UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
Baltimore Division

RON L. LACKS, PERSONAL REPRESENTATIVE OF THE ESTATE OF HENRIETTA LACKS, **PLAINTIFF,** **v.** **ULTRAGENYX PHARMACEUTICAL INC.,** **DEFENDANT.**	**Case No. 1:23-cv-2171-DLB**

AMICI CURIAE BRIEF OF THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW, THE NATIONAL HEALTH LAW PROGRAM, AND THE NATIONAL WOMEN'S LAW CENTER IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT

I. INTRODUCTION

Defendant Ultragenyx Pharmaceutical, Inc. ("Ultragenyx"), a multi-billion-dollar biopharmaceutical corporation,[1] Civil Complaint (hereinafter "Compl.") ¶ 1, has been unjustly enriched by its ongoing commercialization and sale of HeLa cell products. The unethical origins of HeLa cells are well known by Ultragenyx, yet it continues to commercialize them for profit today. In the 1950's, white physicians at Johns Hopkins Hospital regularly conducted non-consensual, non-therapeutic research on patients in the public ward, which had a large population of indigent Black patients. Compl. ¶ 3. This research included harvesting tissue samples from indigent Black patients to develop a cell line that could survive indefinitely in laboratory

[1] In deciding a motion to dismiss, all well-pled facts are taken as true, and all reasonable inferences taken from those facts are drawn in the plaintiff's favor. *See Harrell v. Freedom Mortg. Corp.*, 976 F.3d 434, 439 n.5 (4th Cir. 2020) (citation omitted).

conditions. *Id.* ⁋⁋ 6–8. While providing her treatment for cervical cancer at Johns Hopkins, doctors cut out tissue from Henrietta Lacks's cervix for their research purposes without her knowledge or consent, while she was unconscious and under anesthesia. *Id.* ⁋⁋ 41–43. The procedure, which had no medical benefit to Mrs. Lacks, left her infertile. *Id.* ¶ 42. She died several months later, never learning that her cells had been used to develop the world's first "immortal" cell line—HeLa cells. *Id.* ¶¶ 45–46.

Ultragenyx's enrichment from HeLa cells is unjust not only because it originated from wrongful conduct that breached duties owed to Mrs. Lacks by her doctors, but also because it was enabled by the historic, systemic disregard of legal principles regarding medical experimentation as to Black, low-income, and other systemically oppressed groups. And Ultragenyx perpetuates this cycle of wrongdoing each time it uses and profits from HeLa cells without the Estate's consent, creating a new injury every time it excludes the Lacks Estate from any economic benefit.

In its Motion to Dismiss, Ultragenyx refers to the widespread commercial use of HeLa cells by the medical research community and the benefits to the public that flow from the wrongful experimentation of Mrs. Lacks to insulate itself from liability. *See* Defendant's Motion to Dismiss (hereinafter "Mot.") at 1–2. Ultragenyx further justifies its conduct by claiming it has played no part in the wrongdoing to Mrs. Lacks; in Ultragenyx's view, it is an innocent "purchaser" along the supply chain and its use of HeLa cells is "entirely legal." *Id.* at 1, 11. Yet at no point has Ultragenyx sought the consent of Mrs. Lacks's Estate's, nor has Ultragenyx provided compensation to Mrs. Lacks's Estate. ¶¶ 14, 53. In doing so, Ultragenyx continues to violate the same principles of consent and prohibition against medical experimentation that should have protected Mrs. Lacks in 1951. The implications of Ultragenyx's argument are that individuals and entities may continue to profit from materials obtained illegally and as a result of systemic

discrimination, despite knowing about their unlawful and unethical origins before acquiring such materials. If this Court accepts Ultragenyx's arguments, other beneficiaries of historic injustices will be emboldened to continue to shirk their duty to pay for the value of benefits unjustly obtained.

II. LEGAL ARGUMENT

A. ULTRAGENYX'S ENRICHMENT FROM HELA CELLS IS "UNJUST" IN LIGHT OF THE HISTORICAL DISCRIMINATION AT ISSUE IN THIS CASE

The Estate has stated a claim for unjust enrichment and Ultragenyx's Motion should be denied. In Maryland, "[u]njust enrichment consists of three elements: (1) A benefit conferred upon the defendant by the plaintiff; (2) An appreciation or knowledge by the defendant of the benefit; and (3) The acceptance or retention by the defendant of the benefit under such circumstances as to make it inequitable for the defendant to retain the benefit without the payment of its value." *Hill v. Cross Country Settlements, LLC*, 936 A.2d 343, 351 (Md. 2007) (citations omitted). Ultragenyx has profited from HeLa cells, and, in describing the extent of the benefit to the scientific community, it makes clear it has "an appreciation or knowledge" of the benefit. Compl. ¶¶ 12, 51; Mot. at 1–2. "The final element of an unjust enrichment claim is a fact-specific balancing of the equities. The task is to determine whether the enrichment is unjust." *Hill*, 936 A.2d at 355 (internal quotations and citations omitted). The historical facts underpinning Ultragenyx's commercialization of HeLa cells demonstrate its enrichment is unjust.

The scientific community has long perpetuated egregious medical injustice against nonconsenting, often unknowing individuals, who were disproportionately Black, low-income, or living at the intersection of those identities. Because Ultragenyx is a direct benefactor of those historical wrongs, principles of justice and fairness embedded in Maryland law dictate that the Estate receive compensation for its use of Mrs. Lacks's cells. *See Bank of Am. Corp. v. Gibbons,*

918 A.2d 565, 569 (Md. Ct. Spec. App. 2007) ("The doctrine of unjust enrichment is applicable where the defendant, upon the circumstances of the case, is obliged by the ties of natural justice and equity to refund the money, and gives rise to the policy of restitution as a remedy.") (internal quotations and citations omitted); *Cnty. Comm'rs v. J. Roland Dashiell & Sons, Inc.*, 747 A.2d 600, 607 (Md. 2000) ("Unjust enrichment . . . provide[s] relief for a plaintiff when an enforceable contract does not exist but fairness dictates that the plaintiff receive compensation for services provided.") (cleaned up).[2]

1. Ultragenyx's enrichment relies on acts enabled and sanctioned by systemic discrimination.

Ultragenyx's enrichment from HeLa cells cannot be divorced from the racial and class-based discrimination that allowed the medical research community to disregard medical consent principles and laws with respect to historically marginalized people for centuries. The seizure, experimentation, and, now, commercialization of Mrs. Lacks's cervical cells are intertwined with an age-old practice of medical exploitation of disproportionately poor, Black, and Indigenous people. As explained in *The Immortal Life of Henrietta Lacks*:

> Like many doctors of his era, TeLinde [who extracted Mrs. Lacks's cells] often used patients from the public wards for research, usually without their knowledge. Many scientists believed that since patients were treated for free in the public wards, it was fair to use them as research subjects as a form of payment. And as

[2] Contrary to Ultragenyx's contention, whether Ultragenyx played a part in the non-consensual harvesting of Mrs. Lacks's cells is not determinative in a claim for unjust enrichment. *See Bank of Am. Corp.*, 918 A.2d at 571-73 (citing *Plitt v. Greenberg*, 219 A.2d 237 (Md. 1966) and the Restatement of Restitution to support holding that a cause of action for unjust enrichment may lie against a transferee with whom the plaintiff had no contract, transaction, or dealing, either directly or indirectly). Indeed, Ultragenyx's ongoing commercialization of cells that were wrongfully extracted from Mrs. Lacks by her doctors is the type of situation that the Restatement seeks to redress. *See* Restatement (Third) of Restitution and Unjust Enrichment § 43 (Am. L. Inst. 2011) ("Benefits derived from a fiduciary's breach of duty may . . . be recovered from third parties, not themselves under any special duty to the claimant, who acquire such benefits with notice of the breach."). Moreover, because Ultragenyx took possession of the HeLa cells with knowledge of the widely-publicized circumstances of their wrongful origins, it cannot claim the protection afforded to bona fide purchasers. *See Fishman v. Murphy ex rel. Est. of Urban*, 72 A.3d 185, 192 (Md. 2013) (stating elements and burden of proof for bona fide purchaser defense in real property case).

> Howard Jones once wrote, 'Hopkins, with its large indigent black population, had no dearth of clinical material.'[3]

Lower income people, who were disproportionately Black, were more likely to encounter physicians willing to conduct non-therapeutic and non-consensual research or experimentation on their bodies, often when they were in need of medical care. Indeed, a great portion of early American medical research is founded upon non-consensual experimentation upon systemically oppressed people:

> Southern medicine of the eighteenth and early nineteenth centuries was harsh, ineffective, and experimental by nature. Physicians' memoirs, medical journals, and planters' records all reveal that enslaved [B]lack Americans bore the worst abuses of these crudely empirical practices, which countenanced a hazardous degree of ad hoc experimentation in medications, dosages, and even spontaneous surgical experiments in the daily practice among slaves.[4]

Illustrative of this is, James Marion Sims, who has been deemed the "Father of Gynecology" following his non-consensual, horrific, and life-threatening experimentation on female slaves suffering from childbirth complications.[5]

As discussed in the *Lancet*:

> Medical schools relied on enslaved Black bodies as "anatomical material" and recruited students in southern states by advertising its abundance. This practice was widespread in the 19th and early 20th centuries. American medical education relied on the theft, dissection, and display of bodies, many of whom were Black.[6]

Dehumanizing medical research did not end with slavery, and was, in many ways, sanctioned by the United States government. For example, the United States Public Health Service denied medical treatment to nearly 400 Black men with syphilis in order to track the disease's full

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[3] Rebecca Skloot, The Immortal Life of Henrietta Lacks 29 (Crown ed. 2010).

[4] Harriet A. Washington, *Medical Apartheid: The Dark History of Medical Experimentation on Black Americans from Colonial Times to the Present* 29 (Harlem Moon 2008).

[5] Vanessa Northington Gamble, *Under the Shadow of Tuskegee: African Americans and Health Care*, 87 Am. J. Pub. Health 1773, 1774 (1997), https://ajph.aphapublications.org/doi/epdf/10.2105/AJPH.87.11.1773;

[6] Ayah Nuriddin et al., *Reckoning with Histories of Medical Racism and Violence in the USA*, 396 Art Med. 949, 949 (2020), https://doi.org/10.1016/S0140-6736(20)32032-8.

progression during the Tuskegee experiment.[7] The federal Indian Health Service conducted nonconsensual ophthalmological research on Indigenous children in boarding schools in the 1960's and 1970's and forcibly sterilized 3,406 Indigenous women between 1973 and 1976.[8] The United States government, in partnership with Johns Hopkins, also engaged in a medical experimentation program in the 1940's and 1950's, deliberately and non-consensually infecting both prisoners in the United States and over 5,000 Guatemalans with sexually transmitted diseases in order to test the preventative qualities of penicillin.[9]

This sort of inhumane medical experimentation was particularly rampant in Baltimore during the decades before and after the facts underlying this case. Doctors there reportedly robbed Black graves for dissecting subjects during the 1800's.[10] In 1970's Baltimore, researchers funded by the National Institute of Health induced young Black boys into giving their blood to screen for anemia and other medical problems, but instead used it to conduct genetic testing, purportedly to determine whether they would be criminals later in life.[11] More recently, Baltimore families alleged that the Kennedy Krieger Institute, a research institution associated with Johns Hopkins, knowingly allowed their children living in public housing to sustain lead poisoning as part of a

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[7] Allan M. Brandt, *Racism and Research: The Case of the Tuskegee Syphilis Study* 21 (The Hastings Center 1978) https://dash.harvard.edu/bitstream/handle/1/3372911/Brandt_Racism.pdf?sequence

[8] U.S. Gov't Accountability Off., HRD-77-3, Investigation of Allegations Concerning Indian Health Service 3 (1976), https://www.gao.gov/assets/hrd-77-3.pdf. ; *1976: Government Admits Unauthorized Sterilization of Indian Women*, Nat'l Libr. Med., https://www.nlm.nih.gov/nativevoices/timeline/543.html (last visited Feb. 18, 2022).

[9] Michael A. Rodriguez and Robert Garcia, *First, Do No Harm: The US Sexually Transmitted Disease Experiments in Guatemala*, 103 Am. J. Pub. Health 2122, 2122 (2013), https://tinyurl.com/yckk4ke4.

[10] Gamble, *supra*; David C. Humphrey, *Dissection and Discrimination: The Social Origins of Cadavers in America*, 49 Bull. N.Y. Acad. Med. 819 (1973), https://tinyurl.com/4vtrvp43

[11] Diane Bauer, *Maryland Tests for Criminal Potential*, Washington Daily News, January 22, 1970, *reprinted in* Jay Katz et al., *Experimentation with Human Beings: The Authority of the Investigator, Subject, Profession, and State in the Human Experimentation Process* 342–44 (Russell Sage Found. 1972), https://www.russellsage.org/sites/default/files/ExHB-part1.pdf *Special Supplement: The XYY Controversy: Researching Violence and Genetics*, 10 The Hastings Ctr. Rep. 1, 4 (1980), https://doi.org/10.2307/3560454.

non-therapeutic experimentation project to test the effectiveness of partial lead paint remediation in the 1990's. *See Grimes v. Kennedy Krieger Inst., Inc*., 782 A.2d 807, 817 (Md. 2001).

The systemic nature of the non-consensual, non-therapeutic medical experimentation conducted against Mrs. Lacks, and countless other Black people, is evidenced by the widely documented mistrust in medicine that Black people throughout the United States—and in Baltimore in particular—have developed. This mistrust is directly linked to the history of medical experimentation upon Black people and is now a significant factor in racial health disparities. As described in a PBS report: "In a city renowned for medical schools and research, there's a striking contrast in the dismal health and life expectancy in some Baltimore neighborhoods. There's a deep distrust of the medical system among many African-American residents, dating back to the 1800s."[12]

Ultragenyx acknowledges the history surrounding the nonconsensual taking, cultivation, and commercialization of Mrs. Lacks's cells but nonetheless claims it is an innocent recipient of HeLa cells today. Mot. at 1, 11; Compl. ¶ 51. According to Ultragenyx, it has committed no wrongdoing because Mrs. Lacks's cells are a "resource" that has been "widely available" in the public domain for "more than 70 years," Mot. at 1, and that its conduct is "too remote" to give rise to a claim of unjust enrichment. Mot. at 10. Not so. Ultragenyx's enrichment from HeLa cells is inexorably linked to systemic and historical medical abuse and its contention to the contrary minimizes the egregious history of medical abuse and mistreatment epitomized by Mrs. Lacks's story.

[12] PBS NewsHour, *Baltimore Hospitals Work to Repair Frayed Trust in Black Communities*, Public Broadcasting Service (Feb. 15, 2016), https://www.pbs.org/newshour/show/baltimore-hospitals-work-to-repair-frayed-trust-in-black-communities.

2. The unjust behavior began with the non-consensual experimentation on Mrs. Lacks and continues with Ultragenyx's non-consensual commercialization of HeLa cells for profit.

While Ultragenyx recognizes that in 1951 Johns Hopkins doctors extracted Mrs. Lacks's cells without her knowledge or consent, it fails to acknowledge that medical consent laws prohibited such actions at that time and that its *own* conduct continues this cycle of disregard for those laws.

Maryland common law has unambiguously required consent for medical procedures since the 19th century. *See State v. Housekeeper*, 16 A. 382, 384 (Md. 1889) ("The consent of the wife [to surgery to remove cancerous cells in her breast], not that of the husband, was necessary."); *McClees v. Cohen*, 148 A. 124, 127 (Md. 1930) (citing cases involving the issue of consent in medical negligence and other tort claims, and finding that plaintiff would be entitled to a favorable verdict if dentist extracted two bottom teeth "in violation of her instructions and without her consent").

Indeed, by 1951, the legality of informed consent had become part of international common law. In 1947, following the adjudication of Nazi atrocities involving human experimentation during World War II, an American military tribunal in the case of *United States v. Brandt* adopted the Nuremberg Code, the "most complete and authoritative statement of the law of informed consent to human experimentation." *Grimes*, 782 A.2d at 835 (internal citations and punctuation omitted). It "requires that the informed, voluntary, competent, and understanding consent of the research subject be obtained," along with nine other conditions that must be satisfied before consent can even be requested. *Id.* The Court held, "voluntary consent of the human subject is absolutely essential … to satisfy moral, ethical and legal concepts." *United States v. Brandt* (The Medical Case), 2 Trials of War Criminals Before the Nuremberg Military Tribunals Under Control

Council Law No. 10, p. 181 (1949). Years later, Justice O'Connor would rely on *Brandt* to emphasize that "[i]f this principle [of medical consent] is violated the very least that society can do is to see that the victims are compensated, as best they can be, by the perpetrators." *United States v. Stanley* 483 U.S. 669, 709–10 (1987) (O'Connor, J., dissenting). There can be no question that undertaking a medical procedure without Mrs. Lacks's knowledge or consent, for no medically necessary reason, violated then-existing principles of consent and medical experimentation.

Ultragenyx has used HeLa cells in a multitude of ways, all of which have received tremendous profits. Ultragenyx has become enriched from the gene therapies it manufactures using HeLa cells, the partnerships it has formed related to its HeLa manufacturing platform, and the licensing agreements it has entered into with other corporations. Compl. ¶¶ 64–66. What is more, Ultragenyx publicly admits it is aware of the unethical origin of HeLa cells. *Id*. ¶ 51. Despite this, Ultragenyx has made no effort to seek permission from or provide compensation to Mrs. Lacks's Estate. *Id*. ¶ 53. In doing so, Ultragenyx violates the same principles of consent and medical experimentation that Johns Hopkins violated when it wrongfully removed Mrs. Lacks's cells in 1951.

3. The widespread use and exploitation of HeLa cells does not negate Ultragenyx's liability.

Ultragenyx suggests that the widespread use of HeLa cells and their function as a "resource" to the research community and to Ultragenyx, which uses HeLa cells to "manufacture" gene therapies at a faster rate, make a claim for unjust enrichment untenable. Mot. at 1, 7. But the ends—achieving scientific breakthroughs—cannot justify the means—non-consensual medical experimentation. As the Maryland Court of Appeals observed, "[u]tilitarianism was the ethic of the day"—a framework that medical researchers disproportionately applied to systemically

oppressed people, and which Ultragenyx espouses in defense of its actions here. *Grimes*, 782 A.2d at 836 (citations omitted).

That the medical research community routinely acquires and distributes HeLa cells for the greater good without consent does not justify Ultragenyx's conduct. *See id.* at 815 (finding that research cannot be appropriate and the actions of researchers cannot be proper "[i]f the research methods, the protocols, are inappropriate"). In *Grimes*, the Maryland Court of Appeals found that non-consensual research was not excused simply because "the experiment was . . . a 'for the greater good' project." *Id.* Scientific advancements made at the expense of the subject cannot be divorced from the real impacts on the subject's bodily autonomy:

> It is essential to recognize that society's interest in knowledge may not coincide with an individual subject's interest; the individual subject stands to gain nothing and lose everything, including his or her right of self–determination ... Researchers, under competitive pressure and also financial pressure from corporate backers, operate under a paternalistic approach to research subjects, asserting professional expertise and arguing experimental necessity while minimizing the right to self-determination—a key aspect of the exercise of autonomy—of their subjects. The result is a greater or lesser degree of ethical effacement.

Id. at 839 (citing Jeffrey H. Barker, *Human Experimentation and the Double Facelessness of a Merciless Epoch*, 25 N.Y.U. Rev. Law & Soc. Change 603, 617–20 (1999)). Here, too, Ultragenyx cannot avoid liability by pointing to the purported widespread use and benefits achieved by a system that has exploited Black bodies in the name of medical progress for centuries.

B. THE COURT SHOULD ALLOW PLAINTIFF'S CASE TO PROCEED BECAUSE ULTRAGENYX'S WRONGFUL CONDUCT IS ONGOING AND CONSTITUTES A CONTINUING HARM.

In evaluating whether the Estate has alleged facts to show its claim is timely, it is important to consider the nature of the claim. Each time Ultragenyx acquires, cultivates, sells, and retains profits from HeLa cells without consent and without justly compensating Plaintiff, this activity

constitutes a new instance of unjust enrichment and the statute of limitations runs anew.[13] *See Virginia Hosp. Ass'n v. Baliles*, 868 F.2d 653, 663 (4th Cir. 1989), *aff'd sub nom. Wilder v. Virginia Hosp. Ass'n*, 496 U.S. 498 (1990) (where the plaintiff alleged an ongoing violation, the statute of limitations would not have begun to run until the violation ended); *see also Palmer v. Board of Educ.*, 46 F.3d 682, 685–686 (7th Cir. 1995) ("A wrongful act does not mark the accrual of a claim, however; the time begins with injury rather than with the act that leads to injury . . . A series of wrongful acts [] creates a series of claims."). In addition, the continuous sale of Mrs. Lacks's living tissue without her Estate's permission, consent, or any form of compensation, is precisely the kind of ongoing wrongful conduct that the continuing violations doctrine is designed to protect against. *See generally Litz v. Maryland Dep't of Env't*, 76 A.3d 1076, 1089 (Md. 2013) (explaining continuing violations doctrine).

A district court in New York found ongoing violations where, as in this case, there has been a "continued denial of assets." *Bodner v. Banque Paribas*, 114 F. Supp. 2d 117, 134 (E.D.N.Y. 2000). In *Bodner v. Banque Paribas*, Holocaust survivors alleged unjust enrichment, claiming that the defendant banks' "refusal and failure to return the looted assets improperly deprived plaintiffs of their property and afforded defendants a substantial windfall from over fifty years of interest and investment returns." *Id*. at 122. The court ultimately rejected defendants' statute of limitations defense, holding that the plaintiffs' claims were not time-barred because defendants' continued failure to return plaintiffs' assets, and denial of information about the assets, constituted a continuing violation of international law. *Id*. at 134–35. Similarly, in the present

[13] Ultragenyx argues the separate accrual doctrine does not apply to this claim. But this argument is based on the mistaken premise that any wrongdoing occurred in the past. However, Plaintiff's allegations make clear that Ultragenyx engages in wrongdoing today, every time it uses HeLa cells, and that it intends to do so in the future. Comp. ¶¶ 68, 71. And "when a defendant commits successive violations, the statute of limitations runs separately from each violation." *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 572 U.S. 663, 671 (2014). Nevertheless, Ultragenyx makes no mention of the continuing violations doctrine, which *amici* contend properly tolls the statute of limitations.

case, the Estate's claim should not be dismissed as time-barred because of the nature of Ultragenyx's ongoing non-consensual commercialization and sale of HeLa cells.

Ultragenyx's ongoing enrichment constitutes a present and ongoing economic harm, and the longer Ultragenyx fails to compensate Plaintiff, the greater the magnitude of Plaintiff's economic harm. While the sale of HeLa cells has contributed to Ultragenyx's market capitalization worth billions and the hundreds of millions it reaps annually in revenue, Mrs. Lacks's own family has received nothing. *See* Compl. ¶¶ 14, 23, 61.

Both Ultragenyx's conduct and its defenses are emblematic of practices and policies that have contributed to the historical wealth-stripping of Black communities in the United States. Courts have recognized the compounding effect of historically discriminatory policies on generational wealth. *See, e.g., Texas Dept. of Hous. & Comty. Affairs*, 576 U.S. 519, 528–29 (2015) (recognizing the effects of historical discrimination that "precluded minority families from purchasing homes in affluent areas" and explaining that the "vestiges" of racial segregation remain today, "intertwined with the country's economic and social life."); *Students for Fair Admissions, Inc. v. Harvard Coll.*, 600 U.S. 181, 384 (2023) (Jackson J., Dissenting) ("Gulf-sized race-based gaps exist with respect to health, wealth, and well-being of American citizens" that were "created in the distant past, but have indisputably been passed down to the present day through the generations."). As stated in a report from the Center for American Progress, "the Black-white wealth gap is not an accident but rather the result of centuries of federal and state policies that have systematically facilitated the deprivation of Black Americans."[14] The role of private businesses, such as Ultragenyx, in enabling and perpetuating these disparities cannot be ignored. Notably,

[14] Christian E. Weller & Lily Roberts, *Eliminating the Black-White Wealth Gap is a Generational Challenge*, Center for American Progress (Mar. 19, 2021), https://tinyurl.com/5b4ehx2a.

"private businesses and governments institutionalized racism and discrimination. They also encouraged and sanctioned violence targeting Black lives and property."[15] Ultragenyx's ongoing profit from HeLa cells without just compensation to Plaintiff compounds the impact of these historical harms.

Mrs. Lacks was specifically vulnerable to medical exploitation by virtue of her status as a poor, Black woman living in the racially discriminatory Baltimore of the 1950's. These same identities are also what made her and her family vulnerable to structural economic exploitation and dispossession, which continues to harm the Estate today. Given the reality that HeLa cells are widely available in the public domain, are likely to continue to be sold by Ultragenyx for profit, and have already begot Ultragenyx substantial profits, the Estate should not be denied the opportunity to share in these economic benefits and accrue the generational wealth of which they have thus far been robbed. In light of Ultragenyx's ongoing denial of economic benefit to the Estate, Plaintiff's claim should not be time-barred.

III. CONCLUSION

For the foregoing reasons, Defendant's Motion to Dismiss should be denied in its entirety.

Dated: November 9, 2023.

Respectfully submitted,

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[15] *Id.*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing documents were filed through CM/ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on November 9, 2023.

/s/ *Dorian L. Spence*
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