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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

EXHIBIT A

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73496 / November 3, 2014

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3594 / November 3, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16231

In the Matter of

**BIO-RAD LABORATORIES,
INC.,**

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A
CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Bio-Rad Laboratories, Inc. (“Bio-Rad” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, Respondent admits the Commission’s jurisdiction over the Respondent and the subject matter of these proceedings, and consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise from violations of the Foreign Corrupt Practices Act of 1977 (the "FCPA") [15 U.S.C. § 78dd] by Bio-Rad Laboratories, Inc. ("Bio-Rad") concerning medical diagnostic and life science equipment sales to government customers in Russia, Vietnam, and Thailand.

2. From approximately 2005 to 2010, subsidiaries of Bio-Rad made unlawful payments in Vietnam and Thailand to obtain or retain business. During the same period, Bio-Rad's subsidiary paid certain Russian third parties, disregarding the high probability that at least some of the money would be used to make unlawful payments to government officials in Russia. With respect to Russia, one of Bio-Rad's foreign subsidiaries paid three off-shore agents (the "Russian Agents") for alleged services in connection with sales of its medical diagnostic and life science equipment to government agencies. These agents were not legitimate businesses, and despite receiving large commissions, they did not provide the contracted-for services. In paying these agents, Bio-Rad's foreign subsidiary demonstrated a conscious disregard for the high probability that the Russian Agents were using at least a portion of the commissions to pay foreign officials to obtain profitable government contracts. The General Manager ("GM") of Bio-Rad's Emerging Markets sub-division and the Emerging Markets Controller, both employees of the parent company (collectively, "the Emerging Markets managers") ignored red flags, which permitted the scheme to continue for years. In Vietnam and Thailand, Bio-Rad's foreign subsidiaries used agents and distributors to funnel money to government officials. In total, Bio-Rad made \$35.1 million in illicit profits from these improper payments.

3. In violation of Bio-Rad's policies, Bio-Rad's foreign subsidiaries did not record the payments in their own books in a manner that would accurately or fairly reflect the transactions. Instead they booked them as commissions, advertising, and training fees. These subsidiaries' books were consolidated into the parent company's books and records. During the relevant period, Bio-Rad also failed to devise and maintain adequate internal accounting controls.

Respondent

4. **Bio-Rad Laboratories, Inc.** ("Bio-Rad") is a corporation organized under the laws of the state of Delaware. Bio-Rad's corporate headquarters is Hercules, California. Bio-Rad issues and maintains a class of publicly traded securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934, which are traded on the New York Stock Exchange.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Other Relevant Entities and Persons

5. **Bio-Rad SNC** is an indirect wholly-owned subsidiary of Bio-Rad headquartered in Marnes-La-Coquette, France. Bio-Rad SNC manufactures, sells, and distributes Bio-Rad products. During the relevant time period, Bio-Rad SNC manufactured the products sold to the Russian government, contracted with the off-shore agents in Russia, and paid their sales commissions. Bio-Rad SNC's books, records, and financial accounts are consolidated into Bio-Rad's books and records and reported by Bio-Rad in its financial statements.

6. **Bio-Rad Laboratorii OOO** ("Bio-Rad Russia") is a wholly-owned subsidiary of Bio-Rad located in Moscow, Russia. Bio-Rad Russia's books, records, and financial accounts are consolidated into Bio-Rad's books and records and reported by Bio-Rad in its financial statements.

7. **Agents A, B, and C** (collectively, the "Russian Agents") were incorporated in the United Kingdom, Belize, and Panama, respectively. They contracted with Bio-Rad SNC to assist Bio-Rad Russia in the sale of Bio-Rad products to the Russian government.

8. **Bio-Rad Laboratories** (Singapore) Pte. Limited ("Bio-Rad Singapore") is Bio-Rad's wholly-owned subsidiary, located in Singapore. Bio-Rad Singapore's books, records, and financial accounts are consolidated into Bio-Rad's books and records and reported by Bio-Rad in its financial statements.

9. **Diamed South East Asia Ltd.** ("Diamed Thailand") was a 49%-owned subsidiary of Diamed AG (Switzerland) that was acquired by Bio-Rad in October 2007. Local majority owners ran Diamed Thailand's operations until 2011, when Bio-Rad bought out their interest in the company. Diamed Thailand's financial statements are consolidated into those of Bio-Rad.

Background

10. Bio-Rad is a life science research and clinical diagnostics company that operates in two industry segments, Life Science and Clinical Diagnostics, in the United States and internationally. Bio-Rad's Clinical Diagnostics segment, which designs, manufactures and sells diagnostic testing kits and systems to clinical laboratories and hospitals, accounts for the majority of Bio-Rad's net sales, and almost the entirety of the unlawful payments at issue in this Order.

11. Bio-Rad's international sales organization ("ISO") oversees the company's international sales operations; this includes all locations outside the United States and Canada. In 2009, the ISO consisted of four sub-divisions: (1) Western Europe; (2) Asia Pacific; (3) Japan; and (4) Emerging Markets. Each sub-division had a general manager, reporting to the vice-president of ISO. The Asia Pacific sub-division included Vietnam and Thailand. The Emerging Markets sub-division included Russia and other eastern European countries. Some countries within the sub-divisions had a country manager who reported to the ISO sub-division general manager.

12. Bio-Rad's total consolidated net income for the year ended December 31, 2013 was \$77.8 million, with gross revenues of \$2.1 billion.

Unlawful Payments in Russia

13. From 2005 to the beginning of 2010, a substantial portion of Bio-Rad Russia's business consisted of sales of clinical diagnostic products to the Russian government. Those sales arose from government contracts awarded to Bio-Rad Russia through a public tender offer process that required approval from various government officials. Bio-Rad Russia's largest contracts with the Russian government were national contracts awarded by the Russian Ministry of Health for the sale of HIV testing equipment and blood bank equipment. The clinical diagnostic products sold to the Russian government were manufactured by Bio-Rad SNC, which in many instances also sold them directly to the Russian government due to certain complexities with Russian regulations and tax laws. Those sales were recorded on Bio-Rad SNC's financial records. Other sales made by Bio-Rad Russia were recorded in the first instance on Bio-Rad Russia's financial books.

14. During the relevant time period, Bio-Rad Russia had a country manager, who reported to the GM of Emerging Markets. From 2005 to 2006, the Emerging Markets GM, along with the Emerging Markets' Controller, worked out of Bio-Rad SNC's offices. After that, they worked out of Bio-Rad's corporate offices in the United States.

The Unlawful Payments Scheme

15. From at least 2005 to the beginning of 2010, Bio-Rad SNC paid the Russian Agents commissions of 15%-30% while demonstrating a conscious disregard for the high probability that the Russian Agents were passing along at least a portion of their commissions to Russian government officials to obtain profitable public contracts for the sale of medical diagnostic equipment. The scheme began prior to 2005, orchestrated by the then country manager, who used the Russian Agents, primarily for their influence in connection with the tenders for the government contracts. The Russian Agents were foreign entities with bank accounts in Latvia and Lithuania, all affiliated with the same individual. The Russian Agents entered into agreements to provide various services to Bio-Rad Russia including acquiring new business, creating and disseminating promotional materials to prospective customers, distributing and installing products and related equipment, and training customers. The Russian Agents, however, had no offices in Russia, no employees, and therefore, likely no capability to perform the services outlined in their contracts. One of the Russian Agents even used a phony office address in Moscow that was actually the office address for a Russian government building.

16. After the country manager died in or about 2007, his successor continued to make payments to the Russian Agents. He knew from discussions with colleagues in the Russian health care industry that the Russian Agents' principal had important contacts at the Russian Ministry of Health, and could influence the tender offer specifications and selection process. He performed no additional due diligence on the Russian Agents prior to signing subsequent agreements with them. Some documents suggest that the Russian Agents may have performed distribution services in connection with a few of the contracts. The new country manager estimated in an email to the Emerging Markets GM that Bio-Rad's distribution costs ranged

between 2%-2.5% in one instance. However, Bio-Rad SNC paid the Agents commissions of 15%-30%.

17. Both Russian country managers made extensive efforts to conceal matters relating to the Russian Agents. For example, no one other than the Russian country managers communicated with the Russian Agents and the country managers maintained no records of the Russian Agents. The new country manager used at least ten different personal email addresses with aliases when communicating about the Russian Agents with the Emerging Markets managers. He also used code words like “bad debts” when referring to the Russian Agents’ commissions. The Russian country managers knew or disregarded the high probability that the Russian Agents were using at least a portion of the sales commission payments to bribe Russian government officials in exchange for awarding the company profitable government contracts.

18. The Russian Agents received a total of \$4.6 million on sales of \$38.6 million. These unlawful payments were made by Bio-Rad SNC and recorded as commission payments on its books. These payments continued unabated until the beginning of 2010 when Bio-Rad Russia terminated the services of the Russian Agents. Immediately after that, Bio-Rad Russia lost its first government contract in Russia.

The Red Flags

19. Throughout the relevant time period, the Emerging Markets managers, who were employees of Bio-Rad, ignored repeated red flags regarding the high probability that the Russian Agents were making improper payments to government officials to win public tender offers for government contracts on behalf of Bio-Rad Russia. Specifically, they knew that the Russian Agents were foreign companies and that the Agents did not have the resources to perform the contracted-for services. They also knew that their commissions were excessive and were paid to banks in Latvia and Lithuania. Additionally, they condoned the secrecy surrounding the Russian Agents, and even encouraged it. For example, the Emerging Markets Controller sent an email to a lower-level Bio-Rad SNC employee instructing her to “talk with codes” when communicating about the Russian Agents’ invoices.

20. Furthermore, the Emerging Markets managers knew that the Russian country manager often requested approval for the Russian Agents’ commissions in installments of less than \$200,000. These managers should have recognized that this was an attempt to bypass an additional approval tier by Bio-Rad’s corporate controller, as required by Bio-Rad’s internal controls. Additionally, the Russian country manager sometimes requested payments to the Russian Agents even before Bio-Rad Russia had collected on the underlying sales contracts. The Emerging Markets managers should have known that pre-paying the commission was not normal, and it suggested the possibility of a bribe payment. The practice also violated the express terms of the Russian Agents’ contracts.

21. The Emerging Markets managers also knew that many of the contracted-for services were not necessary to Bio-Rad Russia’s business with the Russian government. Many of the clinical diagnostic products required limited installation or training; additionally, Bio-Rad Russia used a separate distributor for several of the same government contracts during the relevant time period, thereby obviating the need for an additional distributor. Finally, the

Emerging Markets managers knew that some of the Russian Agents' invoices were generated internally at Bio-Rad Russia.

22. Despite the red flags, which surfaced repeatedly over five years, the Emerging Markets managers approved all of the payments to the Russian Agents. They also reviewed, negotiated, and approved the Russian Agents' contracts.

Other Internal Controls Deficiencies

23. In many instances where the corporate controller's approval was needed for payments of over \$200,000 to the Russian Agents, the Emerging Markets controller merely sent an email request for the payment to be approved, without supplying the underlying contracts and invoices. Nevertheless, the corporate controller approved payments to the Russian Agents, relying solely on the Emerging Markets controller's prior review of the supporting documents.

24. The Emerging Markets GM instructed Bio-Rad Russia's country manager to sign the consulting agreements with the Russian Agents on behalf of Bio-Rad SNC. He did this in direct violation of the internal policies and procedures that required Bio-Rad SNC's GM to sign such agreements or, alternatively, to grant a power of attorney to the Bio-Rad senior manager to sign them.

25. The same Emerging Markets GM failed to provide Bio-Rad SNC's legal and finance departments with translated copies of the agreements with the Russian Agents in violation of Bio-Rad's internal policies and procedures. Nevertheless, for five years Bio-Rad's finance department approved the Russian Agents' sales commission payments.

26. From 2005 to the beginning of 2010, the Emerging Markets managers signed and submitted sub-certifications to Bio-Rad's chief financial officer attesting that Bio-Rad Russia's balance sheets and income statements were fairly presented in conformity with U.S. GAAP. The sub-certifications also stated that these managers were responsible for establishing and maintaining Bio-Rad Russia's internal controls, which the documents described as "adequate" and "functioning as needed."

Facts in Vietnam

27. From at least 2005 to the end of 2009, Bio-Rad maintained a sales representative office in Vietnam. A country manager supervised the Vietnam Office's sales activities, and was authorized to approve contracts up to \$100,000 and sales commissions up to \$20,000. Vietnam's country manager reported to Bio-Rad Singapore's Southeast Asia regional sales manager ("RSM"), who in turn reported to the Asia Pacific GM.

28. From 2005 through 2009, the country manager of the Vietnam office authorized the payment of bribes to government officials to obtain their business. At the direction of the country manager, the sales representatives made cash payments to officials at government-owned hospitals and laboratories in exchange for their agreement to buy Bio-Rad's products.

29. In 2006, the RSM first learned of this practice from a finance employee. She raised concerns about it to the Vietnam Office's country manager, who informed her that paying

bribes was a customary practice in Vietnam. On or about May 18, 2006, the Vietnamese country manager wrote in an email to the RSM and the Bio-Rad Singapore finance employee that paying third party fees “[wa]s outlawed in the Bio-Rad Business Ethics Policy,” but that Bio-Rad would lose 80% of its Vietnam sales without continuing the practice. In that same email, the country manager proposed a solution that entailed employing a middleman to pay the bribes to Vietnamese government officials as a means of insulating Bio-Rad from liability. Under the proposed scheme, Bio-Rad Singapore would sell Bio-Rad products to a Vietnamese distributor at a deep discount, which the distributor would then resell to government customers at full price, and pass through a portion of it as bribes.

30. The RSM and the Asia Pacific GM were aware of and allowed the payments to continue. Between 2005 and the end of 2009, the Vietnam office made improper payments of \$2.2 million to agents or distributors, which was funneled to Vietnamese government officials. These bribes, recorded as “commissions,” “advertising fees,” and “training fees,” generated gross sales revenues of \$23.7 million to Bio-Rad Singapore. The payment scheme did not involve the use of interstate commerce, and no United States national was involved in the misconduct.

Facts in Thailand

31. Bio-Rad acquired a 49% interest in Diamed Thailand as part of its acquisition of Diamed AG (Switzerland) in October 2007. Bio-Rad performed very little due diligence on Diamed Thailand prior to the acquisition.

32. Diamed Thailand’s local majority owners managed the subsidiary. Bio-Rad’s Asia Pacific GM was responsible for working and communicating with Diamed Thailand’s majority owners and distributors.

33. Prior to the October 2007 acquisition, Diamed Thailand had an established bribery scheme, whereby Diamed Thailand used a Thai agent to sell diagnostic products to government customers. The agent received an inflated 13% commission, of which it retained 4%, and paid 9% to Thai government officials in exchange for profitable business contracts.

34. The scheme continued even after Bio-Rad acquired Diamed Thailand. Diamed Thailand renewed the contract with the distributor in June 2008, but unbeknownst to Bio-Rad, the distributor was partially owned by one of Diamed Thailand’s local Thai owners.

35. Bio-Rad’s Asia Pacific GM learned of Diamed Thailand’s bribery scheme while attending a distributor’s conference in Bangkok in March 2008. At the conference, Diamed Thailand’s local manager informed him that some of Diamed Thailand’s customers received payments, which the Asia Pacific GM understood to mean kickbacks. The Asia Pacific GM instructed Bio-Rad Singapore’s controller to investigate the matter. The controller confirmed to the Asia Pacific GM that Diamed Thailand was bribing government officials through the distributor. Despite these findings, the Asia Pacific GM did not instruct Diamed Thailand to stop making the improper payments to the distributor.

36. From 2007 to early 2010, Diamed Thailand improperly paid a total of \$708,608 to the distributor, generating gross sales revenues of \$5.5 million to Diamed Thailand. These

payments were recorded as sales commissions. The payment scheme did not involve the use of interstate commerce, and no United States national was involved in the misconduct.

Legal Standards and Violations

A. Under Section 21C(a) of the Exchange Act, the Commission may impose a cease-and-desist order upon any person who is violating, has violated, or is about to violate any provision of the Exchange Act or any rule or regulation thereunder, and upon any other person that is, was, or would be a cause of the violation, due to an act of omission the person knew or should have known would contribute to such violation.

FCPA Violations

B. Under Section 30A(a) of the Exchange Act it is unlawful for any issuer, officer, director, employee, or agent of such issuer or any stockholder thereof acting on behalf of the issuer, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to any foreign official or any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official for the purposes of (i) influencing any act or decision of such foreign official in his official capacity, (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or (iii) securing any improper advantage in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person. [15 U.S.C. § 78dd-1].

C. Additionally, under Section 30A(f)(2), a “knowing” state of mind as to a circumstance may be established “if a person is aware of a high probability of the existence of such circumstance, unless the person actually believes that such circumstance does not exist.”

D. As described above, Bio-Rad violated Section 30A of the Exchange Act because Bio-Rad’s Emerging Markets managers demonstrated a conscious disregard for the high probability that the Russian Agents were using at least a portion of Bio-Rad Russia’s sales commission payments to bribe Russian government officials in exchange for awarding the company profitable government contracts. These managers knew the Russian Agents operated as mere shell entities. They also knew that, among other things, the commissions were large, and that the Russian Agents did not have the resources to perform any of the contracted-for services set forth in their agreements. Nevertheless, the managers approved all of their agreements, and authorized \$4.6 million in payments to the Russian Agents’ off-shore accounts even though many of the payment requests and invoices raised substantial questions as to their legitimacy. Finally, the same Emerging Markets managers communicated about the Russian Agents under cover of secrecy, which further calls in question their legitimacy. These red flags surfaced repeatedly over a five year period.

E. Under Section 13(b)(2)(A) of the Exchange Act issuers are required to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and disposition of the assets of the issuer. [15 U.S.C. § 78m(b)(2)(A)].

F. As described above, Bio-Rad violated Section 13(b)(2)(A) of the Exchange Act. Its subsidiaries falsely recorded the payments to the agents/distributors as payments for legitimate services or commissions, when the true purpose of these payments was to make corrupt payments to government officials to obtain business. The false entries were then consolidated and reported by Bio-Rad in its consolidated financial statements.

G. Under Section 13(b)(2)(B) of the Exchange Act issuers are required to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. [15 U.S.C. § 78m(b)(2)(B)].

H. Bio-Rad violated Section 13(b)(2)(B) because although it had an ethics policy prohibiting the payment of bribes and various policies and procedures requiring accurate books and records, its systems of internal controls proved insufficient to provide reasonable assurances that such payments would be detected and prevented.

Bio-Rad's Self-Disclosure, Cooperation, and Remedial Efforts

I. Bio-Rad made an initial voluntary self-disclosure of potential FCPA violations to the Commission staff and the Department of Justice in May 2010, and immediately thereafter Bio-Rad's audit committee retained independent counsel to conduct an investigation of the alleged violations. The audit committee conducted a thorough internal investigation, and subsequently expanded it voluntarily to cover a large number of additional potentially high-risk countries. The investigation included over 100 in-person interviews, the collection of millions of documents, the production of tens of thousands of documents, and forensic auditing. Bio-Rad's cooperation was extensive, including voluntarily producing documents from overseas, summarizing its findings, translating numerous key documents, producing witnesses from foreign jurisdictions, providing timely reports on witness interviews, and making employees available to the Commission staff to interview.

J. Bio-Rad also undertook significant and extensive remedial actions including: terminating problematic practices; terminating Bio-Rad employees who were involved in the misconduct; comprehensively re-evaluating and supplementing its anti-corruption policies and procedures on a world-wide basis, including its relationship with intermediaries; enhancing its internal controls and compliance functions; developing and implementing FCPA compliance procedures, including the further development and implementation of policies and procedures such as the due diligence and contracting procedure for intermediaries and policies concerning hospitality, entertainment, travel, and other business courtesies; and conducting extensive anti-corruption training throughout the organization world-wide.

Criminal Disposition

K. Bio-Rad has agreed, with the United States Department of Justice, Criminal Division, Fraud Section, to enter into a Non-Prosecution Agreement to resolve potential criminal liability for conduct relating to certain of the findings in the Order.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Bio-Rad's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Bio-Rad cease and desist from committing or causing any violations and any future violations of Sections 30A, 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act;

B. Respondent shall pay, within 10 days of the entry of this Order, disgorgement of \$35,100,000 and prejudgment interest of \$5,600,000 to the Securities and Exchange Commission. If timely payment of disgorgement is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Bio-Rad Laboratories, Inc. as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Alka N. Patel, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 5670 Wilshire Boulevard, Eleventh Floor, Los Angeles, CA 90036.

C. Respondent shall report to the Commission staff periodically, at no less than twelve-month intervals during a two-year term, the status of its remediation and implementation of compliance measures. Should Respondent discover credible evidence, not already reported to

the Commission staff, that questionable or corrupt payments or questionable or corrupt transfers of property or interests may have been offered, promised, paid, or authorized by Respondent entity or person, or any entity or person while working directly for Respondent, or that related false books and records have been maintained, Respondent shall promptly report such conduct to the Commission staff. During this two-year period, Respondent shall: (1) conduct an initial review and submit an initial report, and (2) conduct and prepare at least one (1) follow-up review and report, as described below:

- (1) Respondent shall submit to the Commission staff a written report within one (1) year of the entry of this Order setting forth a complete description of its Foreign Corrupt Practices Act (“FCPA”) and anti-corruption related remediation efforts to date, its proposals reasonably designed to improve the policies and procedures of Respondent for ensuring compliance with the FCPA and other applicable anti-corruption laws, and the parameters of the subsequent reviews (the “Initial Report”). The Initial Report shall be transmitted to Alka N. Patel, Assistant Director, Division of Enforcement, United States Securities and Exchange Commission, 5670 Wilshire Blvd., 11th floor, Los Angeles, CA 90036. Respondent may extend the time period for issuance of the Initial Report with prior written approval of the Commission staff.
- (2) Respondent shall undertake at least one (1) follow-up review, incorporating any comments provided by the Commission staff on the previous report, to further monitor and assess whether the policies and procedures of Respondent are reasonably designed to detect and prevent violations of the FCPA and other applicable anti-corruption laws (the “Follow-up Report”).
- (3) The Follow-up Report shall be completed by no later than one (1) year after the Initial Report. Respondent may extend the time period for issuance of the Follow-up Report with prior written approval of the Commission staff.
- (4) Respondent’s reporting obligations pursuant to the Order, and its concurrent reporting obligations pursuant to the resolutions of certain of its subsidiaries with the U.S. Department of Justice, shall each be satisfied by the simultaneous submission of the same reports to both the Commission staff and the Department of Justice.
- (5) The periodic reviews and reports submitted by Respondent will likely include proprietary, financial, confidential, and competitive business information. Public disclosure of the reports could discourage cooperation, impede pending or potential government investigations or undermine the objectives of the reporting requirement. For these reasons, among others, the reports and the contents thereof are intended to remain and shall remain non-public, except (1) pursuant to court order, (2) as agreed by the parties in writing, (3) to the extent that the Commission staff

determines in its sole discretion that disclosure would be in furtherance of the Commission's discharge of its duties and responsibilities, or (4) is otherwise required by law.

By the Commission.

Brent J. Fields
Secretary

EXHIBIT B

THIS EXHIBIT FILED CONDITIONALLY UNDER SEAL

Pursuant to Defendants' Unopposed Administrative Motion For Leave To File Under Seal
(to be filed May 27, 2015)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Lists various legal categories and codes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

05/27/15

(Place an "X" in One Box Only) () SAN FRANCISCO/OAKLAND () SAN JOSE () EUREKA