

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

EDDIE FULINARA, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

GENMARK DIAGNOSTICS, INC., a
Delaware Company; and DOES 1 through
100, inclusive;

Defendants.

Case No.: 37-2019-00000877-CU-OE-CTL
[Consolidated with Case No. 37-2020-00015936-CU-
OE-CTL]

Honorable Ronald F. Frazier
Department C-65

CLASS ACTION

**~~[PROPOSED]~~ REVISED ORDER OF FINAL
APPROVAL AND JUDGMENT**

Hearing Date: February 4, 2022
Hearing Time: 8:30 a.m.
Hearing Place: Department C-65

Complaint Filed: January 7, 2019
FAC Filed: May 10, 2019
Trial Date: None Set

1 The Court, having read the papers filed regarding Plaintiffs Eddie Fulinara's and Steven
2 Soliven's ("Plaintiffs") Motion for Final Approval of Class Action Settlement, Class Counsel's Fees,
3 Class Counsel's Costs, and Incentive Awards, and after considering the papers submitted in support of
4 the motion, including the Joint Stipulation and Settlement Agreement of Class Action and PAGA
5 Claims ("Settlement Agreement," "Settlement," or "Agreement"), hereby FINDS AND ORDERS as
6 follows:

7 Plaintiffs and Defendants Genmark Diagnostics, Inc. ("Defendant") entered a Settlement
8 Agreement on or about April 21, 2021 to settle this class action lawsuit.

9 The Court entered an Order dated June 9, 2021 preliminarily approving the settlement of this
10 class action lawsuit ("Preliminary Approval Order"), consistent with the Code of Civil Procedure
11 section 382 and California Rule of Court 3.769, ordering notice to be sent to Class Members,
12 scheduling a Fairness Hearing for February 4, 2022, and providing Class Members with an
13 opportunity to object to the settlement or exclude themselves from the Class.

14 The Court held a Fairness Hearing on February 4, 2022 to determine whether to give final
15 approval to the settlement of this class action.

16 1. Incorporation of Other Documents. This Order of Final Approval and Judgment
17 ("Order and Judgment") incorporates the Settlement Agreement. Unless otherwise provided herein, all
18 capitalized terms in this Order and Judgment shall have the same meaning as set forth in the
19 Settlement Agreement.

20 2. Jurisdiction. Because adequate notice has been disseminated, and all Class Members
21 have been given the opportunity to request exclusion from the Class, the Court has personal
22 jurisdiction with respect to the claims of all Class Members. The Court has subject matter jurisdiction
23 over this class action, including jurisdiction to approve the settlement, grant final certification of the
24 Class, and dismiss the class action.

25 3. Final Class Certification. The Court finds that the Class satisfies all applicable
26 requirements of Code of Civil Procedure section 382, California Rule of Court 3.769, and due process.
27 Accordingly, the Court certifies, a Class consisting of all hourly non-exempt employees directly
28 employed by Defendant during the Class Period and all temporary non-exempt workers assigned to

1 Defendant by third-party staffing company The June Group, LLC dba QualStaff Resources
2 (“QualStaff”) during the Class Period (“Class” and “Class Members”). The Class Period is the period
3 from January 7, 2015 to May 31, 2021 (“Class Period”). There are currently nine hundred twenty-six
4 (926) Class Members who did not opt-out of the Settlement by submitting a valid request for exclusion
5 (“Settlement Class Members”).

6 4. Adequacy of Representation. As Class Counsel, Douglas Han and Shunt Tatavos-
7 Gharajeh of the Justice Law Corporation have fully and adequately represented the Class for purposes
8 of entering and implementing the Settlement and have satisfied the requirements of Code of Civil
9 Procedure section 382.

10 5. Class Notice. The Court finds that the Notice of Pendency of Class Action (“Class
11 Notice”) and its distribution to Class Members have been implemented pursuant to the Settlement
12 Agreement and this Court’s Preliminary Approval Order and that it:

13 a. constitute the best practicable notice to Class Members under the circumstances
14 of the class action;

15 b. constitute notice that was reasonably calculated, under the circumstances, to
16 apprise Class Members of: (i) the pendency of the class action; (ii) the material terms and provisions
17 of the Settlement and their rights under the Settlement; (iii) their right to object to any aspect of the
18 proposed Settlement (including final certification of the Class, the fairness, reasonableness and
19 adequacy of the settlement, the adequacy of the Class’s representation by Plaintiffs and Class
20 Counsel, and/or the award of Plaintiffs’ Incentive Awards, Class Counsel’s fees, and Class Counsel’s
21 costs); (iv) their right to exclude themselves from the Class and the Settlement; (v) their right to claim
22 an Individual Settlement Payment; (vi) their right to appear at the Settlement Fairness Hearing; and
23 (vii) the binding effect of the orders and judgment in the class action, whether favorable or
24 unfavorable, on all Settlement Class Members;

25 c. constitute notice that was reasonable, adequate, and sufficient to all Class
26 Members; and

27 d. constitute notice that fully satisfied the requirements of Code of Civil Procedure
28 section 382, California Rule of Court 3.769, and due process.

1 6. Final Settlement Approval. The terms and provisions of the Settlement Agreement
2 have been entered in good faith and are the product of arm's-length negotiations by experienced
3 counsel who have done a meaningful investigation of the claims in the dispute. The Settlement
4 Agreement and all its terms and provisions are fully and finally approved as fair, reasonable, adequate,
5 and in the best interests of the Parties. The Parties are hereby directed to implement the Settlement
6 Agreement according to its terms and provisions.

7 7. Binding Effect. The terms and provisions of the Settlement Agreement and this Order
8 and Judgment are binding on the Settlement Class Members, as well as their heirs, executors and
9 administrators, successors, and assigns, and those terms shall have res judicata and other preclusive
10 effect in all pending and future claims, lawsuits or other proceedings maintained by or on behalf of
11 any such persons, to the extent those claims, lawsuits, or other proceedings involve matters that were
12 or could have been raised in the class action and are encompassed by the release of the Settlement
13 Class Members' Class Released Claims as set forth in the Settlement Agreement. This Settlement will
14 have no binding effect upon, and provide no res judicata preclusion to, those Class Members who have
15 submitted requests for exclusion.

16 8. Class Released Claims. Upon the Effective Date, the claims released by the Settlement
17 Class Members and Plaintiffs will include all claims that were alleged or could have been alleged,
18 known or unknown, including those arising out of or based on the same or similar facts, in the
19 complaints and First Amended Complaints filed by Plaintiffs and/or any Private Attorneys General
20 Act of 2004 ("PAGA") letter sent to the California Labor and Workforce Development Agency
21 ("LWDA") by Plaintiffs prior to or during this case and which could have been alleged against the
22 Released Parties for work performed during the Class Period, including the following: (a) Failure to
23 Pay Wages for All Time Worked at Minimum Wage (LC §§ 204, 223, 558, 558.1, 1194, 1997); (b)
24 Failure to Pay Proper Overtime Wages for Daily Overtime Hours Worked and All Hours Worked (LC
25 §§ 204, 510, 558, 558.1 1194, 1198); (c) Failure to Authorize or Permit Meal Periods and Pay Meal
26 Period Premium Wages at the Regular Rate of Pay (LC §§ 512, 226.7); (d) Failure to Authorize or
27 Permit Rest Periods (LC § 226.7); (e) Failure to Provide Complete and Accurate Wage Statements
28 (LC §§ 226, 1174, 1174.5); (f) Failure to Timely Pay all Earned Wages and Final Paychecks Due at

1 Time of Separation of Employment (LC §§ 201-203); (g) Failure to Reimburse Business Expenses
2 (LC § 2802); (h) Unfair Business Practices (Business & Professions code §§ 17200 et seq.); and (i)
3 Violation of the Private Attorneys General Act of 2004 (Labor Code § 2698, et seq.), including those
4 claims set forth in Plaintiff Soliven’s letter to the LWDA for alleged violations of Labor Code sections
5 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194,
6 1194.2, 1197, 1197.1, 1198, 2800, 2802, and the IWC Wage Orders generally, as well as any and all
7 other claims under California common law, the Labor Code including but not limited to PAGA,
8 California Industrial Welfare Commission Wage Orders, and the Business and Professions Code
9 alleged in or that could have been alleged under the same or similar facts, allegations and/or claims
10 pleaded in this case (“Class Released Claims”).

11 a. Release of PAGA Claims. Upon the Effective Date, Plaintiffs and the PAGA Members
12 shall be deemed to have fully, finally, and forever released, settled, compromised,
13 relinquished and discharged any and all of the Released Parties of and from any and all
14 PAGA claims predicated on the facts and/or claims alleged, or that could have been
15 alleged, in this case and/or any PAGA letter sent to the LWDA by Plaintiffs or in any
16 way premised in whole or in part on any of the Class Released Claims set forth above
17 that arose at any time during the PAGA Period.

18 b. Release of Claims by Class Representatives. Upon the Effective Date, and as a
19 condition of receiving any portion of the Incentive Awards, the Class Representatives,
20 for themselves only, agree to the additional following General Release: In consideration
21 of Defendant’s promises and agreements as set forth herein, the Class Representatives
22 each fully release the Released Parties from any and all Class Released Claims and also
23 generally release and discharge the Released Parties from any and all any claims for
24 wages, bonuses, severance pay, vacation pay, penalties, employment benefits, stock
25 options, violation of any personnel or employment policy, any claims based on
26 discrimination, harassment, unlawful retaliation, violation of public policy, or damages
27 of any kind whatsoever, arising out of any common law torts, contracts, express or
28 implied, any covenant of good faith and fair dealing, any theory of wrongful discharge,

1 any theory of negligence, any theory of retaliation, any legal restriction on Defendant's
2 right to terminate the employment relationship, or any federal, state, or other
3 governmental statute, executive order, regulation or ordinance, or common law, or any
4 other basis whatsoever, to the fullest extent provided by law. Class Representatives
5 shall be deemed to have, and by operation of the Judgment shall have, expressly waived
6 and relinquished to the fullest extent permitted by law the provisions, rights, and
7 benefits of Section 1542 of the Civil Code, or any other similar provision under federal
8 or state law that purports to limit the scope of a general release.

9 c. Released Parties. The Released Parties encompass Defendant and any of its past,
10 present, and future direct or indirect parents, subsidiaries, predecessors, successors, and
11 affiliates, including but not limited to Clinical Micro Sensors, Inc. as well as each of its
12 or their past, present, and future officers, directors, employees, partners, members,
13 shareholders and agents, attorneys, insurers, reinsurers, and any individual or entity
14 which could be jointly liable with Defendant ("Released Parties").

15 9. Enforcement of Settlement. Nothing in this Order and Judgment shall preclude any
16 action to enforce the terms and provisions of the Settlement Agreement.

17 10. Plaintiffs' Incentive Awards. The Court finds that Incentive Awards in the amount of
18 \$10,000, to be paid by Defendant to each Plaintiff out of the Gross Settlement Amount, to be
19 reasonable and appropriate. Plaintiffs' Incentive Awards are to be paid pursuant to the terms and
20 provisions set forth in the Settlement Agreement.

21 a. The rationale for making incentive payments is that the class representatives should be
22 compensated for the expense and risk they have incurred in conferring a benefit on
23 other class members. Such incentive payments are appropriate if they are necessary to
24 induce individuals to participate in the suit. Criteria courts may consider include: (1)
25 the risk to the class representatives in commencing suit, both financial and otherwise;
26 (2) the notoriety and personal difficulties encountered by the class representatives; (3)
27 the amount of time and effort spent by the class representatives; (4) the duration of the
28 litigation; and (5) personal benefit (or lack thereof) enjoyed by class representatives.

1 b. The Court has reviewed Plaintiffs' declarations outlining their involvement in the
2 lawsuit. Given the risks inherent in their services as the Class Representatives, the
3 duration of the case and time involved, and the benefits created for the Class, the Court
4 approves the Incentive Awards in the amount of \$10,000 to each Plaintiff.

5 11. Class Counsel's Fees and Costs. The Court finds an award of Class Counsel's fees of
6 \$420,000, to be paid out of the Gross Settlement Amount by Defendant to Class Counsel, to be
7 reasonable and appropriate. The Court further finds that an award of actual litigation costs in the
8 amount of \$11,651.76, to be paid by Defendant to Class Counsel out of the Gross Settlement Amount,
9 to be reasonable and appropriate. Such fees and costs are to be paid pursuant to the terms and
10 provisions set forth in the Settlement. Defendant shall not be required to pay for any other attorneys'
11 fees and expenses, costs, or disbursements incurred by Class Counsel or any other counsel
12 representing Plaintiffs or Class Members, or incurred by Plaintiffs or Class Members, in connection
13 with or related in any manner to the class action, the Settlement, the administration of the Settlement,
14 and/or the Settlement Class Members' Class Released Claims.

15 a. The Court has an independent right and responsibility to review the requested Class
16 Counsel's fees and only award so much as it determines reasonable. (See *Garabedian*
17 *v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-28.) The Class
18 Counsel's fees requested by Class Counsel in the sum of \$420,000 is thirty-five percent
19 (35%) of the common fund created for the benefit of the Class Members and is
20 supported by use of the percentage-fee method. (See *Laffitte v. Robert Half*
21 *International, Inc.* (2016) 1 Cal.5th 480, 504.) Considering the excellent results
22 achieved for the Class, the financial risk taken by Class Counsel, the novel and difficult
23 nature of this litigation, the skill required to deal with these issues, percentage fees
24 award in other cases, and the contingent fees charged in private marketplace, the Court
25 finds that the request for the Class Counsel's fees is consistent with the legal
26 marketplace, is reasonable, and is approved.

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1 b. The Court has also reviewed the Declaration of Douglas Han regarding the costs
2 expended in the prosecution of this litigation. Under the terms of the Settlement,
3 Plaintiffs may seek reimbursement of up to \$25,000 in litigation costs. As stated above,
4 the Court finds that Plaintiffs have expended \$11,651.76 in litigation costs and that
5 such costs were reasonable. Therefore, the Court approves the payment of Class
6 Counsel's costs in the amount of \$11,651.76 from the common fund for the
7 reimbursement of Class Counsel's litigation costs.

8 12. Settlement Administrator's Costs. The Court finds that Settlement Administrator's
9 costs in the amount of \$12,500, to be paid by Defendant to the Settlement Administrator out of the
10 Gross Settlement Amount, to be reasonable and appropriate. The Settlement Administrator's costs are
11 to be paid pursuant to terms and provisions set forth in the Settlement Agreement.

12 a. The Court has reviewed the declaration of Meagan Brunner from Simpluris, Inc.
13 ("Simpluris"), the Court-approved Settlement Administrator. The Court finds that
14 notice was provided to the Class pursuant to the Preliminary Approval Order, that the
15 notice constitute the best practicable notice to the Class, and that the notice satisfied
16 due process. Simpluris has discharged its duties to provide notice to the Class. Thus,
17 the Court approves a payment for Settlement Administrator's costs in the amount of
18 \$12,500 for Simpluris' services in administering this settlement, including the mailing
19 of Individual Settlement Payments according to the terms of the Settlement Agreement.

20 13. PAGA Payment. The Court finds that PAGA Payment in the amount of \$60,000,
21 seventy-five percent (75%) of which (\$45,000) will be paid by Defendant to the LWDA out of the
22 Gross Settlement Amount and twenty-five percent (25%) of which (\$15,000) will be distributed to the
23 PAGA Members, to be reasonable and appropriate. The PAGA Payment is to be paid pursuant to the
24 terms and provisions set forth in the Settlement Agreement.

25 14. Funding of the Settlement. Within sixty (60) calendar days after the Effective Date,
26 Defendant shall transfer to the Settlement Administrator an amount equal to the Gross Settlement
27 Amount and the employer's share of payroll taxes. Within fourteen (14) calendar days of the transfer
28 of the Gross Settlement Amounts to the Settlement Administrator, and only upon the Effective Date

1 being met, the Settlement Administrator shall issue to each Settlement Class Member his/her/their
2 Individual Settlement Payment.

3 15. Fairness of the Settlement. As noted in the Preliminary Approval Order, the Settlement
4 is entitled to a presumption of fairness. In their moving papers, Plaintiffs contend that the proposed
5 Settlement was the product of arm's-length negotiations following extensive litigation, discovery, and
6 exchange of documentation relating to Plaintiffs' claims. The negotiations were facilitated with the
7 assistance of mediator Anthony F. Pantoni, an experienced and well-respected class action mediator.

8 a. Moreover, with respect to the benefit to the Class Members, Plaintiffs' moving papers
9 indicate that the *highest* Individual Settlement Payment will be approximately
10 \$3,112.71, and the *average* Individual Settlement Payment will be approximately
11 \$729.86 under the proposed allocation, which is based on the number of weeks Class
12 Members worked during the Class Period.

13 16. Uncashed Checks. Any portion of the Net Settlement Amount not cashed within one-
14 hundred eighty (180) days from the date of issuance of the check shall be paid to the following cy pres
15 recipients, selected by Defendant in accordance with Code of Civil Procedure section 384, after all
16 payments for the Settlement Administrator's costs, the Incentive Awards, Class Counsel's fees and
17 costs, and the PAGA have been completed: Justice Gap Fund, State Bar of California.

18 17. Modification of Settlement Agreement. The Settlement Class Members are hereby
19 authorized, upon approval of the Court, to agree to and adopt amendments to or modifications of the
20 Settlement Agreement, by a written instrument signed by counsel for all Parties or their successors.
21 Such amendments or modifications shall be consistent with this Order and Judgment and cannot limit
22 the rights of Settlement Class Members under the Settlement Agreement.

23 18. Retention of Jurisdiction. The Court has jurisdiction to enter this Order and Judgment.
24 This Court expressly retains jurisdiction for the administration, interpretation, effectuation, and/or
25 enforcement of the Settlement Agreement and of this Order and Judgment, and for any other necessary
26 purpose, including, without limitation:

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- 1 a. enforcing the terms and provisions of the Settlement Agreement and resolving any
2 disputes, claims, or causes of action in the class action that, in whole or in part, are
3 related to or arise out of the Settlement Agreement or this Order and Judgment;
4 b. entering such additional orders as may be necessary or appropriate to protect or
5 effectuate this Order and Judgment approving the Agreement, and permanently
6 enjoining Plaintiffs from initiating or pursuing related proceedings, or to ensure the fair
7 and orderly administration of this Settlement; and
8 c. entering any other necessary or appropriate orders to protect and effectuate this Court's
9 retention of continuing jurisdiction.

10 For the reasons set forth above, the Motion for Final Approval of Class Action Settlement,
11 Class Counsel's Fees, Class Counsel's Costs, and Incentive Awards is GRANTED. The Settlement
12 Administrator is directed to carry out the terms of the Settlement Agreement forthwith.

13 The Court sets a compliance hearing for **October 14, 2022 at 8:30 a.m.** in this department.
14 Plaintiffs shall file the Settlement Administrator's report on or before **October 5, 2022.**

15 THE PARTIES ARE HEREBY ORDERED TO COMPLY WITH THE TERMS OF THE
16 SETTLEMENT AGREEMENT. PURSUANT TO CALIFORNIA RULES OF COURT 3.769, THE
17 COURT HEREBY ENTERS FINAL JUDGMENT BASED UPON THE TERMS OF THIS ORDER
18 AND SETTLEMENT AGREEMENT AND, WITHOUT AFFECTING THE FINALITY OF THIS
19 MATTER, RETAINS EXCLUSIVE AND CONTINUING JURISDICTION TO ENFORCE THIS
20 ORDER, THE SETTLEMENT AGREEMENT, AND THE JUDGMENT THEREON.

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22 IT IS SO ORDERED.

23
24 DATED: 2/18/2022



25 HONORABLE RONALD F. FRAZIER
26 SUPERIOR COURT JUDGE
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PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is manderson@justicelawcorp.com

On February 24, 2022, I served the foregoing document described as

REVISED ORDER OF FINAL APPROVAL AND JUDGMENT

for the following case: **Fulinara v. Genmark Diagnostics, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM-770277-20**
Court Case No.: 37-2019-00000877-CU-OE-CTL
San Diego County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 24, 2022, at Pasadena, California.



Mariah Anderson