

## [Securities Regulation Daily Wrap Up, WHISTLEBLOWER NEWS—N.D. Cal.: No second shot for Bio-Rad at whistleblower claim as motion to relitigate is denied, \(May 12, 2017\)](#)

Securities Regulation Daily Wrap Up

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By [Joanne Cursinella, J.D.](#)

Finding no merit in any of its arguments, the Northern District of California denied a company's motion to relitigate a whistleblower action against a former employee (*Wadler v. Bio-Rad Laboratories, Inc.*, May 10, 2017, Spero, J.).

**Jury award.** On February 7, 2017, a jury awarded plaintiff Sanford Wadler \$2,960,000 in past economic loss damages and \$5,000,000 in punitive damages in this [whistleblower action](#) against his former employer, Bio-Rad Laboratories, Inc. and its CEO. The jury found the defendants liable on all three of Wadler's claims: violation of the Sarbanes-Oxley Act, violation of the Dodd-Frank Act, and wrongful termination in violation of public policy under California law. The defendants challenged the jury's findings and asked for a judgment as a matter of law in its favor or a new trial.

**"Starkly different theories."** The court noted that the parties provided "starkly different theories" of the relevant events surrounding Wadler's termination. The defendants claimed that Wadler did not exhibit good judgment or work with senior management and that "[h]is claim to be a whistleblower—which was not based on even the slightest investigation—was discredited by everyone who reviewed it in real time." Wadler asserted that "Bio-Rad's position is nothing more than the traditional whistleblower defense, maligning Mr. Wadler, exaggerating a handful of small workplace issues, and arguing that it would have fired him anyway" and contended that the jury "correctly disregarded these inconsistent, after-the-fact, and undocumented pretexts" to various company activities surrounding his termination.

**Jury findings upheld.** The court briefly discussed all six of the defendants' challenges to the jury's verdict and found none had merit. The court found that Wadler presented sufficient evidence supporting the jury's finding as to his subjective and objective belief of the company's wrongdoing. The court also found that a that a negative performance review for 2012 dated April 15, 2013 and provided to the Justice Department was not created until after Wadler had been terminated and which the defendants admitted was "somewhat related" to his termination. In addition, the court noted that Wadler had pointed out inconsistencies in the defendants' testimony and that the creation of the false performance review may have been made to bolster the reason for Wadler's termination.

The court also found that punitive damages were available despite not being specifically allowed under Dodd-Frank, Sarbanes-Oxley, or the California claim at issue, because "damages for wrongful discharge in violation of public policy are not limited to those specified in the underlying statute that was violated." The court also found that Wadler's actions could be protected activity under both Dodd-Frank and Sarbanes Oxley Acts. Since there is an SEC rule regarding the subject of Wadler's report, his reporting a violation could support a Sarbanes-Oxley claim, and internal whistleblowing is protected under the Dodd-Frank Act, according to Ninth Circuit law.

The case is [No. 15-cv-02356-JCS](#).

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Companies: Bio-Rad Laboratories, Inc.

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