

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: 195443 NAME: Matthew S. Da Vega FIRM NAME: Da Vega Fisher Mechtenberg LLP STREET ADDRESS: 232 E. Anapamu St. CITY: Santa Barbara STATE: CA ZIP CODE: 93101 TELEPHONE NO.: 805.232.4471 FAX NO.: 877.535.9358 E-MAIL ADDRESS: mdavega@mdmflaw.com ATTORNEY FOR (name): Plaintiff Wayne Douglas Gillette	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Riverside STREET ADDRESS: 4050 Main Street MAILING ADDRESS: same CITY AND ZIP CODE: Riverside 92501 BRANCH NAME: Historic Courthouse	
PLAINTIFF/PETITIONER: WAYNE DOUGLAS GILLETTE DEFENDANT/RESPONDENT: COPAN DIAGNOSTICS, INC. OTHER:	CASE NUMBER: CVRI-2105284 JUDICIAL OFFICER: Hon. Harold Hopp
PROPOSED ORDER (COVER SHEET)	DEPT: 10

Revised # 020396507092

NOTE: This cover sheet is to be used to electronically file and submit to the court a proposed order. The proposed order sent electronically to the court must be in PDF format and must be attached to this cover sheet. In addition, a version of the proposed order in an editable word-processing format must be sent to the court at the same time as this cover sheet and the attached proposed order in PDF format are filed.

1. Name of the party submitting the proposed order:
Plaintiff WAYNE DOUGLAS GILLETTE
2. Title of the proposed order:
ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT
3. The proceeding to which the proposed order relates is:
 - a. Description of proceeding: HEARING RE: PLAINTIFFS MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT
 - b. Date and time: March 22, 2023 at 8:30 a.m.
 - c. Place: Riverside County Superior Court
Historic Court House (Dept 10 - Hon. Harold Hopp).
4050 Main Street, Riverside, CA 92501
4. The proposed order was served on the other parties in the case.

Matthew S. Da Vega

(TYPE OR PRINT NAME)



Matthew S. Da Vega

(SIGNATURE OF PARTY OR ATTORNEY)

CASE NAME:
Gillette v. Copan Diagnostics, Inc.

CASE NUMBER:

CVRI -2105284

**PROOF OF ELECTRONIC SERVICE
PROPOSED ORDER**

1. I am at least 18 years old and **not a party to this action.**

a. My residence or business address is (*specify*):

DA VEGA FISHER MECHTENBERG LLP, 232 E. Anapamu St., Santa Barbara, CA 93101

b. My electronic service address is (*specify*): mdavega@mdmflaw.com

2. I electronically served the *Proposed Order (Cover Sheet)* with a proposed order in PDF format attached, and a proposed order in an editable word-processing format as follows:

a. On (*name of person served*) (*If the person served is an attorney, the party or parties represented should also be stated.*):

C. Edward Langhammer, Jr. (attorney for Defendant Copan Diagnostics, Inc.)
Cozen O'Connor, 401 Wilshire Blvd., Suite 850, Santa Monica, CA 90401

b. To (*electronic service address of person served*): clanghammer@cozen.com

c. On (*date*): February 23, 2023

☐ Electronic service of the *Proposed Order (Cover Sheet)* with the attached proposed order in PDF format and service of the proposed order in an editable word-processing format on additional persons are described in an attachment.

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

Date: February 23, 2023

Matthew S. Da Vega

(TYPE OR PRINT NAME OF DECLARANT)



Matthew S. Da Vega

(SIGNATURE OF DECLARANT)

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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **COUNTY OF RIVERSIDE**

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

11 Plaintiff,

12 v.

13 COPAN DIAGNOSTICS, INC.; and DOES
14 1-100, inclusive,

15 Defendants.

Case No. CVRI-2105284

CLASS and REPRESENTATIVE ACTION

**[PROPOSED] ORDER RE PRELIMINARY
APPROVAL OF CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT AND PROVISIONAL
CLASS CERTIFICATION ORDER**

[Assigned To Hon. Harold W. Hopp,
Dept. 10]

Date: March 22, 2023

Time: 8:30 a.m.

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

Action Filed: November 19, 2021

FAC Filed: January 24, 2022

Reservation ID#: 020396507092

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21 On March 22, 2023, this Court heard Plaintiff's Motion for Preliminary Approval of
22 Class Action Settlement and provisional class certification under California Rule of Court 3.769,
23 as filed by Plaintiff Wayne Douglas Gillette (the "Plaintiff"). This Court reviewed the motion,
24 including the Joint Stipulation of Class Action Settlement and Release (the "Agreement,"
25 "Settlement," or "Settlement Agreement"). Based on this review, the hearing, and the findings
26 below, the Court finds good cause to GRANT the motion.
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28

1 **FINDINGS:**

2 **1.** Unless otherwise specified, defined terms in this Preliminary Approval of Class
3 and Representative Action Settlement and Provisional Class Certification Order (the
4 “Preliminary Approval Order”) have the same definition as the defined terms in the Agreement.

5 **2.** The Court determines there is sufficient evidence to suggest that the Agreement
6 (including the Class Representative Enhancement Payment, Class Counsel’s fees and costs, the
7 Settlement Administration Costs, and the allocation of payments to Settlement Class Members)
8 falls within the range of possible approval that could ultimately be given final approval by this
9 Court as fair, reasonable, and adequate, and that the final determination of these issues will be
10 made at the Final Approval Hearing (referred to in the Agreement as the “Fairness Hearing”).
11 More specifically, the Court finds on a preliminary basis that:

12 **(a)** The Settlement provides for a **Gross Settlement Amount of \$400,000**
13 **(Four Hundred Thousand Dollars)** that Defendants will pay into the settlement fund pursuant
14 to the terms and timing specified in the Agreement. The Settlement further provides that the Net
15 Settlement Fund shall be calculated by subtracting the following amounts from the total of the
16 Gross Settlement Amount:

- 17 (1) the Class Counsel Award (estimated at **\$132,000 in attorneys’ fees [33% of**
18 **\$400,000 Gross Settlement Amount]** and **\$20,000 in attorney costs**);
19 (2) all Settlement Administration Costs (estimated not to exceed **\$7,500**);
20 (3) the Class Representative Enhancement Payment (estimated at **\$10,000**); and
21 (4) the PAGA Penalty Amount (**\$5,000**) of which **75% (\$3,750)** is allocated to the
22 California Labor Workforce and Development Agency (“LWDA Payment”) and **25% (\$1,250)**
23 is allocated to the PAGA Group (“PAGA Group Amount”), all under the Private Attorneys
24 General Act of 2004 (“PAGA”)

25 The **Net Settlement Fund**, to be disbursed to Settlement Class Members (estimated at **25**
26 **individual class members**) who have not excluded themselves from the Settlement, is presently
27 anticipated to be **approximately \$225,500** (\$400,000 - \$132,000 [atty fees] - \$20,000 [costs] -
28 \$7,500 [Settlement Administration Costs] - \$10,000 [Class Rep Enhancement Payment] - 5,000

1 [total PAGA Penalty payment which includes \$3,750 LWDA payment and \$1,250 as PAGA
2 Group Amount]](thus the average Settlement Class Member shall receive **approximately \$9,020**
3 [\$225,500 div. 25 = \$9,020]) not including their portion of PAGA Group Payment. If the
4 Settlement is approved, the full amount of the Net Settlement Fund will be paid out to Settlement
5 Class Members who do not exclude themselves from the Settlement in accordance with the terms
6 of the Agreement.

7 (b) The Agreement is fair, adequate and reasonable as to all Class Members
8 when balanced against the probable outcome of further litigation relating to liability and
9 damages issues.

10 (c) Settlement at this time will avoid substantial additional costs by all parties,
11 as well as avoid the delay and risks that would be presented by the further prosecution of this
12 class action.

13 (d) The Settlement does not improperly grant preferential treatment to class
14 representatives or segments of the class, supporting a presumption of fairness.

15 (e) Adequate inquiry, investigation and discovery have been conducted so
16 that counsels for the Parties are able to reasonably evaluate their respective positions, supporting
17 a presumption of fairness.

18 (f) The Agreement has been reached as a result of intensive, serious and non-
19 collusive, arms-length negotiations, supporting a presumption of fairness.

20 3. The Court finds that distribution of the Notice of Class Action Settlement,
21 substantially in the form attached hereto as **Exhibit 1 - Class Notice**, via first class U.S. postal
22 mail to Class Members (a) constitutes the best notice practicable under the circumstances, (b)
23 constitutes valid, due, and sufficient notice to all members of the Class, and (c) complies fully
24 with the requirements of California Code of Civil Procedure section 382, California Rules of
25 Court 3.766 and 3.769, the California and United States Constitutions, and other applicable law.

26 4. For settlement purposes only, the Court finds the Class is so numerous that
27 joinder of all Class Members is impracticable, Plaintiff's claims are typical of the Class's claims,
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1 there are questions of law and fact common to the Class, which predominate over any questions
2 affecting only individual Class Members, the Plaintiff is an adequate representative of the Class,
3 and class certification is superior to other available methods for the fair and efficient
4 adjudication of the controversy.

5 **5.** Pursuant to Labor Code section 2699, subdivision (1)(2), the Court notes that
6 Plaintiff provided a copy of the Agreement to the LWDA at the same time that Plaintiff provided
7 it to the Court, and the Court has reviewed the Settlement's provisions relating to settlement of
8 claims under PAGA. The Court tentatively finds that the **payment of \$5,000 for settlement of**
9 **any and all claims for which civil penalties under PAGA may be sought** or are otherwise
10 available (the "PAGA Penalty Amount"), is fair and adequate. Further, the Court tentatively
11 finds that the PAGA Penalty Payment satisfies the requirements of California Labor Code
12 section 2699, subdivision (i), because **\$3,750 (75%) of the PAGA Penalty Amount** is allocated
13 to the LWDA ("LWDA Payment") for the enforcement of labor laws and education of
14 employers, and **\$1,250 (25%) is allocated for distribution to the PAGA Group**, ("PAGA
15 Group Amount") i.e., the allegedly "aggrieved employees." Each of the PAGA Group members
16 will also be paid approximately **\$50** from the PAGA Group Amount [$\$1,250 \div 25 = \50].
17 This amount is in addition to the amount they are paid as a Settlement Class Member (See
18 Section 2(a), above).

19 **IT IS ORDERED THAT:**

20 **1. Settlement Preliminary Approval.** The Settlement Agreement and the Notice of
21 Class Action Settlement are preliminarily approved. The Court further preliminarily approves
22 the formulas provided in the Settlement for calculating Individual Settlement Payments to the
23 Class Members using a Workweek-based calculation methodology.

24 **1.1 Provisional Certification.** The Settlement Class is provisionally certified for
25 settlement purposes only as a class of: "All current and former Field Service Engineer
26 employees who physically performed worked for Defendant in the State of California from
27 November 19, 2017, until the entry of judgment." "Class Member(s)" refers to a member(s) of
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1 the Class” The “Class Period” refers to the period of time from November 19, 2017 through the
2 date the Court grants preliminary approval of the Settlement. Excluded from the Settlement
3 Class are putative Class Members who submit a timely and valid Request for Exclusion (e.g.
4 via the attached Exhibit 3 - Request for Exclusion Form) and as defined by the Settlement
5 Agreement.

6 **2. Appointment of Class Representative and Class Counsel.** Plaintiff Wayne
7 Douglas Gillette is conditionally appointed as the Class Representative to implement the Parties’
8 Settlement in accordance with the Agreement. Matthew S. Da Vega and Matthew Fisher of
9 Da Vega Fisher Mechtenberg LLP are conditionally appointed as Class Counsel. Class Counsel
10 is conditionally authorized to act on behalf of the Class with respect to all acts or consents
11 required by, or which may be given, pursuant to the Settlement, and such other acts necessary to
12 finalize the Settlement Agreement and its terms. Any Class Member may enter an appearance
13 through his or her own counsel at such Class Member’s own expense. Any Class Member who
14 does not enter an appearance or appear on his or her own behalf will be represented by Class
15 Counsel for settlement purposes only. Plaintiff and Class Counsel must fairly and adequately
16 protect the Class’s interests.

17 **3. Appointment of Settlement Administrator.** CPT Group, Inc. is hereby
18 appointed as the Settlement Administrator for this case.

19 **4. Provision of Class Notice.** Within ten (10) calendar days after entry of this
20 Preliminary Approval Order, Defendant shall provide the Class List to the Settlement
21 Administrator. On or before thirty (30) calendar days of entry of this Preliminary Approval
22 Order, the Settlement Administrator shall mail the Notice of Class Action Settlement (which
23 shall be substantially similar to the form attached hereto as Exhibit 1- Class Notice to all Class
24 Members via regular First-Class U.S. Mail in the manner specified under the Settlement
25 Agreement.

26 **5. Response Deadline.** The Response Deadline shall be **forty-five (45) calendar**
27 **days** from the initial mailing of the Class Notice to Class Members pursuant to Settlement
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1 Agreement. In the event of a re-mailed Class Notice, the Response Deadline will be extended
2 an additional fifteen (15) calendar days for that individual Class Member.

3 **6. Objection to Settlement.** Settlement Class Members who have not submitted a
4 timely and valid Request for Exclusion pursuant to the Settlement Agreement and who want to
5 object to the Agreement must sign and submit by U.S. Mail or other delivery service a valid
6 written Objection (e.g. via the attached **Exhibit 3 - Objection Form**) to the Settlement
7 Administrator on or before the Response Deadline. The Settlement Administrator will provide
8 copies of all such Objections to Class Counsel and Defendant's counsel weekly and will also
9 provide a Final Response Report within five (5) calendar days of the Response Deadline. For an
10 Objection to be valid, it must: (a) state the case name and number of the Action (b) contain the
11 Class Member's name, current mailing address, most current telephone number, and last four
12 digits of his or her Social Security number, (c) state the basis for the objection, (d) be signed
13 by the Class Member, (e) be submitted to the Settlement Administrator at the address specified
14 in the Class Notice; and (f) be submitted with proof of the submission date (such as a U.S.
15 Postal Service postmark or another delivery service date stamp) on or before the Response
16 Deadline. The date the Objection is sent, as evidenced by the postmark or other delivery service
17 date stamp, shall be the exclusive means to determine whether an Objection has been timely
18 submitted. If a Class Member intends to speak at the Final Approval Hearing, he or she should
19 (although they are not required to) file a "notice of intention to appear" with the Court and
20 provide a copy of this notice and their Objection to counsel for both Parties. Any Settlement
21 Class Member will be permitted to appear and speak at the Final Approval Hearing in order to
22 have an Objection heard by the Court.

23 **7. Failure to Object to Settlement.** Class Members who fail to timely object to the
24 Settlement Agreement in the manner specified above will: (1) be deemed to have waived their
25 right to object to the Agreement; and (2) be foreclosed from objecting (whether by appeal or
26 otherwise) to the Agreement.
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1 **8. Requesting Exclusion (Opt Out).** Any Class Member wishing to be excluded
2 (aka “opt-out”) from the Class Settlement must sign and submit by U.S. Mail or other delivery
3 service a valid written Request for Exclusion (e.g. via the attached **Exhibit 2 - Request for**
4 **Exclusion Form**) to the Settlement Administrator on or before the Response Deadline
5 containing all the information required by the Agreement. To be valid, the Request for
6 Exclusion must: (a) state the case name and number of the Action; (b) set forth the name,
7 address, and telephone number of the Class Member requesting exclusion; (c) be signed by the
8 Class Member; (d) be addressed to the Settlement Administrator; and (e) be postmarked on or
9 before the Response Deadline. The date the Request for Exclusion is sent, as evidenced by the
10 postmark or other delivery service date stamp, shall be the exclusive means to determine
11 whether a Request for Exclusion has been timely submitted.

12 **9. Workweek Disputes.** If a Settlement Class Member wishes to dispute the
13 number of Workweeks with which he or she has been credited, the Settlement Class Member
14 must submit to the Settlement Administrator, by U.S. Mail or other delivery service, a
15 Workweek Dispute (e.g. via the attached **Exhibit 4 - Workweek Dispute Form**) on or before
16 the Response Deadline. The Workweek Dispute must: (a) state the case name and number of
17 the Action (b) set forth the Class Member’s name, address, and telephone number; (c) be
18 signed by the Class Member; (d) include any documentary evidence showing that the
19 Workweek information is inaccurate, and (e) be postmarked or submitted to the Settlement
20 Administrator on or before the Response Deadline. The submission date is deemed to be, in the
21 case of submission by U.S. Mail or other delivery service, the date the Workweek Dispute is
22 sent, as evidenced by the postmark or other delivery service date stamp.

23 **10. Termination.** If the Agreement terminates, the following will occur: (a) the
24 Preliminary Approval Order, and/or Final Approval Order and Judgment, and all of its or their
25 provisions will be vacated by its or their own terms, including, but not limited to, vacating
26 conditional certification of the Class; (b) Plaintiff will stop functioning as the Class
27 Representative and Class Counsel will stop serving as counsel for the proposed class; and (c) the
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1 Action will revert to its previous status in all respects as it existed immediately before the Parties
2 executed the Memorandum of Understanding. No term or draft of the Memorandum of
3 Understanding or the Settlement Agreement, or any part of the Parties' settlement discussions,
4 negotiations or documentation will have any effect or be admissible into evidence for any
5 purpose in the Action or any other proceeding. This Preliminary Approval Order will not waive
6 or otherwise impact the Parties' rights or arguments.

7 **11. No Admissions.** Nothing in this Preliminary Approval Order is, or may be
8 construed as, an admission or concession on any point of fact or law by or against any Party.

9 **12. Stay of Dates and Deadlines.** All discovery and pretrial proceedings and
10 deadlines in the Action are stayed and suspended until further notice from the Court, except for
11 such actions as are necessary to implement the Agreement and this Preliminary Approval Order.

12 **13. Final Approval Hearing.** On [REDACTED], at [REDACTED] am/pm,
13 this Court will hold a Final Approval Hearing to determine whether the Agreement should be
14 finally approved as fair, reasonable, and adequate. Plaintiff's Motion for Final Approval of the
15 Settlement and all papers supporting the Class Counsel Award and Class Representative
16 Enhancement Payment must be filed by [REDACTED].
17 Any additional papers supporting final approval, including the Settlement Administrator
18 declaration and any response to Objections to the Agreement must be filed by no later than
19 [REDACTED].

20 **14.** The Court reserves the right to adjourn or continue the date of the Final Approval
21 Hearing and all dates provided for in the Agreement without further notice to the Class, and
22 retains jurisdiction to consider further applications concerning the Settlement. If the Final
23 Approval Hearing Date is continued to another date the Settlement Administrator will give
24 notice to any objecting party of the continuance and new hearing date.

25 **IT IS SO ORDERED.**

26
27 DATED: _____

28 _____
JUDGE OF THE SUPERIOR COURT