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8 *Attorneys for Plaintiffs and the Proposed*

9 *Class, Collective, and Aggrieved Members*

10 **SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY**
11 **OF SACRAMENTO**

12 BRANDON WORTHY and
13 RANDI RIZZARI, Individually and
on Behalf of All Others Similarly
Situated,

14 Plaintiffs,

15 v.

16 MALWAREBYTES, Inc.,

17 Defendant.

Case No. 25CV006631

**DECLARATION OF ADAM KOSHKIN
IN SUPPORT OF PLAINTIFFS'
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND COLLECTIVE ACTION
SETTLEMENT**

Judge: Hon. Lauri A. Damrell

Dept.: 22

Hearing Date: May 30, 2025

Hearing Time: 9:00 AM

Reservation Number: A-006631-001

Complaint Filed: March 19, 2025

1 I, Adam L. Koshkin, declare as follows:

2 1. I am an attorney at the firm of Outten & Golden LLP (“O&G”) in San Francisco,
3 CA, and a member of its Class Action Practice Group. O&G is a 50+ attorney firm based in
4 New York City, with additional offices in San Francisco and Washington, D.C., that focuses on
5 representing plaintiffs in a wide variety of employment matters, including individual and class
6 action litigation involving wage and hour, discrimination, and harassment claims, as well as
7 contract and severance negotiations.

8 2. I have reviewed and am familiar with the Court’s Checklist for Approval of Class
9 Action and/or Private Attorneys General Act Settlements. Plaintiffs’ briefing complies with the
10 checklist.

11 3. I make this declaration in support of Plaintiffs’ Unopposed Motion for Settlement
12 Approval. I have personal knowledge of the matters set forth herein and would so testify if
13 called as a witness at trial.

14 **Background and Experience**

15 4. I received a Juris Doctor degree from the University of California, Berkeley
16 School of Law in 2017. I received my B.A., with honors, from Swarthmore College in 2011.

17 5. I was admitted to the State Bar of California in 2018. I am also admitted to the
18 bars of the U.S. District Courts for the Northern and Central Districts of California, the District
19 of Colorado, and the U.S. Court of Appeals for the Ninth Circuit. I am a member in good
20 standing of each of these bars.

21 6. From September 2017 to September 2018, I clerked for the Honorable Judith E.
22 Levy of the U.S. District Court for the Eastern District of Michigan.

23 7. Since joining O&G in October 2018, I have been engaged primarily in
24 prosecuting wage and hour class and collective actions and class action discrimination cases.

25 8. I am a member of the California Employment Lawyers Association (CELA) and
26 the National Employment Lawyers Association (NELA). I have been named a Super Lawyers
27 Rising Star each year from 2023-2025.

1 law fellow for Cohen Milstein Sellers & Toll PLLC. Ms. Davidson received her A.B. from
2 Dartmouth College in 2015, and her J.D., Order of the Coif, from the University of Virginia
3 School of Law in 2018, where she was the Articles Development Editor for the Virginia Law
4 Review. During law school, Ms. Davidson participated in the Supreme Court Litigation Clinic
5 and the Housing and Litigation Clinic, and was a summer associate at Altshuler Berzon LLP.

6 14. Mohsin Mirza is an Associate at O&G and works on both individual and class
7 action matters at the firm. Prior to joining the firm in June 2024, Mohsin Mirza clerked for the
8 Honorable Angel Kelley of the United States District Court of Massachusetts. He also was a law
9 fellow for Reporters Committee for Freedom of the Press. Mohsin received his B.A. from UC
10 Santa Barbara and his J.D., from the UC Berkeley School of Law, where he was an articles
11 editor for California Law Review. During law school, Mohsin participated in the California
12 Asylum Representation Clinic, East Bay Community Law Center, and the Policy Advocacy
13 Clinic, and was a summer law clerk at the California Department of Justice and NAACP Legal
14 Defense Fund.

15 15. O&G is nationally recognized for its expertise in litigating complex class and
16 collective actions, including wage and hour cases like this one. *See, e.g., Strauch v. Computer*
17 *Science Corp.*, 322 F.R.D. 157, 181 n.15 (D. Conn. 2017) (in wage and hour litigation, finding
18 that O&G “adequately represent[s] the interests of the putative class”), *motion to decertify*
19 *denied*, 2017 U.S. Dist. LEXIS 172655 (D. Conn. Oct. 18, 2017); *Walsh v. CorePower Yoga*
20 *LLC*, No. 16 Civ. 05610, 2017 U.S. Dist. LEXIS 20974, at *24-25 (N.D. Cal. Feb. 14, 2017)
21 (O&G has “a proven track record in the prosecution of class actions as they have successfully
22 litigated and tried many major class action cases”); *Long v. HSBC USA Inc.*, No. 14 Civ. 6233,
23 2015 U.S. Dist. LEXIS 122655, at *23 (S.D.N.Y. Sept. 11, 2015) (O&G attorneys “have
24 appeared in many major FLSA and state labor law cases”); *Puglisi v. TD Bank, N.A.*, No. 13 Civ.
25 637, 2015 U.S. Dist. LEXIS 15966, at *9 (E.D.N.Y. Feb. 9, 2015) (“O&G has substantial
26 experience prosecuting and settling nationwide wage and hour class and collective actions, and
27 are well-versed in wage and hour law and class action law and are well-qualified to represent the

interests of the class.”); *Perez v. Allstate Insurance Co.*, No. 11 Civ. 1812, 2014 U.S. Dist. LEXIS 130214, at *69 (E.D.N.Y. Sept. 16, 2014) (appointing O&G as class counsel and noting that “O&G has the requisite experience in handling class actions . . . , are well versed in the applicable law, and have the resources necessary to represent the NYLL Class fairly and adequately”); *Jacob v. Duane Reade, Inc.*, 289 F.R.D. 408, 423 (S.D.N.Y. 2013) (appointing O&G as class counsel because it has “experience in handling class actions, sufficient knowledge of the pertinent law, and sufficient resources to commit to this representation”), *aff’d*, 602 F. App’x 3 (2d Cir. 2015); *Damassia v. Duane Reade, Inc.*, 250 F.R.D. 152, 165 (S.D.N.Y. 2008) (granting class certification and appointing O&G as class counsel); *Torres v. Gristede’s Operating Corp.*, No. 04 Civ. 3316, 2006 U.S. Dist. LEXIS 74039 (S.D.N.Y. Sept. 29, 2006) (same); *cf. Houser v. Pritzker*, 28 F. Supp. 3d 222, 248, 255 (S.D.N.Y. 2014) (appointing O&G class counsel in nationwide Title VII litigation and noting that O&G “bring[s] to the case a wealth of class action litigation experience”).

16. I have successfully represented Plaintiffs in complex wage and hour cases, as well as other complex employment cases, in California courts. *See, e.g., In re Uber Technologies Wage and Hour Cases*, No. CJC-21-5179 (S.F. Super. Ct.) (PAGA case alleging misclassification of rideshare drivers as independent contractors); *CRD v. Activision Blizzard, Inc.*, No. 21 STCV 26571 (L.A. Super. Ct.) (represented California Civil Rights Division in discrimination and harassment case resulting in \$45,750,000 settlement); *In re Diligent Delivery Wage and Hour Cases*, No. CJC-19-4990 (Alameda Super. Ct.) (PAGA case on behalf of delivery drivers resulting in \$2,836,667 settlement); *Kemp v. Accurate Background, LLC*, No. 30-2021-01188280 (O.C. Super. Ct.) (settlement of \$2,525,000 on behalf of job applicants denied employment where background check company reported convictions older than permitted by California law); *Lee v. Hertz Corp.*, No. 18 Civ. 7481 (N.D. Cal.) (settlement of \$1,750,000 for Title VII claims on behalf of job applicants denied employment due to blanket exclusions of applicants with certain convictions); *Perez v. Wells Fargo Bank, N.A.*, No. 24 Civ. 4077 (C.D.

1 Cal.) (representing bankers misclassified as exempt from overtime bringing claims under
2 California and federal wage and hour laws).

3 **Factual Allegations**

4 17. Defendant Malwarebytes, Inc. (“Defendant” or “Malwarebytes”) is a corporation
5 that sells anti-malware software.

6 18. Plaintiffs Brandon Worthy and Randi Rizarri and Class and Collective Members
7 worked for Malwarebytes as Sales Representatives selling their anti-malware software.

8 19. Defendant disputes that it committed any wrongdoing or violated any federal,
9 state, or local laws pertaining to payment of overtime wages and disputes the claims asserted in
10 this litigation.

11 **Overview of Investigation, Litigation, and Settlement Negotiations**

12 20. Plaintiffs’ counsel initiated an investigation into allegations that Malwarebytes
13 Sales Representatives worked overtime without being paid for all hours worked, whether
14 because they were misclassified as exempt or worked off the clock. Over the course of this
15 investigation, Plaintiffs’ counsel spoke with several Malwarebytes employees, including
16 Plaintiffs, across various job titles whose duties focused primarily on sales. Plaintiffs’ counsel
17 also conducted an investigation regarding Defendants’ business locations, business entities, and
18 past federal and state litigation as well as legal research regarding the underlying merits of
19 Plaintiffs’ claims, possible defenses, the proper measure of damages, and the likelihood of class
20 certification.

21 21. In an effort to explore potential pre-litigation resolution of these claims, Plaintiffs’
22 Counsel informed Defendant, by letter dated February 17, 2022, that Plaintiff Worthy was
23 seeking to recover alleged unpaid wages on behalf of themselves and other Sales Representatives
24 under the FLSA, the California Labor Code, and the Private Attorneys General Act (“PAGA”),
25 and invited Defendant to engage in settlement negotiations. Plaintiff Rizzari joined later as an
26 additional Plaintiff.

22. Once Defendant agreed to participate in mediation, Plaintiffs requested that Defendant provide certain documents and data so that Plaintiffs could evaluate the strength of their claims, litigation risks, and the extent of available damages and penalties. Defendants produced Plaintiffs' complete personnel files, as well as class-wide data including job titles, regular compensation, bonus compensation, work locations, reimbursements, and other data points. This allowed Plaintiffs' Counsel to construct a damages model and calculate damages for Plaintiffs and other Sales Representatives.

23. Following the exchange of data and documents, including mediation statements which outlined the key arguments they would make in the course of the litigation, the Parties participated in three mediation sessions before two experienced wage and hour class and collective action mediators, on October 3, 2022 with Gail A. Glick, Esq. and on July 11, 2023 and February 26, 2024 with Stephen P. Sonnenberg, Esq. After the third mediation the Parties continued discussions with the assistance of Mediator Sonnenberg and ultimately accepted a mediator's proposal on March 13, 2024, and executed a term sheet on September 5, 2024. The Parties continued to negotiate terms not memorialized in the term sheet and finalized and executed a settlement agreement on March 18, 2025.

24. Based on the informal discovery conducted in this case, information exchanged confidentially for purposes of settlement, and their own independent investigation and evaluation, Plaintiffs' Counsel are of the opinion that the Settlement is fair, reasonable, and adequate and is in the best interest of the Associates in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendant as to both collective action certification and the merits of the claims, and potential appellate issues.

25. The settlement was reached after lengthy, vigorous arm's-length negotiations facilitated by an experienced mediator and the exchange of informal discovery. Malwarebytes has confirmed that there is no competing class action raising similar claims.

1 **Litigation Risks**

2 26. Plaintiffs face substantial obstacles to a full and timely recovery here. Although
3 Plaintiffs believe the case is strong, it is subject to considerable risk. For example, Defendant
4 argued that Plaintiffs and all, or substantially all, Sales Representatives were subject to
5 individual arbitration agreements. While Plaintiffs may challenge the validity and enforceability
6 of these agreements, Plaintiffs' counsel are experienced class action litigators and recognize the
7 challenges associated with these arguments. If Plaintiffs were compelled to individual
8 arbitration, the statutes of limitations for similarly situated Sales Representatives' claims would
9 continue to run and there would be no mechanism to formally advise them of their legal rights.
10 Moreover, any Sales Representative who wished to pursue a recovery would be required to
11 participate in intensive individual arbitrations, including document production, deposition
12 testimony, and testifying at the arbitration hearing, only to recover on a relatively small dollar
13 value claim.

14 27. Plaintiffs face additional risks in litigating this case. There was a risk that
15 Plaintiffs would not succeed in certifying or maintaining the class and collective through trial.
16 Malwarebytes would likely argue that differences among Sales Representatives' job duties or
17 compensation levels preclude class certification or warrant decertification of a collective, if
18 certified. Malwarebytes might also argue that whether individual Sales Representatives worked
19 off the clock and Malwarebytes' awareness of that work are individualized issues not appropriate
20 for class litigation. Although Plaintiffs disagree, Plaintiffs recognize that obtaining and
21 maintaining class certification is always a significant obstacle.

22 28. A trial on the merits would involve significant risks for Plaintiffs on liability
23 issues. Malwarebytes would argue that Exempt Sales Representatives were properly classified
24 as overtime exempt (as "administrators," outside salespeople, commissioned salespeople, or
25 some combination of exemptions). Although Plaintiffs believe that Sales Representatives' job
26 duties do not qualify them for any of the relevant exemptions, Plaintiffs' Counsel recognizes that
27 each exemption inquiry is highly contextual, and that litigation of exemption defenses inherently
28

1 poses significant risks. Similarly, it might be difficult for Plaintiffs to prove at trial that Sales
2 Representatives worked off the clock and that Malwarebytes was aware of that work.

3 29. A trial on the merits would entail various risks for Plaintiffs in establishing
4 damages. Malwarebytes would claim that Class Members did not miss meal or rest breaks and
5 dispute the number of hours Sales Representatives claim to have worked. For example,
6 Malwarebytes contended that Sales Representatives took their relevant meal breaks and that
7 Plaintiff did no work off the clock. While Malwarebytes required nonexempt employees to use a
8 timekeeping system that requires employees to clock in and out to reflect time worked, proving
9 whether Defendant made employees work off the clock outside of those times would be an
10 evidentiary challenge.

11 30. To establish a third year of liability and liquidated damages under the FLSA, as
12 well as waiting time and wage statement penalties, Plaintiffs faced risk to overcome
13 Malwarebytes' various state of mind defenses – that any violations were not willful, knowing, or
14 intentional, and that compliance was attempted in good faith.

15 31. To recover maximum PAGA penalties, Plaintiffs would need to establish that
16 penalties should be stacked, and defeat Malwarebytes's likely argument that plaintiffs may
17 recover heightened PAGA penalties only after a court or the Labor Commissioner has
18 determined that the employer violated the Labor Code.

19 32. In light of the myriad risks and delay that litigation would entail, and based on
20 Plaintiffs' Counsel's experience litigating class actions and employment lawsuits, it is the
21 opinion of Plaintiffs' Counsel that the proposed Settlement is in the best interests of the Class
22 Members.

23 **The Settlement Fund**

24 33. The Settlement Agreement establishes a non-reversionary Gross Amount of
25 \$1,610,000 to settle claims against Defendant (the "Total Settlement Amount"). This amount is
26 subject to an escalator should the total number of workweeks identified pre-mediation (14,730)
27 increase by more than eleven percent when calculated for purposes of settlement distribution.

34. The Total Settlement Amount covers (1) individual payments for Participating Collective Class Members and Participating California Class Members; (2) Service Awards of up to \$10,000 to each Plaintiff; (3) Plaintiffs' Counsel's attorneys' fees of up to one-third of the Total Settlement Amount, approximately \$536,666.67; (4) the reimbursement of Plaintiffs' Counsel's actual out-of-pocket costs, approximately \$20,445.02, which includes costs Plaintiffs' Counsel anticipates incurring between now and final approval¹ (5) the Settlement Administrator's fees and costs not to exceed \$8,000; and (6) a Private Attorneys General Act Fund ("PAGA Fund") of \$80,500.00² (allocated 25% to PAGA Members and 75% to the California Labor and Workforce Development Agency ("LWDA")).

35. The Net Settlement Fund will be approximately \$944,388.31.

36. The maximum average net award (after deduction for attorneys' fees, costs, service awards, and administration) Class and Collective Members stand to recover is approximately \$57.76 per workweek (across up to 16,350 workweeks), with an estimated maximum average net total payment of \$3,918.62 per Class and Collective Member if there are approximately 241 Sales Representatives as the Parties estimate.

Eligible Employees

37. Based on the data produced at mediation, there are approximately 80 Putative Collective Class Members, 161 California Class Members and 56 PAGA Members. The Class is ascertainable because members can be identified from Defendant's records.

38. The Named Plaintiffs have no known conflict with Class and Collective Members and assert claims consistent with those of absent Class and Collective Members.

Exposure Analysis for Labor Code and FLSA Claims

39. Total Damages Exposure: Plaintiffs estimate the maximum total exposure for Class Members' wage and hour claims is approximately **\$8,685,837.58**. The Total Settlement

¹ See ¶¶ 62-64, *infra*, for further discussion of Plaintiffs' Counsel's costs.

² Plaintiffs gave notice to the LWDA of their intent to pursue PAGA penalties as required by Cal. Lab. Code § 2699.3. Plaintiffs' Counsel also submitted a copy of the proposed settlement to the LWDA, as required by Cal. Lab. Code § 2699(1)(2).

Amount thus represents an 18.5% recovery for Class Members' Labor Code and FLSA claims, and the Net Fund represents a 10.9% recovery. This recovery is substantial given the litigation risks and the risks in recovering the full extent of possible damages and penalties.

40. Unpaid Overtime: Based on five hours of unpaid overtime per Class Member, assuming Class Members worked overtime in 90% of workweeks (to account for periods of vacations, leave, and other days off), the California Class could have recovered approximately **\$3,079,030.33**. Based on these same assumptions, the Collective Class could have recovered approximately **\$936,288.30**.

41. FLSA Liquidated Damages: Unless it can show a good faith defense, an employer who violates the FLSA is liable to employees for liquidated damages equal to the unpaid overtime wages. 29 U.S.C. §§ 216, 260. Here, based on the assumptions above, the Collective Class could have recovered approximately **\$936,288.30** in liquidated damages.

42. Interest: Plaintiffs' Counsel estimates that the interest on the California overtime damages amounts to approximately **\$2,155,321.23**.

43. Meal and Rest Break Penalties: Plaintiffs' Counsel estimated that there were missed breaks (either meal or rest break) per week for 90% of workweeks, yielding an approximate recovery of **\$682,973.18**.

44. Waiting Time Penalties: Plaintiffs' Counsel estimated waiting time penalties pursuant to Labor Code § 203 of **\$251,936.24**.

45. Wage Statement Penalties: California Class Members could have recovered approximately **\$644,000.00** in wage statement penalties under Labor Code § 226(e).

PAGA Penalties

46. The Settlement Agreement provides that \$80,500.00 of the Total Settlement Amount will be allocated to the Settlement of the PAGA Group's claims, which represents approximately 5% of the Total Settlement Amount.

47. Plaintiffs estimated maximum PAGA penalties at approximately **\$739,800** based on the above Labor Code violations. The PAGA Fund represents approximately 11% of Plaintiffs' maximum theoretical PAGA recovery.

Notice

48. The content of the proposed Notice to be sent to California Class Members is appropriate because it provides sufficient information for Class Members to decide whether to participate in, object to, or opt out of the Settlement and meets all of the requirements of California Rule of Court 3.766(d). It provides (1) a brief explanation of the case, (2) the material terms of the settlement, (3) the proposed fees and costs of Plaintiffs' Counsel and settlement administration, (4) the proposed Service Awards to Plaintiffs, (5) that California Class Members may opt out of or object to the Settlement (and instructions on how to do so), (5) a statement that the settlement will bind all California Class Members who do not request exclusion and bind all Collective Class Members who choose to opt in, (6) a statement that any Class Member who does not request exclusion may, if she so desires, enter an appearance through counsel, (7) details about the court hearing on settlement approval and the opportunity to object, and (8) how California Class Members can obtain additional information, including documents related to the settlement.

49. The Notice to be sent to Putative Collective Class Members is nearly identical in all substantive respects, except that it informs recipients that they can cash their check to participate in the Settlement and release their claims or do nothing and not be bound. It also does not provide information about opting out or objecting, as such information does not apply to Putative Collective Class Members.

50. The manner of giving notice also complies with California Rule of Court 3.766(e) because the proposed procedure for distributing the Notice has a likelihood of reaching a substantial percentage of Class Members. The Notice will be sent via First Class U.S. mail and e-mail to the last known address of each Class Member, and the Settlement Administrator shall attempt to obtain the correct address for each Settlement Class Member whose Notice is returned

as undeliverable, including up to two skip traces, and shall attempt a re-mailing provided it obtains a more recent address. Further, the Notice will provide the address of the website established by the Settlement Administrator, www.malwarebyteswagesettlement.com, so that Class Members will be able to read the settlement agreement and court filings.

51. This method of disseminating the Notice is the best means available to reach Class Members and Putative Collective Class Members because they are salespersons who regularly use email in their personal and professional lives.

52. The Notice will be provided only in English; the Parties do not have any reason to believe that any other language is necessary, as English proficiency was a requirement for the jobs in question.

53. All language in both Notices has been agreed to by Counsel for both Parties.

Service Payment

54. Plaintiffs request service awards, subject to Court approval, of \$10,000 for each Plaintiff in recognition of the services they rendered to the Class and Collective in obtaining the benefits of the settlement, including their participation and assistance in the identification, investigation, and prosecution of this lawsuit, as well as the risks they took in doing so.

55. Plaintiffs each spent 15-20 hours on this case, being interviewed in detail by Plaintiffs' attorneys and providing information about their job duties and Malwarebytes's policies and practices, as part of the initial investigation; searching for and providing Plaintiffs' attorneys with documents related to their work for Malwarebytes; reviewing a proposed representation agreement and carefully considering whether to serve as a named plaintiff whose name would be on publicly filed court documents; reviewing a draft of the Complaint prior to authorizing their attorneys to file this lawsuit and discussing any questions about it; discussing mediation strategy and settlement numbers with Plaintiffs' attorneys before, during, and after the three mediation sessions; remaining available to answer questions and provide input during all three mediation sessions, including by weighing in on settlement value and settlement terms;

1 participating in numerous phone calls with counsel; reviewing the Settlement Agreement,
2 discussing it in detail with Plaintiffs' attorneys, and signing it.

3 56. Plaintiffs took a chance that they would be barred from employment in the
4 industry for the sake of other Sales Representatives.

5 **Attorneys' Fees and Litigation Costs**

6 57. At Final Approval, Plaintiffs will file an application for attorneys' fees and costs
7 seeking one-third of the Total Settlement Amount, or \$536,666.67 in attorneys' fees.

8 58. In our experience, law firms that represent persons in employment matters
9 typically charge their clients at least one-third of their gross recoveries when they represent them
10 on a contingency basis. These fees are also consistent with the retainer agreement entered into
11 by Plaintiffs, which provides that counsel would receive up to one-third of any recovery.

12 59. Plaintiffs' Counsel prosecuted this action without any assurance of payment for
13 their services, litigating the case on a wholly contingent basis in the face of significant risk. And
14 Plaintiffs' Counsel's efforts to master the relevant facts and legal questions – through extensive
15 investigation and mediation discovery – made the resolution of this case possible prior to court
16 rulings that could have significantly weakened Plaintiffs' claims.

17 60. Plaintiffs' Counsel made an informed judgment that this Settlement, as opposed to
18 protracted litigation, is in the best interests of Settlement Class Members and secures substantial
19 benefits for the Class now.

20 61. The amount of attorneys' fees Plaintiffs' Counsel seeks is consistent with a
21 lodestar cross check and Plaintiffs' Counsel will provide billing records sufficient for the Court
22 to conduct that check in conjunction with the forthcoming motion for attorneys' fees and costs.

23 62. Plaintiffs have also expended, to date, \$18,010.02 in reasonable litigation costs.
24 Plaintiffs expect to incur additional costs in the course of settlement administration and will seek
25 reimbursement of a higher amount in their motion for attorneys' fees and costs.

63. Plaintiffs reasonably expended litigation costs consist of mediators' fees, filing and vendor fees, and document review costs. Each of these costs were incidental and necessary to the effective representation of the Class and are appropriately reimbursed.

64. Plaintiffs expect to incur approximately \$2,435 in additional costs prior to final approval, including filing and vendor fees for this motion, filing and vendor fees for final approval and attorney travel to the hearings on preliminary and final approval. Additionally, Plaintiffs expect to pay the \$1,435 filing fee for the Complaint in this action prior to final approval; the amount has been paid to the Court, but due to an error in the filing vendor's billing system, the cost has not yet been passed on to Plaintiffs' counsel.

Settlement Administration

65. The Parties have agreed to the appointment of ILYM, an experienced wage and hour claims administrator, to serve as the Settlement Administrator. The Settlement Administrator's fees will be paid from the Gross Fund not to exceed \$8,000 which includes all service fees, costs, and expenses, assuming the class size is approximately 241 individuals as the parties estimate.

66. These fees will cover, among other things, preparing the notice; determining the amount of payments due to Class and Collective Members, along with the amount of all payroll tax deductions to be withheld; providing regular status reports to Defendant's and Plaintiffs' Counsel regarding the status of the notice process; cutting checks and mailing them to Class and Collective Members; providing W-2s and 1099 forms as required under the Settlement Agreement and applicable law; establishing, controlling, and maintaining the Qualified Settlement Fund; and filing all required tax returns for the QSF and paying all taxes due.

67. The Parties selected ILYM as the settlement administrator after a competitive bidding process involving three settlement administration firms. In addition to ILYM, Plaintiffs sought bids from Rust Consulting, Inc. and XPAND Legal Services. ILYM's bid contained the most comprehensive services at the lowest price.

Exhibits

1 68. Attached hereto as **Exhibit 1** is the Settlement Agreement and Release
2 (“Settlement Agreement”), and accompanying exhibits. **Exhibit A-1** to the Settlement
3 Agreement is the Class Notice, **Exhibit A-2** is the Collective Notice, **Exhibit B** is the Check
4 Cashing Reminder Notice, and **Exhibit C** is the PAGA Check Enclosure Letter.

5 69. Attached hereto as **Exhibit 2** is a true and correct copy of the Declaration of Lisa
6 Mullins.

7 70. Attached hereto as **Exhibit 3** is a true and correct summary of the costs O&G
8 incurred in prosecuting this litigation.

9 71. Attached hereto as **Exhibit 4** is a true and correct copy of the declaration of
10 Brandon Worthy.

11 72. Attached hereto as **Exhibit 5** is a true and correct copy of the declaration of Randi
12 Rizzari.

13 73. Attached hereto as **Exhibit 6** is a true and correct copy of the [Proposed] Order
14 Granting Claimant’s Unopposed Motion for Preliminary Approval of the Class and Collective
15 Action Settlement Prejudice.

16 * * *

17 I declare under penalty of perjury that the foregoing is true and correct
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1 Dated: May 6, 2025

Respectfully submitted,

2 By: /s/ Adam L. Koshkin
3 Adam L. Koshkin (SBN 320152)
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10 *Attorneys for Plaintiffs and Proposed Class*
11 *and Collective and Aggrieved Members*
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Exhibit 1

SETTLEMENT AGREEMENT AND RELEASE

ASM

Plaintiffs Brandon Worthy and Randi Rizzari (together, "Plaintiffs") and Malwarebytes, Inc. ("Malwarebytes" or "Defendant") (collectively with Plaintiffs, the "Parties") hereby enter into this Settlement Agreement and Release ("Agreement") to resolve the wage and hour claims of Plaintiffs and Class and Collective Class Members (as defined below).

RECITALS

WHEREAS, on February 17, 2022, Plaintiff Worthy, through counsel, sent Defendant a letter in which he asserted that Malwarebytes improperly classified its Exempt Sales Representatives (as defined herein) as overtime exempt and suffering and permitting its Nonexempt Sales Representatives (as defined herein) to perform uncompensated work off-the-clock, thereby denying both groups proper overtime pay in violation of the Fair Labor Standards Act ("FLSA") and California law as well as related Labor Code violations, and invited Defendant to engage in settlement negotiations; and Plaintiff Rizzari later joined as an additional Plaintiff and Plaintiffs added an allegation relating to Defendant's failure to include the value of incentive pay in the regular rate when it did pay overtime to Nonexempt Sales Representatives;

WHEREAS, on or around April 4, 2022, the Parties agreed to engage in dialogue regarding the possibility of a resolution of the threatened claims and agreed to toll the limitations period on those claims;

WHEREAS, following the exchange of data and documents, the Parties participated in three mediation sessions before two experienced wage and hour class and collective action mediators, including on October 3, 2022 with Gail A. Glick, Esq. and on July 11, 2023 and February 26, 2024 with Stephen P. Sonnenberg, Esq.;

WHEREAS, following the third mediation the Parties continued discussions with the assistance of the mediator and ultimately accepted a mediator's proposal on March 13, 2024, and following additional negotiations executed a term sheet on September 5, 2024;

WHEREAS, the purpose of this Agreement is to settle fully and finally the unpaid wage and derivative claims raised by Plaintiffs on behalf of themselves and other Exempt and Nonexempt Sales Representatives;

WHEREAS, Defendant (as defined herein) denies all liability to Plaintiffs and any other Sales Representatives;

WHEREAS, Plaintiffs' Counsel analyzed and evaluated the merits of Plaintiffs' and other Sales Representatives' claims; obtained and reviewed documents relating to Plaintiffs' personnel files and Defendant's policies; analyzed payroll data; and based upon their analysis and evaluation of a number of factors, and recognizing the substantial risks of litigation, including the possibility that the claims, if not settled now, might not result in any recovery or might result in a recovery less favorable, and that in the event of a recovery, it would not occur for several years, Plaintiffs' Counsel are satisfied that the terms and conditions of this Agreement are fair, reasonable, and

adequate and that this Agreement is in the best interests of the Plaintiffs and Exempt and Nonexempt Sales Representatives;

NOW, THEREFORE, in consideration of the mutual covenants and promises that are set forth in this Agreement, as well as the good and valuable consideration provided for herein, the Parties agree to a full and complete settlement of the claims on the following terms and conditions:

1. DEFINITIONS

The defined terms set forth in this Agreement have the meanings ascribed to them below.

- 1.1. Agreement or Settlement** means this Settlement Agreement and Release and the exhibits hereto, which the Parties agree and understand set forth all material terms and conditions of the Settlement between them, and which is subject to Court approval.
- 1.2. Attorneys' Fees and Costs** means such funds as may be awarded by the Court to Plaintiffs' Counsel to compensate them for their attorneys' fees and reimbursement for out-of-pocket costs.
- 1.3. Bar Date** means the date that is sixty (60) Days from the date of the initial mailing of Notice, except for Class Members to whom Notice is re-mailed, for whom the Bar Date shall be the later of the sixty (60) Days from the initial mailing or sixty (60) Days from the date of re-mailing, whichever is later, provided that no re-mailings will be completed after the 60th day following the initial mailing. The Bar Date is the deadline for Class Members' Objections or Opt-out Statements, if any.
- 1.4. California Class Members** means Exempt and Nonexempt Sales Representatives employed by Defendant in California during the Class Period, except those who signed separation agreements (who are not included in the Settlement).
- 1.5. Cashing Period** shall mean the one-hundred eighty (180) Day period beginning the day the Settlement Administrator sends the Settlement Checks to Participating California Class Members and Putative Collective Class Members and PAGA Settlement Checks to PAGA Members.
- 1.6. Collective Class Period** means April 4, 2019, through the Release Date.
- 1.7. Class List** means a list of all California Class Members, Putative Collective Class Members, and PAGA Members, including their names, last known addresses, last known telephone numbers, last known personal email addresses, social security numbers, and dates, states, and exempt-status of employment with Malwarebytes as Exempt and/or Nonexempt Sales Representatives sufficient to allow the Settlement Administrator to calculate Eligible Workweeks and associated points pursuant to the terms of this Agreement.

- 1.8. **Class Period** means April 4, 2018, through the Release Date.
- 1.9. **Court** means Sacramento County Superior Court.
- 1.10. **Days** means calendar days.
- 1.11. **Defendant** or **Malwarebytes** means Malwarebytes, Inc. ASM
- 1.12. **Defendant's Counsel** means Littler Mendelson, P.C.
- 1.13. **Eligible Workweek** means each calendar week worked by an Exempt and/or Nonexempt Sales Representative during the Collective Period and/or Class Period.
- 1.14. **Eligible PAGA Pay Period** means each pay period worked by a PAGA Member during the relevant PAGA Period.
- 1.15. **Effective Date** shall mean the later of the following events: five (5) calendar days after the period for filing any appeal, writ, or other appellate proceeding opposing Final Approval and judgment has elapsed without any appeal, writ, or other appellate proceeding having been filed, i.e., sixty-five (65) days from the date the court grants final approval and enters judgment; or, if any appeal, writ, or other appellate proceeding opposing Final Approval has been filed within that timeframe; five (5) business days after any appeal, writ, or other appellate proceedings opposing the Settlement has finally and conclusively dismissed with no right to pursue further remedies or relief.
- 1.16. **Employer Payroll Taxes** means all taxes and withholdings an employer is required to make pursuant to federal, state, and/or local law arising out of or based upon the payment of employment compensation in this Action, including but not limited to FICA, FUTA, and SUTA obligations.
- 1.17. **Exempt Sales Representatives** means current and former employees of Defendant who worked as exempt-classified sales representatives in the job profiles Inside Sales Representative 3, 4 - Own Quota; Inside/Renewal Contract Sales Rep 4; and Telemarketing/Lead Development Rep 4.
- 1.18. **Final Approval Motion** means documents and materials to be filed with the Court pursuant to Cal Rules of Court, Rule 3.769, seeking final approval of the settlement, Attorneys' Fees and Costs, and Service Award.
- 1.19. **Final Approval Order** means the order entered by the Court after the Fairness Hearing, certifying the Class and Collective actions, approving the terms and conditions of this Agreement, and authorizing distribution of the Settlement Checks, PAGA Settlement

Checks, Service Awards, and Attorneys' Fees and Costs, consistent with this Agreement.

- 1.20. **Funding Date** means fifteen (15) Days after the Effective Date.
- 1.21. **LWDA Payment** means seventy-five percent (75%) of the PAGA Fund, or Sixty Thousand Three Hundred Seventy-Five Dollars (\$60,375), which shall be paid to the California Labor and Workforce Development Agency.
- 1.22. **Net Fund** means the remainder of the Total Settlement Amount after deductions/payments for: (1) Court-approved Attorneys' Fees and Costs; (2) Court-approved Service Award; (3) the PAGA Fund; and (4) settlement administration costs.
- 1.23. **Nonexempt Sales Representatives** means all current and former employees of Defendant who worked as nonexempt-classified sales representatives in the job profiles Telemarketing/Lead Development Rep 1, 2, 3; Inside/Contract Renewal Sales Rep 2, 3; Inside Sales Representative 2 - Overlay Quota; and Inside Sales Representative 2 - Own Quota.
- 1.24. **Notice** means the Court-approved Notice of Proposed Class Action Settlement (for California Class Members) and Notice of Proposed Collective Action Settlement (for Putative Collective Class Members), as authorized in the Preliminary Approval Order, in a form substantially similar to **Exhibits A-1 and A-2**.
- 1.25. **Objection** means the written statement that an individual Class Member submits to object to the Settlement.
- 1.26. **Objector** means a Class Member who properly files an Objection to the Settlement and does not include any Class Member who opts-out of this Settlement.
- 1.27. **Opt-Out Statement** is a written, signed statement that an individual Class Member submits to opt out and be excluded from this Settlement.
- 1.28. **PAGA Members** are Exempt and Nonexempt Sales Representatives employed by Defendant in California during the PAGA Class Period, except those who signed separation agreements (who are not included in the Settlement).
- 1.29. **PAGA Check Enclosure Letter** means the letter attached hereto as **Exhibit C**, which the Settlement Administrator shall mail to PAGA Members together with the PAGA Settlement Check.
- 1.30. **PAGA Notice Letter** means the July 24, 2023 letter Plaintiffs submitted to the California Labor and Workforce Development Agency (LWDA).

- 1.31. **PAGA Fund** means \$80,500.00 of the Total Settlement Amount that is attributed to settle fully and finally the PAGA claims of PAGA Members.
- 1.32. **PAGA Payment** means twenty-five percent of the \$80,500 PAGA Fund, or \$20,125, which shall be paid to PAGA Members.
- 1.33. **PAGA Class Period** means from April 4, 2021 through the Release Date.
- 1.34. **PAGA Settlement Amount** means each PAGA Member's share of the PAGA Payment calculated in accordance with this Agreement.
- 1.35. **PAGA Settlement Check** means the checks issued to each PAGA Member for their PAGA Settlement Amount.
- 1.36. **Participating California Class Members** means California Class Members who do not exclude themselves from the settlement.
- 1.37. **Participating Collective Class Members** means Putative Collective Class Members who timely opt-in to the settlement by cashing a check with an endorsement agreeing to a release of their FLSA claims.
- 1.38. **Parties** means the Plaintiffs and Defendant.
- 1.39. **Plaintiffs** mean Brandon Worthy and Randi Rizzari.
- 1.40. **Plaintiffs' Counsel** means Outten & Golden LLP.
- 1.41. **Preliminary Approval Order** means the Order entered by the Court: (1) preliminarily certifying the Class solely for the purpose of effectuating the Agreement; (2) conditionally certifying the Collective pursuant to 29 U.S.C. § 216(b) solely for the purpose of effectuating the Agreement; (3) preliminarily approving the terms and conditions of this Agreement; (4) appointing Plaintiffs' Counsel as Class Counsel; (5) directing the manner and timing of providing Notice to California Class Members and Putative Collective Class Members; and (6) setting dates to effectuate the terms of this Agreement, including the date of the Fairness Hearing.
- 1.42. **Preliminary Approval Date** means the date on which the Court enters the Preliminary Approval Order.
- 1.43. **Preliminary Approval Motion** means documents and materials to be filed with the Court seeking preliminary approval of this Agreement and the issuance of the Preliminary Approval Order.

- 1.44. Putative Collective Class Members** means Exempt and Nonexempt Sales Representatives employed by Defendant outside of California during the Collective Class Period.
- 1.45. Qualified Settlement Fund or QSF** means the account established by the Settlement Administrator for the Total Settlement Amount paid by Defendant.
- 1.46. Release Date.** “Release Date” is the date corresponding to the number of accrued workweeks covered by the Total Settlement Amount. The Release Date for Exempt Sales Representatives will be no later than April 16, 2023. The Release Date for Nonexempt Sales Representatives will be no later than the date of the Preliminary Approval Order subject to the Escalator Clause below.
- 1.47. Released Class Claims** means any and all California state wage and hour claims pled in the operative Complaint, that accrued during employment as Exempt and Nonexempt Sales Representatives during the Class Period, including without limitations, any claims for unpaid wages including but not limited to minimum, regular, or overtime wages (Cal. Lab. Code §§ 510, 1194, 1194.2, 1197, 1197.1, 1198, 1199); failing to timely pay wages or vacation pay (Lab. Code §§ 201-204; 227.3); non-compliant meal periods and any unpaid premiums (Lab. Code §§ 512, 226.7, and applicable Wage Order); non-compliant rest breaks and any unpaid premiums (Lab. Code § 226.7, and applicable Wage Order); non-compliant wage statements (Lab. Code §§ 226, 226.3); unfair competition or business practices (Bus. & Prof. Code § 17200 et seq.); claims for interest, penalties (including but not limited to waiting time penalties at Lab. Code §§ 201-204), or premiums in connection with any of the preceding claims; interest, liquidated damages, attorneys’ fees, costs, and expenses; any claims for injunctive relief, declaratory relief, restitution, fraudulent business practices or punitive damages alleged or which could have been alleged; as well as any claims under the California Labor Code, California Industrial Welfare Commission’s Wage Orders, or the California Code of Regulations, that were alleged or which could have been alleged under the same or similar facts, allegations, or claims in the operative Complaint.
- 1.48. Released Collective Class Claims** means any and all wage and hour claims under the Fair Labor Standards Act (“FLSA”) (29 U.S.C. § 201 et seq.) pled in the operative Complaint, that accrued during employment as Exempt and Nonexempt Sales Representatives during the Collective Class Period, including without limitations, any and all state and federal claims for unpaid overtime wages, and all related claims for penalties, interest, liquidated damages, attorneys’ fees, costs, and expenses that were alleged or which could have been alleged under the same or similar facts, allegations, or claims in the operative Complaint.
- 1.49. Released PAGA Claims** means any and all claims under PAGA pled in the PAGA Letter and/or the operative Complaint, that accrued during employment as Exempt and Nonexempt Sales Representatives during the PAGA Class Period, including without

limitations, all claims for penalties (including but not limited to claims deriving from unpaid wages, unpaid overtime, alleged meal and rest break violations, waiting time penalties, wage statement penalties), interest, attorneys' fees, costs and expenses, and other remedies available under PAGA.

- 1.50. Released Parties** means Defendant Malwarebytes, Inc. and any of its past, present, and future direct or indirect parents, subsidiaries, predecessors, successors, and affiliates; past, present, and future officers, directors, employees, partners, members, owners, shareholders, agents, attorneys, insurers, reinsurers, and any individual or entity which could be jointly liable with Defendant.
- 1.51. Reminder** means the Court-approved reminder to be sent by the Settlement Administrator to Participating Class Members, Putative Collective Class Members, and PAGA Members, reminding them to cash their Settlement Checks and PAGA Settlement Checks, in a form substantial similar to **Exhibit B**.
- 1.52. Service Award** means the Court-approved award of up to Ten Thousand Dollars (\$10,000.00) to be paid to each Plaintiff in recognition for their service as class representatives.
- 1.53. Settlement Amount** means each Participating Class and Putative Collective Class Member's share of the Net Fund calculated in accordance with this Agreement.
- 1.54. Settlement Check** means the check issued to each Participating Class Member and Putative Collective Class Member for their Settlement Amount.
- 1.55. Total Settlement Amount** means One Million Six-Hundred Ten Thousand (\$1,610,000.00), subject to the Escalator, Paragraph 8.1(b).
- 1.56. Work Dates** means each Sales Representative's first and last date of employment as a Sales Representative based on Malwarebytes's records.

2. INITIATION OF ACTION AND PRELIMINARY SETTLEMENT APPROVAL

- 2.1. Agreement to Submit Settlement to the Court for Approval.** The Parties hereby agree to submit this Settlement for class and collective approval to the Court. The Parties will ask the Court to approve this Settlement by entering the Preliminary Approval Order and ultimately entering the Final Approval Order, as specified in this Agreement. The Parties agree not to litigate any matters other than the approval and implementation of this Settlement and issues related to that process as set forth in this Agreement. The Parties have agreed to waive their right to seek to vacate any award of the Court.
- 2.2. Complaint.** Within seven (7) Days after the execution of this Agreement by Plaintiffs and Defendant, Plaintiffs' Counsel will file a Complaint and Preliminary Approval Motion on

behalf of Plaintiffs and other similarly situated Sales Representatives. The Preliminary Approval Application shall include: (1) the proposed Notice attached hereto as **Exhibits A-1 and A-2**; (2) a proposed Preliminary Approval Order; and (3) the necessary documents, memorandum, affidavits, and exhibits for purposes of certifying the Class and Collective actions under Cal. Code Civ. Proc. § 382, *et seq.* and 29 U.S.C. § 216(b) for settlement purposes only and preliminarily approving the Agreement. The Application will seek a date for the Fairness Hearing before the Court at the earliest practicable date.

3. SETTLEMENT ADMINISTRATION AND NOTICE TO CLASS AND PUTATIVE COLLECTIVE CLASS MEMBERS

3.1. The Settlement Administrator will be selected by Plaintiffs' Counsel, subject to Defendant's reasonable approval, which shall not be unreasonably withheld.

3.2. Duties of the Settlement Administrator. The Settlement Administrator will be responsible for: (1) establishing a QSF account; (2) preparing, printing, and disseminating the Notice via mail and email to California Class Members and Putative Collective Class Members; (3) making commercially reasonable searches for new address with no forwarding address, including by tracing any Notices returned undeliverable by mail, or email up to two times to obtain a new mailing address or email address and resending the Notices, and sending Notice via mail or email to any California Class or Putative Collective Class Member who contacts the Settlement Administrator or Plaintiffs' Counsel and requests a Notice between the initial mailing of the Notice and the Bar Date; (4) maintaining an email address which California Class and Collective Class Members can use to make inquiries and provide address updates; (5) preparing, monitoring, and maintaining a web portal where California Class and Collective Class Members can review the Settlement Agreement, Notice, contact information for the Settlement Administrator and Plaintiffs' Counsel, and provide address updates; (6) promptly furnishing to Plaintiffs' Counsel and Defendant's Counsel copies of any California Class Members' Objections and Opt-Out Statements that the Settlement Administrator receives; (7) receiving and tracking California Class Members' Opt-Out Statements, Objections, and other correspondence; (8) determining the number of Eligible Workweeks attributable to each California Class Member, Collective Class Member, and PAGA Member; (9) determining the Settlement Amount allocated to each California Class and Putative Collective Class Member, and the PAGA Settlement Amount allocated to each PAGA Member, in accordance with this Agreement, along with the amount of all payroll taxes to be paid and deductions to be withheld, including Malwarebytes' funding obligations for Employer Payroll Taxes; (10) preparing and mailing Settlement Checks to Participating California Class Members and Putative Collective Class Members, and to PAGA Members, PAGA Settlement Checks and the PAGA Check Enclosure Letter; (11) preparing and sending Reminders to Putative Collective Class Members, Participating Class Members, and PAGA Members who have not yet cashed their Settlement Checks and PAGA Settlement Checks, reminding them to cash their checks via mail and email; (11) providing a report of uncashed checks to the Parties' counsel half-way through the Check Cashing Period; (12) making commercially reasonable searches for new address with no forwarding address, including by tracing any Settlement Checks, and PAGA Settlement Checks returned undeliverable up to two times

to obtain a new mailing address and resending the checks; (13) distributing any approved Service Award and Attorneys' Fees and Costs; (14) calculating and paying all appropriate taxes and complying with all applicable tax reporting obligations, including preparing and filing all applicable tax forms; (15) determining the tax characterization of the Service Award; (16) informing the Parties' counsel if any California Class and Collective Class Members dispute their Work Dates and, if appropriate, asking for more information/records; (17) referring to Claimant's Counsel all inquiries by California Class and Collective Class Members regarding matters not within the Settlement Administrator's duties specified herein; (18) retaining and providing a copy of Settlement Checks endorsed by Participating California Class Members and Participating Collective Class Members to Parties' counsel; (19) timely responding to communications from the Parties' counsel; (20) maintaining adequate records of its activities, including the dates of the mailing(s) of Notice, returned mail and other communications and attempted written or electronic communications with California Class and Collective Class Members; (21) protecting the personal data of California Class and Collective Class Members, including Social Security numbers, from public disclosure; (22) indemnifying the Parties for any penalty or interest arising out of an incorrect calculation or late deposit of the same; (23) preparing a final accounting of settlement funds remaining in the QSF after the expiration of the Check Cashing Period, and distributing the remaining funds in accordance with this Agreement; (24) preparing and providing a compliance affidavit in connection with the Application for Final Approval; (25) providing Plaintiffs' Counsel, each Friday before the close of business (the "Opt-In Report"), with names and contact information of all Participating Collective Class Members who opted in in the time since the prior Opt-In Report; and (26) such other tasks as set forth herein, or as the Parties mutually agree, or as otherwise determined by the Settlement Administrator as necessary in effectuating its notice duties.

3.3. Access to the Settlement Administrator. The Parties will have equal access to the Settlement Administrator and all information related to the administration of the Settlement throughout the settlement administration period. The Settlement Administrator will provide regular reports to counsel for the Parties regarding the status of the mailing of the Notice, Settlement Checks, PAGA Settlement Checks, and Reminders.

3.4. Defendant agrees to cooperate with the Settlement Administrator and to provide accurate information to the extent reasonably available and necessary to calculate the Settlement Amounts to be distributed pursuant to this Agreement and locate Class and Collective Class Members.

4. NOTICE

4.1. Class List. Within five (5) Days of the Preliminary Approval Order, Defendant's Counsel shall provide the Settlement Administrator with the Class List.

4.2. Notice Content. The Notice will include a description of the claims and this Agreement, the Class or Collective Class Member's Work Dates, the estimated amount of each California Class and Putative Collective Class Member's Settlement Check, and the opportunity (and consequences) of objecting or opting-out (for Class Members) or

participating by endorsing and cashing a Settlement Check (for Participating Putative Collective Class Members), and/or to appear at the Fairness Hearing, as applicable. The Notice will advise Class and Collective Class Members of a website where they can review information regarding the settlement and update contact information.

- 4.3. **Notice Distribution.** Notice to Putative Collective Class Members and the California Class Members will be made via mail and email within thirty (30) days of the Preliminary Approval Order. The Notice is attached as **Exhibits A-1 and A-2**.
- 4.4. **Skip Trace and Remailing.** The Settlement Administrator shall use all reasonable means to confirm Class and Putative Collective Class Members' addresses and obtain new addresses, as necessary. In the event that a Notice is returned as undeliverable, the Settlement Administrator shall attempt to obtain a correct address, including by tracing any Notices returned undeliverable by mail or email up to two times to obtain a new mailing address, or email address and resending the Notices by mail and/or other relevant means, provided that no remailing takes place after the 60th day of the original Notice Period. The Settlement Administrator shall also mail or email a Notice to any Class or Putative Collective Class Member who contacts the Settlement Administrator or Claimant's Counsel during the period between the initial mailing of the Notice and the Bar Date, and requests a Notice. In advance of the Fairness Hearing, the Settlement Administrator shall submit a compliance affidavit reflecting completion of these efforts.

5. CLASS MEMBER OPT-OUTS.

- 5.1. **Bar Date.** California Class Members shall have until the Bar Date to opt-out.
- 5.2. **Opt-Out Statement.** California Class Members who choose to opt-out of the Settlement must mail a written, signed Opt-Out Statement to the Settlement Administrator that states that they are opting out of the settlement, and includes their name, address, telephone number, and a statement indicating their intention to opt-out, such as: "I opt out of the Malwarebytes wage and hour settlement." To be effective, the Opt-Out Statement must be post-marked or otherwise received by the Bar Date. The Settlement Administrator will stamp the received date on the original of each Opt-Out Statement that it receives and shall serve copies of each Opt-Out Statement on Plaintiffs' Counsel and Defendant's Counsel no later than three (3) Days after receipt. The Settlement Administrator shall provide all Opt-out Statements as exhibits to its compliance affidavit to be filed with the Final Approval Motion. The Settlement Administrator will retain the stamped originals of all Opt-Out Statements and the originals of all envelopes accompanying Opt-Out Statements in its files until the Effective Date.

6. OBJECTIONS TO SETTLEMENT

- 6.1. **Bar Date.** Participating California Class Members shall have until the Bar Date to object.
- 6.2. **Objection.** Participating California Class Members who wish to object to the Settlement at the Fairness Hearing must first do so in writing. To be considered, such Objection must

be mailed to the Settlement Administrator and post-marked or otherwise received by the Bar Date. The Objection must include all reasons for objecting to the Settlement or the Agreement, and any supporting documentation. The Objection must also include the name, address, and telephone number for the Objector. The Settlement Administrator will stamp the date received on the original and send copies of each Objection and any supporting documentation, as well as a copy of the Notice mailed to the Objector, to Plaintiffs' Counsel and Defendant's Counsel by email no later than three (3) Days after receipt of the Objection. Class Members who opt out may not object.

- 6.3. An Objector has the right to appear at the Fairness Hearing either on their own behalf or through counsel hired by the Objector. An Objector who wishes to appear at the Fairness Hearing must state their intention to do so in writing on their Objection at the time they submit their Objection.
- 6.4. An Objector may withdraw their Objection at any time.
- 6.5. Plaintiffs' Counsel shall file copies of any Objections with the Court and the Parties may file with the Court written responses to any filed Objections no later than three (3) Days before the Fairness Hearing.

7. FAIRNESS HEARING AND FINAL APPROVAL MOTION

- 7.1. After the Bar Date, in accordance with the schedule set by the Court in the Preliminary Approval Order and in advance of the Fairness Hearing, Plaintiffs' Counsel shall file supporting documents and materials for final approval of the Settlement ("Final Approval Motion"). The Final Approval Motion will include a compliance affidavit from the Settlement Administrator; an application for Attorneys' Fees and Costs and Service Award; supporting affidavits and documents from Plaintiffs' Counsel regarding the fairness, adequacy, and reasonableness of the Settlement or any aspect related to the Agreement; and a proposed Final Approval Order.
- 7.2. At the Fairness Hearing, and through the Final Approval Motion, the Parties shall request that the Court, among other things: (1) finally certify the California Class and the Collective actions for purposes of settlement only; (2) approve the Settlement and this Agreement as fair, reasonable, adequate, and binding on all Participating Class Members, Participating Collective Class Members, and PAGA Members; (3) order the Settlement Administrator to distribute Settlement Checks to Putative Collective Class Members, Participating California Class Members, and to distribute PAGA Settlement Checks and the PAGA Check Enclosure Letter to PAGA Members; (4) order Service Award, Attorneys' Fees and Costs, settlement administration costs, and the LWDA Payment to be paid from the QSF; (5) order dismissal with prejudice of all Released Class Claims, Released Collective Class Claims, and Released PAGA Claims asserted in the Complaint, as set forth herein; (6) order entry of the Final Approval Order, in accordance with this Agreement; and (7) retain jurisdiction over the interpretation, implementation, and enforcement of this Agreement as well as any and all matters arising out of, or related to, the interpretation or implementation or enforcement of this Agreement and of the settlement contemplated hereby.

8. SETTLEMENT TERMS

8.1. Settlement Amount

- a. **Total Settlement Amount.** The Total Settlement Amount is \$1,610,000.00 subject to the Escalator, Paragraph 8.1(b). The Total Settlement Amount does not include the Employer Payroll Taxes, which Defendant will fund separately and in addition to the Total Settlement Amount.
- b. **Escalator.** Should the total number of workweeks identified pre-mediation (14,730) increase by more than eleven percent (11%) (1,620), then Defendant shall have the option of: (a) increasing the Total Settlement Amount on a proportional basis by the same number of percentage points above eleven percent (11%) by which the number of Total Eligible Workweeks exceeds 14,730 (for example, if the Total Eligible Workweeks exceed 14,730 by 15%, the Total Settlement Amount would be increased by 4%), in which case the Release Date for the Exempt Sales Representatives will remain April 16, 2023 and the Release Date for the Nonexempt Sales Representatives will remain the date of the Preliminary Approval of the Settlement Agreement; (b) adjusting the Release Date to the date when the Total Eligible Workweeks are equal to or less than 14,730 plus 11% (for example, if the Total Eligible Workweeks are equal to or less than 16,350 on February 26, 2024 but exceed 16,350 on the date of the Preliminary Approval, any claims accruing on or after the date on which the Total Eligible Workweeks exceed 16,350 will not be released); or (c) such other date after the Total Eligible Workweeks exceed 16,350, in which case the Release Date shall be the date designated by Defendant and the Total Settlement Amount will be increased on a proportional basis by the same number of percentage points above eleven percent (11%) by which the number of Total Eligible Workweeks exceeds 16,350 as of the designated Release Date (for example, if Defendant designates March 1, 2024 as the Release Date for Nonexempt Sales Representatives and April 16, 2023 for Exempt Sales Representatives, and Total Eligible Workweeks exceed 14,730 by 15% as of March 1, 2024/April 16, 2023, the Total Settlement Amount would increase by 4%, and no claims accruing after March 1, 2024/April 16, 2023 will be released).
- c. **Qualified Settlement Fund.** The Total Settlement Amount shall be paid to a Qualified Settlement Fund established by a third-party settlement administrator fifteen (15) days after the Effective Date.
- d. **Funding Date.** Defendant shall pay the Total Settlement Amount into the Qualified Settlement Fund established by the Settlement Administrator on or before the Funding Date.

- 8.2. **Individual Payments.** Participating Collective Class Members and Participating California Class Members shall be paid a pro-rata portion of the Net Fund determined by exempt status, work location, and weeks worked in each relevant exempt status and/or

work location in the relevant period as set forth in Paragraphs 8.3 below. The PAGA Class Members shall be paid a pro-rata portion of the PAGA Payment from the Total Settlement Amount determined by the pay periods worked during the PAGA Period as set forth in Paragraph 8.4 below.

8.3. Class and Collective Action Members' Payments.

- a.** Each Putative Collective Class Member or California Class Member shall receive:
 - 1.** One (1) point for each workweek worked as a Nonexempt Sales Representative outside of California;
 - 2.** One and a half (1.5) points for each workweek worked as an Exempt Sales Representative outside of California;
 - 3.** Three (3) points for each workweek worked as a Nonexempt Sales Representative in California;
 - 4.** Four and a half (4.5) points for each workweek worked as an Exempt Sales Representative in California.
- b.** To calculate each Class and Collective Actions Member's proportionate share:
 - 1.** Add all points for all California Class and Putative Collective Class Members together to obtain the "Denominator";
 - 2.** Divide the number of points for each California Class and Putative Collective Class Member by the Denominator to obtain each California Class and Putative Collective Class Member's "Portion of the Net Settlement Fund";
 - 3.** Multiply each California Class and Putative Collective Class Member's Portion of the Net Settlement Fund by the sum of the Net Settlement Fund to determine each Class and Collective Class Member's Settlement Amount;
 - 4.** For each Class and Collective Class Member, their Settlement Amount will be the amount of their Settlement Check, except that PAGA Members will also be entitled to an additional PAGA Settlement Amount, as set forth below in Paragraph 8.4.
- c.** For avoidance of doubt: no Class or Collective Class Member shall be entitled to a double recovery for any one workweek based on their inclusion in both the Class and the Collective. However, Class Members who fall within the PAGA Members group shall be entitled to recover from the Net Fund and the PAGA Payment for the same workweeks based on their inclusion in both the Class and the PAGA

group.

8.4. Allocation to PAGA Members. PAGA Members' estimated proportionate share of the PAGA Payment shall be determined by the Settlement Administrator pursuant to the following formula:

- a. PAGA Members will receive one (1) point for each Eligible PAGA Pay Period;
- b. To calculate each PAGA Member's proportionate share of the PAGA Payment:
 1. Add all points for all PAGA Members together to obtain the "Denominator";
 2. Divide the number of points for each PAGA Member by the Denominator to obtain each PAGA Member's "Portion of the PAGA Payment";
 3. Multiply each PAGA Member's Portion of the PAGA Payment by the PAGA Payment to determine each PAGA Member's PAGA Settlement Amount;
 4. Each PAGA Member will receive a separate PAGA Settlement Amount in addition to the amount that they are entitled to recover as a Class Member.

8.5. Workweek and Pay Period Disputes. The calculation of Eligible Workweeks and Eligible PAGA Pay Periods shall be determined by the Settlement Administrator based on Defendant's business records in accordance with this Agreement. The Notice shall advise Class and Collective Class Members of their Work Dates. If a Class or Collective Class Member disputes Malwarebytes's records and/or the calculation of their Settlement Payment, they must provide written documentation supporting their contention to the Settlement Administrator. Malwarebytes's records are presumed to be correct unless the Class or Putative Collective Class Member proves otherwise with documentary evidence. The Settlement Administrator will evaluate the information that the Class or Collective Class Member provides, share that information with the Parties, and make the final decision as to any dispute if the Parties are unable to reach agreement.

8.6. Tax Characterization and Defendant's Payroll Tax Responsibility

- a. For Putative Collective Class Members, the Settlement Administrator shall allocate 50% of the payment as W-2 wage payments and 50% of the payment as 1099 non-wage compensation as liquidated damages, statutory penalties, and interest.
- b. For Participating California Class Members, the Settlement Administrator shall allocate 33.33% of the payment as W-2 wage payments and 66.67% of the payment as 1099 non-wage compensation as liquidated damages, statutory penalties, and

interest.

- c. For PAGA Members, the Settlement Administrator shall allocate 100% of the payment as 1099 non-wage compensation as statutory penalties.
- d. Payments treated as W-2 wages shall be made net of all applicable employment taxes, including, without limitation, federal, state and local income tax withholding and the employee share of the FICA tax, and shall be reported to the Internal Revenue Service ("IRS") and the payee under the payee's name and Social Security number on an IRS Form W-2. Payments treated as liquidated damages, statutory penalties, and interest shall be made without withholding and shall be reported to the IRS and the payee, to the extent required by law, under the payee's name and social security number on an IRS Form 1099. The Settlement Administrator shall be responsible for determining the appropriate number of exemptions to be used in calculating payroll tax and withholding, deciding the appropriate tax rate, issuing the Settlement Checks and Service Award and issuing IRS Forms W-2 and Form 1099. Payments of Attorneys' Fees and Costs shall be made without withholding and shall be reported to the IRS and to Claimant's Counsel on an IRS Form 1099. Payment of a Service Award will be reported as deemed appropriate by the Settlement Administrator.
- e. The employee portion of all applicable income taxes for the wage payments and any tax responsibility for the non-wage payments will be the sole responsibility of the individual Participating Class Member and Participating Collective Class Member.
- f. Respondent and the Settlement Administrator shall exchange such information as is necessary for the Settlement Administrator to make proper tax withholdings and comply with its tax reporting obligations.

8.7. Attorneys' Fees and Costs.

- a. The parties agree that Plaintiffs' counsel may seek up to, and Defendant will not oppose, no greater than one-third of the Total Settlement Amount as Plaintiffs' attorneys' fees, plus reimbursement of reasonable out-of-pocket costs. Payment to Plaintiffs' counsel of Court-approved Plaintiffs' fees and costs from the Total Settlement Amount shall be made fourteen (14) days after the settlement is funded.
- b. The substance of Plaintiffs' Counsel's application for Attorneys' Fees and Costs is to be considered separately from the Court's consideration of the fairness, reasonableness, adequacy, and good faith of the Agreement. The outcome of any proceeding related to Plaintiffs' Counsel's application for fees and expenses shall not terminate this Agreement or otherwise affect the Court's ruling on the Final Approval Motion. Any amount not approved by the Court will become part of the Net Fund to be distributed to Putative Collective Class Members and Participating Class Members.

8.8. Named Plaintiffs Service Awards.

- a.** In consideration of the services rendered to the Class and Collective actions, Plaintiffs will apply to the Court to each receive up to Ten Thousand Dollars (\$10,000.00) as a Service Award from the Total Settlement Amount. Service Awards approved by the court shall be paid fourteen (14) days after the settlement is funded. A general release will be executed by the Plaintiffs consistent with the terms of the Plaintiffs' Releases, in consideration for the Service Award.
- b.** The application for a Service Award is to be considered separately from the Court's consideration of the fairness, reasonableness, adequacy, and good faith of the Agreement. The outcome of the Court's ruling on the application for Service Award will not terminate this Agreement or otherwise affect the Court's ruling on the Final Approval Motion, Final Approval Order, or the fairness or reasonableness of this Agreement. Defendant will not oppose Plaintiffs' application for Service Awards. Any amount not approved by the Court will become part of the Net Fund to be distributed to Putative Collective Class Members and Participating Class Members.
- c.** A general release as set forth in Paragraph 9.4 will be executed by Plaintiffs in consideration for receiving and accepting the Service Awards.

8.9. Unclaimed Funds. Any portion of the Total Settlement Fund allocated to Participating California Class Members, Putative Collective Class Members, and/or PAGA Members not distributed as per the terms hereof, including any interest in the QSF, and any check not cashed after the expiration of the Cashing Period shall be transferred to the California Unclaimed Property Fund in the name of the intended recipient.

8.10. Timing of Payments. Fourteen (14) Days after the Funding Date (and no sooner than fifteen (15) Days after the Effective Date), the Settlement Administrator will mail Settlement Checks to Participating Class Members, Putative Collective Class Members, and PAGA Members; the LWDA Payment to the LWDA; and the Service Award to Plaintiff; and will wire the Court-approved Attorneys' Fees and Costs to Plaintiffs' Counsel.

8.11. Cashing Period. Participating Class Members, Putative Collective Class Members, and PAGA Members will have one-hundred eighty (180) Days from the date that Settlement Checks are mailed by the Settlement Administrator to cash, deposit, or otherwise negotiate their checks.

8.12. Reminders. The Parties agree they will use robust efforts to ensure that Settlement Checks are received by Participating California Class Members, Putative Collective Class Members, and PAGA Members, including the Settlement Administrator's use of mail, email, and other efforts deemed prudent by the Settlement Administrator, for robust contact attempts and a reminder to timely cash checks prior to the 180-day deadline. After ninety

(90) days from the issuance of the checks, the Settlement Administrator shall issue a postcard and email to the Putative Collective Class Members and Participating California Class Members reminding them to cash their checks. After one hundred thirty-five (135) days from the issuance of the checks, the administrator shall provide a report of any uncashed checks to the parties. To the extent any mailed check is returned as undeliverable, the Settlement Administrator shall attempt a re-mailing to any Putative Collective Class Members or the Participating California Class Members for whom it obtains a more recent address. No such re-mailing shall be attempted after the 180th day.

9. RELEASE OF CLAIMS

- 9.1. Collective Release.** By operation of the Judgment, all Participating Collective Class Members shall release the Released Parties from the Released Collective Class Claims. Each Participating Collective Class Member shall execute a “back of the check” release, containing a statement on the settlement check stating: “By cashing this check, I am opting into the settlement in *Brandon Worthy, et al. v. Malwarebytes, Inc. et al.*, Case No. (TBD) under the Fair Labor Standards Act, 29 U.S.C. § 216(b), and releasing the Released Claims described in the Settlement Agreement.” Putative Collective Class Members who do not sign or cash a check will not become Participating Collective Class Members and will not release the Released Collective Class Claims.
- 9.2. California Class Release.** By operation of the Judgment, all Participating California Class Members shall release the Released Parties from the Released Class Claims. Additionally, the Settlement Administrator shall include a legend on the settlement check stating: “By cashing this check, I am opting into the settlement in *Brandon Worthy, et al. v. Malwarebytes, Inc. et al.*, Case No. (TBD) under the Fair Labor Standards Act, 29 U.S.C. § 216(b), and releasing the Released Claims described in the Settlement Agreement.” Participating California Class Members who do not endorse or cash a settlement check shall release the Released Class Claims but not the Fair Labor Standards Act claims.
- 9.3. PAGA Release.** By operation of the Judgment, all PAGA Class Members shall release the Released Parties from the Released PAGA Claims.
- 9.4. Plaintiffs’ Release.** In consideration for receiving and accepting a service award, Plaintiffs shall be deemed to have, and by operation of the Judgment shall have, expressly waived and relinquished to the fullest extent permitted by law the provisions, rights, and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law that purports to limit the scope of a general release. Except that Brandon Worthy’s release shall carve out claims under 42 U.S.C. § 1981; 42 U.S.C. 2000e-2 et seq.; Cal. Gov’t Code § 12900 et seq.; Cal. Labor Code, Cal. Business & Professions Code, the Cal. Civil Code, and tort claims (“Individual Claims”) and Brandon Worthy shall not release any of his Individual Claims in exchange for his service award. The parties have negotiated and resolved his Individual Claims separate and apart from this Settlement.

Plaintiffs have read Section 1542 of the Civil Code of the State of California, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH 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.

Plaintiffs understand that Section 1542 gives the right not to release existing claims of which they are not now aware, unless Plaintiffs voluntarily choose to waive this right. Having been so apprised, Plaintiffs nevertheless voluntarily waive the rights described in Section 1542 and elect to assume all risks for claims that now exist in their favor, known or unknown with respect to Defendant.

In addition, subject to Plaintiff Worthy's release carve out above, the Plaintiffs' Released Claims further will include, without limitation, any and all claims of any kind regarding Plaintiffs' respective employment and/or the termination of employment including, but not limited to, any claims for wages, bonuses, severance pay, vacation pay, penalties, employment benefits, stock options, violation of any personnel policy, any claims based on discrimination, harassment, unlawful retaliation, violation of public policy, or damages of any kind whatsoever, arising out of any common law torts, contracts, express or implied, any covenant of good faith and fair dealing, any theory of wrongful discharge, any theory of negligence, any theory of retaliation, any legal restriction on any of Defendant's right to terminate the employment relationship, or any federal, state, or other governmental statute, executive order, regulation or ordinance, or common law, or any other basis whatsoever, to the fullest extent provided by law.

Further, the Plaintiffs represent and acknowledge that they have been reimbursed for all expenses incurred, provided all leave entitled to or requested, and have not sustained any work-related injuries in the course and scope of their employment. Notwithstanding the foregoing, (a) Plaintiffs do not waive any right to file an administrative charge with the Equal Employment Opportunity Commission ("EEOC"), subject to the condition that Plaintiffs agree not to seek, or in any way obtain or accept, any monetary award, recovery, or settlement therefrom; (b) Plaintiffs do not release any claim for breach of the terms of the Agreement; and (c) Plaintiffs do not waive any rights with respect to, or release Defendant from, any workers' compensation insurance benefits to the extent any applicable state law prohibits the direct release of such benefits without judicial or agency approval, with the understanding that such benefits, if any, would only be payable in accordance with the terms of any workers' compensation coverage or fund of the Defendant.

10. PARTIES' AUTHORITY. The signatories hereto hereby represent that they are fully authorized to enter into this Agreement and to bind the Parties hereto to the terms and conditions hereof.

11. MUTUAL COOPERATION. The Parties agree to reasonably cooperate with each other

and to take all steps necessary and appropriate to obtain the Court's approval of this Agreement and all of its terms and to effectuate the terms of this Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Agreement. The Parties to this Agreement shall use their commercially reasonable efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by award of the Court, or otherwise, to effectuate this Agreement and the terms set forth herein.

- 12. NO ADMISSION OF LIABILITY.** Defendant denies all of the allegations made by Plaintiffs and denies that it is liable or owes damages to anyone with respect to the alleged facts or causes of action asserted herein. Nonetheless, without admitting or conceding any liability or damages whatsoever, Defendant has agreed to settle these claims on the terms and conditions set forth in this Agreement, to avoid the burden, expense, and uncertainty of litigation. Nothing in this Agreement shall be deemed or used as an admission of liability by Defendant, nor as an admission that a class or collective action should be certified for any purpose other than settlement purposes.

13. INTERPRETATION AND ENFORCEMENT/MISCELLANEOUS TERMS

- 13.1. No Assignment.** Plaintiffs represent and warrant that they have not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any portion thereof or interest therein, including, but not limited to, any interest in their claims, or any related action, and any attempt to do so shall be of no force or effect.
- 13.2. Entire Agreement.** This Agreement (including its Exhibits) constitutes the entire agreement between the Parties with regard to the subject matter contained herein, and all prior and contemporaneous negotiations and understandings between the Parties shall be deemed merged into this Agreement except that the Parties' separate tolling agreement remains in full force and effect and is not merged with this Agreement.
- 13.3. Binding Effect.** This Agreement shall be binding upon the Parties.
- 13.4. Arms' Length Transaction; Materiality of Terms.** The Parties have negotiated all the terms and conditions of this Agreement at arms' length. All terms and conditions of this Agreement in the exact form set forth in this Agreement are material to this Agreement and have been relied upon by the Parties in entering into this Agreement, unless otherwise expressly stated.
- 13.5. Captions.** The captions or headings of the sections and paragraphs of this Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.
- 13.6. Construction.** The determination of the terms and conditions of this Agreement has been by mutual agreement of the Parties. Each party participated jointly in the drafting of this Agreement, and therefore the terms and conditions of this Agreement are not intended to be, and shall not be, construed against any party by virtue of draftsmanship.

- 13.7. Governing Law.** This Agreement shall in all respects be interpreted, enforced and governed by and under the laws of the State of California, without regard to choice of law principles, except to the extent that the law of the United States governs any matter set forth herein, in which case such federal law shall govern.
- 13.8. Continuing Jurisdiction.** The Court shall retain jurisdiction over the interpretation and implementation of this Agreement as well as any and all matters arising out of, or related to, the interpretation or implementation of this Agreement and of the Settlement contemplated thereby.
- 13.9. Waivers, etc. to Be in Writing.** No waiver, modification or amendment of the terms of this Agreement, whether purportedly made before or after the Court's approval of this Agreement, shall be valid or binding unless in writing, signed by or on behalf of all Parties, and then only to the extent set forth in such written waiver, modification or amendment, with any required Court approval. Any failure by any party to insist upon the strict performance by the other party of any of the provisions of this Agreement shall not be deemed a waiver of future performance of the same provisions or of any of the other provisions of this Agreement, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.
- 13.10. When Agreement Becomes Effective; Counterparts.** This Agreement shall become effective upon its full execution by the Parties. The Parties may execute this Agreement in counterparts, and execution in counterparts shall have the same force and effect as if all Parties had signed the same original instrument.
- 13.11. Facsimile, Electronic, and Email Signatures.** Any Party may execute this Agreement by signing, including by electronic means, and transmitting that signature page via facsimile, email, or electronic signature technology to counsel for the other party. Any signature made and transmitted by facsimile, email, or electronic signature technology for the purpose of executing this Agreement shall be deemed an original signature for purposes of this Agreement and shall be binding upon the party whose counsel transmits the signature page by facsimile, email, or electronic signature technology.
- 13.12. Signatories.** This Agreement is valid and binding if signed by Defendant's authorized representatives and Plaintiffs.

WE AGREE TO THESE TERMS.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE FOLLOWS]**

By: 
Brandon Worthy

Dated: 4 February, 2025

By: 
Randi Rizzari

Dated: 02/05, 2025

APPROVED AS TO FORM

Date: 3/18/25

Date: 2/4/2025

By: 
Malwarebytes, Inc.
By: Ameet S. Matharu
Its: VP, General Counsel
03/11/2025
Dated: , 2025

LITTLER MENDELSON, P.C.


CHAD D. GREESON
HELEN BRAGINSKY
Attorneys for Defendant
MALWAREBYTES, INC.

OUTTEN & GOLDEN LLP


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ADAM L. KOSHKIN
MOHSIN MIRZA
Attorneys for Plaintiffs
BRANDON WORTHY and
RANDI RIZARRI

EXHIBIT A-1 (CLASS NOTICE)

OFFICIAL NOTICE OF CLASS ACTION SETTLEMENT

[NAME]

[ADDRESS]

[CITY, STATE ZIP]

If you worked for Malwarebytes, Inc. (“Malwarebytes”) in California as a Sales Representative you may be entitled to a payment from a class action settlement.

A Court authorized this notice. This is not a solicitation from a lawyer.

- You received this Notice because Malwarebytes’ records indicate either that you were employed in the State of California as a Sales Representative in a relevant role during the relevant period, as described in greater detail below.
- Two former Malwarebytes employees filed a wage and hour class action against Malwarebytes. They allege violations of California laws for unpaid minimum and overtime wages, failing to pay timely wages or vacation pay, non-compliant meal periods, non-compliant rest breaks, non-compliant wage statements, unfair competition, and violations of the Fair Labor Standards Act (“FLSA”). They allege these claims on behalf of Sales Representatives classified both as exempt and non-exempt. Malwarebytes denies these allegations and maintains that it has properly complied with all stated and federal laws. The Court has not made any ruling on the merits of the claims. The Parties have entered into a settlement to avoid further disputes and litigation with the attendant inconvenience and expense. Further details are set forth in the Settlement Agreement and Release.
- Under the allocation formula created by the settlement, your potential settlement payment is estimated to be approximately \$[AMOUNT], subject to deductions for applicable taxes and withholdings, which is based on Malwarebytes’ records of your dates of employment as a Sales Representative, the state you worked in, and the category of your claims.

Your legal rights may be affected by this settlement, and you have a choice to make:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING NOW AND OBTAIN PAYMENT CASH A SETTLEMENT CHECK	If you do nothing, you will release the Released Class Claims and be sent a settlement check of approximately \$[AMOUNT], subject to applicable taxes and withholdings.
	By cashing or otherwise negotiating the settlement check, you will further release the Released Collective Class Claims discussed in Section 10 below.
	If you do not cash or otherwise negotiate the settlement check, you will have released the Released Class Claims but you will not release the Released Collective Class Claims.

EXCLUDE YOURSELF	If you do not want to participate in the settlement you must submit a written, signed Opt-Out Statement to the Settlement Administrator, as discussed in Section 11 below. If you submit an Opt-Out Statement, you will not be eligible to receive a settlement payment or object to the settlement.
OBJECT	If you do not submit an Opt-Out Statement, you may write to the Court about why you object to the settlement. More information about objecting is set forth in Section 15 below.

- These rights and options – **and the deadlines to exercise them** – are explained in greater detail in this Notice.
- The Court still has to decide whether to approve the settlement. Settlement payments will be made only after this process is complete. Please be patient.

BASIC INFORMATION

1. Why did I get this Notice?

The Court ordered that you be sent this Notice because you have a right to know about a proposed class and collective action settlement, and about all of your options, before the Court decides whether to approve the settlement. This Notice explains the case, your legal rights, and what benefits are available.

The Court overseeing this case is the California Superior Court for the County of Sacramento. The case is *Worthy v. Malwarebytes, Inc.*, Case No. **[INSERT]**.

2. Am I covered by this settlement?

Malwarebytes' records state that you were employed by Malwarebytes in the State of California as a Sales Representative whom Malwarebytes classified as overtime ineligible at any time between April 4, 2018 and April 16, 2023 ("Exempt Sales Representatives") or as a Sales Representative whom Malwarebytes classified as overtime eligible between April 4, 2018 and **[INSERT RELEASE DATE]** ("Nonexempt Sales Representatives"), and you are thus considered a "California Class Member."

Nonexempt Sales Representatives include current and former Malwarebytes employees who worked in positions of: Telemarketing/Lead Development Rep; Inside/Contract Renewal Sales Rep; and Inside Sales Representative. The exact variations are set forth in greater detail in the Settlement Agreement and Release.

Exempt Sales Representatives include current and former Malwarebytes employees who worked in positions of: Inside Sales Rep, Inside/Renewal Contract Sales Rep, and Telemarketing/Lead Development Rep. The exact variations are set forth in greater detail in the Agreement.

Regardless of job title, if you signed a separation agreement with Malwarebytes, you are not included in the settlement.

3. What is the case about?

The core dispute is about whether Malwarebytes paid its Sales Representatives the overtime compensation they were owed. Two former Malwarebytes employees filed a wage and hour class action against Malwarebytes. They allege violations of California laws for unpaid minimum and overtime wages, failing to pay timely wages or vacation pay, non-compliant meal periods, not compliant rest breaks, non-compliant wage statements, unfair competition, and violations of the Fair Labor Standards Act (“FLSA”). They allege these claims on behalf of Sales Representatives classified both as exempt and non-exempt. Malwarebytes denies these allegations and maintains that it has properly complied with all stated and federal laws.

Additionally, P

The Court has not made any ruling on the merits of the claims, and no party has prevailed in this action. Further details regarding the alleged claims are set forth in the Settlement Agreement and Release.

4. Why is this a class/collective action?

In a class action, one or more people called “class representatives” bring claims on behalf of other people who have similar claims. The people are called “class members” and together are the “class.” Similarly, in a collective action, one or more people can seek to represent a “collective” of similarly situated people. The individuals who initiated this class/collective action are called the “Plaintiffs.” In a class/collective action, plaintiffs ask a court, judge, or Court to resolve the issues for every member of the class and collective.

5. Why is there a settlement?

The Court did not decide in favor of the Plaintiffs or Malwarebytes. Both sides believe they will prevail in a litigation, and there has been no decision in favor of either party. Instead, the Parties have agreed to resolve this matter solely to avoid the burden, expense, delay, and risks associated with litigation.

THE SETTLEMENT BENEFITS – WHAT YOU GET

6. What does the settlement provide?

Malwarebytes has agreed to pay a total of up to \$1,610,000.00 (the “Total Settlement Amount”), which will be used to pay: (1) settlement awards to individual Participating Class and Collective Members; (2) attorneys’ fees to Class Counsel of up to one-third of the Total Settlement Amount plus reimbursement of actual litigation expenses and costs; (3) a Service Award of up to \$10,000.00 to each Plaintiff (total of \$20,000.00); (4) \$80,500.00 to resolve claims under California’s Private Attorneys General Act (PAGA), of which \$60,375.00 will be paid to the California Labor and Workforce Development Agency and \$20,125.00 to individual PAGA Members; and (5) the Settlement Administrator’s fees and costs.

7. How much will my settlement payment be and how was it calculated?

Based on the formula that has been preliminarily approved by the Court, your settlement payment is estimated to be \$[AMOUNT], one third of which is subject to payroll deductions for applicable taxes and withholdings like any other paycheck, for which you will receive a Form W-2, and two thirds of which is not subject to deductions and will be reported on a Form 1099. Neither Class Counsel nor Malwarebytes' counsel can advise you regarding the tax consequences of the settlement. You may wish to consult with your own personal tax advisor in connection with the settlement.

The formula that has been approved by the Court and used to calculate your settlement payment considers the number of weeks you worked, the relative value of the damages available under the applicable laws in California as compared with the value of damages available in other locations, and the category of claims you are eligible to bring depending on whether you were an Exempt Sales Representative (classified as overtime ineligible) or a Nonexempt Sales Representatives (classified as overtime eligible). The Settlement Agreement contains the exact allocation formula. You may obtain a copy of the Settlement Agreement at [www.\[website\].com](http://www.[website].com) or by contacting Class Counsel using the information in **Section 20** below.

The Settlement Administrator used your dates of employment as a Sales Representative from Malwarebytes' records to calculate your payment. Malwarebytes' records indicate that you worked for the company as an [Exempt/Nonexempt] Sales Representative in California from <<Start Date>> to <<End Date.>> [and repeat if individual held both categories of roles in different periods]. Please note that your settlement payment will only cover weeks worked between April 4, 2018 through April 16, 2023, if you worked as an Exempt Sales Representative, and from April 4, 2018 through [INSERT RELEASE DATE], if you worked as a Nonexempt Sales Representative.

If you have questions about your calculation, or dates of employment, you may contact the Settlement Administrator at:

[INSERT SETTLEMENT ADMINISTRATOR CONTACT]

If you dispute Malwarebytes' records and/or the calculation of your settlement payment, you must notify the settlement administrator and provide written documentation supporting your contention. Malwarebytes' records are presumed to be correct unless you prove otherwise with documentary evidence. The Settlement Administrator will evaluate the information you provide and will make the final decision as to any dispute.

HOW YOU GET A PAYMENT

8. How can I get my payment?

If you wish to participate in the Settlement, you do not need to take any current action. You will receive a payment of \$[AMOUNT] by mail if the Court approves the settlement. If your mailing address has changed, please contact the Settlement Administrator or update your address online at

9. When will I get my settlement payment?

The Court will hold a hearing on _____, at _____ to determine whether to give final approval to the settlement. If the Court approves the settlement, settlement checks are anticipated to be mailed approximately three months later.

10. What am I giving up by releasing my claims?

If you do not exclude yourself from the settlement (as described in **Section 11** below), you will release the Released Class Claims. This means that you cannot sue, continue to sue, or be part of any other legal action against Malwarebytes asserting the California wage and hour claims pled in the operative complaint and that accrued during your employment with Malwarebytes as an Exempt or Nonexempt Sales Representative during the Class Period (April 4, 2018 through April 16, 2023 if you worked in an exempt position and April 4, 2018 through **[INSERT RELEASE DATE]** if you worked in a non-exempt position), including, without limitations, any claims for unpaid wages including but not limited to minimum, regular, or overtime wages (Cal. Lab. Code §§ 510, 1194, 1194.2, 1197, 1197.1, 1198, 1199); failing to timely pay wages or vacation pay (Lab. Code §§ 201-204; 227.3); non-compliant meal periods and any unpaid premiums (Lab. Code §§ 512, 226.7, and applicable Wage Order); non-compliant rest breaks and any unpaid premiums (Lab. Code § 226.7, and applicable Wage Order); non-compliant wage statements (Lab. Code §§ 226, 226.3); unfair competition or business practices (Bus. & Prof. Code § 17200 et seq.); claims for interest, penalties (including but not limited to waiting time penalties at Lab. Code §§ 201-204), or premiums in connection with any of the preceding claims; interest, liquidated damages, attorneys' fees, costs, and expenses; any claims for injunctive relief, declaratory relief, restitution, fraudulent business practices or punitive damages alleged or which could have been alleged; as well as any claims under the California Labor Code, California Industrial Welfare Commission's Wage Orders, or the California Code of Regulations, that were alleged or which could have been alleged under the same or similar facts, allegations, or claims in the operative Complaint.

Additionally, if you cash or otherwise negotiate your settlement check, you will release the Released Collective Class Claims. This means that you cannot sue, continue to sue, or be part of any other legal action against Malwarebytes asserting the federal wage and hour claims pled in the operative complaint and that accrued during your employment with Malwarebytes as an Exempt or Nonexempt Sales Representative during the Collective Class Period (April 4, 2019 through April 16, 2023 if you worked in an exempt position and April 4, 2019 through **[INSERT RELEASE DATE]** if you worked in a non-exempt position), including, without limitations, any and all federal claims for unpaid overtime wages, and all related claims for penalties, interest, liquidated damages, attorneys' fees, costs, and expenses that were alleged or which could have been alleged under the same or similar facts, allegations, or claims in the operative Complaint.

Settlement checks that are not cashed within 180 days of issuance will be null and void.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not wish to release your claims, then you must take steps to exclude yourself. This is sometimes referred to as “opting out” of the settlement.

11. How do I opt out of the settlement?

If you wish to exclude yourself from the settlement, you must submit a written Opt-out Statement to the Settlement Administrator, stating: (i) your name, address and telephone number; and (ii) a statement indicating your intent to exclude yourself from the settlement, such as “I opt out of the Malwarebytes wage and hour settlement.” The Opt-out Statement must be postmarked by or otherwise received on or before **[INSERT DATE 60 DAYS FROM NOTICE MAILING OR 60 DAYS FROM REMAILING]**.

If you submit an Opt-out Statement, you will not be eligible to receive a settlement check. You will retain the right to bring your own legal action against Malwarebytes. You should be aware that your claims are subject to a statute of limitations, which means that they will expire on a certain date.

If you ask to be excluded, you cannot object to the settlement.

To opt-out of the settlement, mail an Opt-out Statement to the Settlement Administrator at:

[SETTLEMENT ADMINISTRATOR CONTACT]

Your objection must be postmarked by or otherwise received on or before **[INSERT DATE 60 DAYS FROM NOTICE MAILING OR 60 DAYS FROM REMAILING]**.

12. If I exclude myself, can I get money from this settlement?

No. If you exclude yourself, you will not be eligible to receive a settlement check.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in this case?

The Court has decided that the lawyers at the law firm of Outten & Golden LLP are qualified to represent you and all class members. These lawyers are called “Class Counsel” or “Plaintiffs’ Counsel.” You will not be charged separately for these lawyers; their fees are being covered by the Total Settlement Amount. You do not need to retain your own attorney in order to participate as a Class Member. If you do not opt out of the class and want to be represented by your own lawyer, you may hire one at your own expense. The contact information for Class Counsel is in **Section 20** below.

14. How will the lawyers be paid?

Class Counsel will ask the Court to approve payment of up to one-third of the Total Settlement Amount for their attorneys' fees. These fees would compensate Class Counsel for investigating the facts, mediating and filing the case, and negotiating the settlement. Class Counsel will also ask the Court to approve payment for out-of-pocket costs incurred prosecuting the case.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the settlement or some part of it.

15. How do I tell the Court that I disapprove of the settlement?

If you have not submitted an Opt-out Statement, you can object to any portion of the settlement which you disapprove. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object to the settlement, send a letter to the Settlement Administrator saying that you object to the settlement which includes all of the following: (i) all reasons for objecting to the settlement, and any supporting documentation; and (ii) your name, address, and telephone number. By objecting to the settlement, you will be bound by the decision of the Court (even if the Court overrules your objection).

As an Objector, you do not need to appear at the Fairness Hearing, but if you wish to do so, you should state that in your letter to the Settlement Administrator.

Objections should be mailed to the Settlement Administrator at:

[SETTLEMENT ADMINISTRATOR CONTACT]

Your objection must be postmarked by or otherwise received on or before **[INSERT DATE 60 DAYS FROM NOTICE MAILING OR 60 DAYS FROM REMAILING]**.

16. What's the difference between objecting and opting out?

Objecting is telling the Court that you do not like something about the settlement and asking the Court not to approve the settlement as is.

Opting out (also known as excluding yourself) is telling the Court that you do not want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you. If you submit both an objection and an Opt-out Statement, the Settlement Administrator will attempt to contact you to determine whether you intended to object or exclude yourself. If the Settlement Administrator cannot reach you, it will be presumed that you intended to exclude yourself, and your objection will not be considered.

THE COURT'S FAIRNESS HEARING

17. When and where will the Court decide whether to approve the settlement?

The Court will hold the Fairness Hearing on _____ at _____.

At the hearing, the Court will determine whether the settlement is fair, adequate, and reasonable and will consider any properly submitted objections. Please contact Class Counsel using the contact information provided in **Section 20** below if you have any questions about the Fairness Hearing.

18. Do I have to attend the fairness hearing?

No. Class Counsel will attend to answer questions the Court may have. But, you are welcome to attend the hearing at your own expense; if you wish to do so, please contact Class Counsel. If you send an objection, you do not have to attend. As long as you have not excluded yourself and have mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

GETTING MORE INFORMATION

19. Are there more details about the settlement?

This Notice summarizes the proposed settlement. More details are in a Settlement Agreement. You can get a copy of the Settlement Agreement from the Settlement Administrator or Class Counsel using the contact information below, or at [www.\[website\].com](http://www.[website].com). [MAILED VERSION: You can also access the website using this QR Code: LINK AND QR CODE LINKING TO WEBSITE]

20. How do I get more information?

If you have other questions about the settlement or want more information, you can contact the Settlement Administrator at [INSERT CONTACT INFORMATION], or Class Counsel at:

Melissa L. Stewart
OUTTEN & GOLDEN LLP
695 Third Avenue, 25th Floor
New York, NY 10017
Telephone: [insert number]
Malwarebytes@outtengolden.com

Adam L. Koshkin
Mohsin M. Mirza
OUTTEN & GOLDEN LLP
One California, 12th Floor,
San Francisco, CA 94111
Telephone: [insert number]
Malwarebytes@outtengolden.com

DATED: _____, 20__

Do not contact the Court directly for any reason.

EXHIBIT A-2 (COLLECTIVE NOTICE)

OFFICIAL NOTICE OF SETTLEMENT AND OPPORTUNITY TO JOIN

[NAME]

[ADDRESS]

[CITY, STATE ZIP]

If you worked for Malwarebytes, Inc. (“Malwarebytes”) as a Sales Representative you may be entitled to a payment from a collective action settlement.

An Court authorized this notice. This is not a solicitation from a lawyer.

- You received this Notice because Malwarebytes’ records indicate either that you were employed in the State of California as a Sales Representative in a relevant role during the relevant period, as described in greater detail below.
- Two former Malwarebytes employees filed a wage and hour class and collective action against Malwarebytes. They allege violations of the Fair Labor Standards Act (“FLSA”) for failure to properly pay overtime wages. They allege these claims on behalf of Sales Representatives classified both as exempt and non-exempt. Malwarebytes denies these allegations and maintains that it has properly complied with all stated and federal laws. The Court has not made any ruling on the merits of the claims. The Parties have entered into a settlement to avoid further disputes and litigation with the attendant inconvenience and expense. Further details are set forth in the Settlement Agreement and Release.
- Under the allocation formula created by the settlement, your potential settlement payment is estimated to be approximately \$[AMOUNT], subject to deductions for applicable taxes and withholdings, which is based on Malwarebytes’ records of your dates of employment as a Sales Representative.

Your legal rights may be affected by this settlement, and you have a choice to make:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING NOW CASH A SETTLEMENT CHECK LATER	You do not have to do anything to receive a settlement check. If you do nothing, you will be sent a settlement check of approximately \$[AMOUNT], subject to applicable taxes and withholdings. If you endorse and deposit the settlement check, you will release the Released Collective Class Claims discussed in Section 10 below.
DO NOTHING NOW DO NOT CASH A SETTLEMENT CHECK LATER	If you do not wish to be bound by the settlement, you should not sign or attempt to cash or deposit the settlement check.

- These rights and options – **and the deadlines to exercise them** – are explained in greater detail in this Notice.
- The Court still has to decide whether to approve the settlement. Settlement payments will be made only after this process is complete. Please be patient.

BASIC INFORMATION

1. Why did I get this notice?

The Court ordered that you be sent this Notice because you have a right to know about the settlement of a collective action in which you are eligible to participate, and about all of your options. This Notice explains the case, the settlement, your legal rights, and what benefits are available.

The Court overseeing this case is the California Superior Court for the County of Sacramento. The case is *Worthy v. Malwarebytes, Inc.*, Case No. _____.

2. Am I covered by this settlement?

Malwarebytes' records state that you were employed by Malwarebytes in a state other than California as a Sales Representative whom Malwarebytes classified as overtime ineligible at any time between April 4, 2019 and April 16, 2023 ("Exempt Sales Representatives") or as a Sales Representative whom Malwarebytes classified as overtime eligible between April 4, 2019 and [INSERT RELEASE DATE] ("Nonexempt Sales Representatives"), and you are thus considered a "Collective Member."

Nonexempt Sales Representatives include current and former Malwarebytes employees who worked in positions of: Telemarketing/Lead Development Rep; Inside/Contract Renewal Sales Rep; and Inside Sales Rep. The exact variations are set forth in greater detail in the Settlement Agreement and Release.

Exempt Sales Representatives include current and former Malwarebytes employees who worked in positions of: Inside Sales Rep, Inside/Renewal Contract Sales Rep, and Telemarketing/Lead Development Rep. The exact variations are set forth in greater detail in the Agreement.

Regardless of job title, if you signed a separation agreement with Malwarebytes, you are not included in the settlement.

3. What is the case about?

Two former Malwarebytes employees filed a wage and hour class and collective action against Malwarebytes. They allege violations of the Fair Labor Standards Act ("FLSA") for failure to properly pay overtime wages. They allege these claims on behalf of Sales Representatives classified both as exempt and non-exempt. Malwarebytes denies these allegations and maintains that it has properly complied with all stated and federal laws. The Court has not made any ruling on the merits of the claims. The Parties have entered into a settlement to avoid further disputes

and litigation with the attendant inconvenience and expense. Further details are set forth in the Settlement Agreement and Release

4. Why is this a collective action?

In a “collective action,” a person called the “Plaintiff” brings claims on behalf of people who have similar claims. However, the other employees who have similar claims do not become part of the collective action until they “opt in.” You may “opt in” to and participate in the settlement by cashing or endorsing a settlement check, which the Settlement Administrator will mail you if the settlement is approved by the Court.

5. Why is there a settlement?

The Court did not decide in favor of Plaintiffs or Malwarebytes. Both sides believe they will prevail in litigation, and there has been no decision in favor of either party. Instead, the Parties have agreed to resolve this matter solely to avoid the burden, expense, delay, and risks associated with litigation.

THE SETTLEMENT BENEFITS – WHAT YOU GET

6. What does the settlement provide?

Malwarebytes has agreed to pay a total of up to \$1,610,000.00 (the “Total Settlement Amount”), which will be used to pay: (1) settlement awards to individual Participating Class and Collective Members; (2) attorneys’ fees to Class Counsel of up to one-third of the Total Settlement Amount plus reimbursement of actual litigation expenses and costs; (3) a Service Award of up to \$10,000.00 to each Plaintiff (total of \$20,000); (4) \$80,500.00 to resolve claims under California’s Private Attorneys General Act (PAGA), of which \$60,375.00 will be paid to the California Labor and Workforce Development Agency and \$20,125.00 to individual PAGA Members; and (5) the Settlement Administrator’s fees and costs.

7. How much will my settlement payment be and how was it calculated?

Based on the formula that has been preliminarily approved by the Court, your settlement payment is estimated to be \$[AMOUNT], one half of which is subject to payroll deductions for applicable taxes and withholdings like any other paycheck, for which you will receive a Form W-2, and one half of which is not subject to deductions and will be reported on a Form 1099. Neither Plaintiffs’ Counsel nor Malwarebytes’ counsel can advise you regarding the tax consequences of the settlement. You may wish to consult with your own personal tax advisor in connection with the settlement.

The formula that has been approved by the Court and used to calculate your settlement payment considers the number of weeks you worked, the relative value of the damages available under the applicable federal laws as compared with the value of damages available under California law, and the category of claims you are eligible to bring depending on whether you were an Exempt

Sales Representative (classified as overtime ineligible) or a Nonexempt Sales Representatives (classified as overtime eligible). The Settlement Agreement contains the exact allocation formula. You may obtain a copy of the Settlement Agreement at [www.\[website\].com](http://www.[website].com) or by contacting Class Counsel using the information in **Section 20** below.

The Settlement Administrator used your dates of employment as a Sales Representative from Malwarebytes' records to calculate your payment. Malwarebytes' records indicate that you worked for the company as an **[Exempt/Nonexempt]** Sales Representative in a state other than California from <<**Start Date**>> to <<**End Date**>> **[and repeat if individual held both categories of roles in different periods]**. Please note that your settlement payment will only cover weeks worked between April 4, 2019 through April 16, 2023, if you worked as an Exempt Sales Representative, and from April 4, 2019 through **[INSERT RELEASE DATE]**, if you worked as a Nonexempt Sales Representative.

[INSERT SETTLEMENT ADMINISTRATOR CONTACT]

If you dispute Malwarebytes' records and/or the calculation of your settlement payment, you must notify the settlement administrator and provide written documentation supporting your contention. Malwarebytes' records are presumed to be correct unless you prove otherwise with documentary evidence. The Settlement Administrator will evaluate the information you provide and will make the final decision as to any dispute.

HOW YOU GET A PAYMENT

8. How can I get my payment?

If you wish to participate in the Settlement, you do not need to take any current action. You will receive a payment of \$**[AMOUNT]** by mail. If your mailing address has changed, please contact the Settlement Administrator or update your address online at **[EMAIL VERSION: [www.\[website\].com](http://www.[website].com) / [MAILED VERSION: [www.\[website\].com](http://www.[website].com) AND QR CODE]**

9. When will I get my settlement payment?

The Court will hold a hearing on _____, at _____ to determine whether to give final approval to the settlement. If the Court approves the settlement, settlement checks are anticipated to be mailed approximately three months later.

10. What am I giving up by releasing my claims?

If you or cash or otherwise negotiate your settlement check, you will release the Released Collective Class Claims.

This means that you cannot sue, continue to sue, or be part of any other legal action against Malwarebytes asserting the federal and state wage and hour claims pled in the operative complaint or that could have been pled based on the facts alleged in the complaint and that accrued during your employment with Malwarebytes through April 16, 2023 if you worked in an exempt position and **[INSERT RELEASE DATE]** if you worked in a non-exempt position, including, without limitations, any and all federal claims for unpaid overtime wages, and all related claims for

penalties, interest, liquidated damages, attorneys' fees, costs, and expenses that were alleged or which could have been alleged under the same or similar facts, allegations, or claims in the operative Complaint.

If you elect not to cash or otherwise negotiate your settlement check, you will not release the Released Collective Class Claims and will retain your right to file suit against Malwarebytes.

Settlement checks that are not cashed within 180 days of issuance will be null and void.

THE LAWYERS REPRESENTING YOU

11. Do I have a lawyer in this case?

The law firm of Outten & Golden LLP has been designated as legal counsel to represent you and other Sales Representatives who participate in the settlement. You will not be charged separately for these lawyers; their fees are being covered by the settlement fund. The contact information for Plaintiffs' Counsel is in **Section 16** below.

12. How will the lawyers be paid?

Plaintiffs' Counsel will ask the Court to approve payment of up to one-third of the Total Settlement Amount for their attorneys' fees. These fees would compensate Plaintiffs' Counsel for investigating the facts, mediating and filing the case, and negotiating the settlement. Plaintiffs' Counsel will also ask the Court to approve payment for out-of-pocket costs incurred prosecuting the case.

THE COURT'S FAIRNESS HEARING

13. When and where will the Court decide whether to approve the Settlement?

The Court will hold the Fairness Hearing on _____ at _____.

At the hearing, the Court will determine whether the settlement is fair, adequate, and reasonable and will consider any properly submitted objections. Please contact Plaintiffs' Counsel using the contact information provided in **Section 20** below if you have any questions about the Fairness Hearing.

14. Do I have to attend the fairness hearing?

No. Plaintiffs' Counsel will attend to answer questions the Court may have. But, you are welcome to at your own expense.

GETTING MORE INFORMATION

15. Are there more details about the settlement?

This Notice summarizes the proposed settlement. More details are in a Settlement Agreement. You can get a copy of the Settlement Agreement from the Settlement Administrator or Class

Counsel using the contact information below, or at [www.\[website\].com](http://www.[website].com). [MAILED VERSION: You can also access the website using this QR Code: LINK AND QR CODE LINKING TO WEBSITE]

16. How do I get more information?

If you have other questions about the settlement or want more information, you can contact the Settlement Administrator at [INSERT CONTACT INFORMATION] or Plaintiffs' Counsel at:

Melissa L. Stewart
OUTTEN & GOLDEN LLP
695 Third Avenue, 25th Floor
New York, NY 10017
Telephone: [insert number]
Malwarebytes@outtengolden.com

Adam L. Koshkin
Mohsin M. Mirza
OUTTEN & GOLDEN LLP
One California, 12th Floor,
San Francisco, CA 94111
Telephone: [insert number]
Malwarebytes@outtengolden.com

DATED: _____, 20__

Do not contact the Court directly for any reason.

EXHIBIT B (CHECK CASHING REMINDER NOTICE)

**IMPORTANT REMINDER REGARDING
MALWAREBYTES OVERTIME SETTLEMENT**

Recently, you should have received a check from the settlement of a class and collective action for unpaid overtime against Malwarebytes. As of the date of this mailing, our records indicate that you have not cashed the check that was sent to you.

IMPORTANT DEADLINE: you must sign and cash or deposit your check on or before [INSERT DATE 60 DAYS FROM INITIAL MAILING].

If you have any questions about the case or your legal rights, please contact Melissa Stewart, Adam Koshkin, or Mohsin Mirza at Outten & Golden LLP at [insert number] or Malwarebytes@outtengolden.com.

EXHIBIT C (PAGA CHECK ENCLOSURE LETTER)

Dear [PAGA Member Name]:

The enclosed check includes your share of the California Private Attorneys General Act ("PAGA") settlement payment in *Worthy v. Malwarebytes, Inc.*, a class and collective action settlement. You are receiving this check because you are a member of the settlement's PAGA Member group, which is defined to include Exempt and Nonexempt Sales Representatives employed by Defendant in California during the period April 4, 2021, through April 16, 2023 for Exempt Sales Representatives and through [INSERT RELEASE DATE] for Nonexempt Sales Representatives (the "PAGA Class Period"), except those who signed separation agreements, who are not included in the Settlement.

Two former Malwarebytes employees, filed a PAGA action against Malwarebytes. They allege violations of California laws for unpaid minimum and overtime wages, failing to pay timely wages or vacation pay, non-compliant meal periods, non-compliant rest breaks, non-compliant wage statements, and unfair competition. They make these allegations on behalf of Sales Representatives classified both as exempt and non-exempt. Malwarebytes denies these allegations and maintains that it has properly complied with all stated and federal laws. The Court has not made any ruling on the merits of the claims. The Parties have entered into a settlement to avoid further disputes and litigation with the attendant inconvenience and expense. Further details are set forth in the Settlement Agreement and Release.

The action also included a PAGA claim brought on behalf of the State of California seeking civil penalties from Malwarebytes for California Labor Code violations Plaintiffs alleged.

Malwarebytes denies that it did anything wrong and contends that, among other things, it has complied at all times with all applicable laws.

To settle the PAGA claim, Malwarebytes agreed to pay up to \$80,500.00 (out of the Total Settlement Amount of \$1,610,000), which will be distributed according to PAGA's requirement that 75% be distributed to the California Labor Workforce Development Agency and the remaining 25% be paid to members of the California PAGA Group. Your individual PAGA settlement payment is determined by your proportional share of the \$20,125.00 PAGA Payment, based on the number of pay periods you worked between April 4, 2021 and April 16, 2023 if you worked in an exempt position and between April 4, 2021 and [INSERT RELEASE DATE] if you worked in a non-exempt position. This PAGA settlement check is separate from and in addition to any other individual settlement payment you may receive in this case.

Because the State of California has released its PAGA claims through this settlement, you are precluded from bringing claims for penalties under PAGA pled in the operative complaint or that could have been pled based on the facts alleged in the complaint and that accrued during your employment with Malwarebytes, relating back to the full extent of the applicable statutes of limitations and continuing through April 16, 2023 if you worked in an exempt position and [INSERT RELEASE DATE] if you worked as a Nonexempt Sales Representative. There is no option to exclude yourself from the PAGA portion of the settlement, and you are bound by the PAGA Release (full details of the released claims are available at [URL]). Unless you excluded yourself from the class action portion of this settlement, you are also bound by the settlement release described in the settlement notice.

Enclosed you will also find an IRS Form 1099 for 100% of this payment. Please note that neither the Settlement Administrator nor Class Counsel can provide tax advice. If you have questions about the tax treatment of this payment, we suggest that you consult your tax advisor or accountant.

Please cash or deposit the check on or before its printed void date. Checks will not be re-issued after the void date and will revert to the California unclaimed property fund. If you have any questions about the calculation of your payment, please contact the Settlement Administrator at [insert number] or [insert email] or Class Counsel, Outten & Golden LLP, at [insert number] or Malwarebytes@outtengolden.com.

Regards,

Malwarebytes Settlement Administrator

2025-01-22 Malwarebytes - Settlement Agreement and Exhibits A-C (sign)-Signed

Final Audit Report

2025-03-11

Created:	2025-03-11
By:	Ameet Matharu (amatharu@malwarebytes.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAluz_iITx9toV-B51c_Z3W2TduIGewQks

"2025-01-22 Malwarebytes - Settlement Agreement and Exhibits A-C (sign)-Signed" History

-  Document digitally presigned by Filevine (vinesign-csr@filevine.com)
2025-02-05 - 2:45:53 PM GMT
-  Document created by Ameet Matharu (amatharu@malwarebytes.com)
2025-03-11 - 3:26:42 PM GMT
-  Document emailed to Ameet Matharu (amatharu@malwarebytes.com) for signature
2025-03-11 - 3:31:41 PM GMT
-  Document e-signed by Ameet Matharu (amatharu@malwarebytes.com)
Signature Date: 2025-03-11 - 3:32:09 PM GMT - Time Source: server
-  Agreement completed.
2025-03-11 - 3:32:09 PM GMT

Exhibit 2

Menaka N. Fernando (SBN 271380)
Adam L. Koshkin (SBN 320152)
Mohsin Mirza (SBN 342444)
OUTTEN & GOLDEN LLP
One California Street, 12th Floor
San Francisco, CA 94111
Telephone.: (415) 638-8800
Facsimile: (415) 638-8810
Email: mfernando@outtengolden.com
Email: akoshkin@outtengolden.com
Email: mmirza@outtengolden.com

*Attorneys for Plaintiffs and the Proposed
Class, Collective, and Aggrieved Members*

**SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY
OF SACRAMENTO**

BRANDON WORTHY and
RANDI RIZZARI, Individually
and on Behalf of All Others
Similarly Situated,

Plaintiffs,

v.

MALWAREBYTES, Inc.,

Defendant.

Case No. 25CV006631

**DECLARATION OF LISA MULLINS IN
SUPPORT OF PLAINTIFFS' UNOPPOSED
MOTION FOR PRELIMINARY
APPROVAL OF CLASS AND
COLLECTIVE ACTION SETTLEMENT**

Judge: Hon. Lauri A. Damrell

Dept.: 22

Hearing Date: May 30, 2025

Hearing Time: 9:00 AM

Reservation Number: A-006631-001

Complaint Filed: March 19, 2025

DECLARATION OF LISA MULLINS

1
2 1. I am a resident of the United States of America and am over the age of 21. I am the
3 President for ILYM Group, Inc., (herein after referred to as “ILYM Group”), a professional class action
4 services provider. I am preparing this declaration at the request of Plaintiff’s Counsel. I have personal
5 knowledge of the facts herein, and, if called upon to testify, I could and would testify competently to such
6 facts.

7 2. ILYM Group has extensive experience in disseminating class action notices and
8 administering class action settlements, including direct mail services, telephone, and web-based support,
9 database management, opt-out processing, and settlement fund distribution services for class actions
10 ranging in size from 26 to 4.5 million Class Members. Attached hereto, as **Exhibit A**, is a true and correct
11 copy of ILYM Group’s current CV, reflecting our primary competencies as they relate to class action
12 administration. ILYM Group maintains the highest level of confidentiality. The class data and all forms
13 of communication received by ILYM Group, Inc. will be held in strict confidentiality and will not be
14 disclosed. ILYM Group, will set up a login for Defense Counsel to transmit the class data through our
15 encrypted secure portal. Attached hereto, as **Exhibit B** is ILYM Group’s Security Summary and Protocol.
16 ILYM Group is insured with E&O and Cyber Insurance policies. ILYM Group is insured with E&O
17 Insurance policies up to \$2,000,000 per incident and Cyber Insurance policies up to \$5,000,000 per
18 incident.

19 3. ILYM Group has never had any financial interests in nor affiliation with the parties or
20 counsel in the *Malwarebytes Inc.* matter.

21 4. If appointed by the Court to disseminate the class notice in this case, ILYM Group’s duties
22 will include but not limited to: (a) conducting address traces to locate class member addresses as necessary;
23 (b) mailing and emailing the class notice to the class members; (c) handling inquiries from class members
24 concerning the class notice; and (d) performing other such duties as the parties and/or the Court may direct.

25 5. Upon appointment, ILYM Group will provide a mailing address and toll-free telephone
26 number to receive correspondence and inquiries from class members. ILYM Group will also establish and
27 maintain a case website under the URL www.malwarebyteswagesettlement.com. After receiving the class
28 data file from Defendant, which should contain the class members’ names, last known addresses, email

1 addresses and social security numbers, ILYM Group will upload the data into our database and check for
2 duplicates and other possible discrepancies.

3 6. As part of the preparation for mailing the class notice, ILYM Group will process class
4 members' names and addresses against the National Change of Address ("NCOA") database, maintained
5 by the United States Postal Service ("USPS"), for the purpose of updating and confirming the mailing
6 addresses of the class members before mailing of the class notice and opt-in form. To the extent an updated
7 address is found in the NCOA database, ILYM Group will use the updated address for mailing the class
8 notice. If ILYM Group does not locate an updated address in the NCOA database, it will use the original
9 address provided by Defendant for mailing the class notice.

10 7. Should any class notices be returned to ILYM Group's office as undeliverable, ILYM
11 Group will attempt to locate an updated address using the NCOA database and/or other skip trace efforts
12 and will promptly re-mail the class notice.

13 8. Prior to sending out the notice, ILYM Group will fill in the specific date for the deadline
14 so that all class members will be apprised of exactly when all applicable forms will be due, depending on
15 the deadlines set by the Court, i.e., 60-day Notice period to opt-out, dispute or file an objection. At the
16 expiration of the deadline, ILYM Group will inform all parties as to the number and name of those
17 individuals who filed a timely opt-out, dispute or objection.

18 9. ILYM Group's Disbursement Process will include but not limited to; (a) applying for the
19 case EIN; (b) establishing Qualified Settlement Fund ("QSF") Escrow Account), with administering tasks
20 including but not limited to overview and reconciliation of account; (c) calculating the individual
21 settlement amounts; (d) preparing, administering and distributing settlement award checks to the
22 Participating Class Members, including necessary tax forms (W2 and/or 1099); (e) calculating and
23 withholding all applicable state and federal taxes; and (f) performing other such duties as the Parties and/or
24 the Courts direct. The above services are included in ILYM Group's initial quote. Attached hereto, as
25 **Exhibit C**, is a true and correct copy of ILYM Group's not to exceed quote for this matter.

26 10. ILYM Group's fees are charged: hourly, fixed & per person. No additional charges will be
27 incurred unless the class size increases, or additional services are requested. ILYM Group's fees associated
28 with the administration of this settlement are: **\$8,000.00**.

1 I declare, under penalty of perjury under the laws of the United States of America and the State
2 of California that the foregoing is true and correct. Executed this 2nd day of May 2025, at Tustin,
3 California.

4
5 
6 Lisa Mullins

EXHIBIT “A”

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Overview of Our Firm:

ILYM Group, Inc is a class action administration, legal notification, and direct media outlets firm. With over 20 years of combined experience, our primary commitments are to client satisfaction, cutting edge technology and data management security, seamless case management and delivery of case expectations. Because, of our adherence to these commitments, ILYM Group, Inc is a one of the fastest growing, Woman Owned Business (NAPW), in the industry and has become the go-to firm for class action administration and legal notification. ILYM Group, Inc works with the top defense and plaintiff firms across the United States.

AREAS OF EXPERTISE:

- Wage and Hour
- FLSA
- Insurance and Health Care
- Consumer
- Finance
- ERISA
- TCPA
- Antitrust
- Securities

Ramirez v JC Penney.

- ERISA Case with a class size of 26,000.

Kruger, et al. v. Novant Health

- ERISA Case with a class size of \$32 million.

Abbott, et al. v. Lockheed Martin Corp.

- ERISA Case with \$62 million.

Jacqueline Jones vs. I.Q. Data International, Inc.

- TCPA Case with a class size of 93,993. Performed a reverse look-up to obtain Class Member information. We were able to obtain contact information for 93.82% of the Class that did not have a name or address.

Reza Barani vs. Wells Fargo Bank, N.A.

- TCPA Case with a class size of 82,874. Performed a reverse look-up to obtain Class Member information. We were able to obtain contact information for 87.84% of the Class that did not have a name or address.

Kimberly Roberts, et al. v. T.J. Maxx of CA, LLC, et al.

- Wage & Hour Case with a class size of 82,549.

Robert Stone, et al. v. Universal Protection Services, LP, et al.

- Wage & Hour Case with a class size of 75,351.

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

ILYM Group, Inc. is operational 24/7 delivering true client and class member availability. Our call center is open 24/7/365 days a year, even holidays and is full digital, automated and multilingual. ILYM Group Inc.'s mail and media center is a state-of-the-art facility, fully digital and USPS integrated. We can accommodate cases of any size, from ten class members to multi-millions. ILYM Group, Inc. prides itself on its commitment to service, quality, value pricing and availability. We've committed ourselves to being the best Class Action Administration and Notification Company in our industry. Through our years of experience, ILYM Group, Inc. is dedicated to exceeding our client's expectations.

PRE-SETTLEMENT CONSULTATION

- **Administration Consultation:** Meeting to determine objectives and expectations by both parties. All reporting and responsibilities will be agreed upon as will the seamless process to access data. We will also discuss the opportunities to identify class members with the proposed print and web-based media for optimum reach. Additionally, all expectations and delivery of those results will be planned for and mapped accordingly.

MAILING AND NOTIFICATION

- **Fulfillment and Correspondence:** All provided settlement information will be published via United States Postal Service (USPS first class standards) to the proposed mailing class. Notifications will include a Claim ID and how to respond, or Opt-Out, based on the stipulations.
- **Reverse Lookup:** A confidential reverse phone or reverse cell lookup will provide; owner's name, location, address history, carrier, phone type (landline or cell phone) and more. Our reverse lookup is powered by an extensive database which includes hundreds of millions of cell phone, landline, residential and unlisted number. Our software collects data from multiple data sources and carriers across the US. Our average "hit ratio" ranges from 93% - 98%.
- **Creating Class Database:** All Data is verified and filtered to eliminate duplication against the United States Postal Service (USPS) National Change of Address (NCOA) database. ILYM Group, Inc. will also certify and validate with the Coding Accuracy Support System (CASS) and Track Your Class (TYC) for zone delivery.
- **Claim Forms:** ILYM Group, Inc. will email all claim forms, whenever possible, to have accurate reporting and tracking of all class requests. Emails will contain full text claim forms.
- **Translations:** When needed, ILYM Group, Inc. will translate notices to any language needed to reach Class members.
- **Remails:** Returned mail will be scanned, re-verified and re-mailed. All returned mail is data warehoused and reported to both parties' counsels in a weekly report.

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

MEDIA & INTERNET BANNER ADS

Notice Publication

- **Legal Notices:** ILYM Group, Inc. can provide a Media Proposal to maximize reach based on quantitative and qualitative methodologies.
- **Electronic Publication (Banner Ads):** ILYM Group, Inc. will utilize Internet Banner Noticing efforts and web technologies for maximum reach via the World Wide Web.
- **Electronic Mail Notices:** ILYM Group, Inc. can email an estimated number of class members a full text notice. We are compliant with all search engines and Internet Service Providers (ISP) so that our emails are always “White List” accepted with minimal returns.
- **Reach:** Every case has its own proposed reach and exposure percentage. We filter, verify and scrub the data to improve reach results.
- **Services Included:** Analysis, Documentation, Research and Methodologies, Execution and Reporting.

PROJECT MANAGEMENT

- **Case Notification, Maintenance and Management:** ILYM Group, Inc.’s Senior Project Managers will provide all Account Management, Pre-Consultation to Case Conclusion, Reporting and Claims Processing. Design, negotiation and implementation, upon approval, of all forms and notices, all distribution reporting and filings with the court.
- **Claims Processing:** All claims can be submitted by USPS, Internet, Fax, and Email or Online submission. Claims will be processed and recorded with matching ILYM database ID's. E-claims will have corresponding records of intake. All deficient claims will be notified via USPS and make provisions for class member to re-submit claims.
- **Call Center:** ILYM Group, Inc. will support class members with a toll-free number to get the most up-to-date case settlement information. Customer service representatives will be available 24/7/365 as will recorded messages. All class members are given the options to best serve their needs and to receive case information.
- **Internet Support:** Class members can log on to a provided website and view, print or submit information and claim forms regarding the settlement. Frequently Asked Questions (FAQ's) will be provided as well. Class members may download the claim form with mailing and fax instructions provided on the form.
- **Objection and Request for Exclusion:** All objections and request for exclusion, opt-out, will be data warehoused, dated and reported. Postmarks will serve for exclusion dating and will be forwarded to both counsels' no more than 5 days post submission. Objection will be reviewed by ILYM Group, Inc. to determine the timeliness and basis of the objection. All information will be forwarded to both parties counsel, along with any representation information from the class member, within 5 days.

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

DATA ADMINISTRATION AND NETWORK SECURITY

- **Network Security:** All provided data is encrypted, stored and hosted in a Tier 4, SAS70 certified environment.
- **Database Administration:** To be developed with all electronically provided data. Class members will be assigned ILYM Group, Inc. internal tracking ID's to ensure all collected member data coincides with all received claims.

DISTRIBUTION AND SETTLEMENT FUNDING

- **Distribution and Management:** Upon receipt of settlement funds, ILYM Group, Inc. will open a QSF Account for proceeds of the Gross Settlement Payment. The deposited funds will then be managed per the Settlement Agreement. All funds will be settled with class members and counsel along with all federal and state income tax reporting.
- **Check Printing and Mailing:** Claims processed, quantified and approved by clients, will be processed for distribution. All checks will be printed and mailed via USPS first class standards. ILYM Group, Inc. will reissue checks in accordance with the Settlement Agreement.
- **Preparation, Filing and Reporting of Taxes:** ILYM Group, Inc. will ensure taxes are filed in accordance to all federal, state and local employment tax returns. All taxes associated with the settlement will be paid on time to tax authorities. All filings and returns (e.g., 1099s, W-2s, etc.) will be done properly and timely with the appropriate authorities. All QSF steps and obligations with federal, state and/or local law will be followed.

CASE CONCLUSION

- **Data Manager Final Report:** All database and electronic documentation will be sent in reports weekly and at the conclusion of the Administration engagement. Call center activity, e-claims, mailed, and faxed claims will be included in all reporting.
- **Project Manager Final Report:** All case and class related information will be provided on a weekly basis and at the conclusion of the Administration engagement. Mailing and media final analysis, exclusions, objections, and all other claims processing outcomes, status reports and final court documentations will be included.
- **Affidavits:** ILYM Group, Inc. will provide all affidavits in support of analysis and media reach, final approvals and settlement. Expert Testimony and Media Methodologies will be determined.
- **Document Retention:** Unless otherwise directed, ILYM Group, Inc. will destroy all undeliverable notices on the effective date of the settlement or when the case is no longer subject to appeal. ILYM Group, Inc. will correspond for one year after the final distribution or until the case is no longer subject to appeal.

EXHIBIT “B”

ILYM Group, Inc. (ILYM) in conjunction with our security and Information Technology (IT) vendor(s), maintains the highest level of confidentiality of class member data. The class data and all forms of communication received by ILYM, will be held in strict confidentiality and will not be disclosed. Data provided to the administrator for purposes of notice, settlement, or award administration will be used solely for settlement implementation and for no other purpose. ILYM will set up a login for Defense Counsel to transmit the class data through our encrypted secure portal. ILYM processes adhere to the Settlement Administration Data Protection Checklist in the Northern District of California and are summarized in the tables below.

Technical Controls

Firewalls and intrusion detection/prevention systems	Yes
Endpoint Detection and Response (EDR) Systems	Yes
Complex Password Requirements	Yes
MultiFactor Authentication for Access to Systems and Data	Yes
Malware Protection and AntiVirus	Yes
Vulnerability Scanning/Pen Testing	Yes
Data Encryption	Yes
Key Management for access to encrypted Data	Yes
Access only provided on need-to-know basis	Yes
Security Operations Center (SOC)	Yes
Managed Detection and Response (MDR)	Yes
Security Information and Event Management (SIEM)	Yes
Software Defined Global Network (SGN) with next gen firewall	Yes

Administrative Policies

Personnel and support staff risk assessment and management, including pre-hire background checks and screening processes	Yes
Personnel and support staff required to enter into non-disclosure and confidentiality agreements	Yes
Access controls to systems and data, including guidance for granting, modifying, and reviewing access rights	
Information security and privacy policy training, including policy review, best practices, and data security	Yes
No remote access to systems for Employees	No
Exit interviews/confirmation that terminated/departed employees are immediately cut off from access	Yes
Robust audits of data privacy policies by third-party vendors	Yes
Accreditation in accordance with ISO 27001 and SOC2 (among the industry standards listed below)	Compliant
Disclosure of external certifications and any notice of expiration	Yes

Crisis and Risk Management

Incident response/disaster plan for immediate response to security incidents such as data breach.	Yes
Process and timing for notification to attorneys, claimants, and other stakeholders of a data breach and consideration of resources and/or remedies to provide thereto	Yes
Vendor management program that determines and defines requirements to manage risk associated with outsourcing	Core Vendors are limited and have been vetted. New program being implemented as part of SOC 2

Physical Access Controls

Physical Access Security Security Guards Access Cards to facilities with assignment of identification card subject to approval and review Logs of Access	Logs and “codes” No cards – just codes No security guards Logs are kept
Alarm Systems	Yes
CCTV recording Systems	Yes

Data Collection and Retention

Minimization of collection of personally identifiable information, e.g., social security numbers and banking information	Yes
Data collection only required to extent necessary for settlement administration	Yes
Various methods for ensuring data protection and security of Data classification (including implementation of appropriate safeguards to protect from theft, loss, and/or unauthorized disclosure, use, access, destruction) Compliance with applicable laws and regulations (see below) Secure data transfer	Yes

Data Destruction

Preservation of data only for so long as required for administration of the settlement and any relevant reporting required following the payments or distributions	Yes
Secure data destruction (e.g., 6 months – 1 year or when no longer required)	Yes
Physical media (e.g., paper, CDs) shredded or destroyed to point where they cannot be reconstructed	Yes
Destruction of all derivative copies and/or back-ups	Yes

Applicable Laws, Standards, and Other Regulation

Industry standards: National Institute of Standards and Technology (NIST), HIPAA, FISMA, System and Organization Controls (SOC1 and SOC2) or more advanced assessment, ISO 27001	Yes
Local, national, international privacy regulations (including CCPA)	Yes

Ethical Rules

Administrative policies and/or employee handbook incorporating commitment to ethical rules (e.g., company, court ethical rules) setting forth standards of ethical and legal behavior	Yes
Enforcement clauses, violation resulting in disciplinary action including and up to termination of employment	Yes

Customer Service Measures

Description of settlement website and posting thereto of relevant privacy policies or statements (including portal for reporting suspected loss of confidential data submitted with claim)	Yes
--	-----

Explanation of role of claims administrator and how to prevent phishing (e.g., clear indication that administrator will not request confidential information by e-mail and how to identify a valid e-mail sent from the administrator)	Yes
--	-----

EXHIBIT “C”

Case Name: Malwarebytes Inc.

Thursday, October 3, 2024

Requesting Attorneys Name:

E-Mail:

ILYM Contact:

E-Mail:

Contact Number:

Mohsin M. Mirza

mmirza@outtengolden.com

Lisa Mullins

Lisa@ilymgroup.com

714.878.8836

Estimate For Administrative Solutions

KEY ASSUMPTIONS	
Total Number of Class Members	241
Estimated Percentage of Remails	15%
Certified Spanish Translation	No
ILYM Group Interactive Website	Yes
Check Imaging for Counsel	Yes
Case Duration (Years)	1

Summary Estimate: ILYM Group Fees & Expenses

Case Startup:	\$650.00
Project Management:	\$2,205.00
Notification & Mailing:	\$689.56
Distribution (Includes EIN, Bank Acct * /QSF Setup):	\$3,440.44
Case Conclusion:	\$1,015.00
Not To Exceed ILYM Fees & Expenses:	\$8,000.00

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Case Name: Malwarebytes Inc.

Thursday, October 3, 2024

Requesting Attorneys Name: Mohsin M. Mirza

Activity	Rate Type	Unit Cost	Volume	Amount
CASE STARTUP				
Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	2	\$300.00
Programming of Class Database	Hourly	\$175.00	2	\$350.00

*ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.

Subtotal \$650.00

PROJECT MANAGEMENT				
Project Manager (Case notification and maintenance)	Hourly	\$120.00	3	\$360.00
Staff Hours for Processing Returned Mail	Hourly	\$70.00	2	\$140.00
Staff Hours for Processing Opt-Outs, Disputes & Objection(s)	Hourly	\$70.00	2	\$140.00
Report Processing	Hourly	\$70.00	2	\$140.00
ILYM Group Interactive Website	Flat Fee	\$1,250.00	1	\$1,250.00
NCOA	Flat Rate	\$75.00	1	\$75.00
Toll-Free Customer Service Representative	Flat Fee	\$100.00	1	\$100.00
Weekly Reports	Flat Rate	\$750.00	1	Waived

Subtotal \$2,205.00

NOTIFICATION/MAILING				
Fulfillment of Notice via Email	Flat Fee	\$50.00	1	\$50.00
Fulfillment of Notice Packet and Postcard, English only	Per Piece	\$1.50	241	\$361.50
USPS First Class Postage	Per Piece	\$0.60	241	\$144.60
Re-Mails (Forward/Skip trace Undeliverables)	Per Piece	\$2.00	24	\$48.20
Storage, Photocopies, Deliveries	Flat Fee	\$135.26	1	\$135.26

Subtotal \$689.56

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Case Name: Malwarebytes Inc.

Thursday, October 3, 2024

Requesting Attorneys Name: Mohsin M. Mirza

Activity	Rate Type	Unit Cost	Volume	Amount
DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)				
Distribution Setup & Management	Hourly	\$150.00	3	\$450.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	3	\$375.00
Check, Stub & Release - Print & Mail (W2/1099)	Per Check	\$1.00	241	\$241.00
USPS First Class Postage	Per Piece	\$0.60	241	\$144.60
Re-Mails (Forward/Skip trace Undeliverables up to 10%)	Per Piece	\$1.50	19	\$28.92
Reminder Postcard for Uncashed Checks	Per Piece	\$0.90	84	\$75.92
Reminder Email for Uncashed Checks	Flat Fee	\$25.00	1	\$25.00
Preparation of Taxes	Hourly	\$120.00	5	\$600.00
Annual Filing of Tax Return	Per Year	\$1,500.00	1	\$1,500.00

*Additional Bank fees may apply

Subtotal \$3,440.44

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	1	\$100.00
Project Manager Final Reporting	Hourly	\$120.00	2	\$240.00
Process Unclaimed Funds	Flat Fee	\$550.00	1	\$550.00
Declaration	Hourly	\$125.00	1	\$125.00

Subtotal \$1,015.00

Not To Exceed ILYM Fees & Expenses: \$8,000.00

Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Payment of Charges: ILYM reserves the right to request payment at the conclusion of the administration process. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the conclusion of the administration process. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

Exhibit 3

COSTS SUMMARY

Categories	Cost
Document Management/Hosting	\$40.75
Filing Fees	\$375.25
Mediation Fees	\$17,030.04
Miscellaneous	\$369.63
Shipping	\$64.20
Legal Research	\$130.15
Total	\$18,010.02

Date	Record ID Number	Description	Amount	Category
2/18/2022	2105681	FedEx- Overnight Delivery/Messenger Services- FedEx Inv# 7-671-89969	\$64.20	Shipping
5/12/2022	2107130	Judicate West- Mediation Fees- Mediation Fee	\$4,650.00	Mediation
10/31/2022	2111985	Nuix North America Inc.- Ringtail SaaS- Ringtail Costs - September 2022	\$1.30	Document Management/Hosting
11/29/2022	2113682	Nuix North America Inc.- Ringtail SaaS- Ringtail Costs - October 2022	\$1.10	Document Management/Hosting
12/20/2022	2113760	Nuix North America Inc.- Ringtail SaaS- Ringtail Costs - November 2022	\$1.10	Document Management/Hosting
1/4/2023	2116709	IN COURTALERT.COM	\$16.33	Miscellaneous
1/24/2023	2114861	Nuix North America Inc.- Ringtail SaaS- Ringtail Costs - December 2022	\$1.30	Document Management/Hosting
2/27/2023	2116184	Nuix North America Inc.- Ringtail SaaS- Ringtail Costs - January 2023	\$1.30	Document Management/Hosting
3/20/2023	2116585	Nuix North America Inc.- Ringtail SaaS- Ringtail Costs - February 2023	\$1.30	Document Management/Hosting
4/11/2023	2116658	JAMS, Inc.- Mediation Fees- Mediation	\$4,950.00	Mediation
4/26/2023	2117408	Nuix North America Inc.- Ringtail SaaS- Ringtail Costs - March 2023	\$1.30	Document Management/Hosting
5/17/2023	2117834	Nuix North America Inc.- Ringtail SaaS- Ringtail Costs - April 2023	\$1.30	Document Management/Hosting
6/22/2023	2119679	Nuix North America Inc.- Ringtail SaaS- Ringtail Costs - May 2023	\$1.30	Document Management/Hosting
7/24/2023	2119758	Nuix North America Inc.- Ringtail SaaS- Ringtail Costs - June 2023	\$1.30	Document Management/Hosting
8/7/2023	2120254	JAMS, Inc.- Mediation Fees- Balance for Mediation	\$80.84	Mediation
8/28/2023	2120880	JAMS, Inc.- Mediation Fees- Mediation	\$750.00	Mediation
8/28/2023	2121803	Nuix North America Inc.- Ringtail SaaS- Ringtail Costs - July 2023	\$1.30	Document Management/Hosting
9/5/2023	2121338	JAMS, Inc.- Mediation Fees- Mediation (8/1/23-8/31/23)	\$316.40	Mediation
9/6/2023	2123313	IN *COURTALERT.COM	\$30.24	Miscellaneous
9/25/2023	2121874	Nuix North America Inc.- Ringtail SaaS- Ringtail Costs - August 2023	\$1.30	Document Management/Hosting
10/3/2023	2123868	IN *COURTALERT.COM	\$30.24	Miscellaneous
10/20/2023	2123484	Nuix North America Inc.- Ringtail SaaS- Ringtail Costs - September	\$1.42	Document Management/Hosting
11/2/2023	2124858	In courtalert.com	\$30.24	Miscellaneous
11/10/2023	2123762	Nuix North America Inc.- Ringtail SaaS- Ringtail Costs - October 2023	\$1.42	Document Management/Hosting
12/4/2023	2125732	Courtalert.com	\$30.24	Miscellaneous
12/15/2023	2124330	Nuix North America Inc.- Ringtail SaaS- Ringtail Costs - November 2023	\$1.30	Document Management/Hosting
1/2/2024	2127706	IN *COURTALERT.COM	\$28.16	Miscellaneous
1/8/2024	2124745	JAMS, Inc.- Mediation Fees- Mediation Fee	\$2,400.00	Mediation
1/19/2024	2125288	Nuix North America Inc.- Ringtail SaaS- Ringtail Costs - December 2023	\$1.30	Document Management/Hosting
2/1/2024	2127399	IN *COURTALERT.COM	\$28.16	Miscellaneous

2/19/2024	2126391	Nuix North America Inc.- Ringtail SaaS- Ringtail Costs - January 2024	\$1.42	Document Management/Hosting
2/20/2024	2125811	JAMS, Inc.- Mediation Fees- Mediation	\$1,750.00	Mediation
3/3/2024	2128688	IN *COURTALERT.COM	\$28.16	Miscellaneous
3/15/2024	2126790	Nuix North America Inc.- Ringtail SaaS- Ringtail Costs - February 2024	\$1.42	Document Management/Hosting
4/2/2024	2129800	\In Court Alert.com	\$28.16	Miscellaneous
4/4/2024	2126721	JAMS, Inc.- Mediation Fees- Mediation	\$2,132.80	Mediation
4/19/2024	2127659	Nuix North America Inc.- Ringtail SaaS- Ringtail Costs - March 2024	\$1.42	Document Management/Hosting
5/2/2024	2131384	IN CourtAlert.Com	\$28.16	Miscellaneous
5/10/2024	2127942	Nuix North America Inc.- Ringtail SaaS- Ringtail Costs - April 2024	\$1.42	Document Management/Hosting
6/4/2024	2131698	IN *COURTALERT.COM	\$28.16	Miscellaneous
6/18/2024	2130015	Nuix North America Inc.- Ringtail SaaS- Ringtail Costs - May 2024	\$1.42	Document Management/Hosting
6/30/2024	2129571	"Access Charge	\$130.15	Legal Research
7/1/2024	2130190	Nuix North America Inc.- Ringtail SaaS- Ringtail Costs - June 2024	\$1.44	Document Management/Hosting
7/2/2024	2132799	IN *COURTALERT.COM	\$28.16	Miscellaneous
8/26/2024	2131540	Nuix North America Inc.- Ringtail SaaS- Ringtail Costs - July 2024	\$1.44	Document Management/Hosting
9/16/2024	2131631	Nuix North America Inc.- Ringtail SaaS- Ringtail Costs - August 2024	\$1.44	Document Management/Hosting
10/2/2024	2133791	IN *COURTALERT.COM	\$27.22	Miscellaneous
10/10/2024	2132965	Nuix North America Inc.- Ringtail SaaS- Ringtail Costs - September 2024	\$1.44	Document Management/Hosting
11/6/2024	2133733	Nuix North America Inc.- Ringtail SaaS- Ringtail Costs - October 2024	\$1.45	Document Management/Hosting
11/15/2024	2133181	Adam Koshkin- InFlight WiFi- InFlight WiFi Airplane wifi (revise motion for preliminary approval).	\$8.00	Miscellaneous
12/1/2024	2133444	Nuix North America Inc.- Ringtail SaaS- Ringtail Costs - November 2024	\$1.45	Document Management/Hosting
1/7/2025	2134147	Nuix North America Inc.- Ringtail SaaS- Ringtail Costs - December 2024	\$1.45	Document Management/Hosting
2/20/2025	2135359	Nuix North America Inc.- Ringtail SaaS- Ringtail Costs - January 2025	\$1.45	Document Management/Hosting
3/17/2025	2135782	Nuix North America Inc.- Ringtail SaaS- Ringtail Costs - February 2025	\$1.45	Document Management/Hosting
4/15/2025	2136732	Legal Support Network- Filing Fees- Matter 210893-000001	\$56.00	Filing Fee
4/15/2025	2136733	Legal Support Network- Ex Parte Motion - Matter 210893-000001	\$177.25	Filing Fee
4/15/2025	2136734	Legal Support Network- Miscellaneous- Matter 210893-00001	\$142.00	Filing Fee
			\$18,010.02	

Exhibit 4

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*Attorneys for Plaintiffs and the Proposed
Class, Collective, and Aggrieved Members*

**SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY
OF SACRAMENTO**

BRANDON WORTHY and
RANDI RIZZARI, Individually and
on Behalf of All Others Similarly
Situated,

Plaintiffs,

v.

MALWAREBYTES, Inc.,

Defendant.

Case No. 25CV006631

**DECLARATION OF BRANDON
WORTHY IN SUPPORT OF
PLAINTIFFS' UNOPPOSED MOTION
FOR APPROVAL OF SETTLEMENT
AGREEMENT**

Judge: Hon. Lauri A. Damrell

Dept.: 22
Hearing Date: May 30, 2025
Hearing Time: 9:00 AM
Reservation Number: A-06631-001

Complaint Filed: March 19, 2025

1 I, Brandon Worthy, declare as follows:

2 1. I am a named plaintiff and PAGA representative in the above-captioned action. I
3 make this Declaration in support of Plaintiff's Unopposed Motion for Settlement Approval.

4 2. I have personal knowledge of the facts set forth in this declaration and could and
5 would testify competently to them.

6 3. In recognition for the services that I provided as one of the named Plaintiffs, and
7 in exchange for signing a general release of my claims, I am requesting an enhancement award
8 of \$10,000.

9 4. I estimate that I spent approximately 20-30 hours performing services in support
10 of the litigation and settlement of the PAGA claims alleged in this lawsuit, including the
11 following tasks:

- 12 a. Being interviewed in detail by my attorneys and providing information
13 about my job duties and Malwarebytes's policies and practices, as part of
14 the initial investigation and in preparation for mediation, including
15 preparation of a mediation declaration (approximately 3-4 hours);
- 16 b. Searching for and providing my attorneys with documents related to my
17 work for Malwarebytes (approximately 2 hours);
- 18 c. Reviewing a proposed representation agreement and carefully considering
19 whether to serve as a named plaintiff, understanding that my name would
20 be on publicly filed court documents (approximately 1-2 hours);
- 21 d. Reviewing a draft of the Complaint prior to authorizing my attorneys to
22 file this lawsuit, and discussing any questions I had about it with my
23 attorneys; (approximately 2-3 hours
- 24 e. Discussing mediation strategy and settlement numbers with my attorneys
25 before, during, and after the three mediation sessions (approximately 4-6
26 hours);

- 1 f. Remaining available to answer questions and provide input during all
2 three mediation sessions, including by weighing in on settlement value
3 and settlement terms (approximately 2-3 hours);
4 g. Participating in numerous phone calls with counsel (approximately 6-8
5 hours);
6 h. Reviewing the Settlement Agreement, discussing it in detail with my
7 attorneys, and signing it (approximately 2-3 hours);

8 5. In addition, I took on risk by being a named plaintiff in this lawsuit. I was
9 worried about the possibility of challenges finding work in my field because sales industry for
10 companies like Malwarebytes is a small and interconnected world. Although I was no longer
11 working for Malwarebytes when I initiated the case, I faced the risk that prospective employers
12 would find out about the case and retaliate against me due to the stigma that can attach to an
13 employee who sues his employer.

14 6. I believe I suffered consequences from that risk because I left the industry after
15 becoming a named plaintiff due to being unable to find another role. There are not that many
16 employers in Software as a Service (SAAS) roles. You usually need personal connections to
17 break into these positions and oftentimes people hire people that they know. The IT industry
18 within SAAS is small and many of the same companies hire from one another. After becoming a
19 named plaintiff, I was not able to find work until I started looking in a different industry. I now
20 work in HR which is a totally different field than the one I was in before. As a result of this
21 change, I feel that I am a couple of years behind in my career.

22 7. I took on the risk because I believe that I and others had been improperly
23 compensated by Malwarebytes and that I could help to deter such conduct by seeking damages
24 as a Class representative and penalties as a PAGA representative.

25 8. I have not received any benefit as a result of prosecuting this action, outside of my
26 share as a Class Member and Aggrieved Employee and whatever enhancement award (if any)
27 that the Court might approve. While I had another individual claim which I brought against
28

1 Malwarebytes, those claims were unrelated to the case here and have been resolved in a separate
2 settlement. I am not aware of the amount of my estimated payout at this time as I understand
3 those amounts have yet to be calculated on an individual basis.

4 9. I have not incurred any expenses to further the prosecution of this action because
5 my attorneys advanced court costs and other expenses of litigation, the repayment of which was
6 contingent on the outcome of the matter.

7 10. If the Court awards an enhancement award for my service as a Class and PAGA
8 representative, I will provide Malwarebytes with a general release of all claims that I have or
9 may have against it, known or unknown. I am not aware of any claim that I may have against
10 Malwarebytes other than the claims that I asserted in this case, and those which were resolved in
11 a separate settlement, and therefore, I do not know the hypothetical value of such claims.

12 11. I have never been named a Class or PAGA representative in any other case,
13 pending or closed.

14 12. I do not have any conflicts of interest that would compromise my representation
15 of the Class and Aggrieved Employees.

16
17 * * *

18 I declare under penalty of perjury that the foregoing is true and correct.

19
20 Executed on 04/25/2025 at San Diego, California.

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22 
23 _____
24 Brandon Worthy
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27
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Verification Complete

The document has been officially verified.

Document Status

✓ Signed & Verified

Document Name

2025-04-25 Declaration of B. Worthy ISO Pls. Unopposed Motion for Settlement Approval

Sender Name

Nart Chinda

Document Key

335E88A0-1F0A-4282-A322-017CD0FE5CE3

Recipient 1

Brandon Worthy

brworth86@gmail.com

Order 1

IP Address

68.107.55.9

Signature



Document History

Activity	Date & Time	Recipient	Activity Details
 Document Completed	04/26/2025 00:55 UTC	Brandon Worthy	Signed by Brandon Worthy
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 Document Created	04/25/2025 20:07 UTC		Created by Nart Chinda (NChinda@outtengolden.com)

Exhibit 5

Menaka N. Fernando (SBN 271380)

Adam L. Koshkin (SBN 320152)

Mohsin Mirza (SBN 342444)

OUTTEN & GOLDEN LLP

One California Street, 12th Floor

San Francisco, CA 94111

Telephone: (415) 638-8800

Facsimile: (415) 638-8810

Email: mfernando@outtengolden.com

Email: akoshkin@outtengolden.com

Email: mmirza@outtengolden.com

*Attorneys for Plaintiffs and the Proposed
Class, Collective, and Aggrieved Members*

**SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY
OF SACRAMENTO**

BRANDON WORTHY and
RANDI RIZZARI, Individually and
on Behalf of All Others Similarly
Situated,

Plaintiffs,

v.

MALWAREBYTES, Inc.,

Defendant.

Case No. 25CV006631

**DECLARATION OF
RANDI RIZZARI IN SUPPORT
OF PLAINTIFFS' UNOPPOSED
MOTION FOR APPROVAL OF
SETTLEMENT**

Judge: Hon. Lauri A. Damrell

Dept.: 22

Hearing Date: May 30, 2025

Hearing Time: 9:00 AM

Reservation Number: A-06631-001

Complaint Filed: March 19, 2025

1 I, Randi Rizzari, declare as follows:

2 1. I am a named plaintiff and PAGA representative in the above-captioned action. I
3 make this Declaration in support of Plaintiff's Unopposed Motion for Settlement Approval.

4 2. I have personal knowledge of the facts set forth in this declaration and could and
5 would testify competently to them.

6 3. In recognition for the services that I provided as a named Plaintiff, and in exchange
7 for signing a general release of my claims, I am requesting an enhancement award of \$10,000.

8 4. I estimate that I spent approximately 15-20 hours working on this case and the
9 settlement of the Labor Code and PAGA claims alleged in this lawsuit, including the following
10 tasks:

- 11 a. Being interviewed in detail by my attorneys and providing information
12 about my job duties and Malwarebytes's policies and practices, as part of
13 the initial investigation and in preparation for mediation, including
14 preparation of a mediation declaration (approximately 3-4 hours);
- 15 b. Searching for and providing my attorneys with documents related to my
16 work for Malwarebytes (approximately 2 hours);
- 17 c. Reviewing a proposed representation agreement and carefully considering
18 whether to serve as a named plaintiff, understanding that my name would
19 be on publicly filed court documents (approximately 1-2 hours);
- 20 d. Reviewing a draft of the Complaint prior to authorizing my attorneys to
21 file this lawsuit, and discussing any questions I had about it with my
22 attorneys (approximately 1-2 hours);
- 23 e. Discussing mediation strategy and settlement numbers with my attorneys
24 before, during, and after the three mediation sessions (approximately 2-3
25 hours);

- 1 f. Remaining available to answer questions and provide input during all
2 three mediation sessions, including by weighing in on settlement value
3 and settlement terms (approximately 2-3 hours);
4 g. Participating in numerous phone calls with counsel (approximately 3-5
5 hours);
6 h. Reviewing the Settlement Agreement, discussing it in detail with my
7 attorneys, and signing it (approximately 1-2 hours);

8 5. In addition, I took on risk by being a named plaintiff in this lawsuit. Although I
9 was no longer working for Malwarebytes when I initiated the case, I faced the risk that
10 prospective employers would find out about the case and retaliate against me due to the stigma
11 that can attach to an employee who sues her employer. I was worried about the possibility of
12 challenges finding work in my field because sales industry for companies like Malwarebytes is a
13 small and interconnected world. Even now, I work with people I worked with at Malwarebytes
14 at my new employer in the Bay Area. My reputation therefore counts for a lot.

15 6. I took on the risk because I believe that I and others had been improperly
16 compensated by Malwarebytes and that I could help to deter such conduct by seeking penalties
17 as a PAGA representative.

18 7. I have not received any benefit as a result of prosecuting this action, outside of my
19 share as a Class member and Aggrieved Employee and whatever enhancement award (if any)
20 that the Court might approve. I am not aware of the amount of my estimated payout at this time
21 as I understand those amounts have yet to be calculated on an individual basis.

22 8. I have not incurred any expenses to further the prosecution of this action because
23 my attorneys advanced court costs and other expenses of litigation, the repayment of which was
24 contingent on the outcome of the matter.

25 9. If the Court awards an enhancement award for my service as a Class and PAGA
26 representative, I will provide Malwarebytes with a general release of all claims that I have or
27 may have against it, known or unknown. I am not aware of any claim that I may have against
28

1 Malwarebytes other than the claims that I asserted in this case, and therefore, I do not know the
2 hypothetical value of such claims.

3 10. I have never been named Class or PAGA representative in any other case,
4 pending or closed.

5 11. I do not have any conflicts of interest that would compromise my representation
6 of the Class and Aggrieved Employees.

7 * * *

8 I declare under penalty of perjury that the foregoing is true and correct.

9
10 Executed on 04/28/2025 at Livermore, California.

11
12 

13 _____
Randi Rizzari

Verification Complete
The document has been officially verified.

Document Status	✓ Signed & Verified
Document Name	2025-04-28 Declaration of R. Rizzari in Support of Pls. Unopposed Motion for Approval of Settlement
Sender Name	Nart Chinda
Document Key	087F9F71-67E4-4FAE-B5CE-B2D1AB762EED

Recipient 1 Randi Rizzari goularterandi@gmail.com Order 1	IP Address 98.97.61.171	Signature
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Document History

Activity	Date & Time	Recipient	Activity Details
 Document Completed	04/28/2025 16:40 UTC	Randi Rizzari	Signed by Randi Rizzari
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 Document Created	04/28/2025 16:29 UTC		Created by Nart Chinda (NChinda@outtengolden.com)

Exhibit 6

1 Menaka N. Fernando (SBN 271380)

2 Adam L. Koshkin (SBN 320152)

3 Mohsin Mirza (SBN 342444)

OUTTEN & GOLDEN LLP

One California Street, 12th Floor

4 San Francisco, CA 94111

Telephone.: (415) 638-8800

5 Facsimile: (415) 638-8810

Email: mfernando@outtengolden.com

6 Email: akoshkin@outtengolden.com

7 Email: mmirza@outtengolden.com

8 *Attorneys for Plaintiffs and the Proposed*

9 *Class, Collective, and Aggrieved Members*

10 **SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY**
11 **OF SACRAMENTO**

12 BRANDON WORTHY and
13 RANDI RIZZARI, Individually and
on Behalf of All Others Similarly
Situated,

14 Plaintiffs,

15 v.

16 MALWAREBYTES, Inc.,

17 Defendant.
18
19
20

Case No. 25CV006631

**[PROPOSED] ORDER FOR
PRELIMINARY APPROVAL OF CLASS
AND COLLECTIVE ACTION
SETTLEMENT**

Judge: Hon. Lauri A. Damrell

Dept.: 22

Hearing Date: May 30, 2025

Hearing Time: 9:00 AM

Reservation Number: A-006631-001

Complaint Filed: March 19, 2025

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I. CONDITIONAL CERTIFICATION OF CLASS AND COLLECTIVE

In preliminarily certifying the California Class, the Court finds and concludes that under the relevant standard for certifying a class for settlement purposes that the Settlement Class is ascertainable and sufficiently numerous, there exists a well-defined community of interest, and a class action settlement is a superior method of adjudication for this case.

The Court finds and concludes that the law firm Outten & Golden LLP has extensive experience and expertise in litigating complex employment class and collective actions and is hereby appointed Class Counsel.

-2-

1 The Court also conditionally certifies the following Collective Class for settlement
2 purposes only under the Fair Labor Standards Act: All Sales Representatives who are currently
3 or have been employed by Defendant at any time from April 4, 2019 through the Release Date.

4 **II. PRELIMINARY APPROVAL OF SETTLEMENT**

5 The Court preliminarily approves the Settlement. The Settlement is the result of serious
6 and informed arms-length negotiations between the Parties conducted after Class Counsel
7 adequately investigated Plaintiffs' claims and became familiar with the strengths and weaknesses
8 of the claims. The Court concludes that the proposed Settlement meets the criteria for
9 preliminary settlement approval because it is fair, adequate, reasonable, and in the best interests
10 of the absent class members and falls within the range of possible approval, such that notice to
11 the Class is appropriate. Accordingly, the Settlement is hereby preliminarily approved.

12 The Court finds that the settlement of Plaintiffs' California Labor Code Private Attorney
13 General Act ("PAGA") claim is fair and reasonable, and preliminarily approves the settlement
14 and release of that claim and the PAGA payment in the amount of \$80,500, with 25% allocated
15 to PAGA Members and 75% allocated to the California Labor and Workforce and Development
16 Agency.

17 **III. APPROVAL OF THE NOTICE PLAN**

18 The Court approves, as to form and content, the Notice to be sent to California Class
19 Members and Collective Class Members (attached to this Order as **Exhibits 1 and 2**).

20 The Court approves the procedure for California Class Members to opt out of and to
21 object to the Settlement as set forth in the Settlement Agreement and Class Notice. California
22 Class Members have until the Bar Date, or 60 days from the later of the date the Notice is mailed
23 or re-mailed, to opt out of or object to the Settlement. California Class Members wishing to opt
24 out must mail a written, signed Opt-Out Statement to the Settlement Administrator that states
25 they are opting out of the settlement and includes their name, address, telephone number.
26 California Class Members wishing to object to the Settlement must mail an objection to the
27

Settlement Administrator that includes all reasons for objecting and any supporting documentation, as well as their name, address, and telephone number.

The Court approves the dissemination of the Notice substantially in the manner and form as set forth in the Settlement Agreement. The Court directs Notice by first-class mail and e-mail, in accordance with the implementation schedule set forth below. The Court finds the dates selected for the mailing and distribution of Notices, as set forth in the implementation schedule, meet the requirements of due process and provide the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto.

ILYM Group, Inc. is hereby appointed Settlement Administrator to carry out the duties set forth in this Preliminary Approval Order and the Settlement.

IV. IMPLEMENTATION SCHEDULE

The Court orders the following implementation schedule for further proceedings to effectuate and administer the Settlement:

a.	Deadline for Defendants to provide Class List to Settlement Administrator	5 calendar days after Preliminary Approval Order
b.	Deadline for Settlement Administrator to disseminate Notices via mail, email, and text message	30 calendar days after Preliminary Approval Order
c.	Deadline for Class Members to Postmark Requests for Exclusion	60 calendar days after Notices sent (or 60 days after remailing)
d.	Deadline for Receipt by Court of Objections to Settlement	60 calendar days after Notices sent (or 60 days after remailing)
e.	Deadline for Plaintiffs to file their Motion for Final Approval, as well as their Motion for Attorneys' Fees, Costs, and Service Awards	16 court days prior to Final Fairness and Approval Hearing
f.	Final Fairness and Approval Hearing	Date: October 10, 2025 Time: 9:00 AM

The Fairness Hearing and related prior deadlines set forth above may, from time to time and without further notice to the Settlement Class Members (except those who have submitted timely and valid Objections), be continued or adjourned by Order of the Court.

IT IS SO ORDERED.

Dated: _____

Hon. Lauri A. Damrell

EXHIBIT 1

OFFICIAL NOTICE OF CLASS ACTION SETTLEMENT

[NAME]

[ADDRESS]

[CITY, STATE ZIP]

If you worked for Malwarebytes, Inc. (“Malwarebytes”) in California as a Sales Representative you may be entitled to a payment from a class action settlement.

A Court authorized this notice. This is not a solicitation from a lawyer.

- You received this Notice because Malwarebytes’ records indicate either that you were employed in the State of California as a Sales Representative in a relevant role during the relevant period, as described in greater detail below.
- Two former Malwarebytes employees filed a wage and hour class action against Malwarebytes. They allege violations of California laws for unpaid minimum and overtime wages, failing to pay timely wages or vacation pay, non-compliant meal periods, non-compliant rest breaks, non-compliant wage statements, unfair competition, and violations of the Fair Labor Standards Act (“FLSA”). They allege these claims on behalf of Sales Representatives classified both as exempt and non-exempt. Malwarebytes denies these allegations and maintains that it has properly complied with all stated and federal laws. The Court has not made any ruling on the merits of the claims. The Parties have entered into a settlement to avoid further disputes and litigation with the attendant inconvenience and expense. Further details are set forth in the Settlement Agreement and Release.
- Under the allocation formula created by the settlement, your potential settlement payment is estimated to be approximately \$[AMOUNT], subject to deductions for applicable taxes and withholdings, which is based on Malwarebytes’ records of your dates of employment as a Sales Representative, the state you worked in, and the category of your claims.

Your legal rights may be affected by this settlement, and you have a choice to make:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING NOW AND OBTAIN PAYMENT CASH A SETTLEMENT CHECK	If you do nothing, you will release the Released Class Claims and be sent a settlement check of approximately \$[AMOUNT], subject to applicable taxes and withholdings.
	By cashing or otherwise negotiating the settlement check, you will further release the Released Collective Class Claims discussed in Section 10 below.
	If you do not cash or otherwise negotiate the settlement check, you will have released the Released Class Claims but you will not release the Released Collective Class Claims.

EXCLUDE YOURSELF	If you do not want to participate in the settlement you must submit a written, signed Opt-Out Statement to the Settlement Administrator, as discussed in Section 11 below. If you submit an Opt-Out Statement, you will not be eligible to receive a settlement payment or object to the settlement.
OBJECT	If you do not submit an Opt-Out Statement, you may write to the Court about why you object to the settlement. More information about objecting is set forth in Section 15 below.

- These rights and options – **and the deadlines to exercise them** – are explained in greater detail in this Notice.
- The Court still has to decide whether to approve the settlement. Settlement payments will be made only after this process is complete. Please be patient.

BASIC INFORMATION

1. Why did I get this Notice?

The Court ordered that you be sent this Notice because you have a right to know about a proposed class and collective action settlement, and about all of your options, before the Court decides whether to approve the settlement. This Notice explains the case, your legal rights, and what benefits are available.

The Court overseeing this case is the California Superior Court for the County of Sacramento. The case is *Worthy v. Malwarebytes, Inc.*, Case No. **[INSERT]**.

2. Am I covered by this settlement?

Malwarebytes' records state that you were employed by Malwarebytes in the State of California as a Sales Representative whom Malwarebytes classified as overtime ineligible at any time between April 4, 2018 and April 16, 2023 ("Exempt Sales Representatives") or as a Sales Representative whom Malwarebytes classified as overtime eligible between April 4, 2018 and **[INSERT RELEASE DATE]** ("Nonexempt Sales Representatives"), and you are thus considered a "California Class Member."

Nonexempt Sales Representatives include current and former Malwarebytes employees who worked in positions of: Telemarketing/Lead Development Rep; Inside/Contract Renewal Sales Rep; and Inside Sales Representative. The exact variations are set forth in greater detail in the Settlement Agreement and Release.

Exempt Sales Representatives include current and former Malwarebytes employees who worked in positions of: Inside Sales Rep, Inside/Renewal Contract Sales Rep, and Telemarketing/Lead Development Rep. The exact variations are set forth in greater detail in the Agreement.

Regardless of job title, if you signed a separation agreement with Malwarebytes, you are not included in the settlement.

3. What is the case about?

The core dispute is about whether Malwarebytes paid its Sales Representatives the overtime compensation they were owed. Two former Malwarebytes employees filed a wage and hour class action against Malwarebytes. They allege violations of California laws for unpaid minimum and overtime wages, failing to pay timely wages or vacation pay, non-compliant meal periods, not compliant rest breaks, non-compliant wage statements, unfair competition, and violations of the Fair Labor Standards Act (“FLSA”). They allege these claims on behalf of Sales Representatives classified both as exempt and non-exempt. Malwarebytes denies these allegations and maintains that it has properly complied with all stated and federal laws.

Additionally, P

The Court has not made any ruling on the merits of the claims, and no party has prevailed in this action. Further details regarding the alleged claims are set forth in the Settlement Agreement and Release.

4. Why is this a class/collective action?

In a class action, one or more people called “class representatives” bring claims on behalf of other people who have similar claims. The people are called “class members” and together are the “class.” Similarly, in a collective action, one or more people can seek to represent a “collective” of similarly situated people. The individuals who initiated this class/collective action are called the “Plaintiffs.” In a class/collective action, plaintiffs ask a court, judge, or Court to resolve the issues for every member of the class and collective.

5. Why is there a settlement?

The Court did not decide in favor of the Plaintiffs or Malwarebytes. Both sides believe they will prevail in a litigation, and there has been no decision in favor of either party. Instead, the Parties have agreed to resolve this matter solely to avoid the burden, expense, delay, and risks associated with litigation.

THE SETTLEMENT BENEFITS – WHAT YOU GET

6. What does the settlement provide?

Malwarebytes has agreed to pay a total of up to \$1,610,000.00 (the “Total Settlement Amount”), which will be used to pay: (1) settlement awards to individual Participating Class and Collective Members; (2) attorneys’ fees to Class Counsel of up to one-third of the Total Settlement Amount plus reimbursement of actual litigation expenses and costs; (3) a Service Award of up to \$10,000.00 to each Plaintiff (total of \$20,000.00); (4) \$80,500.00 to resolve claims under California’s Private Attorneys General Act (PAGA), of which \$60,375.00 will be paid to the California Labor and Workforce Development Agency and \$20,125.00 to individual PAGA Members; and (5) the Settlement Administrator’s fees and costs.

7. How much will my settlement payment be and how was it calculated?

Based on the formula that has been preliminarily approved by the Court, your settlement payment is estimated to be \$[AMOUNT], one third of which is subject to payroll deductions for applicable taxes and withholdings like any other paycheck, for which you will receive a Form W-2, and two thirds of which is not subject to deductions and will be reported on a Form 1099. Neither Class Counsel nor Malwarebytes' counsel can advise you regarding the tax consequences of the settlement. You may wish to consult with your own personal tax advisor in connection with the settlement.

The formula that has been approved by the Court and used to calculate your settlement payment considers the number of weeks you worked, the relative value of the damages available under the applicable laws in California as compared with the value of damages available in other locations, and the category of claims you are eligible to bring depending on whether you were an Exempt Sales Representative (classified as overtime ineligible) or a Nonexempt Sales Representatives (classified as overtime eligible). The Settlement Agreement contains the exact allocation formula. You may obtain a copy of the Settlement Agreement at [www.\[website\].com](http://www.[website].com) or by contacting Class Counsel using the information in Section 20 below.

The Settlement Administrator used your dates of employment as a Sales Representative from Malwarebytes' records to calculate your payment. Malwarebytes' records indicate that you worked for the company as an [Exempt/Nonexempt] Sales Representative in California from <<Start Date>> to <<End Date.>> [and repeat if individual held both categories of roles in different periods]. Please note that your settlement payment will only cover weeks worked between April 4, 2018 through April 16, 2023, if you worked as an Exempt Sales Representative, and from April 4, 2018 through [INSERT RELEASE DATE], if you worked as a Nonexempt Sales Representative.

If you have questions about your calculation, or dates of employment, you may contact the Settlement Administrator at:

[INSERT SETTLEMENT ADMINISTRATOR CONTACT]

If you dispute Malwarebytes' records and/or the calculation of your settlement payment, you must notify the settlement administrator and provide written documentation supporting your contention. Malwarebytes' records are presumed to be correct unless you prove otherwise with documentary evidence. The Settlement Administrator will evaluate the information you provide and will make the final decision as to any dispute.

HOW YOU GET A PAYMENT

8. How can I get my payment?

If you wish to participate in the Settlement, you do not need to take any current action. You will receive a payment of \$[AMOUNT] by mail if the Court approves the settlement. If your mailing address has changed, please contact the Settlement Administrator or update your address online at

9. When will I get my settlement payment?

The Court will hold a hearing on _____, at _____ to determine whether to give final approval to the settlement. If the Court approves the settlement, settlement checks are anticipated to be mailed approximately three months later.

10. What am I giving up by releasing my claims?

If you do not exclude yourself from the settlement (as described in **Section 11** below), you will release the Released Class Claims. This means that you cannot sue, continue to sue, or be part of any other legal action against Malwarebytes asserting the California wage and hour claims pled in the operative complaint and that accrued during your employment with Malwarebytes as an Exempt or Nonexempt Sales Representative during the Class Period (April 4, 2018 through April 16, 2023 if you worked in an exempt position and April 4, 2018 through **[INSERT RELEASE DATE]** if you worked in a non-exempt position), including, without limitations, any claims for unpaid wages including but not limited to minimum, regular, or overtime wages (Cal. Lab. Code §§ 510, 1194, 1194.2, 1197, 1197.1, 1198, 1199); failing to timely pay wages or vacation pay (Lab. Code §§ 201-204; 227.3); non-compliant meal periods and any unpaid premiums (Lab. Code §§ 512, 226.7, and applicable Wage Order); non-compliant rest breaks and any unpaid premiums (Lab. Code § 226.7, and applicable Wage Order); non-compliant wage statements (Lab. Code §§ 226, 226.3); unfair competition or business practices (Bus. & Prof. Code § 17200 et seq.); claims for interest, penalties (including but not limited to waiting time penalties at Lab. Code §§ 201-204), or premiums in connection with any of the preceding claims; interest, liquidated damages, attorneys' fees, costs, and expenses; any claims for injunctive relief, declaratory relief, restitution, fraudulent business practices or punitive damages alleged or which could have been alleged; as well as any claims under the California Labor Code, California Industrial Welfare Commission's Wage Orders, or the California Code of Regulations, that were alleged or which could have been alleged under the same or similar facts, allegations, or claims in the operative Complaint.

Additionally, if you cash or otherwise negotiate your settlement check, you will release the Released Collective Class Claims. This means that you cannot sue, continue to sue, or be part of any other legal action against Malwarebytes asserting the federal wage and hour claims pled in the operative complaint and that accrued during your employment with Malwarebytes as an Exempt or Nonexempt Sales Representative during the Collective Class Period (April 4, 2019 through April 16, 2023 if you worked in an exempt position and April 4, 2019 through **[INSERT RELEASE DATE]** if you worked in a non-exempt position), including, without limitations, any and all federal claims for unpaid overtime wages, and all related claims for penalties, interest, liquidated damages, attorneys' fees, costs, and expenses that were alleged or which could have been alleged under the same or similar facts, allegations, or claims in the operative Complaint.

Settlement checks that are not cashed within 180 days of issuance will be null and void.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not wish to release your claims, then you must take steps to exclude yourself. This is sometimes referred to as “opting out” of the settlement.

11. How do I opt out of the settlement?

If you wish to exclude yourself from the settlement, you must submit a written Opt-out Statement to the Settlement Administrator, stating: (i) your name, address and telephone number; and (ii) a statement indicating your intent to exclude yourself from the settlement, such as “I opt out of the Malwarebytes wage and hour settlement.” The Opt-out Statement must be postmarked by or otherwise received on or before **[INSERT DATE 60 DAYS FROM NOTICE MAILING OR 60 DAYS FROM REMAILING]**.

If you submit an Opt-out Statement, you will not be eligible to receive a settlement check. You will retain the right to bring your own legal action against Malwarebytes. You should be aware that your claims are subject to a statute of limitations, which means that they will expire on a certain date.

If you ask to be excluded, you cannot object to the settlement.

To opt-out of the settlement, mail an Opt-out Statement to the Settlement Administrator at:

[SETTLEMENT ADMINISTRATOR CONTACT]

Your objection must be postmarked by or otherwise received on or before **[INSERT DATE 60 DAYS FROM NOTICE MAILING OR 60 DAYS FROM REMAILING]**.

12. If I exclude myself, can I get money from this settlement?

No. If you exclude yourself, you will not be eligible to receive a settlement check.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in this case?

The Court has decided that the lawyers at the law firm of Outten & Golden LLP are qualified to represent you and all class members. These lawyers are called “Class Counsel” or “Plaintiffs’ Counsel.” You will not be charged separately for these lawyers; their fees are being covered by the Total Settlement Amount. You do not need to retain your own attorney in order to participate as a Class Member. If you do not opt out of the class and want to be represented by your own lawyer, you may hire one at your own expense. The contact information for Class Counsel is in **Section 20** below.

14. How will the lawyers be paid?

Class Counsel will ask the Court to approve payment of up to one-third of the Total Settlement Amount for their attorneys' fees. These fees would compensate Class Counsel for investigating the facts, mediating and filing the case, and negotiating the settlement. Class Counsel will also ask the Court to approve payment for out-of-pocket costs incurred prosecuting the case.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the settlement or some part of it.

15. How do I tell the Court that I disapprove of the settlement?

If you have not submitted an Opt-out Statement, you can object to any portion of the settlement which you disapprove. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object to the settlement, send a letter to the Settlement Administrator saying that you object to the settlement which includes all of the following: (i) all reasons for objecting to the settlement, and any supporting documentation; and (ii) your name, address, and telephone number. By objecting to the settlement, you will be bound by the decision of the Court (even if the Court overrules your objection).

As an Objector, you do not need to appear at the Fairness Hearing, but if you wish to do so, you should state that in your letter to the Settlement Administrator.

Objections should be mailed to the Settlement Administrator at:

[SETTLEMENT ADMINISTRATOR CONTACT]

Your objection must be postmarked by or otherwise received on or before **[INSERT DATE 60 DAYS FROM NOTICE MAILING OR 60 DAYS FROM REMAILING]**.

16. What's the difference between objecting and opting out?

Objecting is telling the Court that you do not like something about the settlement and asking the Court not to approve the settlement as is.

Opting out (also known as excluding yourself) is telling the Court that you do not want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you. If you submit both an objection and an Opt-out Statement, the Settlement Administrator will attempt to contact you to determine whether you intended to object or exclude yourself. If the Settlement Administrator cannot reach you, it will be presumed that you intended to exclude yourself, and your objection will not be considered.

THE COURT'S FAIRNESS HEARING

17. When and where will the Court decide whether to approve the settlement?

The Court will hold the Fairness Hearing on _____ at _____.

At the hearing, the Court will determine whether the settlement is fair, adequate, and reasonable and will consider any properly submitted objections. Please contact Class Counsel using the contact information provided in **Section 20** below if you have any questions about the Fairness Hearing.

18. Do I have to attend the fairness hearing?

No. Class Counsel will attend to answer questions the Court may have. But, you are welcome to attend the hearing at your own expense; if you wish to do so, please contact Class Counsel. If you send an objection, you do not have to attend. As long as you have not excluded yourself and have mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

GETTING MORE INFORMATION

19. Are there more details about the settlement?

This Notice summarizes the proposed settlement. More details are in a Settlement Agreement. You can get a copy of the Settlement Agreement from the Settlement Administrator or Class Counsel using the contact information below, or at [www.\[website\].com](http://www.[website].com). [MAILED VERSION: You can also access the website using this QR Code: LINK AND QR CODE LINKING TO WEBSITE]

20. How do I get more information?

If you have other questions about the settlement or want more information, you can contact the Settlement Administrator at [INSERT CONTACT INFORMATION], or Class Counsel at:

Melissa L. Stewart
OUTTEN & GOLDEN LLP
695 Third Avenue, 25th Floor
New York, NY 10017
Telephone: [insert number]
Malwarebytes@outtengolden.com

Adam L. Koshkin
Mohsin M. Mirza
OUTTEN & GOLDEN LLP
One California, 12th Floor,
San Francisco, CA 94111
Telephone: [insert number]
Malwarebytes@outtengolden.com

DATED: _____, 20__

Do not contact the Court directly for any reason.

EXHIBIT 2

OFFICIAL NOTICE OF SETTLEMENT AND OPPORTUNITY TO JOIN

[NAME]

[ADDRESS]

[CITY, STATE ZIP]

If you worked for Malwarebytes, Inc. (“Malwarebytes”) as a Sales Representative you may be entitled to a payment from a collective action settlement.

An Court authorized this notice. This is not a solicitation from a lawyer.

- You received this Notice because Malwarebytes’ records indicate either that you were employed in the State of California as a Sales Representative in a relevant role during the relevant period, as described in greater detail below.
- Two former Malwarebytes employees filed a wage and hour class and collective action against Malwarebytes. They allege violations of the Fair Labor Standards Act (“FLSA”) for failure to properly pay overtime wages. They allege these claims on behalf of Sales Representatives classified both as exempt and non-exempt. Malwarebytes denies these allegations and maintains that it has properly complied with all stated and federal laws. The Court has not made any ruling on the merits of the claims. The Parties have entered into a settlement to avoid further disputes and litigation with the attendant inconvenience and expense. Further details are set forth in the Settlement Agreement and Release.
- Under the allocation formula created by the settlement, your potential settlement payment is estimated to be approximately \$[AMOUNT], subject to deductions for applicable taxes and withholdings, which is based on Malwarebytes’ records of your dates of employment as a Sales Representative.

Your legal rights may be affected by this settlement, and you have a choice to make:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING NOW CASH A SETTLEMENT CHECK LATER	You do not have to do anything to receive a settlement check. If you do nothing, you will be sent a settlement check of approximately \$[AMOUNT], subject to applicable taxes and withholdings. If you endorse and deposit the settlement check, you will release the Released Collective Class Claims discussed in Section 10 below.
DO NOTHING NOW DO NOT CASH A SETTLEMENT CHECK LATER	If you do not wish to be bound by the settlement, you should not sign or attempt to cash or deposit the settlement check.

- These rights and options – **and the deadlines to exercise them** – are explained in greater detail in this Notice.
- The Court still has to decide whether to approve the settlement. Settlement payments will be made only after this process is complete. Please be patient.

BASIC INFORMATION

1. Why did I get this notice?

The Court ordered that you be sent this Notice because you have a right to know about the settlement of a collective action in which you are eligible to participate, and about all of your options. This Notice explains the case, the settlement, your legal rights, and what benefits are available.

The Court overseeing this case is the California Superior Court for the County of Sacramento. The case is *Worthy v. Malwarebytes, Inc.*, Case No. _____.

2. Am I covered by this settlement?

Malwarebytes' records state that you were employed by Malwarebytes in a state other than California as a Sales Representative whom Malwarebytes classified as overtime ineligible at any time between April 4, 2019 and April 16, 2023 ("Exempt Sales Representatives") or as a Sales Representative whom Malwarebytes classified as overtime eligible between April 4, 2019 and [INSERT RELEASE DATE] ("Nonexempt Sales Representatives"), and you are thus considered a "Collective Member."

Nonexempt Sales Representatives include current and former Malwarebytes employees who worked in positions of: Telemarketing/Lead Development Rep; Inside/Contract Renewal Sales Rep; and Inside Sales Rep. The exact variations are set forth in greater detail in the Settlement Agreement and Release.

Exempt Sales Representatives include current and former Malwarebytes employees who worked in positions of: Inside Sales Rep, Inside/Renewal Contract Sales Rep, and Telemarketing/Lead Development Rep. The exact variations are set forth in greater detail in the Agreement.

Regardless of job title, if you signed a separation agreement with Malwarebytes, you are not included in the settlement.

3. What is the case about?

Two former Malwarebytes employees filed a wage and hour class and collective action against Malwarebytes. They allege violations of the Fair Labor Standards Act ("FLSA") for failure to properly pay overtime wages. They allege these claims on behalf of Sales Representatives classified both as exempt and non-exempt. Malwarebytes denies these allegations and maintains that it has properly complied with all stated and federal laws. The Court has not made any ruling on the merits of the claims. The Parties have entered into a settlement to avoid further disputes

and litigation with the attendant inconvenience and expense. Further details are set forth in the Settlement Agreement and Release

4. Why is this a collective action?

In a “collective action,” a person called the “Plaintiff” brings claims on behalf of people who have similar claims. However, the other employees who have similar claims do not become part of the collective action until they “opt in.” You may “opt in” to and participate in the settlement by cashing or endorsing a settlement check, which the Settlement Administrator will mail you if the settlement is approved by the Court.

5. Why is there a settlement?

The Court did not decide in favor of Plaintiffs or Malwarebytes. Both sides believe they will prevail in litigation, and there has been no decision in favor of either party. Instead, the Parties have agreed to resolve this matter solely to avoid the burden, expense, delay, and risks associated with litigation.

THE SETTLEMENT BENEFITS – WHAT YOU GET

6. What does the settlement provide?

Malwarebytes has agreed to pay a total of up to \$1,610,000.00 (the “Total Settlement Amount”), which will be used to pay: (1) settlement awards to individual Participating Class and Collective Members; (2) attorneys’ fees to Class Counsel of up to one-third of the Total Settlement Amount plus reimbursement of actual litigation expenses and costs; (3) a Service Award of up to \$10,000.00 to each Plaintiff (total of \$20,000); (4) \$80,500.00 to resolve claims under California’s Private Attorneys General Act (PAGA), of which \$60,375.00 will be paid to the California Labor and Workforce Development Agency and \$20,125.00 to individual PAGA Members; and (5) the Settlement Administrator’s fees and costs.

7. How much will my settlement payment be and how was it calculated?

Based on the formula that has been preliminarily approved by the Court, your settlement payment is estimated to be \$[AMOUNT], one half of which is subject to payroll deductions for applicable taxes and withholdings like any other paycheck, for which you will receive a Form W-2, and one half of which is not subject to deductions and will be reported on a Form 1099. Neither Plaintiffs’ Counsel nor Malwarebytes’ counsel can advise you regarding the tax consequences of the settlement. You may wish to consult with your own personal tax advisor in connection with the settlement.

The formula that has been approved by the Court and used to calculate your settlement payment considers the number of weeks you worked, the relative value of the damages available under the applicable federal laws as compared with the value of damages available under California law, and the category of claims you are eligible to bring depending on whether you were an Exempt

Sales Representative (classified as overtime ineligible) or a Nonexempt Sales Representatives (classified as overtime eligible). The Settlement Agreement contains the exact allocation formula. You may obtain a copy of the Settlement Agreement at [www.\[website\].com](http://www.[website].com) or by contacting Class Counsel using the information in **Section 20** below.

The Settlement Administrator used your dates of employment as a Sales Representative from Malwarebytes' records to calculate your payment. Malwarebytes' records indicate that you worked for the company as an **[Exempt/Nonexempt]** Sales Representative in a state other than California from <<**Start Date**>> to <<**End Date**>> **[and repeat if individual held both categories of roles in different periods]**. Please note that your settlement payment will only cover weeks worked between April 4, 2019 through April 16, 2023, if you worked as an Exempt Sales Representative, and from April 4, 2019 through **[INSERT RELEASE DATE]**, if you worked as a Nonexempt Sales Representative.

[INSERT SETTLEMENT ADMINISTRATOR CONTACT]

If you dispute Malwarebytes' records and/or the calculation of your settlement payment, you must notify the settlement administrator and provide written documentation supporting your contention. Malwarebytes' records are presumed to be correct unless you prove otherwise with documentary evidence. The Settlement Administrator will evaluate the information you provide and will make the final decision as to any dispute.

HOW YOU GET A PAYMENT

8. How can I get my payment?

If you wish to participate in the Settlement, you do not need to take any current action. You will receive a payment of \$**[AMOUNT]** by mail. If your mailing address has changed, please contact the Settlement Administrator or update your address online at **[EMAIL VERSION: [www.\[website\].com](http://www.[website].com) / [MAILED VERSION: [www.\[website\].com](http://www.[website].com) AND QR CODE]**

9. When will I get my settlement payment?

The Court will hold a hearing on _____, at _____ to determine whether to give final approval to the settlement. If the Court approves the settlement, settlement checks are anticipated to be mailed approximately three months later.

10. What am I giving up by releasing my claims?

If you or cash or otherwise negotiate your settlement check, you will release the Released Collective Class Claims.

This means that you cannot sue, continue to sue, or be part of any other legal action against Malwarebytes asserting the federal and state wage and hour claims pled in the operative complaint or that could have been pled based on the facts alleged in the complaint and that accrued during your employment with Malwarebytes through April 16, 2023 if you worked in an exempt position and **[INSERT RELEASE DATE]** if you worked in a non-exempt position, including, without limitations, any and all federal claims for unpaid overtime wages, and all related claims for

penalties, interest, liquidated damages, attorneys' fees, costs, and expenses that were alleged or which could have been alleged under the same or similar facts, allegations, or claims in the operative Complaint.

If you elect not to cash or otherwise negotiate your settlement check, you will not release the Released Collective Class Claims and will retain your right to file suit against Malwarebytes.

Settlement checks that are not cashed within 180 days of issuance will be null and void.

THE LAWYERS REPRESENTING YOU

11. Do I have a lawyer in this case?

The law firm of Outten & Golden LLP has been designated as legal counsel to represent you and other Sales Representatives who participate in the settlement. You will not be charged separately for these lawyers; their fees are being covered by the settlement fund. The contact information for Plaintiffs' Counsel is in **Section 16** below.

12. How will the lawyers be paid?

Plaintiffs' Counsel will ask the Court to approve payment of up to one-third of the Total Settlement Amount for their attorneys' fees. These fees would compensate Plaintiffs' Counsel for investigating the facts, mediating and filing the case, and negotiating the settlement. Plaintiffs' Counsel will also ask the Court to approve payment for out-of-pocket costs incurred prosecuting the case.

THE COURT'S FAIRNESS HEARING

13. When and where will the Court decide whether to approve the Settlement?

The Court will hold the Fairness Hearing on _____ at _____.

At the hearing, the Court will determine whether the settlement is fair, adequate, and reasonable and will consider any properly submitted objections. Please contact Plaintiffs' Counsel using the contact information provided in **Section 20** below if you have any questions about the Fairness Hearing.

14. Do I have to attend the fairness hearing?

No. Plaintiffs' Counsel will attend to answer questions the Court may have. But, you are welcome to at your own expense.

GETTING MORE INFORMATION

15. Are there more details about the settlement?

This Notice summarizes the proposed settlement. More details are in a Settlement Agreement. You can get a copy of the Settlement Agreement from the Settlement Administrator or Class

Counsel using the contact information below, or at [www.\[website\].com](http://www.[website].com). [MAILED VERSION: You can also access the website using this QR Code: LINK AND QR CODE LINKING TO WEBSITE]

16. How do I get more information?

If you have other questions about the settlement or want more information, you can contact the Settlement Administrator at [INSERT CONTACT INFORMATION] or Plaintiffs' Counsel at:

Melissa L. Stewart
OUTTEN & GOLDEN LLP
695 Third Avenue, 25th Floor
New York, NY 10017
Telephone: [insert number]
Malwarebytes@outtengolden.com

Adam L. Koshkin
Mohsin M. Mirza
OUTTEN & GOLDEN LLP
One California, 12th Floor,
San Francisco, CA 94111
Telephone: [insert number]
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DATED: _____, 20__

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