No. _____

In The
Supreme Court of the United States

DR. CHINWE OFFOR,

Petitioner,

v.

MERCY MEDICAL CENTER, ROCKVILLE CENTRE DIVISION, CATHOLIC HEALTH SERVICES OF LONG ISLAND, DR. SWARNA DEVARAJAN, DR. JOHN REILLY,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I. Whether the U.S. Court of Appeals for the Second Circuit manifestly departed from this Court's precedent by holding that egregious and repetitive acts of forgery and fabrication of hospital records were mere excusable mistakes.

II. Whether the U.S Court of Appeals for the Second Circuit departed from it's own precedent and this Court's Precedent, when it failed to apply the Mcdonnell Douglas Burden shifting Mechanism.

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CITATION TO OPINION BELOW

The Second Circuit's Summary Order affirming the Judgment of the District Court is produced at page A1 of Appendix.

BASIS FOR JURISDICTION

The Second Circuit entered Judgment on March 21st, 2022, See page A1 of Appendix. This petition is timely filed pursuant to Supreme Court Rule 13.1. This Court has Jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Family and Medical Leave Act 29 U.S. Code § 2614, 2615.

U.S. Constitution Fourteenth Amendment- Equal Protection Clause.

STATEMENT OF THE CASE

On September 1st, 2021, Hon. Judge Denis Hurley issued a memorandum opinion, dismissing Offor's Objections to the ruling of Magistrate Judge Steven Locke, granting MMC & CO Cross Motion for Summary Judgment, affirming same and denying her Motion for Summary Judgment and her Motion to Strike. On the 21st of March, 2023, the Second Circuit affirmed the decision of the District Court, adopting the reasoning of the District Court.

Offor was employed by Mercy Medical Center and Catholic Health Services of Long Island as a Neonatologist in 2000. Dr. Offor worked for 12 years without any issues and was in that time promoted to

Assistant Director of Neonatology in 2004. In December 2012, Dr. Offor was placed on focused Review just barely three weeks after she hired an Attorney to assist her in getting MMC & CO to approve an FMLA type leave as she sought to be with her daughter who was sick and pregnant at the time. On December 27th, 2012, Offor's FMLA Leave was approved and two minutes later, she was placed on FPPE. (Docket No. 88, A3168-3170, vol. 14) Dr. Offor remained on the said Focused Review for twenty months (contrary to MMC rules which provide for an eight-month period, followed by a review.), (Docket No. 88, Vol. 14, A3183 para 3) until her employment was terminated as the Hospital sought to force her to resign and leave her employment. In those twenty months of Focused Review, Dr. Offor worked alone, independently, and was asked many times to take charge of the Neonatal Unit during extended periods when her supervisor, the third Appellee, Dr. Devarajan was away from the Hospital. (Docket No. 88, Vol. 14, A3241 to 3270) Offor was reappointed without conditions, (Docket No. 88, Vol. 14, A3236-3240) her work performance was never reviewed nor evaluated as required by MMC Rules, (Docket No. 88, Vol. 14, A3183 para 3, A3198, -3199). She managed the highest acuity Neonates and performed the most intricate procedures. (Docket No. 88, Vol. 14, A3200-3211) Upon the termination of her employment in August 2014, (Docket No. 86, Vol. 12, A 2751)

Dr. Offor filed a Complaint at the Eastern District of New York containing claims for Race and National Origin Discrimination, HCQIA Due Process Violation, FMLA Violation for Retaliation, Libel, Slander, Negligent and Intentional Infliction of

Emotional Distress, Hostile Work Environment amongst other claims (15-cv02219). Judge Arthur Spatt dismissed all these claims with Prejudice and upon appeal to the Second Circuit Court, (16-839) the Appellate Court in reaffirming the Dismissal of the Race and National Origin Discrimination Claims, the HCQIA Due Process and Hostile Work Environment Claim, however ruled that Dr. Offor had established a prima facie case of FMLA Retaliation as MMC & CO had placed Dr. Offor on Focused Review in December 2012, (Docket No. 88, Vol. 14, A3168) less than three weeks after she had hired an Attorney to assist her in securing an FMLA Leave based on alleged incidents that occurred in 2009, 2011 and 2012. These allegations were merely a pretext to place Dr. Offor on focused review and ultimately terminate her employment. Following a Petition for Rehearing filed by MMC & CO, the Second Circuit Court stated inter- alia that the actions of MMC & CO **"was a textbook definition of FMLA Retaliation"** and remanded the case back to the District Court for Trial. (Suit No. 16-839 Offor v. Mercy Medical Center & Ors, at Docket No. 87, Vol. 13, A3149, A3161). Following the remand of the Suit, and over one year after the termination of her employment, MMC & CO filed a Complaint against Offor with the New York Office of Professional Medical Conduct (OPMC) citing five patients Offor was alleged to have mismanaged. MMC & CO took the action alluding to the McDonnell Douglas burden shifting framework, in order to articulate a legitimate, non-discriminatory reason for the adverse employment actions against Offor, and After Acquired Evidence Doctrine. The New York OPMC (being heavily leaned on by the Billionaire

Corporation Appellees) revoked Offor's Medical License in 2018 after refusing to allow her Counsel to submit her Defense two days after the Panel's deadline, (Docket No. 95, Vol. 21, A4774).

The ARB affirmed the decision. Following Offor's Appeal to the New York Court of Appeals, Third Appellate Division, in July 2020, Offor's Medical License Revocation was annulled. The Court stated that the ARB'S decision of Revocation was "Arbitrary and Capricious." Offor v. New York OPMC (Docket No. 95, Vol. 21 at A4767).

Though the revocation of Offor's Medical License was annulled in July 2020, the New York OPMC has indicated it intends to conduct a new trial and has not done so till date.

Offor remains unemployed for over ten years and counting. (MMC & CO have frustrated all her attempts at employment. MMC & CO interfered with her Contract with North Shore LIJ, (Docket No. 96, Vol. 22 at A4863), other attempts at employment, (Docket No. 95, Vol. 22 at A4943-4944), precipitated the revocation of her New Jersey State Medical License, (Docket No. 95, Vol. 21 at A4802), revocation of Offor's American Board of Pediatrics Certificate (Docket No. 95, Vol. 21 at A4781), Suspension of her Pennsylvania State Medical License, (Docket No. 95, Vol. 21 at A4783). Having failed in that bid to articulate legitimate, non-discriminatory reasons for the adverse employment actions taken by them, MMC & CO claimed absurdly, that Offor did not qualify for FMLA. MMC & CO had argued in their Answer to Offor's Complaint that the retaliatory actions they took was as a result of Offor's clinical incompetence. (Docket

No. 44, Vol. 2 at A383 para 41, A385 para 58). Armed with nothing but lies, flailing arguments and conjectures, the Respondents resorted to mass fabrication, alteration and in some cases outright forgery of documents.

PETITION FOR WRIT OF CERTIORARI

Dr. Chinwe Offor Petitions the Court for a writ of Certiorari to review the judgment of the Second Circuit Court of Appeals. This case poses a question that goes to the very heart of the fairness, integrity and impartiality of our justice system. As shocking as it is repulsive, the Respondents defrauded the Courts with a plethora of forged and fabricated documents, leaving behind an odious putrid precedential stench that permits for a future generation of litigants, the flagrant pollution of the revered Temple of Justice with fraud and fabrication.

REASONS FOR GRANTING THE WRIT

I. WHETHER THE U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT MANIFESTLY DEPARTED FROM THIS COURT'S PRECEDENT BY HOLDING THAT EGREGIOUS AND REPETITIVE ACTS OF FORGERY AND FABRICATION OF HOSPITAL RECORDS WERE MERE EXCUSABLE MISTAKES.

Never in the history of American Jurisprudence has any litigant produced so many false and fabricated documents, fraudulently seeking an advantage in a lawsuit. Over 99% of the documents produced in this case were produced by MMC & CO.

Petitioner in response to this deluge of fraudulent documents, filed four separate Motions for Sanctions and two Motions to Compel. The District Court's Orders denying or terminating these Motions and affirmed by the Second Circuit are now before this Court.

The fraudulent and fabricated documents would for the purposes of this petition be discussed in two parts, the fabricated documents submitted by the Respondents in Support of their Summary Judgment Motion and in opposition to the Petitioner's Summary Judgment Motion and the fabricated/fraudulent documents submitted by the Respondents at different stages of the litigation.

1. **THE FRAUDULENT DOCUMENTS SUBMITTED BY THE MMC & CO IN SUPPORT OF THEIR SUMMARY JUDGMENT MOTION**

These documents were the subject of two Motions for Sanctions dated 12/01/2020 and 12/06/2020, both were dismissed by the District Court and the dismissal was affirmed by the Second Circuit Court.

(a) EXHIBIT II (Docket No. 85, Vol. 11 at A2604)

This was a note written by Dr. Devarajan purportedly memorializing events which allegedly occurred at the Mercy Medical Center NICU involving Offor. This note purports to have been written on Monday October 28, 2013 shockingly detailing events that occurred over a month later. The unredacted name of the alleged Patient was never provided, because there was no such Patient,

and the entire alleged incident was made up. The note reads as follows:

"Dr. Offor Incident with Parents October 28,2013

xxxxx and was being treated for apnea, bradycardia and desaturations with GERD. She was diagnosed with GERD on 11/25/13 and Omeprazole started on 10/25 in the evening. I explained to the parents that she will be observed for at least 72 hours to ascertain that she will symptom free and that I as the neonatal attending on service will discuss the discharge date and plan with them on Monday11/28 with the. I communicated this plan clearly to Dr. Offor during sign out on 11/25. On 11/28/13, xxxx was very upset and stated to the nurse that she wanted to take her baby home that day as promised by Dr. Offor. I met with xxxx along with the nurse Maria Cichlolla and explained that we were going to discuss the discharge plan today and that once the medication was available as an outpatient and baby remained symptomatic the baby could go home as early as the next morning. She continued to insist that Dr. Offor told her that the baby was fine and can go home on Monday 11/28……." (Docket No. 85, Vol. 11 at A2605).

Dr. Devarajan was nowhere near the hospital on that day (See MMC Call schedule, Docket No. 88, Vol. 14 at A3225-3226) Dr. Rayjada was on call, and not Dr. Devarajan. Additionally, November 28th, 2013 was a Thursday and NOT a Monday as claimed by Dr. Devarajan in the note. (Monday 11/28 was

repeated twice by Dr. Devarajan in the fabricated note). Surprisingly, the District Court ventures out with a possible explanation for the inconsistencies and discrepancies in the manifestly fraudulent document, an explanation not offered at any point by MMC & CO in all their submissions). According to the Court "If the events occurred in October 2013, and Dr. Devarajan confused October for the eleventh month, everything lines up" (See District Court's Judgment at A24) Unfortunately, this assertion could not be further away from the facts as supported by the evidence. The facts don't line up where Dr. Devarajan was neither on call on October 28, 2013 (Docket No. 88, Vol. 14 (A3226), nor on November 28th, 2013. (Docket No. 88, Vol. 14 at A3227) According to the District Court, "whether the events occurred in October or November 2013 does not materially impact the issues at bar" the position taken by the District Court and supported by the Second Circuit is startling. Dr. Devarajan was not on Call in the Hospital even on November 28th. If Dr. Devarajan was not on call on the date she alleged an incident occurred in the hospital, then the document is surely fabricated and the events described never occurred at all. Most consequential is the fact that after Offor had filed her Motion for Sanctions regarding this Document on 12/01/2020 and 12/06/2020, even with the clear discrepancies pointing clearly to fraudulent fabrication and in the face of a Motion for Sanctions, the MMC & Co Respondents defiantly and arrogantly resubmitted this document as part of their Opposition papers on January 22, 2021 and Respondents'Counsel, deposed to an Affidavit re-affirming and re-authenticating this document. (See Docket No. 85, Vol. 11, at A2500,

para 53, Docket No. 86, Vol. 12 at A2831, para 53). Petitioner also filed a Motion to Strike several documents including this document. The District Court denied the Motion to Strike even whilst asserting that the discrepancies in the document was "a mistake", sadly, the Second Circuit affirmed that decision and like the District Court before it, commenting only on the documents designated as expert reports sought to be struck and ignoring the fraudulent documents (See A48-49 and A12-13).

(b) EXHIBIT PP (Docket No. 86, Vol. 12 at A2702)

This document was one of the documents initially cited in Offor's Motion for Sanctions dated 12/05/2019. It was one of two identical documents, dated differently. One was dated December 19, 2013 and the other was dated December 20th, 2013. (Docket No. 92, Vol. 18 at A3989 to 3992). In the said letter, Dr. Devarajan falsely claimed (amongst other falsehood) that she gave a letter to Dr. Offor on June 15th, 2013 regarding Dr. Offor's alleged "unacceptable behavior" June 15th, 2013 was a Saturday and Dr. Devarajan and Dr. Offor are NEVER in the hospital on Saturdays EXCEPT when they are on Call and Dr. Offor and Dr. Devarajan are NEVER on Call at the same time/day. Upon the realization that her fraud has been exposed, Dr. Devarajan on Oath averred as follows: **"Upon review of the circumstances and the various documents relating to the December 19th letter, the December 19th letter is incorrect because I did not present Dr. Offor with a letter on June 15th, 2013". (**Affidavit of Dr.

Devarajan, Docket No. 81, Vol.7 at A1422, paragraph 20).

(i) MMCS' DUELING AFFIDAVITS

On October 28, 2020, MMC & CO Respondents resubmitted this same document in support of their Motion for Summary Judgment. Offor raised objections to this document filing a two Motions to Strike and two Motions for Sanctions. On 22nd. day of January 2021, MMC again resubmitted this document. (Docket No. 86, Vol. 12 at A2702). Since MMC & CO had admitted that the document was "a mistake", on January 22,2020 (Docket No. 81, Vol. 7 at A1422, para 20) how then do the District and Appellate Courts justify the resubmission twice of this admitted "mistake" by MMC & CO on October 28, 2020, in support of the MMCs' Motion for Summary Judgment and on January 22, 2021? How did the Courts resolve the dueling affidavits deposed to by Dr. Devarajan on January 22, 2020 admitting that the document was "a mistake", and Respondents' Counsels affidavits on October 28 and November 30, 2020, , vol. 12, twice affirming the authenticity of this "mistake." (Docket No. 85, Vol. 11 at A2501, para 60, and Docket No. 86, Vol. 12 at A2832, para 60). A false Affidavit is Perjury. Perjury on any material fact strikes at the core of the judicial function and warrants a dismissal of one's right to participate at all in the truth-seeking process. If one can be punished for perjury with up to five years imprisonment, (See U.S.C. § 1621), it should not seem out of place that a civil action might be dismissed for the same conduct (or in this case a default ordered). Arnold v. Cnty. of El Dorado, 2012 WL 3276979, at *4 (E.D. Cal.)

(c) EXHIBIT Z (Docket No. 86, Vol. 12, at A2766):

MMC & CO produced Exhibit Z, a purported Midas Report which MMC & CO claimed was generated on Patient #1. (See MMC's Rule 56 Statement at Docket No. 85, Vol. 11 at A2413, paras 61-65). Patient No. 1 was born on 08/11/2012 and transferred to LIJ Cohen Children's Hospital on 08/12/2012. However, this was a poorly fabricated Hospital record, created for the purposes of defending the litigation. The document was fraudulent on its face.

(i) OFFOR WAS NOT LISTED AS TREATING PHYSICIAN ON THE MIDAS REPORT

The MMC & Co Respondent claimed Offor's treatment of Patient No. 1 precipitated the raising of this Midas Report (A Sentinel Event Type Record) However, they listed a different Physician ID, Offor was not listed even on the fraudulent document as the treating Physician (whose Physician ID number was 124139- not Offor's number which was 502032), (see Docket No. 97, Vol. 23 at A5093). The Nurse cited in Midas Report (Patty, RN) never cared for Patient # 1, Docket No. 97, Vol. 23 at A5094 to 5095). Exhibit Z was allegedly originated on 07/26/2012 (Start date of Midas Report, Patient # 1 had not been born on that date). The dates of the incidents on the Midas report were 07/26/2012 and 08/ 20/2012, thus the fabrication was off in all ramifications. (Docket No. 97, Vol. 23 at A5152 to A5163). Patient #1 never required antibiotics via Nebulizer (Exhibit Z, item # 5). See Patient #1

medical Record Notes at Docket No. 97, Vol. 23 at A5093). The records thus show that contrary to the falsehood being peddled by MMC & CO, Offor did not perform any intubations (Procedures) on this Baby on 08/20/2012- (Patient #1 had been transferred to LIJ as of that date and the fraudulent report cited MMC as the Medical facility where the Midas Incident occurred). Patient No. 1 had Caucasian Parents, but the Patient cited in the Midas Report had Black Parents. (See Medical Chart of Patient No. 1 at Docket No. 97, Vol. 23 at A5093). The Respondents prepared for the production of Exhibit Z, with Exhibits X, and Y. Exhibit X (Docket No. 86, Vol. 12, A2756) was an alleged memorialization of a Counselling Session regarding Offor's treatment of Patient # 1 and Exhibit Y (Docket No. 86, Vol. 12 A2760). was a purported memorialization by Dr. Reilly of a call allegedly received by Dr. Devarajan from Dr. Koppel (Inadmissible hearsay) regarding Offor's alleged mismanagement of Patient No. 1, which according to the Respondents, was a Sentinel Event resulting in the raising of the Midas Report. In its decision, the District Court noted regarding Exhibit X that: "Moreover Dr. Devarajan states the incident did result in a Midas Report….one dated August 20, 2012 i.e Exhibit Z"(A32, lines 7-9) The District Court in its decision opined that perhaps the Midas Report was raised on Offor's treatment of Patient # 4, attempting to obfuscate Offor's argument. (See A31, lines 6-7), Clearly MMC & CO claimed that the Midas Report was raised on Patient #1. MMC & CO's. Patient #4 WAS NEVER treated by Dr. Koppel of Cohen's Children's Hospital. Even Counsel for the Appellees/Respondents at the Second Circuit Court

Oral Argument stated that Offor's mismanagement was flagged by Dr. Koppel leading to the Midas Report. (15:24-15-38), the learned Judge Steven Menashi also re-echoed that view in a question posed to Petitioner's Counsel (6.42).

(ii) MMC & CO PRIOR DENIAL OF THE EXISTENCE OF ANY MIDAS REPORTS

MMC & CO had produced two documents reproduced multiple times titled **"(a) RISK MANAGEMENT INVESTIGATION OF REPORTED MIDAS INCIDENTS INVOLVING NEONATOLOGIST, DR. OFFOR, DATED 11/14/2012 AND JUNE 10TH, 2013" (**Docket No. 82, Vol. 8, A1778 – 1788). These were written by Rosemarie Povinelli, Director of Risk Management at Mercy Medical Center. In these documents, MMC presented a long list of numerous Midas Incidents and other adverse events arising from Offor's treatment of Patient Nos 1,2,3,4, 8,9. (Docket No. 82, Vol. 8 at A1780-1793). However, when Offor demanded the production of the said Midas Reports or other Adverse Event Reports, MMC through their Attorneys (Nixon Peabody & Co) claimed there were none. (Docket No. 93, Vol. 19 at A4332, line 22 to A4334 line 12).

In response to Offor's Motion to Compel (A4052), MMC Counsel, Mr. Gegwich responded:

"It should also be noted that the first time Plaintiff's counsel requested Midas Incident Reports regarding her management of patients 1, 2, 3, 5, 11, 12 and 13 and the minutes of a meeting held on September 6, 2012 relating to

a respiratory therapist at MMC was as part of her motion to compel. Notwithstanding this wholly improper method for requesting documents, Defendants responded by informing Plaintiff that they conducted a diligent search and are not in possession, custody or control of any of the documents requested in items 6, 7, 8, 9, 10, 11, 12,13 and 14. (Exhibit "B"). Based on the foregoing, Defendants respectfully submit that Your Honor deny Plaintiff's motion to compel in its entirety. Should Your Honor have any questions or require additional information, we are available at the Court's convenience." (Docket No. 92, Vol. 18 at A4062).

Despite this clear statement from MMC & CO Lead Counsel at the time, Offor had during the Court's Conference hearing of her Motion to Compel, sought more clarity from the MMC & CO regarding any Midas Reports, Adverse Event Reports, Sentinel Event Reports and other Incident Reports filed on any of the Patients she had treated and whose treatment allegedly formed the basis of her placement of Focus Practitioner Review and Termination of her employment. Mr. Christopher Gegwich, Respondents' Counsel stated:

"that we've searched for these documents and they're not in the possession, custody or control of the defendants. We're not aware of any documents, and we put that in writing **in a letter, which we attached as an exhibit to our opposition to the motion. The documents do not exist, and plaintiff now understands that. We've made that representation…. they never**

existed" (Docket No. 93, Vol. 19 at A4333 line 21 to A4334 line 12).
MMC & CO after twice denying the existence of any "Midas Report", regarding Patient # 1, submitted this document (Exhibit Z), in their papers in Support of their Motion for Summary Judgment on November 30th and in spite of a Motion for Sanctions filed by Offor protesting the inclusion of this fraudulent document (which MMC had earlier claimed not to be in possession of). On January 22, 2021, MMC, upon the sworn affirmation of their Counsel, Justin Guilfoyle Esq, resubmitted this document in support of their Opposition papers to Offor's Motion for Summary Judgment. (Docket No. 85, Vol. 11 at A2499 para 44, Docket No. 86, Vol. 12 at A2830, para 44).

(d) EXHIBIT SS (Docket No. 86, Vol. 12 at A2718)

This document was produced by MMC purportedly memorializing a meeting with Dr. Offor, called by Dr. Aaron Glatt. In the said note, Dr. Devarajan memorialized the following:
"Dr. Glatt stated that the meeting was not a dialogue and only he will speak. He stated the expectation that emails discussing patient information that are damaging must stop. He stated that any more such emails and he will take further action including suspension. He supports the Chair of the department. All quality concerns must be brought forth through the Peer Review and Pl process within the department. He asked if Dr. Offor had any questions and she stated that she

understands. This is being documented for her file." (Docket No. 86, Vol. 12 at A2719).
This however was definitely not what transpired at the meeting, unknown to Dr. Devarajan, Dr. Glatt memorialized the meeting and sent an email immediately after the meeting to Mercy Medical Center HR and copied Dr. Offor stating
"I met with Drs Reilly, Devarajan and Offor this morning and I laid down what I expected from that Department regarding communication and quality. My comments were directed at all three of them and were not specific but general in nature."
(Docket No. 96, Vol. 22 at A5023). This was a fraudulent mischaracterization of the meeting intended to further depict Dr. Offor as an incompetent and disruptive employee. Again, after Offor had filed her Motions for Sanctions regarding this Document on 12/01/2020 and 12/06/2020, MMC refiled this document as part of their Opposition papers on 01/22/2021 with MMC & CO Counsel, Justin Guilfoyle Esq deposed to an Affidavit re-affirming and re-authenticating this document. (Docket No. 85, Vol. 11, A2501, at para 63 and Docket No. 86, Vol. 12, 2832, at para 63).

(e) EXHIBIT AA (Docket No. 82, Vol. 8 at A1840)

Exhibit AA is an alleged written review by Dr. Schanler regarding Patient #1 and apparently Dr. Schanler did not write or send the said report. The email was sent from rschanle@nshs.edu. The signature block of the email however had the correct email address for Dr. Schanler which is

schanler@nshs.edu. Asides from Offor communicating numerous times with Dr. Schanler at schanler@nshs.edu address, He was a co-member of AAP (Docket No. 96, Vol. 22 at A4994 – A5014). Dr. Schanler offered Offor a job immediately following the termination of her appointment (the opportunity was scuttled by MMC when it leaned on the hospital not to hire Offor even after she had signed an employment contract, Docket No. 96, Vol. 22 at A4863). The District Court in dismissing Offor's allegation of fraud regarding this document cites Sua Sponte a September 1, 2021 (the date of District Court Decision) internet post, several months after the allegation of fraud and Motion for Sanctions filed against MMC, regarding this document. MMC neither offered this information nor made any such argument. It is definitely unlikely that an employee will have two different active email addresses on the same Corporate server. Additionally, the Court never addressed the fact that there were multiple document fonts on the poorly forged email. Again, after Offor had filed her Motion for Sanctions regarding this Document on 12/01/20 and 12/06/2020 MMC & CO. refiled this document as part of their Opposition papers on 01/22/2021, with MMC & CO. Counsel deposing to an Affidavit re-affirming the authenticity of this document. (Docket No. 85, Vol. 11, A2499 at para 45 and Docket No. 86, Vol. 12 A2830 at para 45). The District Court denying a Motion to Strike this document and the Second Circuit affirming.

2. OFFOR'S MOTION FOR SANCTIONS DATED JULY 22ND, 2019 (Docket No. 150, Appendix Vol 2, A294-300)

(a) DELETED MEDICAL TREATMENT NOTES:

Offor filed a Motion for Sanctions dated July 22, 2019. The Respondents well over a year after the termination of Offor's employment, referred her to the New York Office of Professional Medical Conduct (OPMC) claiming that she had clinically mismanaged a different set of patients. In furtherance of these claims, MMC submitted Patient Medical Records including Patient # 5's Medical Records to support their allegations of Clinical mismanagement. Patient #5 was treated by Offor and other Physicians at MMC. Based upon the Medical Records provided, the New York Board Expert found that there was a severe deviation in accepted medical standards because the baby was not administered Insulin and Offor failed to obtain an endocrinology consult during the initial treatment. (Docket No. 92, Vol. 18 at A4136). However, Offor's notes and the Nurses' notes which would have established that she did obtain an endocrinology consult from Dr. Yolanda Saint Louis and documented the consult in line with her recommendation that Insulin should not be administered were deleted. Further, MMC & CO had contaminated the Patient's IV bag and the same contained more than ten times the ordered sugar concentration. The Nurses noticed that the IV bag appeared cloudy. An Investigation was ordered. (Docket No. 92, Vol. 18, A4136). Though Offor's notes

were deleted from the Patient's chart, certain notes about Dr. Offor's consultation with the Endocrinologist as well as her supervisor's note concerning the IV bag remained in the Patient's records. Dr. Devarajan forgot to delete a note which confirmed the investigations into the adulterated IV bag where she stated:

"the investigations of the IV bag, medications in the pump are ongoing, however, the results so far are negative and it does not appear to be iatrogenic" (Docket No. 92, Vol. 18 at A4136). MMC would refuse to produce the Investigation Report alluded to by the Dr. Devarajan despite a Motion to Compel and the District Court refused to Compel its production Docket No. 44, Vol. 2 at A485 to 491).

(b) LOG FABRICATED IN RESPONSE TO MOTION FOR SANCTIONS

In response to the Motion for Sanctions, MMC & CO produced yet another fabricated document, - a log attached to the Affidavit of Mohsen Quraishi-(Docket No. 78, Vol. 4 at A929-932).

The log entries on September 16, 2013 showed an entry at 9.40am- Plan of care was purportedly signed by Kim Jayna NP, Registered Nurse. Jayna Kim, previously known as Jayna Phillips, only became Jayna Kim in 2018 after she got married. See email written by Jayna Phillips to Offor (Docket No. 88, Vol. 14 at A3345). Therefore, the entry purportedly made in 2013 should have been electronically signed by Jayna Phillips. Also, Jayna Kim was not an NP (Nurse Practitioner) in 2013. (Docket No.88, Vol. 14 at A3345). The log was supposed to mirror the Patient Chart, in which she was referred to as Jayna

Phillips in 2013, furthermore, the log missed many entries on the Chart. (Docket No. 89, Vol. 15 at A3465 to 3466). MMC runs two Nurses' shifts in the NICU, 7am to 7pm. (Day Shift) and 7pm to 7am (Night Shift), On September 16, 2013, Jayna Phillips (later known as Jayna Kim) worked the day shift, and Wofford, Gwendolyn RN worked the night shift, but Wofford's name was completely missing from the fraudulently manufactured log for that shift (7pm - 7am overnight shift on September 16, 2013 to September 17, 2013). Wofford's name can be found on the Patient's Chart as the Patient's Nurse for that shift though it was missing from the manufactured log. As reiterated, the log was supposed to mirror the Patient Chart. (Docket No. 78, Vol. 4 A929-932, A809,A825). This same Patient (Patient # 5) was later transferred to Columbia Presbyterian Hospital and all of the Patient's Chart and Records were also transferred. Thus, because these same records will further prove the deletion of the Patient's Charts, Offor issued a Subpoena and then filed a Motion to Compel this third-Party Subpoena. This Motion was opposed by MMC & CO (without Standing), The Third-Party Hospital despite being repeatedly served, neither entered an appearance in the case nor filed any Opposition (rather sending an unfiled letter) with the District Court absurdly ruling that the records were excessive to the needs of the case, the Second Circuit affirmed this decision.
(District Court decision denying Offor's Motion to Compel (A99, A104-105).

3. OFFOR'S MOTION FOR SANCTIONS DATED DECEMBER 5TH, 2019

On September 14, 2020, the District Court Suo Motu, terminated Offor's Motion for Sanctions dated 12/05/2019. The only reason for the termination of the Motion given by the District Judge was that it had been pending for too long. (A-92). By that Motion, Offor had sought Sanctions against MMC and their Counsel who were clearly complicit in the fraud perpetrated on the Court by the submission of numerous forged and fabricated documents. These documents which formed the subject matter of these Sanctions Motions were produced several times by MMC & CO with different bate numbers, they are now listed below and discussed as follows:

(a) FRAUDULENT QUALITY ASSURANCE DOCUMENTS

These documents were purportedly prepared by Rosemarie Povinelli on November 14th, 2012 and June 10th, 2013 respectively and titled "RISK MANAGEMENT INVESTIGATION/TIMELINE OF REPORTED MIDAS INCIDENTS /COMPLAINTS INVOLVING NEONATOLOGIST, DR. OFFOR". (MMC despite this document, later claimed not to be in Possession of any Midas/Adverse Event Reports concerning any Patient managed by Offor. (Docket No. 94, Vol. 18, A4062, Docket No. 93, Vol. 19 A4332 line 22 to A4334 line 12). This document lists alleged MIDAS Incidents involving Offor's treatment of Patient Nos. 1, 2, 3, 4, 8 and 9, (Docket No. 82, Vol. 8, A1778 to 1788, vol. 8. (Offor unsuccessfully sought to Compel production of these documents Docket No. 92, Vol. 18 A4052)

(b) FALSE VENTILATOR MANAGEMENT GUIDELINES

On 2/10/2007, Ms. Povinelli falsely claimed that "ventilator management guidelines were established for the NICU department. All clinical staff educated on the ventilator guidelines." (Docket No. 82, Vol. 8, A1779, A1783. February 10, 2007, was a Saturday and the only clinical staff in the NICU were the nurses on duty and one doctor on weekend call. (Docket No. 90, Vol. 16 A3554).

(c) FALSE JANUARY 20, 2008 MEETING

In the same document, Ms. Povinelli also falsely claimed that Dr. Devarajan and the Director of HR, met with Dr. Offor on January 20, 2008 to discuss Dr. Offor's work performance. (Docket No. 82, Vol. 8 A1779, A1783, and Docket No. 90, Vol. 16 A3538). However, January 20, 2008 was a Sunday. Neither Dr. Devarajan, nor the Director of HR comes into the hospital on Sundays. (Docket No. 90, Vol. 16 A3525).

(d) FALSE COUNSELING REPORT (Docket No. 82, Vol. 8, A1779, A1783, and Docket No. 90Vol. 16 A3553)

Ms. Povinelli also falsely claimed that Dr. Offor was counseled on 04/06/2009 for Frequent ventilator changes, repeated infusions of NS Bolus, repeated NAHCO boluses in a short period of time. (Docket No. 82, Vol. 8, A1779, A1783, and Docket No. 90, Vol. 16 A3553). In truth however, Dr. Offor was not in the Hospital or NICU on the said date. Dr. Offor had been on call in the hospital that weekend and left the hospital at 2am on Monday the 6th of April,

2009. Dr. Offor wrote an email at 12.42am that morning to Dr. Devarajan regarding a very sick baby in her care and an incident involving a Respiratory Therapist. (Docket No. 90, Vol. 16, A3551). Offor did not return to the hospital that week but proceeded on a five-day vacation. (Docket No. 44, Vol. 2 A473). Dr. Offor's paystub for that pay period showing that she had used 22.50 hours of her holiday time and 15.00 hours of her personal time during the said pay period). Dr. Devarajan's response in her sworn declaration was a clumsy attempt at denial and obfuscation of the facts. (Dr. Devarajan acknowledged under Oath that Offor was not in the hospital on that day and for the entire week- see paragraph 14 of Dr. Devarajan's Declaration in Opposition.) However, she stated: "I did not meet with Dr. Offor on April 6 2009, nor does my handwritten note indicate or state that I spoke with her on April 6 2009." (Docket No. 90, Vol. 16 A3575, para 14-18). To the contrary however, this document clearly states: "APRIL 6, 2009 PATIENT REDACTED After complete review of the medical record of the patient, I met with Infant's nurse REDACTED and asked for her input on patient status and physician management. Subsequently, I met with Dr. Offor to discuss her management. Points covered in discussion and counselling were……." (Docket No. 90, Vol. 16, A3553).

(e) FABRICATED LETTER DATED FEBRUARY 29, 2008 (Docket No. 90, Vol. 16, A3538)

This was a letter purportedly written by Dr. Devarajan to Dr. Offor in which the former and Denise Baston, Director of Human Resources

claimed to have met with Dr. Offor on January 20th, 2008 to discuss her work performance. January 20th, 2008 was a Sunday. Human Resources Personnel never come to work on Sundays. Moreover, Dr. Offor and Dr. Devarajan do not come to the Hospital on Sundays except on call and both can never be on call on the same day. In her Opposition Affidavit, Dr. Devarajan under Oath claimed the document was a "mistake" (Docket No. 90, Vol. 16, A3573, paras 7-9). **"I agree with Dr. Offor that we would not have held a meeting with a human resources representative on a Sunday, as a result, the reference to the January 20, 2008 date in the Memorandum is an unintentional mistake that I made at the time when drafting the Memorandum."** (Docket No. 81, Vol. 7, A1418, para 8, A1420 para 14, A1422 para 20). Povinelli averred, **"I do not have any personal knowledge of whether a meeting between Dr. Devarajan and Dr. Offor occurred on January 20, 2008 and my entry in the timeline is based entirely upon Dr. Devarajan's Memorandum"** (Docket No. 82, Vol. 8, A1775 at para 14, A1776, paras 16-17).

(f) THE FABRICATED DECEMBER 19TH LETTER (Docket No. 90, Vol. 16, A3598 to 3599).

This was a letter purportedly written by Dr. Devarajan on December 19th, 2013. In the said letter, Dr. Devarajan falsely claimed that she gave a letter to Dr. Offor on June 15th, 2013, regarding Dr. Offor's alleged "unacceptable behavior". June 15th 2013 was a Saturday. Dr. Offor and Dr.Devarajan are NEVER in the hospital on Saturdays EXCEPT they are on call and Dr. Offor and Dr. Devarajan are

NEVER on call at the same time. Dr. Devarajan in her Declaration in Opposition concedes:

"Upon review of the circumstances and the various documents relating to the December 19, 2013, letter, the December 19, 2013 letter is incorrect because I did not present Dr. Offor with a letter on June 15th, 2013." (Docket No. 90, Vol. 16 A3577 para 20).

Rather interestingly, this document was submitted twice by MMC & CO in support of their Motion for Summary Judgment, and in their Opposition papers as Exhibit PP. (Docket No. 90, Vol. 16, A3576 to 3577, paras 19 and 20). Following the Petitioner's Motion to Strike this document, the District Court refused to strike it and the Second Circuit Appellate Court sadly affirmed. (See A12,13 and A22-29).

(g) <u>FABRICATED MERCY MEDICAL CENTER NEONATOLOGY PEER REVIEW COMMITTEE MINUTES</u> (Docket No. 90, Vol. 16, A3607-A3614).

This fabricated document described events on dates that NEVER happened. This document's header states in part "The Neonatology Peer Review Committee Meeting was held in the Congregation of Infant Jesus Conference Room on Wednesday, June 17th, 2014. However, June 17th, 2014 was a Tuesday (NOT A WEDNESDAY) Docket No. 90, Vol. 16, A3607.

The alleged peer review examined Offor's clinical management of Patient Nos. 12 & 13. The background to this false narrative was that Dr.

Devarajan was on call on May 27, 2014 and she was repeatedly paged and urged to come into the hospital to treat a Neonate (Patient #13) who was in deadly distress having suffered a Pneumothorax. She needed to come into the hospital to evacuate the air in the mediastinum by inserting a chest tube. Dr. Devarajan refused to come in and by the time Offor came to work the following morning, the Patient was near death. Offor wrote an email to Devarajan copied to MMC's CMO, Dr. Reilly, the fourth Respondent (Docket No. 88, Vol. 14, A3272). This made Dr. Devarajan so angry that she decided to fabricate Peer Review Committee Meeting Minutes in order to absolve herself of any wrongdoing and to

(h) PERFORMANCE EVALUATIONS ON DR. OFFOR BY HER SUPERVISOR

Evaluations showed Dr. Offor's Performance Standard exceeding in all areas of clinical and patient care. However, Dr. Devarajan for purposes of this litigation altered these Evaluations by in some cases changing the scale of Dr. Offor's Performance Standard and in other cases inscribing negative remarks on an otherwise glowing Performance Evaluation. (Docket No. 81, Vol. 7, A1494, 1502 and A1516). The response of MMC & CO to these allegations was at first an arrogant dismissal by their Counsel, Tony Dulgerian Esq, who retorted that **"even if the Defendants had forged or altered documents, what is the Plaintiff going to do about it?"** Implying that with Offor's lowly status vis a vis MMC & CO, there was nothing she could do about the forgery of the Documents by MMC &CO and with the District Court mute, the forgery continued unabated. (Docket No. 89, A3460).

4. THE DISTRICT COURT'S ORDER DISMISSING OFFOR'S MOTIONS TO STRIKE AFFIRMED BY THE SECOND CIRCUIT COURT (258, 261- A-83)

Asides from the clearly fabricated documents, Exhibits II, PP, Z, AA and SS, submitted by the Respondents in support of their Summary Judgment Motion and which the Petitioner had requested struck in her Motion to Strike. The Petitioner also sought to strike several documents submitted purporting to be Expert Reports, (a) Exhibits AA, AAA, BB, Y and VV. Most of these documents were unsigned, undated, and did not provide sufficient information regarding the background of the author (CV or Resume) including the basis of their knowledge or materials referred to in arriving at the scientific or clinical conclusions. (Docket No. 82, Vol. 8, A1840, A1847, A1867 and Docket No. 86, Vol. 12, A2760, A2738).

In Exhibit Y, (Docket No. 86, Vol. 12 A2760). Dr. John Reilly attempts to memorialize in an email, a purported Oral Report from an Expert to Dr. Devarajan telephonically. Exhibits HH, JJ (Docket No. 85, Vol. 11, A2573, A2627), NN, X, (Docket No. 86, Vol. 12, A2693, A2756) and EE (Docket No. 85, Vol. 11, A2460). These were fabricated "Counselling documents", vol. 12, A2460, vol. 11. MMC has Counselling forms which provide for the signatures of the Counselor and Counselee after the Counseling session. See sample MMC Counseling form, (Docket No. 92, Vol. 18, A3998).

MMC rules dictate that Employee must sign completed Evaluation form. See Handbook at

(Docket No. 88, Vol. 14, A3188). Failure of MMC to comply with their own policies is a huge pointer to the fabrication of these documents., though the District Court conceded that it was "one mistake" inferring that the Appellees/Respondents had produced a single document with a "mistake" (See A23, para 3) and the Second Circuit in its Summary Order referred to the fraudulent documents as " a few mistakes" (See A11-12) strangely enough, despite these concessions by both Courts, the District Court denied the Appellant/Petitioner's Motion to Strike these documents with the Second Circuit affirming. Both Courts quoted and relied extensively on these documents in their decisions.

These documents should have been struck out and the Appellees should have been sanctioned. **The District Court had quickly sanctioned Offor's Counsel the sum of $25,622.50 for failing to redact the year of birth of unnamed patients from Petitioner's Complaint (The day and month were redacted, See Docket No. 87,Vol. 13-A3081-3093).** but would offer excuses and explanations for clearly fraudulent documents. arguments not made at any time by the Respondents. The Second Circuit sadly affirmed. Fair Hous. of Marin v. Combs, 285 F.3d 899, 905 (9th Cir. 2002) (upholding default sanction against a party who, although ultimately producing relevant documents, "not only failed to produce documents as ordered, but also misrepresented to both counsel and to the district court that the documents did not exist."); Valley Engineers Inc. v. Elec. Eng'g Co., 158 F.3d 1051, 1058, Breezevale Ltd v. Dickinson, 759 A.2d 627, 641 (D.C. 2000) The Supreme Court

reiterated this view in Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 246 (1944). 2d 28, 43 (D.C. 1986) Aoude v. Mobil Oil Corp., 892 F 2d 1115 (1st Cir. 1989) affirming dismissal where Plaintiff concocted a single document) Trammel v. Bass, 672 So. 2d 78, 82 (Fla. Dist. Ct. App 1996) affirming Default Judgment against Defendant who excised damaging six second portion of videotape before producing it during discovery. Pope v. Fed. Express Corp., 974 F.2d 982.984 (8th Cir. 1992) affirming sanction of dismissal for Plaintiff's forgery of, and reliance on, a single document. Breezevale Ltd v. Dickinson, 759 A 2.D 627, 641 (D.C. 2000) affirming sanction of dismissal where top executives of Plaintiff company engaged in scheme to forge documents and subsequently denied the forgery in pleadings and sworn testimony. A Default should have been entered against MMC & CO. According to Justice Hugo Black:

"Tampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society." Hazel-Atlas, 322 U.S. at 246.

See also Chambers v. Nasco 501 U.S. 32, 44 (1991). Where the Supreme Court reaffirmed the inherent power of the Court to fashion appropriate sanctions for conduct which abuses the judicial process. The Supreme Court also recognized that once a party

sets out on a course of bad faith litigation, it taints the entire litigation, and the Court may vindicate itself by requiring the bad faith litigator to pay all of its opponent's attorney fees and expenses (501 U.S. at 56-57).

See also Synanon Found., Inc. v. Bernstein, 517 A2,d 28, 43 (D.C. 1986) Once a party embarks on a pattern of fraud and regardless of the relevance of the fraudulent materials to the substantive legal issue in the case, this is enough to completely taint the party's entire litigation strategy from the date on which the abuse actually began. It is clear that the Courts did not treat both sets of litigants equally.

II. WHETHER THE U.S COURT OF APPEALS FOR THE SECOND CIRCUIT DEPARTED FROM THIS COURT'S PRECEDENT AND ITS OWN PRECEDENT WHEN IT FAILED TO APPLY THE MCDONALD DOUGLAS BURDEN SHIFTING MECHANISM.

On January 20th, 2017, the Second Circuit Court ruled that Offor had established a Prima Facie case of FMLA Retaliation. (Offor v. Mercy 16-839 Docket No. 87, Vol. 13 A3149, A3161).

With Offor satisfying her initial burden of establishing a prima facie case, the burden of production then shifts to the employer to "articulate a legitimate, clear, specific and non-discriminatory reason for its actions" Esser v. Rainbow Advert. Sales Corp., 448 F. Supp. 2d 574, 581 (SDNY 2006) (quoting Quaratino v. Tiffany & Co., 71 F.3d 58,64 (2d Cir. 1995) The Second Circuit applies the

Retaliation analysis from McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). See also Potenza, 365 F. 3d at 168. Thus, the Respondents had the burden to articulate a legitimate non retaliatory reason for the adverse employment action O'Reilly v. Consolidated Edison Co. of New York, Inc., 173 F.App'x 20, 22 (2d Cir. 2006). MMC & CO could not come up with any "legitimate non retaliatory reason and having failed in that attempt, MMC absurdly shifted their argument claiming this time that Offor did not qualify for FMLA. Unfortunately, the District Court and indeed the Second Circuit Court which had earlier ruled that Offor had established a Prima Facie case endorsed that argument.

1. **NOTICE AND EQUITABLE ESTOPPEL:**

This issue is Moot, because Offor took the FMLA vacation. However, the District Court attempted to address the Notice requirement, focusing only on the false notion created by the MMC & CO that Offor failed to give Notice of her daughter's condition to MMC & Co.

Offor repeatedly provided Notice to her Employers several months prior to her proposed FMLA Leave. (Docket No. 87, Vol. 13, A3164, A3005 paras 13-15, and Docket No. 93, Vol. 19 A4231 page 117 line 12-13, A4238 page 145 line 20 - page 147 line 22). Attorney to the Respondents at the Oral Argument conceded that Offor did notify her Supervisor about her daughter's health conditions but he questioned how the employer was to know that these conditions persisted months later. (Oral Argument tape at 24.52-26.30). However, the FMLA requires

employers upon such information to notify the employee that the condition might be FMLA qualifying and to request further information regarding the health conditions.

2. SECOND CIRCUIT DISCUSSION OF TEMPORAL PROXIMITY. (A5 lines 3-10)

In ruling that Offor relied solely on temporal proximity in establishing her FMLA claim the Court stated:

"As the District Court noted, Offor Relied solely on temporal proximity to raise the inference of retaliatory intent-namely the time between her retention of an Attorney to be with her daughter and Defendants putting her on Focused Practitioner Performance Evaluation) Review."(A5 lines 3-10). Nothing could be further from the truth as espoused from the facts of the case. Offor's Appellate Brief of the following do establish the inference of retaliatory intent.

(a) **EVALUATIONS:** Offor Was Not Evaluated During The Period Of Her Placement On FPPE till her employment was terminated notwithstanding MMC & CO allegations of clinical incompetence, and contrary to MMC policy, MMC & CO only evaluated Offor's performance seven times in her 14 years of employment and none whatsoever during the twenty months of Focused Practitioner Performance Evaluation (FPPE) December 2012-August 2014. (Docket No. 90, Vol. 16 A3522, 3526, 3532, 3545, 3555).

By its definition, there cannot be a Focused Practitioner Performance Evaluation without regular Performance Evaluations or at all. MMC & CO FPPE POLICY at (Docket No. 88, Vol. 14, A3183 para3, A3198, A3199). (MMC Sample FPPE Evaluation Form at Docket No. 92, Vol. 18 A4000-4001).

(b) **REAPPOINTMENT**: One year into the FPPE, Offor was reappointed and her privileges renewed without any restrictions or conditions. (Docket No. 88, Vol. 14, A3236-3240).
Mercy failed to comply with New York State Department of Health Regulations and their own policies, which require that adequate, documented evidence of current clinical competence be made part of the reappointment process. Mercy FPPE Policy and Procedure. (Docket No. 88, Vol. 14 A3183 para 3, A3198-3199).

(c) **OFFOR WAS ALLOWED TO WORK ALONE AND WITHOUT SUPERVISION** During the Period of FPPE. Offor was allowed to work alone, independently, and frequently to head the Neonatal unit (during the frequent absences of her Supervisor, third Defendant/Appellee and during the twenty month period of the FPPE) and asked to help other Neonatologists with Clinical Procedures contrary to MMC policy, Docket No. 88, Vol. 14, A3241 to 3270, A3200). Mercy Policy requires that any Physician on FPPE be monitored, supervised and evaluated. (Docket No. 88, Vol. 14, A3183, 3198-3199).

(d) **THERE WERE NO MIDAS, SENTINEL OR ADVERSE EVENTS REPORTS AGAINST OFFOR**

Despite the serious allegations of clinical incompetence, against Offor, and the production of two documents several times, (Risk Management Investigation of reported Midas Incidents involving Neonatologist, Dr. Offor, dated 11/14/2012 and June 10th, 2013 (Docket No. 82, Vol. 8 at A1778 – 1788). Asides from the forged Midas Report (MMC & CO's Exhibit Z submitted in support of their Summary Judgment Motion (Docket No. 86, Vol. 12, A2766). MMC neither had any Sentinel or Adverse Event Reports at the time of the alleged incidents documenting the said events or at all. (Docket No. 93, Vol. 19, A4332 line 22-4334 line 12).

(e) **THERE WAS NO EXPERT REVIEW OF THE THREE PATIENTS OFFOR ALLEGEDLY MISMANAGED PRIOR TO HER PLACEMENT ON FOCUSED REVIEW**

When all Three Patients were reviewed almost two years later, Offor was absolved of any wrongdoing**.** In December 2012, prior to Offor's placement on FPPE, MMC had asked Dr. Marjorie Schulman to review the Charts of the Patients that Offor was alleged to have clinically mismanaged. Dr. Schulman shredded the Charts and advised MMC that after a review of the Medical Charts provided, she could not write any report that would "help" them. Accordingly, she did not provide a report. (Docket No. 92, Vol. 18, A4085). Thus, it was revealed that MMC was "shopping" for Doctors who will write negative

reviews of Offor's clinical management of selected very sick Neonates. (Docket No. 92, Vol. 18, A4079-4082 and Docket No. 93, Vol. 19, A4334 line 16 - A4335 lines 17.

(f) **OFFOR'S FMLA VACATION REQUEST WAS THE ONLY PROXIMATE EVENT**
Offor's FMLA request was the only proximate event between the last alleged Incident of clinical mismanagement and her placement on FPPE.

(g) **OFFOR EXCEEDED CLINICAL PERFORMANCE STANDARDS**
In MMC's only seven performance evaluations through her 14 years employment. (Docket No. 19, Vol. 16, A3522, 3526, 3532, 3545, 3555).

(h) **DESPITE HER PLACEMENT ON FPPE OFFOR WAS ASKED TO REPRESENT CHSLI**
Offor was asked by MMC to attend a deposition on behalf of CHSLI in a Medical Malpractice Suit where she was neither sued nor subpoenaed. (Docket No. 92, Vol. 18, A4127). One of these depositions was for Patient H, (F Hollingsworth v. Mercy Medical Center INDEX NO. **002481/2012**), this was a preterm baby that Dr. Devarajan had gravely mismanaged and which ensuing Malpractice Lawsuit as a result of Dr. Devarajan's Clinical incompetence cost MMC $5million.

(i) **OFFOR WAS GIVEN A PAY RAISE ABOUT TWO MONTHS BEFORE SHE WAS PLACED ON FPPE**
MMC & CO in fact gave her a pay increase in October, 2012, about two months before she was placed on FPPE. (Docket No. 96, Vol. 22, A4980).

(j) **OFFOR IS GENERALLY REGARDED AS A GREAT PHYSICIAN. (DOCKET NO. 95, VOL. 21, A4731-4734, A4753, A4755, A4758, A4761, A4762,A4766),**

See sworn testimony of MMC Nurse, Kathy Elmer at New Jersey Medical Board Hearing at (Docket No. 95, Vol. 21, A4733 p 74 line 6-17) .

"Well, the nurses that came with me today are retired. We just recently retired. But all the nurses, I'm telling you, I don't think there was one, and there must have been full-timers, part-timers, per diems that were there for, you know - none of them would not have signed or been here today if they weren't in fear of losing their jobs. But they all thought she was a phenomenal doctor with the highest level of skills."Kathy Elmer RN.

(3) OFFOR'S DAUGHTER WAS INCAPABLE OF SELF CARE

Offor's daughter was physically incapacitated and incapable of self-care for several weeks following the delivery of her baby. (Docket No. 96, Vol. 22. A4928, vol. 22, Docket No. 93, Vol. 19, A4248 page 188 lines 11-13).

CONCLUSION

Falsification or fabrication of documents erodes public respect for the Judicial system: to the extent that the public believes that falsification is common, and that the perpetrators go unpunished, it will distrust the results reached by the judicial system and lose faith in Courts as reliable sources of justice.

Absent a stern repudiation of this decision by this Court, litigants faced with a difficult lawsuit would turn to the fabrication of documents citing the Second Circuit decision in this case. The Second Circuit's Decision is wrong and inconsistent with Precedents from this Court and other Circuits, and the repugnancy of the decision bids the intervention of this Court. This case presents this Court with a clear opportunity to restate its abhorrence to falsification, fabrication, forgery or other fraud on the Court and settle the disparity in the application of the Mcdonnell Douglas Burden Shifting Mechanism in FMLA Retaliation cases across the Circuits.

Dated this 17th day of May, 2023

Respectfully submitted,

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