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14 **IN THE UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**

16 ALPHA-O PEPTIDES AG, a Swiss limited
17 company, PETER BURKHARD, PH.D., an
18 individual,

19 Plaintiffs,

20 v.

21 REGENTS OF THE UNIVERSITY OF
22 CALIFORNIA ON BEHALF OF THE
23 UNIVERSITY OF CALIFORNIA – IRVINE, a
24 public trust, SUNOMIX THERAPEUTICS,
25 entity form unknown, LBACHIR
26 BENMOHAMED, PH.D, an individual,
27 MOHAMMED BOUZIANE, PH.D, an
28 individual, and DOES 1 THROUGH 50,
inclusive,

Defendants.

Case No.:

COMPLAINT FOR:

1. **CIVIL RICO (18 U.S.C 1962(c))**
2. **CIVIL RICO (18 U.S.C 1962(d))**
3. **VIOLATION OF DEFEND TRADE SECRET ACT (18 U.S.C § 1836(b))**
4. **MISAPPROPRIATION OF TRADE SECRET (CAL. CIV. CODE § 3426)**
5. **FRAUDULENT CONCEALMENT**
6. **FRAUD (INTENTIONAL MISREPRESENTATION)**
7. **FRAUD (INTENTIONAL MISREPRESENTATION)**
8. **CONVERSION**
9. **PATENT INFRINGEMENT**
10. **PATENT INFRINGEMENT**
11. **PATENT INFRINGEMENT**
12. **BREACH OF WRITTEN CONTRACT**
13. **APPROPRIATION OF LIKENESS (CAL. COMMON LAW)**
14. **APPROPRIATION OF LIKENESS (CAL. CIV. CODE § 3344)**
15. **TRADE LIBEL**

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16. UNFAIR BUSINESS PRACTICES
(VIOLATION OF BUS. & PROF.
CODE § 17200)

17. UNJUST ENRICHMENT
18. INJUNCTIVE RELIEF

DEMAND FOR JURY TRIAL

Plaintiffs, ALPHA-O PEPTIDES AG (“AOP” or “Alpha-O Peptides”) and PETER BURKHARD, PH.D (“Burkhard”) (collectively, “Plaintiffs”), hereby bring the following claims against Defendants, REGENTS OF THE UNIVERSITY OF CALIFORNIA ON BEHALF OF THE UNIVERSITY OF CALIFORNIA – IRVINE (“UCI”), SUNOMIX THERAPEUTICS (“Sunomix”), LBACHIR BENMOHAMED, PH.D (“BenMohamed”), and MOHAMMED BOUZIANE, PH.D (“Bouziane”) (collectively, “Defendants”), and each of them, with knowledge as to themselves and otherwise on information and belief, and allege as follows:

INTRODUCTION

“We are committed to doing what is right – and being transparent about it – even when no one is watching.”

(Excerpt from “Mission Statement” of UCI.¹)

1. Notwithstanding UCI’s admirable mission statement, UCI and its co-Defendants have plainly failed to practice what they preach. As described in greater detail herein, Defendants have participated in rampant fraud on a scale that is almost unimaginable in a public university setting. They have **fabricated and forged** numerous documents, misappropriated Plaintiffs’ trade secrets, defrauded Plaintiff (not to mention the federal government), engaged in extortion, trade libel, conversion, violations of the RICO Act, and the list, unfortunately, goes on.

¹ UCI, <https://ce.uci.edu/about/mission/> (last visited September 18, 2023).

1 2. Plaintiffs are the owners of patents and trade secrets for innovative
2 technology (“SAPN” technology) used to design and produce potent vaccines.
3 Plaintiffs and Defendants entered into a series of narrowly constructed license
4 agreements, which allowed Defendants to utilize Plaintiffs’ SAPN technology under
5 very limited circumstances and conditions. Unfortunately, unbeknown to Plaintiffs,
6 Defendants breached their obligations under the agreements, again and again.

7 3. For example, in violation of the license agreements, Plaintiffs applied for
8 numerous federal grants using Plaintiffs’ SAPN technology. Further, because
9 Defendants were applying for the grants behind Plaintiffs’ backs, Defendants falsely
10 claimed that *they owned* Plaintiffs’ trade secrets (which Defendants published in the
11 grant proposals). Defendants also fabricated a letter of support, giving the false
12 impression that their unauthorized use of patented SAPN technology had been
13 approved. Defendants went so far as to forge Burkhard’s signature on the fake letters
14 of support.

15 4. And if the fake letters of support weren’t enough, Defendants also
16 submitted **falsified records stating that Burkhard worked for Sunomix** – complete
17 with a fake Sunomix email address for Burkhard, a fake phone number for Burkhard,
18 a fake title (Chief Science Officer), and a fake salary for Burkhard – which we
19 presume Defendants kept because Burkhard never received or knew about it. The
20 fake employment information served a dual-purpose Defendants. First, it gave the
21 false impression that that Burkhard had approved of Defendants’ use of the SAPN
22 technology for these grant proposals (since according to Defendants, he worked for
23 them). Second, it made it that much easier for Defendants to conceal their
24 wrongdoing, since the federal government now had the wrong contact information for
25 Burkhard and AOP.

26 5. Additionally, Defendants **published Plaintiffs’ trade secrets in a U.S.**
27 **Patent Application and on Sunomix’s website** and, on both occasions, claimed that
28 they (Defendants) were the owners of Plaintiffs’ proprietary SAPN technology.

1 Further, notwithstanding the significant amount of fraud in which Defendants were
2 engaged, they were still able to put on a false face, approach Plaintiffs, and pretend to
3 negotiate new license agreements in good faith, even while violating the existing
4 License Agreements behind Plaintiffs' backs.

5 6. Because Defendants took active measures to conceal their misconduct
6 (e.g., pretending to be interested in negotiating new license agreements, failing to
7 advise Burkhard of the unauthorized grant proposals and patent application, giving
8 the federal government fake contact information for Burkhard), Burkhard did not
9 begin to uncover Defendants' scheme until he noticed the unauthorized grant
10 proposals online, on or about September 22, 2020. Burkhard continued to investigate,
11 and in November 2020, he sent inquiries to Defendants and eventually to the NIH.

12 7. In response to Burkhard's inquiry, UCI and its co-Defendants were
13 neither "transparent," nor were they particularly interested in "integrity" or in "doing
14 the right thing when no one is watching," when questions began to be asked about
15 their unauthorize grant proposals. Instead, Defendants were more interested in
16 retaliating against Burkhard. Therefore, Bouziane forwarded an email to Burkhard
17 (purportedly from "unknown" source) threatening to have Burkhard *arrested and*
18 *hailed before a judge* if he stepped foot in the United States.

19 8. Meanwhile, the NIH began asking questions, at which point,
20 BenMohamed and UCI attempted to save themselves by smearing Plaintiffs' SAPN
21 technology with completely false, unsubstantiated, and libelous statements, which
22 they sent to the NIH. Defendants also manufactured another fake document, this time
23 a fake license agreement (Exhibit F) that purportedly granted Defendants the rights
24 they never received in the legitimate license agreements.

25 9. Defendants' misconduct has all but ruined Plaintiffs. Defendants have
26 stripped Burkhard of his life's work. Plaintiffs can no longer monetize their SAPN
27 technology because Defendants already published Plaintiffs' trade secrets online and
28 in patent applications, and smeared the efficacy and utility of Plaintiffs' SAPN

1 technology. Additionally, there is no easy path for Plaintiffs to apply for patent
2 protection as to certain trade secrets, which Defendants have sabotaged in their
3 unauthorized patent application. In addition, Plaintiff have lost significant business
4 opportunities, since potential business partners and investors have questioned whether
5 Plaintiffs own the trade secrets that Defendants wrongfully published.

6 10. Therefore, Plaintiffs file this action, seeking in the justice system the
7 fairness, transparency, and integrity that Defendants profess in mission statements but
8 fail to deliver in practice.

9 **THE PARTIES**

10 11. **Plaintiff Alpha-O Peptides, AG:** AOP is, and at all relevant times has
11 been, a biotechnology company, operating in Riehen, Switzerland. AOP focuses on
12 the development of potent vaccines. Specifically, AOP utilizes a proprietary
13 technology to create a controlled process in which proteins self-assemble into
14 nanoparticles, commonly referred to as “self-assembling protein nanoparticles”
15 (SAPNs). AOP’s SAPNs are engineered to resemble specific disease-causing
16 viruses (for example, herpes simplex virus (HSV), COVID, human
17 immunodeficiency virus (HIV), etc.). When AOP’s SAPNs are introduced, as a
18 vaccine, to the immune system, they train the immune system to respond to the
19 particular virus they resemble.

20 12. **Plaintiff Peter Burkhard, Ph.D.:** Burkhard is, and at all relevant times
21 has been, a citizen and resident of Switzerland, and a prominent scientist in the field
22 of biomechanical engineering. From 2004-2015, Burkhard served as a Professor of
23 Molecular and Cellular Biology at the University of Connecticut. In 2011, Burkhard
24 received the prestigious five-year NIH-Avant-Garde-Medications Development
25 Award for his work in developing a nicotine vaccine.² Over the years, Burkhard has
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28 ²<https://www.nih.gov/news-events/news-releases/nida-avant-garde-medications-development-award-winners-announced>.

1 established an extended network of professional relationships at many of the major
2 pharmaceutical companies that are involved in vaccine design and development (e.g.,
3 Sanofi, GSK, Pfizer, and Merck, among others) and has engaged in numerous
4 collaborative efforts to develop vaccines for such diseases and illnesses as influenza
5 (Flu), respiratory syncytial virus (RSV), cytomegalovirus (CMV), HSV, COVID,
6 malaria, HIV, toxoplasmosis, and many more.

7 13. Burkhard is a prominent figure in his field of science. Among other
8 things, his work in developing a COVID vaccine attracted significant media attention
9 in Switzerland and Germany early in the pandemic. On March 23, 2020, the primary
10 newspapers of the major cities of Switzerland published a report on Burkhard’s
11 COVID project. (See, e.g., Zürich – Tagesanzeiger; Basel – BaslerZeitung; Bern –
12 BernerZeitung.)³ Burkhard was also broadcasted on several occasions by the Swiss
13 national television, during the year 2020, by the German speaking channel (SRF;
14 Schweizer Radio und Fernsehen – Interviewer: Mario Nottaris)⁴ and the Italian
15 speaking channel (RSI; Radiotelevisione svizzera – Interviewer: Roselli Maria).⁵

16 14. **Regents of the University of California on Behalf of the University of**
17 **California – Irvine:** Plaintiffs are informed and believe, and thereon allege, that UCI
18 is a public trust corporation, organized and existing under the laws of the State of
19 California. Plaintiffs are further informed and believe, and thereon allege, that UCI
20 has its principal place of business in the County of Orange, State of California.

21 15. **Sunomix:** Plaintiffs are informed and believe, and thereon allege, that
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23 ³ Tagesanzeiger, [https://www.tagesanzeiger.ch/diese-schweizer-forschen-nach-einem-](https://www.tagesanzeiger.ch/diese-schweizer-forschen-nach-einem-corona-impfstoff-159091301567)
24 [corona-impfstoff-159091301567](https://www.tagesanzeiger.ch/diese-schweizer-forschen-nach-einem-corona-impfstoff-159091301567), last checked 09/19/2023. On information and
25 belief, “Tagesanzeiger” is the largest daily newspaper in Switzerland.

26 ⁴ SRF, [https://www.srf.ch/news/schweiz/schweizer-impfstoffforschung-wer-wird-der-](https://www.srf.ch/news/schweiz/schweizer-impfstoffforschung-wer-wird-der-erste-sein)
27 [erste-sein](https://www.srf.ch/news/schweiz/schweizer-impfstoffforschung-wer-wird-der-erste-sein), last checked 09/19/2023.

28 ⁵[https://www.rsi.ch/la2/programmi/informazione/ Speciali_Covid-19/Speciale-](https://www.rsi.ch/la2/programmi/informazione/Speciali_Covid-19/Speciale-informazione-Coronavirus-12943928.html)
[informazione-Coronavirus-12943928.html](https://www.rsi.ch/la2/programmi/informazione/Speciali_Covid-19/Speciale-informazione-Coronavirus-12943928.html), link currently not active as of 09/19/2023.

1 Sunomix is an entity, form unknown, with a principal place of business in the County
2 of San Diego, State of California.

3 16. **Lbachir BenMohamed, Ph.D.:** Plaintiffs are informed and believe,
4 and thereon allege, that BenMohamed is, and at all relevant times has been, an
5 individual residing in the County of Orange, State of California. Plaintiffs are further
6 informed and believe, and thereon allege, that at all relevant times, BenMohamed has
7 been employed by UCI as a professor and as the Director of the Laboratory of
8 Cellular and Molecular Immunology in the Department of Ophthalmology. Plaintiffs
9 are further informed and believe, and thereon allege, that since at least 2016,
10 BenMohamed has been employed as a scientist and immunologist at Sunomix (see
11 Exhibit H) and has, therefore, been an agent of both UCI and Sunomix.

12 17. **Mohammed Bouziane, Ph.D.:** Plaintiffs are informed and believe, and
13 thereon allege, that Bouziane is, and at all relevant times has been, an individual
14 residing in the County of San Diego, State of California. Plaintiffs are further
15 informed and believe, and thereon allege, that at all relevant times, Bouziane has
16 served as the CEO of Sunomix.⁶

17 18. The true names and capacities of Defendants designated herein as Does 1
18 through 50, whether each is an individual, a business, a public entity, or otherwise,
19 are presently unknown to Plaintiffs, who therefore sue said Defendants by such
20 fictitious names. Plaintiffs allege that each Doe Defendant is responsible in some
21 actionable manner for the events alleged herein. Wherever in this Complaint it refers
22 to “Defendants,” such reference shall mean and include each of the expressly named
23 defendants and all doe defendants. Plaintiffs will amend the Complaint to state the
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26 ⁶ As of the filing of this complaint, Bouziane’s LinkedIn profile, indicates he is the
27 CEO of Sunomix. Further, Bouziane has signed several documents in this matter as
28 the CEO of Sunomix. (LinkedIn, <https://www.linkedin.com/in/mohammed-bouziane-ph-d-38148061/>, last checked on 09/19/2023.)

1 true names and capacities of said doe defendants when the same have been
2 ascertained.

3 19. Plaintiffs are informed and believe, and thereon allege, that at all times
4 herein mentioned, Defendants, including the defendants sued herein as Does 1
5 through 50, and each of them, was the authorized agent and/or employee and/or joint
6 venturer and/or co-conspirator of other defendants and was at all times acting within
7 the course and scope of such agency and/or employment with the full knowledge,
8 consent, authority, ratification, and/or permission of each of the remaining
9 defendants.

10 20. Plaintiffs are informed and believe, and based thereon allege, that
11 Defendants, including Does 1 through 50, are responsible in some manner – either by
12 act or omission, strict liability, fraud, negligence or otherwise – for the events and
13 happenings alleged in this Complaint, and, thus, caused harm to Plaintiffs.

14 21. Plaintiffs are currently unaware of additional persons or entities that
15 might be legally responsible in some manner for the acts and/or omissions and the
16 damages alleged or other relief sought herein. Should Plaintiffs later discover
17 information that suggests others are responsible in some manner for the acts and
18 omissions described herein, and/or the damages or other relief sought herein,
19 Plaintiffs will amend this Complaint to add any and all such Defendants, who are
20 designated at this time only as Does 1 through 50, inclusive.

21 **JURISDICTION AND VENUE**

22 22. Jurisdiction is proper in the U.S. District Court for the Central District of
23 California under 28 U.S.C. §§ 1331 and 1338, as it is a civil action arising under the
24 laws of the United States - specifically 18 U.S.C. § 1836(b), 18 U.S.C. § 1962(c), 18
25 U.S.C. § 1962(d), and 35 U.S.C. § 1 et seq. Plaintiffs are still in the process of
26 quantifying their damages. Nevertheless, such damages greatly exceed \$75,000.

27 23. Accordingly, this Court also has subject-matter jurisdiction on the basis
28 of diversity of citizenship pursuant to 28 U.S.C. § 1332(a)(2). The Court may also

1 exercise supplemental jurisdiction under 28 U.S.C. § 1367(a). Venue is proper in the
2 Central District of California pursuant to 28 U.S.C. § 1391(b)(2) or, alternatively, 28
3 U.S.C. § 1391(b)(3).

4 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

5 **I. Relevant Scientific Concepts Concerning Antigens and Epitopes**

6 24. **Antigens** “are molecular structures on the surface of viruses that are
7 recognized by the immune system and are capable of triggering one kind of immune
8 response known as antibody production.”⁷

9 25. An **epitope** is part of the antigen. Specifically, the epitope is the part
10 that is recognized by the immune system, and to which the immune system’s
11 antibodies, B-cells, or T-cells, attach.

12 **II. Plaintiffs’ Breakthrough SAPN Technology**

13 26. It is critically important to be able to respond to new emerging
14 pandemics – as the world has seen during outbreaks of SARS and Ebola, and most
15 recently during the COVID pandemic, which affected every single person world-
16 wide. AOP’s SAPN technology is a groundbreaking and effective means to tackle
17 such pandemic threats.

18 27. Specifically, Plaintiffs’ discovery allows scientists to easily design the
19 surface of Plaintiffs’ SAPNs to display epitopes of a target virus, and to arrange the
20 epitopes to make the SAPN surface resemble the target virus. Such SAPNs help the
21 immune system learn to recognize and respond to the target virus. Further, the ease
22 and efficiency with which displays of epitopes can be designed and incorporated onto
23 Plaintiffs’ SAPNs enables effective vaccines to be designed quickly, and is part of
24 what makes these SPANs a truly groundbreaking technology. The fact that scientists
25 can use a personal computer to efficiently design the display of epitopes, and
26 thereafter, use very simple bio-technology methods in the lab to – in a few weeks’

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28 ⁷ <https://www.cdc.gov/flu/about/professionals/antigenic.htm>.

1 time – incorporate the display of epitopes onto Plaintiffs’ SAPNs, could help the
2 world respond more quickly and efficiently to emerging pandemic threats.

3 28. AOP has protected its research and development by obtaining patents
4 that cover its pioneering innovations in self-assembling protein nanoparticles
5 (SAPNs). These patents directed to AOP’s SAPNs provide a vaccine platform that
6 enables efficient modular rational design development of superior targeted vaccines
7 against infectious diseases, as explained in greater detail below.

8 **III. Plaintiffs’ Patents**

9 **A. Patent No. U.S. 8,575,110 (the “110 Patent”)**

10 29. **Peptidic nanoparticles as drug delivery and antigen display systems.**
11 U.S. Patent Nos. 8,575,110 (the “110 Patent”) describes and claims a new type of
12 nanoparticle using the concept of self-organization of a single continuous chain to
13 form peptidic nanoparticles. These nanoparticles can be used as drug targeting and
14 drug delivery systems or as vaccines.

15 30. The ‘110 Patent, entitled “PEPTIDIC NANOPARTICLES AS DRUG
16 DELIVERY AND ANTIGEN DISPLAY SYSTEMS,” was issued on 2013, is
17 assigned to AOP and has been maintained. (A copy of the ‘110 Patent is attached
18 hereto as Exhibit Q.)

19 31. The ‘110 Patent names Peter Burkhard as the inventor.

20 **B. Patent No. U.S. 8,546,337 (the “337 Patent”)**

21 32. U.S. Patent No. 8,546,337 (the “337 Patent”) describes and claims self-
22 assembling peptide nanoparticles (SAPNs) incorporating T-cell epitopes and/or B-cell
23 epitopes that are useful as vaccines and adjuvants.

24 33. The ‘337 Patent, entitled “SELF-ASSEMBLING PEPTIDE
25 NANOPARTICLES USEFUL AS VACCINES,” was issued on October 1, 2013, is
26 assigned to AOP and has been maintained. (A copy of the ‘337 Patent is attached
27 hereto as Exhibit R.)
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1 34. The ‘337 Patent names Peter Burkhard as the inventor.

2 **C. Patent No. U.S. 10,245,318 (the “318 Patent”)**

3 35. U.S. Patent No. 10,245,318 (the “318 Patent”) describes and claims
4 self-assembling protein nanoparticles useful as vaccines and for vaccination that are
5 constructed from suitable oligomerization domains and incorporating the TLR5
6 binding protein flagellin as an adjuvant molecule.

7 36. The ‘318 Patent, entitled “FLAGELLIN-CONTAINING PROTEIN
8 NANOPARTICLES AS A VACCINE PLATFORM” was issued on April 2, 2019, is
9 assigned to AOP and has been maintained. (A copy of the ‘318 Patent is attached
10 hereto as Exhibit S.)⁸

11 37. The ‘318 Patent names Peter Burkhard, Senthil Kumar Raman, Sara
12 Maria Paulillo, Matteo Piazza, Caroline Kulangara, and Christian Mittelholzer as co-
13 inventors.

14 **IV. The Trade Secrets**

15 38. Plaintiffs’ Trade Secrets (“Trade Secrets”) consist of scientific, technical,
16 and engineering information, to include without limitation the following: 1) scientific
17 procedures for using the SAPN technology, described in the Patents, to engineer
18 specific HSV and COVID-19 epitopes into the SAPNs; 2) computational SAPN-
19 designs of epitopes for HSV, including confidential CD4 and CD8 epitopes and the
20 proteins and/or protein domains of VP16, VP22, RR1, RR2 and gD; 3) epitopes of
21 COVID-19, including different spike-derived peptide sequences as B-cell and T-cell
22 epitopes.

23 39. Plaintiffs took significant measures to restrict and protect access to the
24 Trade Secrets. Among other things, Plaintiffs entered into a Confidential Disclosure
25 Agreement with Sunomix; included confidentiality provisions in various contracts
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27 ⁸ The ‘110 Patent, the ‘337 Patent, and the ‘318 Patent shall, at times, be collectively
28 referred to as the “Patents”.

1 with Defendants; identified the Trade Secrets as “Confidential”; restricted access and
2 use of the Trade Secrets to select individuals and entities; and contractually limited
3 the permissible use of the Trade Secrets.

4 40. Many of the Trade Secrets were reflected in the designs which Plaintiffs
5 sent to Defendants and marked “Confidential”. (Exhibit “O”).

6 **V. Relevant Funding Programs of the National Institute of Health**
7 **(NIH)**

8 41. The NIH has different funding programs. For purposes of this
9 Complaint, it is important to understand the difference between SBIR/STTR grants
10 and R01/R21 grants.

11 42. **SBIR/STTR** grants are intended to provide funding for small businesses.
12 However, recipients must be U.S. companies, located in the United States.⁹ Foreign
13 institutions and foreign components of U.S. organizations are not eligible for
14 SBIR/STTR awards. Accordingly, AOP (a Swiss entity) is not eligible for
15 SBIR/STTR awards.

16 43. **R01/R21** grants are intended to provide funding for general research
17 projects. Foreign institutions are eligible to apply for R01/R21. Accordingly, AOP is
18 eligible to apply for these grants, and in fact, AOP has received significant research
19 funding from the NIH for its malaria and nicotine vaccine projects.

20 **VI. Relevant Contracts Involving Plaintiffs and Defendants**

21 **D. The Confidentiality Disclosure Agreement of September 20, 2016**

22 44. On or about September 20, 2016, AOP and Sunomix entered into a
23 Confidential Disclosure Agreement (“CDA”), governing the exchange of confidential
24 information between Plaintiffs and Sunomix. (A true and correct copy of the CDA is
25 attached hereto as Exhibit P.) This CDA had a five-year term and addressed the
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27 ⁹[https://seed.nih.gov/small-business-funding/small-business-program-basics/
28 eligibility-criteria.](https://seed.nih.gov/small-business-funding/small-business-program-basics/eligibility-criteria)

1 exchange of certain confidential information between Plaintiffs and Sunomix.

2 45. The CDA included a robust confidentiality clause, pursuant to which,
3 AOP and Sunomix agreed as follows:

4 Disclosure of Confidential Information. Except as expressly permitted in
5 this Section, for a period of five (5) years from expiration of the Term (as
6 defined in Section 7 below) or termination of this Agreement, the
7 Receiving Party shall hold in confidence and shall not directly or
8 indirectly disclose, communicate or in any way divulge to any person any
9 Confidential Information, without the prior written consent of the
10 Disclosing Party. The Receiving Party shall (i) use such Confidential
11 Information only for the purposes set forth herein or carrying out any
12 agreement relating to the Confidential Information that is entered into by
13 the parties....Receiving Party shall not use or exploit such Confidential
14 Information for its own benefit or the benefit of another without the prior
15 written consent of the Disclosing Party.

(CDA [Ex. Q], p.1)

13 **E. The Materials Transfer Agreement of November 16, 2016**

14 46. On or about November 16, 2016, UCI, Sunomix, and AOP entered into
15 the Materials Transfer Agreement (“MTA”). (A true and correct copy of the MTA is
16 attached hereto as Exhibit A.) Associate Director Kevin Kennan signed on behalf of
17 UCI. Bouziane signed on behalf of Sunomix. Burkhard signed on behalf of AOP.

18 47. At the outset, the MTA acknowledged that AOP was the owner of the
19 SAPN technology. (MTA [Ex. A], p.1 and Schedule 1.) It was agreed that, subject to
20 strict limitations, Sunomix could assist in producing and delivering SAPNs to UCI.

21 Thereafter, UCI could use the SAPN technology in a single, specified project,
22 generate preliminary data, and use the data to apply for an SBIR grant. (Id., p.1.)

23 That project is described as follows:

24 We will use 2 prototype mouse CD4 and CD8 epitopes loaded in their
25 “self-assembled delivery particles”. We will then perform a pilot vaccine
26 experiment with a small number of mice (10 mice) to makes sure their
27 “self-assembled delivery particles” works by protecting from herpes
28 infection (i.e. HSV-1 and HSV-2).

1 (MTA [Ex. A], p.1 and Schedule 2.)

2 48. The MTA expressly limited Defendants' right to use the SAPN
3 technology for anything but 1) applying for a specific SBIR grant; and 2) in
4 connection with the project described above. The MTA provided:

5 The Materials [defined as AOP's SAPN technology...(i) shall be used
6 **solely in connection with the Project** ...; (ii) are provided solely for
7 investigational use in laboratory animals and/or in vitro studies but shall
8 not be used in humans; (iii) shall not be used for commercial purposes;
9 and (iv) except as allowed in the project, shall not be (or caused to be)
10 modified, changed, derivatized....The term of this Agreement, which is
11 the actual length of time during which the Materials may be used, shall
12 expire one (1) year from the Effective Date of this Agreement [November
13 16, 2016]. Recipient [UCI] will not perform any study, research or
14 analysis, other than the Project, without the prior written consent of
15 Sunomix **and** Alpha-O Peptides.

13 (MTA [Ex. A], § 1, **emphasis added**.)

14 49. The MTA provided for limited distribution and control of the of the
15 SAPN technology:

16 **Distribution and Control.** Recipient agrees not to transfer or distribute
17 the Material to any third party without the prior written permission of
18 Sunomix and AlphaO Peptides. In addition, Recipient shall allow only
19 employees and agents under its direct control and supervision to have
20 access to the Material. The Material shall be used only at Recipient's
21 facilities under the direction of the Recipient Scientist. Recipient shall be
22 free to publish the results of the Project; Recipient agrees to notify
23 Sunomix and Alpha-O Peptides at least 30 days prior to publication. In the
24 event that Sunomix and Alpha-O Peptides identifies any patentable
25 subject matter contained within the publication, Sunomix and Alpha-O
26 Peptides can delay publication for an additional 30 days to elect to request
27 that Recipient file for patent protection contained within the publication at
28 Sunomix's and Alpha-O Peptides's expense.

27 (MTA [Ex. A], § 2.)

1 50. The MTA also included a robust confidentiality clause:

2 Confidentiality. Recipient [i.e., UCI] will not, either during or for a period
3 of three(3) years after the term of this Agreement, disclose to any third
4 person or use any Confidential Information of Sunomix and Alpha-O
5 Peptides or its collaborators for any purpose other than the performance
6 of the Project, without the prior written authorization of Sunomix and
7 Alpha-O Peptides. This obligation shall not apply to information that is (i)
8 in the public domain through no fault of Recipient, (ii) independently
9 developed without use or incorporation of Confidential Information, (iii)
10 was known to Recipient prior to disclosure, (iv) is rightfully received from
11 a third party, or (v) required to be disclosed by law, governmental rule, or
12 regulation or 'Order court with competent jurisdiction. For purposes of this
13 Section 5, "Confidential Information" means all confidential or
14 proprietary information provided by Sunomix and Alpha-O Peptides to
15 Recipient that Sunomix and Alpha-O Peptides discloses to Recipient
16 under this Agreement that is marked or described as confidential. If
17 Recipient is requested or required (by oral questions, interrogatories,
18 requests for information of documents, subpoena, civil investigation
19 demand or similar process) to disclose any Confidential Information,
20 Recipient will provide prompt notice to Sunomix and Alpha-O Peptides
21 of such request, in advance of any such disclosure.

17 (MTA [Ex. A], § 5.)

18 51. Finally, the MTA was subject to a one-year term:

19 The term of this Agreement, which is the actual length of time during
20 which Materials may be used, shall expire one (1) year from the Effective
21 Date of this Agreement.

22 (MTA [Ex. A], § 1 .)

23 **F. The 2017 Licensing Agreement**

24 52. On or about March 21, 2017, Sunomix and AOP entered into the “2017
25 Licensing Agreement”. (A true and correct copy of the 2017 Licensing Agreement is
26 attached as Exhibit B.) AOP agreed to license Plaintiffs’ proprietary SAPN
27 technology for purposes of preparing and submitting an STTR grant proposal for the
28 development of an HSV vaccine. Accordingly, the award 1R41AI138764 (an

1 SBIR/STTR type award) was received by Defendants.

2 53. The agreement provided that AOP would work exclusively with
3 Sunomix **but only** for the project of engineering ten pairs of CD4/CD8 T-cell
4 epitopes into the SAPNs. The SAPNs were to be used only for immunization
5 experiments described in the NIH-STTR HSV vaccine grant proposal. The
6 agreement stated, in pertinent part:

7 Alpha-O owns valuable technology, intellectual property (US8575110,
8 US8546337, EP2766386A1, EP2766386A1, EP17157687.9) and
9 proprietary information related to the design, construction, and bio-
10 production of self-assembling protein nanoparticles (SAPNs).

11 For this project **of engineering ten pairs of CD4/CD8 T-cell epitopes**
12 **into the SAPNs**, Alpha-O is willing to work exclusively with Sunomix
13 and to transfer the technology for the bio-production of such SAPN-based
14 HSV vaccines.

15 Alpha-O will provide Sunomix at least 2 mg of pure protein of two SAPN-
16 constructs.

17 Sunomix will use the bio-production protocol provided by Alpha-O to
18 generate nine similar HSV-SAPN constructs.

19 Sunomix will be responsible to deliver at least 2 mg of pure SAPN-protein
20 of eleven constructs (ten vaccine constructs and one negative control) to
21 the laboratory of Dr. Lbachir Benmohamed at the University of California,
22 Irvine, **to be used for the immunization experiments of the project**
23 **described in the NIH-STTR HSV vaccine grant.**

24 (2017 Licensing Agreement [Ex. B], p.1, emphasis added.)

25 **G. The 2018 License Agreement**

26 54. On or about September 7, 2018, Sunomix and AOP entered into the
27 “2018 Licensing Agreement” to further develop the STTR grant proposal related to
28 the HSV vaccine. (A true and correct copy of the 2018 Licensing Agreement is
attached hereto as Exhibit C.) As with the earlier agreements between Plaintiffs and

1 Defendants, the 2018 Licensing Agreement limited Defendants’ permission to use
2 Plaintiffs’ SAPNs. Specifically, Defendants could only use the SAPNs to write an
3 SBIR or STTR proposal. It also provided clear terms that were intended to protect
4 AOP’s patented SAPN technology and confidential trade secrets.

5 55. The Executive Summary of the 2018 Licensing Agreement stated:

6 Sunomix...is an early state biotechnology company creating novel
7 vaccines using AOP’s proprietary self-assembling protein nanoparticles
8 (SAPNs). As its first deliverable product, Sunomix is developing a SAPN
9 vaccine for the prevention and potential treatment of “*Ocular Herpes*”
10 (OH). Our expectation is to leverage the SAPN platform to develop a
11 highly effective vaccine which combats the symptoms and/or onset of
12 disease for the millions currently living with OH in the United States and
13 worldwide.

14 (2018 License Agreement [Ex. C], p.1.)

15 56. As the 2018 License Agreement further provided:

16 AOP grant[ed] Sunomix a non-exclusive license to write Small Business
17 Innovation Research (SBIR) and Small Business Technology Transfer
18 (STTR) grant proposal in collaboration with the non-profit institution
19 University of California Irvine that will focus on the innovative SAPN
20 vaccine platform. The SBIR/STTR programs are structured in three
21 phases.... (Id., ¶1.) Among other things, it was agreed that “Sunomix will
22 pay to AOP a non-refundable, non-creditable license fee of \$20,000 USD
23 for the Phase 1 SBIR/STTR approved OH grant.” (Id., ¶1.1.) It was further
24 agreed that “Sunomix will pay to AOP a non-refundable, non-creditable
25 license fee of \$150,000 USD for the phase II SBIR/STTR approved OH
26 grant.”

27 (2018 License Agreement [Ex. C], ¶1.2.)

28 **H. The April 11, 2020 and April 22, 2020 Agreements**

57. On or about April 11, 2020 and April 22, 2020, Sunomix and AOP
entered into two short-term license agreements, respectively, the “4/11/20
Agreement” and the “4/22/20 Agreement”. (True and correct copies of the 4/11/20
Agreement and the 4/22/20 Agreement are attached, together, as Exhibit D.)

1 58. The 4/11/20 Agreement and the 4/22/20 Agreement are virtually
2 identical. The Agreements state that AOP:

3 [O]wns valuable technology, intellectual property (US8575110,
4 US8546337, EP2766386A1, EP2766386A1, [and] EP17157687.9) and
5 proprietary information related to the design, construction, and bio-
6 production of self-assembling protein nanoparticles (SAPNs).

7 (4/11/20 Agreement [Ex. D],p. 1; 4/22/20 [Ex. D], Agreement, p. 1.)

8 59. The 4/22/20 Agreement provides:

9 Sunomix and AOP will work in partnership to raise funds to be able to
10 start a Phase I clinical trial at the earliest possible date....[¶]...Sunomix
11 will make best efforts to raise funds to support this Covid-19 vaccine
12 development. For a time period of 4 weeks, AOP grants Sunomix
13 exclusive rights for a Covid-19 vaccine to above patents for the United
14 States of America, with the option to obtain a license for more countries.
15 If during this time period of 4 weeks Sunomix is making convincing
16 progress raising sufficient funds as deemed by AOP, then this time period
17 will be extended by another 4 weeks. If Sunomix raise[es] the funds to be
18 able to start a Phase I clinical trial, Sunomix exclusive rights for a Covid-
19 19 vaccine to above patents for the United States of America will become
20 valid in the US until the expiration date of all the patents. If not..., then
21 all patent rights shall return to AOP.

22 (Ex. E [4/22/20 Agreement], p.1.)

23 60. Additionally, both agreements state:

24 “If at some point a profit is made from this project the profit will be shared
25 between Sunomix and AOP as follows:

26 If the funds are raised by Sunomix, Sunomix will receive 50% of the profit
27 and AOP will receive 50% of the profit.

28 If the funds are raised by AOP, Sunomix will receive 40% of the profit
and AOP will receive 60% of the profit.”

(Ex. [D] [April 11, 2020 Agreement] and Ex. [E]; 4/22/20 Agreement, p.1.)

1 61. The 4/11/20 Agreement was materially similar to the 4/22/20
2 Agreement, except that the term of this agreement was 14 days.

3 **VII. DEFENDANTS' EXPLOIT A FAKE LETTER OF SUPPORT, A**
4 **FORGED SIGNATURE, AND AOP'S MISAPPROPRIATED IP TO**
5 **APPLY FOR FEDERAL GRANT MONEY**

6 62. In late 2020, Burkhard learned that UCI and Sunomix submitted the
7 following NIH grant proposals:

- 8 • On December 19, 2018, Grant Proposal 5R21AI147499;
- 9 • On April 11, 2019, Grant Proposal 1R01AI150091; and
- 10 • On May 22, 2020 Grant Proposal 1R01AI158060.

11 63. In submitting the grant proposals listed above, Defendants exceeded the
12 scope of their License Agreements with Plaintiffs, wrongfully infringed Plaintiffs'
13 patents, and exposed Plaintiffs' Trade Secrets to the public. Defendants were not
14 permitted to apply for these grants. The License Agreements clearly stated which
15 grant proposals were authorized. The three above were not among those. Further,
16 lacking permission to file these grant proposals, Defendants resorted to the following
17 wrongful acts: for proposal 5R21AI147499, Defendants **manufactured a false**
18 **supporting letter, complete with a forged signature** purportedly from Burkhard, in
19 support thereof (Exhibit E); and for proposals R01AI150091 and 1R01AI158060,
20 Defendants submitted falsified information stating that Burkhard is the CSO of
21 Sunomix. (Exhibit G).

22 64. In the Spring of 2019, Defendants defrauded Plaintiffs into assisting
23 them prepare the application package for the unauthorized 1R01AI150091 proposal,
24 by coaxing Plaintiffs with promises of a future contract. Defendants omitted the fact
25 that they had already misappropriated Plaintiffs' Trade Secrets, infringed their
26 Patents, and breached their License Agreements by submitting the unauthorized
27 5R21AI147499 proposals behind their backs. Nor did Defendants inform Plaintiffs
28 that they intended to apply for the 1R01AI150091 proposal behind their back once

1 Defendants had what they needed from Plaintiffs.

2 65. Even in pretending to negotiate terms with Plaintiffs, BenMohamed lied.
3 For example, in an email to Burkhard dated March 25, 2019, BenMohamed told
4 Burkhard that “[t]his whole R01 grant itself is \$1.25M for 5 years (\$250,000 per
5 year).” However, the actual budget, was \$3,221,061.¹⁰ Then, on March 26, 2019,
6 BenMohamed emailed Burkhard, promising to send a contract for what would
7 become the 1R01AI150091 proposal: “For the paperwork and contract I will ask
8 Angie Karchmer, our UCI contract officer, to start this contract paperwork.”
9 However, BenMohamed never intended to, and in fact did not, include Plaintiffs in
10 the 1R01AI150091 proposal. Instead, Defendants submitted the 1R01AI150091
11 proposal on their own, without informing Burkhard.

12 66. Further, because Defendants never obtained Burkhard’s permission,
13 they misrepresented to the NIH that Burkhard worked for Sunomix and provided the
14 NIH with:

- 15 • A fake email address for Burkhard
16 (pburkhard@sunomixtherapeutics.com);
- 17 • A fake phone number for Burkhard, (858) 829-6063;
- 18 • A fake title at Sunomix, Chief Science Officer, even though Burkhard
19 never worked at Sunomix; and
- 20 • A fake salary, that Defendants claimed must be included in the budget
21 (and which, it can be inferred Defendants misappropriated – since
22 Burkhard never received it).

23 67. The following year, a very similar sequence of events played out when
24 Defendants submitted the unauthorized 1R01AI158060 proposal. Again, Defendants’
25 fraudulently represented to the NIH that Burkhard served as the CSO of Sunomix,
26

27 ¹⁰ This figure includes an IDC rate of about 57%. The exact amount is currently unknown to Plaintiffs
28 but it is almost twice the \$1.25M amount reported by BenMohamed.

1 with the same fake email address and a fake phone number for Burkhard. (Exhibit
2 G). To cap it off, Defendants claimed that UCI and Sunomix owned AOP's
3 proprietary SAPN-technology – the very same technology that UCI and Sunomix
4 identified as being owned by AOP in the License Agreements. Defendants knew
5 exactly what they were doing in defrauding Plaintiffs (and the federal government).

6 **VIII. UCI AND BENMOHAMED FILE A PATENT APPLICATION THAT**
7 **INCLUDES AOP'S TRADE SECRETS**

8 68. On or about August 8, 2019, UCI misappropriated Trade Secrets –
9 designs which Burkhard had labeled “confidential” in a prior email – and filed them
10 in U.S. Patent Application Publication No. 16/535,534, entitled “Protection Against
11 Recurrent Genital Herpes by Therapeutic Immunization with Herpes Simplex Virus
12 Type 2 Ribonucleotide Reductase Protein Subunits,” which published as U.S. Patent
13 Publication No. 2020/0046827A1 on February 13, 2020. Further, UCI and
14 BenMohamed falsely claimed that they owned the now-published Trade Secrets;
15 falsely claimed they owned and generated valuable data provided by Plaintiffs; and
16 failed to include any mention of Burkhard as a co-inventor, notwithstanding the
17 presence subject matter in the claims that was invented by Burkhard. Instead,
18 Defendants falsely identified BenMohamed as the sole inventor in the patent
19 application.

20 69. In November 2020, after Burkhard began asking UCI and BenMohamed
21 about the filing of a patent application with Plaintiffs' Trade Secrets/inventive
22 contributions. UCI acknowledged that materials from the joint SBIR project with
23 Plaintiffs relating to SAPNs were included in the patent application. Then, in a Reply
24 to Office Action filed February 22, 2021, with the United States Patent and
25 Trademark Office, UCI and BenMohamed canceled all claims in the patent
26 application relating AOP's SAPN technology. No continuation application was filed,
27 as would be standard practice to continue the prosecution of the SAPN technology,
28 and without a pending patent application, the opportunity for Burkhard and AOP to

1 pursue this subject matter in a patent was effectively destroyed. The publication of the
2 patent application eliminated Burkhard and AOP’s Trade Secrets relating to this
3 subject matter.

4 **IX. SUNOMIX ADVERTISES USING AOP’S TRADE SECRETS.**

5 70. Similarly, on September 22, 2020, Plaintiffs discovered that Sunomix
6 had published Plaintiffs’ trade secrets on their website without permission and
7 without any reference to Plaintiffs. (Exhibit I.) Rather, the SAPN technology is
8 presented as if it were Sunomix’s technology. The Partnership section of the website
9 says:

10 “Sunomix Therapeutics continue collaborative research with University
11 of California Irvine. UCI is using our nano-vaccine prototype for Herpes
12 Vaccine studies. “This is an unprecedented opportunity to exploit **our**
13 **unique technology platform** to advance our understanding of protective
14 immunity against Herpes, and thereby accelerate development and of a
highly effective Herpes vaccine,”.”

15 71. The entirety of the text of Sunomix’s “Technology” webpage is more or
16 less a copy-paste job from a document that Plaintiffs sent to Bouziane, and is thus
17 plain plagiarism.

18 72. At present, Plaintiffs do not know any particulars about Sunomix’ HIV-
19 SAPN project listed in the Pipeline section of Sunomix’ website, but clearly this
20 project was not authorized by Plaintiffs. Plaintiffs look forward to learning more
21 during the discovery phase.

22 **X. DEFENDANTS RETALIATE**

23 **A. Plaintiffs Confront Defendants And Seek Information.**

24 73. In or about November/December 2020, Plaintiffs alerted UCI and
25 Sunomix that it had just become aware of alarming conduct by Defendants. Plaintiffs
26 explained that they had become aware that UCI and Sunomix had submitted several
27 applications for NIH grants using Plaintiffs’ patents and trade secrets and applied for
28 a patent protection with the U.S. Patent Office using the Plaintiffs’ Trade Secrets.

1 Consequently, AOP's Trade Secrets were now in the public domain and were stripped
2 of their value. Further, Defendants had infringed Plaintiffs' patents and created a
3 cloud of uncertainty around them, leaving Plaintiffs' unable to capitalize on
4 significant opportunities to utilize their next-generation vaccine technology, including
5 during the COVID pandemic.

6 74. As Plaintiffs continued to investigate and learn more about Defendants
7 wrongdoing, they kept UCI apprised of many of their findings – including that UCI
8 had received federal research money based on forged documents. UCI repeatedly
9 denied wrongdoing; refused to accept responsibility while at the same time refusing
10 to send information that would have aided Plaintiffs in their investigation – such as
11 unredacted copies of the unauthorized research proposals. Similarly, Sunomix
12 refused to accept service of requests for further information or acknowledge email
13 requests. Instead, it seems as though Defendants had other plans for responding to
14 Plaintiffs.

15 **B. Defendants Harass and Extort Burkhard**

16 75. In response to Plaintiffs' good faith attempts to confront and investigate
17 Defendants' conduct, Bouziane, forwarded an e-mail to Burkhard (on behalf of an
18 unidentified person) claiming that, among other things, Defendants will have
19 Burkhard arrested and prosecuted if he returns to the United States and/or fails to stop
20 his good faith investigation into Defendants' wrongdoing:

21
22 Please tell Peter that UCI and BenMohamed are considering filling a
23 Lawsuit of defamation of Character in Germany, Switzerland and in USA

24 Tell him that he might be arrested the next time he comes to USA because
25 he insulted officially USA and the US Gouvernement in this emails by
26 saying United States are encouraging criminal activities. He will need to
27 explain what he means with this in front of a judge and he will need to pay
28 millions in damage.

I am not taking this lightly

1
2 Either he needs to apologize officially and abandon this non sense route
3 he is taking or he will pay huge price and he might be arrested. The lawyer
4 is asking when the next time he is planning to visit the United States”

5 (Exhibit J.)

6 76. Bouziane himself reiterated the extortionist threat, warning Plaintiffs: “I
7 think they will file it.” (*Id.*) When Plaintiffs informed UCI of the threat, they
8 responded, on May 31, 2022: “[W]e do not believe there has been any misconduct on
9 the part of The Regents.”

10 **C. Defendants Attempt To Cover Up Their Wrongdoing With A Fake**
11 **Contract And Forged Signature.**

12 77. In or about January 2021 – after Plaintiffs notified UCI that they had
13 become aware of their unauthorized grant proposals – Defendants attempted to
14 conceal their conspiracy to steal Plaintiffs’ Trade Secrets by creating a fake contract
15 that purported to grant them broader rights than they actually had. They even forged
16 Burkhard’s signature. This fake contract (the “Fake 2017 License Agreement”) is
17 purportedly dated March 21, 2017. (A true and correct copy of the Fake 2017 License
18 Agreement is attached as Exhibit F.)

19 78. The Fake 2017 License Agreement falsely states that AOP agreed that its
20 intellectual property may be used by Defendants in connection with **all proposals** for
21 SAPN applications toward herpes vaccine. In contrast, the real 2017 License
22 Agreement provided that Plaintiffs would work on an exclusive basis with Sunomix
23 **only as necessary to engineer ten pairs of CD4/CD8 T-cell epitopes into SAPNs.**
24 The real 2017 License Agreement provided that the SAPNs were to be used only for
25 immunization experiments described in the NIH-STTR HSV vaccine grant proposal.

26 79. Significantly, prior to signing the real 2017 License Agreement,
27 Defendants attempted to obtain the broad contractual rights contained in the Fake
28 2017 License Agreement, but AOP clearly denied this request.

1 engage in activities to affect interstate and foreign commerce by collaborating to,
2 among other things:

- 3 • misappropriate and use Plaintiffs' trade secrets to unlawfully apply for
4 federal funding and patent protection with the U.S. Patent Office;
- 5 • fraudulently manufacture and present a fake contract purporting to be
6 signed by Burkhard to apply for federal funding and patent protection
7 with the U.S. Patent Office, and thereafter, cover their tracks;
- 8 • fraudulently manufacture and present a fake letter of support purporting
9 to be signed by Burkhard to apply for federal funding, and thereafter,
10 cover their tracks;
- 11 • falsely claim that Burkhard was the Chief Science Officer of Sunomix,
12 including falsely purporting to pay Burkhard a salary to apply for federal
13 funding using Burkhard's patents and trade secrets;
- 14 • extort and intimidate Burkhard so that he would not pursue claims
15 against Defendants;
- 16 • evade liability and intimidate Plaintiffs by wrongfully and fraudulently
17 disparaging their SAPN technology; and
- 18 • manufacture vaccine products for sale and distribution in the United
19 States and internationally.

20 85. The Enterprise operated by Defendants includes Sunomix,
21 BenMohamed, Bouziane, and UCI but is separate and distinct from each of them.

22 86. In furtherance of the Enterprise, Defendants committed the following
23 acts, without limitation:

- 24 a. Defendants obtained by fraud, artifice, and deception, and, without
25 Plaintiffs' authorization, copied, downloaded, uploaded, photocopied,
26 replicated, transmitted, delivered, communicated, or conveyed Plaintiffs'
27 trade secrets, including specifically their Trade Secrets, and conspired
28 with each other to do the same;

- 1 b. Defendants received, acquired, or possessed Plaintiffs' trade secrets,
2 knowing that they had been stolen, obtained, or converted without
3 Plaintiffs' authorization, and conspired with each other to do the same;
- 4 c. Defendants fraudulently identified Burkhard as the Chief Science Officer
5 of Sunomix in connection with an application for federal funding and
6 grants (NIH awards 1R01AI150091 and 1R01AI158060) and, on
7 information and belief, Defendants used mail or wire to engage in such
8 fraud;
- 9 d. Defendants fraudulently presented a fabricated contract, with a forged
10 signature purporting to be from Burkhard, in connection with an
11 application for federal funding and grants (NIH awards 5R21AI147499,
12 1R01AI150091 and 1R01AI158060) and, on information and belief,
13 Defendants used mail or wire to engage in such fraud;
- 14 e. Defendants fraudulently a fabricated letter of support, again with a
15 forged signature purporting to be from Burkhard, in support of an
16 application for federal funding and/or grant money (NIH award
17 5R21AI147499) and, on information and belief, Defendants used mail or
18 wire to engage in such fraud; and
- 19 f. When Burkhard attempted to assert his rights against Defendants,
20 Defendants extorted and retaliated against Burkhard by threatening to
21 have him arrested and pay millions of dollars in damages, if he returned
22 to the United States.

23 87. Defendants intentionally engaged in these acts to benefit themselves,
24 with the knowledge or intent that these acts would injure Plaintiffs. They did so at
25 least in the Central District of California.

26 88. The actions of Defendants in California constitute racketeering activities
27 in violation of 18 U.S.C § 1832. On information and belief, this pattern of activity
28 poses a threat of continuing because Defendants are continuing to proceed with

1 projects using Plaintiffs trade secrets and patents, including an HIV project. In the
2 alternative, there is close-ended continuity as to Plaintiffs' conduct, which occurred
3 regularly from December 19, 2018.

4 89. Defendants Sunomix and UCI benefited from the racketeering activities
5 of their employees, Bouziane and BenMohamed, and the racketeering activities of
6 Defendants Bouziane and BenMohamed were committed within the scope of their
7 employment while at Sunomix and UCI.

8 90. Plaintiffs incurred and continue to incur substantial internal investigation
9 costs, computer forensic costs and increased operational costs as a result of
10 Defendants' misappropriation, constituting concrete financial loss and injury to
11 Plaintiffs.

12 91. As a direct and proximate result of racketeering activities and violations
13 of 18 U.S.C. § 1962(c) by Defendants, Plaintiffs has suffered economic damages both
14 domestically and abroad, including, but not limited to, injuries in the Central District
15 of California and throughout the world in an amount to be proven at trial.

16 92. The aforementioned acts of Defendants were done willfully, with malice
17 toward Plaintiffs, entitling Plaintiffs to treble damages, attorneys' fees, and costs.

18 93. The racketeering activities and violations of 18 U.S.C. § 1962(c) has
19 caused and will continue to cause Plaintiffs irreparable and substantial injury and
20 therefore cannot be fully redressed through damages alone. An injunction prohibiting
21 Defendants from further acquisition, disclosure, use, and possession of the Plaintiffs
22 trade secrets is necessary to provide Plaintiffs with complete relief.

23 94. If Defendants were permitted to continue to engage in their racketeering
24 activities and violations of 18 U.S.C. § 1962(c), Plaintiffs would be irreparably
25 harmed and the economic damages to Plaintiffs will be difficult to quantify.

26 **SECOND CLAIM FOR RELIEF**
27 **CIVIL RICO (18 U.S.C 1962(d))**
28 **(By Plaintiffs Against All Defendants)**

95. Plaintiffs hereby re-allege and incorporate by reference paragraphs 1

1 through 194, inclusive with the same force and effect as though fully set forth herein.

2 96. Defendants have intentionally conspired and agreed to directly and
3 indirectly participate in the affairs of the Enterprise through a pattern of racketeering
4 activities in violation of 18 U.S.C § 1832, as described in Claim I.

5 97. Defendants knew that their actions constituted a pattern of racketeering
6 activities and agreed to those actions in furtherance of, and for the benefit of the
7 Enterprise, as described in Claim I.

8 98. The actions of the Defendants constitute a conspiracy to violate 18 U.S.C
9 § 1962(c), in violation of 18 U.S.C § 1962(d).

10 99. As a direct and proximate result of racketeering activities and violations
11 of 18 U.S.C. § 1962(d) by Defendants, Plaintiffs have suffered economic damages
12 both domestically and abroad, including, but not limited to, injuries in the Central
13 District of California and throughout the world, in an amount to be proven at trial.

14 100. The aforementioned acts of Defendants were done willfully, with malice
15 toward Plaintiffs, entitling Plaintiffs to treble damages, attorneys' fees, and costs.

16 **THIRD CLAIM FOR RELIEF**
17 **MISAPPROPRIATION OF TRADE SECRETS UNDER THE DEFEND**
18 **TRADE SECRETS ACT (18 U.S.C § 1836(b))**
19 **(By Plaintiffs Against All Defendants)**

20 101. Plaintiffs hereby re-allege and incorporate by reference paragraphs 1
21 through 100, inclusive with the same force and effect as though fully set forth herein.

22 102. The above alleged facts constitute actual and threatened
23 misappropriation of the Plaintiffs' Trade Secrets by Defendants under 18 U.S.C. §§
24 1836 and 1839.

25 103. At all times relevant to this Complaint, Plaintiffs owned Trade Secrets,
26 including but not limited to, those attached hereto as Exhibit "O." The designs
27 contain Plaintiffs' Trade Secrets, including proprietary and secret scientific, technical,
28 and engineering information, to include without limitation the following: 1) scientific

1 procedures for using the SAPN technology, described in the AOP Patents, to engineer
2 specific HSV and COVID-19 epitopes into the SAPNs; 2) computational SAPN-
3 designs of epitopes for HSV, including confidential CD4 and CD8 epitopes and the
4 proteins and/or protein domains of VP16, VP22, RR1, RR2 and gD; 3) epitopes of
5 COVID-19, including different spike-derived peptide sequences as B-cell and T-cell
6 epitopes.

7 104. Plaintiffs took reasonable measures to protect the secrecy of the Trade
8 Secrets. Among other things, Plaintiffs included confidentiality provisions in its
9 contracts with Defendants and/or entered into separate confidentiality agreements.
10 Plaintiffs also identified the Trade Secrets as being, “Confidential”. (Exhibit O.)
11 Plaintiffs also took measures to restrict and protect access to the Designs.

12 105. The Trade Secrets derive independent economic value, actual or
13 potential, from not being generally known to, and not being readily ascertainable
14 through proper means by, another person who can obtain economic value from the
15 disclosure or use of the information.

16 106. The Trade Secrets are related to and used in Plaintiffs’ products and
17 services sold or intended for use in interstate or foreign commerce.

18 107. Plaintiffs derive significant economic benefits from owning the Trade
19 Secrets. Specifically, these Trade Secrets were the subject of license agreements and
20 Plaintiffs intended to use the Trade Secrets in future patent applications and/or to
21 create new inventions for future patent applications.

22 108. Defendants improperly acquired, disclosed, used, appropriated, took,
23 carried away, concealed, copied, duplicated, downloaded, replicated, transmitted,
24 sent, uploaded, communicated, or conveyed the Trade Secrets for the benefit of
25 Defendants, and each of them.

26 109. Specifically, and without Plaintiffs’ permission, Defendants filed a
27 patent application which resulted in the publication of Plaintiffs’ Trade Secrets in
28 U.S. Patent Application Publication No. US20200046827A1, causing the Trade

1 Secrets to be publicly disclosed. Further, Plaintiffs infer based on the information
2 available, that Defendants also published the Trade Secrets or at least described them
3 without permission in several grant proposals submitted to the NIH. Sunomix and
4 Bouziane also published the Trade Secrets on Sunomix's website. Again, the use of
5 the Trade Secrets by Defendants was without Plaintiffs' authorization. Plaintiffs did
6 not consent to Defendants' acquisition (by fraud), disclosure, or use of the
7 Defendants' Trade Secrets.

8 110. Defendants performed such acts in furtherance of their unlawful trade
9 secret misappropriation in at least the Central District of California.

10 111. Defendants intended to convert the Trade Secrets to the economic benefit
11 of one other than their owner, Plaintiffs.

12 112. Defendants knew and intended that Plaintiffs, as the owners of the Trade
13 Secrets, would be injured by their actions.

14 113. As a result of Defendants' misappropriation of the Trade Secrets,
15 Plaintiffs have suffered actual damages in an amount to be proven at trial.

16 114. As a result of the Defendants' misappropriation, Defendants have been
17 unjustly enriched.

18 115. Plaintiffs further plead entitlement to a reasonable royalty to compensate
19 Plaintiffs for Defendants' misappropriation of Trade Secrets.

20 116. Plaintiffs are informed and believe, and thereon allege, that Defendants'
21 misappropriation of the Trade Secrets was willful and malicious based on the facts
22 alleged herein. Defendants acted with a purpose and willingness to commit the acts
23 alleged, and Defendants' conduct was not reasonable under the circumstances.

24 Plaintiffs are therefore entitled to exemplary damages and attorney's fees and costs
25 against Sunomix, BenMohamed, Bouziane, and Does 1-25. Plaintiffs further seek
26 exemplary damages against Sunomix, BenMohamed, Bouziane, and Does 1-25 in an
27 amount up to two times the amount of Plaintiffs' actual damages, according to proof
28 under 18 U.S.C. § 1836.

1 117. The misappropriation of the Trade Secrets has caused and will continue
2 to cause Plaintiffs irreparable and substantial injury and therefore cannot be fully
3 redressed through damages alone.

4 118. If Defendants were permitted to continue to use and disseminate
5 Plaintiffs' trade secrets (i.e. the Trade Secrets), Plaintiffs will be irreparably harmed
6 and the economic damages to Plaintiffs would be difficult to quantify. An injunction
7 prohibiting Defendants from further acquisition, disclosure, use, and possession of the
8 Trade Secrets is necessary to provide Defendants with complete relief.

9 119. Defendants' wrongful conduct alleged herein by their misappropriation
10 of Plaintiffs' Trade Secrets will continue unless enjoined and restrained by this Court,
11 and will cause great and irreparable injury to Plaintiffs' business, and it could cause
12 Defendants to have improper advantages, positions, and rights in the marketplace to
13 Plaintiffs' detriment. Absent injunctive relief, Defendants further disclosure and use
14 of Plaintiffs' trade secrets could irreparably harm Plaintiffs.

15 **FOURTH CLAIM FOR RELIEF**
16 **TRADE SECRET MISAPPROPRIATION UNDER THE CALIFORNIA**
17 **UNIFORM TRADE SECRETS ACT (CAL. CIV. CODE § 3426)**
18 **(By Plaintiffs Against All Defendants)**

19 120. Plaintiffs hereby re-allege and incorporate by reference paragraphs 1
20 through 119, inclusive with the same force and effect as though fully set forth herein.

21 121. Plaintiffs sue under the California Uniform Trade Secrets Act based on
22 the misappropriation of their trade secrets in California through Defendants' improper
23 disclosure of Plaintiffs' trade secrets (i.e. the Trade Secrets) to patent agents in
24 California, the use by those Defendants in preparing their Patent Filings based on
25 Plaintiffs' trade secrets, and UCI, BenMohamed, and Does 1-50's use of Plaintiffs'
26 trade secrets in applying for federal funding.

27 122. The Plaintiffs' trade secrets constitute information, including designs,
28 scientific information, methods, techniques, or processes that derive independent
economic value from not being generally known to the public or other persons who

1 can obtain economic value from the trade secrets' disclosure.

2 123. Specifically, the Trade Secrets depicted in Exhibit O are among
3 Plaintiffs' Trade Secrets. The designs depict scientific, technical, and engineering
4 information, all of which is proprietary and secret, including without limitation the
5 following: 1) scientific procedures for using the SAPN technology, to engineer
6 specific HSV and COVID-19 epitopes into the SAPNs; 2) computational SAPN-
7 designs of epitopes for HSV, including confidential CD4 and CD8 epitopes and the
8 proteins and/or protein domains of VP16, VP22, RR1, RR2 and gD; 3) epitopes of
9 COVID-19, including different spike-derived peptide sequences as B-cell and T-cell
10 epitopes.

11 124. Plaintiffs have taken reasonable measures to protect the secrecy of the
12 Plaintiffs trade secrets. Among other things, Plaintiffs included confidentiality
13 provisions in its contracts with Defendants and/or entered into separate confidentiality
14 agreements. Plaintiffs also identified the Trade Secrets as being, "Confidential".
15 (Exhibit O.) Plaintiffs also took measures to restrict and protect access to the
16 Designs.

17 125. However, Defendants intended to and knowingly stole and, without
18 authorization, disclosed, acquired, used, copied, downloaded, uploaded, photocopied,
19 replicated, transmitted, delivered, communicated, or conveyed Plaintiffs' Trade
20 Secrets.

21 126. Defendants acquired, used or disclosed Plaintiffs' Trade Secrets,
22 knowing that they have been stolen, obtained, or converted without Plaintiffs'
23 authorization. Defendants intentionally engaged in these acts to benefit Defendants,
24 and each of them, with the knowledge or intent that these acts would injure Plaintiffs.

25 127. As a direct and proximate result of violations of Cal. Civ. Code § 3426.1
26 by Defendants, Plaintiffs have suffered economic damages both domestically and
27 abroad, including, but not limited to, in the Central District of California and
28 throughout the world, in an amount to be proven at trial but greatly exceeding

1 \$75,000.

2 128. The aforementioned acts of Defendants were done willfully, with malice
3 toward Plaintiffs.

4 129. As a result of Defendants' misappropriation, Plaintiffs have suffered
5 actual damages and Defendants have been unjustly enriched. Plaintiffs plead in the
6 alternative that, if it is determined that neither actual damages nor unjust enrichment
7 is provable, then Plaintiffs are entitled to a reasonable royalty to compensate Plaintiffs
8 for misappropriation of trade secrets by Defendants.

9 130. Plaintiffs further seek exemplary damages against BenMohamed,
10 Bouziane, Sunomix and Does 1-25 in an amount up to two times the amount of
11 Plaintiffs' actual damages according to proof under Cal. Civ. Code § 3426.3.

12 131. Plaintiffs are informed and believe, and thereon allege, that
13 BenMohamed, Bouziane, Sunomix and Does 1-25's misappropriation of Plaintiffs'
14 trade secrets was willful and malicious based on the facts alleged herein.
15 BenMohamed, Bouziane, Sunomix and Does 1-25 acted with a purpose and
16 willingness to commit the acts alleged, and his conduct was not reasonable under the
17 circumstances. Plaintiffs are therefore entitled to exemplary damages, attorney fees,
18 and costs under Cal. Civ. Code § 3426.4.

19 132. The wrongful conduct and misappropriation of Plaintiffs' trade secrets
20 alleged herein will continue unless enjoined and restrained by this Court, and will
21 cause great and irreparable injury to Plaintiffs' business, and it could cause
22 Defendants to have improper advantages, positions, and rights in the marketplace to
23 Plaintiffs' detriment. Absent injunctive relief, further disclosure and use of Plaintiffs'
24 trade secrets by Defendants would irreparably harm Plaintiffs.

25 **FIFTH CLAIM FOR RELIEF**
26 **FRAUDULENT CONCEALMENT**
27 **(By Plaintiffs Against Defendants)**

28 133. Plaintiffs hereby re-allege and incorporate by reference paragraphs 1

1 through 132, inclusive with the same force and effect as though fully set forth herein.

2 134. Defendants had a duty to make full and complete disclosure to Plaintiffs
3 of all material facts relating to Defendants' filing and prosecution of the patent
4 application US20200046827A1 and submission of proposals for NIH awards
5 5R21AI147499, 1R01AI158060, and R01AI150091 directed to AOP's SAPN
6 technology that Plaintiffs developed and subsequently disclosed to Defendants in
7 confidence.

8 135. Defendants' duty of full and complete disclosure arose from, among
9 other things, the confidential working relationship that Defendants had with Burkhard
10 relating to AOP's SAPN technology developed by Burkhard and the preparation of
11 confidential grant proposals for NIH awards 1R01AI158060, and R01AI150091
12 relating to AOP's SAPN technology. In light of their confidential working
13 relationship, Plaintiffs understood and expected that Defendants would not use or
14 exploit for Defendants' own benefit materials and information that Plaintiffs
15 disclosed to Defendants in confidence during the course of their relationship,
16 including materials and information reflected in Burkhard's contribution to proposals
17 1R01AI158060, and R01AI150091.

18 136. Defendants' duty of full and complete disclosure also arose from, among
19 other things, Defendants' filing and prosecution of the patent application
20 US20200046827A1 including AOP's SAPN technology that Plaintiffs disclosed in
21 confidence to Defendants and as to which Burkhard is a true inventor. Because
22 Burkhard is a true co-inventor of the inventions claimed in the patent application
23 US20200046827A1, Defendants had a duty to disclose to Plaintiffs, all material facts
24 relating to the filing and prosecution of the patent application.

25 137. Defendants' duty of full and complete disclosure also arose from, among
26 other things, incomplete and misleading statements that Defendants made to Plaintiffs
27 regarding Defendants' proposals for NIH awards 5R21AI147499, 1R01AI158060,
28 and R01AI150091 relating to AOP's SAPN technology that Plaintiffs disclosed in

1 confidence to Defendants. A party to a business transaction who makes incomplete
2 statements to the other party regarding the subject matter of the transaction becomes
3 obligated to make a full and complete disclosure of all material facts relating to that
4 transaction.

5 138. Defendants breached their duty of full and complete disclosure by failing
6 to disclose and deliberately concealing from Plaintiffs material facts relating to
7 Defendants' filing of the patent application US20200046827A1 directed to AOP's
8 SAPN technology that Plaintiffs developed and subsequently disclosed to Defendants
9 in confidence. In particular, Defendants failed to disclose and deliberately concealed
10 from Plaintiffs that Defendants filed and prosecuted a patent application relating to
11 AOP's SAPN technology that Plaintiffs developed and subsequently disclosed to
12 Defendants in confidence, including that the patent application omitted Burkhard as
13 inventor and instead included BenMohamed as the sole named inventor, even though
14 Burkhard was a true co-inventor of the inventions disclosed and claimed in the patent
15 application.

16 139. Plaintiffs are informed and believe, and on that basis allege, that
17 Defendants failed to disclose to Plaintiffs, and deliberately concealed from Plaintiffs,
18 Defendants' applying for research funding and filing of the patent application, and the
19 omission of Burkhard as inventors on that application, to avoid disrupting the
20 beneficial relationship that Defendants enjoyed with Burkhard. They did so to
21 secretly retain for Defendants' own benefit the financial, competitive and other
22 benefits of AOP's SAPN technology, including the benefits from awards
23 5R21AI147499, 1R01AI158060, and R01AI150091 and the benefits afforded by
24 patent protection.

25 140. Defendants' fraudulent conduct was willful and wanton, such that
26 Defendants acted with such recklessness or negligence to evince a conscious
27 disregard of Plaintiffs' property rights.

28 141. Plaintiffs have suffered damages as a result of Defendants' actions and

1 concealment, in an amount to be determined according to proof. For example,
2 Defendants deprived Plaintiffs of the benefits, financial opportunities and prestige
3 Plaintiffs would have enjoyed if Defendants had not sought and obtained in its own
4 name NIH awards 5R21AI147499, 1R01AI158060, and R01AI150091 related to
5 AOP's SAPN technology and if AOP and Burkhard had been duly recognized and
6 credited with the invention of the patent application US20200046827A1.

7 **SIXTH CLAIM FOR RELIEF**

8 **FRAUD**

9 **(By Plaintiffs Against UCI And BenMohamed)**

10 142. Plaintiffs incorporate paragraphs 1 through 141, inclusive with the same
11 force and effect as though fully set forth herein.

12 143. "One who willfully deceives another with intent to induce him to alter
13 his position to his injury or risk, is liable for any damage which he thereby suffers."
(Cal. Civ. Code § 1709.)

14 144. In the Spring of 2019, BenMohamed, a managing director of UCI, made
15 several false promises and material omissions to Plaintiffs, with the intent to deceive
16 Burkhard into assisting BenMohamed and UCI to prepare what would ultimately
17 become the unauthorized R01AI150091 Grant Proposal. Specifically, BenMohamed
18 and UCI made the following material misrepresentations:

- 19 i. In an email to Burkhard dated March 25, 2019 BenMohamed stated that
20 "This whole R01 grant itself is \$1.25M for 5 years (\$250,000 per year)."
21 ii. In an email to Burkhard dated March 26, 2019, BenMohamed stated,
22 "For the paperwork and contract I will ask Angie Karchmer, our UCI
23 contract officer, to start this contract paperwork."

24 145. These material statements by BenMohamed and UCI were false and
25 intended to deceive Burkhard into believing that they would enter into a contract with
26 Plaintiffs relating to what ultimately became the unauthorized R01AI150091 Grant
27 Proposal. BenMohamed and UCI never intended to enter such a contract with
28 Plaintiffs, and made these statements only to induce Plaintiffs to provide assistance,

1 Trade Secrets, and proprietary information relating to the SAPNs. Once they had
2 acquired these things from Plaintiffs, BenMohamed and UCI submitted the
3 unauthorized R01AI150091 grant proposal without Plaintiffs, behind Plaintiffs' back
4 and without their knowledge, just as they did in submitting the unauthorized
5 5R21AI147499 grant Proposal. Relatedly, on or about March 26, 2019, and
6 throughout the Spring of 2019, BenMohamed and UCI omitted the following material
7 facts in coaxing Plaintiffs to provide assistance and proprietary information relating to
8 the SAPNs:

- 9 iii. BenMohamed and UCI had *already* submitted the unauthorized
10 5R21AI147499 Grant Proposal behind Plaintiffs' back and without
11 permission;
- 12 iv. BenMohamed and UCI had published Plaintiffs' trade secrets and
13 infringed their patented SAPN technology in submitting the
14 unauthorized 5R21AI147499 Grant Proposal;
- 15 v. BenMohamed and UCI had a fabricated letter of support, with a forged
16 signature purportedly signed by Burkhard, which they used in submitting
17 the unauthorized 5R21AI147499 Grant Proposal.

18 146. At the time BenMohamed and UCI made the misrepresentations
19 described herein (at Paragraph 144, subparagraphs i and ii), they each knew the
20 representations were false. Further, BenMohamed and UCI knew that the omissions
21 described herein (at Paragraph 145, subparagraphs iv, v, and vi) were material and
22 inconsistent with their promises that they would enter into a contract relating to the
23 subject matter of the R01AI150091 Grant Proposal.

24 147. In the Spring of 2020, BenMohamed deceived Burkhard yet one more
25 time into assisting him and UCI to prepare what would ultimately become the
26 unauthorized 1R01AI158060 Grant Proposal. Once they had acquired all materials
27 from Plaintiffs, BenMohamed and UCI submitted the unauthorized 1R01AI158060
28 Grant proposal without Plaintiffs, behind Plaintiffs' back and without their

1 knowledge, just as they did in submitting the unauthorized 5R21AI147499 Grant
2 Proposal in 2018 and the unauthorized R01AI150091 Grant Proposal in 2019.

3 148. BenMohamed and UCI made the aforementioned representations and
4 omissions with the intent to deceive and defraud Plaintiffs, and to induce Plaintiffs
5 into providing with access to Plaintiffs' confidential and proprietary SAPN
6 technology, including the Patents and Trade Secrets. BenMohamed and UCI also
7 made the aforementioned representations and omissions with the intent to
8 fraudulently conceal their misappropriation of Plaintiffs' Trade Secrets, infringement
9 of Plaintiffs' Patents, and conversion of Plaintiffs' proprietary materials relating to
10 the SAPNs.

11 149. The aforementioned representations and omissions deceived, defrauded,
12 and induced Plaintiffs into providing BenMohamed and UCI with access to Plaintiffs'
13 confidential and proprietary SAPN technology, including Patents and Trade Secrets.

14 150. Defendants' misrepresentations and omissions were material. Plaintiffs
15 would not have provided Defendants with access to Plaintiffs' confidential and
16 proprietary SAPN technology had Plaintiffs known that BenMohamed and UCI's
17 express and implied representations were false. Nor would Plaintiffs have provided
18 Defendants with access to Plaintiffs' confidential and proprietary SAPN technology
19 had Plaintiffs known the material facts these defendants omitted. Plaintiffs actually,
20 reasonably, and justifiably relied upon BenMohamed and UCI's representations and
21 omissions.

22 151. Any failure by Plaintiffs to determine the falsity of BenMohamed and
23 UCI's representations and omissions is excused by Defendants' superior knowledge
24 of the facts and continued misrepresentations to Plaintiff.

25 152. Plaintiffs have been substantially harmed by BenMohamed and UCI's
26 misrepresentations and omissions, and have suffered damages as a legal, direct, and
27 proximate consequence of BenMohamed and UCI's conduct. Plaintiffs' reliance on
28 Defendants' representations was a substantial factor in causing them harm.

1 use these Plaintiffs' SAPN technology, except as outlined in this
2 agreement;

3 158. Relatedly, in entering the April 11, 2020 License Agreement, and in
4 discussions leading up to the signing of that agreement, Bouziane and Sunomix
5 intentionally omitted the following material facts in communications with Plaintiffs:

- 6 iii. Bouziane and Sunomix had breached prior contractual agreements with
7 Plaintiffs concerning Plaintiffs' SAPN technology, specifically, by
8 submitting the unauthorized 2018 and 2019 Grant Proposals behind
9 Plaintiffs' back and without permission;
- 10 iv. Bouziane and Sunomix had published Plaintiffs' trade secrets and
11 infringed their patented technology in submitting the unauthorized 2018
12 and 2019 Grant Proposal;
- 13 v. Bouziane and Sunomix had fabricated letter of support, with a forged
14 signature purportedly by Burkhard, in support of the unauthorized 2018
15 and 2019 Grant Proposals; and

16 159. At the time Bouziane and Sunomix made the misrepresentations
17 described herein (at Paragraph 157, subparagraphs i and ii), each of these defendants
18 knew the representations were false. Further, Bouziane and Sunomix knew that the
19 omissions described herein (at Paragraph 158, subparagraphs iv, v, and vi) were
20 material to Plaintiffs' decisions and inconsistent with the promises these defendants
21 made in the April 11, 2020 License Agreement.

22 160. Bouziane and Sunomix made the aforementioned representations and
23 omissions with the intent to deceive and defraud Plaintiffs, and to induce Plaintiffs to
24 providing Defendants with access to Plaintiffs' confidential and proprietary SAPN
25 technology, including among other things, the Patents and Trade Secrets.

26 161. Bouziane and Sunomix also made the aforementioned representations
27 and omissions with the intent to fraudulently conceal their misappropriation of
28 Plaintiff's' Trade Secrets, their infringement of Plaintiffs' Patents, and their

1 conversion of Plaintiffs' proprietary information relating to the SAPN technology.

2 162. The aforementioned representations and omissions deceived, defrauded,
3 and induced Plaintiffs into providing Defendants with access to Plaintiffs'
4 confidential and proprietary SAPN technology.

5 163. Bouziane and Sunomix's representations and omissions were material to
6 Plaintiffs decisions. Plaintiffs would not have provided Bouziane and Sunomix with
7 access to their Patents, Trade Secrets, and other proprietary information had Plaintiffs
8 known these defendants' express and implied representations were false. Nor would
9 Plaintiffs have provided Bouziane and Sunomix with access to their Patents, Trade
10 Secrets, and other proprietary information had known the facts that Bouziane and
11 Sunomix' omitted. Plaintiffs actually, reasonably, and justifiably relied upon
12 Bouziane and Sunomix' representations and material omissions.

13 164. Any failure by Plaintiffs to determine the falsity of Bouziane and
14 Sunomix's representations and omissions is excused by Bouziane and Sunomix's
15 superior knowledge of the facts and continued misrepresentations to Plaintiff.

16 165. Plaintiffs have been substantially harmed by Bouziane and Sunomix's
17 misrepresentations and omissions, and have suffered damages as a legal, direct, and
18 proximate consequence of Bouziane and Sunomix's conduct. Plaintiffs' reliance on
19 Bouziane and Sunomix's representations was a substantial factor in causing them
20 harm.

21 166. Bouziane and Sunomix's intended to cause, and did cause, financial
22 injury to Plaintiffs. Bouziane and Sunomix's willfully misrepresented to Plaintiffs
23 that Bouziane and Sunomix could be trusted with Plaintiffs' Patents and Trade
24 Secrets. However, after having been granted access to Plaintiffs' Patents, Trade
25 Secrets, and other proprietary materials, Bouziane and Sunomix used it to apply for
26 federal funding without Plaintiffs' knowledge or permission.

27 167. Bouziane and Sunomix's conduct was done with a conscious disregard
28 for Plaintiffs' rights and with the intent to vex and annoy Plaintiffs. Bouziane and

1 Sunomix’s acts constitute oppression, fraud, and/or malice under California Civil
2 Code § 3294, entitling Plaintiffs to an award of punitive damages in an amount
3 appropriate to punish Bouziane and Sunomix’s and deter others.

4 **EIGHTH CLAIM FOR RELIEF**
5 **CONVERSION**
6 **(By Plaintiffs Against Defendants)**

7 168. Plaintiffs hereby re-allege and incorporate by reference paragraphs 1
8 through 167, inclusive with the same force and effect as though fully set forth herein.

9 169. Plaintiffs are, and at all pertinent times were, the owner of materials and
10 technology, including but not limited to, the Trade Secrets, all of which were merged
11 into Plaintiffs’ disclosures, which Burkhard prepared and delivered to Defendants for
12 the preparation of the proposals for awards R01AI150091 and 1R01AI158060.

13 170. Defendants have substantially interfered with the property – which
14 Plaintiffs provided to Defendants in confidence and for the sole purpose of submitting
15 one or more joint grant proposals to the NIH – by knowingly and intentionally filing
16 and prosecuting patent application No. 16/535,534 using such property; and thereafter,
17 failing to continue the prosecution of the subject matter relating to the Plaintiff’s trade
18 secrets and SAPNs in a continuation or divisional application, allowed the Plaintiff’s
19 intellectual property around this subject matter to go unprotected and published.

20 171. Plaintiffs did not consent to such use of their property.

21 172. As a direct and proximate result of Defendants’ conversion of Plaintiffs’
22 property, Plaintiffs have suffered, and will continue to suffer, harm and substantial
23 damages in an amount and nature to be proven at trial.

24 173. In furtherance of its conversion of Plaintiffs’ property, Defendants failed
25 to disclose and deliberately concealed from Plaintiffs’ that Defendants filed and
26 prosecuted patent application No. 16/535,534, that resulted in Plaintiff’s property being
27 published on February 13, 2020 in Patent Application Publication No.
28 US2020/0046827A1, using the property that Plaintiffs disclosed to Defendants in

1 confidence. Defendants’ conversion of Plaintiffs property and its failure to disclose and
2 deliberate concealment of such conversion was willful and intentional.

3 174. Defendants’ conversion was willful and wanton, such that Defendants
4 acted with such recklessness or negligence to evince a conscious disregard of AOP’s
5 property rights.

6 **NINETH CLAIM FOR RELIEF**
7 **INFRINGEMENT OF THE ‘337 PATENT**
8 **(By Plaintiffs Against UCI)**

9 175. Plaintiffs hereby re-allege and incorporate by reference paragraphs 1
10 through 174, inclusive with the same force and effect as though fully set forth herein.

11 176. On information and belief, Defendants have infringed and will continue to
12 infringe at least one claim of the ‘337 Patent, pursuant to 35 U.S.C. §217(a) by making
13 and/or using SAPNs in grant Proposal 5R21AI147499, grant Proposal 1R01AI150091,
14 and Proposal 1R01AI158060. Defendants’ infringement has damaged and will
15 continue to damage Defendants, which are entitled to recover damages resulting from
16 Defendant’s wrongful acts in an amount to be determined at trial.

17 **TENTH CLAIM FOR RELIEF**
18 **INFRINGEMENT OF THE ‘110 PATENT**
19 **(By Plaintiffs Against UCI)**

20 177. Plaintiffs hereby re-allege and incorporate by reference paragraphs 1
21 through 176, inclusive with the same force and effect as though fully set forth herein.

22 178. On information and belief, Defendants have infringed and will continue to
23 infringe at least one claim of the ‘110 Patent, pursuant to 35 U.S.C. §217(a) by making
24 and/or using SAPNs in grant Proposal 5R21AI147499, grant Proposal 1R01AI150091,
25 and Proposal 1R01AI158060. Defendants’ infringement has damaged and will
26 continue to damage Defendants, which are entitled to recover damages resulting from
27 Defendant’s wrongful acts in an amount to be determined at trial.

28 ///

1 **ELEVENTH CLAIM FOR RELIEF**
2 **INFRINGEMENT OF THE ‘318 PATENT**
3 **(By Plaintiffs Against UCI)**

4 179. Plaintiffs hereby re-allege and incorporate by reference paragraphs 1
5 through 178, inclusive with the same force and effect as though fully set forth herein.

6 180. On information and belief, Defendants have infringed and will continue to
7 infringe at least one claim of the ‘318 Patent, pursuant to 35 U.S.C. §217(a) by making
8 and/or using SAPNs in grant Proposal 5R21AI147499, grant Proposal 1R01AI150091,
9 and Proposal 1R01AI158060. Defendants’ infringement has damaged and will
10 continue to damage Defendants, which are entitled to recover damages resulting from
11 Defendant’s wrongful acts in an amount to be determined at trial.

12 **TWELTH CLAIM FOR RELIEF**
13 **BREACH OF WRITTEN CONTRACT**
14 **(By Plaintiffs Against All Defendants)**

15 181. Plaintiffs reallege and incorporate herein by reference the allegations
16 contained in paragraphs 1 through 180 inclusive, with the same force and effect as
17 though fully set forth herein.

18 182. On or about November 16, 2016, Plaintiffs and Defendants entered into a
19 written contract, specifically, the Materials Transfer Agreement. (Exhibit A.)
20 Among the materials terms of this contract, UCI and BenMohamed specifically
21 represented that they would maintain the confidentiality of Plaintiffs’ SAPN
22 technology and would not use such technology except as outlined in this contract.

23 183. On or about March 21, 2017, Bouziane and Sunomix entered into a
24 written contract with Plaintiffs, specifically, the 2017 License Agreement. (Exhibit
25 B.) Among the materials terms of this contract, Bouziane and Sunomix agree to
26 maintain the confidentiality of Plaintiffs’ SAPN technology and would not use such
27 technology except as outlined in this contract.

28 184. On or about September 7, 2018, Bouziane and Sunomix entered into a

1 written contract with Plaintiffs, specifically, the 2018 License Agreement. (Exhibit
2 C.) Among the materials terms of this contract, Bouziane and Sunomix agree to
3 maintain the confidentiality of Plaintiffs' SAPN technology and would not use such
4 technology except as outlined in this contract.

5 185. On or about April 11, 2020 and April 22, 2020, Bouziane and Sunomix
6 entered into two written contracts with Plaintiffs. (Exhibit D.) Among the materials
7 terms of these contracts', Bouziane and Sunomix agree to maintain the confidentiality
8 of Plaintiffs' SAPN technology and would not use such technology except as outlined
9 in these contracts.

10 186. Thereafter, Defendants breached the aforementioned agreements as
11 follows:

- 12 i. On or about December 19, 2018, and continuing thereafter, all Defendants
13 breached the MTA by applying for and receiving unauthorized NIH funding
14 in connection with the 5R21AI147499 grant proposal;
- 15 ii. On or about December 19, 2018, and continuing thereafter, Sunomix and
16 Bouziane breached the 2017 License Agreement by applying for and
17 receiving unauthorized NIH funding in connection with the 5R21AI147499
18 grant proposal;
- 19 iii. On or about April 11, 2019, and continuing thereafter, Defendants breached
20 the MTA by applying for and receiving unauthorized NIH funding in
21 connection with the R01AI150091 grant proposal;
- 22 iv. On or about April 11, 2019, and continuing thereafter, Sunomix and
23 Bouziane breached the 2017 License Agreement and the 2018 License
24 Agreement by applying for and receiving unauthorized NIH funding in
25 connection with the R01AI150091 grant proposal;
- 26 v. On or about May 22, 2020, and continuing thereafter, Defendants breached
27 MTA by applying for and receiving unauthorized NIH funding in
28 connection with the 1R01AI158060 grant proposal;

- 1 vi. On or about May 22, 2020, and continuing thereafter, Sunomix and
2 Bouziane breached the 2017 License Agreement, the 2018 License
3 Agreement, the April 11, 2020 License Agreement, and the April 22, 2020
4 License Agreement by applying for and receiving unauthorized NIH
5 funding in connection with the 1R01AI158060 grant proposal;
- 6 vii. On or about August 8, 2019, Defendants breached that MTA by filing for
7 the patent application US20200046827A1 using Plaintiffs' Trade Secrets
8 and
- 9 viii. On or about August 8, 2019, Sunomix and Bouziane breached the 2017
10 License Agreement, the 2018 License Agreement, the April 11, 2020
11 License Agreement, and the April 22, License Agreement by filing for the
12 patent application US20200046827A1 using Plaintiffs' Trade Secrets.

13 187. It was not until September 22, 2020, that Plaintiffs learned of
14 Defendants' breach of the contracts identified herein.

15 188. As a direct and proximate cause of Defendants' various breaches of these
16 written contracts, Plaintiffs have suffered damages in an amount to be proven at trial,
17 but which is not less than \$75,000.

18 189. Plaintiffs have performed all conditions, covenants, and promises
19 required on their part to be performed in accordance with the written contracts
20 identified above, except those obligations that were waived by Defendants or which
21 Plaintiffs were excused or prevented from performing.

22 190. As a direct and proximate result of Defendants' breach of contract,
23 Plaintiffs have suffered damages in an amount to be proven at trial, but far in excess
24 of \$75,000, plus interest.

25 **THIRTEENTH CLAIM FOR RELIEF**
26 **COMMON LAW APPROPRIATION OF NAME OR LIKENESS**
27 **(By Burkhard Against Defendants)**

28 191. Burkhard realleges and incorporates herein by reference the allegations

1 contained in paragraphs 1 through 190, inclusive, with the same force and effect as
2 though fully set forth herein.

3 192. Burkhard alleges that Defendants used his name in the unauthorized
4 grant proposals discussed herein. Burkhard further alleges that Defendants' use of
5 Burkhard's name and likeness was an appropriation of Plaintiff's name without
6 Burkhard's consent to the commercial advantage of Defendants.

7 193. Burkhard alleges that as a direct and proximate result of Defendants'
8 misappropriation of Plaintiff's name and likeness Plaintiff has suffered damages in an
9 amount to be proven at trial.

10 **THIRTEENTH CLAIM FOR RELIEF**
11 **STATUTORY APPROPRIATION OF NAME OR LIKENESS (VIOLATION**
12 **OF CALIFORNIA CIVIL CODE § 3344)**
13 **(By Burkhard Against Defendants)**

14 194. Burkhard realleges and incorporates herein by reference the allegations
15 contained in paragraphs 1 through 193, inclusive, with the same force and effect as
16 though fully set forth herein.

17 195. Burkhard alleges that Defendants knowingly used Burkhard's name and
18 likeness in federal grant proposals. Plaintiff further alleges that Defendants' use of
19 Burkhard's name was a knowing appropriation name and was done knowingly
20 and without Burkhard's consent to the commercial advantage of Defendants.
21 Specifically, Burkhard alleges that Defendants' knowing use and unauthorized use of
22 Burkhard's name and likeness was for the commercial purposes of promoting and
23 submitting Defendants' proposals for numerous lucrative federal grants.

24 196. Burkhard alleges that as a direct and proximate result of Defendants
25 misappropriation of Burkhard's name and likeness Plaintiff has suffered damages in
26 an amount equal to the greater than the statutory minimum or the actual damages
27 suffered by Burkhard as a result of the unauthorized use of Burkhard's name and
28 likeness; and any Defendants' profits from the unauthorized use of Burkhard's name

1 and likeness that are attributable to the use and are not taken into account in
2 computing the actual damages.

3 197. Burkhard alleges that Defendants' conduct as herein alleged was
4 perpetrated with malice, fraud and/or oppression as to justify an award of punitive
5 and exemplary damage

6 **FIFTEENTH CLAIM FOR RELIEF**

7 **TRADE LIBEL**

8 **(By Plaintiffs Against UCI and BenMohamed)**

9 198. Plaintiffs reallege and incorporate herein by reference the allegations
10 contained in paragraphs 1 through 197, inclusive, with the same force and effect as
11 though fully set forth herein.

12 199. As described above, on or about December 17, 2020, UCI and
13 BenMohamed, in retaliation for Plaintiffs' inquiry concerning Defendants'
14 unauthorized use of Plaintiffs' SAPN technology, willfully and without justification
15 emailed a written statement to the NIH, disparaging and defamatory the stability and
16 utility of Plaintiffs' SAPN technology.

17 200. The defamatory statements were untrue.

18 201. UCI and BenMohamed knew the defamatory statements were untrue or
19 acted with reckeless disregard of the truth or falsity of the statements.

20 202. UCI and BenMohamed knew or should have recognized that someone
21 else might act in reliance on the statement, causing Plaintiffs financial loss. Plaintiffs
22 allege that these defendants published their false statements with oppression and
23 malice.

24 203. As a direct and proximate result of UCI and BenMohamed's defamation
25 and trade libel, Plaintiffs have been damaged, the exact amount to be proven at trial.

26 204. Upon information and belief, defendants' defamation and trade libel was
27 oppressive, fraudulent and malicious, entitling Plaintiffs to punitive damages in
28 excess of its compensatory damages, the exact amount to be proven at trial.

205. Upon information and belief, UCI and BenMohamed threaten and

1 propose to perform further acts of defamation and trade libel; and unless defendants
2 are restrained by appropriate injunctive relief, Plaintiffs will continue to suffer
3 irreparable harm for which there is no adequate remedy at law

4 **SIXTEENTH CLAIM FOR RELIEF**
5 **UNFAIR BUSINESS PRACTICES (VIOLATION OF CALIFORNIA**
6 **BUSINESS & PROFESSIONS CODE § 17200)**
7 **(By Plaintiffs Against Defendants)**

8 206. Plaintiffs reallege and incorporate herein by reference the allegations
9 contained in paragraphs 1 through 205, inclusive, with the same force and effect as
10 though fully set forth herein.

11 207. Each of Plaintiffs and Defendants is a “person” within the meaning of
12 California Business and Professions Code § 17201.

13 208. Defendants’ conduct in misappropriating Plaintiffs’ Trade Secrets and
14 appropriating Plaintiffs’ likeness for commercial gain is an unlawful business act or
15 practice.

16 209. Each Plaintiff has suffered an injury in fact and has lost money or
17 property as a result of Defendants’ unfair competition within the meaning of
18 California Business and Professions Code § 17204.

19 Plaintiffs are further entitled to judgment and equitable relief against these
20 Defendants, as set forth in the Prayer for Relief, including full restitution and/or
21 disgorgement of all revenues, earnings, profits, compensation, and benefits which
22 may have been obtained by these Defendants as a result of such business acts or
23 practice, in addition to a civil penalty imposed pursuant to California Business and
24 Professions Code § 17206(b). Plaintiffs further seek to enjoin Defendants to cease
25 and desist from engaging in the practices described herein.

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1 irreparable injury to his finances.

2 217. To the extent Plaintiffs have no adequate remedy at law to compensate
3 him for his continuing injuries inflicted by Defendants, Plaintiffs are entitled to
4 temporary, preliminary, and permanent injunctive relief.

5 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of
6 them, as set forth below:

7 1. For general damages according to proof, plus any applicable rate
8 of interest;

9 2. For special damages according to proof;

10 3. For punitive damages against Defendants, as permitted by law;

11 4. For attorney’s fees as permitted by law;

12 5. For costs of suit as permitted by law;

13 6. For interest at the legal rate provided by law;

14 7. A judgment that Plaintiffs directly infringe the ‘318 Patent

15 8. A judgment that Plaintiffs directly infringe the ‘337 Patent;

16 9. A judgment that Plaintiffs directly infringe the ‘110 Patent;

17 10. For an order correcting the inventorship on the 16/535,534 Patent
18 Application to identify Peter Burkhard as the sole inventor;

19 11. For the imposition of a constructive trust requiring that
20 Defendants hold the 16/535,534 Patent Application for the benefit of Peter
21 Burkhard;

22 12. For injunctive relief; and

23 For such other and further relief as this Court may deem just and proper.

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1 **JURY DEMAND:** ADDITIONALLY, Plaintiff demands trial of this matter by jury.
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3 Respectfully submitted,
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6 DATED: September 19, 2023
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10 By: /s/ Chad M. Mandell

11 Chad M. Mandell (Cal. Bar. No. 272775)

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27 PETER BURKHARD, PH.D, Plaintiffs
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