

**CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
CALIFORNIA CIVIL RIGHTS DIVISION**

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DAVID GUAN, GLORIA BANH, RISHI
VISWANATHAN, and MING YU (VANESSA) CHI

Claimants,

**DFEH/CRD CHARGE
OF DISCRIMINATION
AND RETALIATION:
NARRATIVE STATEMENT**

-against-

PENUMBRA, INC.,

Respondent.

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Claimants David Guan, Gloria Banh, Rishi Viswanathan, and Ming Yu (Vanessa) Chi hereby allege the following against Respondent Penumbra, Inc. (“Penumbra” or the “Company”) in support of their employment-based claims for unlawful discrimination based on race, national origin, and retaliation by Respondent as well as certain individuals:

NARRATIVE STATEMENT OF MATERIAL FACTS

PRELIMINARY STATEMENT

“The psychological toll that the discrimination and constant harassment has been immense. As a result of Mr. Bajema’s discriminatory and hostile actions, I am in fear of both my physical and mental health.”

Claimant David Guan, December 5, 2022, email to HR Employee Marvelle Roberts

1. Penumbra, Inc. is a publicly traded medical device company headquartered in Alameda, California. It was founded in 2004 by Arani Bose and Adam Elsesser. The Company manufactures devices for interventional therapies to treat vascular conditions such as stroke and aneurysm.

2. The company purports to employ more than 3,800 employees in 33 different companies, about 75% of whom are “from a minority background.”

3. However, behind the veneer of these seemingly impressive diversity statistics, the reality is that Penumbra employees of Asian descent are considered as and treated like second class citizens. In contrast, white employees are favored for promotion and career advancement opportunities, afforded visible speaking opportunities, routinely placed into managerial roles ahead of schedule, and consistently paid higher salaries, bonuses, raises, and awarded greater equity compensation.

4. In short, Penumbra's Asian employees, such as Claimants, are quick to hit the proverbial "glass ceiling" and are rarely recognized and appreciated for their achievements, whereas white employees reign supreme.

5. Ironically, Penumbra is a company that prides itself on purportedly being diverse and progressive. To that end, in official filings and on earnings calls, the Company will often cite diversity statistics. However, these statistics are not representative of how the Company truly operates. Rather, these statistics are nothing but a carefully orchestrated facade that bely the inner workings of a highly discriminatory and racist company. The truth is in the pudding.

6. Below is what Penumbra stated in its last 10-K filing:

Human Capital Resources

As of December 31, 2023, we had approximately 4,200 employees worldwide. None of our U.S. employees are represented by a collective bargaining agreement. Some of our employees outside of the United States are subject to mandatory, industry-specific collective bargaining agreements or the protections of statutory works councils as required by local law. We have never experienced a work stoppage. We believe our employee relations are good.

In managing our business, we focus on a number of measures and objectives with respect to the attraction, development and retention of our employees that we believe are important to our business, including **diversity**, communication, compensation, professional development, and health, well-being and safety:

- We are proud to be an equal opportunity employer and to have a diverse employee population and leadership team: for example, as of December 31, 2023, approximately 50% of our employees are female, more than half of our senior management team are female, and approximately 75% of our employee population in the United States are from a minority background. We seek to attract a diverse slate of candidates, including from historically underrepresented groups. We believe that **diversity** and inclusion in the workplace enhance employee engagement and stimulate innovation, and that people in diverse groups work better, share information more broadly and consider a wider range of views. We pride ourselves on our diverse workforce, which we believe has been and will continue to be a major contributor to our growth and innovation, and intend to continue to make **diversity** and inclusion a cornerstone of our efforts regarding our workforce.
- We aim to maintain an "open door" culture, and encourage employees to voice their concerns, questions, suggestions and comments. We strive to foster an atmosphere where employees openly share ideas and where people are treated

with dignity and respect. Our goal is to provide a productive working environment based on mutual respect and the highest level of ethical and lawful conduct. We have also established a hotline for employees to report suspected violations of law and concerns related to accounting, auditing and ethical violations.

7. While it may be true that female employees make up nearly half the Company's nearly 4,000 employees, they are paid **significantly less** than male employees, **over \$20,000 less on average.**

8. Further, non-white employees are paid significantly less than their white counterparts, who are the highest paid ethnic group in the Company by a sizeable margin. In fact, Asian employees, who make up approximately 45% of Penumbra's workforce, are paid **less than half** of what white employees, who make up about 25% of the workforce, are paid on average.

9. Similarly, Blacks, Latinos, and Pacific Islanders, who make up less than 20% of the Company's workforce collectively, are **paid half** of what white employees earn on average.

9. These stark figures that Penumbra desperately wants to remind hidden are the true story behind Penumbra's so-called diversity. Whites are disproportionately favored when hiring for the highest paying roles, and even when not, they are given more opportunities to advance as

compared to Asians and other minorities. This allows whites to ascend the ranks while minorities, such as Asians, remain in lower-paying roles.

10. Unfortunately, the harrowing stories detailed below of racial discrimination, harassment, and unlawful retaliation experienced by Claimants David Guan, Gloria Banh, Rishi Viswanathan, and Ming Yu (Vanessa) Chi are all too emblematic of the experiences of the typical Asian and/or non-white Penumbra employee. This action seeks to put an end to this segregation once and for all.

PARTIES

11. At all times relevant hereto, Charging Party, David Guan (“Charging Party Guan”) has been a resident of the State of California, County of Alameda and is of Asian descent.

12. At all times relevant hereto, Charging Party, Gloria Banh (“Charging Party Banh”) has been a resident of the State of California, County of Alameda and is of Asian descent.

13. At all times relevant hereto, Charging Party, Rishi Viswanathan (“Charging Party Viswanathan”) has been a resident of the State of California, County of Alameda and is of Asian (Indian) descent.

14. At all times relevant hereto, Charging Party, Ming Yu (Vanessa) Chi (“Charging Party Chi”) has been a resident of the State of California, County of Alameda and is of Asian descent.

15. At all times relevant hereto, Penumbra, Inc. (“Respondent”) was and is a domestic for-profit company maintaining its principal place of business at 1 Penumbra, Alameda, California, 94502.

16. Upon information and belief, Respondent employs over 3,000 individuals on a full-time or full-time equivalent basis and thus is subject to all statutes upon which Charging Party Guan, Banh, Viswanathan, and Chi are proceeding herein.

17. At all times relevant hereto, Charging Parties were employees of Respondent.

A. David Guan

I. Charging Party Guan Joins Respondent to Continue His Successful Career in Product Management

18. Prior to joining Respondent in 2018, Charging Party Guan worked at STAAR Surgical beginning in 2012 as an Operations Specialist. There, he served as a supervisor of 21 direct reports and managed the firm's core production line which produced \$44 million in annual revenue as well as the physical inventory for all the firm's product lines. He then worked at Deloitte before receiving his MBA degree from Stanford University in 2017. Subsequently, Charging Party Guan worked at Abbott Labs, where he was a Global Product Manager and managed a \$148 million book of business.

19. Charging Party Guan joined Respondent Penumbra as a Manager on December 17, 2018. At Respondent, Charging Party Guan drove double-digit year-over-year sales growth in its flagship Access and Embolization franchises. Charging Party Guan also created new customer outreach programs which helped achieve consistently strong customer penetration figures within the first year following product launches.

20. Charging Party Guan excelled at Respondent and single-handedly launched three products within six months of joining the Company, a feat that had never been done before nor replicated since. Charging Party Guan was hired by Gitanjali Barry, (formerly) Vice President of Marketing and Product Management.

II. After Becoming Charging Party Guan’s Supervisor, Nick Bajema Shuts Out, Harasses, and Demeans Mr. Guan, and Routinely Engages in Offensive, Racist Workplace Conduct

21. Unfortunately, Charging Party Guan’s employment at Respondent started to drastically change for the worse about a year into his employment in November 2019 when, for reasons unknown, Charging Party Guan was forced to start reporting to Director of Marketing Nick Bajema rather than Ms. Barry. This change in reporting was somewhat surprising because it was clear that Ms. Barry did not view Mr. Bajema as a strong performer.

22. Rather, Mr. Bajema was a poor performer who finished near last place in sales training out of a more than 15-person class. Ms. Barry acknowledged many times how it was expected that any Product-related employee in sales training would finish at least in the top three, but that Mr. Bajema was the only person whom she knew who was unable to do that. Notably, a female Asian employee named Michelle Li who was in the same training class as Mr. Bajema and who finished in second place was only moved to Senior Manager – a role subordinate to Mr. Bajema’s Director role.

23. Ms. Barry also told Charging Party Guan that she had to reassure Mr. Bajema to not worry about being unable to perform as well as Ms. Li and that she was continuously frustrated that, even months after the sales training, Mr. Bajema was still unable to grasp the basic concepts of how the Company’s products worked, let alone the advanced clinical knowledge that is required for someone in Mr. Bajema’s position.

24. Even though Ms. Barry was technically no longer Charging Party Guan’s direct supervisor, she continued having one-on-one meetings with him as she was still Mr. Bajema’s direct supervisor, and it was understood that Mr. Bajema was nowhere close to being ready to

lead. Ms. Barry promised Charging Party Guan that she would still support him and look out for his interests, and that these continued one-on-one meetings were one way this was accomplished.

25. Ms. Barry regularly tasked Charging Party Guan to arrive at their one-on-one meetings with at least three action items on which Mr. Bajema could improve – a request that she justified by repeatedly saying that there was “no way” that anybody could tell her that Mr. Bajema was “doing a good job.”

26. In December 2019, Ms. Barry acknowledged that Charging Party Guan was already performing the work of a Senior Manager despite not holding the title but told Charging Party Guan that she would leave it to Mr. Bajema to execute the promotion during Charging Party Guan’s next performance review – which she assured him would be administered soon – so that Mr. Bajema could “become more invested” in Charging Party Guan’s growth.

27. However, Mr. Bajema did not administer Charging Party Guan’s performance review until July 2020, in part because he claimed that he “had to promote Fionah [Dominis] first” – a white employee whom he promoted in May 2020 – supposedly because she had been at the Company longer than Mr. Guan. Mr. Bajema claimed that this was his “policy.” Charging Party Guan would later learn that Mr. Bajema’s purported practice of issuing promotions to his employees based on their longevity at the Company was selectively applied, and only when it benefitted Caucasian employees, at the expense of Asian employees.

28. In fact, Mr. Bajema would later promote a white employee named Lee Pusateri who joined Respondent two years after Charging Party Guan did (and who was even trained by Charging Party Guan no less) at least three times, on each anniversary of Mr. Pusateri’s start date like clockwork, leading to Mr. Pusateri eventually surpassing Charging Party Guan’s level. This occurred in spite of the fact that, by the time of Charging Party Guan’s unlawful termination in

January 2023, Mr. Pusateri had yet to launch a single product on his own (Charging Party Guan and Mr. Pusateri launched one product together before Charging Party Guan's departure), whereas Charging Party Guan launched multiple products on his own, within two highly-specialized, highly-visible, and highly-differentiated franchises. Charging Party Guan was only promoted once from Manager to Senior Manager, even though he had taken over and was performing the work of a Franchise Manager.

29. Notably, Charging Party Guan was told many times that "Product people," like himself, Mr. Pusateri, and Ms. Dominis, were measured by their product launches.

30. To add insult to injury, when Mr. Bajema finally gave Charging Party Guan his long-overdue promotion to Senior Manager, the Company gave Charging Party Guan a meager \$5,000 raise, far lower than raises typically given to Caucasian employees at the time of their promotions, and well below what Mr. Bajema had assured Charging Party Guan that Charging Party Guan would receive "for sure" (a raise to a salary of well over \$200,000) once Mr. Bajema became Charging Party Guan's direct supervisor and was able to "take care" of Charging Party Guan.

a. *Going to HR is "Bad for the Long Game and Rest of Your Career"*

31. Over the next two years, Mr. Bajema subjected Charging Party Guan to blatantly disparate treatment based on his race as well as a steady stream of offensive, racist, and unwelcomed commentary. In a preview of events to come, Mr. Bajema was also open about his penchant for engaging in retaliation against those who engage in protected activity, particularly those who complained against him.

32. For instance, in March 2021, Mr. Bajema told Charging Party Guan to cut his hair, and when Charging Party Guan asked why (particularly because Mr. Bajema would

compliment Caucasian employees with blonde hair for growing out their hair), Mr. Bajema recounted a story about how a former boss at another company told him that he would not be promoted unless he shaved his beard which Mr. Bajema did and was then soon promoted.

33. When Charging Party Guan noted how his former boss's conduct - i.e., to condition a promotion on an employee's appearance - sounded like an "HR violation," Mr. Bajema implicitly warned Charging Party Guan to never complain to HR. Mr. Bajema then justified that statement by claiming that he (Mr. Bajema) "couldn't go to HR [at his former employer] because it's bad for the long game and rest of your career."

34. Putting his words into practice, during an investigation launched by Respondent's HR department into a race discrimination complaint lodged by Nora Mohammed, an employee of Egyptian descent, against her white manager, Liz Reynolds, Mr. Bajema alerted Charging Party Guan that HR, after having just spoken with him and Mr. Pusateri, would be calling Charging Party Guan within the hour. He proceeded to tell Charging Party Guan that, "we like Liz and need to protect her at all costs," and to paint Ms. Mohammed as a poor performer who held a grudge against Ms. Reynolds and who was never subjected to racism – which Mr. Guan of course had no way of knowing.

35. Further, Mr. Bajema also attempted to get an employee named Elizabeth Novick fired for over a year after she accused him of sexist behavior and engendering a "frat bro" culture at the Company and would even boast to Charging Party Guan that he (Mr. Bajema) was the "best" at "building a paper trail." When Ms. Novick finally left Respondent at the end of 2021, Mr. Bajema bragged about playing a big role in her ouster. As will be demonstrated even more later, Mr. Bajema's history of falsifying narratives was a theme across his unlawful treatment of non-white employees and those who accused him of engaging in unlawful behavior.

b. White Penumbra Employees Have “It,” But Non-Whites Don’t

36. A familiar refrain from Mr. Bajema would be how certain employees at Respondent have “it” while others did not have “it.” When Charging Party Guan would ask him for examples of people who had “it,” Mr. Bajema would identify only white employees, without providing any further detail as to any specific management skills or qualities they possessed.

37. Furthermore, Mr. Bajema emphasized that “it” was “just something you have – you either have it or you don’t,” and that “it” was not something that could be taught or acquired.

38. Among the employees whom Mr. Bajema described as having “it” (all of whom were, of course, white) were: (i) Ms. Dominis, who had never successfully launched a single product until 2023; (ii) Mr. Pusateri, about whom Mr. Bajema would say, “anybody who has ever had a bad thing to say about Lee, I automatically don’t like him because Lee is the best dude I know”; (iii) Carson Milner, Charging Party Guan’s counterpart on another team who has on many occasions turned to Charging Party Guan for help on how to launch products as successfully as Charging Party Guan has and for whom Charging Party Guan created a checklist to help guide him; (iv) Zach Arko, the son of a prominent physician who was widely regarded as incompetent and a “screw-up”; (v) George Malone merely because of his British accent; and (vi) Brock Vendsel, a personal friend of Mr. Bajema’s who was not even a Company employee at the time.

39. However, as described below, Mr. Vendsel was hired almost immediately after Charging Party Guan’s termination despite having previously been rejected as a candidate for hire multiple times after several people, including Charging Party Guan, strongly objected to him. This led to a years’-long grudge held by Mr. Bajema against those people, including

Charging Party Guan, during which Mr. Bajema repeatedly stated that they “fucked up” by not hiring Mr. Vendsel because he would have been a “cool boss.”

40. In contrast, among those whom Mr. Bajema described as *not* having “it” included: (i) Charging Party Guan; (ii) Arko Mukherjee, a Marketing Manager of Indian descent; (iii) Charging Party Viswanathan; (iv) Senior Manager Michelle Li who was Asian, a Harvard and Wharton School of Business graduate, and widely regarded as a “superstar” at her previous company and by Ms. Barry; (v) Matthew Lai, an Asian employee whom Mr. Bajema said he could only tell apart from Charging Party Guan by the direction of the part in their hair; and (vi) Tuma Oladapo, a Black employee whom Mr. Bajema offensively and repeatedly described, along with Ms. Mohammad, as “diversity hires.”

c. Asian Employees at Penumbra are Not to be Trusted

41. Mr. Bajema would similarly be quick to laud the purported management ability of white employees such as Ms. Dominis, Mr. Pusateri, and Mr. Malone, whom he stated he “can totally trust” because they are “like [him]” and to whom he would favorably award travel opportunities, which meant they would be excused from doing any technical work related to a product which would then invariably roll down to Asian employees.

42. In contrast, Mr. Bajema would say that he could not trust Asian employees like Charging Party Guan. This included Mr. Mukherjee whom Mr. Bajema described as a “shitbag” after he asked for an overdue promotion that Mr. Bajema refused to give him despite launching multiple key products. Mr. Bajema even punished Mr. Mukerjee for having the “audacity” to challenge his decision not to promote him by making him report to Ms. Dominis, a white peer of Mr. Mukerjee’s who had just undeservedly and prematurely received a promotion from Mr. Bajema.

43. This also included Charging Party Viswanathan, with Mr. Bajema saying that it was “obvious” he could not send Charging Party Viswanathan to meet with physicians located in Florida and other states ostensibly because of Charging Party Viswanathan’s Indian nationality and accent.

44. Mr. Bajema would also say that Asians, especially those of Indian descent, were known to cheat which is why they received good grades.

d. “Dog Eaters” and “Ragheads” at Penumbra

45. Many employees, including Charging Party Guan, have personally witnessed Mr. Bajema routinely use racial epithets and demeaning race-based coded language to describe and/or malign people who were not white. For example, Mr. Bajema would remark about how certain foreign accents were advantageous to career growth while others were not, describing Mr. Malone’s British accent as “smart,” but Indian and other Asian accents as a distraction, going so far as to openly mock Asian accents.

46. For instance, Mr. Bajema would mock how the character of Long Duk Dong from the movie “Sixteen Candles” – a character widely condemned as an offensive stereotype of Asian people – spoke with an exaggerated Asian accent and would even mimic how the character would say, “no more yanky my wanky, the Donger need food” to communicate that he was hungry.

47. Mr. Bajema also used the derogatory term “raghead” to refer to Asian and other non-white employees, even asking Charging Party Guan while the two traveled to Charleston, South Carolina in August 2021, “What kind of raghead is Arko?” referring to the Indian Mr. Mukherjee.

48. On another occasion, during the SNIS 2021 conference, Mr. Bajema asked Mr. Mukherjee what kind of “raghead” a brown-skinned physician was, clearly a microaggression towards Mr. Mukerjee rather than an innocent, “ignorant” question.

49. Charging Party Guan has also witnessed Mr. Bajema use derogatory terms such as “dog eaters” to refer to persons of Asian descent. He even asked Charging Party Guan whether an Asian physician at the SNIS 2021 conference was the “dog-eater type,” and whether Charging Party Guan had ever eaten dog, before giggling.

50. Mr. Bajema would also make derisive comments in the workplace about how China was our “enemy” and that it was “normal” for people who visited China to get hacked by its government.

51. Further, Mr. Bajema referred to how Ms. Mohammed “wears something on her head,” and when Charging Party Guan asked if he was referring to her hijab, Mr. Bajema offensively said that he thought it was called a turban but that it did not matter because it was all the same.

e. White Employees “Fail Up” at Penumbra

52. Mr. Bajema’s biased beliefs also carried over to his managerial actions and decisions as Mr. Bajema would repeatedly assign Charging Party Guan to prepare the quantitative analyses of products but have the white, British-accented and “smart” Mr. Malone present Mr. Guan’s work product because, according to Mr. Bajema, “nobody will question it coming from George.”

53. This white nationalist sentiment was expressed on multiple occasions and resulted in Charging Party Guan having to spend time on extraneous tasks such as teaching Mr. Malone how to use Excel to create basic charts and how to edit and revise emails to the sales force.

Other white employees would also undeservedly serve as the “face” of products, including Ms. Dominis, Mr. Arko, and Mr. Bajema himself.

54. For instance, Ms. Dominis had never launched a single product before joining Penumbra; yet was allowed multiple times to “pick” which franchise she would manage (and she chose Neuro Thrombectomy, which is the most coveted (and easiest) franchise to manage). As a result, Mr. Bajema shuffled Mr. Guan between multiple franchises, seemingly on instantaneous whims.

55. This meant that while Ms. Dominis was able to cruise through her work, Mr. Guan had to learn the intricacies of the Company’s most difficult-to-manage franchises, on the fly no less, without help, each and every time he was shifted around between franchises for Ms. Dominis’s benefit. Despite this, Mr. Guan was still highly successful while having to manage much more with less help. In fact, while Mr. Guan was always rated highly for his performance, he was compensated less than and only promoted after Ms. Dominis.

56. Moreover, whereas Mr. Guan has had multiple successful product launches under his belt, as of 2024, Ms. Dominis has completely botched three major product launches for which she was responsible for managing.

57. Most recently, Ms. Dominis was tasked with launching Penumbra’s highly anticipated and highly touted flagship product, Thunderbolt. However, the launch of this product was a complete failure, failing to meet expectations so badly that the Company had to temper expectations about the product’s success during earnings calls, telling analysts not to even consider its revenue potential in assessing the Company’s stock performance.

58. The second most recent product for whose launch Ms. Dominis was responsible for managing was another highly anticipated product named Jet 7 MAX. Despite Mr. Guan

being far more experienced and qualified to launch this product, this task was given to Ms. Dominis. Nonetheless, Ms. Dominis had to ask Mr. Guan for help launching the product multiple times, and openly stated that she had no idea what goes into a product launch. Mr. Guan had to literally walk her through the basics of a product launch, but despite receiving assistance from Mr. Guan and others, the product completely failed and was taken off the market. Because of her shortcomings, the product flopped during the prelaunch phase, despite it being a strong and viable product. In fact, the product was later rebranded and just recently relaunched in 2024, which demonstrates that the failure of the launch was due to the failings of its product manager, Ms. Dominis, and not due to the actual performance of the product.

59. Further, when Mr. Guan first started working at Penumbra, Ms. Dominis helped Mr. Arko launch a product named Jet 7 Xtra Flex, which was so poorly launched that the product was recalled due to the product managers' failure to account for the proper usage of the product when training physicians, leading to multiple patient deaths and eventually a mandatory recall notice from the FDA. This was the worst event ever to happen at Penumbra in relation to a product launch. Despite this failure, Ms. Dominis and Mr. Arko were given opportunity after opportunity to rise the ranks, effectively failing upward.

60. Moreover, under Ms. Dominis's leadership, the Jet 7 franchise has fallen from 70% market share to approximately 30% market share now.

61. In addition, while Mr. Guan has managed more than 20 direct reports across multiple companies in his lifetime, it was Ms. Dominis who was given opportunity after opportunity to hire direct reports. Mr. Guan was the one who actually needed direct reports since he was managing multiple franchises that required much more work to be done, but Mr. Bajema gave Ms. Dominis the opportunity to increase the head count under her instead. Mr. Bajema

would say that Mr. Guan had to prove that he could manage people first, despite him already having extensive managerial experience, whereas Ms. Dominis, who never previously managed people, did not have to prove the same.

62. Further, upon information, every single one of Ms. Dominis's direct reports has reported a toxic culture working under her. They have either quit and accused her of being a substandard manager (as in the cases of Arko Mukherjee and Mr. Viswanathan) or are gearing up to quit (as in the case of Sydney Weible).

63. There are countless examples of instances in which Mr. Guan had to carry double the responsibilities Ms. Dominis had with none of the resources, while also needing to help her complete the most basic responsibilities of her job, such as correcting her emails for grammar and spelling errors, teaching her how to use Excel, helping her think of ideas, and coaching her direct reports Mr. Mukerjee and Mr. Viswanathan, adding a huge burden to Mr. Guan's already overextended roles

64. In fact, Ms. Dominis is a low performer who is nonetheless rated highly by Mr. Bajema due to their agreement to help and vouch for each other. Ms. Dominis has acknowledged to Mr. Guan many times that she would not be successful at any other company because she lacked the necessary skillset which is why she needed to make sure she maintained a great relationship with CEO Adam Elsesser and Mr. Bajema.

65. Moreover, since Ms. Dominis was on leave when the first three of the RED family of products were launched, Mr. Mukherjee ended up successfully launching these three RED products over three consecutive months. Mr. Mukerjee did such a good job that these three products are still the flagship devices for this franchise to this day. After Mr. Mukerjee left due to experiencing racism at the Company and being discriminatorily slotted under Ms. Dominis,

Mr. Viswanathan launched RED43, the only other device part of the flagship RED family of catheters. However, Mr. Bajema still only gives credit to Ms. Dominis for “leading the launch” despite her performing nearly none of the work and providing such shoddy feedback that Mr. Pusateri and Mr. Guan often had to step in to help guide Mr. Viswanathan when he needed guidance and feedback.

66. Notably, when Mr. Guan spoke to Mr. Bajema regarding his own leveling at Penumbra, Mr. Bajema’s stated reason for why Ms. Dominis always needed to be promoted before Mr. Guan could be promoted was that she “just has it.” Mr. Bajema has repeated this statement to Mr. Guan many times, often in a mocking tone. Others whom Mr. Bajema has said “has it” are George Malone and Zach Arko, both of whom are white.

67. And as to Mr. Arko, he is widely known as a poor performer lacking marketing experience who fails to perform the most basic functions of his job and is undeserving of his role, but since his father is a prominent physician (Dr. Frank Arko) who uses Penumbra’s products, and because Mr. Bajema has said that he just has “it,” he has been afforded opportunity after opportunity to rise.

68. Mr. Arko is even referred to as a “golden retriever” for his inability to do anything but laugh, smile, and party. Mr. Arko has been incapable of doing the bare minimum for which a marketer/product manager is responsible, and Mr. Guan constantly had to help and coach him until Mr. Arko was allowed to work remotely from Dallas.

69. Within Penumbra, few people respect Mr. Arko’s abilities. Externally, Mr. Arko is known as a womanizer who has had affairs with colleagues despite being married with a child and another one on the way. Despite this dreadful reputation that seriously undermines the

respect required to lead a product, Mr. Arko remains the face of the products he manages at Penumbra.

70. With regard to Mr. Bajema, after he was hired, Ms. Barry asked Mr. Guan and others to tutor Mr. Bajema, as she was growing increasingly frustrated with his inability to grasp basic concepts behind products under his purview. This went so far as to cause Mr. Guan to have to spend weekends coaching Mr. Bajema repeatedly on the most basic of concepts that he, like all those under him, learned in sales training.

71. Mr. Bajema also repeatedly assigned Charging Party Guan tedious technical assignments because, as he stated, “you’re Asian so you should be good with this kind of stuff.” When Charging Party Guan would object to Mr. Bajema’s piling on of work onto Charging Party Guan’s already heavy workload, he would make remarks along the lines of, “dude, look at you,” or “look in the mirror, this should be easy for you.”

72. Moreover, Mr. Bajema would repeatedly and discriminatorily deny Charging Party Guan’s requests for direct reports – much needed as Charging Party Guan was simultaneously managing two of the Company’s most important and differentiated product franchises – while rewarding white employees (all of whom had responsibility for only a single franchise) with direct reports, promotions, and career advancing accolades. Within Respondent’s Product Marketing organization alone, there were countless examples of white employees who were individually responsible for a single franchise being offered resources, opportunities, and promotions ahead of non-white employees.

73. Mr. Bajema would also repeatedly haphazardly and disruptively move Asian employees, including Charging Party Guan and Mr. Mukherjee, between franchises, while rarely, if ever, moving white team members from one franchise to another. In fact, this became a

running joke at the Company with people asking Charging Party Guan, “so what does Nick have you doing now?”

74. Notably, in November 2021, Mr. Bajema, after teasing Charging Party Guan for months that he had “big news” for him, announced that Charging Party Guan would be taking over responsibility for the Neuro Surgical franchise – without informing Charging Party Guan of this decision before the announcement.

75. Charging Party Guan would later learn that Mr. Bajema had months earlier approached both Ms. Dominis and Mr. Pusateri about this notoriously difficult franchise but they had both declined to take over this responsibility, resulting in it being foisted onto Charging Party Guan and his already-full plate.

76. Ms. Dominis and others openly complained about the horrors of managing this difficult franchise – widely known to be the most difficult franchise at the Company to manage – which required extremely specialized skills, which the Franchise Manager at the time, Ms. Novick, possessed.

77. The position of Franchise Manager is one level above Senior Manager, so by taking over these duties on top of already performing his duties as a Senior Manager, Charging Party Guan further confirmed how his career development was being stymied in a position for which he was overqualified.

78. To add further insult to injury, Charging Party Guan only had about one month, which included the winter holidays, to learn everything about this franchise before Ms. Novick’s departure from the Company. However, Mr. Bajema strongly discouraged and practically forbade Charging Party Guan from speaking with Ms. Novick, despite Charging Party Guan’s

insistence that he needed to speak to her to get trained in the product-specific knowledge required to do the job.

79. Nevertheless, Mr. Bajema constantly pressured Charging Party Guan to stop speaking to Ms. Novick and went as far as to admonish him that he should be able to figure it out on his own. It was almost as if Mr. Bajema took pleasure in making the terms and conditions of Charging Party Guan's employment as difficult as possible, while treating white employees with deference and kid gloves.

80. Notably, at least one individual, Mr. Mukherjee, raised a complaint regarding Mr. Bajema's discrimination against non-white employees during his exit interview with the Company in March 2022, specifically referring to Charging Party Guan as one of the victims/targets of Mr. Bajema's discriminatory conduct.

81. However, the HR employee conducting Mr. Mukherjee's exit interview did not appear to write anything down concerning Mr. Mukherjee's complaint nor seem to care, and no investigation into the allegations was ever launched by Respondent.

III. After Spreading Vicious, Racist Lies About Charging Party Guan and Charging Party Banh Throughout the Company, Mr. Bajema Falsely Claims That Charging Party Guan Resigned From His Position

82. In late-August 2022, due to an emergency health concern related to Charging Party Banh's mother, both Charging Party Banh and Charging Party Guan, her partner, requested time off to be able to travel to Hong Kong and be with Charging Party Banh's family.

83. Charging Party Guan requested three weeks off until September 19, 2022, and because of the uncertainty surrounding the sensitive situation and given that there was nothing urgent at the time on Charging Party Guan's work calendar, Mr. Bajema approved the request.

84. Charging Party Guan kept Mr. Bajema updated on his travels, which included sending Mr. Bajema a text message on August 31, 2022, to let him know that he may be unable to respond to messages immediately but would get back to him as soon as possible.

85. On September 6, 2022, Charging Party Guan notified Mr. Bajema that he planned to return early to the United States on September 9, 2022. Despite Charging Party Guan's efforts to return earlier than planned, on September 12, 2022, Charging Party Guan reached out to Mr. Bajema to request an additional three weeks off. Mr. Bajema approved Charging Party Guan's request to be off until October 14, 2022.

86. Charging Party Guan reminded Mr. Bajema that he would have no phone or email access during most of his time off, which Mr. Bajema said was fine. Little did Charging Party Guan know, however, that Mr. Bajema would use the fact that Charging Party Guan was difficult to reach – which Mr. Bajema knew would be the case – to spread false, racist rumors around the office, including to the entire marketing department, senior executives, and sales leadership, about the Chinese government kidnapping and capturing Charging Party Guan and Charging Party Banh, causing obvious concern at the Company.

87. Mr. Bajema took advantage of Charging Party Guan's offline status to tarnish his reputation within Respondent. Mr. Bajema was so convincing that Charging Party Guan would later learn that the Company's IT department attempted to track his and Charging Party Banh's whereabouts, while an HR employee named Marvelle Roberts contacted the U.S. consulate in Hong Kong to inquire about their travels. Again, Mr. Bajema had been explicitly told by Charging Party Guan that it would be difficult for him to communicate from Hong Kong, and Mr. Bajema approved Charging Party Guan to be off until October 14, 2022.

88. After Charging Party Guan and Charging Party Banh arrived back in the U.S., Charging Party Guan contacted Mr. Bajema on October 11, 2022, to notify him that they had just gotten back to the U.S. Charging Party Guan and Mr. Bajema then agreed to meet on October 14, 2022.

89. Notably, two days earlier, on October 12, 2022, Charging Party Banh met with her manager, Senior Director of Strategy Alex Reeves, Executive Vice President of Strategy Jason Mills, and an HR Director named Casey Jenkins, and mentioned to them how, while the details were not yet entirely thought through, she was interested in working remotely from Hong Kong, and if possible, by the end of the year.

90. Mr. Reeves, Mr. Mills, and Ms. Jenkins were supportive of the proposed change so long as there was an overlap in working hours given the time differences.

91. However, apparently, word about Charging Party Banh's aspirations to relocate to be closer to her family spread to Mr. Bajema who, unbeknownst to Charging Party Guan, took it upon himself to tell multiple employees throughout the Company that Charging Party Guan would be leaving Respondent to move to Hong Kong.

92. When Charging Party Guan and Mr. Bajema finally met over Microsoft Teams on October 14, 2022, Charging Party Guan disclosed that Charging Party Banh was considering moving to Hong Kong, to which Mr. Bajema responded by eagerly encouraging Charging Party Guan to go with Charging Party Banh to Hong Kong, even saying how, if it was his wife who wanted to move somewhere, he would quit his job and follow her.

93. Despite Mr. Bajema's suggestive tone, Charging Party Guan never indicated any intent to leave Respondent during this meeting. Rather, Charging Party Guan mentioned that,

unlike Charging Party Banh who could relocate to Hong Kong more easily, he did not have any residency status or rights in Hong Kong, making any move improbable.

94. Charging Party Guan and Mr. Bajema met again on October 20, 2022, this time in person. Mr. Bajema disclosed to Charging Party Guan that the whole company, including Chief Executive Officer Adam Elsesser, had been worried about him and Charging Party Banh while they were in Hong Kong, notwithstanding the fact that Charging Party Guan had expressly warned Mr. Bajema multiple times that it would be difficult to maintain consistent communications during their trip, had told Mr. Bajema halfway through their trip that they were fine, and despite Mr. Bajema's own email notifying staff that Charging Party Guan would be on PTO until mid-October.

95. Mr. Bajema also mentioned that he had heard from Mr. Mills about Charging Party Banh's desire to move to Hong Kong. Charging Party Guan asked Mr. Bajema whether it would be possible for him to work remotely from Hong Kong to which Mr. Bajema stated that nobody on his team was allowed to work remotely, even from Los Angeles which Charging Party Guan proposed as an alternate possibility given that there were direct flights available from Los Angeles to Hong Kong.

96. Mr. Bajema told Charging Party Guan, "I will take care of you," and that they would "definitely" figure something out even if it meant Charging Party Guan joining a different team, since Charging Party Guan did "great work and everyone loves [him]."

97. Mr. Bajema then told Charging Party Guan that he would contact HR and that he preferred that Charging Party Guan not talk to anybody about his desire to work remotely yet.

98. Again, at no point did Charging Party Guan indicate that he had made any decision to move, much less that he planned to resign from Penumbra to Mr. Bajema, who

Charging Party Guan understood intended to help him determine whether moving was even a possibility. Indeed, Mr. Bajema acted as if he was more excited than anyone, including Charging Party Guan, about the possibility of Charging Party Guan moving to Hong Kong.

99. The next day, October 21, 2022, Mr. Bajema emailed Ms. Roberts telling her that Mr. Elsesser had approved his request to backfill Charging Party Guan's position and that Charging Party Guan would be resigning from Respondent in December 2022 and relocating to Hong Kong, with the exact date to be determined.

100. Mr. Bajema also told Ms. Roberts that the position that needed to be backfilled, Marketing Manager, was identical to a recently posted position but with the difference being that the backfill would be allowed to work remotely, even though he had told Charging Party Guan just one day earlier that he would not allow anyone on his team to work remotely.

101. Ms. Roberts then asked Charging Party Guan to confirm that he was leaving the Company in December. It had become abundantly apparent that Mr. Bajema was manufacturing a false story to terminate Charging Party Guan and replace him with a remote hire, namely Mr. Bajema's Caucasian friend, Brock Vendsel.

102. Over the next week, Charging Party Guan attempted to speak to Ms. Roberts to discuss and clarify the situation; that is, that no decision had been reached as to whether he would be moving, and more importantly, he never indicated to Mr. Bajema that he would resign.

103. Charging Party Guan and Ms. Roberts finally met on November 4, 2022, at which time Charging Party Guan explained that he had not resigned and that he thought Mr. Bajema would be reaching out to HR to see whether there were any other roles at the Company that he could perform from Hong Kong since Mr. Bajema had made it clear that his current role could not be performed remotely.

104. Charging Party Guan also questioned why the backfill for his position would be allowed to work remotely whereas Mr. Bajema refused to allow Charging Party Guan to even work remotely from Los Angeles. Ms. Roberts told Charging Party Guan to speak with Mr. Bajema to clear up any confusion.

105. Charging Party Guan and Mr. Bajema subsequently met in person in Mr. Bajema's office on November 10, 2022. Charging Party Guan told Mr. Bajema that he had spoken to HR and wanted to make clear that he never said that he would resign and that he had no plans to move at that time.

106. Mr. Bajema became irate and hostile, and started yelling about how he could not have Charging Party Guan on his team because he needed to "plan for the future." Charging Party Guan asked Mr. Bajema why Mr. Bajema was not relieved that Charging Party Guan wanted to continue working in the same capacity and instead seemed so keen on having Charging Party Guan resign. Mr. Bajema stated that he did not understand why Charging Party Guan was not moving and that he needed a departure date from Charging Party Guan.

107. Charging Party Guan then pointed out how Charging Party Banh had never said that she would resign, undermining any notion that he would resign despite currently having no plans to move to Hong Kong.

108. Mr. Bajema spoke so loudly that others in the office could hear him yelling through his closed office door.

109. The next day, November 11, 2022, Mr. Bajema wrote to Ms. Roberts to tell her that he had met with Charging Party Guan and there was a misunderstanding from their October 17, 2022, meeting and that Charging Party Guan would like to seek employment with a different Penumbra team that could accommodate him living in Hong Kong and matched his skillset.

110. Mr. Bajema also stated that Charging Party Guan's current role could not be performed from Hong Kong and that while Charging Party Guan needed more time to determine his exact last date, Mr. Bajema would like it to be December 31, 2022.

111. Again, Mr. Bajema omitted the fact that Charging Party Guan never stated that he would be moving to Hong Kong.

IV. Charging Party Guan Reports the Racial Discrimination and Harassment to Which He and Other Asian Employees Have Been Subjected, Only to be Viciously and Blatantly Retaliated Against for Engaging in Protect Activity, Culminating in His Unlawful Termination

112. A few days later, on November 14, 2022, Charging Party Guan wrote to Ms. Roberts, telling her that he had neither resigned from the Company nor his role, and had only alerted Mr. Bajema to a desire to potentially relocate to Hong Kong, if possible.

113. Charging Party Guan stated that if remote work was an option, he would be grateful to be able to transition to it if he decided to try and relocate, but that otherwise he intended to remain in his role.

114. Charging Party Guan reiterated how Mr. Bajema had told him that any product-focused role could never be remote but then agreed to allow his backfill to be completely remote, and that Mr. Bajema had become hostile during their last meeting and tried to pressure him to resign.

115. Importantly, Charging Party Guan told Ms. Roberts how Mr. Bajema's conduct was another example of the discriminatory treatment that he had to endure from Mr. Bajema due to his skin color and race, and how Mr. Bajema accommodated white employees and set them up for success while going out of his way to hold back non-white employees from career advancement, or even force them out.

116. After Charging Party Guan engaged in protected activity by complaining to Ms. Roberts about how he was being discriminated against by Mr. Bajema because of his race, Mr. Bajema immediately began a campaign of retaliation against Charging Party Guan.

117. For instance, on or around November 19, 2022, at the SVIN 2022 conference, Mr. Bajema told an employee named Jasmine Kerr that “it’s going to get ugly” between him and Charging Party Guan and asked for incriminating evidence to use against Charging Party Guan, namely whether “David said anything about me” while Charging Party Guan was out with colleagues the previous night (Ms. Kerr said no).

118. Mr. Bajema was clearly trying to stir dissension among the staff and turn employees against Charging Party Guan by signaling that he was not to be trusted or considered part of the team.

119. Notably, after the completion of the Company’s Fellows Course at the conference, Mr. Bajema sent a message thanking the entire sales leadership team and commended each member of his team individually by name for taking time out of a Saturday to work on the course; that is, everyone except Charging Party Guan whom he noticeably excluded.

120. This was particularly hurtful and damaging because Mr. Bajema had requested that Charging Party Guan go out of his way to fly into the conference primarily to work the Fellows Course, and Charging Party Guan supported the course from start to finish, set-up to take down, and was the last team member to leave the conference on Saturday.

121. Mr. Bajema’s retaliatory conduct was so blatant that other employees reached out to Charging Party Guan asking him why he was excluded from Mr. Bajema’s message.

122. On November 21, 2022, Charging Party Guan had a follow-up discussion with Ms. Roberts during which he further complained about Mr. Bajema’s racially discriminatory

conduct, his fostering of a hostile work environment that targeted non-white employees, his inability to lead, and his penchant for dishonesty and poor management skills.

123. A week later, on November 28, 2022, Mr. Bajema once again retaliatorily excluded Charging Party Guan from team communications that were directly related to his product franchise, despite copying white team members on the message who were not even responsible for the topic/product franchise.

124. Two days later, on November 30, 2022, Ms. Roberts notified Charging Party Guan that Respondent had hired a third-party outside investigator named Gabriele Handler Marks of Hulst Handler LLP to supposedly conduct an independent and neutral investigation into Charging Party Guan's complaints, and that he should expect to speak to her soon and be prepared to send her information relevant to his complaints.

125. Ms. Roberts told Charging Party Guan that the Company would take appropriate action at the conclusion of the investigation and inform him of the outcome, and that the Company had a "no retaliation" policy.

126. However, Ms. Roberts concluded the email by stating that it was Respondent's "understanding" that Mr. Guan resigned in October when he expressed his intent to move to Hong Kong as his position could not be performed internationally, and that the Company was "willing to work" with him on an exit date.

127. Of course, the Company's "understanding" was incorrect and perplexing as Charging Party Guan had never resigned nor was there any evidence – besides Mr. Bajema's bogus claims – suggesting that he did resign.

128. On December 5, 2022, Charging Party Guan wrote to Ms. Roberts and asked to clarify the basis on which the Company had determined that he resigned back in October 2022

and why this conclusion was being reached prior to the completion of the purported independent investigation into his discrimination complaints, as Mr. Bajema's attempt to oust him from the Company under false pretenses was yet another example of his discriminatory treatment towards Charging Party Guan.

129. Charging Party Guan also summarized Mr. Bajema's recent retaliatory acts, including excluding him from important team communications, attempting to turn employees against him, and even continually perpetuating the falsehood that he had resigned despite the multiple conversations Charging Party Guan had with him to clarify any supposed misunderstanding.

130. Charging Party Guan also notified Ms. Roberts how Mr. Bajema took the opportunity of Charging Party Guan being out on PTO to malign his reputation and character within the Company, spreading racist rumors that the Chinese government had captured him and feigning concern, knowing that Charging Party Guan would not have telephone or email access to refute these falsehoods.

131. Charging Party Guan also accused Mr. Bajema of encouraging others to take the extraordinary step of contacting the U.S. Consulate in Hong Kong and members of his family knowing that this was all unnecessary, and then discouraging him from speaking to anyone at the Company, including HR, about the situation, stating that he would "reach out to HR" on his behalf, only to falsely report that Charging Party Guan had resigned.

132. Charging Party Guan further noted how Mr. Bajema's discriminatory treatment had negatively impacted his career and well-being, including how Mr. Bajema had repeatedly and inexplicably skipped him over for promotions despite the value he added to the Company that was objectively more than white employees who had repeatedly been promoted.

133. Charging Party Guan noted other discriminatory conduct in which Mr. Bajema had engaged, including derogatory and racist name-calling (as articulated *supra*) and how the Company had repeatedly turned a blind eye to his unlawful conduct, allowing it to fester and emboldening him to continue his misconduct.

134. Indeed, despite complaints from multiple individuals and substantial evidence of Mr. Bajema's questionable character and professional history,¹ the Company failed to investigate or put controls in place to ensure fair, non-discriminatory treatment.

135. Charging Party Guan ended his email by stating: *"The psychological toll that the discrimination and constant harassment has been immense. As a result of Mr. Bajema's discriminatory and hostile actions, I am in fear of both my physical and mental health."*

136. Ms. Roberts replied to Charging Party Guan's email on December 7, 2022, to let him know that she had passed on his email to the investigator.

137. Charging Party Guan followed up with Ms. Roberts on December 10, 2022, to let her know that he was continuing to hear from more and more colleagues throughout the organization that he had left the Company which in and of itself was retaliatory as it diminished his stature at the Company and made it difficult to perform his work duties effectively.

138. Charging Party Guan implored the Company to clear up these misperceptions as soon as possible. He reiterated: "I am still with the company, and I have never resigned."

¹ According to internet sources, prior to being hired by Penumbra, Mr. Bajema was involved in a military scandal in which he and another soldier were allegedly fooling around with grenades, resulting in injuries to several soldiers amongst their own platoon. Rather than report the incident truthfully, it has been alleged that Mr. Bajema and the other soldier, Michael Barbera, colluded to cover it up as an enemy attack using intimidation and false reporting, resulting in one of the casualties receiving a Purple Heart. See <https://www.columbian.com/news/2014/apr/26/witness-to-iraqi-killings-kept-quiet/>

Later, Mr. Barbera was tried for allegedly killing two unarmed Iraqi boys after someone from Mr. Bajema's platoon came forward as a whistleblower. See <https://archive.triblive.com/news/army-recon-leader-charged-with-murders-of-two-iraqi-boys-says-he-doesnt-kill-for-no-reason/>

139. Ultimately, on January 18, 2023, Ms. Roberts and Sandra Aguilera, an HR Specialist, notified Charging Party Guan that the so-called independent investigation had concluded and failed to substantiate any discrimination, and that Charging Party Guan's final day would be January 18, 2023.

140. It was clear that the investigation had a preordained result, and that the mountain of evidence of discriminatory conduct, including statements from Charging Party Viswanathan and Charging Party Banh corroborating Charging Party Guan's account, was dismissed.

141. The Company had made up its mind that it was going to support Mr. Bajema no matter what, with Charging Party Guan's decision to engage in protected activity and report the racial discrimination he had faced for years serving as the "nail in his coffin."

142. Charging Party Guan's last day at Respondent was January 25, 2023, and he left still being owed approximately \$17,000 in unreimbursed business expenses and had to forfeit nearly \$200,000 worth of restricted stock units.

V. After Unlawfully Terminating Charging Party Guan, Mr. Bajema Hurriedly Backfills the Newly Open Position with Brock Vendsel and Permits Multiple White Employees to Work Entirely Remotely, an Accommodation He Discriminatorily Denied to Asian Employees

143. As the above demonstrates, Mr. Bajema's actions towards Charging Party Guan leading to his termination, in combination with the relentless disparagement of and disparate treatment towards non-White, and particularly Asian Penumbra employees, were clearly motivated by unlawful racial bias.

144. Moreover, Mr. Bajema's actions immediately after orchestrating Charging Party Guan's purported resignation are just as telling. Within weeks of Charging Party Guan's termination, Mr. Bajema and Respondent hurriedly hired a white individual, Brock Vendsel, who

had previously been rejected for hire based on the written opinions of numerous employees who had interviewed him, to backfill Charging Party Guan's role.

145. To add even further insult to injury, Mr. Bajema permitted Mr. Vendsel to perform the position remotely from Arizona.

146. In addition, after terminating Charging Party Guan and refusing to consider any remote work accommodation, Mr. Bajema permitted multiple white employees to work remotely, including explicitly allowing Mr. Pusateri the freedom to purchase a home in and work remotely from Los Angeles, and Becca Warwood from Montana.

147. Furthermore, shortly following Charging Party Guan's unlawful termination, Mr. Bajema did not hesitate to continue to give preferential treatment to Respondent's white employees by elevating Ms. Dominis and Mr. Pusateri to Director, which was three levels above Charging Party Guan's title at the time of his firing (Senior Manager), despite Charging Party Guan's unquestionable stronger performance and track record.

B. Gloria Banh

I. Ms. Banh, a Seasoned and Successful Finance Professional, Joins Penumbra

148. Charging Party Banh is a 2011 graduate of the University of California, Berkeley where she obtained a Bachelor of Arts degree in Economics. Charging Party Banh was a member of the prestigious Golden Key International Honor Society, National Society of Collegiate Scholars, and Regents Scholarship Committee.

149. In 2012, Charging Party Banh began working at PricewaterhouseCoopers as an Associate and was ultimately promoted to Senior Associate and made the point person for a hedge fund client worth \$16 billion.

150. In 2016, Charging Party Banh worked for Google as a Senior Revenue Accountant where she designed and implemented automation processes.

151. Then, in 2017, Charging Party Banh moved to LAM Research to be a Senior Financial Analyst, and subsequently received two promotions, before moving to Shutterfly where she worked as a Finance Manager.

152. Charging Party Banh joined Penumbra in July 2019 as a Manager in Respondent's Corporate Strategy team. She has had an unblemished performance record and has been promoted to the role of Senior Manager, while serving as an effective and compassionate supervisor to multiple Penumbra employees.

II. Charging Party Banh Raises the Idea of Potentially Relocating to and Working Remotely From, Hong Kong to be Near Her Family, Which is Initially Received Positively by the Company

153. As referenced above, between late-August 2022 and mid-October 2022, Charging Party Banh took approved vacation time to travel, along with her partner, Charging Party Guan, to Hong Kong to be with her family during a family health emergency.

154. As discussed above, Charging Party Guan's supervisor, Mr. Bajema, took advantage of the fact that Charging Party Banh and Charging Party Guan were, at times, unreachable (despite having been told by Charging Party Guan that this was to be expected), to spread a vicious and racist rumor throughout the Company that the two had been kidnapped and were being detained by the Chinese government, which sullied their reputations and caused obvious alarm among Respondent's employees.

155. Ultimately, after returning from Hong Kong, Charging Party Banh had a check-in meeting on October 12, 2022, with Mr. Reeves, Mr. Mills, and Ms. Jenkins.

156. Charging Party Banh explained to them how she and Charging Party Guan were never in danger during their travels and were simply unreachable due to circumstances beyond their control.

157. Charging Party Banh further noted how this was a difficult time for her and her family, and that, while she had no intention or desire to resign from her position, she did aspire to move closer to her family, if possible, at least temporarily.

158. Mr. Reeves, Mr. Mills, and Ms. Jenkins all expressed support for Charging Party Banh's ambition to potentially relocate and work remotely from Hong Kong and assured Charging Party Banh that they would work to resolve any logistical issues that may arise due to her being in a different time zone.

159. Charging Party Banh was already managing two employees who worked remotely, including Charging Party Chi and Keshav Biyani, who lived in and worked from India. As such, the prospect of Charging Party Banh working remotely, even from another country, was not inconceivable so long as the differences in time zones were accounted for.

160. Charging Party Banh stated that she was prepared to ensure an overlap in working hours considering Mr. Mills's preference that she continue to manage Charging Party Chi and Mr. Biyani.

161. The takeaway from this meeting was clear: the Company highly valued Charging Party Banh, understood that she was going through a very trying time in her life, and would support her should she wish to relocate to and work remotely from Hong Kong if there was sufficient notice provided and any logistical issues based on the differences in time zones resolved.

162. A few days later, on October 17, 2022, Charging Party Banh had a one-on-one meeting with Chief Financial Officer Maggie Yuen during which Ms. Yuen assured Charging Party Banh that she had “nothing to worry about” if she ultimately decided to relocate to Hong Kong.

III. Penumbra Retaliates Against Charging Party Guan For Her Relationship with Mr. Guan and Her Support and Corroboration of Mr. Guan’s Race Discrimination Complaint

163. Unfortunately, the Company’s support for Charging Party Banh seemingly disappeared over night after Charging Party Guan, Charging Party Banh’s partner, accused Mr. Bajema of discriminating against him based on his race, including by falsely claiming that Charging Party Guan had resigned from Penumbra to move to Hong Kong with Charging Party Banh.

164. While the retaliation Charging Party Guan immediately faced after engaging in this protected activity is described in detail above, Charging Party Banh, by virtue of her association with Charging Party Guan, and later, with her decision to cooperate in the purported “independent investigation” into Charging Party Guan’s race discrimination complaints during which she corroborated many of his grievances, also became the target of an unlawful retaliatory campaign aimed at punishing her for engaging in protected activity.

165. To wit, just days after Charging Party Guan engaged in protected activity by lodging his complaints against Mr. Bajema with HR on November 14, 2022, November 21, 2022, and again on November 30, 2022, Mr. Mills abruptly removed Charging Party Banh’s two direct reports, Charging Party Chi and Mr. Biyani, even though Charging Party Banh had not made a final decision nor any concrete plans to move to Hong Kong. Charging Party Chi and Mr. Biyani were reassigned to work under Ellie LaRocca, a white employee.

166. Charging Party Chi and Mr. Biyani both immediately expressed dismay about Respondent's decision to change their reporting structure.

167. Then, on December 8, 2022, Charging Party Banh met again with Mr. Reeves, Mr. Mills, and Ms. Jenkins. Whereas the Company had previously expressed full support of whatever decision Charging Party Banh ultimately made and had assured her that the Company would work with her to ensure as seamless a transition as possible back on October 12, 2022, the tenor and tone of this discussion shifted dramatically.

168. The Company now claimed not only that Charging Party Banh would no longer be allowed to manage employees by virtue of her relocating to Hong Kong – which made no sense since she was already managing at least one employee who lived all the way in India without issue – but that she would now have to become a contractor and that her employment with the Company would need to terminate.

169. Notably, the Company required that her services contract be limited to a six-month term, through a third party named Velocity Global, and with no assurance whatsoever that her contract would be renewed or extended.

170. In other words, this contractual arrangement would have effectively given the Company free reign to ultimately terminate Charging Party Banh's employment in retaliation for Charging Party Guan's protected activity without legal consequence.

171. The reason given for this sudden proposed change to Charging Party Banh's employee status at the Company – that Respondent supposedly could not employ her if she relocated to Hong Kong – also was dubious and nonsensical since Respondent not only purports to be a global company with employees in 33 different companies but employs workers

throughout the world without forcing them into becoming contract-based workers devoid of legal rights.

172. And even if Respondent did not have a formal corporate entity set up in Hong Kong at the time, there was nothing specifically preventing the Company from establishing one.

173. Nor did Respondent have to mandate that Charging Party Banh agree to drastically alter the terms and conditions of her employment such that she would lose all her legal protections as an employee.

174. Rather, it was abundantly clear that Penumbra was now keen on taking advantage of an opportunity to phase Charging Party Banh out of the Company in retaliation for Charging Party Guan's (and later her) protected activity.

175. Moreover, the Company told Charging Party Banh that her salary would have to be dramatically reduced by almost 25% purportedly because she would no longer be based in California or a people manager — issues that are dubious in merit and were never raised as a possibility in their earlier meeting. If anything, the higher cost of living in Hong Kong should have warranted an increase to her salary, and the retaliatory and unilateral decision to remove Charging Party Guan's reports out from under her did not justify dramatically decreasing her compensation.

176. Indeed, it was inexplicable why the Company felt it was justified in drastically cutting Charging Party Banh's pay for performing virtually the same work she was already performing merely because she would be performing it from a different remote location.

177. The Company's decision to abruptly "put the squeeze" on Charging Party Banh was clearly a sudden new punitive condition resulting from Charging Party Guan's (and later her own) protected activity.

178. Charging Party Banh was understandably shocked at the Company's sudden about-face and demonstrative hostility towards her, after agreeing just weeks earlier to accommodate her during perhaps the most trying time in her life – and for good reason given the immense value she brought to Respondent.

179. Now, suddenly, Penumbra was willing to marginalize and cast aside Charging Party Banh based on her association with Charging Party Guan who was now regarded as a troublemaker and pariah by Mr. Bajema and management merely for objecting to Mr. Bajema's brazen racial discrimination towards non-whites.

180. Furthermore, just like what the Company did to Charging Party Guan, Penumbra tried to strong-arm Charging Party Banh into providing a final date of employment to solidify their punitive intentions, but Charging Party Banh rightly refused since she in fact had no solid plans to even move to Hong Kong.

IV. Penumbra Repeatedly Tries to Force Charging Party Banh Out of the Company, and Even Admits that CEO Adam Elsesser Considered Her Situation Intertwined with Charging Party Guan's Protected Activity

181. On December 14, 2022, Charging Party Banh had a one-on-one meeting with Mr. Reeves during which she expressed how she could not help but feel that her job status was now being affected due to Charging Party Guan's protected complaints.

182. Mr. Reeves did not deny or attempt to dispel Charging Party Banh's concerns and tellingly stated how it was "difficult for people to separate these things because people are human," referring to Respondent's Chief Executive Officer Adam Elsesser, and that Mr. Elsesser "is an emotionally-driven guy."

183. The next day, December 15, 2022, Charging Party Banh met again with Mr. Reeves, Mr. Mills, and Ms. Jenkins during which the Company offered to “only” reduce Charging Party Banh’s salary by \$25,000 provided she give them a concrete termination date.

184. Charging Party Banh asked for more information and time to think through what was being presented to her given how drastically the terms of her potential relocation had shifted after Charging Party Guan engaged in protected activity which caused her to feel unduly rushed and pressured.

185. Charging Party Banh reiterated how she had no plans to move to Hong Kong anytime soon, and asked Ms. Jenkins to see a draft of the contract Respondent had in mind for her so she could have a better understanding of what the Company was proposing. Ms. Jenkins refused, however, and insisted that Charging Party Banh provide a termination date first to proceed.

186. Concerned by the Company’s newfound urgency to terminate her employment, Charging Party Banh again complained how she felt this sudden new emphasis on ousting her was related to Charging Party Guan’s protected activity.

187. When Mr. Mills started to speak, Ms. Jenkins quickly interjected and stopped any further discussion about Charging Party Guan’s case. Refusing to relent, Mr. Mills offered to keep Charging Party Banh’s salary at what it was if it made it easier for Charging Party Banh to provide the Company with a termination date.

188. Charging Party Banh stood her ground and reiterated how she had a lot to think about and process and agreed to revisit their discussions after the holidays.

189. The next day, December 16, 2022, Charging Party Banh wrote to Ms. Jenkins to formally complain about how the Company’s position on her potential relocation “changed so

much from what we originally discussed” and how it seemed that “these changes are somehow related to David’s complaint against his manager” since “the terms of [her] continued employment in Hong Kong changed as soon as David made his complaint.”

190. In response, Ms. Jenkins tried to walk back and reframe the Company’s positions, claiming that Respondent was “not considering anything related to David’s complaint when working through [Charging Party Banh’s] situation,” that the Company was only “considering the slight decrease in salary when moving to Hong Kong,” and that Charging Party Banh’s “role and responsibilities will be changing slightly with [her] relocation.”

191. Around this time, on or about December 21, 2022, Charging Party Banh met with the “independent investigator” hired by Respondent in relation to Charging Party Guan’s complaints and provided truthful information that supported Charging Party Guan’s account of being racially discriminated against and subjected to a racially based hostile work environment by Mr. Bajema. Ultimately, as detailed above, the Company terminated Charging Party Guan’s employment in January 2023 claiming, falsely, that he had resigned from Respondent.

192. On January 18, 2023, Charging Party Banh reminded Ms. Jenkins about her concern that she was being retaliated against because of Charging Party Guan’s protected activity but declined to file a “formal complaint” at that time, as she had already communicated her concerns and their underlying facts to HR and management multiple times - which of course was more than sufficient and necessary for HR to launch an investigation - and feared further retaliation.

193. Then, on March 30, 2023, Charging Party Banh met with Ms. Jenkins and told her that she was not planning to move to Hong Kong and felt disconnected from the team and not treated fairly when her direct reports were moved out from under her.

194. Regardless, Ms. Jenkins still demanded a termination date from Charging Party Banh and attempted to gaslight Charging Party Banh by accusing her of “jerking the team back and forth” — something which had never occurred.

195. Notably, Ms. Jenkins promised to send Charging Party Banh an email memorializing this meeting, but never did.

196. Rather, on April 4, 2023, after not hearing from Ms. Jenkins, Charging Party Banh wrote to Ms. Jenkins to recap their meeting and elaborate on her concerns about the “sudden changes in the original working arrangement and the company’s abrupt shift in treatment,” and how she feared “further retaliation.”

197. Charging Party Banh also denied that she was “jerking the team back and forth,” and reiterated how her intention was to make any possible relocation “as easy as possible for Penumbra,” even as the Company was pressuring her to “keep transitioning since the wheels were already in motion,” and “complied” with the abrupt removal of her direct reports even though she “didn’t quite agree with the direction we were moving.”

198. Ms. Jenkins replied to Charging Party Banh on April 18, 2023, notifying her that HR would be investigating her complaints, and claiming, falsely, among other things, that Charging Party Banh was told during the October 12, 2022, meeting that her “responsibilities would need to shift” such that she could no longer be a “People Manager,” that “at the end of the meeting, it was clear that [she was] moving to Hong Kong by December 2022,” and that the Company “relied on the info[rmation]” Charging Party Banh shared at that meeting to move her two reports under Ms. LaRocca.

199. Charging Party Banh responded on April 27, 2023, likening Ms. Jenkins’ attempt to “craft[] a false narrative ... that benefits the company” to “how the company treated David

and others who have come forward with complaints about the company's discriminatory practices" in an "attempt to rewrite history."

200. Charging Party Banh clarified how no one at the October 12, 2022, meeting stated or indicated that: (i) she "could not continue" in her role as Senior Manager, Corporate Strategy; (ii) the Company "couldn't have a People Manager based 15+ hours ahead of their team"; (iii) the Company had no "legal entity in Hong Kong to employ" her or that Ms. Jenkins "need[ed] to reach out to our PEO company, Velocity Global"; and (iv) "it was clear" that Charging Party Banh was "moving to Hong Kong by December 2022" and "could not continue" in her current role.

201. Charging Party Banh further clarified, among other things, that these topics were "first mentioned" to her during their meeting on December 8, 2022 (which was after Charging Party Guan's complaint), not in October 2022.

202. Just one week later, in blatant retaliation for Charging Party Banh's latest protected complaint, on May 4, 2023, Ms. Jenkins and an IT department employee met with Charging Party Banh and falsely accused her of violating Company policy by using a VPN, or virtual private network.

203. Charging Party Banh was forced to meet with HR and IT on multiple occasions, during which the Company required Charging Party Banh to share her screen through Microsoft Teams and click through various folders, files, and even the browsing history on her Company-issued laptop computer.

204. After the Company found no evidence whatsoever of any wrongdoing (because no wrongdoing had occurred), the Company still insisted that Charging Party Banh was somehow violating policy and insisted that she bring her laptop into the office and hand it over to

the IT department. Charging Party Banh complied since she had obviously done nothing wrong and needed a new laptop anyway since she had not been issued a new one since she began working at Respondent.

205. When Charging Party Banh dropped off her laptop, the IT technician assured her that he would merely transfer data from her old laptop to her new laptop, and that the old laptop would be wiped “immediately.” This turned out to be a lie, as the Company instead shipped Charging Party Banh’s old laptop to a computer forensic expert for examination, all in hopes of coming up with a pretextual reason to force her out of the Company – which of course, it did not find.

V. Penumbra HR Initiates Yet Another Sham “Investigation,” This Time Into Charging Party Banh’s Protected Complaints

206. In early-May 2023, Respondent notified Charging Party Banh that an Employee Relations Manager named Nisha Roberson was assigned to investigate Charging Party Banh’s complaints. Charging Party Banh met with Ms. Roberson on May 10, 2023, and explained how, after initially wholeheartedly supporting Charging Party Banh’s aspiration to relocate to Hong Kong to be near her family and work for the Company remotely, after Charging Party Guan made complaints about Mr. Bajema, including for race discrimination, the Company’s tone shifted dramatically, as described above.

207. Charging Party Banh also explained to Ms. Roberson how Mr. Bajema had spread false rumors about her and Charging Party Guan being captured by the Chinese government, giving off the appearance that he was a concerned manager while she and Charging Party Guan were reckless, unresponsive employees. These false rumors were meant to erode their colleagues’ trust in them.

208. She also explained how Mr. Bajema manipulated Charging Party Banh's interest in relocating to Hong Kong to create a false narrative that Charging Party Guan had resigned, which ultimately led to Charging Party Guan's unlawful termination.

209. Charging Party Banh made clear that she believed the Company was retaliating against her just as it had retaliated against Charging Party Guan months earlier.

210. It was not until six months later, in early-November 2023, that Ms. Roberson notified Charging Party Banh that the Company had completed its "investigation" into her complaints and concluded – to no one's surprise – that they were supposedly "unsubstantiated," and that Respondent's actions taken against her were for business reasons unrelated to Charging Party Guan's complaints or the resulting investigation.

211. Ms. Roberson stated that, while "it was more likely than not that [Ms. Jenkins] did have legitimate reasons for the delay in sending the recap email" following their March 30, 2023, conversation in which she accused Charging Party Banh of "jerk[ing] the team back and forth," she "underst[ood] why [Charging Party Banh] had a different perception."

212. Ms. Roberson also claimed that she could not "substantiate" that Ms. Jenkins misrepresented facts about her conversations with Charging Party Banh or attempted to "rewrite history."

213. Ms. Roberson "did find that the situation could have been handled more effectively by [Ms. Jenkins] . . .and as a result of this finding, appropriate action will be taken to make sure that transfers like this are documented at the outset to prevent confusion" and "minimize confusion for employees who ask to transfer to another role or country in the future."

214. Notwithstanding Ms. Roberson's one-sided "findings," the unlawful retaliatory actions taken by Respondent against Charging Party Banh, including marginalizing her by

removing her direct reports and punitively altering the terms and conditions of her potential relocation, have stymied her promising career, resulting in loss of income and career opportunities, tarnished her reputation and standing amongst her colleagues and peers, and caused her tremendous emotional distress.

IV. Penumbra Continues to Relentlessly Subject Charging Party Banh to Persistent Discriminatory and Retaliatory Practices

215. Respondent's treatment of Charging Party Banh continues to manifest a discernible pattern of discriminatory and retaliatory practices, starkly contrasting with the treatment of her white colleagues within the Corporate Strategy team.

216. Despite Charging Party Banh's exceptional performance, the trajectory of her professional growth and compensation at Penumbra has been deliberately stymied, raising grave concerns about the Company's adherence to equitable and non-discriminatory employment practices.

217. For instance, Charging Party Banh has been subjected to a clear disparity in promotion and compensation practices. While her white peers have been routinely promoted annually, Charging Party Banh was advised that a biennial promotion would be the norm for her.

218. Moreover, since the commencement of Mr. Mills's tenure as her manager, Charging Party Banh's annual raises have been capped at a meager 5% — a rate below raises typically given to Caucasian employees.

219. This deliberate undervaluation of Charging Party Banh's contributions, especially when juxtaposed with the recognition and compensation afforded to her white colleagues, is indicative of discriminatory treatment based on race.

220. Respondent has also strategically deprived Charging Party Banh of valuable stock-based/equity compensation.

221. Specifically, as Respondent distributed stock-based compensation to its people managers, Mr. Mills opportunistically divested Charging Party Banh of her direct reports, effectively disqualifying her from receiving the bonus that she had rightfully earned.

222. This act, retaliatory in nature, not only deprived Charging Party Banh of her due compensation but also signified a calculated move to marginalize her and diminish her standing within the Company.

223. In addition, Respondent has obstructed Charging Party Banh from receiving well-deserved promotions. Despite two years of unassailable performance as a Senior Manager, Charging Party Banh's rightful progression to a Director-level position was obstructed, and she was instead presented with a nominal 5% raise.

224. Mr. Reeves's communications to Charging Party Banh have suggested that Mr. Mills's refusal to endorse her deserved promotion was not only irrational but also devoid of logical business justification.

225. The suggestion that Charging Party Banh herself should convince Mr. Mills of her worthiness further underscores the unreasonable hurdles placed in her path, distinctly setting her apart from her white counterparts.

226. Moreover, Respondent has deliberately undermined Charging Party Banh's professional growth and lied about the reasons why her career has been stymied.

227. For instance, in a particularly disingenuous manner, Mr. Mills engaged in what can only be characterized as an attempt to gaslight Charging Party Banh. He suggested that Charging Party Banh ought to be grateful for retaining her title as Senior Manager given her lack of direct reports. He commended Charging Party Banh on her performance throughout 2023 as

an individual contributor, while simultaneously suggesting that she needed to demonstrate her capabilities in managing direct reports to warrant higher compensation.

228. Mr. Mills rationalized the stagnation of Charging Party Banh's compensation by claiming she was "already paid at the higher range for an individual contributor role." Such statements not only misrepresent the circumstances but also conveniently omit the crucial detail that it was Mr. Mills's deliberate actions that relegated Charging Party Banh to this individual contributor status, thereby impacting her compensation trajectory and professional growth.

229. Mr. Mills suggested that opportunities for Charging Party Banh to manage direct reports were more realistic on the Finance team, as opposed to the Corporate Strategy team where such prospects were limited.

230. Charging Party Banh was presented with an internal transfer opportunity to work under CFO Maggie Yuen which was initially portrayed as a promising leadership role, a change that Charging Party Banh considered due to her deep respect for Ms. Yuen's leadership style and capabilities.

231. Charging Party Banh advocated for an adjustment in title and compensation to "Director" to ensure that she would not commence her new role hampered by the inequitable baseline previously established by Mr. Mills.

232. However, subsequent discussions revealed constraints; Ms. Yuen expressed her inability to immediately facilitate these changes due to perceived organizational optics, yet assured Charging Party Banh of eventual recognition of her well-deserved status.

233. Nevertheless, the subsequent job description was markedly less impactful, focusing on "finance data management" instead of the leadership opportunity Charging Party Banh was verbally promised.

234. This transfer, portrayed as an opportunity, was, in fact, a way to remove Charging Party Banh, who had become a pariah in the eyes of Jason Mills, from the Corporate Strategy team, and effectively demote her to a “back office” function, sidelining her from business-critical decisions.

235. Emblematic of the Company’s discriminatory practices when it came to its treatment of Charging Party Banh and her career is Respondent’s promotion of Alexandria Burden, a white woman, to Director of Reporting and Analytics – a role that heavily relies on the use of Charging Party Banh’s foundational work.

236. In her new role, Charging Party Banh has been relegated to a background function as she is being asked to provide essential analytics and support to Ms. Burden, who is positioned in prominent business-partnering roles.

237. This restructuring not only stifles Charging Party Banh’s career advancement opportunities by effectively diminishing visibility of her contributions and involvement in key business activities, but also unjustly enriches her white colleagues at her expense, further perpetuating a discriminatory workplace culture.

238. While Charging Party Banh acknowledges Ms. Yuen’s intentions to help, unfortunately, even the CFO’s power to rectify the extensive damage that Mr. Mills has inflicted upon Charging Party Banh’s career is quite limited.

C. Rishi Viswanathan

I. Charging Party Viswanathan Joins Penumbra and Receives Immediate Praise for His Strong Performance

239. Charging Party Viswanathan graduated from Chaitanya Bharathi Institute of Technology in India with a Bachelor’s degree in Technology, before graduating from the

University of California Irvine – Merage School of Business and School of Biological Sciences where he received a Master’s Degree in Science in Biotechnology and Management.

240. Charging Party Viswanathan subsequently worked at the National Institute of Nutrition (the Indian Council of Medical Research) where he focused on stem cell treatment of osteoarthritis.

241. Thereafter, Charging Party Viswanathan worked at Lumitron Technologies performing comprehensive market research under the supervision of its Chief Technology Officer.

242. In July 2021, Charging Party Viswanathan joined Penumbra in the role of Associate Marketing Manager, a title he held for the duration of his employment.

243. Among many accomplishments at Penumbra, Charging Party Viswanathan managed the Company’s Neurovascular Thrombectomy products and led the launches of the RED line of catheters in Canada and the launch of RED 43 catheter in the United States.

244. Notably, in the first year and a half of his employment, Penumbra repeatedly recognized Charging Party Viswanathan’s strong performance and valuable contributions, including by awarding him an off cycle raise of \$20,000 in 2022.

245. In fact, Charging Party Viswanathan’s manager, Fionah Dominis, wrote an overwhelmingly positive annual performance review for him in October 2022.

246. In Charging Party Viswanathan’s self-review, Charging Party Viswanathan outlined his goal to be promoted to Marketing Manager by March 2023, which Ms. Dominis affirmed was a completely viable timeline, signing off on the self-review without comment.

247. For her part, Ms. Dominis glowingly described Charging Party Viswanathan as a “valuable member” of the Neuro Marketing team, whom she had “watched” over the prior year

“grow[] not only with his understanding of the neuro space but also in his understanding of the unique way Penumbra does business.”

248. Ms. Dominis further noted how Charging Party Viswanathan had “been pulled in numerous different directions” and had been asked to “quickly learn different systems, technologies, and process,” which he accomplished “with a great attitude and eagerness to learn.”

249. Ms. Dominis further wrote that she “endorse[d] all the accomplishments listed by Rishi in his self-review,” and specifically pointed out two areas of distinction that needed to be recognized: (i) his consistent posting of content on Penumbra’s social media on a weekly basis, and management thereof, with little to no oversight from her; and (ii) his initiative to learn how to code on Tableau to automate data for which he “spent countless hours, nights, and weekends” creating “digestible competitive data for Sales Management.”

250. Ms. Dominis concluded her 2022 review of Charging Party Viswanathan’s performance by expressing how “excited” she was “for him to develop and evolve into a leader in the company” and looked forward to “working with him” to accomplish his outlined goals.

251. By all measures, Charging Party Viswanathan was an absolute rising star at Respondent with a very bright future ahead of him. That is, until he participated in the so-called “independent investigation” into Charging Party Guan’s complaints of race discrimination against Mr. Bajema and confirmed that what Charging Party Guan was alleging was, in fact, the truth, much to Respondent’s chagrin, which rendered him *persona non grata* seemingly overnight.

II. Charging Party Viswanathan is Marginalized, Harassed, Denied Career Advancement Opportunities, and Retaliated Against Immediately After Participating in Penumbra’s “Investigation” Into Charging Party Guan’s Discrimination Complaints

252. On or about December 16, 2022, Charging Party Viswanathan agreed to speak with the purported third-party “independent investigator” who was investigating Charging Party Guan’s race discrimination complaints against Mr. Bajema - attorney Gabrielle Handler Marks.

253. Charging Party Viswanathan was identified as a victim of race discrimination himself and took his duty to speak truthfully and openly with the investigator seriously.

254. Accordingly, Charging Party Viswanathan confirmed to Ms. Marks that he had, in fact, observed racially biased treatment and aggressive behavior by Mr. Bajema towards Asian members of his team.

255. Charging Party Viswanathan provided examples of how Mr. Bajema intimidated Asian team members to discourage them from speaking up about various matters, and how Mr. Bajema told him and others that Charging Party Guan was in a Chinese prison while he was away on PTO.

256. Charging Party Viswanathan also detailed how Mr. Bajema once sent him to Charleston, South Carolina with less than two hours’ notice (after Charging Party Guan was unable to do so) to meet with physicians and attend “scheduled cases” in which Penumbra products may be used, despite knowing full well that there were no such cases scheduled for the day in question, demonstrating his punitive and retaliatory animus against Charging Party Guan and lack of regard and disrespect for Asian employees.

257. Charging Party Viswanathan also confirmed that Mr. Bajema had in fact asked Jasmine Kerr at the SVIN 2022 conference in November 2022 whether Charging Party Guan had spoken about him at a team dinner and that he told her that “things are going to get ugly”

between him and Charging Party Guan after Charging Party Guan had lodged complaints against him to HR.

258. Charging Party Viswanathan also noted how he felt discriminated against by Ms. Dominis whenever she would try to “correct” his foreign accent even though his communication was clear, articulate, and comprehensible.

259. Following Charging Party Viswanathan’s participation in the investigation concerning Charging Party Guan’s race discrimination complaints, on December 19, 2022, his manager Ms. Dominis, who reported into Mr. Bajema but who had been an ardent supporter of Charging Party Viswanathan to that point, suddenly began documenting alleged deficiencies in Charging Party Viswanathan’s presentation/public speaking skills despite having earlier offered him the opportunity to introduce RED43, a product on which he had been the lead for several months, at Penumbra’s National Sales Meeting.

260. Ms. Dominis’s claims were untrue, and Charging Party Viswanathan wrote back to Ms. Dominis on December 22, 2022, providing specific examples of instances in which he displayed competence in presenting/public speaking.

261. Notably, when Charging Party Viswanathan met with both Ms. Dominis and Mr. Bajema on December 30, 2022, they both retracted their earlier statements criticizing Charging Party Viswanathan’s speaking skills and acknowledged how he had greatly improved in this area, but still refused to allow Charging Party Viswanathan to present at Penumbra’s National Sales Meeting, this time claiming that it was appropriate for a senior leader to introduce the product.

262. Significantly, the day before this December 30, 2022, meeting, on December 29, 2022, Charging Party Viswanathan wrote to Ms. Marks to make her aware of other relevant

examples of discriminatory treatment at Penumbra that he was unable to raise at their previous meeting.

263. Charging Party Viswanathan informed Ms. Marks about how Mr. Bajema hired a white individual named Sydney Weible to be a Marketing Manager after treating her far better than how he treated Charging Party Viswanathan during her recruitment, hiring, and onboarding processes.

264. Specifically, Charging Party Viswanathan noted that when Mr. Bajema initially hired him, he immediately reduced Charging Party Viswanathan's base salary by \$30,000 from what Mr. Viswanathan had been told the salary would be, and told others that, "Rishi would accept any offer."

265. In contrast, Penumbra flew Ms. Weible out to California for her interview and "wined and dined" and chauffeured her around, whereas Charging Party Viswanathan had to pay for his own flights and lodging.

266. Charging Party Viswanathan further stated how Mr. Bajema's apparent criteria for career advancement at Penumbra was highly discriminatory towards Asian employees, including how he would repeatedly cite Charging Party Viswanathan's accent as a barrier to promotion.

267. In fact, Mr. Bajema deliberately misrepresented Charging Party Viswanathan's duties and responsibilities to justify hiring the white Ms. Weible as a Marketing Manager, when it was clear that Charging Party Viswanathan was already performing this role, including the responsibilities of a former Marketing Manager who had just left the Company — only without the formal title.

268. Charging Party Viswanathan further made Ms. Marks aware that he believed he was already being retaliated against for having spoken to her earlier and participating in her “investigation” given that Mr. Bajema and his team, including Ms. Dominis,² recently documented purported deficiencies in Charging Party Viswanathan’s presentation skills that were unfair and manufactured, while also punitively taking away a career advancement opportunity for him to present the RED43 product – a decision made shortly after he spoke to Ms. Marks.

269. Charging Party Viswanathan also noted how a few weeks earlier, Mr. Bajema called another employee into his office to serve as a witness to a conversation between him and Charging Party Viswanathan about one of Charging Party Viswanathan’s products/franchises, supposedly because he needed a “witness” to all conversations he has in the office and that “this

² Other examples of discriminatory conduct and remarks made by Ms. Dominis to Charging Party Viswanathan include:

- Repeatedly telling Mr. Viswanathan that he should pronounce words “the American way” or else he would sound “less professional and believable”;
- During mock presentations/dry runs, stopping Mr. Viswanathan to “correct” his accent and forcing him to pronounce words in the manner she did, and then refusing to let him resume his presentation until he got the pronunciation “right”;
- Telling Mr. Viswanathan that the Penumbra sales team saw him as an “inferior person” because of how he spoke, while refusing to identify who had apparently told her this. Ms. Dominis proceeded to ask Mr. Viswanathan to seriously consider accent modification classes to “win the respect of the sales team”;
- When Mr. Viswanathan was preparing to travel to Charleston, South Carolina for the first time for a field ride, Ms. Dominis laughingly remarked that a person “who looks like” him could be a target of discrimination, and warning him to not leave his hotel room except for work, which was extremely offensive to Mr. Viswanathan and made him very uncomfortable;
- During team lunches, commenting on how she found Shruti Narayan’s (Executive Vice President and General Manager of Penumbra Interventional) accent “funny” and asking Mr. Viswanathan whether she was from the same region in India where he was from. After Mr. Viswanathan said that he was unsure, Ms. Dominis proceeded to tell Mr. Viswanathan that Ms. Narayan sounded like him and that she was surprised Ms. Narayan had “gotten this far” with that accent and had apparently never bothered to try to change her accent despite living in the U.S. for a long period of time;
- Ridiculing Ms. Narayan as someone who received a lot of attention from Penumbra CEO Adam Elsesser because she was a person of color with mediocre talent;
- Becoming inebriated during the SVIN 2021 conference in Phoenix, Arizona and remarking that she watches the television show “90 Day Fiancé” and finds “those brown men dumb, funny and desperate for white women”; and
- Telling Mr. Viswanathan that her best friend was Indian American and had an American accent that allowed others to perceive her as competent and professional, and that he should “aim” for that.

is the environment we are working in now.” However, afterwards, Mr. Bajema nevertheless spoke with Charging Party Viswanathan’s white manager, Ms. Dominis, alone in his office with the door closed and without a witness.

III. Penumbra Conducts Yet Another “Sham” Investigation, This Time Into Charging Party Viswanathan’s Complaints of Race Discrimination and Retaliation

270. Following Charging Party Viswanathan’s complaints to Ms. Marks, Penumbra enlisted Ms. Marks, who had just completed her clearly sham “investigation” into Charging Party Guan’s complaints of discrimination against Mr. Bajema which, despite the mountain of evidence against Mr. Bajema and witnesses who corroborated and supported Charging Party Guan’s account, still resulted in Charging Party Guan’s unlawful termination, to investigate Charging Party Viswanathan’s complaints.

271. On March 10, 2023, an HR employee named Sandra Aguilera notified Charging Party Viswanathan that Ms. Marks had completed her “investigation” into his allegations against Mr. Bajema and Ms. Dominis and shared Ms. Marks’s purported “findings.”

272. To no one’s surprise, Ms. Marks found none of Charging Party Viswanathan’s accusations “substantiated,” even blaming the fact that Charging Party Viswanathan was not reimbursed for his travel expenses when he interviewed for his role on a “misunderstanding,” and found no violation of Company policy.

273. Ms. Marks’s sham investigation and preordained “conclusions” seemed to only embolden Mr. Bajema and Ms. Dominis to retaliate against Charging Party Viswanathan further and more acutely.

274. Specifically, in May 2023, Ms. Dominis denied Charging Party Viswanathan’s promotion request to Marketing Manager, even though Charging Party Viswanathan’s

performance remained as strong, if not stronger, since Ms. Dominis issued her glowing performance review in October 2022 (shortly before he engaged in protected activity) in which she expressed her support for Charging Party Viswanathan's promotion aspirations.

275. Ms. Dominis now claimed that Charging Party Viswanathan was not ready for a promotion, and that he suddenly lacked leadership, self-awareness, respect, and professionalism.

276. In fact, on May 11, 2023, Ms. Dominis wrote to Charging Party Viswanathan, copying Mr. Bajema and Marvelle Roberts, an email full of falsehoods and baseless criticisms meant to support Penumbra's retaliatory denial of the promotion Charging Party Viswanathan earned and was due.

277. Ms. Dominis even had the audacity to claim that she "felt [Charging Party Viswanathan's] performance decline in the last few months" – coinciding, of course, with when Charging Party Viswanathan first engaged in protected activity.

278. Ms. Dominis, with Mr. Bajema's endorsement, hardly bothered to hide her discriminatory and retaliatory animus against Charging Party Viswanathan.

279. After getting over the initial shock about how the same manager who was his biggest advocate just a few months earlier had now become so antagonistic towards him after he engaged in protected activity and made complaints of discrimination, Charging Party Viswanathan responded to Ms. Dominis's email on May 15, 2023, refuting each of her false and/or manufactured points of criticism, and explaining how almost all of her critiques were only now being raised for the first time despite many allegedly occurring months earlier, and only after he engaged in protected activity.

280. Charging Party Viswanathan concluded his response email stating what was readily obvious – that the timing of his purported "declining performance" coincided directly

with his participation in the investigation into Charging Party Guan’s discrimination complaints against Mr. Bajema, and his subsequent complaints of race discrimination and retaliation against Ms. Dominis and Mr. Bajema.

281. Ms. Dominis replied two days later, on May 17, 2023, denying – unsurprisingly – Charging Party Viswanathan’s allegations, while claiming that neither she nor Mr. Bajema were “against” him in any way.

282. She maintained that the performance issues she raised were valid and had nothing to do with any protected activity but refused to respond specifically to any of Charging Party Viswanathan’s rebuttals, allegedly so as not to “inflammate” the situation further.

283. Charging Party Viswanathan responded a few days later, assuring Ms. Dominis that she would not be “inflammating” anything by answering his clarifying questions about his performance, and that it was grossly unfair to point out, in a single lengthy email and during one meeting only, all the purported performance issues that she and Mr. Bajema suddenly claim was hindering his ability to grow and perform well in his role for “the last few months,” and reiterated how he was being unlawfully retaliated against, sabotaged, and punished for his protected activity.

284. Mr. Bajema finally chimed in a few days later, on May 25, 2023, to generically deny Charging Party Viswanathan’s retaliation accusations, and hollowly assert that he and Ms. Dominis remained committed to providing him with feedback and investing in his professional growth at Penumbra.

285. Notably, Mr. Bajema was not present during most of the alleged incidents that Ms. Dominis referenced, yet, without bringing the issue to HR’s attention or otherwise investigating Charging Party Viswanathan’s allegations, blindly supported Ms. Dominis.

286. While all of this was occurring, on May 17, 2023, Ms. Dominis alerted Charging Party Viswanathan, for the first time, about a group of physicians from the Latin America region who were visiting Respondent's headquarters the very next day, despite knowing that the visit was scheduled months in advance.

287. Ms. Dominis asked Charging Party Viswanathan to present on RED 43, and while Charging Party Viswanathan agreed to do so despite the lack of reasonable notice provided – and ultimately did an outstanding job (for which he, predictably, received no recognition from Ms. Dominis) – Ms. Dominis provided Charging Party Viswanathan's white peer, Ms. Weible, with at least three weeks' notice of the visit.

288. This was yet another example of disparate and retaliatory treatment transparently meant to set Charging Party Viswanathan up for failure.

289. Worse, following the visit from the Latin American physicians, in a blatant attempt to gin up a baseless performance issue against Charging Party Viswanathan to justify the retaliatory actions taken against him, Ms. Dominis falsely accused Charging Party Viswanathan of failing to attend a demonstration session that Charging Party Viswanathan had, in fact, attended.

290. Even after Ms. Dominis confirmed that she was wrong after speaking with Ms. Weible, Ms. Dominis continued to try to further her false narrative, demonstrating that she had no genuine interest whatsoever in Charging Party Viswanathan's career growth, but, rather, was solely focused on furthering her retaliatory campaign against Charging Party Viswanathan by any measures necessary as punishment for his protected activity.

IV. Penumbra Endorses and Condone Mr. Bajema's and Ms. Dominis's Campaign of Unlawful Retaliation Against Charging Party Viswanathan, Emboldening Them to Further Ramp Up Their Relentless Retaliatory Conduct Towards Him With Impunity

291. Around this time, Ms. Roberson was enlisted to also investigate Charging Party Viswanathan's discrimination and retaliation complaints and met with Charging Party Viswanathan who provided her with detailed information about his unlawful treatment at the Company.

292. Charging Party Viswanathan, perhaps naively, was hopeful that Ms. Roberson would actually do something about the blatant retaliation he was facing, which was bringing his professional career to a halt, and causing him significant emotional distress.

293. However, he would soon learn that Ms. Roberson's mandate was to merely give off the impression that she cared about Charging Party Viswanathan's plight, while giving cover to Ms. Dominis and Mr. Bajema to continue their retaliatory campaign aimed at ousting Charging Party Viswanathan, including by repeatedly falsely accusing him of performance deficiencies, with impunity and license.

294. Over the course of the next several months, and as Ms. Roberson's "investigation" was ongoing, Charging Party Viswanathan continued to experience unrelenting discrimination and retaliation, about which he repeatedly complained, both to Ms. Dominis and/or Mr. Bajema directly, and to others including Ms. Aguilera in HR and Ms. Roberson.

295. Ultimately, on September 2, 2023, to absolutely no one's surprise, Ms. Roberson notified Charging Party Viswanathan that she was closing out her investigation into his complaints and found that she was "unable to substantiate" his claim of retaliation by direct leadership for participating in the December 2022 workplace investigation into Mr. Guan's

discrimination complaints and found no evidence to support behavior that would violate Respondent's anti-harassment, discrimination, and retaliation policy.

296. Almost immediately after Ms. Roberson issued her "findings" and closed out her "investigation" into Charging Party Viswanathan's complaints, on or about September 7, 2023, Mr. Bajema and Ms. Dominis met with Charging Party Viswanathan to administer his "annual review," during which the two were not only rude and disrespectful towards Charging Party Viswanathan, but made false accusations of performance deficiencies against him, as clear further retaliation against Charging Party Viswanathan.

297. Then, about three weeks later, Mr. Bajema and Ms. Dominis further punished Charging Party Viswanathan for engaging in protected activity by placing him on a baseless Performance Improvement Plan, or PIP.

298. Due to the intense emotional distress suffered because of the Company's truly relentless campaign of discrimination, retaliation, harassment, and gaslighting, Charging Party Viswanathan had to take a medical leave of absence on September 18, 2023, to address his mental health, with an anticipated return to work date of November 15, 2023.

V. Penumbra Continues to Harass and Retaliate Against Charging Party Viswanathan Immediately After He Returns From Protected FMLA Leave, Resulting in His Constructive Discharge

299. Charging Party Viswanathan returned to work from his FMLA medical leave on November 17, 2023.

300. On Monday November 20, 2023, Charging Party Viswanathan contacted Ms. Roberson to request that she reinitiate her "investigation" into Ms. Dominis's retaliatory treatment towards him as it was clear that Ms. Roberson misunderstood – whether accidentally or by design – his claims.

301. Charging Party Viswanathan also requested that interim measures that had been in effect before he went on medical leave be reimplemented, particularly having an HR team member present during Charging Party Viswanathan's meetings with Ms. Dominis.

302. Incredibly, on the very next day, November 21, 2023, which was technically just three weeks after Ms. Roberson's purported "investigation" into Charging Party Viswanathan's discrimination and retaliation complaints was allegedly closed out (considering the period in which Charging Party Viswanathan was out on FMLA medical leave), Ms. Dominis, who was seemingly anxious to put the final "nail in the coffin" and oust Charging Party Viswanathan from the Company and/or force him to quit, met with Charging Party Viswanathan to baselessly tell him that she was "concerned" that his "return is not off to a good start," and that Charging Party Viswanathan was not meeting the "minimum standards necessary for successful performance" in his position.

303. Indeed, rather than show an ounce of compassion or sensitivity toward Charging Party Viswanathan who had just been forced to take a medical leave of absence to treat his mental health because of their incessant discrimination and retaliation towards him, Ms. Dominis and Mr. Bajema, as if it derived them pleasure, immediately did everything within their power to punish and torment Charging Party Viswanathan.

304. Charging Party Viswanathan immediately complained to HR the next day, November 22, 2023, about Ms. Dominis's harassing, unprofessional, disrespectful, and hostile conduct towards him.

305. Moreover, because of the constant relentless discrimination and retaliation to which he continued to be subjected, Charging Party Viswanathan had to call out sick on November 30, 2023, and subsequently had to go back on medical leave on December 5, 2023.

306. Nevertheless, just days later, on December 8, 2023, Ms. Dominis and Mr. Bajema followed up their retaliatory efforts by formally issuing Charging Party Viswanathan a 30-day Performance Improvement Plan, which, yet again, was permeated with falsehoods, misrepresentations, and unwarranted and unjustified criticism.

307. That Respondent would issue Charging Party Viswanathan a PIP while he was on protected medical leave is abhorrent and cruel.

308. On January 12, 2024, Charging Party Viswanathan was constructively discharged from Respondent. The discriminatory and retaliatory atmosphere had become unendurable and was causing serious harm to Charging Party Viswanathan's physical and mental well-being, leaving him no choice but to resign, all of which was the result of his decision to engage in protected activity and stand up to the racism that he and other Asian employees have sadly been facing at Penumbra for years.

309. The toll that Penumbra's relentless campaign of discrimination, harassment, and retaliation has had on Charging Party Viswanathan's mental and physical health cannot be understated.

310. Since the incessant misconduct began in retaliation for his cooperation during the investigation into Charging Party Guan's race discrimination claims, Charging Party Viswanathan has suffered from low self-esteem, an inferiority complex, anxiety, and symptoms of obsessive-compulsive disorder (OCD).

311. Charging Party Viswanathan's symptoms worsened in or around April 2023 just as he started frequently having episodes of severe depression during which he would self-isolate and avoid any contact with family or friends for days on end.

312. In addition to severe anxiety attacks, Charging Party Viswanathan also developed intense thoughts of self-harm of increasing seriousness.

313. The distress from which he was suffering manifested in many other ways, including, but not limited to, loss of appetite, extreme fatigue, and chronic insomnia, which all contributed to a steep decline in Charging Party Viswanathan's physical health, which continues to this day.

314. In fact, Charging Party Viswanathan had to begin seeking mental health treatment in May 2023, and has been regularly meeting with his provider ever since.

315. Charging Party Viswanathan has also needed to seek medical intervention for his depression and OCD symptoms, including treatment by a psychiatrist who has prescribed him Prozac, an anti-depressant he must consume daily.

316. Simply, from the moment Penumbra first decided to embark on its illegal campaign of discrimination and retaliation against Charging Party Viswanathan over a year ago, every single day has become a living nightmare and intense battle for him to maintain his mental and physical well-being.

D. Ming Yu (Vanessa) Chi

I. Charging Party Chi Joins and Excels at Penumbra

317. Charging Party Chi graduated from the National Chengchi University in Taiwan with a Bachelor of Arts degree in Economics and then received her Master's degree in Engineering at the University of California, Berkeley.

318. Charging Party Chi began her career as a Financial Data Analyst at DBS Bank, after which she held coveted Data Scientist internships at J.P. Morgan Chase & Co. and AnChain.Ai.

319. In August 2021, Charging Party Chi joined Penumbra as a Corporate Strategy Analyst.

320. Due to her strong performance, Charging Party Chi was soon promoted to Corporate Strategy Senior Analyst, reporting to Charging Party Banh.

II. Against Her Wishes, Charging Party Chi is Reassigned from Reporting to Charging Party Banh to a Less Qualified and Less Competent White Manager, and is Then Unlawfully Retaliated Against When She Refuses to Take Respondent's "Bait" and Disparage Charging Party Banh

321. As discussed above, in November 2022, Penumbra retaliatorily stripped Charging Party Banh of her two direct reports, one of whom was Charging Party Chi.

322. The Company had initially indicated an intent to understand the preferences of Charging Party Banh's direct reports as to whether they wished to continue to report into Charging Party Banh in the event she relocated and worked remotely from Hong Kong, or whether they preferred reporting to someone else.

323. However, after Charging Party Guan began to engage in protected activity by complaining about race discrimination against Mr. Bajema, the Company abruptly changed its position and unilaterally removed Charging Party Banh's direct reports based on her relationship with Charging Party Guan, and reassigned them to work under Ellie LaRocca, Manager, Corporate Strategy.

324. Charging Party Chi immediately expressed her dissatisfaction with being removed from Charging Party Banh's team but had no choice in the matter.

325. However, after Charging Party Banh began to complain about being retaliated against herself by Respondent because of Charging Party Guan's and her own protected activity, Penumbra began to look for ways to make its retaliatory decision seem justified.

326. This included an attempt to elicit information from Mr. Biyani and Charging Party Chi that the Company seemingly hoped it could use to denigrate Charging Party Banh and justify further retaliation against her.

327. Unfortunately for the Company, this plan was foiled when Charging Party Chi, staying true to her experiences and principles, gave truthful, positive feedback when asked to describe her experience working under Charging Party Banh.

328. Sadly, Charging Party Chi's refusal to "toe the company line" and support Charging Party Banh instead caused Charging Party Chi to herself become Respondent's next target.

329. Charging Party Chi comprehensively described the retaliation she faced for supporting Charging Party Banh, a victim herself of unlawful retaliation who too engaged in protected activity, in a written complaint to Ms. Jenkins and Mr. Reeves dated July 3, 2023, which was shortly after the Company issued her a retaliatory Performance Improvement Plan.

330. In her complaint, Charging Party Chi stated that, from the start of 2023, she was the victim of discrimination and retaliation. Specifically, Charging Party Chi described how, at the expense of her career development, she was repeatedly instructed by Ms. LaRocca to not speak to or seek help from Charging Party Banh if she had questions about her work – questions which Ms. LaRocca herself could not answer due to her lack of knowledge and/or competence.

331. In other words, simply to marginalize Charging Party Banh and minimize her achievements, expertise, and status for standing up to racial discrimination against Asian employees at Penumbra, the Company willingly set Charging Party Chi up for failure by banning her from speaking to Charging Party Banh, before reprimanding her for seeking help from Charging Party Banh on matters for which Charging Party Banh was the subject matter expert.

332. Unfortunately, as Charging Party Chi described in her July 3, 2023, correspondence, the Company immediately retaliated against Charging Party Chi for refusing to capitulate and disparage Charging Party Banh.

333. After submitting her honest feedback, Charging Party Chi noticed a significant shift in her working conditions, as Ms. LaRocca became increasingly hostile towards Charging Party Chi, consistently refusing to cooperate or assist her with work projects, and frequently scapegoating Charging Party Chi for her (Ms. LaRocca's) own failures and lack of knowledge.

334. Charging Party Chi noted how it was convenient for Ms. LaRocca to blame and criticize Charging Party Chi instead of acknowledging her own inability to coach or perform the technical work for which her direct reports were responsible.

335. Charging Party Chi further complained about how the lesser qualified Ms. LaRocca had been promoted over her in the first place, despite her significant managerial shortcomings.

336. Charging Party Chi noted how she had observed Penumbra treat Charging Party Banh unfairly, which caused her to fear that she too would be treated the same way and set up to fail to justify pushing yet another Asian employee out of the Company.

337. Specifically, Charging Party Chi explained how it was completely unrealistic to expect someone to accomplish all the tasks outlined in her PIP before the arbitrarily set August 2023 deadline, which made it clear that the PIP was designed to lead to failure and thus justify more punitive actions against her.

338. Charging Party Chi asked to be reassigned to a new manager, specifically Charging Party Banh, and for Ms. LaRocca's discriminatory and retaliatory PIP to be rescinded.

339. Notably, about a week later, on July 12, 2023, Charging Party Banh also contacted Mr. Reeves and Ms. Jenkins to complain about Ms. LaRocca, and specifically about how Ms. LaRocca had essentially warned her to “not support” or “help” Charging Party Chi because she allegedly wanted Charging Party Chi to” work independently.”

340. Charging Party Banh noted how Ms. LaRocca had claimed that it was supposedly difficult for her to manage Charging Party Chi if Charging Party Banh kept allowing Charging Party Chi to come speak to her.

341. Charging Party Banh also described how Ms. LaRocca admonished Charging Party Banh about how this was apparently the second time that she had to “have this conversation with” Ms. Banh.

342. This understandably made Charging Party Banh feel uncomfortable, particularly since Charging Party Chi would only come to Charging Party Banh because Ms. LaRocca was not capable herself of helping Charging Party Chi with her work.

343. Charging Party Banh expressed how she enjoyed working with Charging Party Chi and welcomed any work-related questions from her.

344. Shortly thereafter, Charging Party Chi complained directly to Ms. LaRocca, telling Ms. LaRocca how their relationship was “one-sided” insofar as Ms. LaRocca was reaping all the benefits and rewards of Charging Party Chi’s work, while Charging Party Chi was unduly criticized if something went wrong.

345. Charging Party Chi also complained about how Ms. LaRocca failed to make a genuine effort to support or coach her despite Charging Party Chi’s drastically increased workload – a substantially different dynamic than the supportive relationship she had with her former manager, Charging Party Banh.

346. Instead, as Charging Party Chi complained, Ms. LaRocca continuously set Charging Party Chi up to fail, including by issuing her a PIP with impossible-to-attain expectations only meant to overwhelm her rather than sincerely help improve her performance.

347. Charging Party Chi also objected to the undue criticism she constantly received from Ms. LaRocca, such as for not responding to Ms. LaRocca's emails immediately even though, as Ms. LaRocca presumably should have known, it took time to find the correct answers to Ms. LaRocca's questions which pertained to complex, technical work.

348. Unfortunately, indiscretions like these had become part and parcel to, as Charging Party Chi described it, Ms. LaRocca's "chaotic" management style and the extreme lengths to which Ms. LaRocca resorted to blame and disparage Charging Party Chi rather than accept responsibility for her own actions and inadequacies.

349. Charging Party Chi also took offense to how it was useless to go to Ms. LaRocca with questions as she would provide her with no helpful information, or perhaps simply tell her to go to others, even though she simultaneously banned Charging Party Chi from speaking to Charging Party Banh, creating an atmosphere of utter confusion.

350. Charging Party Chi further requested an opportunity to explain to Ms. LaRocca why the deadlines in the PIP were unrealistic and to show her the amount and depth of work that went into completing those tasks.

351. Charging Party Chi made it clear that her performance was being inaccurately portrayed in furtherance of a concerted agenda to concoct a narrative that painted her in a negative light and subjected her to unfair double standards as an Asian employee who refused to capitulate to Penumbra's discriminatory and retaliatory efforts to smear Charging Party Banh and engaged in protected activity herself.

III. Respondent Continues to Relentlessly Retaliate Against Charging Party Chi After She Returns from Medical Leave For the Depression and Anxiety Caused by the Company

352. Due to the incessant workplace retaliation she had to endure, including the retaliatory and unrealistic PIP she had been issued, Charging Party Chi was forced to take a medical leave of absence at the end of July 2023.

353. For the sake of her mental well-being, when Charging Party Chi returned to work in August 2023, she requested to be assigned to a new manager as a reasonable accommodation to allow her to work and alleviate the depression she was experiencing because of Ms. LaRocca's unlawful conduct, unrealistic and unreasonable expectations meant to cause failure, and abject inability and/or refusal to effectively manage and lead.

354. However, unsurprisingly, the Company summarily refused Charging Party Chi's reasonable accommodation request, while acknowledging, as it had to, that such a change in reporting may occur if Ms. LaRocca was found to have violated the Company's Anti-harassment, Discrimination and Retaliation Policy during the Company "investigation" into Charging Party Chi's complaints.

355. Charging Party Chi was forced to then take another medical leave of absence through October 2023, but upon her return to work, the retaliation resumed from where it had left off, as Ms. LaRocca immediately issued Charging Party Chi an updated PIP setting forth more unreasonable and unrealistic expectations meant to set Charging Party Chi up for failure.

356. To make matters worse, Ms. LaRocca was unable to and/or unavailable to assist Charging Party Chi with an assignment to create a market model that was seemingly thrust onto her at the eleventh hour – yet another effort to set her up to fail.

357. Despite these handicaps, Charging Party Chi still persevered and performed admirably on this project, with multiple Penumbra Directors commending her work.

358. Yet, Ms. LaRocca still took umbrage with Charging Party Chi's work, lobbing unwarranted and unfair criticism at her work during a November 9, 2023, performance review meeting.

359. Shortly thereafter, Charging Party Chi was forced to go back on medical leave due to the mental distress caused by Ms. LaRocca's continuous retaliation against her, which also included assigning her an unreasonable workload and deadlines and denying her any assistance or guidance to help her succeed.

CONCLUSION

360. It is clear from the foregoing that Respondent has engaged in unlawful discrimination, harassment, fostering of a hostile work environment, and retaliation on the basis of race and/or national origin in violation of the California Fair Employment and Housing Act ("FEHA"), Title VII of the Civil Rights Act of 1964 ("Title VII"), Section 1981 of the Civil Rights Act of 1866, 42 U.S.C. § 1981 ("Section 1981"), and Unlawful Interference and Retaliation under the Family Medical Leave Act ("FMLA") (as to Mr. Viswanathan) – the compendium of which give rise to compensatory damages based on lost wages and emotional distress, in addition to punitive damages, liquidated damages, interest, attorneys' fees, and legal costs, in an amount of ***no less than \$12 million***.

361. As a result of the foregoing, Charging Parties have been and continue to be unlawfully discriminated against, humiliated, and degraded, and thus have suffered loss of rights, emotional distress, and loss of income and earnings.

362. Because Penumbra's actions have been malicious, willful, outrageous, and done with full knowledge of the legion of law to the contrary, Charging Parties demand punitive damages against the Company.

363. Respondent's flagrant disregard of the above-referenced laws – including those not enforced by the DFEH/CRD – evidences a pattern and practice of discrimination and retaliation based on race that falls squarely within the DEFH's investigatory and enforcement statutory mandates to investigate, and enforce prohibitions against, discriminatory conduct in the workplace, particularly when the conduct, like that here, is systemic and wide-reaching.