

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS**

Tarek Abdel-Aleem, Esq.
No.678587
8 Chauncy Street, Ste. 2
Cambridge MA, 02138

DR. SALAH ABDEL-ALEEM)	Case No.
)	
Plaintiff,)	
)	PLAINTIFF’S VERIFIED COMPLAINT AND
vs.)	DEMAND FOR TRIAL BY JURY
)	
OPK BIOTECH INC.; Zafiris Zafirelis; Alex Pugachev;)	ACTION FOR ABUSE OF PROCESS
)	
DOES DEFENDANTS 1 – 10.)	
)	
Defendants.)	

COMPLAINT

TO THE HONORABLE COURT:

COMES NOW, Plaintiff through his undersigned attorney and respectfully **STATES**
and **PRAYS** as follows:

I. Preliminary Statement

1. This case involves defendant OPK Biotech (“OPK”), a purchaser of a defunct bankrupt company, (Biopure), and its ongoing attempt to recoup its losses through abuse of the legal system. OPK, through its coercive representations, communications, and filings, continues to use the legal system solely for the improper purpose of obtaining legally protected materials which are subjected to a protective order. OPK’s ulterior and illegal motive in the present case is to gain access to third-party confidential proprietary information and intellectual property. Dr. Abdel-

1 Aleem alleges herein that OPK continues to engage in (1) illegal, improper, perverted use of the
2 legal process that is not warranted or authorized, and has an (2) improper purpose in exercising
3 such illegal, improper or perverted use of process; and (3) damages have resulted. (For the
4 elements of the abuse of process claim, See Continental Cablevision v. Storer Broadcasting Co.,
5 653 F. Supp. 451, 457 (D. Mass. 1986)).

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7 2. Plaintiff, a retired insolvent scientist with Atypical Progressive Parkinson's disease,
8 brings this action in order to preclude OPK's abuse of the legal system, and to recover damages.

9 **II. Jurisdiction**

10 3. This Court has proper jurisdiction over the subject matter and over the parties on the
11 grounds that all parties have diverse citizenship and the amount of controversy exceeds,
12 exclusive of interest and costs, the amount of (\$75,000), pursuant to 28 U.S.C. § 1332.
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14 **III. Nature of the Action**

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16 4. The nature of the action is for the recovery of damages resulting from OPK BIOTECH
17 LLC., ("OPK's") abuse of process through its representations throughout August of 2010, up
18 until its filings on or about October 22, 2010, and subsequent litigation and representations
19 thereafter. Plaintiff demands injunctive relief and a jury trial.
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21 **III. Parties**

22 5. Plaintiff ("Dr. Abdel-Aleem") is a natural person of legal age and domiciled at 9 Apple
23 Blossom Lane, Ithaca, New York.

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25 6. Defendant OPK, at all times mentioned herein, is a registered Delaware Limited Liability
26 Corporation, headquartered in Moscow, licensed in the Commonwealth of Massachusetts, with
27 manufacturing facilities located in Cambridge Massachusetts. OPK's principal place of business
28 is located at 11 Hurley Street, Cambridge MA, 02141. OPK's registered Manager is **Alex**

1 **Pugachev**, his Registration Address is CT Corporation System, 155 Federal Street, Suite 700,
2 Boston, MA 02110.

3 7. DOES Defendants 1 - 10 are unknown natural persons who are responsible for Plaintiff's
4 damages, once their true names are known, they will be substituted.

5 **IV. FACTS**

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7 8. On June 29, 2007, Biopure filed suit against Plaintiff seeking damages and equitable
8 relief for violation of state statutes, in particular the violation of Massachusetts common law and
9 statutes concerning the tortuous misappropriation of trade secrets and proprietary business
10 information (M.G.L. Chapter 93 §§ 42 and 42a), as well as breach of contract. (See Exhibit 1)
11 Biopure commenced the abovementioned frivolous suit for the reasons that follow.

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13 9. On January 1, 2005, Dr. Abdel-Aleem entered into a consulting agreement with Biopure.
14 As a condition of his further engagement, Dr. Abdel-Aleem entered into an Employment
15 Agreement Concerning Protection of Company Property and the Arbitration of Legal Disputes
16 dated August 1, 2005 ("Agreement").

17
18 10. On July 28, 2006, Abdel-Aleem's employment with Biopure was terminated. Dr. Abdel-
19 Aleem left Biopure because he had fundamental differences with the then CEO of Biopure,
20 Zafiris Zaferilis, regarding the safety and reliability of Biopure's product. In Dr. Abdel-Aleem's
21 professional opinion, based on published scientific studies, Biopure's blood substitute product
22 was unsafe for human use. Dr. Abdel-Aleem was unwilling to compromise his moral and ethical
23 obligations to the public and Biopure's shareholders by deceiving them into believing that
24 Biopure's product, Hemopure, was viable at the time. Hemopure never gained U.K. or U.S.
25 regulatory approval. Dr. Abdel-Aleem feared that Biopure was attempting to abuse his
26 credentials and reputation in the field of clinical trials to deceive shareholders. Dr. Abdel-
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1 Aleem's suspicions were prescient, as Biopure was sued by its shareholders for
2 misrepresentations concerning its stock price and the viability of Hemopure, and eventually
3 settled with its shareholders for \$600,000, within months of filing for bankruptcy. On July 16,
4 2009, Biopure announced it had filed for Chapter 11 Bankruptcy and entered into an agreement
5 with OPK for the sale of substantially all of its assets.
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7 11. In January 2007 Dr. Abdel-Aleem consulted with IKOR Life Sciences Inc., ("Ikor") in
8 California. Between the months of January and April 2007, Dr. Abdel-Aleem prepared five
9 documents proposing animal experiments, solely based on scientific journals available in the
10 public domain. Two of the documents which Abdel-Aleem prepared were based on Ikor's pre-
11 existing experiments. Moreover, Dr. Abdel-Aleem's basic scientific research for Ikor was in no
12 way related to Biopure's line of work.
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14 12. Upon learning of Dr. Abdel-Aleem's consulting work for Ikor, Mr. Zaferilis attempted to
15 convince Dr. Abdel-Aleem to provide information incriminating Ikor and Carl Rausch
16 ("Rausch"), co-founder and former executive of Biopure who also provided consulting services
17 to Ikor through his new employer Maxiom Consulting, Inc. ("Maxiom"). When Dr. Abdel-
18 Aleem failed to comply with Biopure's unlawful request to provide Ikor's proprietary
19 information, Biopure filed suit against Dr. Abdel-Aleem. In January 2008 Biopure filed a motion
20 for a protective order that would protect the proprietary information of Biopure and Ikor as a
21 pretext to force Dr. Abdel-Aleem and Rausch to produce sensitive information related to Ikor.
22 Prior to the issuance of the protective order, Dr. Abdel-Aleem and Rausch were hesitant to
23 unlawfully disclose proprietary information relating to Ikor. Extensive discovery ensued.
24 Biopure subpoenaed Dr. Abdel-Aleem's and his son's email accounts. Their computers were
25 seized in order to access any and all data entered therein.
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1 13. After several years and intrusive discovery, OPK has failed to show how Dr. Abdel-
2 Aleem misappropriated any of its confidential information. By April 30, 2007, Biopure had
3 accumulated a deficit of \$538,610,000 from both capital and operating losses but has been
4 unable to attribute any of its losses to the alleged misconduct of Dr. Abdel-Aleem. Now, OPK
5 seeks to lift the protective order that it initially requested for its own protection, to access the
6 sensitive and highly confidential information of Ikor.
7

8 14. On March 8, 2010, the Court dismissed the suit because of Biopure's failure to appear
9 and prosecute the case. In June 2010, Mr. Zaferilis, current CEO of OPK, contacted Dr. Abdel-
10 Aleem and attempted to coerce him into releasing the protective order in exchange for OPK's
11 promise not to reopen the case against him. Counsel for OPK informed Dr. Abdel-Aleem that
12 OPK would reinstate the lawsuit against him if he did not agree to unlawfully release the
13 information subject to the protective order. (See Exhibit 3)
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15 15. OPK waited seven (7) months until they moved to vacate the default judgment. During
16 that time, they continued to threaten and coerce Abdel-Aleem with further litigation, unless he
17 capitulated to their ultimatum. Dr. Abdel-Aleem refused to comply with OPK's requests unless
18 OPK agreed to fully indemnify him against any potential lawsuit from Ikor. OPK refused to do
19 so and instead continued to strong-arm Dr. Abdel-Aleem, who then and now suffers from
20 Progressive Parkinson's Disease, into releasing the protective order.
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22 16. In OPK's most recent submission to the court on February 15, 2001, OPK made it
23 unambiguously clear that their sole purpose in pursuing their frivolous claims against Dr. Abdel-
24 Aleem is to force him into unlawfully releasing to them proprietary information relating to Ikor.
25 (See Exhibit 2) Such a release would amount to a serious breach of Dr. Abdel-Aleem's
26 contractual and moral obligations. Thus, OPK's suit constitutes the tort of abuse of process.
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1 OPK'S process consists of filing litigation, calling Dr. Abdel-Aleem's home, and initiating
2 correspondences. OPK has utilized said process for the ulterior or illegitimate purpose of gaining
3 confidential information which is subject to a protective order. OPK seeks to gain access to
4 confidential information so they may misappropriate third party intellectual property rights and
5 proprietary information. Damages have resulted including emotional distress. (See Adams v.
6 Whitman, 62 Mass. App. Ct. 850, 853 (Mass. App. Ct. 2005)).

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8 17. Even though Biopure requested the protective order, OPK continues to insist that Dr.
9 Abdel-Aleem stipulate to lifting confidential information in the protective order, or endure the
10 expenses of their meritless litigation.

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12 **V. COUNT I**

13 (Abuse of Process)

14 18. Dr. Abdel-Aleem realleges the preceding paragraphs and incorporates them by reference,
15 herein, as though fully set forth.

16 19. Defendants, each and every one of them, have abused the process of this court in a
17 wrongful manner, not proper in the regular conduct of the proceedings by filing OPK Biotech,
18 LLC, v. Salah Abdel-Aleem, CIV 07-2472, and in other litigation, to accomplish a purpose for
19 which said proceedings were not designed, specifically, to gain confidential proprietary
20 information and intellectual property that is subject to a protective order, the assignation of Dr.
21 Abdel-Aleem's reputation, and retaliation for his separation from defendant's unsafe and
22 unmarketable products.

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24 20. Defendants, each and every one of them, acted with an ulterior motive to gain access to
25 confidential information which is subject to a protective order, and assassinate Dr. Abdel-
26 Aleem's reputation, in said litigations.
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21. That defendants, each and every one of them, have committed willful acts of intimidation, threats, and requests for submission of confidential documents not authorized by the process of litigation, and not proper in the regular conduct of litigation, Dr. Abdel-Aleem has suffered damage, loss and harm, including but not limited to his reputation, his emotional tranquility, and privacy.

22. That said damage, loss and harm, was the proximate and legal result of the use of such legal process.

WHEREFORE, Dr. Abdel-Aleem seeks relief as is hereinafter pleaded.

DAMAGES ON THE FIRST CAUSE OF ACTION

1. For general and compensatory damages according to proof.
2. For punitive and exemplary damages according to proof.
3. For attorney's fees and costs of suit.
4. For such other and further relief as the Court may deem just and proper.

RESPECTFULLY SUBMITTED,

Dated this MARCH 8, 2011

/s/ Tarek Abdel-Aleem
TAREK S. ABDEL-ALEEM, ESQ.
8 CUANCY STREET, 332
CAMBRIDGE MA, 02138

VERIFICATION

I, the undersigned, attorney for the Plaintiff in the entitled action, know the contents of the foregoing Verified Complaint and certify that the same is true of my own knowledge, except as to the matters which are therein stated upon my information and belief, and as to those matters, I believe them to be true. I declare under penalty of perjury that the foregoing is true and correct according to the laws of Massachusetts and the United States. This declaration was executed on March 5, 2010, Boston, Massachusetts.

Dated this MARCH 8, 2011,

/s/ Tarek Abdel-Aleem
TAREK S. ABDEL-ALEEM, ESQ.
No. 678587
8 CHAUNCY STREET, Ste. 32
CAMBRIDGE MA, 02138