants</i>	)

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**JURY DEMAND INCLUDED**

**PLAINTIFF'S FIRST AMENDED COMPLAINT**

COMES NOW Joy Laskar, Ph.D., Plaintiff, and for his First Amended Complaint against Defendants Phillip W. Hurd, Patrick A. Jenkins, Jilda D. Garton, and Mark G. Allen, filed pursuant to Federal Rule of Civil Procedure 15(a)(1)(B), respectfully shows the Court the following:



## INTRODUCTION

1.

Plaintiff brings this action pursuant to (a) *42 U.S.C. §§ 1983 and 1988*, (b) the Fourth Amendment to the United States Constitution, and (c) principles of Georgia law pertaining to the claim of malicious prosecution. Plaintiff shows that intentionally malicious acts and omissions of Defendants led directly to and caused the criminal prosecution of Dr. Laskar for the offenses of theft and racketeering. Defendants initiated their investigation against Dr. Laskar in the face of and contrary to longstanding practices and procedures of and at the Georgia Institute of Technology (hereinafter referred to as “Georgia Tech” or the “Institute”), which practices and procedures plainly demonstrated that Dr. Laskar had committed no wrongdoing. Had not such practices and procedures been willfully and recklessly ignored, but instead had been taken into account and fairly considered, a criminal prosecution would not have been instigated against Plaintiff, and he would have suffered none of the damages which Defendants caused him. Defendants initiated, supported, and instigated an investigatory process leading to the suspension, termination, arrest and criminal prosecution of Dr. Laskar that was based upon a false, misleading and materially incomplete investigative and factual record. The report was one which Defendants were responsible for advancing and creating. Defendants acted maliciously and without probable cause to instigate and cause the malicious prosecution of Plaintiff.

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2.

When the Defendants' investigation was begun, ostensibly to understand why a grant research project sponsored by the National Semiconductor Corporation ("NSC") had become overrun, an investigation which failed to determine any wrongdoing by either Plaintiff or the company he had founded, Dr. Laskar was an esteemed and internationally prominent electrical engineer and professor serving on the Georgia Tech faculty. Holder of the Georgia Tech Schlumberger Chair in Microelectronics at the Institute's School of Electrical and Computer Engineering, Dr. Laskar was focused on the rapidly emerging mixed signal design technology field. The field is one in which Dr. Laskar holds over 50 patents. Dr. Laskar was then, and is today, an industry leader in the field of 60GHz signal design.

3.

Dr. Laskar is also the author of five (5) books and more than 600 peer reviewed journal and conference articles. Prior to the termination of his employment as full Professor, Dr. Laskar simultaneously served as Faculty Advisor to no less than 50 graduate doctoral students. At the time, this was more than any other Georgia Tech professor.

4.

In recognition of Dr. Laskar's scholarship, as reward for his leading-edge research, and in tribute to his extensive mentoring of students and colleagues alike, Dr. Laskar has been the recipient of numerous awards and honors. These recognitions included:

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- (a) The Army Research Office Young Investigator Award (1995);
- (b) The NASA Invention Award: “Integrated Noise Generator” (1996);
- (c) The National Science Foundation CAREER Award (1996);
- (d) National Science Foundation Packaging Research Center Faculty Of the Year Award (1998);
- (e) The National Science Foundation Packaging Research Center Educator Of the Year Award (1999);
- (f) The Rappaport Award from the Institute of Electrical and Electronics Engineers (1999);
- (g) The Georgia Tech Faculty Graduate Student Mentor of the Year (2001);
- (h) Appointment as Senior Member of the Institute of Electrical and Electronics Engineers (2002);
- (i) The Clemson University College of Engineering Young Alumni Award (2003);
- (j) The Outstanding Young Engineer Award of the Institute of Electrical and Electronics Microwave Theory and Techniques Society (2003);

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- (k) The NAE/Humboldt Foundation Featured Speaker for Frontiers of Engineering (2003);
- (l) Fellow of the Institute of Electrical and Electronic Engineers (2005);
- (m) Distinguished Lecturer in 2006-07 at The Institute of Electrical and Electronics Engineers EDS;
- (n) Recipient of Georgia Tech's "Outstanding Faculty Research Author" Award (2007);
- (o) Recipient of Georgia Tech ECE's Distinguished Mentor Award (2008);
- (p) Vice Chair of the Institute of Electrical and Electronics Engineers MTT-S Executive Committee (2008-09);  
and
- (q) Chair of the Institute of Electrical and Electronic Engineers MTT-S Executive Committee (2010).

5.

In 2003, Dr. Laskar helped to found Georgia Tech's Georgia Electronic Design Center ("GEDC") and became its first Director. GEDC was conceived as a cross-disciplinary electronics and photonics research center focused on the development of high-speed electronic components and signal processing in order to achieve breakthrough performance. GEDC worked in partnership with the Georgia Tech Research Corporation ("GTRC") and was managed by the

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University's Provost Office. As GEDC's Director, Dr. Laskar established numerous partnerships with outstanding technology companies from around the world. These companies were encouraged by Dr. Laskar to provide, and did provide, monies to GEDC and various affiliated Georgia Tech organizations. The companies sought to work closely on advanced research in collaboration with faculty members at Georgia Tech. They were keenly interested in pursuing this opportunity because, largely as a result of Dr. Laskar's path-finding research, Georgia Tech had become the place to be in mixed signal technology research. More than \$70 Million in managed grants and research contracts were secured by Dr. Laskar in his capacity either as Principal Investigator or Co- Investigator on specific research projects. As measured by grants and research contracts received, Dr. Laskar was one of the most productive faculty members in the entire Institute. Dr. Laskar attracted grants and research contracts for:

- (a) National and International companies including:
  - i. Hewlett-Packard;
  - ii. Texas Instruments;
  - iii. General Electric;
  - iv. National Semiconductor Corporation;
  - v. Samsung;
  - vi. BellSouth

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- vii. International Business Machines (IBM);
- viii. Northrop Grumman; and
- ix. Microsoft Corporation.

(b) Governmental organizations such as:

- i. NASA;
- ii. The U.S. Army;
- iii. The U.S. Navy; and
- iv. The National Science Foundation.

6.

In furtherance of Georgia Tech's mission to provide a learning laboratory for its students, the GEDC, during Dr. Laskar's tenure, saw ever-increasing numbers of undergraduate and graduate level students working on the Center's research programs. Attracted by the exciting work of Dr. Laskar and his colleagues, these students were assigned to Georgia Tech faculty members actually conducting the research. Benefited by Dr. Laskar's outreach and charismatic leadership, a large portion of that research was supported by some of the world's most important and best-known technology companies, giving GEDC additional cache and leverage in attracting the very best doctoral candidates to enroll at Georgia Tech. Once enrolled, these students were able to utilize the equipment, facilities and chip technology made available to them at GEDC. They were further able to use their research as part of their doctoral theses and to have the

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opportunity to make important contributions to an emerging new technology. Today, GEDC has more than 15 active faculty and over 100 graduate and undergraduate students engaged in its activities. Georgia Tech advertises GEDC as being “one of the world’s largest university-based semiconductor research centers.” ([www.gedc.gatech.edu](http://www.gedc.gatech.edu))

### 7.

The investigation of Dr. Laskar undertaken by Defendants, the suspension of the Professor without pay, and the termination of Dr. Laskar’s tenured faculty position, followed by his arrest and criminal prosecution, severely damaged Dr. Laskar’s professional reputation and standing. The reputational damages he sustained were amplified by the media coverage which Defendants organized and assisted. As a direct and proximate consequence of the Defendants’ actions and omissions, Dr. Laskar’s reputation within the academy was destroyed. He was not able for a period of six (6) years following his arrest to secure full-time employment at any other accredited academic institution. The resulting damages to the Professor’s personal health and well-being were profound. Dr. Laskar was professionally diagnosed as suffering from post-traumatic stress syndrome (“PTSD”). His wife and three children suffered severe and long-lasting emotional distress and anxiety. The entire Laskar family was devastated by a disgrace that was needlessly, publicly, and maliciously inflicted upon them.

Specific actions undertaken by the Defendants demonstrate the malice with which their investigation was pursued. Defendants deliberately timed the release of their investigative findings without granting Dr. Laskar a single meeting to know and understand the charges leveled against him, and then be able to challenge and correct the purported findings which had been made. Defendants deliberately orchestrated their Georgia Bureau of Investigation raid of Dr. Laskar's office, vehicles, and residence to occur on May 17, 2010, the very day that a heralded new technology company founded by Dr. Laskar, Sayana Wireless LLC ("Sayana"), was scheduled to be sold. Both Dr. Laskar and Georgia Tech's affiliated contracting entity, the Georgia Tech Research Corporation ("GTRC"), held substantial equity interests in Sayana. The scheduled sale of the company was expected to provide Dr. Laskar millions of dollars in transaction proceeds, and was expected to provide GTRC millions of dollars as well. When Dr. Laskar was suspended by the University, the suspension was implemented without pay, in contravention of Georgia Tech's Faculty Handbook regulations. When the ensuing revocation process got underway, Georgia Tech again did not follow its own procedures, and Dr. Laskar was never permitted to appear before the interim faculty panel to plead his case. Defendants even reneged on the conditions which Dr. Laskar's criminal attorney had negotiated for the surrender of the Professor to law enforcement authorities, privately and away from public view, by deceptively causing Dr. Laskar to move into the public square so that television reporters whom Defendants



had arranged and coordinated to be on hand could film the proverbial “perp walk” as the Professor was taken into custody.

9.

In the weeks and months which followed, further substantial damages were caused to Dr. Laskar. Dr. Laskar’s sparkling career, its glowing prospects for further advancement, the Professor’s personal reputation, and his professional role as mentor and advisor to an extraordinary number of talented Georgia Tech advanced degree and doctoral students, were all effectively demolished. Dr. Laskar was suspended without pay in violation of Georgia Tech’s Faculty Handbook provisions, which called for continuing payment to the suspended party until the merits of the investigation could be heard and decided. Dr. Laskar was subsequently deprived of his tenured position on the Georgia Tech faculty. The loss of that paid position, and the loss of anticipated transaction proceeds had the scheduled sale of Sayana Wireless LLC been permitted to occur, jeopardized Dr. Laskar’s ability to support and care for his family. Without the financial support he was rightfully due, Dr. Laskar was forced to make other arrangements to address the substantial medical expenses incurred in treating him and his family members for the emotional and physical illnesses caused to and suffered by them. Crushing legal expenses also had to be managed and paid in order for Dr. Laskar to defend himself from the unsubstantiated University and criminal charges brought against him.

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10.

More than six years later, on October 5, 2016, after a bitter and protracted University and legal process, The Honorable Robert McBurney, a sitting Judge of the Superior Court of Fulton County, Georgia, entered an order dismissing all criminal charges brought and filed against Dr. Laskar.

11.

Termination of the criminal proceedings against Dr. Laskar gives rise under Georgia law to a claim for malicious prosecution. *O.C.G.A. § 51-7-41*. Dr. Laskar shows that the investigation undertaken by Defendants, and the resulting criminal prosecution filed and pursued against him, was the result of actions orchestrated and coordinated by Defendants with law enforcement and prosecutorial actors. Under the guise of a University inquiry originally requested by Defendants Garton and Allen, then expanded at their request, the University Internal Audit Department led an investigation of Dr. Laskar and his company by Defendants that was maliciously pursued and unsupported by any probable cause. Defendants' efforts were, in part, a deliberate effort to assign blame to Dr. Laskar for accounting practices, research procedures and start-up company protocols that were commonplace and longstanding within the Georgia Tech community. More particularly, Defendants Garton and Allen sought to have the investigative process secure the removal and/or crediting of cost overruns reflected on the books and accounts of GTRC and to assign blame for the overruns in question to

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asserted criminal wrongdoing committed by Dr. Laskar.

12.

The actions and omissions of the Defendants were not just false, misleading and materially incomplete, they were immoral, unjust, and extravagantly unfair to a man who had brought renown and distinction to Georgia Tech and had enriched the research grant and foundation coffers of the Institute by millions and millions of dollars. Maliciously pursued and unsupported by probable cause, the Defendants' investigation, which instigated and led to the criminal prosecution of Dr. Laskar, was wrongful, illegal and scandalous. It inflicted one more stain upon the Georgia Tech community at large. Plaintiff brings this action to correct the injustice perpetrated against him, to clear his name in every possible respect, and to win the monetary relief that is due him.

**JURISDICTION AND VENUE**

13.

This Court has subject-matter jurisdiction of this action under and by virtue of *28 U.S.C. §§ 1331 and 1343*. Plaintiff raises a federal question and the violation of his federally guaranteed Constitutional rights. This Court has pendent jurisdiction of Plaintiff's state law claims under and by virtue of *28 U.S.C. §1367(a)*.

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14.

This Court is the proper venue in which to adjudicate this action under and by virtue of 28 U.S.C. §§ 1391(b)(1) and (2). The material actions and omissions of Defendants took place in this District and Division.

### **PARTIES**

15.

Dr. Laskar was previously a resident of Atlanta and the State of Georgia. Dr. Laskar now resides in Santa Clara County, California. The Defendants, all of whom were acting under color of a state institution and state law as employees of Georgia Tech and its affiliated entities, provided false, misleading and materially incomplete information regarding Dr. Laskar to law enforcement and prosecutors, which caused and led to the criminal prosecution that was ultimately terminated in Dr. Laskar's favor. The Defendants' actions led to a Fourth Amendment violation of Dr. Laskar's constitutional rights and subjects the Defendants to Section 1983 liability for malicious prosecution. Plaintiff's claims are asserted against Defendants in their individual and personal capacities.

16.

Defendant Phillip W. Hurd is a resident of the State of Georgia and resides at 1881 Lancaster Drive S.E., Conyers, Rockdale County, Georgia 30013-6440. Defendant Hurd is subject to the jurisdiction of this Court. At all times material to the events described in Plaintiffs Complaint, Defendant Hurd worked as the

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Chief Audit Executive and Director of Internal Auditing for the Georgia Institute of Technology. Defendant Hurd led the Audit Department investigation of Dr. Laskar and worked directly with law enforcement and prosecutorial actors. Defendant Hurd even accompanied Georgia Bureau of Investigation (“GBI”) Special Agent staff to request orders for search and seizure from Judges serving in Cobb and Fulton Counties.

17.

Defendant Patrick A. Jenkins is a resident of the State of Georgia and resides at 4704 Brazil Wood Court, Kennesaw, Cobb County, Georgia 30144-1487. Defendant Jenkins is subject to the jurisdiction of this Court. At all times material to the events described in Plaintiff’s Complaint, Defendant Jenkins worked as the Senior Information Systems Auditor in the Department of Auditing for the Georgia Institute of Technology. Defendant Jenkins worked alongside Defendant Hurd in performing the investigation of Dr. Laskar and his company. Defendant Jenkins interacted with the other Defendants and University personnel, and he accompanied GBI staff to execute warrants and interview witnesses, in many instances propounding questions to witnesses himself.

18.

Defendant Jilda Garton is a citizen and resident of the State of Georgia and resides at 420 Woodvine Court, Roswell, Fulton County, Georgia 30076-3630. Defendant Garton is subject to the jurisdiction of this Court. At all times material to the events described in

Plaintiffs Complaint, Defendant Garton worked as the Associate Vice Provost for Research and as the General Manager of the Georgia Tech Research Corporation (“GTRC”) and the Georgia Tech Applied Research Corporation (“GTARC”). Defendant Garton was responsible for managing the operational and financial standing of GTRC, including its financial responsibility for research activities which it promoted and encouraged on behalf of Georgia Tech faculty, partners and interests. Defendant Garton took affirmative steps to ensure that GTRC was not perceived to be or actually deemed responsible for specific cost overruns that appeared on its books of account, including costs expended for research undertaken at GEDC on behalf of outside companies such as Samsung. Defendant Garton worked actively to push such costs off of GTRC’s books and to attribute selected cost overruns to GEDC, Professors and/or Principal Investigators like Dr. Laskar. Utilizing the investigation that was set into motion regarding Dr. Laskar, Sayana and GEDC, which she requested and then requested be expanded. Defendant Garton worked in concert with Defendant Allen and other Defendants on these matters.

19.

Defendant Mark G. Allen was previously a resident of the State of Georgia. He is today a resident of the State of Pennsylvania and resides at 2037 Spruce Street, Philadelphia, Pennsylvania 19103-5623. Defendant committed tortious acts and omissions while in Georgia which caused serious and substantial damage to Plaintiff in Georgia, including acts constituting and supporting the malicious prosecution

of Plaintiff. Under and by virtue of *O.C.G.A. § 9-10-91*, Defendant Allen is subject to the jurisdiction of this Court. At all times material to the events described in Plaintiff's Complaint, Defendant Allen served as a Professor at Georgia Tech in the School of Electrical and Computer Engineering ("ECE") and as Senior Vice Provost of the University. Later, Defendant Allen became Acting Director of Georgia Tech's Georgia Electronic Design Center ("GEDC"). Defendant Allen worked in concert with Defendant Garton to initiate and expand the investigation of cost overruns that ultimately led to Dr. Laskar's suspension, termination, arrest and prosecution.

### **OPERATIVE FACTS**

#### **Dr. Laskar's Superlative Academic And Professional Credentials**

20.

Dr. Laskar is widely known for his work in designing and developing mixed signal integration circuits and chips for use in wireless and digital communications systems. At Georgia Tech, Dr. Laskar spearheaded the development of high performance mixed signal solutions operating in low-power usage scenarios (i.e., in situations involving 100 to 1,000 times lower power outputs than previously accomplished). Dr. Laskar's work produced substantially lower cost structures and made possible the development of technical solutions costing less than \$10.00. Prior thereto, design and build expenses had exceeded \$10,000.00.

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21.

At all times material to the events described in this Complaint, Dr. Laskar's research included:

- (a) the original design and development of the power amplifier (a key component of the transmitter) used in Intel Corporation's Centrion Platform;
- (b) the development of high speed equalization chips (i.e., techniques to preserve information in high speed data links) used by Intersil Americas LLC for improved data connectivity in servers being deployed by Google, Microsoft Corporation and Cisco Systems; and
- (c) the development of technology building blocks for the miniaturization of military grade radar systems affixed to chips.

22.

Dr. Laskar began his technical career by earning a Bachelor of Science degree in Computer Engineering from Clemson University in 1985.

23.

In 1989, Dr. Laskar earned a Master of Science degree in Electrical Engineering from the University of Illinois at Urbana-Champaign. Two years later, in 1991, he earned his Doctorate degree in Electrical Engineering from that same institution.



24.

Dr. Laskar subsequently began work as a Research Engineer at the International Business Machines Corporation (“IBM”). Working out of IBM’s Thomas J. Watson Research Center in New York, Dr. Laskar focused on Cryogenic CMOS. Cryogenics is a branch of physics dealing with the production and effects of very low temperatures. CMOS, or complementary metal-oxide-semiconductors, is a technology used in constructing integrated circuits. The technology is used in microprocessors, microcontrollers, static RAM and other digital logic circuits. Cryogenic CMOS are currently being evaluated as point-contact HPGe detectors (i.e., hyperpure germanium detectors) in connection with deep space dark matter search and neutrino experimentation.

25.

In 1992 Dr. Laskar became an Assistant Professor at the University of Hawaii at Manoa. There, he helped lay the foundation for establishment of the University’s Microwave Applications Laboratory.

26.

In January 1995 Dr. Laskar was appointed an Assistant Professor at the Georgia Institute of Technology (“Georgia Tech”). Two years later, he was promoted to the position of Associate Professor with tenure.

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27.

In 2002, Dr. Laskar became a tenured full Professor at Georgia Tech. At the time of his appointment, Dr. Laskar was simultaneously named the Joseph M. Pettit Professor of Electronics.

28.

In 2003 Dr. Laskar helped to found Georgia Tech's Georgia Electronic Design Center ("GEDC"). He became the GEDC's first Director. As previously noted, GEDC is a cross-disciplinary electronics and photonics research center focused on the development of high-speed electronic components and signal processing. Dr. Laskar worked to establish partnerships between GEDC and prominent technology companies from around the world. These companies provided monies to GEDC or affiliated Georgia Tech organizations in order to have the opportunity to work closely with Georgia Tech faculty members on advanced research. More than \$70 Million in managed grants or research contracts were secured by Dr. Laskar in his capacities as Principal Investigator or Co-Principal Investigator.

29.

Dr. Laskar ultimately became one of the most productive faculty members at Georgia Tech as measured by grants and research contracts received. National and international companies including Hewlett-Packard, Texas Instruments, General Electric, National Semiconductor Corporation, Samsung, Bellsouth, IBM, Northrop Grumman, and Microsoft Corporation funded grants and research contracts. Governmental organizations such as NASA, the U.S.

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Army, the U.S. Navy and The National Science Foundation did so as well. GEDC provided a learning laboratory for University students engaged in such research and who sought to advance their graduate and doctoral ambitions. Today, the Center has more than 15 active faculty and over 100 graduate and undergraduate students. Georgia Tech currently advertises the Center as “one of the world’s largest university-based semiconductor research centers.” ([www.gedc.gatech.edu](http://www.gedc.gatech.edu))

30.

In 2007 Dr. Laskar was awarded the Georgia Tech-Schlumberger Chair in Microelectronics at the School of Electrical and Computer Engineering. Schlumberger NV is a world-wide business and provides integrated project management solutions to the international oil and gas exploration and production industries.

31.

Over the course of his academic career, Dr. Laskar has written and presented numerous scholarly papers for publication and presentation in the United States and other countries. His work has focused on mixed signal design. Dr. Laskar is the author of five (5) books and more than 600 peer-reviewed journal and conference articles.

32.

With more than 50 patents issued to him in the field of mixed signal design, Dr. Laskar is an industry leader in 60GHz signal design. His prolific scholarship, leading-edge research, and extensive mentoring of

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students and colleagues has caused Dr. Laskar to become the recipient of numerous awards and honors. A listing of those recognitions can be found in Paragraph 4 above.

33.

Significantly, these recognitions were not in all instances devoted to the accomplishment or advancement of Dr. Laskar's own career aspirations. At least two awards came to the Professor for being an "outstanding" mentor to Georgia Tech graduate students and a "distinguished" mentor in the School of Electrical and Computer Engineering. At Georgia Tech Dr. Laskar simultaneously served as Faculty Advisor to no less than 50 graduate doctoral candidates, which by any measure is impressive, and at that time was more than any other Georgia Tech professor.

**The Formation Of Sayana Wireless, LLC By Dr. Laskar**

34.

In 2006, Dr. Laskar founded Sayana Wireless, LLC ("Sayana"), a Georgia limited liability company, together with Dr. Stephane Pinel, a colleague and fellow Georgia Tech employee. Dr. Laskar owned a majority membership interest in the company. Georgia Tech Research Corporation ("GTRC") was initially granted a 5% member interest in Sayana and was provided copies of all organizational and stock subscription documents. These documents detailed the ownership interests held by all members in the company, including the majority interest held by Dr.

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Laskar. GTRC's ownership share in Sayana was later increased to a 10% member interest.

35.

Georgia Tech actively encouraged Dr. Laskar to found Sayana, just as it encouraged other Institute professors to found companies that could advance the dissemination of their research technology to the public at large. Georgia Tech was engaged in a conscious effort to emulate and even surpass the success of peer institutions like Stanford and MIT in the incubation and spin-off of technology companies. With Dr. Laskar's leading edge research work in mixed signal technology, Georgia Tech encouraged Dr. Laskar to have Sayana join GEDC as a member company. Georgia Tech also encouraged Sayana to apply to VentureLab as an internal start-up company within GEDC. Georgia Tech later sponsored a series of televised symposia where, at one such event, the University's senior executives and officers were in attendance, and Dr. Laskar was introduced to them and other audience members as a Principal of Sayana.

36.

Building upon Dr. Laskar's proprietary technology, Sayana was also engaged in the development of high-speed wireless signaling technology. Because of Dr. Laskar's position as a University employee, ownership of this intellectual property was vested in Georgia Tech and held in the name of GTRC.

GTRC is a state chartered 501(c)(3) not-for-profit corporation serving Georgia Tech. GTRC serves as the assignee of all intellectual property arising from research activities at Georgia Tech. It is further engaged in licensing that same technology back to those faculty members responsible for its creation so that they can commercialize it. GTRC's Board of Directors is comprised of Georgia Tech faculty, the President of Georgia Tech, others appointed by the President, a representative from the Georgia Tech National Alumni Association, a representative from the Georgia Tech Foundation, Inc., and other members from industry at large. GTRC licenses all intellectual property which is created by Georgia Tech employees, including faculty members. The intellectual property licensed by GTRC includes all pertinent patents, copyrights and trade secrets. GTRC supports and promotes research conducted at Georgia Tech through its stewardship of funds which are collected for sponsored research, and through its own financial support of certain research activities. Through technology transfer, GTRC enables Georgia Tech to maintain partnerships with public and private sectors of the economy in order to assure that research benefits are widely disseminated. All funds collected by GTRC are used to support those Georgia Tech programs requested by the University and approved by the GTRC Board of Directors. GTRC pays for sponsored research costs, license and royalty fees, and all corporate operating expenses associated with the work. GTRC supports Georgia Tech's grants and funded support programs. GTRC also assists Georgia Tech in obtaining

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quality research space, entering into long-term leases for specialized research equipment, and conducting other research support programs as requested by Georgia Tech.

38.

In February 2009 Sayana delivered \$90,000 to GEDC to support its membership in GEDC and the organization's ongoing operations. Earlier, Sayana had paid the salaries of GEDC co-op research assistants during the 2007-2009 academic years and in the approximate total amount of \$165,000. Sayana also paid research expenses of GEDC during academic years 2008-2009 in the approximate amount of \$70,000. Sayana paid to GTRC patent and licensing fees in the approximate amount of \$220,000. In consideration of all these amounts, Sayana made use of Georgia Tech facilities, research equipment and staff. This use was authorized, and Sayana's usage was no different from that of any other GEDC hosted and affiliated company. Sayana's usage of the Center's facilities, equipment and staff was actively encouraged by Georgia Tech.

39.

The funds paid by Sayana to GEDC in support of membership and GEDC's ongoing operations enabled it to utilize the Center's facilities, equipment and research staff.

40.

In July 2006 Sayana entered into a License Agreement with the GTRC, whereby GTRC licensed to Sayana the signaling technology that Dr. Laskar had

developed. In consideration of this license, Sayana ultimately granted to GTRC a 10% interest in the company. Sayana then became committed to commercializing its licensed technology and earning compensation for itself and all its members, including GTRC.

41.

As a start-up company working as part of GEDC, Sayana was successful in advancing its licensed technology and positioning itself for sale. The assets of the company were scheduled for private auction on May 17, 2010 pursuant to a transaction managed and conducted by Pagemill Partners of Silicon Valley, California. It was anticipated that Sayana would receive sales proceeds totaling approximately \$30 Million. It was understood that GTRC would receive 10% of that expected sum, or approximately \$3 Million.

### **The Suspension Of Dr. Laskar from Georgia Tech**

42.

These expectations notwithstanding, by letter dated May 17, 2010, Dr. G.P. Peterson, President of Georgia Tech, suddenly announced to Dr. Laskar: “In reviewing the recent cost overruns within the Georgia Electronic Design Center (GEDC), the Institute’s Department of Internal Audit discovered what they believe to be substantial evidence of malfeasance on your part including the misappropriation of Institute resources for the benefit of a company, Sayana Wireless LLC, of which you are part owner.”



43.

President Peterson informed Dr. Laskar that, “effective immediately, I am suspending you *without pay* until the Institute concludes its investigation of this matter.” (emphasis supplied) At the time of Mr. Peterson’s letter to Dr. Laskar, Dr. Laskar had been an employee of Georgia Tech for more than 15 years. President Peterson’s suspension of Dr. Laskar without pay was in direct violation of the Georgia Tech Faculty Handbook provision which governed this matter.

44.

Section 5.10.5 of the Georgia Tech Faculty Handbook (the “Faculty Handbook”) in effect at the time of President Peterson’s notice to Dr. Laskar provides that “The President in consultation with the Executive Board shall determine whether a faculty member confronted with a dismissal charge shall be temporarily relieved of duties. Unless legal considerations forbid, any such relief from duties will be *with pay*.” (emphasis supplied)

45.

Section 5.10.4 of the Faculty Handbook provides that it is only upon the conclusion of a formal hearing and dismissal by the President that “the Faculty member shall be suspended from employment *without pay* from the date of the final decision of the President.” (emphasis supplied)

46.

The Georgia Institute of Technology is a research university of the University System of Georgia, but it is not a distinct legal entity from the Board of Regents of the University System of Georgia. The Board of Regents has vested in itself the government, control and management of the University System of Georgia and each of its institutions. There is no provision in the Board of Regents Policy Manual in effect at the time of President Peterson's notice to Dr. Laskar (the "Regents' Manual") authorizing the suspension of faculty without pay. As does the Faculty Handbook, the Regents' Manual authorizes suspension without pay of a faculty member *only* upon termination: "Upon dismissal by the president, the faculty member shall be suspended from employment without pay from the date of the final decision of the president." President Peterson's suspension of Dr. Laskar without pay therefore violated the Regents' Manual.

47.

Section 5.10.4 of the Faculty Handbook provides that during the pendency of dismissal procedures, "[e]xcept for such simple announcements as may be required covering the time of the hearing and similar matters, *public statements and publicity about the case* by either the Faculty member or Administrative Offices *should be avoided until the proceedings have been completed.*" (emphasis supplied) Section 8.3.9.2 of the Regents' Manual similarly provides that "[e]xcept for such simple announcements as may be required covering the time of the hearing and similar matters, public statements and publicity about the case by

either the faculty member or administrative officers should be avoided until the proceedings have been completed.”

48.

These provisions notwithstanding, representatives of Georgia Tech, including the Defendants, discussed and coordinated the dissemination of information to members of the news media regarding the suspension of Dr. Laskar. These actions included the following:

(1) On the day that President Peterson suspended Dr. Laskar without pay – May 17, 2010 - Georgia Tech issued a press release regarding the GBI’s execution of 23 differing search warrants issued against and for Dr. Laskar’s personal papers and property, and that of other named individuals and property;

(2) Dr. Gary May of Georgia Tech sent emails respecting these investigative events to faculty, staff and students of the School of Electrical and Computer Engineering on May 17, 2010 and June 22, 2010;

(3) Georgia Tech posted on the GEDC website a link to a WSB-TV report on the suspension of Dr. Laskar; and

(4) Georgia Tech improperly discussed with reporter WSB-TV Richard Belcher purported facts relating to the suspension of Dr. Laskar and the initiation of termination proceedings against him.

All of these actions were undertaken in violation of Section 5.10.4 of the Faculty Handbook.

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49.

There is no provision in the Faculty Handbook or the Regents' Manual authorizing the termination of a tenured faculty member's access to email and voicemail communications systems prior to the termination of the employment of that tenured faculty member. Despite this lack of authorization, these aforementioned steps were taken against Dr. Laskar.

50.

There is no provision in the Faculty Handbook or the Regents' Manual authorizing the omission or nondisclosure of the affiliation of a tenured faculty member in connection with published scholarly papers or conferences after dismissal proceedings have been initiated against that tenured faculty member but before a ruling has been made in such a proceeding. Despite this lack of authorization, these aforementioned steps were taken against Dr. Laskar.

51.

There is no provision in the Faculty Handbook or the Regents' Manual authorizing the removal of a tenured faculty member as the named and published advisor of a Ph.D. candidate after dismissal proceedings have been initiated against the tenured faculty member but before a ruling has been made in such a proceeding. Despite this lack of authorization, these aforementioned steps were taken against Dr. Laskar.

52.

Each year during the course of his employment at Georgia Tech, Dr. Laskar entered into a Fiscal Year Employment Contract with the Board of Regents. Each of these Fiscal Year Employment Contracts consisted of a form agreement setting forth the terms of Dr. Laskar's employment.

53.

Among the terms of the 2009 Employment Contract executed by Dr. Laskar appeared the following language: "This agreement is made expressly subject to applicable state and federal laws and to the statutes and regulations of this institution and to the Bylaws and Policies of the Board of Regents, which are available for your inspection upon request." The applicable policies and procedures of the Board of Regents were set forth in the Board of Regents' Policy Manual, available at [http://www.usg.edu/policy\\_manual/](http://www.usg.edu/policy_manual/). The applicable policies and procedures of Georgia Tech were set forth in its Faculty Handbook, available at [http://www.academic.gatech.edu/handbook/Georgia\\_Institute\\_of\\_Technology\\_FacFaculty\\_Handbook\\_Sep2008.pdf](http://www.academic.gatech.edu/handbook/Georgia_Institute_of_Technology_FacFaculty_Handbook_Sep2008.pdf). Despite the fact that Dr. Laskar's Employment Contract was made expressly subject to the policies and procedures of the Board of Regents, Defendants acted in flagrant violation of them.

**The Substantive Claims Involving Dr. Laskar  
Assembled And Recorded By Defendants**

54.

In December 2009, Defendant Jilda D. Garton, the Associate Vice Provost for Research at the Georgia Institute of Technology, and the General Manager of the Georgia Tech Research Corporation (GTRC), together with Defendant Mark G. Allen, then Senior Vice Provost for Research and Innovation at Georgia Tech, discussed with Defendant Hurd, the Chief Audit Executive within Georgia Tech's Department of Internal Auditing, an investigation of cost overruns which they reported totaled approximately \$650,000 and were related to a contract called National Semiconductor. Defendant Hurd initially reported that he "thought this was just a major, colossal accounting screwup."

55.

Soon after, on January 5, 2010, Defendant Garton emailed Defendant Allen to report, "We need to go ahead and move GEDC's National Semiconductor costs totaling \$644,338 off GTRC's books in the third quarter of FY 2010."

- A. Defendant Garton reported to Defendant Allen that "the options to consider are to transfer the costs back to the PIs' [Principal Investigators] schools, write them off, transfer them to GEDC, or develop a repayment plan." Ultimately, she wrote, the costs should be brought "back to GEDC where Chris Evans [GEDC's Director of Operations] has said that the charges are not

GEDC charges but that each PI is responsible.” Defendant Garton was also at this time focused on another, much larger cost overrun involving Samsung, upwards of \$1.4 Million, which she wanted off of GTRC’s books.

- B. In earlier conversations had with Internal Audit employee Larry Webster, Defendant Garton had expressed concern that research work being done by employees of Samsung, one of the companies Dr. Laskar had recruited to fund advanced research at GEDC, was becoming mixed up with work that GEDC was doing under a separate contract with Samsung.
- C. Dr. Garton expressed her further concern to Mr. Webster that “GEDC Director [Joy Laskar] has, or is employed by a nonGT company” and she was “unsure as to his level of effort between his GT job and his other job.”
- D. For his part, Defendant Allen responded to Defendant Garton’s January 5 email on January 6, 2010 as follows: “I agree we need to consider dealing with this as part of the larger GEDC ‘clean-up’, and that the solutions that we implement should be broad-based.”
- E. Accordingly, on January 15, 2010, Defendant Allen emailed Defendant Hurd to say, “It has come to my attention that there may be some irregularities regarding certain research accounts from National Semiconductor (sponsor) that were handled through the Georgia Electronic Design Center (GEDC) several years

ago. In particular, there is concern that work was double-spent due to potential issues with invoicing through GTRC and GTF [the Georgia Tech Foundation]. The amount involved is substantial (on the order of \$600K). Multiple PIs [Principal Investigators] from the School of ECE [Electrical and Computer Engineering] expended the funds, and GEDC may have also expended the funds (thus the doublespending). In order to understand what happened, I request that Internal Audit conduct a study of this issue, determine whether or not the funds were double-spent, . . . and identify appropriate changes and controls that will prevent these issues from occurring in the future. Jilda has assembled a large amount of paperwork on this issue and I would ask that you or someone on your staff please get in touch wither her, understand the situation (from GTRC's point of view), collect other points of view and documentation as appropriate, and prepare a plan to determine how we can resolve the issues above, . . . ."

- F. In the weeks that followed, Defendant Garton communicated with GTRC's Director of Accounting, Barbara Alexander, who expressed alarm that "GEDC is a hydra with many heads that need to be reckoned with." (Email from B. Alexander to Jilda Garton dated January 25, 2010).
- G. During this same month of January 2010, Defendant Allen began discussing with Dr. Laskar the implementation of a plan to reduce



the larger overrun involving Samsung. Dr. Laskar sought to assist in addressing the issue, and he and Defendant Allen began communicating regularly about an agreed plan of action, which involved reducing GEDC expenses, identifying and securing new funding sources to apply against the overrun, and limiting salary and other expenses so that doctoral students working at GEDC would not be terminated in order to reduce overhead. Over a period of weeks, these remedial steps were in process, and progress was being demonstrated.

- H. Even so, Defendant Garton and GTRC's Director of Accounting, Barbara Alexander, sought a formal expansion of the existing investigation involving NSC in order to help GTRC contend with outside auditors who were questioning the organization having booked cost overruns which remained unpaid. Defendant Garton was informed on January 24, 2010 that Ms. Alexander had discussed the status of the audit with Mr. Webster as follows: "I had previously given him info on Samsung and a couple of other things to show a pattern of diverted funds. He said he showed the info to his superiors and they said to only focus on NSC. This seems a little short sighted considering Samsung could be an A133 finding if the auditors are not pleased with the progress [of repayment]. The auditors also look at write offs. If they connect the dots on Perelli, NSC, and Samsung we could have a real problem."

- I. One month later, and as if it was something inappropriate, Ms. Garton was advised that Ms. Alexander had been informed that “Stephan Penelle [sic] . . . is Laskar’s right hand post doc and is knee deep in the Sayana company.” (Email from B. Alexander to J. Garton dated February 22, 2010).
- J. These matters were discussed by Defendant Garton with Defendant Hurd, and on March 23, 2010 she emailed Ms. Alexander to report, “I can’t really go into the details but suffice it to say, it’s getting the appropriate attention.”
- K. Indeed, after attending several meetings with Georgia Tech employees and Defendant Garton, Defendant Hurd determined that he would expand his investigation to conduct an audit of all GEDC finances. Hurd later discussed the progress of his work with Defendant Allen, with Dr. Gary Schuster, who was then serving as Provost for Georgia Tech, with Dr. G.P. “Bud” Peterson, the President of Georgia Tech, and with Patrick McKenna, Esq., the Chief of Legal Affairs for the Institute.

56.

In short order, Defendant Hurd and his team subsequently produced an Official Report of Suspected Malfeasance (the “2010 Report”) dated April 14, 2010. He delivered that report to John M. Fuchko, III, then Associate Vice Chancellor for Internal Audit at the Board of Regents of the University System of Georgia.

57.

In the 2010 Report, Defendant Hurd declared that Dr. Laskar had, among other things, made misrepresentations to the IRS, had misused equipment, offices and laboratory facilities of Georgia Tech in order to further the interests of Sayana, had violated several Georgia Tech policies and procedures, and had committed violations of statutory law, which Defendant Hurd identified as *O.C.G.A. § 40-10-23*, *O.C.G.A. § 40-10-25*, and *United States Code Title 18, Part I, Chapter 46, § 1001*. The Official Code of Georgia Annotated does not contain either of the two Georgia provisions which were cited by Defendant Hurd. Defendant Hurd took it upon himself to contact the Internal Revenue Service to raise questions about certain actions of Sayana and Dr. Laskar, which prompted the IRS to contact Dr. Laskar. Notably, and after an extended examination was made, the IRS concluded that there were no penalties due.

58.

Defendant Hurd concluded his 2010 Report by requesting that, if a GBI agent was assigned to investigate the case, that agent should be Mr. Wesley Horne.

59.

Vice Chancellor Fuchko notified State of Georgia Senior Assistant Attorney General David S. McLaughlin of Defendant Hurd's reported findings and charges against Dr. Laskar.

60.

The following week, Mr. McLaughlin met for several hours with representatives of Georgia Tech and the Office of Internal Audit for the Board of Regents to discuss the issues raised in Defendant Hurd's 2010 Report. While Defendant Hurd considered his presentation to be a "preliminary audit report," he never signed and issued a final one. He did proceed to present a PowerPoint summary of his findings and conclusions.

61.

Following the meeting, Mr. McLaughlin announced, "It is clear that crimes have been committed that warrant immediate criminal investigation . . . ***Chief Audit Executive Phillip W. Hurd and his team have developed evidence showing that there is probable cause to believe that crimes have been committed.***" (emphasis supplied)

62.

By letter to the Director of the GBI dated April 21, 2010, Mr. McLaughlin requested that the GBI pursue a criminal investigation of Georgia Tech's reported allegations against Dr. Laskar and Georgia Tech employee, Dr. Stephane Pinel. Mr. McLaughlin attached to his letter a copy of Defendant Hurd's 2010 Report. Mr. McLaughlin noted that he does not generally request a particular special agent be assigned to a given case, but in this instance he requested that Mr. Wesley Horne be appointed - the same special agent requested by Mr. Hurd.

63.

In his letter, Mr. McLaughlin also emphasized that “Georgia Tech President G.P. Peterson has pledged the full support of the university and the resources of Georgia Tech Internal Auditing . . . Mr. Hurd and his team stand prepared per Dr. Peterson’s directive to assist the GBI and Attorney General’s Office in any way needed.”

64.

The GBI thereafter proceeded to investigate Dr. Laskar and Dr. Stephane Pinel.

65.

On the morning of May 14, 2010, and approximately one month after Defendant Hurd had submitted the 2010 report, both he and GBI Special Agent Lisa Vorrasi met with Cobb County Superior Court Judge Adele Grubbs. Defendant Hurd and Agent Vorrasi sought issuance of an Order For Search And Seizure of Dr. Laskar’s home and two of his automobiles.

66.

Defendant Hurd and Agent Vorrasi asked the Court to issue an Order directing that any computers seized during the searches did not have to be taken to the GBI computer forensics lab in DeKalb County, Georgia but could instead be taken to the office of Georgia Tech Internal Auditing. Defendant Hurd and Agent Vorrasi asked the Court to issue an Order allowing non-law enforcement employees of Georgia Tech to accompany

the GBI and to be present upon execution of the search warrants.

67.

Agent Vorrasi submitted an Affidavit In Support Of Search And Seizure Warrants. Upon consideration of Agent Vorrasi's Affidavit and other evidence submitted under oath, Judge Grubbs adjudged there to be probable cause to believe that Dr. Laskar had violated State laws. The requested Orders For Search And Seizure were issued. However, the Affidavit upon which the Orders were based was replete with false, misleading and materially incomplete information:

- A. Preliminarily, Special Agent Vorrasi admitted in the Affidavit that nearly all of the information appearing in it was provided to her by Defendant Phillip W. Hurd - "Unless otherwise indicated, all facts presented herein are derived from my conversations and communications with Mr. Hurd."
- B. Importantly, the Affidavit, the Orders for Search and Seizure, and the resulting executed searches and seizures were designed to disrupt the sale of Sayana, which Defendants and the Office of the Attorney General for the State of Georgia were fully aware was to take place on May 17, 2010.
- C. Factually, the Affidavit alleged that "[e]mails and Georgia Tech financial records indicate Georgia Tech has been paying [Circuits Multi-Projets (CMP)] for chips *ordered by, used by, and sold by Sayana*. In other words, there is probable cause to believe that Laskar and Pinel

stole money from Georgia Tech through deceptive acts in order to pay for the debt incurred by Sayana.”

- D. These allegations were knowingly false and/or materially incomplete. The Affidavit failed to state that all of the microchips purchased by Georgia Tech from CMP were used by Georgia Tech and its students. Also omitted was the fact that the cost of the microchips was a debt incurred by Georgia Tech - not Sayana.
- E. The Affidavit did not state that Sayana was a member of GEDC and that GEDC member companies, including Sayana, were not required to pay for microchips used for Georgia Tech student research.
- F. The Affidavit asserted there was “probable cause” to believe that Mr. Pinel and Dr. Laskar had stolen “as much as \$700,000 or more” from Georgia Tech. The Affidavit asserted that the alleged probable cause for this charge was discussed in the Affidavit (“as will be discussed below.”). (Affidavit, p. 7). However, the Affidavit never provided probable cause information to support any conclusion that Mr. Pinel or Dr. Laskar had stolen \$700,000 or more from Georgia Tech. To the contrary, Special Agent Vorrasi averred that she possessed only “one complete paper trail of records”—the records relating to the July 2007 chip runs or tapeouts. The Affidavit admitted that “[a]t this point in the investigation, it is unknown whether all of

the chip runs were for Sayana or for some other legitimate GEDC purpose.”

- G. The Affidavit alleged that an invoice from chip manufacturer CMP in the amount of \$50,000 was given to Georgia Tech and, on or about January 6, 2010, Georgia Tech issued a check to CMP for \$50,000. (Affidavit, p. 8). But the Affidavit was materially false and incomplete in its assertions because it omitted to state that payment for the July 2007 chip runs/tapeouts had been approved by the Georgia Tech Provost Office and that neither Sayana nor Dr. Laskar possessed any control over that approval process.
- H. The Affidavit asserted that Mr. Pinel and Dr. Laskar used their positions at Georgia Tech to “steal” resources from Georgia Tech to develop and test Sayana’s microchips. (Affidavit, p. 1). The Affidavit alleges that the resources which Mr. Pinel and Dr. Laskar allegedly stole included “equipment, lab space, employees, specialized licensed software, computers, and computer servers.” (Affidavit, pp. 1, 7). The Affidavit, however, was devoid of any specific examples of an alleged theft of “lab space, employees, specialized licensed software, computers, [or] computer servers” by Mr. Pinel or Dr. Laskar. The Affidavit falsely, recklessly and materially omitted the fact that Sayana was a member of GEDC, and as such it possessed the same access to “resources” as did other GEDC members. As with all GEDC members, Georgia



Tech was fully aware of the office space, labs, and other resources which Sayana was using. Similarly, the Affidavit never pointed out that numerous other start-up companies founded by Georgia Tech faculty members had utilized Georgia Tech resources, used physical office space and facilities, accessed CAD, design resources, lab and prototype resources, or availed themselves of output system design hardware/software. These startup companies included (1) CardioMEMS, founded by Defendant Allen, (2) Axio Bion Systems, founded by Defendant Allen and Steve De Weerth, (3) Suniva, founded by Ajeet Rohatgi, (4) E-System Design, founded by Madhavan Swaminathan, (5) Jacket MicroDevices (JMD), founded by Madhavan Swaminathan, (6) Digital Furnace, founded by John Limb and Daniel Howard, (7) Innovolt, founded by Deepak Divan, (8) Lancope, founded by John A. Copeland, and (9) Nexidia, founded by Mark A. Clements.

- I. The Affidavit alleged that Sayana provided “deliverables” or “functional chips.” (Affidavit, pp. 6, 9). These allegations were knowingly and materially false. Sayana never “sold” chips or provided commercially viable chips. It provided only **chip prototypes** for research and evaluation by Georgia Tech students and its operational partner, ETRI.
- J. The Affidavit falsely and recklessly asserted in its “Introduction” section that it was “believed” Mr. Pinel and Dr. Laskar had committed “thefts”

by using “a 60 GHZ channel measurement device (‘the device’)” to test microchips. (Affidavit, p. 6). Special Agent Vorrasi alleged that Sayana “could” have leased time on the “device” from Georgia Tech. However, the Affidavit offered no support that Sayana or Dr. Laskar were required to “lease” time on the “device” from Georgia Tech. The “device” Special Agent Vorrasi was referring to was a Vector Network Analyzer (VNA). The Affidavit falsely and recklessly asserted that Georgia Tech “ha[d] the only device in this part of the country.” There were in fact other VNAs available at Georgia Tech.

68.

Later that same morning, Defendant Hurd and Ms. Vorrasi met with Fulton County Superior Court Judge Craig Schwall to seek an Order For Search And Seizure of:

- Dr. Stephane Pinel’s home;
- nine automobiles belonging either to Dr. Laskar, Dr. Pinel or Sayana employees;
- Dr. Laskar’s office at Georgia Tech;
- Dr. Pinel’s office at Georgia Tech;
- the offices of three other Georgia Tech employees;
- the office of a Sayana employee;

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- Sayana's office space at 75 Fifth Street, NW, Suite 310, Atlanta, Georgia;
- three (3) lab locations at Georgia Tech;
- the person of Dr. Pinel; and
- the person of Dr. Laskar.

69.

Defendant Hurd and Agent Vorrasi asked the Court to provide that any computers seized during the searches would not have to be taken to the GBI computer forensics lab in DeKalb County, Georgia but could instead be taken to the offices of Georgia Tech Internal Auditing.

70.

Defendant Hurd and Agent Vorrasi asked the Court to issue an Order permitting non-law enforcement employees of Georgia Tech to accompany the GBI and to be present upon execution of the search warrants.

71.

Upon consideration of Agent Vorrasi's Affidavit and other evidence submitted under oath, the Honorable Judge Schwall adjudged there to be probable cause to believe that Dr. Laskar had violated State laws. The requested Orders For Search And Seizure were issued.

72.

Agent Vorrasi's Affidavit was 21 pages in length, exclusive of exhibits. As noted above, in her Affidavit the Agent stated that Dr. Laskar had used his position

at Georgia Tech to steal money and other resources from the Institute, including equipment, lab space, employees, specialized licensed software, computers and computer servers. ***Importantly, in the section of her Affidavit entitled “Sources of Information,” Agent Vorrasi wrote that “Georgia Tech Director of Internal Auditing Philip [sic] W. Hurd is affiant’s primary source of information for this affidavit . . . He and his audit team are responsible for conducting the investigative audit which led to discovering the crimes alleged in this affidavit. He and his audit team have reviewed thousands of emails and records. The facts presented herein are gleaned from this review. Additional facts contained herein are known personally by Mr. Hurd . . . [and through his] review of [certain records] . . . and interviews with [certain Georgia Tech staff] . . . Unless otherwise indicated, all facts presented herein are derived from my conversations and communications with Mr. Hurd.”*** (emphasis supplied)

73.

Agent Vorrasi’s Affidavit referenced what Defendant Hurd and his Georgia Tech Audit team had “examined,” “retrieved,” “image,” “identified,” “found,” “discovered,” “revealed” and “determined.” Four times she used either the phrase “Based upon my conversations with Mr. Hurd,” or “According to Mr. Hurd.” The Agent additionally employs the phrase “According to Audits” on four occasions and utilizes the phrase “According to Georgia Tech” at 24 separate places in the Affidavit.

**Misrepresentations That Sayana Used Office  
Space Without Payment**

74.

Mr. Hurd reported to Agent Vorrasi that Sayana had wrongfully occupied and used office space in Georgia Tech's Technology Square Research Building ("TSRB"), explaining that Sayana should have paid Georgia Tech to lease the space.

75.

Defendant Patrick A. Jenkins testified under oath and before a representative of the Attorney General's office that no evidence had been found demonstrating the existence of a lease for office space by and between Georgia Tech and Sayana.

76.

Defendant Hurd admitted under oath that he had not found a single invoice, bill or contract to show that GEDC members generally were paying for office space, for their use of computers, or for their use of CAD labs or anything else.

77.

**Defendant Jenkins subsequently admitted under oath that he was not aware of any evidence demonstrating that GEDC company members whose names appeared on a map of the TSRB, including G-Tronix, Teyl, Terabit, Quellan, Agilent, Microsoft, Neuromorphix, Whipper, Sienna or OFS had any lease or contract obligation to pay for use of office space at the**

**Technology Square Research Building (“TSRB”). Defendant Jenkins testified that he “was not directed to look into those [companies] . . . I was only directed to look at Sayana.”** (emphasis supplied) And yet, had Mr. Jenkins simply spoken to Internal Audit staff member, Larry Webster, he might have overcome the material incompleteness of his report. Mr. Webster reported in memorandum notes entitled “Sayana Space Rental LW/3-19-10” that “Pat Jenkins asked that I check to see if Sayana Wireless was renting/leasing office space in either TSRB or the Centergy Building. I first called Adrian McCord in GT’s Real Estate Office. She said she currently had no TSRB space that was rented/leased to an external company.” Thus, Mr. Jenkins would have learned that no external company was formally renting or leasing space in that building.

78.

Dr. Paul Hasler, a Professor in the School of Electrical and Computer Engineering and the founder of two start-ups that had become GEDC member companies; gave a sworn statement specifying that some of the benefits of GEDC membership included access to and the use of space within TSRB when available.

79.

Dr. Gary May testified under oath and before a representative of the Attorney General’s office that the benefits of GEDC membership included the ability to use GEDC equipment and facilities. He testified that TSRB does not charge rent and that, if a company had

an office space in TSRB, that company by definition did not pay rent.

80.

Dr. May testified under oath that the companies Pirelli, Microsoft, Quellan, G-Tronix, Agilent and Neuromorphix all had office spaces in TSRB, and none of them was charged for their space. He explained that there was no charge for using TSRB space.

81.

In contrast, Defendant Jilda D. Garton testified under oath and before a representative of the Attorney General's office that, while GEDC bylaws provided that GEDC member companies had "[a]ccess to GEDC resources, personnel and activities," the phrase "access to resources" meant only that GEDC members could observe things being used and observe students at work, and could suggest problems for students to work on, and could engage in discussions about research results. Insistently, Defendant Garton testified that such access did *not* mean that GEDC members could actually use GEDC resources or personnel. She further testified that use could occur only after the Center had established a cost center so that Georgia Tech was paid for the use of its equipment and facilities.

82.

Defendant Mark G. Allen testified under oath and before a representative of the Attorney General's office that a GEDC member company was able to use laboratory tools, CAD tools, laboratory equipment, or computers, only after a sponsored research agreement

was entered into or a cost center was established, by which the member company would be billed. However, Defendant Allen conceded that he was not aware of this being done with any GEDC member company.

83.

Undeterred, Defendant Garton testified under oath and before a representative of the Attorney General's office that she was not personally aware of other centers or individual professors who were, like Dr. Laskar, using GEDC resources to manufacture chips. She testified that she was not personally aware of any person using chips designed with Georgia Tech equipment and for use by start-up companies.

84.

Defendant Garton's assertion notwithstanding, Defendant Allen had cofounded a company called Axion Biosystems while he was working at Georgia Tech. Axion Biosystems used Georgia Tech equipment to design its chips and made use of Georgia Research Alliance ("GRA") funds to produce its chip prototypes. The GRA is an independent not-for-profit organization operating in conjunction with the state of Georgia's Department of Economic Development and has as its objective the expansion of research and commercialization capacity within Georgia's universities for purposes of developing the state's technology economy.

85.

Defendant Allen testified under oath and before a representative of the Attorney General's office that it



was appropriate to use GRA Phase 1 and Phase 2 funds to advance *chip prototypes* in order to make them available for commercialization.

86.

Georgia Tech Auditor Larry Webster wrote in a document he entitled “Lessons Learned,” under the section heading “Institute Center Policy,” that “OSP [Office of Sponsored Programs] and GT [Georgia Tech] have a Center policy, which has rules and procedures for establishing and running a GT Center.” Importantly, he wrote, GEDC was ‘grandfathered-out’ of these rules, because they existed before the rules were finalized (about November 2006). For GEDC, this led to educational memberships being promoted (unrestricted gifts to GTF [Georgia Tech Foundation]) and an Advisory Board that did not work as intended to guide & monitor GEDC activity.” Mr. Webster went on to suggest that “The President’s Office should review all Institute Centers, and specifically approve any other Centers that are allowed not to follow Institute policy.” Under the section heading “Gifts from Sponsors,” Mr. Webster again noted that “GEDC was grandfathered out” of “the Institute’s Center Policies.”

87.

In their Responses to Dr. Laskar’s First Requests To Admit, dated February 18, 2011, the Board of Regents of the University System of Georgia admitted that they did not possess any agreements, contracts, or other instruments pursuant to which they leased space, equipment, or resources from GEDC or any other

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division or center of Georgia Tech to any of the following 45 companies:

- (1) Adtran, Inc.;
- (2) ADVA Optical Networking;
- (3) Agilent Technologies;
- (4) Anadigics, Inc.
- (5) Analog Devices, Inc.
- (6) Ardext Technologies;
- (7) Anritsu Corporation
- (8) Asahi Glass Co., Ltd.;
- (9) BarcoView, LLC;
- (10) Broadcom Corporation;
- (11) CIENA Corporation;
- (12) Echostar Communications Corporation;
- (13) Eena International;
- (14) EG Technology, Inc.;
- (15) Engent, Inc.;
- (16) Freescale Semiconductor, Inc.
- (17) Hewlett Packard Development Corporation, L.P.;
- (18) HP Labs;
- (19) Infinera;

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- (20) Integrated Device Technology;
- (21) Intel;
- (22) IVivity, Inc.;
- (23) Kipper Technologies, Inc.;
- (24) Lancope;
- (25) LumoFlex;
- (26) Mannheim;
- (27) Nanoventions;
- (28) National Semiconductor;
- (29) Neuromorphix;
- (30) Nexidia;
- (31) Nortel Networks;
- (32) On Semiconductor;
- (33) Optical Fiber Solutions;
- (34) Quellan, Inc.;
- (35) Raytheon Company;
- (36) Rhode & Schwartz;
- (37) RF Micro Devices, Inc.;
- (38) Schlumberger, Ltd.;
- (39) Siemens;
- (40) SoC Solutions;

- (41) Sun Microsystems, Inc.;
- (42) Texas Instruments;
- (43) VeriSign Communications Services;
- (44) Vocalocity, Inc.;
- (45) Zoobeat.

**Misrepresentations Made Regarding Sayana's  
Purported Use Of Equipment**

88.

Dr. May testified under oath and before a representative of the Attorney General's office that GEDC membership entitled member companies to use GEDC laboratory equipment, design tools and software, and to use its facilities and programs to design chips.

89.

Defendant Patrick A. Jenkins testified under oath and before a representative of the Attorney General's office that Sayana employees had used Cadence software belonging to Georgia Tech and that such use was wrongful. But Defendant Jenkins acknowledged that his basis for concluding this was based only on the fact he had found no written agreement between Sayana and Georgia Tech that would allow Sayana to use the software.

90.

As noted, Defendant Hurd communicated to Agent Vorrasi that Sayana had used a 60GHz channel

measurement device owned by Georgia Tech, explaining that the device was the only one of its kind in “this part of the country.” Defendant Hurd reported to Agent Vorrasi that Sayana had not paid but should have paid monies to Georgia Tech for purported “leased time” when using the device.

91.

The device to which Defendant Hurd referred is a Vector Network Analyzer (“VNA”), and GEDC had approximately five (5) other VNAs within its inventory. All of the equipment was purchased using research funding that Dr. Laskar had secured for Georgia Tech. All GEDC member companies, including Sayana, were allowed to use the VNAs at no additional cost and without written agreements in place to use them.

92.

All GEDC member companies also had electronic access to Georgia Tech’s Cadence software.

93.

Defendant Jenkins testified under oath and before a representative of the Attorney General’s office that he had no evidence in hand to show that GEDC member companies whose names appeared on a map of TSRB, including G-Tronix, Teyl, Terabit, Quellan, Agilent, Microsoft, Neuromorphix, Whipper, Sienna or OFS, had contracts in place or were being billed at a cost center for their use of space, computers, CAD machines, or laboratory equipment. Defendant Jenkins explained this omission in his proof by testifying he “was only directed to look at Sayana.” He also testified that he

had no evidence to show that any GEDC member company had a cost center established so that they could access Georgia Tech computers, CAD equipment, laboratory equipment or office space, and, importantly, **that he “was not asked to look at it.”** (emphasis supplied)

95.

Dr. May testified under oath that the companies Pirelli, Microsoft, Quellan, G-Tronix, Agilent and Neuromorphix, as GEDC member companies, all had the right to use laboratory equipment and CAD design tools ***at no charge*** because as a GEDC member company this right of use was a recognized part of their benefits.

96.

**Defendant Jenkins admitted under oath that he had not pulled up logs for other GEDC member companies having electronic access to Cadence software, that he “only looked at the log for the [sic] Sayana” and that he “was directed to look at Sayana . . . I was not directed to look at other GEDC members. I was directed to look at Sayana . . . I was instructed to identify Sayana users.” Defendant Jenkins testified that he did not look at GEDC policy or practice with respect to the use of Cadence software because he was not directed to do so.** (emphasis supplied)

97.

In addition, Defendant Jenkins also admitted under oath having recalled “something about” a company

called Agilent having a CAD lab at GEDC as well as access to CAD tools. Defendant Jenkins acknowledged under oath that he had no evidence that Agilent was billed for such usage or such access, or had a lease or other contract with Georgia Tech regarding its access to the CAD lab or its use of Cadence or other CAD tools. Defendant Jenkins admitted that Agilent had purchased a CAD tool for GEDC that was made available for use by other GEDC member companies.

98.

Professor Hasler wrote in a sworn statement that “some of the benefits of GEDC membership included the right to use Georgia Tech computers on a dual-use basis, access and use to laboratory equipment, space and equipment, access and use of CAD and other design tools . . .” Dr. Hasler went on to report that “Georgia Tech faculty are allowed and encouraged to utilize laboratory resources to develop technology in their lab and/or research group to where it could be commercially transitioned, either through licensing or start-up activities.” The Professor noted that “many of my colleagues . . . have utilized Institute resources for developing technology to a level for commercial transition attempt. It is my understanding that this is standard practice or procedure at Georgia Tech.”

**Misrepresentations Made About Dr. Laskar  
Having Stolen Computers**

99.

Defendant Hurd communicated to Agent Vorrasi that Dr. Laskar had stolen computers from Georgia Tech by giving them to Sayana employees.

100.

Defendant Hurd later testified under oath and before a representative of the Attorney General's office that Dr. Laskar had not authorized the use of GEDC provided computers by GEDC member start-up companies, including Axion, Technon and GTronix. But Defendant Hurd later acknowledged under oath that he had not investigated whether Axion, GTronix or GEDC member companies had purchased their own computers or utilized ones provided by GEDC.

101.

Defendant Hurd also acknowledged under oath that he had not investigated whether Microsoft, Cyber Semi, Samsung, Panasonic, Sony, AT&T or Nokia were permitted to use GEDC computers.

102.

When questioned under oath by Senior Assistant Attorney General McLaughlin during a court hearing conducted on February 8, 2016 in the criminal case brought against Dr. Laskar, Chris Evans, the former Director of Operations for the GEDC, testified that the computers which Sayana employees took to the Centergy Building were computers that had been donated by Agilent for use by startup companies.



**Misrepresentations Made Regarding The  
Nature Of The Materials Which Sayana Had  
Transported to ETRI**

103.

Defendant Hurd reported to Agent Vorrasi that Sayana had contracted with several companies to develop and deliver functional chip schematics, chips and chip test results.

104.

Sayana in fact had contracted with Electronics and Telecommunications Research Institute (“ETRI”) by means of a Collaborative Research Agreement, and pursuant to which Sayana would send **chip prototypes** to ETRI for further testing and evaluation.

105.

Defendant Hurd instead reported to Agent Vorrasi that Sayana had entered into several contracts for chips representing fully finished, functional products. Defendant Hurd’s report was patently false and untrue. The chips which Sayana contracted to deliver, and in fact delivered to ETRI, were **chip prototypes**.

106.

Almost one year later, Defendant Hurd was forced to acknowledge under oath and before a representative of the Attorney General’s office that he had examined Sayana’s VentureLab application and had learned that part of Sayana’s proposed VentureLab funding was to provide chip prototypes to customers. Defendant Hurd testified that Sayana’s application specified that

funding for Phase 1 and Phase 2 would go toward chip prototypes and the testing of chips. Defendant Hurd testified that “There’s nothing wrong with GEDC making prototype chips,” and he further admitted that he knew the chips that were provided by Sayana to ETRI were prototype chips and test chips delivered so that ETRI could evaluate whether the chip technology properly worked and that the chips being so used could not be resold.

107.

In their Responses to Dr. Laskar’s First Requests To Admit, dated February 18, 2011, the Board of Regents of the University System of Georgia (of which Georgia Tech is an organizational unit) admitted that the chips fabricated by CMP in Tapeout reference number GT\_Oct2008 were prototype chips with no commercial resale value.

108.

In a letter dated May 30, 2009, from Mr. Wooyong Lee, the head of ETRI’s engineering staff, to Dr. Laskar, Mr. Lee stated in part: “Pursuant to the [August 1, 2006] and [January 19, 2007] Collaborative Research Agreements . . . ETRI acknowledges that it has received from Sayana the TEST UNIT SAMPLES.” (both phrases inside brackets and emphasis in the original).

109.

In a sworn statement read into the record at Dr. Laskar’s faculty hearing on March 30, 2012, Mr. Wooyong Lee testified that “[t]he purpose of the

Collaborative Research Agreements [between ETRI and Sayana] was to engage in cooperative research to better understand the applications for exchange and exchange access services of various technologies, including low cost 60 gigahertz integrated receiver technology . . . Sayana provided ETRI with periodic research reports regarding its research . . . and with samples of chips manufactured by Circuits Multi-Projets . . . so that ETRI could test the chips and verify the workability of the concept. ETRI paid Sayana for the periodic research reports. ETRI did not pay Sayana for any of the CMP chip samples Sayana provided. ***All of the chips Sayana provided to ETRI were prototype chips with no commercial or no resale value. None of the chips Sayana provided to ETRI were sold to ETRI for commercial use or resale.***” (emphasis supplied)

110.

In this regard, Senior Assistant Attorney General McLaughlin relied upon Defendant Allen to help him understand the technology at issue in the case and whether it was a fully developed, useable, marketable chip. For example, by e-mail sent in October 2011, Mr. McLaughlin specifically asked for “the technology/patent/license experts,” among whom he included by name “Mark Allen and Kevin Wozniak, collectively, perhaps – to take a look at” four types of evidence to test “our theory” that “the CMP-chips and all of the development and testing on the chips was a preordained journey from license agreement to the useable, marketable, wireless technology chip which ended up in those test kits.”

111.

Defendant Allen's involvement notwithstanding, and despite his personal knowledge that prototype chips purchased with Georgia Tech funds were customarily used by startup companies and students, Defendant Allen took no action to prevent Defendant Hurd from reporting to Agent Vorrasi that Dr. Laskar had stolen money from Georgia Tech through deceptive practices that were intended to cause Georgia Tech to pay a French chip manufacturer, Circuits Multi-Projets ("CMP") for chips used and sold by Sayana in an amount that "may be as great as \$700,000 to \$1,470,000."

112.

Yet, almost one year later, Defendant Hurd was forced to acknowledge under oath and before a representative of the Attorney General's office that he had no evidence that Dr. Laskar had taken or used any of the CMP chips for which Georgia Tech had reportedly paid \$1.4 million.

113.

As previously noted, Mr. Wooyong Lee, an employee of ETRI, submitted a sworn statement demonstrating that ETRI had paid Sayana for periodic research reports and had not paid Sayana for any of the CMP chip samples which Sayana had provided to it. Mr. Lee reported that all of the chips which Sayana had provided to ETRI were prototype chips with no commercial retail or sale value. None of the chips which Sayana provided to ETRI, he stated, were sold to ETRI for commercial use or resale.

114.

Professor Hasler, previously identified as a Professor in the School of Electrical and Computer Engineering and the founder of two start-up companies which became GEDC member companies, stated in a sworn statement that it was “common practice” at Georgia Tech “for start-up companies to provide research prototypes to customers for evaluation and testing, including prototype integrated chips, often at no additional cost to the start-up company so long as the chips cannot be resold for commercial use.”

**Misrepresentations That Work Performed On  
CMP Chips Was Not For The Benefit Of Georgia  
Tech**

115.

Defendant Hurd reported to Agent Vorrasi that a variety of documents and things, including research logs and papers, files, notes, journals, data runs, schematics, reports, summaries, Gerber files, and the testing of chips would all show that the work performed on the CMP chips was for Sayana and not for Georgia Tech.

116.

And yet, almost one year later, Defendant Hurd acknowledged under oath and before a representative of the Attorney General’s office that he had not bothered to find out whether any of the CMP chips paid for by Georgia Tech were used in connection with research dissertations being written by Georgia Tech students. He explained that he had not done so

because, “[i]t wasn’t relevant to my investigation.” Significantly, Defendant Hurd admitted that Georgia Tech should pay for chips used in connection with student research dissertations.

117.

Defendant Jenkins e-mailed Senior Assistant Attorney General McLaughlin on May 19, 2010 to report that “the OCT008 [sic] chip run was part of Sayana’s business with ETRI.”

118.

Importantly, Defendant Jenkins omitted from that report fact that chip run referenced as GT\_ Oct2008 was used for research upon which researchers affiliated with Georgia Tech based scholarly papers and presentations.

119.

Matthew Leung, a researcher affiliated with Georgia Tech’s School of Electrical and Computer Engineering, stated by sworn affidavit that he co-authored the presentation “Millimeter-Wave CMOS Power Amplifier Technology,” for the GEDC/GTAC Industry Review and co-authored the scholarly article “On the Development of CMOS mmW and sub-THz Phased Array Technology for Communication/Sensing Nodes,” based on research obtained runs including CMP chip run GT\_ Oct2008.

120.

David Yeh, a researcher affiliated with Georgia Tech’s School of Electrical and Computer Engineering,

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stated by sworn affidavit that he co-authored an invited paper and corresponding presentation materials for Custom Integrated Circuits Conference entitled “60 GHz CMOS/PCB Co-Design and Phased Array Technology,” co-authored the three presentations entitled (1) “WE4D-2: High-speed Signal Processing Circuits for Wireless and Optical Communication Systems,” (2) “Ultra Low Power Continuous Time Analog and Mixed-Signal Multi-Gigabit Technologies,” (3) “Ultra Low-Power Mixed Signal Multi-Gigabit Technologies.” and co-authored the three scholarly articles (1) “Low-Power Analog-to-Digital Converter for Multi Gigabit Wireless Receiver in 90 nm CMOS,” (2) “40pJ/bit 90nm CMOS Broadband Demodulator with Fully Integrated DSP Modem” and (3) “On the Development of CMOS mmW and sub-THz Phased Array Technology for Communication/Sensing Nodes,” based on research obtained from several CMP chip runs including CMP chip run GT\_Oct2008.

121.

Defendant Jenkins e-mailed Senior Assistant Attorney General McLaughlin again on May 21, 2010 to inform him that “Chip run S09C7-1 (aka GT\_JAN2007) – that Georgia Tech paid \$177K for was for Sayana’s deliverable to ETRI.”

122.

Again, Defendant Jenkins omitted from that report the fact that the chip run referenced as GT\_Jan2007 was used for research upon which researchers affiliated

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with Georgia Tech based scholarly papers and presentations.

123.

Chang-Ho Lee, a researcher affiliated with Georgia Tech's School of Electrical and Computer Engineering, stated by sworn affidavit that he co-authored the presentation "Circuit and Module Challenges for 60GHz Gb/s Radio," based on research obtained from several CMP chip runs including CMP chip run GT\_Jan2007.

124.

David Yeh a researcher affiliated with Georgia Tech's School of Electrical and Computer Engineering, stated by sworn affidavit that he co-authored the five presentations entitled (1) "Circuit Module Challenges for 60 GHz Gb/s Radio," (2) "CMOS mmW Radar Technology," (3) "ISSCC 2008 Session 6/UWB Potpourri/6.8 A 90 nm CMOS 60 GHz Radio," (4) "60 GHz 90nm CMOS Front-end Technology," and (5) "ISSCC: 60 GHz CMOS 90 nm Radio with integrated signal processor," and co-authored the six scholarly articles entitled (1) "A SOC/SOP Co-design approach for mmW SMOS in QFN Technology," (2) "60GHz CMOS: the intersection of gaming and connectivity," (3) "17-dB-Gain CMOS Power Amplifier at 60 GHz," (4) "60GHz CMOS 90 nm Radio with Integrated Signal Processor," (5) "60 GHz SingleChip 90 nm CMOS Radio with Integrated Single Processor," and (6) "Development of CMOS Based Circuits for 60 GHz WPAN applications," and co-authored an invited paper and corresponding presentation materials for the



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Custom Integrated Circuits Conference entitled “60 GHz CMOS/PCB Co-Design and Phased Array Technology,” based on research obtained from several CMP chip runs including CMP chip run GT\_Jan2007.

125.

On November 15, 2010, Defendant Jenkins emailed Senior Assistant Attorney General McLaughlin to report that “the CMP stuff will show that [Sayana Co-founder Stephane Pinel is] ordering the items on behalf of GT [Georgia Tech]— which is very damning, because the Sayana reports to ETRI, along with the contracts, show the true purpose of the chip orders . . . they cannot deny the deliverables, reports and contracts between Sayana and ETRI, which in my very humble opinion, sinks their boat.”

126.

But Defendant Jenkins omitted from his communication the fact that every chip run ordered from CMP was used for research upon which students and/or researchers affiliated with Georgia Tech had based scholarly papers, presentations, master theses, and/or doctoral dissertations.

127.

Chang-Ho Lee, a researcher affiliated with Georgia Tech’s School of Electrical and Computer Engineering, stated by sworn affidavit that he co-authored scholarly papers and presentations based on research obtained from several CMP chip runs including CMP chip runs GT\_Apr 2007 and GT\_Jan2007.

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128.

Matthew Leung, a researcher affiliated with Georgia Tech's School of Electrical and Computer Engineering, stated by sworn affidavit that he co-authored scholarly papers and presentations based on research obtained from several CMP chip runs including CMP chip runs GT\_Apr2007, GT2\_Jul2007, GT1\_Jan2008, GT3\_Jan2008, GT1\_Apr2008, GT2\_Apr2008, GT3\_Apr2008, GT\_May2006, GT2\_Jan2008 and GT\_Oct2008.

129.

David Yeh, a researcher affiliated with Georgia Tech's School of Electrical and Computer Engineering, stated by sworn affidavit that he co-authored scholarly papers and presentations based on research obtained several CMP runs including CMP chip runs GT\_Sept2006, GT\_May2006, GT\_Jan2007, GT\_Apr2007, GT1\_Jul2007, GT2\_Jul2007, GT1\_Jan2008, GT2\_Jan2008, GT3\_Jan2008, GT1\_Jul2008, GT2\_Jul2008, GT3\_Jul2008, GT1\_Apr2008, GT2\_Apr2008, GT3\_Apr2008 and GT\_Oct2008.

130.

Very importantly, Defendant Allen testified under oath that there were circumstances under which it was entirely appropriate to use unrestricted funds to pay for the production of chips that would be used by Georgia Tech students in published reports, in research dissertations, or in publications authored by Georgia Tech faculty members. Defendant Allen, however, did not act to ensure that the information being provided

to the Senior Assistant Attorney General was truthful and accurate.

131.

Importantly, Professor Hasler's sworn statement reported that "it is standard practice and procedure" for Georgia Tech "to use unrestricted funds, VentureLab funds, and gifts to pay for research in the fabrication of building block and prototype chips to be used in student dissertations and faculty peer review journals and other publications and presentations."

132.

Georgia Tech later admitted, in response to formal Requests for Admission served upon it in pending litigation, that Georgia Tech had conducted no investigation into whether student Master thesis submissions and doctoral dissertation presentations had been based on, had referenced, or had included any intellectual property related to computer chips manufactured by CMP for Georgia Tech, GEDC or Sayana. Georgia Tech further admitted that, prior to suspending Dr. Laskar, it had not conducted an investigation into whether any computer chips manufactured by CMP had been sold or would be the subject of a scientific or academic publication, including without limitation conference papers or journal articles authored or co-authored by any employee or student of Georgia Tech.

133.

Before Georgia Tech suspended Dr. Laskar without pay and the GBI conducted its coordinated raids on

May 17, 2010, Georgia Tech made no analyses, reports, determinations, studies, interviews, audits or other public records regarding whether the chips fabricated by CMP were solely for academic purposes, solely for provision of prototypes to ETRI and Microsoft, or for both purposes dually. The Board of Regents of the University System of Georgia (of which Georgia Tech an organizational unit) responded “Georgia Tech has no responsive documents,” to the following five Georgia Open Records Act (“GORA”) requests:

**GORA Request No. 6:** *All*, if any analyses, reports, determinations, studies, interviews, audits or other public record prepared by or for Georgia Tech at any time to ascertain or determine as a matter of fact how many chips fabricated by CMP were *solely* for academic purposes, *i.e.*, doctoral dissertations, masters theses, presentations or scientific papers;

**GORA Request No. 7:** *All*, if any analyses, reports, determinations, studies, interviews, audits or other public record prepared by or for Georgia Tech before . . . May 17, 2010 to ascertain or determine as a matter of fact how many chips fabricated by CMP were

*solely* for academic purposes, *i.e.*, doctoral dissertations, masters theses, presentations or scientific papers;

**GORA Request No. 8:** *All*, if any analyses, reports, determinations, studies, interviews, audits or other public record prepared by or for Georgia Tech to ascertain or determine as a matter of fact how many chips fabricated by CMP were for academic purposes *and the dual purpose* of providing prototype – not for commercial sale – chips for ETRI or Microsoft;

**GORA Request No. 9:** *All*, if any analyses, reports, determinations, studies, interviews, audits or other public record prepared by or for Georgia Tech to ascertain or determine as a matter of fact how many chips fabricated by CMP were *solely* and only for the purpose of providing prototype – not for commercial sale – chips for ETRI or Microsoft; and

**GORA Request No. 10:** *All*, if any analyses, reports, determinations, studies, interviews, audits or other public record prepared by or for Georgia Tech to ascertain or determine as a matter of fact how many different or separate chips actually are contained in each “tape out” or fabrication by CMP.

134.

In point of fact, and this point is crucial to understanding the false, misleading, and materially incomplete nature of the Defendants investigative reports to law enforcement, every CMP chip production (referred to as a tape run) identified by Defendants had generated published peer-review journal articles, conference papers, and dissertations. These production tape runs included chips which ETRI received. At least 35 dissertations prepared by Georgia Tech doctoral candidates were in some manner or way related to these tape runs. Defendants failed to ensure that what was being alleged was factual and accurate. The record even suggests that Defendant Garton knew what was involved when she recommended that Georgia Tech officials not speak about Sayana and ETRI. When Senior Assistant Attorney General McLaughlin suggested that a contact from Georgia Tech be appointed to deal with ETRI, Defendant Garton emailed Georgia Tech in-house counsel Patrick McKenna to warn, *“We need to be careful to talk*

*only about Georgia Tech 's relationship with ETRI and not Sayana 's. We really know relatively little about the company's relationship with ETRI . . ."* (emphasis added). If true, nothing was done to ensure that Defendants did not present false, misleading and materially incomplete conclusions about Sayana's relationship with ETRI, or from asserting that Sayana was selling to ETRI finished, commercially saleable chips.

**Misrepresentations Made About The  
Falsification Of A Chip Invoice**

135.

Defendant Hurd testified under oath and before a representative of the Attorney General's office that Dr. Laskar had caused a Georgia Tech employee named Cathy Beam to falsify a quote pertaining to CMP chip production.

136.

Yet, Defendant Hurd later admitted under oath that Ms. Beam did not inform him that Dr. Laskar had told her to falsify a quote. Defendant Hurd testified and admitted that he had found no evidence showing that Dr. Laskar had directed or instructed anyone to falsify an invoice. He also testified and admitted that an employee in Georgia Tech's Internal Audits department interviewed Ms. Beam, and that a transcript of that interview recorded Ms. Beam's report that "Chris [Evans]told me to make up a quote."

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137.

During Stephane Pinel's Georgia Tech faculty hearing regarding his dismissal from Georgia Tech, Defendant Jenkins testified that an exhibit presented to him reflected "the fake quote that was forged by Kathy [sic] Beam upon direction of Chris Evans and, I believe, Dr. Laskar."

138.

Ms. Beam was questioned on more than one occasion by the GBI. She never reported to the GBI that Dr. Laskar had instructed or requested her to falsify a quote.

139.

In a hearing before The Honorable Robert McBurney of the Superior Court of Fulton County on January 26, 2016, Ms. Beam testified that Chris Evans had instructed her to create the quote.

**Misrepresentations That Sayana Transmitted  
Georgia Tech Intellectual Property For Which  
Sayana Had No License Extending To ETRI**

140.

In the 2010 Audit Report, Defendants reported that Sayana had delivered to ETRI intellectual property that may have been Georgia Tech's property.

141.

In April 2010, during a meeting lasting several hours, Defendant Hurd made a PowerPoint presentation to Senior Assistant Attorney General



McLaughlin, to representatives of Georgia Tech, and to the Office of Internal Audit for the Board of Regents. The slides from Defendant Hurd's presentation accuse Sayana of delivering intellectual property to ETRI that may have been Georgia Tech's property.

142.

Defendant Hurd testified under oath and before a representative of the Attorney General's office that Sayana had a contract with the GTRC, pursuant to which it licensed certain intellectual property in existence in 2006, but that Sayana had filed and used 14 additional patents covering intellectual property belonging to Georgia Tech and for which Sayana had been granted no license. Defendant Hurd cited Mr. Wozniak as the source of his information. Importantly, Defendant Hurd acknowledged that he had not questioned Dr. Laskar about this.

143.

Defendant Hurd testified under oath and before a representative of the Attorney General's office that Sayana had given or sold intellectual property or things to ETRI that it was not licensed to use and that Dr. Laskar had permitted ETRI employees to visit Georgia Tech laboratory facilities where they were exposed to Georgia Tech intellectual property.

144.

These assertions notwithstanding, Defendant Hurd later admitted under oath that ETRI had a separate contract with Georgia Tech allowing it to access GEDC labs, and that other companies, including Microsoft,

Texas Instruments, AT&T and Hewlett Packard, all had similar contracts with Georgia Tech which allowed them to access GEDC labs.

145.

Defendant Hurd later admitted under oath that he had not investigated whether any of the information provided to ETRI was derived from publicly available articles discussing 60 GHz research.

**Misrepresentations That Dr. Laskar Defrauded ETRI**

146.

During the aforementioned meeting in April 2010, Defendant Hurd made a PowerPoint presentation to Senior Assistant Attorney General McLaughlin, to representatives of Georgia Tech, and to the Office of Internal Audit for the Board of Regents presenting slides which accused Dr. Laskar of defrauding ETRI.

147.

Defendants' Audit reported to Agent Vorrasi Dr. Laskar had deceived ETRI

148.

Defendant Hurd testified under oath and before a representative of the Attorney General's office that Sayana "couldn't provide the exact chips, so they took other chips [owned by Georgia Tech] to fool ETRI's accounting . . . they sent to ETRI the other chips that they wanted to just fool their accounting so they could

get payment.” But there was, and there is, no evidence to substantiate this charge.

149.

Sayana employees Bevin Perumana, Saikat Sarkar and Padmanava Sen all testified, when they were deposed by Senior Assistant Attorney General McLaughlin on June 24, 2010, that Sayana files which had been labeled “fake” indicated only that the files were *preliminary* layouts and not final layouts. The employees all testified that the “fake” designation was used only to distinguish between preliminary and final layouts and had nothing whatsoever to do with the authenticity of the files.

**Misrepresentations That Georgia Tech Had  
Strict Policies and Procedures Regarding  
Faculty Members’ Public and Private Work**

150.

Defendant Hurd reported to Agent Vorrasi that strict policies and procedures existed at Georgia Tech to control how faculty members “blend[]” their “public and private” work. But this is not true.

151.

In the aftermath of Dr. Laskar’s suspension, Steve Cross, Executive Vice President for Research at Georgia Tech, informed Kwang Wook Bae, an executive at Samsung, that what had happened with Dr. Laskar occurred because Georgia Tech and the GTRC did not have well established rules place and that they were working to establish guidelines.

152.

Similarly, Defendant Mark Allen told Mr. Bae what happened with Dr. Laskar occurred because Georgia Tech and the GTRC did not have well established rules in place and that they were working to establish guidelines. Samsung, however, elected to discontinue its work with Georgia Tech after the University's action taken against Dr. Laskar, reporting that ownership issues concerning the intellectual property on which Samsung's supported research had taken place would complicate the relationship going forward.

**Misrepresentations Made About A Theft of  
Resources Including Employees from Georgia  
Tech**

153.

Defendant Hurd reported to Agent Vorrasi that Dr. Laskar used his position at Georgia Tech to steal resources from Georgia Tech, including employees.

154.

Defendant Hurd testified under oath and before a representative of the Attorney General's office that he reached the conclusion that Sayana had compelled students who were paid by Georgia Tech to work 100% of their time for ETRI, based on his review of a Collaborative Research Agreement between Sayana and ETRI.

155.

The recklessness of this assertion was revealed when Defendant Hurd also testified that he did not

know whether the term “load” used in the Collaborative Research Agreement signified a percentage of (a) any and all time the worker could work during a 24-hour day, or (b) the time the worker could work for Sayana outside of the worker’s other professional commitments.

156.

Defendant Hurd testified that he never contacted ETRI to seek clarification of what the term “load” meant in the context of the Collaborative Research Agreement. When the hearing Chairman sought to clarify what Defendant Hurd did and did not know about the meaning of the term “load,” and observed “this issue about well, were they doing their day a week or other things, that is still sort of cloudy right now,” Defendant Hurd concurred by stating, “That, that *is* cloudy.” (emphasis supplied)

157.

Defendant Jenkins testified under oath and before a representative of the Attorney General’s office that he never contacted anybody at ETRI to ask what the term “load” meant in the context of the Collaborative Research Agreement because he “thought it was self-explanatory.” He further testified that the term “load” was nowhere defined in the Collaborative Research Agreement.

158.

In a sworn statement read into record at Dr. Laskar’s faculty hearing on March 30, 2011, Mr. Wooyong Lee testified that “As part of its Collaborative

Research Agreement ETRI, Sayana designated Dr. Joy Laskar,, Dr. Stephane Pinel, Dr. Kyuate Lim, Dr. Saikat Sarkar, Sen Padmanava and R. Mukhopadhyay as members of its research team and agreed those persons would spend a set percentage of the time each was permitted to work for Sayana on our project. ETRI understood that the individuals identified . . . were not full-time employees of Sayana and thus would not be able to spend all of their time on our collaborative research projects. For example, ETRI understood by stating Saikat Sarkar would work a hundred percent load, Sayana was agreeing only that all of Sarkar's time with Sayana would be spent on our joint project."

**Actions By Defendants In Conjunction With  
The Wrongful Suspension Of Dr. Laskar**

159.

On May 18, 2010, one day following the GBI's raid of Dr. Laskar's home, and following raids conducted at 20 other locations, Georgia Tech proceeded to suspend Dr. Laskar from his position of employment at Georgia Tech and to do so without pay. Mr. Stephen Fleming, then Vice President of Georgia Tech, sent an e-mail to Georgia Tech faculty members describing the policies and procedures for the use of Georgia Tech facilities and resources by start-up companies. Mr. Fleming wrote, in part, "I'm sure you've all seen the news reports about a potential misuse of resources at one of our campus research centers . . . Some of you have reached out to us expressing concern about your own research and commercialization activities." He encouraged those who were concerned they might have violated a rule to contact a specified Georgia Tech

employee to discuss the matter. Defendant Jilda Garton testified under oath and before a representative of the Attorney General's office that Mr. Fleming's e-mail had been sent "because we were asked a number of questions. And folks wanted us to clarify and make sure that those policies and procedures were articulated for people who were asking those questions." In other words, because of longstanding practices and procedures, members of the Georgia Tech community wanted to understand if those procedures affecting their member companies had now been placed in question.

160.

After search warrants were secured by Agent Vorrasi on the basis of her Affidavit and information supplied to her by Defendant Hurd, she conducted a briefing on Friday, May 14, 2010 with approximately 25 individuals who would participate in the execution of the search warrants. These 25 people included GBI agents, Georgia Tech Department of Public Safety Officials, and Georgia Tech Internal Audit employees. On Monday May 17, 2010, the GBI raids took place at 21 different locations. Defendant Jenkins testified under oath that GBI officials wore Kevlar vests and had their guns drawn when executing the warrants.

161.

Every single item seized during the GBI raids was released to the Georgia Tech Internal Audit Department and stored in a building on the Georgia Tech campus in Atlanta, Fulton County, Georgia. Defendant Hurd personally signed the documentation

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recording many of these releases of evidence from the GBI to Georgia Tech Internal Audits. The items seized included many non-technical items such as a passport seized from Stephane Pinel's bedroom, Delta Airline tickets seized from his office, six U.S. passports and Indian currency seized from Dr. Laskar's home, as well as bits of paper with handwriting on them dug out of trash cans.

162.

Melissa Hall, an employee of Georgia Tech's Internal Auditing, subsequently accompanied Agent Wesley Horne to receive equipment regarding 60 GHz technology from Georgia Tech employee Dr. Stephen Ralph. That equipment was also released to Georgia Tech's Internal Auditing.

163.

At approximately 8:30 am, May 17, 2010, nine law enforcement officials (including four GBI agents and five Cobb County Police Department officers) began their raid of Dr. Laskar's home. The raid lasted approximately four hours. During the course of the raid, investigators destroyed a project Dr. Laskar's seven-year old daughter had made for school.

164.

When the raid began at his home, Dr. Laskar was unaware; he was at that moment on the Georgia Tech campus. GBI Special Agent Lisa Vorrasi approached Dr. Laskar on campus and tried to question him. She told him that she wanted to search his vehicle. Dr. Laskar then accompanied Agent Vorrasi and another



GBI agent to a parking deck located on the Georgia Tech campus. Although Agent Vorrasi's search warrant for Dr. Laskar's vehicle listed the wrong model, Dr. Laskar nevertheless unlocked his car to make it available for her inspection.

165.

When Agent Vorrasi seized Dr. Laskar's computer from his vehicle, Dr. Laskar provided her with the login-in and password information to allow her to access the information thereon.

166.

Prior to these raids, Dr. Laskar was never questioned by Georgia Tech's Internal Auditing Department. As of February 15, 2010, Larry Webster, an employee of the Department, was under the impression that Internal Auditing planned to question Dr. Laskar before commencing its raids. Even Defendant Allen had inquired if Defendant Hurd would not be meeting and discussing matters with Dr. Laskar. Defendant Hurd declined, and Defendant Allen did not use his authority to direct Mr. Hurd to afford the Professor that minimal opportunity to demonstrate that the Defendants' conclusions were false, misleading and materially incomplete.

167.

During some of the GBI's raids, employees of Georgia Tech's Internal Auditing department accompanied law enforcement officials. Terry Nolan, the Associate Director of Internal Auditing at Georgia Tech, accompanied law enforcement officials on their

raid Sayana's offices at 75 Fifth Street, NW, Suite 310, Atlanta, Fulton County, Georgia and their raid Dr. Laskar's office on the Georgia Tech campus.

**Defendants Jenkins Joined Prosecutors In  
Formally Questioning Sayana Employees**

168.

On June 24, 2010, Sayana employee Bevin Perumana was deposed by Senior Assistant Attorney General McLaughlin in the presence of Special Agent Vorrasi. Defendant Patrick Jenkins was present at Mr. Perumana's deposition. During the deposition, Defendant Jenkins spoke on the record and questioned Mr. Perumana directly.

169.

On June 24, 2010, Sayana employee Saikat Sarkar was deposed by Mr. McLaughlin, again in the presence of Special Agent Vorrasi and Defendant Jenkins. During the deposition, Defendant Jenkins spoke on the record and questioned Mr. Sarkar directly.

170.

On June 24, 2010, Sayana employee Padmanava Sen was deposed by Mr. McLaughlin in the presence of Special Agent Vorrasi and Defendant Jenkins. During the deposition, Defendant Jenkins spoke on the record and questioned Mr. Sen directly.

171.

Defendant Jenkins assisted GBI Agent Lisa Vorrasi with her questioning of witness Romain Pelard.

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172.

Defendant Jenkins assisted GBI Agent Lisa Vorrasi with her questioning of witness Angelika Braig.

173.

Defendant Jenkins assisted GBI Agent Lisa Vorrasi with her questioning of witness Edward Gebara.

174.

Defendant Jenkins assisted GBI Agent Lisa Vorrasi with her questioning of witness Carl Rust.

175.

Defendant Jenkins assisted GBI Agent Lisa Vorrasi with her questioning of witness Kyutae Lim.

176.

Defendant Jenkins assisted GBI Agent Wesley Horne with his questioning of witness Joi Adams.

177.

Defendant Jenkins assisted GBI Agent Wesley Horne with his questioning of witness Debasis Dawn.

178.

Defendant Jenkins assisted GBI Agent Wesley Horne with his questioning of witness David Yeh.

179.

Defendant Jenkins assisted GBI Agent Wesley Horne with his questioning of witness Cathy Beam.

180.

After the GBI questioned Paul Freet, the Principal at VentureLab, Mr. Freet observed almost of the questions had been asked by Georgia Tech Internal Audit employees, and not the GBI agents. Georgia Tech employees appeared to be running the interview and those Georgia Tech Internal Audit employees questioning him, he said, were not familiar with VentureLab or the spin-out process.

181.

On March 17, 2011, Jessica Sentz, a licensed attorney working in Georgia Tech's Office of Legal Affairs wrote to Senior Assistant Attorney General McLaughlin to inquire: "[W]e wanted to know how to approach him [Patrick Jenkins] as a WTN [witness] because of his wearing two hats: GT employee and GBI agent (I use the 'agent' loosely). He's going to be our star WTN [witness] and we want to keep a Chinese firewall between what he knows as GT EE and what he knows as a 'helper' to GBI. Can we call you . . . for the answers those questions?"

182.

Defendants were unusually and closely involved with law enforcement and investigative authorities respecting the actions instigated and taken against Dr. Laskar.

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**GBI Warrants Were Executed On The Day The  
Sayana Auction Sale Was Scheduled To Occur,  
Causing That Sale To Be Cancelled**

183.

Sayana Wireless LLC paid \$50,000.00 to the firm Pagemill Partners in order to effectuate the sale of Sayana by private auction. Pagemill Partners is a Silicon Valley technology investment bank specializing in the sale of electronic design companies.

184.

Seventeen (17) different companies had conducted an investigation of Sayana and were identified as potential bidders. Pagemill Partners had advised Sayana that it anticipated an auction price for Sayana of more than \$30 Million.

185.

The auction was scheduled to begin on May 17, 2010.

186.

On the morning of May 17, 2010, the Georgia Bureau of Investigation, in furtherance of criminal charges reported, approved, assembled and communicated by Defendants, raided the homes of Dr. Laskar and Dr. Pinel, their offices at Georgia Tech, and some 20 other locations. The personal and professional items, including computers, seized in this raid have never been returned to Dr. Laskar and his family, notwithstanding the dismissal of all charges against

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him. Many of the items taken were highly personal in nature.

187.

Assisted by emails and press releases planned, orchestrated and disseminated by Defendants and those to whom they reported at Georgia Tech, the events described were covered intensely by the news media. Pagemill Partners was forced to halt the auction of Sayana. As a consequence of the auction being cancelled, Sayana lost millions of dollars in sales proceeds.

188.

Dr. Laskar was deprived of millions of dollars in anticipated transaction proceeds. As holder of a 10% member interest in Sayana, the Georgia Tech Research Corporation also lost millions of dollars in anticipated proceeds. Defendants regarded it to be more important to act maliciously toward and against Dr. Laskar than to preserve and protect the benefits available to GTRC.

189.

On December 30, 2014, Dr. Laskar was criminally indicted for racketeering and theft in connection with the purchase by Georgia Tech of CMP computer prototype chips.

190.

As noted, on October 5, 2016, The Honorable Robert McBurney of the Superior Court of Fulton County dismissed all claims presented and filed against Dr. Laskar, terminating that legal proceeding in Dr.

Laskar's favor. In concluding that the State was attempting to utilize a payment made by Georgia Tech to CMP, the French-based company which had manufactured the chips in question, Judge McBurney analyzed that any alleged criminal act, if proven, could only have occurred outside the statute of limitations period. As for the payment by Georgia Tech to CMP, which the State asserted was took place within the purported limitations period, Judge McBurney concluded that Dr. Laskar could not have authorized the payment inasmuch as it was effectuated well after Dr. Laskar had been suspended and terminated by the University. In other words, the payment was made after Dr. Laskar no longer had authority to act on the University's behalf or to cause the payment to be made. (Order, pp. 2 and 3, fn. 5) ("In particular, he could not have 'acted' in the context of the alleged racketeering scheme when Georgia.Tech paid the bill that forms the basis for the State's claim that some act of racketeering occurred with the period of the statute of limitations. That final payment to CMP, authorized by senior University officials, was made over a year after Defendant had been fired, i.e, at a time when Defendant had no ability to take actions on behalf of the University.") Moreover, the State presented no evidence to show that Dr. Laskar or Sayana had any intention to deprive Georgia Tech of the prototype chips that were ordered, which was a necessary element to the underlying crime of theft being advanced pursuant to provisions of Georgia law. *Cook v. State*, 180 Ga. App. 139 (1986). All of the aforementioned evidence demonstrated and confirmed that the chips in question had been used by students at Georgia Tech, for research and thesis study, thereby

demolishing any suggestion let alone a criminal assertion that Dr. Laskar had sought to deprive Georgia Tech of the property. This analysis demonstrates there was no probable cause to support the charges brought against Dr. Laskar.

**SECTION 1983 CLAIM FOR MALICIOUS  
PROSECUTION**

191.

The allegations contained in paragraphs 1 through 190 of Plaintiffs Complaint are incorporated herein by reference as if each said paragraphs was restated and re-alleged in its entirety.

192.

*42 U.S.C. § 1983* provides in pertinent part:

Every person, who under color of any statute, ordinance, regulation, custom or usage of any state or territory of the District of Columbia subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the constitution and law shall be liable to the party injured in an action at law, suit in equity, or other appropriate proceeding for redress.

193.

At all times relevant to the material events described in this Complaint, Plaintiff was a citizen of the United States of America and a person within and subject to its jurisdiction. All of the named Defendants



were persons acting under color of a state and state law as that conduct is described in *42 U.S.C. § 1983*.

194.

At all times relevant hereto, the Defendants acted under the color of state law when acting within the scope of their employment and as employees of an institutional arm of the state of Georgia, the Board of Regents of the University System of Georgia, the state-owned Georgia Institute of Technology, and the Institute's affiliated entities. All of the Defendants performed the acts and omissions described in this Complaint within the scope of their official duties and employment. However, the claims stated by Plaintiff are not asserted against the Defendants in their official capacities; rather, all claims are asserted against them in their individual and personal capacities.

195.

Defendants attempted to influence, instigate and mislead a criminal investigator and prosecutor by knowingly providing false, misleading and materially incomplete information regarding Plaintiff and his actions. Defendants are liable for maliciously instigating, initiating, advancing, facilitating and pursuing the criminal prosecution of Plaintiff and without probable cause. "In Georgia . . . it is beyond a reasonable dispute that a person who provides false, misleading, or materially incomplete information to law enforcement can be held liable for instigating a malicious prosecution." *Buckner v. Shetterley*, 621 F. Supp.2d 1300 (M.D. Ga. 2008). "[A] government official who . . . instigates or causes an unlawful arrest may be

held liable under the Fourth Amendment.” *Id.* (citing *Rodriguez v. Ritchey*, 539 F.2d 394, 400 (5th Cir. 1976)) (“[G]eneral principles of tort law provide a cause of action for unlawful arrest against a defendant who affirmatively instigated, encouraged, incited, or caused the unlawful arrest.”). Thus, Defendants violated Plaintiffs constitutional right against unreasonable arrest, seizure and prosecution, and that right was “clearly established” at the time of the Defendants’ misconduct. *Rehberg v. Paulk*, 611 F.3d 828, 834 (11th Cir. 2010). The state of the law at the time of Defendants’ actions and omissions gave Defendants “fair warning” that their actions were violative of Plaintiffs federally protected rights. 621 F. Supp. 2d at 1300. Importantly, there need not be a case “on all fours” with materially identical facts before courts will allow suits against [officials]. 621 F. Supp. 2d at 1303 (citing *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1277 (11th Cir. 2004)).

196.

Defendants, by providing false, misleading, and materially incomplete information about Plaintiff, about the facts and circumstances surrounding his conduct while he worked for and on behalf of Georgia Tech, GEDC, Sayana, GTRC, and in support of students whom he mentored and advised, acted maliciously and without probable cause when they recommended, requested, instigated, referred, suggested, and directed the initiation of a criminal prosecution against

Defendants' actions resulted in, led to, and caused the criminal prosecution of Plaintiff for two counts of racketeering based upon the underlying crimes of theft by taking. *O.C.G.A. §§ 16-14-4(a) and (b)*. On October 5, 2016, the criminal proceedings against Plaintiff were terminated finally and fully in his favor. *Williams v. Marbut*, 52 Ga. App. 588, 183 S.E. 820 (1936) ("The final termination of a criminal case favorably to the defendant, and amounting to a final ending of the prosecution, is such a termination favorably to the defendant as constitutes a basis for a suit for malicious prosecution."); *Gooch v. Tudor*; 296 Ga. App. 414 (2009) ("We note that punishment under a criminal statute may not be used for the collection of a debt, contractual or otherwise.") (citing the Constitution of the State of Georgia, "There shall be no imprisonment for debt." Art. I, Section 1, Paragraph 23); *Uboh v. Reno*, 141 F.3d 1000, 1005 (11th Cir. 1998) ("Consistent with each of the policies underlying the favorable termination requirement, however, courts have found favorable termination to exist by virtue of an acquittal, an order of dismissal reflecting an affirmative decision not to prosecute, **a dismissal based on the running of the statute of limitations**, an entry of a nolle prosequi, and, in some cases, a granted writ of habeas corpus.") (emphasis supplied). "Actual innocence, however, is not required for a common law favorable termination." *Id.* (citing *Restatement of the Law of Torts*, §§ 659, 660 (1938)). Under Georgia law, "[a] criminal prosecution which is carried on maliciously and without any probable cause and which causes damages to the person prosecuted shall give him a

cause of action.” *O.C.G.A. § 51-7-40*. The right of action accrues when the criminal prosecution is ended. *O.C.G.A. § 51-7-41*. (“The criminal prosecution forming the basis for an action for malicious 98 prosecution must be ended before the right of action for malicious prosecution accrues.”) A plaintiff may recover general damages as well as compensation for any arrest or imprisonment, including damages for discomfort or injury to his health, or loss of time and deprivation of society. *Heck v. Humphrey*, 512 U.S. 477, 484 (1994) Attorneys’ fees incurred are recoverable. Accordingly, the Defendants’ conduct constituted the tort of malicious prosecution of Plaintiff under principles of Georgia and federal law.

198.

As a direct and proximate result of Defendants’ actions, Plaintiff has suffered, and is entitled to recover, direct, consequential, special and other damages in an amount to be determined at a trial of this action.

199.

The actions and omissions of Defendants resulted in Plaintiff’s arrest, in the wrongful and unlawful seizure of his private property and papers, and in the seizure and criminal prosecution of his person. Dr. Laskar was deprived of his personal liberty, of his ability to secure gainful employment, and of his ability to support his family. Dr. Laskar experienced and suffered the destruction of his career along with the destruction of his personal and professional reputation. Defendants caused Plaintiff to suffer these damages in violation of

the Fourth Amendment to the Constitution of the United States of America.

200.

Under governing Eleventh Circuit authority, it is established “with obvious clarity, that a government official is prohibited from intentionally providing false information to law enforcement without probable cause and thereby directly causing a Fourth Amendment violation.” *Buckner v. Shetterley*, 621 F.Supp.2d 1300 (M.D. Ga. 2008).

201.

Defendants are not entitled to the protection of any sovereign, official or qualified immunity for their actions and omissions. The violation by Defendants of Plaintiff’s Fourth Amendment constitutional rights of liberty and improper seizure, under circumstances demonstrating that they had fair warning such a deprivation of rights was illegal, and having delivered false, misleading and materially incomplete information to law enforcement, deprives them of any immunity that they might otherwise be entitled to claim.

202.

Plaintiff is entitled to the recovery of his reasonable attorneys’ fees and costs pursuant to 42 U.S.C. § 1988, and to the recovery of pre-judgment interest and costs as provided under federal law. Defendants have acted in bad faith, and Plaintiff is additionally entitled to the recovery of his reasonable attorneys’ fees and expenses

of litigation under and by virtue of *O.C.G.A. Section 13-6-11*.

203.

Defendants' actions were willfully undertaken, deliberately and maliciously pursued, and evidence bad faith. Defendants' actions constituted a willful and wanton disregard for, and a violation of Plaintiffs Constitutional rights.

204.

The actions of Defendants additionally evidence willful misconduct, malice, fraud, wantonness, oppression, and an entire want of care sufficient to raise the presumption of a conscious indifference to consequences. Under and by virtue of *O.C.G.A. § 51-12-5.1(b)*, Plaintiff is entitled to an award of punitive damages in an amount to be determined by the enlightened conscience of the jury.

205.

Plaintiff brings this action timely and in accordance with the relevant statute of limitations.

**WHEREFORE**, Joy Laskar, Ph.D., respectfully prays and demands:

- (1) that process issue as provided by law;
- (2) that Plaintiff have judgment against Defendants for all recoverable direct, consequential and special damages arising under Count One of his Complaint;

- (3) that Plaintiff have a recovery of pre-judgment interest;
- (4) that Plaintiff recover his reasonable attorneys' fees and expenses of litigation;
- (5) That Plaintiff recover punitive damages in an amount to be determined by the enlightened conscience of the jury;
- (6) That all costs of this action be cast upon Defendants;
- (7) That Plaintiff have a trial of this action before a jury of his peers;
- (8) That the Court declare Defendants' conduct has violated the Fourth Amendment to the Constitution of the United States; and
- (9) that Plaintiff have such other and further relief as this Court deems just and proper.

DATED: November 28, 2018.

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Respectfully submitted,

/s/ Michael A. Dailey

Michael Alan Dailey

Georgia Bar No. 203250

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*Attorney for Plaintiff*



**CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 5.1 of the Local Rules of the U.S. District Court for the Northern District of Georgia, the undersigned certifies that the within and foregoing Complaint was prepared in accordance with L.R. 5.1, N.D. Ga., using Times New Roman font, 14 Point.

This 28th day of November, 2018.

/s/ Michael A. Dailey

Michael Alan Dailey

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*Attorney for Plaintiff*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

CIVIL ACTION FILE  
NO. 1:18-cv-4570-WMR

[Filed: November 28, 2018]

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JOY LASKAR, Ph.D.,	)
	)
<i>Plaintiff,</i>	)
	)
vs.	)
	)
PHILLIP W. HURD;	)
PATRICK A. JENKINS; JILDA D.	)
GARTON; and MARK G. ALLEN,	)
	)
<i>Defendants</i>	)

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**CERTIFICATE OF SERVICE**

This is to certify that I have this day served a copy of the within and foregoing *Plaintiff's First Amended Complaint* by filing the document with the Court's CM/ECF filing system, which automatically serves a copy of the filing upon counsel for Defendants:

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This 28th day of November, 2018.

/s/ Michael A. Dailey

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