

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

GUILLERMO GUTIERREZ, M.D.  
633 Bingaman Road  
Orrtanna, PA 17353

Plaintiff,

v.

Case No. \_\_\_\_\_

THE GEORGE WASHINGTON UNIVERSITY  
1918 F Street, N.W.  
Washington, D.C. 20052

**TRIAL BY JURY IS DEMANDED**

Serve: Registered Agent:  
Mary Lynn Reed  
2100 Pennsylvania Avenue, NW  
Suite 250  
Washington, D.C. 20052

and

MEDICAL FACULTY ASSOCIATES, INC.,  
d/b/a THE GEORGE WASHINGTON  
UNIVERSITY MEDICAL FACULTY ASSOCIATES  
2150 Pennsylvania Avenue, N.W.  
Suite 10-403  
Washington, D.C. 20037-3201

Serve: Registered Agent:  
Corporation Service Company,  
1090 Vermont Avenue, NW  
Washington, D.C. 20005

Defendants.

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**COMPLAINT**

Plaintiff Guillermo Gutierrez, M.D. ("Plaintiff"), by and through undersigned counsel, hereby submits this Complaint against Defendants The George Washington

University (“GWU”) and Medical Faculty Associates, Inc. d/b/a The George Washington University Medical Faculty Associates (“GW MFA”) to recover damages based on breach of Plaintiff’s faculty and employment contracts with Defendants.

### **Jursidiction**

1. This court has jurisdiction over Plaintiff’s employment contract claims pursuant to 28 U.S.C. § 1332(a)(1) and (a)(4) based upon diversity of citizenship, as Plaintiff is a citizen and resident of the Commonwealth of Pennsylvania and Defendants GWU and GW MFA are corporations incorporated in and with principal offices located in the District of Columbia, and because the amount in controversy exceeds \$75,000.

### **Venue**

2. At all times relevant to this Complaint, Plaintiff was and is employed by Defendants in Washington, D.C. Venue is proper in this district under 28 U.S.C. §§ 1391(b)(1) and (2), as the Defendants are chartered and/or incorporated in and have their principal offices in the District of Columbia.

### **Parties**

3. Plaintiff Guillermo Gutierrez, M.D. is a citizen and resident of the Commonwealth of Pennsylvania. Plaintiff is a medical doctor specializing in pulmonary and critical care medicine, a tenured medical professor at GWU, and an employee of GWU and GW MFA.

4. Defendant GWU is an Act of Congress corporation chartered and/or incorporated in, and with its principal office located in, the District of Columbia.

5. Defendant GW MFA is a non-profit tax-exempt corporation incorporated in,

and with its principal office located in, the District of Columbia. GW MFA employs physicians from various specialties to provide clinical, administrative and teaching services, participate in certain research activities, further GW MFA's tax-exempt mission, and fulfill GW MFA's contractual commitments to The George Washington University, including The George Washington University School of Medicine, The George Washington University Hospital, and other entities.

### **Factual Background**

6. In 2001, GWU appointed Plaintiff as Professor of Medicine, Anesthesiology and Critical Care Medicine, with Tenure. This tenured faculty appointment remains in effect.

7. GWU's 2001 letter appointing Plaintiff as a tenured Professor of Medicine, Anesthesiology and Critical Care Medicine stated in part: "This is a regular, tenured faculty appointment that is contingent on your continued full-time employment at The George Washington University Medical Faculty Associates, Inc. ("MFA, Inc.)."

8. Defendant GW MFA and Plaintiff executed an employment agreement with Plaintiff (GW MFA's Full Time Physician's Agreement, dated August 27, 2001, hereinafter the "GW MFA Employment Agreement").

9. The GW MFA Employment Agreement, at Paragraph III (Physician's Obligations), provides that Plaintiff "agrees to devote his/her professional best efforts and professional full time professional effort to the benefit of GW MFA, including, without limitation, the devotion of sufficient time and effort to provide teaching, research and administrative services to the University." The GW MFA Employment Agreement, at Paragraph IV-A (Physician Compensation), also provides that: "In return for performing all duties referred to in this Agreement, Physician shall be paid by GW MFA the initial

annual draw set forth in Exhibit A and otherwise in accordance with the GW MFA Compensation Plan set forth in Exhibit B.”

10. The 2001 GW MFA Employment Agreement with Plaintiff acknowledges that GWU compensates GW MFA for an unspecified portion of Plaintiff’s GW MFA salary (“A component of your salary will include money from the [GWU] School and Graduate Medical Education”).

11. In 2011, GWU also appointed Plaintiff as Professor of Engineering and Applied Sciences. This tenured faculty appointment remains in effect.

12. On June 26, 2019, GW MFA renewed Plaintiff’s Employment Agreement from July 1, 2019 through June 30, 2020.

13. On July 1, 2019, GWU extended Plaintiff’s faculty appointment through June 30, 2020. The letter states in part:

“This is to confirm the continuation of your appointment as Professor of Medicine, of Anesthesiology and Critical Care Medicine and of Engineering at The George Washington University School of Medicine and health Sciences for the fiscal year July 1, 2019 through June 30, 2020. This is a regular, tenured faculty appointment that is contingent on your continued full-time employment at The George Washington University Medical Faculty Associates, Inc. (“MFA, Inc.”).

It is understood that MFA, Inc. is solely responsible for payment of your compensation and payment of or provision for employment fringe benefits, and that this re-appointment carries no compensation from the University. Nevertheless, you will continue to be considered a regular faculty member under the GW Faculty

Code, and you will continue to have the academic rights, privileges and duties that go with that status, all subject to your continued full-time by MFA, Inc., and to any applicable provisions of the academic affiliation agreement between the University and MFA, Inc. Your academic duties will continue to be determined by the Dean, your department chair, and other academic officials of the University and School of Medicine and Health Sciences.”

14. In August, 2018, Plaintiff contacted Professor Jean-Louis Vincent, one of the world’s leading authorities in intensive care medicine based in Brussels, Belgium, to inquire about the possibility of conducting short-term medical research at the Erasme University Hospital Intensive Care Department in Brussels under the mentorship of Professor Vincent. Prof. Vincent replied enthusiastically to the idea.

15. On or about September 6, 2018, Plaintiff orally informed Dr. Alan G. Wasserman, Chairman of GW MFA’s Department of Medicine, of Plaintiff’s plans to apply for a 6-month research position at Erasme University Hospital Intensive Care group in Brussels, Belgium under the Fulbright Scholar Program at the U.S. Department of State.

16. On September 11, 2018, a formal invitation to undertake the research from Prof. Jacques Creteur, head of the Intensive Care Department at Erasme University Hospital was received by Plaintiff.

17. On September 13, 2018, Plaintiff submitted his application for the Fulbright U.S. Research Scholar Program with the U.S. Department of State.

18. In September, 2018, Dr. Wasserman, Chairman of the GW MFA Department of Medicine, and Dr. Akman, Dean of the GWU School of Medicine, sent letters to the Fulbright Foreign Scholar Program supporting Plaintiff’s application,

19. On March 1, 2019, Plaintiff was selected by the Commission for Educational Exchange Between the United States, Luxembourg and Belgium to be a Fulbright U.S. Research Scholar in Belgium during the 2019-2020 academic year.

20. On April 26, 2019, Plaintiff sent an email to Dr. Robert Kelly, CEO of GW MFA, with a copy to Dr. Wasserman, notifying both that Plaintiff had been selected for the Fulbright Research Scholarship, and requested that half of Plaintiff's salary be paid to him while in Brussels in exchange for Plaintiff continuing to read via electronic transmission pulmonary function tests (PFTs) on a daily basis as part of his employment duties at GW MFA.

21. As the Division Director, as well as the CLIA-certified Director of the Pulmonary Function Laboratory at GW MFA, Plaintiff has been the sole interpreter of PFTs for many years at GW MFA.

22. In response to Plaintiff's email of April 26, 2019, Dr. Wasserman replied: "Have you applied to the [GWU] Medical School for a Sabbatical? You are tenured and therefore should be eligible."

23. On May 2, 2019, Dr. Robert Kelly, CEO of GW MFA responded to Plaintiff's April 26, 2019 email as follows: "I am sorry that I did not respond right away. First of all, congratulations for your award. I am sure that it will be an amazing experience for you. I think that it will be important for both Dr Wasserman and I to make an onsite inspection of your workplace!! As far as your compensation during that time goes, that is something that you and Dr Wasserman will need to work out together. The central MFA does not do salaries of the medical staff."

24. On May 24, 2019, Plaintiff notified the GWU Medical School of his Fulbright

Research Scholar award in an email to Ray Lucas, MD (Senior Associate Dean for Faculty and Health Affairs, GWU School of Medicine and Health Sciences) as follows:

*I have been awarded a Fulbright Scholar position to spend six months in Brussels (January through June 2020) doing research at the Erasme Hospital ICU (see attached). I need guidance from you as to the forms required by the university for sabbatical leave. Many thanks, Guillermo*

26. On May 28, 2019, Dr. Lucas replied to Plaintiff as follows: *The information and forms are on the faculty affairs website <https://facultyaffairs.gwu.edu/personnel-forms>. New dates have not been issued by the Provost for this year. Since you are employed by the MFA, your status and salary (if any) while on sabbatical would be as per MFA policies. If the MFA does not have a formal process, you can fill out the Univ form as a template. It should be signed off by Alan [Wasserman] and Bob Kelly or his designee and then you can send in to us. When it is approved by the MFA and your chair, Alan [Wasserman] will need to notify us and we will change your official status as "sabbatical" for that time period. Ray*

27. On May 28, 2019, Plaintiff asked Dr. Wasserman for his comments regarding the email from Dr. Lucas. Dr. Wasserman replied as follows: *You should check the University bylaws and make sure you have to be employed or just a tenured physician. You could also ask to be employed by the university for this time.*

28. In June, 2019, Plaintiff sent a completed GWU sabbatical application to Ms. Royette Leatham, the GW MFA Faculty Affairs Administrator, Department of Medicine. The application was approved and signed by Dr. Wasserman, who had it forwarded to Jeffrey Sich, PhD, Executive Director, Faculty Affairs and Program Development, GWU

School of Medicine and Health Sciences, for approval and comments by Dean Jeffrey Akman and by the GWU Provost.

29. On June 25, 2019, Plaintiff exchanged the following emails with Dr. Jeffrey Sich and Dr. Ray Lucas (with a copy to Dr. Wasserman) inquiring about GWU's policies and rules governing sabbatical leave:

- *"Jeff, What is the University Policy regarding Tenured professors going on sabbatical leave? Guillermo*
- *Hi Guillermo, We received your application. My understanding is that you are requesting an unpaid sabbatical for one semester. Is this correct? Jeff*
- *Dear Jeff, Much appreciate your input. However, I would like to know where is it written that only University-employed tenured faculty receive a salary while on sabbatical. G"*
- From Ray Lucas, Associate Dean, GWU Medical School (copy to Dr. Wasserman): *Guillermo: As an MFA employed faculty member, all of your compensation and benefits is the sole responsibility of the MFA (those are the terms in your faculty appointment letter). From the Univ perspective, you can go on sabbatical like any other regular faculty member, however it is up to the MFA and its policies to decide if you will be paid while you are away. Ray*

30. On June 26, 2019, Plaintiff's Employment Agreement with GW MFA was renewed from July 1, 2019 to June 30, 2020.

31. On July 1, 2019, Plaintiff's faculty appointment at GWU was renewed from July



1, 2019 to June 30, 2020.

32. On October 11, 2019, Plaintiff had an email sent to GW MFA's Centralized Master Scheduler requesting closure of Plaintiff's outpatient clinics during the time of his sabbatical from January 1 through June 30, 2020.

33. On October 31, 2019, Plaintiff sent Dr. Wasserman an email with his notice of his sabbatical beginning January 1, 2019 (sic) and returning July 1, 2020, and repeated his willingness to continue reading the PFTs in exchange for half of his salary during his sabbatical, and unequivocally stating his intention to resume his duties as GW MFA Division Director upon his return on July 1, 2020.

34. On November 11, 2019, Dr. Wasserman acknowledged having received Plaintiff's October 31, 2019 notice, and asked Plaintiff to correct the sabbatical dates to January 1, 2020 through June 30, 2020, which Plaintiff corrected immediately.

35. During November, 2019, Plaintiff asked Dr. Wasserman about his request of being allowed to perform readings of PFTs in exchange for half his salary during his sabbatical, and Dr. Wasserman responded that Dr. Kelly was against the idea and there was nothing he could do to change Dr. Kelly's decision.

36. On December 10, 2019, Provost Blake formally approved Plaintiff's sabbatical on behalf of GWU, stating the following: "During the period of your sabbatical from your position as Professor of Medicine, Anesthesiology, Engineering and Applied Sciences you will receive full salary."

37. The daily research Plaintiff performs during his sabbatical, and which requires him to render a full report of his research to GWU when it ends, are central

conditions of the approval granted by GWU for the Fulbright sabbatical, constitute the rendering of services and academic research pursuant to the GW MFA Employment Agreement and GWU faculty appointment, and redound to the benefit of GWU and GW MFA.

38. On December 12, 2019, Plaintiff met and shared Provost Blake's December 10, 2019 letter with Dr. Wasserman to ascertain and confirm whether Plaintiff's salary would continue being paid by GW MFA during the sabbatical, given that Plaintiff is not on GWU's payroll. Dr. Wasserman reassured Plaintiff that he would continue receiving his GW MFA salary as always, and that at the end of the sabbatical, GW MFA would bill GWU for reimbursement.

39. On December 13, 2019, Plaintiff met with Dr. Wasserman and asked Dr. Wasserman if there were any issues pending that Plaintiff needed to address before his departure. Dr. Wasserman replied there were none. Dr. Wasserman mentioned his plan to pay each of the remaining four faculty members an additional \$15,000 for them to read the PFTs during the time Plaintiff was away. Plaintiff again offered to read the PFTs, but Dr. Wasserman replied, "I have my marching orders. Kelly does not want you to do it."

40. Reassured by Provost Blake's letter and Dr. Wasserman's commitment, Plaintiff flew on to Brussels on December 16<sup>th</sup> to prepare for his sabbatical work.

41. On January 2, 2020, Plaintiff sent an email to Sophie Pawlak, GW MFA's Executive Director (Dept. of Medicine) requesting a letter or email from GW MFA confirming Plaintiff's salary payment during the sabbatical to fulfill a request he had received from the Fulbright Commission.

42. Plaintiff's January 2, 2020 email was responded to on January 2 and 3, 2020 by

Dr. Wasserman in part as follows (with copies to GWU Provost Blake and GW MFA CEO Dr. Kelly):

On January 2, 2020: "... GW MFA doesn't provide salary for Sabbaticals. [Plaintiff's] Sabbatical was approved by the University as to his letter. It might be best if Dr. G. contacts the Provost directly...."

On January 3, 2020: "As you know, GW MFA and GWU remain separate companies and we are not able to bind them to any legal or financial obligations.

Thus, I was a surprised as you were that the University seemed to suggest that they were going to pay your salary. Upon further reflection it appears the letter was sent in error and was part of a template used for GW employees, which you are not. I also reviewed the university's policy which clearly excludes payment for any professor who works for a separate organization, which directly applies to your situation.

Given this information you probably should not expect GW to continue to pay your salary in as much as you do not receive a salary from them, but in the end, I guess that is between you and the University.

I contacted Mr. Bender [GW MFA's general counsel] who confirmed that your employment agreement with GW MFA does not allow for sabbatical and does not provide any right to salary continuation. He also stated that, technically speaking, your employment agreement is effectively terminated if you are not working. I informed him that I advocated for your sabbatical so long as you decide to return to work at GW MFA after your sabbatical, he made it clear that the GW MFA will honor that commitment and agree to enter into a new employment agreement

under substantially similar terms and conditions (your compensation will remain the same as it was before January 1, 2020).

I am sorry for all this confusion but we both know that salary continuation while on sabbatical was not something the GW MFA has ever offered any of its physicians. You are also the first GW MFA employed physician to be allowed a sabbatical from the Department in the last 20 years.”

43. Four days later, on January 7, 2020, GWU Provost Blake (with a cc to GWU School of Medicine and Health Sciences’ Dean Akman) sent a revised letter to Plaintiff regarding his Fulbright sabbatical stating in part:

“This supersedes our letter of December 10, 2019. I am pleased to inform you that [GWU] President LeBlanc and I have approved your application for sabbatical leave, effective January 1, 2020 through June 30, 2020. During the period of your sabbatical from your position as Professor of Medicine, Anesthesiology, Engineering and Applied Sciences you will receive full salary. Your salary will be paid by the GW Medical Faculty Associates.”

44. On January 9, 2020, Plaintiff sent a “High Importance” email to Ashley Maas, GWU’s Faculty Personnel Coordinator at the Office of Faculty Personnel repeating his request for written confirmation from GWU and GW MFA through the intercession of Provost Blake that his salary would be paid by GW MFA, adding in part: “I need this confirmation as soon as possible, given that I must be provided without delay to the Luxembourg/Belgian Fulbright Commission.” Plaintiff copied GWU Medical School Dean Akman and GW MFA CEO Dr. Kelly to this email.

45. GWU Provost Blake responded to this email from Plaintiff several hours later

with a third GWU approval letter regarding the Fulbright sabbatical rescinding his December 10 and January 7 letters, and stating in part:

“Please allow this letter to serve as our corrected and final restatement approving your application for sabbatical leave, effective January 1, 2020 through June 30, 2020. I offer my apologies for any misunderstanding as to our prior communications in the earlier pro forma letters prepared by the Provost’s office staff on my behalf which are hereby rescinded. Consistent with the terms of your faculty appointment to GWU, you shall retain any applicable benefits during the period of your sabbatical from your position as Professor of Medicine, Anesthesiology, Engineering and Applied Sciences. Any sabbatical employment benefits you receive from GW Medical Faculty Associates (GW-GW MFA) are subject to the terms and conditions of your employment agreement with GW-GW MFA.”

46. Plaintiff has complied fully with all of the terms and conditions of his GW MFA Employment Agreement, his two tenured professorship appointments with GWU, and his Fulbright Research Scholar appointment.

47. GWU’s Sabbatical Leave Policies state that “[D]uring a period of sabbatical leave the university will pay a faculty member his/her full salary for one semester of leave,” and adds that “[a] faculty member may not receive sabbatical compensation from the university and concurrently hold a fully compensated position with another organization.”

48. GWU has never failed or refused to provide the salary of a GWU School of Medicine full-time faculty member during GWU-approved research sabbaticals lasting the equivalent of one academic semester.

49. GWU has failed or refused to pay Plaintiff his full salary as a faculty member during his Fulbright Research Scholar sabbatical leave since January 1, 2020.

50. GW MFA has failed or refused to pay Plaintiff his salary under his Employment Agreement during his Fulbright Research Scholar sabbatical since January 1, 2020.

**COUNT I**  
**GWU'S BREACH OF FACULTY AGREEMENT**

51. The foregoing paragraphs are realleged and incorporated by reference herein.

52. GWU's failure or refusal to pay Plaintiff his full salary as a tenured faculty member during his Fulbright Research Scholar sabbatical leave violates GWU's Sabbatical Leave Policies, which are a part of Plaintiff's tenured faculty appointment terms and conditions at GWU.

53. GWU's failure or refusal to pay Plaintiff his full salary as a tenured faculty member during his Fulbright Research Scholar sabbatical leave, once GWU learned GW MFA had decided not to compensate Plaintiff his GW MFA salary and that Plaintiff had therefore ceased to "concurrently hold a fully compensated position with another organization [i.e., GW MFA]," violated GWU's Sabbatical Leave Policies, which are part of Plaintiff's tenured faculty appointment terms and conditions at GWU.

54. GWU assured and promised Plaintiff in writing on December 10, 2019, that during his Fulbright Research Scholar sabbatical, "you will receive full salary." GWU reneged on this promise in a letter dated January 9, 2020.

55. GWU also assured and promised Plaintiff in writing on January 7, 2020, that his salary would be paid by GW MFA during his sabbatical. GWU reneged on this promise in a letter dated January 9, 2020.

56. Plaintiff relied on the commitments and promises made by GWU to him before Plaintiff left for his Fulbright Research Scholar sabbatical.

**COUNT II**  
**GW MFA'S BREACH OF GW MFA EMPLOYMENT AGREEMENT**

57. Paragraphs 1 through 50 of the Complaint are realleged and incorporated by reference herein.

58. GW MFA's failure or refusal to pay Plaintiff his full salary under his GW MFA Employment Agreement during his Fulbright Research Scholar sabbatical because Plaintiff's sabbatical research is not considered "working" for employment purposes is in breach of Plaintiff's GW MFA Employment Agreement, which includes as part of Plaintiff's employment duties and obligations "the devotion of sufficient time and effort to provide teaching, research, and administrative services to the University [GWU]."

59. Further, GW MFA's failure or refusal to pay Plaintiff his full salary under his GW MFA Employment Agreement during his Fulbright Research Scholar sabbatical because of Plaintiff's sabbatical research is in breach of Plaintiff's GW MFA Employment Agreement, which requires GW MFA that "[in] return for performing all duties referred to in the [Employment] Agreement, Physician [Plaintiff] shall be paid by MFA the initial annual draw set forth in Exhibit A and otherwise in accordance with the MFA Company Plan set forth in Exhibit B."

60. In addition, GW MFA's failure or refusal to pay Plaintiff his full salary under his GW MFA Employment Agreement during his Fulbright Research Scholar sabbatical leave is in breach of repeated commitments and promises made to Plaintiff during 2019

by authorized representatives of GW MFA, including its officers and directors, that such payments would be made.

61. Plaintiff relied on the commitments and promises made by the authorized GW MFA representatives to Plaintiff before Plaintiff left for his Fulbright Research Scholar sabbatical.

**COUNT III**  
**BREACH OF CONTRACT BY JOINT EMPLOYERS GWU AND GW MFA**

62. Paragraphs 1 through 50 of the Complaint are realleged and incorporated by reference herein.

63. Defendants GWU and GW MFA are joint employers of Plaintiff, as joint employment is defined under common law. *See Browning-Ferris Industries of California, Inc., d/b/a BFI Newby Island Recycling v. NLRB*, U.S. Court of Appeals for the D.C. Circuit, No. 16-1028, December 28, 2018; *Boire v. Greyhound Corp.*, 376 U.S. 473 (1964); and Restatement (Second) of Agency..

64. Defendants meet the common law tests of horizontal joint employers *vis-à-vis* Plaintiff.

65. Defendants are jointly and severally liable to Plaintiff as his joint employers with regard to his compensation claims based on breach of contract and breach of promise.

**COUNT IV**  
**VIOLATION OF THE D.C. WAGE PAYMENT AND COLLECTION LAW**  
**(D.C. Code §§ 32-1301 to 32-1310)**

66. Paragraphs 1 through 50 of the Complaint are realleged and incorporated by reference herein.



67. Defendants are “Employers” as defined by the D.C. Wage Payment and Collection Law (DCWPCL), D.C. Code §§ 32-1301(1B).

68. Plaintiff is an “Employee” as defined by the DCWPCL, D.C. Code §§ 32-1301(2).

69. Plaintiff and Defendants are subject to the provisions of the DCWPCL.

70. Defendants have violated and continue to violate the wage payment requirements of D.C. Code § 32-1302 by failing or refusing to pay Plaintiff’s wages during his 2020 Fulbright Research Scholar sabbatical.

#### **PRAYER FOR RELIEF**

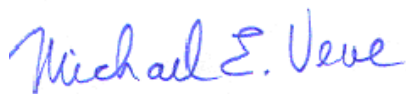
WHEREFORE, Plaintiff requests that the court award him:

- 1) Back wages for the period from January 1, 2020 to June 30, 2020 under the Employment Agreement in the amount of \$137,500;
- 2) Pension contributions for the period January 1, 2020 to June 30, 2020 under the Employment Agreement;
- 3) Liquidated damages pursuant to § 32-1308(a)(1)(A)(ii) of the DCWPCL for an amount equal to treble the sum of the amounts set forth in Prayer for Relief paragraphs 1) through 2) above; and
- 4) Reasonable attorneys’ fees and costs pursuant to § 32-1308(a)(1)(A) of the DCWPCL.

**PLAINTIFF HEREBY DEMANDS TRIAL BY JURY.**

Respectfully submitted,

DATE: February 27, 2020.



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