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8  
9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA**

11  
12  
13 **SECURITIES AND EXCHANGE**  
**COMMISSION,**

14 Plaintiff,

15 vs.

16 **HANI ZEINI,**

17 Defendant.  
18

Case No.

**COMPLAINT**

19  
20 Plaintiff Securities and Exchange Commission (“SEC”) alleges:

21 **JURISDICTION AND VENUE**

22 1. The Court has jurisdiction over this action pursuant to Sections 20(b),  
23 20(d)(1) and 22(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. §§  
24 77t(b), 77t(d)(1) & 77v(a), and Sections 21(d)(1), 21(d)(3)(A), 21(e) and 27(a) of the  
25 Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78u(d)(1),  
26 78u(d)(3)(A), 78u(e) & 78aa(a).

27 2. Defendant Hani Zeini has, directly or indirectly, made use of the means  
28 or instrumentalities of interstate commerce or of the mails in connection with the

1 transactions, acts, practices and courses of business alleged in this complaint.

2 3. Venue is proper in this district pursuant to Section 22(a) of the Securities  
3 Act, 15 U.S.C. § 77v(a), and Section 27(a) of the Exchange Act, 15 U.S.C. § 78aa(a)  
4 because certain of the transactions, acts, practices and courses of conduct constituting  
5 violations of the federal securities laws occurred within this district. In addition,  
6 venue is proper in this district because Defendant Hani Zeini resides in this district.

7 **SUMMARY**

8 4. This case is about a former chief executive officer, Hani Zeini (“Zeini”),  
9 who fraudulently concealed damaging information about his company, Sientra Inc.  
10 (“Sientra”), from the stock market while Sientra raised more than \$61 million in a  
11 public stock offering. The day after the offering closed, the information was revealed  
12 to the market and Sientra’s stock lost more than half its value.

13 5. Sientra sells silicone breast implants that were entirely made and  
14 supplied by a privately-held Brazilian company. On Sunday, September 20, 2015,  
15 while Sientra was in the process of finalizing the offering, Zeini learned that the  
16 regulatory certificate needed for the Brazilian company to sell its implants in the  
17 European Union had been suspended due to particles identified during an audit of the  
18 supplier’s manufacturing procedures. At the time, Sientra’s offering was scheduled  
19 to close in just seventy-two hours.

20 6. Rather than bring the information he obtained to the attention of others,  
21 Zeini hid this information from every other professional working on the offering—  
22 including Sientra’s general counsel, its outside counsel, its chief financial officer, its  
23 outside auditors, the offering’s underwriters and their counsel, and Sientra’s board of  
24 directors. Zeini also took steps to affirmatively conceal the information and prevent  
25 others from finding out about it.

26 7. With the information Zeini had learned still under wraps, Sientra’s  
27 offering of three million shares of its common stock closed on Wednesday,  
28 September 23, 2015. When Sientra disclosed the suspension the next day, its stock

1 price plummeted 52.6%, from \$20.58 to \$9.70 per share. Zeini then took additional  
2 steps to hide evidence that he had known of the suspension before the offering closed.

3 8. By engaging in this conduct, Zeini violated Section 10(b) of the  
4 Exchange Act and Rule 10b-5(a)-(c) thereunder, and Sections 17(a)(1) and (3) of the  
5 Securities Act. Zeini also aided and abetted Sientra's violation of Section 17(a)(2) of  
6 the Securities Act.

7 9. The SEC seeks a permanent injunction, a civil monetary penalty, and an  
8 officer and director bar against Zeini.

### 9 THE DEFENDANT

10 10. **Defendant Hani Zeini**, age 54, is a resident of Santa Barbara,  
11 California. Zeini founded Sientra in 2006, and was its chief executive officer and  
12 president until he resigned on November 12, 2015. He also served as a member of  
13 Sientra's board of directors until resigning from the board on February 16, 2016.

### 14 OTHER RELEVANT ENTITIES

15 11. **Sientra Inc.** is a Delaware corporation with its principal place of  
16 business in Santa Barbara, California. Sientra's securities are registered under  
17 Section 12(b) of the Exchange Act and its common stock is quoted on the NASDAQ  
18 Global Select Market (ticker symbol: SIEN). It is a medical aesthetics company  
19 focused on breast implants.

20 12. "**Supplier**" is a privately-owned silicone implant manufacturer located  
21 in Rio de Janeiro, Brazil. Since Sientra's inception and through at least the end of  
22 2015, Supplier was the sole manufacturer and supplier of the products Sientra sold.

### 23 THE ALLEGATIONS

#### 24 **A. Sientra's Business**

25 13. Sientra is a medical aesthetics company whose primary products are  
26 silicone gel breast implants sold to plastic surgeons in the United States. Zeini  
27 founded Sientra in 2006, and its initial public offering occurred in 2014.

28 14. Prior to founding Sientra, Zeini worked in the pharmaceutical industry

1 for approximately fifteen years, including working for five years for another company  
2 that sold breast implants.

3 15. In addition to Zeini, Sientra's management included, among others, its  
4 chief financial officer, its in-house counsel (the "General Counsel"), and a vice  
5 president of regulatory affairs and quality assurance ("Vice President A").

6 16. Zeini hired Vice President A for her job at Sientra, and the two also  
7 worked together at a previous employer for several years.

8 17. From Sientra's founding through at least the end of 2015, the sole  
9 manufacturer and supplier for the breast implants and other products sold by Sientra  
10 was Supplier.

11 18. Supplier manufactured the implants it provided to Sientra at Supplier's  
12 manufacturing facility in Brazil. Supplier also marketed and sold its own brand of  
13 implants outside of the United States, including in Europe.

14 19. In order to sell breast implants in the European Union, Supplier was  
15 required to have a valid "CE certificate," also sometimes referred to as a "CE mark."  
16 A CE certificate is a denotation permitting a company's products to be sold in the  
17 European Union.

18 20. Several of Sientra's public filings with the SEC, which Zeini signed  
19 electronically, disclosed the importance of Supplier's operations to Sientra, and the  
20 risks associated with Sientra's reliance on Supplier as its "sole source" manufacturer-  
21 supplier of its products.

22 21. Sientra filed an annual report on Form 10-K for the year ended  
23 December 31, 2014, and quarterly reports on Form 10-Q for quarters ended March 31  
24 and June 30, 2015. In its Forms 10-K and 10-Q, Sientra warned that its future  
25 profitability depended on its breast implant products, and that it relied on the Supplier  
26 as its "sole source" manufacturer of all of its products.

27 22. In its 2014 annual report, Sientra further stated that, "[O]ur reliance on  
28 [Supplier] involves a number of other risks, including among other things that... our

1 products may not be manufactured in accordance with agreed upon specifications or  
2 in compliance with regulatory requirements, or its manufacturing facilities may not  
3 be able to maintain compliance with regulatory requirements, which could negatively  
4 affect the safety or efficacy of our products or cause delays in shipments of our  
5 products.”

6 23. Before and during September 2015, Sientra was engaged in ongoing  
7 negotiations concerning a potential acquisition of Supplier. Through those  
8 negotiations, Zeini obtained additional information about the significance of  
9 Supplier’s CE certificate, including from his counterpart at Supplier in Brazil,  
10 Supplier’s chief executive officer (the “Supplier CEO”).

11 **B. Sientra’s September 2015 “Follow-On” Public Stock Offering**

12 24. In order to raise additional capital, Sientra conducted a “follow-on”  
13 stock offering in September 2015. A follow-on offering is a sale of stock after a  
14 company has gone public through an initial public offering.

15 25. On September 3, 2015, Sientra filed an initial registration statement on  
16 Form S-1 for the follow-on offering, which it amended on September 14 (the  
17 “Registration Statement”).

18 26. The group of professionals working on the offering included individuals  
19 in Sientra’s management (Zeini, Sientra’s chief financial officer, and the General  
20 Counsel); the four underwriter firms; the underwriters’ outside counsel; Sientra’s  
21 outside counsel; and Sientra’s outside audit firm.

22 27. On September 17, 2015, Sientra entered into a purchase agreement with  
23 the underwriters for the offering (the “Purchase Agreement”), which Zeini reviewed  
24 and signed as Sientra’s CEO.

25 28. On September 18, 2015, Sientra filed a prospectus on Form 424B3 for  
26 the offering (the “Prospectus”).

27 29. As Sientra’s CEO, Zeini had ultimate authority on behalf of Sientra over  
28 both the Registration Statement and Prospectus.

1           30. Zeini reviewed the Registration Statement and the Prospectus before  
2 each was filed with the SEC, and signed the Registration Statement as Sientra’s CEO.  
3 The Registration Statement contained the same risk factors as the Prospectus.

4           31. As it did in its other SEC filings, Sientra disclosed in the Registration  
5 Statement and Prospectus risks that could impact its business, including, among  
6 others, the risks that Sientra relied on “a foreign, sole source, third-party” to supply  
7 Sientra with its products; that Supplier was located outside the United States, in  
8 Brazil; that factors outside Sientra’s control could adversely affect manufacturing and  
9 supply of Sientra’s products; and that “any negative publicity concerning our  
10 products could harm our business reputation and negatively impact our financial  
11 results.”

12           32. Sientra’s Registration Statement and Prospectus both expressly  
13 incorporated by reference the “Risk Factors” sections in its annual report on Form 10-  
14 K for the year ended December 31, 2014, and in its quarterly reports on Form 10-Q  
15 for quarters ended March 31 and June 30, 2015.

16           33. In the Purchase Agreement, Sientra represented to the underwriters for  
17 the offering that neither the Registration Statement nor the Prospectus contained “an  
18 untrue statement of material fact” or omitted “to state a material fact” necessary to  
19 make the statements therein “not misleading,” and that Sientra had not incurred any  
20 “material adverse change in the condition (financial or otherwise), business,  
21 prospects, management, properties, operations or results of operations of the  
22 Company, taken as a whole (*‘Material Adverse Change’*) or any development which  
23 would reasonably be expected to result in any Material Adverse Change.” (Emphasis  
24 in original.)

25           34. The Purchase Agreement also required that on the closing date, Sientra  
26 would provide the underwriters with an officer’s certificate, signed by Sientra’s CEO  
27 and CFO, attesting that Sientra’s representations in the Purchase Agreement were true  
28 and correct as of the closing date of the offering, including as to the absence of any

1 material adverse changes in Sientra's business.

2 **C. Zeini Learns that Supplier's CE Certificate Has Been Suspended**

3 35. Supplier's CE certificate was suspended on or about September 17,  
4 2015, due to concerns about particles identified during an audit of its manufacturing  
5 procedures.

6 36. On Sunday, September 20, 2015, Zeini learned that Supplier's CE  
7 certificate had been suspended.

8 37. At the time Zeini learned this information, Zeini knew that the offering  
9 was scheduled to close in approximately seventy-two hours, on September 23, 2015.

10 38. Supplier's CEO called Zeini's cell phone the morning of Sunday  
11 September 20, 2015, shortly before 9:00 a.m. PDT.

12 39. On the September 20 phone call, Supplier's CEO told Zeini that the CE  
13 certificate had been suspended.

14 40. Supplier's CEO further told Zeini on the September 20 phone call that  
15 because of the suspension, Supplier planned to suspend sales of its breast implants in  
16 the European Union.

17 41. Supplier's CEO also told Zeini on that phone call that Supplier planned  
18 to send a "field safety notice" to its European distributors as early as the next day,  
19 Monday, September 21, instructing Supplier's distributors not to sell its implant  
20 products until the CE certificate was reinstated. A field safety notice is a letter to  
21 distributors concerning the sale of a product.

22 42. On the September 20 phone call, Zeini asked the Supplier CEO for a  
23 copy of the draft field safety notice.

24 43. Shortly after the September 20 phone call, Zeini called Vice President A  
25 and directed Vice President A to contact the Supplier CEO.

26 44. Zeini also sent the Supplier CEO a text message asking that the Supplier  
27 CEO "please make sure the actual letter and its content is also discussed with [Vice  
28 President A] and she can provide input to make sure the words used are consistent

1 and in themselves do not create a problem since we are operating on the fact this  
2 letter will become public and used in the U.S.” Zeini’s text message also notified the  
3 Supplier CEO that Sientra was “discussing internally if we need to initiate a crisis-  
4 management process.”

5 45. Shortly after the September 20 phone call, the Supplier CEO emailed the  
6 draft field safety notice to Vice President A.

7 46. The same day, September 20, Vice President A forwarded the Supplier  
8 CEO’s email and the draft field safety notice to Zeini, writing in her cover email that  
9 “[w]e will need to discuss,” and denoting the email as one of “high” importance.

10 47. The same day, September 20, Zeini reviewed the draft field safety  
11 notice.

12 48. The draft field safety notice stated, among other things, that:

13 During an audit on our manufacturing procedures, a  
14 potential source of particles was identified....during this  
15 unannounced audit, possible ameliorations of  
16 manufacturing processes were identified, allowing  
17 [SUPPLIER] to lower the risk factor further....

18 As a result of this audit, *a suspension until December 17th*  
19 *2015 of our CE Certificates took place*....For this reason,  
20 we request that the devices mentioned above, be no longer  
21 commercialized until our *re-Cerification* [sic] or further  
22 notice...[W]e are engaged to take all necessary actions  
23 towards safer devices and towards our *re Certification*...

24 (Emphasis added.)

25 49. On September 20, Zeini sent proposed revisions to the field safety notice  
26 to Vice President A.

27 50. In Zeini’s revisions, Zeini removed the language “*a suspension until*  
28 *December 17th 2015 of our CE Certificates took place*.” (Emphasis added.)



1 51. Zeini's revisions instead stated that the CE certificate "*will be*  
2 *temporarily suspended*" (emphasis added).

3 52. Zeini's revisions also stated that "We [Supplier] are undertaking all  
4 necessary efforts ... *to resolve this matter and reactivate our CE certification*"  
5 (emphasis added).

6 53. At the time Zeini reviewed and edited the draft field safety notice, Zeini  
7 understood that Supplier could not continue selling its products in the European  
8 Union during a suspension of its CE certificate.

9 54. On the evening of September 20, Zeini sent his revisions to the draft  
10 field safety notice to Vice President A in an email with the subject line "Suggested  
11 Draft."

#### 12 **D. Zeini's Scheme to Conceal the CE Certificate Suspension**

13 55. Between Sunday, September 20, when he learned that Supplier's CE  
14 certificate had been suspended, and the close of the offering on Wednesday,  
15 September 23, Zeini concealed the suspension from the underwriters and others  
16 working on the offering.

##### 17 **1. Zeini lies to Vice President A, and directs her to conceal the** 18 **suspension**

19 56. Beginning on September 20, Zeini instructed Vice President A to  
20 conceal the news of the Supplier CE certificate suspension.

21 57. First, on Sunday, September 20, Zeini sent Vice President A a text  
22 message stating, among other things, that "we should talk to decide who gets into the  
23 circle at this early stage to protect against rumors and leaks."

24 58. On Monday, September 21, Zeini met with Vice President A in person at  
25 Sientra's offices.

26 59. Vice President A told Zeini that, in addition to the field safety notice  
27 (that was to be sent to distributors), Supplier was planning to send a letter to the  
28 doctors who utilize Supplier's products concerning the Supplier CE certificate

1 suspension.

2 60. On September 21, Zeini reviewed a draft of Supplier's letter for the  
3 doctors that Vice President A had received from Supplier, and emailed suggested  
4 revisions to Vice President A.

5 61. At the time, Vice President A perceived Zeini to be "concerned" about  
6 an upcoming call she understood "had something to do with finances."

7 62. Zeini knew at that time that a diligence call with the underwriters for the  
8 offering was scheduled to take place in approximately forty-eight hours.

9 63. Vice President A asked Zeini on September 21 if he had discussed "the  
10 [Supplier] issue" with Sientra's General Counsel.

11 64. Zeini falsely told Vice President A that he had spoken to the General  
12 Counsel about the suspension.

13 65. At the time of the meeting between Zeini and Vice President A,  
14 however, Zeini had not told the General Counsel about the suspension nor discussed  
15 with him any information he received from the Supplier CEO.

16 66. Also on September 21, Zeini directed Vice President A to tell no one  
17 else at Sientra about the suspension.

18 **2. Zeini lies to the General Counsel and instructs him to**  
19 **withhold information**

20 67. At no time prior to the close of the offering did Zeini inform the General  
21 Counsel about the suspension.

22 68. Zeini and the General Counsel did not speak on Sunday, September 20.  
23 They exchanged several text messages the next day, September 21.

24 69. At approximately 10:30 a.m. PDT on Tuesday, September 22, Zeini  
25 called the General Counsel on the General Counsel's cell phone.

26 70. During their call, Zeini did not tell the General Counsel that Supplier's  
27 CE certificate had been suspended.

28 71. Instead of telling the General Counsel that the CE certificate had been

1 suspended, Zeini misleadingly told the General Counsel only that a complaint had  
2 been made to a European regulator about particulate matter on Supplier-manufactured  
3 breast implants.

4 72. In addition, Zeini told the General Counsel that Supplier was  
5 “contemplating” sending letters to European distributors and doctors stating that  
6 Supplier was voluntarily suspending its sale of implants in Europe, but that Zeini did  
7 not know if or when Supplier intended to send the letters, and that Supplier had sent  
8 Vice President A drafts of the two letters.

9 73. The General Counsel asked to review the draft letters.

10 74. Zeini declined to provide the General Counsel the draft letters.

11 75. Based on the false and misleading information he had provided to the  
12 General Counsel, Zeini asked the General Counsel if Sientra needed to make a  
13 disclosure in connection with the offering.

14 76. Based on the false and misleading information that Zeini had provided,  
15 the General Counsel advised Zeini against disclosing the information Zeini provided  
16 him, in connection with the offering.

17 77. Zeini instructed the General Counsel not to discuss the information Zeini  
18 provided him with anyone else at Sientra, including outside counsel.

19 78. Later on Tuesday, September 22, Zeini signed the officer’s closing  
20 certificate on behalf of Sientra.

21 79. The officer’s closing certificate represented that “the representations and  
22 warranties of [Sientra] in the Purchase Agreement are true and correct as if made at  
23 and as of the Closing Date.” This included the representations that the Registration  
24 Statement and the Prospectus did not contain any untrue statements of material fact or  
25 omit any material information, and that Sientra had not incurred any “material  
26 adverse changes” to its business.

1           **3. Zeini prevents news of the CE suspension from being disclosed**  
2           **to the underwriters on the diligence call**

3           80. A diligence call with the underwriters, the underwriters' counsel,  
4 Sientra's outside auditors, and Sientra's outside counsel, was scheduled for early the  
5 morning of Wednesday, September 23.

6           81. The purpose of the diligence call was to confirm for the underwriters,  
7 immediately prior to the closing, that no material adverse events had taken place.

8           82. The underwriters' counsel provided a list of written diligence questions  
9 to the working group in advance of the call, which included questions asking  
10 management if there:

11           (a) were "any material updates or changes[. . . ] [s]ince our last  
12 diligence call;"

13           (b) were "[a]ny material developments with your relationships with  
14 contractual parties and particularly, [Supplier];"

15           (c) were "[a]ny FDA regulatory actions or other regulatory  
16 developments;" and

17           (d) was "[a]ny other information that has not been made known to us  
18 that may be deemed material to an investor or that would make the disclosure in the  
19 Prospectus untrue or misleading."

20           83. Zeini reviewed the list of written diligence questions before the diligence  
21 call took place on September 23rd.

22           84. During his September 22 call with the General Counsel, Zeini instructed  
23 the General Counsel to participate in the diligence call on September 23, and to close  
24 the offering, without making any additional disclosures about any information  
25 received from Supplier's CEO.

26           85. At approximately 7:00 a.m. PDT on Wednesday, September 23, the day  
27 the offering was scheduled to close, the General Counsel participated in the diligence  
28 call.

1 86. During the call, counsel for the underwriters asked the General Counsel  
2 if Sientra had any additional facts to disclose in response to the list of written  
3 diligence questions.

4 87. Following Zeini's instructions—and unaware that Supplier's CE  
5 certificate had been suspended—the General Counsel responded “no” in response to  
6 the questions described above.

7 88. As Zeini had not told the General Counsel about the suspension, the  
8 General Counsel did not disclose the suspension on the diligence call.

9 89. At the time of the diligence call, neither the General Counsel, the  
10 underwriters, the underwriters' counsel, Sientra's outside auditors, nor Sientra's  
11 outside counsel knew that Supplier's CE certificate had been suspended due to  
12 concerns about particles identified during an audit of its implant manufacturing  
13 procedures.

14 **4. Zeini prevents news of the CE suspension from being disclosed**  
15 **to the underwriters during the closing call**

16 90. A closing call with Sientra's underwriters and their counsel, Sientra's  
17 outside counsel, and Sientra's outside auditors was scheduled for shortly after the  
18 diligence call that same morning, Wednesday, September 23.

19 91. The purpose of the closing call was to confirm that the offering would  
20 proceed to closing and that the company would be releasing signed signature pages  
21 for the various documents required for the closing, including Zeini's signature page  
22 for his officer's closing certificate.

23 92. Before that closing call, at approximately 7:48 a.m. PDT, the head of  
24 Sientra's marketing department sent Zeini a text message with a screen shot of a text  
25 message he had received that day from an American doctor visiting Europe.

26 93. The doctor's text message stated in part: “I am in Europe. TUV  
27 Rhineland just this am pulled [Supplier's]s CE mark. No info said temporary  
28 suspension until further notice?”

1 94. Sientra's head of marketing department asked Zeini in his text message:  
2 "Any knowledge?"

3 95. At approximately 8:00 a.m. PDT, after the General Counsel had  
4 completed the diligence call, and shortly before the General Counsel was scheduled  
5 to dial into the closing call, Zeini sent the General Counsel a text message requesting  
6 to speak by phone.

7 96. The General Counsel called Zeini back at approximately 8:05 a.m. PDT,  
8 and Zeini, having read the text message, told the General Counsel that an American  
9 doctor traveling in Europe either saw or heard something about Supplier suspending  
10 its sales while he was visiting a plastic surgeon's office.

11 97. Zeini did not tell the General Counsel that the doctor's text message  
12 stated that Supplier's CE certificate had been "pulled."

13 98. Zeini directed the General Counsel to proceed with the closing call and  
14 close the offering.

15 99. At approximately 8:15 a.m. PDT, on Wednesday, September 23, the  
16 General Counsel released Sientra's signature pages for the offering, including the  
17 signature page for the officer certificate that Zeini had signed on September 22.

18 100. The General Counsel then participated in the closing call, where he  
19 informed the underwriters, their counsel, and Sientra's outside counsel that Sientra  
20 was releasing the signature pages, including Zeini's signature on the closing  
21 certificate.

22 101. The offering closed shortly thereafter.

23 102. At the time they participated in the closing call, neither the General  
24 Counsel, the underwriters, the underwriters' counsel, nor Sientra's outside counsel or  
25 auditors knew that Supplier's CE certificate had been suspended due to concerns  
26 about particles identified during an audit of its implant manufacturing procedures.

27 103. At no time prior to the closing of the offering did Zeini inform Sientra's  
28 outside counsel, outside auditors, board of directors, chief financial officer, nor the

1 underwriters or the underwriters' counsel, that he had received any information from  
2 Supplier's CEO concerning Supplier's CE certificate.

3 104. Sientra raised \$61,397,000 through the offering, selling three million  
4 shares of its common stock to the public market.

5 105. Sientra's sales to the market occurred through the underwriters of the  
6 offering, who purchased the stock to distribute to the market.

7 **E. Once the Offering Closes, Sientra Discloses the Suspension**

8 106. Late in the afternoon on September 23, a regulator from the United  
9 Kingdom placed a notice on its website concerning the suspension of Supplier's  
10 European CE certificate.

11 107. On September 24, 2015, Sientra filed a public report with the SEC on  
12 Form 8-K.

13 108. In its Form 8-K, Sientra disclosed that it had issued a letter from Zeini,  
14 dated September 24, to its plastic surgeon customers, regarding the suspension of  
15 Supplier's CE certificate.

16 109. Zeini was involved in the decision to issue the Form 8-K, with members  
17 of Sientra's management team, including the CFO, the General Counsel, and others.

18 110. At the time of the Form 8-K's preparation, Zeini did not inform anyone  
19 on Sientra's management team that he had received information from Supplier's CEO  
20 concerning the suspension of Supplier's CE certificate before the close of the  
21 offering.

22 111. In the letter, which Zeini approved and signed, Zeini stated: "I want to  
23 comment on some industry news *that we became aware of yesterday*. The Medicines  
24 and Healthcare Products Regulatory Agency (MHRA), an executive agency of the  
25 United Kingdom Department of Health, announced the suspension of Supplier's CE  
26 certificate for all medical devices made by [Supplier]." (Emphasis added.)

27 112. The Form 8-K and the accompanying letter from Zeini did not disclose  
28 that Zeini had first learned about the CE certificate suspension on September 20,

1 2015.

2 113. By the close of the market on September 24, 2015, Sientra's stock price  
3 fell from \$20.58 to \$9.70, a decline of 52.63%.

4 **F. Zeini Attempts to Cover His Tracks**

5 114. After the suspension became public, Zeini took additional steps to  
6 conceal that he knew about the suspension before the offering closed.

7 115. The text messages Zeini had received from Sientra's head of marketing  
8 on September 23 were erased from Zeini's cell phone.

9 116. On Thursday, September 24, Zeini directed the General Counsel to  
10 consult Sientra's vice president of administration, who was responsible for Sientra's  
11 IT functions, and ask whether it was possible to delete emails Zeini had received over  
12 the weekend.

13 117. Upon receiving Zeini's request, the General Counsel asked Vice  
14 President A to see the information from the Supplier CEO that Zeini had received  
15 before the offering closed.

16 118. Vice President A then showed the General Counsel the draft field safety  
17 notice and the draft letter to doctors that she and Zeini received from the Supplier  
18 CEO before the closing.

19 119. On Friday, September 25, the General Counsel confronted Zeini with  
20 having misled the General Counsel regarding the suspension, prior to the close of the  
21 offering.

22 120. Zeini then directed the General Counsel to conceal what Zeini had told  
23 the General Counsel prior to the close of the offering.

24 121. When the General Counsel refused, Zeini instructed him not to call into  
25 Sientra's board of directors meeting scheduled for the next day.

26 122. Shortly thereafter, the board of directors and Zeini agreed that Zeini  
27 would resign as Sientra's CEO and from Sientra's board of directors.  
28



1           **G. Zeini and Sientra’s Misrepresentations and Omissions**

2           123. Zeini and Sientra made misrepresentations and omissions in the  
3 Registration Statement, the Prospectus, and the officer’s closing certificate that was a  
4 condition of the Purchase Agreement.

5           124. At the time of the sale of Sientra’s stock to the public, the Registration  
6 Statement and Prospectus were the company’s disclosure documents provided to  
7 prospective and actual investors in the offering.

8           125. The Registration Statement and the Prospectus omitted, and did not  
9 disclose, that the Supplier’s CE certificate had been suspended due to concerns about  
10 particles identified during an audit of Supplier’s implant manufacturing procedures.  
11 Neither document was amended to reflect this news before the close of the offering.

12           126. The Registration Statement and Prospectus also each disclosed certain  
13 risks that “may prevent [Sientra] from achieving [its] business objectives, and may  
14 adversely affect [its] business.” Three of the risk factors related to Supplier,  
15 including the statements that:

- 16           (a) “we rely on a foreign, sole source, third-party to manufacture and  
17 supply our silicone gel breast implants, tissue expanders and other products;”  
18           (b) “there are inherent risks in contracting with manufacturers located  
19 outside of the United States such as in Brazil;” and  
20           (c) “any negative publicity concerning our products could harm our  
21 business reputation and negatively impact our financial results.”

22           127. Those statements were false and misleading at the time of sale because  
23 neither the Registration Statement nor the Prospectus further disclosed that Supplier’s  
24 CE certificate had been suspended due to concerns about particles identified during  
25 an audit of Supplier’s manufacturing procedures.

26           128. The disclosures that there might be risks that Sientra relied on Supplier  
27 as its sole-source supplier of its products, or that negative publicity concerning  
28 Sientra’s products could harm its reputation and business, were rendered misleading

1 because there was no disclosure in the Registration Statement or Prospectus that that  
2 Supplier's CE Certificate had been suspended based on particles identified during an  
3 audit of its manufacturing procedures. Zeini knew, or was reckless or negligent in  
4 not knowing, that information would become public soon, as the Supplier was  
5 sending letters to its distributors and doctors.

6 129. Sientra's 2014 annual report, incorporated by reference in the  
7 Registration Statement and Prospectus, stated that: "[O]ur reliance on [Supplier]  
8 involves a number of other risks, including among other things that... our products  
9 may not be manufactured in accordance with agreed upon specifications or in  
10 compliance with regulatory requirements, or its manufacturing facilities may not be  
11 able to maintain compliance with regulatory requirements, which could negatively  
12 affect the safety or efficacy of our products or cause delays in shipments of our  
13 products."

14 130. This statement was false and misleading at the time Sientra sold its  
15 securities. It was not true that Supplier's manufacturing facilities "may not be" in  
16 compliance with "regulatory requirements"—the suspension of the Supplier's CE  
17 certificate, due to concerns about particles identified in an audit of Supplier's implant  
18 manufacturing procedures, meant that Supplier was not in regulatory compliance, as  
19 it was not able to sell its implants in the European Union. Zeini knew, or was  
20 reckless or negligent in not knowing, that Sientra's business prospects would likely  
21 be impacted by Supplier's manufacturing facilities' regulatory compliance difficulty,  
22 since Supplier was Sientra's only source for its products.

23 131. The closing certificate that Zeini signed, which was a closing condition  
24 of the Purchase Agreement, falsely stated that the "representations and warranties of  
25 the Company in the Purchase Agreement are true and correct as if made at and as of  
26 the Closing Date."

27 132. This was false and misleading because the Purchase Agreement  
28 represented that neither the Registration Statement nor the Prospectus contained "an

1 untrue statement of material fact” or omitted “to state a material fact” necessary to  
2 make the statements therein “not misleading.” As alleged above, the Registration  
3 Statement and Prospectus contained misrepresentations and omissions.

4 133. Zeini’s closing officer’s certificate also falsely stated that Zeini  
5 “affirm[ed]” the accuracy of the matters set forth in Section 5(c) of the Purchase  
6 Agreement,” including that Sientra had incurred no “material adverse changes” to its  
7 business nor “any development that would reasonably be expected to result” in a  
8 material adverse change to its business.

9 134. That was also false and misleading because, in fact, Sientra had incurred  
10 a material, undisclosed event—the CE certificate for its sole-source supplier had been  
11 suspended due to concerns about particles identified during an audit of its implant  
12 manufacturing procedures.

#### 13 **H. The Information Zeini Withheld was Material**

14 135. The information Zeini withheld about Supplier’s CE certificate  
15 suspension would have been important to reasonable investors’ decisions to purchase  
16 Sientra’s stock.

17 136. As Sientra’s sole manufacturer and supplier, Supplier was critically  
18 important to Sientra’s business, and concerns about Supplier’s ability to sell its  
19 products, and/or about particles identified during an audit of Supplier’s implant  
20 manufacturing procedures, necessarily impacted Sientra.

21 137. The working group of professionals involved in Sientra’s offering, and  
22 Sientra’s board of directors, would have found it important to know, prior to the close  
23 of the offering, that Supplier’s CE certificate had been suspended.

24 138. That Sientra’s stock price dropped 52.63% upon Sientra’s disclosure of  
25 the CE certificate suspension indicates that the market found the information  
26 significant.

#### 27 **I. Zeini Acted with Scierter and Without Reasonable Care**

28 139. Zeini acted knowingly, recklessly and without reasonable care in

1 concealing and failing to disclose the information he received from the Supplier CEO  
2 about the CE certificate suspension, prior to the offering closing.

3 140. Before September 2015, Zeini was familiar with the CE certificate  
4 requirement, due to his extensive experience as an executive in the medical aesthetics  
5 industry.

6 141. In addition, during the summer and fall of 2015, Sientra was considering  
7 acquiring Supplier, and during purchase negotiations with Supplier, Zeini was further  
8 acquainted with the significance of Supplier's CE certificate.

9 142. Thus, in September 2015, Zeini understood that a CE certificate was  
10 necessary for Supplier to sell its products in the European Union.

11 143. Zeini knew, or was reckless or negligent in not knowing, that: (a)  
12 Sientra's business depended upon its ability to obtain breast implants from its sole  
13 source manufacturer, Supplier; (b) adverse publicity concerning Supplier, Sientra's  
14 sole manufacturer, was likely to adversely affect Sientra's business; (c) Sientra's  
15 relationships with the doctors who utilize its implants could be negatively impacted if  
16 it became publicly known that there was an assertion that Supplier's products had a  
17 manufacturing issue involving particles; and (d) Supplier's intended letter to its  
18 distributors could harm Sientra's business by triggering concerns about the safety of  
19 Sientra's products and/or negative publicity.

20 144. Zeini knew, or was reckless or negligent in not knowing, that Sientra's  
21 Registration Statement and Prospectus contained no disclosure of Supplier's CE  
22 certificate suspension at the time Sientra's stock was sold to the public in the  
23 offering. He also knew, or was reckless or negligent in not knowing, that the  
24 Registration Statement and Prospectus were rendered false and misleading because  
25 they did not disclose the suspension and because they contained statements about  
26 business risk that were rendered misleading by that omission.

27 145. Zeini further knew, or was reckless or negligent in not knowing, that his  
28 officer's closing certificate was false and misleading, since it reaffirmed, among other

1 things, the representation that there were no material adverse changes to Sientra's  
2 business, when, in fact, there had been.

3 146. Zeini acted knowingly, recklessly and without reasonable care by,  
4 among other things, directing Vice President A to conceal from others in Sientra  
5 management the information he learned from Supplier's CEO, and in lying to her  
6 about what information he provided to Sientra's general counsel.

7 147. Zeini acted knowingly, recklessly and without reasonable care by,  
8 among other things, falsely depicting to the General Counsel the information he  
9 learned from Supplier's CEO; in directing the General Counsel not to consult outside  
10 counsel about the issue; in directing the General Counsel to participate in the  
11 diligence and closing calls without disclosing to the General Counsel that Supplier's  
12 CE certificate was in fact suspended; and in instructing him, after the information  
13 became public, not to reveal that Zeini possessed any information before the closing.

14 148. Zeini acted knowingly, recklessly and without reasonable care in  
15 withholding from the General Counsel, outside counsel, chief financial officer,  
16 outside auditors, board of directors, and its underwriters and their counsel, prior to the  
17 close of the offering, the information he learned from Supplier's CEO.

18 149. Zeini acted knowingly, recklessly and without reasonable care with  
19 respect to Sientra's Form 8-K, issued after the close of the offering, which  
20 misleadingly suggested that Sientra had not learned of the CE certificate suspension  
21 until after the closing.

22 150. Zeini acted knowingly, recklessly and without reasonable care in  
23 attempting to delete electronic records reflecting information he received from  
24 Supplier's CEO prior to the closing.

25 **J. Zeini Knowingly Provided Substantial Assistance to Sientra, which**  
26 **Obtained Money by Means of the Misstatements**

27 151. Zeini knowingly or recklessly provided substantial assistance to Sientra,  
28 which obtained over \$61 million from the public market in the offering, by means of

1 material misstatements and omissions.

2 152. At the time Sientra's stock was sold to the public, Sientra's statements in  
3 its Registration Statement and Prospectus, and in Zeini's officer's closing certificate  
4 that was a closing condition of Sientra's Purchase Agreement with the underwriters,  
5 were rendered misleading by Zeini's concealment of the information he possessed  
6 concerning Supplier's CE certificate suspension.

7 153. Sientra obtained the proceeds of the offering by means of Zeini's and its  
8 own material misstatements and omissions.

9 154. Zeini provided substantial assistance to Sientra. He signed the  
10 Registration Statement, Purchase Agreement, and officer's closing certificate; he  
11 reviewed the underwriters' diligence questions; he directed the general counsel to  
12 conduct the diligence call and the closing call; and he directed the closing of the  
13 offering on Sientra's behalf.

14 155. Zeini knew, or was reckless in not knowing, that the information he  
15 received from Supplier's CEO concerning the suspension of Supplier's CE certificate  
16 was not disclosed to the working group of professionals involved in the offering, or to  
17 the public, prior to the offering closing.

18 **FIRST CLAIM FOR RELIEF**

19 **Fraud in the Connection with the Purchase and Sale of Securities**

20 **Violations of Section 10(b) of the Exchange Act and Rule 10b-5(b)**

21 156. The SEC realleges and incorporates by reference paragraphs 1 through  
22 155 above.

23 157. Defendant Zeini knowingly made false and misleading material  
24 statements to and omitted information from the market in connection with Sientra's  
25 offering. Zeini had ultimate authority over Sientra's Registration Statement and  
26 Prospectus through which Sientra sold its stock to the public, both of which omitted  
27 material information about the Supplier's CE certificate suspension, and were also  
28 rendered misleading by the information Zeini learned regarding that suspension. The

1 officer's closing certificate signed by Zeini falsely reaffirmed the representations in  
2 the Purchase Agreement that the Registration Statement and Prospectus did not  
3 contain any untrue statements of material fact or omit any material information and  
4 that there had been no material adverse changes to Sientra's business—whereas Zeini  
5 knew that the suspension of Supplier's CE certificate had occurred, but was not  
6 disclosed. The information Zeini withheld was material, as reflected in the  
7 precipitous drop in the company's stock price once the news became public.

8 158. By engaging in the conduct described above, Defendant Zeini, directly  
9 or indirectly, in connection with the purchase or sale of a security, by the use of  
10 means or instrumentalities of interstate commerce, of the mails, or of the facilities of  
11 a national securities exchange: made untrue statements of a material fact or omitted  
12 to state a material fact necessary in order to make the statements made, in the light of  
13 the circumstances under which they were made, not misleading.

14 159. Defendant Zeini, with scienter, made untrue statements of a material fact  
15 or omitted to state a material fact necessary in order to make the statements made, in  
16 the light of the circumstances under which they were made, not misleading.

17 160. By engaging in the conduct described above, Defendant Zeini violated,  
18 and unless restrained and enjoined will continue to violate, Section 10(b) of the  
19 Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5(b) thereunder, 17 C.F.R. §§  
20 240.10b-5(b).

## 21 **SECOND CLAIM FOR RELIEF**

### 22 **Fraud in Connection with the Purchase or Sale of Securities**

#### 23 **Violations of Section 10(b) of the Exchange Act and Rule 10b-5(a) and (c)**

24 161. The SEC realleges and incorporates by reference paragraphs 1 through  
25 155 above.

26 162. Defendant Zeini knowingly concealed the information he received  
27 concerning the suspension of Supplier's CE certificate prior to the close of Sientra's  
28 offering, preventing the professionals working on the offering from finding out this

1 information and enabling Sientra to obtain millions of dollars from the sale of its  
2 shares to the public. Zeini took affirmative steps to conceal his knowledge:  
3 misleadingly revising Supplier's draft field safety notice; telling falsehoods to others  
4 in Sientra management; directing others in Sientra's management to hide information  
5 and obfuscate and to lie; and trying to cover up his deception once the truth became  
6 known.

7 163. By engaging in the conduct described above, Defendant Zeini, directly  
8 or indirectly, in connection with the purchase or sale of a security, and by the use of  
9 means or instrumentalities of interstate commerce, of the mails, or of the facilities of  
10 a national securities exchange: (a) employed devices, schemes, or artifices to  
11 defraud; and (c) engaged in acts, practices, or courses of business which operated or  
12 would operate as a fraud or deceit upon other persons.

13 164. Defendant Zeini, with scienter, employed devices, schemes and artifices  
14 to defraud; and engaged in acts, practices or courses of conduct that operated as a  
15 fraud on the investing public by the conduct described in detail above.

16 165. By engaging in the conduct described above, Defendant Zeini violated,  
17 and unless restrained and enjoined will continue to violate, Section 10(b) of the  
18 Exchange Act, 15 U.S.C. § 78j(b), and Rules 10b-5(a) and 10b-5(c) thereunder, 17  
19 C.F.R. §§ 240.10b-5(a) & 240.10b-5(c).

### 20 **THIRD CLAIM FOR RELIEF**

#### 21 **Fraud in the Offer or Sale of Securities**

#### 22 **Violations of Section 17(a)(1) and (3) of the Securities Act**

23 166. The SEC realleges and incorporates by reference paragraphs 1 through  
24 155 above.

25 167. Defendant Zeini knowingly concealed the information he received  
26 concerning the suspension of Supplier's CE certificate prior to the close of Sientra's  
27 offering, preventing the professionals working on the offering from finding out this  
28 information and enabling Sientra to obtain millions of dollars from the sale of its



1 shares to the public. Zeini took affirmative steps to conceal his knowledge:  
2 misleadingly revising Supplier's draft field safety notice; telling falsehoods to others  
3 in Sientra management; directing others in Sientra's management to hide information,  
4 to obfuscate and to lie; and trying to cover up his deception once the truth became  
5 known.

6 168. By engaging in the conduct described above, Defendant Zeini directly or  
7 indirectly, in the offer or sale of securities, and by the use of means or instruments of  
8 transportation or communication in interstate commerce or by use of the mails  
9 directly or indirectly: (a) employed devices, schemes, or artifices to defraud; and (c)  
10 engaged in transactions, practices, or courses of business which operated or would  
11 operate as a fraud or deceit upon the purchaser.

12 169. Defendant Zeini, with scienter, employed devices, schemes and artifices  
13 to defraud; and, with scienter or negligence, engaged in transactions, practices, or  
14 courses of business which operated or would operate as a fraud or deceit upon the  
15 purchaser.

16 170. By engaging in the conduct described above, Defendant Zeini violated,  
17 and unless restrained and enjoined will continue to violate, Sections 17(a)(1) and  
18 17(a)(3) of the Securities Act, 15 U.S.C. §§ 77q(a)(1), 77q(a)(3).

19 **FOURTH CLAIM FOR RELIEF**

20 **Aiding and Abetting Sientra's Violations of**

21 **Section 17(a)(2) of the Securities Act**

22 171. The SEC realleges and incorporates by reference paragraphs 1 through  
23 155 above.

24 172. Sientra obtained money by means of false and misleading material  
25 statements and omissions in connection with its offering. Zeini knowingly made  
26 false and misleading material statements to and omitted information from the market  
27 in connection with Sientra's offering. Sientra's Registration Statement and  
28 Prospectus, through which Sientra sold its stock to the public, omitted material

1 information about the Supplier’s CE certificate suspension, and were rendered  
2 misleading by the information Zeini learned regarding that suspension. The officer’s  
3 closing certificate falsely reaffirmed the representations in the Purchase Agreement  
4 that the Registration Statement and Prospectus did not contain any untrue statements  
5 of material fact or omit any material information and that there had been no material  
6 adverse changes to Sientra’s business—whereas Zeini knew that the suspension of  
7 Supplier’s CE certificate had occurred, but was not disclosed. The information Zeini  
8 withheld was material, as reflected in the precipitous drop in the company’s stock  
9 price once the news became public.

10 173. Defendant Zeini acted with scienter or negligence in withholding  
11 information about Supplier’s CE certificate suspension. As Sientra’s CEO, Zeini’s  
12 knowledge and absence of reasonable care are imputed to Sientra, which obtained  
13 over \$61 million by means of these material misstatements and omissions.

14 174. By reason of the conduct described above, Sientra violated  
15 Section 17(a)(2) of the Securities Act by obtaining of money by means of material  
16 misstatements and omissions.

17 175. By reason of the conduct described above, Defendant Zeini knowingly  
18 and recklessly provided substantial assistance to, and thereby aided and abetted,  
19 under Section 15(b) of the Securities Act, 15 U.S.C. § 77o(b), Sientra’s violation of  
20 Section 17(a)(2) of the Securities Act, 15 U.S.C. § 77q(a)(2), as prohibited by  
21 Section 15(b) of the Securities Act, 15 U.S.C. § 77o(b).

22 **PRAYER FOR RELIEF**

23 WHEREFORE, the SEC respectfully requests that the Court:

24 **I.**

25 Issue findings of fact and conclusions of law that Defendant Zeini committed  
26 the alleged violations.

27 **II.**

28 Issue judgments, in forms consistent with Rule 65(d) of the Federal Rules of

1 Civil Procedure, permanently enjoining Defendant Zeini, and his agents, servants,  
2 employees and attorneys, and those persons in active concert or participation with  
3 any of them, who receive actual notice of the judgment by personal service or  
4 otherwise, and each of them, from violating Section 17(a) of the Securities Act [15  
5 U.S.C. §77q(a)], and Section 10(b) of the Exchange Act [15 U.S.C. §§ 78j(b)] and  
6 Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

7 **III.**

8 Order Defendant Zeini to pay civil penalties under Section 20(d) of the  
9 Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15  
10 U.S.C. § 78u(d)(3)].

11 **IV.**

12 Enter an order against Defendant Zeini, pursuant to Section 20(e) of the  
13 Securities Act, 15 U.S.C. § 77t(e), and Section 21(d)(2) of the Exchange Act, 15  
14 U.S.C. § 78u(d)(2), (6), prohibiting him from acting as an officer or director of any  
15 issuer that has a class of securities registered pursuant to Section 12 of the Exchange  
16 Act, 15 U.S.C. § 781 or that is required to file reports pursuant to Section 15(d) of the  
17 Exchange Act, 15 U.S.C. §78o(d).

18 **V.**

19 Retain jurisdiction of this action in accordance with the principles of equity and  
20 the Federal Rules of Civil Procedure in order to implement and carry out the terms of  
21 all orders and decrees that may be entered, or to entertain any suitable application or  
22 motion for additional relief within the jurisdiction of this Court.

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1 **VI.**

2 Grant such other and further relief as this Court may determine to be just and  
3 necessary.

4  
5 Dated: September 19, 2018

6 */s/Amy Jane Longo*

7 Amy J. Longo

8 Matthew T. Montgomery

9 Attorney for Plaintiff

10 Securities and Exchange Commission

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