

1 KELLY M. DERMODY (SBN 171716)
DANIEL M. HUTCHINSON (SBN 239458)
2 JALLÉ H. DAFA (SBN 290637)
Lieff Cabraser Heimann & Bernstein, LLP
3 275 Battery Street, 29th Floor
San Francisco, CA 94111
4 Telephone: (415) 956-1000
Facsimile: (415) 956-1008
5 kdermody@lchb.com
dhutchinson@lchb.com
6 jdafa@lchb.com

7 *Attorneys for Plaintiff*

8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SAN FRANCISCO**
10 **UNLIMITED JURISDICTION**

11 **OMONDI NYONG'O**

12 **Plaintiff,**

13 v.

14 **SUTTER HEALTH, PALO ALTO**
15 **MEDICAL FOUNDATION, and PALO**
16 **ALTO FOUNDATION MEDICAL GROUP,**

17 **Defendants.**

Case No. CGC-21-592714

DECLARATION OF DR. OMONDI
NYONG'O IN SUPPORT OF MOTION TO
ENFORCE PROTECTIVE ORDER

Hearing Date: April 18, 2022
Time: 9:00 AM
Dept.: 302

18 I, Omondi Nyong'o, M.D., hereby declare as follows:

19 1. I have personal knowledge of my statements in this declaration. If called as a
20 witness, I would accurately testify about these statements.

21 2. On June 22, 2021, my attorneys filed on my behalf a Complaint for Damages and
22 Injunctive Relief against Sutter Health, Palo Alto Medical Foundation ("PAMF"), and Palo Alto
23 Foundation Medical Group ("PAFMG"), which details some of the racial discrimination and
24 retaliation I have faced at Sutter.

25 3. Sadly, my Complaint no longer tells the whole story because Sutter's
26 discriminatory and retaliatory conduct has continued, and in many respects has gotten worse, after
27 I filed this lawsuit.

28 **Additional Retaliation in my Compensation and Job Conditions**

- 1 4. My compensation depends in part on the number of patients I treat.
- 2 5. I require support and staff to treat patients efficiently.
- 3 6. However, I have operated with reduced rooms, impaired vision testing systems for
4 the children, absent tools, and arbitrary reductions in staff.
- 5 7. Sutter’s management failed to hire or assign sufficient staff or number of rooms,
6 despite my repeated requests for staffing and offers to take more patients—and despite the high
7 patient demand caused by other doctors’ extended absences.
- 8 8. For example, Sutter failed to hire a temporary orthoptist while my regular
9 orthoptist was away for an extended maternity leave.
- 10 9. Sutter also removed one of my two technicians.
- 11 10. This further reduced my patient capacity and therefore my compensation, leaving
12 me at levels that are significantly less than my compensation before Sutter arbitrarily demoted me
13 as a scapegoat for the administrative decisions of White leaders. I have an exemplary patient
14 record.
- 15 11. Because of Sutter’s discrimination and ongoing retaliation, I earned approximately
16 \$40,000 less in 2021 than I did eleven years ago in 2010.
- 17 12. My compensation in 2021 was less than in any year since I joined Sutter as a
18 shareholder.
- 19 13. I received this low pay despite the fact that management represented that 2021 was
20 a year of amazing financial achievements for PAFMG.
- 21 14. These retaliatory pay reductions continue. Earlier this month, PAFMG notified me
22 by email of the third pay cut since filing my Complaint. I am therefore on pace to make even less
23 monthly in 2022 than in 2021. Sutter is clearly trying to force me out because I am challenging
24 racism.

25 **Additional Retaliation in my Fundraising Role**

26 15. Sutter’s retaliation also targeted my fundraising work which benefits Sutter’s
27 neediest patients and enhances Sutter’s reputation.

28

1 16. Although I was promised a promotion from my Pharmacy & Therapeutics (P&T)
2 PAMF committee chair position to a more senior position on the Sutter Bay Medical Foundation-
3 wide P&T committee, Sutter withheld the promotion after I filed the lawsuit and did not promote
4 me.

5 17. Despite my leadership role and success in philanthropy projects, Sutter has
6 continued to exclude me from fundraising meetings and activities. I believe Sutter is trying to
7 silence my voice, deny me credit for my accomplishments, and send me a message that I must be
8 quiet or be sidelined.

9 **Additional Retaliation in this Litigation**

10 18. I have received a copy of the Defendants' requests for documents in connection with
11 the lawsuit. Many of the relevant materials requested are in my work files, including messages
12 from colleagues. I have also taken steps to ensure that my lawyers insist on the confidentiality of
13 patient records, including through a case protective order. Once I understood that the appropriate
14 steps for confidentiality of records was in place in the lawsuit, I immediately went to work
15 retrieving documents responsive to PAFMG's discovery requests.

16 19. On Saturday, January 29, 2022, and Sunday, January 30, 2022, I spent most of my
17 weekend collecting work emails responsive to PAFMG's discovery requests.

18 20. I then sent those documents to Plaintiff's counsel through a secure and encrypted
19 online portal.

20 21. Despite assurances that I would be permitted to collect case-relevant materials under
21 the confidentiality agreement in the case, on Wednesday, February 2, 2022, Sutter Health's Office
22 of the General Counsel contacted me directly, cc'ing PAFMG CEO Kurt VandeVort, M.D.,
23 warning me that my document collection is in violation of Sutter policy. A copy of that
24 communication is attached as Exhibit A.

25 22. Since receiving that communication, I have not collected any more documents.

26 **Additional Retaliation against me Affecting my Professional Research and Patients**

27 23. As part of my ethical and professional duties as a doctor, I conduct and publish
28 research.

1 24. I recently published an article titled *Patching for Amblyopia: A Novel Occlusion*
2 *Dose Monitor for Glasses Wearers to Track Adherence*, Journal of Binocular Vision and Ocular
3 Motility (Feb. 1, 2022).

4 25. This article was the culmination of eight years of fundraising and research. In the
5 article, I described a research study for a patching system device I co-invented to elevate care for
6 children with lazy eye—the novel occlusion dose monitor device, or “Nyong’o” device.

7 26. Lazy eye (or amblyopia) is the leading cause of vision loss in children and young
8 adults. Children with lazy eye are up to 4% of the U.S. population. Sharing this research with as
9 wide an audience as possible is therefore absolutely critical.

10 27. On March 1, 2022, Sutter’s manager of research communications contacted me
11 with the purpose of reporting on the findings of my study in Sutter’s research communications
12 and in external media. I promptly answered her questions regarding the study.

13 28. However, on a call a few days later, Sutter’s manager of research communications
14 informed me that she had spoken with two lawyers in Sutter’s Office of the General Counsel
15 about my research. This is the same Office of the General Counsel that, one month earlier, sent
16 me the communication attached as Exhibit A.

17 29. Sutter’s manager of research communications subsequently informed me that there
18 will be no internal or external media regarding my research. She wrote that Sutter’s Office of the
19 General Counsel told her to “hold off on communications and media relations around this
20 research.”

21 30. This denial of support for my important, patient-benefitting research is unheard of.
22 It is also personally devastating and soul-crushing. It undermines eight years of clinical, research,
23 and fundraising work. It impedes the delivery of crucial information about sight-saving research
24 and innovation to local Bay Area parents of affected children, health institutions, medical
25 colleagues, the wider United States public, and beyond. It adversely impacts the pediatric
26 patients who stand to gain from my work. I scarcely have words to express my grief for the
27 children who will now suffer avoidable vision loss because of Sutter’s refusal to publicize this
28 discovery for them.

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Conclusion

31. This declaration includes some, but not all, of the discrimination and retaliation I have faced since filing this lawsuit. The backlash, differential treatment, and disparaging racist comments and conduct have been ongoing.

32. I ask that the Court grant this Motion to Enforce the Protective Order so that I may continue my lawsuit without further delay and stop Sutter’s discriminatory and retaliatory actions affecting me, my colleagues, and my patients.

I declare under penalty of perjury that the foregoing is true and correct and that it was executed in San Francisco, California, on March 21, 2022.

/s/ Omondi Nyong’o
Omondi Nyong’o, M.D.

EXHIBIT A

Nyong'o, Omondi L MD

From: Haines, Dawn
Sent: Wednesday, February 2, 2022 10:19 AM
To: Nyong'o, Omondi L MD
Cc: eyesrusclinic@gmail.com; VandeVort, Kurt MD
Subject: DLP Incident 07929352

Importance: High

Good morning Omondi,

Sutter Health's Data Loss Prevention (DLP) program flagged the emails you sent on **1/30/22** to your personal email address, eyesrusclinic@gmail.com for review because they contained confidential information. It is against Sutter Health policy to send confidential information to a workforce member's personal or other non-Sutter Health email when that member has a Sutter Health email address. Going forward please do not send PHI and/or confidential information to your personal email.

Please answer the following question and follow these steps:

1. Why did you send this information to your personal email?
2. Delete the emails from your personal email and delete them from your email trash or recycle bin.
3. Respond to this email attesting that (i) you have securely destroyed and deleted the information contained in the emails; and (ii) you have not made, retained, used, or shared any of the information contained in those emails.
4. If you have any questions, please reference Sutter Health policy *Safeguarding Protected Health Information*.

Safeguarding PHI

Please let me know if you have any questions.

Thank you,
Dawn

Dawn Haines

Cyber Security Analyst
Privacy and Information Security
Office of the General Counsel
Cell: 916-402-1791
Email: Lenhard@sutterhealth.org



To give your password more strength, try adding some extra length!

w6rds Together, We Can Protect Patient Information

IMPORTANT CONFIDENTIALITY NOTICE:

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