

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.


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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