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 SANFORD WADLER

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 10 **UNITED STATES DISTRICT COURT**
 11 **NORTHERN DISTRICT OF CALIFORNIA**

12 SANFORD S. WADLER,

13 Plaintiff,

14 v.

15
 16 BIO-RAD LABORATORIES, INC.,
 a Delaware Corporation; NORMAN
 17 SCHWARTZ; LOUIS DRAPEAU; ALICE N.
 18 SCHWARTZ; ALBERT J. HILLMAN;
 DEBORAH J. NEFF,

19 Defendants.

Case No. 3:15-cv-2356

COMPLAINT FOR:

1. RETALIATION IN VIOLATION OF 18 U.S.C. § 1514A (SARBANES-OXLEY)
2. RETALIATION IN VIOLATION OF 15 U.S.C. § 78u-6 (DODD-FRANK)
3. RETALIATION IN VIOLATION OF CALIFORNIA LABOR CODE § 1102.5
4. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY
5. NONPAYMENT OF WAGES UNDER CAL. LABOR CODE §§ 201, 227.3
6. WAITING TIME PENALTIES UNDER CAL. LABOR CODE § 203

JURY TRIAL DEMANDED

1 Plaintiff Sanford S. Wadler (“Wadler” or “Plaintiff”) hereby alleges as follows:

2 **Introduction**

3 1. This matter presents the classic case of whistleblower retaliation. After learning
4 of his employer Bio-Rad’s involvement in extensive bribery occurring in Russia, Thailand, and
5 Vietnam, Wadler investigated evidence of similar violations of the Foreign Corrupt Practices Act
6 (“FCPA”) in China, where corruption is notoriously endemic. Key Bio-Rad officers and
7 directors wanted Wadler to turn a blind eye to this misconduct or sweep it under the rug, but he
8 refused. Instead, and following his mandatory duties under federal securities laws as the
9 Company’s chief legal officer, Wadler investigated this potential criminal activity and reported it
10 up the ladder. When Wadler reasonably began to believe that the conspiracy to violate the FCPA
11 went all the way to the top of the corporate hierarchy, he reported his concerns to the Company’s
12 audit committee. Then, just shortly before Bio-Rad was scheduled to present to the SEC and
13 DOJ regarding the Company’s investigation into potential FCPA violations, the Company fired
14 Wadler precisely because he refused to be complicit in its wrongdoing. A company is not
15 allowed to attempt to silence whistleblowers in this manner.

16 **PARTIES**

17 2. Wadler became the General Counsel and Secretary of Defendant Bio-Rad
18 Laboratories, Inc. (“Defendant” or “Bio-Rad”) in 1989. He was appointed to the position of
19 Vice President in 1996 and Executive Vice President in 2012. The Company also
20 simultaneously employed him in many different roles, for example by having him serve as a
21 director, officer, and/or shareholder on virtually all of Bio-Rad’s many subsidiaries.

22 3. Wadler is a member of the New York and Washington DC bars and is a registered
23 patent attorney. He was also a registered in-house counsel with the State Bar of California.

24 4. Bio-Rad is a publicly traded corporation. Its corporate headquarters and principal
25 place of business are located in Hercules, California, which is in Contra Costa County. Bio-Rad
26 manufactures and supplies the life science research, healthcare, analytical chemistry, and other
27 markets with a range of products and systems used to separate complex chemical and biological
28 materials and to identify, analyze, and purify their components. It sells its products globally.

1 **GENERAL ALLEGATIONS**

2 **Bio-Rad’s FCPA Violations in Vietnam, Thailand, and Russia**

3 14. In 2009, Bio-Rad’s corporate officers became aware that certain of its employees
4 and agents in Vietnam, Thailand, and Russia may have violated provisions of the FCPA.

5 15. Those schemes are outlined in vivid detail in a consent order filed publicly by the
6 SEC, attached hereto as Exhibit A, under which Bio-Rad agreed to pay \$55.1 million for making
7 unlawful payments either directly or indirectly to government officials in these countries in order
8 to obtain or maintain governmental business, and for related books and records violations. In
9 addition to detailing the underlying bribery schemes themselves, the order also discusses the
10 lengths that the Company went through to conceal this conduct, for example in the case of
11 Russia by “maintain[ing] no records” concerning certain entities that were “not legitimate
12 businesses” who received “excessive commissions” yet “did not provide the contracted-for
13 services” for which they were purportedly retained (and indeed were clearly incapable of
14 performing). The Bio-Rad subsidiaries also “used at least ten different personal email addresses
15 with aliases when communicating about” such entities and “used code words like ‘bad debts’”
16 when referring to their commissions. Similarly attempts to conceal bribery were made in
17 Vietnam, where \$23.7 million in admitted bribes were improperly recorded as “commissions”,
18 “advertising fees,” and “training fees.” And in Thailand, a Bio-Rad subsidiary recorded over
19 \$700,000 in known bribes as commissions.

20 **FCPA Investigation in China**

21 16. As a result of the widespread allegations of illegal bribery uncovered in Russia,
22 Thailand, and Vietnam, Bio-Rad determined that it needed to investigate whether there were
23 similar violations in China—a country where Bio-Rad had significantly greater amounts of sales
24 than Thailand, Vietnam, or Russia and where corruption is notoriously widespread.

25 17. Bio-Rad hired an outside law firm, Steptoe and Johnson LLP, to investigate
26 allegations of potential bribery in China. That law firm came to the conclusion that there was no
27 evidence of improper payments.

28 18. Wadler was surprised by that conclusion, given the volume of business that Bio-

1 Rad conducted in China, the company's apparently routine practice of committing FCPA
2 violations in Russia, Thailand, and Vietnam, and the fact that China was a country notorious for
3 its endemic corruption.

4 **The Life Technologies Royalty Audit**

5 19. Bio-Rad had licensed products from a company known as Life Technologies
6 ("Life") for many years. As part of the licensing agreement, Life conducted audits to confirm
7 prices paid by end-users (on which royalties are calculated) to make sure Life was being properly
8 compensated.

9 20. It came to Wadler's attention in mid-2011 that, in response to Life's audit
10 requests, Bio-Rad was unable to supply virtually any documentation to Life regarding Bio-Rad's
11 operations in China.

12 21. Wadler was shocked that, with sales in the hundreds of millions of dollars over a
13 number of years, Bio-Rad could not come up with virtually any documents evidencing such
14 sales. Wadler repeatedly tried to obtain documents from Bio-Rad's CEO, CFO, and other key
15 executives, but despite indicating that they would assist in tracking down such documents, these
16 executives repeatedly failed to do so.

17 22. Wadler was concerned that the failure to maintain documents that would
18 accurately reflect Bio-Rad's transactions in China was itself a books and records violation of the
19 FCPA. More importantly, he was worried that the lack of documentation suggested efforts to
20 conceal violations of the FCPA's anti-bribery provisions. The sheer dearth of documents in
21 relation to Bio-Rad's extensive China operations suggested that such bribery might be rampant.

22 23. As time went on, Wadler became concerned that Life might file a lawsuit against
23 Bio-Rad related to its failure to produce documents during its audits. Wadler was worried that
24 such a lawsuit would have a substantially detrimental effect on the company by, among other
25 things, opening up Bio-Rad to scrutiny from the U.S. Department of Justice ("DOJ") and
26 Securities and Exchange Commission ("SEC") for its China dealings (before it even attempted to
27 self-disclose such potential violations) as well as the FCPA violations that were already being
28 investigated with respect to Bio-Rad's operations in other countries.

1 **Several Documents Are Found that Demonstrate FCPA Violations in China**

2 24. In late 2012, Wadler was finally able to uncover a few documents—though far
3 less than there should have been given Bio-Rad’s substantial operations in China. And, in even
4 the relatively few documents he was able to uncover, there was unambiguous evidence of
5 potential bribery. These documents specifically showed transactions with governmental entities
6 (such as public universities) in which Bio-Rad distributors had contracted to provide a certain
7 number of items, invoiced them for that number of items, but then actually provided several
8 additional items for free. The cost of the free items was almost half of the items actually billed
9 for. Wadler reasonably concluded that these free items reflected kickbacks being paid to
10 governmental employees or entities for giving business to the relevant distributor.

11 25. In addition to alerting Wadler about likely corruption regarding the specific
12 transactions at issue, this discovery made Wadler concerned that Steptoe and Johnson’s prior
13 investigation into potential FCPA violations in China had been deficient. Further, because there
14 were still so few documents produced in response to the Life Audit, and even those few
15 documents that could be identified suggested bribery, Wadler became concerned that bribery was
16 widespread.

17 26. In addition to being concerned about the possibility of additional underlying
18 FCPA violations, Wadler was concerned that this discovery would negatively impact the
19 Company’s ongoing investigations with the SEC and DOJ. Bio-Rad had been trying to work
20 with them to minimize the penalties for the earlier FCPA violations and he knew that one of the
21 major factors in determining the ultimate penalties imposed was the “tone at the top” of the
22 Company. He knew that the government was only likely to grant Bio-Rad leniency if the
23 Company was perceived as being diligent and cooperative, and that these additional revelations
24 suggested that they were not embodying either of these traits.

25 27. Still more evidence of FCPA violations came to Wadler’s attention in early 2013
26 when he learned that certain standard language concerning the need for FCPA compliance had
27 been removed (without his knowledge or approval) from documents translated into Chinese and
28 used for Bio-Rad’s operations in China. Wadler became concerned that this represented an

1 intentional effort by Bio-Rad's agents and employees to circumvent internal controls intended to
2 prevent FCPA violations. He also obtained additional documents that suggested additional
3 instances of bribery.

4 28. Due to the repeated stonewalling he had received from the CEO, CFO, and other
5 members of management, Wadler became suspicious that corruption issues in China were known
6 to senior management, and that management was intentionally blocking his efforts to uncover
7 evidence of bribery and related misconduct.

8 29. As a result, and pursuant to his mandatory "up the ladder" reporting requirements
9 under federal securities laws, Wadler notified the Audit Committee in February 2013 of his
10 concerns. He specifically relayed his concerns that he had uncovered evidence of bribery,
11 books-and-records violations, and that language had been altered in documents in Chinese in
12 order to circumvent Bio-Rad's internal controls to prevent such violations of the law.

13 30. To his amazement and disappointment, the Audit Committee reengaged Steptoe
14 and Johnson to investigate these additional FCPA violations. This was the very same law firm
15 that initially concluded in 2011 (incorrectly, as it had turned out) that there was no evidence of
16 FCPA violations in China. Wadler was concerned that Steptoe had a clear conflict of interest in
17 doing the investigation again when it failed to uncover the violations in 2011 because any
18 finding in 2013 would have demonstrated Steptoe's prior malpractice.

19 31. Wadler's suspicions were further heightened on or about February 22, 2013 in a
20 meeting between the Company and its outside auditors at which Wadler was present. There, the
21 CFO informed the outside auditors that she wanted to send people to China to attempt to unearth
22 the missing documents for the Life Audit, but the CEO, Norman Schwartz prevented her from
23 doing that.

24 32. At a meeting in March 2013 between Bio-Rad, Steptoe and Johnson, and Bio-
25 Rad's outside auditor Ernst & Young, Steptoe indicated that there was no evidence of improper
26 payments regarding Bio-Rad's China Sales. Wadler was shocked by this conclusion, given the
27 documentation that had already been uncovered before the investigation began that clearly
28 indicated that bribery had occurred. Wadler stated that thirty percent of the documents

1 concerning Bio-Rad’s China operations that he had reviewed contained discrepancies relating to
2 the shipment volume. Wadler stated that this fact suggested to him that there were significant
3 additional FCPA violations that Steptoe and Johnson had apparently not uncovered. Wadler
4 asked Steptoe and Johnson partner Patrick Norton—the partner who actually conducted the
5 investigations into potential FCPA violations in both 2011 and 2013—whether such
6 discrepancies troubled him, whether Norton knew the whereabouts of the extra products shipped,
7 and what he knew about the actual motivation for shipping them. Norton responded that he had
8 simply not addressed those issues in his investigation. Wadler was flabbergasted. After all, the
9 entire reason Steptoe and Johnson had been retained was to investigate these very discrepancies,
10 and the firm had apparently not done even that.

11 33. Despite Wadler’s comments regarding additional documents demonstrating FCPA
12 violations, Neither Steptoe and Johnson nor Davis Polk asked Wadler for any other documents
13 he might have that would shed light on the issues raised to the Audit Committee. Instead,
14 Wadler was effectively shut out of the investigation over his repeated objections that he should
15 be included.

16 **Bio-Rad Announces Deficiencies in its Internal Controls via its SEC Filings,**
17 **Including Deficiencies Specifically Related to its Operations in China**

18 34. On March 8, 2013, Bio-Rad filed its 10K statement with the SEC, in which it
19 disclosed that it had “identified significant deficiencies in [its] internal control over financial
20 reporting, including “the unauthorized issuance of distributor contracts at [its] Chinese
21 subsidiary,” “[its] lack of controls over pricing and [its] ineffective methods of analyzing credit
22 risk” and “[i]n some instances, the lack of sufficient documentation for the timing of revenue
23 recognition.” Thus, Bio-Rad admitted publicly that it was, in fact, engaging in some of the very
24 misconduct Wadler had complained about.

25 **Wadler Is Suddenly Terminated**

26 35. On June 7, 2013, Bio-Rad terminated Wader. Although the CEO effectuated the
27 termination, the decision was made by a vote of the entire Board. Mr. Schwartz subsequently
28 confirmed that the decision was that of the entire Board in statements he made to Wadler.

1 36. Wadler’s briefcase was then searched and he was escorted out of the office
2 without being given any time to gather his personal items. He was not offered any recognition
3 for his many years of dedicated service.

4 37. Throughout his employment, Wadler reported to the CEO, first David Schwartz
5 and then Norman Schwartz. Wadler was never told that his work was deficient or that he was
6 not a valued member of management. Indeed, in December 2012, Norman Schwartz after
7 writing a positive performance review promoted him to Executive Vice President and gave him a
8 raise.

9 38. When Mr. Schwartz and the rest of the Board made their decision to fire Wadler,
10 all of the Board members—including Respondents Drapeau, Hillman, Neff, and Alice
11 Schwartz—were aware that Wadler had reported bribery, books-and-records violations, and
12 related misconduct to persons with supervisory authority over him and to other persons working
13 for Bio-Rad who had the authority to investigate, discover, or terminate such misconduct. The
14 full Board was also aware of the fact that Wadler had refused to turn a blind eye to such
15 misconduct and refused to participate in any way in efforts to cover it up.

16 39. On information and belief, Respondents made the decision to fire Wadler
17 precisely because he provided information, caused information to be provided, and otherwise
18 assisted in an investigation regarding conduct which he reasonably believed constituted a
19 violation of federal laws regarding mail fraud, wire fraud, bank fraud, securities fraud, rules and
20 regulation of the Securities and Exchange Commission, and provisions of federal law relating to
21 fraud against shareholders. Among other things, he was terminated due to his efforts to get the
22 CEO and CFO to address properly violations of the FCPA and for complying with Wadler’s
23 mandatory “up the ladder” reporting requirements when it became clear that the company was
24 not taking reasonable steps to investigate and remedy FCPA violations. In addition, Wadler was
25 fired because, even after the initiation of the investigation, he continued to insist that the
26 investigation be complete and uninfluenced by conflicts of interest.

27 40. On further information and belief, the reasons the company provided for firing
28 Wadler were pretextual. Wadler would never have been terminated if he had not protested to the

1 Audit Committee and others about the existence of serious violations of the FCPA.

2 **Bio-Rad Discloses Wadler's Complaints to the SEC, Waiving any Potential Claim of**
3 **Privilege**

4 41. Wadler was fired on June 7, 2013. At the time of his termination, Bio-Rad had
5 been scheduled to give a report to the SEC and DOJ just a few weeks later during which it was
6 supposed to update these governmental entities regarding the status of Bio-Rad's internal FCPA
7 investigations.

8 42. Bio-Rad had its outside counsel for the Company, Davis Polk, give the
9 presentation to the government. On information and belief, Bio-Rad was concerned that
10 Wadler's termination might reflect poorly on the company by implying that his firing had
11 something to do with potential FCPA concerns, or otherwise relate to information he might have
12 provided to the government had he not been fired. As a result, the presentation given by Davis
13 Polk to these governmental entities specifically disclosed (and attempted to rebut) Wadler's
14 internal complaints and other communications with the Company concerning his view that there
15 was likely widespread bribery and books-and-records violations regarding Bio-Rad's operations
16 in China. The Company also discussed the various steps Steptoe and Johnson had undertaken to
17 investigate potential FCPA violations discussed above, as well as the retention of Davis Polk. A
18 true and correct copy of that presentation along with its transmittal email to the SEC and DOJ is
19 attached hereto as Exhibit B. On information and belief, the presentation given to the SEC and
20 DOJ was a self-serving attempt to avoid potential negative repercussions regarding the improper
21 activities Bio-Rad engaged in discussed above.

22 43. Because Bio-Rad voluntarily disclosed Wadler's internal communications to the
23 government, the Company waived any potential claim of privilege it might have had with respect
24 to these communications. Indeed, in subsequent proceedings where it further disclosed these
25 communications to the Department of Labor, Bio-Rad admitted that this PowerPoint presentation
26 was not privileged.

27 **Bio-Rad's Outside Auditors Resign**

28 44. Bio-Rad's auditors, Ernst & Young, ultimately resigned from doing Bio-Rad's

1 audit work in September of 2013. On information and belief, material deficiencies and
2 substantial disagreement between the auditors and Bio-Rad’s senior leadership contributed to the
3 resignation of the auditors.

4 **Bio-Rad Agrees to Pay \$55.1 Million in Fines to the Government for FCPA**
5 **Violations, and Admits to Precisely the type of Misconduct in China that Wadler**
6 **Blew the Whistle about**

7 45. In its November 7, 2014 10Q filing with the SEC, Bio-Rad admitted that it had
8 entered into a non-prosecution agreement with the DOJ and SEC, under which it would pay
9 \$55.1 million for FCPA violations in Russia, Thailand, and Vietnam.

10 46. In that same filing, Bio-Rad admitted that it had been investigated, and in some
11 cases fined, for engaging in exactly the type of practices that Wadler had blown the whistle
12 about. The filing revealed that the Company had been investigated by “the local counterpart of
13 China’s State Administration for Industry and Commerce,” and that this governmental entity had
14 required Bio-Rad’s subsidiary in China to pay a penalty of \$300,000 “for providing free products
15 pursuant to contractual obligations with customers during years 2012 and 2013, which was
16 deemed to be in violation of the Anti-Unfair-Competition Law.” It also vaguely admitted that
17 “China’s Bureau of Market Supervision and Administration, through its local counterpart in
18 Pudong New District, Shanghai (“Bureau”) has begun a review of [Bio-Rad’s] importation
19 practices with respect to certain of [Bio-Rad’s] products.”

20 47. These admissions demonstrate that Bio-Rad was engaging in practices such as
21 giving “free goods” (or, in other words bribes) in connection with obtaining governmental
22 contracts that is forbidden by the FCPA.

23 **FIRST CLAIM**
24 **(RETALIATION IN VIOLATION OF 18 U.S.C. § 1514A (SARBANES-OXLEY)**
25 **(Against all Defendants)**

26 48. Wadler incorporates by reference paragraphs 1 to 47 above, as though fully set
27 forth herein.

28 49. Wadler was an employee of Bio-Rad.

50. Bio-Rad issues and maintains a class of publicly traded securities registered

1 pursuant to Section 12(b) of the Securities Exchange Act of 1934, which are traded on the New
2 York Stock Exchange.

3 51. Wadler engaged in activity protected under 15 U.S.C. § 1514A because he
4 provided information, caused information to be provided, or otherwise assisted in an
5 investigation regarding conduct that he reasonably believed constituted violations of 18 U.S.C. §
6 1341 (mail fraud), § 1343 (wire fraud), § 1344 (bank fraud), § 1348 (securities fraud), any rule or
7 regulation of the SEC, or any provision of federal law relating to fraud against shareholders.

8 52. The information or assistance was provided to (or the investigation is conducted
9 by) a Federal regulatory or law enforcement agency; any Member of Congress or any committee
10 of Congress; or a person with supervisory authority over the employee (or such other person
11 working for the employer who has the authority to investigate, discover, or terminate
12 misconduct).

13 53. Wadler had both a subjective and objectively reasonable belief that the conduct
14 being reported violated a listed law, rule, or regulation.

15 54. Bio-Rad, including its Board of Directors, its CEO, CFO, and others, knew or
16 suspected that Wadler engaged in such protected activity.

17 55. Wadler was terminated.

18 56. Wadler's protected activity was a contributing factor—and indeed the reason
19 for—his termination.

20 57. As a proximate result of Bio-Rad's actions against Wadler, as alleged above,
21 Wadler has been harmed in that he has suffered the loss of wages, benefits, and additional
22 amounts of money he would have received if he had not been subjected to said treatment.
23 Wadler has also been harmed in that he has suffered humiliation, mental anguish, and emotional
24 and physical distress. As a result of such conduct, Wadler has suffered damages in an amount
25 according to proof.

26 58. Within 180 days of his termination, Wadler filed a complaint with the secretary of
27 labor. The Secretary of Labor has not issued a final decision and more than 180 days have
28 elapsed, and any delay was not due to Wadler's bad faith.

1 contributing factor in Bio-Rad's decision to terminate him.

2 79. As a proximate result of Bio-Rad's actions against Wadler, as alleged above,
3 Wadler has been harmed in that he has suffered the loss of wages, benefits, and additional
4 amounts of money he would have received if he had not been subjected to said treatment.
5 Wadler has also been harmed in that he has suffered humiliation, mental anguish, and emotional
6 and physical distress. As a result of such conduct, Wadler has suffered damages in an amount
7 according to proof.

8 80. Wadler was terminated for engaging in mandatory "up the ladder" reporting
9 requirements under SEC rules governing attorneys such as himself who represent issuer clients
10 appearing and practicing before the SEC, including but not limited to 17 C.F.R. 205.3. In
11 addition, Wadler was terminated for refusing to aid and abet or be an accessory after the fact to
12 criminal violations of the FCPA and SOX.

13 **FIFTH CLAIM**
14 **(NONPAYMENT OF WAGES UNDER CAL. LABOR CODE §§ 201, 227.3)**
15 **(Against Defendant Bio-Rad)**

16 81. Wadler incorporates by reference paragraphs 1 to 80 above, as though fully set
17 forth herein.

18 82. At the time of Wadler's termination, and pursuant to his employment agreement
19 with Bio-Rad, Wadler had accrued wages in the form of paid vacation that he had not yet used.

20 83. Bio-Rad was obligated to pay Wadler for any unused vacation time at the time of
21 termination pursuant to California Labor Code Sections 201 and 227.3 but failed to do so. Thus,
22 Wadler is entitled to payment for this vacation time.

23 **SIXTH CLAIM**
24 **(WAITING TIME PENALTIES UNDER CAL. LABOR CODE § 203)**
25 **(Against Defendant Bio-Rad)**

26 84. Wadler incorporates by reference paragraphs 1 to 83 above, as though fully set
27 forth herein.

28 85. Bio-Rad intentionally failed to pay wages to Wadler regarding his vacation time
when those wages were due. As such, its failure to pay wages was intentional and subjects it to
waiting time penalties pursuant to Labor Code Section 203.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

1. Two times the amount of back pay otherwise owed to Wadler, with interest at the maximum legal rate;
2. For any other money judgment representing compensatory damages including lost wages, earnings, retirement benefits and other employee benefits, and all other sums of money, together with interest at the maximum legal rate on these amounts, according to proof;
3. For a money judgment for mental pain and anguish and emotional distress, according to proof, with interest at the maximum legal rate, according to proof;
4. For waiting time penalties pursuant to California Labor Code Section 203;
5. For an award of punitive damages, according to proof;
6. Compensation for litigation costs, expert witness fees, and attorneys' fees;
7. Reinstatement with the same seniority status that the individual would have had, but for the discrimination; and
8. For such other and further relief as the court deems proper.

Date: May 27, 2015

KERR & WAGSTAFFE LLP

By: _____ /s/ _____
MICHAEL VON LOEWENFELDT

Attorneys for Plaintiff
SANFORD S. WADLER

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DEMAND FOR JURY TRIAL

Pursuant to Civil Local Rule 3-6, Plaintiff hereby demands a trial by jury in this matter.

Date: May 27, 2015

KERR & WAGSTAFFE LLP

By: _____/s/_____
MICHAEL VON LOEWENFELDT

Attorneys for Plaintiff
SANFORD S. WADLER