

DA # 434736

AGENCY # UNRPD 11-893

FILED

11 NOV 17 PM 2:04

IN THE JUSTICE COURT OF RENO TOWNSHIP  
IN AND FOR THE COUNTY OF WASHOE, STATE OF NEVADA

STEVE TUTTLE  
RENO JUSTICE COURT  
BY *[Signature]*  
DEPUTY

\* \* \*

THE STATE OF NEVADA,

Plaintiff,

RCR 2011-064661

v.

DEPT: 1

JUDY MIKOVITS,

Defendant.

SECOND  
CRIMINAL COMPLAINT

*COPIES*

JAIME MCGUIRE of the University of Nevada Police Department, County of Washoe, State of Nevada, verifies and declares upon information and belief and under penalty of perjury, that JUDY MIKOVITS, the defendant above-named, has committed the crimes of:

COUNT I. POSSESSION OF STOLEN PROPERTY, a violation of NRS 205.275, a felony, (F900) in the manner following, to wit:

That the said defendant, JUDY MIKOVITS, on or about September 30, 2011, at Reno Township, within the County of Washoe, State of Nevada, did willfully and unlawfully possess or withhold stolen goods having a value in excess of Six Hundred Fifty Dollars (\$650.00), to wit, a black Apple laptop, multiple flash drives, approximately a dozen or more research notebooks, and miscellaneous correspondence from the Whittemore Peterson Institute, at Reno, Washoe County, Nevada, such property being owned by the Whittemore Peterson Institute, for her own gain or to prevent the true owner from again possessing said property, knowing that the property was obtained by means of larceny or under such circumstances as should

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155-268  
Exhibit 1

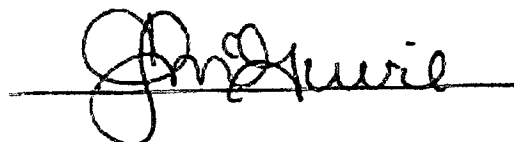


1 have caused a reasonable man to know that such goods were so  
2 obtained.

3 COUNT II. UNLAWFUL TAKING OF COMPUTER DATA, EQUIPMENT,  
4 SUPPLIES, OR OTHER COMPUTER-RELATED PROPERTY, a felony violation of  
5 205.4765, in the manner following, to wit:

6 That the said defendant on or about September 30, 2011, at  
7 Reno Township, within the County of Washoe, State of Nevada, did  
8 willfully, unlawfully and without authorization, take, conceal, or  
9 retain possession of data, a program or any supporting documents  
10 which exists inside or outside a computer, system or network, or a  
11 computer or computer system, or a device used to access a computer  
12 network or data, and the cumulative total loss of all items taken or  
13 possessed is in excess of \$500.00, or said taking, concealment or  
14 possession caused an interruption or impairment of a public service,  
15 including, without limitation, a governmental operation, regardless  
16 of the value of the property, to wit: MIKOVITS directed her former  
17 research associate, an employee of Whittemore Peterson Institute, to  
18 take a black Apple laptop, multiple flash drives, approximately a  
19 dozen or more research notebooks, and miscellaneous correspondence  
20 from the Whittemore Peterson Institute, and to deliver them to her at  
21 Reno, Washoe County, Nevada.

22 DATED this 17 day of November, 2011

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Exhibit 1

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IN THE MATTER OF AN APPLICATION  
FOR AN ARREST WARRANT  
FOR JUDY MIKOVITS

STEVE TUTTLE  
RENO JUSTICE COURT  
BY *[Signature]*  
DEPUTY

AFFIDAVIT IN SUPPORT OF  
SECOND COMPLAINT AND WARRANT OF ARREST

STATE OF NEVADA )  
                  ) ss.  
COUNTY OF WASHOE )

*[Signature]*  
JAIME MCGUIRE

AFFIANT does hereby swear under information and belief and penalty of perjury that the assertions of this affidavit are true.

1. That your affiant is a Police Officer, with the University of Nevada, Reno Police Department, and in that capacity has become familiar with the criminal investigation and reports compiled in UNRPD case number 11-892; that further, your affiant is informed and believes and thereupon alleges the following to be a sufficient representation of facts to establish probable cause to believe that JUDY MIKOVITS has committed the crime(s) of POSSESSION OF STOLEN PROPERTY, a felony violation of NRS 209.275, and UNLAWFUL TAKING OF COMPUTER DATA, EQUIPMENT, SUPPLIES, OR OTHER COMPUTER-RELATED PROPERTY, a felony violation of 205.4765, which were committed on or about September 30, 2011.

2. That on September 30, 2011, MIKOVITS instructed Max Flost to illegally enter her former office which has a controlled access system located at the Center for Molecular Medicine, to retrieve research notebooks and other items that were the property of the Whittemore Peterson Institute (hereinafter "WPI"), and are

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Exhibit 2



protected under patent. MIKOVITS was formerly employed as Director of Translational Research at WPI, and was terminated on September 29, 2011, for misconduct. MIKOVITS had previously signed an "Employee Proprietary Information and Invention Agreement" which legally explained to her that WPI is the sole owner of the subject research information.

3. Mr. Pfoest, who was a research assistant to MIKOVITS, and who is still employed today at WPI, participated in a police interview on November 15, 2011, wherein he relayed many of the relevant facts contained in this Affidavit. Pfoest revealed that he subsequently turned over the stolen items to MIKOVITS on October 17, 2011. During the intervening time period MIKOVITS left the area. She returned on October 16<sup>th</sup> and took possession of the subject items on October 17<sup>th</sup>. MIKOVITS retained possession of the stolen property and failed to return it to rightful owners. The items taken, include a black Apple laptop, multiple flash drives, approximately 12-24 research notebooks, and miscellaneous correspondence from WPI. The missing property includes trade secrets and information regarding inventions that are patented, or for which a patent application is pending. That MIKOVITS has been asked multiple times to return the missing items to WPI and she has refused to do so. That investigation has revealed that the value of the stolen property greatly exceeds \$650.00; that the value of the property stolen is likely to be in the hundreds of thousands of dollars, or more.

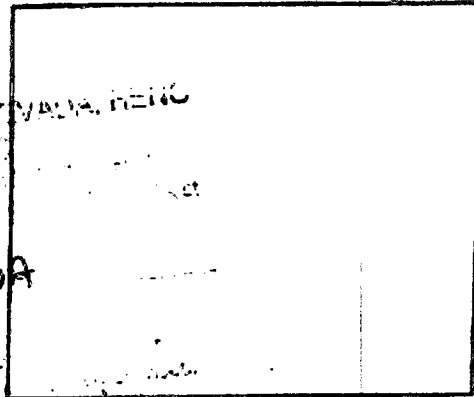
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Exhibit 2

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STATE OF CALIFORNIA - COUNTY OF VENTURA

SEARCH WARRANT AND AFFIDAVIT (AFFIDAVIT)



I, Todd Hourigan, swear under oath that the facts expressed by me in the attached and incorporated Statement of Probable Cause are true, and that based thereon I have probable cause to believe and do believe that the property described below may be lawfully seized pursuant to Penal Code Section(s) 1524 and/or 1524.2, as indicated below, and is now located at the location(s) set forth below. Wherefore, I request that this Search Warrant be issued.

NIGHT SEARCH REQUESTED: YES \_\_\_ NO X

SIGNATURE OF AFFIANT

*Handwritten signature of Todd Hourigan*

(SEARCH WARRANT)

THE PEOPLE OF THE STATE OF CALIFORNIA TO ANY SHERIFF, POLICEMAN OR PEACE OFFICER IN THE COUNTY OF VENTURA: Proof, by affidavit, having been made before me by Todd Hourigan that there is probable cause to believe that the property described herein may be found at the location(s) set forth herein and that it may be lawfully seized pursuant to Penal Code Section(s) 1524 and/or 1524.2 in that it

- was stolen or embezzled
- was used as the means of committing a felony
- is possessed by a person with the intent to use it as means of committing a public offense or is possessed by another to whom he or she may have delivered it for the purpose of concealing it or preventing its discovery.
- tends to show that a felony has been committed or that a particular person has committed a felony,
- tends to show that sexual exploitation of a child, in violation of P.C. Section 311.3, has occurred or is occurring;

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**YOU ARE THEREFORE COMMANDED TO SEARCH:**

The following location:

**1. 7081 Wolverine Street Ventura, County of Ventura, California.**

Further described as a two-story single-family residence. The residence is white in color with off white trim and has a brown composite roof. The residence is marked "7081" with 3" black numbers, which are affixed to the trim above the garage door. The residence is located three residences west of Buffalo Avenue, on the north side of Wolverine Street.

Areas to be searched to include all rooms, attics, basements, containers, safes, and other parts therein, the surrounding grounds and any garages, storage rooms, trash containers, and outbuildings of any kind located thereon. Any vehicles parked at or in the vicinity of 7081 Wolverine Street Ventura California 93004 provided said vehicles could be shown by paperwork, keys, or registration to be associated with the listed address. These vehicles are to be searched only during the date and time of the execution of the search warrant.

UNIVERSITY OF NEVADA, RENO

WOCDA

**2. 2031 Jamestown Way Oxnard, County of Ventura, California.**

11/29/11

A. Borrave

Further described as a two-story condo residence. The residence is blue in color with white trim and has a brown composite roof. The residence is marked "2031" with 4" black numbers, which are affixed to a brick column south of the front door. The residence is located three buildings south of Costa de Oro, on the west side of Jamestown Way.

Areas to be searched to include all rooms, attics, basements, containers, safes, and other parts therein, the surrounding grounds and any garages, storage rooms, trash containers, and outbuildings of any kind located thereon. Any vehicles, boats and/ or vessels parked at or in the vicinity of 2031 Jamestown Way Oxnard California 93030

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(S)



provided said vehicles, boats and/or vessels could be shown by paperwork, keys, or registration to be associated with Judy Mikovits or the listed address. The residence is located in the Oxnard Harbor and the ocean is located to the rear of the residence. The residence 2031 Jamestown Way has a Boat dock that is attached to the residence. These vehicles, boats and/or vessels are to be searched only during the date and time of the execution of the search warrant.

**FOR THE FOLLOWING PROPERTY:**

- 10CDP  
11/29/11  
A. BORNHARDT
1. Papers, documents and property that show possession, ~~dominion~~ and control over the premises listed above, including keys, cancelled mail, envelopes, rental agreements, and receipts, utility and telephone bills, photographs, filled prescription bottles, vehicle registrations, vehicle repair documents, gas receipts, insurance papers, address and telephone books, diaries, government notice documents, clothing, and any kind of objects which bear a persons name, phone number or address.
  2. Any computers, cellular phones, computer storage devices, including computer storage tapes, optical disks, zip drives, floppy disks, and hard disks. Any property bearing the name Whittemore Peterson Institute (WPI) that contains reference to research notes and research data. Authorized officers are directed to conduct an off premise forensic examination of any seized media for evidence that indicates the property is related to Whittemore Peterson Institute (WPI) research.
  3. Laboratory notebooks, documents, emails and paperwork containing research notes and research data including any copies of these documents in any form.
  4. A black 15" Apple Mac book laptop.

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Exhibit 3

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- 5. Any safety deposit keys or paperwork indicating the existence of a safety deposit box.
- 6. Any paperwork indicating the existence of a storage unit or rental storage box.
- 7. Any paperwork or evidence of electronic or other communication with Dr. Francis W. Ruscetti or the Laboratory for Experimental Immunology in Frederick, MA.

\_\_\_\_\_  
 Signature of Judge of the Superior Court,  
 Ventura Judicial District

*1/2 Counterfeit Security*  
*5/13/11*  
*11/29/11*  
*A. Bonnyo*

**AND TO SEIZE IT IF FOUND** and bring it forthwith before me or this court, at the courthouse of this court. This Search Warrant and incorporated Affidavit was sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ A.M./P.M. Wherefore, I find probable cause for the issuance of this Search Warrant and do issue it.

\_\_\_\_\_, NIGHT SEARCH APPROVED: YES \_\_\_ NO \_\_\_  
 Judge of the Superior Court,  
 Ventura Judicial District

UNIVERSITY OF NEVADA, RENO  
11/29/11  
A. Borrajo

**STATEMENT OF PROBABLE CAUSE**

**I. Experience**

I, Todd Hourigan, have been employed as a peace officer in the State of California by the City of Ventura since June of 2003. During my career as a police officer with the City of Ventura, I have worked as a patrol officer and detective investigating a wide variety of crimes. Many of these crimes were embezzlements, frauds, grand thefts, possession of stolen property, gang and drug related crimes.

During my time as a police officer for the City of Ventura, I have attended classes dealing with investigations. In January 2003, I attended the Ventura County Police and Sheriff's Academy where I completed the standard training in the areas of criminal investigation and crime scene management. In 2004, I attended a 24-hour Drug Abuse and Recognition school, sponsored by the Ventura County Sheriff's Department. In 2008, I attended 40 hours on Interview & Interrogation Techniques, given by Behavioral Analysis Training Institute. In November 2008, I attended a Street Gangs and Subcultures class, sponsored by the Los Angeles Sheriff's Department. During this class, I received approximately 40-hours of training re: the gang culture and gang trends. In July 2009, 2010 and 2011, I attended the California Gang Investigators Conference. During these conferences, I received approximately 96-hours of training re: gang trends in California and throughout the country.

I am currently assigned to the Ventura Police Department's Special Enforcement Team as a detective. While working as a patrol officer and detective for the City of Ventura, I have investigated hundreds of embezzlement, fraud, possession of stolen property and grand theft cases. I have assisted in probation searches and search warrants of subjects that have committed and been arrested for embezzlement, fraud and grand theft. I have been involved in embezzlement, fraud, possession of stolen property and grand theft related arrests. Through these cases, I have become familiar

with the elements of the crimes, i.e. embezzlements, fraud, possession of stolen property and grand theft related crimes.

UCDA

II. Investigation

On November 18, 2011, I spoke with Detective Jaime McGuire from the University of Nevada, Reno Police Department. I have read the reports of Detective McGuire and spoken to her personal about her report. The following is a summary of her report:

On Tuesday, November 15, 2011 at about 2:30 pm Det. Jaime McGuire responded to work at the University of Nevada, Reno Police Department (UNRPD) and met with Commander Todd Renwick. Det. Jaime McGuire was informed that on Wednesday, November 09, 2011, Annette Whittemore, President and CEO of the Whittemore Peterson Institute (WPI), which is located on the University of Nevada, Reno campus, had filed an incident report concerning stolen materials that contained patent related data and research results that belonged to the Institute.

The employee that had sole possession of the materials, Dr. Judy Mikovits, was terminated by the Institute on September 29, 2011 at about 3:30 pm.

At about 3:00 pm, Detective Warren Conley and Det. Jaime McGuire met with Harvey Whittemore and Max Pfof at the University of Nevada, Reno Police Department (UNRPD) regarding the theft of patent researched from an access-controlled area in the Whittemore Peterson Institute for Neuro-Immune Disease. Detective Warren Conley and Det. Jaime McGuire conducted a videotaped interview with Pfof and Mr. Whittemore in the UNRPD conference room.

Max Pfof stated that he had been the associate research assistant to Dr. Judy Mikovits from 2008 until she was terminated. According to Mr. Pfof, on September 29, 2011, he met with Dr. Mikovits at the Sierra Tap House in Reno, Nevada after her

termination. Mikovits was concerned that the Institute may remove information, tamper with, or destroy the research, which contains notes from each researcher.

During the conversation, Mikovits asked Pfof to enter the building and her office to retrieve the notebooks and secure them. Mikovits also asked Pfof to take some "samples" and ship them to the National Cancer Institute, the Laboratory for Experimental Immunology in Frederick, MA. Pfof proposed he would enter the building before normal business hours through the loading dock doors. WODA

On September 30, 2011 at approximately 5:15 am, Pfof backed up to the loading dock of the Center for Molecular Medicine building (CMM) which is on the University grounds in his black Jeep Cherokee. At 5:16 am, Pfof attempted three times to use his card key to access the doors, but was denied access. Pfof returned later at 8:00 am and again parked at the loading docks. Pfof was only able to gain entry during regular business hours since Annette Whittemore had suspended all entry to preserve the research. Pfof stated he went to Dr. Mikovits's office, #303A and retrieved numerous research notebooks from the drawer. He estimates that he took somewhere around 12 to 20 notebooks. He placed half of them in his backpack and carried out the remainder in his hands. Pfof took the notebooks home and hid the books in a "Birthday" bag in his garage until Dr. Mikovits returned from an Ireland meeting. 11/29/11

Mr. Pfof picked up Dr. Mikovits from the airport on Sunday, October 16, 2011 and she spent the night at his home. While Pfof was at work on Monday, October 17th, Dr. Mikovits packed the remainder of her belongings along with the research notebooks and left town in a rental car, headed to her residence & boat docked at 2031 Jamestown Way Oxnard, CA 93035. Mr. Pfof was unaware that Dr. Mikovits was going to leave but received texts that she had left and was heading home.

Dr. Mikovits has been providing the address of 2031 Jamestown Way Oxnard, California 93035 to WPI and the University of Nevada, Reno as her address while she

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was a researcher for WPI. As of 11:00 am today (November 18, 2011), Dr. Mikovits was observed by Ventura Police officer Lindsay in front of 2031 Jamestown Way in Oxnard. Pfof stated the two worked very closely but had a completely platonic relationship he describes as a "mentor/student" relationship. When asked if Pfof knew the whereabouts of the research notebooks, he stated that between his phone conversations and text messages with Dr. Mikovits, Pfof believed that the stolen property is in the physical possession of one of Dr. Mikovits's patients named Lilly Meehan who resides at 7081 Wolverine St. Ventura, CA 93003. <sup>1000A</sup>

Mr. Pfof received text messages from Dr. Mikovits that the "mob" was after her due her having possession of the research and that she could only trust <sup>11/29/11</sup> 2 people: Mr. Pfof & Lilly Meehan. If anyone came after Dr. Mikovits, they would not be able to find the research because she intended to give the research to Lilly Meehan for safekeeping. Dr. Mikovits intended to then take the research to Dr. Francis W. Ruscetti at the Laboratory for Experimental Immunology in Frederick, MA. Lilly Meehan's current DMV address is 7081 Wolverine Street, Ventura, California.

Det. Jaime McGuire also spoke with Harvey Whittermore who stated the following: Dr. Judy Anne Mikovits worked for the Whittermore Peterson Institute and signed an "Employee Proprietary Information and Invention Agreement". This document was signed every year since September 17, 2007. Dr. Judy Anne Mikovits had possession of the missing/stolen laboratory notebooks while she worked at WPI. She was the only employee with access to the notebooks. Upon her termination, it was determined that the notebooks were missing. Dr. Judy Anne Mikovits was issued Apple MacBook 15 inch black laptop computer that is the property of the WPI. That laptop is also missing from WPI.

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Exhibit 3

- Dr. Judy Anne Mikovits has been formally requested several times to immediately return WPI's property via certified letter and emails. These requests have gone unanswered.

- A Temporary Restraining Order was requested and granted in the Second Judicial Court of Washoe County Nevada on November 07, 2011 restraining Dr. Mikovits from destroying, deleting, or altering in any way the notebooks, flash drives, the laptop, emails, etc. See attached

Dr. Judy Mikovits currently has a \$100,000 arrest warrant for possession of stolen property and unlawful taking of computer data issued on November 16<sup>th</sup> 2011 by the Honorable Patricia Lynch in the Justice Court of Reno Township in the County of Washoe, in Nevada.

WCDA

The research contained in these notebooks has a potential net worth in the millions of dollars and has taken years to compile/develop. Some of the research is already patented and some of the research has patents pending. There are trade secrets and inventions in the notebooks which are being used to conduct ongoing experiments.

### III. Opinions and Conclusions

The Whittemore Peterson Institute for Neuro-Immune Disease has a temporary restraining order for Dr. Judy Mikovits restraining Dr. Mikovits not to destroy, delete or alter in anyway the stolen property, i.e. laboratory research notebooks, flash drives provided by WPI, confidential material, any emails, notes or other documents. My opinion is that if Dr. Mikovits and the stolen property are not located immediately, Dr. Mikovits will take every effort to conceal the notebooks to belonging to WPI or ensure

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Exhibit 3

their delivery to Dr. Francis W. Ruscelli or National Cancer Institute, the Laboratory for Experimental Immunology in Frederick, MA.

WCDA

**B. Conclusions**

Based on the facts and opinions stated above, I believe that there is probable cause to believe that the evidence tending to prove felony violations of California Penal Code section 496 PC (Possession of Stolen Property) will be found at the locations listed in the affidavit.

Based on the above information in this affidavit and my experience, education, training, and expertise, it is my opinion that the above listed property is potentially located at the above addresses.

Wherefore it is respectfully requested that a search warrant for the above-described premise be issued. I swear under penalty of perjury that the foregoing is true and correct to the best of my information and belief.



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2012 JUN 11 PM 3:36

IN THE JUSTICE COURT OF RENO TOWNSHIP  
IN AND FOR THE COUNTY OF WASHOE, STATE OF NEVADA

\*\*\*

THE STATE OF NEVADA,

Plaintiff,

Case No. RCR 2011-064661

v.

DEPT: R01

JUDY MIKOVITS,

Defendant.

*Counterfeit*

NOTICE OF DISMISSAL PURSUANT TO NRS 174.085(5)

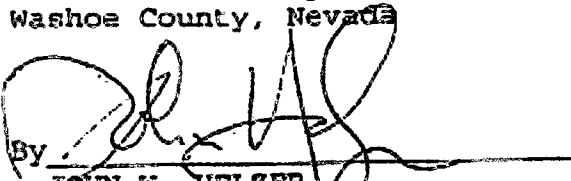
COMES NOW, the State of Nevada, by and through RICHARD A. GAMMICK, District Attorney of Washoe County, and JOHN W. HELZER, Assistant District Attorney, and hereby dismisses the charges filed against the above-named defendant in case number RCR 2011-064661, without prejudice, pursuant to NRS 174.085(5).

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 11<sup>th</sup> day of June, 2012.

RICHARD A. GAMMICK  
District Attorney  
Washoe County, Nevada

BY   
JOHN W. HELZER  
Assistant District Attorney

171-268  
Exhibit 4

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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the Washoe County District Attorney's Office and that, on this date, I deposited for mailing at Reno, Washoe County, Nevada, a true copy of the foregoing document, addressed to:

TAMMY M. RIGGS, ESQ.  
905 Plumas St.  
Reno, NV 89509

DATED this 11<sup>th</sup> day of June, 2012.

*Karen A. Hollister*  
*1/2 Counterfeit Security*  
*U.S.C. 5136*

**EXHIBIT "G"**

**WPI's Proof of Claim No. 6-1**

**NOTICE OF COUNTERFEIT SECURITY  
-18 U.S.C. 513(a)**

**1772-268**

B 10 (Official Form 10) (04/10)

<b>UNITED STATES BANKRUPTCY COURT</b> Central District of California		<b>PROOF OF CLAIM</b>
Name of Debtor: Judy Anita Mikovits		Case Number: 9:12-bk-13335-RR
Note: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): Whittemore Peterson Institute		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.
Name and address where notices should be sent: Carl Kinne West, Esq., General Counsel, Whittemore Peterson Institute 1884 N. Virginia Street, University of Nevada, Reno MS 0552 Reno, Nevada 89552-0552		Court Claim Number: <u>6-1</u> (if known)
Telephone number: (775) 682-8260		Filed on: <u>03/01/2013</u>
Name and address where payment should be sent (if different from above):		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.
Telephone number:		<input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
1. Amount of Claim as of Case Filed: \$ <u>NO LESS THAN 500,000.00</u>		5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.  Specify the priority of the claim.
If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.  If all or part of your claim is entitled to priority, complete item 5.		
<input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		<input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).
2. Basis for Claim: <u>litigation claim</u> (See instruction #2 on reverse side.)		<input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. §507 (a)(4).
3. Last four digits of any number by which creditor identifies debtor: <u>1234</u>		<input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. §507 (a)(5).
3a. Debtor may have scheduled account as: _____ (See instruction #3a on reverse side.)		<input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. §507 (a)(7).
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.		<input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. §507 (a)(8).
Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: _____		<input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. §507 (a)(____).  Amount entitled to priority: _____
Value of Property: \$ _____ Annual Interest Rate: _____  Amount of arrearage and other charges as of time case filed included in secured claim, _____  If any: \$ _____ Basis for perfection: _____  Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____		Amounts are subject to adjustment on 4/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.		<b>FOR COURT USE ONLY</b>
7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instructions 7 and definition of "redacted" on reverse side.)  DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.  If the documents are not available, please explain: <u>see Schedule A (attached)</u>		
Date: 03/01/2013	Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.  <u>Carl West Kinne, Carl West Kinne, Vice President, General Counsel</u>	

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 3 years, or both. 18 U.S.C. §§ 152 and 3571.

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**Schedule A**

In response to item 7, the Whittmore Peterson Institute will supplement this proof of claim with documents from Whittmore Peterson Institute for Neuro-Immune Disease v. Judy A. Mikovits, Case No. CV11-03232 in the Second Judicial District Court of Nevada, in and for the County of Washoe.

Additional documents supporting this claim include laboratory notebooks illegally removed from the Whittmore Peterson Institute and believed to be in the possession of the Debtor.

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B10 (Official Form 10) (04/13)

<b>UNITED STATES BANKRUPTCY COURT</b>		<b>Central District of California</b>	<b>PROOF OF CLAIM</b>
Name of Debtor: <b>Judy Anne Mikovits</b>		Case Number: <b>9:12-bk-13335-RR</b>	<p style="text-align: center;"><b>COURT USE ONLY</b></p> <input checked="" type="checkbox"/> Check this box if this claim amends a previously filed claim. Court Claim Number: <u>6-1</u> (If known) Filed on: <u>03/01/2013</u>
NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.			
Name of Creditor (the person or other entity to whom the debtor owes money or property): <b>Whittemore Peterson Institute for Neuro-Immune Disease, a Nevada non-profit corporation</b>			
Name and address where notices should be sent: <b>J. Scott Bovitz, Esq., Bovitz &amp; Spitzer 880 W. First Street, Suite 502 Los Angeles, CA 90012-2430</b>		Telephone number: (213) 346-8300 email: <a href="mailto:bovitz@bovitz-spitzer.com">bovitz@bovitz-spitzer.com</a>	<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.
Name and address where payment should be sent (if different from above): <b>Carl West Kinne, Esq., General Counsel, Whittemore Peterson Institute 1664 N. Virginia Street, University of Nevada, Reno MS 0552 Reno, Nevada 89557-0552</b>			
Telephone number: (775) 682-8260 email: <a href="mailto:ckinne@wpinstitute.org">ckinne@wpinstitute.org</a>			
1. Amount of Claim as of Date Case Filed: \$ <u>5,565,745.52</u>			
If all or part of the claim is secured, complete item 4.			
If all or part of the claim is entitled to priority, complete item 5.			
<input checked="" type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.			
2. Basis for Claim: <u>litigation claim</u> (See instruction #2)			
3. Last four digits of any number by which creditor identifies debtor: n / a	3a. Debtor may have scheduled accounts as:  (See instruction #3a)	3b. Uniform Claim Identifier (optional):  (See instruction #3b)	
4. Secured Claim (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.			
Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe:		Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ _____	
Value of Property: \$ _____		Amount for perfection: _____	
Annual Interest Rate _____ % <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable (when case was filed)		Amount of Secured claim: \$ _____	
		Amount Unsecured: \$ _____	
5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.			
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).	<input type="checkbox"/> Wages, salaries, or commissions (up to \$12,475*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier - 11 U.S.C. § 507 (a)(4).	<input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507 (a)(5).	Amount entitled to priority: \$ _____
<input type="checkbox"/> Up to \$2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507 (a)(7).	<input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507 (a)(8).	<input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507 (a)( ).	
*Amounts are subject to adjustment on 4/01/16 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.			
6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)			

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**7. Documents:** Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, security agreements, or, in the case of a claim based on an open-end or revolving consumer credit agreement, a statement providing the information required by FRBP 3001(c)(3)(A). If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. If the claim is secured by the debtor's principal residence, the Mortgage Proof of Claim Attachment is being filed with this claim. (See instruction #7, and the definition of "redacted".)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

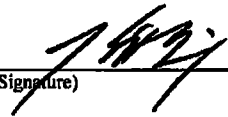
**8. Signature:** (See instruction #8)

Check the appropriate box.

- I am the creditor.     I am the creditor's authorized agent.     I am the trustee, or the debtor, or their authorized agent.     I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.) (See Bankruptcy Rule 3004.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: J. Scott Bovitz  
 Title: Attorney  
 Company: Bovitz & Spitzer  
 Address and telephone number (if different from notice address above): \_\_\_\_\_

(Signature)  (Date) 7/25/2013

Telephone number: \_\_\_\_\_ email: \_\_\_\_\_

*Penalty for presenting fraudulent claim:* Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

**INSTRUCTIONS FOR PROOF OF CLAIM FORM**

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply.

Items to be completed in Proof of Claim form

**Court, Name of Debtor, and Case Number:**  
 Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.

**Creditor's Name and Address:**  
 Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

**1. Amount of Claim as of Date Case Filed:**  
 State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

**2. Basis for Claim:**  
 State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

**3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:**  
 State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

**3a. Debtor May Have Scheduled Account As:**  
 Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

**3b. Uniform Claim Identifier:**  
 If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

**4. Secured Claim:**  
 Check whether the claim is fully or partially secured. Skip this section if the

claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

**5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507 (a):**  
 If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

**6. Credits:**  
 An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

**7. Documents:**  
 Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest and documents required by FRBP 3001(c) for claims based on an open-end or revolving consumer credit agreement or secured by a security interest in the debtor's principal residence. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

**8. Date and Signature:**  
 The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

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DEFINITIONS	INFORMATION
<p><b>Debtor</b> A debtor is the person, corporation, or other entity that has filed a bankruptcy case.</p>	<p><b>Acknowledgment of Filing of Claim</b> To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the court's PACER system (<a href="http://www.pacer.psc.uscourts.gov">www.pacer.psc.uscourts.gov</a>) for a small fee to view your filed proof of claim.</p>
<p><b>Creditor</b> A creditor is a person, corporation, or other entity to whom debtor owes a debt that was incurred before the date of the bankruptcy filing. See 11 U.S.C. §101 (10).</p>	
<p><b>Claim</b> A claim is the creditor's right to receive payment for a debt owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.</p>	<p><b>Offers to Purchase a Claim</b> Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 <i>et seq.</i>), and any applicable orders of the bankruptcy court.</p>
<p><b>Proof of Claim</b> A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.</p>	
<p><b>Secured Claim Under 11 U.S.C. § 506 (a)</b> A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien.</p>	<p><b>Redacted</b> A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor must show only the last four digits of any social-security, individual's tax-identification, or financial-account number, only the initials of a minor's name, and only the year of any person's date of birth. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information.</p>
<p><b>Unsecured Claim</b> An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.</p>	
<p><b>Claim Entitled to Priority Under 11 U.S.C. § 507 (a)</b> Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.</p>	<p><b>Evidence of Perfection</b> Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.</p>
<p><b>Redacted</b> A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor must show only the last four digits of any social-security, individual's tax-identification, or financial-account number, only the initials of a minor's name, and only the year of any person's date of birth. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information.</p>	

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Default judgment was entered against debtor Judy A. Mikovits (herein referred to as "Mikovits") in the matter of *Whittemore Peterson Institute for Neuro-Immune Disease v. Judy A. Mikovits* (Case No. CV11-03232) (See Exhibit 4 of Exhibit A). As a result, Whittemore Peterson Institute for Neuro-Immune Disease (herein referred to as "WPI") is entitled to damages corresponding to the causes of action asserted in its original complaint. Plaintiff's Prove-Up Pre-Hearing Statement (Exhibit A, herein referred to as the "Statement") provides an overview of WPI's claims against Mikovits, all of which are deemed admitted as a result of the default judgment. The causes of action entitling WPI to monetary damages are detailed more fully in the Statement (pp. 11-14 of Exhibit A) and are summarized as follows:

- Breach of the Proprietary Information and Invention Agreement (Exhibit 1 of Exhibit A, herein referred to as the "PIIA") Mikovits executed as an employee of WPI;
- Misappropriation of WPI trade secrets;
- Conversion of misappropriated WPI property;
- Breach of implied covenant of good faith and fair dealing implied in the PIIA and all agreements between Mikovits and WPI.

WPI has sustained significant financial losses as a result of Mikovits' actions following her termination. WPI is also entitled to exemplary and punitive damages in connection with these causes of action.

As a non-profit, WPI relies largely on charitable donations for funding. As Exhibit B shows, charitable donations to WPI have significantly decreased. WPI believes that this decrease in donations is more likely than not caused by Mikovits' actions. For instance, donors advised that they didn't want their donations to support a costly legal battle, which was made necessary by Mikovits' actions following her termination. Additionally, Mikovits

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told lies about the circumstances surrounding her termination and repeatedly made disparaging remarks about WPI, which negatively impacted the reputation and goodwill of WPI, which are crucial to WPI's ability to raise funds. A substantial loss in an area of charitable donations is online giving campaigns ("cause marketing"). Cause marketing is a popular option for corporations looking to give back to the community. These contests require a large number of passionate supporters, which WPI was able to build over the years before Mikovits' actions following her termination. It is highly unlikely that WPI will be able to immediately garner the same support as in the past for future contests due to Mikovits' actions.

Other critical sources of funding for WPI are research grants and contracts with third parties. It is more likely than not that Mikovits' actions have resulted in lost opportunities in valuable research contracts and grants. Indeed, WPI had to take exceptional steps to maintain its federal research grants due to Mikovits' actions following her termination. The damages sustained by WPI's research program are significant and somewhat difficult to quantify. They are best demonstrated by adding the cost of the research program (Exhibit C) and Mikovits' compensation (Exhibit D) during the time that Mikovits was employed at WPI. In order to replicate useful research studies or avoid research paths that were not productive, as detailed in valuable research and business materials (laboratory notebooks, flash drives, files on computers, emails, data, etc.) misappropriated by Mikovits, WPI must pay other research personnel, collect and analyze new research samples, purchase additional supplies, etc. The business contacts in emails misappropriated by Mikovits are highly valuable and must be re-established with further cost to WPI.

Finally, as Exhibit E shows, WPI has incurred substantial attorney's fees and costs to pursue the civil action against Mikovits.

Although WPI almost certainly would have been awarded a more substantial judgment with exemplary and punitive damages, WPI is asserting a claim of \$5,565,745.52.

#### **CALCULATION OF DAMAGES SUSTAINED BY WPI:**

Decrease in donations (Exhibit B)	\$370,477.00
Research program costs (Exhibit C)	\$478,564.55
Mikovits compensation (Exhibit D)	\$2,325,135.00
Attorney's fees and costs (Exhibit E)	\$693,485.87
Exemplary and punitive damages	\$1,698,083.10
<b>Total claim:</b>	<b>\$5,565,745.52</b>

#### **EXHIBITS**

Exhibit A: Plaintiff's Prove-Up Pre-Hearing Statement

Exhibit B: Decrease in Donations

Exhibit C: Research Related Costs

Exhibit D: Payroll Summary for Judy Mikovits

Exhibit E: Mikovits Attorney's Fees and Costs

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# EXHIBIT A

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1 **CODE:**  
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9 *Attorneys for Plaintiff*

10 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

11 IN AND FOR THE COUNTY OF WASHOE

12 WHITTEMORE PETERSON INSTITUTE  
13 FOR NEURO-IMMUNE DISEASE, a  
14 Nevada non-profit corporation,

Case No. CV11-03232

15 Plaintiff,

Dept. No. 1

16 vs.

17 JUDY A. MIKOVITS, an individual,

18 Defendant.

19 **PLAINTIFF'S PROVE-UP PRE-HEARING STATEMENT**

20 COMES NOW Plaintiff WHITTEMORE PETERSON INSTITUTE FOR NEURO-  
21 IMMUNE DISEASE (hereafter "WPI") and hereby submits the pre-hearing statement as ordered  
22 by the Court.

23 **POINTS AND AUTHORITIES**

24 **A. BACKGROUND:**

25 WPI is a state-of-the-art nonprofit research institute located on the campus of the  
University of Nevada at Reno with a research team, clinical laboratory, and patient medical  
clinic devoted to serving people with neuro-immune disease (NID)--a group of complex,  
multi-symptom diseases, including myalgic encephalomyelitis (ME), chronic fatigue  
syndrome (CFS), fibromyalgia, post Lyme disease, and Gulf War illness (GWI). (Annette  
Whittemore Affidavit attached hereto as **Exhibit 1**, "A Whittemore Aff," ¶ 2). A leader in  
research related to NID, the Institute has brought CFS and ME to the forefront of the

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1 scientific community and the world, and is changing the way the scientific community  
2 researches NID, by attempting to determine such critical information as genetic  
3 susceptibility, infectious pathogens, immune deficits, inflammatory markers, and the  
4 potential role of novel retroviruses in NID. (*Id.*) WPI was founded by Annette  
5 Whittemore, the mother of a daughter who suffers from Myalgic Encephalitis/Chronic  
6 Fatigue Syndrome and similarly presenting illnesses. (*Id.*)

7 WPI employed Defendant Mikovits as its Research Director from the inception of  
8 WPI until Mikovits's termination on September 29, 2011. (*Id.* ¶ 3). In this role, Mikovits's  
9 job duties included leading the research team studying causes and potential cures for NID,  
10 and supervising other personnel in the lab, including ensuring that departing employees  
11 turned over proprietary materials to WPI when their employment terminated. (*Id.*) WPI  
12 primarily paid Mikovits for her research. WPI cumulatively paid Mikovits approximately  
13 \$700,000 in salary and bonus for her work. (*Id.*) In support of WPI's research, WPI also  
14 incurred substantial additional expense paying for Mikovits to travel to numerous scientific  
15 conferences. (*Id.*)

16 In connection with Mikovits's employment, WPI and Mikovits executed a "Whittemore  
17 Peterson Institute For Neuro-Immune Disease Employee Proprietary Information And  
18 Invention Agreement" ("PIIA"). (*Id.* ¶ 4, Exhibit 1.) In the PIIA, Mikovits agreed that WPI  
19 would be the sole owner of, among other things, all Proprietary Information that Mikovits  
20 developed (alone or with others) during the period of her employment with WPI, whether or  
21 not developed during regular business hours. (*See, e.g., Id.* [PIIA sections 4.1, 1.1, 5.1]).  
22 Proprietary Information includes all inventions, developments, concepts, research, plans,  
23 original works of authorship, applications, methods, biological materials, information about  
24 research and development, documents, papers, drawings, models, sketches, written or oral  
25 instructions, electronic documents, discoveries, methods, cell lines, drawings, and works in  
progress. (*See, e.g., Id.* [PIIA section 4.8, 1.1, 1.2, and 4.1]). (Throughout this Memorandum,

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1 “Proprietary Information” has the definition set forth in the attached PIIA.) Similarly,  
2 Mikovits agreed to assign and transfer to WPI all rights and title to any Inventions made during  
3 her work for the Institute. (*See, e.g., Id.*, [PIIA sections 4.2 and 1.2]). Although the PIIA  
4 invited Mikovits to identify any existing inventions or intellectual property in which she  
5 claimed an ownership interest when she signed the PIIA, Mikovits did not identify any. (*See,*  
6 *e.g., Id.*, [PIIA section 4.5 and Schedule A]).<sup>1</sup> As part of her employment, Mikovits agreed to  
7 maintain laboratory notebooks and related records and acknowledged that such materials and  
8 any inventions contained therein belonged solely to WPI — Mikovits agreed to prepare and  
9 make available

adequate, accurate, and current records on the Development of all  
Inventions and to disclose promptly to an appropriate officer or  
senior manager of WPI all Inventions and relevant records  
Developed under this Agreement, which I agree shall remain the  
sole and exclusive property of the Company and shall be part of  
the Proprietary Information. Without limiting my other obligations  
hereunder, I further agree to promptly disclose to an appropriate  
officer or senior manager of WPI, all information and records  
relating to any inventions Developed (a) during my period of  
employment....

14 (*Id.* [PIIA section 4.8]).

15 Mikovits promised that upon termination of her employment, she would return all WPI’s  
16 Proprietary Information such as laboratory notebooks and any intellectual property that she  
17 developed during the period of her employment with WPI, including materials residing on her  
18 personal laptop or in any personal email account. (*Id.* [PIIA Section 8.1])

On termination of my employment with the Company, or at any  
time the Company requests, I will deliver immediately to the  
Company, and will not keep in my possession, recreate, or deliver  
to anyone else, any and all property belonging to Company,  
including, but not limited to, any and all Proprietary

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<sup>1</sup> Mikovits also agreed to hold all of WPI’s Proprietary Information in trust for the sole  
benefit of WPI and agreed not to use, disclose, or release any of WPI’s Proprietary  
Information, even after termination of her employment, except as necessary to carry out her  
duties as an employee of WPI or as specifically authorized by WPI. (*See, e.g., Annette*  
*Whittemore Affidavit Ex. A* [PIIA sections 1.1, 1.2, and 4.1]). Similarly, Mikovits agreed  
to not use WPI’s Proprietary Information for personal or financial gain or the gain of any  
third party. (*See, e.g., Id.* [PIIA section 7.2]). In addition, Mikovits agreed she could only  
handle or dispose of WPI’s Proprietary Information by methods approved by WPI. (*See,*  
*e.g., Id.* [PIIA section 6.2]).

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1 Information... in any form, stage of development or media  
2 (including all copies), ...as well as all devices and equipment  
3 belonging to the Company (including computers, software, tools,  
4 handheld electronic devices, telephone equipment, and other  
5 electronic devices), Company credit cards, records, data, database,  
6 notes, notebooks, reports, files, proposals, lists, correspondence,  
7 specifications, drawings, blueprints, sketches, materials,  
8 photographs, charts, any other documents and property, and  
9 reproductions of any and all of the foregoing items that were  
10 Developed by me (alone or jointly with others) or for me pursuant  
11 to my employment with the Company, obtained by me in  
12 connection with my employment with the Company, or otherwise  
13 belonging to the Company, its successors, or assigns, including  
14 without limitation those records maintained pursuant to Section 4.8  
15 hereof.

16 Mikovits also agreed to participate in an exit interview. (*Id.*)

17 Consistent with this contractual requirement, WPI has an administrative policy of  
18 obtaining its Proprietary Materials from employees upon their employment termination.  
19 (*Id.* ¶ 5). Employees must - at the time of their departure from WPI - turn over their  
20 laboratory notebooks and any electronic Proprietary Materials developed during the period  
21 of their employment. (*Id.*) Mikovits knew this administrative policy well, as she  
22 supervised this process in connection with the departures of researchers who worked for her  
23 at the Institute. (*Id.*) However, Mikovits violated this policy upon her own termination, and  
24 as, detailed below, took laboratory notebooks belonging to WPI, as well as electronic data,  
25 materials and other intellectual property of WPI.

**WPI's Intellectual Property Exists in the Laboratory Notebooks, on the  
Laptop, on the Flash Drives, and in the Gmail Account.**

19 Mikovits kept detailed laboratory notebooks containing her research notes,  
20 important data, findings, results of experiments, and all inventions conceived in the course  
21 of her duties at WPI. (*See Ex. 2 Lombardi Aff. ¶ 5, 7; AWhittemore Aff. ¶ 6; HWhittemore*  
22 *Aff. ¶ 2.*) The laboratory notebooks are the primary record of the ongoing research  
23 Mikovits conducted on behalf of WPI. (*Id.*) These notebooks contain information on  
24 WPI's ongoing and completed studies, as well as information on completed studies  
25 performed at WPI. (*Id.*) Also included was information on the processing of patient

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1 samples, research procedures, protocols and results, pictures of slides, Mikovits's  
2 contemporaneous notes on each significant event that occurred, and detailed  
3 contemporaneous descriptions of what Mikovits did as well as the results of the research.  
4 (*Id.*)

5 Other researchers (such as Max Pfof, Cassandra "Cassie" Puccinelli, and Kathryn  
6 "Katy" Hagen) similarly kept laboratory notebooks containing their research notes, findings  
7 and results of their experiments and studies at WPI. (*See* Lombardi Aff. ¶ 6, AWhittemore  
8 Aff. ¶ 6; HWhittemore Aff. ¶ 3.)

9 The laboratory notebooks of Mikovits, Pfof, Puccinelli, and Hagen (collectively,  
10 the "Notebooks")<sup>2</sup> contain valuable information and intellectual property of the Institute,  
11 including trade secrets and inventions, which WPI needs to effectively continue its  
12 important work. (*See, e.g.*, Lombardi Aff. ¶¶ 5-7, AWhittemore Aff. ¶ 6; HWhittemore Aff.  
13 ¶¶ 2-3.) WPI takes reasonable steps to maintain the secrecy of the Notebooks, such as  
14 keeping them in a secure, locked location where they could only be accessed by authorized  
15 WPI employees with a need to know the information. (*See id.*) WPI employees are trained  
16 to keep the Notebooks secret, and are contractually required to maintain the secrecy of the  
17 information contained in the Notebooks. (*See id.*) For example, section 6.1 and 1.4 of the  
18 PIIA, which every researcher must sign as a condition to working at the Institute, describe  
19 the researcher's duty to safeguard the information in the Notebooks. (*See id.*; *see also*  
20 AWhittemore Aff. Ex. 1 [PIIA].)

21 The Notebooks and all the intellectual property contained in the Notebooks belong  
22 to WPI and not Mikovits or the other researchers. (*See* AWhittemore Aff. Ex. A [PIIA at  
23 1.1, 1.2, 4.1, 4.2, 4.5, 4.8, 5.1, 7.2, 8.1].) Indeed, as described above, Mikovits expressly  
24 agreed that WPI owned her laboratory notebooks, as well as the laboratory notebooks of the  
25 other researchers at WPI working for Mikovits. *See id.*

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<sup>2</sup> The "Notebooks" excludes 3 laboratory notebooks of Pfof which were stored in a  
different secure location in the WPI laboratory and not taken by Mikovits. The "Notebooks"  
includes any laboratory notebooks of any other WPI researcher(s) if such notebooks are  
now in Mikovits's possession, custody, or control.

1           The Notebooks are not the only place Mikovits stored WPI's Proprietary  
2 Information. Mikovits routinely used a laptop as the primary computer for performing her  
3 work on behalf of WPI. (Lombardi Aff. ¶ 8; AWhittemore Aff. ¶ 7). This laptop as well as  
4 flash drives taken by Mikovits have multiple files containing WPI's Proprietary  
5 Information, including research results and data, demographic information, study  
6 descriptions, research reports, drafts of papers, grant applications, and presentations that  
7 Mikovits created on behalf of WPI. (*See id.*; *see also* Lombardi Aff. ¶¶ 9, 11; AWhittemore  
8 Aff. ¶¶ 8, 10.) Mikovits routinely performed WPI-related work on this laptop both on  
9 business trips or while on the premises of WPI and stored her work files on the laptop or  
10 separate flash drives. (*Id.*) Many of the files containing WPI's Proprietary Information do  
11 not exist on WPI's computers or networks, and instead reside only on Mikovits's computer  
12 and the flash drives. (*Id.*; *see also* AWhittemore Aff. ¶ 15; Lombardi Aff. ¶ 14.) When  
13 Mikovits took the laptop and the flash drives upon her termination, WPI lost access to these  
14 critical files and documents. (*Id.*)

15           In addition, Mikovits stored WPI's Proprietary Information in a personal email account  
16 jamikovits@gmail.com (the "Gmail Account"). (*See* AWhittemore Aff. ¶ 9; Lombardi Aff. ¶  
17 10). Mikovits routinely used the Gmail Account in connection with her WPI work. (*Id.*)  
18 Among other things, she used the Gmail Account to communicate with research study subjects,  
19 research collaborators, research boards, patients, and donors. (*Id.*)

20           **B.       When Mikovits Was Terminated, She Failed to Turn Over the Notebooks  
21 and WPI's Proprietary Information on the Laptop, on the Flash Drives and  
22 in the Gmail Account.**

23           On September 29, 2011, WPI terminated Mikovits's employment. (AWhittemore  
24 Aff. ¶ 10). Since Mikovits's termination, WPI learned that Mikovits has taken (or was  
25 responsible for the removal of) the Notebooks from WPI. (*See Id.* ¶¶ 5, 10; Lombardi Aff. ¶  
11; HWhittemore Aff. ¶¶ 4-7; Hillerby Aff. ¶ 3). Prior to Mikovits's termination, at least  
one notebook (each) of Pfof, Puccinelli, and Hagen, were located in a locked drawer in  
Mikovits's desk in her office at WPI. (HWhittemore Aff. ¶ 4). Similarly, prior to

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1 Mikovits's termination, Mikovits's laboratory notebooks were also located in the same  
2 locked drawer. (*Id.*) Mikovits had the only key to the locked drawer, and no one at the  
3 Institute could gain access. (*Id.* ¶ 5.) As a result, and after Mikovits's departure, the  
4 Institute contacted the desk manufacturer which deployed a representative to the Institute  
5 who used a master key to unlock the drawer. (*Id.* ¶ 6.). Only then, did WPI discover for the  
6 first time that the Notebooks had been taken. (Hillerby Aff. ¶ 3).

7 Mikovits failed to return other proprietary information belonging to the Institute.  
8 Upon her termination and in violation of the PIIA as well as the administrative policy for  
9 departing employees, Mikovits failed to turn over WPI's Proprietary Information stored on  
10 her laptop computer, in the flash drives, and in the Gmail Account. (*See* AWhittemore Aff.  
11 ¶¶ 5, 10 and Exhibit A [PIIA]; Lombardi Aff. ¶ 11; HWhittemore Aff. ¶¶ 4-7; Hillerby Aff.  
12 ¶ 3). The Notebooks, as well as any of WPI's other Proprietary Information that Mikovits  
13 failed to deliver to WPI upon her termination is the "Misappropriated Property".

14 On or about October 3, 2011, WPI sent Mikovits a letter requesting that Mikovits  
15 immediately return all WPI's property and equipment (including computer files and other  
16 electronic media). (*Id.*)

17 On November 2, 2011, counsel for WPI sent Mikovits a second letter requesting the  
18 return of the Misappropriated Property, and explaining that if it was not turned over  
19 immediately, WPI would be left with no choice but to institute a formal legal proceeding to  
20 ensure its safe return. (*Id.*)

21 To date, several notebooks remain outstanding, as does the emails, computer and other  
22 proprietary information. On November 18, 2011, Defendant opposed Plaintiff's motion seeking a  
23 preliminary injunction asserting, *inter alia*, that Mikovits did not possess, control, or have the  
24 Misappropriated Property. It is undisputed that the Defendant did not comply with the terms of  
25 the TRO requiring the return of the Misappropriated Property, although some of the laboratory  
notebooks were returned to police authorities investigating a criminal matter involving the  
Defendant after her arrest. In addition, a computer was seized pursuant to the execution of a

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1 search warrant against the Defendant and a lab computer was returned with its contents "wiped  
2 clean" resulting in an attempted forensic recovery by the Plaintiff.

3 Plaintiff replied to Defendant's opposition on November 21, 2011 and established  
4 that Mikovits did indeed have the Misappropriated Property and the circumstances under  
5 which she gained control and possession of said material. Pursuant to this Court's order an  
6 evidentiary hearing was scheduled for 1:30 pm on November 22, 2011, and thus the matter  
7 came before this Court on Plaintiff's Motion for Preliminary Injunction. On or about  
8 November 21, 2011, night before the preliminary injunction hearing in this case, the  
9 husband of Judy Mikovits, had turned over certain notebooks belonging to the Ventura  
10 County authorities, thereby proving WPI's case that these materials were under Mikovits's  
11 custody and control.

12 Rather than proceed with a full evidentiary hearing in open court, counsel for the parties  
13 agreed to initially proceed with a chamber conference with the Court. This conference was  
14 detailed and included constructive negotiations on a variety of issues raised by the parties and the  
15 Court. As a result of these negotiations, the matter was agreed to be resolved by stipulation of  
16 the parties and was to set forth the terms under which a preliminary injunction could be issued  
17 without resort to such evidentiary hearing. These lengthy discussions did indeed lead to the  
18 parties' agreement and a subsequent written stipulation and order granting Plaintiff's Motion for  
19 Preliminary Injunction in the instant case.

20 The parties after due consideration **agreed**, *inter alia*, that the WPI was likely to succeed  
21 on the merits, was likely to suffer irreparable harm, that there were no copies of the laboratory  
22 notebooks that Mikovits took, that the balance of equities was in WPI's favor, and that the public  
23 interest supported the issuance of a preliminary injunction.

24 This Court **ordered** the Defendant not to destroy the Misappropriated Property, not to  
25 disseminate or use the Misappropriated Property, to immediately deliver the Misappropriated

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1 Property to counsel for WPI, and deliver a certification to this Court by December 2, 2011 that  
2 such delivery was completed. This was not the first time she failed to do that which she said was  
3 going to do. In the Mikovits' Declaration filed on November 18, 2011 in Paragraph 30 she  
4 affirmatively states: **That there is nothing in my gmail (sic) account that could be considered**  
5 **proprietary. Nonetheless, in the interest in good faith, I will provide my work-related e-**  
6 **mails to counsel for Plaintiff prior to the November 22, 2011 hearing. This she did not do.**

7           The Honorable Brent Adams ordered a default judgment entered in favor of Plaintiff  
8 and against Defendant pursuant to the terms of NRCP 37(b)2(c) for willful and wanton  
9 disregard of the orders of this Court in a manner which flaunts and otherwise mocks and  
10 ignores the essential discovery of the very information which is the subject of this lawsuit.

11 **Order, January 24, 2012.**

12           The Court also ordered that a permanent injunction is hereby issued on the same terms as  
13 the Court has previously ordered for the preliminary injunction with a new return date of January  
14 17, 2012 and that Defendant shall comply forthwith with such prior orders of this Court. **Order,**  
15 **January 24, 2012.**

16           The Court further ordered that an evidentiary hearing on the damages suffered by the  
17 Plaintiff as a result of Defendant's conduct be held, including a calculation of expenses and  
18 attorney's fees associated with these proceedings. **Order, January 24, 2012.**

19           After the entry of the January 24, 2012, order, Defendant has filed several motions,  
20 including a motion for reconsideration of all orders entered by Judge Adams. On July 24, 2012,  
21 this Court entered an order denying Defendant's motion for leave to file motion for  
22 reconsideration of orders, striking Defendant's answer, entering a permanent injunction and  
23 denying stay. The prove-up hearing is now scheduled for September 6-7, 2012.

24  
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1       **B. DAMAGES:**

2               Where a default is entered as a discovery sanction, the pleadings of Plaintiff are deemed  
3 admitted and Plaintiff has the burden to show by a preponderance of the evidence that the  
4 amount of damages corresponds to asserted causes of action. Foster v. Dingwall, 126  
5 Nev.Adv.Op. 6, 227 P.3d 1042 (Nev. 2010).

6               In the present case, the well-pleaded factual assertions, as well as the following claims  
7 are deemed admitted:

- 8                       1) Mikovits agreed to maintain laboratory notebooks and related records and  
9                               acknowledged that such materials...belonged solely to WPI (Para. 9)
- 10                      2) Mikovits agreed to hold all of WPI's proprietary information in trust for the  
11                               sole benefit of WPI and agreed not to use, disclose, or release any of WPI's  
12                               Proprietary Information, even after termination. (Para. 10).
- 13                      3) Mikovits agreed that upon termination she would return all information to  
14                               WPI, including any information of any laptop, computer, flash drive or email  
15                               account. (Para. 11)
- 16                      4) The laboratory notebooks contain valuable information and intellectual property  
17                               of the WPI, including trade secrets and inventions, which WPI needs to  
18                               effectively continue its ongoing experiments and important research. The  
19                               information in the Notebooks derives independent economic value from not  
20                               being generally known to or ascertainable by the public or third parties. (Para.  
21                               15).
- 22                      5) Mikovits routinely stored WPI proprietary information on her laptop and  
23                               personal email account. (Para. 17-18).
- 24                      6) There are no copies of the Notebooks, and they are not electronically backed  
25                               up. (Para. 27). The Notebooks are WPI's primary record of key ongoing and

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completed research and the only comprehensive repository for the information. In some instances, the Notebooks are the only record of researcher notations, research results, and research timing. (Para. 27).

7) First Cause of Action –Breach of Contract—Mikovits breached to Proprietary Information and Invention agreement, “PIIA” attached in full to Plaintiff WPI’s complaint by wrongfully taking property from WPI and refusing to deliver the misappropriated property to WPI. (Para. 28-32)

The measure of damages for a breach of contract is that amount which will reasonably compensate an injured party for all the detriment, harm or loss naturally flowing from the breach and which was reasonably foreseeable as the result of the breach when the contract was made, together with any additional damages which resulted from special circumstances known or which should have been known to the breaching party when the contract was made. Conner v. Southern Nevada Paving, Inc., 103 Nev. 353, 741 P.2d 800 (1987); Colorado Environments, Inc. v. Valley Grading Corp., 105 Nev. 464, 779 P.2d 80 (1989); Nev.JI 13CN.46.

The amount of damages need not be proved with mathematical exactitude, but the party seeking damages must provide an evidentiary basis for determining a reasonably accurate amount of damages. There is no requirement that absolute certainty be achieved; once evidence establishes that the party seeking damages did, in fact, suffer injury, some uncertainty as to the amount of damages is permissible. Gramanz v. T-Shirts and Souvenires, Inc., 111 Nev. 478, 484-85, 894 P.2d 342, 346-47

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1 (1955); Mort Wallin of Lake Tahoe, Inc. v. Commercial Cabinet Co. Inc.,  
2 105 Nev. 855, 857, 784 P.2d 954, 955 (1989).

3 8) Specific Performance—(Para. 33-37). Plaintiff WPI requests a Court order  
4 releasing any property in the possession of the Ventura County Authorities or  
5 University of Nevada Reno PD or RPD to the custody of WPI.

6 9) The materials taken by Defendant Mikovits constitute trade secrets and their  
7 removal has damaged and continues to damage the WPI. (Para. 38-44).

8 10) The Misappropriation of property by Mikovits was willful, wanton or  
9 reckless in conscious disregard of the rights of WPI.

10 11) WPI is entitled to exemplary and punitive damages pursuant to NRS  
11 600A.050 and NRS 42.001.

12 Conscious disregard means knowledge of the probable harmful  
13 consequences of a wrongful act and a willful and deliberate failure to  
14 avoid these consequences. NRS 42.001.

15 The purpose of punitive damages is to punish and deter similar  
16 conduct in the future, not to make the Plaintiff whole. Evans v. Dean  
17 Witter Reynolds, Inc., 116 Nev. 598, 5 P.3d 1043 (2000).

18 Damages for misappropriation of trade secrets include all losses  
19 caused by misappropriation and unjust enrichment caused by  
20 misappropriation. NRS 600A.050(1). Where there is willful, wanton or  
21 reckless misappropriation or disregard of the rights of the owner of the  
22 trade secrets, the Court may award exemplary damages in an amount not  
23 exceeding twice the award made under subsection 1. NRS 600A.050(2).

24 12) Mikovits wrongly converted the misappropriated property of WPI to her use,  
25 control and benefit, thereby unlawfully depriving and removing the

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1 misappropriated property from the ownership, possession, profit, use and  
2 control of the WPI.

3 The damages for conversion are the value of the property plus interest at  
4 the time of the conversion. Evans v. Dean Witter Reynolds, Inc., 116 Nev. 598, 5  
5 P.3d 1043 (2000). Where there is a return of some converted property, it can  
6 potentially mitigate consequential damages attendant to loss of use of the  
7 converted property, but it cannot be considered as an offset to the value of the  
8 property taken, i.e. non-consequential damages. Id at 608.

9 In Winchell v. Schiff, 124 Nev. 938, 193 P.3d 946 (2008), the Nevada  
10 Supreme Court affirmed that the appropriate measure of damages in a conversion  
11 action where the Defendant is unable or unwilling to return the property is the full  
12 value of the property and any interference with the business and full  
13 compensation for actual losses. In addition, the Court held that the property  
14 converted is not the sole measure of damages. Id at 951. The Court held that  
15 damages in a conversion claim include the value of the converted property as well  
16 as all losses attendant thereto. Id.

17 13) By Mikovits' actions, she breached the implied promise of good faith and fair  
18 dealing that was implied in the PIIA and all agreements between the parties.  
19 (Para. 49-53.

20 Plaintiff is entitled to contract damages arising from the breach of the  
21 covenant of good faith and fair dealing, and to the benefit of the bargain  
22 where justified expectations of the party are not met. A.C. Shaw Const. Inc.  
23 v. Washoe County, 105 Nev. 913, 784 P.2d 9 (1989).

24 When one party performs a contract in a manner that is unfaithful to the  
25 purpose of the contract and the justified expectations of the other party are

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1 thus denied, damages are awarded against the party who does not act in good  
2 faith. Hilton Hotels Corp. v. Butch Lewis Productions, Inc., 107 Nev. 226,  
3 808 P.2d 919 (1991). If, for example, business is diverted to another store in  
4 an effort to bring down the business with whom the agreement was made, the  
5 contracting party would not be acting in good faith. Id. In such a case, the  
6 Defendant would be liable for losses resulting from breach of the covenant of  
7 good faith. Id.

8 **D. WITNESSES**

- 9 1. Frank Thompson  
10 2. Ken Hunter  
11 3. Vincent Lombardi  
12 4. Annette Whittemore  
13 5. Isabel Barreo  
14 6. Carli West Kinne  
15 7. Debbie Blades  
16 8. Harvey Whittemore  
17 9. Andrea Whittemore  
18 10. Shanti Rawat  
19 11. Amanda McKenzie

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**AFFIRMATION PURSUANT TO NRS 239B.030**

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

**DATED** this 29<sup>th</sup> day of August, 2012.

**BOWEN HALL**

By: /s/ Ann O. Hall  
DAN C. BOWEN, Esq.  
ANN O. HALL, ESQ.  
AUDREY D. TEARNAN, ESQ.  
555 South Center Street  
Reno, NV 89501

*Attorneys for Plaintiff*

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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I hereby certify that I am an employee of BOWEN HALL, and that on this date I personally served a true copy of the foregoing document addressed to:

Dennis Jones, Esq.  
MYERS WIDDERS GIBSON  
JONES & SCHNEIDER  
3500 Lakeside Court, Suite 209  
Reno, NV 89509

- Via U.S. Mail
- Via Overnight Mail
- Via Hand Delivery
- Via Reno-Carson Messenger
- Via Facsimile
- Via Email
- Via ECF/eFlex

DATED this 29<sup>th</sup> day of August, 2012.

By /s/ Sharon Samson  
an employee of Bowen Hall

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**INDEX OF EXHIBITS**

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3	Affidavit of Harvey Whittemore	4
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**FILED**  
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08-29-2012:05:31:44 PM  
Joey Orduna Hastings  
Clerk of the Court  
Transaction # 3184387

**EXHIBIT 1**

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**AFFIDAVIT OF ANNETTE WHITEMORE**

STATE OF NEVADA )  
COUNTY OF WASHOE )

I, Annette Whittemore, declare under penalty of perjury that the assertions of this affidavit are true and correct.

1. I have been the Founder and President of the Whittemore Peterson Institute for Neuro-Immune Disease ("WPI" or "the Institute"), a nonprofit research institute, since I founded it in 2007. Currently, as President and CEO, my duties include, among other things, leading and overseeing all of the operational and financial matters at WPI and cultivating and maintaining relationships critical to the functioning of the Institute. I take a hands-on role as CEO, am regularly in my office at WPI, and regularly interact with the WPI researchers. I have personal knowledge of the facts set forth in this affidavit and, if called upon to do so, could and would competently testify thereto.

2. WPI is a state-of-the-art nonprofit research institute located on the campus of the University of Nevada at Reno with a research team, clinical laboratory, and patient medical clinic devoted to serving people with neuro-immune disease (NID)--a group of complex, multi-symptom diseases, including myalgic encephalomyelitis (ME), chronic fatigue syndrome (CFS), fibromyalgia, post Lyme disease, and Gulf War illness (GWI). A leader in research related to NID, the Institute has brought CFS and ME to the forefront of the scientific community and the world, and is changing the way the scientific community researches NID, by attempting to determine such critical information as genetic susceptibility, infectious pathogens, immune deficits, inflammatory markers, and the potential role of novel retroviruses in NID. I founded WPI to help patients, like my daughter who suffers from Myalgic Encephalitis/Chronic Fatigue Syndrome and others who suffer from similarly presenting illnesses.

3. WPI employed Dr. Judy Mikovits as its Research Director from the inception of WPI until Dr. Mikovits's termination on September 29, 2011. In this role, Dr. Mikovits's job duties included leading the research team studying causes and potential cures for NID, and supervising other personnel in the research lab, including ensuring that departing employees

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turned over proprietary materials to WPI when their employment terminated. During her employment by WPI, Dr. Mikovits was paid approximately \$700,000 in salary and bonus. In support of WPI's research, WPI also incurred additional expense supporting Dr. Mikovits's travel to numerous scientific conferences.

4. In connection with Dr. Mikovits's employment, WPI and Dr. Mikovits executed a "Whittemore Peterson Institute For Neuro-Immune Disease Employee Proprietary Information And Invention Agreement" ("PIIA"). A true and correct copy of the PIIA is attached to this Affidavit as Exhibit A and incorporated by reference. Throughout this Affidavit, "Proprietary Information" has the definition set forth in the attached PIIA.

5. Since its inception, WPI has had an administrative policy of obtaining its Proprietary Materials from employees upon termination of their employment. As part of this policy, WPI requires employees - at the time of their departure from WPI - to turn over their laboratory notebooks and any electronic Proprietary Materials developed during the period of their employment. Dr. Mikovits knew this administrative policy well, as she supervised this process in connection with the departures of researchers at the Institute.

6. As the Research Director at WPI, Dr. Mikovits kept detailed laboratory notebooks containing important data. Other researchers at WPI (including, but not limited to, Max Pfof, Cassandra "Cassie" Puccinelli, and Kathryn "Katy" Hagen) similarly kept laboratory notebooks containing important data. The laboratory notebooks of Mikovits, Pfof, Puccinelli, and Hagen (collectively, the "Notebooks")<sup>1</sup> contain valuable information and intellectual property, including trade secrets and inventions, which WPI needs on a daily basis to effectively continue its ongoing experiments and important research. The information in the Notebooks derives independent economic value from not being generally known to, and not being readily ascertainable by proper means by the public or any other persons who can obtain commercial or economic value from its disclosure or use. WPI takes reasonable steps to maintain the secrecy of the information contained in the Notebooks. For example, the Notebooks were kept in a secure,

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<sup>1</sup> The "Notebooks" excludes three notebooks of Pfof which are currently in the WPI laboratory.

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locked location where they could only be accessed by authorized WPI employees with a need to know the information. WPI researchers are trained to keep the Notebooks confidential and must sign a Proprietary Information And Invention Agreement as a condition to working at the Institute.

7. When she was employed by WPI, Dr. Mikovits routinely used a laptop as the primary computer for performing her work on behalf of WPI. Dr. Mikovits told me that this laptop contained electronic files for WPI. I repeatedly saw Dr. Mikovits using the laptop and have seen the files on the laptop. The laptop had multiple files containing WPI's Proprietary Information, including research results, research data, demographic information, study descriptions, research reports, drafts of papers, grant applications, and presentations that Dr. Mikovits created on behalf of WPI as a WPI employee. Dr. Mikovits routinely performed work for WPI on this laptop both on the premises of WPI, while on business trips for WPI, and at home. Much of WPI's Proprietary Information on the laptop resided exclusively on the laptop.

8. When she was employed by WPI, Dr. Mikovits also stored WPI's Proprietary Information on flash drives. Among other things, she stored presentation slides and data generated at WPI on these flash drives.

9. When she was employed by WPI, I repeatedly received work-related emails from Dr. Mikovits's personal email account jamikovits@gmail.com (the "Gmail Account"). Dr. Mikovits routinely used the Gmail Account for her work on behalf of WPI. Among other things, she used the Gmail Account to communicate with research study subjects, research collaborators, research boards, patients, collaborators, and donors. As a result, the Gmail Account contained WPI's Proprietary Information. While Dr. Mikovits also used an Institute email account, the Gmail Account contains WPI work-related emails that are not in her Institute account.

10. On September 29, 2011, WPI terminated Dr. Mikovits's employment. When Dr. Mikovits was terminated, she did not turn over to WPI the Notebooks or electronic files on her laptop, on flash drives, or in her Gmail Account. In this affidavit, I will refer to the Notebooks and any of WPI's Proprietary Information in electronic or other form that Dr. Mikovits failed to deliver to WPI upon her termination as the Misappropriated Property.

11. WPI has asked Dr. Mikovits to return the Misappropriated Property but Dr. Mikovits has not done so. On or about October 3, 2011, at my direction, WPI sent Dr. Mikovits a letter requesting that she immediately return all of WPI's property and equipment (including computer files and other electronic media). A true and correct copy of this letter is attached to this Affidavit as Exhibit B and incorporated by reference.

12. On November 2, 2011, WPI's lawyer Mr. Stafford Matthews sent a letter to Dr. Mikovits requesting the return of the Misappropriated Property, and explaining that if it was not returned, WPI would be left with no choice but to institute a formal legal proceeding to ensure its safe return. A true and correct copy of this letter is attached to this Affidavit as Exhibit C and incorporated by reference. To date, Dr. Mikovits has not returned the Misappropriated Property.

13. Upon information and belief, Dr. Mikovits has been pursuing opportunities with other research institutions since her termination at WPI.

14. WPI is immediately and irreparably harmed by the loss of the Misappropriated Property. WPI urgently needs the Misappropriated Property on a daily basis to continue its critical research. More broadly, WPI needs the Misappropriated Property to research effectively, continue ongoing experiments and studies, communicate with research subjects effectively, defend its earlier research findings, apply for patents, and obtain grants to help find a cure for those patients suffering with NID.

15. The Misappropriated Property risks immediate destruction, alteration, deletion, or dissemination in Dr. Mikovits's possession. WPI would be immediately and irreparably harmed if the Misappropriated Property were destroyed, altered, deleted, or disseminated. There are no copies of the Notebooks, and they are not electronically backed up. Instead, the Notebooks are WPI's primary record of key ongoing and completed research and the only comprehensive repository for the information. In some instances, the Notebooks are the only record of researcher notations, research results, and research timing. WPI was in the process of copying the laboratory notebooks of its researchers, including the Notebooks, when Dr. Mikovits's employment terminated. Upon information and belief, Dr. Mikovits took the Notebooks before they could be copied. Similarly, WPI does not have access to Dr. Mikovits's

Gmail Account, and does not have copies of its Proprietary Information on the laptop, the flash drives, or in the Gmail Account used by Dr. Mikovits.

16. If called to testify in this action, I could competently testify that the above-stated assertions are true to my own personal knowledge, except as to those matters stated upon information and belief, and as to such matters, I believe them to be true.

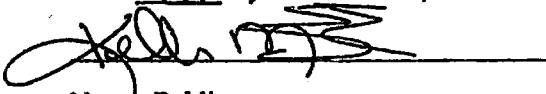
Dated this 7<sup>th</sup> day of November, 2011 in Reno, Nevada.

  
ANNETTE WHITTEMORE

State of Nevada  
County of Washoe

SUBSCRIBED and SWORN to before

me this 7<sup>th</sup> day of November, 2011.

  
Notary Public



# Exhibit 1

# Exhibit 1

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**WHITTEMORE PETERSON INSTITUTE FOR NEURO-IMMUNE DISEASE**  
**EMPLOYEE PROPRIETARY INFORMATION AND INVENTION AGREEMENT**  
**("Agreement")**

As a condition of my present and future employment by WHITTEMORE PETERSON INSTITUTE FOR NEURO-IMMUNE DISEASE, a Nevada non-profit corporation ("WPI") (together with its subsidiaries, parent corporations, affiliates and any related entities, collectively the "Company"), and in consideration of such employment during the period thereof, but without the payment of additional consideration, the undersigned ("I" or "me") agrees to the following:

1. **PROPRIETARY INFORMATION**

1.1 I understand and acknowledge that my work as an employee of the Company will involve access to, disclosure to me of and creation of confidential, proprietary, and trade secret information of the Company and its employees, representatives, agents, customers, vendors, suppliers, consultants, contractors, or business associates (collectively, "Proprietary Information"). I further understand and acknowledge that the Company and its employees, representatives, agents, customers, vendors, suppliers, consultants, contractors, or business associates have developed, compiled, and otherwise obtained this Proprietary Information often at great expense, and that such information has great value to their respective businesses. For purposes of this Agreement the term "customers" includes without limitation any licensees, and "suppliers" includes without limitation any licensors to the Company. I agree at all times to hold in strict confidence and in trust for the sole benefit of the Company and its employees, representatives, agents, customers, vendors, suppliers, consultants, contractors or business associates each and all of the Proprietary Information. I further agree that I shall treat all Proprietary Information as private, privileged, and confidential, and that I shall not use, disclose or release any Proprietary Information in any manner to any person or entity at any time, even after termination of my employment, except to the extent necessary to carry out my duties as an employee of the Company or as specifically authorized in advance by a duly authorized officer of WPI. I further understand and agree that the publication

or other disclosure of Proprietary Information through literature or speeches or other communications to the public must be approved in advance in writing by a duly authorized officer of WPI in all cases.

1.2 I understand and acknowledge and agree that, for purposes of this Agreement, "Proprietary Information" includes all confidential, proprietary or trade secret information and ideas in whatever form or state of development, tangible or intangible, whether disclosed to or learned or developed by me (alone or with others) or for me, and whether or not marked confidential or proprietary, pertaining in any manner to the business of the Company or to the Company's employees, representatives, agents, customers, vendors, suppliers, consultants, contractors or business associates, including but not limited to any and all (a) inventions, developments, concepts, ideas, trade secrets, technical information, know-how, research, designs, diagrams, plans, specifications, structures, functions, computer codes, original works of authorship, discoveries, applications, products, processes, methods, biological or other materials, cell lines, patterns, templates, prototypes, formulas, drawings, schematics, works in process, software, systems, technologies, engineering, work product, and other confidential and proprietary information in whatever form and as now or hereafter constituted, and any and all improvements, customizations or modifications to or derivative works of any of the foregoing, any and all associated information or databases (collectively, "Company Developments"); (b) the inventions (as hereinafter defined); (c) information about

costs, profits, markets, research and development, actual and anticipated business and sales of the Company or any of its customers, vendors or suppliers; (d) other financial information or business plans of the Company, including but not limited to past, current, or future activities of the Company such as funding activities, lists of stockholders or investors, market sizing data, and intellectual property and business strategies and other legal processes; (e) identities of or other information regarding actual or potential customers or trade contacts of the Company, including but not limited to any customer or vendor or supplier lists; (f) plans for future development and new product and services concepts; (g) documents, books, papers, drawings, models, sketches, prototypes, written or oral instructions or comments, and other data of any kind and description, including but not limited to electronic data recorded or retrieved by any means, pertaining to the Company (or any present or future customers, vendors, suppliers, consultants, contractors or business associates of the Company); (h) Personal Information; (i) information regarding the compensation or skills or experience or contact information of other employees or contractors of the Company; (j) all proprietary or confidential information of any kind disclosed to or learned by me (alone or with others) under any prior employment or engagement or nondisclosure agreement with the Company or any predecessor or subsidiary or parent corporation or affiliate or related entity thereof or with any of Wingfield Nevada Group Management Company, LLC, Rediabs U.S.A., Inc., Nevada Biotechnologies LLC, or Simaron LLC; and (k) any Prior Inventions being assigned to the Company (if any) pursuant to any Invention Assignment between the parties.

1.3 For purposes of any nondisclosure obligations hereunder but not otherwise, I agree that such information will not be "Proprietary Information" to the extent that the information is, or becomes, known to the general public through lawful means and through no act or omission by me or any agent or representative of mine. If I

am in doubt as to whether certain information is Proprietary Information, or whether Proprietary Information has become public knowledge, I agree to consult with the management of Company prior to disclosing or using the information other than in the authorized performance of my services to the Company.

1.4 I agree that I will maintain at my work station or in other locations under my control only such Proprietary Information that I have a current "need to know," and that I will return to the appropriate person or entity or location, or otherwise properly dispose of, Proprietary Information once my need to know no longer exists. I agree that I will not make copies of any information unless I have a legitimate need for such copies in connection with my work.

1.5 I represent and warrant that my work as an employee of the Company will be my own original work and does not and will not use or incorporate or breach any agreement or obligation to keep in confidence or not use any proprietary information, confidential information, or trade secret information or knowledge or data acquired by me prior to my becoming an employee of the Company or otherwise, and I will not improperly use or incorporate or disclose to the Company, or induce the Company to use or incorporate or disclose, any confidential, proprietary or trade secret information, knowledge, invention, or data belonging to any previous employer or other person or entity. Without limiting the foregoing, I will not bring onto the premises of the Company or transfer onto the Company's technology or systems, or disclose or distribute any nonpublic documents or any property or proprietary information belonging to any former employer or any other person or entity to whom I have an obligation of confidentiality or nonuse unless consented to in writing by that former employer or other person or entity.

2. THIRD-PARTY INFORMATION

I recognize that the Company has received and in the future will receive from third parties their confidential or proprietary information subject to a duty on the part of the Company to maintain the confidentiality of such information and to use it only for limited purposes ("Third Party Information"). I agree that I owe the Company and such other parties, during the period of my employment and at all times thereafter, a duty to hold all such confidential or proprietary information in the strictest confidence and not to disclose it to any person or entity (except as necessary in carrying out my work for the Company consistent with the Company's agreement with such other party) or to use it for the benefit of anyone other than for the Company or such other party (consistent with the Company's agreement with such other party) without the express written authorization of a duly authorized officer or senior manager of WPI.

3. PERSONAL INFORMATION

I understand that the Company has received and in the future will receive personally identifiable information from customers, suppliers, employees, consultants, contractors, advisors or third parties, including but not limited to names, addresses, telephone or facsimile numbers, Social Security Numbers, user names, passwords, background information, credit card or banking information, health information, contact information, or other information entrusted to the Company ("Personal Information"). I agree that I owe the Company and such other parties, during the period of my employment and thereafter, a duty to hold all such information in the strictest confidence and not to disclose it to any person or entity (except as necessary in carrying out my work for the Company consistent with the Company's agreement with such other party) or to use it for the benefit of anyone other than for the Company or such other party (consistent with the

Company's agreement with such other party) without the express written authorization of a duly authorized officer of WPI. I understand that there are laws in the United States and other countries that protect Personal Information, and that I must not use Personal Information other than for the purpose for which it was originally obtained by the Company or make any disclosures of Personal Information to any third party or from one country to another without the prior approval of a duly authorized officer or senior manager of WPI.

4. ASSIGNMENT OF INVENTIONS

Without payment of additional consideration, and to the fullest extent not prohibited by applicable law:

4.1 I acknowledge and agree that the Company and its successors and assigns shall be the sole and exclusive owner, in perpetuity and throughout the universe, of any and all Proprietary Information, including without limitation Company Developments, and any and all patents and patents pending, patent applications, copyrights, moral rights, trademarks, service marks, logos, trade dress, database rights, trade secret rights, proprietary information rights, contract rights, goodwill, or other intellectual property rights or intangible rights or claims of any kind or nature (collectively "Intellectual Property Rights") with respect of any of the foregoing, and any and all improvements or modifications to or derivative works of any of the foregoing, whether or not subject to patent or copyright or other protection and in any state of development or form or media, that have been or will be made, conceived, developed, reduced to practice or authored by me (alone or with others) or result from or are suggested by any work performed by or for me (collectively "Developed") (I) under any prior employment or engagement with the Company or any predecessor or subsidiary or parent corporation or affiliate or related entity thereof or with any of Wingfield Nevada Group

Management Company, LLC, Redlabs U.S.A., Inc., Nevada Biotechnologies LLC, or Simaron LLC, (ii) during the period of my employment, whether or not Developed during regular business hours, and whether or not Developed before, on, or after the Effective Date hereof, or (iii) at any time after termination of my employment, if based on, derived from, or incorporating or referencing any of the Proprietary Information, Company Developments, or Third Party Information to any extent, with each and all of the foregoing collectively defined as the "Inventions"; free of any encumbrances, liens, covenants, conditions and restrictions registrations or other adverse claims or interests of any kind or nature by me or any persons or entities known to or related to me or acting in concert with me (collectively "Claims").

4.2 I agree to and hereby irrevocably and exclusively assign and transfer to the Company and its successors and assigns all right, title and interest throughout the universe in and to each and all of the Inventions in perpetuity. Such assignment and transfer shall be deemed made by me in each case as of the time such invention is made, conceived, developed, authored or reduced to practice or suggested or results from such work (collectively "Development") of the subject invention on a continuous basis. I expressly acknowledge and agree that this is an assignment and transfer of all rights, title and interest in and to the Inventions and not a mere license, and that I am not retaining any right, title or interest in or to any of the Inventions.

4.3 This assignment and transfer to the Company of the Inventions includes any and all rights of attribution, paternity, integrity, modification, disclosure and withdrawal, and any other rights throughout the universe that may be known as or referred to as "moral rights," "artist's rights," "droit moral" or the like (collectively "Moral Rights").

4.4 I acknowledge and agree that all Inventions (including but not limited to original works of authorship) that are made by me (either alone or with others) within the scope of my employment and that are protectable by copyright are "works made for hire," pursuant to United States Copyright Act (17 U.S.C. Section 101 *et seq.*) as amended or superseded.

4.5 To avoid future confusion, I have listed on Schedule A attached hereto and made a part hereof a description of all inventions and other intellectual property, if any, Developed by me alone or with others in which I claim any ownership or other right. It is understood and agreed that the attached list is the complete and exclusive listing of all inventions or intellectual property that are to be excluded from this Agreement as having been Developed prior to my employment and which are not otherwise being assigned or transferred to the Company. I understand that, by not listing an invention or property, I am acknowledging that such invention or property was not Developed before my employment with the Company commenced.

4.6 I also agree to execute and deliver such patent applications and other assignments or instruments or documents and to do other such acts and provide other assistance, at the request of the Company or its successors or assigns, in order to obtain a patent or other rights, register a copyright or trademark or otherwise establish or confirm or enforce the ownership or rights of the Company or its successors or assigns in and to the Prior Inventions or related Intellectual Property Rights in any jurisdiction. I further hereby irrevocably appoint WPI and its successors and assigns and any of their respective officers as my attorneys-in-fact to undertake any such acts in my name.

4.7 To the extent that Moral Rights or any other rights or interests hereunder cannot be transferred or assigned under applicable law for any reason, or to the extent that I otherwise may be deemed under applicable law to retain any



Moral Rights or other rights, title or interest in or to any of the Inventions notwithstanding the terms of this Agreement, if any, I hereby further (a) unconditionally and irrevocably waive and agree to not enforce such rights, and all claims and causes of action of any kind against the Company or its successors or assigns with respect to such rights, including without limitation any right to identification of authorship or limitation on subsequent modifications that I may have in the Inventions; (b) agree, at the Company's request and expense, to consent to and join in any action to enforce such rights against others; and (c) hereby grant to the Company and its successors and assigns an irrevocable, perpetual, exclusive, fully paid-up, transferable, assignable and sublicensable (through multiple levels of sublicensees) right and license throughout the universe to use, reproduce, distribute, display, publish and perform (whether publicly or otherwise), prepare derivative works of and otherwise modify, adapt, make, have made, sell, offer to sell, import and otherwise use and exploit (and have others exercise such rights on behalf of the Company or its successors or assigns) all or any portion of the Inventions, in any form or media whether now known or later Developed, with such grant being made in each case as of the time of Development on a continuous basis ("License"). The foregoing License includes without limitation the right to make any improvements or modifications to and derivative works of all or any portion of the Inventions, including, without limitation, the making of additions to or deletions from the Inventions, regardless of the medium (now or hereafter known) into which the Inventions may be modified and regardless of the effect of such modifications on the integrity of the Inventions, and to identify me, or not to identify me, as one or more authors of or contributors to the Inventions or any portion thereof, whether or not the Inventions or any portion thereof have been modified.

4.8 I further agree to maintain and make available adequate, accurate, and current

written records on the Development of all Inventions and to disclose promptly to an appropriate officer or senior manager of WPI all Inventions and relevant records Developed under this Agreement, which I agree shall remain the sole and exclusive property of the Company and shall be part of the Proprietary Information. Without limiting my other obligations hereunder, I further agree to promptly disclose to an appropriate officer or senior manager of WPI, all information and records relating to any Inventions Developed (a) during my period of employment or (b) during the one (1) year period after my employment terminates for any reason or no reason, to the extent such post-employment Inventions relate to, arise or are derived from any of the Proprietary Information or Company Developments, including but not limited to Inventions Developed during my employment. Any disclosures made by me following my period of employment will be received by the Company in confidence for the purpose of determining if the Inventions have been based on any Proprietary Information, and are subject to the terms of this Agreement.

4.9 I understand and agree that the decision whether or not to commercialize or market any Inventions is within the Company's sole discretion and for the Company's sole benefit, and that no royalty or other consideration will be due to me as a result of any efforts of the Company to commercialize or market any such Inventions.

4.10 I further agree that in the event of any dispute or issue regarding credit or attribution for the discovery or development of any Invention as against any other individuals either within or outside of the Company, I will submit to and fully cooperate with and participate in such peer review proceedings and other dispute resolution procedures and policies as may be established or directed by the Company from time to time for such purposes; and that all determinations made under such

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proceedings and procedures and policies shall be conclusive and binding on me.

**5. INFORMATION ON COMPANY PREMISES**

5.1 I understand and agree that all information generated, received, or maintained by or for me on the premises or equipment or software of the Company (including but not limited to any computer or technology systems, hand held devices, documents, telephones, mobile phones and electronic mail or voicemail systems) is the property of the Company, and I hereby waive any Intellectual Property Rights, privacy rights or property or other rights that I otherwise may have with respect to such information.

5.2 Without limiting its other rights hereunder, the Company shall the right to audit and search all such items and systems under Section 5.1 hereof, without further notice to me, to ensure compliance with the within terms and the Company's policies, and for any other reasonable purposes in the Company's sole discretion. I understand that I am not permitted to add any unlicensed, unauthorized, or non-compliant software or other applications to the Company's technology systems, including without limitation open source or free software not authorized by the Company, and that I shall refrain from copying unlicensed software onto the Company's technology systems or using non-licensed software or websites. I understand that it is my responsibility to comply with the Company's policies governing use of the Company's documents and the Internet, email, telephone, and technology systems to which I will have access in connection with my employment.

**6. SAFEGUARDING PROPRIETARY INFORMATION, THIRD PARTY INFORMATION OR PERSONAL INFORMATION**

6.1 I understand that avoiding loss or theft of Proprietary Information, Third Party Information or Personal Information is an

important part of my duties. I will not allow any other person to use any office key or access card or computer passwords in my possession, to access any office premises, use any such office key or access card or computer passwords, or access my computer or the Company's network, without prior approval from senior management of the Company. I will follow all instructions from the Company and from third parties with whom the Company does business (including but not limited to the US government) about avoiding loss or theft or unauthorized use of Proprietary Information, Third Party Information or Personal Information, including but not limited to, complying with Company policies and procedures and placing appropriate legends upon documents signifying their sensitive nature. I will only use secure networks established by the Company when using Proprietary Information, Third Party Information or Personal Information. I will immediately report to the Company any loss or suspected loss or unauthorized use of Proprietary Information, Third Party Information or Personal Information, and any suspicious activity such as external hacking attempts, or unusual internal activity.

6.2 Given the sensitivity of Proprietary Information, Third Party Information and Personal Information, I understand that I may only handle or dispose of such information by secure methods approved by the Company.

**7. INTERFERENCE WITH COMPANY BUSINESS; NONSOLICITATION**

7.1 I agree that, during my employment with the Company, I will not accept or engage in any business activity, employment, consulting or other relationship or commitment with any other person or entity that is or may be competitive with, or that would otherwise conflict with, my obligations to the Company or my performance of the services for which I am employed.

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7.2 I further agree to not (a) accept any fees, commissions, loans or other consideration of any nature in connection with any transaction on behalf of Company other than as provided to me directly by Company; (b) offer illegal payments or other gifts or other consideration to suppliers or customers of the Company; or (c) use Proprietary Information, Third Party Information, Personal Information or my position with Company for personal or financial gain or the gain of any third party.

7.3 To prevent unfair competitive use of information or relationships pertaining to the Company which I have acquired in the course of my employment, including but not limited to the prevention of any use or disclosure of Proprietary Information, I further agree that from the Effective Date and until one (1) year after the termination of my employment, I will not directly or indirectly for myself or on the behalf of others (a) solicit or encourage any employee or contractor of the Company to terminate their relationship with the Company, or (b) intentionally interfere with any person who is or during the period of my engagement was a partner, joint venturer, representative, agent, customer, vendor, supplier, consultant, contractor or business associate of the Company. The above restrictions shall be in addition to the nondisclosure and nonuse and other obligations and restrictions contained in this Agreement.

7.4 I further agree that if I have signed a confidentiality agreement or similar type of agreement with any former employer or other person or entity, I will comply with the terms of any such agreement to the extent that its terms are valid and enforceable under applicable law. I represent and warrant that after undertaking a careful search (including searches of my computers, software, tools, systems, database, cell phones, electronic devices, and documents), I have returned all property and confidential information belonging to all prior employers.

## 8. TERMINATION OF EMPLOYMENT

8.1 On termination of my employment with the Company, or at any time the Company requests, I will deliver immediately to the Company, and will not keep in my possession, recreate, or deliver to anyone else, any and all property belonging to Company, including, but not limited to, any and all Proprietary Information (including without limitation, Inventions and Company Developments), Third Party Information, or Personal Information in any form, stage of development or media (including all copies), as well as all devices and equipment belonging to the Company (including computers, software, tools, handheld electronic devices, telephone equipment, and other electronic devices), Company credit cards, records, data, database, notes, notebooks, reports, files, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, materials, photographs, charts, any other documents and property, and reproductions of any and all of the foregoing items that were Developed by me (alone or jointly with others) or for me pursuant to my employment with the Company, obtained by me in connection with my employment with the Company, or otherwise belonging to the Company, its successors, or assigns, including without limitation those records maintained pursuant to Section 4.8 hereof. I also consent to an exit interview to confirm my compliance with this Section.

8.2 Upon termination of my employment with the Company, I further agree that I will immediately sign and deliver the Termination Certificate substantially in the form attached as Schedule B to this Agreement.

8.3 On termination of my employment with the Company, I hereby consent to the Company's notification of my subsequent employer or other persons or entities of my obligations under this Agreement. I further agree that I will inform any subsequent employer or

company to which I provide services of my obligations under this Agreement.

#### 9. FURTHER REPRESENTATIONS.

I represent and warrant that (a) my performance of this Agreement will not breach any agreement to keep or not use confidential information acquired by me in confidence or in trust prior to my employment by the Company; (b) I have not assigned or transferred or purported to assign and transfer any part of the Inventions or other subject matter of this Agreement to any other person or entity other than the Company; (c) to my knowledge none of the Inventions infringes or misappropriates or violates any Intellectual Property Rights or privacy or similar rights of any third party; (d) I have the unrestricted right to assign, transfer and grant the within rights and licenses under this Agreement, free and clear of any and all Claims; and (e) I otherwise have and will have no outstanding agreement or obligation that is or will be in conflict with any of the provisions of this Assignment or that would preclude me from consummating or complying with the provisions hereof.

#### 10. REMEDIES

I acknowledge and agree that nothing in this Agreement is intended to limit any rights or remedies the Company may have under the Uniform Trade Secrets Act or other applicable laws in any jurisdiction, all of which are reserved by the Company, and that I could face possible criminal and civil actions, including imprisonment and monetary liability, if I misappropriate the trade secrets of the Company or its customers, vendors, suppliers, consultants, contractors or business associates. In addition, I recognize that my violation of this Agreement could cause the Company irreparable harm and significant injury, the amount of which may be extremely difficult to estimate, thus, making any remedy at law or in damages inadequate. Therefore, I agree that in the event of a breach or

threatened breach that involves Proprietary Information (including without limitation Inventions or Company Developments), Third Party Information or Personal Information, the Company shall have the right to enforce the provisions of this Agreement by injunction, specific performance, or other legal or equitable relief. These rights shall be in addition to, and without prejudice to, any other rights or remedies available to the Company in law or equity, which shall be cumulative. In any action relating to enforcement or breach or threatened breach of this Agreement, the Company and I agree that the prevailing party in the action shall be entitled to an award of all reasonable attorneys' fees and costs incurred by the prevailing party.

#### 11. SUCCESSORS AND ASSIGNS

I understand and agree that the Company may assign or transfer or subcontract or license or delegate this Agreement or any of its rights or obligations under this Agreement, at any time and without obtaining my consent or notice to me, to any other person or entity, including without limitation to any successor in connection with a transfer of Company's relevant assets, whether by merger, consolidation, sale of assets or stock or otherwise. I further understand and agree that I may not and shall not assign or transfer or subcontract or license or delegate this Agreement or any of my rights or obligations under this Agreement, and that any attempt to do so shall be null and void and a material breach hereof. Subject to and without limiting the foregoing restrictions, I agree this Agreement shall be binding upon me and my affiliates, heirs, devisees, spouses, executors, administrators, representatives, successors and assigns (whether or not permitted), and shall inure to the benefit of the Company and its licensees, successors and assigns. There are no other intended third party beneficiaries under this Agreement, except as expressly stated herein.

12. SURVIVAL

Each and all of the respective rights of and licenses granted to the Company and each and all of my respective obligations and covenants contained in this Agreement, and any claims or causes of action then existing hereunder, shall survive the termination of my employment or other relationship with the Company or the termination of this Agreement and remain in full force and effect. If I am employed or engaged by a successor, subsidiary, or affiliate of Company or by a joint venture or partnership in which Company participates, this Agreement further shall be continued during my employment or engagement by such other entity.

13. SEVERABILITY

If any provision of this Agreement shall be held by a court of competent jurisdiction to be invalid or unenforceable, such provision shall be enforced to the fullest extent permitted by law and shall be revised to the extent necessary to make such provision valid and enforceable consistent with the original intent and economic effect of such provision, and the remaining provisions hereof will remain in full force and effect. In addition, if any one or more provisions contained in this Agreement shall be held to be excessively broad as to duration, geographical scope, activity, or subject, it shall be construed by limiting or reducing it, so as to be enforceable with applicable law.

14. GOVERNING LAW; JURISDICTION

This Agreement and all matters arising out of or relating to this Agreement shall be governed by and construed in accordance with the laws of the State of Nevada, without application of conflict of law rules. Any and all claims or actions arising out of or relating to this Agreement shall be brought exclusively in the federal or state courts located in the County of Washoe, Nevada, with enforcement of any judgment or order in any relevant jurisdiction;

and each of the parties consents and waives all objections to jurisdiction and venue in such courts.

15. WAIVER

No waiver by the Company of any breach of this Agreement shall be a waiver of any preceding or succeeding breach. No waiver by the Company of any right under this Agreement shall be construed as a waiver of any other right. The Company shall not be required to give notice to enforce strict adherence to all terms of this Agreement.

16. ENTIRE AGREEMENT

This Agreement is the final and entire agreement between the parties with respect to the subject matter hereof; shall supersede all prior or other current understandings or discussions between the parties; and may not be contradicted by evidence of any prior or contemporaneous agreement; provided however that this Agreement is not intended to supersede (a) my employment agreement with the Company or (b) any other assignment or transfers by me of patent or other rights to the Company or its predecessor at any time (including but not limited to that certain Invention Assignment between the parties dated as of the same date as this Agreement ("Prior Invention Assignment")), which shall remain in full force and effect; provided further that in the event of any conflict in terms the provisions of this Agreement shall be controlling except in the case of the Prior Inventions as therein defined, in which case the Prior Invention Assignment shall be controlling. No modification or amendment of this Agreement shall be binding on the Company or me unless executed in writing by me and a duly authorized officer of WPI.

17. INTERPRETATION

When the context requires, the plural shall include the singular and the singular the plural; and any gender shall include any other gender. To the extent permitted by law, this

Agreement shall not be construed against the drafter. Section headings are not part of this Agreement and are only for the convenience of the parties.

18. MISCELLANEOUS.

Nothing in this Agreement shall be construed to prohibit me from engaging in protected activities under the National Labor Relations Act. Each party represents and warrants that such party has all necessary power and authority to execute and deliver this Agreement and to perform the obligations of such party hereunder. This Agreement may be executed in counterparts, which together will be the same instrument.

[Signature Page to Follow]

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I HAVE CAREFULLY READ THIS AGREEMENT AND UNDERSTAND ITS TERMS. I ACKNOWLEDGE THAT IN ENTERING INTO AND EXECUTING THIS AGREEMENT I HAVE HAD THE OPPORTUNITY TO SEEK THE ADVICE OF INDEPENDENT LEGAL COUNSEL. I HAVE COMPLETED SCHEDULE A BEFORE SIGNING THIS AGREEMENT, LISTING ALL INVENTIONS AND RIGHTS THAT I WISH TO EXCLUDE FROM THE OPERATION OF THIS AGREEMENT.

IN WITNESS WHEREOF, this Agreement is made and entered into effective as of the first day of my employment with the Company, as of September 17, 2007 ("Effective Date").

JUDY MIKOVITS, Ph.D.:

Signature: Judy Mikovits

Date Signed: 2-20-09 (and Oct 08)

AGREED TO AND ACCEPTED:

WHITTEMORE PETERSON INSTITUTE FOR NEURO-IMMUNE DISEASE

By: Scott J. Whittemore

Title: President

Date Signed: 2-20-09

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**WHITTEMORE PETERSON INSTITUTE FOR NEURO-IMMUNE DISEASE**  
**EMPLOYEE PROPRIETARY INFORMATION AND INVENTION AGREEMENT**

**Schedule A**

1. Except as set forth below, there are no inventions or other intellectual property that I wish to exclude from the operation of this Agreement (attach additional sheets if necessary):

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2. Due to prior confidentiality agreement(s), I cannot complete the above disclosure with respect to inventions or other intellectual property developed prior to my employment with the Company and generally listed below, the proprietary rights and duty of confidentiality with respect to which I owe the following parties (attach additional sheets if necessary):

<u>Inventions or Property</u>	<u>Parties</u>	<u>Relationship</u>
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>

[Please note: Any blanks not filled in will be deemed to indicate "none"].

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Schedule B

Termination Certificate Concerning  
Company Proprietary Information

*(TO BE COMPLETED AT END OF EMPLOYMENT)*

This is to certify that I do not have in my possession or control and have returned all property and equipment of Whittemore Peterson Institute for Neuro-Immune Disease or its subsidiaries or affiliates or related entities (collectively the "Company") or its successors or assigns, including without limitation any and all Proprietary Information, Inventions, Personal Information, Third Party Information and Company Developments, and that I did not make or distribute or retain any copies of the foregoing.

I further certify that I have reviewed the Employee Proprietary Information and Invention Agreement ("Agreement") between the Company and me, and I confirm that I have complied with and will continue to comply with each and all of its terms and conditions, including without limitation the restrictions on use and disclosure of all Proprietary Information, the reporting of any Inventions, and the non-solicitation of Company personnel and customers. This Certificate in no manner limits my responsibilities or the Company's rights or remedies under the Agreement or under applicable law. All capitalized terms not defined in this Certificate shall have the same meaning as in the Agreement.

After leaving the Company's employment, I will be employed by \_\_\_\_\_  
in the position of \_\_\_\_\_

Date: \_\_\_\_\_  
Employee Name: \_\_\_\_\_

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**Exhibit 2**

**Exhibit 2**

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**October 3, 2011**

**Judy Mikovits  
50 N. Sierra Street  
Apartment 709  
Reno, NV 89501**

**Enclosed please find your final pay check, a reimbursement check for expenses submitted, and your employee separation paperwork. The separation paperwork includes a form for your signature, and a notice of your eligibility for continuation of health insurance coverage and instructions for making an election of coverage.**

**Also enclosed is a copy of the Employee Proprietary Information and Invention Agreement you signed with WPI. Please sign the Included Schedule B, Termination Certificate Concerning Company Proprietary Information.**

**You will need to return the employee separation and Schedule B forms, and all WPI property and equipment, to WPI immediately as per the Proprietary Information Agreement, and specifically Section B. An envelope is included for the paperwork. Please make arrangements with either Carl Kinne or Mike Hillerby to return all WPI property and equipment (including computer files and other electronic media), and to pick up any personal property you may have at WPI.**

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**Exhibit 3**

**Exhibit 3**

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**SNR DENTON** 

SNR Denton US LLP  
1530 Page Mill Road  
Suite 200  
Palo Alto, CA 94304-1125 USA

Stafford Matthews  
Partner  
stafford.matthews@snrdenton.com  
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F +1 650 788 0310  
snrdenton.com

November 2, 2011

**BY EXPRESS MAIL AND EMAIL TO**  
**jamikovits@gmail.com**

**URGENT**

Judy Mikovits  
2031 Jamestown Way  
Oxnard, CA 93035

**Re: Demand For Immediate Return of WPI's Property**

Dear Judy:

We write to you now as a final courtesy to again request the immediate return of laboratory notebooks and other intellectual property taken by you and owned by the Whittemore Peterson Institute ("WPI" or the "Institute").

As you know, the written Proprietary Information and Invention Agreement ("PIIA"), effective September 17, 2007, signed by you with the Institute, requires that upon termination of your employment, you must immediately deliver to WPI all work materials and other Proprietary Information as defined in the PIIA, and that you must execute and deliver a Termination Certificate affirming that you have returned all such Proprietary Information to WPI. A copy of the PIIA is attached for your convenience. I understand that you are especially familiar with these requirements since, in your role as Research Director at WPI, you have been repeatedly responsible for ensuring that your subordinates complied with these procedures upon the termination of their employment.

Unfortunately, in connection with the recent termination of your employment, you have ignored your fundamental legal obligations under the PIIA and instead have wrongfully taken valuable Proprietary Information and other property belonging to the Institute and thus far have refused to return it. This is a material breach of your duties to the Institute under contract and under law. In particular, all of the laboratory notebooks maintained by you during your employment with WPI are now missing, as are a number of laboratory notebooks maintained by other researchers in the lab, including Max Pfost, Cassie Puccinelli, and Katie Hagen. These notebooks are the exclusive property of WPI. I understand that all of these notebooks were kept in a locked desk drawer in your office for which you had the only key. We have witnesses placing the notebooks in your locked desk drawer prior to your termination, and other witnesses confirming that the

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**SNR DENTON** 

Judy Mikovits  
November 2, 2011  
Page 2

notebooks had disappeared no later than 72 hours after your departure. It is obvious that you have taken them without permission. Your immediate return of these notebooks without any tampering or deletions is essential to the ongoing work of the Institute. Similarly, I understand that you have taken WPI's Proprietary Information stored on your laptop and in your Gmail account.

On behalf of WPI, we must reiterate WPI's previous written request that you immediately return all of the intellectual property and work product belonging to the Institute. This includes all of the WPI laboratory notebooks or other documents maintained by you during your employment at WPI, as well as any laboratory notebooks and documents of other WPI researchers taken by you. In addition, we request that you immediately provide us with electronic copies of all emails, files, patient information and other data contained on your laptop computer or memory drives or any Gmail or other email account (including but not limited to emails sent and received from jamikovits@gmail.com) relating to the work that you did at WPI. Such information also constitutes Proprietary Information as defined by the PIIA and is also owned by the Institute. You are required to report and turn over all of such information to the Institute and you may not retain any copies of the same.

As you well know, the Institute has paid you personally approximately \$700,000 in compensation over the past several years for your work and has also furthered your standing and your career mightily by sending you to various scientific conferences in Europe, Asia and elsewhere as WPI's representative and at WPI's considerable expense. Apart from the clear breaches of your legal obligations to the Institute, your behavior towards the Institute following your termination on these matters has been unethical and inappropriate.

Please advise me immediately if you intend to comply with our requests. In all events you are instructed to not destroy or alter any of the notebooks, files, emails or other intellectual property to which WPI is entitled under a contract you personally signed and promised to honor. Destruction of any of these materials or any other evidentiary materials is a sanctionable offense.

Although WPI does not wish to resort to the courts to ensure your compliance with your contractual obligations, you will leave WPI no choice but to file a lawsuit against you if you do not return these materials by noon on Friday, November 4, 2011. The materials should be directed to me at the address on this letterhead.

Sincerely,



Stafford Matthews

Enclosure

cc: Annette Whittemore

**FILED**  
Electronically  
08-29-2012:05:31:44 PM  
Joey Orduna Hastings  
Clerk of the Court  
Transaction # 3184387

**EXHIBIT 2**

224-268

**AFFIDAVIT OF VINCENT LOMBARDI**

STATE OF NEVADA        )  
                                  )  
COUNTY OF WASHOE    )

I, Vincent Lombardi, Ph.D., declare under penalty of perjury that the assertions of this affidavit are true and correct.

1. Since July 2007, I have been employed by the Whittemore Peterson Institute For Neuro-Immune Disease ("WPI" or "the Institute"), a nonprofit research institute located on the campus of the University of Nevada at Reno. I have been intimately involved in the research at the WPI from 2007 through the present, first as a postdoctoral fellow, then as a researcher, and now as Director of Research. I have been Director of Research since Dr. Judy Mikovits's departure on September 29, 2011. As Director of Research, my duties include managing all research projects, conceptual development of new research projects, hands on laboratory work on existing research projects, finishing the existing work associated with grants received by WPI, grant writing, and ensuring completion and delivery of all research results. Since Dr. Mikovits's departure in September 2011, I have taken over the supervision of all studies that she previously supervised. I have personal knowledge of the facts set forth in this affidavit and, if called upon to do so, could and would competently testify thereto.

2. I have been studying Chronic Fatigue Syndrome ("CFS") since approximately 1993. My research started as an undergraduate in the field of Biostatistics, characterizing T-cell populations in CFS patients. I later continued to work in CFS-related research in the laboratory of Dr. Robert Suhadolnik at Temple University, studying the interferon regulated RNase L antiviral pathway and its involvement in CFS. In 2005, I completed my graduate degree at the University of Nevada, receiving my Ph.D. in Biochemistry. The primary focus of my Ph.D. thesis was the isolation and characterization of novel diuretic neuro-peptides.

3. Upon joining WPI in July, 2007, my research effort focused on the inflammatory component of CFS and its relationship to the development of lymphoma in CFS patients. Today, I continue to focus my research efforts in neuro-immune diseases and the innate immune system,

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including potential pathogens and their involvement with the interferon system and RNase L antiviral pathway.

4. Between 2007 and 2011, I interacted with and observed Dr. Mikovits in the WPI laboratory on a continual basis. We worked closely together on multiple studies and published multiple papers together on our research.

5. As the Research Director at WPI, Dr. Mikovits kept detailed laboratory notebooks containing her research notes, important data, findings, results of experiments, inventions conceived in the course of her duties at WPI, and notes on her communications with research subjects. I have seen the contents of these notebooks during laboratory meetings with Dr. Mikovits. Dr. Mikovits's laboratory notebooks are the primary record of the ongoing research she conducted on behalf of WPI, and contain information on WPI's ongoing studies as well as information on completed studies performed at WPI. Dr. Mikovits's laboratory notebooks contain a variety of other information, including information on patient sample processing, research procedures, research protocols, research results, pictures of slides, Dr. Mikovits's contemporaneous notes on significant events that occurred in the research, and detailed contemporaneous descriptions of what Dr. Mikovits did as well as the results of the research.

6. Other researchers at WPI (including, but not limited to, Max Pfost, Cassandra "Cassie" Puccinelli, and Kathryn "Katy" Hagen) similarly kept laboratory notebooks containing their research notes, findings and results of their experiments and studies at WPI. I have seen these notebooks. Like Dr. Mikovits's notebooks, Pfost's, Puccinelli's, and Hagen's notebooks are the primary record of their ongoing research at WPI and contain Pfost's, Puccinelli's, and Hagen's contemporaneous notes on significant events that occurred in the research, including detailed contemporaneous descriptions of what they did as well as the results of the research. Among other things, the researchers pasted actual research result printouts into their notebooks.

7. The laboratory notebooks of Mikovits, Pfost, Puccinelli, and Hagen (collectively, the "Notebooks")<sup>1</sup> contain valuable information and intellectual property, including inventions,

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<sup>1</sup> The "Notebooks" excludes 3 laboratory notebooks of Pfost which are in WPI's laboratory today.

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which WPI needs to effectively continue its ongoing experiments and important research. WPI takes reasonable steps to maintain the secrecy of the information contained in the Notebooks. For example, the Notebooks were kept in a secure, locked location where they could only be accessed by authorized WPI employees with a need to know the information. Under WPI's laboratory policy, notebooks cannot leave the premises. WPI employees are trained to keep the Notebooks confidential, and are contractually required to maintain the confidentiality of the information contained in the Notebooks. The information in the Notebooks is valuable because other researchers outside WPI do not know about it.

8. While Dr. Mikovits worked at WPI, I observed Dr. Mikovits routinely using a laptop as the primary computer for performing her work on behalf of WPI. I saw the files on this laptop and saw Dr. Mikovits using this laptop on a daily basis. This laptop had multiple files containing WPI's intellectual property, including research results, research data, demographic information, study descriptions, research reports, drafts of papers, grant applications, communications with collaborators and patients, and presentations that Dr. Mikovits created on behalf of WPI as a WPI employee. Dr. Mikovits routinely performed work for WPI on this laptop while on the premises of WPI, while on business trips for WPI, and at home. Many of the WPI intellectual property-containing files on the laptop do not exist on WPI's other computers or networks, and instead resided only on the laptop.

9. While Dr. Mikovits worked at WPI, I observed Dr. Mikovits routinely using flash drives to store materials containing WPI's intellectual property, including but not limited to, Powerpoint presentations, drafts of manuscripts, and communications.

10. While Dr. Mikovits worked at WPI, I routinely received WPI work-related emails from her email account jamikovits@gmail.com (the "Gmail Account"). Dr. Mikovits routinely used the Gmail Account in connection with her work on behalf of WPI. Among other things, she used the Gmail Account to communicate with research study subjects, research collaborators, research boards, patients, and donors. Dr. Mikovits provided her Gmail Account as a contact address for research subjects.

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11. Since Dr. Mikovits's departure, WPI has not had access to the Notebooks, the laptop that Dr. Mikovits used for her WPI work, all of the flash drives that Dr. Mikovits used for her WPI work, or the Gmail Account. In this affidavit, I will refer to the Notebooks, as well as any of WPI's Proprietary Information that Dr. Mikovits did not provide to WPI upon her termination, as the "Misappropriated Property."

12. WPI has suffered immediate and irreparable injury and damage as a result of its loss of the Misappropriated Property. The research team at WPI needs the Misappropriated Property to establish our current research position and to continue our ongoing experiments and studies in a timely and efficient way. For example, to continue our ongoing experiments and studies, we need information contained in the Misappropriated Property on how patient samples have been identified, treated and processed. We also need the Misappropriated Property to defend our earlier research findings, avoid pursuing research that the Misappropriated Property would suggest is fruitless, to research effectively, and communicate with research subjects effectively. In addition, getting published in science journals is key to the current and future success of WPI, and the loss of the Misappropriated Property could seriously delay WPI's ability to get published.

13. It is impossible to exactly replicate the several years of work that is documented in the Misappropriated Property. This is because, among other reasons, the research subjects for these studies undergo treatment which alters their samples - a sample today from a research subject who has undergone treatment for two years differs from a sample from the same research subject two years ago. In addition, subjects who previously participated may not be available to donate more samples.

14. WPI will be irreparably harmed if the Misappropriated Property is destroyed, deleted, or altered. The Misappropriated Property risks immediate destruction, deletion, or alteration in Dr. Mikovits's possession. WPI does not have any copies of the Notebooks, and they are not electronically backed up on WPI's servers. Instead, the Notebooks are WPI's primary record of key ongoing and completed research and the only comprehensive repository for the information. In some instances, the Notebooks are the only record of researcher

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notations, research results, and research timing. Many of the WPI Intellectual Property-containing files on the laptop and on the flash drives used by Dr. Mikovits reside only on the laptop and flash drives. WPI does not have access to Dr. Mikovits's Gmail Account, and Dr. Mikovits has not provided WPI with a copy of the emails that contain WPI's intellectual property.

15. WPI will be irreparably harmed if the Misappropriated Property is disseminated. The Misappropriated Property risks immediate dissemination in Dr. Mikovits's possession.

16. Upon information and belief, Dr. Mikovits has been pursuing opportunities with other research institutions since her termination at WPI.

17. If called to testify in this action, I could competently testify that the above-stated assertions are true to my own personal knowledge, except as to those matters stated upon information and belief, and as to such matters, I believe them to be true.

Dated this 7<sup>th</sup> day of November, 2011 in Reno, Nevada.

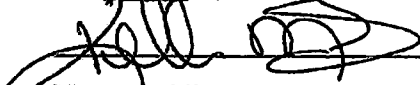
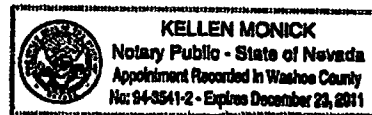


VINCENT C. LOMBARDI, PHD

State of Nevada  
County of Washoe

SUBSCRIBED and SWORN to before

me this 7<sup>th</sup> day of November, 2011.

  
Notary Public

**FILED**  
Electronically  
08-29-2012:05:31:44 PM  
Joey Orduna Hastings  
Clerk of the Court  
Transaction # 3184387

**EXHIBIT 3**

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**AFFIDAVIT OF HARVEY WHITEMORE**

STATE OF NEVADA        }  
COUNTY OF WASHOE    }

I, Harvey Whittemore, declare under penalty of perjury that the assertions of this affidavit are true and correct.

1. I am an attorney and an unpaid advisor to the Whittemore Peterson Institute for Neuro-Immune Disease ("WPI" or "the Institute"), a nonprofit research institute located on the campus of the University of Nevada in Reno with a research team, clinical laboratory, and patient medical clinic devoted to serving people with neuro-immune disease ("NID"). I work closely with the researchers and other employees at WPI. I am also married to Annette Whittemore, the founder of WPI. I have personal knowledge of the facts set forth in this affidavit and, if called upon to do so, could and would competently testify thereto.

2. When she was the Research Director at WPI, Dr. Judy Mikovits kept detailed laboratory notebooks containing her research notes, important data, findings, results of experiments, and inventions conceived in the course of her duties at WPI (the "Mikovits Notebooks"). As recently as the middle of September 2011, Dr. Mikovits brought the Mikovits Notebooks to meetings where I was present and reviewed the Mikovits Notebooks in detail with me, on multiple occasions going section by section through the notebooks with me. These notebooks contained the results of studies regarding human gamma retroviruses, material supporting our patent filings, information which was shared with scientific collaborators, information regarding what samples and scientific material was sent to other laboratories, and information necessary to properly support the ongoing mission of the WPI.

3. Other researchers at WPI (including, but not limited to, Max Pfost, Cassandra "Cassie" Puccinelli, and Kathryn "Katy" Hagen) similarly kept laboratory notebooks containing their research notes, findings and results of their experiments and studies at WPI. I have seen Mr. Pfost and Ms. Puccinelli inputting information into their notebooks and have reviewed with Mr. Pfost and Ms. Puccinelli the contents of their notebooks, including specific notations.

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4. The last time I was alone with Dr. Mikovits in her office prior to her September 29, 2011 termination, she showed me the locked drawer on the left hand side of her desk where she kept the Mikovits Notebooks and the notebooks of other researchers. On that day, Dr. Mikovits told me that the laboratory notebooks of researchers Pfof, Puccinelli, and Hagen were in her possession and in a locked desk drawer. I observed Dr. Mikovits unlocking her desk drawer and pulling out a notebook prepared and used by Ms. Hagen (the "Hagen Notebook"). Dr. Mikovits specifically referred me to particular dated references to laboratory activities in the Hagen Notebook.

5. Aside from Dr. Mikovits, no one at WPI had a key to the desk drawer where Dr. Mikovits stored the laboratory notebooks. Dr. Mikovits told me that she had the only key to the locked desk drawer.

6. Upon Dr. Mikovits's termination, I participated with WPI in requesting that a representative of the desk manufacturer (Chris West) come on site to the WPI and open the locked desk drawer in the presence of Mike Hillerby to discover what was in Dr. Mikovits's desk drawer. Mr. Hillerby has told me that the notebooks of Mikovits, Pfof, Puccinelli, and Hagen were not in the drawer when Mr. West unlocked it.

7. Following the unlocking of Dr. Mikovits's drawer, WPI has carefully searched the entire WPI facility but has not located the Mikovits Notebooks or the laboratory notebooks of Puccinelli or Hagen. WPI has located three laboratory notebooks of Pfof which were stored in a different secure location in the WPI laboratory; one Pfof notebook is missing. Other notebooks from other researchers have been located.

8. Prior to Mikovits' termination, I advised Annette Whittemore that WPI should immediately take steps to make copies of relevant research materials, including notebooks, and create a central library so that researchers could appropriately access materials necessary for their work. As part of that process, I have met with WPI researchers and requested copies of their laboratory notebooks. I have also met with WPI researchers and requested that they record videos detailing the work that they have done, so that WPI could have a complete record of the

activities of the researchers. Prior to her termination, Dr. Mikovits refused to participate in the copying of the laboratory notebooks and the video recording.

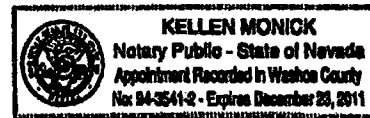
9. If called to testify in this action, I could competently testify that the above-stated assertions are true to my own personal knowledge, except as to those matters stated upon information and belief, and as to such matters, I believe them to be true

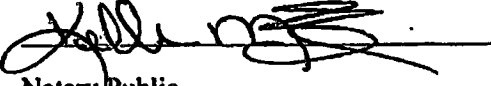
Dated this 7th day of November, 2011 in Reno, Nevada.

  
\_\_\_\_\_  
HARVEY WHITTEMORE

State of Nevada  
County of Washoe

SUBSCRIBED and SWORN to before  
me this 7th day of November, 2011.



  
\_\_\_\_\_  
Notary Public



**FILED**  
Electronically  
08-29-2012:05:31:44 PM  
Joey Orduna Hastings  
Clerk of the Court  
Transaction # 3184387

**EXHIBIT 4**

**FILED**  
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01-24-2012:02:18:31 PM  
Joey Orduna Hastings  
Clerk of the Court  
Transaction # 2717393

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CODE: 3060

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

WHITEMORE PETERSON INSTITUTE  
FOR NEURO-IMMUNE DISEASE, a  
Nevada non-profit corporation,

Plaintiff,

vs.

JUDY A. MIKOVITS, an individual,

Defendant.

Case No. CV11-03232

Dept. No. B6

AMENDED ORDER

Plaintiff, WHITEMORE PETERSON INSTITUTE FOR NEURO-IMMUNE DISEASE ("Plaintiff or WPI"), having filed on December 7, 2011, a Motion for Order to Show Cause ("Show Cause Motion") for Defendant's failure to comply with the Court's Order for Preliminary Injunction and Order Regarding (Production of) Documents; Defendant having filed on December 12, 2011, an Opposition to the Show Cause Motion; and WPI on December 14, 2011, having filed a Reply in support of the Show Cause Motion, the Court scheduled a hearing in this matter to commence at 9:00 a.m. on December 19, 2011. This matter having come before this Court at the time set forth above (the "Proceedings"), the Court entertained the opportunity for additional testimony and argument.

WPI through its President/CEO, Annette Whitemore, and general counsel, Carli West Kinne were present and represented by Ann O. Hall, Esq. of Bowen Hall. Defendant Judy A.

Order

235-268

1 Mikovits ("Defendant or Mikovits") was present and represented by her counsel Dennis Neil  
2 Jones, Esq. of Myers, Widders, Gibson, Jones & Schneider, LLP ("NV"). No direct testimony  
3 was given by the parties, but the Court heard and considered argument of counsel.

4 **FACTS**

5 On November 4, 2011, Plaintiff filed its complaint alleging breach of contract, trade secret  
6 misappropriation, conversion, breach of implied covenant of good faith and fair dealing, specific  
7 performance, and replevin (the "Complaint") against the Defendant, and on November 7, 2011  
8 Plaintiff filed a Motion for a Temporary Restraining Order ("Motion") seeking the return and  
9 protection of valuable material owned by the WPI. The Court considered Plaintiff's Motion and  
10 entered a Temporary Restraining Order ("TRO") against Defendant to secure the safe return of  
11 property misappropriated from Plaintiff's offices and laboratories (the "Misappropriated  
12 Property"). On November 9, 2011 the Defendant was served with the Complaint and TRO.

13 The Misappropriated Property ordered to be returned included laboratory notebooks, lab  
14 computers, notes and documentation regarding the research conducted by employees of the  
15 Plaintiff, e-mails containing Plaintiff's proprietary and confidential information, and other  
16 valuable material all as set forth in the Court's Order of that date.

17 On November 18, 2011, Defendant opposed Plaintiff's motion seeking a preliminary  
18 injunction asserting, *inter alia*, that Mikovits did not possess, control, or have the  
19 Misappropriated Property. It is undisputed that the Defendant did not comply with the terms of  
20 the TRO requiring the return of the Misappropriated Property, although some of the laboratory  
21 notebooks were returned to police authorities investigating a criminal matter involving the  
22 Defendant after her arrest. In addition, a computer was seized pursuant to the execution of a  
23 search warrant against the Defendant and a lab computer was returned with its contents "wiped  
24 clean" resulting in an attempted forensic recovery by the Plaintiff.

25 Plaintiff replied to Defendant's opposition on November 21, 2011 and established that  
26 Mikovits did indeed have the Misappropriated Property and the circumstances under which she  
27 gained control and possession of said material. Pursuant to this Court's order an evidentiary  
28 hearing was scheduled for 1:30 pm on November 22, 2011, and thus the matter came before this

1 Court on Plaintiff's Motion for Preliminary Injunction.

2 Rather than proceed with a full evidentiary hearing in open court, counsel for the parties  
3 agreed to initially proceed with a chamber conference with the Court. This conference was  
4 detailed and included constructive negotiations on a variety of issues raised by the parties and  
5 the Court. As a result of these negotiations, the matter was agreed to be resolved by stipulation  
6 of the parties and was to set forth the terms under which a preliminary injunction could be issued  
7 without resort to such evidentiary hearing. These lengthy discussions did indeed lead to the  
8 parties' agreement and a subsequent written stipulation and order granting Plaintiff's Motion for  
9 Preliminary Injunction in the instant case. The Court's Order granting the preliminary  
10 injunction established a time certain consistent with discussions in chambers and most  
11 importantly detailed a very specific discovery process to insure the Court's *in camera* review of  
12 material that Defendant deemed privileged in some way, whether by the assertion of a Fifth  
13 Amendment privilege against self-incrimination, attorney/client privilege, or doctor/patient  
14 privilege. Because there has been no compliance with such discovery process, the Court has not  
15 yet determined whether any privilege applies or whether it applies to a particular document.

16 The parties after due consideration agreed, *inter alia*, that the WPI was likely to succeed  
17 on the merits, was likely to suffer irreparable harm, that there were no copies of the laboratory  
18 notebooks that Mikovits took, that the balance of equities was in WPI's favor, and that the  
19 public interest supported the issuance of a preliminary injunction.

20 This Court ordered the Defendant not to destroy the Misappropriated Property, not to  
21 disseminate or use the Misappropriated Property, to immediately deliver the Misappropriated  
22 Property to counsel for WPI, and deliver a certification to this Court by December 2, 2011 that  
23 such delivery was completed. In this regard, I must point out that this is not the first time she  
24 failed to do that which she said was going to do. In the Mikovits' Declaration filed on  
25 November 18, 2011 in Paragraph 30 she affirmatively states: That there is nothing in my  
26 gmail (sic) account that could be considered proprietary. Nonetheless, in the interest in  
27 good faith, I will provide my work-related e-mails to counsel for Plaintiff prior to the  
28 November 22, 2011 hearing. This she did not do.

1 As a result of the Proceedings and the arguments of counsel made during such hearing as  
2 contained on pages 3-32 of the Transcript of Proceedings on the Plaintiffs Motion for Order to  
3 Show Cause ("the Transcript"), the Court hereby readopts the analysis set forth on pages 32 -47  
4 of the Transcript as the basis for the Court's decision. The Court being fully advised in the  
5 premises and good cause appearing therefor,

6 **IT IS HERBY ORDERED** that default judgment is entered in favor of Plaintiff and  
7 against Defendant pursuant to the terms of NRCP 37(b)2(c) for willful and wanton disregard of  
8 the orders of this Court in a manner which flaunts and otherwise mocks and ignores the essential  
9 discovery of the very information which is the subject of this lawsuit.

10 **IT IS HEREBY FURTHER ORDERED** that a permanent injunction is hereby issued  
11 on the same terms as the Court has previously ordered for the preliminary injunction with a new  
12 return date of January 17, 2012 and that Defendant shall comply forthwith with such prior orders  
13 of this Court.

14 **IT IS HEREBY FURTHER ORDERED** that an evidentiary hearing on the damages  
15 suffered by the Plaintiff as a result of Defendant's conduct be held on January 25, 2012 (the  
16 "Damages Hearing").

17 **IT IS HEREBY FURTHER ORDERED** that Plaintiff prepare the necessary  
18 documentation to calculate the expenses, including attorney's fees, associated with the hearing  
19 on the preliminary injunction, the chamber's conference on November 22, 2011, and these  
20 Proceedings (the "Proof").

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**IT IS HEREBY FURTHER ORDERED** that Plaintiff file such Proof with this Court  
prior to the Damages Hearing.

DATED this 24th day of January, 2012



\_\_\_\_\_  
**BRENT T. ADAMS**  
District Judge

**239-268**

# EXHIBIT B

240-268

**Whittemore Peterson Institute**

	<b>Current</b>	<b>Prior</b>	<b>Difference</b>
	<b>9/29/11</b>	<b>9/29/2010</b>	
	<b>1/23/12</b>	<b>1/23/2011</b>	
<b>Donations- Regular</b>	<b>17,900.33</b>	<b>144,795.74</b>	<b>(126,895.41)</b>
<b>Year end letter</b>	<b>2,070.00</b>	<b>8,275.00</b>	<b>(6,205.00)</b>
<b>Total Donations</b>			<b>(133,100.41)</b>
<b>Vivant</b>			<b>(123,630.00)</b>
<b>Total</b>			<b>(256,730.41)</b>

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Whittemore Peterson Institute  
 Research Related Costs  
 2007 - 2011

	2007	2008	2009	2010	2011	Total
Research Salaries and Burden	74,207	295,854	441,299	474,118	441,810	1,727,289
Lab Supplies	15,151	124,942	112,846	121,919	93,931	468,789
Subcontracted Services				58,785	29,989	88,775
Clinical Director Subcontracted	65,055	54,167	24,167			143,388
Fee for Service labor	1,100	10,923	83,031	87,607	70,084	252,745
Non capital equipment		13,080	33,559	47,138	37,209	130,986
Other lab expenses (travel, meals, dues training)	38,498	28,355	18,766	44,132	39,252	169,001
Total By Year	194,010	527,321	713,668	833,699	712,275	2,980,972
Operating Grant reimbursement				(340,047)	(315,791)	(655,838)
Net expenses	194,010	527,321	713,668	493,652	396,485	2,325,135

*Fabricated Spread Sheet by Defendants  
 Lacking actual receipts, Fraud on the Court*

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# EXHIBIT D

**Whittemore Peterson Institute**  
**Payroll summary for Judy Mikovits**  
**From W-2's**

Year	Salary
2007	37,692.34
2008	145,048.46
2009	181,606.69
2010	176,305.84
2011	140,332.54
<b>WPI Payroll Total</b>	<b>680,985.87</b>

For the period 11/15/2006 to 9/16/2007 Dr Mikovits was paid thru WNGM

There are 2 bonuses that were paid outside of payroll per management

12/22/2010 Christmas	2,500.00
1/15/2008	10,000.00

<b>Total compensation</b>	<b>693,485.87</b>
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# EXHIBIT E

245-268

# EXHIBIT C

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**Whittemore Peterson Institute  
 Mikovits Legal Bills**

<b>SNR Denton US LLP</b>			
	11/30/2011	1347429	19,804.50
	11/30/2011	1347428	52,938.00
	12/15/2011	1348365	51,198.75
	12/16/2011	1348364	129,364.98
	01/27/2012	1356123	30,802.79
	01/27/2012	1356124	24,535.12
	02/27/2012	1362020	8,429.62
	04/26/2012	1376639	5,641.87
	05/23/2012	1383200	589.50
	05/26/2012	1376645	2,651.35
<b>TOTAL SNR DENTON</b>			<b>325,956.48</b>

<b>Bowen Hall</b>	<b>Inv date</b>		
WPI vs Mikovitz	11/30/2011		42,113.27
Client 20008	1/10/2012		24,071.38
	2/1/2012		11,105.46
	3/1/2012		15,019.71
	4/1/2012		19,470.78
	5/1/2012		5,815.49
	6/1/2012		8,231.11
	7/1/2012		2,270.26
	8/1/2012		3,472.68
	9/1/2012		8,325.50
	10/1/2012		11,850.02
	11/1/2012		862.41
<b>TOTAL BOWEN HALL</b>			<b>152,608.07</b>

**TOTAL LEGAL FEES 478,564.55**

*Fabricated Accounting Spread sheet by Defendant.  
 Shows no actual accounting  
 Fraud upon the Court*

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**EXHIBIT “H”**

**Motion For Order Authorizing Trustee To  
Compromise Controversy**

**NOTICE OF COUNTERFEIT SECURITY  
-18 U.S.C. 513(a)**

CERTIFICATE OF SERVICE

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Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address CRAIG G. MARGULIES (State Bar No. 185925) MEGHANN TRIPLETT (State Bar No. 268005) MARGULIES FAITH, LLP 16030 Ventura Blvd., Suite 470 Encino, California 91436 Telephone: (818) 705-2777 Facsimile: (818) 705-3777 Email: Meghann@MarguliesFaithLay.com  <input type="checkbox"/> Debtor(s) appearing without an attorney <input checked="" type="checkbox"/> Attorney for: Jeremy W. Faith, Chapter 7 Trustee	FOR COURT USE ONLY
UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - NORTHERN DIVISION	
In re: JUDY ANNE MIKOVITS,	CASE NO.: 9:12-bk-13335-RR CHAPTER: 7
NOTICE OF MOTION FOR ORDER WITHOUT HEARING PURSUANT TO LBR 9013-1(o)	
Debtor(s).	[No hearing unless requested in writing]

Notice of Court Filing  
 U.S.C. Trustee  
 5/15/14

**TO THE U.S. TRUSTEE AND ALL PARTIES IN INTEREST, PLEASE TAKE NOTICE THAT:**

1. Movant(s) Jeremy W. Faith, Chapter 7 Trustee, has filed a motion entitled Motion for Order Authorizing Trustee to Compromise Controversy; memorandum of Points and Authorities; Declaration of Jeremy W. Faith in Support Thereof.
2. Movant(s) is requesting that the court grant the motion without a hearing, as provided for in LBR 9013-1(o).
3. The motion is based upon the legal and factual grounds set forth in the motion and briefly described in the attached description of relief sought. (Check appropriate box below):
  - The full motion is attached hereto; or
  - The full motion has been filed with the court, and a detailed description of the relief sought is attached hereto.
4. **DEADLINE FOR FILING AND SERVING OPPOSITION PAPERS AND REQUEST FOR A HEARING:** Pursuant to LBR 9013-1(o), any party objecting to the motion may request a hearing on the motion. The deadline for filing and serving a written opposition and request for a hearing is 14 days after the date of service of this notice, plus 3

This form is optional. It has been approved for use in the United States Bankruptcy Court for the Central District of California.

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additional days if you were served by mail, electronically, or pursuant to F.R.Civ.P. 5(b)(2)(D), (E), or (F). If you fail to comply with this deadline, the court may treat such failure as a waiver of your right to oppose the motion and may grant the motion without further hearing and notice.

Date: 2/12/2014

Respectfully submitted,

/s/ Meghann Triplett  
Signature of Movant or attorney for Movant

Meghann Triplett  
Printed name of Movant or attorney for Movant

1 CRAIG G. MARGULIES (State Bar No. 185925)  
2 MEGHANN TRIPLETT (State Bar No. 268005)  
3 **MARGULIES FAITH, LLP**  
4 16030 Ventura Blvd., Suite 470  
5 Encino, California 91436  
6 Telephone: (818) 705-2777  
7 Facsimile: (818) 705-3777  
8 Email: Meghann@MarguliesFaithLaw.com

9 Attorneys for Jeremy W. Faith, Chapter 7 Trustee

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**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
NORTHERN DIVISION**

In re

JUDY ANNE MIKOVITS,

Debtor(s).

Case No.: 9:12-bk-13335-RR

Chapter 7

**MOTION FOR ORDER AUTHORIZING  
TRUSTEE TO COMPROMISE  
CONTROVERSY; MEMORANDUM OF  
POINTS AND AUTHORITIES;  
DECLARATION OF JEREMY W. FAITH IN  
SUPPORT THEREOF**

[No Hearing Required Pursuant to Local  
Bankruptcy Rule 9013-1(o)]

TO THE HONORABLE ROBIN L. RIBLET, UNITED STATES BANKRUPTCY JUDGE:

Jeremy W. Faith, solely in his capacity as Chapter 7 Trustee (the "Trustee") for the above-captioned bankruptcy estate of Judy Anne Mikovits ("Debtor" or "Mikovits"), hereby moves this Court for an order pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure and Local Bankruptcy Rule 9013-1(o), authorizing the Trustee to compromise a controversy with the Whittemore Peterson Institute for Neuro-immune Disease ("WPI") on the terms set forth in the Settlement Agreement (the "Agreement") attached as Exhibit 1 to the Declaration of Jeremy W. Faith and as fully described herein.

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1 This Motion is made upon the attached Memorandum of Points and Authorities,  
2 the Declaration of Jeremy W. Faith; the Notice of Motion which is served upon all  
3 interested parties pursuant to Rule 2002(a) of the Federal Rules of Bankruptcy  
4 Procedure; all pleadings and records on file herein; all matters which are subject to  
5 judicial notice and any other evidence which may be introduced prior to any hearing on  
6 this Motion.

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 I.

9 **STATEMENT OF FACTS AND TERMS OF COMPROMISE**

10 **A. Background Facts**

11 The Debtor commenced this bankruptcy case by the filing of a voluntary petition  
12 under chapter 7 of the Bankruptcy Code on September 5, 2012 (the "Petition Date").  
13 Thereafter, the Trustee was appointed as the Chapter 7 Trustee for the Debtor's  
14 bankruptcy estate ("Estate") in which capacity he continues to serve.

15 Prior to the Petition Date, the Debtor was named as a defendant in a in a civil  
16 lawsuit filed by WPI in the Second Judicial District Court for the State of Nevada, County  
17 of Washoe entitled *Whittemore Peterson Institute for Neuro-Immune Disease v. Judy A.*  
18 *Mikovits*, Case No. CV11-03232 ("Nevada Litigation"). WPI's causes of action in the  
19 Nevada Litigation included: breach of contract, trade secret misappropriation, conversion,  
20 breach of implied covenant of good faith and fair dealing, specific performance, and  
21 replevin. The Debtor disputes all of WPI's claims and causes of action in the Nevada  
22 Litigation.

23 Prior to the Petition Date, on January 24, 2012, the Nevada Court entered its  
24 Amended Order granting default judgment in favor of plaintiff WPI and against defendant  
25 Mikovits. The Nevada Court also issue a permanent injunction against Mikovits and set  
26 a further hearing to determine the amount of WPI's money damages. However, the  
27 Debtor filed her bankruptcy case prior to WPI's prove up hearing for monetary damages  
28 against the Debtor. As such, WPI claim against the Estate is unliquidated.

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1 The Nevada Litigation is currently stayed pursuant to Section 362 of the  
2 Bankruptcy Code by the filing of the Debtor's Chapter 7 bankruptcy case.

3 Under Section 542 of the Bankruptcy Code, Mikovits' claims and causes of action  
4 against WPI have become property of the bankruptcy estate. Mikovits' claims against  
5 WPI include claims arising from WPI's termination of Mikovits' employment a disputed  
6 arrest, and related claims (the "Estate Claims"). WPI disputes all of Mikovits' claims and  
7 causes of action.

8 On or about March 1, 2013, WPI timely filed its proof of claim against the Debtor's  
9 Estate. On July 25, 2013, WPI filed an amended proof of claim for \$5,565,745.52 for its  
10 unliquidated money damages in the Nevada Litigation ("Amended Proof of Claim"). After  
11 investigation of WPI's allegations and thorough analysis, the Trustee finds the amount of  
12 damages asserted in the Amended Proof of Claim is objectionable. WPI maintains that  
13 the Amended Proof of Claim is valid and fully supportable.

14 In order to reduce litigation expenses and minimize the uncertainties of any  
15 contested proceedings regarding the proper amount of WPI's claims, the Trustee and  
16 WPI entered into settlement negotiations, which culminated in the instant settlement. It  
17 is the intention of the parties hereto to settle their disputes regarding the Amended Proof  
18 of Claim, and the Estate Claims. The resolution is set forth in the Agreement attached  
19 hereto as Exhibit 1.

20 **A. The Terms of the Compromise**

21 Subject to bankruptcy court approval, WPI's general unsecured claim is allowed  
22 at \$5,565,745.52. However, all but \$80,000 of WPI's claim is ordered subordinated; the  
23 subordinated portion of WPI's allowed claim (\$5,485,745.52) will be paid pro rata only  
24 after all allowed administrative, priority and claims listed by categories in 11 U.S.C. §  
25 726(a)(1), (a)(2), (a)(3), (a)(4), and (a)(5) have been paid in full. In consideration of the  
26 reduced allowed claim, the Trustee releases WPI from any and all claims or causes of  
27 action arising in or out of, or related to: (i) the subject matter of the Amended Proof of  
28 Claim; (ii) the Estate Claims; and (iii) the Trustee's avoiding power claims (if any). The

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1 Trustee retains and does not release WPI from the obligations set forth in the Settlement  
2 Agreement. WPI releases its claims against the Estate, except for those (to be  
3 subordinated) claims stated in the Amended Proof of Claim (See Exhibit 1).

4 The Trustee, in the exercise of his business judgment, has determined that it is in  
5 the best interests of the Estate to resolve the Amended Proof of Claim and the Estate  
6 Claims. The issues involved in liquidating WPI's money damages arising out of the  
7 Nevada Litigation and prosecuting the Estate Claims would have required substantial  
8 time and money to resolve and the costs to the Estate to litigate the issues would have  
9 reduced the amount of funds available at the end of this case to pay claims and the  
10 Agreement provides certainty. The Agreement is the product of the Parties' negotiations  
11 and ultimate cooperative resolution. The Trustee negotiated the Agreement through  
12 counsel, taking into account, among other things, the costs of litigation and the likelihood  
13 of succeeding at trial and the cost of further administration. Accordingly, the Trustee  
14 submits that the compromise is fair and reasonable and should be approved by the  
15 Court.

### 16 III.

#### 17 ARGUMENT

##### 18 A. The Trustee Is Authorized To Enter Into The Compromise

19 Federal Rule of Bankruptcy Procedure 9019 authorizes a party in interest to  
20 compromise a controversy following notice and an opportunity for a hearing. Federal  
21 Rule of Bankruptcy Procedure 2002(a)(6) governs the notice requirements for approval  
22 of motions. Local Bankruptcy Rule 9013-1(o) requires that all creditors shall receive no  
23 less than 14 days notice by mail of an opportunity to request a hearing date unless the  
24 Court otherwise directs.

25 In the case at bar, a Notice of Motion, which summarizes the relief sought by the  
26 Motion was served upon all creditors of the bankruptcy estate, as well as parties  
27 requesting special notice. The Trustee expects no opposition to the Motion.  
28 Accordingly, the Trustee respectfully requests that the Court enter a finding that notice is

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1 sufficient to creditors for purposes of this Motion and the Motion should be approved  
2 without the need for a hearing.

3 **B. The Compromise Should Be Approved**

4 It is well established that settlements are favored over continued litigation. See,  
5 e.g., In re A & C Properties, 784 F.2d 1377 (9th Cir. 1986); In re Blair, 538 F.2d 849, 851  
6 (9th Cir. 1976); In re Heissenger Resources, Ltd., 67 B.R. 378, 382 (C.D. Ill. 1986).

7 Among the factors to be considered in determining whether a settlement is fair and  
8 equitable are the following:

- 9 (a) the probability of successful litigation;
- 10 (b) any impediments to collection;
- 11 (c) the complexity, expense, inconvenience and delay of litigation; and
- 12 (d) the interest of creditors with deference to their reasonable opinions.

13 In re A & C Properties, *supra*, 784 F.2d at 1381.

14 The focus of inquiry in reviewing and approving compromises is whether the  
15 settlement is reasonable under the particular circumstances of the case. In re General  
16 Store of Beverly Hills, 11 B.R. 539, 542 (9th Cir. BAP 1981). Further, it is not the  
17 bankruptcy judge's responsibility to decide the numerous questions of law and fact with  
18 respect to the merits of the litigation, but rather to "canvas the issues and see whether  
19 the settlement falls below the lowest point of the range of reasonableness." In re  
20 Heissenger, *supra*, 67 B.R. at 383. From an analysis of the foregoing factors, the Court  
21 should conclude that the terms of the settlement are fair and equitable, and well within  
22 the range of reasonableness. Moreover, the Trustee submits that the Agreement is also  
23 in the best interest of the Chapter 7 estate.

24 **1. Probability of Successful Litigation**

25 The Trustee's probability of success on the Estate Claims is very difficult to  
26 gauge. Such difficulty and ambiguity supports the approval of the Agreement. The  
27 Estate's cause of action against WPI are largely contingent on the Trustee's ability to  
28 overturn the default judgment and permanent injunction entered against the Debtor in

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1 the Lawsuit and subsequently prevailing at trial against WPI. Thereafter, the Estate  
2 could pursue its potential claims against WPI for wrongful termination, wrongful arrest  
3 and related damages arising therefrom. Furthermore, the Trustee would also be  
4 required to file an objection to WPI's Amended Proof of Claim arising from the Nevada  
5 Litigation and litigate the damages issues.

6 The Agreement provides an efficient mechanism for the Estate to have WPI's  
7 Amended Proof of Claim significantly reduced and provides for a meaningful distribution  
8 to the Estate's creditors.

9 **2. Any Impediments To Collection**

10 The Trustee believes that collection of a judgment from WPI would be difficult.  
11 WPI is a non-profit research institute and relies primarily on charitable donations for  
12 funding. WPI asserts in its Amended Proof of Claim that as a result of the dispute with  
13 the Debtor (as alleged in the Nevada Litigation), its donations have significantly  
14 decreased. Furthermore, the Trustee is informed that in or about September 2013,  
15 Harvey Whittemore, the husband of WPI's founder and president Annette Whittemore,  
16 was sentenced to two years imprisonment for illegal campaign contributions. The  
17 Trustee believes that this arrest and related negative publicity of the Whittemore name  
18 may also negatively effect donations. Therefore, the Trustee believes that collection of a  
19 judgment from WPI would be uncertain.

20 In contrast, the Agreement provides an expense free mechanism for the Trustee  
21 to resolve its objection to WPI's Amended Proof of Claim and provides a guaranteed  
22 meaningful distribution to creditors of the Estate.

23 **3. The Complexity, Expense, Inconvenience and Delay of Litigation**

24 The issues involved in the Nevada Litigation and Estate Claims are speculative  
25 and complex and would require the Trustee to retain special counsel as well as experts.  
26 The Trustee would also need to file an objection to WPI's asserted claim of  
27 \$5,565,745.52 against the Estate. Litigation of these issues would cause significant  
28 delay and expense to the Estate.

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1 The Agreement resolves the Trustee's objection to the Amended Proof of Claim at  
2 minimal administrative expense and will also result in an expedited administration and  
3 closing of the Estate. The Agreement will therefore further judicial economy.

4 **4. The Interest of Creditors**

5 The settlement allows the Trustee to preserve resources by subordinating all but  
6 \$80,000 of WPI's asserted \$5,565,745.52 claim against the Estate without any additional  
7 administrative expense. This will allow for a meaningful distribution to the Estate's other  
8 unsecured creditors.

9 In summary, the Agreement is based on the Trustee's good business judgment  
10 that it will benefit the Estate and creditors, and therefore approval of the Motion is  
11 proper.

12 **IV.**

13 **CONCLUSION**

14 Accordingly, the Trustee respectfully requests that this Court enter an order:

- 15 1. Granting the Motion;
- 16 2. Approving the Settlement Agreement in the form as set forth in Exhibit 1  
17 attached hereto;
- 18 3. Authorizing the Parties to take any and all steps necessary to effectuate  
19 the Settlement Agreement; and
- 20 4. Ordering that all but \$80,000 of WPI's Amended Proof of Claim shall be  
21 paid pro rata only after all allowed administrative, priority, and claims listed by categories  
22 in 11 U.S.C. § 726(a)(1), (a)(2), (a)(3), (a)(4), and (a)(5) have been paid in full; and
- 23 5. Granting such other and further relief as is just and appropriate in the  
24 circumstances.

25 DATED: February 12, 2014

MARGULIES FAITH, LLP

26 By:                   /s/ Meghann Triplett                    
27 Meghann Triplett  
28 Attorneys for Jeremy W. Faith,  
Chapter 7 Trustee

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**DECLARATION OF JEREMY W. FAITH**

I, Jeremy W. Faith, declare as follows:

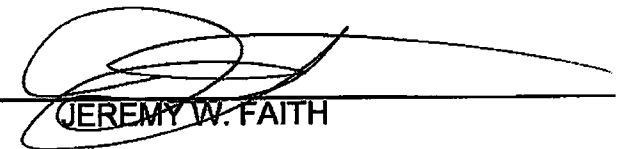
1. I am the duly appointed, qualified and acting Chapter 7 trustee for the bankruptcy estate of Judy Anne Mikovits. I have personal knowledge of the matters set forth herein and if called as a witness could and would testify competently thereto. This declaration is submitted in support of the foregoing Motion For Order Authorizing Trustee to Compromise Controversy (the "Motion"). Defined terms in the Motion shall have the same meaning herein.

2. By the attached Motion, I am requesting authority to enter into and consummate the Settlement Agreement (the "Agreement") I entered into with WPI. A true and correct copy of the Agreement is attached hereto as Exhibit 1.

3. I have exercised my best business judgment in reaching the proposed Agreement.

4. I believe that the terms of the Agreement are fair and reasonable and, therefore, the Agreement is in the best interests of the Estate and its creditors.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed on February 12, 2014 at Encino, California.

  
\_\_\_\_\_  
JEREMY W. FAITH

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EXHIBIT 1

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## SETTLEMENT AGREEMENT

January 21, 2014

The parties to this Settlement Agreement are: Jeremy W. Faith ("Faith") in his capacity as the bankruptcy trustee for In re Judy Anne Mikovits, chapter 7 case no. 9:12-bk-13335-RR; and Whittemore Peterson Institute for Neuro-Immune Disease ("WPI").

## RECITALS

A. On November 11, 2011, WPI filed a complaint against Judy A. Mikovits ("Mikovits") in the Second Judicial District Court of the State of Nevada, in and for the County of Washoe. This commenced case no. CV11-03232 (the "Nevada Litigation"). WPI's causes of action included: breach of contract; trade secret misappropriation; conversion; breach of implied covenant of good faith and fair dealing; specific performance; and replevin. Mikovits disputes all of WPI's claims and causes of action.

B. On January 24, 2012, the Nevada court entered its Amended Order granting a default judgment in favor of plaintiff WPI and against defendant Mikovits. The Nevada court also issued a permanent injunction against Mikovits and set a further hearing to determine the amount of WPI's money damages. The Nevada court was not able to liquidate WPI's money damages before Mikovits filed bankruptcy.

C. On September 5, 2012, Mikovits filed a bankruptcy petition in the United States Bankruptcy Court for the Central District of California. This commenced In re Judy Anne Mikovits, chapter 7 case no. 9:12-bk-13335-RR and automatically stayed the Nevada Litigation.

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D. Under 11 U.S.C. § 541, Mikovits' claims and causes of action against WPI (the "Estate Claims") became property of Mikovits' bankruptcy estate. Mikovits' claims against WPI include claims arising from WPI's termination of Mikovits' employment and a disputed arrest. WPI disputes all of Mikovits' claims and causes of action.

E. WPI filed a timely proof of claim. On July 25, 2013, WPI filed an Amended Proof of Claim for \$5,565,745.52 for its unliquidated money damages in the Nevada litigation (the "Amended Proof of Claim").

F. After investigation of WPI's allegations and thorough analysis, Faith finds the amount of damages asserted in the Amended Proof of Claim is objectionable. WPI maintains that the Amended Proof of Claim is valid and fully supportable.

G. In order to reduce litigation expenses and and minimize the uncertainties of any contested proceeding regarding the proper amount of WPI's claims, and in order to to obtain the release of the Estate Claims, WPI has agreed to subordinate a portion of its allowed claim.

## AGREEMENT

Faith and WPI agree as follows:

1. Incorporation of Recitals. The foregoing recitals are incorporated herein.
2. Allowed Claim. WPI 's general unsecured claim is hereby allowed at \$5,565,745.52. However, all but \$80,000.00 of WPI's claim is ordered subordinated; the subordinated portion of WPI's allowed claim

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(\$5,485,745.52) will be paid *pro rata* only after all allowed administrative, priority and claims listed by categories in 11 U.S.C. § 726(a)(1), (a)(2), (a)(3), (a)(4), and (a)(5) have been paid in full.

3. Release of claims. Faith, in his capacity as the bankruptcy trustee for In re Judy Anne Mikovits, chapter 7 case no. 9:12-bk-13335-RR, releases WPI (and WPI's officers, directors, employees, representatives, agents, and attorneys) from any and all claims or causes of action arising in, arising out of, or related to: (i) the subject matter of the Amended Proof of Claim; (ii) the Estate Claims; and (iii) Faith's avoiding power claims (if any). Faith retains (and does not release) WPI from the obligations set forth in this Settlement Agreement.

WPI releases its claims against the bankruptcy estate in In re Judy Anne Mikovits, chapter 7 case no. 9:12-bk-13335-RR, except for those (to be subordinated) claims stated in the Amended Proof of Claim.

WPI releases Faith (and his representatives, agents, and attorneys) from claims (if any) arising in, arising out of, or related to Faith's actions in In re Judy Anne Mikovits, chapter 7 case no. 9:12-bk-13335-RR.

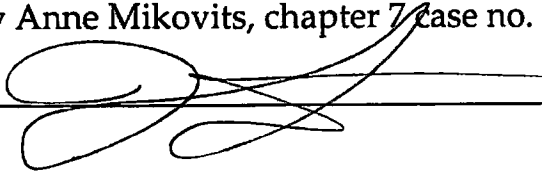
4. Approval by the court. Faith shall file a motion for an order approving this Settlement Agreement under Federal Rule of Bankruptcy Procedure 9019. A final order approving this Settlement Agreement is a condition precedent to its effectiveness and validity (including the Parties' mutual release of claims). The order must provide that this Settlement Agreement is binding upon: Faith, WPI, Mikovits, and Mikovits' creditors; and their legal successors, heirs, executors, administrators, assigns, partners and representatives.

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5. Governing law. This Settlement Agreement shall be governed and construed under California law. The United States Bankruptcy Court shall retain jurisdiction to enforce any and all provisions and issues associated hereto.

SIGNATURES

Jeremy W. Faith ("Faith") in his capacity as the bankruptcy trustee for In re Judy Anne Mikovits, chapter 7 case no. 9:12-bk-13335-RR



---

Whittemore Peterson Institute for Neuro-Immune Disease

By: \_\_\_\_\_

Its: \_\_\_\_\_

APPROVED AS TO FORM:

---

Meghann Triplett, counsel for Jeremy W. Faith, Chapter 7 Trustee

---

J. Scott Bovitz, counsel for Whittemore Peterson Institute for Neuro-Immune Disease

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5. Governing law. This Settlement Agreement shall be governed and construed under California law. The United States Bankruptcy Court shall retain jurisdiction to enforce any and all provisions and issues associated hereto.

SIGNATURES

Jeremy W. Faith ("Faith") in his capacity as the bankruptcy trustee for In re Judy Anne Mikovits, chapter 7 case no. 9:12-bk-13335-RR

---

Whittemore Peterson Institute for Neuro-Immune Disease

By: *Quint J. Whitten*

Its: *President*

APPROVED AS TO FORM:

---

Meghann Triplett, counsel for Jeremy W. Faith, Chapter 7 Trustee

*J. Scott Bovitz*

J. Scott Bovitz, counsel for Whittemore Peterson Institute for Neuro-Immune Disease

264-268

5. Governing law. This Settlement Agreement shall be governed and construed under California law. The United States Bankruptcy Court shall retain jurisdiction to enforce any and all provisions and issues associated hereto.

**SIGNATURES**

Jeremy W. Faith ("Faith") in his capacity as the bankruptcy trustee for In re Judy Anne Mikovits, chapter 7 case no. 9:12-bk-13335-RR

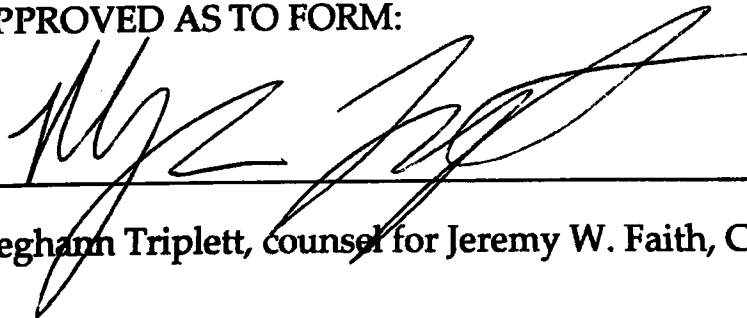
\_\_\_\_\_

Whittemore Peterson Institute for Neuro-Immune Disease

By: \_\_\_\_\_

Its: \_\_\_\_\_

APPROVED AS TO FORM:



\_\_\_\_\_  
Meghan Triplett, counsel for Jeremy W. Faith, Chapter 7 Trustee

\_\_\_\_\_  
J. Scott Bovitz, counsel for Whittemore Peterson Institute for Neuro-Immune Disease

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## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 16030 Ventura Blvd., Suite 470, Encino, CA 91436

A true and correct copy of the foregoing document entitled **NOTICE OF MOTION AND MOTION FOR ORDER AUTHORIZING TRUSTEE TO COMPROMISE CONTROVERSY; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF JEREMY W. FATIH IN SUPPORT THEREOF** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On February 13, 2014, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- J Scott Bovitz [bovitz@bovitz-spitzer.com](mailto:bovitz@bovitz-spitzer.com)
- Jeremy W. Faith (TR) [jfaith@7trustee.net](mailto:jfaith@7trustee.net),  
[C118@ecfbis.com](mailto:C118@ecfbis.com); [Helen@MarguliesFaithLaw.com](mailto:Helen@MarguliesFaithLaw.com); [leedowding@gmail.com](mailto:leedowding@gmail.com)
- David Joel Follin [legalstaff1@hotmail.com](mailto:legalstaff1@hotmail.com), [legalstaff4@hotmail.com](mailto:legalstaff4@hotmail.com)
- Nancy Ly [bknotice@rcolegal.com](mailto:bknotice@rcolegal.com), [nlee@rcolegal.com](mailto:nlee@rcolegal.com)
- Craig G Margulies [craig@marguliesfaithlaw.com](mailto:craig@marguliesfaithlaw.com),  
[staci@marguliesfaithlaw.com](mailto:staci@marguliesfaithlaw.com); [mhillel@marguliesfaithlaw.com](mailto:mhillel@marguliesfaithlaw.com); [fahim@marguliesfaithlaw.com](mailto:fahim@marguliesfaithlaw.com)
- Meghann A Triplett [Meghann@MarguliesFaithlaw.com](mailto:Meghann@MarguliesFaithlaw.com),  
[Helen@MarguliesFaithlaw.com](mailto:Helen@MarguliesFaithlaw.com); [MF\\_ecf@ecf.inforuptcy.com](mailto:MF_ecf@ecf.inforuptcy.com); [Marta@MarguliesFaithLaw.com](mailto:Marta@MarguliesFaithLaw.com)
- United States Trustee (ND) [ustpregion16.nd.ecf@usdoj.gov](mailto:ustpregion16.nd.ecf@usdoj.gov)
- Edward T Weber [bknotice@rcolegal.com](mailto:bknotice@rcolegal.com)

**2. SERVED BY UNITED STATES MAIL:**

On February 13, 2014, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Debtor: Judy Anne Mikovitz, 2031 Jamestown Way, Oxnard, CA 93035-3747

Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served):** Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) \_\_\_\_\_, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

February 13, 2014

Date

Staci McFadden

Printed Name

/s/ Staci McFadden

Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

Label Matrix for local noticing  
0973-9

Case 9:12-bk-13335-RR  
Central District Of California  
Santa Barbara  
Wed Feb 12 18:11:01 PST 2014

Whittemore Peterson Institute  
c/o Carli West Kinne  
1664 N. Virginia Street  
University of Nevada  
Reno MS 0552  
Reno, NV 89557-0552 Unites States of Ame

American Express Gold  
PO Box 981540  
El Paso, TX 79998-1540

Bowen Hall Ohlson & Osborne  
555 S Center St  
Reno, NV 89501-2205

CitiMortgage Inc.  
PO Box 6243  
Sioux Falls, SD 57117-6243

Law Offices Of Michael & Associates  
555 St Charles Dr Ste 204  
Thousand Oaks, CA 91360-3992

Bank of America, N.A.  
Routh Crabtree Olsen, PS  
1241 East Dyer Road, Ste. 250  
Santa Ana, CA 92705-5611

Northern Division  
1415 State Street,  
Santa Barbara, CA 93101-2511

(p)BANK OF AMERICA  
PO BOX 982238  
EL PASO TX 79998-2238

Chase  
Home Equity Loan  
PO Box 78035  
Phoenix, AZ 85062-8035

David Nolde  
2031 Jamestown Way  
Oxnard, CA 93035-3747

Marriot Rewards Premier Visa  
PO Box 94014  
Palatine, IL 60094-4014

eCAST Settlement Corporation, assignee  
of Chase Bank USA, N.A.  
POB 29262  
New York, NY 10087-9262

United States Trustee (ND)  
915 Wilshire Blvd, Suite 1850  
Los Angeles, CA 90017-3560

American Express Bank, FSB  
c o Becket and Lee LLP  
POB 3001  
Malvern, PA 19355-0701

Bank Of America  
PO Box 5170  
Simi Valley, CA 93062-5170

Chase Freedom  
PO Box 94014  
Palatine, IL 60094-4014

FIA CARD SERVICES, N.A.  
4161 Piedmont Parkway  
NC4 105 03 14  
Greensboro, NC 27410

United Mileage Plus Visa  
PO Box 94014  
Palatine, IL 60094-4014

David Joel Follin  
Law Offices of David J Follin  
950 County Sq Dr Ste 202  
Ventura, CA 93003-5480

267-268

This is to certify that I have on this \_\_\_\_\_ day of April, 2019 placed a true and correct copy of the:

PLAINTIFFS' NOTICE TO THE COURT OF Dr. Judy Mikovits's  
CRIMINAL AFFIDAVIT AND CRIMINAL COMPLAINT Pursuant to 28  
U.S.C. §1361 in Incorporated Case No. 3:15-cv-00409-RCJ at the below  
address, or by depositing the same in the U.S. Mails; at 675 East Santa Clara  
Street, Ventura CA 93001, addressed to the below entities:

To: The District Court Clerk, Lloyd D. George Federal Courthouse 333 Las  
Vegas Blvd. South Las Vegas, NV 89101. Certified

Mail: \_\_\_\_\_

**And to:**

STEVEN W. MYHER, acting United States Attorney, District of Nevada,  
and,

TROY K. FLAKE, Assistant United States Attorney, 501 Las Vegas  
Boulevard South, Suite 1100, Las Vegas, Nevada 89101;

Telephone: 702-388-6336; Email: troyflake@usdoj.gov.

Certified Mail: \_\_\_\_\_

I declare under penalty of perjury that the above is true and correct.

\_\_\_\_\_  
Judy A. Mikovits, PhD  
137 Maple Ave, #2  
Carlsbad, California 92007

268 - 268