

**UNITED STATES DISTRICT COURT
For the
DISTRICT OF MAINE**

IDEXX LABORATORIES, INC. and
IDEXX DISTRIBUTION, INC.,

Plaintiffs,

Case No.: 2:17-cv-00100-JDL

v.

DONKATE ENTERPRISES, INC.,
d/b/a VETERINARY CENTER AT FISHHAWK

Defendant.

**DONKATE ENTERPRISES, INC. d/b/a VETERINARY CENTER AT
FISHHAWK'S ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIM**

DONKATE ENTERPRISES, INC., d/b/a VETERINARY CENTER AT FISHHAWK,
("VCF"), by and through undersigned counsel, answers Plaintiff's Complaint (the "Complaint")
filed by IDEXX LABORATORIES, INC., and IDEXX DISTRIBUTION, INC., and states as
follows:

GENERAL ALLEGATIONS

1. VCF is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Complaint, therefore they are denied.
2. VCF is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Complaint, therefore they are denied.
3. VCF admits the allegations contained in paragraph 3 of the Complaint.
4. VCF admits the allegations in paragraph 4 of the Complaint for jurisdictional purposes only. VCF denies that Plaintiffs are entitled to any damages whatsoever.

5. VCF denies the allegations contained in paragraph 5 of the Complaint.
6. VCF states the Agreement speaks for itself. All remaining allegations contained in paragraph 6 of the Complaint are denied.
7. VCF admits the allegations contained in paragraph 7 of the Complaint.
8. VCF states the Agreement speaks for itself. All remaining allegations contained in paragraph 8 of the Complaint are denied.
9. VCF states the Agreement speaks for itself. All remaining allegations contained in paragraph 9 of the Complaint are denied.
10. VCF states the Agreement speaks for itself. All remaining allegations contained in paragraph 10 of the Complaint are denied.
11. VCF denies the allegations contained in paragraph 11 of the Complaint.
12. VCF denies the allegations contained in paragraph 12 of the Complaint.
13. VCF denies the allegations contained in paragraph of 13 of the Complaint.

**COUNT I – BREACH OF CONTRACT
LABORATORY DIAGNOSTIC AGREEMENT**

14. VCF adopts and restates its answers to paragraphs 1 through 13 above as if set forth fully herein.
15. VCF states the Agreement speaks for itself. The remaining allegations contained in paragraph 15 are denied.
16. VCF denies the allegations contained in paragraph 16 of the Complaint.
17. VCF denies the allegations contained in paragraph 17 of the Complaint.
18. VCF denies the allegations contained in paragraph 18 of the Complaint.
19. VCF denies the allegations contained in paragraph 19 of the Complaint.

**COUNT II – BREACH OF CONTRACT
ADDITIONAL PRODUCTS AND SERVICES**

20. VCF adopts and restates its answers to paragraphs 1 through 19 above as if set forth fully herein.

21. VCF denies the allegations contained in paragraph 21 of the Complaint.

22. VCF denies the allegations contained in paragraph 22 of the Complaint.

23. VCF denies the allegations contained in paragraph 23 of the Complaint.

24. VCF denies the allegations contained in paragraph 24 of the Complaint.

COUNT III- PAYMENT ON ACCOUNT ANNEXED (16 M.R.S.A. § 355)

25. VCF adopts and restates its answers to paragraphs 1 through 24 above as if set forth fully herein.

26. VCF denies the allegations contained in paragraph 26 of the Complaint

27. VCF denies that the declaration attached to the Complaint contains an accurate accounting and denies it owes Plaintiffs \$31,399.98.

28. VCF denies the allegations contained in paragraph 28 of the Complaint.

COUNT IV – UNJUST ENRICHMENT

29. VCF adopts and restates its answers to paragraphs 1 through 28 above as if set forth fully herein.

30. VCF admits it purchased products and services from IDEXX Distribution, Inc. The remaining allegations contained in paragraph 30 of the Complaint are denied.

31. VCF denies the allegations contained in paragraph 31 of the Complaint.

32. VCF denies the allegations contained in paragraph 32 of the Complaint.

33. VCF denies the allegations contained in paragraph 33 of the Complaint.

COUNT V – QUANTUM MERUIT

34. VCF adopts and restates its answers to paragraphs 1 through 33 above as if set forth fully herein.

35. VCF admits it purchased products and services from IDEXX Distribution, Inc. VCF denies the remaining allegations contained in paragraph 35 of the Complaint.

36. VCF is without information or knowledge sufficient to form a belief as to the truth of the allegations, therefore denies the allegations contained in paragraph 36 of the Complaint.

37. VCF denies the allegations contained in paragraph 37 of the Complaint.

38. VCF denies the allegations contained in paragraph 38 of the Complaint.

WHEREFORE, Donkate Enterprises, Inc., d/b/a Veterinary Center at Fishhawk, having fully answered the Complaint, demands judgment against Plaintiff including VCF's attorney's fees and costs and such other and further relief as the Court deems just and proper.

AFFIRMATIVE DEFENSES

First Affirmative Defense

As its First Affirmative Defense, VCF asserts that Plaintiffs are estopped from bringing their claim against VCF.

Second Affirmative Defense

As its Second Affirmative Defense, VCF asserts that Plaintiffs are guilty of unclean hands.

Third Affirmative Defense

As its Third Affirmative Defense, VCF asserts that IDEXX is, and at all relevant times was, in breach of its contractual obligations to VCF.

Fourth Affirmative Defense

As its Fourth Affirmative Defense, VCF asserts that Plaintiffs failed to mitigate their damages.

Fifth Affirmative Defense

As its Fifth Affirmative Defense, VCF asserts that the Plaintiffs have failed to state a claim upon which relief can be granted.

Sixth Affirmative Defense

As its Sixth Affirmative Defense, VCF asserts that there was no Agreement due to mistake.

Seventh Affirmative Defense

As its Seventh Affirmative Defense, VCF asserts there was no Agreement due to Plaintiffs' fraudulent conduct in inducing VCF to enter into the Agreement. Specifically, Plaintiffs fraudulently induced the Defendant to execute the Laboratory Diagnostic Agreement by falsely assuring Defendant the agreement could be canceled at any time without penalty; that the Defendant would be hired to provide lectures for payment which would offset any monies required under the Agreement; and that the IDEXX points awarded would offset damages incurred by Defendant in the purchase of IDEXX's Cornerstone Software.

Eighth Affirmative Defense

As its Eighth Affirmative Defense, VCF asserts that Plaintiffs' conduct during the term of

the Agreement was fraudulent. Specifically, the Plaintiffs fraudulently billed the Defendant for product it did not order and did not accept; applied payments Defendant made on laboratory equipment to improperly invoiced items such as the Cornerstone software, and improperly added accelerated interest to invoices. Defendant trusted Plaintiffs' upper management and sales representatives and reasonably, foreseeably and detrimentally relied on Plaintiffs' misrepresentations and has suffered damages as a result.

Ninth Affirmative Defense

As its Ninth Affirmative Defense, VCF asserts that Plaintiffs' claim is barred by their failure to act in a commercially reasonable manner.

Tenth Affirmative Defense

As its Tenth Affirmative Defense, VCF asserts that Plaintiffs' claim is barred because Defendant repudiated and canceled the Laboratory Diagnostic Agreement and tendered refund of the IDEXX points credited and/or the IDEXX equipment.

Eleventh Affirmative Defense

As its Eleventh Affirmative Defense, VCF asserts the Laboratory Diagnostic Agreement is unconscionable.

Twelfth Affirmative Defense

As its Twelfth Affirmative Defense, VCF asserts that Plaintiffs' alleged damages are limited to liquidated damages specified in the Laboratory Diagnostic Agreement such as repayment of IDEXX Points Award.

Thirteenth Affirmative Defense

As its Thirteenth Affirmative Defense, VCF asserts that all or part of Plaintiffs' alleged

damages are barred under the doctrine of setoff.

Fourteenth Affirmative Defense

As its Fourteenth Affirmative Defense, VCF asserts Plaintiffs' claim is barred due to Plaintiffs' negligent misrepresentation of the alleged agreement. Specifically, Plaintiffs falsely claimed Defendant could cancel the agreement at any time without penalty; that the Defendant would be hired to provide lectures for payment which would offset any monies required under the Agreement; and that the IDEXX points awarded would offset damages incurred by Defendant in the purchase of IDEXX's Cornerstone Software. Defendant reasonably and foreseeably relied on these misrepresentations and suffered damages as a proximate result.

Defendant reserves the right to assert additional defenses.

WHEREFORE, Defendant Donkate Enterprises, Inc., d/b/a Veterinary Center at Fishhawk, having fully answered the Complaint, demands judgment against Plaintiffs including attorneys' fees and costs and such other and further relief as the Court deems just and proper.

COUNTERCLAIM

DonKate Enterprises, Inc, D/B/A Veterinary Center at Fishhawk, ("VCF") by and through undersigned counsel, hereby sues IDEXX Laboratories, Inc. ("IDEXX Labs") and IDEXX Distribution, Inc. ("IDEXX Distribution") (Collectively "IDEXX") and alleges as follows:

Jurisdiction

1. The Court has supplemental jurisdiction over this counterclaim pursuant to 28 U.S.C. §1367 because they are so related to the Plaintiff's claims that they form part of the same

case or controversy under Article III of the United States Constitution, and the amount in controversy exceeds \$75,000 exclusive of interest and costs.

Venue

2. Venue is proper because this is a compulsory counterclaim to a claim filed in this District.

Parties

3. Counterclaim Plaintiff DonKate Enterprises, Inc. D/B/A Veterinary Center at Fishhawk (“VCF”), is a Florida Corporation with a principal place of business at 5484 Lithia Pinecrest Road, Lithia, Florida, 33547.

4. VCF is a locally owned, privately-held, three-doctor veterinary practice, with annual sales of less than \$2 million.

5. Upon information and belief, Counterclaim Defendant, IDEXX Labs is a Delaware corporation registered to do business in the State of Maine with a principal place of business at One IDEXX Dr., Westbrook Maine, 04092.

6. Upon information and belief, Counterclaim Defendant IDEXX Distribution is a Delaware corporation registered to do business in the State of Maine with a principal place of business at One IDEXX Dr. Westbrook Maine, 04092.

7. Upon information and belief, Counterclaim Defendants IDEXX are a publicly traded multi-national conglomerate, with annual sales well in excess of \$1 Billion.

8. VCF has retained counsel and is obligated to pay them a reasonable fee for representation in this matter and in defense of the Complaint.

9. All conditions precedent have occurred or were waived.

GENERAL ALLEGATIONS

The Beginning of an Eight Year Relationship

10. VCF began operations in 2007, and is owned by Donkate Enterprises Inc. (“Donkate”). Donkate’s sole shareholders and officers are a husband and wife; Dr. Katharine Thompson, and Donald A. Thompson. VCF provides veterinary care in the Tampa Bay area.

11. At all times material, Donald Thompson (“Thompson”) was a Certified Veterinary Practice Manager and managed the veterinary practice.

12. Katharine M. Thompson (“Dr. Thompson” or “Doctor”) is a veterinarian, licensed in the State of Florida.

13. VCF started using IDEXX products on commencement of operations.

14. Most notably, at the urging of IDEXX sales rep Elizabeth Brooks-Pento, VCF undertook an expensive and innovative method of practice emerging in the veterinary industry. Known as “real time” laboratory diagnostics, this method provides immediate diagnostic results to veterinarians in the hospital setting. With immediate test results, a clinic can eliminate the need for third party laboratories to test bloodwork thereby eliminating the need for clients to return the next day for treatment.

15. At the time VCF implemented real-time diagnostics, most veterinary hospitals were not utilizing that process due to expense and doubts among doctors as to the accuracy of such in-house testing. IDEXX sought more veterinary hospitals that would implement the real-time strategy.

16. With “real time” diagnostics implemented at VCF, along with other innovative client care concepts, VCF immediately exceeded sales projections and client enthusiasm for real-time blood tests that allowed for same day treatment was high.

The Lectures

17. Shortly after the successful commencement of VCF, in 2008 Dr. Thompson was asked by IDEXX agents including Elizabeth Brooks-Pento to speak to fellow veterinarians in Tampa, Florida about her experiences with real-time, in-house laboratory diagnostics.

18. Due to her unique combination of personality and knowledge, IDEXX requested that Dr. Thompson conduct regular engagements with IDEXX during which she lectured other veterinarians on the benefits of real-time, and VCF was compensated for her efforts on behalf of IDEXX. The compensation for Lectures at this time was at the rate of \$500 per speaking engagement.

19. Within a few months of Doctor’s first engagement by IDEXX, husband Thompson was asked to join Doctor in the lectures (collectively “Thompsons”). The Doctor lacked critical practice management details that frequently were discussed during the lectures, and Thompson brought VCF business knowledge to the lectures. This gave IDEXX a husband and wife speaking team that owned a veterinary hospital, were both outstanding speakers, and had utilized real-time diagnostics to great success.

20. By 2010, the Thompsons were regularly engaged by IDEXX for speaking lectures on a yearly basis, providing between 12 and 20 lectures in Florida each year. The speaking compensation increased to \$1,000 per lecture, with all travel and other expenses reimbursed.

The lecture reviews by attendees continually showed the Thompsons to be highly effective speakers for IDEXX.

21. Between 2008 and 2012, the Thompsons developed lectures for IDEXX, and were compensated for the delivery of those lectures. By 2012, the lecture compensation rate for the VCF team was \$1500, with all expenses reimbursed.

22. During the Lectures, IDEXX sales representatives for all IDEXX product lines were present, including representatives who sold the IDEXX Cornerstone Software. The software was used for practice management of hospitals (appointment calendars, inventory management, etc.), and utilized proprietary software connections for communicating with in-house laboratory equipment and other diagnostic tools including X-Ray imaging.

23. VCF, while utilizing many aspects of real-time diagnostic tools, did not have Cornerstone software installed, but instead used a competitor's product.

24. In 2013 IDEXX utilized the Thompsons for lectures not only within Florida, but in multiple locations throughout the Southeast United States.

25. At what would end up being the final lecture event in 2013, in Nashville, Tennessee, the Thompsons and employees of IDEXX, including Ms. Aimee Murdock, IDEXX National Account Trainer, and Ms. Debra Noble, Regional Manager for IDEXX, began discussions with the Thompsons for the 2014 lecture event schedule.

26. In January of 2014, Mr. Thompson, IDEXX event planners at the IDEXX corporate home office, and Ms. Murdock conferenced by telephone for the sole purpose of establishing a speaking plan for the year that included no less than 20 engagements by the

Thompsons. IDEXX particularly inquired as to the Thompsons maximum availability, as they sought to expand the successful lectures to a larger market with more frequency.

27. Upon information and belief, In February of 2014, IDEXX made a major corporate change, implementing direct distribution of its products and eliminating the position of Ms. Murdock and others involved in the lectures. Thereafter, IDEXX failed and/or refused to book the Thompsons for any future lectures.

The First Misrepresentation

28. In January of 2014, IDEXX and its representatives were present at the North American Veterinary Conference at the Gaylord Palms Hotel in Kissimmee, Florida. Mr. Thompson was also in attendance.

29. During the conference, Thompson was approached by IDEXX to purchase the Cornerstone software system (Hereafter, "Cornerstone"). Because of the substantial expense of Cornerstone, and the fact VCF had encountered financial difficulties from the 2008 Great Recession, Thompson declined the first requests to purchase Cornerstone. However, IDEXX representatives Carla Greenlaw and Elizabeth Brooks-Pento were persistent and emphasized the long-term nature of the lectures provided by VCF owners. Brooks-Pento specifically stated "the 2014 Lectures will more than cover the cost of Cornerstone Installation" and "the installation will benefit you too, while providing us lecturers that have the entire universe of IDEXX products."

30. The sole purpose of the request was so that the lectures conducted by VCF would include only products sold by IDEXX. Prior to the request, VCF used a competing software for

VCF and veterinarians attending the lectures routinely inquired as to which software was used by VCF.

31. Both Greenlaw and Brooks-Pento sought higher approval from IDEXX via phone calls and conferences with their managers, and Greenlaw was authorized to hand write onto the Cornerstone Software purchase agreement an amount of IDEXX points. Greenlaw and Brooks-Pento called it a “down-payment on lectures” that IDEXX promised.

32. In expectation of a continued and rewarding relationship with IDEXX, VCF agreed to purchase Cornerstone with the explicit and stated understanding from IDEXX representatives, including Ms. Elizabeth Brooks-Pento, that payment for the projected lectures in 2014 would more than cover the cost of the expensive Cornerstone.

The Nightmare Commences

33. Implementation of Cornerstone commenced in April of 2014, and the installation was disastrous in substantial respects, including:

- a. The first computers IDEXX installed were not capable of handling in-room checkouts, which IDEXX knew from the lectures was a significant competitive advantage employed by VCF.
- b. IDEXX replaced the first computers installed, and the replacements also were malfunctioning and would not run Cornerstone. At great expense of time and energy, VCF finally installed a third set of computers which did run Cornerstone.
- c. Since installation, and continuing to the onset of the instant litigation, Cornerstone routinely crashes and requires server resets to correct. Resets occur between 5 and 15 times per day, causing countless hours of down time for staff and

significant delays to VCF clients. This downtime has resulted in substantial lost revenue and productivity by VCF.

34. Meanwhile, during 2014 and into 2015, Thompson engaged in an increasingly frustrating process attempting to resolve issues with IDEXX regarding the Cornerstone software. Each effort, involving long phone calls and time on the computer with IDEXX representatives, resulted in limited action, no improvement in operating results, and generally a desire by the representatives to refer the problem to a higher level of management.

The Second Misrepresentation While Attempting to Resolve the First

35. In May of 2015, while still in the process of working to resolve Cornerstone problems, IDEXX offered to provide VCF a Laboratory Diagnostic Agreement [Hereafter the “Agreement”]. The Agreement included IDEXX “points” that effectively were dollars which could be used for the purchase of IDEXX diagnostic tools and supplies.

36. This Agreement offer was spearheaded by Jesse Levesque (hereafter “Levesque”), local IDEXX sales representative assigned to the VCF account, and by IDEXX management, most notably Ms. Kim Linton (Hereafter “Linton”) who at all relevant times was IDEXX’s managing sales director of the Florida region.

37. During the negotiations, Linton stated the Agreement was to cement the continuing relationship with VCF. Both Levesque and Linton repeatedly said IDEXX was including additional points in the Agreement offer with the intent to partially make amends for the continuing issues created by Cornerstone failures and the absence of lecture income to offset the Cornerstone purchase.

38. Most significantly, IDEXX representatives stated that the Agreement was revocable, and could be terminated at any time without penalty.

39. Because Cornerstone was continuing to cause substantial problems for VCF and Thompson was beginning to doubt the ability of IDEXX to resolve issues, during the negotiation phase for the Agreement, Thompson repeatedly confirmed with IDEXX representatives that the Agreement could be revoked. Those statements by IDEXX representatives included:

- a. On June 3, 2015, at 10 am at the VCF offices, Mr. Levesque arrived and met with Mr. Thompson. At that meeting in Thompson's office, Levesque stated IDEXX would make an Agreement to provide substantial discounts in products, and desired to lock VCF business for the long term. He also stated that IDEXX wanted to try to make amends for the continuing issues with Cornerstone. At that time, Thompson specifically inquired about the termination of any long-term Agreement, and Levesque stated that "you can always terminate any of our agreements" and that "IDEXX is not in the business of forcing anyone to use products they don't want." During the conversation about termination, Levesque pointedly observed that IDEXX has always taken back and given credit for products not used by VCF, regardless of the reason including that VCF simply didn't want/need them.
- b. Having refused the first offer from IDEXX, Levesque via email informed VCF that IDEXX was working to increase its offer to secure VCF long-term business and requested another meeting on June 11, 2015, at 10am again at VCF. During the meeting, with an offer on the table that included more IDEXX points than the

first, Thompson again specifically asked about the long-term nature of the deal. Levesque pointed to the contract language on the signature page of the Agreement and stated the Agreement plainly “allows for the ending of the Agreement, which would require re-payment of any bonus points awarded but unearned.” Thompson reviewed the language, asked clarifying questions, and was satisfied with the response from Levesque that the Agreement did allow for early termination, and the only obligation by VCF upon termination was repayment of any bonus points awarded but unearned. Doctor Thompson, working that day, also attended part of the meeting, and asked numerous questions of Levesque in respect to the ongoing problems VCF was having with Cornerstone, and explicitly requested Levesque to explain the termination clause. Levesque did so, repeating the statement made earlier to Mr. Thompson that the clause on the signature page governed early termination of the Agreement, and that “IDEXX only wants your business if you want to work with us” and assuring the Thompsons that the Agreement was “able to be terminated.”

- c. Prior to the Agreement acceptance, Thompson asked Levesque to address incorrect charges on the VCF IDEXX statements associated with the Cornerstone installation. Because Levesque had limited knowledge and was a new rep, the billing issue resulted in an escalation to Linton, the Regional Sales Manager.
- d. Linton, via email on June 22, 2015, agreed to insert herself into the billing and Agreement negotiation and sought details on the Cornerstone issues.

- e. As a result of the involvement by Linton, a phone call between Thompson and Linton occurred on or about June 25th, 2015. During the evening phone call, Thompson and Linton discussed for almost one hour the lingering issues with Cornerstone, billing problems, and the lecture issue. Linton was asked repeatedly during the call about the ability of VCF to terminate any long-term Agreement should things not work between IDEXX and VCF. Linton on two separate occasions during the phone call stated the Agreement “could be terminated by VCF at any time.” Linton made repeated assurances that “IDEXX values VCF’s long term business” and “we have always worked with you and always will” and “you can trust us to do the right thing” and other representations to assure Thompson that accepting the offered Agreement did not mean VCF could not switch vendors should the ongoing issues with Cornerstone not be resolved.
40. Based upon the representations by IDEXX that the Agreement could be revoked or canceled, VCF executed the Agreement on June 30, 2015.
41. After the Agreement was executed, Cornerstone issues persisted, and improper billing continued. Thompson encountered representative after representative who simply wanted to hand the issue off to the next level of management, compelling Thompson to spend countless hours reviewing the problem for the next person. IDEXX representatives continued to hand off the issues associated with Cornerstone to another manager, without any resolution of the productivity losses being suffered by VCF on a daily basis.

The Final “Escalation”

42. As a result of the continued escalation by IDEXX representatives, the Thompsons ultimately met in January 2016 with George Fennell (Hereafter “Fennell”), the Vice-President of Companion Animal Group for IDEXX. The breakfast meeting occurred during the North American Veterinary Conference in the Gaylord Palms Hotel, on a Sunday morning at 9 a.m.

43. During the meeting, Fennell assured the Thompsons that the Cornerstone issues would be “immediately resolved” and that Cornerstone was a “round peg being driven into a square hole.”

44. Thompson requested of Fennell that IDEXX provide a new software system to VCF that was currently being developed by IDEXX. Because the new software is cloud based, VCF believed it could offer relief from the continuing network and shut down problems associated with Cornerstone.

45. During the meeting, both Thompsons expressed extreme dissatisfaction with IDEXX, Cornerstone, the breach of the Cornerstone agreement for lectures, and most notably the new laboratory Agreement and the desire to end all relationships with IDEXX if the Cornerstone issues were not immediately resolved.

46. The meeting lasted well over an hour, and at its conclusion Fennell assured Thompson and Doctor that IDEXX highly valued the relationship with VCF and that all issues would be immediately resolved.

The Oppressive and Unfair Final Acts

47. More than one month after the meeting with Fennell, on February 18, 2016 and in utter exasperation, Thompson emailed Fennell and while thanking him for his time in January stated:

- a. “At this point, Cornerstone is an anchor that must be cut. Immediately.”
- b. “Without our oral agreement to continue speaking for IDEXX (as we had done over the last seven years), there is no way we would have contemplated using Cornerstone...Because that is true, there is simply no chance I will continue working with IDEXX without full resolution to the nightmare my team continues to endure. We have spent more than \$50,000 and countless hours of time, and are still unable to pound the square peg into the round hole.”
- c. “...absent some major change...we will completely end our relationship with IDEXX. It remains my hope that isn't the case, but I am beyond exasperated and my hospital business demands immediate resolution.”

48. Fennell replied back to the Feb 18 email within minutes, noting “I wish to immediately acknowledge your note. I'm traveling at the moment and would like to offer a more comprehensive reply when I get to my destination in a few hours.”

49. Later the same day, Fennell emailed stating “A day I'd just as soon forget. My apologies. I will get back to you.”

50. Finally, after almost four weeks without any further response from Fennell, Thompson emailed Fennell on March 10, 2016 stating, “At this point, I would like the name of

someone to assist me in terminating VCF's relationship with your company...I cannot continue having the problems I am enduring...I would assume since we have legal agreements that will be someone on your legal team, but again, please advise so that I might negotiate an equitable conclusion immediately.

51. Despite such communications to the highest levels of IDEXX, VCF still waits for any reasonable response.

52. While VCF sought an amicable termination of the Agreement and all other relationships with IDEXX, Fennell and IDEXX instead engaged in oppressive behavior designed to force VCF to remain as their client.

53. In response to the legitimate request by Thompson in March, Fennell replied, almost three months later, by written letter on June 21, 2016 and stated:

- a. "we would prefer that we continue our relationship with you"
- b. "As of today's date, in the event you stop performing your obligations under the Agreement...IDEXX would be willing to mutually terminate the Agreement with no further liability on the part of either party for \$289,750. This is comprised of the remaining amount required to meet your Annual Minimum Purchase Amounts over the next sixty-one months, when the Agreement would otherwise expire.
- c. "our preference would be to continue our relationship with Fishhawk under the terms...but if [VCF] elects to terminate, payment is due to IDEXX on or before July 1, 2016."

This e-mail from Fennell was the first time IDEXX ever mentioned that payment of the Annual Minimum Purchase Amounts would be a condition to early termination of the Agreement.

54. Nine days after the letter by Fennell, on June 30th, 2016, IDEXX wrongly billed VCF for the amount claimed by Fennell as due and payable should VCF wish to exit the relationship with IDEXX. This resulted in an invoice for an amount exceeding \$300,000, which IDEXX then inappropriately added ruinous interest in the amount of more than \$5,000 per month.

55. VCF was never in receipt of the products billed onto the invoice, and never ordered the products that were billed on the invoice. Further, IDEXX improperly utilized payments made for materials and supplies ordered by VCF by crediting the payments to the Cornerstone Invoices despite knowing the payments were not for those invoices, and while being fully aware of the ongoing Cornerstone problems being suffered by VCF.

56. Upon information and belief, Fennell directed the billing department to engage in the nefarious conduct with the intention of coercing VCF into remaining in a relationship with IDEXX.

57. As a consequence of the improper conduct by IDEXX, VCF retained counsel to dispute the wrongful billing. By written communications with IDEXX counsel, VCF attorneys received agreement that billing the interest was completely improper, and IDEXX agreed to remove interest and discontinue billing for undelivered products from VCF monthly statements.

58. However, in continuance of their improper scheme of coercion and pressure, IDEXX immediately added back the charges for undelivered products from the Agreement in the

IDEXX invoices sent monthly to VCF, and IDEXX continues its improper and wrongful billing to the date of this cause of action.

COUNT I
FRAUD IN THE INDUCEMENT
(AS TO THE LABORATORY DIAGNOSTIC AGREEMENT)

59. VCF repeats and realleges the allegations of paragraphs 1 through 58 above, as if fully set forth herein.

60. Commencing early in June, 2015, IDEXX representatives falsely and with intent to induce VCF to sign the Laboratory Diagnostic Agreement, (the “Agreement”), misrepresented that the Agreement could be canceled at any time with no penalty. IDEXX, through its agents Linton and Levesque made the statements knowing they were false, or with such reckless disregard as to whether they were true or false that malice is implied.

61. IDEXX agents made the representations knowing the falseness of the statement, and knowing that IDEXX would not provide any cancellation provision for the Agreement but instead would require VCF to pay the cost of purchasing the “Minimum Monthly Requirement” for the six years of the Agreement term.

62. In reasonable reliance on IDEXX’s representation, and being ignorant of its falsity, VCF on or about June 30, 2015 was induced to enter into the Agreement with IDEXX. Had VCF known that the termination representation and the Cornerstone representation was not truthful, VCF would not have entered into the Agreement.

63. As a result of the intentional misrepresentations described above, VCF has and continues to sustain damages.

64. VCF is further entitled to punitive damages as IDEXX's actions and/or omissions were done knowingly and intentionally

WHEREFORE, VCF demands judgment against IDEXX for:

- a. Rescission of the Laboratory Diagnostic Agreement;
- b. Compensatory and Punitive damages
- c. Pre-judgment interest;
- d. Costs of suit;
- e. Attorney Fees; and
- f. Such other and further relief as the court considers just and proper.

COUNT II
BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
(AS TO THE LABORATORY AGREEMENT)

65. VCF repeats and realleges the allegations of paragraphs 1 through 64 as if fully set forth herein.

66. VCF and IDEXX executed a written contract for laboratory services on June 21, 2015.

67. The Agreement is unambiguous about the permissibility of termination of the Agreement.

68. IDEXX, through a conscious and deliberate act, failed or refused to discharge contractual responsibilities including allowing VCF to terminate the Agreement.

69. The actions of IDEXX in refusing to allow termination, and the refusal to engage in negotiations to resolve the impasse, unfairly frustrates the purpose of the Agreement and unfairly impairs the expectations of the VCF.

70. IDEXX's actions are a breach of the covenant of good faith and fair dealing attendant to every contract, and deprive VCF of the benefits of the contract.

71. VCF has suffered damages as a consequence of the bad faith and unfair dealing of IDEXX.

WHEREFORE, VCF demands judgment against IDEXX for:

- a. Compensatory damages;
- b. Pre-judgment interest;
- c. Costs of suit;
- d. Attorney Fees; and
- e. Such other and further relief as the Court considers just and proper.

COUNT III
FRAUD IN THE INDUCEMENT
(AS TO THE CORNERSTONE AGREEMENT)

72. VCF repeats and re-alleges the allegations of paragraphs 1 through 71 as if fully set forth herein.

73. In January of 2014, at the North American Veterinary Conference, IDEXX, through its agents Greenlaw and Brooks-Pento requested that VCF install Cornerstone Practice Management Software, a software product sold by IDEXX, which was not currently utilized by VCF.

74. IDEXX sought the installation of the software so that Thompson and Doctor's Lectures would not include any third-party product, and the only purpose for VCF's change in hospital practice management software was to enhance the Lectures provided for IDEXX by agents of VCF.

75. IDEXX agreed to hire VCF for a minimum of 20 Lectures in 2014, at the 2013 compensation rate of \$1500 per lecture plus all expenses paid, in return for the agreement by VCF to purchase and install the Cornerstone software.

76. IDEXX specifically agreed to provide the Lectures at that number and rate because it offset the cost of the Cornerstone purchase entirely. IDEXX representatives, specifically Carla Greenlaw and Elizabeth Brooks-Pento, stated the 2014 Lecture compensation would cover the cost of the Software. Both Greenlaw and Brooks-Pento sought approval by telephone for the oral agreement, and Greenlaw stated the agreement was approved by her managers.

77. VCF entered into the Cornerstone purchase based on the false representations by IDEXX agents that VCF would have lectures in 2014 which offset the cost of the Cornerstone purchase. IDEXX, through its agent Greenlaw made these representations in order to induce VCF into purchasing the Cornerstone software, knowing they were false or with such reckless disregard as to whether they were true that malice is implied.

78. In reasonable reliance on IDEXX's representation, and being ignorant of its falsity, VCF on or about January 21, 2014 was induced to enter into the Cornerstone purchase with IDEXX. Had VCF known that the lecture promise was not truthful, VCF would not have entered into the Cornerstone purchase.

79. Had VCF known that the Cornerstone software was defective, it would not have executed the Cornerstone purchase.

80. VCF did not realize the promises were fraudulent until on or about January of 2015, when the year passed without the promised lecture income to VCF. Further, the

Cornerstone software never worked as designed or promised. By email communication March 10, 2016 to George Fennell, IDEXX Vice-President of Companion Animal Group, VCF terminated the Cornerstone Agreement for failure to perform. By that date, VCF discovered the falsity of IDEXX's representation and became entitled to void the contract on the ground of fraudulent misrepresentation and failure of performance by IDEXX.

81. As a direct and proximate result of the intentional misrepresentations by IDEXX, VCF has sustained damages.

82. VCF is further entitled to punitive damages as IDEXX's actions and/or omissions were done knowingly and intentionally.

WHEREFORE, VCF demands judgment against IDEXX for:

- a. Rescission of the Cornerstone Agreement;
- b. Compensatory and Punitive damages;
- c. Pre-judgment interest;
- d. Costs of suit; and
- e. Such other and further relief as the court considers just and proper

COUNT IV
BREACH OF IMPLIED COVENANT OF FITNESS FOR A PARTICULAR PURPOSE
(AS TO CORNERSTONE SOFTWARE)

83. VCF repeats and realleges the allegations of paragraphs 1 through 82 as if fully set forth herein.

84. Plaintiff purchased Cornerstone Software from IDEXX in January of 2014.

85. IDEXX sold Cornerstone software for the purpose of managing medical records and other veterinary practice management functions, and fully was aware of the reason VCF purchased the software.

86. VCF relied on IDEXX to provide a suitable software product that would perform as promised.

87. The Software provided by IDEXX failed to be fit for the particular purpose for which VCF purchased the software.

88. VCF has suffered damages caused by the software's failure to perform as advertised and as required.

WHEREFORE, VCF demands judgment against IDEXX for:

- a. Compensatory damages;
- b. Prejudgment interest;
- c. Costs of suit;
- d. Attorney fees, and
- e. Such other relief as the Court may find just and proper.

COUNT V
BREACH OF EXPRESS WARRANTY
(AS TO CORNERSTONE SOFTWARE)

89. VCF repeats and realleges the allegations of paragraphs 1 through 88 as if fully set forth herein.

90. VCF purchased Cornerstone Software from IDEXX in January of 2014.

91. IDEXX provided an express warranty by affirmation of fact that the product would work as advertised. Defendant modeled the software in trade shows attended by VCF and represented and warranted the software would perform without flaw.

92. The Defendants' software failed to conform to the description and affirmations made to VCF in respect to the functionality and performance of the software.

93. VCF suffered damages caused by the breach of the express warranty.

WHEREFORE, VCF demands judgment against IDEXX for:

- a. Compensatory damages;
- b. Prejudgment interest;
- c. Costs of suit;
- d. Attorney fees, and
- e. Such other relief as the Court may find just and proper.

COUNT VI
**VIOLATIONS OF THE FLORIDA UNFAIR
AND DECEPTIVE TRADE PRACTICES ACT**

94. VCF repeats and realleges the allegations of paragraphs 1 through 93 as if fully set forth herein.

95. This is an action for violation of Florida's Unfair and Deceptive Trade Practices Act pursuant to §501.201 et seq., Fla. Stat. (2016).

96. IDEXX engaged in unfair and oppressive billing practices, sending invoices to VCF for products not received nor requested. IDEXX billed VCF in excess of \$280,000 and added interest to the improper amount in a bid to force VCF to continue using IDEXX products and services.

97. IDEXX caused the unfair and oppressive billings to VCF in an improper and illegal effort to force VCF to continue to utilize the services and products of IDEXX.

98. Due to the continued improper billing practices, VCF has been damaged by the improper billing and interest charges, creating an uncertainty and inability to utilize other products and services while attempting to end the IDEXX relationship.

99. Further, IDEXX engaged in unlawful, unconscionable and deceptive practices with regard to sale of IDEXX lab equipment and execution of the Laboratory Diagnostic Agreement, and sale of the Cornerstone Software to VCF.

WHEREFORE, VCF demands judgment against IDEXX for:

- a. All compensatory and statutory damages;
- b. Legal interest;
- c. Costs of suit;
- d. Attorney fees, and
- e. Such other relief as the Court may find just and proper.

COUNT VII
ACCOUNTING

100. VCF repeats and realleges the allegations of paragraphs 1 through 99 as if fully set forth herein.

101. IDEXX alleges lost profits of at least \$247,000 as a result of VCF's alleged breach of the Laboratory Diagnostic Agreement.

102. VCF disputes liability and states IDEXX has sustained no damages whatsoever for the alleged breach.

103. VCF and IDEXX engaged in a business relationship spanning 10 years, and during such time IDEXX provided monthly statements for varying products including capital equipment purchases and supplies.

104. IDEXX has co-mingled monies payable for supplies with monies payable for capital equipment, hopelessly confusing VCF as to which payments are due for supplies and which payments are due for capital equipment purchases.

105. IDEXX utilizes mixed account billing, creating a complicated invoice that is not clear as to requirements for payment of supplies versus payment of capital equipment. Further, IDEXX has impermissibly credited payments for supplies which were due and payable with invoices for faulty equipment such as Cornerstone software or other rejected items which were not due and payable.

106. IDEXX and VCF share a fiduciary relationship, and have engaged in complex business transactions for more than a decade.

107. VCF has repeatedly requested clarification from IDEXX for invoice items without satisfactory explanations from IDEXX.

108. VCF has no other remedy at law, and demands an equitable accounting from IDEXX.

WHEREFORE, VCF demands judgment against IDEXX for:

- a. An accounting of all VCF invoices from 2011 to current,
- b. Costs of suit
- c. Prejudgment interest,
- d. Attorney Fees, and

- e. Such other relief as this Court may find just and proper.

COUNT VIII
DECLARATORY JUDGMENT

109. VCF repeats and realleges the allegations of paragraphs 1 through 108 as if set forth fully herein.

110. This is an action for declaratory judgment and damages that exceed \$15,000.

111. There is a bona fide, actual, present and practical need for the declaration.

112. VCF and IDEXX entered into a Laboratory Diagnostic Agreement, dated June 30, 2015, for services and products related to diagnostic laboratory testing for VCF.

113. The rights of VCF which present the current controversy are dependent upon the facts or law applicable and come from the second page of the Agreement. That page contains the following heading “What happens if you do not meet your obligations under this Agreement”. It goes on to say: “termination of this Agreement as well as repayment of any and all of the IDEXX Points Award, as well as repayment of any discounts or rebates received under this Agreement.”

114. VCF relies on the plain meaning of the language, which clearly allows for early termination of the Agreement, with repayment of any points awarded, and repayment of any discounts provided for products delivered under the Agreement.

115. IDEXX maintains an adverse and antagonistic interest in the relevant portion of the Agreement, instead insisting the Agreement does not allow for early termination absent liquidated damages in the amount of the projected minimum purchase over the aggregate of the contract term.

116. There are no other provisions in the Agreement that address cancellation, or liquidated damages, or any other provision on the topic of ending the Agreement.

117. In an effort to resolve the dispute over the termination clause, VCF repeatedly attempted to communicate with IDEXX, to no avail.

118. Instead of agreeing to early termination, IDEXX billed VCF for \$287,000 for products never delivered, nor requested; instead maintaining the position that cancellation of the contract is not contemplated within the Agreement and that VCF must purchase the Annual minimum purchase amount for the entirety of the term of the contract, despite the absence of any liquidated damages clause. Further, IDEXX continues to charge interest on the unpaid portion of the wrongful invoices.

119. The billing action, if proper, would completely bankrupt VCF and the failure of IDEXX to discharge their legal duties under the Agreement justifies the exercise of the Court's discretion in granting declaratory judgment in favor of VCF.

120. VCF is in doubt about its rights under the Agreement, stands to suffer substantial harm as a result of the antagonistic position of IDEXX, and is not seeking a declaratory judgment to propound a question for curiosity or mere legal advice.

WHEREFORE, VCF demands judgment against IDEXX:

- a. declaring VCF has the right to early termination of the Agreement without payment of \$287,000;
- b. Awarding prejudgment interest;
- c. Costs of suit;
- d. Attorney fees, and

e. Such other relief as the Court may find just and proper.

/s/ Gregory P. Hansel

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via electronic transmission from the ECF System for the District of Maine on this 17th day of April, 2017, upon the following:

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