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15 **SUPERIOR COURT OF CALIFORNIA**  
16 **COUNTY OF SAN FRANCISCO**  
17 **UNLIMITED JURISDICTION**

18 OMONDI NYONG'O

19 **Plaintiff,**

20 v.

21 SUTTER HEALTH, PALO ALTO MEDICAL  
22 FOUNDATION, and PALO ALTO  
23 FOUNDATION MEDICAL GROUP,

24 **Defendants.**

Case No. \_\_\_\_\_

**COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF**

**JURY TRIAL DEMANDED**

25 Plaintiff, Dr. Omondi Nyong'o, by and through his attorneys at Lief Cabraser Heimann &  
26 Bernstein LLP, brings this action against Sutter Health, Palo Alto Medical Foundation  
27 ("PAMF"), and Palo Alto Foundation Medical Group ("PAFMG") (collectively, "Sutter") for  
28 violations of California law arising from a racially toxic workplace. Plaintiff alleges as follows.

**I. INTRODUCTION**

1. Sutter is one of California's largest integrated health delivery systems, serving 3.5 million members and employing over 55,000 individuals.

2. Plaintiff, Dr. Omondi Nyong'o, is a nationally and internationally recognized Black surgeon who has been employed by Sutter for almost 13 years. He completed his undergraduate studies at Brown University, his medical schooling at the University of California,

1 San Francisco (UCSF) School of Medicine, and his ophthalmology residency at the University of  
2 Washington Eye Institute in Seattle, Washington. Thereafter, Dr. Nyong'o trained as a Pediatric  
3 Ophthalmology and Strabismus fellow at the University of Michigan W.K. Kellogg Eye Center in  
4 Ann Arbor, Michigan. He is Board Certified in Ophthalmology. Dr. Nyong'o was the inaugural  
5 award recipient of the Jamplis Community Service Award for Sutter Health, and was selected by  
6 the allied professional associations of Pediatric Ophthalmology and Orthoptics as one of only 12  
7 national pediatric surgical ophthalmologists to serve on the American Orthoptic Council. He has  
8 provided outstanding care to thousands of children in Silicon Valley, and has received teaching  
9 awards, quality of care awards, and other awards at Sutter, universities, and other non-profit  
10 organizations. He was the first and only Black physician to ever chair any department within the  
11 Palo Alto Medical Foundation region of Sutter Health. Due to his commitment to providing  
12 medical services to those most in need, he has been a leader in Sutter's philanthropic efforts,  
13 currently serving as a Medical Director of Philanthropy for the Palo Alto Foundation Medical  
14 Group.

15 3. Despite his impeccable qualifications and years of dedicated service, Dr. Nyong'o  
16 has been subject to a pattern of racial discrimination, including pay and promotion discrimination,  
17 down-leveling, biased reviews, heightened scrutiny and racial harassment, different standards of  
18 behavior, and unfair discipline.

19 4. Plaintiff alleges violations of the California Fair Employment and Housing Act,  
20 Cal. Gov't Code section 12940, *et seq.* ("FEHA"); the California Fair Pay Act, Cal. Lab. Code  
21 section 1197.5, *et seq.*, ("CFPA"); California Health and Safety Code section 1278.5(b); the  
22 California Unfair Competition Law, Cal. Bus. & Prof. Code section 17200, *et seq.*; breach of  
23 contract, and intentional infliction of emotional distress.

24 5. Plaintiff seeks declaratory and monetary relief and an award of costs and  
25 attorneys' fees.

## 26 **II. THE PARTIES**

27 6. Plaintiff Nyong'o is a surgeon employed by Sutter since 2008. He currently holds  
28 the titles of pediatric surgical ophthalmologist and Medical Director of Philanthropy.

1           7. Defendant Sutter Health is a California nonprofit corporation headquartered in  
2 Sacramento, California. Under its control and among its affiliates are Palo Alto Foundation  
3 Medical Group and Palo Alto Medical Foundation. Sutter Health’s total operating revenue for  
4 2020 was \$13.2 billion.<sup>1</sup> Sutter has multiple offices in San Francisco County and regularly  
5 conducts business in the County.<sup>2</sup>

6           8. Defendant PAMF is a California nonprofit corporation headquartered in Palo Alto,  
7 California. PAMF operates in more than two dozen California cities and currently employs  
8 nearly 1,800 doctors.

9           9. Defendant PAFMG is a privately held corporation headquartered in Los Altos,  
10 California.

11          10. During all relevant times, Defendants employed Plaintiff within the meaning of all  
12 applicable statutes.

### 13 **III. JURISDICTION AND VENUE**

14          11. This Court has jurisdiction under Article VI, Section 10, of the California  
15 Constitution and Code of Civil Procedure section 410.10 because the action involves issues of  
16 state law.

17          12. Venue is proper in this Court pursuant to Code of Civil Procedure sections 395(a)  
18 and 395.5 because one or more Sutter entities maintain and administer records relevant to the  
19 unlawful practices alleged here in San Francisco County, because Sutter’s unlawful actions giving  
20 rise to its liability were committed in part in San Francisco County, and because Dr. Nyong’o  
21 resides and works in San Francisco County.

22          13. Dr. Nyong’o duly filed a Complaint of Employment Discrimination with the  
23 California Department of Fair Employment and Housing (“DFEH”) on January 15, 2021, which  
24 he amended on June 4 and 15, 2021. He received a Case Closure and Right to Sue Notice from

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25 <sup>1</sup> *Sutter Health Financial Performance*, SUTTER HEALTH, <https://www.sutterhealth.org/about/financials> (last visited June 16, 2021).

26 <sup>2</sup> *Sutter Health, Find Location, Search Results*, SUTTER HEALTH  
27 <https://www.sutterhealth.org/location-search?location-type=&location-city=San+Francisco&location-status=&location-affiliate=&location-lat=37.7749295&location-lng=-122.4194155&location-distance=8.07&location-service=&location-auto=San+Francisco%2C+CA&sort-type=&q=&start=1&max> (last visited June 22, 2021).

1 the DFEH on January 15, 2021. The Parties in this action also entered into a separate tolling  
2 agreement, tolling the statute of limitations on all claims between September 15, 2020 and  
3 January 15, 2021. Dr. Nyong'o has satisfied all administrative requirements.

4 **IV. FACTUAL ALLEGATIONS**

5 **A. Dr. Nyong'o Has Spent Over a Decade as One of Sutter's Most Accomplished**  
6 **Ophthalmologists.**

7 14. Dr. Nyong'o is a renowned pediatric surgical ophthalmologist, with an impeccable  
8 resume of accomplishments and service. He completed his undergraduate studies at Brown  
9 University, his medical schooling at the University of California, San Francisco (UCSF) School  
10 of Medicine, and his ophthalmology residency at the University of Washington Eye Institute in  
11 Seattle, Washington. Thereafter, Dr. Nyong'o trained as a Pediatric Ophthalmology and  
12 Strabismus fellow at the University of Michigan W.K. Kellogg Eye Center in Ann Arbor,  
13 Michigan. He is Board Certified in Ophthalmology.

14 15. Dr. Nyong'o began his career at Sutter in July 2008. Over the last twelve years,  
15 Dr. Nyong'o has received awards for outstanding resident teaching, excellent patient care, and  
16 commitment to community service. Dr. Nyong'o was also selected by the allied professional  
17 associations of Pediatric Ophthalmology and Orthoptics as one of only 12 national pediatric  
18 surgical ophthalmologists to serve on the American Orthoptic Council.

19 16. Among many accolades, Dr. Nyong'o was the inaugural award recipient of the  
20 Jamplis Community Service Award for Sutter Health. He also serves as PAFMG's Medical  
21 Director of Philanthropy, and is widely regarded as the face of Sutter's charitable efforts. Staff  
22 and patients alike have praised Dr. Nyong'o's surgical skills and friendly bedside manner, with  
23 some patients (or their families) making sizable donations to Sutter in gratitude for Dr. Nyong'o's  
24 service.

25 17. Notwithstanding Sutter's willingness to exploit Dr. Nyong'o's considerable  
26 medical skills, patient service, and contributions to the Sutter community in order to advance its  
27 own corporate reputation in the areas of philanthropy and diversity and inclusion, Sutter has  
28 subjected Dr. Nyong'o to racial trauma arising from racist and discriminatory employment

1 decisions against Dr. Nyong’o and due to a workplace culture which generally disrespects,  
2 undermines, and disciplines African American staff and doctors, including Dr. Nyong’o, due to  
3 racial bias.

4 18. The racist environment that permeates Sutter also limits opportunities for other  
5 Black doctors, impairs their ability to achieve their potential professionally and financially, and  
6 subjects them to racial trauma at work. Dr. Nyong’o’s Black colleagues have worked  
7 extraordinarily hard over the course of their medical careers only to find that their  
8 accomplishments are devalued and that there is a glass ceiling for Black doctors at Sutter. The  
9 Black doctors at Sutter support one another, but remain demoralized by the lack of respect,  
10 heightened scrutiny, and toxicity directed at them by Sutter leadership. In order to survive at  
11 Sutter, Black doctors report that they are advised to keep their head down and remain unseen.

12 19. Currently, there are no Black leaders whatsoever in Sutter’s senior ranks.  
13 Moreover, only three of the 354 doctors in any leadership position across Sutter are Black (less  
14 than 1%). These three Black doctors hold the lowest title, Tier 1 (head of their individual clinic).  
15 Two are in Alameda, and one in Santa Cruz (only recently appointed in December 2020).

16 20. Like other Black doctors at Sutter, Dr. Nyong’o has experienced numerous racially  
17 traumatizing events at work. For example, early on in his career, Dr. Nyong’o’s Tier 1 leader  
18 praised Dr. Nyong’o for “not being like” another more senior Black doctor who has “a chip on his  
19 shoulder.” Dr. Nyong’o was further warned not to become like the more senior Black doctor and  
20 also develop a “chip on [his] shoulder” because she could tell “you two are friends because you  
21 are the same people/race.” In the fall of 2017, a current PAFMG board member, noting the  
22 dearth of Black leaders and lack of corporate support stated to Dr. Nyong’o that “people like you  
23 [meaning, Black people]” might be able to enter leadership again “in another ten years.” On  
24 another occasion, Dr. Brennan Scott, a Tier 2 (senior leader) white male colleague passed by Dr.  
25 Nyong’o in the surgery center and called him another person’s name. When Dr. Nyong’o  
26 expressed confusion Scott responded, “I called you someone else’s name because you guys are  
27 both Black and you look the same.”  
28

1           21.     While Dr. Nyong’o’s peers have broadly noted his professional excellence,  
2 character, and leadership qualities, the same senior Black doctor referenced above nevertheless  
3 advised Dr. Nyong’o soon after he started to keep to himself and not seek leadership  
4 opportunities, administrative duties, or other indicia of “succeeding” because doing so would  
5 place a target on Dr. Nyong’o’s back from white leaders. Unfortunately, that prediction came  
6 true, as described herein, when Dr. Nyong’o subsequently experienced first-hand being targeted  
7 for mistreatment when he was promoted and then de-leveled to appease white leader discomfort.

8           22.     Dr. Nyong’o has also observed or heard other Black physicians and staff at Sutter  
9 describe similar challenges to career advancement and promotion. In addition, many have  
10 confided in him about workplaces riddled with racial stereotypes and hostility:

11           a.     *Black Physician Colleague 1*: After Black Physician Colleague 1 tried to  
12 raise concerns about anti-Black racism with Sutter leadership, Sutter’s senior administrator  
13 warned Black Physician Colleague 1 that such complaints of racial bias are perceived as  
14 “intimidating” to white leadership and considered disruptive and unwelcome.

15           b.     *Black Physician Colleague 2*: A white doctor colleague called this Black  
16 doctor “aggressive” simply because they had asked a white staff member to conduct a routine test  
17 and other tasks related to standard patient care that would be normal for a doctor in their position  
18 to request of the staff member. When the white staff member complained about Black Physician  
19 Colleague 2, Sutter disciplined Black Physician Colleague 2. When the Black doctor pointed out  
20 the baselessness of the accusation, Sutter required Black Physician Colleague 2 to see a  
21 psychologist as part of their punishment. Another colleague also told Black Physician Colleague  
22 2 that their wearing of natural (non-relaxed) African hair was not welcomed at Sutter.  
23 Unfortunately, Black Physician Colleague 2 is not the only Black doctor at Sutter who has been  
24 discriminated against for wearing natural or non-straightened hair.

25           c.     *Black Physician Colleague 3*: Sutter HR Executive Manager Missy Hanley,  
26 a white woman based at Sutter’s headquarters, along with other HR employees of Sutter, called  
27 Black Physician Colleague 3 “aggressive” after Black Physician Colleague 3 asked for race  
28 metrics to help with diversity efforts at Sutter. In addition, a white doctor repeatedly made racist

1 comments regarding Latinx and Asian staff and patients in front of Black Physician Colleague 3.  
2 For example, the offending white doctor stated that Latinx people “live in the ghetto” and “don’t  
3 have insurance.” Although Black Physician Colleague 3 was upset by these racist comments and  
4 reported them to Dr. Pat Curtis and Dr. Amy Heneghan, two white women on the Professional  
5 Affairs Committee (“PAC”), no steps were taken to correct the behavior and it continued. In  
6 response to Black Physician Colleague 3’s complaints, the Chief Medical Officer for the San  
7 Mateo region (also a white doctor) intervened on behalf of the offending white doctor, thereby  
8 undermining Black Physician Colleague 3’s attempt to stop the racially hostile work environment  
9 the white doctor was causing. Black Physician Colleague 3 was so demoralized when the  
10 offending white doctor continued her racist comments that Black Physician 3 quit their job and  
11 relinquished their shareholder status in order to escape the racist environment.

12 d. *Black Physician Colleague 4*: PAC Chair Dr. Amy Heneghan, Sutter HR  
13 Executive Manager Missy Hanley, and the Professional Affairs Committee threatened Black  
14 Physician Colleague 4 with disciplinary action on the basis that a patient had suggested that Black  
15 Physician Colleague 4 had been “looking tired.” Black Physician Colleague 4 objected to the  
16 accusation as inaccurate, explaining that they are Black and Native American and that their eyes  
17 are traditionally associated with the Asian phenotype. Despite this explanation, Ms. Hanley  
18 placed Black Physician Colleague 4 on a Performance Improvement Plan (“PIP”) and warned  
19 Black Physician Colleague 4 that any further patient complaints regarding “looking tired” would  
20 be cause for more discipline. In contrast, “looking tired” does not cause career-impacting  
21 discipline for white doctors. Ms. Hanley and Dr. Heneghan also required Black Physician  
22 Colleague 4 to see a psychiatrist as part of their punishment.

23 e. *Black Staff Colleague 5*: A white male Tier 2 senior leader invited Black  
24 Staff Colleague 5 to the leader’s personal party, but stated the invitation was contingent on Black  
25 Staff Colleague 5 bringing their Black children to serve the white Tier 2 leader’s guests. The  
26 Black staff member was deeply upset by the insinuation that their Black children should be the  
27 white leader’s servants and refused the invitation. A white Sutter leader also informed Black  
28

1 Staff Colleague 5 that their proposed donation of abstract art for the building hallways was  
2 rejected because Black Staff Colleague 5's art looked too "afro-centric."

3 f. *Black Physician Colleague 6*: A white staff person followed Black  
4 Physician Colleague 6 into a Sutter building and repeatedly asked this Black surgeon, "Can I help  
5 you?" suggesting that Black Physician Colleague 6 was in the wrong place and did not belong  
6 there. Although Black Physician Colleague 6 did not need "help" and clearly knew where they  
7 were going, this white staff person would not relent and followed Black Physician Colleague 6 all  
8 the way to the surgeon's own office. There, the white staff person insisted she had only followed  
9 Black Physician Colleague 6 because she did not know they worked there. Black Physician  
10 Colleague 6 replied that they had worked for Sutter for over 10 years.

11 g. *Black Physician Colleague 7*: Black Physician Colleague 7 has experienced  
12 racial hostility from white coworkers and staff, including a white staff member who tried to stop  
13 Black Physician Colleague 7 from parking in physician parking despite this Black doctor being a  
14 long-term physician.

15 23. In approximately June 2020, after years of enduring glass ceilings and racial  
16 transgressions at Sutter, and in the wake of George Floyd's murder, a number of Sutter's Black  
17 doctors sought to raise awareness about racism and encourage more support for diversity. Among  
18 other things, they offered a proposal to initiate a Diversity & Inclusion Committee at PAMF. In  
19 response to this overture, a white leader of the PAFMG Board of Directors held a meeting where  
20 it was intimated that Black and other doctors of color were being "aggressive" by advancing an  
21 anti-racism and pro-diversity agenda. This white board member required that Sutter bring in an  
22 ex-military facilitator to oversee a meeting between Black doctors and white leadership because,  
23 it was asserted, "who knows what" the Black doctors will do. Sutter's facilitator then warned the  
24 Black doctors and their allies who were seeking to raise awareness about diversity and inclusion  
25 issues that their request for workplace fairness was improper and tantamount to "anti-white  
26 racism." The facilitator also informed the two women, one of whom was Black, who were  
27 leading the conversation that they needed to speak more "with grace and mercy." The experience  
28



1 left the group of doctors of color shaken, and further informed a widely shared belief among the  
2 Black doctors that Sutter is hostile to racial equity.

3 24. Not surprisingly, Black doctors leave Sutter at higher rates than white doctors.  
4 And, sadly, Sutter's white leaders have been unconcerned about Sutter being a good workplace  
5 for Black doctors or staff. Sutter's white leaders have also made the racially stereotyped  
6 calculation that Sutter only needs to employ a small number of Black doctors to serve Sutter's  
7 relatively small proportion of Black patients, reflecting either Sutter's disrespect for the ability of  
8 its Black doctors to serve non-Black patients or an assumption (which it appears content to  
9 indulge) that non-Black patients do not want (and should not have) to be treated by Black doctors.  
10 In fact, Christine Thorburn (then PAFMG CEO and then Board Chair), a white woman, has stated  
11 that PAFMG does not need to hire additional Black doctors because the number of Black doctors  
12 should not exceed the number of Black patients at Sutter (around 2%). Regardless, even by  
13 Sutter's reasoning, in capping its number of Black doctors, Sutter appears uninterested in making  
14 itself more attractive to or growing its population of Black patients, which it appears satisfied in  
15 underserving relative to the population.

16 **B. Sutter Has Failed to Pay or Promote Dr. Nyong'o Fairly, and Has**  
17 **Scapegoated and Down-leveled Him Due to Racial Bias.**

18 25. While Dr. Nyong'o has achieved certain levels of career success at Sutter, he has  
19 been treated differently and less favorably due to his race. In addition, his forward progress has  
20 been halted and reversed due to the racial discomfort of a predominantly white leadership team  
21 that does not value African American colleagues.

22 26. In 2015, Dr. Nyong'o achieved the position of ophthalmology and optometry  
23 department chair, or what PAFMG calls a "Tier 2" leader. Out of a total of 33 Tier 2 leaders at  
24 that time, 29 were white, 2 were South Asian Americans, 1 was East Asian American, and 1 (Dr.  
25 Nyong'o) was Black. Dr. Nyong'o was the first Black physician ever promoted to Tier 2 at  
26 PAFMG, and none have been promoted to that level since then.

27 27. Two years later, in January 2017, Dr. Nyong'o became medical director of  
28 PAFMG's surgical specialties ("Tier 3"). Dr. Nyong'o's expanded responsibilities included

1 supervising the surgical subspecialty departments of ophthalmology, dermatology, plastic  
2 surgery, urology, and otolaryngology. The various Tier 2 department chairs of the surgical  
3 specialties reported to Dr. Nyong'o in his capacity as a Tier 3 leader.

4 28. Approximately one month into his Tier 3 tenure, Dr. Nyong'o was directed by Dr.  
5 Holly Beeman, PAFMG administrator and Chief Surgical Officer ("CSO"), and Dr. Pat Curtis,  
6 then head of the Professional Affairs Committee ("PAC") which oversees physician discipline, to  
7 implement a plan they had developed for a "big intervention" of a clinic with some physicians  
8 with "bad attitudes." Dr. Beeman and Dr. Curtis are white women. Dr. Beeman stated she would  
9 be in touch with Dr. Nyong'o about scheduling a meeting with Dr. Curtis to discuss a plan for  
10 moving some of the physicians to another clinic.

11 29. Within a few weeks, Dr. Curtis and Dr. Nyong'o met with the first physician of the  
12 clinic to discuss potential reassignments to a different location. The physician group at the clinic  
13 was upset about the decision, and raised their concerns with PAFMG's board and CEO Dr. Rob  
14 Nordgren, a white man.<sup>3</sup> The proposed plan apparently did not go over well with PAFMG's  
15 Board. However, instead of blaming the architects of the plan (Dr. Beeman and Dr. Curtis), the  
16 white administrators (Nordgren, Beeman, and Curtis) decided to blame Dr. Nyong'o even though  
17 Dr. Nyong'o had merely followed Dr. Beeman and Dr. Curtis' instructions.

18 30. Dr. Beeman and Dr. Nordgren thereafter called Dr. Nyong'o into a meeting and  
19 informed Dr. Nyong'o that he was being relieved of his Tier 2 and Tier 3 duties, and down-  
20 leveled (demoted) to a regular clinical position without any leadership titles, and with significant  
21 loss of pay. Dr. Beeman explained that Dr. Nyong'o did not do anything wrong, but that this was  
22 just the way things had to be in order to move forward.

23 31. Notably, nothing happened to Dr. Beeman or Dr. Curtis, both white doctors, even  
24 though it was their idea to break up the physician group. As of May 2021, Dr. Beeman and Dr.  
25 Curtis retained their titles and leadership roles and remained in leadership.

26 32. Moreover, the controversial physician transfer plan never happened: Dr. Nyong'o  
27 essentially took the fall for a bad decision of white leadership that, paradoxically, was never even  
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<sup>3</sup> At that time, seven of the nine members of the Board were white.

1 implemented. Ultimately, the only person who was injured was Dr. Nyong'o, the only Black  
2 senior leader.

3 33. Dr. Nyong'o had no warning or opportunity to discuss his abrupt removal from the  
4 Tier 2 and Tier 3 role. There was no discussion of alternatives, and no consideration of the  
5 impact of making the lone Black leader into a scapegoat.

6 34. Dr. Nyong'o was obviously devastated. He had worked extremely hard and even  
7 given up half of his clinical practice to make time for his Tier 2 and Tier 3 leadership  
8 responsibilities. Dr. Nyong'o's salary was also reduced by 40% upon his termination from  
9 leadership.

10 35. After Dr. Nordgren announced Dr. Nyong'o's removal from the Tier 2 and Tier 3  
11 position, several physicians reached out to Dr. Nyong'o to express dismay about what happened  
12 to him. They lauded Dr. Nyong'o for his excellent leadership skills and noted the unfairness of  
13 his demotion, particularly as nothing happened to Dr. Beeman or Dr. Curtis.

14 36. Defendants' doctors and staff of color were particularly demoralized. The very  
15 public way in which Dr. Nyong'o, an exemplary surgeon and physician leader, was stripped of  
16 his role made other doctors of color at PAFMG feel even more vulnerable to the whims of a  
17 biased system. Dr. Nyong'o's maltreatment ultimately discouraged other doctors of color from  
18 pursuing leadership opportunities within the organization, believing that leadership does not value  
19 physicians of color, will not give them due credit for their qualifications, and/or will make them  
20 expendable if needed to absorb white leadership's failings.

21 37. After terminating Dr. Nyong'o's Tier 2 and Tier 3 status, PAFMG advanced two  
22 white physicians with no greater qualifications to fill the one position that Dr. Nyong'o had  
23 earned: (1) Dr. Jason Luksich, to replace Dr. Nyong'o in the Tier 2 role, and (2) Dr. Mark Rosen,  
24 to replace Dr. Nyong'o in the Tier 3 role.

25 38. No other Black physician has since been promoted to a Tier 2 or Tier 3 position at  
26 PAFMG.

1           **C. Sutter Engages in Campaigns of Harassment and Retaliation Against Doctors**  
2           **of Color Who Raise Concerns.**

3                   **1. Sutter’s Campaign Against Dr. Nyong’o**

4           39. Even after Sutter stripped Dr. Nyong’o from his Tier 2 and Tier 3 leadership role,  
5 Dr. Nyong’o stayed at Sutter and attempted to rebuild his clinical practice. This has proved to be  
6 impossible because Sutter hired two other ophthalmologists to cover over half of his practice  
7 when Dr. Nyong’o had been required to make time for the Tier 2 and Tier 3 responsibilities that  
8 had been taken away. Sutter also interfered with his attempts to expand his clinical role.

9           40. In particular, Dr. Nyong’o has been subjected to racial harassment from the very  
10 same white leaders who replaced him. For example, when Dr. Nyong’o expressed interest in  
11 picking up open shifts to cover the losses in his income, Dr. Rosen (Dr. Nyong’o’s white Tier 3  
12 leader) stated that Dr. Nyong’o would only be permitted to staff additional clinics on Saturdays  
13 and, remarkably, instructed Dr. Nyong’o to not take the elevators because the white doctors  
14 would be “uncomfortable” seeing him there. This instruction left Dr. Nyong’o only with the back  
15 stairs to access the clinic. Dr. Nyong’o is not aware of any white doctor being asked to sneak  
16 around so as not to disrupt his colleagues. He was humiliated and declined these conditions.

17           41. In addition, after Dr. Nyong’o’s down-leveling demotion, Dr. Luksich, the white  
18 doctor who replaced Dr. Nyong’o as the Tier 2 leader, singled out Dr. Nyong’o for negative  
19 treatment. For example, Dr. Luksich told Dr. Nyong’o that he was not going to invite Dr.  
20 Nyong’o to a department-wide meeting (the department Dr. Nyong’o belongs to) because Dr.  
21 Luksich intended to discuss Dr. Nyong’o “behind his back” and he did not want Dr. Nyong’o  
22 present. Dr. Nyong’o immediately replied that Dr. Luksich’s plan was inappropriate and hostile,  
23 and that Dr. Nyong’o did not agree to it. Dr. Luksich ignored Dr. Nyong’o’s concern and held  
24 the department meeting without Dr. Nyong’o anyway. Dr. Nyong’o only learned of the meeting  
25 invitation from another doctor of color who noticed Dr. Nyong’o’s name was missing. Doctors of  
26 color informed Dr. Nyong’o that they were dismayed and shocked to observe Dr. Nyong’o treated  
27 with such disrespect, and found the message chilling for them.

1           42.     In approximately February 2018, Dr. Nyong’o complained to his Tier 1 leader, Dr.  
2 Eirene Wong, that Dr. Luksich and Dr. Rosen were maintaining an isolating and hostile work  
3 environment. Dr. Nyong’o also explained that he had tried to rebuild his clinical practice but it  
4 proved to be impossible, and sought Dr. Wong’s support.

5           43.     Dr. Wong informed Dr. Nyong’o that she consulted Dr. Amy Heneghan, a white  
6 woman who heads the PAC for the Palo Alto region, but instead of helping Dr. Nyong’o on  
7 issues of racial bias, Dr. Heneghan advised Dr. Wong that Dr. Nyong’o should seek  
8 psychological counseling.

9                           **2.     Racist Discipline and Retaliation Against African American Doctors**  
10                           **and other Doctors of Color, Including Dr. Nyong’o**

11           44.     In a September 2019 meeting, Dr. Wong and a white Sutter manager suggested to  
12 Dr. Nyong’o that two orthoptists had recently left Sutter due to concerns with Dr. Nyong’o and  
13 one of his colleagues. Dr. Nyong’o knew this claim to be false, however, as the orthoptists (with  
14 whom he had close, personal relationships) had not left the practice due to any concerns with him.  
15 In fact, one of the orthoptists, a British South Asian woman, left due to poor management and  
16 because her white Sutter manager called her a racist epithet, and the other orthoptist, the South  
17 Asian orthoptist’s close friend, left to work in her hometown of London (UK).

18           45.     Knowing that Sutter’s claim about the orthoptists’ departure was false and that the  
19 real issue for the orthoptists was white Sutter leadership, Dr. Nyong’o expressed concern to Dr.  
20 Wong and the white Sutter manager that Sutter leadership was once again looking for a fall guy  
21 for issues that they and not Dr. Nyong’o had created. Dr. Nyong’o was especially concerned that,  
22 as a disposable Black doctor, he might be singled out again. The meeting ended with no further  
23 follow up. Dr. Nyong’o subsequently spoke with Missy Hanley, Sutter’s HR Executive Manager,  
24 who confirmed that the orthoptists had never said anything negative about his treatment of them.

25           46.     In December 2019, two months after the meeting about the orthoptists with Dr.  
26 Wong and the white Sutter manager, HR Executive Manager Missy Hanley and medical director  
27 Dr. Mark Rosen called Dr. Nyong’o into a meeting. The meeting was scheduled to discuss the  
28 recruitment of new orthoptists, who are critical support staff to Dr. Nyong’o’s practice. But when

1 Dr. Nyong'o arrived, Ms. Hanley stated that instead of discussing recruitment they wanted to  
2 address a "complaint" from his leaders about Dr. Nyong'o's attitude two months earlier, during  
3 the September 2019 meeting when they falsely accused him of driving away the orthoptists. Ms.  
4 Hanley and Dr. Rosen indicated that Dr. Nyong'o could be disciplined for his attitude.  
5 Dr. Nyong'o was shocked to be threatened with further professional repercussions merely  
6 because Dr. Nyong'o had stated in a meeting with his leadership that he had been mistreated by  
7 Sutter. He told Ms. Hanley and Dr. Rosen that during the September meeting he had been very  
8 concerned about a repeat of the incident two years earlier when, in 2017, Sutter suddenly stripped  
9 him of his leadership role, and he expressed to Dr. Wong and the white Sutter manager that the  
10 experience then had been devastating. Dr. Nyong'o also reiterated to Ms. Hanley and Dr. Rosen  
11 that Dr. Nyong'o felt scapegoated when he was demoted and did not want to go through the  
12 experience of being unfairly scapegoated again for the orthoptists leaving.

13 47. One week later, Ms. Hanley sent Dr. Nyong'o a follow-up email acknowledging  
14 that Dr. Nyong'o felt ambushed by a meeting, which had been scheduled for other purposes, to  
15 discuss concerns about something that happened over two months earlier. In her summary of  
16 their December 2019 meeting, Ms. Hanley noted that Dr. Nyong'o had shared his feeling of being  
17 scapegoated with her and Dr. Rosen several times. She nevertheless reiterated that the Tier 1  
18 leaders had concerns regarding the September 2019 meeting, including that Dr. Nyong'o had  
19 become "angry" and had stated "he did not want to be scapegoated."

20 48. In response to Ms. Hanley's communication, Dr. Nyong'o asked Ms. Hanley  
21 whether there were any HR resources to address his concerns of being mistreated and  
22 scapegoated as a Black doctor. Ms. Hanley never responded to Dr. Nyong'o's request for help.

23 49. Instead, just weeks later in January 2020, Sutter retaliated against Dr. Nyong'o by  
24 limiting his clinical facilities and interfering with his ability to provide patient care. In particular,  
25 when Dr. Nyong'o returned from his winter holiday, he discovered that leadership had dismantled  
26 his equipment and re-purposed the room he had been using for *four years*, effectively kicking him  
27 out of office space with no warning. Dr. Nyong'o no longer had his own workspace and,  
28 apparently, was supposed to accept this further degradation of his employment without complaint.

1 Because he was so worried about his patients getting the services they needed, he sent several  
2 emails and made several calls to clinic leadership about the missing workspace. He finally  
3 received a new workspace three weeks later. However, the white clinic leadership did not like  
4 that Dr. Nyong'o had advocated for appropriate clinical resources for his patients, and Sutter  
5 subsequently disciplined Dr. Nyong'o for advocating for these patient services.

6 50. On March 18, 2020, as COVID-19 was breaking across the country and on the day  
7 a Shelter-in-Place order was placed on all Bay Area counties, Ms. Hanley emailed Dr. Nyong'o to  
8 inform him that Sutter was placing him on a Performance Improvement Plan ("PIP"). The PIP  
9 was signed by three white Sutter administrators: (1) Dr. Mark Rosen (Medical Director), (2)  
10 Missy Hanley (HR Executive Manager), and (3) Dr. Amy Heneghan (Chair of the Professional  
11 Affairs Committee).

12 51. The PIP punished Dr. Nyong'o for speaking up about his mistreatment and for  
13 opposing the retaliation against him that harmed patients. The PIP characterized his complaints  
14 to his senior leaders in racially coded language, casting him as an angry Black man, and  
15 describing his complaints as "intimidating, aggressive, and not collaborative." In short, Sutter  
16 discriminated against him as a Black doctor, racially stereotyped his reaction to his mistreatment,  
17 and then punished him for having the temerity to request racial fairness at Sutter.

18 52. Sutter issued the PIP to intimidate and traumatize Dr. Nyong'o, and to create a  
19 negative record of him where no such record existed on the merits of his patient care or  
20 citizenship at Sutter.

21 53. The PIP also prevented Dr. Nyong'o from registering his interest in career  
22 advancement. For example, if not for the PIP, Dr. Nyong'o would have at least applied to the  
23 open CEO position at PAFMG. In fact, many other doctors supported him for the position and  
24 told him he was qualified because of his leadership experience, promise, and desire. Following  
25 this encouragement from his colleagues and peers, Dr. Nyong'o wrote directly to a white PAFMG  
26 board member to ask how to apply for the CEO position, but was rebuffed and later informed he  
27 could not apply because of the PIP. Dr. Nyong'o was denied the opportunity to be considered  
28 due to his race and in retaliation for him challenging racial bias at Sutter. The CEO position was

1 ultimately filled in early January 2021 by Kurt VandeVort, a white doctor. Dr. Nyong'o was at  
2 least as qualified as the candidate selected based on their respective combinations of experience,  
3 training, donor work, and other personal qualities.

4 54. Sutter imposed the racist PIP on Dr. Nyong'o for nine months, from March 2020  
5 to December 2020. Dr. Nyong'o objected to the PIP immediately and repeatedly requested that it  
6 be rescinded. During this time, Dr. Nyong'o nevertheless continued to provide excellent, close  
7 contact patient care despite a global pandemic via an airborne and highly contagious virus that  
8 disproportionately harmed Black and brown Americans like Dr. Nyong'o.

9 55. In fact, during most of 2020, Dr. Nyong'o, like many Black Americans,  
10 experienced trauma on multiple fronts. COVID-19 was ravaging Black and brown communities,  
11 home to many essential and frontline workers and historic healthcare inequities. In addition,  
12 unprovoked and unfathomable violence against Black Americans played out almost daily on the  
13 news, as reports surfaced one after another of the slayings of unarmed Black men and women by  
14 law enforcement or white vigilantes, including of Ahmaud Arbery (jogging) on February 23,  
15 Breonna Taylor (in her bed) on March 13, Daniel Prude (running naked through the street) on  
16 March 23, George Floyd (buying groceries) on May 25, and Rayshard Brooks (asleep in his car at  
17 a fast food drive-through) on June 12. In addition, the over-surveillance of Black people for  
18 potential criminalization by white colleagues, neighbors, or bystanders was at a fever pitch,  
19 including on May 25, when media blasted reports of a white woman calling the NYPD on a Black  
20 birdwatcher in Central Park. The country was thereafter engulfed in conversations about "racial  
21 equity" throughout the summer of 2020, a topic that Sutter was only too happy to embrace for  
22 appearances sake.

23 56. On June 5, 2020, while Black doctors were calling for better treatment internally  
24 and Dr. Nyong'o continued to be subject to Sutter's racist PIP, Sutter's CEO Sarah Krevans wrote  
25 to the Sutter community with the following message regarding Sutter's alleged support of the  
26 Black Lives Matter movement and its commitment to ending racial violence: "Over the last  
27 several days, many peaceful protesters raised their voices to advocate for justice and equality, and  
28



1 we stand with them while they peacefully advocate for a just society where no one's life is at  
2 increased risk because of racism or discrimination.”

3 57. In June 2020, in advance of Juneteenth, CEO Krevans issued another statement to  
4 the Sutter community regarding Sutter's alleged commitment to ending racism in healthcare (all  
5 the while ignoring the pleas of its Black doctors about inequities at Sutter): “Our Sutter values  
6 compel us to speak out about inequity in healthcare as well as racism and injustice in our society.  
7 We have an unyielding commitment to equality, diversity and inclusion and we work to embed it  
8 in our culture. We know there is more to be done and we are committed to it.” The hypocrisy of  
9 Sutter's statements while not only maintaining, but intensifying, a climate of racial bias over the  
10 past year was not lost on Sutter's Black doctors, including Dr. Nyong'o.

11 58. On July 27, 2020, while Dr. Nyong'o was challenging racism and over-policing at  
12 work, CEO Krevans co-wrote a somewhat ironic piece in which she stated, “George Floyd's  
13 killing has pushed our country to a long overdue tipping point. Across the nation conversations  
14 about systemic racial injustice – that for too long were stigmatized and sidelined – are taking their  
15 rightful place at the forefront of public discourse. The realities of racism and injustice have been  
16 the lived experience of Black Americans for far too long. To make lasting change we must shine  
17 a spotlight on inequities in all facets of society, including health care.”

18 59. Despite public statements to the contrary, Sutter's white leadership ignored the  
19 calls for racial equity raised internally by Dr. Nyong'o and other Black professionals. In  
20 September 2020, Dr. Nyong'o even retained counsel to try to encourage Sutter to revoke the PIP  
21 amicably. Dr. Nyong'o pointed out that the meritless PIP not only harmed Dr. Nyong'o's well-  
22 being, but had reverberated across a tightknit group of Black doctors and other doctors of color at  
23 PAFMG. Knowing the trauma it was causing to Black colleagues, Sutter still refused to budge.  
24 Sutter's maliciousness in this regard, during this extraordinarily painful time for Black Americans  
25 in general, and certainly for Black American physicians during the time of racial reckoning and  
26 COVID, deserves special attention.

27 60. Sadly, however, Sutter's habit of over-disciplining extraordinary Black doctors is  
28 not unique to Dr. Nyong'o. In fact, a disproportionate number of doctors of color at Sutter have

1 been required to meet with the Professional Affairs Committee (“PAC” or disciplinary  
2 committee), had their income reduced, lost pay opportunities provided to white doctors, were  
3 denied promotions, or were asked to leave or forced out through hostility, scrutiny, or absurd  
4 discipline. The PAC and/or senior leaders have reprimanded doctors of color when they have  
5 objected to certain tap-on-the shoulder or preferential hires, required doctors of color to take  
6 courses to improve patient satisfaction survey scores (while knowing that those surveys are both  
7 non-representative and racially biased), and subjected doctors of color (and especially Black  
8 doctors) to Performance Improvement Plans (“PIPs”) when they have advocated for themselves  
9 or their patients.

10 61. Importantly, researchers have found that racial hostilities encountered at work by  
11 physicians of color are “significantly correlated with secondary traumatic stress, an important  
12 element of professional quality of life.”<sup>4</sup> This is exactly the type of trauma experienced by Dr.  
13 Nyong’o, and which Sutter fostered.

14 62. Dr. Nyong’o’s PIP finally ended in December 2020. Unfortunately, this did not  
15 end his mistreatment.

16 63. On January 15, 2021, after years of mistreatment and nearly 10 months of  
17 repeatedly attempting (unsuccessfully) to resolve issues internally for himself and other Black  
18 doctors and doctors of color, Dr. Nyong’o filed a Charge of Discrimination with the Department  
19 of Fair Employment and Housing, alleging systemic discrimination against Black doctors and  
20 professionals of color at Sutter.

21 64. That same month, starting in January 2021, Sutter began excluding Dr. Nyong’o  
22 from strategy meetings and communications regarding philanthropy, even though he is PAFMG’s  
23 Medical Director of Philanthropy and had previously always been invited to present on the  
24 department’s activities and played a leading role in the strategy direction of the department’s  
25 philanthropic work.

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28 <sup>4</sup> Serafini, Kelly, et al. “Racism as experienced by physicians of color in the health care setting.”  
*Family Medicine* 52.4 (2020): 282-87.

1           65. In February 2021, just weeks after Dr. Nyong'o filed his Charge, Sutter announced  
2 a new initiative to intimidate and silence the outcry of Black doctors. In a new "Professional  
3 Conduct Policy," Sutter announced that clinicians, like Dr. Nyong'o, could be subject to  
4 discipline for any of a wide array of vaguely defined "disruptive behavior." The policy made no  
5 exceptions for whistleblowers or for those challenging bias or harassment. Instead, the new  
6 disciplinary policy ominously warned that behavior would be considered "disruptive" if it  
7 involved, for example, "publicly disparaging members of the team or the institution" or if the  
8 employee "fail[ed] to participate in any workplace investigation whether related to oneself or  
9 another." This new policy sent a chilling message to Dr. Nyong'o and other doctors of color: if  
10 you speak out against racial bias at Sutter, you will be punished.

11           66. On April 30, 2021, Dr. Nyong'o learned that Dr. Kurt VandeVort, the new white  
12 male CEO, canceled Dr. Nyong'o's planned promotion from PAFMG's Medical Director of  
13 Philanthropy to PAMF-wide Medical Director of Philanthropy. This failure to promote Dr.  
14 Nyong'o reflected further retaliation for Dr. Nyong'o's complaints about race discrimination at  
15 Sutter.

16           67. Dr. Nyong'o has repeatedly informed Sutter that he has but one goal: to provide  
17 excellent patient care in an environment where Black doctors do not have to battle white  
18 leadership for basic fairness and equal opportunity. But following his 2017 demotion and  
19 continuing under-compensation, the racist 2020 PIP, the lack of consideration for his complaints  
20 of racial discrimination, the ongoing retaliation, and the racially toxic hostile work environment  
21 that Dr. Nyong'o continues to experience today personally and by observation of other Black  
22 doctors and doctors of color, Dr. Nyong'o's only remaining option has been to bring this lawsuit.

23                               **COUNT I**

24                               **Race Discrimination**

25                               **FEHA, Cal. Gov't Code section 12940, et seq., Title VII, 42 U.S.C. section 1981**

26           68. Dr. Nyong'o hereby incorporates by reference all preceding paragraphs as alleged  
27 above as if fully set forth herein.  
28



1 (4) denying him promotion to PAFMG CEO; and (5) dismantling Dr. Nyong'o's equipment and  
2 re-purposing the patient care room he had been using for the last four years so that he was  
3 effectively kicked out of his office with no warning in January 2021.

4 77. As a direct, foreseeable, and proximate result of Defendants' unlawful actions, Dr.  
5 Nyong'o has suffered and continues to suffer substantial losses in earnings, equity, and other  
6 employment benefits and has incurred other economic losses.

7 78. As a further direct, foreseeable, and proximate result of Defendants' unlawful  
8 actions, Dr. Nyong'o has suffered emotional distress, humiliation, shame, and embarrassment in  
9 an amount to be proven at the time of trial.

10 79. Defendants committed the acts herein despicably, maliciously, fraudulently, and  
11 oppressively, with the wrongful intention of injuring Dr. Nyong'o, from an improper and evil  
12 motive amounting to malice, and in conscious disregard of the rights of Dr. Nyong'o. Dr.  
13 Nyong'o is thus entitled to recover punitive damages from Defendants in an amount according to  
14 proof.

15 **COUNT III**  
16 **Failure to Prevent Discrimination**  
17 **FEHA, Cal. Gov't Code section 12940(k)**

18 80. Dr. Nyong'o hereby incorporates by reference all preceding paragraphs as alleged  
19 above as if fully set forth herein.

20 81. Under California Government Code § 12940(k), it is an unlawful employment  
21 practice for an employer "to fail to take all reasonable steps necessary to prevent discrimination  
22 from occurring."

23 82. Through its above-described actions and omissions, Defendants failed in its  
24 affirmative duty to take all reasonable steps necessary to prevent discrimination, harassment,  
25 and/or retaliation from occurring in violation of the FEHA.

26 83. Among other failures, Defendants demoted, unfairly disciplined, and failed to  
27 promote Dr. Nyong'o compared to similarly situated, non-Black employees despite repeated  
28 complaints to management, senior leadership, and Human Resources.



1           92.     As a direct and proximate result of Defendants' unlawful actions, Dr. Nyong'o  
2 suffered lost wages, employment benefits, other compensation and benefits, and other economic  
3 damages in amounts to be proven at trial.

4           93.     As a direct and proximate result of Defendants' unlawful actions, Dr. Nyong'o has  
5 suffered injury, including but not limited to emotional distress, entitling him to compensatory  
6 damages in an amount to be proven at trial.

7           94.     Dr. Nyong'o is entitled to reasonable attorneys' fees and costs pursuant to  
8 California Government Code section 12965(b).

9                                   **COUNT V**  
10                                  **Unequal Pay**  
11                                  **CFPA, Cal. Lab. Code section 1197.5, et seq.**

12           95.     Dr. Nyong'o hereby incorporates by reference all preceding paragraphs as alleged  
13 above as if fully set forth herein.

14           96.     Sutter has discriminated against Dr. Nyong'o in violation of the CFPA by paying  
15 him at wage rates less than the wage rates paid to employees of other races for equal and  
16 substantially similar work. Specifically, Sutter has paid Dr. Nyong'o less than employees of  
17 other races for equal work on jobs for which the performance required equal skill, effort, and  
18 responsibility, and which were performed under similar working conditions. Sutter has paid Dr.  
19 Nyong'o less than employees of other races for substantially similar work, when viewed as a  
20 composite of skill, effort, and responsibility, and performance under similar working conditions.

21           97.     Sutter violated the CFPA by intentionally, knowingly, and deliberately paying Dr.  
22 Nyong'o less than employees of other races for equal and substantially similar work.

23           98.     As a result of Sutter's conduct, violation of the CFPA, and/or Sutter's willful,  
24 knowing, and intentional discrimination, Dr. Nyong'o has suffered and will continue to suffer  
25 harm, including but not limited to lost earnings, lost benefits, and other financial loss, as well as  
26 non-economic damages.

27           99.     Dr. Nyong'o is therefore entitled to all legal and equitable remedies available  
28 under law, including wages, interest, and liquidated damages.

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**COUNT VI**  
**Unfair Competition**  
**California Unfair Competition Law, Cal. Bus. & Prof. Code sections 17200, et seq.**

100. Dr. Nyong’o hereby incorporates by reference all preceding paragraphs as alleged above as if fully set forth herein.

101. Sutter is a “person” as defined under California Business and Professions Code section 17021.

102. Sutter, with its conduct alleged herein, has engaged and continues to engage in business practices that violate California law, including but not limited to, the FEHA and the CFPA. Sutter’s unlawful and unfair business practices include discriminatory pay, promotion, down-leveling, discipline, and retaliation in violation of California law, and therefore constitute unlawful business practices prohibited by Business and Professions Code section 17200 *et seq.*

103. Sutter’s conduct alleged herein occurred during the four years preceding the filing of this Complaint.

104. Because of its unlawful acts, Sutter has reaped and continues to reap unfair benefits and illegal profits at the expense of Dr. Nyong’o. Accordingly, Sutter should be required to disgorge these unfair benefits and illegal profits in an amount according to proof at the time of trial.

105. Dr. Nyong’o also seeks all injunctive and preventative relief authorized by Business and Professions Code sections 17202–03.

**COUNT VII**  
**Intentional Infliction of Emotional Distress**

106. Dr. Nyong’o hereby incorporates by reference all preceding paragraphs as alleged above as if fully set forth herein.

107. Sutter’s conduct alleged herein is extreme and outrageous and is beyond the bounds of that tolerated in a decent society.

108. Sutter engaged in the conduct alleged herein with the intent to cause Dr. Nyong’o extreme emotional distress, or at a minimum, with reckless disregard as to whether it would cause extreme emotional distress.





1           3.       Compensatory damages to Dr. Nyong'o in an amount in accordance with proof  
2 presented at trial;

3           4.       Restitution to Dr. Nyong'o who was deprived of wages, other compensation,  
4 employment benefits, and other equitable monetary relief to disgorge Sutter's profits obtained in  
5 violation of the UCL;

6           5.       Rightful place relief to place Dr. Nyong'o in the position(s) he would have held  
7 but for discriminatory promotion denials or demotions;

8           6.       Exemplary and punitive damages (where available) in an amount commensurate  
9 with Sutter's ability to pay and to deter future conduct;

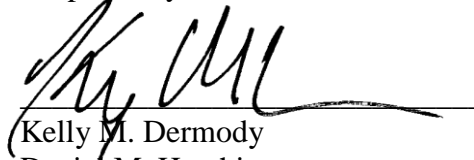
10          7.       An award of litigation costs and expenses, including reasonable attorneys' fees;

11          8.       Pre-judgment and post-judgment interest; and

12          9.       Such other and further relief as the Court may deem just and proper.

13 Dated: June 22, 2021

Respectfully Submitted,

14 

15 Kelly M. Dermody

16 Daniel M. Hutchinson

17 Jallé H. Dafa

18 Nigar A. Shaikh

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19 BERNSTEIN, LLP

20 *Attorneys for Plaintiff*

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