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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

WAYNE DOUGLAS GILLETTE, on
behalf of himself and all similarly situated,

Plaintiff,

v.

COPAN DIAGNOSTICS, INC.; and DOES
1-100, inclusive,

Defendants.

Case No.: CVRI2105284

CLASS and REPRESENTATIVE ACTION

**DECLARATION OF MATTHEW H. FISHER
IN SUPPORT OF MOTION FOR FINAL
APPROVAL OF CLASS SETTLEMENT and
ATTORNEY FEES and COSTS**

Assigned For All Purposes to the Hon. Harold W.
Hopp (Dept. 10)

Date: August 24, 2023

Time: 8:30 a.m.

Location: Dept. 10 (Hon. Harold W. Hopp)

Reservation ID# 413303880178

I, Matthew H. Fisher, hereby declare as follows:

1. I make this Declaration based on personal knowledge. If called and sworn as a witness, I would testify competently as to the facts in this Declaration.

2. I am an attorney admitted to practice law in the State of California.

3. I am a named Partner of Da Vega Fisher Mechtenberg, LLP ("DFM LLP").

4. DFM LLP is lead and only counsel for the Plaintiff in this Lawsuit. ("Class Counsel.")

5. I have been intimately involved in all aspects of this dispute and the resulting settlement. I make this declaration in support of Plaintiff's Motion for Final Approval of Class Settlement and Attorney Fees and Costs.

1
2 **I. LEAD COUNSEL BACKGROUND and COMPETENCY**

3 6. **DA VEGA | FISHER | MECHTENBERG LLP (“DFM LLP”)**: DFM LLP is a
4 small plaintiff-side contingency fee based law firm representing individuals who could not
5 otherwise afford legal counsel. Each case the firm takes, including this one, runs the risk of an
6 uncertain outcome and possibility of little or no recovery for the client or the firm. Many cases
7 the firm takes can require years of litigation and thousands of hours of attorney time and costs.
8 To represent our clients in this case on a contingent fee basis, our firm had to forego compensable
9 hourly work on other cases to devote the necessary time and resources to this case. In so doing,
10 our firm gave up work that a firm receives more immediate payment for in exchange for risky
11 contingent fee work in this case. This firm has previously invested in similar cases which resulted
12 in little or no recovery due to various issues, including but not limited to bankruptcy, change in
13 prevailing law, and/or lengthy appeals.

14 7. **Plaintiff’s Counsel Matthew H. Fisher**: I am a graduate of the University of
15 California, Berkeley (1998) and the USC Gould School of Law (2003), where I served on the Law
16 Review Staff. I became a member of the State Bar of California in 2003. From 2003 to 2006, I
17 worked in private practice for Pollak, Vida & Fisher in Los Angeles representing public entities
18 and insurance companies in bad faith litigation. From 2006 to 2012, I worked as an associate in
19 the nationally recognized law firm of Cappello & Noel LLP in Santa Barbara, California
20 representing plaintiffs in complex business litigation, civil rights, securities, and lender liability
21 suits. In 2012, I started my own law firm, Da Vega Fisher Mechtenberg LLP (“DFM LLP”),
22 originally with an office in the San Francisco Bay Area then later opening additional offices in
23 Santa Barbara, Ventura, and the Sacramento area. I am one of the firm’s two founding partners. I
24 personally manage the firm’s Folsom's office and travel back and forth between Sacramento and
25 the firm's Mountain View office in the Bay Area. DFM LLP has always been a Plaintiff-side
26 contingency based law firm representing clients predominantly in employment and personal injury
27 matters in both individual and class actions. DFM LLP is experienced counsel in matters such as
28 this and has worked on significant employment cases such as *Salvatierra v. Intuitive Surgical*,

1 *Inc.*, Santa Clara County Superior Court, Case No. 2014-1-CV-272069 (2016) (\$4.6M gross
2 settlement for class of 208 misclassified class member employees); *Gibbins/Leal v. Hismeh*
3 *Enterprises, Inc.*, Ventura County Superior Court, Case No. 56-2015-00468352 (2017) (\$1M
4 gross settlement for class of 4000+ delivery driver members reimbursements); *Sena v. Facebook,*
5 *Inc.*, San Mateo County Superior Court, Case No. 16CIV00496 (2018) (\$4.25M gross settlement
6 for class of 900+ class member employees for unpaid overtime wage); and *Magpiong v. CareLinx,*
7 San Mateo County Superior Court, Case No. 21-CIV-03038 (2022) (\$1.8 M gross settlement for
8 class of 2000+ class member employees for IC misclassification /unpaid overtime wage), to name
9 but a few. I have also worked on several appellate matters over the course of my career such as
10 *Pitzen v. Superior Court* (2004) 120 Cal.App.4th 1374 (collateral estoppel effect is afforded to
11 claims litigated and decided against a small claims plaintiff); *AREI II Cases* (2013) 216
12 Cal.App.4th 1004 (construing scope of aiding and abetting liability under California's securities
13 laws); and *Gruber v. Yelp Inc* (2020) 55 Cal.App.5th 591 (California Invasion of Privacy Act
14 covers one-way call recording)

15 **II. CLASS COUNSEL AWARD OF ATTORNEY FEES and COSTS**

16 8. **Common Fund Settlement:** In this matter DFM LLP negotiated a Class action
17 settlement providing a common settlement fund with a payout of **\$400,000 (Four Hundred**
18 **Thousand dollars)**. (Settlement Agreement §§ 1.6, 2.1). Class Counsel is seeking as a Fee Award
19 of 33% percentage of this common settlement fund. (Settlement Agreement § 2.2).

20 9. **Attorney Fees of 33% Percent of Common Fund is Reasonable:** Class Counsel
21 requests the Court grant its application for an award of attorneys' fees in the amount of **\$132,000**
22 **(One Hundred and Thirty Two Thousand dollars)**. This is equal to 33% of the Gross
23 Settlement Amount of \$400,000 created on behalf of the Class. (Settlement Agreement § 2.2).
24 The requested award is fair, reasonable, and well within the common range for attorney fees of
25 20% to 50% in a common fund settlement. The requested award also compares favorably to the
26 overall lodestar incurred to date (see below). Therefore, the DFM LLP respectfully requests
27 approval of the agreed upon fee award.
28

1 10. **Contingency Fee Matter:** As this is a contingency matter, Class Counsel litigated
2 this action without receiving any payment for their services or reimbursement of their costs
3 incurred for the benefit of the Class. To represent the Class on a contingent fee basis, Class
4 Counsel had to forego compensable hourly work or other contingency fee cases to devote the
5 necessary time and resources to this contingent case. In so doing, Class Counsel gave up work
6 that a firm receives more immediate payment for in exchange for risky class action contingency
7 fee work which could have paid the Class and its Counsel nothing. A number of difficult issues,
8 the adverse resolution of any one of which could have barred the successful prosecution of the
9 action, were present here. Attorneys' fees in this case were not only contingent but risky, with a
10 very real chance that Class Counsel would receive nothing at all for their efforts, having devoted
11 time and advancing costs. Class Counsel has previously invested in similar cases which resulted
12 in little or no recovery due to various issues, including but not limited to bankruptcy, failed
13 certification/decertification, other overlapping class cases, and/or lengthy appeals.

14 11. **Contingency Fee Market:** I am familiar with the contingent fee market
15 throughout California and in particular as it pertains to complex employer, wage and hour, and
16 class action litigation. On behalf of my firm, I have negotiated hundreds of contingency fee
17 agreements with Plaintiffs, including both individual matters and as representatives in class action
18 suits. Many of those agreements provide that counsel will receive between 33% to 40%+ of any
19 recovery that is obtained, and, in addition that counsel be reimbursed for the costs they incurred
20 out of the recovery amount. These are typical and standard percentages in employment-related
21 contingency fee agreements throughout California. The Class Members in this complex wage and
22 hour case would not be likely to obtain competent counsel in California, for any amount less than
23 these standard fee percentages. Class Counsel has also advanced all costs in this matter and not
24 been paid for any attorney's fees or costs to date.

25 12. **Class Counsel's Hours and Hourly Rates:** I will have worked on this matter for
26 43 hours at the time of this motion and my current billable rate as of 2022 is \$650/hr. for class
27 action work (\$650/hr. x 43 hours = \$27,950 in lodestar). This rate has been previously approved
28 for my class action work in prior cases.

13. **Class Counsel Lodestar Cross-Check:** I have reviewed my firm's lodestar in this matter and believe the charges are reasonable and were reasonably necessary to the conduct of the case. These rates are in line with the prevailing rates of attorneys in the California legal community for similar work. In this case, the reasonableness of the requested for \$132,000 in attorneys' fees is further supported by a cross-check using attorney's lodestar in this matter. Class Counsel has spent a significant amount of hours investigating, researching, and litigating this matter, including but not limited to the following: interviewing Plaintiffs and flushing out facts and issues; researching employer and causes of action; developing facts and investigating Defendant's ownership structure (Secretary of State, etc.); investigating and discussing job functions, duties, compensation, policies and procedures, etc.; regularly meeting and/or communicating with our clients who are the Class Representatives; drafting pleadings (complaint, case management statements, mediation briefs); drafting and responding to informal discovery; reviewing information produced in formal and informal discovery (payroll data, etc.); researching employee misclassification and various impact on class actions; participating in Court-ordered hearings and conferences; attending mediation; retention of expert witnesses; discussion with expert witnesses issues related to damage model calculations; preparing and analyzing damage models; negotiating the terms of the Settlement; reviewing and making changes to Settlement Agreement; and coordinating and overseeing all the administration of the Settlement. The contemporaneous billing records evidence that the attorneys' lodestar is \$135,325 (greater than the amount of fees requested) with additional fees still to be incurred for preparation and attending the final approval hearing, managing post approval settlement distribution with the claims administrator, responding to class member inquiries, and handling any potential appeal of the matter. As a result, the current lodestar amount understates the total attorneys' fees ultimately incurred in this action. Class Counsel lodestar crosscheck of attorney fees is as follows:

Attorney Name	Hours	Hourly Rate	Totals
Matthew S. Da Vega	124	\$750	\$93,000
Matthew H. Fisher	43	\$650	\$27,950
Ted Mechtenberg	23	\$625	\$14,375

TOTAL	190		\$135,325
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The requested fee award of \$132,000 represents a **negative multiplier**. Whereas “Multipliers of 1 to 4 are commonly found to be appropriate in complex class action cases.” *Destefano v. Zynga, Inc.*, 2016 WL 537946, at *21 (N.D. Cal. Feb. 11, 2016) (quoting *Hopkins v. Stryker Sales Corp.*, 2013 WL 496358, at *4 (N.D. Cal. Feb. 6, 2013)); see *Vizcaino v. Microsoft Corp.*, 290 F.3d United States District Court Northern District 1043, 1051 n.6 (9th Cir. 2002)(citing survey finding most multipliers range from 1.0 to 4.0). As a result, this Court should have no trouble concluding that an award is supported by the lodestar cross-check is fair and reasonable and is justified under California law. “[T]he lodestar method better accounts for the amount of work done, while the percentage of the fund method more accurately reflects the results achieved.” *Rawlings v. Prudential-Bache Properties, Inc.* (6th Cir. 1993) 9 F.3d 513, 516.

14. **Class Counsel Attorney Costs:** The Settlement Agreement permits up to \$20,000 in reimbursement of costs. (Settlement Agreement § 2.2). However, Plaintiff’s actual costs are only **\$18,150 (Eighteen Thousand One Hundred and Fifty dollars)**. Therefore, Class Counsel requests the Court award it \$18,150 in costs related to filing fees, service fees, mediation fees, travel costs, and expert fees which could not have been recovered if this case had been lost. Class Counsel was required to advance all costs in this litigation. In this type of litigation where the corporate defendant and their attorneys are well funded, this can prove to be very expensive, risky, and therefore cost prohibitive to many attorneys. The financial burdens undertaken by Plaintiff and Class Counsel in prosecuting this action on behalf of the Class were substantial. Plaintiff undertook the risk of liability for Defendant’s costs and even fees had this case not succeeded, as well as other potential negative financial ramifications from having come forward to sue Defendant on behalf of the Class. Accordingly, the contingent nature of the fee and the financial burdens on Class Counsel and Plaintiff also support the requested awards. The following list itemizes Class Counsel’s costs and expenses to date:

Filings/Service/Court Fees:	\$ 3,544
Travel (Flights, Lodging, Rentals, Meals - Plaintiff travel from East Coast to attend mediation in person):	\$ 4,046
Mediation Fees/Costs:	\$ 7,475

Experts Fees/Costs: \$ 3,085
TOTAL \$ 18,150

15. I am presently unaware of any opposition to the final approval of this settlement.

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

DATED: July 31, 2023

DA VEGA | FISHER | MECHTENBERG LLP



By: _____

Matthew H. Fisher
Attorneys for Plaintiff and Class