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18
19 **UNITED STATES DISTRICT COURT**
20
21 **CENTRAL DISTRICT OF CALIFORNIA**
22

23 JILL PATT, D.V.M., and LITTLE
24 CRITTERS VET, LLC, individually
25 and on behalf of all others similarly
26 situated,

27 Plaintiffs,

28 vs.

ANTECH DIAGNOSTICS, INC.

Defendant.

Case No.: 8:18-cv-01689-JLS-DFM

**SECOND AMENDED COMPLAINT
FOR RESTITUTION, INJUNCTION
AND DAMAGES FOR
VIOLATIONS OF CAL. BUS. &
PROF. CODE § 17200, BREACH OF
CONTRACT, and VIOLATION OF
SECTION 2 OF THE SHERMAN
ACT**

CLASS ACTION

DEMAND FOR JURY TRAIL

1 Little Critters Jill Patt, D.V.M., and Little Critters Vet, LLC, on behalf of
2 themselves and all others similarly situated, allege the following:

3 **I. PARTIES**

4 **A. Individual and Representative Little Critters**

5 1. Dr. Jill Patt, D.V.M. is a veterinarian practicing through the auspices
6 of Plaintiff Little Critters Vet, LLC, in Gilbert, Arizona.

7 2. Little Critters Vet, LLC, is a limited liability company formed under
8 Arizona law that operates a veterinary office and practice under the tradename
9 Little Critters Veterinary Hospital in Gilbert, Arizona. Dr. Jill Patt and Little
10 Critters Vet, LLC are sometimes collectively referred to below as “Little
11 Critters”.

12 **B. Antech**

13 3. Antech Diagnostics, Inc. (“Antech”) is a California corporation with
14 its corporate headquarters located at 17620 Mt. Hermann Street, Fountain Valley,
15 California 92708. It is a subsidiary of VCA, Inc., sometimes operating under the
16 tradename VCA Antech, which began as an owner and operator of veterinary
17 hospitals, but which now also holds subsidiaries operating in a number of pet
18 health sectors. On January 9, 2017, Mars, Inc. announced that it was purchasing
19 VCA, Inc. for approximately \$9.1 billion and, on September 12, 2017, announced
20 that the acquisition had been completed.

21 **II. JURISDICTION AND VENUE**

22 4. This Court has original jurisdiction of this action under the Class
23 Action Fairness Act of 2005. Pursuant to 28 U.S.C. §§ 1332(d)(2) and (6), this
24 Court has original jurisdiction because the aggregate claims of the members of the
25 putative Class exceed \$5 million, exclusive of costs, and each Plaintiff is a citizen
26 of a different state than Defendant.

27 5. The Central District of California has personal jurisdiction over
28 Antech because Antech is authorized or registered to do business and operate in

1 this District, where it engaged in, and continues to engage in, the practices alleged
2 in this Complaint.

3 6. Venue is proper in this District pursuant to 28 U.S.C. § 1391,
4 because Antech’s headquarters are in this District and it transacts substantial
5 business within this District. Antech’s form contracts for selling veterinary
6 diagnostic reference laboratory testing services include a venue provision
7 providing, “Each of the parties hereto hereby irrevocably consents and submits to
8 the exclusive personal jurisdiction of United States District Court for the Central
9 District of California.”

10 **III. SUMMARY OF THE ACTION**

11 7. Just like medical doctors providing care for human patients,
12 veterinarians use and rely upon a wide range of laboratory tests to diagnose and
13 treat their animal patients. Antech is one of two major providers of diagnostic
14 reference laboratory testing services to veterinarians in the United States. In their
15 marketing materials, Antech states:
16

17 No one better understands the importance of quality patient care and the
18 value of accurate dependable testing than VCA ANTECH . . . Dependable
19 testing is more than technology; accurate and dependable results rely on
20 highly skilled and trained technicians. Each and every ANTECH
21 Laboratory Technician is under daily QA/QC programs designed to ensure
22 accurate results while receiving annual mandatory testing to insure their
23 skills and knowledge are second to none.

24 8. To obtain Antech diagnostic reference laboratory testing services,
25 veterinarians typically enter into a contract substantially the same in form as that
26 reached between Little Critters and Antech, which is attached hereto as Exhibit A
27 (the “Contract”), although the dollar figures vary from veterinarian to
28 veterinarian. These agreements are contracts of adhesion, to which Antech
requires agreement rather than one with the substantive terms negotiated other
than dollar amounts, an approach Antech has consistently taken for decades.

1 These agreements require that the veterinarian use Antech for at least 90% of all
2 veterinary diagnostic reference laboratory testing services purchases subject to
3 extremely limited exceptions. Exh. A at 2 “Exclusivity” Paragraph. The term of
4 the Contract is six years. Plus, Antech includes as part of the pricing an initial
5 “loan,” including interest, that is collected if the veterinarian attempts to terminate
6 the Contract before the end of the term, but which is forgiven at the end of the
7 term of the loan. Antech also has a pattern and practice of suing veterinarians
8 who attempt to stop using Antech’s services before the end of the term for all
9 expected revenues to be received under the remaining term of the contract.

10 9. The terms accuracy and precision are not subjective when applied to
11 diagnostic laboratories. Rather, as alleged below, extensive academic literature
12 and industry guidelines have been developed to measure accuracy and precision
13 in statistical terms. Practitioners consider testing results to be dependable when
14 they meet or exceed these guidelines for accuracy and precision.

15 10. Antech’s diagnostic laboratory services and results are woefully
16 below applicable guidelines. Indeed, the quality of Antech’s services and results
17 are substantially worse than that of competitors. As a result, veterinarians under
18 contract with Antech are put at risk of providing unacceptable levels of veterinary
19 care to their patients due to receiving inaccurate, undependable and imprecise
20 laboratory test results from Antech.

21 11. Consequently, veterinarians were deceived when Antech marketed
22 itself as providing accurate, precise, and dependable laboratory services and
23 results that were “second to none.”

24 12. Rather than compete openly in terms of price and quality of service,
25 Antech has shielded itself from the competitive discipline of the marketplace by
26 steering veterinarians to enter into exclusive dealing contracts with onerous terms
27 and by undertaking other efforts to attempt to monopolize the market for
28 veterinary diagnostic reference laboratory testing services in the United States.

1 Consequently, competition for veterinary diagnostic reference laboratory testing
2 services in this country is restrained, and veterinarians and their patients receive
3 poorer quality at a higher price than would pertain in a competitive marketplace.
4 For the sake of veterinarians and their patients, Little Critters seek to represent a
5 class of those who contracted with Antech to remedy these injustices.
6 Plaintiffs excluded from this Second Amended Complaint the Counts that the
7 Court dismissed with prejudice in its May 18, 2020 Order Granting in Part and
8 Denying in Part Defendant’s Motion to Dismiss Claims and Strike Class
9 Allegations. Plaintiffs hereby reserve their right to appeal the dismissal with
10 prejudice when ripe for appeal.

11
12 **IV. COMMON SUBSTANTIVE ALLEGATIONS**

13 **A. Veterinarians Need Diagnostic Reference Laboratory Testing**
14 **Services, Including Test Results**

15 13. There are three distinct types of laboratories in the veterinary field.
16 First, most veterinarians can perform certain laboratory tests “in-house” at their
17 offices by using microscopes, blood machines, urine analyzers and the like. Tests
18 typically performed in-house include blood count, blood chemistry, urine testing,
19 and microscopic evaluation of skin scrapes and ear swabs. Second, there are
20 clinical laboratories, typically under the auspices of a university, which support
21 research and teaching designed to improve the practice of veterinary care over the
22 long term. Third, companies such as Antech operate what are called veterinary
23 diagnostic reference laboratories that provide laboratory testing, services and
24 results to veterinarians, including some tests that a veterinarian cannot typically
25 perform in-house. Examples of such tests include those designed to detect the
26 presence of Aspergillus antibodies in birds, Pasteurella PCR in rabbits, *Ehrlichia*
27 PCR in dogs and Chlamydomphila in cats.

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1 14. As a result, virtually all private veterinary practices contract with
2 diagnostic reference laboratory companies to obtain tests, services and results.
3 These arrangements typically establish the method by which the veterinary
4 practice will convey test samples to the diagnostic reference laboratory, most
5 often by scheduled pick-up by the laboratory with overnight shipping for other
6 tests, where appropriate. The diagnostic reference laboratory will then conduct a
7 test on the sample and convey the result to the veterinary practice, often – as is the
8 case with Antech – by transmission via the Internet by interfacing with the
9 veterinary practice’s electronic medical records. The laboratory company’s staff
10 is also supposed to be available to the veterinary practice to provide support,
11 answer questions, and respond to concerns. When dealing with companies other
12 than Antech, veterinary practices typically pay a specified price for each test and
13 then bill their customer for those tests. Veterinary practices also rely heavily on
14 test results in diagnosing patients and formulating treatment plans and options.

15
16 **B. Antech Imposes Onerous Exclusive Contracts on Veterinary Practices**

17 15. Antech requires veterinarians to whom it provides what it contends
18 are preferred pricing and priority customer service for its laboratory testing
19 services to sign a form contract it calls the “Exclusive Laboratory Services
20 Agreement” (the “Exclusive Agreement(s)"). Attached as Exhibit A hereto is the
21 first seven pages of the one signed by Dr. Patt on July 6, 2017, not including
22 pages 8 through 10 consisting of an Annex relating to prices, discounts, and
23 credits. The Exclusive Agreements contain a confidentiality provision purporting
24 to prohibit veterinarians from disclosing any terms of the agreement and declaring
25 that a breach of any of the promises in the agreement will result in irreparable and
26 continuing damage to Antech Diagnostics for which there shall be no adequate
27 remedy at law. Exh. A, Page 3, ¶ 7. That confidentiality provision contains an
28

1 exception for circumstances “required by law or judicial process.” *Id.* As a
2 result, Antech routinely files the form agreement, including pricing, as an exhibit
3 to complaints it files in open court before federal tribunals around the country
4 against veterinarians Antech deems to have violated the agreement. Further, the
5 parties to this action have discussed terms of the Contract in their previous filings
6 and argument in this action, and in previous argument in this matter, the Court
7 expressed interest in seeing the specific provisions of Little Critters’ contract with
8 Antech.

9 16. The confidentiality clause in the Exclusive Agreements, particularly
10 when combined with the “loan” and other purported discounts contained in those
11 agreements, discussed below, create a conflict of interest between veterinarians
12 and their clients because, under California state licensing rules, veterinarians are
13 required to disclose the actual price charged by the laboratory for results.

14 17. The confidentiality provisions in the Exclusive Agreements, in
15 conjunction with other provisions and practices discussed below, were designed
16 to and have the effect of inhibiting and prohibiting veterinarians from discussing
17 amongst themselves their relations with Antech. As a consequence, the ability of
18 veterinarians to mitigate the impact of Antech’s onerous practices by ameliorating
19 conduct has been impaired.

20 18. Another factor making it difficult for veterinarians to communicate
21 about, or even discern, Antech’s conduct is the way in which Antech structures its
22 periodic statements to veterinarians so that the veterinarian has no means of
23 knowing if Antech is honoring the preferred pricing specified in the Exclusive
24 Agreements. Specifically, Antech simply provides a lump sum discount at the
25 bottom of its statements with no information about what was actually charged to
26 the veterinary practice per each individual test.

27 19. Antech’s Contract with Little Critters has an initial term of 6 years,
28 and its Exclusive Agreements have terms ranging from 5 to 7 years. The

1 Exclusive Agreements require that veterinarians use Antech for almost their entire
2 diagnostic reference laboratory testing requirements during the term of the
3 Exclusive Agreement. The Exclusive Agreements state, “During the Term,
4 Practice Owner shall cause all Laboratory Services that are to be performed for
5 and on behalf of the Practice(s), to be performed by a veterinary diagnostic
6 laboratory owned or operated by Antech Diagnostics.” Exh. At, Page 2. There
7 are certain limited exceptions to the exclusivity provision, such as for tests that
8 Antech does not perform, or where the test prices are less than 10% of all fees for
9 such services. *Id.*

10 20. Antech’s Exclusive Agreement also sets a minimum dollar amount
11 per year that each practice must pay Antech. For Little Critters, the Contract
12 provided for purchase, after application of all discounts and credits, veterinary
13 diagnostic laboratory services from Antech in “an aggregate amount of not less
14 than \$24,000” for each 12 month period following the July 1, 2017 Effective Date
15 of the contract. Exh. A, Page 2. These annual minimum requirements, a
16 standard feature of Antech’s Exclusive Agreements, affect the incentives Antech
17 will pay. Specifically, Antech salesmen endeavor to get veterinarians to agree to
18 higher annual minimum limits in order to obtain greater incentive payments,
19 lower prices, and greater discounts.

20 21. From the outset of the Contract through May, 2018, Little Critters
21 exceeded the aggregate amount of purchases from Antech for each month on a
22 pro-rated basis by much more than the minimum required under the Contract.

23 22. Antech’s form Exclusive Agreement also provides for a loan to the
24 practice owner for a period equal to the exclusive term. For Little Critters, the
25 Contract provided a loan in the amount of \$12,000 for a period of 6 years at an
26 annual interest rate of 7%. Exh. A, Page 5. The “loan” is actually an element of
27 pricing and a mechanism to further incentivize practice owners to comply with
28 the exclusivity requirements. Thus, the loan includes a “forgiveness” provision

1 that forgives each year's annual loan payment when the practice owner complies
2 with its minimum dollar amount of purchases from Antech, as required under the
3 Exclusive Agreement.

4 23. The Exclusive Agreements contain "evergreen clauses," under which
5 the contract renews for an additional 24 months unless the veterinarian provides
6 written notice of non-renewal at least one year prior to the end of the term. Exh.
7 A, Page 3, ¶ 3. Antech makes it difficult for veterinarians to know if they have
8 complied with this clause. For example, Antech provides no reminder of the
9 approaching deadline for providing notice and is evasive about whether it will
10 accept emails as written notice. Nor does Antech specify to whom in the
11 organization written notice must be provided. For example, Dr. Patt had to
12 communicate with Antech multiple times before finally obtaining confirmation
13 that she had exercised her notice rights.

14 24. Paragraph 2 of the Standard terms and conditions in the Exclusive
15 Agreement states, "All Laboratory Services provided by Antech Diagnostics
16 pursuant to this Agreement are provided in accordance with and subject to all
17 terms and conditions set forth in the ANTECH Service Directory in effect at the
18 time the Laboratory Services are performed." Exh. A, Page 3, ¶ 2. The last
19 Service Directory published by Antech states, "In accepting work, we warrant that
20 we shall provide services in a professional manner by qualified personnel, and we
21 warrant the accuracy of the test results for the specimen submitted."

22
23 **C. Antech Coerces Veterinarians to Remain in Contractual
Relations**

24 25. Antech uses force, coercion, threats, intimidation and federal
25 lawsuits to keep its veterinarian clients in line paying their annual minimums and
26 exclusively using Antech's services. Antech has filed over 55 federal lawsuits
27 against its veterinarian clients since February 2013.
28

1 26. Prior to filing suit, Antech sends a threatening demand letter from its
2 counsel to the veterinarians demanding huge sums of money not justified under
3 the Exclusive Agreement and declaring that Antech wins these cases when they
4 are filed. The letter sent to Little Critters, dated August 15, 2018, is attached as
5 Exhibit B, without the copy of the Exclusive Agreement that was attached to the
6 original of Exhibit B.

7 27. In its letter to Little Critters, Antech demanded payment, as follows:
8 “You owe \$298,704.76 which represents the amount that Antech has been
9 damaged by your breach, including the return of the \$24,000 incentive.
10 Accordingly, I will expect that a check made payable to ‘Antech Diagnostics’ in
11 the amount of \$1298,704.76 [sic] be delivered to my office no later than the close
12 of business on August 24, 2018.” The letter does not explain or itemize how
13 Antech determined that it was entitled to almost \$300,000 or how it could be
14 reasonable to require a veterinarian to pay that amount of money nine days from
15 the date the letter was drafted. In most cases, Antech simply calculates the
16 amount that the veterinarian would have paid if they had exclusively used Antech
17 and made the minimum required purchases for the rest of the term, thus claiming
18 100% of those payments as “lost profits,” without regard to the fact that is not
19 how lost profits are calculated.

20 28. Before Antech sent the demand letter to Dr. Patt, she had worked
21 with Antech for over six months elaborating her concerns and looking for ways to
22 improve results. She had also suggested modifying the Contract to allow her to
23 send those tests in which she had lost confidence in Antech to competing
24 laboratories, but Antech ignored or rejected those efforts.

25 29. In one case Antech litigated in Maryland, it claimed damages of
26 \$273,000 over the remaining life of the contract. The Court in a Memorandum
27 Opinion stated that Antech’s “chance of actually recovering that amount appears
28 remote.”

1 30. Antech's demand letters are drafted to maximize the *in terrorem*
2 effect on the recipients in the hope that they will generate further payments to
3 Antech and prevent the recipients from determining the valid defenses they may
4 have.

5 31. Antech also requires the use of nondisclosure agreements in its
6 settled litigation to prevent the veterinarians from putting each other on notice
7 about Antech's tactics and its continuous provision of false lab results.

8 32. One veterinarian stated that they had been threatened with a slander
9 suit from Antech upper management if they posted on the online forum with
10 complaints similar to Plaintiff Dr. Patt's complaints.

11 33. Antech threatened to sue another veterinarian with similar
12 complaints and indicated that Antech would seek all of his records, including the
13 posts on the veterinarian's Internet forum. Antech also sent an investigator to
14 take photographs of the IDEXX box on his door as proof that he was not
15 exclusively using Antech and took video of the IDEXX driver picking up the
16 samples. (IDEXX is Antech's principal competitor.)

17 34. Antech also uses the economic threat of litigation, rather than the
18 merits of prospective litigation, to coerce veterinarians into abiding by the
19 Exclusive Agreement. As a large company that has extensive experience suing
20 under the Exclusive Agreement, Antech knows that it can easily afford the costs
21 of each case much more readily than can an individual or small practice
22 veterinarian, who has no such experience. Consequently, Antech expects that
23 many veterinarians will back down rather than follow-through on their desire to
24 end contractual relations with Antech, an expectation that has frequently come to
25 pass.

26 35. A factor increasing Antech's ability to use the economic threat of
27 litigation, rather than the merits of prospective litigation, to coerce veterinarians
28 into remaining in contractual relations with Antech is the governing law and

1 venue provision in the Exclusive Agreement. *See* Exhibit A, Page 5 ¶ 9 & Page 9
2 ¶ 12, stating that any disputes arising out of the arrangement will be governed by
3 California law and subject to the venue of this Judicial District. Antech requires
4 veterinarians all over the country to sign agreements containing these clauses,
5 increasing the degree to which Antech is more familiar with the litigation that
6 would ensue than would be the veterinarians, especially those in other states
7 whose attorneys are not licensed to practice in California. As a consequence, both
8 Antech and the veterinarians know that any resulting litigation will be relatively
9 cheaper for Antech and more expensive for the veterinarians than if the Exclusive
10 Agreement was governed by the law of the state in which the veterinarian
11 operated and/or in which the Antech lab performing the tests were located.

12 36. It has been documented in a number of sources that veterinarians
13 tend to be a very law abiding group relative to other medical professionals and the
14 population at large. This fact makes Antech's practice of suing large numbers of
15 veterinarians for breach of contract even more suspicious and indicative of
16 misconduct on Antech's part.

17
18 **D. Antech Falsely Represents that it Provides Accurate, Precise,
and Dependable Lab Results**

19 37. Antech represents that its lab results are of high quality and can be
20 trusted because, among other things, it claims to employ high quality staff. One
21 such online representation is: "No one better understands the importance of
22 quality patient care and the value of accurate, dependable diagnostic testing than
23 VCA ANTECH. ... Dependable testing is more than technology; accurate and
24 dependable results rely on highly skilled and trained technicians. Each and every
25 ANTECH Laboratory Technician is under daily QA/QC programs designed to
26 ensure accurate results while receiving annual mandatory testing to insure their
27 skills and knowledge are second to none."
28

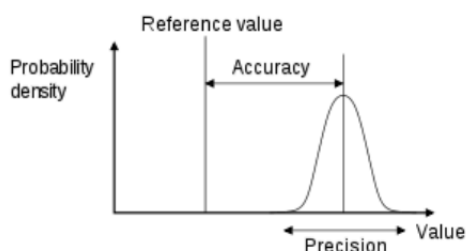
1 (<http://www.antechdiagnostics.com/main/becomeanantechclient.aspx>). Plaintiff
2 Dr. Patt, acting within the course and scope of her relationship with Plaintiff
3 Little Critters Vet, LLC, saw and relied on this representation and other Antech
4 representations of the quality of Antech's testing services and results prior to
5 entering into the Contract with Antech. This representation was intended to and
6 did create the false impression that Antech manages its laboratory technical staff
7 in such a way as to insure accurate, precise and dependable test results. This
8 impression is false for the reasons described below.

9 38. Antech produces a steady stream of statements to veterinarians
10 touting quality, such as the line on the front page of its 2019 fee schedule
11 declaring that Antech is, "Defining the Standard of Excellence" at its diagnostic
12 labs. Antech marketing materials also stated their laboratories are "state-of-the-
13 art." Antech marketing materials also stated that Antech sets "the standard for
14 reference laboratory excellence." Dr. Patt, acting within the course and scope of
15 her relationship with Plaintiff Little Critters Vet, LLC, saw and relied on these
16 representations prior to entering into an agreement with Antech.

17 39. The Agreement states, "All Laboratory Services provided by Antech
18 Diagnostics pursuant to this Agreement are provided in accordance with and
19 subject to all terms and conditions set forth in the ANTECH Service Directory at
20 the time." Exh. A, Page 3, ¶ 2. During all relevant times, the ANTECH Service
21 Directory stated with respect to Antech, "In accepting work, we warrant that we
22 shall provide services in a professional manner by qualified personnel, and we
23 warrant the accuracy of the test results for the specimen submitted." It also
24 stated, "ANTECH Diagnostics is dedicated to quality control (QC) and (QA) that
25 are unsurpassed in the industry." It also stated that Antech's techniques "not only
26 assure compliance and uniformity amongst our teams, but also provide peace of
27 mind for our clients from the knowledge that we continuously strive for
28 measurable improvements."

1 **E. There Are Objective Guidelines for Evaluating Error, Accuracy, and Precision as Measures of the Dependability of Veterinary Diagnostic Reference Laboratory Testing**

2 40. Accuracy is defined by the American Society of Veterinary Clinical
3
4 Pathologists (ASVCP) as the closeness of agreement between the results of a
5 measurement and the true concentration of the analyte (*i.e.*, hitting the bulls eye
6 of the target). See Harr KE, Flatland B, Nabity M, Freeman KP., *ASVCP*
7 *Guidelines: Allowable Total Error Guidelines for Biochemistry*, 42(4) Veterinary
8 Clinical Pathology, 2013 Dec;42(4):424-36 (Dec. 2013). Accuracy is the
9 opposite of inaccuracy (and inaccuracy is also sometimes called “bias”), as
10 depicted below. The more accurate the measured value, the closer the measured
11 line is to the reference value.
12



19 Bias is calculated using the formula: bias (%) = ([mean measured – mean
20 target]/mean target) x 100.

21 41. Precision is defined as agreement between independent, repeated
22 results obtained from the same specimen under specified conditions. It is
23 represented by the standard deviation (in units of the test) or coefficient of
24 variation (in units of percent) calculated from performance testing data. (See
25 Nabity MB, Harr KE, Camus MS, Flatland B, Vap LM., *ASVCP Guidelines:*
26 *Allowable Total Error Hematology*, 47(1) Veterinary Clinical Pathology, 9-21
27 March 2018). Error in precision and accuracy are called imprecision and bias and
28

1 can be quantified. These are combined in Allowable Total Error = 2 x Coefficient
2 of Variation (aka imprecision) + Bias (in % terms). Both CLIA and ASVCP have
3 set Allowable Total Error, defined as a quality requirement that sets a limit for
4 combined imprecision (random error) and bias (inaccuracy, or systematic error)
5 that are tolerable in a single measurement or single test result to ensure clinical
6 usefulness. Allowable total error is an established benchmark in the field.

7 42. In considering the accuracy and precision of diagnostic reference
8 laboratory results, it is useful to divide errors and potential errors into three
9 categories. The first is “pre-analytical,” encompassing errors that occur before
10 the sample is analyzed in the laboratory. The most commonly reported types of
11 pre-analytical error are: a) missing sample and/or test request, b) wrong or
12 missing identification, c) contamination from infusion route, d) hemolysed,
13 clotted, and insufficient samples, e) inappropriate containers, f) inappropriate
14 blood to anticoagulant ratio, and g) inappropriate transport and storage conditions.
15 The second category is “analytical,” resulting typically from false positives or
16 false negatives in the test itself due to bias, imprecision, and possible
17 interferences. The third category is post-analytical, resulting primarily from data
18 entry error.

19 43. In categorizing analytical errors further, two measures are important
20 in the field for determining the clinical usefulness of the analysis performed by a
21 laboratory. The first is “diagnostic sensitivity,” which is essentially the statistical
22 measure for the proportion of actual positives that are correctly identified. The
23 second is “diagnostic specificity,” which is essentially the statistical measure for
24 determining the proportion of actual negatives that are correctly identified.
25 Practitioners consider testing results to be dependable when the diagnostic
26 sensitivity and specificity is high enough to meet acceptable guidelines in clinical
27 practice.

28 /////

1 44. More specific objective guidelines applicable to veterinary
2 diagnostic reference laboratories have also been developed. For example, an
3 Antech employee (at the time) was the lead author of an academic journal article
4 outlining ASCVP consensus quality assurance guidelines. Gunn-Christie RG,
5 Flatland B, Friedrichs KR, Szladovits B, Harr K, Ruotsalo K, Knoll J, Wamsley
6 H, Freeman K.P., *ASVCP Quality Assurance Guidelines: Preanalytical,*
7 *Analytical, and Postanalytical Factors for Clinical Chemistry, Urinalysis, and*
8 *Cytology in Veterinary Laboratories* 41 *Vet Clin Pathol.* 18–26 (2012). The
9 article provides minimal guidelines for quality assurance and quality control for
10 veterinary laboratory testing and a basis for laboratories to assess their current
11 practices. Among the practices identified as setting the baseline minimum are the
12 following:

- 13 · All verbal or written feedback, including complaints and
14 suggestions, should be documented and forwarded to the appropriate level
15 of management. Corrective actions in response to feedback must be
16 documented and organizational reviews conducted to ensure timely and
17 appropriate follow-up.
- 18 · Personnel conditions should be comfortable and appropriate for
19 computer data entry, data transcription, handling specimens, specimen
20 disposal, and all other specimen-processing tasks with special consideration
21 given to repetitive work.
- 22 · Personnel should meet training requirements necessary for specific
23 areas of the laboratory. The laboratory should be staffed appropriately to
24 meet the workload.
- 25 · An instrument performance log should be kept for each instrument.
26 If possible, monitoring should include participation in an external
27 proficiency or quality assurance program specific to veterinary diagnostic
28 laboratories.

1 · Appropriate use of retest criteria should be used. Documentation of
2 retesting should be included on the worksheet and the report or, if
3 necessary, on the corrected report.

4 · Adequate training of analysts performing microscopic examination
5 of urine specimens from animals is necessary and should be documented.

6 · As it relates to cytology, the individual who interprets findings in
7 veterinary specimens, preferably a board-certified veterinary pathologist,
8 should have documented cytopathology training and good working
9 knowledge of cytologic findings from all species and cytologic specimen
10 types expected to be received by the laboratory and evaluated. The
11 individual should be available to communicate with clients about important
12 pre-analytical, analytical, and post-analytical factors regarding the
13 cytologic specimens.

14 · Regarding clinical chemistry, an instrument performance log should
15 be maintained for each analyzer. External monitoring should include
16 participation in an external proficiency or quality assurance program
17 specific to veterinary diagnostic laboratories.

18 · Validation of QC rules and procedures is recommended to ensure
19 that errors in precision and accuracy are identified. Unidentified errors
20 may invalidate the clinical use of the test results.

21 · The laboratory should establish a procedure for a two person review
22 of specimen quality and results by technologists, supervisors, or
23 pathologists prior to finalization and release of results. An explicit review
24 may be stipulated for problematic tests or for certain specimen
25 characteristics or may be based on the clinical significance of test results.

26 /////

27 /////

28 /////

1 · The laboratory should keep a copy of all reports and any
2 accompanying worksheets. Reports should be initialed and dated by the
3 technician or pathologist involved in performing or interpreting any stage
4 of the procedures.

5 45. Antech's failure to comply with these minimal quality assurance
6 guidelines is demonstrated through the incorrect results provided to Little Critters
7 and other veterinary practices, and by Antech's changing records without
8 documenting corrections. Likewise, comments by Antech employees establish
9 that Antech has not met the minimal guidelines for staffing required by these
10 guidelines. The documentation required by these guidelines is exclusively in the
11 hands of Antech and not available to Little Critters or other veterinarians.¹

12 46. Pursuant to these guidelines and practices, efforts have been made to
13 reduce error rates at veterinary laboratories to levels far below those that pertain
14 at Antech. For example, one laboratory was able to implement an error
15 management system that reduced its error rate from 1.3% to 0.7%. Hooijberg E,
16 Leidinger E, Freeman K., *An Error Management System in a Veterinary Clinical*
17 *Laboratory*, 24(3) *J. Vet. Diagn. Invest.*, 458-68 (May 2012). Similarly, the
18 University of Florida has installed a new LIMS system to decrease its error rate

19
20 ¹ Numerous other articles also articulate objective guidelines for achieving
21 accuracy and precision in veterinary diagnostic reference laboratories. *See, e.g.*,
22 Flatland, B., Camus, M.S. and Baral, R.M., *Analytical Quality Goals — a Review*,
23 47(4) *Veterinary Clinical Pathology*, 47(4), pp.527-538 (2018); Nabity MB, Harr
24 KE, Camus MS, Flatland B, Vap LM. 2018 47(1) *ASVCP Guidelines: Allowable*
25 *Total Error Hematology*, 47(4) *Vet. Clin. Pathol.* 9-21 (March, 2019); Friedrichs,
26 K R, Harr, KE, Freeman, KP, Szladovits, B, Walton, RM, Barnhart, KF, and
27 Blanco-Chavez, J.. *ASVCP Reference Interval Guidelines: Determination of de*
28 *Novo Reference Intervals in Veterinary Species and Other Related Topics*, 41 *Vet.*
 Clin. Pathol. 441–453 (2012); Vap LM, Harr KE, Arnold JE, Freeman KP, Getzy
 K, Lester S, Friedrichs KR. *ASVCP Quality Assurance Guidelines: Control of*
 Preanalytical and Analytical Factors in Veterinary Laboratories Related to
 Hematology for Mammalian and Non-Mammalian Species, Hemostasis, And
 Crossmatching, 41 *Vet. Clin. Pathol.* 8–17 (2011); Flatland, B., Freeman, K. P.,
 Friedrichs, K. R., Vap, L. M., Getzy, K. M., Evans, E. W. and Harr, K. E., *ASVCP*
 Quality Assurance Guidelines: Control of General Analytical Factors in
 Veterinary Laboratories, 39 *Vet. Clin. Pathol.* 39: 264–277 (2010).

1 from a level of 4.5%. As can be seen from these examples, overall laboratory
2 error rates including preanalytical, analytical and postanalytical rates are quite
3 low in other veterinary diagnostic reference laboratories.

4 47. Review of error tracking data in other veterinary diagnostic reference
5 laboratories has repeatedly shown that, when error collection was based on
6 clinician complaints, like Little Critters' experience here, the number was very
7 low, on the order of 0.05% of all test results. When a careful review of the whole
8 working process was performed, the number of errors increased substantially to
9 0.5% of all test results, *i.e.*, clinician detected error represents "the tip of the
10 iceberg" of error actually occurring in the laboratory. (Bonini P, Plebani M,
11 Ceriotti F, Rubboli F. *Errors In Laboratory Medicine*, 48(5) Clinical Chemistry
12 691-98 (May 1, 2002). Therefore, attempting to hold the number of errors that
13 Little Critters has discovered to an arbitrary percentage error is inappropriate.
14 Assessment of error requires assessment of the whole process for realistic
15 evaluation.

16
17 **F. Antech's Accuracy and Precision Fall Short of Acceptable**
18 **Guidelines, Rendering Antech's Testing Services and Results**
19 **Undependable**

20 48. Little Critters' test results received from Antech have been reviewed
21 by a boarded veterinary pathologist. The pathologist concluded from the
22 documents that Antech does not appropriately address known technical errors in
23 laboratory test results reported to Little Critters. Further, written communication
24 between Antech professional staff/management and Little Critters was
25 misleading. The pathologist further concluded that the laboratory test results
26 received by Little Critters from Antech exceed the level of errors that could
27 reasonably be expected to be confirmed by an individual clinician, that they are
28 indicative of a significantly higher level of error, a level which is unacceptable in

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1 the industry. The pathologist further concluded that Antech has changed results
2 without following industry guidelines for documentation.

3 49. Beginning in December 2017, Little Critters began to have concerns
4 about the quality of Antech's lab results. At that point, Little Critters had
5 received results from Antech from fecal samples that came back negative and,
6 when questioned, were changed by Antech to positive. Suspicious of the results
7 received from Antech, and concerned about the potential impact on the practice
8 resulting from incorrect diagnoses stemming from false lab results, Plaintiff Dr.
9 Patt began watching more closely for errors in the results and found numerous
10 ones. These errors included blood serology for disease testing (both false
11 positives and false negatives), as well as blood chemistry results, urinalysis and
12 fecal results.

13 50. It is not possible for Little Critters to rerun or check all of Antech's
14 test results for the simple reason that they are a veterinary practice, not a
15 veterinary diagnostic reference laboratory. Nevertheless, Little Critters found
16 upon closer inspection that Antech's services and results were simply
17 unacceptable from a veterinary perspective, far below what were accepted in their
18 own in-house laboratory, what was provided in previous and recent experience
19 with Antech's competitor, IDEXX, and what would be tolerated in a veterinary
20 clinical laboratory.

21
22 1. *EHRLICIA CANIS, BORRELIA BURGDORFERI,*
ANAPLASMA, AND DIROFILARIA

23
24 51. Further, there are specific conditions and tests for which Antech's
25 unacceptably poor performance has been clearly established. *Ehrlichia Canis,*
26 *Borrelia Burgdorferi* (Lyme Disease), *Anaplasma,* and *Dirofilaria* (heartworm)
27 titers are screened by the Accuplex4 testing equipment, which is currently
28 marketed by Antech and was marketed to Little Critters. Antech has claimed to

1 the veterinary community that *Ehrlichia Canis*, as measured by the Accuplex4,
2 should have diagnostic sensitivity approaching 100% based on original data
3 described in an article written by Moroff, an Antech employee, as lead author:
4 Moroff S, Sokolchik I, Woodring T, Woodruff C, Atkinson B, Lappin MR, *Use of*
5 *an Automated System for Detection of Dog Serum Antibodies against Ehrlichia*
6 *Canis Glycoprotein*, 26(4) Journal of Veterinary Diagnostic Investigation, 558-62
7 (July 2014). In that piece, Moroff and his co-authors claim that the AccuPlex4x
8 features “earlier detection which makes the assay more sensitive” than competing
9 tests, including the 4DX offered by IDEXX. Antech repeated that contention
10 even though the paper was substandard, using a sample number of only 8 animals
11 without a negative control population. *See also* Chandrashekar R, Mainville CA,
12 Beall MJ, *et al. Performance of a Commercially Available In-Clinic ELISA for*
13 *[Kh1] the Detection of Antibodies against Ana-Plasma Phagocytophilum,*
14 *Ehrlichia Canis, and Borrelia Burgdorferi and Dirofilaria Immitis Antigen in*
15 *Dogs*, 71 Am J Vet Res 1443-1450 (2010).

16 52. A team of veterinary internal medicine specialists in the Northeast
17 United States then investigated AccuPlex 4 and showed it had substandard
18 diagnostic sensitivity in comparison to other methods in the marketplace to test
19 for *Borrelia*, *Anaplasma*, and *Dirofilaria*. Goldstein, RE, Beall MJ, and Alleman
20 AR, *Performance Comparison Of SNAP® 4Dx® Plus And Accuplex® 4 for the*
21 *Detection of Antibodies to Borrelia Burgdorferi and Anaplasma*
22 *Phagocytophilum*, 12(2) International Journal of Applied Research in Veterinary
23 Medicine 1 May 2014).

24 ////

25 ////

26 ////

27 ////

28 ////

SNAP 4dx Plus vs AccuPlex 4 Test	
Snap 4dx Plus	AccuPlex 4
<ul style="list-style-type: none"> • Heartworm Sens: 89-99%, Spec: 99% • B. burgdorferi Sens: 98.5%, Spec: 95.7% Reproducibility 96% Only detects infection (C6) • A. phagocytophilum & platys Sens: 91.7%, Spec: 88.7% • Ehrlichia Sens: 97.1, Spec: 95.3% E. canis & E. ewingii[^] 	<ul style="list-style-type: none"> • Heartworm Sens: 76%, Spec: 95% • B. burgdorferi Sens: 78.5%, Spec: 72.9% Reproducibility 89% Vaccine and exposure* • A. phagocytophilum Sens: 75%, Spec: 82.6% • Ehrlichia Sens: ?, Spec: ? Only E. canis
<p>[^] More common in the central and south central U.S. * Possible issue with early infection & Lyme vaccination</p>	

Nevertheless, Antech continued to tout misleadingly to the veterinary community the false claim of the superiority of its Accuplex4 test over competitors.

53. Based on the known prevalence of disease in the surrounding Phoenix area, one would expect a minimum of 4% of dogs would be *Ehrlichia* positive, but this figure could well be as high as 15-20% depending on seasonal conditions. Using Accuplex4, Plaintiff Dr. Patt caused 30 dogs to be tested from January 2018 to present for *Ehrlichia Canis* (predominantly in the spring, the prime season for the condition) and all samples were reported by Antech as negative. She has confirmed 3 of these results as false negatives based on comparison to the IDEXX 4DX test, which is consistent with expected results given the sensitivity and specificity results depicted in the above figure.

54. For a dog named “S. Kukkola,” Antech’s Accuplex reported negative results for *E. Canis* even though the numbers on the test were greater than 1:2048, which should generate a positive result. The same then was rechecked with a verified result. Later the sample was submitted to the clinical laboratory at North Carolina State University at Dr. Patt’s request for PCR testing, which confirmed the patient was infected with *Ehrlicia*. When, after being informed of these facts, Jim Church of Antech was asked if he trusted the Accuplex test, he said, “Well I

1 work for the company so it's difficult to say but what I will say is that I don't trust
2 it today as much as I did yesterday."

3
4 2. LITTLE CRITTERS' EXPERIENCE WITH FECALS

5 55. Little Critters' experience with Antech testing of fecal samples
6 provides further specific examples of inaccuracy and imprecision, rendering its
7 testing results undependable. For example, a bearded dragon lizard presented
8 with diarrhea on March 24, 2018. A fecal sample was collected in the standard
9 container provided by Antech and provided for pick up by Antech. Little Critters
10 received a final report from Antech stating a negative result, but that result did not
11 fit the clinical presentation. Consequently, Little Critters requested verification
12 from the laboratory. Little Critters' personnel were told the sample had leaked in
13 transit but that Antech would try to verify it. Four days later Little Critters
14 received a call from Antech stating that Antech was able to rerun the test, with no
15 commentary about leaks, and that the result was actually positive for *Coccidia*. A
16 fecal sample was repeated after April 11, 2018, subsequent to treatment with
17 Ponazuril, and it was also reported as negative. The owner continued to report
18 diarrhea and malodorous stool, making this result suspect.

19 56. Similarly, Antech provided a negative fecal test result for a dog
20 named "Bella." After Little Critters requested a recheck, the test result came back
21 positive for *Coccidia* and listed as a match. Sara Reed of Antech stated that it
22 looked like the technician left the field that asks if the recheck matches blank and
23 that Antech's information technology staff was looking into why doing that
24 would cause the report to say that the results match when it was not entered that
25 way. She apologized for the error and confusion.

26 57. Antech provided a negative fecal test result for a dog named
27 "Honey." After Little Critters requested a recheck, the test result came back
28 positive for *Giardia*, a potential human/zoonotic disease.

1 58. Antech provided a negative fecal test result for a dog named “Petal.”
2 After Little Critters requested a recheck, the test result came back positive for
3 *Giardia* and hookworms. Dr. Patt then communicated with Dr. Lewis of Antech,
4 stating that these results made no sense. Dr. Lewis agreed with that statement.
5 Dr. Patt then asked how these conditions were missed on the first report. Dr.
6 Lewis stated he could not answer that question. Dr. Patt then told Dr. Lewis that
7 she could not trust Antech’s results. Jim Church of Antech admitted that Antech
8 did not co-ordinate its efforts well in this case and could understand why the
9 situation would be confusing and contradictory. Little Critters then sent a sample
10 from the patient to IDEXX, and the result was positive for *Giardia* only.

11 59. A lizard named “Rigby” was suffering from diarrhea. Little Critters
12 received a result from Antech negative for all parasites, which is unusual in
13 lizards and particularly so when one is clinically ill with diarrhea. One week later,
14 Antech contacted Little Critters to say the final result was incorrect and the fecal
15 was actually positive for *Coccidia*. Then the same day, Little Critters received
16 another call from Antech indicating the second result was incorrect and the fecal
17 sample actually had two parasites: *Coccidia* and Pinworms.

18 60. Antech provided a negative fecal test result for a reptile named
19 “Tank.” After Little Critters requested a recheck, Antech amended the test report
20 to change it from Rhabditiform to Nyctotherus. A week later, the test result came
21 back positive for Entamoeba 2+. Entamoeba has the potential to be a zoonotic
22 disease.

23
24 3. LITTLE CRITTERS’ EXPERIENCE WITH
 COCCIDIODES TITERS

25
26 61. Antech offers a test for *Coccidioidomycosis immitis* (Valley Fever),
27 which is a potentially zoonotic diseases, commonly referred to as *Cocci*, with test
28 results reported as titers. Little Critters’ experience with this test also exemplifies

1 Antech's woefully substandard performance. For example, on a dog patient
2 known as "Cinder," Little Critters requested a recheck of Antech's initial negative
3 result. At first, Antech responded that there was insufficient sample to perform a
4 recheck, but then an Antech employee named Andrea contacted Little Critters,
5 saying that the recheck had verified the negative test result. Then Little Critters
6 received a report from Antech showing that, upon a recheck, the sample was
7 positive for *Cocci*. In communications with Little Critters about the incident,
8 Antech's documentation identified "tech error" as the source of the problem,
9 including a notation "see initials," that may well indicate that the technician in
10 question was known for errors. When Little Critters pointed out this series of
11 events to Antech, they were told that the Antech laboratory was not fully
12 informed before calling Little Critters.

13 62. For a dog named "Squeeky," Antech first reported a positive test
14 result for *Cocci* and then changed the result to negative with no notification to
15 Little Critters. In response to Little Critters' inquiries, Antech sent an email
16 establishing that this event represented a breakdown of protocol. A subsequent
17 email established that the Antech technicians did not follow standard operating
18 procedures. Then Antech sent a lab alert contending that the delay in reporting
19 results was due to mechanical issues.

20 63. For a dog named "Butters," Antech provided a test result for *Cocci*
21 that was a false positive.

22 64. For a dog known as "Cricket," Antech initially provided no result but
23 instead claimed there was an insufficient sample to be tested. Then Antech sent a
24 positive test result.

25 65. For a dog known as "Tawnie," Antech initially provided a positive
26 test result for *Cocci* but later changed it to negative.

1 4. LITTLE CRITTERS' EXPERIENCE WITH URINALYSIS,
2 CBC TESTING, AND PATHOLOGY REVIEW

3 66. Little Critters' experience with Antech with respect to urinalysis,
4 CBC (Complete Blood Cell Count) testing, and pathology reviews also
5 demonstrates that Antech's performance was substandard. For example, Antech
6 reported that a rabbit named "Shadow" had urate crystals, which would not be
7 possible in this sample of rabbit urine. Dr. Patt requested that this urine be
8 rechecked. Two pathology reviews were required before getting accurate crystal
9 identification, and the results were changed, but Antech's records still listed the
10 test result as a match for urate crystals.

11 67. A dog named "Christmas" suffered from immune mediated
12 hemolytic anemia. After Antech reported abnormal results, the patient had a
13 transfusion, and subsequent immunosuppressive medications, resulting in blood
14 morphology changes beyond the Antech technician's skill level, preventing Little
15 Critters from being able to recheck the lab results. Accordingly, Little Critters
16 requested a pathology review of this case, but Antech never provided one.

17 68. Antech performed what is known as a CBC test for a lizard named
18 "Mr. Bittles." The test result indicated zero monocytes, zero basophils, and zero
19 eosinophils. In light of the patient's condition, Little Critters requested a
20 pathologist review the blood slides to verify the results. Antech's pathology
21 reviews for Mr. Bittles stated that the patient had monocytosis, but that
22 conclusion did not match the reported initial results, which were not marked as
23 preliminary. .

24 69. Pathology reviews are supposed to be conducted by a board certified
25 veterinary pathologist. In at least two cases, Antech's pathology reviews were
26 conducted by a veterinarian who was not a veterinary pathologist. That situation
27 is analogous to a medical general practitioner for a human patient purporting to do
28 the work of a board-certified medical pathologist.

1 70. A rabbit named “Huxley” was scheduled for surgery. Antech
2 reported that the patients platelets were low, which could be an issue for surgery
3 due to bleeding. Little Critters requested verification, but Antech did not change
4 the initial report. Rather, Antech sent the exact same report indicating low
5 platelets, but confusingly changed only the match section of the report to indicate
6 that this did not match the original results. Upon Little Critters’ further request
7 for clarification, Antech changed the report to indicate adequate platelets.

8 71. This fact pattern with “Huxley” was common. There were many
9 examples where Little Critters requested verification of test results from Antech,
10 but was sent back a report with the same results at the top of the page, but with
11 the word “no” under the match heading at the bottom of the report to indicate that
12 the recheck did not match the initial report. Such a slapdash method of
13 responding would be easy for veterinarian offices to miss in a busy practice.
14 Little Critters would have to request the correction again, and often more than
15 once, until Antech sent a properly corrected report.

16
17 5. LITTLE CRITTERS’ EXPERIENCE WITH
18 BIOCHEMICAL ANALYSIS

19 72. Little Critters’ experience with Antech’s biochemistry tests provide
20 further concrete examples that Antech’s testing services were inaccurate,
21 undependable, and imprecise. For example, a dog named “Cody” was a long-
22 term patient of Little Critters. A specialist in a different clinic than Little Critters
23 ordered a CBC/Chemistry test for Cody run by Antech and received a report of
24 abnormally high GGT (gall bladder value) and triglyceride levels, which they
25 shared with Little Critters. As a result of the false positive high GGT value, an
26 internist at yet another clinic emergency abdominal ultrasound was conducted on
27 the patient. Little Critters asked the specialist to have Antech to verify the results,
28 at which point, Antech changed the results to a lower triglyceride level and

1 normal GGT level. The same test for the patient was run by IDEXX and a normal
2 result was reported.

3 73. For a lizard named “Lizzy,” Antech’s original test results indicated
4 an abnormally low Potassium level of 0.9 and a uric acid level of 0.0. That uric
5 acid level made no clinical sense. Little Critters requested a recheck, upon which
6 Antech amended the uric acid level to <1.5 mg/dl. Jim Church of Antech
7 admitted that the results did not make clinical sense.

8 74. For a cat named “Leonardo,” Antech reported a Magnesium (Mg) of
9 5.3. Little Critters consulted with an internist to determine the possible causes of
10 such an anomalous result. Then Antech reported the result was an error and the
11 level was actually normal. As Antech acknowledged in an email, “We probably
12 could have caught this . . . “

13
14 6. LITTLE CRITTERS’ EXPERIENCE WITH
RESPIRATORY FASTPANEL PCR

15 75. Little Critters’ experience with Antech’s respiratory fastpanel PCR
16 tests provides further demonstration that Antech’s performance was unacceptable.

17 76. The influenza virus tested for by the fastpanel PCR test mutates
18 frequently. One of the most prevalent strains is H3N2, but Antech’s assay
19 through at least August, 2019, does not test for it and thus cannot detect it.
20 Consequently, Antech’s influenza test consistently generates false negatives for
21 patients infected with H3N2.

22 77. For example, for a dog named “Mouse,” Antech reported a positive
23 test result in 2019 for *Mycoplasma*, even though the patient showed no signs or
24 symptoms. From a sample drawn at the same time as the one Antech analyzed,
25 IDEXX reported a negative result and verified it. This sample was provided from
26 a non-symptomatic animal as a test of the accuracy of the services provided by
27 Antech and IDEXX.
28

1 78. For a dog named “Isabella,” Little Critters provided a sample to
2 Antech of a non-symptomatic patient. Antech reported a positive test result for
3 *Mycoplasma*, but the patient showed no symptoms, including no coughing, and
4 has no history of recent vaccination, making the positive result almost certainly
5 false. IDEXX tested a sample drawn at the same time for this patient and
6 reported a negative test result for *Mycoplasma*.

7 79. In short, two asymptomatic dogs were assessed by Little Critters
8 using Antech’s canine respiratory PCR Panel and both results were false positives
9 for *Mycoplasma*, which creates doubt as to whether Antech’s *Mycoplasma* test is
10 trustworthy.

11 80. For a dog named “Fancy,” Antech reported the patient positive for
12 *Bordetella*. Those results could not be verified because Antech stated that they
13 had discarded the sample IDEXX reported a respiratory panel as negative.
14 IDEXX was then asked to, and did in fact, verify the negative results as accurate.
15 The patient’s lack of response to the typical medication used to treat *Bordetella* fit
16 with a negative result. The patient then tested positive for *Cocci* at IDEXX. Had
17 the *Bordetella* diagnosis been accepted, testing and treatment for the true
18 condition, *Cocci*, would have been delayed.

19
20 7. LITTLE CRITTERS’ EXPERIENCE WITH LYME
ACCUPLEX

21 81. For a dog named Whiskey, Antech provided a false positive test
22 result for Lyme Disease. The Arizona puppy had no history of travel outside of
23 the state and thus was unlikely to encounter Lyme. A follow-up test with 4DX, a
24 competitive test to Antech’s, came back negative.

25 ////

26 ////

27 ////

1 8. LITTLE CRITTERS' CUSTOMER SERVICE
2 EXPERIENCE

3 82. Antech also failed to provide acceptable customer service. For
4 example, with a cat named "Butterscotch," Little Critters called Antech to cancel
5 an initial test, which was drawn again and sent the next day, in an effort to
6 determine the appropriate timing for a cesarean section on a cat. But Antech
7 never cancelled the first test. When Little Critters called Antech for the results of
8 the second day's test, they were given the results from day one.

9 83. For the dog named "Isabella," Sara Reed of Antech admitted that the
10 treatment of testing for the patient was a breakdown of normal protocol. First
11 Antech contended that the problem was with its equipment for detecting *Cocci*,
12 but the technician did not flag the system. Antech did not notify Little Critters of
13 what was happening. Antech admitted that no results should have been released
14 until the recheck was verified. Sara Reed stated that Antech's verification was
15 sent to its North Carolina laboratory, which indicated Isabella was positive, but
16 then said that Antech does not have PCR testing in North Carolina and that the
17 patient was negative on the FastPanel PCR test. Antech admitted they had
18 performed the verification themselves, and then later changed the report to read,
19 "Reviewed by technician."

20 84. For the dog named "Christmas," Antech stated that the pathology
21 review was pending, but it was never received, and the report was changed to
22 reviewed by technician.

23 85. For a bird named "Charlie," after two or three other excuses, Antech
24 admitted that the entire sample was consumed in multiple "machine failures" and
25 requested a new sample, but unfortunately the bird died while awaiting results.

26 86. Antech repeatedly failed to pick up laboratory samples, or the
27 Antech driver would come before the scheduled pick-up time and leave without
28 picking up samples put in the collection box before the scheduled time but after

1 the driver appeared. This failure was particularly egregious when Little Critters
2 were trying to establish progesterone levels for impending cesarean section
3 deliveries, which are obviously a time-sensitive matter.

4
5 9. ALTERING MEDICAL RECORDS

6 87. Veterinarians are obligated by state licensing authorities and good
7 practice to maintain accurate medical records. Doing so is important because,
8 among other reasons, they and others may need to look at patient files to
9 determine what happened to a patient over a course of time.

10 88. Accordingly, standard practice is to not alter the record of any test
11 result. Rather, if a second test is conducted, it should be clearly labeled as such.
12 If it turns out an initial test result is incorrect, it is typically “amended,” such that
13 the original result is still evident in the file as well as the amended, corrected
14 result. Alternatively, certain test results are marked as “preliminary,” when
15 appropriate, and then marked as “final,” when everything has been resolved, but
16 again, both results are in the file.

17 89. Antech’s testing services frequently interfaces with veterinary
18 practice management software, which maintains the patient's medical record, via
19 the Antech "Dashboard." In those circumstances, the veterinary practice uses the
20 Dashboard as its record of doctor requested test results as conducted and reported
21 by Antech.

22 90. Antech sometimes provides information correcting erroneous initial
23 test results by “updating” the test result via the Antech Dashboard. This process
24 results in a medical record containing the initial test result to be changed **without**
25 an appropriate laboratory notation such as “addendum” or “corrected,” the
26 required process that would also leave the initial test result record accessible. In
27 practice, Antech’s “updating” approach leaves practitioners unable to check
28 Antech’s error rate. More fundamentally, it puts veterinarians at risk of failing to

1 abide by licensing board dictates that they maintain accurate medical records or to
2 comply with prevailing guidelines of veterinary care.

3 91. To state the problem differently, if a veterinarian communicates the
4 first test result from Antech to clients and that result is later changed by Antech
5 without clear demarcation, the veterinarian has no record proving that her
6 statements to the client were true at the time of her client communication. The
7 veterinarian is legally responsible to document all findings that lead to diagnoses.
8 These unannounced changes to test results by Antech thus place her license in
9 jeopardy.

10 92. To be clear, Antech's pattern on these issues was inconsistent. In
11 some instances, Antech would change the test record without any amendment. In
12 others, the report was amended, but the initial incorrect results were kept intact.
13 In a few instances, Antech amended the test report in the appropriate manner.

14 93. For example, for the lizard named "Rigby," Antech changed the test
15 result from negative to positive by "updating" it via telecommunications. That
16 approach means Little Critters would no longer have any record of the original
17 document reflecting the initial test results in the electronic medical records it
18 references for Antech tests. Because Dr. Patt was concerned about continually
19 changing test results from Antech, however, she had printed the original report
20 that documents this medical record alteration without flagging of the change.
21 Similarly, Antech changed the initial test results via "updating" for the patients
22 "Christmas" and "Squeeky," whose conditions were relayed above, without
23 correct demarcation. Numerous reports for other patients also indicate they were
24 "updated," leaving Little Critters with no record of the initial test or result for
25 patients named "Polly," "Bovi," "Hunter," and two patients named "Casey." In
26 the case of Bovi, Antech sent a final report on one day listing *E. Canis* serology
27 as a strong negative while the next day Antech sent another report denominated
28 final listing the result as positive.

1
2 10. THE EXPERIENCE OF OTHER VETERINARIANS

3 94. Dr. Patt posted her concerns about Antech's false lab reports on an
4 online forum for veterinarians, to which other veterinarians around the country
5 responded with numerous additional examples of Antech providing false lab
6 results. Other veterinarians have included among their experiences with
7 inadequate Antech laboratory test results, the following:

- 8 (a) Falsely reporting sensitivities to antibiotics that violate FARAD
9 with regard to chicken cultures;
- 10 (b) Lost two histopathology samples where the vet had sent the entire
11 masses, so there was no way to go back for more tissue;
- 12 (c) Incorrect reports sent on two cases where the vet contacted the pet
13 owners with the results only to have Antech send "corrected" results
14 later, which required the vet to call the owners to tell them that he
15 had provided them with incorrect lab results;
- 16 (d) UAs sent out for analysis did not come close to what vet saw in
17 house; samples loaded with bacteria, WBC, even sperm, and Antech
18 saw "no cells and no bacteria;"
- 19 (e) Found their T4 levels on cats were very unreliable when a cat came
20 back normal and when rechecked two weeks later (after he
21 continued to lose weight and vomit), he was severely hyperthyroid;
22 checked the other T4 results that had been relied on and found two
23 others that were hyperthyroid;
- 24 (f) Wrong sample used for a black lab with a large, black mass on its
25 toe; the results from Antech reported malignant melanoma, so the
26 entire toe was amputated and sent to Antech and the histopathology
27 report came back squamous cell carcinoma; when asked why the
28 results did not include the melanoma or the decalcified toe bone, the

1 tech reported that they were not present in the sample,
2 demonstrating that Antech provided results from the wrong sample;
3 (g) After Antech bought one local lab and merged it into Antech, a
4 veterinarian sent a UA to get an ID on a Crystal seen in urine; on a
5 fresh sample, there were at least 30 crystals per HPF; Antech's
6 results were completely off-base, showing no crystals, the pH, SP
7 GRAV and the blood were all completely different than the urine
8 sent in; spoke with the person in charge and learned that the person
9 handling the urine samples was running behind, so he would run
10 about every tenth one, and then (slightly) adjust those results and
11 report them for the other nine.

12
13 11. ANTECH UNDERINVESTS IN LABORATORY
PERSONNEL

14 95. When Dr. Patt has been able to get an explanation from Antech as to
15 why its test results were erroneous, one common explanation given is that the
16 laboratory technician read the results incorrectly. This is not always an accurate
17 statement of the incorrect reasons for the test result. It is, however, a result of the
18 fact that Antech's laboratory technician positions are lowly paid, often working at
19 night, and poorly managed, all in a manner that fails to meet the requirements for
20 quality assurance in a veterinary diagnostic reference laboratory.

21 96. Antech laboratory technicians made the following comments about
22 their employment on the website Glassdoor.com:

- 23 (a) Poor hourly wage and no work/life balance.
24 (b) Over worked under paid better off working at Walmart.
25 (c) Worst place I have ever worked in my life.
26 (d) There is a high turnover rate. I attribute this to a low pay and
27 unrewarding work environment.
28

1 (e) Under minimum wage cause of zoning loophole, not worth working
2 here the pay is terrible for the amount of work expected from you.
3 Especially for an overnight position and quota based job
4 performance.

5 (f) You make a dollar more than minimum wage that it.

6 97. Antech laboratory technicians made the following comments about
7 their positions on the website Indeed.com:

8 (a) This is a terrible place to work. No work-life balance, terrible
9 management/HR, low pay, and overall abusive work culture.

10 (b) Pay was less than I hoped for after two raises and promotions. I
11 ultimately decided to move on with my career in search of greater
12 challenges and better pay.

13 (c) Poorly trained management and expected to know everything
14 without proper training beforehand and you never get out on time.
15 OT is an expectation instead of an option.

16 98. In short, Antech has engaged in a variety of conduct designed to cut
17 its labor costs as low as possible, below the level that would allow it to provide
18 the level of professionalism and accuracy it promises in the Exclusive Agreement
19 and Antech marketing materials.

20 12. ANTECH'S TESTING SERVICES AND RESULTS ARE
21 UNACCEPTABLY INACCURATE, UNDEPENDABLE,
22 AND IMPRECISE

23 99. All of the above indicates that Antech's services and test results are
24 not reliably accurate. Nor are its laboratories "state-of-the-art." Nor does it
25 "provide services in a professional manner by qualified personnel." Little Critters
26 used IDEXX as a veterinary diagnostic reference laboratory both before entering
27 into the Agreement and more recently. In its experience, the IDEXX services and
28 results were substantially more accurate, dependable and precise than those

1 provided by Antech. Similarly, veterinary practices that have used competitors of
2 Antech other than IDEXX have enjoyed services and results were substantially
3 more accurate, dependable and precise than those provided by Antech.

4
5 13. ANTECH'S CONDUCT HARMS VETERINARY PRACTICES

6 100. Antech's deficiencies have not improved over time but appear to
7 have worsened. Little Critters has used Antech for a very small sample of tests in
8 2019, and all of those test results proved erroneous.

9 101. Antech's faulty laboratory practices threaten not only the health of
10 animals, but of humans. For example, as alleged above, Antech provided false
11 negative fecal results for hookworms in veterinary patients, such as in the instance
12 of a dog named "Petal." Hookworms are a zoonotic disease infecting humans,
13 and specifically children. Consequently, false negative results for this condition
14 increase the likelihood that human children will contract hookworm from their
15 pets. Ocular hookworm infections in children are known to often be confused
16 with retinoblastoma, a type of childhood cancer requiring removal of the eye.

17 102. As another example, Antech has provided false negative results for
18 *Giardia* in veterinary patients, such as in the instance of the dog named "Honey,"
19 as alleged above. *Giardia* is a zoonotic disease that humans can contract from
20 dogs, which will increase the risk that the human will contract subsequent
21 infections. Consequently, false negative results for this condition increases the
22 likelihood that human will contract *Giardia*.

23 103. By providing invalid results to veterinarians across the country,
24 Antech is also, in effect, providing invalid results to pet owners. As a result, pet
25 owners lost pets needlessly and had to experience their pets suffering prolonged
26 treatment, with concomitant psychic and economic costs, resulting from Antech's
27 poor quality laboratory practices.
28

1 104. As alleged below, Antech’s practices have inflicted economic harm
2 upon veterinarians, but they have also put veterinarians in an unacceptable
3 position. Veterinarians swear an oath to behave in an ethical manner and provide
4 care to patients with that requirement foremost in mind. State licensing boards
5 hold the veterinarian, not the veterinary testing company, ultimately responsible
6 for the care of patients. Accordingly, once Little Critters learned of the numerous
7 deficiencies in Antech’s services, it became difficult to know which Antech test
8 results to trust. In short, this case is an attempt to vindicate the ability of
9 veterinarians to provide the best care possible to their patients.

10 105. Antech’s executives have displayed a practice of covering up
11 deficiencies in Antech’s laboratory testing operations rather than admitting
12 fundamental problems and ameliorating them. Many incidents demonstrate these
13 cover ups, but two are illustrative.

14 106. The first concerns the rabbit named “Shadow.” The laboratory test
15 result indicated that Shadow had “Amorphous Urate Crystals” of >50 but a blood
16 pH of 8. As a matter of simple chemistry, such a result is impossible, since
17 crystals cannot form in a basic solution, such as indicated by a pH in excess of 7.
18 Dr. Patt told a technician at Antech that rabbits do not get urate crystals, but the
19 technician responded first that these were indeed urates and later that there were
20 insufficient samples to recheck. Then Dr. Lon Rich, a highly experienced and
21 high-ranking veterinary pathologist for Antech, got involved and stated that the
22 urates might be due to medications the rabbit had ingested, without confronting
23 the fact, which he obviously knew, that urates would not form in an animal with a
24 basic urine. In other words, he was covering up an obvious deficiency in
25 Antech’s test results by reaching for implausible explanations to defend those
26 results.

27 107. The second concerns the lizard named “Lizzy.” As alleged above,
28 Antech’s test result indicated that she had uric acid of 0 and a Potassium level of

1 0.9. Dr. Patt conveyed to Antech that those test results were ludicrous and that
2 Antech would not report such results if it kept track of a minimum-maximum
3 range of real world results. In particular, any lizard of that species with a
4 Potassium level below 1.5 would die of heart failure. Antech should never have
5 reported the results to Dr. Patt in the first place as they should know that such
6 absurd results indicate a problem with the test rather than the patient's condition.
7 At that point, Dave Lewis of Antech became involved. Dave Lewis is a highly-
8 credentialed and high-ranking pathologist within Antech. But he never addressed
9 the Potassium level reading because it was indefensible. In other words, he too
10 was covering up an obvious deficiency in Antech's test results.

11 What likely happened is that Antech committed an aspiration error, failing
12 to suck up enough of the sample due to clotting. That would explain the
13 absurdly low results. In that instance, a veterinary diagnostic reference
14 laboratory should, according to industry custom and practice, tell the
15 veterinarian to resubmit, run a second test at no charge, and confirm the
16 result. Instead, in this instance, Antech reverified its results rather than
17 admitting to deficiencies in their operations.

18 **CLASS ALLEGATIONS**

19 108. Little Critters bring this action on behalf of themselves and the
20 members of the proposed Class under Rule 23(a), (b)(2), (b)(3), and/or (c)(4) of
21 the Federal Rules of Civil Procedure. The proposed Class consists of the
22 following:

23 All veterinarians and/or their associated practice entities that are
24 parties to an Exclusive Laboratory Services Agreement with Antech
25 or have been such parties at any time since four years prior to
September 19, 2018.

26 109. Excluded from the Class are Antech, its parents, subsidiaries,
27 affiliates, officers and directors, any entity in which Antech has a controlling

28 /////

1 interest, and all judges assigned to hear any aspect of this litigation, as well as
2 their immediate family members.

3 110. Numerosity. Fed. R. Civ. P. 23(a)(1). The members of the Class are
4 so numerous that joinder is impractical. The Class consists of around 4,000
5 members. The precise number is within Antech's knowledge and can be
6 ascertained only by resort to Antech's records.

7 111. Commonality. Fed. R. Civ. P. 23(a)(2) and (b)(3). There are
8 numerous questions of law and fact common to the Class that predominate over
9 any questions affecting only individual members of the Class. Among the
10 questions of law and fact common to the Class are:

- 11
- 12 (a) Whether Antech concealed the significant amount of false lab results
13 that it was providing;
- 14 (b) What guidelines apply to determine whether Antech provided
15 sufficient accuracy, dependability, and precision in its tests, services,
16 and results;
- 17 (c) Whether Antech has provided a level of accuracy, dependability,
18 and precision below applicable guidelines;
- 19 (d) Whether Antech's conduct puts veterinarians in an excruciating
20 dilemma, forcing them to choose between continuing their contract
21 and their duty to their clients, patients, oath and license once the
22 veterinarian has lost trust in Antech's test results;
- 23 (e) Whether Antech took steps to make it more difficult for
24 veterinarians to learn of Antech's practices, as alleged above;
- 25 (f) Whether Antech used the economic threat of litigation, rather than
26 the merits of litigation, to coerce veterinarians to remain in
27 contractual relations with Antech;
- 28 (g) Whether Antech is placing public health at risk;
- (h) Whether Antech is violating the public trust;

- 1 (i) Whether Class members are entitled to restitution, and in what
2 amount;
- 3 (j) Whether Antech violated its duty of good faith and fair dealing
4 under the Exclusive Agreements; and
- 5 (k) Whether Class Members are entitled to damages and a declaration of
6 relief as a result of Antech's breach.

7
8 112. Typicality. Fed. R. Civ. P. 23(a)(3). Little Critters' claims are
9 typical of the claims of the members of the Class and, like all members of the
10 Class, Little Critters entered into an Exclusive Agreement with Antech. Little
11 Critters have no interests antagonistic to the interests of any other member of the
12 Class.

13 113. Adequacy. Fed. R. Civ. P. 23(a)(4). Little Critters are each a
14 representative who will fairly and adequately assert and protect the interests of the
15 Class and have retained counsel experienced in prosecuting class actions.
16 Accordingly, each Plaintiff is an adequate representative, who will fairly protect
17 the interests of the Class.

18 114. Superiority of Class Action. Fed. R. Civ. P. 23(b)(3). A class action
19 is superior to all other available methods for the fair and efficient adjudication of
20 this lawsuit, because individual litigation of the claims of all members of the
21 Class is economically unfeasible and procedurally impracticable. While the
22 aggregate damages sustained by the Class are in the millions of dollars, the
23 individual damages incurred by each member of the Class resulting from
24 Antech's wrongful conduct are relatively small to warrant the expense of
25 individual lawsuits – all the more so in light of likely reprisal by Antech in the
26 form of meritless counterclaims for breach of the Exclusive Agreement and the
27 confidentiality clauses therein. The likelihood of individual Class members
28 prosecuting their own separate claims is thus remote, and, even if every member

1 of the Class could afford individual litigation, the court system would be unduly
2 burdened by individual litigation of such cases.

3 115. The prosecution of separate actions by members of the Class would
4 create a risk of establishing inconsistent rulings or incompatible standards of
5 conduct for Antech. Additionally, individual actions may be dispositive of the
6 interests of the Class, although certain class members are not parties to such
7 actions.

8 116. Injunctive and Declaratory Relief. Fed. R. Civ. P. 23(b)(2). The
9 conduct of Antech is generally applicable to the Class as a whole and Little
10 Critters seek equitable remedies with respect to the Class as a whole. Little
11 Critters do not seek monetary relief as an aspect of the Rule 23(b)(2) class. As
12 such, the systematic policies and practices of Antech make declaratory or
13 equitable relief with respect to the Class as a whole appropriate.

14 117. Issue Certification. Fed. R. Civ. P. 23(c)(4). In the alternative, the
15 common questions of law and fact, set forth above, predominate and are
16 appropriate for issue certification on behalf of the proposed Class.

17 **COUNTS**

18 **COUNT I**

19 ***Unlawful Business Practices***

(California Business & Professions Code § 17200, *et seq.*)

20
21 118. Little Critters incorporate and reallege by reference each and every
22 allegation above as if fully set forth herein.

23 119. A business act or practice is “unlawful” under the UCL if it violates
24 any other law or regulation.

25 120. Federal law, 15 U.S.C. § 2, prohibits attempted monopolization.

26 /////

27 /////

28 /////

1
2 **G. THERE IS A DISTINCT MARKET FOR VETERINARY**
3 **DIAGNOSTIC REFERENCE LABORATORY TESTING**
4 **SERVICES IN THE UNITED STATES**

5 121. Veterinary diagnostic reference laboratory testing services
6 constitutes the relevant product market in this case. Such services include the
7 tests, test results, support services provided by the seller, and all physical items
8 used in connection with those things, such as specimen collection containers.
9 Veterinarians have no reasonable substitute for such testing services, and such
10 testing services are a vital part of their veterinary practices.

11 122. Other diagnostic testing services are not reasonable substitutes for
12 veterinary diagnostic reference laboratory testing services because they do not
13 cover the same type of tests as those provided by veterinary diagnostic reference
14 laboratory testing services or because they are not available to veterinarians
15 operating a veterinary practice.

16 123. Historically, the price of veterinary diagnostic reference laboratory
17 testing services has been completely independent of the price of other types of
18 diagnostic testing services.

19 124. The veterinary field has long recognized that veterinary diagnostic
20 reference laboratory testing services are a distinct part of the profession,
21 discussing and analyzing such services without reference to any other type of
22 diagnostic testing.

23 125. “Elasticity” is the term used to describe the sensitivity of the amount
24 demanded of a product to a change in the price charged for it. The more sales of a
25 certain product would decline as the price of that product increases, the more
26 elastic are the prices of that product. Conversely, inelastic pricing exists when the
27 amounts sold of a certain product do not decline significantly even when the price
28 of that product increases significantly. In other words, when customers have few
or no practical alternatives to a given product in the form of cheaper products of

1 similar quality and functionality, they will pay higher prices for the product they
2 need with relatively little reduction in the amount of the product they purchase.

3 126. Pricing for veterinary diagnostic reference laboratory testing services
4 is highly inelastic, in large part because there are no adequate substitutes for those
5 services.

6 127. Those in the market for veterinary diagnostic reference laboratory
7 testing services, both sellers and veterinarians, recognize that it constitutes a
8 distinct market. Further, both sellers and veterinarians recognize that
9 veterinarians need access to a wide array of diagnostic tests available only from
10 veterinary diagnostic reference laboratories. Indeed, veterinarians cannot always
11 know what the needs will be of the next patient that walks in the door.

12 Consequently, veterinarians need to know they can go to a seller of veterinary
13 diagnostic reference laboratory services and obtain the test they need rather than
14 trying to chase down a distinct seller of just the specific test the veterinarian needs
15 at the moment. As a result, the market has developed such that providers of
16 veterinary diagnostic reference laboratory testing services sell a full array of
17 diagnostic tests. Virtually no sellers exist who sell just the testing services,
18 including results, for a single diagnostic test, but not others. Therefore,
19 veterinarians view sellers of veterinary diagnostic reference laboratory testing
20 services from the perspective that such sellers will be able to conduct any test
21 typically handled by veterinary diagnostic reference laboratories to help
22 veterinarians provide care to their patients. Accordingly, considering all the
23 various tests offered by veterinary diagnostic reference laboratories to be part of a
24 single distinct market reflects the commercial realities of veterinary practice.

25 128. The geographic boundaries of the market for selling veterinary
26 diagnostic reference laboratory testing services are those of the United States.
27 Because veterinarians are licensed to practice by state authorities, they would be
28 understandably reluctant to have samples tested by laboratories located outside of

1 the United States, in part because state authorities might be dubious of such a
2 practice and because the veterinarians themselves would naturally be less
3 confident of the services provided in another country with which the veterinarian
4 is unfamiliar on a professional basis. Further, shipping veterinary specimens
5 across international borders would be considerably more expensive than shipping
6 them within the United States, partly because such specimens would be subject to
7 customs inspections. Nor would custom authorities handle lightly the shipping of
8 possibly diseased samples into their country. Historically, virtually no veterinary
9 practices located within the United States obtain veterinary diagnostic reference
10 laboratory services from outside the United States. Conversely, specimens
11 collected by veterinarians within the United States are frequently transported
12 across state lines and might be tested at a facility located within another state,
13 regardless of region, for logistical reasons.

14
15 **H. ANTECH HOLDS SUBSTANTIAL MARKET POWER IN**
16 **THE MARKET FOR VETERINARY DIAGNOSTIC**
17 **REFERENCE LABORATORY TESTING SERVICES IN**
18 **THE UNITED STATES**

19 129. Approximately 90% of the sales of veterinary diagnostic reference
20 laboratory testing services in the United States are sold in roughly equal
21 proportions by either Antech or IDEXX. In other words, each of Antech and
22 IDEXX accounts for roughly 45% of the share of that market. The remaining
23 10% is split among entities, with the two largest being independents known as
24 Phoenix and Marshfield, and the remainder accounted for by ARP/ZNLabs,
25 ETHOS, National Biovet and a handful of other quite small regional laboratories.
26 The market share of these sellers other than Antech and IDEXX has not grown
27 collectively in memory, but is instead shrinking collectively over time.

28 130. Mars, the parent company of Antech, owns more veterinary hospitals
than any other entity in the United States. Mars requires such facilities to use

1 Antech exclusively for diagnostic laboratory tests, further insulating Antech from
2 competitive pressure from those potential customers of other sellers in the market.

3 131. Years ago, there were numerous veterinary lab diagnostic services.
4 Over time, they have consolidated. Much of the consolidation has resulted from
5 Antech's purchase of competing services. By 2015, there were only three major
6 competitors in the: IDEXX, Antech and Abaxis. Antech purchased the Abaxis
7 Veterinary Reference Laboratory, leaving only the two major competitors in the
8 market.

9 132. High barriers to entry have prevented new entrants into the market
10 for the sale of veterinary diagnostic reference laboratory testing services in the
11 United States. Entry into the market involves significant start-up capital
12 expenditures. A new entrant would have to incur tens of millions of dollars in
13 costs, including capital expenditures on large laboratory facilities, testing
14 equipment, and obtaining local land use approvals for the construction of new
15 laboratories handling diseased samples. Some of the equipment used to test
16 animal samples is developing rapidly and thus could well be obsolete by the time
17 the hypothetical new entrant is actually ready to open business. The investment
18 in facilities and testing equipment is sunk in that the capital has little to no
19 alternative value.

20 133. The barriers to entering the market are also strengthened by the
21 difficulty of staffing a new company that would attempt to compete robustly with
22 Antech and IDEXX. Staffing such a company would require a large, skilled
23 workforce of veterinarians, veterinary pathologists, veterinary assistants,
24 technicians, and those experienced in managing them. The veterinary field is
25 sufficiently specialized that it would not be possible to hire such an extensive
26 skilled labor force without bidding up labor costs substantially over current levels.
27 Even convincing enough such workers to relocate to new facilities would be a
28 difficult and expensive proposition.

1 The misconduct alleged herein constitutes another barrier to entering the market.
2 The Exclusive Arrangements with Antech mean that the 45% of buyers in the
3 market could not rapidly transition to a new entrant. Further, IDEXX also uses
4 long-term exclusive contracts similar to Antech's with the veterinarians IDEXX
5 serves, foreclosing another 45% of the market to potential new entrant. Any
6 investors in a hypothetical major new entrant to the market would be dissuaded
7 from investing by the inordinately risky prospect of investing tens of millions of
8 dollars to compete in the market with 90% of the potential customers foreclosed
9 from patronizing the new entrant until their years long exclusive contracts
10 terminated.

11 134. The onerous terms Antech imposes in its Exclusive Agreements both
12 demonstrate its market power and enhance it. A veterinary diagnostic reference
13 laboratory in a fully competitive market would not be able to impose such
14 onerous terms on purchasers. Instead, they would choose a competitive
15 alternative with more favorable terms, pressuring the veterinary diagnostic
16 reference laboratory to shift away from onerous terms to less onerous ones to
17 survive in the marketplace. Further, the onerous terms Antech imposes act to
18 shield it from competitive pressures by making it virtually impossible for
19 veterinarians to switch the bulk of their purchases to one of Antech's competitors
20 during the term of their Exclusive Agreements with Antech.

21 135. Antech adopted a policy long ago of steering veterinary customers to
22 exclusive dealing contracts by offering pricing in those contracts that is
23 substantially less supracompetitive than the pricing offered outside those contracts
24 and by offering service under those contracts that is supposed to be more
25 responsive than that offered outside those contracts. Antech has and currently
26 instructs and supervises its sales personnel to drive veterinarian customers into
27 the Exclusive Agreements, with overwhelming success, a success mirrored at
28 IDEXX. None of the veterinarians in the class, nor Little Critters, was a party to

1 the original Exclusive Agreements Antech initially offered. Little Critters is not
2 challenging those Exclusive Agreements because of some shift in the economic
3 winds, but because the anticompetitive nature of those contracts was revealed to
4 Little Critters when it learned, to its dismay, that Antech's service under those
5 contracts is woefully substandard.

6 136. The form and substance of the Exclusive Agreements is drafted by
7 Antech and is not subject to negotiation with veterinarians. Certain terms
8 affecting overall price are subject to negotiation within a relatively narrow range,
9 but the negotiation primarily takes the form of Antech offering slightly better
10 price terms, discounts, and amount of "loan," in return for a promise by the
11 veterinarian to meet increased minimum purchase requirements. Antech has far
12 greater bargaining power than any individual veterinarian it negotiates with, both
13 because of its market power and because of the other imbalance of economic
14 resources between Antech and individual veterinarians. Consequently, the terms
15 of the Exclusive Agreements are greatly to Antech's liking, but accepted by
16 veterinarians only because their choices are greatly constrained by both Antech's
17 market power and IDEXX's decision to engage in highly similar conduct with
18 respect to steering veterinary customers into onerous exclusive agreements.

19 137. As alleged above, the Exclusive Agreements contain numerous
20 onerous provisions. In particular:

- 21
- 22 (a) Antech's requirement of a term of between 5 and 7 years in the
23 Exclusive Agreements;
 - 24 (b) Antech's requirement of an "evergreen provision" under which the
25 Exclusive Agreement renews unless a veterinarian provides written
26 notice a year before the end of the term and Antech's practice of
27 making it as difficult as possible for veterinarian to comply with the
28 notice requirement;

- 1 (c) Antech’s practice of providing a “loan” at the outset of the
2 agreement whose balance is due only if the Exclusive Agreement is
3 terminated, or if minimum purchase levels are not met;
- 4 (d) Antech’s position that, if the veterinarian terminates the contract,
5 Antech is entitled to all its expected revenue under the terms of the
6 contract, which Antech falsely contends constitute lost profits;
- 7 (e) Antech’s confidentiality provisions, making it more difficult for
8 veterinarians to learn about Antech’s conduct, particularly before
9 they sign the Exclusive Agreement;
- 10 (f) Antech’s practice of suing veterinarians who seek to terminate the
11 Exclusive Agreement, not out of a good faith belief in the merits of
12 the litigation, but in order to impose prohibitive litigation costs *in*
13 *terrorem*;

14 138. Through the Exclusive Agreements, Antech forecloses around 45%
15 of purchasers in the market for veterinary diagnostic reference laboratory testing
16 services. In other words, Antech’s competitors cannot solicit effectively the
17 business of the around 45% of prospective purchasers who would otherwise be
18 available to them because those prospective purchasers would be in breach of the
19 Exclusive Agreements if they bought substantial amounts from those competitors
20 of Antech.

21 139. Antech’s Exclusive Agreements have harmed competition in the
22 market for veterinary diagnostic reference laboratory testing services. Because
23 the Exclusive Agreements foreclose such a large portion of the market from
24 effective competition, competitive forces have been reduced and competitive
25 discipline on sellers in the relevant market has been weakened. As a result prices,
26 for veterinary diagnostic reference laboratory testing services are higher than
27 would otherwise be the case. In other words, Antech’s Exclusive Agreements
28 generate supracompetitive prices in the market. Further, and predictably, the
detriment Antech’s Exclusive Agreements inflict upon competition in the relevant

1 market also degrade the quality of veterinary diagnostic reference laboratory
2 testing services relative to what would pertain if that market were truly
3 competitive. Those insulated from competition typically raise prices and/or
4 reduce quality relative to those operating in a fully competitive market, and that
5 general rule applies to Antech here.

6 140. Increasing these harms to competition is that fact that IDEXX also
7 steers its veterinary customers into onerous exclusive agreements. Because
8 IDEXX also has a market share of roughly 45%, in addition to Antech's market
9 share, approximately 90% of the market is foreclosed from effective competition.
10 This foreclosure greatly increases barriers to entering the market to the point that
11 no rational business would decide to undertake the investment necessary to enter
12 into the business of selling veterinary diagnostic reference laboratory testing
13 services to compete robustly with Antech and IDEXX when 90% of the potential
14 customers would not be available for years after entry at best.

15 141. The Exclusive Agreements provide no real competitive benefits to
16 the market. The purported procompetitive justifications for exclusive dealing
17 contracts are almost always related to vertical chains of distribution in which a
18 manufacturer (or analogous source) enters into exclusive dealing arrangements
19 with dealers.³ These purported justifications assert that imposing exclusive
20 sources of supply on dealers compels their loyalty to the manufacturer (or
21 analogous source), preventing dealer free-riding and incentivizing dealers to
22 invest greater amounts in promoting the manufacturer's (or analogous source's)
23 goods or services. But here, Antech's and IDEXX's exclusive contracts are not
24 made with dealers, but with the purchasers in the market: the veterinarians

25
26 ³ See, e.g., B. Klein & A. Lerner *Procompetitive Justifications for Exclusive*
27 *Dealing: Preventing Free-Riding and Creating Undivided Dealer Loyalty*, Dept.
28 of Justice, Antitrust Div. (2006) available at
<https://www.justice.gov/atr/procompetitive-justifications-exclusive-dealing-preventing-free-riding-and-creating-undivided>

1 themselves. Of course, veterinarians are not in a position to free-ride on Antech's
2 or IDEXX's efforts because they have to pay Antech or IDEXX for services.
3 Indeed, they have to pay supracompetitive amounts for, at least in Antech's
4 situation, substandard services.

5
6 **I. ANTECH HAS ATTEMPTED TO MONOPOLIZE THE RELEVANT MARKET**

7
8 142. In imposing the Exclusive Agreements and their onerous terms in
9 these circumstances, Antech has attempted to monopolize the market for
10 veterinary diagnostic reference laboratories.

11 143. Antech has also engaged in other conduct to further its purpose of
12 attempting to monopolize the market. As alleged above, it has acquired
13 competitors in the market, such as Abaxis, to increase Antech's market share and
14 market power.

15 144. Also as alleged above, Mars is the parent company of Antech and
16 owns more veterinary hospitals than any other entity in the United States. Antech
17 has participated in Mars requiring that such facilities use Antech exclusively for
18 veterinarian diagnostic reference laboratory tests, further increasing Antech's
19 share of the market and power within that market.

20 145. Further, as alleged above, Antech engages in practices to prevent
21 veterinarians from communicating about the nature of the Exclusive Agreements
22 and the deficiencies in Antech's testing services. Antech also files and threatens
23 lawsuits for *in terrorem* effect, intentionally seeking the entire stream of lost
24 revenue damages as contractual damages for lost profits in order to dissuade
25 veterinarians from terminating their Exclusive Agreements.

26 146. Because of its market power, this course of conduct presents a
27 dangerous probability that Antech will monopolize the market for veterinarian
28 diagnostic reference laboratory testing services.

1 147. Further, Antech undertook this conduct with the specific intent to
2 destroy competition in the market for veterinarian diagnostic reference laboratory
3 tests and thus monopolize that market.

4 **J. ANTECH'S CONDUCT INFLICTED ANTITRUST INJURY**
5 **ON LITTLE CRITTERS AND THE CLASS IN**
6 **INTERSTATE COMMERCE**

7 148. Antech's sales to Little Critters and the Class occur in interstate
8 commerce. For example, Antech is located in this judicial district, but sells
9 veterinarian diagnostic reference laboratory testing services to Little Critters in
10 Arizona. Further, Antech will test samples provided by Little Critters and the
11 Class in its laboratories located throughout the United States.

12 149. Little Critters and the Class have suffered antitrust injury as a result
13 of Antech's conduct. As alleged above, Antech's use of Exclusive Agreements
14 with onerous terms, plus the other conduct it undertook in its attempt to
15 monopolize the relevant market, have restrained competition, heightened barriers
16 to entering the market, and insulated itself from competitive discipline. As a
17 result, Antech charges supracompetitive prices and provides woefully substandard
18 services. In a fully competitive market, Antech's substandard quality would lead
19 to veterinarians quickly shifting their business to Antech's competitors. Due to
20 Antech's anticompetitive behavior, however, veterinarians locked into Exclusive
21 Agreements with Antech face no viable option for replacing Antech as their
22 supplier of veterinarian diagnostic reference laboratory testing services until, at
23 the earliest, the end of the term of their Agreement, assuming they do not run
24 afoul of Antech's evergreen contract tactics. Consequently, those veterinarians
25 suffer the plight of paying supracompetitive prices for substandard quality,
26 exactly the fate the antitrust laws were designed to prevent.

27 150. Pursuant to the Exclusive Agreements with Antech, Little Critters
28 and the Class paid money to Antech. Little Critters request that this Court cause

1 Antech to restore this money paid by Little Critters and all Class Members and to
2 enjoin Antech from continuing to violate the UCL as discussed herein or from
3 violating the UCL in the future. Otherwise, Little Critters, the respective Class
4 they seek to represent, and members of the general public may be irreparably
5 harmed or denied an effective and complete remedy if such an order is not
6 granted.

7 151. Plaintiffs are entitled to an award of costs and attorneys' fees
8 pursuant to California Code of Civil Procedure, section 1021.5 and Civil Code,
9 section 1717.

10 **COUNT II**
11 ***Attempted Monopolization***
12 **(Sherman Act § 2)**

13 152. Little Critters incorporate and reallege by reference each and every
14 allegation above as if fully set forth herein.

15 153. Section 2 of the Sherman Act (15 U.S.C. § 2) prohibits attempts to
16 monopolize any part of the trade or commerce among the States.

17 154. Antech has substantial power in the relevant market for the
18 diagnostic reference laboratory testing for animals and there exists a dangerous
19 probability of Antech gaining monopoly power in this market.

20 155. With the specific intent to acquire monopoly power in and over the
21 relevant market, Antech has committed exclusionary, or anticompetitive acts
22 including the use of long-term exclusive dealing arrangements, the use of
23 misleading financial incentive schemes, and intimidation tactics aimed to
24 discourage the transmission of critical information about the quality and true cost
25 of its services.

26 156. Rather than competing on price and the quality of the services it
27 provides, Antech has attempted to foreclose competition through the use of

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1 exclusive dealing arrangements and pricing schemes that allow it to distort the
2 true cost of its services during the contracting process.

3 157. On information and belief, Antech has already established such
4 arrangements with most of its veterinarian customers comprising approximately
5 45% of the veterinarians in the relevant market, and—if unchecked—Antech will
6 foreclose even more of the market to competition.

7 158. Viewed in conjunction with similar exclusive dealing practices of
8 IDEXX, the other large competitor in the relevant market, such exclusive dealing
9 agreements currently foreclose 90% of the market to competition.

10 159. On information and belief, Antech's exclusive dealing arrangements,
11 and its attempts to suppress the dissemination of information about the quality of
12 its services, are having the effect of denying Antech's competitors meaningful
13 market access and depriving them of the opportunity to achieve economies of
14 scale.

15 160. Furthermore, because of Antech's conduct, consumers face a
16 degradation in the quality of diagnostic reference laboratory testing for animals
17 that would be available to them without Antech's anticompetitive conduct
18 including its exclusive dealing arrangements, its confidentiality requirements, and
19 other strong-arm tactics.

20 161. Upon information and belief, there are high barriers to entry in the
21 relevant market for diagnostic reference laboratory testing services. These barriers
22 include the exclusive dealing practices of Antech and IDEXX, the high
23 concentration of market share held by these two firms, and the significant capital
24 expenditures that are required to obtain land use permits, build testing facilities,
25 and purchase expensive testing equipment that might quickly become obsolete in
26 a rapidly developing technological environment.

27 162. Because Antech and IDEXX's agreements lock-up approximately
28 90% of the market for up to six years, and because a potential new competitor

1 would be unlikely to recoup its market entry costs by competing for a portion of
2 the remaining 10% of the relevant market that is not already foreclosed to
3 competition, Antech’s anticompetitive practices deter new competition from
4 entering the market at a level sufficient to deter or counteract Antech’s exercise of
5 its monopoly power in the relevant market.

6 163. Antech’s anticompetitive conduct is not motivated by efficiency
7 concerns and has no valid or legitimate business justification. Instead, its purpose
8 and effect is to establish its monopoly position, and to diminish competition in the
9 relevant market.

10 164. Antech’s anticompetitive conduct alleged herein has injured (and
11 unless enjoined, will continue to injure) consumers and competitors in the
12 relevant market through unreliable laboratory testing, decreased choice, reduced
13 innovation, and other anticompetitive effects, including raising additional barriers
14 to entry in the relevant market.

15 165. By reason of Antech’s unlawful attempted monopolization of the
16 market for diagnostic reference laboratory testing services, Little Critters and
17 other consumers in the relevant market have been injured in their business and
18 property.

19 166. Unless enjoined and declared illegal, Antech’s unlawful conduct will
20 continue, consumers will continue to sustain injury and damages, and competition
21 will continue to decrease in the relevant market.

22 167. The injuries to Little Critters and other consumers described herein
23 are the types of injuries the antitrust laws were intended to prevent because they
24 are a direct result of Antech’s anticompetitive conduct alleged herein, which
25 occurred in the United States, and has a substantial effect on competition in the
26 relevant market.

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1 168. Plaintiffs are entitled to injunctive relief and to treble damages.

2 **COUNT III**
3 **Breach of Contract**

4 169. Little Critters incorporate and reallege by reference each and every
5 allegation above as if fully set forth herein.

6 170. Little Critters entered into the Contract with Antech. The Class
7 entered into Exclusive Agreements with Antech.

8 171. Plaintiff Dr. Patt and Plaintiff Little Critters Vet, LLC are each
9 parties to the Exclusive Agreement attached hereto, in pertinent part, as Exhibit
10 A. The Exclusive Agreement explicitly identifies the parties as including Dr. Patt
11 as the “practice owner,” and Little Critters, LLC as the “practice” subject to the
12 Contract’s terms. Exh. A. Similarly, Dr. Patt signed the Contract, not merely
13 personally, but under the denomination “Practice Owner.” *Id.*, Page 2.

14 172. It is the evident intent of the parties to the Contract that it covers
15 both Dr. Patt and Little Critters Vet, LLC. There is no doubt that the purpose of
16 doing so was to enable Antech to proceed against either Dr. Patt or Little Critters
17 Vet, LLC for contractual remedies.

18 173. Antech drafted the substantive terms of the Contract and the
19 Exclusive Agreement, which were not subject to negotiation other than as to
20 pricing, discount, and loan terms within a narrow range, and thus any ambiguity
21 in such terms should be interpreted against Antech.

22 174. Paragraph 2 of the Standard terms and conditions in the Contract and
23 Exclusive Agreements states, “All Laboratory Services provided by Antech
24 Diagnostics pursuant to this Agreement are provided in accordance with and
25 subject to all terms and conditions set forth in the ANTECH Service Directory in
26 effect at the time the Laboratory Services are performed.” Exh. A, Page 3, ¶ 2.
27 The last Service Directory published by Antech states, “In accepting work, we
28 warrant that we shall provide services in a professional manner by qualified

1 personnel, and we warrant the accuracy of the test results for the specimen
2 submitted.”

3 175. Implied into every contract for professional or business services
4 under California law is an implied duty, which cannot be waived that the services
5 will be performed competently and with reasonable care.

6 176. Little Critters and the Class performed all material terms required
7 under the Contract or Exclusive Agreements, respectively, or were excused from
8 such performance by Antech’s failure to perform adequately.

9 177. Little Critters demanded that Antech provide veterinary diagnostic
10 reference laboratory testing services and results in a professional manner, with
11 competence and reasonable care.

12 178. Antech materially breached the Contract and Exclusive Agreements
13 because it performed its part of the Contract to provide veterinary diagnostic
14 reference laboratory testing services, unprofessionally, incompetently and with a
15 failure to use reasonable care.

16 179. Under California law, every contract imposes upon each party a duty
17 of good faith and fair dealing in its performance and enforcement. Antech’s
18 pattern of conduct related to Little Critters and the Class constituted objectively
19 unreasonable conduct that unfairly failed to meet the reasonable expectations of
20 the other parties to Antech’s Exclusive Agreements. Antech’s conduct includes
21 failing to staff its diagnostic laboratories in the manner identified in the applicable
22 guidelines, failing to manage the process and reporting of test results in the
23 manner identified in the applicable guidelines, failing to communicate with the
24 veterinarians in the manner identified in the applicable guidelines, changing
25 written reports of lab results without following documentation protocols, and
26 making statements to Little Critters and the Class which indicated the purpose of
27 covering up the deficiencies in Antech’s processes. Antech’s overall conduct
28 places at risk the entire careers and practices of the veterinarians who are subject

1 to Antech's Exclusive Agreements, forcing them to either continue using
2 Antech's services after losing faith in the services provided or risk financial ruin
3 when threatened by Antech. Antech's conduct in enforcing and threatening to
4 enforce the exclusivity provisions of the agreements in the context of Antech's
5 own failures is also unreasonable conduct.

6 180. Little Critters and the Class were harmed by Antech's conduct
7 because Antech's woefully substandard performance required them to order and
8 conduct extensive verifications, rechecks and pathology reviews of erroneous and
9 potentially erroneous results, bearing the cost in time and money of doing same.
10 Moreover, they were harmed by Antech's conduct because they had to either bear
11 the risk of either a) terminating their agreement with Antech and facing Antech's
12 threatened or actual litigation, or b) continuing to use the services of a veterinary
13 diagnostic reference laboratory they no longer trusted at peril to their ethical
14 duties, licenses, and liability, since veterinarians are primarily responsible for the
15 level of care they provide to patients.

16 181. Little Critters and the Class are entitled to rescission of the Contract
17 and to all Exclusive Agreements to which Class members exercise their right to
18 rescind, and a declaration that they are not obligated to continue complying with
19 the Exclusivity and Annual Minimum provisions of the Exclusive Agreements –
20 in particular, a declaration that Little Critters and the Class are not obliged to
21 repay the value of the incentive payments or the "loan" included as part of the
22 overall pricing scheme in the Exclusive Agreement.

23 182. Little Critters and the Class are entitled to an award of costs and
24 attorneys' fees pursuant to California Civil Code, section 1717.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Little Critters and the Class demand judgment against
27 Antech as follows:
28

1 A. An order certifying that this action may be maintained as a class
2 action, that Little Critters be appointed Class Representatives and Little Critters'
3 counsel be appointed Class Counsel;

4 B. A judgment awarding Little Critters and all members of the Class for
5 damages, restitution or other equitable relief, including, without limitation, treble
6 damages, disgorgement of all profits and unjust enrichment that Antech obtained
7 from Little Critters and the Class as a result of the unlawful, unfair and fraudulent
8 business practices described herein;

9 C. An order enjoining Antech from continuing to violate the laws as
10 described herein;

11 D. A declaration that Little Critters and the Class are not required to
12 continue compliance with the Exclusive and Annual Minimum provisions of their
13 Exclusive Agreements with Antech – in particular, a declaration that Little Critters
14 and the Class are not obliged to repay the value of the incentive payments or the
15 “loan” included as part of the overall pricing scheme in the Exclusive Agreement.

16 E. A judgment awarding Little Critters the costs of suit, including
17 reasonable attorneys’ fees, and pre and post-judgment interest; and

18 F. Such other and further relief as may be deemed necessary or
19 appropriate.

20 **JURY DEMAND**

21 Little Critters demand trial by jury on all claims so triable.

22 DATED: July 17, 2020

GREEN & NOBLIN, P.C.

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24 By: /s/ Robert S. Green
Robert S. Green

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