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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

FLORIN VRANCEANU,
Plaintiff,

vs.

MERCK, SHARP & DOHME CORP., a New
Jersey Corporation; and DOES 1 through 25,
inclusive,
Defendants.

Lead Case No. 37-2020-11926-CU-OE-CTL
(Consolidated with Case No.:
37-2020-00018042-CU-BT-CTL)

Hon. Timothy Taylor
Dept. C-72

**JOINT STIPULATION OF CLASS AND
PAGA REPRESENTATIVE ACTION
SETTLEMENT AND RELEASE**

Complaint Filed: March 3, 2020
Amended Complaint Filed: May 26, 2020
Related Complaint Filed: June 2, 2020

1 This Class Action and PAGA Settlement Agreement and Release of Claims is entered into
2 by and between Plaintiff FLORIN VRANCEANU ("Plaintiff"), individually and on behalf of all
3 others similarly situated, and Defendant MERCK SHARP & DOHME CORP. ("Defendant")
4 (collectively, the "Parties"), and is approved by their respective counsel of record, subject to the
5 terms and conditions hereof and the Court's approval.

6 **A. Definitions**

7 1. "Action" or "Lawsuit" means and refers to the consolidated case entitled *Florin*
8 *Vranceanu v. Merck, Sharp & Dohme Corp.*, pending in San Diego County Superior Court, Case
9 No. 37-2020-11926-CU-OE-CTL, and consolidated with Case No. 37-2020-00018042-CU-BT-
10 CTL.

11 2. "Agreement," "Settlement Agreement," "Settlement," or "Stipulation" shall mean
12 this Class Action and PAGA Settlement Agreement and Release of Claims, including any attached
13 Exhibits.

14 3. "Class Counsel" refers to Robert A. Waller, Jr. of Law Office of Robert A. Waller,
15 Jr. and Robert Radulescu of Romancore Law, PC.

16 4. "Class Data" means, for each Settlement Class Member, his or her name; last-known
17 mailing address; Social Security number; employee identification number; personal email address
18 (if known); and Estimated Days as a Settlement Class Member and (if applicable) as a PAGA
19 Settlement Employee.

20 5. "Class Notice" means the Notice of Proposed Settlement of Class Action and
21 Hearing Date for Final Court Approval substantively in the form attached hereto as Exhibit A to
22 this Agreement and incorporated by reference into this Agreement.

23 6. "Class Notice Packet" means the Class Notice to be provided to the Class Members
24 by the Settlement Administrator in the form set forth as Exhibit A to this Agreement (other than
25 formatting changes to facilitate printing by the Settlement Administrator).

26 7. "Class Representative" or "Plaintiff" means and refers to Florin Vranceanu.
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1 8. “Complaint” refers to the Complaint filed in the Action entitled *Florin Vranceanu*
2 *v. Merck, Sharp & Dohme Corp.*, pending in San Diego County Superior Court, Case No. 37-2020-
3 11926-CU-OE-CTL, and consolidated with Case No. 37-2020-00018042-CU-BT-CTL.

4 9. “Court” means the California Superior Court, County of San Diego or any Court of
5 competent jurisdiction.

6 10. “Defendant” means and refers to Merck Sharp & Dohme Corp.

7 11. “Defendant’s Counsel” or “Defense Counsel” means and refers to John D. Hayashi
8 and Alexander L. Grodan of Morgan, Lewis & Bockius LLP.

9 12. “Effective Date” means the latest of the following dates: (i) if no Settlement Class
10 Member objects, intervenes, or files a motion to vacate the judgment approving the Settlement
11 Agreement under California Code of Civil Procedure § 663, then the date the Court enters an order
12 granting Final Approval of the Settlement and entering Judgment; (ii) if a Settlement Class Member
13 objects, intervenes, or files a motion to vacate the judgment approving the Settlement Agreement,
14 then sixty-one (61) calendar days following the date the Court enters an order granting Final
15 Approval of the Settlement and entering Judgment, assuming no appeal is filed; or (iii) if a timely
16 appeal is filed, the date of final resolution of that appeal (including any requests for rehearing and/or
17 petitions for *certiorari*), resulting in final judicial approval of the Settlement.

18 13. “Estimated Days” means the number of days estimated between the date of a Class
19 Member’s separation of employment with Defendant and the date of final payment of accrued
20 vacation wages up to a maximum of 30 days based on Defendant’s records.

21 14. “Final” means that the Settlement has been granted “Final Approval” by the Court
22 and the “Effective Date” has occurred.

23 15. “Final Approval” refers to the order of the Court granting final approval of this
24 Settlement Agreement and entering a Judgment approving this Settlement on the same terms
25 provided herein (unless explicitly excepted herein) or as may be modified by subsequent written
26 and executed agreement of the Parties or order of the Court.

27 16. “Final Settlement Class” or “Final Settlement Class Members” means, collectively,
28 all Participating Class Members and all PAGA Settlement Employees.

1 17. “Individual Settlement Amount” shall have the meaning ascribed to it in Paragraph
2 49(c) below.

3 18. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 49(b)
4 below.

5 19. “Notice” means the Notice of Settlement of Class and PAGA Action that will be
6 sent to the Settlement Class Members.

7 20. “Notice Response Deadline” is 45 calendar days from the date the Notice is mailed
8 to the Settlement Class Members.

9 21. “Objecting Settlement Class Member” means a Settlement Class Member, other
10 than Plaintiff, who submits a valid and timely objection to the terms of this Agreement with respect
11 to the Class Claims pursuant to Paragraph 70(c) below.

12 22. “PAGA” shall refer to the California Labor Code Private Attorneys General Act of
13 2004, California Labor Code Sections 2698, *et seq.*

14 23. “PAGA Notice” shall refer to the notice sent by Plaintiff, by and through counsel,
15 on or about February 1, 2020 to the California Labor & Workforce Development Agency
16 (“LWDA”) and to Defendant, alleging that Defendant engaged in violations of the California Labor
17 Code and California Wage Orders.

18 24. “PAGA Payment” shall mean a payment of \$12,000 to be paid from the Gross
19 Settlement Amount, with 25% of the payment going to the PAGA Settlement Employees, and 75%
20 of the payment going to the LWDA. These payments will be made whether or not the PAGA
21 Settlement Employees opt out of the Settlement since the PAGA Settlement Employees will not
22 have the ability of opting out of the PAGA portion of the Settlement.

23 25. “PAGA Period” and “PAGA Release Period” shall mean March 23, 2019 through
24 Preliminary Approval Date.

25 26. “PAGA Settlement Employees” include all individuals who previously were
26 employed by Defendant in California and whose employment ended in California on or after March
27 23, 2019 with unused accrued vacation days and whose payment for these vacation days was issued
28 after the employee’s separation date.

1 27. “Participating Class Member” means any and all Settlement Class Members who do
2 not opt out of the Settlement of the Class Claims by submitting timely and valid Requests for
3 Exclusion and will be mailed an Individual Settlement Amount for their participation in the
4 Settlement.

5 28. “Parties” or “Settling Parties” mean Plaintiff, the Settlement Class Members, the
6 PAGA Settlement Employees, and Defendant, collectively.

7 29. “Preliminary Approval Date” means the date the Court preliminarily approves the
8 Settlement Agreement, and the exhibits thereto, and enters the Preliminary Approval Order.

9 30. “Preliminary Approval Order” means the judicial Order to be entered by the Court,
10 upon the application or motion of Plaintiff, preliminarily approving this Settlement and providing
11 for the issuance of the Notice of Settlement of Class and PAGA Action, an opportunity to opt out
12 of the Settlement of the Class Claims, an opportunity to submit timely objections to the terms of
13 this Settlement related to the Class Claims, and setting a hearing on the fairness of the terms of
14 Settlement, including approval of attorneys’ fees and costs. Defendant will not object to Plaintiff’s
15 motion for preliminary approval as long as it comports with the terms of this Agreement and after
16 giving Defendant’s counsel two weeks for reasonable review and comment prior to the filing of
17 motion for preliminary approval.

18 31. “Release” shall mean the release and discharge of the Class Claims by Plaintiff and
19 all of the Participating Class Members and the release and discharge of the PAGA Claims by
20 Plaintiff and all of the PAGA Settlement Employee, as set forth in Paragraphs 52-57 below.

21 32. “Released Parties” shall refer to Defendant and all affiliated parties and entities
22 (including their past and present affiliates, parents, subsidiaries, predecessors, owners, successors,
23 shareholders, divisions, and each of these entities’ past and present directors, officers, managing
24 agents, employees, partners, benefit plans, shareholders, and representatives).

25 33. “Request for Exclusion” shall have the meaning ascribed to it in Paragraph 70(a)
26 below.

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1 34. “Service Payment” or “Service Award” means the amount approved by the Court to
2 be paid to the Class Representative in addition to his Individual Settlement Amount as a
3 Participating Class Member.

4 35. “Settlement Administrator” means Phoenix Settlement Administrators, the third-
5 party settlement administrator proposed by the Parties, as approved by the Court.

6 36. “Settlement Amount” or “Gross Settlement Amount” shall have the meaning
7 ascribed to it in Paragraph 49(a) below.

8 37. “Settlement Class Member” or “Class Member” refers to individual members of the
9 Settlement Class.

10 38. “Settlement Class” and “Settlement Class Members” refers to all individuals who
11 previously were employed by Defendant in California and whose employment ended in California
12 on or after June 1, 2017 and whose final vacation pay was issued after the separation date.

13 39. “Settlement Class Period,” “Class Period,” “Settlement Class Release Period,” or
14 “Class Release Period” shall mean June 1, 2017 through Preliminary Approval Date.

15 **B. General Terms**

16 40. On or about February 1, 2020, Plaintiff submitted a pre-filing letter to the LWDA
17 notifying the agency of his intent to seek civil penalties on behalf of himself and other similarly
18 situated “aggrieved employees” under the PAGA for alleged Labor Code violations relating to the
19 late payment of final vacation wages.

20 41. On or about March 3, 3020, Plaintiff filed an individual lawsuit against Defendant
21 in San Diego County Superior Court, Case No. 37-2020-119264, asserting a claim for waiting time
22 penalties under Labor Code Section 203 based on the alleged failure to pay his accrued, unused
23 vacation days until the month following his separation date. On or about May 26, 2020, Plaintiff
24 filed a First Amended Complaint (“FAC”) adding a representative PAGA claim.

25 42. On or about June 2, 2020, Plaintiff filed a second lawsuit against Defendant alleging
26 similar claims but on behalf of a putative class of employees in California who allegedly had not
27 received timely payment of their accrued but unused vacation wages upon separation of
28 employment, Case No. 37-2020-18042. Following meet and confer efforts between the Parties,

1 Plaintiff filed a consolidated amended complaint on or about September 17, 2020 in Case No. 37-
2 2020-119264, adding the putative class claims that were pending in Case No. 37-2020-18042.

3 43. Defendant denies Plaintiff's claims and allegations and contends that the Action is
4 not suitable for class certification and/or representative treatment. Defendant and the Released
5 Parties deny that they have engaged in any unlawful activity, they have failed to comply with the
6 law in any respect, or that they have any liability to anyone under the claims asserted in this Action.
7 Defendant and the Released Parties further assert that nothing herein shall be construed as an
8 admission of liability by Defendant or by any Released Party.

9 44. Class Representative believes he can proceed with his representative and class
10 claims, that the Action is meritorious, and that class certification is appropriate.

11 45. The Parties have conducted a thorough investigation into the facts of the Action.
12 This includes conducting extensive exchange of informal discovery, including Defendant's written
13 policies and practices and the production of payroll records and termination data for Settlement
14 Class Members and PAGA Settlement Employees. The Parties have also discussed their various
15 legal contentions regarding Plaintiff's claims and Defendant's defenses. Class Counsel is both
16 knowledgeable about and has done extensive research with respect to the applicable law and
17 potential defenses to the claims of the Settlement Class Members and PAGA Settlement
18 Employees. Class Counsel has diligently pursued an investigation of the Class Members' claims
19 against Defendant. Based on the foregoing data and on their own independent investigation and
20 evaluation, Class Counsel is of the opinion that the settlement with Defendant for the consideration
21 and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in
22 the best interest of the Settlement Class Members and PAGA Settlement Employees in light of all
23 known facts and circumstances, including the risk of significant delay and uncertainty associated
24 with litigation, various defenses asserted by Defendant, the risks with respect to class certification
25 of these claims, and numerous potential appellate issues.

26 46. The Parties discussed attempting to resolve the Action through private mediation,
27 but were able to engage in arms-length settlement negotiations and made progress without the need
28 and added cost of a private mediator.

1 47. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts
2 to be performed or judgments to be entered pursuant to the terms of the Settlement and Agreement,
3 shall be construed as an admission by Defendant of any wrongdoing or violation of any statute or
4 law or liability on the claims or allegations in the Action.

5 48. Stipulation for Class Certification and Representative Treatment. For settlement
6 purposes only, Defendant will stipulate that the Settlement Class Members described herein who
7 do not Request Exclusion from the Settlement Class may be conditionally certified as a settlement
8 class and that the PAGA Settlement Employees are appropriate for representative treatment for
9 purposes of settlement only. This stipulation to certification and representative treatment is in no
10 way an admission that class action certification and/or representative treatment is proper and shall
11 not be admissible in this or in any other action except for the sole purposes of enforcing this
12 Agreement. Should, for whatever reason, the Court fail to issue Final Approval or the Effective
13 Date does not happen, the Parties' stipulation to class certification and representative treatment as
14 part of the Settlement shall become null and void *ab initio* and shall have no bearing on and shall
15 not be admissible in connection with the issue of whether or not class certification and/or
16 representative treatment would be appropriate in a non-settlement context. Defendant expressly
17 reserves its rights and declares that it will continue to oppose class certification, representative
18 treatment, and the substantive merits of the case should the Court fail to issue Final Approval or
19 the Effective Date does not happen. Plaintiff expressly reserves his rights and declares that he will
20 continue to pursue class certification and representative treatment and a trial should the Court fail
21 to issue Final Approval or the Effective Date does not happen.

22 **C. Terms of Settlement**

23 49. The financial terms of the Settlement are as follows:

24 (a) Gross Settlement Amount: The Parties agree to settle this Action for the
25 gross amount of Nine Hundred and Twenty-Five Thousand Dollars (\$925,000) ("the Settlement
26 Amount"). The Settlement Amount is the maximum amount that will be paid by Defendant, and
27 includes Individual Settlement Amounts, attorneys' fees of Class Counsel, costs and expenses, the
28 Service Payment to the Class Representative, and the PAGA Payment.

1 (b) Net Settlement Amount: The “Net Settlement Amount” is defined as the
2 Settlement Amount less attorneys’ fees and litigation costs of Class Counsel as approved and
3 awarded by the Court, the Service Payment to the Class Representative as approved and awarded
4 by the Court, and the PAGA Payment.

5 (c) Individual Settlement Amounts for the Settlement Class: The Settlement
6 Administrator will use the Class Data to calculate each Participating Class Member’s and PAGA
7 Settlement Employees’ Individual Settlement Amounts based on the following formula:

8 i. PAGA Payment: \$12,000 of the Gross Settlement Amount has been
9 designated to the PAGA Claims. Twenty-five percent (25%), or \$3,000, shall be paid out to PAGA
10 Settlement Employees. Each PAGA Settlement Employee shall receive a portion of the \$3,000
11 proportionate to the number of the PAGA Settlement Employee’s Estimated Days compared to the
12 total number of Estimated Days for all PAGA Settlement Employees during the PAGA Period.

13 ii. Class Amount: The Net Settlement Amount designated to the Class
14 Claims shall be allocated to each Participating Class Member based on his or her proportionate
15 number of Estimated Days compared to the total number of Estimated Days for all Participating
16 Class Members during the Class Period. Each Settlement Class Member’s respective Estimated
17 Days shall be identified in the Notice of Settlement of Class and PAGA Action.

18 (d) Service Payment to Class Representative: The amount awarded to the Class
19 Representative as a Service Payment will be set by the Court in its discretion, not to exceed \$10,000.
20 Defendant agrees not to oppose this request. The Service Payment to the Class Representative will
21 be paid out of the Gross Settlement Amount. The Class Representative will be issued a Form 1099
22 in connection with this payment. Plaintiff shall be solely and legally responsible to pay any and all
23 applicable taxes on this payment. The Parties agree that any amount awarded by the Court as the
24 Service Payment to Plaintiff less than the requested amount shall not be a basis for Plaintiff or Class
25 Counsel to rescind the Settlement Agreement or otherwise void the Settlement.

26 (e) Attorneys’ Fees and Costs: Defendant agrees to not oppose a request by
27 Class Counsel to the Court for an award of attorneys’ fees of one-third (33.33%) of the Gross
28 Settlement Amount, inclusive of reasonable litigation costs (“Attorneys’ Fees and Cost Award”).

For purposes of this Settlement, Defendant agrees not to oppose any contention by Class Counsel that attorneys' fees should be based on the common fund theory. The Attorneys' Fees and Cost Award shall be paid from the Gross Settlement Amount, and except for this award, Defendant shall have no further obligation to pay any attorneys' fees, costs or expenses to Class Counsel. Any Court order awarding less than the amount sought by Class Counsel shall not be grounds to rescind the Settlement Agreement or otherwise void the Settlement. In the event of any appeal of the amount of the awards of Attorneys' Fees and Costs (if any) approved by the Court, final funding and administration of the portion of the Attorneys' Fees and/or Costs award in dispute will be segregated and stayed pending the exhaustion of appellate review. Class Counsel agrees that any allocation of fees between or among Class Counsel and any other attorney representing or claiming to represent the Class Members shall be the sole responsibility of Class Counsel.

(f) Tax Treatment of Settlement Payments: Because Individual Settlement Amount Payments are payments in compromise and settlement of a claim for alleged penalties, one hundred percent (100%) of such payments will be allocated as non-wage penalties and will be reported, if required by applicable tax laws, on an IRS Form-1099. IRS Form 1099s or other tax forms as may be required by law for all amounts paid pursuant to this Settlement will be issued to Plaintiff, Settlement Class Members and PAGA Settlement Employees, Class Counsel, and applicable governmental authorities. IRS Form 1099 will also be issued to Plaintiff, Class Counsel, and applicable governmental authorities for the payment of Attorneys' Fees and Cost Award and the Service Payment in the amount approved by the Court. Plaintiff and Class Counsel each agree to hold Defendant harmless from and against any damage or penalty incurred by Defendant as a result of any taxing authority assessing any tax or penalty upon Defendant as a consequence of any tax being due and unpaid on each of their portions of the Gross Settlement Amount.

(g) Tax Liability: Class Counsel, Defendant and Defendant's Counsel make no representations as to the tax treatment or legal effect of the Individual Settlement Amounts called for hereunder, and Plaintiff and the Settlement Class Members are not relying on any statement or representation by Class Counsel, Defendant, or Defendant's Counsel in this regard. Plaintiff and the Final Settlement Class understand and agree that they will be solely responsible for the payment

1 of any taxes and penalties assessed on their respective Individual Settlement Amounts described
2 herein. Forms 1099 will be distributed at times and in the manner required by the Internal Revenue
3 Code of 1986 (the "Code") and consistent with this Agreement. If the Code, the regulations
4 promulgated thereunder, or other applicable tax law, are changed after the date of this Agreement,
5 the processes set forth in this Section may be modified in a manner to bring Defendant into
6 compliance with any such changes.

7 (h) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS AGREEMENT
8 (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH
9 PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN
10 "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
11 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
12 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS
13 INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE
14 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE
15 MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR
16 PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
17 EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX
18 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
19 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
20 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO
21 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
22 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
23 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
24 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
25 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
26 OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF
27 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
28 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY

TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

50. “Non-Reversionary” Settlement. This is a “non-reversionary” settlement. Under no circumstances will any portion of the Settlement Amount revert to Defendant. Settlement Class Members will not have to make a claim in order to receive an Individual Settlement Amount. Distributions, in the form of Individual Settlement Amounts, will be made directly to each Participating Class Member.

51. Class Counsel and Plaintiff believe that the Settlement is fair and reasonable, and adequate, and will so represent same to the Court.

D. Release by Plaintiff and the Final Settlement Class

52. Upon the Effective Date of this Settlement, Plaintiff and each Participating Class Member, for themselves and for their respective spouses, domestic partners, marital community, children, estates, trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, assigns, and representatives (collectively, “Releasing Parties”), will forever completely release and discharge the Released Parties from the Release for the Class Period with respect to the Class Claims. The Released Class Claims includes any and all wage and hour claims, rights, demands, liabilities, and causes of action of every nature and description that were or are alleged in the Action, or could have been alleged based on the facts, circumstances, and claims alleged in the Action, against Defendant from June 1, 2017 through the date of Preliminary Approval, including without limitation all claims arising out of California Labor Code § 227.3 and Labor Code §§ 201-203 regarding Defendant’s payment of final vacation wages to employees, and all other statutory, constitutional, contractual or common law claims for damages, unpaid costs, penalties, liquidated damages, punitive damages, interest, attorneys’ fees, litigation costs, restitution, equitable relief, or additional damages that allegedly arise out of the facts as alleged in the Action.

53. Each Participating Class Member will be deemed to have made the foregoing Release as if by manually signing it.

1 54. Upon the Effective Date of this Settlement, Plaintiff, the LWDA, and each PAGA
2 Settlement Employee, for themselves and the Releasing Parties will forever completely release and
3 discharge the Released Parties from the Release for the PAGA Period with respect to the PAGA
4 Claims regardless of whether any PAGA Settlement Employee submitted a Request for Exclusion.
5 The Released PAGA Claims include any and all claims, rights, demands, liabilities, and causes of
6 action of every nature and description that were or are alleged in the Action or Plaintiff's PAGA
7 Notice, or could have been alleged under the California Labor Code Private Attorneys General Act
8 of 2004, Labor Code section 2699 et seq., based on the facts, circumstances, and claims alleged in
9 the Action or the PAGA Notice, against Defendant from March 23, 2019 through the date of
10 Preliminary Approval, including without limitation all claims for civil penalties under the PAGA
11 arising out of California Labor Code § 227.3 and §§ 201-203 and from Defendant's payment of
12 final vacation wages to employees. These claims are released by Plaintiff in his representative
13 capacity as authorized proxy and agent for the State of California and the LWDA and as a private
14 attorney general "aggrieved employee" acting on behalf of himself and the PAGA Settlement
15 Employees.

16 55. Each PAGA Settlement Employee and the LWDA will be deemed to have made the
17 foregoing Release as if by manually signing it.

18 56. Plaintiff and Defendant intend that the Settlement described in this Agreement will
19 release and preclude any further claim, whether by lawsuit, administrative claim or action,
20 arbitration, demand, or other action of any kind, by each and all of the Participating Class Members
21 to obtain a recovery based on, arising out of, and/or related to any and all of the Release with respect
22 to the Class Claims. The Settlement Class Members shall be so notified in the Notice. This
23 paragraph does not apply to any Settlement Class Member who timely and validly opts out of the
24 Settlement.

25 57. Plaintiff and Defendant intend that the Settlement described in this Agreement will
26 release and preclude any further claim, whether by lawsuit, administrative claim or action,
27 arbitration, demand, or other action of any kind, by each and all of the PAGA Settlement Employees
28 and the LWDA to obtain a recovery based on, arising out of, and/or related to any and all of the

1 Release with respect to the PAGA Claims. The PAGA Settlement Employees and the LWDA shall
2 be so notified in the Notice.

3 58. Class Representative, on behalf of himself and the Participating Settlement Class
4 Members, acknowledges and agrees that the claims for untimely payment of final accrued vacation
5 wages in the Action, are disputed, and that the payments set forth herein constitute payment of all
6 sums allegedly due to them. Class Representative, on behalf of himself and the Participating
7 Settlement Class Members, acknowledge and agree that California Labor Code Section 206.5 is
8 not applicable to the Parties hereto. Section 206.5 provides in pertinent part as follows:

9 An employer shall not require the execution of any release of any claim or right on
10 account of wages due, or to become due, or made as an advance on wages to be
earned, unless payment of those wages has been made.

11 **E. Release by Class Representative**

12 59. As a material inducement to Defendant to enter into this Settlement Agreement, in
13 addition to the Class Representative's release of the Released Class Claims and Released PAGA
14 Claims, as discussed in Paragraphs 52 through 57 above, Class Representative does hereby, for
15 himself and for his spouses, domestic partners, marital community, children, estates, trusts,
16 attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees,
17 conservators, guardians, assigns, and representatives, forever completely release and discharge the
18 Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises,
19 agreements, contracts, controversies, damages, actions, causes of action, suits, rights, demands,
20 costs, losses, debts, and expenses (including for back wages, statutory penalties, civil penalties,
21 liquidated damages, exemplary damages, interest, attorneys' fees, and costs) of any nature
22 whatsoever, from the beginning of time through the execution of this Stipulation, whether known
23 or unknown, suspected or unsuspected, concealed or hidden, including but not limited to all claims
24 arising out of, based upon, or relating to Class Representative's employment with Defendant or the
25 remuneration for or termination of such employment (collectively, the "Class Representative's
26 Individual Claims").

27 60. Without limiting the generality of the foregoing, Class Representative also expressly
28 releases for himself alone all claims or rights against Released Parties arising out of or relating to

1 alleged violations of any contracts, express or implied (including but not limited to any contract of
 2 employment); any contract or covenant of good faith and fair dealing (express or implied); any tort,
 3 including but not limited to, negligence, fraud, misrepresentation and violation of California Labor
 4 Code section 970, negligent infliction of emotional distress, intentional infliction of emotional
 5 distress, defamation, “retaliation” claims and claims for violation of public policy, any claim for
 6 improper or unauthorized wage deductions, failure to pay the applicable wage, unpaid wages,
 7 unpaid vacation benefits, penalties, liquidated damages, other damages, overtime, and alleged “off
 8 the clock” work under federal and state law, including, but not limited to, California Labor Code
 9 Sections 204 and 558, waiting time penalties pursuant to California Labor Section 203, damages or
 10 penalties pursuant to California Labor Code Section 226, meal period and rest break payments and
 11 penalties pursuant to California Labor Code Sections 226.7 and 512, failure to provide itemized
 12 wage statements pursuant to California Labor Code Section 226, statutory or civil penalties
 13 pursuant to California Labor Code Sections 210, failure to indemnify for business expenses
 14 pursuant to Labor Code section 2802, failure to provide one day of rest in seven pursuant to
 15 California Labor Code Sections 551 and 552, unfair competition and unfair business practices
 16 pursuant to Business and Professions Code Section 17200 et seq., interest and costs pursuant to
 17 California Civil Code Section 3287 and California Labor Code Section 218.6, statutory or common
 18 law rights to attorneys’ fees and costs, including those pursuant to California Labor Code Section
 19 1194 *et seq.*; claims under the Private Attorneys General Act of 2004, Labor Code section 2699 *et*
 20 *seq.*, and the alleged violation or breach of any other state or federal statute, rule and or regulation;
 21 including all applicable Industrial Welfare Commission Wage Orders, and all similar causes of
 22 action, including but not limited to, any claim for restitution, equitable relief, interest, penalties,
 23 costs or attorneys’ fees in connection with any of the foregoing, negligent infliction of emotional
 24 distress, intentional infliction of emotional distress, and defamation; any “wrongful discharge,”
 25 “constructive discharge,” and “retaliation” claims; any claims relating to any breach of public
 26 policy; any legal restrictions on Defendant’s right to discharge employees; and any federal, state,
 27 or other governmental statute, regulation, or ordinance, including, without limitation: (1) Title VII
 28 of the Civil Rights Act of 1964 (race, color, religion, sex, and national origin discrimination or

harassment, including retaliation for reporting discrimination or harassment); (2) 42 U.S.C. § 1981 (discrimination); (3) Equal Pay Act, 29 U.S.C. § 209(d)(1) and California Labor Code 1197.5 (equal pay); (4) Americans with Disabilities Act, 42 U.S.C. § 12100 et seq. (disability discrimination); (5) Family and Medical Leave Act, 29 U.S.C. § 2601 et seq. (family/medical leave); (6) California Fair Employment and Housing Act, Cal. Government Code § 12900 et seq. (discrimination or harassment in employment and/or housing, including discrimination or harassment based on race, religious creed, color, national origin, ancestry, disability, marital status, sex (including pregnancy), or age, including retaliation for reporting discrimination or harassment); (7) California Family Rights Act, Cal. Government Code § 12945.1 et seq. (family/medical leave); (8) California Labor Code, including Section 1720 et seq., or any Industrial Welfare Commission Wage Order; (9) Executive Order 11246 (race, color, religion, sex, and national origin discrimination or harassment); (10) Executive Order 11141 (age discrimination); (11) Sections 503 and 504 of the Rehabilitation Act of 1973 (handicap discrimination); (12) the Fair Labor Standards Act; (13) Employee Retirement Income Security Act, 29 U.S.C. § 1000 et seq. (employee benefits); (14) the California Civil Code; (15) the California Labor Code; (16) the California Constitution; (17) the National Labor Relations Act; and (18) any other federal, state, or local statute or legislation.

61. Class Representative for himself alone expressly waives and relinquishes all rights and benefits afforded by Section 1542 of the Civil Code of the State of California and do so understanding and acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code of the State of California states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge of all parties, Class Representative and Class Counsel expressly acknowledge that this Settlement Agreement is intended to include in its effect, without limitation, all claims that Class Representative knew of, as well as all claims that he does not know or suspect

1 to exist in his favor against the Released Parties, or any of them, for the time period from the
2 beginning of time to the execution of this Settlement Agreement, and that this Settlement
3 Agreement contemplates the extinguishment of any such Class Representative's individual claims.

4 **F. Interim Stay of Proceedings**

5 62. Pending completion of all of the prerequisites necessary to effectuate this
6 Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action
7 except such as are necessary to effectuate the Settlement.

8 **G. Notice Process**

9 63. Appointment of Settlement Administrator. Defendant requests that the Court
10 appoint Phoenix Settlement Administrators as the qualified administrator, to serve as the Settlement
11 Administrator, which, as a condition of appointment, will agree to be bound by this Agreement
12 with respect to the performance of its duties and its compensation and will execute a confidentiality
13 agreement satisfactory to Defendant. The Settlement Administrator's duties will include preparing,
14 printing, and mailing the Class Notice Packet to all Settlement Class Members; conducting a
15 National Change of Address search to update Class Member addresses before mailing the Class
16 Notice Packets; re-mailing to the Class Member's new address Class Notice Packets that are
17 returned; setting up a toll-free telephone number to receive calls from Class Members; receiving
18 and reviewing for validity completed Requests for Exclusion; providing the Parties with weekly
19 status reports about the delivery of Class Notice Packets and receipt of completed Requests for
20 Exclusion; calculating Individual Settlement Amounts; issuing the checks to effectuate the
21 payments due under the Settlement; issuing the tax reports and payments to taxing authorities
22 required under this Settlement; and otherwise administering the Settlement pursuant to this
23 Agreement. The Settlement Administration Expenses, including the cost of printing and mailing
24 the Class Notice Packet, will be paid separately by Defendant and are not to be taken from the
25 Gross Settlement Amount.

26 64. The Parties agree that the Settlement Administrator shall establish a Qualified
27 Settlement Fund ("QSF") that is intended to be pursuant to Section 468B of the Code and Treas.
28 Reg. § 1.468B-1, 26 CFR § 1.468B-1 *et seq.*, and will be administered by the Settlement

1 Administrator as such. With respect to the QSF, the Settlement Administrator shall: (1) open and
2 administer a settlement account in such a manner as to qualify and maintain the qualification of the
3 QSF as a "Qualified Settlement Fund" under Section 468B of the Code and Treas. Reg. §1.468B-
4 1; (2) satisfy all federal, state and local income and other tax reporting, return, and filing
5 requirements with respect to the QSF; and (3) satisfy out of the QSF all fees, expenses, and costs
6 incurred in connection with the opening and administration of the QSF and the performance of its
7 duties and functions as described in this Agreement. The aforementioned fees, costs, and expenses
8 shall be treated as and included in the costs of administering the QSF and as Settlement
9 Administration Expenses.

10 65. Disputes Regarding Settlement Administration. Any and all disputes relating to
11 administration of the Settlement by the Settlement Administrator (except for disputes regarding
12 Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction over
13 the terms and conditions of this Settlement Agreement, until Plaintiff and Defendant notify the
14 Court that all payments and obligations contemplated by this Settlement Agreement have been fully
15 carried out. Prior to presenting any issue to the Court, counsel for the Parties will confer in good
16 faith to resolve the dispute without the necessity of Court intervention.

17 66. Notice. The Notice, as approved by the Court, shall be sent by the Settlement
18 Administrator to the Settlement Class Members, by first class mail within twenty-five (25) business
19 days following entry of the Preliminary Approval Order. No later than fifteen (15) business days
20 following entry of the Preliminary Approval Order, Defendant will provide to the Settlement
21 Administrator in electronic format a spreadsheet containing each Class Member's Class Data. All
22 Class Data will be used for settlement notification and settlement administration, shall be kept
23 confidential by the Settlement Administrator, and shall not be provided to Class Counsel or used
24 for any other purpose.

25 67. Returned Notices. The Settlement Administrator will take steps to ensure that the
26 Notice is correctly mailed to all Settlement Class Members, including utilization of the National
27 Change of Address Database maintained by the United States Postal Service to review the accuracy
28 of and, if possible, update a mailing address. Notices will be re-mailed to any Settlement Class

1 Member for whom an updated address is located within ten (10) calendar days following both the
2 Settlement Administrator learning of the failed mailing and its receipt of the updated address. The
3 Notice shall be identical to the original Notice, except that it shall notify the Settlement Class
4 Member that the exclusion (opt-out) request or objection must be returned by the later of the Notice
5 Response Deadline or fifteen (15) days after the remailing of the Notice.

6 68. Presumption Regarding Receipt of Notice. It will be conclusively presumed that if
7 an envelope has not been returned within thirty (30) days of the mailing that the Settlement Class
8 Member received the Notice.

9 69. Disputes Regarding Class Data. Settlement Class Members are deemed to
10 participate in the Settlement, unless they submit a timely and valid Request for Exclusion. The
11 Notice will inform Settlement Class Members of his/her Estimated Days during the Class Period
12 and (if applicable) the PAGA Period. Settlement Class Members may dispute the Estimated Days
13 if they feel it is not accurate by timely submitting evidence to the Settlement Administrator.
14 Defendant's records will be presumed determinative absent reliable evidence to rebut Defendant's
15 records, but Defendant will evaluate the evidence submitted by the Settlement Class Member. In
16 the event that Defendant determines that any Settlement Class Member's Estimated Days should
17 be increased, then the Settlement Administrator will recalculate the Participating Class Members'
18 Individual Settlement Amounts; however, in no event will Defendant be required to increase the
19 Gross Settlement Amount. In the event that Defendant determines that any Settlement Class
20 Member's Estimated Days should be increased, then the Settlement Administrator will recalculate
21 the Participating Class Members' Individual Settlement Amounts; however, in no event will
22 Defendant be required to increase the Gross Settlement Amount unless the increase to Estimated
23 Days exceeds ten percent (10%) of the total number of Estimated Days before the increase. If this
24 ten percent threshold is exceeded, Defendant will increase the Net Settlement Amount by the same
25 percentage that is above the 10% threshold (i.e., proportionally increased Net Settlement Amount
26 = [total number of recalculated Estimated Days] divided by [110% of total Estimated Days before
27 recalculation] multiplied by Net Settlement Amount).

70. Settlement Class Members' Rights. Each Settlement Class Member will be fully advised of the Settlement, the ability to object to the provisions of the Settlement related to the Class Claims, and the ability to opt-out or request exclusion from the Class Claims provisions of the Settlement. Settlement Class Members will have until the Notice Response Deadline to object or submit a Request for Exclusion to the Settlement Administrator by U.S. Mail. The Notice will inform the Settlement Class Members of the Court-established deadlines for filing objections or requesting exclusion from the Class Claims provisions of the Settlement in accordance with the following guidelines:

(a) Requests for Exclusion from Participating Settlement Class. Any Settlement Class Member, other than Plaintiff, may request to be excluded from the Participating Settlement Class by submitting a "Request for Exclusion" to Defendant, postmarked on or before the Notice Response Deadline. The Request for Exclusion should state:

"I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS
IN THE VRANCEANU V. MERCK SHARP & DOHME CORP.
LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED
FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY
MONEY FROM THE SETTLEMENT OF THE CLASS CLAIMS IN
THIS LAWSUIT."

Any Request for Exclusion must include the full name, address, telephone number, last four digits of the social security number or date of birth, and signature of the Settlement Class Member requesting exclusion. The Request for Exclusion must be returned by mail to the Settlement Administrator at the specified address. Any such Request must be made in accordance with the terms set forth in the Notice. A Request for Exclusion will be timely only if postmarked by the Notice Response Deadline, unless the Parties otherwise agree in writing. Any Settlement Class Member who timely requests exclusion in compliance with these requirements: (i) will not have any rights under this Agreement with respect to the Class Claims, including the right to object, appeal, or comment on the Settlement; (ii) will not be entitled to receive any payments

1 under this Agreement with respect to Class Claims; and (iii) will not be bound by this Agreement,
2 or the Judgment with respect to the Class Claims.

3 (b) Binding Effect on Final Settlement Class Members. Except for those
4 Settlement Class Members who exclude themselves in compliance with the procedures set forth
5 above, all Settlement Class Members will: (i) be deemed to be Final Settlement Class Members
6 for all purposes under this Agreement; (ii) will be bound by the terms and conditions of this
7 Agreement, the Judgment, and the releases set forth herein; and (iii) except as otherwise provided
8 herein, will be deemed to have waived all objections and oppositions to the fairness,
9 reasonableness, and adequacy of the Settlement.

10 (c) Objections to Settlement of Class Claims. Any Settlement Class Member,
11 other than Plaintiff, may object to the terms of this Agreement with respect to the Class Claims
12 and may appear at the Final Approval Hearing and object whether or not they have filed a written
13 objection as outlined herein. To object, a Settlement Class Member shall inform the Settlement
14 Administrator, in writing, of his or her objection, which shall be postmarked by the Notice
15 Response Deadline at the address set forth in the Notice. Such objection shall include the full
16 name, address, telephone number, last four digits of the social security number or date of birth,
17 signature of the Objecting Settlement Class Member, and the basis for the objection, including any
18 legal support and each specific reason in support of the objection, as well as any documentation
19 or evidence in support thereof, and, if the Objecting Settlement Class Member is represented by
20 counsel, the name and address of his or her counsel. If any Objecting Settlement Class Member
21 wishes to speak at the Final Approval Hearing with respect to the Class Claims, that Objecting
22 Settlement Class Member's written submission should include a request to be heard, and the Court
23 will determine whether Objecting Settlement Class Members will be permitted to speak. The
24 Settlement Administrator shall provide objections, if any, to Class Counsel and Defense Counsel
25 within three (3) days of receipt, and shall attach the same to its declaration of due diligence it files
26 with the Court prior to the Final Approval Hearing. Any Participating Class Member who files an
27 objection remains eligible to receive an Individual Settlement Amount from the Settlement.
28 Plaintiff and Defendant shall not be responsible for any fees, costs, or expenses incurred by any

1 Class Member and/or his or her separately-retained counsel related to any objections to the
2 Settlement. Submitting an objection does not preserve the right to appeal a final judgment. Rather,
3 the right to appeal is preserved by becoming a party of record by timely and properly intervening
4 or filing a motion to vacate the judgment under Code of Civil Procedure § 663. Settlement Class
5 Members and PAGA Settlement Employees may not object to or opt-out of the Settlement with
6 respect to the PAGA Claims.

7 (d) Failure to Object. Any Settlement Class Member who desires to object with
8 respect to the Class Claims but fails to timely submit a written objection or appear at the final
9 approval hearing to request to be heard waives any right to object and will be foreclosed from
10 making any objection to this Settlement. Any Settlement Class Member who does not timely and
11 properly become a party of record by intervening or filing a motion to vacate the judgment waives
12 any and all rights to appeal from the Judgment, including all rights to any post-judgment
13 proceeding and appellate proceeding, such as a motion to vacate judgment, motion for new trial,
14 a motion under California Code of Civil Procedure section 473, and extraordinary writs.

15 (e) Responses to Objections. Counsel for the Parties may file a response to any
16 objections submitted by Objecting Settlement Class Members.

17 71. Distribution of Funds. Defendant shall fund the Gross Settlement Amount by
18 depositing the money with the Settlement Administrator. Defendant shall fund the Gross
19 Settlement Amount within twenty (20) business days after the Effective Date provided that the
20 Settlement Administrator sends to Defendant's counsel the QSF's IRS Form W-9 on or before the
21 Effective Date. Within ten (10) business days after Defendant funds the Gross Settlement Amount,
22 the Settlement Administrator will mail the payments to the Final Settlement Class Members, the
23 payment for the Attorneys' Fees and Costs to Class Counsel, any Service Payment to the Class
24 Representative, and the PAGA Payment to the LWDA.

25 72. Deadline for Cashing Settlement Checks. Final Settlement Class Members shall
26 have 180 calendar days after mailing by the Settlement Administrator to cash their settlement
27 checks. If any Final Settlement Class Member's check is not cashed within that period, the check
28 will be void and a stop-payment will be issued. All unclaimed funds shall be paid to the State of

1 California's Unclaimed Property Fund in the name of the Participating Class Member. The Release
2 of the Class Claims will be binding upon all Final Settlement Class Members regardless of whether
3 they cash their checks within the 180-day period. In the event that any settlement check is returned
4 to the Settlement Administrator within 180 days of mailing, the Settlement Administrator will,
5 within five (5) business days of receipt of the returned settlement check, perform a skip trace to
6 locate the individual. If a new address is located by these means, the Settlement Administrator will
7 have ten (10) business days to re-issue the check and will notify Defense Counsel and Class Counsel
8 that a re-issued check has been sent. Neither Defendant, Defense Counsel, Class Counsel, nor
9 Plaintiff will have any liability for lost or stolen settlement checks, forged signatures on settlement
10 checks, or unauthorized negotiation of settlement checks. Without limiting the foregoing, in the
11 event a Final Settlement Class Member notifies the Settlement Administrator that he or she believes
12 that a settlement check has been lost or stolen, the Settlement Administrator shall immediately stop
13 payment on such check. If the check in question has not been negotiated prior to the stop payment
14 order, the Settlement Administrator will issue a replacement check.

15 73. Not later than 10 days before the date by which Plaintiff files the motion for final
16 approval of the Settlement, the Settlement Administrator will provide the Parties for filing with the
17 Court a declaration of due diligence setting forth its compliance with its obligations under this
18 Agreement and detailing the Class Notice Packets mailed and remailed including any mail tracing
19 efforts, Requests for Exclusion it received, and objections received. Prior to the Final Approval
20 Hearing, the Settlement Administrator will supplement its declaration of due diligence if any
21 material changes occur from the date of its prior declaration.

22 74. No person shall have any claim against Defendant (or its designee), Defendant's
23 Counsel, Plaintiff, or Class Counsel based on mailings, distributions, payments or reports made in
24 accordance with or pursuant to this Agreement. This provision does not, however, prevent a Party
25 from seeking enforcement of this Agreement.

26 **H. Duties of the Parties Prior to the Court's Approval**

27 75. Upon execution of this Agreement and the preparation and approval of the Notice,
28 Proposed Preliminary Approval Order, and Proposed Final Approval Order and Judgment, Plaintiff

will move the Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order accomplishing the following:

(a) Scheduling the Final Approval Hearing on the issue of whether this Settlement should be finally approved as fair, reasonable and adequate as to the Class Members and a hearing on Attorneys' Fees, Costs and the Service Payment;

(b) Approving as to form and content the proposed Notice;

(c) Directing the mailing of the Notice by first class mail to the Settlement Class Members;

(d) Preliminarily approving this Settlement; and

(e) Preliminarily certifying the class for purposes of this Settlement.

76. Reallocation of Settlement Proceeds. In the event the Court fails, on its first hearing, to approve this Agreement because the amount of the PAGA Payment is not adequate, then the Parties shall cooperate in good faith to reallocate the total settlement proceeds, within this Agreement, in order to try to achieve Final Approval of the Agreement upon any subsequent Court hearings.

I. Duties of the Parties Following Court's Final Approval

77. In connection with the Final Approval Hearing provided for in this Settlement Agreement, Class Counsel shall submit a proposed Final Approval Order and Judgment:

(a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;

(b) Approving Class Counsel's application for an award of attorneys' fees and reimbursement of litigation costs and expenses, and the Service Payment to the Class Representative; and

(c) Entering judgment approving Settlement, thereby permanently barring all Participating Class Members from prosecuting any Class Claims covered by the Release against any of the Released Parties and permanently barring all PAGA Settlement Employees and the LWDA from prosecuting any PAGA Claims covered by the Release against any of the Released Parties.

J. Voiding the Agreement

78. If the Court fails or refuses to issue the Final Approval Order or fails to approve any material condition of this Settlement Agreement which effects a fundamental change of the Settlement (unless explicitly excepted herein), the entire Settlement Agreement shall be rendered voidable and unenforceable as to all Parties herein at the option of either Party.

79. If five percent (5%) or more of the Settlement Class Members timely submit Requests for Exclusion, Defendant shall have the option of terminating or modifying this Agreement without prejudice to its pre-settlement positions and defenses in the Action. If Defendant exercises such option, under this paragraph it shall be relieved of any obligation to pay the Settlement Amount or any other obligations from the Settlement by giving notice to Plaintiff's Counsel within ten (10) days of the Notice Response Deadline.

80. If the Settlement is voided or fails for any reason, Plaintiff and Defendant will have no further obligations under the Settlement, including any obligation by Defendant to pay the Settlement Amount, or any amounts that otherwise would have been owed under this Settlement.

K. Other Terms

81. Full and Complete Defense. This Agreement may be pleaded by any Released Party as a full and complete defense to and may be used as the basis for an injunction against, any action, suit or other proceeding that has been or may be instituted, prosecuted or attempted, asserting any claims covered by the Release.

82. Waiver. The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

83. No Publicity. Communications regarding this Settlement prior to the Final Approval Date shall be limited to Court-Approved Notices in the Action. After the Final Approval Date, Class Counsel and the Class Representative agree that they will not make any direct or indirect comment or publication of the Settlement or of Defendant by name or indirectly by description (e.g., "a large pharmaceutical defendant") in terms of affirmative or responsive media statements/comments, press releases or conferences, website postings or content, social media postings or content, other Internet postings or content, subscribed email messages, newsletters,

1 disseminated updates, mass mailings, or any other comment or publication to the press, media, or
2 public at large, except that Class Counsel shall be permitted to refer generically to the gross amount
3 of the settlement and the legal claims that were at issue (e.g., referencing “action for waiting time
4 penalties based on claims of untimely payment of vacation wages”) without identifying Defendant
5 by name or describing Defendant. Nothing herein shall be construed to prevent Class Counsel from
6 the public filing of motions or other case materials in the Action related to seeking and obtaining
7 Court approval of this Settlement and the related awards of attorneys’ fees and costs, or to respond
8 to communications from Settlement Class Members or their representatives about this Settlement,
9 or to prevent the Parties or their representatives from communicating with financial or legal
10 advisors regarding the Settlement. In response to any media inquiry, Class Counsel and the Class
11 Representative may state only that the Action has been settled on terms mutually agreeable to the
12 Parties. Except as explicitly provided for in this paragraph, Class Counsel and the Class
13 Representative shall not discuss, promote, and/or advertise the fact and/or terms of the Settlement
14 and Class Counsel and the Class Representative will strictly maintain the confidentiality of the fact
15 and/or terms of the Settlement except as to enforce this Settlement Agreement or with respect to
16 Class Counsel’s communication with Settlement Class members or their representatives after
17 preliminary approval.

18 84. Parties’ Authority. The signatories hereto represent that they are fully authorized to
19 enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

20 85. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
21 accomplish the terms of this Settlement Agreement, including but not limited to, execution of such
22 documents and to take such other action as may reasonably be necessary to implement the terms of
23 this Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts,
24 including all efforts contemplated by this Settlement Agreement and any other efforts that may
25 become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and
26 the terms set forth herein. As soon as practicable after execution of this Settlement Agreement,
27 Class Counsel shall, with the assistance and cooperation of Defendant and Defendant’s Counsel,
28

1 take all necessary steps to secure the Court's preliminary and final approval of the settlement, and
2 the final entry of judgment.

3 86. No Prior Assignments. The Parties hereto represent, covenant, and warrant that they
4 have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer,
5 or encumber to any person or entity any portion of any liability, claim, demand, action, cause of
6 action or rights released and discharged by this Settlement Agreement.

7 87. No Admission. Defendant denies any and all liability to Plaintiff and/or any
8 Settlement Class Member in this Action, as to any and all causes of action that were asserted or that
9 might have been asserted in this Action. Nonetheless, Defendant wishes to settle and compromise
10 the matters at issue in the operative Complaint to avoid further substantial expense and the
11 inconvenience and distraction of protracted and burdensome litigation. Defendant also has taken
12 into account the uncertainty and risks inherent in litigation, and without conceding any infirmity in
13 the defenses that it has asserted or could assert against Plaintiff, has determined that it is desirable
14 and beneficial that Plaintiff's claims be settled in the manner and upon the terms and conditions set
15 forth in this Agreement.

16 88. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
17 Order, nothing contained herein, nor the consummation of this Settlement Agreement, is to be
18 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part
19 of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this
20 Settlement Agreement with the intention of avoiding further disputes and litigation with the
21 attendant inconvenience and expenses. This Settlement Agreement is a settlement document, and
22 it, along with all related documents such as the notices, and motions for preliminary and final
23 approval, shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence
24 408, be inadmissible in evidence in any proceeding, except an action or proceeding to approve the
25 settlement, and/or interpret or enforce this Settlement Agreement. The stipulation for class
26 certification as part of this Settlement Agreement is for settlement purposes only and if, for any
27 reason the settlement is not approved, the stipulation will be of no force or effect.

89. Notices. Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed:

To the Settlement Class Members and PAGA Settlement Employees:

Robert W. Waller, Jr.
robert@robertwallerlaw.com
 P.O. Box 999
 Cardiff-by-the-Sea, CA 92007
 Tele: 760.753.3118; Fax: 760.753.3206

Robert Radulescu
robert@romancorelaw.com
 401 West A Street, Suite 1100
 San Diego, CA 92101
 Tele: 619.766.2626

To Defendant:

Alexander L. Grodan
alexander.grodan@morganlewis.com
 600 Anton Boulevard, Suite 1800
 Costa Mesa, CA 92626-7653
 Tel: 714.830.0600; Fax: 714.830.0700

90. Construction. The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or her or its counsel participated in the drafting of this Settlement Agreement. Plaintiff and Defendant expressly waive the common-law and statutory rule of construction that ambiguities should be construed against the drafter of an agreement and further agree, covenant, and represent that the language in all parts of this Agreement shall be in all cases construed as a whole, according to its fair meaning.

1 91. Captions and Interpretations. Paragraph titles or captions contained herein are
2 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or
3 describe the scope of this Settlement Agreement or any provision hereof. Each term of this
4 Settlement Agreement is contractual and not merely a recital.

5 92. Modification. This Settlement Agreement may not be changed, altered, or modified,
6 except in writing and signed by the Parties hereto, and approved by the Court. This Settlement
7 Agreement may not be discharged except by performance in accordance with its terms or by a
8 writing signed by all of the Parties hereto.

9 93. Dispute Resolution. Prior to instituting legal action to enforce the provisions of this
10 Agreement or to declare rights and/or obligations under this Agreement, a Party shall provide
11 written notice to the other Party and allow an opportunity to cure the alleged deficiencies, and
12 Plaintiff and Defendant agree to seek the help of a mutually-agreed upon mediator to resolve any
13 dispute they are unable to resolve informally. During this period, the Parties shall bear their own
14 attorneys' fees and costs. This provision shall not apply to any legal action or other proceeding
15 instituted by any person or entity other than Plaintiff or Defendant.

16 94. Court Retains Jurisdiction. The Parties agree that upon the entry of judgment
17 pursuant to the terms of this Agreement, that, pursuant to Code of Civil Procedure Section 664.6,
18 the Court shall retain exclusive and continuing equity jurisdiction of this Action over all Parties to
19 interpret, enforce, and effectuate the terms, conditions, intents, and obligations of this Agreement.

20 95. Enforceability. Pursuant to California Evidence Code Section 1123(a) and (b), this
21 Agreement is intended by the Parties to be, and shall be, enforceable, binding, and admissible in a
22 court of law.

23 96. Choice of Law. This Settlement Agreement shall be governed by and construed,
24 enforced and administered in accordance with the laws of the State of California, without regard to
25 its conflicts-of-law rules.

26 97. Integration Clause. This Settlement Agreement contains the entire agreement
27 between the Parties relating to the settlement and transaction contemplated hereby, and all prior or
28 contemporaneous agreements, understandings, representations, and statements, whether oral or

written and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

98. Binding on Assigns. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

99. Signatures of All Class Members Unnecessary to be Binding. It is agreed that, because the members of the Settlement Class are numerous, it is impossible or impractical to have each Final Class Member execute this Settlement Agreement. The Notice will advise all Settlement Class Members of the binding nature of the releases provided herein and such shall have the same force and effect as if this Settlement Agreement were executed by each Final Settlement Class Member.

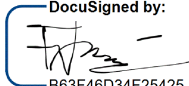
100. Counterparts. This Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully signed Settlement Agreement, which shall be binding upon and effective as to all Parties. Electronic signatures shall have the same force and effect as an original.

APPROVAL AND EXECUTION BY PARTIES:

CLASS REPRESENTATIVE:

Dated: March __, 2022

3/2/2022

DocuSigned by:

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Florin Vranceanu

DEFENDANT:

MERCK SHARP & DOHME, CORP.

Dated: March __, 2022

By: _____
 Title: _____

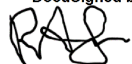
1 **APPROVED AS TO FORM:**

2 **CLASS COUNSEL:**

3 Dated: March ___, 2022

LAW OFFICE OF ROBERT A. WALLER, JR.

4 3/2/2022

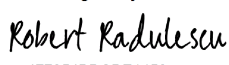
DocuSigned by:

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Robert A. Waller, Jr.
Attorneys for Plaintiff and the Class

6 Dated: March ___, 2022

ROMANCORE LAW, P.C.

3/2/2022

DocuSigned by:

477354BDCDE1453...

Robert Radulescu
Attorneys for Plaintiff and the Class

13 **DEFENDANT'S COUNSEL:**

MORGAN, LEWIS & BOCKIUS LLP

15 Dated: March 11, 2022



Alexander L. Grodan
Attorneys for Defendant, Merck Sharp & Dohme Corp.

1 written and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder
2 may be waived except in writing.

3 98. Binding on Assigns. This Settlement Agreement shall be binding upon and inure to
4 the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
5 successors, and assigns.

6 99. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
7 because the members of the Settlement Class are numerous, it is impossible or impractical to have
8 each Final Class Member execute this Settlement Agreement. The Notice will advise all Settlement
9 Class Members of the binding nature of the releases provided herein and such shall have the same
10 force and effect as if this Settlement Agreement were executed by each Final Settlement Class
11 Member.

12 100. Counterparts. This Settlement Agreement may be executed in counterparts, and
13 when each Party has signed and delivered at least one such counterpart, each counterpart shall be
14 deemed an original, and, when taken together with other signed counterparts, shall constitute one
15 fully signed Settlement Agreement, which shall be binding upon and effective as to all Parties.
16 Electronic signatures shall have the same force and effect as an original.

17
18 **APPROVAL AND EXECUTION BY PARTIES:**

19 **CLASS REPRESENTATIVE:**

20 Dated: March __, 2022

21 _____
Florin Vranceanu

22
23 **DEFENDANT:**

24 MERCK SHARP & DOHME, CORP.

25
26 Dated: March 8, 2022

27 By: Alan Modlinger

Title: Executive Director