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**F I L E D**  
Clerk of the Superior Court

**SEP 17 2020**

By: R. Willis, Deputy

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14 Attorneys for Plaintiff FLORIN VRANCEANU, Individually and as Representative and  
15 on behalf of all similarly situated

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
17 **IN AND FOR THE COUNTY OF SAN DIEGO**

18 FLORIN VRANCEANU,

19 Plaintiffs,

20 v.

21 MERCK, SHARP & DOHME CORP., A  
22 New Jersey Corporation; and DOES 1  
23 through 25, inclusive,

24 Defendants.

CASE NO.  
37-2020-00011926-CU-OE-CTL

Assigned for all purposes to:  
Hon. Timothy Taylor  
Dept. C-72

Complaint Filed: 3/3/2020  
FAC Filed: 5/26/2020  
Trial Date: Not Set

Related Case Number  
37-2020-00018042-CU-BT-CTL  
Assigned for all purposes to:  
Hon. Richard S. Whitney  
Dept. C-68  
Complaint File: 6/2/2020  
Trial Date: Not Set

**[PROPOSED] CONSOLIDATED AmENDED  
COMPLAINT**

**DEMAND FOR JURY**

1 Plaintiff FLORIN VRANCEANU alleges:

2 1. Plaintiff FLORIN VRANCEANU ("Plaintiff" or "VRANCEANU") is an  
3 individual and is now, and at all times mentioned in this complaint was a resident of San  
4 Diego County, California. At all times herein mentioned Plaintiff VRANCEANU was  
5 employed by Defendant MERCK, SHARP & DOHME CORP.

6 2. Defendant MERCK, SHARP & DOHME CORP ("Defendant" or "MERCK")  
7 is and at all times mentioned herein was a New Jersey corporation duly organized,  
8 existing, and conducting business in the County of San Diego under and by virtue of the  
9 laws of the State of California.

10 3. Plaintiff is unaware of the true identities and/or capacities of those  
11 defendants sued herein as "DOES 1 through 25, inclusive," and are for that reason they are  
12 sued by such fictitious names. Plaintiff will amend this complaint to allege the true names,  
13 capacities and identities of such "DOE" defendants if, and when, ascertained. Plaintiff is  
14 informed, believes and thereon alleges that each of the fictitiously named defendant(s)  
15 is/are thereon responsible in some manner for the occurrences herein alleged, and that  
16 Plaintiffs' injuries as herein alleged were proximately caused by such acts.

17 4. Plaintiff is informed, believes and thereon alleges that at all times mentioned  
18 herein, each of the defendants was the agent, employee, servant, partner and/or  
19 representative of each of the remaining defendants, and in doing the things hereinafter  
20 alleged, was acting within the course and scope of such agency, employment, servitude,  
21 partnership and/or other relationship and with the consent of each other.

22 I.

23 **FACTUAL BACKGROUND AND GENERAL ALLEGATIONS**

24 5. Plaintiff VRANCEANU was employed by Defendant MERCK as a Senior  
25 Clinical Research Scientist in San Diego County. Plaintiff was hired by MERCK in or about  
26 January 23, 2017.

27 6. On or about April 3, 2019, Plaintiff VRANCEANU notified MERCK he  
28 intended to resign his position and that his last day would be April 12, 2019.

1           7.       At the time Plaintiff notified MERCK of his resignation Plaintiff had six (6)  
2 days of vacation earned and/or accrued which were unused. When Plaintiff notified  
3 MERCK of his resignation MERCK knew Plaintiff had six (6) days of unused, earned  
4 and/or accrued vacation days which Plaintiff was entitled to be paid at the time of his  
5 resignation, or on his last day of work.

6           8.       On or about April 12, 2019, MERCK paid Plaintiff his final paycheck.  
7 Plaintiff's final paycheck did not include payment of wages for Plaintiff's six (6) accrued  
8 or earned but unused vacation days.

9           9.       More than 30 days later, on or about May 24, 2019, MERCK paid Plaintiff in  
10 a separate check for Plaintiff's six (6) accrued or earned but unused vacation days.

11          10.      On or about February 1, 2020, Plaintiff filed with the California Labor  
12 Workforce Development Agency (LWDA) a notice of violation and claim in accordance  
13 with California Labor Code §2699.3. Plaintiff tendered to the LWDA the \$75.00  
14 administrative filing fee in accordance with California Labor Code §2699.3(a)(1)(B).  
15 Plaintiff's claim was assigned PAGA Case Number LWDA-CM-770146-20. Plaintiff mailed  
16 to Defendant MERCK via certified return receipt postage copies of the letter sent to the  
17 LWDA.

18          11.      More than 65 days have passed since Plaintiff filed his notice of violation and  
19 claim with the LWDA in which time the State of California has taken no action on  
20 Plaintiff's claim and has not notified Plaintiff that it intends to prosecute this action on his  
21 behalf or on behalf of other aggrieved employees. Plaintiff therefore prosecutes this action  
22 pursuant to the California Private Attorney General Act (PAGA), California Labor Code  
23 §2698, *et seq.*

24          12.      On March 3, 2020, Plaintiff filed this action against Defendant for  
25 nonpayment of his vacation wages and applicable penalties in accordance with Cal. Labor  
26 Code §203.

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1           13.     On April 8, 2020, Plaintiff submitted for filing with the San Diego Superior  
2 Court a First Amended Complaint which was "filed" on May 26, 2020, following re-  
3 opening of the San Diego Superior Court after the COVID-19 mandated shutdown.  
4 Plaintiff's First Amended Complaint included a claim for violation of the California Private  
5 Attorney General Act (PAGA).

6           14.     On June 2, 2020, Plaintiff filed in the San Diego Superior Court a separate  
7 class action complaint which was assigned case number 37-2020-00018042-CU-BT-CTL.

8           15.     Plaintiff now files this Consolidated Complaint.

9                               II.

10                              **FIRST CAUSE OF ACTION**

11                              **FAILURE TO PAY WAGES TIMELY; WAITING TIME PENALTIES**

12                              **(Cal. Labor Code §202, §203, §227.3, et seq.)**

13           16.     Plaintiff incorporates by this reference each and every previous paragraph  
14 and all allegations contained therein as though set forth in full herein.

15           17.     Defendant MERCK failed to pay Plaintiff VRANCEANU his vacation wages  
16 as required by Cal. Labor Code §202 and §227.3. Vacation pay is not a gratuity or a gift,  
17 but is, in effect, additional wages for services performed. See, *Suastez v. Plastic Dress-Up Co.*  
18 (1982) 31 Cal.3d 774, 779 (holding vacation pay is simply a form of deferred compensation).

19           18.     Defendant MERCK violated Cal. Labor Code §202 and/or §203 by failing to  
20 pay Plaintiff VRANCEANU timely all vacation wages due and owing when he resigned  
21 his position in April 2019. Plaintiff VRANCEANU alleges MERCK's conduct in failing to  
22 timely pay his earned and accrued vacation wages as herein alleged was willful because  
23 MERCK knew it had a legal obligation to pay earned or accrued but unused vacation  
24 wages in accordance with Cal. Labor Code §202 and §227.3, respectively and that statutory  
25 obligation was well-established at the time.

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1 19. Cal. Labor Code §203(a) provides:

2 If an employer willfully fails to pay, without abatement or reduction, in  
3 accordance with Sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5,  
4 any wages of an employee who is discharged or who quits, the wages of the  
5 employee shall continue as a penalty from the due date thereof at the same  
6 rate until paid or until an action therefor is commenced; but the wages shall  
7 not continue for more than 30 days. An employee who secretes or absents  
8 themselves to avoid payment to them, or who refuses to receive the payment  
9 when fully tendered to them, including any penalty then accrued under this  
10 section, is not entitled to any benefit under this section for the time during  
11 which the employee so avoids payment.

12 20. As a direct and proximate result of MERCK's failure to pay Plaintiff  
13 VRANCEANU's vacation wages timely Plaintiff VRANCEANU's wages continued as a  
14 penalty from the date due, April 12, 2019, at the same rate until paid but for not more than  
15 30 days. Because MERCK failed to pay Plaintiff VRANCEANU his vacation wages for  
16 more than 30 days from April 12, 2019, Plaintiff is entitled to recover the full amount  
17 permitted by law according to proof at trial, including interest thereon.

18 21. In addition, as a proximate result of Defendant MERCK's conduct as herein  
19 alleged Plaintiff did employ attorneys and/or other legal professionals to prosecute this  
20 action and is thereon entitled to an award of attorney fees in an amount according to proof  
21 in accordance with California Labor Code §218.5.

### 22 III.

#### 23 SECOND CAUSE OF ACTION

#### 24 PRIVATE ATTORNEY GENERAL ACT (PAGA)

25 [Cal. Labor Code §2698, et seq.]

26 22. Plaintiff incorporates by this reference each and every previous paragraph  
27 and all allegations contained therein as though set forth in full herein.

28 23. Plaintiff has exhausted the administrative remedy requirement set forth at  
Cal. Labor Code §2699, §2699.3, as herein alleged, prior to prosecuting this action pursuant  
to the California Private Attorney General Act (PAGA).

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1           24.     Plaintiff brings this action on his own behalf and in a representative capacity  
2 pursuant to the PAGA on behalf of the all other current and former aggrieved employees  
3 for Defendant MERCK's violations of the enumerated Labor Code sections as alleged  
4 herein and for the associated penalties pursuant to Cal. Labor Code §2698, *et seq.*

5           25.     Pursuant to Cal. Labor Code §2699.5, Plaintiff may maintain a Private  
6 Attorney General Act (PAGA) claim for Defendant's violation(s) of Cal. Labor Code §202,  
7 §203, and/or §227.3, respectively, as herein alleged.

8           26.     Pursuant to Cal. Labor Code §2699, Plaintiff and all other aggrieved  
9 employees are entitled to recovery of twenty-five percent (25%) of all penalties referenced  
10 herein due under California law, including interest thereon, attorney's fees and costs in an  
11 amount according to proof at trial.

12           27.     As a direct and proximate result of MERCK's violations as herein alleged,  
13 Plaintiff and all aggrieved employees are also entitled to recover penalties in accordance  
14 with California Labor Code §2699(f) which provides:

15           (f) For all provisions of this code except those for which a civil penalty is  
16 specifically provided, there is established a civil penalty for a violation of  
17 these provisions, as follows: (1) If, at the time of the alleged violation, the  
18 person does not employ one or more employees, the civil penalty is five  
19 hundred dollars (\$500). (2) If, at the time of the alleged violation, the person  
employs one or more employees, the civil penalty is one hundred dollars  
(\$100) for each aggrieved employee per pay period for the initial violation  
and two hundred dollars (\$200) for each aggrieved employee per pay period  
for each subsequent violation.

20           28.     In addition, as a proximate result of Defendant MERCK's conduct as herein  
21 alleged Plaintiff did employ attorneys and/or other legal professionals to prosecute this  
22 action and is thereon entitled to an award of attorney fees in an amount according to proof  
23 in accordance with California Labor Code §2699(g)(1).

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1 IV.

2 CLASS ACTION ALLEGATIONS

3 (California Code of Civil Procedure §382)

4 29. Plaintiff incorporates by this reference each and every previous paragraph  
5 and all allegations contained therein as though set forth in full herein.

6 30. Plaintiff alleges the number of employees affected by Defendant MERCK's  
7 actions, conduct and unlawful policy and/or practice as herein alleged are so numerous  
8 as to make joinder of individual cases impractical, a waste of judicial resources, and not  
9 judicially economical. Based on information and belief Plaintiff alleges there are more than  
10 500 employees of MERCK located in California who during the applicable limitations  
11 period were affected by MERCK's practice of not paying timely their earned and accrued  
12 but unused vacation hours as herein alleged.

13 31. Plaintiff alleges for himself and all other employees similarly situated the  
14 actions of MERCK as herein alleged involve common questions of law and fact including  
15 but not limited to whether MERCK violated the provisions of California Labor Code §201  
16 and/or §202 when it failed to pay Plaintiff and all other employees their earned and  
17 accrued but unused vacation wages immediately upon termination, or within 72 hours of  
18 the employee quitting, respectively.

19 32. Plaintiff further alleges for himself and all other employees similarly situated  
20 the actions of Defendant MERCK as herein alleged involve common questions of law and  
21 fact, including but not limited to whether MERCK violated willfully the provisions of  
22 California Labor Code §203.

23 33. Plaintiff further alleges for himself and all other employees similarly situated  
24 the actions of Defendant MERCK as herein alleged involve common questions of law and  
25 fact including but not limited to whether MERCK violated the California Labor Code as  
26 herein alleged.

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34. Plaintiff alleges his claims against Defendant MERCK as herein alleged are typical of all other employees similarly situated who are part of the class as herein alleged.

35. Plaintiff VRANCEANU alleges the class is defined as follows:

All employees of Defendant MERCK located in California from June 1, 2016 to the date of final approval or trial who were not paid earned and accrued but unused vacation wages immediately upon termination or within 72 hours of quitting.

36. Plaintiff alleges neither he nor his counsel of record herein have any real or potential conflicts with members of the putative class and that he will adequately represent the interests of the class. Plaintiff further alleges his counsel of record herein are qualified, experienced and capable of effectively and adequately prosecuting this class action for the benefit of the class as a whole. Plaintiff is therefore an adequate class representative and his counsel of record herein are adequate to representative the putative class.

V.

## PRAYER FOR RELIEF

Plaintiff FLORIN VRANCEANU and each of them pray for relief as follows:

1. For compensatory and economic damages, including interest thereon in an amount according to proof at trial;

2. For penalties in accordance with California Labor Code including but not limited to §203 in an amount according to proof at trial;

3. For penalties in accordance with California Labor Code §2699(f) in an amount according to proof at trial;

4. For attorney fees pursuant to statute, including but not limited to Cal. Labor Code §218.5 and/or §2699(g)(1), in an amount according to proof.

5. That this action be certified as a class action;

6. For costs of suit according to proof;

7. For prejudgment interest according to proof; and

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8. For such other relief as may be fair, just and equitable.

Dated: September 8, 2020

/s/ Robert A. Waller, Jr.  
ROBERT A. WALLER, JR.  
Attorneys for Plaintiff

## DEMAND FOR JURY

Plaintiff FLORIN VRANCEANU hereby demands a jury trial on each and every cause of action for which a jury trial is available.

By,

Dated: September 8, 2020

/s/ Robert A. Waller, Jr.  
ROBERT A. WALLER, JR.  
Attorneys for Plaintiff