

1 HAEGGQUIST & ECK, LLP
ALREEN HAEGGQUIST (221858)
2 alreenh@haelaw.com
3 JENNA M. RANGEL (272735)
jennar@haelaw.com
4 225 Broadway, Suite 2050
San Diego, CA 92101
5 Telephone: (619) 342-8000
Facsimile: (619) 342-7878
6

7 Attorneys for Plaintiff

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN DIEGO

10 CENTRAL DIVISION

11 BEVERLY M. EMERSON, Ph.D., an
Individual,

12 Plaintiff,

13 vs.

14 THE SALK INSTITUTE FOR
15 BIOLOGICAL STUDIES, SAN DIEGO,
16 CALIFORNIA, a California Nonprofit
17 Public Benefit Corporation; and
DOES 1-50, Inclusive,

18 Defendants.
19

Case No.: 37-2017-00026375-CU-OE-CTL

COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF

DEMAND FOR JURY TRIAL

HAEGGQUIST & ECK, LLP

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1 Plaintiff Beverly M. Emerson, Ph.D. (“Dr. Emerson” or “Plaintiff”), by her attorneys,
2 brings this action on behalf of herself against Defendant The Salk Institute for Biological
3 Studies, San Diego, California (“Salk Institute” or “Defendant”), and DOES 1 through 50,
4 inclusive. Plaintiff makes the following allegations upon information and belief (except those
5 allegations as to the Plaintiff or her attorneys, which are based on personal knowledge), based
6 upon an investigation that is reasonable under the circumstances, which allegations are likely to
7 have evidentiary support after a reasonable opportunity for further investigation and/or
8 discovery.

9 NATURE OF ACTION

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11 1. For over half a century, the Salk Institute has operated as an antiquated boys’
12 club, systematically undermining and marginalizing its three female Full Professors.¹ Very few
13 females have made it to the level of Full Professor, and those who have, have endured numerous
14 discriminatory reprisals minimizing their successes, including: (1) slower promotion rates; (2)
15 lower pay regardless of their experience and scientific contributions, seniority, ability to secure
16 grant funding, awards and accolades, and high-profile publications; (3) an unequal distribution
17 of resources, including both in donor funding and laboratory staff; (4) exclusion from
18 opportunities for high-value grants from private donors and foundations; (5) denial of nearly all
19 leadership and professional advancement opportunities within the Salk Institute; and (6) a hostile
20 environment in which they are undermined, disrespected, disparaged, and treated unequally.

21 2. What is worse, the Administration and Board of Trustees (including, but not
22 limited to, former President William Brody, current President Elizabeth Blackburn, and former
23 Chairman of the Board Irwin Jacobs) have known about this discrimination, yet done absolutely
24 nothing to stop it or right the wrongs perpetrated against its equally talented and decorated

25 ¹ The Salk Institute has four female non-Emeritus Full Professors – Dr. Emerson, Dr.
26 Katherine Jones, Dr. Victoria Lundblad, and Dr. Joanne Chory. While Dr. Emerson and Drs.
27 Jones and Lundblad are employed and funded by the Salk Institute, Dr. Chory is employed and
28 funded by the Howard Hughes Medical Institute (HHMI), a non-profit medical research
organization that supports scientists across the United States. All references to “female Full
Professors” exclude Dr. Chory, unless otherwise noted.

1 female Full Professors. Instead of providing them with the same resources and opportunities that
 2 male Full Professors receive to conduct their research and advance their careers, the Salk
 3 Institute has intentionally kept its female Full Professors beneath the glass ceiling. Dr. Emerson,
 4 who has dedicated almost 31 years of her career to the Salk Institute, wants to shatter that glass
 5 ceiling and expose the Salk Institute so that future female scientists will not have to bear the
 6 same discriminatory burdens.

7 3. To redress the harms suffered, Dr. Emerson brings claims for: (1) gender
 8 discrimination (disparate treatment) in violation of California Government Code §12940(a); (2)
 9 gender discrimination (disparate impact) in violation of California Government Code §12940(a);
 10 (3) failure to prevent discrimination in violation of California Government Code §12940(k); (4)
 11 gender pay discrimination in violation of California Labor Code §1197.5(a); (5) intentional
 12 infliction of emotional distress; (6) violation of the Unfair Competition Law, California Business
 13 & Professions Code §§17200, *et seq.*; and (7) accounting.

14 **JURISDICTION AND VENUE**

15 4. The Superior Court of the State of California has jurisdiction over this action
 16 pursuant to Article VI, §10 of the California Constitution because this case is a cause not given
 17 by statute to other trial courts. Federal jurisdiction does not exist in this case because there is no
 18 federal question implicated and because there is no diversity of citizenship.

19 5. This Court has personal jurisdiction over Defendant because Defendant does
 20 business, and conducts a substantial amount of business, in the State of California. During the
 21 relevant period, Defendant did sufficient business in, had sufficient contacts with, and
 22 intentionally availed itself of the laws and markets of California through the promotion, sale,
 23 marketing, and operation of services, as to render exercise of jurisdiction by California courts
 24 permissible. The violations of law hereinafter described have been and are now being carried
 25 out within the County of San Diego, State of California.

26 6. Venue is proper in this county in accordance with Code of Civil Procedure
 27 §395(a) because Dr. Emerson resides in this County and Defendant is currently doing, and has
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1 done during the relevant period, significant amounts of business in this County. In addition,
 2 many of the acts and practices giving rise to Dr. Emerson’s claims occurred in this County.

3 **THE PARTIES**

4 **Dr. Emerson**

5 7. Dr. Emerson is now, and at all relevant times was, a resident of the County of
 6 San Diego, State of California. As a woman, Dr. Emerson is a member of a protected class of
 7 persons under the California Fair Employment and Housing Act, Government Code §§12940,
 8 *et seq.*, and Labor Code §1197.5. Dr. Emerson has been employed by the Salk Institute since
 9 1986.

10 **Defendants**

11 8. Defendant, the Salk Institute, is a California nonprofit public benefit corporation,
 12 with its principal place of business located at 10010 North Torrey Pines Road, La Jolla,
 13 California 92037. Defendant is registered with the California Secretary of State to do business
 14 in California. Defendant employs more than five persons and is, and all times mentioned herein
 15 was, an “employer” within the meaning of Government Code §12926(d) and the Labor Code.
 16 Defendant also has a duly constituted Board of Trustees which is responsible for its management
 17 and operation.

18 9. In doing the acts herein alleged, Defendant’s employees, subcontractors, and
 19 agents acted within the course and scope of their employment and agency with Defendant.
 20 Defendant engaged in the acts alleged herein and/or condoned, permitted, authorized, and/or
 21 ratified the conduct of its employees, subcontractors, and agents, and is vicariously liable for the
 22 wrongful conduct of its employees, subcontractors, and agents alleged herein.

23 10. Dr. Emerson does not know the true names and capacities of Defendant DOES 1
 24 through 50, inclusive, and therefore sues them by these fictitious names. Dr. Emerson will
 25 amend this Complaint to include their names and capacities once they are known. Dr. Emerson
 26 is informed and believes, and on that basis, alleges, that each of the Defendants designated as a
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1 DOE is legally responsible in some manner for the occurrences alleged in this Complaint, and
 2 unlawfully caused the injuries and damages to Dr. Emerson as alleged in this Complaint.

3 11. Dr. Emerson is informed and believes, and thereon alleges, that each Defendant
 4 is, and at all times mentioned was, the agent, employee, or representative of each of the other
 5 Defendants. Each Defendant, in doing the acts, or in omitting to act as alleged in this Complaint,
 6 was acting within the scope of his or her actual or apparent authority, or the alleged acts and
 7 omissions of each Defendant as agent subsequently were ratified and adopted by each other
 8 Defendant as principal.

9 **EXHAUSTION OF REMEDIES**

10 12. On January 3, 2017, Dr. Emerson filed a charge of discrimination with the
 11 California Department of Fair Employment and Housing (“DFEH”). That same day, the DFEH
 12 closed Dr. Emerson’s case and issued a Right-To-Sue Notice. Therefore, Dr. Emerson has
 13 exhausted her administrative remedies. True and correct copies of the charge and notice are
 14 collectively attached hereto as Exhibit 1.

15 **FACTS COMMON TO ALL CAUSES OF ACTION**

16 13. The Salk Institute is one of the world’s preeminent centers of biomedical
 17 research. Established in 1963, it has continuously employed internationally-renowned faculty
 18 who make groundbreaking contributions in areas such as cancer, gene therapy, neurobiology,
 19 and plant biology.

20 14. The Salk Institute claims it is an Equal Opportunity Employer and is “committed
 21 to providing a work environment free from any form of unlawful harassment, discrimination or
 22 retaliation.” In fact, the Salk Institute has strict written policies requiring personnel who believe
 23 they have been discriminated against, or who have witnessed any discrimination, to
 24 “immediately report such conduct” to management or Human Resources. The Salk Institute then
 25 vows that “[i]n response to *every complaint*, the Institute will, through impartial and qualified
 26 personnel and in a timely manner, conduct an objective investigation, track and document the
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1 investigation to ensure reasonable progress, reach conclusions and arrive at a determination
2 based on information and evidence collected, and communicate its determination... If improper
3 conduct is found, ***appropriate corrective action will be taken to stop any prohibited conduct***
4 ***and deter future conduct of a similar nature.***” (Emphasis added.) See the Salk Institute’s
5 “Policy Prohibiting Harassment, Discrimination and Retaliation.”

6 15. Unfortunately, the Salk Institute has utterly failed to follow its own policies,
7 discriminating against all three of its female Full Professors, including Dr. Emerson, for decades
8 through systemic marginalization. Female Full Professors are: (1) promoted at slower rates; (2)
9 paid less regardless of their experience and scientific contributions, seniority, ability to secure
10 grant funding, awards and accolades, and high-profile publications; (3) deprived of their
11 equitable share of resources, including donor funding and laboratory space; (4) blocked from
12 high-value funding opportunities from private donors and foundations; (5) denied nearly all
13 leadership and professional advancement opportunities within the Salk Institute; and (6) forced
14 to work in a hostile environment in which they are undermined, disrespected, and treated
15 unequally.

16 16. In fact, the Administration and the Board of Trustees have known about these
17 gender disparities ***for over 10 years***, yet have failed to take any corrective action whatsoever as
18 required by its own policies. As early as 2001, then-President Richard Murphy commissioned a
19 “Report of the Faculty Development Committee on the Status of Women Faculty at the Salk”
20 from the Academic Council,² which was completed in 2003 by a committee chaired by Dr.
21 Chory, the only female Full Professor *not* employed by the Salk Institute (the “2003 Report”).
22 The 2003 Report was based on 30 years of the Salk Institute’s faculty appointments and
23 promotions. Among other things, the 2003 Report identified several alarming trends including
24 an underrepresentation of women faculty, slower promotion times for women faculty, and a
25 grossly disproportionate allocation of resources (including awarding all the Salk Institute’s
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27 _____
28 ² The Academic Council serves as a representative of the faculty and formulates the Salk
Institute’s academic policies.

1 Endowed Chairs³ to only male faculty). Based on the clear evidence of gender inequality, the
2 2003 Report made recommendations to the President and the Board of Trustees to help close the
3 massive gender gap. Regrettably, the Administration and Board of Trustees completely ignored
4 the 2003 Report’s findings and recommendations and continued to allow male-dominance over
5 female Full Professors to prevail.

6 17. Thirteen years later, these same issues were presented to President Elizabeth
7 Blackburn and to Chairman of the Board Irwin Jacobs via a “White Paper” from the six-person
8 Faculty Issues Subgroup of the Community and Culture Committee, chaired by Dr. Emerson
9 (the “2016 Report”). The 2016 Report was one of several “White Papers” commissioned by
10 President Blackburn in conjunction with C-Far, an outside consulting firm (www.cfar.com)
11 retained by the Salk Institute, which spent several months consulting with the Salk Institute.
12 Among other things, the 2016 Report concluded that the Salk Institute: has a “substantial and
13 long-standing problem in recruiting, promoting and retaining women faculty”; has low turnover
14 on faculty committees and “a complete lack of gender diversity in leadership positions” that
15 promotes “a culture in which a small subset of faculty [*i.e.*, senior male Professors] play a
16 disproportionately large role in academic governance”; a lack of written policies and procedures
17 regarding the distribution of resources, resulting in inconsistent [discriminatory], non-
18 transparent allocations; reserves all opportunities for visibility among high-value private donors
19 for a “limited number of go-to faculty” [*i.e.*, senior male Professors]; applies “significant gender-
20 specific bias” to the distribution of resources, as evidenced by the substantial size differential
21 between the male Full Professor-run and female Full Professor-run laboratories; and exhibits
22 “gender-specific bias ... in the timeline for awarding endowed chairs.”

23 18. Around the same time, a Finance Committee sub-group, which Dr. Emerson was
24 not a member of, also submitted a “White Paper” to President Blackburn which concluded that
25 because “no system is in place ... to assess the equitable and transparent distribution of Institute-

27 ³ Endowed Chairs, funded by private donors and foundations, are designed to honor
28 exceptional faculty members while providing crucial financial support to pay a portion of the
faculty member’s salary.

1 generated resources [*i.e.*, “fundraising activities of the President’s Office, the External Relations
2 Office, the Office of Technology Development and others at the Institute”]” and because “the
3 labs headed by all of the senior female faculty are in the bottom quartile of lab size, despite
4 higher levels of NIH funding in one of these labs ... *the mechanism for distribution of Institute
5 resources may not be gender-neutral.*”

6 19. For years, President Brody and Chairman Jacobs, and more recently President
7 Blackburn, completely ignored the damning evidence of gender discrimination. Upon receipt of
8 the 2016 Report and the Finance Committee’s 2016 White Paper, President Blackburn and
9 Chairman Jacobs failed to further investigate their complaints or even distribute them to the
10 Board of Trustees for their review, an action President Blackburn had previously stated would
11 be taken. At the same time, the Salk Institute disingenuously endorsed the goal of “diversity and
12 inclusion” as integral to fostering a healthy Salk Institute culture.

13 20. With full knowledge of this long-standing gender discrimination, the Salk
14 Institute also misleadingly promotes its “Women in Science” program as “donor bait,” claiming
15 that the program “is making great strides toward awareness of the need for more women and
16 other underrepresented groups to fully participate in science innovation” to solicit donations
17 from the unsuspecting public.

18 21. The Salk Institute has been able to perpetuate this gender discrimination for so
19 long through a complete lack of transparency in its policies and procedures regarding recruiting
20 and hiring, promotions, pay raises, allocation of donor funding and resources, access to private
21 donor funding opportunities, distribution of bridge funding, awarding of Endowed Chairs, and
22 appointment to committee leadership positions, as well as the absence of annual faculty
23 performance reviews (in contrast to other organizations in the Salk Institute’s peer group).
24 Without clear policies and procedures, a small group of senior male Full Professors, in collusion
25 with the Administration, have been allowed to control the Salk Institute entirely to their benefit.

26 22. Today, the effects of the Salk Institute’s discriminatory practices are startling.
27 Approximately, only:
28

- 1 (a) 20% of the faculty⁴ are female;
- 2 (b) 13% of all Full Professors are female;
- 3 (c) 21% of the new faculty hires since 2010 have been female;
- 4 (d) 11% of the Endowed Chairs have been awarded to female Full Professors,
- 5 with a significant time delay relative to Endowed Chairs awarded to male Full Professors;
- 6 (e) 5% of the current leadership positions on appointed faculty committees
- 7 are held by female Full Professors; and
- 8 (f) 4% of all laboratory staff are employed by female Full Professors, which
- 9 are all substantially smaller than the laboratories run by male Full Professors.

10 23. As President Blackburn has opined regarding the glass ceiling in the sciences
 11 after she joined the Salk Institute, “I think what’s happened over the years, although there’s been
 12 many women coming into the pipeline for many sciences, there’s been a drop-off in the
 13 percentage of women as one goes higher and higher into their career ranks” based on “some
 14 combination of both implicit and explicit biases at work” Indeed, in her own career, President
 15 Blackburn has experienced “situations where I could tell that I was not included in the same
 16 kind of somewhat old boys’ sorts of networking, and I think decisions were being made without
 17 my participation because I wasn’t really in those networks and not accepted into them.”⁵ This
 18 gender bias and “old boys’ sorts of networking” has been occurring at the Salk Institute for
 19 decades, and unfortunately, is still occurring under its first female President, who is clearly very
 20 aware of the problem.

21 **Dr. Emerson is a Highly-Accomplished, Internationally-Renowned Scientist Who Has**
 22 **Dedicated 31 Years of Research to the Salk Institute**

23 24. Dr. Emerson is an internationally-renowned scientist in the field of molecular
 24 biology. She was hired by the Salk Institute as an Assistant Professor in 1986. In 1992, she was

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 26 ⁴ This includes both HHMI and non-HHMI Full Professors, Associate Professors, and
 Assistant Professors, but excludes Professors Emeritus and Salk Fellows.

27 ⁵ Turk, Victoria, “More and More Science Grads are Women. So Why do so Few Make it
 28 to the Top?” April 22, 2016, <http://motherboard.vice.com/read/more-and-more-science-grads-are-women-so-why-do-so-few-make-it-to-the-top>.

1 promoted to Associate Professor, and in 1999, she was promoted to Full Professor. She is
2 currently 65 years old and her employment contract with the Salk Institute is set to expire on
3 December 31, 2017.

4 25. For almost 31 years, Dr. Emerson has run a laboratory focused on deciphering
5 mechanisms of transcriptional and epigenetic control using developmentally expressed genes
6 and genes or pathways that are deregulated in human cancers. Dr. Emerson has consistently
7 maintained National Institutes of Health (NIH) grants for 30 years to run her laboratory, which
8 are highly competitive (only approximately 7 - 15% of NIH grant applications are funded) and
9 extremely valuable (they pay direct and 94% of indirect (overhead) costs of the laboratory). Dr.
10 Emerson was also among the first awardees of competitive grants from the California Institute
11 of Regenerative Medicine and from the National Cancer Institute's (NCI) Physical Sciences in
12 Oncology Network. Dr. Emerson's NIH funding ended in May 2016 due primarily to forced
13 staff reductions by the Salk Institute, impeding Dr. Emerson's ability to maintain sufficient
14 production for grant renewal.

15 26. Dr. Emerson's research has resulted in an extensive history of publications in
16 high-profile scientific journals, including recent articles in *Molecular Cell*, *eLIFE*, *Nature*
17 *Cancer Reviews*, and *Proceedings of the National Academy of Sciences*.

18 27. Dr. Emerson has been a Member of the Salk Institute's NCI-designated Cancer
19 Center since approximately 1990 and a Member of the University of California, San Diego's
20 Moores Cancer Center since approximately 2014.

21 28. In 2013, after 27 years of service (and 14 years as a Full Professor), Dr. Emerson
22 was finally awarded the Salk Institute's Edwin K. Hunter Endowed Chair, which is designed to
23 provide crucial financial support for Dr. Emerson's laboratory infrastructure, including salary
24 support.

25 29. In 2014, Dr. Emerson was elected Faculty Chair by her peers for the Salk
26 Institute's Academic Council, serving as Chair-Elect from April 2014 to April 2015, Chair from
27 April 2015 to April 2016, and as Past Chair until March 31, 2017. Dr. Emerson was only the
28

1 second woman to hold this Faculty Chair position since its inception. By virtue of her election
 2 as Faculty Chair, Dr. Emerson also became a Member of the Board of Trustees, serving from
 3 2014 to March 31, 2017.

4 30. In 2015, Dr. Emerson was elected as a Fellow of the American Association for
 5 the Advancement of Science, the world’s largest general scientific society, for her distinguished
 6 contributions to science.

7 31. Though Dr. Emerson has had a sense of the “old boys’ club” culture at the Salk
 8 Institute since she started in 1986, it was not until she became Faculty Chair and received a copy
 9 of the 2003 Report from Dr. Chory, that she realized her almost 31-year career has been plagued
 10 by blatant gender discrimination, which was endorsed either implicitly or explicitly by the
 11 Administration and the Board of Trustees.

12 **The Salk Institute Thwarts the Careers of its Female Faculty by Promoting Females at**
 13 **Much Slower Rates than its Male Faculty**

14 32. The faculty hierarchy at the Salk Institute increases in rank from Assistant
 15 Professor to Associate Professor to Full Professor. Professors at all levels establish and manage
 16 individual laboratories and are required to hire and pay their staff, conduct research, and publish
 17 their findings in peer-reviewed journals, among other responsibilities. Only Full Professors
 18 receive tenure and are eligible for Endowed Chairs and leadership positions on faculty
 19 committees.

20 33. Unfortunately, over the years, the Salk Institute has consistently discouraged
 21 female faculty from seeking promotions, promoted females at slower rates than males, denied
 22 female faculty promotions, and/or encouraged female faculty to leave the Salk Institute, severely
 23 limiting the number of females in the pipeline for promotion to Full Professor.

24 34. In fact, since 1999, only one female has been promoted to Full Professor (Dr.
 25 Emerson) and only one female has been hired as a Full Professor (Dr. Lundblad, hired in 2004).

26 35. The 2003 Report specifically addressed this issue, concluding that female
 27 Assistant Professors had to work an average of 1.2 years longer than male Assistant Professors
 28

1 (6.4 years vs. 5.6 years) to be promoted to Associate Professor, and female Associate Professors
2 had to work an average of 1.7 years longer than male Associate Professors (5.3 years vs. 3.6
3 years) to be promoted to Full Professor, putting females several years behind their male
4 counterparts in receiving the professorial benefits. The 2003 Report also noted 70% of male
5 faculty were promoted to Full Professor ahead of the stated guidelines, while only one woman
6 had ever been promoted ahead of schedule.

7 36. Dr. Emerson personally experienced this lag in promotion time. She had to work
8 nearly seven years as an Assistant Professor before being promoted to Associate Professor, and
9 nearly seven years as Associate Professor before being promoted to Full Professor. In total, it
10 took Dr. Emerson almost five years longer than the average male faculty member to become a
11 Full Professor at the Salk Institute.

12 37. The Faculty Issues Subgroup of the Community and Culture Committee also
13 addressed this issue in the 2016 Report, noting that in the past six years, the Salk Institute hired
14 3.75 male faculty members for every female appointment, and that all current female Full
15 Professors had been hired as Assistant Professors over 30 years prior, except for Dr. Lundblad.
16 As the 2016 Report concluded, *“This statement alone is indicative of a substantial and long-
17 standing problem in recruiting, promoting and retaining women faculty.”*

18 **The Salk Institute Pays Female Full Professors Significantly**
19 **Less Than Their Male Counterparts**

20 38. On information and belief, when Dr. Jones was hired by the Salk Institute in 1986
21 (the same year Dr. Emerson was hired), the Assistant to the Chief Financial Officer told her that
22 female faculty were paid less and given fewer resources than male faculty. This was confirmed
23 in 2009, when Human Resources informed Dr. Emerson and Dr. Jones that they were among the
24 six lowest paid Full Professors at the Salk Institute despite having years of seniority over many
25 of the male Full Professors.

26 39. In fact, the Salk Institute’s IRS Form 990s show that Dr. Emerson has earned less
27 total compensation than her male counterparts for years (and likely her entire career at the Salk
28

1 Institute). On information and belief, by 2014, Dr. Emerson’s total compensation was about 50%
2 less than the highest paid male Full Professor (Dr. Inder Verma) as listed on the 2014 IRS Form
3 990.

4 40. Further, by 2015, at least one of the 2009 lowest paid male Full Professors, as
5 reported by Human Resources, was being paid a higher base salary than Dr. Emerson, despite
6 being ten years her junior in seniority.

7 41. Additionally, in 2016, Dr. Emerson was informed that certain male Full
8 Professors are also paid yearly “retention payments.” Dr. Emerson has never received a retention
9 payment from the Salk Institute despite her nearly 31 years of loyal service. The Salk Institute
10 also provides incentive-based compensation and laboratory funding. Yet, the policies describing
11 eligibility for incentive-based compensation and retention payments and the process for making
12 these decisions are completely non-transparent.

13 **The Salk Institute Intentionally Disadvantages Female Full Professors’ Laboratories**
14 **Through Inequitable Resource Distribution and Exclusion from**
15 **High-Value Funding Opportunities**

16 42. Research laboratories at the Salk Institute are funded by federal and state grants,
17 private foundations and donors, and the Salk Institute itself (via interest from the endowment
18 and indirect cost awards from NIH grants). Deficits in laboratory funding are covered by the
19 Salk Institute (called “bridge funding”), at the discretion of the Administration.

20 43. As stated in Dr. Emerson’s employment contract with the Salk Institute, “While
21 it is assumed that you *and the Institute* will use best efforts to assure that your salary continues
22 to come from appropriate grants, contracts and other outside sources, the portion of salary not
23 so provided by outside sources will be provided from Salk Institute funds.” (Emphasis added.)

24 44. A laboratory’s success and competitiveness depends upon these various sources
25 of funding. The funds are used to hire research staff (usually Post-Doctoral fellows and graduate
26 students), which increases the laboratory’s ability to make significant discoveries and publish
27 their findings in scientific journals, and thereby increases the odds for continued and additional
28 research funding. Thus, smaller laboratories are at a significant competitive disadvantage in

1 terms of productivity, funding, and career potential. In fact, the Salk Institute considers these
2 small laboratories to be “non-sustainable.”

3 **Grant Funding**

4
5 45. Most Professors must continuously apply for grants to maintain the funding
6 required to run their laboratories. NIH grants are especially valuable because they pay direct
7 costs (*e.g.*, salaries, equipment, and supplies), and then pay a separate amount equal to 94% of
8 the direct costs for indirect costs (*e.g.*, facilities, maintenance, and administrative expenses).
9 Competition for grant funding is unrestricted, meaning all Professors are eligible to apply.

10 46. The NIH “Grants Policy Statement” requires organizations that receive NIH
11 funding to comply with various statutes, including the Educational Amendments of 1972, which
12 provide that no person shall, on the basis of sex, be excluded from participation in, denied the
13 benefits of, or subjected to discrimination under any educational program or activity receiving
14 federal financial assistance. The NIH may revoke or cease funding, and even suspend or disbar
15 an institution from receiving funds, due to a recipient’s violation of an applicable law, regulation,
16 or policy, which constitutes a failure to comply with the terms and conditions of the award.

17 47. The NIH recently restated its requirement that “grantee institutions, PIs and
18 others responsible for the administration of these funded activities identify and eliminate barriers
19 to participation in order to provide a non-discriminatory research and research-related
20 environment.”

21 48. The NIH Grants Policy Statement also requires recipients to comply with its cost
22 principles. Under these principles, direct and indirect costs are only allowed if they are
23 reasonable, allocable to a specific grant, treated consistently for all work of the organization
24 under similar circumstances, and conform with the limitations and exclusions contained in the
25 terms and conditions of the award.

26 49. When a Professor is awarded an NIH grant, there is absolutely no transparency
27 as to how the Salk Institute utilizes the indirect cost award, and therefore, no transparency to
28 determine whether any of the indirect costs are actually allocated to the Professor’s laboratory,

1 or instead, used to support male Professors' laboratories to the detriment of female Professors.
2 On information and belief, the Salk Institute does not always abide by the NIH's cost principles
3 when allocating the indirect costs awarded from grants received by female Full Professors.

4 50. First, female Full Professor laboratories are among the smallest laboratories at
5 the Salk Institute ***despite each female Full Professor maintaining almost continuous NIH***
6 ***grant funding***. Currently, Dr. Emerson's laboratory employs two staff members, Dr. Jones'
7 laboratory employs four staff members, and Dr. Lundblad's laboratory employs four staff
8 members. In contrast, the male Full Professors' laboratories have an average of 11 staff
9 members, and at least six of their laboratories have between 16 and 53 staff members, although
10 ***many of these male Full Professors maintain little NIH funding***. Male Full Professors with
11 comparable amounts of NIH funding to female Full Professors have laboratories that are two to
12 three times larger.

13 51. The expectation is that a median Salk Institute laboratory should have two NIH
14 grants per faculty member, sustaining around 8.5 staff members. Yet, female Full Professors
15 with two NIH grants are limited to four staff members, which is an insufficient size to renew
16 existing grants. As the 2016 Report concluded, this is evidence of "significant gender-specific
17 bias." The Finance Committee's 2016 White Paper also concluded that this was evidence that
18 ***"the mechanism for distribution of Institute resources may not be gender-neutral."***

19 52. Furthermore, as Dr. Emerson nears the expiration of her contract, she has been
20 repeatedly forced to reduce her laboratory staff without explanation. Dr. Emerson's laboratory
21 routinely had six to eight staff members until 2012. But, in 2012, former President Brody
22 summoned Dr. Emerson into his office and stated that he did not know how much longer the
23 Salk Institute could support her laboratory, even though she had two NIH grants at the time and
24 more NIH funding per staff member than many male Full Professors. Since 2012, Dr. Emerson
25 has been forced to successively fire staff, ultimately reducing her laboratory size by 75% to two
26 staff members (not counting herself).

1 53. Other female Full Professors have also been forced to reduce their laboratory
 2 staffs. In approximately 2013, Dr. Jones (age 62) was forced to reduce her laboratory by 50%,
 3 from eight staff members to four staff members. In recent years, Dr. Lundblad (age 64) has also
 4 been forced to reduce her laboratory by 67%, from twelve staff members to four staff members.
 5 To the best of Dr. Emerson’s knowledge, no male Full Professor has had to make such Draconian
 6 cuts in the size of his laboratory.

7 54. These forced reductions are commonly referred to as the “Death Spiral.” By
 8 drastically reducing laboratory staff, the laboratory will become far less productive and be
 9 unable to produce the data necessary to apply for new and continued grant funding, to publish
 10 more frequently, and to attract strong candidates (such as Post-Doctoral Researchers). The
 11 laboratory thus becomes “non-sustainable,” which paves the way to justify forcing female Full
 12 Professors to retire at the end of their contracts, without the possibility of a contract extension.

13 55. The majority of male Full Professors, on the other hand, are not forced into the
 14 Death Spiral. In fact, several male Full Professors have continued to work for the Salk Institute
 15 post-tenure, maintaining laboratories with more staff members than the pre-tenure female Full
 16 Professors, and with limited or no NIH funding, requiring the Salk Institute to subsidize their
 17 deficits.

18 56. Furthermore, while female Full Professors have been forced to strip their
 19 laboratories down to the bare bones, the Administration has enjoyed significant salary increases
 20 and bonuses. For example, between 2012 and 2014, when President Brody claimed the Salk
 21 Institute could not support Dr. Emerson’s laboratory, he enjoyed a 67% increase in his total
 22 compensation, from \$971,543 to \$1,623,785 (including \$881,135 in “Other Compensation”), as
 23 reported on the Salk Institute’s IRS Form 990.

Private Donors/Foundations

24
 25
 26 57. The External Relations office is charged with securing private donations to
 27 support research and to communicate the value and impact of that research to a local, national,
 28 and global audience to build awareness and broaden the base of prospective donors. It routinely

1 organizes national and international fundraising events featuring a subset of “go to” Salk
2 Institute faculty.

3 58. Access to these private donor funding opportunities is controlled by Rebecca
4 Newman, Director of External Relations, with the advice of her hand-picked External Relations
5 Committee. The External Relations Committee is an administrative committee with no oversight
6 and is dominated by certain senior male Full Professors. The only female Full Professor on the
7 Committee is Dr. Chory, who is employed and fully funded by the HHMI, not the Salk Institute.
8 The largesse bestowed upon this hand-picked subset of male Full Professors enables them to
9 sustain laboratories much larger than those of Dr. Emerson and Drs. Jones and Lundblad.

10 59. In November 2015, Ms. Newman disclosed to the Board of Trustees that the Salk
11 Institute had raised millions of dollars in private donations, and cited individual awards between
12 one to six million dollars each to specific male Full Professors, including members of the
13 External Relations Committee. Indeed, fund-raising efforts by External Relations to provide
14 substantial support to individual laboratories through “Endowed Laboratory Proposals” are
15 made for select male Full Professors but not for any female Full Professors.

16 60. Female Full Professors, on the other hand, have been excluded from virtually all
17 high-value private donor funding opportunities, which have a restricted application process that
18 necessitates the Salk Institute’s backing. For example, in 2013, 20 faculty members were chosen
19 to apply for a grant from the Helmsley Charitable Trust. No female Full Professors were selected
20 to apply for the initial grant (which awarded \$42 million to the Salk Institute) or for the more
21 recent 2016 grant renewal (which awarded \$25 million to the Salk Institute). In fact, almost all
22 other faculty members in the two departments in which Dr. Emerson and Drs. Jones and
23 Lundblad work were included in the Helmsley grant. These three female Full Professors were
24 specifically excluded without either External Relations or the three senior male lead
25 investigators (Full Professors) of the grant even requesting updates on their current research to
26 determine whether it would be appropriate to include them in the application.

1 61. Instead, female Full Professors are typically only given the opportunity to apply
 2 for small *private* grants in the range of \$10,000 to \$50,000.

3 62. Female Full Professors are also excluded from many opportunities to meet
 4 potential high-value donors, which include speaking at events such as the “Salkexcellerators”
 5 private receptions and attending the annual Salk Institute International Council meetings and
 6 other nationwide and international events. Instead, as the 2016 Report pointed out, these events
 7 are reserved for a small subset of “go-to faculty” (*i.e.*, including the same few senior male Full
 8 Professors), selected by External Relations through the few senior male Full Professors who
 9 unduly influence these decisions. In Dr. Emerson’s nearly 31-year history at the Salk Institute,
 10 she has been dispatched to a fundraising event outside of San Diego only once, in 2003. Some
 11 male Full Professors are sent to such events several times a year.

12 63. Further, on information and belief, due to the lack of transparency at the Salk
 13 Institute, the Salk Institute usurps some private donations intended for female Full Professors
 14 without the female Full Professor ever knowing about them. For example, on several occasions,
 15 Dr. Emerson was told to write research progress reports for private donors she was unaware
 16 supported her research and that she had never met.

Endowed Chairs

18 64. Many private foundations have established Endowed Chairs, which provide Full
 19 Professors with stable funding to support their salaries so that they can focus on their research.
 20 The Salk Institute currently has 27 Endowed Chairs,⁶ which each have a \$3 million funding
 21 minimum.

22 65. There are no objective metrics to determine how Endowed Chairs are awarded.
 23 There is no correlation between the Full Professor’s seniority, ability to generate grant funding,
 24 publications in high-profile journals, or receipt of prestigious awards or accolades. Instead, the
 25

27 _____
 28 ⁶ Excluding developmental chairs, which are solely awarded to junior faculty, and honorary chairs, which do not provide any funding.

1 Administration awards Endowed Chairs based on unknown subjective metrics poisoned with
2 bias against female Full Professors.

3 66. Thirteen years ago, the 2003 Report specifically addressed the fact that all
4 Endowed Chairs had only been awarded to male faculty, despite employing five worthy female
5 Full Professors at the time. This male dominance has continued. In fact, up until 2013, no female
6 Full Professor had ever been awarded an Endowed Chair.

7 67. Dr. Emerson had to work for the Salk Institute as a Full Professor for 14 years
8 (and 27 years in total) before she received the first Endowed Chair awarded to a female Full
9 Professor in 2013. Dr. Lundblad worked as a Full Professor for ten years before she received
10 her Endowed Chair in 2014. In 2015, Dr. Ursula Bellugi (now *Emerita*), who has worked for the
11 Salk Institute almost since its establishment, was only awarded a non-funded “Honorary” Chair.
12 Dr. Jones, who has worked for the Salk Institute for over 30 years, still has not received an
13 Endowed Chair.

14 68. Meanwhile, the Salk Institute awarded Endowed Chairs to male Full Professors
15 who were with the Salk Institute for as little as two years, and who are significantly junior to all
16 female Full Professors, including Dr. Emerson. As the 2016 Report noted, this skewed timeline
17 for awarding Endowed Chairs is also evidence of “gender-specific bias.”

18 **The Salk Institute Encourages Male-Dominance by Denying Female Full Professors the**
19 **Opportunity to Serve in Leadership Positions**

20 69. There are numerous leadership opportunities at the Salk Institute including
21 positions within its Academic Council, nine standing faculty committees, and the Salk Institute
22 Cancer Center. However, as the 2016 Report pointed out, there is “a complete lack of gender
23 diversity in leadership positions.” Female Full Professors are regularly excluded from these
24 leadership opportunities.

25 70. The Academic Council represents the faculty to the Administration and Board of
26 Trustees and formulates the Salk Institute’s academic policies. It has a Faculty Chair position,
27 which is an elected leadership position chosen by all Salk Institute faculty. In 2014, Dr. Emerson
28

1 was elected by her peers to serve as Faculty Chair from April 2015 to April 2016. Dr. Emerson
2 was only the second female Full Professor to ever serve in this leadership position since the
3 inception of the Academic Council in 1989 and she endured a considerable amount of hostility
4 and marginalization from the Administration and some male Full Professors during her term.

5 71. The Salk Institute's nine standing faculty committees have a considerable amount
6 of power, including determining recruitments and promotions (the Appointments Committee),
7 the Salk Institute's scientific direction (the Academic Planning Committee), and the distribution
8 of laboratory space (the Space Committee). Each committee has a Chair and a Co-Chair or Vice
9 Chair position held by Full Professors. In 2017, no chair position was held by a female Full
10 Professor. In Dr. Emerson's nearly 31 years with the Salk Institute, she has never been appointed
11 to a faculty committee leadership position.

12 72. Further, there are no term limits for faculty committee leadership positions,
13 allowing male Full Professors to chair these powerful committees for up to 10 to 15 years. As
14 the 2016 Report noted, "This promotes a culture in which a small subset of faculty [*i.e.*, senior
15 male Full Professors] play a disproportionately large role in academic governance."

16 73. The Salk Institute's NCI-designated Cancer Center comprises about half of the
17 research at the Salk Institute. Currently, 19 male Full Professors and all three female Full
18 Professors are members of the Cancer Center, and only seven of these Full Professors have
19 active or recent NCI funding. Dr. Emerson and Dr. Jones are two of these Full Professors with
20 active or recent NCI funding.

21 74. The Cancer Center has seven leadership positions, including the position of
22 Director. Despite having NCI funding and significant experience in cancer research, Dr.
23 Emerson and Drs. Jones and Lundblad have been consistently denied leadership positions at the
24 Cancer Center, although they have requested them on numerous occasions. In fact, all leadership
25 positions at the Cancer Center have *always* been held by male Full Professors, many of which
26 are junior to Drs. Emerson, Jones, and Lundblad, causing them to complain to the Director about
27 the lack of diversity. This blatant gender discrimination led Dr. Jones to resign from the Cancer
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1 Center in 2015, although her name still appears on the Salk Cancer Center website, presumably
2 because of her NCI grants that greatly benefit the Cancer Center.

3 **Dr. Emerson Was Forced to Endure Further Gender Discrimination and a Hostile**
4 **Environment Perpetuated by the**
5 **Salk Institute Administration and Senior Male Full Professors after**
6 **She was Elected to a Position of Power**

7 75. In rare instances that a female Full Professor obtains a position of power at the
8 Salk Institute, she is undermined, disrespected, and treated unequally from her male
9 predecessors and successors. Dr. Emerson experienced this when she assumed the Faculty Chair
10 position on the Academic Council in April 2015. Among other things:

11 (a) President Brody intentionally diminished and belittled Dr. Emerson by
12 failing to attend *any* of the faculty meetings during Dr. Emerson's term, in violation of the By-
13 Laws and in direct contrast with his giving a "President's Report" at every quarterly faculty
14 meeting chaired by her male predecessors.

15 (b) Dr. Emerson was prevented from attending all four Executive Committee
16 meetings of the Board of Trustees, in violation of the By-Laws. The Administration and/or
17 President Brody either failed to inform her of the meetings or told her the meeting had been
18 cancelled.

19 (c) The Administration refused to provide Dr. Emerson with the information
20 she needed to do her job, including Salk Institute space diagrams, information about laboratory
21 sizes, information about how Fellows are funded, and copies of the External Relations
22 Department's presentations to the Academic Council.

23 (d) Though all prior male Faculty Chairs or Chair-Elects were responsible for
24 overseeing laboratory space assignments, Dr. Emerson, as Chair-Elect, was stripped of this
25 responsibility by her male predecessor, who formed a special "Space Committee" and appointed
26 an un-elected male Full Professor to oversee this new committee. As Chair-Elect, Dr. Emerson
27 was excluded from all discussions and decisions about the distribution of laboratory space
28 through the Space Committee.

1 (e) Tellingly, President Brody took issue with Dr. Emerson’s “Academic
2 Council Goals: 2015-16,” in which she, as Faculty Chair, delineated a goal to include more
3 female Full Professors in leadership roles, contemptuously stating that “boys control committees
4 and boys choose boys.”

5 **The Salk Institute’s Undefined Policies Have Allowed this Pattern and Practice**
6 **of Gender Discrimination to Continue for Decades**

7 76. In addition to discussing the rampant gender discrimination, the 2016 Report also
8 reported on issues of governance and transparency. Specifically, because many academic
9 policies at the Salk Institute are not in writing, they are subject to multiple interpretations,
10 resulting in inconsistent, non-transparent, and discriminatory governance. For example:

11 (a) There are no policies regarding faculty recruitment, allowing the Salk
12 Institute to hire 3.5 male faculty for every one female faculty member in the past six years.

13 (b) There are no annual faculty performance reviews, giving the
14 Administration and the Board of Trustees maximum latitude to make subjective biased decisions
15 regarding promotions, pay raises, Endowed Chair awards, and leadership appointments. This is
16 in sharp contrast to most other scientific institutes in the Salk Institute’s peer group.

17 (c) There are no written policies regarding private donor funding
18 opportunities, which, unlike federal and state grants, are not open to all faculty members.
19 Instead, the Salk Institute endows certain influential male Full Professors and administrators
20 with the power to select the lucky applicants without any transparency or stated objective metrics
21 to guide their decisions.

22 (d) There are no established term limits for faculty committee positions,
23 indefinitely limiting power to a select group of senior male Full Professors.

24 (e) There are also no clear policies and there is no accountability for the
25 distribution of laboratory space, bridge funding, private donor funding, or indirect cost awards,
26 allowing the Salk Institute to make distributions with little to no oversight.

1 (f) There are no criteria or policies governing the category of “Special
2 Arrangements for Individual [Private Investigators]” or permanent “bridge funding,” which
3 benefit only those favored senior male Full Professors who cannot support their large
4 laboratories with their own NIH funding, or lack thereof.

5 **The Administration and the Board of Directors Have Knowingly Violated the Salk**
6 **Institute’s Policies and Allowed Gender Discrimination to Continue for Years**

7 77. The Salk Institute’s By-Laws vest all corporate powers in the Board of Trustees,
8 “which shall control the property and manage the affairs of the Corporation.” *See* “By-Laws of
9 The Salk Institute for Biological Studies, San Diego California, April 17, 2015,” Article IV,
10 Section 1. Irwin Jacobs was the Chairman of the Board of Trustees from November 2006 to
11 November 2016 and is currently serving on the Board of Trustees as Chairman Emeritus. The
12 President and Faculty Chair also serve on the Board of Trustees, among other elected members.

13 78. The Salk Institute’s “Suggested Roles and Responsibilities of a Board of Trustee
14 Member: Criteria for Board Service” states that the Board of Trustees is charged with
15 establishing overall policies, implementing a strategic plan with identified goals and objectives,
16 evaluating the Salk Institute’s performance once policies are established, providing financial
17 and investment oversight, and “upholding the Salk Institute Code of Ethics and setting the ethical
18 tone for the Salk, the management, and the employees of the Salk.”

19 79. The Salk Institute’s “Guidelines for the Board of Trustees” again emphasizes that
20 the Board of Trustees is responsible for setting the ethical tone for the Salk Institute, and charges
21 the Board of Trustees with establishing policies to encourage all personnel to alert management
22 and the Board of Trustees of ethical issues and potential violations of the law, without fear of
23 retribution.

24 80. In addition to the Salk Institute’s “Policy Prohibiting Harassment, Discrimination
25 and Retaliation,” the Salk Institute’s “Code of Ethics” also requires that it “provide equal
26 employment opportunities to all employees” in “all aspects of employment, including, but not
27 limited to, hiring, job assignment, compensation, promotion, benefits, training, discipline and
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1 termination.” The Code also prohibits the Salk Institute from engaging in unfair methods of
2 competition and unfair or deceptive acts or practices, and requires that staff members maintain
3 and report accurate financial information. Staff members are “personally responsible” for
4 bringing any instance, occurrence, or practice that they in good faith believe is a violation of the
5 Ethics Code to the attention of management. The Salk Institute vows to ensure a thorough and
6 timely investigation and resolution.

7 81. Dr. Emerson, as a faculty member, Faculty Chair of the Academic Council, and
8 Member of the Board of Trustees, upheld her fiduciary duties and ethical responsibilities to alert
9 management and the Board of Trustees of ethical issues and potential violations of the law by
10 repeatedly complaining about the rampant gender discrimination. Among other complaints:

11 (a) In May 2016, Dr. Emerson and Drs. Jones and Lundblad met with
12 President Blackburn to complain about the lack of resources for their laboratories based on their
13 gender, and Dr. Emerson’s and Dr. Jones’ lower salaries. Although President Blackburn told
14 them that they were each “outstanding scientists,” she was unable or unwilling to remedy these
15 issues.

16 (b) President Blackburn later commissioned the Community and Culture
17 Committee (one of several committees established by her), from which the “Faculty Issues”
18 Subgroup emerged. Dr. Emerson was asked to chair the Faculty Issues Subgroup, comprised of
19 five other faculty members, and wrote a White Paper on “Diversity and Inclusion,” which
20 included gender discrimination issues. Dr. Emerson compiled the evidence and prepared the
21 2016 Report, which was delivered to President Blackburn in June 2016 with the understanding
22 that the 2016 Report would be sent to Chairman Jacobs and certain Board members to discuss
23 at the August 2016 Board meeting. The 2016 Report provided evidence of the Salk Institute’s
24 substantial and long-standing gender discrimination against female Full Professors. However,
25 neither President Blackburn nor Chairman Jacobs ever questioned Dr. Emerson about the 2016
26 Report, presented the 2016 Report to the Board of Trustees, or otherwise notified the Board of
27 Trustees of the 2016 Report’s findings.

1 (c) As recently as November 2016, Dr. Emerson also questioned the Finance
 2 Committee of the Board of Trustees (on which she served, along with President Blackburn and
 3 Chairman Jacobs) about the Salk Institute’s annual budgets to determine how resources are
 4 allocated in an attempt to identify and remedy discriminatory allocations. Dr. Emerson asked
 5 specific questions about ambiguous budget categories such as “Special Arrangements,” “Special
 6 Payments,” and “Individual PI agreements for Institute Funding,” but received no response. Dr.
 7 Emerson also pointed out that although the Salk Institute’s endowment has performed poorly
 8 for years, government grant funding has decreased significantly, and the number of faculty
 9 members has decreased, the amount of money budgeted for the Administrative Expenses has
 10 increased and budgets for direct research have decreased. Furthermore, certain members of the
 11 Administration continue to receive high salaries and yearly bonuses.

12 82. In violation of the Salk Institute’s “Policy Prohibiting Harassment,
 13 Discrimination and Retaliation” and the “Code of Ethics,” the Administration and the Board of
 14 Trustees have never investigated the findings of the 2003 Report, the 2016 Report, or the Finance
 15 Committee’s 2016 White Paper, and have not taken any corrective actions to stop or remedy the
 16 discrimination or prevent it from continuing. As a result, Dr. Emerson has suffered and continues
 17 to suffer lost wages, humiliation, embarrassment, loss of enjoyment of life, emotional distress,
 18 and mental anguish. Dr. Emerson is a victim of Defendant’s unlawful practices and therefore
 19 brings this action to recover damages, restitution, and injunctive and declaratory relief.

20 **FIRST CAUSE OF ACTION**

21 **Gender Discrimination (Disparate Treatment)**
 22 **In Violation of California Government Code §12940(a)**

23 83. Dr. Emerson re-alleges and incorporates herein by reference each and every
 24 allegation in the preceding and subsequent paragraphs.

25 84. Government Code §12940 states in pertinent part: “It is an unlawful employment
 26 practice ... [f]or an employer, because of the ... gender ... of any person ... to discriminate against
 27

1 the person in compensation or in terms, conditions, or privileges of employment.” Government
 2 Code §12940(a).

3 85. At all relevant times mentioned herein, Dr. Emerson, who is female, was in a
 4 class of persons protected by Government Code §12940 because of her gender, and Defendant
 5 was aware of her gender.

6 86. As set forth above, and in violation of Government Code §§12940 *et. seq.*,
 7 Defendant discriminated against Dr. Emerson on the basis of her gender. Among other
 8 discrimination, Dr. Emerson was: (1) promoted at a slower rate than her male counterparts; (2)
 9 compensated less than her male counterparts in both wages and benefits; (3) deprived of her fair
 10 share of resources, including donor funding and laboratory space; (4) blocked from high-value
 11 funding opportunities from private donors and foundations; (5) denied leadership and
 12 professional advancement opportunities; (6) forced to work in a hostile environment in which
 13 Dr. Emerson was undermined, disrespected, disparaged, and treated unequally; and, (7) forced
 14 to suffer a loss of professional reputation.

15 87. As a proximate result of Defendant’s wrongful conduct, Dr. Emerson has
 16 suffered, and continues to suffer, substantial losses in earnings and job benefits, and potential
 17 career opportunities, in an amount to be determined according to proof at the time of trial.

18 88. As a further proximate result of Defendant’s calculated, contemptable, and
 19 loathsome conduct, Dr. Emerson has suffered, and continues to suffer, humiliation,
 20 embarrassment, loss of enjoyment of life, emotional distress, and mental anguish, all in an
 21 amount to be determined according to proof at the time of trial.

22 89. In performing the acts alleged herein, Defendant acted with oppression, fraud,
 23 malice, and with conscious disregard for the rights of Dr. Emerson, and Dr. Emerson is therefore
 24 entitled to punitive damages against Defendant in an amount commensurate with Defendant’s
 25 wrongful acts sufficient to punish and make an example of Defendant to deter further despicable
 26 conduct.

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1 95. As a proximate result of Defendant’s wrongful conduct, Dr. Emerson has
 2 suffered, and continues to suffer, substantial losses in earnings and job benefits, and potential
 3 career opportunities, in an amount to be determined according to proof at the time of trial.

4 96. As a further proximate result of Defendant’s calculated, contemptable, and
 5 loathsome conduct, Dr. Emerson has suffered, and continues to suffer, humiliation,
 6 embarrassment, loss of enjoyment of life, emotional distress, and mental anguish, all in an
 7 amount to be determined according to proof at the time of trial.

8 97. In performing the acts alleged herein, Defendant acted with oppression, fraud,
 9 malice, and with conscious disregard for the rights of Dr. Emerson, and Dr. Emerson is therefore
 10 entitled to punitive damages against Defendant in an amount commensurate with Defendant’s
 11 wrongful acts sufficient to punish and make an example of Defendant to deter further despicable
 12 conduct.

13 98. Dr. Emerson has sustained and continues to sustain legal expenses and attorney
 14 fees, in addition to other damages that may be sustained herein, and is also entitled to recover
 15 prevailing party attorney’s fees and costs pursuant to Government Code §12965(b), as a result
 16 of Defendant’s calculated, contemptable, and loathsome conduct.

17 **THIRD CAUSE OF ACTION**

18 **Failure to Prevent Discrimination from Occurring
 19 In Violation of California Government Code §12940(k)**

20 99. Dr. Emerson re-alleges and incorporates herein by reference each and every
 21 allegation in the preceding and subsequent paragraphs.

22 100. Government Code §12940(k) makes it unlawful for an employer “to fail to take
 23 all reasonable steps necessary to prevent discrimination ... from occurring.”

24 101. At all times mentioned herein, Defendant was aware of the discriminatory
 25 conduct toward Dr. Emerson, and failed to take reasonable steps to prevent such conduct from
 26 occurring, in violation of Government Code §12940(k).

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1 102. As a proximate result of Defendant’s calculated, contemptable, and loathsome
2 conduct, Dr. Emerson has suffered, and continues to suffer, substantial losses in earnings and
3 job benefits in an amount to be determined according to proof at the time of trial.

4 103. As a further proximate result of Defendant’s wrongful conduct, Dr. Emerson has
5 suffered, and continues to suffer, humiliation, embarrassment, loss of enjoyment of life,
6 emotional distress, and mental anguish, all in an amount to be determined according to proof at
7 the time of trial.

8 104. In performing the acts alleged herein, Defendant acted with oppression, fraud,
9 malice, and with conscious disregard for the rights of Dr. Emerson, and Dr. Emerson is therefore
10 entitled to punitive damages against Defendant in an amount appropriate to punish and make an
11 example of Defendant.

12 105. Dr. Emerson is also entitled to recover prevailing party attorney’s fees and costs
13 pursuant to Government Code §12965(b), as a result of Defendant’s calculated, contemptable,
14 and loathsome conduct.

15 **FOURTH CAUSE OF ACTION**
16 **Gender Pay Discrimination**
17 **In Violation of California Labor Code §1197.5(a)**

18 106. Dr. Emerson re-alleges and incorporates herein by reference each and every
19 allegation in the preceding and subsequent paragraphs.

20 107. Labor Code §1197.5(a) makes it unlawful for an employer to “pay any of its
21 employees at wage rates less than the rates paid to employees of the opposite sex for
22 substantially similar work when viewed as a composite of skill, effort, and responsibility, and
23 performed under similar working conditions ...”.

24 108. At all times mentioned herein, Dr. Emerson, who is female, was in a class of
25 persons protected by Labor Code §1197.5(a) because of her gender, and Defendant was aware
26 of her gender.

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1 109. As set forth above, and in violation of Labor Code §1197.5, Defendant willfully
2 paid Dr. Emerson less than her similarly-situated male colleagues performing substantially
3 similar work when viewed as a composite of skill, effort, and responsibility, and performed
4 under similar working conditions.

5 110. The differential in pay between male and female Full Professors was due strictly
6 to gender and not due to either a seniority system, a merit system, a system that measures
7 earnings by quantity or quality of production, or any other bona fide factor such as education,
8 training, or experience. Alternatively, to the extent Defendant allegedly relied upon one or more
9 of these bona fide factors, such factors were not applied reasonably and do not account for the
10 entire wage differential.

11 111. As a proximate result of Defendant’s calculated, contemptable, and loathsome
12 conduct, Dr. Emerson has suffered, and continues to suffer, a substantial loss of wages and
13 benefits based on the unlawful differential. Pursuant to Labor Code §1197.5(h), Dr. Emerson is
14 entitled to recovery of the differential in wages and benefits, plus interest, in an amount to be
15 determined according to proof at the time of trial.

16 112. Dr. Emerson is entitled to liquidated damages pursuant to Labor Code
17 §1197.5(h), as a result of Defendant’s wrongful conduct.

18 113. Dr. Emerson is also entitled to attorneys’ fees and costs pursuant to Labor Code
19 §1197.5(h), as a result of Defendant’s calculated, contemptable, and loathsome conduct.

20 **FIFTH CAUSE OF ACTION**

21 **Intentional Infliction of Emotional Distress**

22 114. Dr. Emerson hereby re-alleges and incorporates by reference the allegations
23 contained in the paragraphs above, as if fully set forth herein.

24 115. Defendant engaged in outrageous conduct toward Dr. Emerson with the intention
25 of causing, or with reckless disregard for the probability of causing, Dr. Emerson to suffer severe
26 emotional distress, and with wanton and reckless disregard for the injurious result to Dr.
27 Emerson. As set forth in detail above, Defendant discriminated against Dr. Emerson and caused
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1 Dr. Emerson to endure numerous discriminatory reprisals based on her gender, including: (1)
2 slower promotion rates; (2) lower pay; (3) an unequal distribution of resources; (4) exclusion
3 from opportunities for high-value grants from private donors and foundations; (5) denial of
4 leadership and professional advancement opportunities within and outside of the Salk Institute;
5 (6) a hostile environment in which Dr. Emerson was undermined, disrespected, disparaged and
6 treated unequally; and, (7) a loss of professional reputation. Dr. Emerson has dedicated nearly
7 31 years of her scientific career to Defendant, and in return, Defendant subjected Dr. Emerson
8 to systemic marginalization to intentionally minimize her success. Further, Defendant has been
9 on notice of the rampant gender discrimination for over a decade, yet has intentionally failed to
10 prevent the discrimination from continuing.

11 116. As a proximate result of Defendant's calculated, contemptable, and loathsome
12 conduct, Dr. Emerson has suffered, and continues to suffer, substantial losses in earnings,
13 earning capacity, and other benefits of employment, all in an amount to be determined according
14 to proof at the time of trial.

15 117. As a further proximate result of Defendant's wrongful conduct, Dr. Emerson has
16 suffered and continues to suffer humiliation, embarrassment, loss of enjoyment of life,
17 emotional distress and mental anguish, all in an amount to be determined according to proof at
18 the time of trial.

19 118. In performing the acts alleged herein, Defendant acted with oppression, fraud,
20 malice, and in conscious disregard of the rights of Dr. Emerson, and Dr. Emerson is therefore
21 entitled to punitive damages against Defendant in an amount appropriate to punish and make an
22 example of Defendant.

23 SIXTH CAUSE OF ACTION

24 Violation of the Unfair Competition Law, 25 Business & Professions Code §§17200, *et seq.*

26 119. Dr. Emerson hereby re-alleges and incorporates by reference the allegations
27 contained in the paragraphs above, as if fully set forth herein.

1 120. Defendant is a “person” as defined under Bus. & Prof. Code §17021.

2 121. Each of the directors, officers, and/or agents of Defendant is equally responsible
3 for the acts of the others as set forth in Bus. & Prof. Code §17095.

4 122. Defendant engaged in unlawful activity prohibited by Bus. & Prof. Code
5 §§17200, *et seq.* The actions of Defendant as alleged within this Complaint constitute unlawful
6 and unfair business practices with the meaning of Bus. & Prof. Code §§17200, *et seq.*

7 123. As described above, Defendant has conducted the following unlawful activities:

8 (a) violation of Government Code §12940(a) by discriminating against Dr.
9 Emerson based on her gender;

10 (b) violation of Government Code §12940(k) by failing to prevent
11 discrimination from occurring; and

12 (c) violation of Labor Code §1197.5(a) by discriminating against Dr.
13 Emerson in payment based on her gender.

14 124. Defendant’s activities also constitute unfair practices in violation of Bus. & Prof.
15 Code §§17200, *et seq.*, because Defendant’s practices violate the above noted laws, and/or
16 violate an established public policy, and/or the practice is immoral, unethical, oppressive,
17 unscrupulous, and substantially injurious to Dr. Emerson.

18 125. The identified violations of the Government and Labor Codes constitute business
19 practices because they were done repeatedly over a period of time, and in a systematic manner
20 to the detriment of Dr. Emerson.

21 126. As a result of Defendant’s violations of the Government and Labor Codes, Dr.
22 Emerson has suffered injury-in-fact and has lost money or property as a result of Defendant’s
23 practices. This injury-in-fact and loss of money or property consists of the lost wages and other
24 restitutionary remedies provided by the Government and Labor Codes as detailed in this
25 Complaint and other resulting harms. Dr. Emerson is entitled to restitution, an injunction,
26 declaratory, and other equitable relief against such unlawful practices to prevent future damage
27 for which there is no adequate remedy at law.

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1 127. As a result of its unlawful acts, Defendant has reaped and continues to reap unfair
 2 benefits and unlawful profits at the expense of Dr. Emerson. Defendant should be enjoined from
 3 this activity pursuant to Bus. & Prof. Code §17203.

4 128. As a direct and proximate result of the unfair business practices of Defendant,
 5 Dr. Emerson is entitled to equitable and injunctive relief, including full restitution of all wages
 6 which have been unlawfully lost as a result of the business acts and practices described herein,
 7 and enjoining Defendant to cease and desist from engaging in the practices described herein for
 8 the maximum time permitted pursuant to Bus. & Prof. Code §17208, including any tolling.

9 129. Dr. Emerson is also entitled to attorneys’ fees and costs, pursuant to the private
 10 attorney general theory doctrine (Code of Civil Procedure §1021.5), and any other applicable
 11 provision for attorneys’ fees and costs, based upon the violation of the underlying public
 12 policies.

13 **SEVENTH CAUSE OF ACTION**

14 **Accounting**

15 130. Dr. Emerson hereby re-alleges and incorporates by reference the allegations
 16 contained in the paragraphs above, as if fully set forth herein.

17 131. “A cause of action for an accounting requires a showing that a relationship exists
 18 between the plaintiff and defendant that requires an accounting, and that some balance is due
 19 the plaintiff that can only be ascertained by an accounting.” *Teselle v. McLoughlin*, 173 Cal.
 20 App. 4th 156, 179 (2009).

21 132. As set forth above, an employment relationship exists between Dr. Emerson and
 22 Defendant. As stated in Dr. Emerson’s employment contract with Defendant, “While it is
 23 assumed that you and the Institute will use best efforts to assure that your salary continues to
 24 come from appropriate grants, contracts and other outside sources, the portion of salary not so
 25 provided by outside sources will be provided from Salk Institute funds.”
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1 133. As set forth above, Defendant does not have any clear policies, and therefore no
 2 accountability, for the distribution of private donor funding or indirect costs from grant funding
 3 awarded to its scientists.

4 134. On information and belief, some private donations specifically intended for Dr.
 5 Emerson and/or indirectly intended for Dr. Emerson via Defendant’s “Women in the Sciences”
 6 fundraising efforts were usurped by Defendant without Dr. Emerson ever knowing about them.
 7 Further, on information and belief, Defendant also misallocated the indirect costs awarded from
 8 grants received by Dr. Emerson.

9 135. Due to the lack of transparency, Dr. Emerson does not know the precise amount
 10 of private donor funding and indirect cost funding due to her laboratory, and such amounts can
 11 only be determined by an accounting of Defendant’s books and records.

12 136. Dr. Emerson seeks an accounting of Defendant’s books and records so that the
 13 amount owed to her can be ascertained.

P R A Y E R

WHEREFORE, the Plaintiff seeks judgment as follows:

- 14 A. For compensatory damages, including loss of wages and benefits (past and
 15 future), and emotional distress damages from Defendant according to proof at trial;
- 16 B. For recovery of the differential in wages and benefits pursuant to Labor Code
 17 §1197.5(h);
- 18 C. For an accounting of Defendant’s books and records;
- 19 D. For liquidated damages from Defendant pursuant to Labor Code §1197.5(h);
- 20 E. For pre-judgment and post-judgment interest to the extent allowable by law;
- 21 F. For attorneys’ fees and costs from Defendant pursuant to Government Code
 22 §12965(b), Labor Code §1197.5(h), and Code of Civil Procedure §1021.5;
- 23 G. For punitive, exemplary, and special damages from Defendant, according to
 24 proof;
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H. For an injunction restraining Defendant from continuing to engage in unlawful and unfair business practices in violation of Bus. & Prof. Code, §§17200, *et seq.*; and

I. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all claims.

Dated: July 18, 2017

HAEGGQUIST & ECK, LLP
ALREEN HAEGGQUIST
JENNA M. RANGEL

By: _____
ALREEN HAEGGQUIST

225 Broadway, Suite 2050
San Diego, CA 92101
Telephone: (619) 342-8000
Facsimile: (619) 342-7878

Attorneys for Plaintiff

EXHIBIT 1



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 | TDD 800-700-2320
www.dfeh.ca.gov | email: contact.center@dfeh.ca.gov

DIRECTOR KEVIN KISH

AMENDED

January 03, 2017

Jenna Rangel
225 Broadway, Suite 2050
San Diego California 92101

RE: Notice to Complainant or Complainant's Attorney

DFEH Matter Number: 153954-268847

Right to Sue: Emerson / The Salk Institute For Biological Studies, San Diego, California

Dear Complainant or Complainant's Attorney:

Attached is a copy of your complaint of discrimination filed with the Department of Fair Employment and Housing (DFEH) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq. Also attached is a copy of your Notice of Case Closure and Right to Sue. Pursuant to Government Code section 12962, DFEH will not serve these documents on the employer. You or your attorney must serve the complaint. If you do not have an attorney, you must serve the complaint yourself. Please refer to the attached Notice of Case Closure and Right to Sue for information regarding filing a private lawsuit in the State of California.

Be advised that the DFEH does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 | TDD 800-700-2320
www.dfeh.ca.gov | email: contact.center@dfeh.ca.gov

DIRECTOR KEVIN KISH

AMENDED

January 03, 2017

RE: Notice of Filing of Discrimination Complaint

DFEH Matter Number: 153954-268847

Right to Sue: Emerson / The Salk Institute For Biological Studies, San Diego, California

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Department of Fair Employment and Housing (DFEH) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. This case is not being investigated by DFEH and is being closed immediately. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to DFEH is requested or required.

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 | TDD 800-700-2320
www.dfeh.ca.gov | email: contact.center@dfeh.ca.gov

DIRECTOR KEVIN KISH

AMENDED

January 03, 2017

Beverly Emerson
REDACTED

RE: Notice of Case Closure and Right to Sue

DFEH Matter Number: 153954-268847

Right to Sue: Emerson / The Salk Institute For Biological Studies, San Diego, California

Dear Beverly Emerson,

This letter informs you that the above-referenced complaint was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective January 03, 2017 because an immediate Right to Sue notice was requested. DFEH will take no further action on the complaint.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

To obtain a federal Right to Sue notice, you must visit the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758

800-884-1684 | TDD 800-700-2320

www.dfeh.ca.gov | email: contact.center@dfeh.ca.gov

DIRECTOR KEVIN KISH

AMENDED

Enclosures

cc:

1 **COMPLAINT OF EMPLOYMENT DISCRIMINATION**
2 **BEFORE THE STATE OF CALIFORNIA**
3 **DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING**
4 **Under the California Fair Employment and Housing Act**
5 **(Gov. Code, § 12900 et seq.)**

6 In the Matter of the Complaint of
7 Beverly Emerson, Complainant.

DFEH No. 153954-268847

8 **REDACTED**

9 vs.

10 The Salk Institute For Biological Studies, San
11 Diego, California, Respondent.
12 10010 N. Torrey Pines Road
13 La Jolla, California 92037

14 Complainant alleges:

15 1. Respondent **The Salk Institute For Biological Studies, San Diego, California**
16 is a subject to suit under the California Fair Employment and Housing Act (FEHA)
17 (Gov. Code, § 12900 et seq.). Complainant believes respondent is subject to the
18 FEHA.

19 2. On or around **January 03, 2017**, complainant alleges that respondent took the
20 following adverse actions against complainant: **Discrimination Denied a work**
21 **environment free of discrimination and/or retaliation, Denied equal pay,**
22 **Denied promotion, Other, Promoted at a slower rate than male counterparts,**
denied an equitable distribution of resources, excluded from private funding
opportunities, and excluded from leadership and professional advancement
opportunities, among other discriminatory acts.. Complainant believes
respondent committed these actions because of their: **Sex - Gender** .

3. Complainant **Beverly Emerson** resides in the City of **San Diego**, State of
California. If complaint includes co-respondents please see below.

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Additional Complaint Details:

Throughout her employment with Respondent, Ms. Emerson has been and continues to be discriminated against based on her gender. Among other discriminatory acts, Ms. Emerson has been denied equal pay, promoted at a slower rate than her male counterparts, denied an equitable distribution of resources, excluded from private funding opportunities, and excluded from leadership and professional advancement opportunities based on her gender.

1 VERIFICATION

2 I, **Jenna Rangel**, am the Attorney for Complainant in the above-entitled complaint.
3 I have read the foregoing complaint and know the contents thereof. The same is
4 true of my own knowledge, except as to those matters which are therein alleged on
information and belief, and as to those matters, I believe it to be true.

5 On January 03, 2017, I declare under penalty of perjury under the laws of the State
6 of California that the foregoing is true and correct.

7 **San Diego, CA**
8 **Jenna Rangel**

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