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individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

MARNELLE MAC DULA, individually and
on behalf of all other similarly situated
employees,

Plaintiff,

vs.

IDEXX DISTRIBUTION, INC., a Delaware
Corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No. 23CV005044

*Assigned for All Purposes to Hon. Lauri A. Damrell,
Department 22*

CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: November 8, 2024

Time: 9:00 a.m.

Dept.: 22

Judge: Hon. Lauri A. Damrell

Filed: July 19, 2023

FAC Filed: May 14, 2024

Trial Date: None Set

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on November 8, 2024, at 9:00 a.m., or as soon thereafter as the
3 matter may be heard in Department 22 of the above-entitled Court, Plaintiff Marnelle Mac Dula,
4 individually and on behalf of all other similarly situated individuals, will, and hereby does, move for
5 entry of an Order for the following:

- 6 1. Certifying the proposed class herein for purposes of settlement;
- 7 2. Appointing Plaintiff Marnelle Mac Dula as Class Representative for purposes of settlement;
- 8 3. Appointing Shimoda & Rodriguez Law, PC, as Class Counsel for purposes of settlement;
- 9 4. Approving the proposed class action and Private Attorney's General Act settlement, in the
10 gross amount of \$1,365,000.00, which is incorporated herein by reference;
- 11 5. Approving the application for payment to Class Counsel of attorneys' fees in the amount of
12 \$477,750.00;
- 13 6. Approving the application for payment to Class Counsel of reasonable costs in the amount of
14 \$14,265.46;
- 15 7. Approving the Enhancement Payment of \$10,000.00 to the Class Representative, Marnelle
16 Mac Dula
- 17 8. Approving the appointment of ILYM Group, Inc. as the Settlement Administrator and for
18 payment to ILYM Group, Inc. for administering said class action settlement in the amount of
19 \$8,750;
- 20 9. Approving the settlement of claims under the Private Attorneys General Act for the total
21 amount of \$40,000.00, 75% of which will be paid to the Labor and Workforce Development
22 Agency and 25% of which will be paid to Aggrieved Employees;
- 23 10. Determining that the class notification procedure and process complied with Class Members'
24 due process rights;
- 25 11. Directing that any amount from settlement checks that were not cashed by the check cashing
26 deadline be donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Center for Workers
27 Rights under the doctrine of *cy pres*;
- 28

1 12. Approving and adopting the Proposed Order and its implementation schedule, which is filed
2 herewith and incorporated by reference.

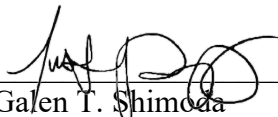
3 This Motion is being made pursuant to Code of Civil Procedure section 382, Labor Code section
4 2699(l), and California Rules of Court 3.769 and 3.764, on the grounds that the preliminary approved
5 class action and Private Attorneys General Act settlement is fair, reasonable, and adequate as to all Class
6 Members and should be approved by the Court. This motion will be based on the notice of motion,
7 memorandum of points and authorities, the Declaration of Justin P. Rodriguez, the Declaration of
8 Marnelle Mac Dula, the Declaration of Cassandra Polites, exhibits, the record and files of this case, and
9 any further oral or documentary evidence introduced at the hearing of this motion.

10 **Pursuant to Local Rule 1.06(A), the court will make a tentative ruling on the merits of this matter**
11 **by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings for the**
12 **department may be downloaded off the court's website. If the party does not have online access,**
13 **they may call the dedicated phone number for the department as referenced in the local telephone**
14 **directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and**
15 **receive the tentative ruling. If you do not call the court and the opposing party by 4:00 p.m. the**
16 **court day before the hearing, no hearing will be held.**

17 Dated: October 15, 2024

Shimoda & Rodriguez Law, PC

18 By: _____

19 
20 Galen T. Shimoda
21 Justin P. Rodriguez
22 Renald Konini
23 Attorneys for Plaintiff

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CLASS ACTION

**MEMORANDUM OF POINTS & AUTHORITIES
IN SUPPORT OF PLAINTIFF'S MOTION FOR
FINAL APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT**

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FEDERAL STATUTES

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I. INTRODUCTION AND OPENING SUMMARY OF ARGUMENT

Plaintiff Marnelle Mac Dula (“Plaintiff”) seeks final approval of a non-reversionary wage and hour class action and Private Attorneys General Act (“PAGA”) settlement in the gross amount of \$1,365,000.00. *See generally* Exhibit A (Joint Stipulation Regarding Class Action and PAGA Settlement and Release [“Agreement”]). Plaintiff brought this class action individually and on behalf of similarly situated employees who worked for Defendant IDEXX Distribution, Inc., (“Defendant”) (Plaintiff and Defendant sometimes collectively referred to as the “Parties”). *See generally*, Exhibit B (Plaintiff’s Operative Complaint). There are 573 Class Members.

Plaintiff has alleged that Defendant violated California law by 1) failing to pay overtime wages, 2) failing to pay minimum wages, 3) committing meal and rest period violations, 4) failing to provide accurate wage statements, 5) failing to pay all final wages, 6) failing to reimburse expenses, 7) failing to pay all sick leave wages owed, and 8) engaging in unfair competition. *See generally* Exhibit B; *see also* Declaration of Justin P. Rodriguez (“Decl. Rodriguez”), ¶¶ 3-5, 11-12. Plaintiff has also alleged Defendant is liable for civil penalties under the PAGA based on these violations. *See id.*; Exhibit C (Plaintiff’s Ltr. to the Labor and Workforce Development Agency [“LWDA”] Regarding PAGA Claims). Defendant has denied all of Plaintiff’s allegations in their entirety and any liability or wrongdoing of any kind. *See* Decl. Rodriguez, ¶ 7. Defendant has also denied that this case is appropriate for class certification other than for purposes of settlement. *See id.* However, subject to Court approval, the Parties have been able to compromise and settle all asserted claims as a result of extensive investigations, document and data exchanges, and extended negotiations. *See* Exhibit A. Plaintiff and Plaintiff’s counsel believe the proposed Agreement is fair, reasonable, and adequate based on the investigations, discovery, employee data exchanges, negotiations, and a detailed knowledge of the issues in this case. *See* Decl. Rodriguez, ¶ 12; Declaration of Marnelle Mac Dula (“Decl. Mac Dula”), ¶ 10.

The reaction of Class Members to the preliminarily approved Agreement has been overwhelmingly positive and gives substantial support to the Agreement and all terms and allocations therein being fair, reasonable, and adequate. Zero Class Members opted out of the settlement and there have been zero objections to the Agreement. *See* Declaration of Cassandra Polites (“Decl. Polites”), ¶¶

11-12. It is well within the discretion of this Court to grant final approval of the Agreement as it satisfies all applicable criteria for final settlement approval under California law. Accordingly, Plaintiff requests that the Court: (1) certify the settlement class; (2) grant final approval of the Agreement; (3) find that the procedures used to notify Class Members complied with due process; (4) grant Plaintiff's request for attorney's fees and costs, the Enhancement payment to the Class Representative, and Settlement Administrator Costs; and (5) approve and adopt the proposed order granting final approval, which is filed concurrently herewith.

II. PROCEDURAL AND LITIGATION HISTORY

Plaintiff filed a class action complaint on approximately July 19, 2023, in the Sacramento County Superior Court against Defendant. Plaintiff exhausted administrative remedies under the PAGA by providing notice of the claims and violations to the LWDA. *See* Exhibit C; Cal. Lab. Code § 2699.3(a), (c); Decl. Rodriguez, ¶¶ 3-4. On approximately August 25, 2023, the case was removed to Federal Court. *See id.* On or about October 26, 2023, Plaintiff filed a separate, PAGA-only lawsuit in Sacramento County Superior Court on behalf of herself and Aggrieved Employees alleging violations of the California Labor Code as stated in her notice letter to the LWDA. *See id.* at ¶ 4. After resolving the asserted class and PAGA claims, the Parties stipulated to this case being remanded back to State Court and to file an amended complaint consolidating the class and PAGA claims into this case. *See id.* at ¶¶ 3-4. This case was remanded back to State Court on April 9, 2024, and a First Amended Complaint was filed on approximately May 14, 2024. *See id.*; Exhibit B. There is no date set for a motion for certification or trial in this matter. *See* Decl. Rodriguez, ¶ 6.

III. INVESTIGATION AND DISCOVERY CONDUCTED

Plaintiff thoroughly investigated issues affecting certification, the merits of the class claims, and potential damages for such claims. *See id.* at ¶¶ 3-4, 7-11; Decl. Mac Dula ¶¶ 2-3, 5-8. Plaintiff worked during the time all of Defendant's policies and practices at issue in the Complaint were in effect and provided information regarding these policies and practices, enabling pre-filing investigations to take place. *See* Decl. Mac Dula, ¶¶ 2, 5-6. The Parties engaged in informal discovery and exchange of documents, including a representative sampling of employee data, such as timecards, paystubs, payroll data, and relevant policies for the entirety of the statute of limitations applicable to the asserted claims.

The discovery covered all aspects of the asserted claims, including certification issues, merits issues, damages, the scope and configuration of Class Members, the content and implementation of the wage and hour policies at issue, issues relating to manageability concerns at trial, among other relevant areas. *See* Decl. Rodriguez, ¶¶ 8-9. The information allowed Plaintiff to determine the extent and frequency of any violations in accordance with Plaintiff's contentions and create an accurate damages model to assess the reasonableness of any settlement. *See id.*

IV. NEGOTIATION AND PROPOSED SETTLEMENT

a. Plaintiff and Defendant Engaged in Extensive Arm's Length Negotiations

The final settlement occurred only after extended, arm's length negotiations. Over the course of approximately eleven (11) months, Plaintiff has been investigating the claims and discussing with Defendant's counsel the merits of the claims and issues present in this case. *See id.* at ¶¶ 7-12. The Parties exchanged substantial amounts of information and legal analysis in connection with these discussions. *See id.* It was only after these extended discussions, which included a full day mediation with Steven G. Mehta, Esq., that the Parties were able resolve all claims and enter into the Agreement. *See id.* at ¶ 10.

b. The Terms of the Agreement

1. The following groups of individuals are covered by the Agreement: (a) Class Members, which include all individuals who have worked, or continue to work, for IDEXX Distribution, Inc., in California as non-exempt employees at any time between July 19, 2019, up to May 26, 2024; and (b) Aggrieved Employees, which include all individuals who have worked, or continue to work, for IDEXX Distribution, Inc., in California as non-exempt employees at any time between July 18, 2022, up to May 26, 2024. *See* Exhibit A, ¶¶ 1.2, 1.5. There are 573 Class Members and 410 Aggrieved Employees.

2. Defendant will pay the Gross Settlement Amount of \$1,365,000.00, which is exclusive of the employer's share of payroll taxes. *See id.* at ¶ 5.1. Twenty percent (20%) of the payment to Participating Class Members will be characterized as W-2 wages and eighty percent (80%) will be characterized as 1099 income for tax reporting purposes. *See id.* at ¶¶ 5.9.1-5.9.2. The entire payment to Aggrieved Employees will be characterized as 1099 income for tax reporting purposes. *See id.* at ¶ 5.9.3. No portion of the Gross Settlement Amount will revert to Defendant. *See id.* at ¶ 5.6. Aggrieved

1 Employees will still be paid their share of the PAGA Payment regardless of whether they opt out of
2 being Class Members. *See id.* at ¶¶ 7.5.1, 7.8.3.

3 3. Up to \$10,000 will be paid to Plaintiff as an Enhancement Payment. This amount will be
4 in addition to any amount Plaintiff may be entitled to under the terms of the Agreement. *See id.* at ¶ 5.4.

5 4. At preliminary approval, the Court approved appointing ILYM Group, Inc. to act as the
6 Settlement Administrator, whose final costs are \$8,750.00. *See* Decl. Polites ¶ 18. Exhibit A, ¶ 1.33.

7 5. The Parties agree that \$40,000.00 of the Gross Settlement Amount shall be allocated to
8 resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment will be paid to
9 the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees. *See* Exhibit A, ¶ 5.5.
10 Given the risk to proving the claims on the merits, the derivative nature of the penalties, the efforts by
11 Defendant to maintain compliant policies and take corrective action, the presence of what may likely be
12 deemed good faith disputes, and the Court's discretion to reduce any penalty award, Plaintiff believes
13 the \$40,000.00 PAGA Payment allocation represents a meaningful settlement aimed at deterring non-
14 compliance given the facts of this case. *See* Decl. Rodriguez, ¶¶ 7-12; *see also Nordstrom Com. Cases*,
15 186 Cal.App.4th 576, 589 (2010) (approving \$0 allocation to the resolution of PAGA claims based on
16 their being disputed and being part of a class settlement which was evaluated based on the terms of the
17 agreement overall); *Junkersfeld v. Med. Staffing Sols., Inc.*, 2022 WL 2318173, *8 n.2 (E.D. Cal. 2022)
18 (collecting cases with PAGA settlement values ranging from .037%-1%); *Jennings v. Open Door*
19 *Marketing, LLC*, 2018 WL 4773057, *9 (N.D. Cal. 2018) (approving settlement of PAGA claims at
20 0.6% of total estimated value due to risk of no recovery); *Ruch v. AM Retail Grp., Inc.*, 2016 WL
21 5462451, *7 (N.D. Cal. 2016) (approving \$10,000 PAGA settlement allocation where total PAGA
22 penalty exposure was approximately \$5.2 million, or 0.2% of total estimated value); *Davis v. Cox*
23 *Commc 'ns California, LLC*, 2017 U.S. Dist. LEXIS 63514, *1 (S.D. Cal. 2017) (preliminarily approving
24 \$4,000 PAGA allocation in \$275,000 settlement); *Moore v. Fitness Int'l, LLC*, 2014 U.S. Dist. LEXIS
25 8358, *5 (S.D. Cal. 2014) (approving \$2,500 PAGA allocation when attorneys' fees award alone
26 amounted to \$200,000); *Jack v. Hartford Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, *6 (S.D. Cal.
27 2011) (approving \$3,000 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*,
28 2010 U.S. Dist. LEXIS 53416, *2 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation in \$1,000,000

1 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, *9 (N.D. Cal. 2009)
2 (approving \$1,500 PAGA allocation in \$1,026,000 settlement); *Syed v. M-I, L.L.C.*, 2017 U.S. Dist.
3 LEXIS 24880, *34-35 (E.D. Cal. 2017) (approving \$100,000 PAGA allocation in a \$3,950,000
4 settlement even though PAGA exposure was calculated at \$53,600,000, or 0.2% of total estimated
5 value); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, *7 (E.D. Cal. 2012)
6 (approving \$10,000 PAGA allocation in a \$3,700,000 settlement); *Franco v. Ruiz Food Prod., Inc.*,
7 2012 WL 5941801, *14 (E.D. Cal. 2012) (\$10,000 in PAGA payment from \$2,500,000 settlement fund);
8 *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, *1 (N.D. Cal. 2011) (approving PAGA
9 settlement payment of \$7,500 to the LWDA out of \$6.9 million common-fund settlement).

10 6. The Parties agree that up to thirty five percent (35%) of the Gross Settlement Amount
11 (\$477,750.00) will be paid for Plaintiff's attorneys' fees incurred in the litigation of this case.
12 Defendant will not oppose any application for attorneys' fees so long as it is within this threshold. *See*
13 *id.* at ¶ 5.2. Additionally, the Parties agree that Plaintiff will be entitled to actual litigation costs, which
14 are \$14,265.46. *See id.*; Exhibit D (Plaintiff's Counsel's Itemized Costs). The difference between the
15 actual costs and the originally allocated \$17,500 will be redistributed to Class Members on a pro rata
16 basis. *See* Exhibit A, ¶ 5.2.

17 7. Any allocated amounts under the Agreement for Settlement Administrator Costs, an
18 Enhancement Payment, and attorney's fees and costs that are not ultimately awarded by the Court will
19 remain part of the Net Settlement Amount and be paid out to Participating Class Members on a pro rata
20 basis as set forth in the Agreement. *See* Exhibit A, ¶¶ 5.1-5.5, 5.8. These amounts will be paid out from
21 the Gross Settlement Amount, not in addition to the Gross Settlement Amount. *See* Exhibit A, ¶¶ 5.1-
22 5.5.

23 8. Class Members who fail to timely opt-out of this settlement will waive all Released Class
24 Claims as set forth in the Agreement. *See* Exhibit A, ¶¶ 1.5, 1.14, 1.26, 1.30, 1.32, 6.1, 7.5.1.
25 Aggrieved Employees will waive all Released PAGA Claims as set forth in the Agreement regardless of
26 whether they opt out of being a Class Member. *See id.* at ¶¶ 1.2, 1.14, 1.31-1.32, 6.2, 7.5.1.

27 9. For any portion of the Net Settlement Amount or PAGA Payment allocated to
28 Participating Class Members and/or Aggrieved Employees that is not claimed by them by cashing their

1 respective settlement checks within 180 calendar days of issuance, that remaining amount shall be
2 donated equally, *i.e.*, 50/50 to Capital Pro Bono, Inc., and the Center for Workers' Rights under the
3 doctrine of *cy pres*. See Exhibit A, at ¶ 5.6. Because the Agreement provides for all funds such that
4 there is no residue, the provisions of California Civil Procedure Code section 384 are inapplicable. See
5 *In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 718, 720 (2006). The designated beneficiaries clearly
6 promote the law consistent with the objectives and purposes underlying the lawsuit as they are non-
7 profits aimed at assisting employees with wage and hour claims who cannot afford legal representation,
8 including providing representation for employees in wage claims before the California Labor
9 Commissioner. See *id.* at 722-724; see also Decl. Rodriguez, ¶¶ 30-40.

10 **c. Allocation of Settlement Funds**

11 Payment to Participating Class Members and Aggrieved Employees will not require the
12 submission of a claim form. A Net Settlement Amount will be determined by subtracting from the
13 Gross Settlement Amount any attorney's fees and costs, Enhancement Payment to the Class
14 Representative, Settlement Administrator Costs, and PAGA Payment that are approved and/or awarded
15 by the Court. Each Class Member's share will be determined by dividing their total weeks worked
16 within the Class Period by the total weeks worked by all Class Members within the Class Period. That
17 fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's
18 individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion
19 of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA Claim
20 Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period. That
21 fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved
22 Employee's individual share. See Exhibit A, at ¶¶ 1.17, 1.24, 1.29, 5.5, 5.8.

23 **V. PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND THE**
24 **SUBSEQUENT CLASS ACTION ADMINISTRATION**

25 Plaintiff's motion for preliminary approval of the class action settlement was approved by the
26 Court on June 28, 2024. To comply with Class Members' due process rights, the parties enlisted an
27 exhaustive method to ensure the best practical means possible was used to provide notice to the class.
28 The parties provided the Settlement Administrator with the names, last known address, and social

1 security numbers for the class. The Settlement Administrator then updated this information by doing
2 an address trace for each Class Member. *See* Decl. Polites, ¶¶ 5-6. If the Notice of Settlement mailings
3 were returned as undeliverable, further investigation was performed and they were re-mailed using
4 updated information. *See id.* at ¶ 8. Of the 573 Notice Packets mailed, only 5 were undeliverable after
5 use of these methods. *See id.* at ¶¶ 7, 10. The Notice of Settlement included information regarding the
6 requested attorneys' fees, costs, Enhancement Payment, payment to the LWDA, administration costs,
7 and tax allocations. *See* Exh. A to Decl. Polites. The average distribution to participating class
8 members is approximately \$1,421.00, the maximum distribution is approximately \$2,794.58. *See id.* at
9 ¶ 16. No objections to the preliminarily approved settlement have been made and no Class Members
10 opted out. *See id.* at ¶¶ 11-12.

11 It is not required that Class Members be given actual notice of a class settlement; instead, the
12 best practicable notice under the circumstances is all that is required. *See Silber v. Mabon*, 18 F.3d
13 1449, 1453 (9th Cir. 1994); *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1129 (9th Cir. 2017);
14 *Walsh v. CorePower Yoga LLC*, 2017 U.S. Dist. LEXIS 163991, *12-14 (N.D. Cal. 2017); *Wright v.*
15 *Linkus Enters.*, 259 F.R.D. 468, 474-75 (E.D. Cal. 2009). In *Silber v. Mabon*, 18 F.3d 1449 (9th Cir.
16 1994), the Court rejected a class member's argument that he had not received due process because he
17 did not receive notice until after the opt out period, finding that, so long as the notice process utilized is
18 the best practicable under the circumstances, due process is satisfied even if there is no actual receipt of
19 the notice. *See Silber*, 18 F.3d at 1453-1454. A similar finding was made in *Briseno v. Conagra*
20 *Foods, Inc.*, 844 F.3d 1121 (9th Cir. 2017). With regard to any undeliverable notice in this case, the
21 Court in *Rannis v. Recchia*, 380 F.App'x 646 (9th Cir. 2010) found that class members who did not
22 receive actual notice due to their mailings being deemed undeliverable were still properly held to be
23 part of the class settlement because they received the best notice practicable under the circumstances.
24 *See Rannis v. Recchia*, 380 F.App'x at 650-651. In *Noel v. Thrifty Payless, Inc.*, 7 Cal.5th 955, 980-
25 984 (2019), the California Supreme Court noted that California has adopted a similar approach
26 regarding providing notice to class members.

27 The notice method in *Rannis* is similar to that used in the present case. For example, the notice
28 contains all information necessary for a Class Member to assess the litigation, the settlement, and

whether they wanted to participate, object, or opt-out. *See* Exh. A to Decl. Polites. The Settlement Administrator utilized a national change of address database, forwarding notices, and skip tracing to ensure that all reasonable means were exhausted in attempting to provide Class Members notice of this settlement. *See* Decl. Polites, ¶¶ 5-10. Additionally, the entire motion for preliminary approval, the Notice, and all filings in this matter were available, free of charge, on a web page accessible to all Class Members and identified on the class notice. *See* Exh. A to Decl. Polites, pg. 5. The content of the notice and the manner in which it was provided to Class Members was the best practicable notice to satisfy due process.

VI. THE AGREEMENT WARRANTS FINAL APPROVAL AS IT IS FAIR, REASONABLE, AND ADEQUATE AS TO ALL CLASS MEMBERS BASED ON THE FACTS OF THIS CASE

A class action may not be dismissed, compromised, or settled without Court approval and the decision to approve or reject a settlement is committed to the Court’s sound discretion. *See* Cal. Rules of Court, Rule 3.769; Fed. R. Civ. Proc., Rule 23(e)¹; *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 234-35 (2001); *see also* Cal. Lab. Code §§ 2699(l)(2). However, “[d]ue regard should be given to what is otherwise a private consensual agreement between the parties. The inquiry ‘must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.’” *See Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996); *see also Cellphone Termination Fee Cases*, 180 Cal.App.4th 1110, 1118 (2009); *In re Microsoft I-V Cases*, 135 Cal.App.4th at 723; *Nordstrom Com. Cases*, 186 Cal.App.4th at 581. The law favors settlement of lawsuits, particularly class actions and other complex cases where substantial resources can be conserved by avoiding the time, expense, and rigors of formal litigation. *See Cellphone Termination Fee Cases*, 180 Cal.App.4th at 1117-1118; *In re Microsoft I-V Cases*, 135 Cal.App.4th at 723 n.14; *Nordstrom Com. Cases*, 186 Cal.App.4th at 581; *see also Neary v. Regents of Univ. of Cal.*, 3 Cal.4th 273, 277-81 (1992).

¹The California Supreme Court has authorized California’s trial courts to rely on these federal resources to decide class certification issues. *See Green v. Obledo*, 29 Cal.3d 126, 145-46 (1981).

1 **a. The Terms of The Settlement Are Fair and Within the Range of Reasonableness**

2 The purpose of the Court’s final evaluation of a proposed class action settlement is to determine
3 only whether it is within the range of reasonableness. *See Wershba*, 91 Cal.App.4th at 234-35. If the
4 Court finds a proposed settlement falls within “the range of reasonableness,” it should grant final
5 approval of the class action settlement. *See, e.g., North County Contr. ’s Assn., Inc. v. Touchstone Ins.*
6 *Svcs.*, 27 Cal.App.4th 1085, 1089-90 (1994); *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116,
7 133 (2008). Factors to consider in determining whether the settlement is fair, reasonable, and adequate
8 include the strength of the Plaintiff’s case, the risk, expense, complexity and likely duration of further
9 litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the
10 extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the
11 presence of a governmental participant, and the reaction of the class members to the proposed
12 settlement. *See Dunk*, 48 Cal.App.4th at 1801. However, this Court should begin its analysis with a
13 presumption that the proposed settlement is fair. “A presumption of fairness exists where: (1) the
14 settlement is reached through arm’s length bargaining; (2) investigation and discovery are sufficient to
15 allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4)
16 the percentage of objectors is small.” *Id.* at 1802; *see also In re Heritage Bond Litig.*, 2005 WL
17 1594403, *10 (C.D. Cal. 2005) (“It is established that the absence of a large number of objectors to a
18 proposed class action settlement raises a strong presumption that the terms of a proposed class
19 settlement action are favorable to the class members”).

20 **i. The Agreement is a Result of Extensive, Non-Collusive Arm’s Length Negotiations**
21 **Between the Parties**

22 Settlement of this case was reached only after substantial litigation and extensive arm’s length
23 negotiations lasting nearly eleven (11) months, which included a full day of mediation. *See Decl.*
24 *Rodriguez*, ¶¶ 7-10. At all times, the negotiations were adversarial, although still professional in nature.
25 *See id.*

26 //

27 //

28 //

1 **ii. The Extent of Investigation and Discovery Completed Provided Ample**
2 **Information to Enter Into an Informed and Reasonable Settlement**

3 The Parties were in possession of all necessary information during the negotiations. The Parties
4 engaged in substantial informal discovery, which included all necessary components for evaluating the
5 class claims and creating an accurate damages model. *See id.* at ¶¶ 7-12. Plaintiff was in possession of
6 this information prior to calculating any damages in this case. *See id.* As a result, Plaintiff was able to
7 make a reasonable estimation of Defendant’s potential liability. *See id.* For these reasons, the
8 settlement now before the Court was reached at a stage where “the parties certainly have a clear view of
9 the strengths and weaknesses of their cases” sufficient to support the settlement. *See Boyd v. Bechtel*
10 *Corp.*, 485 F.Supp. 610, 617 (N.D. Cal. 1979).

11 **iii. Plaintiff’s Counsel are Experienced in Similar Litigation**

12 Plaintiff’s counsel have considerable experience in complex litigation such as class and PAGA
13 actions. *See Decl. Rodriguez*, ¶¶ 14-22. Thus, Plaintiff’s counsel are qualified to evaluate the class
14 claims, the value of settlement versus moving forward with litigation, and viability of possible
15 affirmative defenses. Plaintiff’s counsel believe that the Agreement is fair, reasonable, and adequate in
16 light of the risks associated with the claims, the uncertainties of complex litigation, and the secured
17 benefit to Class Members. *See id.* at ¶ 12.

18 **iv. No Class Members Objected or Opted Out**

19 The reaction by Class Members to the Agreement and all the terms and allocations stated therein
20 is overwhelmingly positive. Zero Class Members have objected to any aspect of the Agreement and
21 zero have opted out. *See Decl. Polites*, ¶¶ 11-12. This provides strong evidence that the settlement is
22 fair, reasonable, and adequate. *See In re Heritage Bond Litig.*, 2005 WL 1594403, *10 (“It is established
23 that the absence of a large number of objectors to a proposed class action settlement raises a strong
24 presumption that the terms of a proposed class settlement action are favorable to the class members”);
25 *Nat’l Rural Telecommunications Coop, v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004) (“The
26 unanimous, positive reaction to the Proposed Settlement is compelling evidence that the Proposed
27 Settlement is fair, just, reasonable, and adequate”).
28

1 **v. The Settlement is Fair, Reasonable, and Adequate Based on the Strength of**
2 **Plaintiff's Case and the Risks and Costs of Further Litigation**

3 Plaintiff's claims and the ability to obtain and maintain certification all the way through trial
4 were heavily disputed by Defendant. See Decl. Rodriguez, ¶¶ 7-12. Based on the records and facts of
5 this case, Plaintiff has secured a gross recovery of approximately 7.1% of the maximum value of the
6 claims in this matter and between 14.4% and 48.2% of the more realistic range of recovery. See Decl.
7 Rodriguez, ¶¶ 11-12. The net recovery represents approximately 4.2% of the maximum value of the
8 claims in this matter and between 8.6% and 28.7% of the more realistic range of recovery. The average
9 net award is approximately \$1,421 with a maximum distribution of \$2,794.58. See Decl. Polites, ¶ 16.

10 This settlement is a reasonable compromise of the class and PAGA claims and is within the
11 percentile ranges of the total available damages that have been approved in other class settlements. See
12 *Wershba*, 91 Cal.App.4th at 246, 250; *Rebney v. Wells Fargo Bank*, 220 Cal.App.3d 1117, 1139 (1990);
13 *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 628 (9th Cir. 1982); see also *In re Omnivision*
14 *Technologies, Inc.*, 559 F.Supp.2d 1036, 1042 (2007) (noting that certainty of recovery in settlement of
15 6% of maximum potential recovery after reduction for attorney's fees was higher than median
16 percentage for recoveries in shareholder class action settlements, averaging 2.2%-3% from 2000 through
17 2002); *Bravo v. Gale Triangle, Inc.*, 2017 U.S. Dist. LEXIS 77714 (C.D. Cal. 2017) (approving a
18 settlement where the net recovery to class members was approximately 7.5% of the projected maximum
19 recovery amount); *Avila v. Cold Spring Granite Co.*, 2017 U.S. Dist. LEXIS 130878 (E.D. Cal. 2017)
20 (approving a settlement with a gross recovery of 11% of the projected maximum damages available and
21 a net recovery of approximately 6.7% of the projected maximum recovery); *Bellinghausen v. Tractor*
22 *Supply Co.*, 306 F.R.D. 245 (N.D. Cal. 2015) (approving a settlement where the gross recovery was
23 approximately 8.5% of the projected maximum recovery); *Schiller v. David's Bridal, Inc.*, 2012 U.S.
24 Dist. LEXIS 80776, *48 (E.D. Cal. 2012) ("Class Members will receive an average of approximately
25 \$198.70, with the highest payment to a Class Member being \$695.78 . . . Overall, the Court finds that
26 the results achieved are good, which is highlighted by the fact that there was no objection to the
27 settlement amount or the attorneys' fees requested."); *Gardner v. GC Servs., LP*, 2012 U.S. Dist. LEXIS
28 47043, 18 (S.D. Cal. 2012) ("the results achieved in this case were very favorable. Class members are

provided with immediate monetary relief, with an average award of around several hundred dollars and a minimum award of \$50”).

vi. The Proposed Settlement is a Reasonable Compromise of Claims

In *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116 (2008), the Court required additional information be presented in class action settlements “to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation” *Id.* at 129. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal.App.4th 399 (2010), clarified that *Kullar* does not require an illusory prediction of the outer reaches of exposure without taking into account the actual risks of litigation such as dispositive motions and trial. *Kullar* also does not require an explicit statement of the maximum amount to be recovered if a plaintiff prevailed on all the claims, provided there is a record that allows “an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.” *Id.* at 409.

Plaintiff has thoroughly set forth the realistic range of outcomes in this litigation as well as the data points relied upon in reaching these ranges. See Decl. Rodriguez ¶¶ 11-12. The record demonstrates that the compromises made by Plaintiff were reasonable and have resulted in a settlement with a recovery percentage well within the range of what has been found to be sufficient in several other cases. See, *supra*, Section VI.a.iv; see also *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1242 (9th Cir. 1998) (“The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved”); *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 (2d Cir. 1974) (“In fact there is no reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the potential recovery”).

b. Certification of the Class is Appropriate

Class certification is appropriate when (1) the class is ascertainable and (2) there is “a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented.” *Dunk*, 48 Cal.App.4th at 1806. The “community of interest” element “embodies three factors: (1) common questions of law or fact predominate; (2) class representatives with claims or

defenses typical of the class; and (3) class representatives who can adequately represent the class.” *Id.* Here, the Court conditionally certified the settlement class at preliminary approval, and nothing has happened in the interim that would warrant changing that decision. *See Garcia v. City of King City*, 2017 WL 363257, *4 (N.D. Cal. 2017); *Messineo v. Ocwen Loan Servicing, LLC*, 2017 WL 733219, *4 (N.D. Cal. 2017). Here, the Parties agree that, for the purposes of settlement, these prerequisites are met. *See* Exhibit A.

i. The Proposed Settlement Class is Ascertainable and Sufficiently Numerous

The proposed settlement class is ascertainable because all putative Class Members can be readily identified through employee personnel and payroll files. *See Noel v. Thrifty Payless, Inc.*, 7 Cal.5th 955, 980 (2019); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 932 (1981); *Lee v. Dynamex, Inc.*, 166 Cal.App.4th 1325, 1334 (2008). The numerosity requirement is met because there are 573 Participating Class Members, which makes joinder of all members impracticable. *See Gay v. Waiters’ & Dairy Lunchmen’s Union*, 489 F.Supp. 282 (N.D. Cal. 1980), *aff’d* 694 F.2d 531 (9th Cir. 1982); *Hebbard v. Calgrove*, 28 Cal.App.3d 1017, 1030 (1972) (noting no set minimum to meet the numerosity prerequisite, but a class as few as twenty-eight (28) members is acceptable). Thus, these requirements are satisfied.

ii. The Commonality, Predominance, and Typicality Requirements are Met

The commonality requirement is met when there are questions of law or fact regarding the class as a whole. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). Commonality requires only that some common legal or factual questions exist; Plaintiff need not show that all issues in the litigation are identical. *See Richmond v. Dart Ind., Inc.*, 29 Cal.3d 462, 473 (1981); *City of San Jose v. Superior Court*, 12 Cal.3d 447, 460 (1974). Common questions of law or fact must also predominate over individual questions and class-wide treatment of a dispute must be superior to individual litigation.² *See Richmond*, 29 Cal.3d at 469. Predominance requires a putative class be sufficiently cohesive to warrant adjudication by representation. *See Hanlon*, 150 F.3d at 1022. The typicality requirement is

²When assessing predominance and superiority, a court may consider that the class will be certified for settlement purposes only and that manageability of trial is therefore irrelevant. *See Amchem Products v. Windsor*, 521 U.S. 591 (1997).

1 met when claims of the named representative are typical of those of the class, though “they need not be
2 substantially identical.” *Id.* at 1020; *Classen v. Weller*, 145 Cal.App.3d 27, 46-47 (1983).

3 The common questions of law and fact in this case stem from Plaintiff’s contention that
4 Defendant violated California law by 1) failing to correctly incorporate the value of non-discretionary
5 lab bonuses into class members’ regular rates of pay for the purpose of paying overtime premiums, sick
6 time, and supplemental COVID paid sick time, 2) failing to incorporate the value of shift differentials
7 into class members’ regular rates of pay for the purpose of paying sick leave, meal and rest period
8 premiums, and supplemental COVID paid sick time, 3) failing to pay class members for all time spent
9 entering the building, going through security, getting to the lab, and clocking in for their shift, 4)
10 pressuring class members to work off the clock to avoid overtime, 5) failing to provide all meal periods,
11 including second meal periods, 6) failing to provide all rest periods, including third rest periods, and 7)
12 requiring class members to download and use applications on their personal cellphones without
13 reimbursing them. *See* Exhibit B. The waiting time penalties, unfair competition, and PAGA claims are
14 derivative of these violations. *See id.* Plaintiff and the Class Members seek the same remedies under
15 state law. Under these specific circumstances, the commonality and predominance requirements are
16 satisfied. Regarding the typicality requirement, Plaintiff contends she suffered from the same unlawful
17 policies, treatment, and circumstances as Class Members did, will request the same remedies, and will
18 rely on the same methods of proof to establish liability and damages. *See id.* Thus, the typicality
19 requirement is also satisfied for settlement purposes.

20 **iii. The Adequacy Requirement is Met**

21 The adequacy of representation requirement is met if the named representative and counsel have
22 no interests adverse to those of the putative class members and are committed to vigorously prosecuting
23 the case on behalf of the class. *See Hanlon*, 150 F.3d at 1020; *McGhee v. Bank of America*, 60
24 Cal.App.3d 442, 450-51 (1976). Those standards are met here. Under the proposed Agreement,
25 Plaintiff and the putative Class Members will receive a pro rata share of the settlement based on the
26 number of workweeks they worked for Defendant. *See* Exhibit A. Finally, any settlement class member
27 who wished to opt-out of the settlement was able to do so, and he or she was also able to dispute the
28 number of workweeks stated in the Notice of Settlement.

1 There is no conflict of interest between Plaintiff and Class Members. Plaintiff and Plaintiff's
2 counsel have pursued the claims made in the operative Complaint vigorously on behalf of the class.
3 Plaintiff's counsel, with Plaintiff's assistance, thoroughly investigated the claims made in this case by
4 speaking with Plaintiff and reviewing substantial amounts of documents. Plaintiff's counsel thereafter
5 engaged Defendant's counsel in settlement discussions over the course of approximately eleven (11)
6 months. Moreover, Plaintiff's counsel has experience defending and bringing wage and hour claims.
7 Because Plaintiff's counsel has vigorously pursued Plaintiff's and the Class Members' claims, the
8 adequacy requirement is met. *See generally* Decl. Rodriguez.

9 **VII. THE AMOUNTS REQUESTED FOR ATTORNEY'S FEES AND COSTS, AN**
10 **ENHANCEMENT PAYMENT TO THE CLASS REPRESENTATIVE, AND**
11 **SETTLEMENT ADMINISTRATOR COSTS ARE REASONABLE AND SHOULD BE**
12 **APPROVED**

13 The Notice of Settlement sent to Class Members specifically identified the allocations for
14 attorney's fees and costs, the Enhancement Payment, and Settlement Administrator Costs. *See* Exh. A
15 to Decl. Polites. The reaction of Class Members to these requested amounts provides useful evidence of
16 whether they are reasonable. *See In re Heritage Bond Litig.*, 2005 WL 1594403, *21 ("The absence of
17 objections or disapproval by class members to Class Counsel's fee request further supports finding the
18 fee request reasonable"). As noted above, there were no objections raised to the Agreement or any term
19 or allocation therein whatsoever. *See* Decl. Polites, ¶ 12. In addition to Class Members' reactions
20 supporting the requested amount, the facts and applicable case law also support awarding these amounts
21 in full.

22 An award of attorney's fees should include compensation for all hours reasonable spent. *See*
23 *Ketchum v. Moses*, 24 Cal.4th 1122, 1133 (2201); *see also Hensley v. Eckerhart*, 461 U.S. 424, 431
24 (1983) (finding hours are reasonable spent if they are the kind normally billed to a fee-paying client).
25 California has not adopted any "benchmark" percentage utilized by several federal courts. *See Emmons*
26 *v. Quest Diagnostics Clinical Lab's, Inc.*, 2017 WL 749018, *7 (E.D. Cal. 2017) ("Notably, while the
27 California Supreme Court recognized the Ninth Circuit's 25 percent benchmark for percentage awards
28 in common fund cases, it did not adopt such a benchmark for California cases")/ Instead, "[t]he

benchmark in determining attorneys fees is reasonableness.” *Karton v. Ari Design & Const., Inc.*, 61 Cal.App.5th 734, 744 (2021).

a. A Fee of Thirty-Five Percent of the Common Fund Is Reasonable Because It Is Within the Ranges Historically Approved by Courts in Class Settlements and a Lodestar Cross Check Validates the Proposed Fee

An award of attorney’s fees under the common fund doctrine is appropriate in this case as there is a sufficiently identifiable class of beneficiaries (*e.g.* the settlement class), the benefits received can be accurately traced to the settlement Plaintiff and Class Counsel were able to negotiate on behalf of Class Members, and the fee can be shifted with exactitude to those benefiting as the fee request is a specific, lump-sum percentage of the fund. *See Laffite v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016); *Paul, Johnson, Alston & Hunt v. Gaulty*, 886 F.2d 268, 271 (9th Cir. 1989); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 477-478 (1980) (“A Lawyer who recovers a common fund for the benefit of persons other than . . . her client is entitled to a reasonable attorney’s fee from the fund as a whole.”). The requested fee, 35% of the common fund is within ranges awarded in other cases. *See Martin v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796, *22-23 (S.D. Cal. 2011) (collecting cases); *Birch v. Office Depot, Inc.*, USDC Southern District, Case No. 06cv1690 DMS (WMC) (awarding 40% fee on a \$16 million wage and hour class action settlement); *Rippee v. Boston Mkt. Corp.*, USDC Southern District, Case No. 05cv1359 BTM (JMA) (awarding a 40% fee on a \$3.75 million wage and hour class action settlement).

To the extent there may be some Courts that have granted fees at a percentage less than 35%, that does not justify an arbitrary cap on Class Counsel’s fees in this case. First, in many instances, the treatises or cases discussing these percentages are relying on federal decisions guided by a “benchmark” percentage of 25% that has not been adopted by the California Supreme Court. *See Emmons*, 2017 WL 749018, *7. This artificially lowers the average percentage of fees awarded. Second, many of the same decisions and treatises refer to cases that have a substantial gross settlement fund to begin with, which will generally correspond to a lower percentage of fees being deemed reasonable. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1052 (9th Cir. 2002) (compiling an appendix of class settlements with gross settlement funds of \$53 million to \$193 million and a range of 2.8% to 40% in awarded attorney’s fees, averaging approximately 22%). Rather than acting as a cap on any fee, the percentages applied in cases are a tool to cross check the reasonableness of the fee just as the lodestar method is a tool to cross

1 check the reasonableness of the requested percentage. *See Karton*, 61 Cal.App.5th at 744; *Vizcaino*, 290
2 F.3d at 1048 (“courts cannot rationally apply any particular percentage – whether 13.6 percent, 25
3 percent or any other number – in abstract, without reference to all the circumstances of the case”).

4 To the extent the Court wishes to exercise its discretion to conduct a lodestar cross check, the
5 cross check only validates the fee request. *See Laffitte*, 1 Cal.5th at 503-506. Again, an award of
6 attorney’s fees should include compensation for all hours reasonably spent. *See Ketchum*, 24 Cal.4th at
7 1133; *See also Hensley*, 461 U.S. at 431 (finding hours are reasonably spent if they are the kind
8 normally billed to a fee-paying client). After monitoring the disbursement of all funds and reporting to
9 the Court at any compliance hearing(s), Class Counsel will have spent approximately 589.2 hours
10 performing tasks that would normally be billed to any fee-paying client in complex litigation. *See Decl.*
11 *Rodriguez*, ¶ 24; Exhibit F; *Syers Props. III, Inc. v. Rankin*, 226 Cal.App.4th 691, 699 (2014) (“Because
12 time records are not required under California Law . . . , there is no required level of detail that counsel
13 must achieve.”) (internal quotations omitted). At the prevailing market rates for Class Counsel’s level
14 of experience and this type of complex litigation, this equates to a lodestar of approximately \$348,400.
15 *See Decl. Rodriguez*, ¶¶ 24-25; *Children’s Hosp. and Med. Ctr. V. Bonta*, 97 Cal.App.4th 740, 746
16 (2002) (noting rates were reasonable where they were “within the range of reasonable rates charged by
17 and judicially awarded comparable attorneys for comparable work.”).

18 A fee award of 35% of the common fund would require an approximately 1.37x multiplier of
19 Class Counsel’s lodestar. *See Decl. Rodriguez*, ¶¶ 24-26. Both California Appellate Courts and the
20 State Supreme Court have approved multipliers ranging from 2x to 4x of the lodestar in prior cases. *See*
21 *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th at 487 (finding the trial court did not abuse its discretion
22 in approving a fee award and noting that the award resulted in a multiplier of 2.03x to 2.13x); *Wershba*,
23 91 Cal.App.4th at 255 (“Multipliers can range from 2 to 4 or even higher”). Multipliers are awarded in
24 contingent fee litigation to compensate counsel for the risk of non-payment:

25 It is an established practice in the private legal market to reward attorneys
26 for taking the risk of non-payment by paying them a premium over their
27 normal hourly rates for winning contingency cases. *See Richard Posner*,
28 *Economic Analysis of Law* § 21.9, at 534-35 (3d ed. 1986). Contingent
fees that may far exceed the market value of the services if rendered on a
non-contingent basis are accepted in the legal profession as a legitimate

1 way of assuring competent representation for Plaintiff who could not
2 afford to pay on an hourly basis regardless whether they win or lose.

3 *Chem. Bank v. City of Seattle (In re Walsh Pub. Power Supply Sys. Sec. Litig.)*, 19F.3d 1291, 1299 (9th
4 Cir. 1994). Moreover, “in the common fund context, attorneys whose compensation depends on their
5 winning the case, must make up in compensation in the cases they win for the lack of compensation in
6 the cases they lose.” *Id.* at 1300-01; *see also Ketchum*, 24 Cal.4th at 1138 (“The adjustment to the
7 lodestar figure, *e.g.*, to provide a fee enhancement reflecting the risk that the attorney will not receive
8 payment if the suit does not succeed, constitutes earned compensation; unlike a windfall, it is neither
9 unexpected nor fortuitous”). Complex litigation in general, and wage and hour class and PAGA
10 litigation in particular, is an extremely risky practice and requires a substantial amount time and
11 resources to adequately pursue. *See Decl. Rodriguez*, ¶¶ 13, 26. It is very often the case that the
12 extensive amount of litigation required results in a negative multiplier for attorney fee awards in any
13 settlement approval proceedings. *See id.* at ¶ 26. However, in this case, the substantial benefit that
14 Plaintiff and Class Counsel have been able to secure for Class Members has also enabled the potential
15 for a fee award that includes a positive multiplier to counsel’s lodestar. An upwards adjustment should
16 be approved in this case to reflect the risk undertaken by Class Counsel in this contingent fee litigation.
17 For these reasons, the Court should grant Class Counsel’s fee request. *See Decl. Rodriguez*, ¶¶ 23-26.

18 **b. Class Counsel’s Expenses and Costs Were Necessarily Incurred to Achieve the Benefit
19 Obtained**

20 The appropriate analysis in determining whether particular costs are compensable is whether they
21 are of the type typically billed by attorneys to paying clients in the marketplace. *See Harris v.*
22 *Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (“Harris may recover as part of the award of attorney’s fees
23 those out-of pocket expenses that ‘would normally be charged to a fee paying client’”); *Abrams v.*
24 *Lightolier, Inc.*, 50 F.3d 1204, 1225 (3d Cir. 1995); *Bratcher v. Bray-Doyle Indep. Sch. Dist. No. 42*, 8
25 F.3d 722, 725-26 (10th Cir. 1993). The categories of expenses for which Class Counsel seek
26 reimbursement here are categories normally charged to hourly clients and, therefore, should be
27 reimbursed out of the common fund. *See Decl. Rodriguez*, ¶ 27; Exhibit D.
28

1 **c. Class Counsel's Request for an Enhancement Payment to the Class Representative Is**
2 **Justified In Light of The Results Achieved for the Class**

3 A service payment to a named plaintiff is intended to recognize their time and effort on behalf
4 of the class. Indeed, courts routinely approve incentive awards to compensate named plaintiffs for the
5 services they provide and the risks they incurred during the course of the class action litigation. *See*
6 *Ingram v. The Coca Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001). In *Ingram*, the Court approved
7 incentive awards of \$300,000.00 to each named Plaintiff in recognition of the services they provided to
8 the class by responding to discovery, participating in the mediation process, and taking the risk of
9 stepping forward on behalf of the class. *See id.* at 694; *see also Van Vranken v. Atlantic Richfield Co.*,
10 901 F.Supp. 294 (N.D. Cal. 1995) (approving a \$50,000.00 participation award); *Cellphone*
11 *Termination Fee Cases*, 186 Cal.App.4th at 1393 (approving \$10,000 awards to each of the four (4)
12 named plaintiffs).

13 To date, Plaintiff has spent approximately 105-125 hours providing substantial support in
14 helping to secure payment to Class Members. *See* Decl. Mac Dula, ¶¶ 5-8. Plaintiff provided and
15 explained a substantial number of documents critical to helping establish important facts central to this
16 case and participated in substantial amount of informal discovery. *See id.* Payment of \$10,000.00 to
17 Plaintiff is appropriate given the risk, assistance, time required, and burden experienced in bringing and
18 resolving this case, especially since the amount was identified in the Notice of Settlement and no
19 objections to it have been received. *See West v. Circle K Stores, Inc.*, 2006 U.S. Dist. LEXIS 76558,
20 *7-*8, *12, *27 (E.D. Cal. 2006) (awarding a \$15,000 representative enhancement where 10,000 class
21 members were to receive a gross award of approximately \$500 each from \$5,000,000 settlement); *Dent*
22 *v. ITC Serv. Group*, 2013 U.S. Dist. LEXIS 139359, *9-*10, *15-*16 (D. Nev. 2013) (awarding a
23 \$15,000 representative enhancement out of a \$150,000 settlement for approximately 530 class
24 members).

25 **d. The Court Should Approve the Payment of Settlement Administrator Costs**

26 Since being preliminarily approved as the Settlement Administrator, ILYM Group, Inc., has
27 carried out its duties as set forth in the Court's order and the Agreement. *See generally* *See* Decl.
28 Polites. Under the Agreement, a maximum of \$20,000 was set aside for potential Settlement
Administrator Costs. ILYM Group, Inc.'s final costs are \$8,750.00, well under the potential maximum

1 Class Members were given notice of. Plaintiff requests that the Court approve payment to the
2 Settlement Administrator in the amount of \$8,750.00 to compensate it for the costs of administration as
3 part of the final order approving the Settlement.

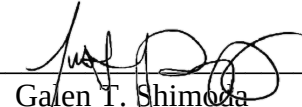
4 **VIII. CONCLUSION**

5 For all of the foregoing reasons, Plaintiff respectfully requests that this Court certify the class for
6 settlement purposes; grant final approval of the proposed settlement, including the Enhancement
7 Payment, the payment to the LWDA under PAGA, payment of Settlement Administrator Costs, and
8 Class Counsel's application for reasonable attorneys' fees and costs; find that the Notice of Settlement,
9 and administration process satisfied Class Members' due process rights; and approve the proposed order
10 submitted concurrently herewith.

11 **Shimoda & Rodriguez Law, PC**

12
13 Dated: October 15, 2024

By: _____


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Justin P. Rodriguez
Renald Konini
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Attorneys for Plaintiff MARNELLE MAC DULA
individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

MARNELLE MAC DULA, individually and
on behalf of all other similarly situated
employees,

Plaintiff,

vs.

IDEXX DISTRIBUTION, INC., a Delaware
Corporation; and DOES 1 to 100, inclusive,
Defendants.

Case No. 23CV005044

*Assigned for All Purposes to Hon. Lauri A. Damrell,
Department 22*

CLASS ACTION

**DECLARATION OF JUSTIN P. RODRIGUEZ IN
SUPPORT OF PLAINTIFF'S MOTION FOR
FINAL APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT**

Date: November 8, 2024

Time: 9:00 a.m.

Dept.: 22

Judge: Hon. Lauri A. Damrell

Filed: July 19, 2023

FAC Filed: May 14, 2024

Trial Date: None Set

1 I, Justin P. Rodriguez, declare:

2 1. I am an attorney at law duly admitted to practice before all the courts of the State of
3 California and an attorney of record for Plaintiff Marnelle Mac Dula (“Plaintiff”) herein. I am making
4 this declaration on behalf of the named Plaintiff, the putative class members, and in support of
5 Plaintiff’s Motion for Final Approval of Class Action and PAGA Settlement (“Motion”). A true and
6 correct copy of the Joint Stipulation Regarding Class Action and PAGA Settlement and Release
7 (“Agreement”) in this matter is filed with this Motion as Exhibit A.

8 2. Pursuant to the Rule 2.99.05 of the Local Rules for the Superior Court of California,
9 County of Sacramento, I have reviewed the Court’s class action and PAGA settlement checklist and
10 believe I have prepared the moving papers in compliance with the checklist as well as the California
11 Rules of Court.

12 3. This case was brought as a wage and hour class action based on Plaintiff’s contention
13 that Defendant IDEXX Distribution, Inc. (“Defendant”), violated California law by failing to pay
14 overtime wages, failing to pay minimum wages, committing meal and rest period violations, failing to
15 provide accurate wage statements, failing to pay all final wages, failing to reimburse expenses, failure
16 to pay all sick leave wages owed, and engaging in unfair competition. Plaintiff is the only named
17 representative in this matter. From our initial investigations of Plaintiff’s claims and documents, we
18 believed these claims had merit and could be maintained as a class action. We filed a class action
19 complaint on or about July 19, 2023. Prior to administrative remedies on claims under the Private
20 Attorney’s General Act (“PAGA”) being fully exhausted, Defendant removed this case to the United
21 States District Court for the Eastern District of California on August 25, 2023, Case No. 2:23-cv-
22 01819-MCE-CKD. Extensive meet and confer discussions regarding the sufficiency of the pleadings
23 and the class claims under the Federal Rules of Civil Procedure took place. However, prior to any
24 hearing regarding the sufficiency of the pleadings, we filed a motion to remand the class case back to
25 state court.

26 4. At or around the same time the class complaint was filed, Plaintiff also filed a notice
27 with the Labor and Workforce Development Agency (“LWDA”) to exhaust administrative remedies on
28 the PAGA claims. The notice set forth the facts and theories of liability under the PAGA, which

1 include the same facts asserted in the class action complaint and the separately filed PAGA complaint.
2 A true and correct copy of the notice filed with the LWDA is being filed with this Motion as Exhibit C.
3 A copy of the notice was also sent to Defendant via certified mail and the \$75.00 filing fee was
4 remitted to the LWDA at that time. There was no response by the LWDA regarding its intent to
5 investigate the claims alleged in Plaintiff's notice for more than 65 days. As such, Plaintiff became
6 authorized to commence a civil action under the PAGA. Because the class complaint was already
7 removed to federal court by the time administrative exhaustion had been completed, Plaintiff filed a
8 separate PAGA only complaint in Sacramento County Superior Court, Case No. 23CV010650, on or
9 about October 26, 2023. A copy of this filed complaint has been uploaded to the LWDA. This caused
10 further, substantial meet and confer discussions with Defendant's counsel about the propriety of
11 Plaintiff having a separately filed PAGA only complaint from the removed class action complaint and
12 challenging Plaintiff's ability to maintain the separate action via demurrer or otherwise. Ultimately, the
13 parties agreed to mediate the claims raised in the class action and the separately filed PAGA only action
14 before any hearings or rulings on the issues regarding remand or the various challenges asserted by
15 Defendant took place. After resolving all claims at mediation, the parties stipulated to the class
16 complaint being remanded to State Court and amending the class complaint to include the PAGA
17 claims, effectively consolidating all claims and allegations into this case for a more efficient review and
18 approval procedure of the proposed settlement. This case was remanded on April 9, 2024, and a
19 consolidated First Amended Complaint was filed in this action on May 14, 2024. A true and correct
20 copy of Plaintiff's operative Complaint is filed with this Motion as Exhibit B. A copy of the
21 consolidated complaint has also been uploaded to the LWDA.

22 5. The claims brought in this litigation were based allegations that Defendant violated
23 California law by 1) failing to correctly incorporate the value of non-discretionary lab bonuses into
24 class members' regular rates of pay for the purpose of paying overtime premiums, sick time, and
25 supplemental COVID paid sick time, 2) failing to incorporate the value of shift differentials into class
26 members' regular rates of pay for the purpose of paying sick leave, meal and rest period premiums, and
27 supplemental COVID paid sick time, 3) failing to pay class members for all time spent entering the
28 building, going through security, getting to the lab, and clocking in for their shift, 4) pressuring class

1 members to work off the clock to avoid overtime, 5) failing to provide all meal periods, including
2 second meal periods, 6) failing to provide all rest periods, including third rest periods, and 7) requiring
3 class members to download and use applications on their personal cellphones without reimbursing
4 them. The waiting time penalty, wage statement violation, and unfair competition claims also derive
5 from these violations.

6 6. Currently, there is no date set for a motion to certify the class and there is no trial date.

7 7. Defendant is represented in this matter by Alexandra M. Asterlin and Kyle A. Wende of
8 Ogletree, Deakins, Nash, Smoak & Stewart, P.C. As set forth more fully below, Defendant has
9 contested the merits of this case, the suitability of the case for class action or representative treatment,
10 the manageability of the case at trial, and Plaintiff's ability to prove a violation in each pay period for
11 each employee among other defenses and contentions they made challenging the propriety of this
12 action. Defendant further contended, even assuming there was a finding supporting the imposition of
13 PAGA penalties, that the Court would likely exercise its discretion to substantially reduce any such
14 penalties owed based on evidence of good faith attempts to comply with California Labor Code
15 obligations by Defendant. Notwithstanding its agreement to settle this matter, Defendant believe the
16 practices Plaintiff is contending are unlawful either do not exist or, to the extent they do exist, fully
17 comply with all state and federal employment laws with respect to Plaintiff and Class Members. Also,
18 Defendant has contended that this matter is not appropriate for class certification outside of this
19 proposed class settlement.

20 8. Based on the expected testimony from Plaintiff and Class Members, a review of
21 Defendant's policies and procedures and other documents relating to the alleged claims, information on
22 the number of Class Members, Class Members' total workweeks within the Class Period, pay periods
23 within the one (1) year penalty statute of limitations, the number of Class Members who separated
24 employment within three (3) years of this case being filed, and a representative sample of Class
25 Members' time and payroll data, the scope of the potential damages to Plaintiff and Class Members in
26 light of the claims alleged, the uncertainty in the law with regard to certification, and the negotiations
27 that have taken place, I am convinced that the proposed settlement is in the best interest of the class.
28 The length and risks of trial and other normal perils of litigation that impact the value of the claims were

1 also considered and weighed in reaching the Agreement. In addition, I carefully considered the prospect
2 of potential class certification issues as well as the uncertainty of class certification, the difficulties of
3 complex litigation, and the lengthy process of establishing specific damages and various possible delays
4 and appeals in agreeing to the proposed settlement. I further considered the fact that penalties under the
5 PAGA could be substantially cut at the discretion of the Court even if Plaintiff was successful on
6 proving those claims and there was risk that a Court could find no willfulness in the failure to pay wages
7 at separation, which would eliminate the value of the waiting time penalty claim entirely. Overall, I
8 believe it is more beneficial to secure a guaranteed benefit to the class now rather than to proceed with
9 litigation and potentially obtain zero funds to the class due to legal or factual issues in the case.

10 9. My office, including my partner, Galen T. Shimoda, my former associate, Brittany V.
11 Berzin, my associate, Renald Konini, our paralegal, and myself, along with Plaintiff's assistance,
12 thoroughly investigated the merits of the claims and potential damages for such claims. Prior to
13 agreeing to mediation, our office drafted written discovery and related protective orders and *Belaire*
14 notice drafts that we were ready to serve on Defendants after they filed an Answer. However, the
15 removal to federal court delayed this effort and, ultimately, the parties agreed to mediation and informal
16 discovery before the formal written discovery could be served. The parties engaged in informal
17 discovery and exchange of documents that included, but was not limited to, a 20% representative
18 sampling of employee data, covering time records and payroll data, and relevant handbooks, bulletins,
19 and memoranda containing Defendant's policies for the entirety of the statute of limitations applicable to
20 the alleged claims. Spreadsheets produced by Defendant included more than 116,000 rows of data
21 covering approximately 6,934 pay periods for the 112 individuals within the sample group. Review of
22 this data included comparing the time records and payroll data with approximately 59 unique pay codes
23 and Defendant's wage and hour policies, which evolved over the course of the Class Period. The
24 informal discovery covered all aspects of the asserted claims, including certification issues, merits
25 issues, damages, the scope and configuration of Class Members, the content and implementation of the
26 wage and hour policies at issue, issues relating to manageability concerns at trial, among other relevant
27 areas. From this production we were able to determine information critical to a reliable damages
28 analysis including, but not limited to, shifts eligible for meal and rest periods and the number of

1 potential shifts that may correspond to liability under our theories of liability, the average number of
2 workweeks and pay periods that had potential violations based on the asserted claims, and the frequency
3 with which violations occurred in a given week and/or pay period. This information allowed my office
4 to assess both liability and damages and create an accurate damages model. Plaintiff assisted in all
5 aspects of this litigation including providing factual information relating to Plaintiff's and Class
6 Members' employment conditions, providing a substantial number of documents, witnesses to interview,
7 and answering questions regarding Defendant's factual contentions in this matter. This informal
8 discovery directly related to our ability to maintain this case as a class action and our ability to obtain a
9 favorable settlement for the class.

10 10. Throughout this litigation our office had numerous communications with Defendant's
11 counsel discussing our respective positions. The parties engaged in mediation on March 27, 2024, using
12 an experienced mediator, Steven G. Mehta, Esq. It was only after approximately eleven (11) months of
13 extensive, arm's length negotiations that the parties were able to reach a settlement, which only occurred
14 after the full-day mediation. The negotiations were at all times contentious and adversarial, though still
15 professional in nature.

16 11. The following represents the potential maximum recovery for each of Plaintiff's claims
17 based on my office's analysis of Defendant's relevant policies and the sample data produced by
18 Defendant. There were 63,741 workweeks in the Class Period, 11,775 pay periods within the one (1)
19 year penalty statute of limitations period, an average hourly rate of \$26.03, and an average overtime
20 rate of \$39.05:

- 21 a) Minimum Wages: This claim is based on allegations that Defendant failed to pay
22 Plaintiff and Class Members for all time spent entering the building, going through
23 security, getting to the lab, and clocking in for their shift, as well as for time worked off
24 the clock at the end of a shift. The maximum damages for this claim are approximately
25 \$430,251.75. This amount was calculated based on the upper range of estimated time it
26 took Plaintiff and Class Members to complete a security check-in process and travel to
27 their assigned work areas and time spent working off the clock at the end of their shift,
28 which was approximately thirty (30) minutes per week. Based on the weighted average

1 minimum wage rate of \$13.50 during the Class Period, this equals approximately
2 \$430,251.75 in unpaid minimum wages. Because we also assumed that all unpaid time
3 qualified for overtime, only liquidated damages was being claimed to avoid double
4 recovery of substantive wage loss. Defendant heavily disputed this theory of liability.
5 First, Defendant contended it did not maintain any security protocols or check-in
6 procedures requiring Plaintiff and similarly situated employees to wait in lines and be
7 inspected upon arriving or leaving work. Instead, Defendant contended that, at most, the
8 office buildings where Plaintiff and similarly situated employees worked were owned
9 and/or operated by third parties who utilized a badge identification procedure that took
10 no additional time to complete. Defendant contended that Plaintiff and similarly
11 situated employees simply showed their badge as they walked by the building's security
12 desk on their way to their work areas. Second, Defendant contended it maintained, and
13 strictly enforced, policies against working off-the-clock and that overtime was regularly
14 paid, undermining any contention that there was any practice or policy promoting off-
15 the-clock work. These contentions presented substantial risk to both liability and
16 damages. The Court may find that a third party requiring a security check and/or out
17 procedure does not satisfy the control element for hours worked as set forth in *Frlekin v.*
18 *Apple Inc.*, 8 Cal.5th 1038 (2020). To the extent that the Court did find sufficient
19 control, Plaintiff's calculations provide the upper range of potential exposure, estimating
20 30 minutes per week for every week for every Class Member. Plaintiff's own
21 investigations have found that the amount of time at issue ranged from five (5) minutes
22 to thirty (30) minutes depending on the week. To the extent that Defendants are able to
23 demonstrate that the process did not require anything more than showing a badge as an
24 employee walked past the security desk, it is highly unlikely that Plaintiff will be able to
25 establish the upper or mid-range of exposure. Finally, a good faith dispute would
26 eliminate liability for liquidated damages for unpaid minimum wages. See Cal. Lab.
27 Code § 1194.2(b). Given the factual and legal disputes, it is likely that a Court would
28

find a good faith dispute, which entirely wipes out a claim for liquidated damages. *See id.* Thus, I believe it is more realistic that there would be no recovery for this claim.

b) Unpaid Overtime (Off-the-Clock): The off-the-clock theory of overtime liability is based on the same factual allegations that form the basis for the minimum wage claim, which are stated above. The maximum damages for this claim are approximately \$1,244,383.67 ([63,741 workweeks x 0.5 hour off-the-clock per week] x \$39.05 average overtime rate). Plaintiff has assumed that all unpaid hours qualified as overtime. This amount does not take into account any potential risks with respect to Plaintiff proving the merits or damages. Because this theory of liability is based on the same facts supporting the minimum wage claims, it is subject to the same risks identified above. As noted above, there is a substantial risk that any time spent during the check in process would not be compensable because there was not sufficient employer control. Additionally, the range of unpaid time varied between five (5) to thirty (30) minutes per week. I believe a more realistic range of recovery for this theory of liability is between \$0 to \$423,090.45, which is based on a more likely ten (10) minutes of unpaid time per week assuming Plaintiff can establish liability.

Unpaid Overtime (Regular Rate of Pay): This theory of liability for unpaid overtime is based on allegations that Defendant failed to incorporate the value of bonuses when calculating the regular rate of pay for overtime. The maximum damages for this claim are approximately \$ 1,567,741.68. Based on Class Members' time and payroll data, approximately 86.3% of the approximately 31,871.5 total pay periods during the Class Period included overtime with a bonus earned over the same period. Based on the average amount of a bonus attributable to each pay period (\$223.11), the average amount of total hours worked per pay period (83.06), the average amount of overtime (2.15) and double time hours (0.91) worked per affected pay period, Plaintiff calculated the average amount of overtime owed per affected pay period was \$30.87 and the average amount of double time owed per affected pay period was approximately \$26.13. At approximately 27,504.24 affected pay periods, this equals \$1,567,741.68 total unpaid

wages $([30.87+26.13] \times 27,504.24)$. This amount does not take into account any potential risks with respect to Plaintiff proving the merits or damages, which was heavily disputed. For example, Defendant contended that there was no need to separately calculate any overtime owed as a result of the bonus payments because they were discretionary in nature. Defendant also contended that even if they were not considered discretionary, the manner in which the bonuses were calculated already accounted for overtime and other premium payments because they were based on a percentage of all earnings, including overtime and other similar premium wages. To the extent the Court agreed with either of these factual contentions, the value of this claim would be entirely eliminated. *See* 29 C.F.R. § 778.208 (discretionary bonuses need not be included in the regular rate); 29 C.F.R. § 778.210 (where bonus calculated as a percentage of total income that already includes overtime, no separate payment of overtime is required). Over the course of the Class Period there were also several changes to how the bonus was described and characterized in communications towards Class Members. More recent communications on the nature of the bonus and its calculations started to track the percentage of total income method identified in the federal regulations, creating a higher risk for the claim later in the Class Period. Taking these risks into account factors into account, I believe a more realistic range of recovery for this theory of liability is between \$391,935.42 to \$1,175,806.26 (25% to 75% reduction based on risk).

- c) Meal Periods: This claim is based on allegations that due to work demands Class Members were unable to begin their meal periods before the end of their fifth hour of work or were unable to take a full thirty (30) minute meal period due to requiring the donning and doffing of personal protective equipment and handwashing protocols whenever employees returned or left their workstations. The maximum damages for this claim are approximately \$2,240,487.91. This amount was calculated based on an average hourly rate of \$26.03, an average of 4.84 shifts per week, and a violation rate of approximately 27.9% per shift based on Defendant's time records. This amount does

not take into account any potential risks with respect to Plaintiff proving the merits or damages. Defendant contended that time clocks and time recording practices allowed Plaintiff and similarly situated employees to clock out for lunches after taking off any personal protective equipment and clock back in before putting any back personal protective equipment back on. Thus, any such time would have been clocked in. Similarly, the handwashing stations were located such that the handwashing protocols could be completed while clocked in. This was a substantial risk to the claims because, outside of Plaintiff's contentions that the donning/doffing and handwashing protocol requirements, Defendant's meal and rest period policy was facially valid. While Plaintiff can utilize the rebuttable presumption of meal period violations based on the time records, Plaintiff would still have the burden to establish a theory of liability amenable to class treatment. Thus, the dispute on the location of the time clocks and the order in which the donning/doffing occurred have a substantial impact on the claim. Taking these factors into account, a more realistic range of recovery for this claim is between \$560,121.98 to \$1,120,243.96 (50% to 75% reduction based on risk).

- d) Rest Breaks: This claim was based on the same allegations as the meal period claim. However, Plaintiff contended that Class members were not provided with lawful rest periods approximately 50% of the time. Based on 4.84 shifts per week, 63,741 total weeks during the Class Period, and an average \$26.03 hourly rate, this equates to a maximum exposure of approximately \$4,015,211.32. This does not account for the risk associated with this claim. Because this claim is based on the same factual basis as the meal period claims, it is also subject to the same risks as detailed above. However, there is no requirement that an employer keep records of rest periods, so this claim does not benefit from any presumptive violation based on time records under the law like meal period claims do. This presented an even greater risk for Plaintiff's rest period claims than the meal period claims. Taking these factors into account, I believe a more realistic range of recovery for this claim would be between \$401,521.13 to \$1,003,802.83 (75% to 90% reduction based on risk).

1 e) Sick Leave: This claim was based on allegations that Defendant failed to correctly
2 calculate the regular rate of pay for sick leave, because it failed to incorporate the value
3 of bonuses and shift differentials when calculating the regular rate of pay for premium
4 purposes such as sick leave pay. The maximum damages for this claim are
5 approximately \$454,116.24. Based on the Class members' time and payroll data,
6 approximately 44.7% of all pay periods included a form of sick leave or PTO that we
7 contended was required to be paid at the regular rate of pay as well as shift differentials
8 and/or bonuses earned over the same period. Plaintiff calculated the average regular rate
9 of pay for affected pay periods by taking the total earnings and dividing by the total
10 hours worked. This equated to an average regular rate of approximately \$28.72 in each
11 affected pay period. There was also an average of approximately 11.85 sick leave
12 and/or PTO hours paid in each of the affected pay period. Based on the difference
13 between the average hourly rate and the average regular rate of pay for the affected pay
14 periods, this equated to a difference of approximately \$31.88 owed per pay period. At
15 44.7% of all pay periods affected, this equated to \$454,116.27 owed in total. These
16 amounts do not take into account any potential risks with respect to Plaintiff proving the
17 merits or damages, which was heavily disputed. First, it was not clear from the payroll
18 records what percentage of PTO was used for qualifying sick leave purposes as opposed
19 to reasons other than qualifying sick leave. To ensure Plaintiff did not underestimate the
20 amount of potential damages for this claim, Plaintiff assumed that any and all instances
21 of PTO used would have been subject to the regular rate requirements of California
22 Labor Code section 245 *et seq.* Limiting the scope of this claim to those instances that
23 were clearly for sick leave related issues requiring pay at the regular rate (*i.e.* COVID
24 leave), the percentage of affected pay periods would drop to 0.8%. Additionally, any
25 bonus payments forming the basis for the regular rate calculation were still subject to the
26 risk of being found to be discretionary and/or already including the sick leave earnings
27 when calculating the percentage of the bonus, as described above. This presented a
28 substantial risk to this claim since these types of payments were the most frequent and of

the highest amounts paid. Taking these factors into account, I believe a more realistic range of recovery for this claim is between \$113,529.06 to \$227,058.12 (50% to 75% reduction based on risk).

f) Reimbursement: This claim was based on Plaintiff's contention that she and Class Members were required to track their hours and to clock in and out using applications on their personal cell phone. The maximum exposure for this claim is \$147,094.62, which is based on a monthly cell phone bill of approximately \$100 and 10% work usage rate, which equates to approximately \$2.31 owed per week. This amount does not take into account any potential risks associated with this claim. Defendant heavily disputed whether use of personal cell phones was required given the presence of time clocks at several different locations that were available for employees to use. Defendant contended that the use of any applications on a personal device was, at most, a personal choice of convenience by Class Members. Furthermore, it is unlikely that Class Members all had their own standalone cell phone plans as opposed to being billed as additional lines on a pre-existing plan. In my experience there has always been a range of individuals whose cell phone plans are \$30-\$60 per month as additional lines on a pre-existing plan. Thus, it is unlikely that the full amount of damages Plaintiff calculated would be established even if Plaintiff was successful in certifying the class and establishing liability. Based on these risks, a more realistic range of recovery for this claim would be between \$22,064.19 to \$73,547.31 (50% to 85% reduction based on risk).

g) Wage Statement Violations: This claim is derivative of Plaintiff's overtime, minimum wage, meal and rest period claims, and sick leave claims. The maximum exposure for this claim is \$588,750, which is calculated based on an initial violation of \$50 per pay period per employee and assumes a violation in each of the 11,775 pay periods within the one (1) year penalty statute of limitations. Based on our research, we did not find any prior Labor Commissioner or court decisions that stated Defendant's practices and/or policies were improper. As such, a "subsequent violation" may not be found for

penalty calculation purposes and the exposure analysis was based on an “initial violation” valuation being adopted by any fact finder if this matter went to trial. See *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207-1209 (2008). This amount does not take into account the potential risks associated with this claim. Because this claim is derivative of Plaintiff’s other claims, the same risks identified above for Plaintiff’s minimum wages, overtime, meal period, rest period, and sick leave claims apply here as well, substantially affecting the potential value of this claim. Furthermore, under the recent California Supreme Court case, *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal.5th 1056 (2024), employers now have a good faith dispute defense against wage statement claims. Given the factual and legal disputes, I believe it is likely that a Court would find a good faith dispute. Thus, I believe it is more realistic that there would be no recovery for this claim.

- h) Waiting Time: This claim is derivative of the failure to pay minimum wages, failure to pay overtime, failure to provide meal and rest periods, and paid sick leave. The maximum damages for this claim based on the class data is \$1,205,709.60, which was based on the \$26.03 average hourly rate, 193 former employees, and assuming each employee had at least a regular eight (8) hour day as part of their typical work schedule. The penalty was calculated using a full 30 days for each formerly employed Class Member. This amount does not take into account any potential risks associated with the claim. Because it is derivative of Plaintiff’s claims asserted above, it carries all the same risks. Similar to the liquidated damages for minimum wages and wage statement violations, waiting time penalties are subject to a good faith dispute defense. See *Diaz v. Grill Concepts Servs., Inc.*, 23 Cal.App.5th 859, 868 (2018). For the same reasons as stated above, it is likely that a good faith dispute would be found and the value associated with this claim would be eliminated entirely.
- i) PAGA: This claim is derivative of the Labor Code violations identified above and would be subject to all the same risks as the underlying claims it is based on. Additionally, based on our research, we did not find any prior Labor Commissioner or court decisions

1 that stated Defendant's practices and/or policies were improper. As such, a "subsequent
2 violation" may not be found for penalty calculation purposes, and the exposure analysis
3 here is based on an "initial violation" valuation being adopted by any fact finder if this
4 matter went to trial. See *Amaral*, 163 Cal.App.4th at 1207-1209. Based on Class
5 Members' payroll data, the maximum exposure for this claim is \$7,466,708.90. As was
6 calculated per violation as follows:

- 7 • *Minimum Wages*: \$1,177,500 (11,775 pay periods x default \$100 per pay
8 period per Labor Code section 2699);
- 9 • *Overtime*: \$588,750 (11,775 pay periods x \$50 per pay period per Labor
10 Code section 558);
- 11 • *Meal Periods*: \$588,750 (11,775 pay periods x \$50 per pay period per Labor
12 Code section 558);
- 13 • *Rest Periods*: \$1,177,500 (11,775 pay periods x default \$100 per pay period
14 per Labor Code section 2699(f));
- 15 • *Wage Statements*: \$1,177,500 (11,775 pay periods x default \$100 per pay
16 period per Labor Code section 2699(f));
- 17 • *Final Wages*: \$855,866.40 (137 former employees within the penalty statute
18 of limitations. Calculated the same as waiting time penalties pursuant to
19 Labor Code section 256 [\$26.03 average hourly rate x 8-hour day x 30 days =
20 \$6,247.20. 137 former employees x \$6,247.20 = \$855,866.40]);
- 21 • *Failure to Maintain Accurate Records*: \$197,000 (\$500 x 394 employees
22 within the penalty statute of limitations per Labor Code section 1174.5);
- 23 • *Sick Leave*: \$526,342.50 (Per pay period violation rate of 44.7% x 11,775
24 pay periods x default \$100 per pay period per Labor Code section 2699(f));
25 and
- 26 • *Reimbursement*: \$1,177,500 (11,775 pay periods x default \$100 per pay
27 period per Labor Code section 2699(f)).
28

1 These amounts do not take into account any of the risks in proving the merits of the
2 underlying claims that the PAGA damages are based on. The identified risks would
3 likely eliminate several of the claims (*e.g.* minimum wages & waiting time penalties),
4 and/or substantially reduce the number of pay periods at issue due to the inability to
5 prove the claims in every pay period for every employee. The identified risks may also
6 cause the Court to deviate from the maximum penalties because the violation rates are
7 so low or the substantive loss is so small in comparison to the maximum civil penalty
8 (*e.g.* meal periods & reimbursement). In addition to the risks on the merits, I believe
9 the Court may exercise its discretion to reduce PAGA penalties in this case because a
10 majority of the civil penalties sought would be in addition to amounts owed for
11 substantive violations, some of the violations are due to technical non-compliance with
12 the Labor Code, such as derivative wage statement violations, and Defendant produced
13 legally compliant policies among other documents that a Court may find demonstrates a
14 good faith attempt at compliance. Courts are statutorily authorized to use discretion to
15 reduce penalties and the range of discretion used varies substantially. *See Thurman v.*
16 *Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (30% reduction);
17 *Fleming v. Covidien, Inc.*, 2011 U.S. DIST. LEXIS 154590, *9 (C.D. Cal. 2011) (82%
18 reduction). The 82% reduction equates to roughly \$9-\$18 worth of civil penalties per
19 pay period per employee depending on the total potential value of the civil penalty (*i.e.*
20 \$50-\$100), which is more in line with actual awards based on my experience and
21 review of awards in other cases. Thus, even if using the maximum values possible and
22 setting aside risks of proving the claims on the merits, the total exposure may be cut to
23 approximately \$1,344,007.60 (82% reduction) to \$5,447,042.50 (30%) or lower. It is
24 important to note that this discretionary reduction is completely separate and in addition
25 to any risks on the merits. Given the substantial risks associated with the claims, I
26 believe the amount that might ultimately be awarded under this claim would be
27 significantly lower than the maximum civil penalties available. I believe allocating
28 \$40,000.00 to the PAGA claims in this case is appropriate, especially in light of

1 amounts that Courts have approved as reasonable valuations in other cases. *See*
2 *Nordstrom Com. Cases*, 186 Cal.App.4th 576, 589 (2010) (approving \$0 allocation to
3 the resolution of PAGA claims based on their being disputed and being part of a class
4 settlement which was evaluated based on the terms of the agreement overall);
5 *Junkersfeld v. Med. Staffing Sols., Inc.*, 2022 WL 2318173, *8 n.2 (E.D. Cal. 2022)
6 (collecting cases with PAGA settlement values ranging from .037%-1%); *Jennings v.*
7 *Open Door Marketing, LLC*, 2018 WL 4773057, *9 (N.D. Cal. 2018) (approving
8 settlement of PAGA claims at 0.6% of total estimated value due to risk of no recovery);
9 *Ruch v. AM Retail Grp., Inc.*, 2016 WL 5462451, *7 (N.D. Cal. 2016) (approving
10 \$10,000 PAGA settlement allocation where total PAGA penalty exposure was
11 approximately \$5.2 million, or 0.2% of total estimated value); *Davis v. Cox Commc 'ns*
12 *California, LLC*, 2017 U.S. Dist. LEXIS 63514, *1 (S.D. Cal. 2017) (preliminarily
13 approving \$4,000 PAGA allocation in \$275,000 settlement); *Moore v. Fitness Int'l,*
14 *LLC*, 2014 U.S. Dist. LEXIS 8358, *5 (S.D. Cal. 2014) (approving \$2,500 PAGA
15 allocation when attorneys' fees award alone amounted to \$200,000); *Jack v. Hartford*
16 *Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, *6 (S.D. Cal. 2011) (approving \$3,000
17 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*, 2010
18 U.S. Dist. LEXIS 53416, *2 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation in
19 \$1,000,000 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, *9
20 (N.D. Cal. 2009) (approving \$1,500 PAGA allocation in \$1,026,000 settlement); *Syed*
21 *v. M-I, L.L.C.*, 2017 U.S. Dist. LEXIS 24880, *34-35 (E.D. Cal. 2017) (approving
22 \$100,000 PAGA allocation in a \$3,950,000 settlement even though PAGA exposure
23 was calculated at \$53,600,000, or 0.2% of total estimated value); *Garcia v. Gordon*
24 *Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, *7 (E.D. Cal. 2012) (approving \$10,000
25 PAGA allocation in a \$3,700,000 settlement); *Franco v. Ruiz Food Prod., Inc.*, 2012
26 WL 5941801, *14 (E.D. Cal. 2012) (\$10,000 in PAGA payment from \$2,500,000
27 settlement fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, *1 (N.D.
28

Cal. 2011) (approving PAGA settlement payment of \$7,500 to the LWDA out of \$6.9 million common-fund settlement).

12. In summary, Plaintiff's gross recovery of \$1,365,000.00 under the Agreement equals approximately 7.1% of the maximum value of the claims in this matter (\$19,360,455.69) and between 14.4% and 48.2% of the more realistic range of recovery (\$2,833,279.38 to \$9,470,591.43). After deducting from the Gross Settlement Amount the proposed allocations for attorneys' fees and costs, any Enhancement Payment to the Class Representative, Settlement Administrator Costs, and the PAGA Payment, the net recovery under the Agreement, \$814,234.54, represents approximately 4.2% of the maximum value of the claims in this matter. The net recovery also represents between 8.6% and 28.7% of the more realistic range of recovery. After taking into account the final number of Class Members and workweek adjustments that occurred during the settlement administration notice process, the average net value per class member is approximately \$1,421 and is the equivalent of approximately \$11.00 per workweek. I believe the Agreement is fair, reasonable, and adequate, representing a reasonable compromise of claims based on the legal and factual disputes in this case. The ability to secure a guaranteed settlement now and ensure Class Members receive some compensation, rather than proceed to further litigation and potentially recover nothing, was a motivating factor in reaching this Agreement. To the extent final approval is granted, we will file a notice of entry of judgement regarding final approval and upload a filed copy to the webpage created by the Settlement Administrator for effectuating notice to Class Members.

13. In agreeing to represent Plaintiff and take on this case for all Class Members, our office agreed to take this case on a contingency basis, meaning that we would take a percentage of any settlement or judgment should we recover a monetary amount. We took a risk that we would not recover any money in this matter if we were unsuccessful at trial. We also took on the risk that the case may be subject to an unfavorable summary judgment ruling. However, we believe it is important to make sure employees are able to find affordable representation in order to ensure that employers are complying with all their legal obligations towards employees and paying employees all their hard-earned wages. We rely on attorneys' fee awards in order to continue working to ensure California wage and hour protections are enforced. Recovery of our full lodestar plus an appropriate multiplier is

1 necessary to compensate for the risk undertaken. Otherwise, we could not continue to represent
2 employees who are denied wages, but whose cases may be time-consuming and difficult to prove.
3 There have been many class cases we have litigated where ultimately, we get zero for our time because
4 we are unable to meet certification requirements or the company becomes financially insolvent.
5 Additionally, there are numerous occasions, where the fee recovered actually results in a negative
6 multiplier of our lodestar as the amount of work required to obtain a good result for the class is usually
7 more than the 35% common fund request we make to compensate our time. Over the past year and a
8 half, there has been approximately one (1) case where the fee award in a class case resulted in a
9 positive multiplier. All other cases have resulted in a negative multiplier.

10 14. I am a shareholder at Shimoda & Rodriguez Law, PC. My law firm is a boutique law
11 practice that focuses primarily on employment litigation, emphasizing wage and hour litigation. I
12 attended and graduated college from U.C. Davis, receiving a Bachelor of Arts in Philosophy and the
13 Departmental Citation for Academic Achievement in the Philosophy program. I was one of only two
14 recipients of this award out of the entire Philosophy Department. After U.C. Davis, I attended the
15 University of the Pacific, McGeorge School of Law, graduating in 2011 and receiving a Juris
16 Doctorate. I graduated in the top 20% of my class and was a member of the Traynor Honor Society at
17 McGeorge. Other academic achievements of mine include receiving a Witkin Award (top grade) in my
18 legal research and writing course, a Witkin Award in complex civil litigation, being a member of the
19 Dean's List from 2008 to 2011, being a Legislative Staff Writer for the *McGeorge Law Review* from
20 2009–2010, being an Associate Comment Editor for the *Pacific McGeorge Global Business &*
21 *Development Law Journal* from 2010–2011, and being selected as a Sacramento County Bar
22 Association Diversity Fellow in 2009. I was also a member of the Employment and Labor Law Society
23 and an officer for the Latino Law Students Association from 2009 to 2010.

24 15. I have been practicing law since 2011. From 2011 to 2016, I worked with the Shimoda
25 Law Corp. as an Associate. I became a Shareholder/Partner in the firm in 2017. Shimoda Law Corp.
26 became Shimoda & Rodriguez Law, PC, in 2022. Since 2017, I have received an AV Preeminent
27 rating from Martindale-Hubbell for my legal ability and ethical standards. From 2018 to 2023, I was
28 recognized as a Super Lawyer (Rising Star). From 2024 to present of have been recognized as a Super

1 Lawyer. I have been a panel speaker and presented a number of seminars covering issues in wage and
2 hour litigation in general and complex class and PAGA litigation in particular. These engagements
3 include the following: (1) *Epic Systems*, PAGA, and the Future of Employment Arbitration in
4 California (Sacramento County Bar Assoc., Sept. 2018); (2) Class Actions and PAGA Claims (Assoc.
5 of Defense Counsel of Northern California & Nevada, Jul. 2020); (3) Mediation: The Experienced Trial
6 Lawyers Perspective (Sacramento County Bar Assoc., Sept. 2020); (4) How to Become a Pivotal Part
7 of Any Wage and Hour Practice Group (Sacramento County Bar Assoc., Mar. 2021); (5) Emerging
8 Trends and Issues Relating to Arbitration and PAGA Claims in a Post-Viking River Cruises World
9 (Sacramento County Bar Assoc., Nov. 2022). I was elected to the Sacramento County Bar Association
10 Labor and Employment Law Section's executive committee in 2019 and was the Chair of the executive
11 committee for 2022. I have also been a member of the Presiding Judge Civil Law Advisory Committee
12 for Sacramento County Superior Court since August 2020. My practice focuses on complex civil
13 litigation, including wage and hour class actions, PAGA claims, and Fair Labor Standards Act
14 ("FLSA") claims. I am actively involved in most all of the complex litigation handled by our firm.
15 Class and/or PAGA actions I have litigated or am currently litigating, including the instant case,
16 includes, but is not limited to, the following:

- 17 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 18 • *Adams-Angway v. Placer Title Company, et al.*, Case No. SCV0040845 (Placer Sup. Ct.);
- 19 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 20 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- 21 • *Aslam v. American Custom Private Security, Inc.*, Case No. STK-CV-UOE-2018-0012080
22 (San Joaquin Sup. Ct.);
- 23 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 24 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 25 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.
26 Sup. Ct.);
- 27 • *Barkhousen v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup.
28 Ct.);

- *Benak v. MDStat Urgent Care, Inc.*, Case No. 34-2015-00188181 (Sac. Sup. Ct.);
- *Bigornia v. Quest Diagnostics Clinical Laboratories, Inc., et al.*, Case No. 34-2019-00271174 (Sac. Sup. Ct.);
- *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup. Ct.);
- *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac. Sup. Ct.);
- *Castorena v. Flowmaster, Inc.*, Case No. CV18-2191 (Yolo Sup. Ct.);
- *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup. Ct.);
- *Carr, et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-00209613 (Sac. Sup. Ct.);
- *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- *Cress, et al. v. Mitsubishi Chemical Carbon Fiber and Composites, Inc.*, Case No. 34-2017-00222101 (Sac. Sup. Ct.);
- *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.);
- *Ferreyra v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup. Ct.);
- *Foye v. The Golden 1 Credit Union*, Case No. 34-2018-00235003 (Sac. Sup. Ct.);
- *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- *Garcia v. Royal Plywood Company, LLC, et al.*, Case No. 34-2017-00221627 (Sac. Sup. Ct.);
- *Gomes v. Progressive Casualty Insurance Company*, Case No. 34-2018-00241979 (Sac. Sup. Ct.);
- *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac. Sup. Ct.);

- *Gordon, et al. v. Hospice Source, LLC, et al.*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
- *Gotts v. John L. Sullivan Chevrolet, Inc.*, Case No. 34-2018-00231576 (Sac. Sup. Ct.);
- *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- *Hellum v. A1 Protective Services, LLC, et al.*, Case No. 34-2018-00234449 (Sac. Sup. Ct.);
- *Hercules v. Maximus Services, LLC, et al.*, Case No. 34-2019-00268385 (Sac. Sup. Ct.);
- *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac. Sup. Ct.);
- *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- *Insixiengmay v. Hyatt Corporation, et al.*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Nguyen v. Cardinal Health Pharmacy Services, LLC, et al.*, Case No. 2:19-cv-01939-KJM-EFB (E.D. Cal.);
- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Roberts v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac. Sup. Ct.);
- *Salas, et al. v. Joint Ventures, LLC, et al.*, Case No. 34-2018-00227493 (Sac. Sup. Ct.);
- *Salmon v. Ovarions Fanfare, L.P., et al.*, Case No. 34-2018-00244749 (Sac. Sup. Ct.) ;
- *Scarano v. J.R. Putman, Inc.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.) ;
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.); and

- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

16. The preceding list does not include those cases where, for various reasons, the case was filed as a class action and/or PAGA action, but did not maintain that status through the end of the case.

17. My partner, Galen T. Shimoda, Esq., worked with me on this matter and was critical in assisting with all aspects of the litigation of this case. Mr. Shimoda and I are some of only a handful of plaintiff attorneys located in Sacramento who handle wage and hour class actions. Mr. Shimoda attended and graduated from the University of Utah in 2000 with a B.S. in Business Management and a B.A. in Asian Studies, with a minor in Japanese language. He then attended and graduated from the University of the Pacific, McGeorge School of Law and received his J.D. degree in 2003. He graduated from McGeorge in the top 5% of his class and was a member of the Order of the Coif and Traynor Honor Society. Since graduating from McGeorge, Mr. Shimoda has authored a number of employment law articles for journals and our firm regularly publishes articles on our firm's website. Mr. Shimoda has been a regular panel speaker for the CEB (Continuing Education of the Bar) Employment Review seminars from 2014 to the present. His speaking engagements include the following: 1) Lorman Military Leave Law Speaker; 2) Restaurant Association Speaker at Annual Seminar (Los Angeles); 3) Federal Bar Association, Sacramento Chapter: 2015 Amendments to the Federal Rules of Civil Procedure (Mar. 30, 2016); 4) CEB – Employment Law Practice: 2016 Year in Review (Jan. 20, 2017); 5) CEB – Employment Law Practice: 2015 Year in Review (Jan. 22, 2016); 6) CEB – Employment Law Practice: Year in Review (2014) (Jan. 9, 2015); 7) CEB - Employment Law Practice: Year in Review (2013) (Jan. 10, 2014); 8) Sacramento County Bar Association - Class Actions from the Trenches: Real World Experiences from the Plaintiff and Defense Bar (Feb. 21, 2012); 9) Sacramento Employer Advisory Council – Wage and Hour Workshop: Going Beyond the Exemption Discussion (Apr. 7, 2016); 10) Sacramento Employer Advisory Council - Wage & Hour Panel and AB 1825 Training: Updates on California's New Wage Laws and Manager Compliance Training (Apr. 25, 2017); 11) Sacramento County Bar Association, Labor and Employment Section – PAGA Representative Litigation: Emerging Trends and Issues (May 17, 2016); 12) Sacramento Business Journal Panel – Overtime Rules (Jun. 23, 2016); 13) Association of Defense Counsel of Norther California & Nevada - Employment Law Update – Do the Math: Calculation Exposure and

1 Damages in Wage and Hour Cases (Aug. 12, 2016); 14) California Employment Lawyers Association -
2 PAGA Today and PAGA Tomorrow: Moderate-Advanced Issues In PAGA Litigation (Oct. 20, 2017);
3 15) California Employment Lawyers Association Advanced Wage and Hour Seminar – Better Know a
4 Venue Roundup (May 17, 2019). Mr. Shimoda has been AV rated by Martindale Hubbell since 2013,
5 was recognized as a Super Lawyer (Rising Star) from approximately 2009 to 2013 and was recognized
6 as a Super Lawyer from 2014 to present.

7 18. Mr. Shimoda has practiced law in California since being admitted to the State Bar in
8 2003, litigating wage and hour class actions and individual wage and hour litigation among other cases.
9 Mr. Shimoda began practicing class action law on the defense side at the firm of Orrick, Herrington &
10 Sutcliffe LLP. He then switched to plaintiff class action work in 2005. His class action experience is
11 in wage and hour law. Mr. Shimoda has litigated several class action cases in California State and
12 Federal Courts, including up to certification, settlement, preliminary and final approval, and
13 disbursement of monies, and has been found to be satisfy the adequacy requirements for class counsel.
14 Some of the class action and/or PAGA cases he is litigating and/or has litigated as lead or co-counsel
15 include the following:

- 16 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 17 • *Acosta v. Acosta Sales, LLC, et al.*, Case No. 2:11-CV-01796 (C.D. Cal.);
- 18 • *Atchley v. Blaggs Food Service, LLC*, 34-2017-0215930 (Sac. Sup. Ct.);
- 19 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 20 • *Arnall v. North American Merchandising Service Inc.*, Case No. 06AS01439 (Sac. Sup. Ct.);
- 21 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- 22 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 23 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 24 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.
25 Sup. Ct.);
- 26 • *Benak v. MDStat Urgent Care, Inc.*, No. 34-2015-00188181 (Sac. Sup. Ct.);
- 27 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup.
28 Ct.);

- 1 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup.
- 2 Ct.);
- 3 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac.
- 4 Sup. Ct.);
- 5 • *Carlos v. Abel Mendoza, Inc., et al.*, Case No. 34-2016-00195806 (Sac. Sup. Ct.);
- 6 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup.
- 7 Ct.);
- 8 • *Carr et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 9 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-
- 10 00209613 (Sac. Sup. Ct.);
- 11 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 12 • *Colbert v. American Home Craft Inc.*, Case No. 05AS05012 (Sac. Sup. Ct.);
- 13 • *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.)
- 14 • *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242
- 15 (San Joaquin Sup. Ct.);
- 16 • *Dugue v. Sierra Forever Families, et al.*, Case No. 34-2017-00210770 (Sac. Sup. Ct.);
- 17 • *Fadhl v. Siemens Healthcare Diagnostics, Inc., et al.*, Case No. 34-2017-00209518 (Sac.
- 18 Sup. Ct.);
- 19 • *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
- 20 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 21 • *Gerard v. Les Schwab Tires Center of California, Inc.*, Case No. 34-2007-300000003 (Sac.
- 22 Sup. Ct.);
- 23 • *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- 24 • *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- 25 • *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- 26 • *Hernandez et al. v. MP Nexlevel, LLC et al*, Case No. 3 :16-cv-03015-JCS (N.D. Cal.);
- 27 • *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac. Sup. Ct.);
- 28 • *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);

- *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- *James v. Language World Services, Inc., et al.*, Case No. 34-2020-00279929 (Sac. Sup. Ct.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *Koretsky v. Furniture USA, Inc.*, Case No. 34-2014-00172142 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.);
- *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac. Sup. Ct.);
- *Miller v. Leaders in Community Alternatives*, Case No. FCSO47249 (Solano Sup. Ct.);
- *Pickens v. Elica Health Centers*, Case No. 34-2016-00200382 (Sac. Sup. Ct.);
- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Rickwalt v. Direct Reconditioning, LLC, et al.*, Case No. 34-2015-00175642 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac. Sup. Ct.);
- *Rogers v. Les Scwhab Tires Center of California, Inc.*, Case No. 34-2009-00066320 (Sac. Sup. Ct.);
- *Schechter et al. v. Isys Solutions, Inc.*, Case No. RG10550517 (Alameda Sup. Ct.);
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac. Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.);
- *Williams v. Civic Development Group*, Case No. 06AS00267 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

1 19. The preceding list of cases does not include those where, for a variety of reasons, the
2 case was initially filed as a class and/or PAGA action, but did not maintain that status through the end
3 of the case.

4 20. My associate, Renald Konini, Esq., also worked with me on this case. In May 2011, Mr.
5 Konini graduated from Seton Hall University School of Law. Prior to moving to California, he
6 practiced law in New Jersey. While working for my firm, Mr. Konini has worked on a variety of
7 individual and class action cases, including those involving wage and hour claims, Private Attorney
8 General Act claims, wrongful termination claims, discrimination claims, retaliation claims, and
9 harassment claims. Mr. Konini passed the July 2016 California Bar Examination and started practicing
10 as an associate at my firm from approximately April 2019 to February 2021. He rejoined my firm in
11 September 2022. Mr. Konini has experience drafting written discovery, taking and defending
12 depositions, calculating class-wide damages, interviewing putative class members, drafting motions
13 and briefs on complex class action procedures, negotiating class and individual damages claims, and
14 communicating with opposing counsel regarding these items in navigating the litigation. Mr. Konini
15 has also worked on other class and/or PAGA wage and hour actions that my firm has filed, namely
16 *Bertelli v. Air Products and Chemicals, Inc.*, Case No. 34-2018-00236898 (Sac. Sup. Ct.), *Carr v.*
17 *Howroyd-Wright Employment Agency, Inc.*, Case No. 34-2018-00228290 (Sac. Sup. Ct.), *Gomez v.*
18 *Vander Schaaf Dairy, et al.*, Case No. STK-CV-UOE-2020-0003954 (San Joaquin Sup. Ct.), *Haggins*
19 *v. Kelly Services, Inc.*, Case No. 34-2017-00220473 (Sac. Sup. Ct.), *Hussaini v. Integrated Resources,*
20 *Inc.*, et al, Case No. 34-2021-00297152 (Sac. Sup. Ct.), *Kee, et al. v. Dr. Jeffrey A. Saladin, Dental*
21 *Corporation (D/B/A Children's Choice Pediatric Dental Care), et al.*, Case No. 34-2020-00290072
22 (Sac. Sup. Ct.), *Lear v. Raxium, Inc.*, Case No. 21CV004358 (Alameda Sup. Ct.), *Serrano v. Cool*
23 *Time, LLC*, Case No. 34-2021-00312356 (Sac. Sup. Ct.), *Grebe v. Mary Ann's Baking Co., Inc.*, Case
24 No. 34-2020-00285254-CU-OE-GDS (Sac. Sup. Ct.), *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No.
25 20CV01255 (Butte Sup. Ct.), *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac.
26 Sup. Ct.), *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac.
27 Sup. Ct.), *Pek, et al v. Varris Management, Inc.*, Case No. STK-CV-UOE-2020-3954 (San Joaquin Sup.
28

1 Ct.), *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac. Sup. Ct). Mr.
2 Konini's practice largely revolves around wage and hour matters, including class and PAGA claims.

3 21. My former associate, Brittany V. Berzin, attended and graduated college from U.C.
4 Davis, receiving a Bachelor of Arts in Psychology. Ms. Berzin received her J.D. from the University of
5 the Pacific McGeorge School of Law. Ms. Berzin joined Shimoda & Rodriguez Law, PC, as a law
6 clerk in February 2015 where she gained civil litigation experience working on individual, class action
7 and PAGA employment cases throughout law school. Ms. Berzin also participated in an employment
8 law clinic in 2015 and 2016 that helps low-income workers by providing free legal consultations,
9 advising employees of their legal remedies on a variety of matters (*e.g.*, wage and hour, discrimination,
10 harassment, California leave laws, unemployment, workers' compensation, retaliation, and wrongful
11 termination, etc.) under the supervision of an attorney, preparing wage claims, and providing
12 representation in wage claims before the California Labor Commissioner. From 2016-2017, Ms.
13 Berzin completed an externship at the Federal Public Defenders Office as a Certified Law Student
14 where Ms. Berzin obtained discovery, completed legal research, drafted motions, negotiated plea deals,
15 represented clients in a variety of hearings (*e.g.*, arraignments, motion hearings, sentencing hearings,
16 etc.), and defended a client against five misdemeanor charges in a jury trial in the United States District
17 Court for The Eastern District of California. Ms. Berzin was also a member of the nationally
18 recognized McGeorge Mock Trial Team and went on to coach a high school Mock Trial team in 2018
19 after graduating from law school. In May 2017, Ms. Berzin graduated from the University of the
20 Pacific, McGeorge School of Law with Great Distinction and was inducted into the Order of the Coif,
21 graduating in the top 10% of her class. Ms. Berzin received the Witkin Award for Academic
22 Excellence in Legal Research and Writing, Civil Procedure, Bankruptcy, and Criminal
23 Procedure. From 2020 to 2024, Ms. Berzin was recognized as a Super Lawyer (Rising Star). Ms.
24 Berzin was a member of the executive committee of the Sacramento County Bar Association Labor &
25 Employment Section since January 2020, serving as Co-Chair of the committee in 2021. Ms. Berzin
26 has over seven years of experience working on civil litigation and employment law matters. Most of
27 that experience has been specific to analyzing and litigating wage and hour claims. As an associate,
28 Ms. Berzin worked on a variety of individual, class action, and PAGA cases involving wage and hour

claims, such as failure to pay overtime, failure to pay minimum wages, failure to provide meal and rest periods, failure to pay reimbursement expenses, unlawful deductions, failure to keep accurate time records, failure to provide paid sick leave, failure to pay all wages upon separation, unfair competition, breach of contract, independent contractor misclassification, and salaried misclassifications. Some of the class action and/or PAGA cases that Ms. Berzin litigated while with our firm include the following:

- *Arosemena v. Ranchhodrai, Inc., et al.*, Case No. STK-CV-UOE-2019-15963 (San Joaquin Sup. Ct.);
- *Arroyo v. Epic Home Solar*, Case No. 34-2021-00310634 (Sac. Sup. Ct.);
- *Balli v. Brown Box Investments, Inc., et al.*, Case No. 34-2018-00232656 (Sac. Sup. Ct.);
- *Barkhousen, et al. v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup. Ct.);
- *Barrios v. American Property Management, Inc.*, Case No. 1:18-cv-00352-AWI-SKO (E.D. Cal.);
- *Callahan v. Creative Alternatives, Inc., et al.*, Case No. 2027518 (Stanislaus Sup. Ct.);
- *Collazo v. T.O.P. Marketing Group, Inc.*, Case No. 34-2022-00314092 (Sac. Sup. Ct.);
- *Cristobal v. BAT Residential Services, Inc.*, Case No. FCS056331 (Solano Sup. Ct.);
- *Coronado v. MGD, Inc.*, Case No. STK-CV-UOE-2021-893 (San Joaquin Sup. Ct.);
- *Estrada v. MAD Security Services, Inc.*, Case No. 34-2021-00300627 (Sac. Sup. Ct.);
- *Ferreyra v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup. Ct.);
- *Finance of America Wage And Hour Cases*, Case No. JCCP 5081 (Orange County Sup. Ct.);
- *Gomez, et al. v. Kleary Masonry, Inc.*, Case No. 34-2020-00278067 (Sac. Sup. Ct.);
- *Gonzalez v. Northcentral Pizza, LLC, et. al.*, Case No. 34-2019-00252018 (Sac. Sup. Ct.);
- *Gordon, et al. v. Hospice Source, LLC*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
- *Green v. Warden Security Associates, Inc.*, Case No. 22CV396140 (Santa Clara Sup. Ct.);
- *Hampton v. Unlimited Security Specialists, Inc.*, Case No. CV2021-2130 (Yolo Sup. Ct.);
- *Hercules, et al. v. Maximus Services, LLC*, Case No. 34-2019-00268385 (Sac. Sup. Ct.);
- *Insixiengmay v. Hyatt Corporation*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal);
- *Kurtz v. Perimeter Security Group, LLC, et al.*, Case No. CU19-083650 (Nevada Sup. Ct.);

- *Leong-Call v. MRB Foods, Inc.*, Case No. 34-2020-00287486 (Sac. Sup. Ct.);
- *Magat v. Medical Care Professionals, Inc., et al.*, Case No. SCV0042579 (Placer Sup. Ct.);
- *Mayorga v. Brown Strauss, Inc.*, Case No. STK-CV-UOE-2020-0010906 (San Joaquin Sup. Ct.);
- *McGhee v. Salute Incorporated*, Case No. 34-2022-00315317 (Sac. Sup. Ct.);
- *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- *Meals v. Grass Valley Extended Care, Inc., et al.*, Case No. CU19-083606 (Nevada Sup. Ct.);
- *Munoz v. Wilmor And Sons Plumbing And Construction*, Case No. 34-2021-00306609 (Sac. Sup. Ct.);
- *Ruiz v. CTE Cal, Inc.*, Case No. 34-2020-00289168 (Sac. Sup. Ct.);
- *Saavedra, et al. v. SMF Global, Inc.*, Case No. 34-2018-00243363 (Sac. Sup. Ct.);
- *Scarano v. J.R. Putman, Inc., et al.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.);
- *Scoggins, et al. v. Energy Star Construction, Inc.*, Case No. 34-2018-00243048 (Sac. Sup. Ct.);
- *Strawn v. Bridgestone Retail Operations, LLC*, Case No. 34-2018-00242049 (Sac. Sup. Ct.);
- *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);
- *Tracy v. Von Housen's Sacramento, Inc.*, Case No. 34-2020-00282778 (Sac. Sup. Ct.);
- *Uribe v. Ecoguard Pest Management, Inc.*, Case No. 34-2021-00300650 (Sac. Sup. Ct.);
- *Vasquez v. Chriswell Home Improvements, Inc.*, Case No. 34-2021-00305938 (Sac. Sup. Ct.);
- *Villarruel, et al. v. General Produce Company, et al.*, Case No. 34-2021-00311463 (Sac. Sup. Ct.);
- *Walker v. Yan Kalika Dental Corporation*, Case No. 34-2021-00305106 (Sac. Sup. Ct.); and
- *Webb v. Professional Healthcare At Home, LLC*, Case No. FCS055317 (Solano Sup. Ct.).

22. The preceding list of cases does not include those where, for a variety of reasons, the case was initially filed as a class and/or PAGA action, but did not maintain that status through the end of the case.

1 23. My office is requesting attorneys' fees under the common fund doctrine pursuant to
2 *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016), *Paul, Johnson, Alston & Hunt v.*
3 *Grauly*, 886 F.2d 268, 271 (9th Cir. 1989), and *Boeing Co. v. Van Gemert*, 444 U.S. 472, 477-478
4 (1980). Plaintiff has been able to secure an identifiable benefit on behalf of Class Members and equity
5 counsels that the cost of the representation should be born equally amongst all Class Members
6 receiving these benefits. The settlement recovery provides a good result and is the product of
7 substantial time and effort in analyzing the facts and law applicable to this case. There was substantial
8 risk in agreeing to take this case on a contingency basis and as a class action with the possibility that
9 our firm would not receive any compensation our time and efforts due to issues regarding the merits
10 and/or certification and have carried that risk over the course of the case. In my experience, the
11 attorney's fee request of thirty-five percent (35%) of the common fund is within ranges typically
12 approved in wage and hour class action litigation. This includes awards in Sacramento County
13 Superior Court. For example, in November 2022, the Sacramento County Superior Court approved a
14 fee request of 35% and the same hourly rates for Mr. Shimoda, Ms. Berzin, and myself in connection
15 with a motion for final approval of a wage and hour class action settlement in *Strawn v. Bridgestone*
16 *Retail Operations, LLC*, Case No. 34-2018-00242049 (Sac. Sup. Ct.).

17 24. I believe a lodestar cross check supports finding a 35% fee award is appropriate in this
18 case. The total lodestar is approximately \$348,400 based on approximately 589.2 hours, which
19 includes an estimated 10 hours of time for myself preparing for and attending the final approval
20 hearing, ensuring compliance, and the disbursement of funds consistent with a final approval order. I
21 have reviewed our firm's billing records with Mr. Shimoda and Mr. Konini and have created a
22 summary chart showing the task categories and hours worked by each billing attorney in each category.
23 Ms. Berzin was no longer with our firm at the time this Motion was filed, so I was not able to review
24 the billing records with her. However, I independently reviewed her billing entries. A true and correct
25 copy of the summary chart is being filed with this Motion as Exhibit F. In reviewing the entries, I
26 believe the hours reported are accurate. To the extent we believe it appropriate to do so in any given
27 assignment, we attempt to assign tasks to the billing attorney with the lower rate in order to reduce
28 costs that otherwise might inhibit the likelihood a case will resolve. Our firm uses billing software,

which tracks the entries by day and time. Our billing software also records time in 1/10 of an hour increments. Our billing software also enables the use of a start/stop timer that can be used to more accurately record how long a particular task takes. A summary of the entries in Exhibit F by timekeeper is as follows:

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Lodestar</u>
Galen T. Shimoda	134.3	\$725	\$97,367.50
Justin P. Rodriguez	288.5	\$625	\$180,312.50
Brittany V. Berzin	118.2	\$425	\$50,235.00
Renald Konini	48.2	\$425	\$20,485.00
Total:	589.2	--	\$348,400

25. I believe the requested rates are within the prevailing market rates for Sacramento County and elsewhere. Ms. Berzin, Mr. Konini, myself, and Mr. Shimoda have approximately 5 years, 8 years, 13 years, and 20 years of experience, respectively, litigating complex wage and hour class and PAGA actions. Again, Sacramento County Superior Court has approved these rates for myself, Mr. Shimoda, and Ms. Berzin in November 2022. *See Strawn v. Bridgestone Retail Operations, LLC*, Case No. 34-2018-00242049 (Sac. Sup. Ct.). Mr. Konini was approved at these rates in connection with a wage and hour class action in Sacramento County Superior Court in January 2023. *See Kee, et al. v. Dr. Jeffrey A. Saladin, Dental Corporation (D/B/A Children's Choice Pediatric Dental Care), et al.*, Case No. 34-2020-00290072. Awarding fees at the hourly rate in effect at the time of the fee request is an appropriate and judicially approved method. *See Missouri v. Jenkins by Agyei*, 491 U.S. 274, 283 (1989).

26. Comparing our lodestar to the fees requested, an award of \$477,750 would require a multiplier of approximately 1.37x of our lodestar. This is a modest multiplier and less than multipliers awarded by Courts in other cases, which can range from 2x to 4x of counsel's lodestar. *See Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th at 487 (finding the trial court did not abuse its discretion in approving a fee award and noting that the award resulted in a multiplier of 2.03 to 2.13); *Wershba v. Apple Comput., Inc.*, 91 Cal.App.4th 224, 255 (2001) ("Multipliers can range from 2 to 4 or even

higher”). It takes a substantial amount of time and effort to properly litigate complex cases like wage and hour class and PAGA actions. The unfortunate reality is that in these cases we will, more often than not, incur a negative multiplier to our lodestar. *See e.g., McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.) (35% fee award effectively a 0.65x multiplier of counsel’s lodestar); *Uribe v. EcoGuard Pest Management, Inc.*, Case No. 34-2021-00300650 (Sac. Sup. Ct.) (35% fee award effectively a 0.78x multiplier of counsel’s lodestar); *Blair v. Clark Wagaman Designs*, Case No. 34-2021-00313156 (Sac. Sup. Ct.) (35% fee award effectively a 0.62x multiplier of lodestar). Awarding positive multipliers in those rare cases where they are applicable is critical to our firm being able to ensure we can continue to aggressively litigate cases on behalf of employees to secure wages and penalties owed to them. For the foregoing reasons, I believe the request of \$477,750 (35%) for attorneys’ fees is justified given the results obtained on behalf of the class.

27. Although the Agreement set out a maximum of \$17,500.00 for potential attorney’s costs, the total costs incurred or that will be incurred through a compliance hearing by Class Counsel is \$14,265.46. A true and correct copy of my firm’s itemized costs incurred prior to the filing of this Motion and the expected costs incurred through the final approval and compliance hearings is attached to this declaration as Exhibit D. These costs were all incurred to advance the interests of Class Members in this litigation and are of the kind that we would normally bill to fee paying clients. The difference in the actual costs and the maximum amount allocated under the Agreement will be added to the Net Settlement Amount and disbursed to Class Members.

28. I have used several class action administrator companies in the wage and hour class actions I have resolved in the past and believe ILYM Group, Inc., will continue to provide the best service to administer the proposed class settlement. ILYM Group, Inc., has provided services in the administration industry for a long time and utilizes case managers with considerable experience in the field. ILYM Group, Inc. has procedures in place to protect the security of class data as well as insurance. Under the settlement the difference between the originally allocated \$20,000 and the actual administration costs of \$8,750 will be paid to the Class Members on a pro rata basis.

29. A copy of the Agreement and the entire Motion was submitted to the LWDA for review at the same time the Motion was submitted to the Court pursuant to California Labor Code section

2699(l)(2). A true and correct copy of documents demonstrating the settlement documents were provided to the LWDA and that the LWDA has confirmed receipt are being filed with this Motion as Exhibit E.

30. The designated *cy pres* beneficiaries in this case are Capital Pro Bono, Inc. (“CPB”) and the Center For Workers Rights (“CFWR”). Only those funds that remain from uncashed settlement checks will be sent to the *cy pres* beneficiaries pursuant to section 5.6 of the Agreement.

31. CPB is a 501(c)(3) nonprofit in good standing with the State of California that was established in 1981 and incorporated in 1986 to provide free civil legal services to the indigent, primarily through the use of volunteer attorneys. The formal service area includes Sacramento, Yolo, San Joaquin, El Dorado and Placer counties, however it also regularly provides assistance, whether in person or by phone, to individuals residing outside those counties, including Solano, Nevada, Merced, Sutter, Yuba, and Stanislaus counties. CPB changed its name in 2020 from Voluntary Legal Services Program of Northern California (“VLSP”) to Capital Pro Bono, Inc. CPB has been the recipient of *cy pres* funds from several jurisdictions in the State of California, including from Sacramento County Superior Court.

32. If CPB is approved as a *cy pres* beneficiary, any funds received will be dedicated to the Employment Law Clinic and Advice Line project, which assists the indigent with legal matters related to their current or former employment. This assistance regularly includes, but is not limited to, free legal advice regarding claims for unpaid wages, failure to provide meal and rest periods, failure to pay reimbursement, and waiting time penalty claims. CPB provides legal advice, assistance with legal forms, and direct representation in administrative hearings, including administrative hearings in front of the California Labor Commissioner for unpaid wages. CPB has a staff attorney and clinic coordinator who provide assistance, along with experienced employment law attorney volunteers. These services have been a focus of the Employment Law Clinic and Advice Line project since its inception with VLSP and continuing through today under CPB.

33. CFWR is also a qualified *cy pres* designee in class actions, under section 384, as it is a 501(c)(3) nonprofit in good standing with the State of California providing free civil legal services to the indigent. Since its inception in 2014 and in partnership with Legal Aid at Work, the CFWR offers one-

on-one legal consultations for low-wage workers. The CFWR discusses employment issues with workers and advises them as to the available legal remedies. In addition to individual counseling on employment issues, the CFWR educates workers, unions, and community members about workplace laws and remedies through “Know-Your-Rights” trainings conducted by the CFWR staff and volunteers.

34. The CFWR provides limited representation for low-wage workers in wage claims before the California Labor Commissioner. The CFWR has provided services to low-wage workers in a variety of industries across the entire state of California. CFWR primarily focuses on the enforcement of basic workplace protections, including claims for unpaid wages, minimum wage violations, failure to pay overtime, failure to pay reimbursement, waiting time penalties, and meal and rest period violations. The CFWR helps workers navigate the wage claim process before the California Labor Commissioner through advice given at its legal consultation clinics and/or, in some cases, through representing workers in these claims. If the CFWR is approved as a *cy pres* beneficiary, the funds received will be dedicated towards assisting low-wage workers with wage claims and enforcing the California Labor Code with respect to those wage claims.

35. I believe the services provided by CPB and the CFWR promote the law consistent with the objective of wage and hour class actions in general and in this case specifically.

36. I have spoken with every other attorney at my firm to determine whether they have any relationship with either of the proposed *cy pres* beneficiaries.

37. I have volunteered for both organizations numerous times over the past several years, either directly in the advice clinics or by presenting seminars on wage and hour laws for law students seeking to also volunteer at advice clinics. I have also volunteered by sitting on CPB’s advisory committee. These organizations are non-profits that assist low-income workers throughout California, giving free legal advice regarding employment law issues and representing employees with wage claims before the California Labor Commissioner. I have witnessed firsthand the quality service and attention these entities provide to individuals in need of employment law advice and representation at the California Labor Commissioner.

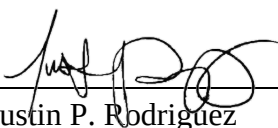
38. Galen T. Shimoda has volunteered for both organizations on and off over the past several years through either presenting wage and hour seminars to law students who staff the free advice clinics

1 or helping at the advice clinics themselves. However, Mr. Shimoda has not performed any volunteer
2 work with either organization since approximately March 2020. Mr. Shimoda has never received
3 payment or compensation of any kind in connection with any work he's done with either of the proposed
4 *cy pres* beneficiaries.

5 39. Brittany V. Berzin, my former associate, had never done any work, volunteer or
6 otherwise, with CPB. During law school, Ms. Berzin was a student volunteer for the CFWR for two
7 summers. Since graduating law school and while working with our firm, she has volunteered for the
8 CFWR approximately one to two times per year, assisting in the advice clinic. Ms. Berzin had also
9 volunteered to be on the Board of Directors and was the Chair at the time she left our firm, which was an
10 unpaid position. As Chair, Ms. Berzin was one of seven Board Members, who were all from different
11 law firms and/or local public and private organizations. No compensation or benefits, monetary or
12 otherwise, was provided to any Board Member or organization a Board Member is associated with. The
13 Executive Director of the CFWR supervises, directs, and controls the day-to-day operations of the
14 CFWR, not Ms. Berzin or the Board of Directors. As Chair, Ms. Berzin's additional duties included
15 scheduling meetings, drafting meeting agendas and presiding over meetings. Furthermore, CFWR has
16 not, and does not, provide any referrals to Shimoda & Rodriguez Law, PC.

17 40. Renald Konini has never done any work, volunteer or otherwise with Capital Pro Bono,
18 Inc., or the Center For Workers' Rights. Neither my firm, myself, Mr. Konini, Ms. Berzin, nor Mr.
19 Shimoda have ever received any compensation, direct or indirect, for designating CFWR or CPB as *cy*
20 *pres* beneficiaries or in connection with any of the volunteer work we have done with the organizations.

21 I declare under penalty of perjury under the laws of the State of California that the foregoing is
22 true and correct. Executed on October 15, 2024, in Sacramento, California.

23
24
25 
26 Justin P. Rodriguez
27
28

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Renald Konini (Cal. State Bar No. 312080)
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Attorneys for Plaintiff MARNELLE MAC DULA

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

MARNELLE MAC DULA, individually and
on behalf of all other similarly situated
employees,

Plaintiff,

vs.

IDEXX DISTRIBUTION, INC., a
Massachusetts Corporation; and DOES 1 to
100, inclusive,

Defendants.

Case No. 23CV005044

*Assigned for All Purposes to Hon. Lauri A. Damrell
Department 22*

**DECLARATION OF CASSANDRA POLITES
OF ILYM GROUP, INC., IN SUPPORT OF
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT**

Date: November 8, 2024
Time: 9:00 a.m.
Dept: 22
Judge: Hon. Lauri A. Damrell

Filed: July 19, 2023
FAC Filed: May 14, 2024
Trial Date: None Set

1 I, Cassandra Polites, declare as follows:

2 1. I am a resident of the United States of America and am over the age of 18. I am a Case
3 Manager for ILYM Group, Inc., (herein after referred to as “ILYM Group”), the professional settlement
4 services provider who has been retained by the Parties’ Counsel and subsequently appointed by the Court
5 to serve as the Settlement Administrator for the above captioned, *Mac Dula v. Idexx Distribution, Inc.*
6 matter. I am authorized to make this declaration on behalf of ILYM Group and myself. I have personal
7 knowledge of the facts herein, and, if called upon to testify, I could and would testify competently to such
8 facts.

9 2. ILYM Group has extensive experience in administering Class Action Settlements,
10 including direct mail services, database management, claims processing and settlement fund distribution
11 services for Class Actions ranging in size from 26 to 4.5 million Settlement Class Members.

12 3. ILYM Group was engaged by the Parties’ Counsel and subsequently approved and
13 appointed by the Court to provide notification services and settlement administration, pursuant to the terms
14 of the Settlement, in the above referenced Action. Duties performed to-date and to be performed after
15 Final Approval of the Settlement is granted, include: (a) printing and mailing the *Notice of Proposed Class*
16 *Action and PAGA Settlement, and Hearing Date for Final Court Approval of Settlement* (referred to as
17 “Notice of Settlement”); (b) receiving and processing requests for exclusion and objections to the
18 Settlement; (c) resolving Class Members’ disputes over the number of workweeks Defendant has record
19 of them working during the Class Period, which was pre-printed on their individualized Notice of
20 Settlement; (d) establishing a QSF account and calculating individual settlement award amounts; (e)
21 processing and mailing settlement award checks; (f) handling tax withholdings as required by the
22 Settlement and the law; (g) preparing, issuing and filing tax returns and other applicable tax forms; (h)
23 handling the distribution of any unclaimed funds pursuant to the terms of the Settlement; and (i)
24 performing other tasks as the Parties mutually agree to and/or the Court orders ILYM Group to perform.

25 4. On July 2, 2024, ILYM Group received the Court approved text for the Notice of
26 Settlement from Class Counsel. ILYM Group prepared a draft of the formatted Notice of Settlement,
27 which was approved by the Parties’ Counsel prior to mailing.
28

1 5. On July 9, 2024, ILYM Group received the class data file from Counsel for Defendant,
2 which contained the name, social security number, last known mailing address, and employment dates for
3 each Class Member and Aggrieved Employee (“Class List”). The data file was uploaded to our database
4 and checked for duplicates and other possible discrepancies. The Class List contained unique records for
5 573 individuals who worked a total of 74,006 work weeks.

6 6. As part of the preparation for mailing, all 573 names and addresses contained in the Class
7 List were then processed against the National Change of Address (“NCOA”) database, maintained by the
8 United States Postal Service (“USPS”), for purposes of updating and confirming the mailing addresses of
9 the Class Members before mailing of the Class Notice Packet. The NCOA contains requested change of
10 addresses filed with the USPS. To the extent that an updated address was found in the NCOA database,
11 the updated address was used for mailing the Notice of Settlement. To the extent that no updated address
12 was found in the NCOA database, the original address provided by Counsel for Defendants was used for
13 mailing the Notice of Settlement.

14 7. On July 26, 2024, the Notice of Settlement was mailed, via U.S First Class Mail, to all 573
15 individuals contained in the Class List. Attached hereto, as **Exhibit A**, is a true and correct copy of the
16 mailed Notice of Settlement.

17 8. As of the date of this declaration, 47 Notice of Settlement mailings have been returned to
18 our office of which none were returned with a forwarding address. ILYM Group performed a
19 computerized skip trace on the 47 returned mailings that did not have a forwarding address, in an effort to
20 obtain an updated address for the purpose of re-mailing the Notice of Settlement. As a result of this skip
21 trace, 42 updated addresses were obtained and the Notice of Settlements were promptly re-mailed to those
22 Class Members, via U.S. First Class Mail.

23 9. As of the date of this declaration, a total of 42 Notice of Settlement mailings have been re-
24 mailed as a result of ILYM Group’s skip tracing efforts.

25 10. As of the date of this declaration, a total of 5 Notice of Settlement mailings have been
26 deemed undeliverable as no updated addresses were found notwithstanding the skip tracing.

27 11. As of the date of this declaration, ILYM Group has not received any request for exclusion.
28 The deadline to request exclusion from the Settlement was September 24, 2024.

12. As of the date of this declaration, ILYM Group has not received any objections to the Settlement. The deadline to submit a written objection to the Settlement was September 24, 2024.

13. As of the date of this declaration, ILYM Group has received one dispute from a Class Member regarding the number of Qualifying Workweeks attributed to them within the Class Period. We conferred with the Parties' Counsel to address the dispute and confirmed there was no error. The additional weeks claimed by the individual in the dispute were worked after they were promoted to an exempt position, which is excluded from being a Qualifying Workweek and Qualifying Pay Period under Paragraph 1.29 of the Agreement. The Class Member has been notified of the resolution of the dispute and no further dispute has been received.

14. The Net Settlement Amount available to Participating Class Members is estimated to be \$814,234.54.00 and was calculated by subtracting the requested attorneys' fees (\$477,750.00), the requested litigation costs and expenses (\$14,265.46), the requested Enhancement Payment (\$10,000.00), the requested Settlement Administrator Costs (\$8,750.00), and the PAGA Payment (\$40,000.00) from the Gross Settlement Amount \$1,365,000.00.

15. As of this date, no Class Members submitted any request to opt out of the Settlement and, therefore, all 573 Class Members are deemed to be Participating Class Members. Their share of the Net Settlement Amount is allocated on a pro rata basis using their weeks worked.

16. The *highest* payment to a Participating Class Member is currently estimated to be approximately \$2,794.58 and the *average* payment is currently estimated to be approximately \$1,421.00. These amounts are subject to employee-side tax and withholdings.

17. Pursuant to the Agreement, 25% of the PAGA Payment (\$10,000.00) will be allocated to Aggrieved Employees regardless of whether he or she opted out of the class portion of the Settlement. The payment to Aggrieved Employees is allocated on a pro rata basis using their Qualifying Pay Periods. There are 410 Aggrieved Employees who worked 14,596 pay periods during the PAGA Claim Period.

18. ILYM Group's total fees and costs for services in connection with the administration of this Settlement, which includes fees and costs incurred to-date, as well as anticipated fees and costs for completion of the settlement administration, are \$8,750.00. ILYM Group's work in connection with this matter will continue with the calculation of the settlement award payments, issuance and mailing of the

1 settlement award checks, the necessary tax filing and reporting on such payments, and any other tasks that
2 the Parties mutually agree to and/or the Court orders ILYM Group to perform.

3
4 I declare under penalty of perjury under the laws of the State of California and the United States
5 that the foregoing is true and correct to the best of my knowledge and that this Declaration was executed
6 this 26th day of September 2024, at Tustin, California.

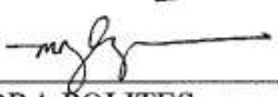
7
8
9 
10 CASSANDRA POLITES

EXHIBIT “A”

CALIFORNIA SUPERIOR COURT
FOR THE COUNTY OF SACRAMENTO

MARNELLE MAC DULA, individually and on behalf of
all other similarly situated employees,

Plaintiff,

vs.

IDEXX DISTRIBUTION, INC., a Delaware Corporation;
and DOES 1 to 100, inclusive,

Defendant.

Case No. 23CV005044

**NOTICE OF PROPOSED CLASS ACTION AND
PAGA SETTLEMENT, AND HEARING DATE FOR
FINAL COURT APPROVAL OF SETTLEMENT**

ATTENTION: All individuals who have worked, or continue to work, for IDEXX Distribution, Inc., in California as non-exempt employees at any time between July 19, 2019, and May 26, 2024 (the “Class Members”).

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS ACTION LITIGATION AND POTENTIAL DISBURSEMENT OF SETTLEMENT FUNDS TO YOU. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO PARTICIPATE IN OR OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.

You are receiving this notice pursuant to an order from the Sacramento County Superior Court (“Court”) granting Plaintiff’s motion for preliminary approval of a Joint Stipulation Regarding Class Action PAGA Settlement and Release (“Agreement” or “Settlement”) as fair, reasonable, and adequate. The Settlement was entered into between Plaintiff Marnelle Mac Dula (“Plaintiff” or “Class Representative”), and Defendant IDEXX Distribution, Inc. (“Defendant”), on behalf of Class Members as defined above. The terms of the Settlement are outlined herein. You are receiving this notice because Defendant’s records indicate you fall within the definition of “Class Member.” Defendant’s records also indicate that you worked <<MERGED_ClassWW>> weeks during the applicable Class Period (as defined below), which means your total share of the settlement proceeds is estimated to be \$<<MERGED_ClassAward>>. Your actual share of the settlement proceeds will vary depending on the total number of Class Members that choose to participate and the resolution of any workweek disputes as described in this notice.

The terms of the Agreement and a description of the case are identified in this notice. Pursuant to the Court’s order, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

I. BACKGROUND OF THE CASE

On July 19, 2023, Plaintiff initiated this lawsuit by filing a Complaint against Defendant in the Sacramento County Superior Court, Case No. 23CV005044, on behalf of herself and Class Members. On October 26, 2023, Plaintiff filed a separate lawsuit alleging a single cause of action under the PAGA against Defendants for the same Labor Code violations in Sacramento County Superior Court, Case No. 23CV010650. On May 14, 2024 Plaintiff filed an amended complaint consolidating the allegations and claims from both cases into the earlier filed lawsuit, Case No. 23CV005044. The term “Action” means the putative class and PAGA action pending in Sacramento County Superior Court, Case No. 23CV005044. The Class Period is July 19, 2019, to May 26, 2024 (the “Class Period”).

In the Action, Plaintiff sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of herself, Class Members, and Aggrieved Employees. Plaintiff alleged that Defendant violated California law by 1) failing to pay overtime wages, 2) failing to pay minimum wages, 3) failing to provide meal periods, 4) failing to provide rest period, 5) failing to provide accurate wage statements, 6) failing to timely pay final wages, 7) failing to reimburse expenses, and 8) engaging in unfair competition based thereon and the failure to pay all sick leave wages owed. Plaintiff also contends these violations support a claim under the PAGA. Defendant has denied all of Plaintiff’s allegations. The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Furthermore, the Parties have participated in a full day mediation facilitated by a neutral third party. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Agreement, Defendant continue to deny all allegations and claims. Defendant has entered into this Settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

The Agreement applies to any and all Class Members, which are defined as all individuals who have worked, or continue to work, for IDEXX Distribution, Inc., in California as non-exempt employees at any time between July 19, 2019, to May 26, 2024. The Agreement also applies to Aggrieved Employees, which are defined as all individuals who have worked, or continue to work, for IDEXX Distribution, Inc., in California as non-exempt employees at any time between July 18, 2022, to May 26, 2024. If you are a Class Member, you have the opportunity to participate in the Settlement, or to exclude yourself (“opt out”) from the Settlement. This notice is to advise Class Members of how they can either participate in the Settlement or be excluded from the Settlement. As set forth below, Aggrieved Employees cannot opt out of this Agreement as it relates to the PAGA Payment or Released PAGA Claims regardless of whether they opt out of being a Class Member. Aggrieved Employees will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, Defendant has agreed to pay a total sum of One Million Three Hundred Sixty Five Thousand (\$1,365,000.00) (“Gross Settlement Amount”). Deducted from this Gross Settlement Amount will be sums approved by the Court for attorneys’ fees not to exceed 35% of the Gross Settlement Amount, attorneys’ costs not to exceed \$17,500.00, Settlement Administrator Costs estimated not to exceed \$20,000, Class Representative’s Enhancement Payment of \$10,000.00, and \$40,000.00 for alleged PAGA penalties (the “PAGA Payment”), which will result in a “Net Settlement Amount” for distribution to all Class Members. Any employer side taxes attributable to payments allocated as wages will be paid by Defendant in addition to the Gross Settlement Amount. As explained further below, the amount of each Class Member’s share of the Net Settlement Amount will depend on the number of weeks worked by participating Class Members during the Class Period. Of the \$40,000.00 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among Aggrieved Employees.

The number of weeks you worked during the Class Period and your estimated total share of the Net Settlement Amount and PAGA Payment (“Individual Settlement Amount”) is stated on the first page of this notice. The actual amount received may be more or less than the amount stated depending on the actual number of weeks worked by Participating Class Members (*i.e.*, those who do not opt out of the Settlement), the resolution of any disputes regarding workweeks, and on the distributions finally approved and allocated by the Court. However, whether Class Members opt out will have no effect on Aggrieved Employees’ allocations for the PAGA claim.

B. Individual Settlement Amounts and Allocation Between Class Members and Aggrieved Employees

Defendant will pay Individual Settlement Amounts through the Settlement Administrator, as described below, to each Participating Class Member and to Aggrieved Employees. All Individual Settlement Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that the amount payable to eligible Class Members from the Net Settlement Amount will be allocated and paid as 80% for disputed interest, statutory penalties, and other non-wage damages for which an IRS Forms 1099-MISC and 1099-INT will issue and 20% for disputed wages for which IRS Forms W-2 will issue. The PAGA Payment to Aggrieved employees will be paid as 100% for civil penalties.

Payment to Participating Class Members and Aggrieved Employees will not require the submission of a claim form. Each Participating Class Member’s share will be determined by dividing their total weeks worked within the Class Period by the total weeks worked by all Participating Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member’s individual share of the Net Settlement Amount. Each Aggrieved Employee’s share of the 25% portion of the PAGA Payment will be determined by dividing their pay periods worked within the PAGA Claim Period by the total pay periods worked by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee’s individual share. The PAGA Claim Period is defined as July 18, 2022, to May 26, 2024. Defendant’s records indicate that you worked <<MERGED_PAGAPP>> pay periods during the applicable PAGA Claim Period, which means your share of the PAGA Payment is estimated to be \$<<MERGED_PAGAAward>>. This amount is included in your estimated Individual Settlement Amount stated on the first page of this notice, not in addition to it. You will still receive your share of the PAGA Payment even if you opt out of being a Class Member. Receipt of the Individual Settlement Amounts will not entitle any Class Member or Aggrieved Employee to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

C. Calculations to Be Based on Defendant’s Records and Resolution of Workweek Disputes

For each Class Member, the amount payable will be calculated by the Settlement Administrator from Defendant’s records. Defendant’s records will be presumed correct unless evidence to the contrary is provided to the Settlement Administrator. Defendant’s

records and any additional evidence will be reviewed by the Settlement Administrator in the event of a dispute about the number of workweeks worked by an individual Class Member. If a Class Member disputes the accuracy of Defendant's records, all supporting documents evidencing additional workweeks must be submitted by the Class Member. The dispute must (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than September 24, 2024. The dispute will be resolved by the Settlement Administrator based on the records and evidence provided.

D. Release of Claims

For those Class Members who do not opt out and Aggrieved Employees, the Agreement contains the following releases:

Class members who do not opt out will be deemed to have released any and all class claims that are alleged in the Complaint, and any additional wage and hour claims that could have been brought based on the facts alleged in the Complaint, through the Class Period. This release excludes the release of claims not permitted by law. The Released Class Claims exclude claims for workers' compensation or unemployment insurance benefits. This release will cover all Class Members who do not opt out.

Aggrieved Employees will be deemed to have released any and all claims that were brought under the Private Attorneys General Act, Labor Code §§ 2698 et seq., contained in Plaintiff's PAGA Action as exhausted in the LWDA Notice and any additional wage and hour PAGA claims that could have been brought based on the facts alleged in Plaintiff's notice letter to the LWDA during the PAGA Claim Period. Aggrieved Employees cannot opt out of this waiver of claims.

The individuals released ("Released Parties") include Defendant and Defendant's past, present, and/or future, direct and/or indirect, officers, shareholders, directors, members, managers, representatives, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, joint venturers, agents, employees, attorneys, and insurers.

Class Members and/or Aggrieved Employees can talk to one of the lawyers appointed as Class Counsel (listed below) for free or talk to their own lawyer if they have questions about the released claims and what they mean.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement as a Class Member

If you wish to be a Participating Class Member and believe your workweek information is accurate, **you do not need to take any further action**. Payment will be automatically made to you consistent with the terms of the Agreement and Court Order. If you wish to dispute the workweek calculation, you may follow the procedures outlined in Section II.C above. California law protects Class Members from retaliation based on their decision to participate in the Settlement.

B. Excluding Yourself from the Settlement as a Class Member

The Court will exclude you from being a Class Member if you request this by September 24, 2024. If you do not wish to be bound by the Settlement as a Class Member, you may request to be excluded (*i.e.*, "opt out") by submitting a timely written request to the Settlement Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the Settlement, and/or wants to be excluded from this Settlement; (c) identify the case name and number (*i.e.* *Mac Dula v. IDEXX Distribution, Inc.*, 23CV005044); (d) be signed; and (e) be post-marked no later than September 24, 2024. The request to opt out must be mailed by First Class U.S. Mail, or the equivalent, to:

ILYM Group, Inc.
P.O. Box 2031
Tustin, CA 92781
Telephone: (888) 250-6810
Fax: (888) 845-6185
Email: claims@ilymgroup.com

If you submit a request to opt out which is not postmarked by September 24, 2024, your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Settlement Administrator, no longer be a Class Member and not receive their share of the Net Settlement

Amount. Aggrieved Employees cannot opt out of this Agreement and will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

C. Objection to Settlement

If you do not opt out of the Settlement, you can object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. You can ask the Court to deny approval by submitting an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. You may submit a written objection, which should (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including supporting documentation; (d) identify the case name and number (*i.e. Mac Dula v. IDEXX Distribution, Inc.*, 23CV005044); (e) be signed; and (f) be post-marked no later than September 24, 2024. Written objections must be sent to the Settlement Administrator at the address identified in Section III.B.

Additionally, or in the alternative to sending a written objection to the Settlement Administrator, you may appear at the final approval hearing to state your objection. Any Class Member who does not request exclusion may, if the Class Member so desires, enter an appearance through an attorney. If you appear through your own attorney, you are responsible for paying that attorney.

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

If the Court grants final approval of the Settlement, the Court will make and enter judgment consistent therewith. A notice of entry of judgment will be filed with the Court and available online at the Court's public web portal: <https://prod-portal-sacramento-ca.journaltech.com/public-portal/>. The judgment, whether favorable or not, will bind all Class Members who do not request exclusion. After final approval, each and every Class Member who does not opt out of the Settlement and Aggrieved Employee, will release Defendant and the Released Parties from the Released Class Claims and the Released PAGA Claims described above. In other words, if you were employed as a Class Member by Defendant in California during the Class Period, and you do not exclude yourself from the Settlement, you will be deemed to have entered into these releases and to have released the above-described claims. In addition, you will be barred from ever suing Defendant and the Released Parties with respect to the claims covered by this Settlement. If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Department 22, 720 9th Street, Sacramento, California 95814 on November 8, 2024, at 9:00 a.m. to determine whether the Agreement should be finally approved as fair, reasonable and adequate. To join by Zoom: <https://saccourt-ca.gov.zoomgov.com/my/sscdept22>. To join by phone: (833) 568-8864 / ID 16184738886. The Court will also be asked to approve Class Counsel's request for attorneys' fees and costs, the Settlement Administrator Costs, and the Class Representative's Enhancement Payment. The hearing may be continued without further notice. It is not necessary for you to appear at this hearing.

VI. ADDITIONAL INFORMATION

You may access the Complaint, Class Counsel's motion for preliminary approval, the Agreement, and any other documents required by the Court at <https://prod-portal-sacramento-ca.journaltech.com/public-portal/>. You can also contact Class Counsel or Defendant's Counsel as follows:

Galen T. Shimoda
Justin P. Rodriguez
Renald Konini
Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733
On behalf of Plaintiff

Alexandra M. Asterlin
Kyle A. Wende
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
500 Capitol Mall, Suite 2500
Sacramento, CA 95825
Telephone: (916) 840-3150
Facsimile: (916) 840-3151
On behalf of Defendant

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS. IF YOU HAVE ANY QUESTIONS, CALL (888) 250-6810

BY ORDER OF THE COURT

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Renald Konini (Cal. State Bar No. 312080)
Shimoda & Rodriguez Law, PC
9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733

Attorneys for Plaintiff MARNELLE MAC DULA
individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

MARNELLE MAC DULA, individually and
on behalf of all other similarly situated
employees,

Plaintiff,

vs.

IDEXX DISTRIBUTION, INC., a Delaware
Corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No. 23CV005044

*Assigned for All Purposes to Hon. Lauri A. Damrell,
Department 22*

CLASS ACTION

**DECLARATION OF PLAINTIFF MARNELLE
MAC DULA IN SUPPORT OF MOTION FOR
FINAL APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT**

Date: November 8, 2024

Time: 9:00 a.m.

Dept.: 22

Judge: Hon. Lauri A. Damrell

Filed: July 19, 2023

FAC Filed: May 14, 2024

Trial Date: None Set

1 I, Marnelle Mac Dula, declare:

2 1. I am a competent adult, I have personal knowledge of the facts set forth in this
3 declaration, and I am making this declaration on behalf of myself, as a named plaintiff, and in support of
4 Plaintiff's Motion for Final Approval of Class Action and PAGA Settlement.

5 2. I worked for Defendant IDEXX Distribution, Inc. ("Defendant") from January 2022 to
6 April 2023 as a non-exempt employee. I was subject to all of Defendant's policies and practices that
7 have been alleged as unlawful in the Complaint and the notice sent to the Labor and Workforce
8 Development Agency, including the following: failure to pay overtime, failure to pay minimum wages,
9 failure to provide meal and rest periods or pay premiums in lieu thereof, failure to provide accurate wage
10 statements, failure to timely pay final wages, failure to reimburse expenses, failure to pay all sick leave
11 wages, and violation of Labor Code section 558.

12 3. I have actively participated in the litigation of this case for the benefit of all Class
13 Members. In preparing to bring these claims I reviewed the qualifications of several different law firms
14 by reviewing their web sites to see who I thought would be the best to bring these claims. I also looked
15 at several online articles about these types of claims to help me understand them more and prepare for
16 my discussions. I wanted to make sure I could have an informed discussion about the claims and have a
17 better idea of what to expect in litigation and how to help the case proceed. After securing Shimoda &
18 Rodriguez Law, PC, I continued to be actively involved in the case to help ensure a positive outcome.

19 4. My attorneys explained to me the risks and benefits of bringing a class action and a claim
20 under the Private Attorneys General Act ("PAGA"). I understood that pursuing the case as a class and
21 PAGA action meant that it would take substantially longer than pursuing my claims individually,
22 whether in Court or with the California Labor Commissioner, and that I risked getting nothing in the
23 end, but I believed it was important to make sure that Defendant followed the law for everyone. I
24 understood that I took on the risk, both professionally and financially, in pursuing the case as a class and
25 PAGA action rather than pursuing my claims individually, including the risk of having to pay
26 Defendant's costs if we were unsuccessful in bringing our claims.

27 5. During the course of this litigation, I have given detailed accounts of all the facts related
28 to my employment. I provided my attorneys with extensive documentation that I believe supported the

1 claims brought against Defendant. I met with and assisted my attorneys in understanding these
2 documents and providing context for Defendant's payroll process as it applied to me and how I believed
3 it applied to Defendant's other employees. I worked the night shift but also worked on the day shift on
4 several occasions. I believe my experiences working under different shift types allowed me to discuss
5 the similarities of the wage and hour policies and practices among all Class Members.

6 6. The work I performed for this case included an extensive review of documents and
7 payroll practices to show and explain to my attorneys what was happening and why I thought it was
8 unlawful. For example, I explained to my attorneys my job duties and responsibilities, the type of tasks
9 and work performed at the farms, the nature of security protocols and check in/out procedures, the
10 nature of the bonuses and pay types, including my understanding of how they could be earned and were
11 calculated, workflow issues that affected an employee's ability to take meal and/or rest periods, and
12 Defendant's policies and how they impacted myself, Class Members, and the workflow issues relating to
13 breaks and off-the-clock work. I reviewed payroll histories with my attorneys to identify and explain
14 the itemized pay codes and how they related to the bonus and shift differential policies. Moreover, I
15 described the timekeeping process and applications that could be used on personal cell phones, which
16 related to the reimbursement claims. This addressed all of the claims alleged and we continued to
17 discuss this throughout the case as more information was provided by Defendant. For example, the
18 review became even more detailed when reviewing and discussing the payroll data sample that was
19 produced as part of informal discovery to engage in mediation. I have spent a substantial amount of
20 time working on this case, including working to identify potential witnesses to provide declarations and
21 be interviewed by my attorneys.

22 7. To date, I estimate that I have spent approximately 105-125 hours assisting my attorneys
23 in this case. Also, I spoke to several Class Members after the Preliminary Approval Motion who
24 reached out to me to ask questions about the settlement and how to participate.

25 8. I participated in the negotiations and settlement discussions in this case, including
26 participating in mediation by phone, speaking with my attorneys to answer questions, provide any
27 additional information needed to assist the negotiations, and discussing the potential terms of the
28 Agreement to evaluate its adequacy. Throughout the course of this litigation I have asked questions

1 when I needed clarification about various aspects of this case to make sure there were continually steps
2 taken to advance the interests of Class Members.

3 9. I have not received any benefits as a result of filing this lawsuit. One of the burdens I
4 have experienced in bringing the lawsuit include assuming the risk of having to pay Defendant's costs if
5 the Court or jury rules against us on the claims. My understanding is that this is a substantial risk
6 because the costs associated with litigation, in general, are very high and this cost is multiplied many
7 times over in complex litigation like class actions. As stated above, I have spent a substantial amount of
8 time in this case, securing a monetary benefit for many individuals who have not had to do anything
9 whatsoever to have the opportunity to receive it. I have been employed full-time during the majority of
10 the time this case has been pending. As a result, the time I have spent on this case has to occur during
11 my lunch and/or breaks times, after hours, and on my days off. Rather than spend this time with friends
12 and family, I have spent this time for the benefit of Class Members. I also have experienced stress and
13 anxiety because of litigation in this case and I took medications to treat my anxiety. Finally, as part of
14 the Settlement, I am the only individual providing a general release of all my individual claims and
15 waiving the protections of California Civil Code section 1542 for unknown claims. No other Class
16 Member is subject to such a broad release.

17 10. I have reviewed the final Joint Stipulation of Class Action and PAGA Settlement and
18 Release, discussed the terms with my attorney, and asked my attorney any questions I had. I believe the
19 terms of the Settlement and allocations are fair and reasonable given the facts of the case.

20 11. I understand that any Class Representative Enhancement Payment I may receive is for
21 my participation as a Class Representative and it is not contingent on my support or approval of the
22 Agreement.

23 12. I have no interest in the designated *cy pres* beneficiaries, Capital Pro Bono, Inc., and the
24 Center for Workers' Rights, whether financial, in their governance, or otherwise.

25 I declare under penalty of perjury under the laws of the State of California that the foregoing is
26 true and correct. Executed on 10/14/2024 in Sacramento, California.

27 

Marnelle F. Mac Dula (Oct 14, 2024 13:34 PDT)

28 Marnelle Mac Dula

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
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Attorneys for Plaintiff MARNELLE MAC DULA
individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

MARNELLE MAC DULA, individually and
on behalf of all other similarly situated
employees,

Plaintiff,

vs.

IDEXX DISTRIBUTION, INC., a Delaware
Corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No. 23CV005044

*Assigned for All Purposes to Hon. Lauri A. Damrell,
Department 22*

CLASS ACTION

**EXHIBIT LIST AND EXHIBITS IN SUPPORT
OF PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT**

Date: November 8, 2024

Time: 9:00 a.m.

Dept.: 22

Judge: Hon. Lauri A. Damrell

Filed: July 19, 2023

FAC Filed: May 14, 2024

Trial Date: None Set

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
A	Joint Stipulation Regarding Class Action and PAGA Settlement and Release
B	Plaintiff's Operative Complaint
C	Plaintiff's Letter to the LWDA Regarding PAGA Claims
D	Plaintiff's Itemized Costs
E	Proof of Submission to LWDA
F	Summary Chart of Plaintiff's Counsel's Hours

Dated: October 15, 2024

Shimoda & Rodriguez Law, PC

By: 
 Galen T. Shimoda
 Justin P. Rodriguez
 Renald Konini
 Attorneys for Plaintiff

Exhibit A

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5 Attorneys for Plaintiff MARNELLE MAC DULA
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7 Alexandra M. Asterlin (SBN 221286)
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11 Attorneys for IDEXX DISTRIBUTION, INC.

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

14 MARNELLE MAC DULA, individually and on
15 behalf of all other similarly situated employees,

16 Plaintiff,

17 vs.

18 IDEXX DISTRIBUTION, INC., a Delaware
19 Corporation ; and DOES 1 to 100, inclusive,
20 Defendant.
21

Case No.: 23CV005044

**JOINT STIPULATION REGARDING CLASS
ACTION AND PAGA SETTLEMENT AND
RELEASE**

Filed: July 19, 2023
FAC Filed: May 14, 2024
Trial Date: None Set

1 This Joint Stipulation Regarding Class Action and PAGA Settlement and Release is made and
2 entered into between the Plaintiff Marnelle Mac Dula (“Plaintiff”), on behalf of herself, the Labor and
3 Workforce Development Agency, Class Members, and Aggrieved Employees, and Defendant IDEXX
4 Distribution, Inc., (“Defendant”). This Agreement is subject to the terms and conditions set forth below
5 and the approval of the Court.

6 **1. DEFINITIONS**

7 The following terms, when used in this Agreement, have the following meanings:

8 1.1 “Action” means *Marnelle Mac Dula v. IDEXX Distribution, Inc.*, Sacramento Superior
9 Court Case No. 23CV005044 (“the Class Action”) and *Marnelle Mac Dula v. IDEXX Distribution, Inc.*,
10 Sacramento Superior Court Case No. 23CV010650 (the “PAGA Action”).

11 1.2 “Aggrieved Employee(s)” means all individuals who have worked, or continue to work, for
12 IDEXX Distribution, Inc., in California as non-exempt employees at any time between July 18, 2022, up
13 to either (1) the Preliminary Approval Date, or (2) May 26, 2024, whichever is earlier. The estimated
14 number of Aggrieved Employees is 394.

15 1.3 “Agreement” or “Settlement” or “Settlement Agreement” means this Joint Stipulation
16 Regarding Class Action and PAGA Settlement and Release.

17 1.4 “Class Counsel” means Galen T. Shimoda, Justin P. Rodriguez, and Renald Konini of
18 Shimoda & Rodriguez Law, PC.

19 1.5 “Class Member(s)” means all individuals who have worked, or continue to work, for
20 IDEXX Distribution, Inc., in California as non-exempt employees at any time between July 19, 2019, up
21 to either (1) the Preliminary Approval Date, or (2) May 26, 2024, whichever is earlier. The estimated
22 number of Class Members is 559.

23 1.6 “Class Period” means July 19, 2019 up to either (1) the Preliminary Approval Date, or (2)
24 May 26, 2024, whichever is earlier.

25 1.7 “Class Representative” means Plaintiff Marnelle Mac Dula.

26 1.8 “Class Representative’s Released Claims” means all claims arising from, could have been
27 asserted, or related in any way to the Class Representative’s employment or termination of that employment
28 with Defendant or arising out of or in any way connected with any claim, loss, damage, or injury

1 whatsoever, resulting from any act or omission of Defendant or the Released Parties on or before the date
2 this Agreement is executed by Plaintiff, under federal, state, or local laws, and/or ordinances, or tort or
3 contract theories, whether known or unknown, and whether anticipated or unanticipated, including without
4 limitation statutory, constitutional, contractual or common law claims for lost wages, unpaid wages,
5 emotional distress, punitive damages, special damages, damages, unpaid costs, penalties, liquidated
6 damages, interest, attorneys' fees, litigation costs, restitution, equitable relief or other similar relief or
7 claims against the Released Parties. Furthermore, without limiting the generalities of the foregoing,
8 Plaintiff also specifically agrees and acknowledges she is waiving any right to recover based upon state or
9 federal age, sex, race, color, national origin, marital status, religion, veteran status, disability, sexual
10 orientation, medical condition, genetic condition, or other antidiscrimination laws, rules, regulations, or
11 ordinances, including but not limited to, Title VII of the Civil Rights Act of 1964, Sections 1981 and 1983
12 of the Civil Rights Act of 1866, the Fair Credit Reporting Act, the Americans with Disabilities Act, the
13 WARN Act, the Equal Pay Act, the Employee Retirement Income Security Act, California Business and
14 Professions Code 17200, et seq., the Age Discrimination in Employment Act of 1967, as amended
15 ("ADEA"), and the Older Workers Benefit Protection Act, as amended ("OWBPA")(except a claim
16 relating to whether this release⁴ or waiver is valid under the ADEA and except for any claims under the
17 ADEA that may arise after the date this Agreement is executed by Plaintiff), the California Labor Code
18 and any similar state or local laws, such as the California Fair Employment and Housing Act, California
19 Family Medical Leave Act, the California Family Rights Act, and all of their implementing regulations and
20 interpretative guidelines, as well as in common law, including laws related to discrimination, harassment,
21 or retaliation, whether known or unknown, and whether anticipated or unanticipated, arising from or
22 relating to Plaintiff's relationship or the termination of the relationship with any Released Party through
23 the date this Agreement is executed by Plaintiff for any type of relief. For full avoidance of doubt, this is a
24 complete and general release of all claims to the maximum extent permitted by law. The Class
25 Representative's Released Claims exclude claims for workers' compensation (except for claims pursuant
26 to Labor Code Sections 132a and 4553), unemployment insurance benefits, disability, social security, or
27 other claims that cannot be released as a matter of law. This release includes a waiver of the protections
28 found in California Civil Code section 1542, which states:

1 A general release does not extend to claims that the creditor or releasing
2 party does not know or suspect to exist in his or her favor at the time of
3 executing the release and that, if known by him or her, would have
4 materially affected his or her settlement with the debtor or released party.

5 Plaintiff may hereafter discover claims or facts in addition to, or different from, those which she knows
6 or believes to exist, but Plaintiff expressly agrees to fully, finally, and forever settle and release any and
7 all claims against the Released Parties, known or unknown, suspected or unsuspected, which exist or may
8 exist against the Released Parties at the time prior to the execution of this Agreement, including, but not
9 limited to, any and all claims relating to or arising from Plaintiff's employment with Defendant.

10 1.9 "Complaint" means the operative Complaint on file in the Action with the Court.

11 1.10 "Court" means the Sacramento County Superior Court.

12 1.11 "Defendant" means IDEXX Distribution, Inc.

13 1.12 "Defendant's Counsel" means Alexandra M. Asterlin and Kyle A. Wende of Ogletree,
14 Deakins, Nash, Smoak & Stewart, P.C.

15 1.13 "Enhancement Payment" means the amount approved by the Court to be paid to the Class
16 Representative in recognition of the time and effort expended on behalf of Class Members for the benefit
17 of Class Members, which is in addition to any Individual Settlement Amount paid to the Class
18 Representative as a Participating Class Member.

19 1.14 "Effective Date" means the Final Approval Date unless there is a timely objection lodged
20 that has not later been withdrawn, in which case the Effective Date will be either (a) the 60th calendar day
21 after a signed order approving this settlement has been filed provided no appellate proceeding having been
22 filed; or (b) seventh (7th) calendar day after any appellate proceeding opposing the settlement has been
23 finally dismissed with no material change to the terms of this settlement and there is no right to pursue
24 further remedies or relief, whichever is later.

25 1.15 "Final Approval Date" means the date a signed order granting final approval of this
26 Agreement is filed with the Court.

27 1.16 "Gross Settlement Amount" is the sum of One Million Three Hundred Sixty Five Thousand
28 Dollars (\$1,365,000.00). Unless the escalator clause is triggered as described in Section 10.1, in no event
shall Defendant pay more than the Maximum Settlement Amount as a result of this Settlement.

1.17 “Individual Settlement Amount” means an individual Class Member’s and Aggrieved Employee’s allocation of the Net Settlement Amount and PAGA Payment respectively, as defined in Sections 1.19, 1.23, 5.5, and 5.8.

1.18 “LWDA” means the California Labor and Workforce Development Agency.

1.19 “Net Settlement Amount” is the portion of the Gross Settlement Amount available for distribution to Class Members, as described in this Agreement, after deduction of Class Counsel’s attorneys’ fees and litigation costs, Settlement Administrator Costs, the PAGA Payment, and Enhancement Payment to the Class Representative.

1.20 “Notice of Settlement” means the document substantially in the form attached hereto as Exhibit 1.

1.21 “Notice Period” means sixty (60) calendar days from the initial mailing of the Notice of Settlement to Class Members and Aggrieved Employees.

1.22 “PAGA” means Private Attorneys General Act.

1.23 “PAGA Payment” means the amount allocated from the Gross Settlement Amount towards resolving claims under the Private Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq.*

1.24 “PAGA Claim Period” means July 18, 2022, up to either (1) the Preliminary Approval Date or (2) May 26, 2024, whichever is earlier.

1.25 “Parties” mean Defendant and Plaintiff.

1.26 “Participating Class Member” means any and all Class Members who have not made any timely request to opt-out of the Agreement.

1.27 “Preliminary Approval Date” means the date a signed order granting preliminary approval of this Agreement is filed with the Court.

1.28 “QSF” means a Qualified Settlement Fund set up by the Settlement Administrator for the benefit of the Participating Class Members and/or Aggrieved Employees and from which the payments under this Agreement shall be made. Any amounts Defendant has agreed to pay under this Agreement shall remain the property of Defendant until the payments required under the Agreement are made.

1.29 “Qualifying Workweeks” and “Qualifying Pay Periods” are weeks worked by Class Members and Pay Periods worked Aggrieved Employees during the Class Period and/or PAGA Claim

1 Period, respectively, in California. For Class Members, workweeks shall mean any week during the Class
2 Period in which a Class Member performed any compensable work for Defendant as an hourly paid or non-
3 exempt employee, according to Defendant's records. For Aggrieved Employees, Pay Periods shall mean
4 the number of workweeks (as defined herein above) divided by two during the PAGA Claim Period. The
5 calculation of a Class Member's and/or Aggrieved Employee's workweeks and a determination as to
6 whether a Class Member and/or Aggrieved Employee was actively employed in California in a particular
7 workweek or pay period shall be construed from Defendant's records.

8 1.30 "Released Class Claims" means any and all class claims that are alleged in the Complaint,
9 and any additional wage and hour claims that could have been brought based on the facts alleged in the
10 Complaint, through the Class Period. This release excludes the release of claims not permitted by law.
11 The Released Class Claims exclude claims for workers' compensation or unemployment insurance
12 benefits. This release will cover all Class Members who do not opt out.

13 1.31 "Released PAGA Claims" means any and all claims that were brought under the Private
14 Attorneys General Act, Labor Code §§ 2698 *et seq.*, contained in Plaintiff's PAGA Action as exhausted in
15 the LWDA Notice and any additional wage and hour PAGA claims that could have been brought based on
16 the facts alleged in Plaintiff's notice letter to the LWDA during the PAGA Claim Period. Aggrieved
17 Employees cannot opt out of this waiver of claims.

18 1.32 "Released Parties" means Defendant and Defendant's past, present, and/or future, direct
19 and/or indirect, officers, shareholders, directors, members, managers, representatives, partners, investors,
20 shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors,
21 assigns, joint venturers, agents, employees, attorneys, and insurers.

22 1.33 "Settlement Administrator" means and refers to ILYM Group, Inc., the third-party entity
23 that will administer the Agreement as outlined in Sections 4 and 7, or any other third-party administrator
24 agreed to by the Parties and approved by the Court for the purposes of administering this Agreement. The
25 Parties each represent that they do not have any financial interest in the Settlement Administrator.

26 1.34 "Settlement Administrator Costs" means the fees and expenses reasonably incurred by the
27 Settlement Administrator as a result of the procedures and processes expressly required by this Agreement,
28 and shall include all costs of administering the Agreement, including, but not limited to, all tax document

1 preparation, custodial fees, and accounting fees incurred by the Settlement Administrator; all costs and fees
2 associated with preparing, issuing and mailing any and all notices and other correspondence to Class
3 Members and/or Aggrieved Employees; all costs and fees associated with communicating with Class
4 Members and/or Aggrieved Employees, Class Counsel, and Defendant's Counsel; all costs and fees
5 associated with computing, processing, reviewing, and paying the Individual Settlement Amounts, and
6 resolving disputes; all costs and fees associated with calculating tax withholdings and payroll taxes, if any,
7 making related payment to federal and state tax authorities, if any, and issuing tax forms relating to
8 payments made under the Agreement; all costs and fees associated with preparing any tax returns and any
9 other filings required by any governmental taxing authority or agency; all costs and fees associated with
10 preparing any other notices, reports, or filings to be prepared in the course of administering Individual
11 Settlement Amounts; and any other costs and fees incurred and/or charged by the Settlement Administrator
12 in connection with the execution of its duties under this Agreement.

13 **2. DESCRIPTION OF THE LITIGATION**

14 2.1 On or about July 18, 2023, Plaintiff sent notice to the LWDA to exhaust administrative
15 remedies under the PAGA for failure to pay overtime wages, failure to pay minimum wages, failure to
16 provide meal periods or pay premiums in lieu thereof, failure to provide rest periods or pay premiums in
17 lieu thereof, failure to provide accurate wage statements, failure to pay final wages, failure to pay
18 reimbursements for expenses, violation of Labor Code sections 558 & 558.1, failure to maintain accurate
19 records, and failure to provide paid sick leave. The LWDA did not respond to the notice within the
20 statutorily required time frame and, as such, Plaintiff became authorized to act as a Private Attorneys
21 General on all alleged PAGA claims.

22 2.2 On or about July 19, 2023, Plaintiff filed the Class Action in Sacramento County Superior
23 Court on behalf of herself and Class Members alleging claims for failure to pay overtime wages, failure to
24 pay minimum wages, meal period violations, rest period violations, wage statement violations, waiting
25 time penalties, failure to reimburse expenses, and unfair competition. The Class Action was removed to
26 the United States District Court for the Eastern District of California on August 25, 2023, Case No. 2:23-
27 cv-01819-MCE-CKD.
28

1 2.3 On or about October 26, 2023, Plaintiff filed a separate lawsuit, the PAGA Action, in
2 Sacramento County Superior Court on behalf of herself and Aggrieved Employees alleging violations of
3 the California Labor Code as stated in her notice letter to the LWDA against Defendant, Jonathan Jay
4 Mazelsky, and Brian P. McKeon.

5 2.4 Through informal discovery, Defendant and Defendant's Counsel provided Class Counsel
6 with copies of its policies and procedures, employee handbooks, information on Class Members including,
7 but not limited to, Class Members' workweeks, dates of employment, total number of Class Members, their
8 rates of pay, and pay periods as well as timecard data and payroll reports for a randomly selected sample
9 of Class Members.

10 2.5 After Class Counsel received the data, the Parties participated in a lengthy mediation with
11 private mediator Steven G. Mehta, Esq., on March 27, 2024. At the conclusion of the mediation, the Parties
12 were able to come to a resolution covering the claims in the Class Action and the PAGA Action. At all
13 times, the Parties' settlement negotiations have been non-collusive, adversarial, and at arm's length.

14 2.6 On April 9, 2024, the Class Action was ordered to be remanded to State Court. The Parties
15 stipulated to Plaintiff filing a First Amended Complaint consolidating the claims and allegations in the
16 PAGA Action into the Class Action and dismissing individual defendants Jonathan Jay Mazelsky and Brian
17 P. McKeon. Plaintiff filed a First Amended Complaint in the Class Action to this effect on May 14, 2024.

18 2.7 Discussions between Plaintiff and Class Counsel, between counsel for the Parties, document
19 productions, extensive legal analysis, the provision of information by Defendant to Plaintiff and the
20 detailed analysis of the records, including expert analysis, have permitted each side to assess the relative
21 merits of the claims and the defenses to those claims.

22 2.8 In the Action, Plaintiff contends that Defendant violated California law by 1) failing to pay
23 overtime wages, 2) failing to pay minimum wages, 3) failing to provide meal periods, 4) failing to provide
24 rest periods, 5) failing to provide accurate wage statements, 6) failing to timely pay final wages, 7) failing
25 to reimburse expenses, and 8) engaging in unfair competition based thereon and the failure to pay all sick
26 leave wages owed. Plaintiff also contends these violations support a claim under the PAGA. Defendant
27 has denied each of Plaintiff's claims and Defendant has denied that this Action is appropriate for class
28 certification for anything other than settlement purposes. The agreed upon Gross Settlement Amount was

1 reached after evaluating the Parties' theories of potential exposure for the underlying claims and the class
2 data supporting these claims. The Parties, with the assistance of the mediator, also assessed appropriate
3 discounts to the potential liability based on Defendant's factual and legal contentions and defenses.

4 2.9 The Parties agree that the above-described investigation and evaluation, as well as informal
5 discovery and the information exchanged to date, are more than sufficient to assess the merits of the
6 respective Parties' positions and to compromise the issues on a fair and equitable basis. Plaintiff, Class
7 Counsel, Defendant, and Defendant's Counsel have concluded that it is desirable that the Action be settled
8 in a manner and upon such terms and conditions set forth herein in order to avoid further expense,
9 inconvenience and distraction of further legal proceedings, and the risk of an adverse outcome each of the
10 Parties potentially face in the Action. Therefore, the Parties desire to resolve the claims in the Action.
11 Plaintiff, Class Counsel, Defendant, and Defendant's Counsel are of the opinion that the Agreement for the
12 consideration and terms set forth herein is fair, reasonable, and adequate in light of all known facts and
13 circumstances.

14 **3. THE CONDITIONAL NATURE OF THIS AGREEMENT**

15 3.1 This Agreement and all associated exhibits or attachments are made for the sole purpose of
16 settling the Action. This Agreement and the settlement it evidences are made in compromise of disputed
17 claims. Because the Action was pled as a class action, this Agreement must receive preliminary and final
18 approval by the Court. Accordingly, the Parties enter into this Agreement and associated settlement on a
19 conditional basis. If the Effective Date does not occur, or if the Court's approval of the settlement is
20 reversed or materially modified on appellate review, this Agreement shall be deemed null and void; it shall
21 be of no force or effect whatsoever; it shall not be referred to or utilized for any purpose whatsoever; and
22 the negotiation, terms and entry of the Agreement shall remain subject to the provisions of California
23 Evidence Code Sections 1119 and 1152, Federal Rule of Evidence 408, and any other analogous rules of
24 evidence that may be applicable.

25 3.2 Defendant has denied all claims as to liability, damages, liquidated damages, penalties,
26 interest, fees, restitution, injunctive relief and all other forms of relief asserted in the Action. Defendant
27 has agreed to resolve the Action via this Agreement, but to the extent this Agreement is deemed void or
28 the Effective Date does not occur, Defendant does not waive, but rather expressly reserves, all rights to

challenge all such claims and allegations in the Action upon all procedural and factual grounds, including, without limitation, the ability to challenge class or collective treatment on any grounds, as well as to assert any and all other potential defenses or privileges.

4. SCOPE OF THE CLASS

4.1 The scope of the class of individuals encompassed under the Agreement and subject to all obligations and duties required under the Agreement, shall include all Class Members as defined in Section 1.5 and all Aggrieved Employees as defined in Section 1.2. However, it shall not include any Class Members who submit valid and timely requests to opt-out of the Agreement and settlement, as set forth in Section 7.5.1.

4.2 Only Participating Class Members and Aggrieved Employees are entitled to recover under this Agreement.

4.3 Any person who believes that he or she is a Class Member or Aggrieved Employee and wishes to participate in the Agreement, but did not receive a Notice of Settlement because his or her name did not appear on the class list provided to the Settlement Administrator prior to mailing, may submit a data request to the Settlement Administrator. The data request must contain all of the following information: (a) the full name and, if applicable, Social Security Number of the individual making the request; (b) the name used by such employee as of the time his or her employment with Defendant ended; (c) the individual's dates of employment with Defendant; and (d) a return address to which a response may be sent. Every data request must be postmarked on or before the conclusion of the Notice Period or otherwise submitted to the Settlement Administrator such that it is received before the conclusion of the Notice Period. Upon receipt of any data requests, the Settlement Administrator shall promptly (in no event more than two business days) transmit the data requests to Defendant's Counsel and request that Defendant review its records.

4.4 If Defendant agrees that the person listed in a data request is a Class Member and/or Aggrieved Employee, the Settlement Administrator shall promptly mail a Notice of Settlement to the person who submitted the data request, at the address designated for that purpose in the data request. All provisions of this Agreement relating to the Notice of Settlement shall apply to Notice of Settlements sent in response to data requests, and any person who submits a data request and is sent a Notice of Settlement

in response shall be treated by the Settlement Administrator as a Class Member and/or Aggrieved Employee for all other purposes.

4.5 If Defendant does not agree that the person listed in a data request is a Class Member and/or Aggrieved Employee, Defendant's Counsel and Class Counsel shall attempt to resolve any such dispute in good faith within seven (7) calendar days of Class Counsel being advised in writing of the data request dispute. Defendant's records shall control unless the individual submitting the data request provides persuasive evidence to doubt the accuracy of those records. Each data request dispute that Defendant's Counsel and Class Counsel cannot timely resolve shall be resolved by the Settlement Administrator. The Settlement Administrator must accept and weigh all the evidence provided in a good faith attempt to resolve the dispute. The Settlement Administrator must resolve any dispute submitted to it within seven (7) calendar days after Defendant's Counsel and Class Counsel submit the dispute to the Settlement Administrator. The decision by the Settlement Administrator shall be final as between the parties, subject to Court review.

5. TERMS OF THE SETTLEMENT

The Parties agree as follows:

5.1 Gross Settlement Amount: In consideration and exchange for the releases described in Section 6, Defendant shall pay the Gross Settlement Amount (\$1,365,000.00). Funding of the Gross Settlement Amount shall occur within 21 calendar days after the Effective Date to be held in trust in a QSF by the Settlement Administrator. The Gross Settlement Amount includes payments to Participating Class Members, Aggrieved Employees, all attorneys' fees, costs and litigation expenses related to the Action incurred to date, as well as all such fees and costs incurred in documenting the Agreement, administering the Agreement (including Settlement Administrator Costs), and obtaining final approval of the Agreement, the Enhancement Payment to the Class Representative and the PAGA Payment. Any monies necessary to satisfy Defendant's tax obligations (*e.g.* employer FICA, FUTA and SDI contributions on wage payments) on any monies distributed to Participating Class Members will be paid in addition to the Gross Settlement Amount.

5.2 Attorneys' Fees and Costs: Class Counsel will apply to the Court for attorney's fees of 35% of the Gross Settlement Amount, which shall be paid from the Gross Settlement Amount. Defendant has

1 agreed to not oppose Class Counsel's application for attorneys' fees so long as it does not exceed the 35%
2 threshold. Class Counsel will also be entitled to reimbursement for advanced litigation expenses not to
3 exceed \$17,500.00, which shall be paid from the Gross Settlement Amount. Defendant has agreed to not
4 oppose Class Counsel's request for reimbursement for advanced litigation expenses so long as they do not
5 exceed the \$17,500.00 threshold. The Settlement Administrator will issue Class Counsel an IRS Form
6 1099 for the attorneys' fees and costs paid under this Agreement. In the event that the Court awards less
7 than the requested attorney's fees and/or costs, the portion of the requested amounts not awarded to Class
8 Counsel shall be added to the Net Settlement Amount to be distributed to Participating Class Members on
9 a pro rata basis. Even in the event the Court reduces or does not approve the attorney's fees and costs
10 requested by Class Counsel, Plaintiff and Class Counsel shall not have the right to revoke this Agreement
11 and it will remain binding.

12 5.3 Settlement Administrator Costs: The Settlement Administrator Costs shall be paid from the
13 Gross Settlement Amount and shall not exceed \$20,000. The difference between any actual costs and the
14 allocated \$20,000 shall be added to the Net Settlement Amount to be distributed to Participating Class
15 Members on a pro rata basis.

16 5.4 Enhancement Payment: Class Counsel, on behalf of Plaintiff, shall apply to the Court for
17 an Enhancement Payment to the Class Representative in an amount not to exceed Ten Thousand Dollars
18 (\$10,000.00) to compensate for the risks, time, and expense of her involvement in the Action and securing
19 the benefits of this Agreement for Class Members. The Enhancement Payment is in addition to the
20 Individual Settlement Amount Plaintiff would otherwise be due under the Agreement as a Participating
21 Class Member. Defendant has agreed to not oppose Class Counsel's request for an Enhancement Payment
22 to Plaintiff so long as it does not exceed the amount stated herein. The Enhancement Payment will be
23 designated as a non-wage payment and reported on an IRS Form 1099-MISC. In the event that the Court
24 awards less than the Enhancement Payment amount requested, then any portion of the requested amount
25 not awarded to the Class Representative shall be added to the Net Settlement Amount to be distributed to
26 Participating Class Members on a pro rata basis. Even in the event the Court reduces or does not approve
27
28

1 the requested Class Representative Enhancement Payment, Plaintiff and Class Counsel shall not have the
2 right to revoke this Agreement and it shall remain binding.

3 5.5 PAGA Payment: Forty Thousand Dollars (\$40,000.00) of the Gross Settlement Amount
4 shall be allocated to resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment
5 will be paid to the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees on a pro
6 rata basis as described below in Section 5.8. Any amount not approved by the Court for the allocated
7 PAGA Payment shall be added to the Net Settlement Amount to be distributed to Participating Class
8 Members on a pro rata basis.

9 5.6 Treatment of Residue and Cy Pres: For any portion of the Net Settlement Amount or PAGA
10 Payment allocated to Participating Class Members and/or Aggrieved Employees that were not claimed by
11 cashing their respective settlement checks before the deadline to do so, that remaining amount shall be
12 donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Center for Workers' Rights under the doctrine
13 of *cy pres*. The Parties agree this disposition results in "no unpaid residue" under California Code of Civil
14 Procedure §384, as the distribution of all funds is accounted for under the Settlement. Therefore, Defendant
15 will not be required to pay any interest on said amount. No portion of the Gross Settlement Amount will
16 revert to Defendant for any reason.

17 5.7 No Additional Benefits Contributions: All Individual Settlement Amounts paid to
18 Participating Class Members and Aggrieved Employees shall be deemed to be income solely in the year in
19 which such amounts were actually received. It is expressly understood and agreed that the receipt of such
20 Individual Settlement Amounts will not entitle any Participating Class Member or Aggrieved Employee to
21 any new or additional compensation or benefits under any company bonus or other compensation or benefit
22 plan or agreement in place during the period covered by the Agreement, nor will it entitle any Participating
23 Class Member Aggrieved Employee to any increased retirement, 401(k) and/or 403(b) benefits or matching
24 benefits, or deferred compensation benefits. It is the intent of this Agreement that the Individual Settlement
25 Amounts provided for in this Agreement are the sole payments to be made by Defendant to the Participating
26 Class Members and Aggrieved Employees in connection with this Agreement (notwithstanding any
27 contrary language or agreement in any benefit or compensation plan document that might have been in
28 effect during the period covered by this Agreement).

1 5.8 Pro Rata Distribution Formula: Payment to Participating Class Members and Aggrieved
2 Employees of their Individual Settlement Amount will not require the submission of a claim form. A Net
3 Settlement Amount will be determined by subtracting from the Gross Settlement Amount any amounts for
4 approved attorneys' fees and costs, any Enhancement Payment to the Class Representative, the Settlement
5 Administrator Costs, and the PAGA Payment. Each Class Member's share will be initially determined by
6 dividing their total Qualifying Workweeks within the Class Period by the total Qualifying Workweeks of
7 all Class Members. That fraction will then be multiplied by the Net Settlement Amount to arrive at the
8 Class Member's individual share of the Net Settlement Amount. Any funds allocated to Class Members
9 under this formula who timely opt out of the Settlement will be redistributed to Participating Class
10 Members on a pro rata basis, *i.e.* each Participating Class Member's share will be determined by dividing
11 their total Qualifying Workweeks within the Class Period by the total Qualifying Workweeks of all
12 Participating Class Members and that fraction will then be multiplied by the Net Settlement Amount to
13 arrive at the Participating Class Member's individual share of the Net Settlement Amount. Each Aggrieved
14 Employee's share of the 25% portion of the PAGA Payment will be determined by dividing their total
15 Qualifying Pay Periods within the PAGA Claim Period by the total Qualifying Pay Periods by all
16 Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25%
17 portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share.

18 5.9 Tax Allocation: The Parties recognize that the Individual Settlement Amounts to be paid to
19 Participating Class Members and/or Aggrieved Employees reflect a settlement of a dispute over claimed
20 penalties and wages. The Settlement Administrator shall calculate the employer's share of payroll taxes
21 on the amounts paid to Participating Class Members as wages as well as calculating all required
22 withholdings and deductions from said wage payments. The characterization of Individual Settlement
23 Amounts to Participating Class Members and Aggrieved Employees are as follows:

24 5.9.1 Twenty percent (20%) of each Participating Class Members' share of the Net
25 Settlement Amount shall be allocated for payment of disputed wages and shall be subject to required
26 employer taxes. Participating Class Members shall receive an IRS Form W-2 for reporting of this portion
27 of their Individual Settlement Amount.
28

1 5.9.2 Eighty percent (80%) of each Participating Class Members' share of the Net
2 Settlement Amount shall be allocated for disputed statutory penalties and interest, and no amount shall be
3 deducted for any taxes. This portion of the Individual Settlement Amount consists of other income, not
4 wages, for which the Participating Class Members shall receive IRS Forms 1099-MISC and 1099-INT and
5 this payment shall be divided equally among the 1099-MISC and 1099-INT designations.

6 5.9.3 The entirety (100%) of each Aggrieved Employee's share of the 25% portion of the
7 PAGA Payment shall be allocated for payment of disputed civil penalties, and no amount shall be deducted
8 for any taxes. This portion of the Individual Settlement Amount consists of other income, not wages, for
9 which the Aggrieved Employees shall receive an IRS Form 1099-MISC.

10 5.10 Participating Class Members and Aggrieved Employees shall be solely responsible for the
11 reporting and payment of their share of any federal, state and/or municipal income or other taxes on
12 payments made pursuant to this Agreement, and shall hold the Parties, Class Counsel, and Defendant's
13 Counsel free and harmless from any claims resulting from treatment of such payments as non-taxable,
14 including the treatment of such payments as not subject to withholding or deduction for payroll and
15 employment taxes. No party has made any representation to any of the other Parties as to the taxability of
16 any payments pursuant to this Agreement, including the payments to Participating Class Members, the
17 payments to Aggrieved Employees, the payments to Class Counsel, the payments to the Class
18 Representative, the payroll tax liability of Defendant, or the allocation of the Net Settlement Amount or
19 PAGA Payment to wage and non-wage income as provided in this Section, or otherwise as to tax
20 implications of any provision of this Agreement.

21 5.11 No Additional Contribution by Defendant: Defendant's monetary obligation under this
22 Agreement is limited to the Gross Settlement Amount and any employer side payroll taxes owed on
23 amounts characterized as wages under this Agreement. All other costs and expenses arising out of or in
24 connection with the performance of this Agreement shall be paid from the Gross Settlement Amount, unless
25 expressly provided otherwise herein. However, in the event this agreement is deemed null and void as
26 described in Section 3 because the Court, in its independent determination, finds that the Agreement does
27 not meet the standards for settlement approval, then Defendant and Plaintiff shall be equally responsible
28

1 for the costs of the Settlement Administrator incurred between the date the Agreement was executed and
2 the date of such event.

3 5.12 Certification For Settlement Purposes: The Parties agree that, for purposes of settlement
4 only, certification of the class as defined in Section 1.5 and 4.1 is appropriate and the requisites for
5 establishing class certification have been met and are met.

6 5.13 Adequacy of Class Counsel and Class Representative: The Parties agree that, for purposes
7 of settlement only, Class Counsel and Plaintiff are adequate representatives for Class Members and
8 Aggrieved Employees.

9 **6. RELEASE**

10 6.1 Release of Claims by Participating Class Members: Upon the Effective Date, all
11 Participating Class Members will be deemed to fully, finally and forever release the Released Class Claims
12 as to all Released Parties. In addition, on the Effective Date, all Participating Class Members and their
13 successors in interest will be permanently enjoined and forever barred from prosecuting any of Released
14 Class Claims against any of the Released Parties. These releases will take effect whether or not a
15 Participating Class Member receives his or her Individual Settlement Payment or cashes and deposits any
16 Individual Settlement payment check.

17 6.2 Release of Claims by Aggrieved Employees: Upon the Effective Date, as representatives of
18 the State of California and on behalf of the LWDA, Plaintiff and all Aggrieved Employees will be deemed
19 to fully, finally and forever release the Released PAGA Claims as to all Released Parties. In addition, on
20 the Effective Date, all Aggrieved Employees and their successors in interest will be permanently enjoined
21 and forever barred from prosecuting any of the Released PAGA Claims against any of the Released Parties.
22 These releases will take effect whether or not an Aggrieved Employee receives his or her Individual PAGA
23 Payment or chases and deposits any Individual PAGA payment check.

24 6.3 Release by Plaintiff: Upon the Effective Date, Plaintiff will be deemed to fully, finally and
25 forever release the Released Class Claims, Released PAGA Claims, and Class Representative's Released
26 Claims as to all Released Parties. In addition, on the Effective Date, Plaintiff and any successors in interest
27 will be permanently enjoined and forever barred from prosecuting any of the Released Class Claims,
28 Released PAGA Claims, and Class Representative's Released Claims against any of the Released Parties.

6.4 Finality of Release: Plaintiff and Participating Class Members, and Aggrieved Employees may hereafter discovery facts or legal arguments in addition to, or different from, those they now know or currently believe to be true with respect to the claims, causes of action, and legal theories of recovery in this Action. Regardless, the discovery or new facts or legal arguments shall in no way limit the scope and definition of the release, and by virtue of this agreement, Plaintiff, Participating Class Members, and Aggrieved Employees shall be deemed to have, and by operation of final judgment approved by the Court shall have, fully, finally, and forever settled and released all Released Class Claims and Released PAGA Claims. The Parties understand and specifically agree the scope of this release is a material part of the consideration for this Agreement, was critical in justifying the economic value of this settlement and, without it, Defendant would not have agreed to the consideration provided, and is narrowly drafted and necessary to ensure Defendant is obtaining peace of mind regarding the resolution of claims that were or could have been alleged based upon the facts asserted in the operative Complaint, and the PAGA Action complaint, as exhausted by the LWDA notice.

7. SETTLEMENT ADMINISTRATION

7.1 Duties of Settlement Administrator: The Settlement Administrator shall be responsible for: 1) receiving Class Member and Aggrieved Employee contact information and confirming addresses are valid; 2) calculating estimated Individual Settlement Amounts and any and all taxes associated with the Individual Settlement Amounts, including employer taxes; 3) taking appropriate steps to trace and locate any individual Class Members and Aggrieved Employee whose address or contact information as provided to the Settlement Administrator is inaccurate or outdated and mailing the Notice of Settlement to Class Members; 4) providing notification to the appropriate state and federal officials of this Agreement as required under the law; 5) receiving, independently reviewing, and resolving any challenges (in consultation with Class Counsel and Defendant's Counsel) from Class Members or Aggrieved Employees, including any associated documentation, regarding their Qualified Workweek calculations; 6) receiving and serving on Class Counsel, Defendant's Counsel, and the Court, copies of any written objections, and/or any opt out statements; 7) establishing a toll free telephone line and responding to inquiries and requests for information or assistance from Class Members and/or Aggrieved Employees; 8) maintaining a QSF; 9) determining and paying the final amounts due to be paid under the Agreement after resolution of all

1 challenges, disputes, opt-outs, awarded attorneys' fees and costs, Settlement Administrator Costs, PAGA
2 Payment, taxes, any Enhancement Payments, and for funds that cannot be distributed due to the inability
3 to locate Class Members or Aggrieved Employees; 10) determining the validity of any disputes or late opt-
4 outs by previously unidentified Class Members or Aggrieved Employees; 11) paying any residual funds
5 from uncashed checks; 12) reporting to Class Counsel and Defendant's Counsel regarding the statistics of
6 the administration, including (a) the number of initial Notice of Settlements mailed; (b) the number of
7 forwarded Notice of Settlements; (c) the number of re-mailed Notice of Settlements; (d) the number of
8 total undeliverable Notice of Settlements; (e) the number of address traces performed for undeliverable
9 Notice of Settlements; (f) the number of Notice of Settlements undeliverable from traced addresses; (g) the
10 number of total objections received; (h) the number of opt-out requests received; (i) the number of disputes
11 received; (j) the number of disputes resolved; 13) providing a declaration to the Court regarding the final
12 statistics of the administration and compliance with all payment obligations under the Agreement; 14)
13 completing all necessary tax reporting on the QSF and payment of the Individual Settlement Amounts to
14 Participating Class Members and Aggrieved Employees; and 15) carrying out other related tasks as
15 necessary to effectuate the terms of this Agreement and any Order of the Court. All disputes relating to
16 the Settlement Administrator's ability and need to perform its duties shall be referred to the Court, if
17 necessary, which will have continuing jurisdiction over the terms and conditions of this Agreement, until
18 all payments and obligations contemplated by the Agreement have been fully executed. Plaintiff, Class
19 Counsel, Defendant, and Defendant's Counsel shall not bear any responsibility for errors or omissions in
20 the calculations or distribution of the settlement payments or development of the list of recipients of
21 settlement payments.

22 7.2 Notice to Class Members and Aggrieved Employees: Defendant represents and warrants
23 that Class Members and Aggrieved Employees are able to read and write in English such that no translation
24 of the Notice of Settlement into another language is necessary. The Notice of Settlement will provide Class
25 Members and Aggrieved Employees with a summary of the terms and conditions of the Agreement, how
26 to participate in the settlement, how to object to the Agreement, how to dispute the individual's Qualifying
27 Workweeks, and how to opt-out from the Agreement. The Notice of Settlement will also inform Class
28

Members and Aggrieved Employees of the Gross Settlement Amount, Net Settlement Amount, proposed attorneys' fees and costs allocations, any proposed Enhancement Payments, proposed Settlement Administrator Cost allocations, proposed PAGA Payment allocations, the scope of the class, the nature and extent of the released claims, dates set for a fairness hearing and hearing on Class Counsels' motion for attorneys' fees and costs. The Notice of Settlement shall include information regarding Class Member's and Aggrieved Employee's estimated Individual Settlement Amount. The Notice of Settlement will provide information on how to access electronic copies online of the Notice of Settlement, any motions for approval of the Agreement, any motions for approval of attorneys' fees and costs, and any other documents as the Court directs.

7.3 Class Member Data and Mailing: No later than fourteen (14) calendar days after the Preliminary Approval Date, Defendant shall provide the Settlement Administrator with the first and last name, last known mailing address, last known telephone number, Social Security Number, start and end date (if any) of employment of each Class Member and Aggrieved Employee, and any other information the Settlement Administrator needs to effectuate notice to Class Members and Aggrieved Employees as outlined herein. The Settlement Administrator shall review the data to determine the number of Qualifying Workweeks for each Class Member and Aggrieved Employee. No later than fourteen (14) calendar days after receipt of such address information, the Settlement Administrator will perform a national change of address ("NCOA") search, update the addresses per the results of the NCOA search, and then mail the Notice of Settlement, substantially in the form attached as Exhibit 1, to each Class Member and Aggrieved Employee by first-class mail, postage prepaid. The Settlement Administrator shall maintain all information received from Defendant confidential to itself, and Defendant's Counsel. However, Class Counsel shall be able to review the breakdown of Qualified Workweeks and estimated Individual Settlement Amounts for Class Members and Aggrieved Employees prior to mailing for quality assurance, provided the personal identifying information is redacted and/or omitted.

7.4 Returned and/or Re-mailed Notice of Settlements: In the event that a Notice of Settlement is returned to the Settlement Administrator as undeliverable on or before the conclusion of the Notice Period, the Notice of Settlement shall be sent to the forwarding address affixed thereto within five (5) calendar days. If no forwarding address is provided, then the Settlement Administrator shall promptly

attempt to determine a correct address using a skip-trace, computer or other search using the name, address and/or Social Security number of the individual involved, and shall then perform a single re-mailing within five (5) calendar days to any more recent address found as a result of the search. Following each search that does not result in a corrected address, for those Class Members who appear to be current employees of Defendant at the time of the Preliminary Approval Date, the Settlement Administrator shall contact Defendant's Counsel for assistance and Defendant shall cooperate in good faith with the Settlement Administrator's reasonable efforts to obtain valid mailing addresses for Class Members to the extent they are active employees of Defendant. In the event the Notice of Settlement is forwarded to a new address and/or re-mailed to a Class Member, the deadline for the Class Member to submit any request to opt-out, a dispute, or an objection shall be the end of the Notice Period or 10 days from the date of the re-mailing/forwarding to a new address, whichever is later. In the event the procedures in this Section are followed and the Class Member does not timely and properly request to opt-out, the Class Member shall be bound by all terms of the Agreement, including the releases contained in Section 6.

7.5 Responses to Notice of Settlement:

7.5.1 *Opt-Outs:* The Notice of Settlement shall provide that Class Members who wish to exclude themselves from the Agreement must submit a request to opt-out as provided in this Section. The request to opt-out must (a) state the Class Member's full name and date of birth; (b) a statement that he or she does not want to be a Class Member, does not want to participate in the settlement, and/or wants to be excluded from the settlement; (c) identify the case name and number (*i.e. Mac Dula v. IDEXX Distribution, Inc.*, Case No. 23CV005044); (d) be signed; and (e) be post-marked no later than the conclusion of the Notice Period or the re-mailing timeline stated in Section 7.4. The Class Member must personally sign the request to opt-out. No request to opt-out may be made on behalf of a group of Class Members. The date of the postmark on the return-mailing envelope shall be the exclusive means used to determine whether a request to opt-out has been timely submitted. Any Class Member who requests to opt-out of the Agreement will not be entitled to any portion of the Net Settlement Amount nor will they have any right to object, appeal or comment thereon. The name of any Class Member who submits a valid and timely opt out request will be specifically identified in any proposed order granting final approval. Class Members who fail to submit a valid and timely request to opt-out shall be bound by all terms of the Agreement and any order or

1 final judgment thereon. Regardless of whether an Aggrieved Employee opts out of being a Class Member,
2 they will still receive their share of the PAGA Payment as Aggrieved Employees cannot opt out of this
3 Agreement as it relates to the PAGA Payment or Released PAGA Claims.

4 7.5.2 *Objection Procedures:* Any Class Member who does not opt-out, but who wishes
5 to object to this Agreement or otherwise to be heard concerning this Agreement, may submit a written
6 objection to the Settlement Administrator, who will promptly provide copies of the objection to Class
7 Counsel and Defendant's Counsel. The Notice of Settlement shall make clear that the Court can only
8 approve or deny the Agreement, not change the terms of the Agreement. The written objection should (a)
9 state the Class Member's full name and date of birth; (b) provide evidence that the individual is, in fact, a
10 Class Member; (c) state the reasons for the objection(s), including any supporting documentation; (d)
11 identify the case name and number (*i.e. Mac Dula v. IDEXX Distribution, Inc.* , Case No. 23CV005044);
12 (e) be signed; and (f) be post-marked no later than the conclusion of the Notice Period or the re-mailing
13 timeline stated in Section 7.4. Additionally, or in the alternative to sending a written objection to the
14 Settlement Administrator, any Class Member may appear at the final approval hearing to state their
15 objection.

16 7.5.3 *Dispute Procedures:* Any Class Member who disputes the number of Qualifying
17 Workweeks on the Notice of Settlement shall contact the Settlement Administrator. The dispute must (a)
18 identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c)
19 be signed; and (d) be post-marked no later than the conclusion of the Notice Period or the re-mailing
20 timeline stated in Section 7.4. The Settlement Administrator shall promptly (in no event more than two
21 business days) forward all such disputes to Defendant's Counsel and request that Defendant review the
22 dispute. Defendant's records shall presumptively control, unless the Class Member can produce
23 documentation evidencing other periods of employment worked. If Defendant agrees with submitted
24 information, the Class Member shall be credited or subtracted Qualifying Workweeks in accordance with
25 their submitted dispute and that final number of Qualified Workweeks shall govern the calculation of that
26 Class Member's Individual Settlement Amount. If Defendant disagrees with the submitted information,
27 Defendant's Counsel will promptly advise Class Counsel of the dispute, which includes turning over any
28 documentation submitted by the Class Member as part of the dispute. Defendant's Counsel and Class

Counsel shall attempt in good faith to resolve any such dispute within five (5) calendar days of Class Counsel being advised of the dispute. Each dispute that Defendant's Counsel and Class Counsel cannot timely resolve shall be resolved by the Settlement Administrator, subject to Court review.

7.5.4 Deficient Opt-Outs, Objections, or Disputes: In the event that a deficient opt-out, objection, or dispute is received on or before the conclusion of the Notice Period, the Settlement Administrator shall mail a letter to the Class Member within five (5) calendar days informing them of the deficiency. If a deficiency letter is mailed to a Class Member, the deadline for the Class Member to cure the deficiency shall be the end of the Notice Period or 10 calendar days from the date of the deficiency letter, whichever is later.

7.6 Due Process Acknowledgement: Compliance with the procedures set forth in Sections 7.1 to 7.5.4 shall constitute due and sufficient notice to Class Members of the Action and the Agreement and shall satisfy Class Members' due process rights. Nothing else shall be required of the Parties, Class Counsel or Defendant's Counsel to provide notice of the proposed Agreement.

7.7 Settlement Administrator Declaration Regarding Notice Period: Within fourteen (14) calendar days after the conclusion of the Notice Period, the Settlement Administrator shall provide Class Counsel and Defendant's Counsel with a signed declaration under penalty of perjury providing a complete and detailed report regarding the statistics and responses of settlement administration to date and all the Settlement Administrators' obligations under Sections 5.8 to 5.9.3 and 7.1 to 7.5.4.

7.8 Settlement Administrator Payments to Participating Class Members, Class Counsel and Plaintiff: Within seven (7) calendar days after the Effective Date and the Court's determination of the amount of attorneys' fees and costs payable to Class Counsel, the Enhancement Payment payable to Plaintiff, the PAGA Payment, and Settlement Administrator Costs, the Settlement Administrator shall calculate the final Net Settlement Amount, the final Individual Settlement Amounts for Participating Class Members and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations Class Counsel and Defendant's Counsel. Defendant shall wire the Gross Settlement Amount and applicable taxes necessary to fund the Settlement as described in Section 5.1 to the Settlement Administrator within twenty-one (21) calendar days after the Effective Date to be to be held in trust in a QSF. Within seven (7) calendar days after Defendant fund the settlement, the Settlement Administrator

1 shall deliver payment of Class Counsels' attorney's fees and costs, the Enhancement Payment payable to
2 Plaintiff, the 75% portion of the PAGA Payment payable to the LWDA, Settlement Administrator Costs,
3 and payment to Participating Class Members and/or Aggrieved Employees as required under this
4 Agreement and approved by Court.

5 7.8.1 The Settlement Administrator shall wire the Court-approved attorneys' fees and
6 costs to Class Counsel, unless another method is requested by Class Counsel. Class Counsel shall provide
7 the Settlement Administrator with the pertinent taxpayer identification number and payment instructions
8 after the Final Approval Date.

9 7.8.2 The Settlement Administrator shall send a check by mail for the Court-approved
10 Enhancement Payment to the Class Representative, care of Class Counsel unless another method is
11 requested by Class Counsel.

12 7.8.3 Only Participating Class Members and Aggrieved Employees will receive their
13 Individual Settlement Amount.

14 7.8.4 The Settlement Administrator shall remit and report the applicable portions of the
15 payroll tax payment to the appropriate taxing authorities on a timely basis pursuant to its duties under this
16 Agreement. Defendant agree to reasonably cooperate with the Settlement Administrator to the extent
17 necessary to determine the amount of the payroll tax payment required.

18 7.9 Settlement Check Expiration and Uncashed Checks: The Settlement Administrator shall
19 issue Individual Settlement Amounts to Participating Class Members and Aggrieved Employees in the
20 form of a check, which shall become null and void if not deposited within one hundred eighty (180)
21 calendar days of issuance. After one hundred eighty (180) calendar days of issuance, the checks shall be
22 voided and funds from all uncashed checks shall be transmitted in accordance with Section 5.6. The
23 Settlement Administrator shall deliver these funds within fourteen (14) calendar days after the check
24 cashing deadline.

25 7.10 Settlement Administrator Declaration Regarding Compliance and Settlement
26 Administration: Within twenty-one (21) calendar days after the last day for Participating Class Members
27 and Aggrieved Employees to cash their settlement checks, the Settlement Administrator shall provide Class
28 Counsel and Defendant's Counsel with a signed declaration under penalty of perjury providing a complete

and detailed report regarding the settlement administration documenting that all payments under the Agreement have been made, that the Court's final approval order has been complied with, and that all the obligations of the Settlement Administrator have been completed.

8. PRELIMINARY SETTLEMENT ADMINISTRATION SCHEDULE

8.1 The schedule may be modified depending on whether and when the Court grants necessary approvals, orders notice to Class Members and Aggrieved Employees, and sets further hearings. The schedule may also be modified to correct clerical errors and to reflect the provisions in the Agreement as described above. In the event of such modification, the Parties shall cooperate to complete the settlement procedures as expeditiously as reasonably practicable. The preliminary schedule for notice, approval, and payment procedures carrying out the Agreement is as follows:

Last day for Defendant to provide Settlement Administrator with Class Member and Aggrieved Employee information	Within 14 calendar days after the Preliminary Approval Date
Last day for Settlement Administrator to complete NCOA search, update Class Member and Aggrieved Employee mailing information, and mail Notice of Settlement	Within 14 calendar days after the Settlement Administrators' receipt of Class Members' information from Defendant
Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	60 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
Last day for Settlement Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 14 calendar days after end of the Notice Period
Last day for Settlement Administrator to calculate the final Net Settlement Amount, the final Individual Settlement Amounts for Participating Class Members and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendant's Counsel	Within 7 calendar days after the Effective Date
Last day for Defendant to fund settlement	Within 21 calendar days after the Effective Date

Last day for Settlement Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Settlement Administrator Costs, payment to Participating Class Members, and payment to Aggrieved Employees	Within 7 calendar days after Defendant has funded the settlement
Last day for Participating Class Members and Aggrieved Employees to cash settlement checks	180 calendar days after issuance of checks to Participating Class Members and Aggrieved Employees
Last day for Settlement Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
Last day for Settlement Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

9. DUTIES OF THE PARTIES

9.1 Preliminary Approval: The Parties will cooperate in obtaining, through an unopposed motion to be filed as soon as reasonably practicable, an order from the Court preliminarily approving this Agreement at the earliest possible date, concurrently with the Court's certification of the Action as a class action for settlement purposes. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed, shall take all steps that may be requested by the Court relating to, or that are otherwise necessary to the approval and implementation of this Agreement and shall otherwise use their respective best efforts to obtain certification for settlement purposes, approval of, and implementation of this Agreement. The Parties will submit this Agreement to the Court for preliminary approval of its terms and for approval of the steps to be taken to obtain its final approval. Within one week of signing this Agreement, Class Counsel shall provide a draft of the Preliminary Approval Motion to Defendant's Counsel. Defendant's Counsel will provide comments and/or proposed revisions within two weeks after receipt of the draft Preliminary Approval Motion from Class Counsel. With regard to the final approval documents, a similar one-week maximum review and response time shall be observed by the Parties. The Parties will request that the Court's preliminary approval of this

1 Agreement be embodied in an Order Granting Preliminary Approval of Class Action and PAGA
2 Settlement.

3 9.1.1 Plaintiff's motion shall seek an order: 1) Preliminarily approving the Agreement; 2)
4 Approving as to form and content the proposed Notice of Settlement; 3) Directing the mailing of the Notice
5 of Settlement by first class mail to Class Members and Aggrieved Employees; 4) Preliminarily appointing
6 Plaintiff and Class Counsel as representatives of Class Members; 5) Preliminarily approving settlement
7 administration services to be provided by the Settlement Administrator; 6) Preliminarily approving the
8 proposed Enhancement Payment to Plaintiff; 7) Preliminarily approving the application for payment of
9 reasonable attorneys' fees and reimbursement of litigation-related expenses to Class Counsel; and 8)
10 Scheduling a fairness hearing on the question of whether the proposed Agreement should be finally
11 approved as fair, reasonable and adequate as to the Class Members.

12 9.1.2 Defendant shall not oppose Plaintiff's motion for approval of the proposed
13 Agreement.

14 9.1.3 The Parties shall cooperate with each other and the Settlement Administrator during
15 the process of giving Class Members notice and opportunity to object to the Agreement, as necessary and
16 appropriate to assure effective communication to individual Class Members of information about their
17 rights and obligations under this Agreement.

18 9.2 Final Approval and Fairness Hearing: On a date approved by the Court and set forth in the
19 Notice of Settlement, the Court shall hold the Final Approval and Fairness Hearing where objections, if
20 any, may be heard. Class Counsel shall provide the Court as part of the motion for final approval of the
21 Agreement, a declaration by the Settlement Administrator of due diligence and proof of mailing of the
22 Notice of Settlement required to be mailed to Class Members by this Agreement, and of the delivery results
23 of the Settlement Administrator's mailings including tracing and re-mailing efforts. The Settlement
24 Administrator declaration shall identify, by name, any Class Member who submitted a timely and valid
25 request to opt out during the Notice Period.

26 9.2.1 Class Counsel and Defendant shall work in good faith to draft a mutually agreeable
27 Proposed Order Granting Final Approval of Class Action and PAGA Settlement and Final Judgment. The
28 Proposed Order Granting Final Approval of Class Action and PAGA Settlement and Final Judgment shall

1 include findings and orders: 1) Approving the Agreement, adjudging the terms thereof to be fair, reasonable
2 and adequate, and directing that its terms and provisions be carried out; 2) Approving the payment of an
3 Enhancement Payment to the Class Representative; 3) Approving Class Counsel's application for an award
4 of attorneys' fees and reimbursement of out-of-pocket litigation expenses; 4) Approving the Settlement
5 Administrator Costs; and 5) Providing that the Court will retain jurisdiction to oversee administration and
6 enforcement of the terms of the Agreement and the Court's orders.

7 9.2.2 Following entry of the Court's order granting final approval of the Agreement, the
8 Parties will each act to ensure the fulfillment of all its provisions, including but not limited to the following:
9 1) Should an appeal be taken from the final approval of the Agreement or motion to set aside the judgement
10 be filed, all parties will support the final approval order on appeal or otherwise; 2) Class Counsel will assist
11 the Settlement Administrator as needed or requested in the process of identifying and locating Participating
12 Class Members and Aggrieved Employees entitled to payments under the Agreement and assuring delivery
13 of such payments; 3) Class Counsel and Defendant's Counsel will cooperate with each other and assist the
14 Settlement Administrator as needed or requested in completing the distribution of any residual amounts, as
15 specified above, to the *cy pres* beneficiaries; 4) Class Counsel, in conjunction with the Settlement
16 Administrator, will certify to the Court completion of all payments required to be made by this Agreement.

17 9.3 Final Judgment: If the Court approves this Agreement at the final approval and fairness
18 hearing, the Parties will request that the Court enter an Order Granting Final Approval of Class Action and
19 PAGA Settlement and Final Judgment.

20 9.4 Notice to LWDA: Plaintiff will provide notice to the Labor and Workforce Development
21 Agency ("LWDA") of this settlement in accordance with Labor Code § 2699(1)(2).

22 9.5 Remand and Consolidation: The Parties agree that for purposes of approving the settlement,
23 they will stipulate to the filing of an amended complaint in Case No. 23CV005044 that adds any and all
24 facts and claims alleged in Plaintiff's PAGA only complaint, filed in Sacramento County Superior Court
25 (Case No. 23CV010650) consolidating all claims at issue and being resolved by this Agreement into a
26 single pleading. Plaintiff shall promptly dismiss, without prejudice, Case No. 23CV010650, after
27 preliminary approval of the Settlement.

28 **10. MISCELLANEOUS TERMS**

1 10.1 Defendant's Right to Withdraw Based on Opt-Outs: If, prior to the Final Approval Date,
2 10% or more of the Class Members have submitted proper and timely requests to opt-out in accordance
3 with the provisions of the Agreement, Defendant may rescind the Agreement and all actions taken in its
4 furtherance will be thereby null and void. Defendant must exercise this right of rescission, in writing, to
5 Class Counsel, within seven (7) calendar days after the Settlement Administrator notifies the Parties of the
6 total number of opt-outs. If the option to rescind is exercised, then any Settlement Administrator Costs
7 shall be paid by Defendant.

8 10.2 At mediation, Defendant's data set covered the period from July 19, 2019, to February 18,
9 2024, (the "Data Period"). Based upon the Data Period data set, Defendant estimated there were 63,741
10 workweeks during the Class Period. In the event the number of workweeks during the Class Period is more than
11 70,115 (*i.e.*, greater than 10% more than 63,741), then the Gross Settlement Amount shall be increased
12 proportionally by the workweeks in excess of 70,115, multiplied by the workweek value. For example, if the
13 Settlement Administrator determined the number of Workweeks worked by Settlement Class Members during
14 the Data Period is actually 12% greater than 63,741, then the Gross Settlement Amount shall increase by 2%.

15 10.3 Circular 230 Disclaimer: EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF
16 THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT
17 OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND
18 AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN
19 COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR
20 ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
21 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON
22 AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT
23 CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS
24 RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX
25 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
26 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
27 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY
28 OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR

DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

10.4 No Prior Assignments: The Parties represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or right released and discharged in this Agreement.

10.5 Waiver of Appeal and Ability to Opt Out: To the extent permitted by applicable law, by signing this Agreement Defendant is waiving any rights to appeal from the Court's approval of the settlement unless the Court materially modifies the settlement. Furthermore, by signing this Agreement Plaintiff is waiving any right or ability to opt out of this Agreement during the Notice Period or otherwise.

10.6 Exhibits Incorporated by Reference: The terms of this Agreement include the terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth in this Agreement. Any Exhibits to this Agreement are an integral part of the Settlement.

10.7 Judgment and Retention of Jurisdiction to Enforce: Upon the Effective Date, judgment will be entered according to this Agreement. The Parties stipulate and agree that the Sacramento County Superior Court shall have continuing jurisdiction to enforce the terms of the Agreement pursuant to Civil Procedure Code section 664.6 and that the prevailing party any action necessary to enforce the terms of the Agreement after default by the other party may recover reasonable attorney's fees and costs related thereto.

10.8 Mutual Cooperation: The Parties agree to cooperate fully with one another to accomplish and implement the terms of this Agreement. Such cooperation shall include, but not be limited to, execution of such other documents and the taking of such other action as may reasonably be necessary to fulfill the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts

1 contemplated by this Agreement and any other efforts that may become necessary by Court order, or
2 otherwise, to effectuate this Agreement and the terms set forth herein.

3 10.9 No Admission of Liability: Neither the acceptance nor the performance by Defendant of
4 the terms of this Agreement, nor any of the related negotiations or proceedings, is or shall be claimed to
5 be, construed as, or deemed to be, an admission by Defendant of the truth of any of the allegations in the
6 Complaint, the representative character of the Action, the validity of any of the claims that were or could
7 have been asserted by Plaintiff and/or Class Members in the Action, or of any liability or guilt of Defendant
8 in the Action. Nothing in this Agreement shall be construed to be or deemed an admission by Defendant
9 of any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Class Members, or any other
10 person, and Defendant specifically disclaim any liability, culpability, negligence, or wrongdoing toward
11 Plaintiff, the Class Members, or any other person. Each of the Parties has entered into this Stipulation with
12 the intention to avoid further disputes and litigation.

13 10.10 Notices: Unless otherwise specifically provided herein, all notices, demands, or other
14 communications given hereunder shall be in writing and shall be deemed to have been duly given as of the
15 third business day after mailing by United States certified mail, return receipt requested, addressed as
16 follows:

17 To Plaintiff and the Class:

18 Galen T. Shimoda
19 Justin P. Rodriguez
20 Renald Konini
21 Shimoda & Rodriguez Law, PC
22 9401 East Stockton Blvd., Suite 120
23 Elk Grove, CA 95624

24 To Defendant:

25 Alexandra M. Asterlin
26 Kyle A. Wende
27 Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
28 500 Capitol Mall, Suite 2500
 Sacramento, CA 95825

10.11 Mutual Drafting of Agreement: The Parties hereto agree that the terms and conditions of
this Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that

1 this Agreement shall not be construed in favor of or against any party by reason of the extent to which any
2 party or its counsel participated in the drafting of this Agreement.

3 10.12 Attorneys' Fees and Costs Limitations: Neither Class Counsel nor any other attorneys
4 acting for, or purporting to act for, the Class, Class Members, or Plaintiff, may recover or seek to recover
5 any amounts for fees, costs, or disbursements from the Releasees or the Gross Settlement Amount except
6 as expressly provided in this Agreement.

7 10.13 No Modifications: This Agreement may be amended or modified only by a written
8 instrument signed by counsel for all Parties or their successors-in-interest. This Agreement may not be
9 discharged except by performance in accordance with its terms.

10 10.14 Authorization to Enter Into Settlement Agreement: Counsel for all Parties warrant and
11 represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and
12 to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement
13 to effectuate its terms and to execute any other documents required to effectuate the terms of this
14 Agreement.

15 10.15 Class Member Signatories: Because the Action has not yet been certified, and the Class
16 Members are so numerous, the Parties agree that it is impossible or impractical to have each Class Member
17 sign this Agreement. It is agreed that, for purposes of seeking approval of the Agreement, this Agreement
18 may be executed on behalf of all Class Members by the Class Representative.

19 10.16 Counterparts: This Agreement shall become effective upon its execution by all of the
20 undersigned. Plaintiff, Class Counsel, Defendant and Defendant's Counsel may execute this Agreement
21 in counterparts, and execution of counterparts shall have the same force and effect as if each had signed
22 the same instrument. Facsimile, electronic, and/or scanned copies of signatures shall have the same force
23 and effect of originals.

24 10.17 Choice of Law: The Agreement and any exhibits hereto shall be considered to have been
25 negotiated, executed, and delivered, and to have been wholly performed, in the State of California, and the
26 rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance with,
27 and governed by, the substantive laws of the State of California without giving effect to that State's choice
28 of law principles.

1 10.18 Headings and Captions: Section titles or captions contained in the Agreement are inserted
2 as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of
3 this Agreement, or any provision thereof.

4 10.19 No Retaliation or Discouragement: The Parties agree they will take no action that could be
5 construed as retaliation against any Class Members for participating or seeking to participate in this class
6 action settlement. The Parties will not discourage any class member from participating or seeking to
7 participate in this class action settlement. This is a material term of the Agreement and non-breaching
8 Parties will seek court intervention if this provision is breached.

9 10.20 Integrated Agreement: This Agreement sets forth the entire understanding between the
10 Parties and supersedes any and all prior agreements, oral or written, pertaining to the subject matter hereof.
11 Each party acknowledges that there is no representation, inducement, promise or agreement which has been
12 made, orally or otherwise, by the other party, concerning the terms or conditions of this Agreement, which
13 is not expressly embodied in this Agreement. In entering into this Agreement, the Parties represent that the
14 terms of this Agreement are fully understood and voluntarily accepted by the Parties.

15 10.21 Binding on Successors and Assigns: This Agreement will be binding upon, and inure to the
16 benefit of, the successors or assigns of the Parties to this Agreement, as previously defined.

17 10.22 No Other Claims or Actions: Plaintiff and Class Counsel are not currently aware of any:
18 (a) unalleged claims in addition to, or different from, those which are finally and forever settled and
19 released against the Released Parties by this Agreement; and (b) Plaintiff and Class Counsel further
20 represent that, other than the instant Action, they have no current intention of asserting any other claims
21 against Defendant in any judicial or administrative forum. The Parties acknowledge, understand, and agree
22 that the representations described in this paragraph are essential to the Agreement and that this Agreement
23 would not have been entered into were it not for this representation.

24 10.23 Unauthorized Publicity: Plaintiff and Class Counsel agree not to disclose or publicize the
25 Agreement, including the fact of the Agreement, its terms or contents, and the negotiations underlying the
26 Agreement, in any manner or form, directly or indirectly, to any person or entity, except Class Members
27 and/or Aggrieved Employees and as shall be reasonably required to effectuate the terms of the Agreement.
28 For the avoidance of doubt, this section means Plaintiff and Class Counsel agree not to issue press releases,

communicate with, or respond to any media or publication entities, publish information in manner or form, whether printed or electronic, on any medium or otherwise communicate, whether by print, video, recording or any other medium, with any person or entity concerning the Settlement, including the fact of the Settlement, its terms or contents and the negotiations underlying the Settlement, except as reasonably required to effectuate the terms of the Settlement and provide notice to the putative class and aggrieved employees.

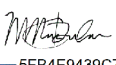
10.24 Invalidity of Any Provision: Before declaring any provision of this Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

10.25 Waiver of Compliance: No waiver of any condition or covenant contained in this Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized attorneys, as of the day and year herein set forth.

For Plaintiff:

Date: 5/23/2024

DocuSigned by:

 5FB4E9439C714EA...Dula

FOR Defendant:

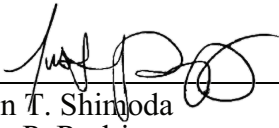
Dated: May 23, 2024


 By: Michael Lane, EVP
 For IDEXX Distribution, Inc.

APPROVED AS TO FORM

Shimoda & Rodriguez Law, PC

Dated: 5/23/24

By: 
 Galen T. Shimoda
 Justin P. Rodriguez
 Renald Konini
 Attorneys for Plaintiff and Aggrieved
 Employees

1 APPROVED AS TO FORM

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

2
3 Dated: May 23, 2024

4 By: 

Alexandra M. Asterlin
Kyle A. Wende
Attorney for Defendant

Exhibit 1

CALIFORNIA SUPERIOR COURT
FOR THE COUNTY OF SACRAMENTO

MARNELLE MAC DULA, individually and on
behalf of all other similarly situated employees,

Plaintiff,

vs.

IDEXX DISTRIBUTION, INC., a Delaware
Corporation; and DOES 1 to 100, inclusive,

Defendant.

Case No. 23CV005044

**NOTICE OF PROPOSED CLASS ACTION
AND PAGA SETTLEMENT, AND HEARING
DATE FOR FINAL COURT APPROVAL OF
SETTLEMENT**

ATTENTION: All individuals who have worked, or continue to work, for IDEXX Distribution, Inc., in California as non-exempt employees at any time between July 19, 2019, and [REDACTED] (the "Class Members").

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS ACTION LITIGATION AND POTENTIAL DISBURSEMENT OF SETTLEMENT FUNDS TO YOU. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO PARTICIPATE IN OR OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.

You are receiving this notice pursuant to an order from the Sacramento County Superior Court ("Court") granting Plaintiff's motion for preliminary approval of a Joint Stipulation Regarding Class Action PAGA Settlement and Release ("Agreement" or "Settlement") as fair, reasonable, and adequate. The Settlement was entered into between Plaintiff Marnelle Mac Dula ("Plaintiff" or "Class Representative"), and Defendant IDEXX Distribution, Inc. ("Defendant"), on behalf of Class Members as defined above. The terms of the Settlement are outlined herein. You are receiving this notice because Defendant's records indicate you fall within the definition of "Class Member." Defendant's records also indicate that you worked [REDACTED] weeks during the applicable Class Period (as defined below), which means your total share of the settlement proceeds is estimated to be [REDACTED]. Your actual share of the settlement proceeds will vary depending on the total number of Class Members that choose to participate and the resolution of any workweek disputes as described in this notice.

The terms of the Agreement and a description of the case are identified in this notice. Pursuant to the Court's order, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

I. BACKGROUND OF THE CASE

On July 19, 2023, Plaintiff initiated this lawsuit by filing a Complaint against Defendant in the Sacramento County Superior Court, Case No. 23CV005044, on behalf of herself and Class Members. On October 26, 2023, Plaintiff filed a separate lawsuit alleging a single cause of action under the PAGA against Defendants for the same Labor Code violations in Sacramento County Superior Court, Case No. 23CV010650. On May 14, 2024 Plaintiff filed an amended complaint consolidating the allegations and claims from both cases into the earlier filed lawsuit, Case No. 23CV005044. The term "Action" means the putative class and PAGA action pending in Sacramento County Superior Court, Case No. 23CV005044. The Class Period is July 19, 2019, to [REDACTED] (the "Class Period").

In the Action, Plaintiff sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of herself, Class Members, and Aggrieved Employees. Plaintiff alleged that Defendant violated California law by 1) failing to pay overtime wages, 2) failing to pay minimum wages, 3) failing to provide meal periods, 4) failing to provide rest period, 5) failing to provide accurate wage statements, 6) failing to timely pay final wages, 7) failing to reimburse expenses, and 8) engaging in unfair competition based thereon and the failure to pay all sick leave wages owed. Plaintiff also contends these violations support a claim under the PAGA. Defendant has denied all of Plaintiff's allegations. The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Furthermore, the Parties have participated in a full day mediation facilitated by a neutral third party. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide settlement. By settling, the Parties will avoid the risks

associated with a lengthy litigation process. Despite agreeing to and supporting the Agreement, Defendant continue to deny all allegations and claims. Defendant has entered into this Settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

The Agreement applies to any and all Class Members, which are defined as all individuals who have worked, or continue to work, for IDEXX Distribution, Inc., in California as non-exempt employees at any time between July 19, 2019, to [REDACTED]. The Agreement also applies to Aggrieved Employees, which are defined as all individuals who have worked, or continue to work, for IDEXX Distribution, Inc., in California as non-exempt employees at any time between July 18, 2022, to [REDACTED]. If you are a Class Member, you have the opportunity to participate in the Settlement, or to exclude yourself (“opt out”) from the Settlement. This notice is to advise Class Members of how they can either participate in the Settlement or be excluded from the Settlement. As set forth below, Aggrieved Employees cannot opt out of this Agreement as it relates to the PAGA Payment or Released PAGA Claims regardless of whether they opt out of being a Class Member. Aggrieved Employees will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, Defendant has agreed to pay a total sum of One Million Three Hundred Sixty Five Thousand (\$1,365,000.00) (“Gross Settlement Amount”). Deducted from this Gross Settlement Amount will be sums approved by the Court for attorneys’ fees not to exceed 35% of the Gross Settlement Amount, attorneys’ costs not to exceed \$17,500.00, Settlement Administrator Costs estimated not to exceed \$20,000, Class Representative’s Enhancement Payment of \$10,000.00, and \$40,000.00 for alleged PAGA penalties (the “PAGA Payment”), which will result in a “Net Settlement Amount” for distribution to all Class Members. Any employer side taxes attributable to payments allocated as wages will be paid by Defendant in addition to the Gross Settlement Amount. As explained further below, the amount of each Class Member’s share of the Net Settlement Amount will depend on the number of weeks worked by participating Class Members during the Class Period. Of the \$40,000.00 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among Aggrieved Employees.

The number of weeks you worked during the Class Period and your estimated total share of the Net Settlement Amount and PAGA Payment (“Individual Settlement Amount”) is stated on the first page of this notice. The actual amount received may be more or less than the amount stated depending on the actual number of weeks worked by Participating Class Members (*i.e.*, those who do not opt out of the Settlement), the resolution of any disputes regarding workweeks, and on the distributions finally approved and allocated by the Court. However, whether Class Members opt out will have no effect on Aggrieved Employees’ allocations for the PAGA claim.

B. Individual Settlement Amounts and Allocation Between Class Members and Aggrieved Employees

Defendant will pay Individual Settlement Amounts through the Settlement Administrator, as described below, to each Participating Class Member and to Aggrieved Employees. All Individual Settlement Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that the amount payable to eligible Class Members from the Net Settlement Amount will be allocated and paid as 80% for disputed interest, statutory penalties, and other non-wage damages for which an IRS Forms 1099-MISC and 1099-INT will issue and 20% for disputed wages for which IRS Forms W-2 will issue. The PAGA Payment to Aggrieved employees will be paid as 100% for civil penalties.

Payment to Participating Class Members and Aggrieved Employees will not require the submission of a claim form. Each Participating Class Member’s share will be determined by dividing their total weeks worked within the Class Period by the total weeks worked by all Participating Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member’s individual share of the Net Settlement Amount. Each Aggrieved Employee’s share of the 25% portion of the PAGA Payment will be determined by dividing their pay periods worked within the PAGA Claim Period by the total pay periods worked by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee’s individual share. The PAGA Claim Period is defined as July 18, 2022, to [REDACTED]. Defendant’s records indicate that you worked [REDACTED] pay periods during the applicable PAGA Claim Period, which means your share of the PAGA Payment is estimated to be [REDACTED]. This amount is included in your estimated Individual Settlement Amount stated on the first page of this notice, not in addition to it. You will still receive your share of the PAGA Payment even if you opt out of being a Class Member. Receipt of the Individual Settlement Amounts will not entitle any Class Member or Aggrieved Employee to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the

Settlement.

C. Calculations to Be Based on Defendant's Records and Resolution of Workweek Disputes

For each Class Member, the amount payable will be calculated by the Settlement Administrator from Defendant's records. Defendant's records will be presumed correct unless evidence to the contrary is provided to the Settlement Administrator. Defendant's records and any additional evidence will be reviewed by the Settlement Administrator in the event of a dispute about the number of workweeks worked by an individual Class Member. If a Class Member disputes the accuracy of Defendant's records, all supporting documents evidencing additional workweeks must be submitted by the Class Member. The dispute must (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than [redacted]. The dispute will be resolved by the Settlement Administrator based on the records and evidence provided.

D. Release of Claims

For those Class Members who do not opt out and Aggrieved Employees, the Agreement contains the following releases:

Class members who do not opt out will be deemed to have released . . . [1.30]

Aggrieved Employees will be deemed to have released . . . [1.31]

The individuals released ("Released Parties") include [1.32].

Class Members and/or Aggrieved Employees can talk to one of the lawyers appointed as Class Counsel (listed below) for free or talk to their own lawyer if they have questions about the released claims and what they mean.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement as a Class Member

If you wish to be a Participating Class Member and believe your workweek information is accurate, **you do not need to take any further action**. Payment will be automatically made to you consistent with the terms of the Agreement and Court Order. If you wish to dispute the workweek calculation, you may follow the procedures outlined in Section II.C above. California law protects Class Members from retaliation based on their decision to participate in the Settlement.

B. Excluding Yourself from the Settlement as a Class Member

The Court will exclude you from being a Class Member if you request this by [redacted]. If you do not wish to be bound by the Settlement as a Class Member, you may request to be excluded (*i.e.*, "opt out") by submitting a timely written request to the Settlement Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the Settlement, and/or wants to be excluded from this Settlement; (c) identify the case name and number (*i.e.* *Mac Dula v. IDEXX Distribution, Inc.*, 23CV005044); (d) be signed; and (e) be post-marked no later than [redacted]. The request to opt out must be mailed by First Class U.S. Mail, or the equivalent, to:

[admin info]

If you submit a request to opt out which is not postmarked by [redacted], your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Settlement Administrator, no longer be a Class Member and not receive their share of the Net Settlement Amount. Aggrieved Employees cannot opt out of this Agreement and will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

C. Objection to Settlement

If you do not opt out of the Settlement, you can object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. You can ask the Court to deny approval by submitting an objection. You **cannot**

ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. You may submit a written objection, which should (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including supporting documentation; (d) identify the case name and number (*i.e. Mac Dula v. IDEXX Distribution, Inc.*, 23CV005044); (e) be signed; and (f) be post-marked no later than [REDACTED]. Written objections must be sent to the Settlement Administrator at the address identified in Section III.B.

Additionally, or in the alternative to sending a written objection to the Settlement Administrator, you may appear at the final approval hearing to state your objection. Any Class Member who does not request exclusion may, if the Class Member so desires, enter an appearance through an attorney. If you appear through your own attorney, you are responsible for paying that attorney.

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

If the Court grants final approval of the Settlement, the Court will make and enter judgment consistent therewith. A notice of entry of judgment will be filed with the Court and available online at the Court's public web portal: <https://prod-portal-sacramento-ca.journaltech.com/public-portal/>. The judgment, whether favorable or not, will bind all Class Members who do not request exclusion. After final approval, each and every Class Member who does not opt out of the Settlement and Aggrieved Employee, will release Defendant and the Released Parties from the Released Class Claims and the Released PAGA Claims described above. In other words, if you were employed as a Class Member by Defendant in California during the Class Period, and you do not exclude yourself from the Settlement, you will be deemed to have entered into these releases and to have released the above-described claims. In addition, you will be barred from ever suing Defendant and the Released Parties with respect to the claims covered by this Settlement. If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Department 22, 720 9th Street, Sacramento, California 95814 on [REDACTED] at 9:00 a.m. to determine whether the Agreement should be finally approved as fair, reasonable and adequate. To join by Zoom: <https://saccourt-ca.gov.zoomgov.com/my/sscdept22>. To join by phone: (833) 568-8864 / ID 16184738886. The Court will also be asked to approve Class Counsel's request for attorneys' fees and costs, the Settlement Administrator Costs, and the Class Representative's Enhancement Payment. The hearing may be continued without further notice. It is not necessary for you to appear at this hearing.

VI. ADDITIONAL INFORMATION

You may access the Complaint, Class Counsel's motion for preliminary approval, the Agreement, and any other documents required by the Court at <https://prod-portal-sacramento-ca.journaltech.com/public-portal/>. You can also contact Class Counsel or Defendant's Counsel as follows:

Galen T. Shimoda
Justin P. Rodriguez
Renald Konini
Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733
On behalf of Plaintiff

Alexandra M. Asterlin
Kyle A. Wende
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
500 Capitol Mall, Suite 2500
Sacramento, CA 95825
Telephone: (916) 840-3150
Facsimile: (916) 840-3151
On behalf of Defendant

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS. IF YOU HAVE ANY QUESTIONS, CALL [number]

BY ORDER OF THE COURT

Exhibit B

1 Galen T. Shimoda (Cal. State Bar No. 226752)
2 Justin P. Rodriguez (Cal. State Bar No. 278275)
3 Renald Konini (Cal. State Bar No. 312080)
4 **Shimoda & Rodriguez Law, PC**
5 9401 East Stockton Boulevard, Suite 120
6 Elk Grove, CA 95624
7 Telephone: (916) 525-0716
8 Facsimile: (916) 760-3733

9 Attorneys for Plaintiff MARNELLE MAC DULA

ELECTRONICALLY FILED
Superior Court of California
County of Sacramento

05/14/2024

By: A. Turner Deputy

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

12 MARNELLE MAC DULA, individually and
13 on behalf of all other similarly situated
14 employees,

15 Plaintiff,

16 vs.

17 IDEXX DISTRIBUTION, INC., a
18 Massachusetts Corporation; and DOES 1 to
19 100, inclusive,

20 Defendants.

Case No. 23CV005044

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES:**

1. Failure to Pay Overtime Wages
2. Failure to Pay Minimum Wages
3. Meal Period Violations
4. Rest Period Violations
5. Wage Statement Violations
6. Waiting Time Penalties
7. Failure to Reimburse Expenses
8. Unfair Competition
9. Private Attorneys General Act

DEMAND FOR JURY TRIAL

1 Plaintiff MARNELLE MAC DULA (“Plaintiff”), on behalf of herself and all other similarly
2 situated employees, hereby files this First Amended Complaint against Defendants IDEXX
3 DISTRIBUTION, INC., a Massachusetts Corporation; and DOES 1 to 100, inclusive (hereinafter all
4 collectively referred to as “Defendants”). On information and belief, Plaintiff alleges the following:

5 **INTRODUCTION**

6 1. This is a class action and Private Attorneys General Act (“PAGA”) lawsuit brought by
7 Plaintiff for failure to pay overtime wages, failure to pay minimum wages, meal and rest period
8 violations, wage statement violations, waiting time penalties, failure to reimburse expenses, and unfair
9 competition.

10 **JURISDICTION AND VENUE**

11 2. The Sacramento County Superior Court has jurisdiction in this matter pursuant to
12 California Code of Civil Procedure section 410.10 to determine alleged violations of the California
13 Labor Code, California Business and Professions Code, and Wage Order No. 4.

14 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a), 395.2, and 395.5, in that
15 Defendant is a foreign entity and has not designated any county in California as being where it maintains
16 its principal offices. In addition, some of the wrongful acts and violations of law asserted herein
17 occurred within Sacramento County, and Defendant’s obligation to pay wages arose in Sacramento
18 County pursuant to *Madera Police Officers Assn. v. City of Madera*, 36 Cal.3d 403, 414 (1984).

19 4. Plaintiff sought permission pursuant to Labor Code section 2699 *et seq.* to pursue the
20 claims set forth in this Complaint against Defendants as a Private Attorney General on behalf of herself
21 and other similarly situated employees. Pursuant to Labor Code section 2699.3, Plaintiff gave written
22 notice via online submission to the Labor and Workforce Development Agency (“LWDA”) on July 18,
23 2023. Plaintiff provided facts and legal bases for his claims within the notice to the LWDA on all
24 violations asserted under the Private Attorneys General Act cause of action. Plaintiff submitted the
25 \$75.00 filing fee. The July 18, 2023 notice was also sent via certified mail to Defendants on the same
26 day. Plaintiff is informed and believes, that to date, the LWDA has not provided any response to
27 Plaintiff’s notice correspondence. Accordingly, Plaintiff is informed and believes that she has exhausted
28 all administrative remedied pursuant to the Private Attorneys General Act and may bring this action on

1 behalf of herself and all Aggrieved Employees. *See* Cal. Labor Code § 2699.3(a)(2)(A), (c)(3); *Caliber*
2 *Bodyworks, Inc. v. Sup. Ct.*, 134 Cal.App.4th 365, 383 n.18, 385 n.19 (2005). Aggrieved Employees
3 includes all individuals who have, or continue to, perform work for Defendants in California as non-
4 exempt employees from July 18, 2022 to the present.

5 **PARTIES**

6 5. MARNELLE MAC DULA is an individual over the age of eighteen (18) and is a
7 resident of the State of California.

8 6. On information and belief, Plaintiff alleges, IDEXX DISTRIBUTION, INC., is now
9 and/or at all times mentioned in this Complaint was a Massachusetts Corporation and the owner and
10 operator of an industry, business and/or facility doing business in the State of California.

11 7. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the
12 alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and
13 are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true
14 names and capacities of these DOE Defendants when they are ascertained.

15 8. At all times mentioned herein, each Defendant was the agent or employee of each of the
16 other Defendants and was acting within the course and scope of such agency or employment. The
17 Defendants are jointly and severally liable to Plaintiff.

18 9. Defendants, and each of them, are now and/or at all times mentioned in this Complaint
19 were members of and/or engaged in a joint employment, joint venture, partnership and common
20 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,
21 joint venture, partnership and common enterprise.

22 10. Defendants, and each of them, now and/or at all times mentioned in this Complaint
23 approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

24 11. Defendants proximately caused Plaintiff to be subjected to the unlawful practices,
25 wrongs, complaints, injuries and/or damages alleged in this Complaint.

26 //

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CLASS ALLEGATIONS

12. Plaintiff brings the First through Eighth Causes of Action on behalf of herself and all others similarly situated as a class action pursuant to California Code of Civil Procedure section 382. The class which Plaintiff seeks to represent is composed of, and defined, as follows:

All individuals who have, or continue to, work for Defendants in California as non-exempt employees from July 19, 2019, to the present.

13. This action has been brought and may be properly maintained as a class action, pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-defined community of interests in the litigation and the proposed class is easily ascertainable.

(a) Numerosity: The putative class is so numerous that the individual joinder of all members is impracticable under the circumstances of this case. While the exact number of class members is unknown to Plaintiff at this time, Plaintiff is informed and believes that Defendants have employed as many as fifty (50) individuals falling within the above stated class definition throughout the State of California during the applicable statute of limitations, who were subjected to the policies and practices outlined in this Complaint. As such, joinder of all members of the putative class is not practicable.

(b) Common Questions Predominate: Common questions of law and fact exist as to all members of the putative class and predominate over questions that affect only individual members of the class. These common questions of law and fact include, without limitation, the following:

- (1) Whether Defendants failed to correctly calculate putative class members' regular rates of pay;
- (2) Whether Defendants failed to pay putative class members for all hours worked;
- (3) Whether Defendants failed to pay putative class members all overtime wages;
- (4) Whether Defendants failed to authorize and permit all meal periods;
- (5) Whether Defendants failed to authorize and permit all rest periods;
- (6) Whether Defendants had a policy or practice to provide putative class members with a second lunch for shifts longer than 10 hours;

- 1 (7) Whether Defendants had a policy or practice to provide putative class members
2 with a third rest break for shifts longer than 10 hours;
- 3 (8) Whether Defendants required putative class members to use their personal
4 cellphones;
- 5 (9) Whether Defendants had a policy or practice to reimburse putative class members
6 for the use of their personal cellphones;
- 7 (10) Whether as a result of Defendants' policies and practices putative class members
8 received all wages, due and owing, at the time of their termination or separation;
9 and
- 10 (11) Whether Defendants provided Plaintiff's and putative class members with wage
11 statements that complied with Labor Code section 226.

12 (c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative
13 class. The putative class also sustained damages arising out of Defendants' common
14 course of conduct in violation of the law as complained of herein. Plaintiff and all
15 members of the putative class were non-exempt employees who were not paid all regular
16 and overtime wages, did not receive all meal and rest periods owed, and were not
17 reimbursed for personal cellphone use. Additionally, Defendants issued Plaintiff and all
18 members of the putative class wage statements that did not comply with Labor Code
19 section 226. As a result, Plaintiff and each member of the putative class will have
20 suffered the same type of harm and seek the same type of recovery based on the same
21 legal theories.

22 (d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the
23 putative class. For all relevant times, Plaintiff resided in California and worked for
24 Defendants in California. Moreover, Plaintiff is an adequate representative of the
25 putative class as Plaintiff has no interests that are adverse to those of putative class
26 members. Additionally, Plaintiff has retained counsel who has substantial experience in
27 complex civil litigation and wage and hour matters.
28

(e) Superiority: A class action is superior to other available means for the fair and efficient adjudication of the controversy since individual joinder of all members of the putative class is impracticable. Class action treatment will permit a larger number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Further, as damages suffered by each individual member of the class may be relatively small, the expenses and burden of the individual litigation would make it difficult or impossible for individual members of the class to redress the wrongs done to them, and an important public interest will be served by addressing the matter as a class action. The cost to the court system of adjudication of such individualized litigation would be substantial. Individualized litigation would also present the potential for inconsistent or contradictory judgments.

14. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

GENERAL ALLEGATIONS

15. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 14 as though fully set forth herein.

16. Plaintiff and similarly situated employees worked for Defendants within the claim period as non-exempt employees. Plaintiff worked for Defendants from approximately January 2022 to April 2023. Plaintiff and similarly situated employees regularly worked over eight (8) hours in a day and/or forty (40) hours in a week.

17. Defendants paid Plaintiff and similarly situated employees an hourly rate in addition to shift differentials and a nondiscretionary Lab Bonus. However, Defendants failed to correctly incorporate the value of the non-discretionary bonus into Plaintiff's and similarly situated employees' regular rate of pay for premium pay purposes, including overtime, sick time, supplemental COVID paid sick time. Additionally, Defendants did not incorporate the value of shift differential into the regular rate of pay with regard to Plaintiff's and similarly situated employees' sick leave, meal and rest period premiums, and supplemental COVID paid sick time. This practice of Defendants to incorrectly calculate

1 Plaintiff's and similarly situated employees' regular rates of pay resulted in unpaid overtime, unpaid
2 sick time, and unpaid supplemental sick time for Plaintiff and similarly situated employees.

3 18. Defendants failed to pay Plaintiff and similarly situated employees for all regular and
4 overtime hours worked. Defendants required Plaintiff and similarly situated employees to complete
5 their work but prohibited overtime, which required Plaintiff and similarly situated employees to work
6 off-the-clock.

7 19. Defendants did not authorize and permit Plaintiff and similarly situated employees to take
8 all meal and rest periods owed to them. Defendants employed Plaintiff and similarly situated employees
9 for work for periods of more than five hours without providing them an off-duty meal period of at least
10 30 minutes. Defendants did not have a policy or practice to provide Plaintiff and similarly situated
11 employees with second meal periods when they worked shifts longer than ten (10) hours. Defendants
12 would alter time records to make it appear that there were not late or missed meal periods for Plaintiff
13 and similarly situated employees. Defendants employed Plaintiff and similarly situated employees for
14 periods of longer than three and one-half (3.5) hours without providing at least a 10-minute rest period.
15 Defendants did not have a policy or practice to provide Plaintiff and similarly situated employees with a
16 third rest period when they worked shifts longer than ten (10) hours. Defendants' management also
17 frowned upon breaks being taken, including bathroom breaks. Employees who took breaks were viewed
18 as not hard working. Defendants did not pay Plaintiff and similarly situated employees all missed meal
19 and rest period premiums they were owed.

20 20. Defendants required Plaintiff and similarly situated employees to use their personal
21 cellphones to track their hours worked. However, Defendants failed to pay any reimbursements to
22 Plaintiff and similarly situated employees for the use of their personal cellphones.

23 21. Defendants failed to provide Plaintiff and similarly situated employees with accurate
24 wage statements. The wage statements Defendants provided did not accurately itemize employees'
25 gross and net wages, meal period premiums, rest period premiums, paid sick time, supplemental paid
26 sick time, and all applicable hourly rates in effect during the pay period, total hours worked, and the
27 corresponding number of hours worked at each hourly rate.

22. At the time of Plaintiff's and similarly situated employees' termination or separation, Plaintiff and similarly situated employees had overtime, sick time, supplemental paid sick time, and meal and rest period premiums owing to them. As of the date of this letter, Defendants have not paid Plaintiff and similarly situated employees these wages they are owed.

CAUSES OF ACTION

FIRST CAUSE OF ACTION
FAILURE TO PAY OVERTIME WAGES
(As to all Defendants)

23. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 22 as though fully set forth herein.

24. During the period Plaintiff was employed by Defendants, Defendants were required to compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours per day. *See, e.g.*, IWC Wage Order No. 4, section (3)(A); Cal. Lab. Code §§ 510, 1194.

25. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day and/or forty (40) hours per week on several occasions while employed by Defendants. However, Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours worked at their regular rate of pay.

26. Plaintiff and similarly situated employees were not exempt from overtime protections employees under the California Wage Orders and Labor Code.

27. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

SECOND CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
(As to all Defendants)

28. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 27 as though fully set forth herein.

29. For the period preceding the filing of this Complaint, Defendants were required to compensate Plaintiff and similarly situated employees with at least California's applicable minimum for every hour worked. *See* MW-Order 2019; IWC Wage Order, No. 4, section 4(A); Cal. Lab. Code § 1194.

30. Plaintiff was not exempt to the State's Minimum Wage Order. Defendants were aware of their obligation to pay the minimum wage for each hour worked but failed to do so.

31. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

THIRD CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(As to all Defendants)

32. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 31 as though fully set forth herein.

33. An employer must provide an employee a meal period in accordance with the applicable Wage Order, and California Labor Code sections 226.7 and 512.

34. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 4, section 11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30) minutes for each work period of more than five (5) hours.

35. California Labor Code section 512 and Wage Order No. 4 section 11(B) further provide that employers may not employ employees for a work period for more than ten (10) hours per day without providing the employee with a second meal period of at least thirty (30) minutes. However, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. Employees are entitled to one (1) hour of pay at their regular rate of compensation for each meal period not provided.

36. Defendants employed Plaintiff and similarly situated employees for periods of more than five (5) hours without providing meal breaks of at least thirty (30) minutes or a second meal period of at least thirty (30) minutes when Plaintiff and similarly situated employees worked more than ten (10) hours in a day. Defendants also failed to allow Plaintiff and similarly situated

1 employees to take their first meal period before the completion of their fifth hour of work and failed
2 to allow Plaintiff and similarly situated employees to take their second meal period before the
3 completion of their tenth hour of work. Plaintiff and similarly situated employees did not waive their
4 rights to all meal periods throughout their employment.

5 37. Defendants further failed to pay Plaintiff and similarly situated employees the
6 applicable meal period premiums for any such missed meal breaks.

7 38. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
8 employees have been damaged as stated in the section below entitled "DAMAGES," which is
9 incorporated here to the extent pertinent as if set forth here in full.

10 **FOURTH CAUSE OF ACTION**
11 **REST PERIOD VIOLATIONS**
(As to all Defendants)

12 39. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 38 as though fully
13 set forth herein.

14 40. An employer must provide an employee a rest period in accordance with the
15 applicable Wage Order and California Labor Code section 226.7.

16 41. California Labor Code section 226.7 and Wage Order No. 4, section 12(A) require an
17 employer to provide a rest period of not less than ten (10) minutes for each work period of more than
18 four (4) hours or a major fraction thereof.

19 42. Plaintiff alleges that Defendants failed to authorize and permit Plaintiff and similarly
20 situated employees to take paid rest periods of at least ten (10) minutes for each work period that
21 they worked more than four (4) hours or a major fraction thereof.

22 43. Defendants further failed to pay Plaintiff and similarly situated employees the
23 applicable rest period premiums for any such missed rest periods.

24 44. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
25 employees have been damaged as stated in the section below entitled "DAMAGES," which is
26 incorporated here to the extent pertinent as if set forth here in full.

27 //

28 //

FIFTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(As to all Defendants)

45. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 44 as though fully set forth herein.

46. Pursuant to California Labor Code section 226(a), an employer must provide an itemized statement to an employee, semimonthly or at the time of each payment of wages, showing:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

47. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an itemized statement or failed to provide an accurate and complete itemized statement showing the requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not accurately itemize all applicable hourly rates in effect during the pay period, all regular and overtime hours worked and corresponding rates of pay, and gross and net wages earned. The paystubs also did not accurately itemize Plaintiff's and similarly situated employees' total hours worked due to Defendants' security check policy that resulted in off-the-clock work. Plaintiff and similarly situated employees were not able to promptly and easily determine their total hours worked from their paystubs alone. Additionally, Plaintiff and similarly situated employees suffered confusion over

1 whether they received all wages owed and were prevented from effectively challenging information
2 on their wage statements.

3 48. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
4 employees have been damaged as stated in the section below entitled "DAMAGES," which is
5 incorporated here to the extent pertinent as if set forth here in full.

6 **SIXTH CAUSE OF ACTION**
7 **WAITING TIME PENALTIES**
8 **(As to all Defendants)**

9 49. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 48 as though fully
10 set forth herein.

11 50. An employer must pay an employee who is terminated all unpaid wages immediately
12 upon termination. *See* Cal. Lab. Code § 201.

13 51. An employer must pay an employee who resigns all unpaid wages within seventy-two
14 (72) hours of their resignation. *See* Cal. Lab. Code § 202.

15 52. Plaintiff and similarly situated employees did not receive all wages, including minimum
16 and overtime wages, meal and rest period premiums, or all sick leave pay or supplemental sick leave pay
17 owed at their termination or within the required time after their separation from employment.

18 53. An employer who willfully fails to pay an employee wages in accordance with California
19 Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30)
20 days. *See* Cal. Lab. Code § 203.

21 54. Defendants knew of their obligation to pay Plaintiff's and similarly situated employees'
22 their final wages when their employment terminated. Indeed, Defendants had knowledge that Plaintiff
23 and similarly situated employees did not receive all meal and rest periods, were not paid for all hours
24 worked, and were not paid at the correct regular rates of pay. Such conduct shows Defendants had
25 knowledge of earned, but unpaid wages at the time of separation, yet Defendants still refused to pay the
26 remaining wages owed.

27 55. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
28 have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by
thirty (30) days for Defendants' failure to pay all wages due.

63. Plaintiff further alleges that such actions and/or conduct constitute a violation of the California Unfair Competition Law (“UCL”) (Business and Professions Code 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

64. As a direct and legal result of the Defendants’ conduct, as alleged herein, pursuant to the UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code sections 17203, 17208, violations of California Labor Code sections 226.7, 510, 512, and 1194 all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

NINTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(As to all Defendants)

65. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 64 as though fully set forth herein.

66. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the following provisions of the Labor Code in their dealings with him and other similarly situated current and former employees:

- Violation of Labor Code §§ 510, 1194; IWC Wage Order 4, § 3 (Failure to Pay Overtime Wages)
- Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 4, § 4 (Failure to Pay Minimum Wages)
- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)
- Violation of Labor Code §§ 226.7, 512; IWC Wage Order 4, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 226.7; IWC Wage Order 4, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)

- Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)
- Violation of Labor Code § 226.3, 1174 (Failure to Maintain Accurate Records)
- Violation of Labor Code § 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. As to the First Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
3. As to the Second Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
 - d. Liquidated damages pursuant to California Labor Code section 1194.2;
4. As to the Third Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;
5. As to the Fourth Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;
6. As to the Fifth Cause of Action:
 - a. Penalties as provided for in Labor Code section 226, including the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which the

violation occurred and one hundred dollars (\$100.00) per employee for each violation in the subsequent pay periods, but not to exceed four thousand dollars (\$4,000.00);

b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section 226(e);

7. As to the Seventh Cause of Action:

a. An amount to be proven at trial;

b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);

8. As to the Ninth Cause of Action:

a. For civil penalties as provided for in the Labor Code for each enumerated violation in an amount to be proven at trial;

b. For those Labor Code sections, the violation of which there is no civil penalty provided, the default penalty provided in Labor Code section 2699(f): for any initial violation, one hundred dollars (\$100) for each aggrieved employee per pay period; For any subsequent violation, two hundred dollars (\$200) for each aggrieved employee per pay period;

c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699; and

d. For any other remedies as allowed by law and/or deemed appropriate by the Court.

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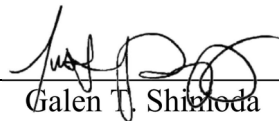
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- 1 9. For such other and further relief as this Court may deem just and proper,
2 including, but not limited to:
3 a. Wages as proved at trial;
4 b. Injunctive and Declaratory relief;
5 c. Attorney's fees and costs as provided for by law; and
6 d. Interest.

7
8 Dated: April 30, 2024

Shimoda & Rodriguez Law, PC

9
10 By: _____


Galen T. Shimoda
Justin P. Rodriguez
Renald Konini
Attorneys for Plaintiff

Mac Dula v. IDEXX Distribution, Inc.
Sacramento County Superior Court of California 23CV005044

**PROOF OF SERVICE — CCP §§ 1013a and 2015.5
and California Rules of Court, Rule 1.21 and Rule 2.150**

I, Shaniya Baird, declare that:

I am a citizen of the United States and am over the age of eighteen years and not a party to the within above-entitled action.

On May 14, 2024, I served the following documents on the party below:

• **FIRST AMENDED COMPLAINT FOR DAMAGES**

Alexandra M. Asterlin Kyle A. Wende Ogletree, Deakins, Nash, Smoak, & Stewart, P.C. 400 Capitol Mall, Suite 2800 Sacramento, CA 95825 Phone: (916) 840-3150 Facsimile: (916) 840-3151 Email: alexandra.asterlin@ogletree.com kyle.wende@ogletree.com noreen.witt@ogletree.com elaine.blizzard@ogletree.com	
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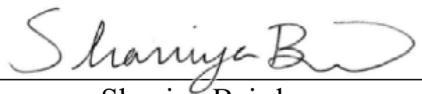
[] [By Mail] I am familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service and that each day's mail is deposited with the United States Postal Service that same day in the ordinary course of business. On the date set forth above, I served the aforementioned document(s) on the parties in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, for collection and mailing on this date, following ordinary business practices, at Salt Lake City, Utah addressed as set forth above.

[] [By Personal Service] By personally delivering a true copy thereof to the office of the addressee above.

[XXX] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown above. No error was reported by the e-mail service that I used.

[] [By Overnight Courier] By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:_____.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 14, 2024, at Salt Lake City, Utah.


Shaniya Baird

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Exhibit C



Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd.
Suite #120
Elk Grove, CA 95624
Ph. (916) 525-0716
Fax (916) 760-3733
www.shimodalaw.com

July 18, 2023

For Online Filing:

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Mac Dula v. IDEXX Distribution, Inc.*

Dear Labor Commissioner,

As counsel for Marnelle Mac Dula (“Plaintiff”), I am writing to provide you and the following “employers” notice pursuant to California Labor Code section 2699.3:

IDEXX Distribution, Inc.
One Idexx Drive
Westbrook, ME 04092

Jonathan Jay Mazelsky
One Idexx Drive
Westbrook, ME 04092

Brian P. McKeon
One Idexx Drive
Westbrook, ME 04092

We are setting forth the “facts and theories” to support each of the counts found within this complaint. Please notify us of your intent to investigate any or all of the claims alleged herein against IDEXX Distribution, Inc., Jonathan Jay Mazelsky, and Brian P. McKeon (“Defendants”). Should you decide not to investigate, we request that you allow us to bring the following action on behalf of Plaintiff and all Aggrieved Employees, pursuant to Labor Code section 2699(a). Specifically, Aggrieved Employees shall include, but is not limited to the following: all individuals who have, or continue to, work for Defendants in California as non-exempt employees from one (1) year prior to the date of this letter to the present. Plaintiff is clearly entitled to bring a Private Attorneys General Act (“PAGA”) claim for civil penalties on behalf of these individuals pursuant to *Huff v. Securitas Security Services USA, Inc.*, 23 Cal.App.5th 745, 757 (2018) (finding a plaintiff has PAGA standing if affected by one of the alleged violations; the plaintiff need not have personally experienced all the violations pursued in PAGA action).



A. FACTS

Plaintiff and Aggrieved Employees worked for Defendants within the claim period as non-exempt employees. Plaintiff worked for Defendants from approximately January 2022 to April 2023. Plaintiff and Aggrieved Employees regularly worked over eight (8) hours in a day and/or forty (40) hours in a week.

Defendants paid Plaintiff and Aggrieved Employees an hourly rate in addition to shift differentials and a nondiscretionary Lab Bonus. However, Defendants failed to correctly incorporate the value of the non-discretionary bonus into Plaintiff's and Aggrieved Employees' regular rate of pay for premium pay purposes, including overtime, sick time, supplemental COVID paid sick time. Additionally, Defendants did not incorporate the value of shift differential into the regular rate of pay with regard to Plaintiff's and Aggrieved Employees' sick leave, meal and rest period premiums, and supplemental COVID paid sick time. This practice of Defendants to incorrectly calculate Plaintiff's and Aggrieved Employees' regular rates of pay resulted in unpaid overtime, unpaid sick time, and unpaid supplemental sick time for Plaintiff and Aggrieved Employees.

Defendants failed to pay Plaintiff and Aggrieved Employees for all regular and overtime hours worked. Defendants required Plaintiff and Aggrieved Employees to complete their work but prohibited overtime, which required Plaintiff and Aggrieved Employees to work off-the-clock.

Defendants did not authorize and permit Plaintiff and Aggrieved Employees to take all meal and rest periods owed to them. Defendants employed Plaintiff and Aggrieved Employees for work for periods of more than five hours without providing them an off-duty meal period of at least 30 minutes. Defendants did not have a policy or practice to provide Plaintiff and Aggrieved Employees with second meal periods when they worked shifts longer than ten (10) hours. Defendants would alter time records to make it appear that there were not late or missed meal periods for Plaintiff and Aggrieved Employees. Defendants employed Plaintiff and Aggrieved Employees for periods of longer than three and one-half (3.5) hours without providing at least a 10-minute rest period. Defendants did not have a policy or practice to provide Plaintiff and Aggrieved Employees with a third rest period when they worked shifts longer than ten (10) hours. Defendants' management also frowned upon breaks being taken, including bathroom breaks. Employees who took breaks were viewed as not hard working. Defendants did not pay Plaintiff and Aggrieved Employees all missed meal and rest period premiums they were owed.

Defendants required Plaintiff and Aggrieved Employees to use their personal cellphones to track their hours worked. However, Defendants failed to pay any reimbursements to Plaintiff and Aggrieved Employees for the use of their personal cellphones.



Defendants failed to provide Plaintiff and Aggrieved Employees with accurate wage statements. The wage statements Defendants provided did not accurately itemize employees' gross and net wages, meal period premiums, rest period premiums, paid sick time, supplemental paid sick time, and all applicable hourly rates in effect during the pay period, total hours worked, and the corresponding number of hours worked at each hourly rate.

At the time of Plaintiff's and Aggrieved Employees' termination or separation, Plaintiff and Aggrieved Employees had overtime, sick time, supplemental paid sick time, and meal and rest period premiums owing to them. As of the date of this letter, Defendants have not paid Plaintiff and Aggrieved Employees these wages they are owed.

B. ALLEGATIONS AND CHARGES

Count One – Violation of Labor Code §§ 510, 1194; IWC Wage Order 4, § 3 (Failure to Pay Overtime Wages)

Labor Code sections 510 and 1194 require employers to pay employees 1 ½ times their regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek. Employers must also pay employees 1 ½ times their regular rate of pay for the first eight (8) hours worked on the seventh day of work in any one workweek. Finally, employers must pay employees 2 times their regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh day of work in any one workweek. As stated above, Plaintiff and Aggrieved Employees worked over eight (8) hours per day and forty (40) hours per week and were not paid all overtime wages owed. Plaintiff and all Aggrieved Employees are entitled to recover all unpaid overtime wages. Failure to pay such wages is against the law.

Count Two – Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 4, § 4 (Failure to Pay Minimum Wages)

During the period Plaintiff and Aggrieved Employees were employed by Defendants they were entitled to be paid at least the State's minimum wage rate for each hour that they worked. *See, e.g.*, IWC Wage Order MW-2019; IWC Wage Order No. 4, § (4); Cal. Lab. Code §§ 1194, 1197.1. For the reasons stated above, Defendants did not pay Plaintiff and Aggrieved Employees for all hours worked. Thus, Plaintiff and Aggrieved Employees were not paid at least the applicable state minimum wage for those hours worked. This is against the law.

Count Three - Violation of Labor Code §§ 226.7, 512 and Wage Order No. 4, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 4, section 11(A) require employers to provide employees meal periods of thirty (30) minutes per five (5) hours worked, which is to be



taken before the completion of the fifth hour. Labor Code section 512 and Wage Order No. 4, section 11(B) further provide that employers may not employ employees for a work period of more than ten (10) hours per day without providing the employee with a second meal period of thirty (30) minutes; however, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant meal periods pursuant to California law. Defendants also failed to pay any meal period premiums for their failure to provide meal periods. This was in violation of the law.

Count Four – Violation of Labor Code § 226.7 and Wage Order No. 4, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 4, section 12(A) require employers to provide employees paid off-duty rest periods of ten (10) minutes per four (4) hours or major fraction thereof worked. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant rest periods pursuant to California law. Defendants also failed to pay any rest period premiums for their failure to provide rest periods. This was in violation of the law.

Count Five – Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)

Labor Code section 226 requires employers to furnish to employees with “an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, . . . (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer . . . and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee . . .” For the reasons stated above, Defendants failed to comply with these requirements with respect to Plaintiff and Aggrieved Employees. This is in violation of the law.

Count Six – Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)

Labor Code sections 201-203 require that all wages, including minimum wages, overtime wages, meal premiums, rest premiums, and paid sick time, be paid to employees upon separation and/or termination of employment. Here, for the reasons stated above, Plaintiff and Aggrieved Employees did not receive all final wages due and owing to them at the time of termination or



seventy-two (72) hours thereafter as required by Labor Code sections 201-203. This is in violation of the law.

Count Seven – Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)

Labor Code section 2802(a) states that “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” Defendants failed to pay any reimbursements for personal cellphone use by Plaintiff and Aggrieved Employees. This was in violation of the law.

Count Eight – Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)

Labor Code section 558 states that it is unlawful for any employer, or other person acting on behalf of an employer, to violate or cause to be violated any of sections 500 to 558.1 of the Labor Code or any order of the Industrial Welfare Commission. Similarly, Labor Code section 558.1 states that it is unlawful for any employer or other person acting on behalf on an employer to violate, or cause to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, as well as Sections 203, 226, 226.7, 1193.6, 1194, or 2802 of the Labor Code. As described above, Defendants, by and through Defendants agents, violated Plaintiff and Aggrieved Employees’ rights provided for under Labor Code sections 558 and 558.1 as well as the incorporated Wage Orders and incorporated statutes therein. Jonathan Jay Mazelsky and Brian P. McKeon were officers, directors, shareholders, and/or managing agents of IDEXX Distribution, Inc. responsible for the violations stated herein as they were in a position of authority with the power and responsibility to monitor, institute, and/or modify the unlawful practices, but chose to ratify them instead. This is against the law.

Count Nine – Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)

Labor Code section 226.3 provides that any employer who fails to maintain records required by Labor Code section 226(a) or provide records required by 226(a) shall be subject shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation. Labor Code section 1174(d) provides that employers must keep and maintain accurate payroll records showing the hours worked daily by, and the wages paid to, employees. Defendants failed to maintain the accurate records required by law and, instead, maintained incomplete, inaccurate records regarding Plaintiff and Aggrieved Employees’ wage records and hours worked. This was against the law.



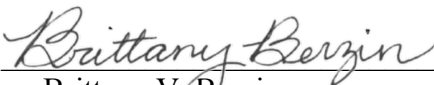
Count Ten – Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)

Labor Code sections 246, *et seq.*, mandate that employers must provide California employees, who work thirty (30) or more days within a year for the employer, paid sick leave of at least one (1) hour for every thirty (30) hours worked that begins to accrue at the commencement of employment. An employer may use a different accrual method, other than providing one hour per every 30 hours worked, provided that the accrual is on a regular basis so that an employee has no less than twenty-four (24) hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period. An employer may limit the use of sick leave to either twenty-four (24) hours or the equivalent of three (3) days, whichever is greater, during a year period. However, employers using an accrual method rather than a lump sum method must allow employees to accrue up to forty-eight (48) hours or the equivalent of six (6) days at any given time. Employers must authorize employees to take paid sick leave under the conditions set forth in the Healthy Workplaces, Healthy Families Act of 2014 (“HWHFA”) for the diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member. Any sick leave taken must be paid at the employee's regular rate of pay. For the reasons state above, Defendants failed to provide Plaintiff and Aggrieved Employees with sick leave meeting the requirements set forth in HWHFA. Plaintiff will be seeking equitable, injunctive, and restitutionary relief to remedy these violations.

If you have any questions or require any further information regarding the facts and theories to support these claims, do not hesitate to contact our office.

Very truly yours,

Shimoda & Rodriguez Law, PC

By: 
Brittany V. Berzin

BVB:sb

cc: Client via e-mail

Mac Dula v. IDEXX Distribution, Inc.

**PROOF OF SERVICE — CCP §§ 1013a and 2015.5
and California Rules of Court, Rule 1.21 and Rule 2.150**

I, Shaniya Baird, declare that:

I am a citizen of the United States and am over the age of eighteen years and not a party to the within above-entitled action.

On July 19, 2023, I served the following documents on the party below:

- Private Attorney General Act Letter

IDEXX Distribution, Inc. One Idexx Drive Westbrook, ME 04092	Jonathan Jay Mazelsky One Idexx Drive Westbrook, ME 04092
Brian P. McKeon One Idexx Drive Westbrook, ME 04092	

[XXX] [By Certified Mail] I am familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service and that each day's mail is deposited with the United States Postal Service that same day in the ordinary course of business. On the date set forth above, I served the aforementioned document(s) on the parties in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, for collection and mailing on this date, following ordinary business practices, at Salt Lake City, Utah addressed as set forth above.

[] [By Personal Service] By personally delivering a true copy thereof to the office of the addressee above.

[] [By Overnight Courier] By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:_____.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on July 19, 2023, at Salt Lake City, Utah.

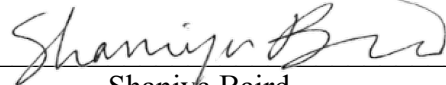

Shaniya Baird

Exhibit D

Date	Description	Amount
7/18/2023	Payment to LWDA - PAGA Filing Fee	\$75.00
7/19/2023	Certified Mail - PAGA letters to employers	\$26.31
7/20/2023	Administration Fee - Phone, Fax, Scan, Copying, Westlaw Legal Research Fee	\$500.00
7/27/2023	Affordable Legal Service Fee - IDEXX Distribution Inc	\$75.00
8/1/2023	One Legal Service, Filing Fee, & Complex Fee (Class)	\$1,579.25
8/17/2023	One Legal Service Fee - Proof of Service	\$83.39
11/1/2023	One Legal Service, Filing Fee, & Complex Fee (PAGA)	\$1,560.72
12/7/2023	Mediation - Mediator Fee	\$9,750.00
12/27/2023	One Legal Service Fee - Proof of Service	\$83.39
3/29/2024	One Legal Service Fee -Notice	\$16.88
4/2/2024	One Legal Service Fee -Notice	\$16.88
4/17/2024	One Legal Service Fee - Class Management Statement	\$16.88
5/6/2024	One Legal Service Fee -Stipulation and Order Re Amending Complaint	\$37.47
5/15/2024	One Legal Service Fee - Amended Complaint	\$16.88
6/4/2024	One Legal Fee - Motion for Preliminary Approval of Settlement	\$78.65
6/5/2024	Service Fee - Capitol Process: Preliminary Approval Motion	\$132.50
6/5/2024	One Legal Fee - Proof of Service	\$16.88
9/23/2024	One Legal Fee - Request and Order Re Dismissing PAGA Case	\$17.50
6/12/2024	One Legal Fee - Joint Case Management Conference Statement	\$16.88
Anticipated	One Legal Fee - Motion for Final Approval of Settlement	\$125.00
Anticipated	One Legal Fee - Notice of Entry of Order	\$20.00
Anticipated	One Legal Fee - Compliance Declaration	\$20.00

Total: \$14,265.46

Exhibit E

Exhibit F

TASK CATEGORY					GTS	JPR	BVB	RK
<u>Pre-filing investigation, Pleadings, Admin Exhaustion, and Related Law & Motion.</u> Includes time spent during initial client meetings and review of claims and documents; Pre-filing investigation/research. Review of payroll records and prior filings against Defendant; Drafting pleadings, notices, administrative filings for state and federal court proceedings; Reviewing and responding to pleadings and state and federal court filings; Research regarding removal and remand; Drafting motion to remand; Research regarding claim splitting and motion to dismiss/judgment on the pleadings for state and federal court; Drafting opposition outlines regarding claim splitting and motion to dismiss/judgment on the pleadings; Communications with opposing counsel regarding same, internal communications regarding same, and communications with client regarding same.					32.9	88.4	55.8	12.2
<u>Case Review, Management, Strategy Meetings, Dispositive Motions.</u> Includes time spent discussing general plan of action updates and strategies in weekly meetings; Research and analysis regarding claim elements and issues affecting representative litigation in state and federal court; Preparing for case management conferences and related meet/confer, drafting of statements, and attendance for hearings; Reviewing minute orders and general correspondence from state and federal Court regarding case management and assignments; Research regarding certification in state and federal court; Research regarding trial plan and related issues on state and federal court; Communications with opposing counsel regarding same, internal communications regarding same, communications with client regarding same.					26.6	36.8	28.9	11.7
<u>Discovery (Pre-Mediation/Non-Mediation Related), Related Law & Motion, and Hearings.</u> Includes time spent preparing discovery requests; Research regarding discovery issues and anticipated objections in state and federal court; Document review and analysis; Seek out witnesses for interviews and obtaining declarations; Review public records requests regarding prior labor commissioner filings and prior wage and hour lawsuits; Review SEC filings related to information on compensation plan terms bonuses; Communications with opposing counsel regarding same, internal communications regarding same, communications with client regarding same.					2.3	7.9	8.6	-
<u>Discovery / Investigation for Mediation.</u> Includes time spent preparing informal discovery specifically geared towards mediation; reviewing informal mediation productions, including data, analyses, documents, and public records; Analyzing sample; Perform damages analysis and calculations; Communications with opposing counsel regarding same, internal communications regarding same, communications with client regarding same.					19.4	53.1	19.7	-
<u>Mediation / Settlement Conference / Direct Negotiations.</u> Includes time spent drafting/revising mediation brief and accompanying exhibits; Drafting pocket briefs; Review documents productions for potential exhibits; Preparing for and attending mediation; Legal research relating to issues on day of mediation; Preparing working draft of MOU; Communications with opposing counsel regarding same, internal communications regarding same, communications with client regarding same.					15	19.2	5.2	-
<u>Drafting Settlement Agreements.</u> Includes time spent preparing long form agreement and exhibits, revisions relating thereto; Research regarding approval procedures and logistics in state and federal court proceedings; Research regarding disputed terms; Solicit and review settlement administrator bids; Communications with opposing counsel regarding same, internal communications regarding same, communications with client regarding same.					17.3	23.9	-	-
<u>Settlement Approval and Administration.</u> Includes time spent drafting motion for preliminary approval and supporting declarations and order; Class data and settlement calculation review; Speaking with Settlement Administrator regarding calculations, distributions, and final approval logistics; Review reports from Settlement Administrator; Respond to Class Member calls and inquiries regarding the settlement and research relating thereto; Draft Motion for final approval and supporting declarations, review and finalize exhibits relating thereto; Legal research regarding approval issues and consolidating into a single action for approval purposes; Communications with opposing counsel regarding same, internal communications regarding same, communications with client regarding same. Includes estimated 10 hours for J. Rodriguez supervising final distributions and compliance with Court final approval order and attending compliance hearings.					20.8	59.2	-	24.3
TOTAL:					134.3	288.5	118.2	48.2

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Renald Konini (Cal. State Bar No. 312080)
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Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733

Attorneys for Plaintiff MARNELLE MAC DULA
individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

MARNELLE MAC DULA, individually and
on behalf of all other similarly situated
employees,

Plaintiff,

vs.

IDEXX DISTRIBUTION, INC., a Delaware
Corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No. 23CV005044

*Assigned for All Purposes to Hon. Lauri A. Damrell,
Department 22*

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT**

Date: November 8, 2024

Time: 9:00 a.m.

Dept.: 22

Judge: Hon. Lauri A. Damrell

Filed: July 19, 2023

FAC Filed: May 14, 2024

Trial Date: None Set

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Final Approval of Class Action and PAGA Settlement (“Motion”) in the above
3 referenced case came before this Court, on November 8, 2024, at 9:00 a.m., in Department 22 before
4 the Honorable Lauri A. Damrell, presiding. Plaintiff Marnelle Mac Dula (“Plaintiff”) filed this
5 putative class action on July 19, 2023. The operative Complaint alleges that Defendant IDEXX
6 Distribution, Inc. (“Defendant”) violated California law by failing to pay overtime wages, failing to
7 pay minimum wages, committing meal and rest period violations, failing to provide accurate wage
8 statements, failing to pay all final wages, failing to reimburse expenses, failing to pay all sick leave
9 wages owed, and engaging in unfair competition. Plaintiff has also alleged Defendant is liable for
10 civil penalties under the Private Attorney’s General Act (“PAGA”) based on these violations. Plaintiff
11 sought attorneys’ fees and costs as part of this Action. Defendant denied all of Plaintiff’s claims and
12 denied that this case was appropriate for class treatment. No class has been certified. The class
13 settlement was preliminarily approved by this Court on June 28, 2024.

14 The parties have agreed to settle the class and PAGA claims. Defendant will provide monetary
15 consideration in exchange for a release of claims consistent with the terms of the proposed settlement
16 as set forth in the Joint Stipulation Regarding Class Action and PAGA Settlement and Release
17 (“Agreement” or “Settlement”). Any capitalized terms herein shall have the same meaning as set forth
18 in the Agreement. The Court, having received and considered Plaintiff’s Motion for Final Approval of
19 Class Action and PAGA Settlement, the declarations in support, the Agreement, the Notice of
20 Settlement, and other evidence, HEREBY ORDERS AND MAKES DETERMINATIONS AS
21 FOLLOWS:

22 **I. CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF CLASS**
23 **REPRESENTATIVE; APPOINTMENT OF CLASS COUNSEL**

24 The Court finds that certification of the following class for settlement purposes only is
25 appropriate under the California Code of Civil Procedure and related case law:

26 All individuals who have, or continue to work, for IDEXX Distribution,
27 Inc., in California as non-exempt employees at any time between July 19,
28 2019, up to May 26, 2024.

1 The Court recognizes that the foregoing definition is for Class Member identification purposes
2 only and is not intended to capture the claims at issue or limit or alter the released claims under the
3 Agreement.

4 For settlement purposes only, the Court finds that Class Members meet the ascertainability and
5 numerosity requirements since the parties can identify with a matter of certainty, based on payroll
6 records, individuals who fall within the definition and the number of Class Members would make
7 joinder impractical. The commonality and predominance requirements are met for settlement purposes
8 since there are questions of law and fact common to Class Members. The common questions of law or
9 fact in this case all stem from Plaintiff's contentions that Defendant caused the violations outlined above
10 by 1) failing to correctly incorporate the value of non-discretionary lab bonuses into class members'
11 regular rates of pay for the purpose of paying overtime premiums, sick time, and supplemental COVID
12 paid sick time, 2) failing to incorporate the value of shift differentials into class members' regular rates
13 of pay for the purpose of paying sick leave, meal and rest period premiums, and supplemental COVID
14 paid sick time, 3) failing to pay class members for all time spent entering the building, going through
15 security, getting to the lab, and clocking in for their shift, 4) pressuring class members to work off the
16 clock to avoid overtime, 5) failing to provide all meal periods, including second meal periods, 6) failing
17 to provide all rest periods, including third rest periods, and 7) requiring class members to download and
18 use applications on their personal cellphones without reimbursing them. The PAGA, waiting time
19 penalty, wage statement violation, and unfair competition claims also derive from these violations.
20 Additionally, Class Members seek the same remedies under state law. The typicality requirement for
21 settlement purposes is also satisfied since the claims of the Class Representative are based on the same
22 facts and legal theories as those applicable to the class members.

23 The Court also finds that certifying the settlement class is required to avoid each Class Member
24 from litigating similar claims individually. This Settlement will achieve economies of scale for Class
25 Members with relatively small individual claims and conserve the resources of the judicial system.

26 The Court finds that Plaintiff Marnelle Mac Dula and Plaintiff's counsel, Galen T. Shimoda
27 Justin P. Rodriguez, and Renald Konini of Shimoda & Rodriguez Law, PC, to be adequate
28

representatives of the settlement class. The Court appoints them as Class Representative and Class Counsel, respectively.

II. APPROVING CLASS ACTION AND PAGA SETTLEMENT

The Court has again reviewed the preliminarily approved Agreement, which was submitted with Plaintiff's Motion as Exhibit A. The Court finds that final approval is warranted as the Settlement falls within the range of reasonableness and is fair, reasonable, and adequate for the class. The Court also finds the Settlement was agreed upon only after extensive investigation, litigation, and arms-length negotiations by counsel experienced in complex litigation, who took reasonable steps and measures to weigh the potential value of the disputed claims against the risks of continued litigation. Class Members were able to object to the Agreement and its terms through the administration process and at a fairness hearing or opt-out of being bound by the preliminarily approved Agreement.

No objections were made by Class Members and no Class Member opted out of the settlement. Because the Court finds the Parties' settlement to have been agreed upon only after an extensive investigation and arms-length negotiations, and in an attempt to avoid further delays and costs, the Court gives final approval to the Agreement and all terms therein as if stated here in full, including the \$1,365,000.00 Gross Settlement Amount.

The Court approves the PAGA Payment of Forty Thousand Dollars (\$40,000.00), which shall be paid from the Gross Settlement Amount, not in addition to the Gross Settlement Amount, to resolve the alleged PAGA claims. Seventy-Five percent (75%) of the PAGA Payment will be paid to the Labor and Workforce Development Agency ("LWDA") and Twenty-Five percent (25%) will be paid to Aggrieved Employees on a pro rata basis as described in the Agreement. The Court also finds that based on the facts of this case and the disputed issues, the Agreement provides a recovery that creates an effective, substantial deterrent to any potential future non-compliance, furthering the purpose of the Labor Code and LWDA.

The Court approves of the identified *cy pres* beneficiaries and distribution plan wherein any checks issued to Participating Class Members and/or Aggrieved Employees that are not cashed by the deadline to do so shall be donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Center for

Workers' Rights. *See In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 718 (2006). No portion of the Gross Settlement Amount will revert to Defendant for any reason.

The releases and waivers for Class Members who did not opt out of being bound by the Agreement (*i.e.* Participating Class Members), Aggrieved Employees, and the Class Representative are also approved by the Court as set forth in the Agreement.

Class Counsel sought an award of attorneys' fees of \$477,750.00, attorney's costs of \$14,265.46, an Enhancement Payment to the Class Representative in the amount of \$10,000, and for Settlement Administrator Costs in the amount of \$8,750. Defendant does not oppose these requests. The Notice of Settlement sent to Class Members included information regarding these amounts and that they would be requested in connection with final approval of the Agreement. Class Members have been given the opportunity to object to these amounts and no objections have been submitted in any respect whatsoever. The Court has reviewed the evidence submitted by Class Counsel regarding their hourly rates, prior fee awards in Sacramento County Superior Court at the requested rates, the appropriateness of the requested multiplier to counsel's lodestar, and the amount of time expended in the litigation for the benefit of Class Members. The Court finds that the requested rates and hours expended are reasonable. The Court has also reviewed the updated itemized costs submitted by Class Counsel, the information provided by the Class Representative regarding the efforts and burdens undertaken for the benefit of the class, and the cost information provided by the Settlement Administrator. The Court finds that these amounts are fair and reasonable, and awarded as requested, which will be deducted from the Gross Settlement Amount. This finding is further supported by the lack of objection by Class Members to these amounts. The difference between the actual attorney's costs and Settlement Administrator Costs awarded and the originally allocated attorney's costs of \$17,500 and Settlement Administrator Costs of \$20,000 will be added to the Net Settlement Amount pursuant to the terms of the Agreement.

III. APPROVAL OF THE DISTRIBUTION METHOD OF NOTICE TO THE CLASS, INCLUDING THE NOTICE OF SETTLEMENT

The Court finds that the Notice of Settlement, which was submitted with Plaintiff's Motion as Exhibit A to the Declaration of Cassandra Polites, fairly and adequately advised Class Members of the terms of the Agreement, the rights being waived, their right to opt out, the ability to dispute the number

of workweeks worked during the Class Period, their pro rata share of the Net Settlement Amount, how to participate in the settlement, how to file documentation in opposition to the proposed settlement, and when to appear at the fairness hearing. The Court further finds that the Notice of Settlement distribution of such notice by first class mail to each identified Class Member at his or her most recent address based on a National Change of Address database search from the Class Members' last known address and a skip trace on any Class Members who have the Notice of Settlement returned as "undeliverable" or "not at this address" comported with all constitutional requirements, including those of due process.

IV. IMPLEMENTATION SCHEDULE

Accordingly, with good cause shown, the Court hereby approves and orders that the following implementation schedule be adhered to:

Last day for Settlement Administrator to calculate the final Net Settlement Amount, the final Individual Settlement Amounts to Participating Class Members and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendant's Counsel	Within 7 calendar days after the Effective Date
Last day for Defendant to fund settlement	Within 21 calendar days after the Effective Date
Last day for Settlement Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Settlement Administrator Costs, payment to Participating Class Members, and payment to Aggrieved Employees	Within 7 calendar days after Defendant has funded the settlement
Last day for Participating Class Members and Aggrieved Employees to cash settlement checks	180 calendar days after issuance of checks to Participating Class Members and Aggrieved Employees
Last day for Settlement Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline

1 Last day for Settlement Administrator to provide
2 Parties with compliance declaration

Within 21 calendar days after settlement
check cashing deadline

3
4 IT IS FURTHER ORDERED that this final approval order is effective as a judgment with each
5 party to bear its own fees and costs outside of what has been ordered herein. This matter is subject to
6 the Court's continuing jurisdiction to monitor and enforce the terms of this order and the approved
7 Agreement.

8 The Court Sets a further compliance hearing for July 18, 2025, at 10:30 a.m. At least 15
9 calendar days prior to the hearing, Class Counsel shall file a declaration from the Settlement
10 Administrator regarding the status of the distribution of the settlement funds. If the Court is satisfied
11 that the settlement funds have been fully distributed, no appearance will be required.

12 **IT IS SO ORDERED.**

13
14 Date: _____

By: _____
Judge of the Superior Court