

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

_____		)
JIN LI,		)
	Plaintiff	)
		)
v.		)
		)
BROWN UNIVERSITY		)
IN PROVIDENCE IN THE STATE OF		)
RHODE ISLAND AND PROVIDENCE		)
PLANTATIONS		)
	Defendant	)
_____		)

CA 11 - 073 ML  
C. A No.:

**COMPLAINT**

**INTRODUCTION**

The Plaintiff, Jin Li, hereby files this Complaint against the Defendant, Brown University in Providence in the State of Rhode Island and Providence Plantations, and alleges as follows:

**PARTIES AND JURISDICTION**

1. Plaintiff, Jin Li, (hereinafter "Plaintiff") is a resident of North Attleboro, Bristol County, Massachusetts, and is a citizen of the Commonwealth of Massachusetts.
2. Defendant, Brown University in Providence in the State of Rhode Island and Providence Plantations (hereinafter "Defendant" or "Brown") is a Rhode Island Corporation with a principal place of business in the City of Providence, County of Providence and State of Rhode Island and is a citizen of the State of Rhode Island and Providence Plantations.
3. The Court has jurisdiction over the parties as the Defendant is a citizen of Rhode Island and the events giving rise to this controversy are based in Rhode Island.
4. The Court has jurisdiction over this action pursuant to 28 U.S.C. Sec. 1332 in that the Plaintiff and Defendant are citizens of entirely different states and the amount in controversy, exclusive of interest and costs, exceeds the sum or value of \$75,000.00.
5. The Court has jurisdiction over this action as it arises under the laws of the United States pursuant to 28 U.S.C. Sec. 1331 (federal question).

6. The Court has jurisdiction pursuant to 28 U.S.C. §2201 (Declaratory Judgments) and supplemental jurisdiction over ancillary state law claims.

7. Venue over this action properly lies in the District of Rhode Island pursuant to 28 U.S.C. Sec. 1391.

8. Plaintiff is a tenured member of the faculty at Brown University, holding the rank of Associate Professor in the Education Department.

9. In 2007 the Plaintiff, working through Brown University's "Office of Sponsored Projects" obtained a grant from a private foundation for the purpose of investigating an important aspect of the education and socialization of Chinese immigrant children. The title of Plaintiff's investigation was "European American and Chinese Immigrant Children's Learning Beliefs and Related Socialization at Home." Plaintiff's investigation was scheduled to begin on November 1, 2007 and be completed in a period of 48 months, or by October 31, 2011.

10. In connection with the Plaintiff's investigation, representatives of the Defendant, through the Office of Sponsored Projects, and Research Protection Office informed the Plaintiff that she was required to obtain approval for certain aspects of her investigation from Brown's Institutional Review Board (hereinafter "IRB").

11. Brown's IRB was established pursuant to 45 C.F.R. part 46, entitled "Protection of Human Subjects." This regulation applies, on its terms, only to research that is conducted by federal agencies or employees, supported with federal funds, or subject to specific federal regulation. 45 C.F.R. 46.101. Although Plaintiff's research does not appear to fall within the scope of the regulation, Brown subjected her to the jurisdiction of its IRB.

12. Even if Plaintiff's investigation fell categorically within IRB jurisdiction, the particular method of Plaintiff's research is categorically exempt from such regulation pursuant to 45 C.F.R. Sec. 46.101(b)(2) exempting research involving the use of educational tests, interviews, or surveys.

13. Despite the fact that Plaintiff's investigation falls outside the scope of IRB authority, Brown subjected her to review and approval by its IRB.

14. The IRB initially approved the Plaintiff's investigation, which essentially involved educational testing of Chinese American children and interviews of their parents. Brown's IRB approved payment to each family in the amount of \$600 per family for three years of participation in the investigation.

15. Some of the families interviewed were of middle or upper-middle class status, and some were of lower socio-economic status. It became clear to the Plaintiff that lower income families were consuming considerably more time for completion of surveys and interviews than middle or upper-middle income families. Plaintiff decided, therefore, that it would be more equitable to compensate the lower income families at the rate of \$600 for three years, and the upper and middle income families at the rate of \$300, and that this differential more accurately reflected the families' time spent in the investigation. All families signed consent forms reflecting the amount they were to be paid.

16. Plaintiff's budget for the investigation – approved by Brown – reflected the differential payments in paragraph 13.

17. Plaintiff proceeded with the investigation, collecting data through testing, surveys, and interviews with the subject families.

18. In February 2010, Plaintiff presented the IRB with a request to modify certain aspects of her investigation, including approval of the payment differential. The IRB denied that request and advised Plaintiff that she may not use any of the data collected from families that were paid \$300 unless arrangements were made to make additional payments to those families to bring their total to \$600. Plaintiff made numerous efforts to resolve this matter within the IRB, but to no avail.

19. On the present state of affairs, Plaintiff is unable to use substantial portions of the data collected during her investigation because the IRB has prohibited her from doing so. Given the current funds available to Plaintiff through the grant, it would not be possible to make retroactive payments to middle and upper middle class families (all of whom had agreed to accept the lower amount). Should the IRB ruling stand, Plaintiff would be deprived of the fruits of years of research, and the education community would be deprived of the results of the same.

### COUNT I

20. The applicable federal regulation requires that membership in an IRB include diversity, "including consideration of race, gender, and cultural backgrounds and sensitivity to such issues as community attitudes..." 45 C.F.R. Sec. 46.107. Brown's IRB contains no minority members, and therefore fails to comply with the requirements of this regulation.

21. Plaintiff is Chinese by birth and her investigation focuses on the socialization and education of Chinese immigrant children. Brown, by constituting on IRB that contains no representation of the Chinese community, Asian community, or any other minority community, deprived the Plaintiff and the wider community that she represents of equal protection of the laws, in contravention of the regulation empowering creation of its IRB.

WHEREFORE, Plaintiff prays that Brown and its IRB as presently constituted be preliminarily and permanently restrained and enjoined from restricting or otherwise limiting the Plaintiff's investigation in a manner that deprives Plaintiff of equal protection of the laws and that its rulings be voided.

### **COUNT II**

22. Brown has deprived the Plaintiff of any opportunity for internal review of the actions of its IRB. The applicable regulation, 45 C.F.R. Sec. 46.112, provides for "further appropriate review and approval or disapproval" within an institution after IRB approval. The IRB approved Plaintiff's investigation in general but imposed specific unreasonable limiting conditions. Brown has failed to provide for any review of that action as contemplated by Sec. 46112.

23. Depriving the Plaintiff of any avenue for review within the institution effectively deprives her of due process.

WHEREFORE, Plaintiff prays that Brown and its IRB be preliminarily and permanently restrained and enjoined from restricting, limiting, or interfering with her investigation in the absence of any procedure for internal review of IRB actions.

### **COUNT III**

24. Plaintiff seeks declaratory relief pursuant to 28 U.S.C. Sec. 2201.

25. Plaintiff says that her investigation is exempt from IRB review pursuant to 45 C.F.R. Sec. 46.101 in that (a) it does not involve federal employees, federal funds, or regulation by any federal agency and (b) it involves education testing, surveys, and interviews and poses no threat to any human subject.

WHEREFORE, Plaintiff requests declaratory judgment that her investigation is not subject to IRB jurisdiction.

#### **COUNT IV**

26. The limitations imposed by Brown's IRB on the Plaintiff's investigation has impeded the progress of the investigation and has interfered with Plaintiff's ability to complete her investigation in a timely, efficient, and effective manner.

27. The fruits of the Plaintiff's investigation are her intellectual property; to the extent that Brown's IRB is impeding her use of the information that she has obtained, the Plaintiff has suffered economic harm.

28. Plaintiff estimates that her economic loss to date as a direct and proximate result of the actions of Brown and its IRB has been in excess of \$200,000.00.

WHEREFORE, Plaintiff demands judgment in an amount sufficient to compensate her for her economic loss, plus interest and attorneys' fees as provided by law.

#### **COUNT V**

29. To the extent that Brown's IRB has impeded the Plaintiff's investigation, Defendant has interfered with the relationship between the Plaintiff and the foundation that awarded her the grant to conduct the investigation.

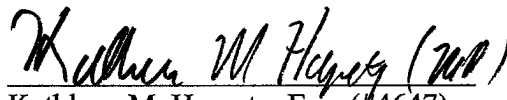
30. As a direct and proximate result of Brown's interference, Plaintiff has suffered and continues to suffer damages.

WHEREFORE, Plaintiff demands judgment in an amount sufficient to compensate her for the damages so suffered, plus interest, costs and attorneys' fees as provided by law.

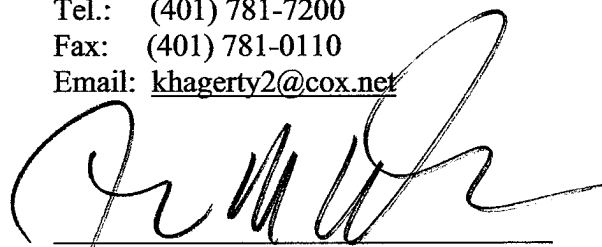
#### **JURY DEMAND**

Plaintiff hereby demands a jury trial as to all triable issues of right and designates Kathleen M. Hagerty and Thomas M. Dickinson as trial counsel.

JIN LI,  
By her Attorneys,



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2-25-2011