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SCHWARTZ, ALBERT HILLMAN, AND  
DEBORAH NEFF.

16 **UNITED STATES DISTRICT COURT**  
17 **NORTHERN DISTRICT OF CALIFORNIA**  
18 **SAN FRANCISCO DIVISION**

19 SANFORD S. WADLER, an individual,

20 Plaintiff,

21 v.

22 BIO-RAD LABORATORIES, INC.,  
23 a Delaware Corporation; NORMAN  
24 SCHWARTZ; LOUIS DRAPEAU; ALICE N.  
25 SCHWARTZ; ALBERT J. HILLMAN;  
26 DEBORAH J. NEFF,

27 Defendants.

Case No. 3:15-cv-02356-JCS

**JOINT CASE MANAGEMENT  
STATEMENT**

DATE: December 4, 2015  
TIME: 2:00 PM  
DEPT: Courtroom G, 15<sup>th</sup> Floor  
JUDGE: Hon. Joseph C. Spero  
TRIAL: January 9, 2017

1 Sanford Wadler (“Plaintiff”) and Bio-Rad Laboratories, Inc. (“Bio-Rad”), Norman  
2 Schwartz, Louis Drapeau, Alice N. Schwartz, Albert J. Hillman, and Deborah J. Neff  
3 (collectively, “Defendants”) jointly submit this Case management Statement.

4 **1. Jurisdiction and Service:**

5 This Court has federal subject matter jurisdiction over claims for retaliation in violation  
6 of 15 U.S.C. § 1514A and 15 U.S.C. § 78U-6 pursuant to 28 U.S.C. § 1331 because these claims  
7 arise under federal law. This Court has supplemental jurisdiction over Plaintiff’s remaining  
8 claims pursuant to 28 U.S.C. § 1367. Venue is proper in this Court pursuant to 28 U.S.C. §  
9 1391(b) because a substantial part of the events or omissions giving rise to the claim occurred in  
10 this District, Defendant Bio-Rad resides in this District, and all Defendants are residents of  
11 California. All parties have been served.

12 **2. Facts:**

13 The following statements of the Facts have not changed since the last Joint Case  
14 Management Statement:

15 Plaintiff’s Statement

16 Plaintiff alleges that Defendants retaliated against Plaintiff when Defendants terminated  
17 his employment in violation of 18 U.S.C. § 1514A (Sarbanes-Oxley), 15 U.S.C. § 78u-6 (Dodd-  
18 Frank), California Labor Code § 1102.5, and public policy. Plaintiff further alleges that Bio-Rad  
19 violated California Labor Code §§ 201 and 227.3 when it failed to pay Plaintiff his wages, and  
20 that Plaintiff is owed waiting time penalties under California Labor Code § 203.

21 Plaintiff became General Counsel and Secretary of Defendant Bio-Rad in 1989. He was  
22 appointed to the position of Vice President in 1996 and Executive Vice President in December  
23 2012.

24 In 2009, Bio-Rad’s corporate officers became aware that certain of its employees and  
25 agents in Vietnam, Thailand, and Russia may have violated provisions of the Foreign Corrupt  
26 Practices Act (“FCPA”). Bio-Rad agreed to pay \$55.1 million to resolve these alleged  
27 violations, which included making unlawful payments either directly or indirectly to government  
28 officials and for related books and records violations.

1 As a result of these allegations of bribery, Bio-Rad determined that it needed to  
2 investigate whether there were similar violations in China. Bio-Rad hired an outside law firm,  
3 Steptoe and Johnson LLP, which concluded that there was no evidence of improper payments.  
4 Plaintiff was surprised by Steptoe and Johnson LLP's conclusion.

5 From 2011 to 2013, Plaintiff found additional evidence of potential violations of the  
6 FCPA by Bio-Rad or its employees or agents.

7 In mid-2011, Plaintiff learned that Bio-Rad was unable to supply virtually any  
8 documentation to Life Technologies, a licensor of products to Bio-Rad, regarding Bio-Rad's  
9 operations in China, including documents concerning the hundreds of millions of dollars of sales.  
10 Plaintiff grew concerned that Life Technologies might file a lawsuit against Bio-Rad, thereby  
11 opening up Bio-Rad to scrutiny from the Securities and Exchange Commission ("SEC") and the  
12 Department of Justice. Plaintiff was repeatedly stonewalled by Bio-Rad's CEO, CFO and other  
13 management, and became suspicious that the corruption issues were known to senior  
14 management. Plaintiff ultimately assisted Bio-Rad in resolving the dispute with Life  
15 Technologies, with full approval from Bio-Rad's Board.

16 In late 2012, Plaintiff uncovered a few documents that showed evidence of bribery in  
17 China, including illegal kickbacks to government officials.

18 In early 2013, Plaintiff learned that certain standard language regarding FCPA  
19 compliance had been removed without his knowledge or approval from documents translated  
20 into Chinese and used for Bio-Rad's operations in China. In February 2013, due to his concerns  
21 that management was intentionally blocking his efforts to uncover evidence of FCPA violations,  
22 Plaintiff notified the Audit Committee of his concerns.

23 The Audit Committee responded by reengaging Steptoe and Johnson LLP again to  
24 investigate potential FCPA violations. In March 2013 at a meeting with the Audit Committee,  
25 Bio-Rad's outside auditors, and Plaintiff, Steptoe and Johnson indicated that there was no  
26 evidence of improper payments regarding Bio-Rad's sales in China. When Plaintiff pressed  
27 Steptoe and Johnson partner Patrick Norton about the numerous discrepancies relating to  
28 shipment volume, Mr. Norton responded that he had not addressed those issues in the

1 investigation.

2 On March 8, 2013, Bio-Rad filed its 10-K statement, in which it disclosed that it  
3 identified significant deficiencies in internal reporting, including unauthorized distributor  
4 contracts at a Chinese subsidiary.

5 On June 7, 2013, Bio-Rad terminated Wadler following a decision by the Board of  
6 Directors. Defendants made the decision to fire Plaintiff because he provided information,  
7 caused information to be provided, and otherwise assisted in an investigation regarding conduct  
8 which he reasonably believed constituted a violation of federal laws, including the FCPA.  
9 Plaintiff alleges he was fired because, even after the initiation of the investigation, he continued  
10 to insist that the investigation be complete and uninfluenced by conflicts of interest.

11 Bio-Rad's outside auditors, Ernst & Young, ultimately resigned, presumably due to  
12 material deficiencies and substantial disagreement between Ernst & Young and Bio-Rad's  
13 leadership.

14 Defendants' Statement

15 Defendants deny the allegations against them and submit that Plaintiff's supposed  
16 whistleblower claims are entirely without merit. Plaintiff's employment was terminated solely  
17 because of his abusive and damaging conduct during the months preceding the termination –  
18 conduct that alienated other members of management and subordinates alike and caused  
19 disruption and embarrassment to the Company. Plaintiff alleges, to the contrary, that  
20 notwithstanding Bio-Rad's ongoing cooperation in an investigation by the Securities Exchange  
21 Commission ("SEC") into broader and more serious Foreign Corrupt Practices Act ("FCPA")  
22 issues, Bio-Rad fired him for raising comparatively less serious and ultimately unsubstantiated  
23 FCPA concerns to the Board Audit Committee, concerns which the Audit Committee promptly  
24 investigated and disclosed to the SEC.

25 Mr. Wadler's allegations were made to the Audit Committee not in good faith but as a  
26 pattern of unreasonable oppositional activity on his part – namely, because of his anger at Bio-  
27 Rad's senior management over issues of compensation and reporting structure, among others.  
28 Completely unrelated to the Company's investigation of Mr. Wadler's allegations of corruption

1 in Bio-Rad's China operations, Plaintiff's behavior and performance during his last year of  
2 employment underwent a distinct change for the worse. This led the Company's Board to  
3 conclude that Mr. Wadler was no longer able to work cooperatively with his fellow executives  
4 and other Bio-Rad employees and, therefore, was unable to effectively discharge his duties as  
5 General Counsel. Specifically, Mr. Wadler's relations with other members of Bio-Rad's senior  
6 management deteriorated as a result of his aggressive expressions of dissatisfaction with his  
7 compensation and with the organization of the Company's legal function. There was increasing  
8 friction between Mr. Wadler, the legal department under his direction, and the rest of the  
9 Company. Other members of management frequently complained that the legal department was  
10 so slow in responding to issues raised to it that the Company's ability to engage in business  
11 transactions was significantly impaired. Meanwhile, in discussions with Mr. Schwartz about his  
12 compensation, which Mr. Wadler insisted was too low, he threatened Mr. Schwartz and yelled  
13 "I'm going to bring this Company down." Mr. Wadler's behavior was so abusive that members  
14 of Bio-Rad's senior management felt threatened and intimidated.

15 Mr. Wadler alienated management and kept them in the dark while taking damaging  
16 actions beyond his authority. For example, without any authorization from management or the  
17 Board, he sought to negotiate a multi-million dollar settlement with Life Technologies related to  
18 a 2011 audit, offering far more than management was willing to pay. This put the Company in a  
19 compromised position in subsequent negotiations with Life Technologies.

20 He also repeatedly failed to share cooperatively or timely information that was necessary  
21 for other managers to do their jobs. For example, in March 2013, on the day before the  
22 Company intended to file its Form 10-K, Mr. Wadler for the first time asserted that the pre-  
23 existing accrual for the Life Technologies audit was too low. He was unable to identify any  
24 event-driven reason for increasing the long-standing accrual, but he threatened not to execute his  
25 legal letter in connection with the 10-K if the accrual was not changed. This last minute  
26 objection to the accrual in connection with the Life Technologies royalty dispute caused the  
27 Company to be unable to file its required SEC Annual Report on Form 10-K on time. Bio-Rad  
28 was instead forced to make an embarrassing additional public filing with the SEC to allow it to

1 file its 10-K ten days after it was due.

2           Against this background of deteriorating performance by Mr. Wadler and the dysfunction  
3 that resulted, the Board ultimately determined that Mr. Wadler's inability to work cooperatively  
4 with other Bio-Rad executives and employees rendered him unable to effectively lead the  
5 Company's legal function.

6           **3. Legal Issues:**

7           The Court's October 23, 2015 Order Granting In Part and Denying In Part Defendants'  
8 Motion To Dismiss addressed the central disputed points of law raised thus far by either party.  
9 (Dkt. No. 53). Defendants have filed a Motion for Certification of Interlocutory Appeal and  
10 Request for a Stay of Proceedings Pending Appeal (Dkt. No. 57) addressing the following  
11 disputed points of law:

12           Whether Plaintiff, without having made a disclosure to the Securities and Exchange  
13 Commission ("SEC"), can state a claim for relief under the Dodd-Frank whistleblower anti-  
14 retaliation provision. 15 U.S.C. § 78u-6(a)(6).

15           Whether Sarbanes-Oxley's whistleblower anti-retaliation provision provides for liability  
16 against non-officer directors for actions taken in their capacity as such. 18 U.S.C. § 1514A.

17           Whether Dodd-Frank's whistleblower anti-retaliation provision provides for liability  
18 against non-officer directors for actions taken in their capacity as such. 15 U.S.C. § 78u-  
19 6(h)(1)(A).

20           The parties respectfully reserve their rights to identify additional disputed points of law  
21 as the case progresses.

22           **4. Motions:**

23           The prior granted motions are as follows: (1) Defendants' Unopposed Administrative  
24 Motion for Leave to File Under Seal (Dkt. No. 8); (2) Stipulated Protective Order (Dkt. No. 9);  
25 (3) Application for Admission of Attorney Scott C. Jones *Pro Hac Vice* (Dkt. No. 12); (4)  
26 Stipulation to Continue Case Management Conference and Related Deadlines (Dkt. No. 27); (5)  
27 Motion to File Amicus Curaie by Securities and Exchange Commission (Dkt. No. 29); (6) ADR  
28 Stipulation (Dkt. No. 31); (7) Stipulated Joint Administrative Motion for Leave to File Statement

1 of Recent Decision (Dkt. No. 47); and (8) Stipulated Order Pursuant to Federal Rule of Evidence  
2 502(d) Re: Non-Waiver of Attorney-Client Privilege and Work Product Protection in Production  
3 of Documents in Discovery (Dkt. No. 55).

4 Defendants' Motion to Dismiss the Complaint was granted in part and denied in part  
5 pursuant to the Court's October 23, 2015 Order. (Dkt. Nos. 24 & 53.)

6 Pending before the Court is Defendants' Motion for Certification of Interlocutory Appeal  
7 and Request for Stay of Proceedings Pending Appeal (Dkt. No. 57). The Motion shall be heard  
8 on January 8, 2016.

9 The parties anticipate filing summary judgment motions. Other motions may be filed as  
10 the case progresses.

11 **5. Amendment of Pleadings:**

12 In the Court's Case Management and Pretrial Order of September 10, 2015, the Court  
13 ordered that the deadline for amending the pleadings is December 1, 2015 and that no new  
14 parties may be added. (Dkt. No. 46.) Plaintiff does not currently expect to add or dismiss any  
15 parties or claims.

16 **6. Evidence Preservation:**

17 The parties have reviewed the Guidelines Relating to the Discovery of Electronically  
18 Stored Information ("ESI Guidelines"), and hereby confirm that the parties have met and  
19 conferred pursuant to Fed. R. Civ. P. 26(f) regarding reasonable and proportionate steps taken to  
20 preserve evidence relevant to the issues reasonably evident in this action.

21 **7. Disclosures:**

22 The parties held the Rule 26(f) meet and confer conference on July 29, 2015. Initial  
23 disclosures were exchanged on Friday, August 21, 2015.

24 **8. Discovery:**

25 Plaintiff has propounded document requests and interrogatories to all Defendants.  
26 Defendant Bio-Rad has responded to Plaintiff's first set of document requests and  
27 interrogatories. The Individual Defendants' deadline to respond is December 10, 2015. The  
28 parties have begun a meet and confer concerning Bio-Rad's responses to both the requests for

1 production of documents and interrogatories, and have exchanged letters and met in person to  
2 that end. The parties also are continuing the meet and confer process regarding custodians and  
3 search terms. As to custodians, the parties are in agreement on the collection of documents from  
4 20 custodians, and are currently meeting and conferring about 3 additional custodians requested  
5 by Plaintiff. As to search terms, the parties are combining the meet and confer process  
6 concerning document requests and the relevant search terms, and understand that the search  
7 terms may change as discovery progresses. The parties recently had a face-to-face meeting  
8 regarding these issues, which was productive. There are currently no discovery disputes which  
9 require the Court's involvement.

10 The parties have agreed to sequence discovery such that document discovery shall come  
11 before depositions. The parties still do not agree about the number of depositions necessary over  
12 the default limit of 10 per side. The parties believe that it makes sense to wait until after  
13 significantly more document discovery has been done in order to see if court assistance is  
14 necessary regarding this issue, as that document discovery will likely affect substantially the  
15 number of depositions needed. At this point, neither party has noticed nor taken a deposition.

16 The parties have entered into a Stipulated Protective Order, an E-Discovery Protocol, and  
17 a Stipulated Order Pursuant to Federal Rule of Evidence 502(d) Re: Non-Waiver of Attorney-  
18 Client Privilege and Work Product Protection in Production of Documents in Discovery to  
19 govern discovery in this matter.

20 **9. Class Actions:**

21 This case is not a class action.

22 **10. Related Cases:**

23 The parties are unaware of any related cases or proceedings.

24 **11. Relief:**

25 The following discussion of Relief has not changed since the last Joint Case Management  
26 Statement:

27 Plaintiff sought the following relief in his Complaint:

- 28 1. Two times the amount of back pay otherwise owed to Wadler, with interest at the



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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.

In his Rule 26 Initial Disclosures, Plaintiff further described the bases on which damages are calculated as follows:

a. Wadler is entitled to two times the amount of back pay, as well as front pay. The amount of backpay and front pay is calculated based off of Wadler's total yearly compensation from Bio-Rad Laboratories, Inc., including but not limited to salary, bonus, benefits, fringe benefits, retirement benefits, stock options, and restricted stock, adjusted for inflation and reasonable and continuing increases over the relevant period, which is also the subject of expert discovery; Defendants are in possession of the information necessary to complete such calculations that Plaintiff currently lacks, particularly as it relates to certain payroll information missing from information provided to Wadler for more recent years of Wadler's employment, and thus Plaintiff cannot reasonably calculate a specific dollar amount at this time;

b. Damages for Plaintiff's unused paid vacation time, as well as waiting time penalties for the unpaid wages. Defendants are in possession of the information necessary to complete such calculations regarding the amount of vacation time accrued but not paid

1 out and thus Plaintiff cannot reasonably calculate a specific dollar amount at this time.  
2 Specifically with respect to waiting time penalties, those penalties are calculated by  
3 multiplying 30 (the maximum number of days for which payment is available per statute)  
4 times Wadler's daily rate of pay, which, as discussed above, is subject to further  
5 discovery and cannot be assigned a specific number at this time.

6 c. Damages for humiliation, mental anguish, and emotional and physical distress for  
7 an amount to be proven at trial;

8 d. Prejudgment and post-judgment interest at the maximum available rate;

9 e. Litigation costs, expert witness fees, and attorneys' fees in an amount to be  
10 proven at trial; and

11 f. Punitive damages, in an amount to be determined at trial.

12 **12. Settlement and ADR:**

13 Prior to filing this action, the parties conducted a private mediation, which was  
14 unsuccessful. The parties have complied with ADR L.R. 3-5. (Dkt. Nos. 31-33.) The parties  
15 have agreed to participate in mediation before the Hon. Edward A. Infante (Ret.) of JAMS on  
16 April 19, 2016. (Dkt. No. 52.)

17 **13. Consent to Magistrate Judge For All Purposes:**

18 The parties have consented to have a magistrate judge conduct all further proceedings  
19 including trial and entry of judgment. (Dkt. Nos. 22, 23.)

20 **14. Other References:**

21 The parties agree that the case is not suitable for reference to binding arbitration, a special  
22 master, or the Judicial Panel on Multidistrict Litigation.

23 **15. Narrowing of Issues:**

24 Plaintiff believes that it is premature to discuss what specific issues may eventually be  
25 narrowed pending further discovery, but respectfully reserves the right to revisit this as discovery  
26 progresses.

27 Defendants have filed a Motion for Certification of Interlocutory Appeal and Request for  
28 a Stay of Proceedings Pending Appeal (Dkt. No. 57), and respectfully reserve the right to revisit

1 this issue pending resolution of the Motion and as discovery progresses.

2 **16. Expedited Trial Procedure:**

3 The parties agree that this case should not proceed under the Expedited Trial Procedure of  
4 General Order No. 64 Attachment A.

5 **17. Scheduling:**

6 On September 10, 2015, the Court ordered the following trial schedule dates:

7

Description	Date
Designation of Experts	July 1, 2016
Discovery Cutoff	August 1, 2016
Hearing of Dispositive Motions	September 23, 2016 at 9:30 a.m.
Pretrial Conference	December 9, 2016 at 2:00 p.m.
Trial	January 9, 2017 at 8:30 a.m.

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11 **18. Trial:**

12 Plaintiff has demanded a jury trial. (Dkt. No. 1.) Defendants have filed an answer to  
13 Plaintiff's complaint. (Dkt. No. 54.) The trial will likely last 3-4 weeks.

14 **19. Disclosure of Non-party Interested Entities or Persons:**

15 Plaintiff has filed the "Certification of Interested Entities or Persons" required by Civil  
16 Local Rule 3-15. (Dkt. No. 2.) Plaintiff restates that other than the named parties, there is no  
17 interest to report.

18 Defendants have filed the "Certification of Interested Entities or Persons" required by  
19 Civil Local Rule 3-15. (Dkt. No. 6, 7.) Defendants restate that other than the named parties,  
20 there is no interest to report. Defendant Bio-Rad further restates that it is a publicly traded  
21 company, there is no publicly traded corporate parent or subsidiary of Bio-Rad, and no publicly  
22 held corporation owns 10% or more of Bio-Rad.

23 **20. Professional Conduct:**

24 All attorneys of record for the parties have reviewed the Guidelines for Professional  
25 Conduct for the Northern District of California.

26 **21. Such other matters as may facilitate the just, speedy and inexpensive**  
27 **disposition of this matter:**

28 The parties are unaware of any such issues.

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Date: November 25, 2015

**KERR & WAGSTAFFE LLP**

By /s/ Kenneth Nabity  
KENNETH NABITY

Attorneys for Plaintiff  
SANFORD WADLER

Date: November 25, 2015

**LATHAM & WATKINS LLP**

By /s/ Linda M. Inscoc  
LINDA M. INSCOE

Attorneys for Defendants  
BIO-RAD LABORATORIES INC., NORMAN  
SCHWARTZ, LOUIS DRAPEAU, ALICE  
SCHWARTZ, ALBERT HILLMAN, AND  
DEBORAH NEFF

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**GENERAL ORDER 45 ATTESTATION**

I, Kenneth Nabity, am the ECF User whose ID and password are being used to file this  
JOINT CASE MANAGEMENT STATEMENT. In compliance with General Order 45, X.B., I  
hereby attest that Counsel for Defendants indicated in the signature line above has concurred in  
this filing.

DATED: November 25, 2015

**KERR & WAGSTAFFE LLP**

By: /s/ Kenneth Nabity  
KENNETH NABITY