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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 S. DA VEGA
IN SUPPORT OF PLAINTIFFS' 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 S. Da Vega, 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 at Da Vega Fisher Mechtenberg, LLP ("DFM LLP").

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

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

4 **I. LEAD COUNSEL BACKGROUND and COMPETENCY**

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

16 7. **Plaintiff's Lead Counsel Matthew S. Da Vega:** I am a graduate of the
17 University of California, Santa Barbara (1993) and the University of San Francisco School of
18 Law (1997). I became a member of the State Bar of California in 1998. After passing the bar I
19 started working in private practice as a Plaintiff's attorney. During my entire career I have
20 always practiced as a Plaintiff's lawyer representing individuals and/or groups of individuals,
21 specializing in employment, personal injury, mass torts, and product defect matters. I have done
22 so now for approximately 24 years. I first worked for Brayton & Purcell in Novato, CA
23 representing individuals injured from exposure to asbestos and other toxins. I then worked for
24 the class action firm of Lieff Cabraser Heimann & Bernstein in San Francisco, CA representing
25 individuals and class members in mass torts, product defects, and in employment matters. I then
26 worked for the firm of Cappello & Noel in Santa Barbara, again representing individual and class
27 action Plaintiffs in employment claims, lender liability, and antitrust matters. In 2012, I started
28 my own law firm, Da Vega Fisher Mechtenberg LLP ("DFM LLP"), originally with an office in

1 the San Francisco Bay Area then later opening additional offices in Santa Barbara, Ventura, and
2 the Sacramento area. I am one of the firm's two founding partners and the current managing
3 partner. I personally manage the firm's Mt. View office and Santa Barbara office and travel back
4 and forth between the two on a regular basis. I currently have cases all over the state of
5 California including as far north as Sonoma County and as far South as San Diego County and as
6 far east as Stanislaus County. The majority of my practice and cases are in the San Francisco
7 South Bay area although I maintain my primary residence in Santa Barbara, California. DFM
8 LLP has always been a Plaintiff-side contingency based law firm representing clients
9 predominantly in employment and personal injury matters in both individual and class actions.
10 DFM LLP is experienced counsel in matters such as this and has worked on significant
11 employment cases such as *Salvatierra v. Intuitive Surgical, Inc.*, Santa Clara County Superior
12 Court, Case No. 2014-1-CV-272069 (2016) (\$4.6M gross settlement for class of 208
13 misclassified class member employees); *Gibbins/Leal v. Hismeh Enterprises, Inc., Ventura*
14 *County Superior Court*, Case No. 56-2015-00468352 (2017) (\$1M gross settlement for class of
15 4000+ delivery driver members reimbursements); *Sena v. Facebook, Inc., San Mateo County*
16 *Superior Court*, Case No. 16CIV00496 (2018) (\$4.25M gross settlement for class of 900+ class
17 member employees for unpaid overtime wage); *Fregoso v. Eat Club, Inc.*, Santa Clara County
18 Superior Court, Case No. 18-CV-330433 (2021) (\$900K gross settlement for class of 1815 class
19 member employees for unpaid overtime wages); and *Magpiong v. CareLinx, Inc.*, San Mateo
20 County Superior Court, Case No. 21-CIV-03038 (2022)(\$1.9M gross settlement for a class of
21 2058 Nurses for under-paid overtime wages and misclassification as independent contractors).

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

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

27 9. **Attorney Fees of 33% Percent of Common Fund is Reasonable:** Class Counsel
28 requests the Court grant its application for an award of attorneys' fees in the amount of **\$132,000**

1 **(One Hundred and Thirty Two Thousand dollars).** This is equal to 33% of the Gross
2 Settlement Amount of \$400,000 created on behalf of the Class. (Settlement Agreement § 2.2).
3 The requested award is fair, reasonable, and well within the common range for attorney fees of
4 20% to 50% in a common fund settlement. The requested award also compares favorably to the
5 overall lodestar incurred to date (see below). Therefore, the DFM LLP respectfully requests
6 approval of the agreed upon fee award.

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

21 11. **Contingency Fee Market:** I am familiar with the contingent fee market
22 throughout California and in particular as it pertains to complex employer, wage and hour, and
23 class action litigation. On behalf of my firm, I have negotiated hundreds of contingency fee
24 agreements with Plaintiffs, including both individual matters and as representatives in class
25 action suits. Many of those agreements provide that counsel will receive between 33% to 40%+
26 of any recovery that is obtained, and, in addition that counsel be reimbursed for the costs they
27 incurred out of the recovery amount. These are typical and standard percentages in
28 employment-related contingency fee agreements throughout California. The Class Members in

1 this complex wage and hour case would not be likely to obtain competent counsel in California,
2 for any amount less than these standard fee percentages. Class Counsel has also advanced all
3 costs in this matter and not been paid for any attorney's fees or costs to date.

4 12. **Class Counsel's Hours and Hourly Rates:** I will have worked on this matter
5 for 124 hours at the time of this motion and my current billable rate as of 2022 is \$750/hr. for
6 class action work (\$750/hr. x 124 hours = \$93,000 in lodestar). Matthew H. Fisher is an equity
7 partner of the DFM LLP and worked 43 hours on this case and his billing rate is \$650/hr. for
8 class action work (\$650/hr. x 43 hours = \$27,950 in lodestar). (See Declaration of Matthew H.
9 Fisher ISO of Motion). Ted D. Mechtenberg is an equity partner of the DFM LLP and worked
10 23 hours on this case and his billing rate is \$625/hr. for class action work (\$625/hr. x. 23 hours
11 = \$14,375 in lodestar). (See Declaration of Ted D. Mechtenberg ISO of Motion). These rates
12 are comparable to, but are less than, those of counsel with the same education and experience in
13 the relevant legal communities in which I practice including the San Francisco Bay Area and
14 Southern California. Attached are various surveys of billing rates showing higher hourly rates
15 than DFM LLP currently charges for attorneys with less experience. (See Exhibits 4, 5, and 6).

16 13. **Class Counsel Lodestar Cross-Check:** I have reviewed my firm's lodestar in
17 this matter and believe the charges are reasonable and were reasonably necessary to the conduct
18 of the case. These rates are in line with the prevailing rates of attorneys in the California legal
19 community for similar work. In this case, the reasonableness of the requested for \$132,000 in
20 attorneys' fees is further supported by a cross-check using attorney's lodestar in this matter.
21 Class Counsel has spent a significant amount of hours investigating, researching, and litigating
22 this matter, including but not limited to the following: interviewing Plaintiffs and flushing out
23 facts and issues; researching employer and causes of action; developing facts and investigating
24 Defendant's ownership structure (Secretary of State, etc.); investigating and discussing job
25 functions, duties, compensation, policies and procedures, etc.; regularly meeting and/or
26 communicating with our clients who are the Class Representatives; drafting pleadings
27 (complaint, case management statements, mediation briefs); drafting and responding to informal
28 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

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.

1 14. **Class Counsel Attorney Costs:** The Settlement Agreement permits up to
2 \$20,000 in reimbursement of costs. (Settlement Agreement § 2.2). However, Plaintiff's actual
3 costs are only **\$18,150 (Eighteen Thousand One Hundred and Fifty dollars)**. Therefore, Class
4 Counsel requests the Court award it \$18,150 in costs related to filing fees, service fees, mediation
5 fees, travel costs, and expert fees which could not have been recovered if this case had been lost.
6 Class Counsel was required to advance all costs in this litigation. In this type of litigation where
7 the corporate defendant and their attorneys are well funded, this can prove to be very expensive,
8 risky, and therefore cost prohibitive to many attorneys. The financial burdens undertaken by
9 Plaintiff and Class Counsel in prosecuting this action on behalf of the Class were substantial.
10 Plaintiff undertook the risk of liability for Defendant's costs and even fees had this case not
11 succeeded, as well as other potential negative financial ramifications from having come forward
12 to sue Defendant on behalf of the Class. Accordingly, the contingent nature of the fee and the
13 financial burdens on Class Counsel and Plaintiff also support the requested awards. The
14 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
<u>TOTAL</u>	<u>\$ 18,150</u>

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

20 16. Attached hereto as **Exhibit 1** is a true and correct copy of the Court's April 25,
21 2023 Preliminary Approval of Class and Representative Action Settlement and Provisional Class
22 Certification Order ("Preliminary Approval Order").

23 17. Attached hereto as **Exhibit 2** is a true and correct copy of the Declaration of
24 Veronica Olivares (on behalf of CPT Group, Inc.) with Respect to Notification and
25 Administration ("CPT Decl.").

26 18. Attached hereto as **Exhibit 3** is the true and correct copies of the Declaration of
27 Class Representative Wayne Douglas Gillette.
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1 19. Attached hereto as **Exhibit 4** is a true and correct copy of the NALFA 2020
2 Litigation Hourly Rate Range Growth (demonstrating that average rates for lawyers who have
3 been practicing for 21-24 years [i.e. Plaintiff's counsel Matthew S. Da Vega] are between
4 \$751-\$1000/hour and from 17-20 years [i.e. Plaintiff's counsel Matthew H. Fisher and Ted
5 Mechtenberg] are between \$651-900/hour).

6 20. Attached hereto as **Exhibit 5** is a true and correct copy of the Laffey Matrix
7 (demonstrating current average rates for lawyers practicing 20+ years at \$919/hour and those
8 practicing 11-19 years at \$764/hour).

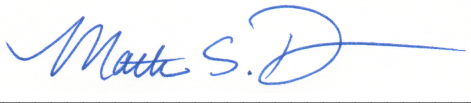
9 21. Attached hereto as **Exhibit 6** is a true and correct copy of National Law Journal
10 Billing Survey 2017 (demonstrating the average partner rates at various California defense firms
11 in 2017 were: Cooley LLP (\$1,100/hr.), Sheppard Mullin (\$760/hr.), Lobel Weiland Golden
12 Friedman LLP (\$750/hr.), Winthrop Couchot Golubow Hollander, LLP (\$595/hr.), Morris,
13 Polich & Purdy, LLP (\$575./hr.); Leslie Cohen Law PCS (\$575/hr.)(See 2017 - National Law
14 Journal Annual Survey on Billing Rates).

15 22. Attached hereto as **Exhibit 7** is a true and correct copy of the Proof of Submission
16 to the LWDA of this motion and the supporting papers via the LWDA's website.

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

19
20 **DATED:** July 31, 2023

DA VEGA | FISHER | MECHTENBERG LLP

21
22 By: 

23 Matthew S. Da Vega
24 Attorneys for Plaintiffs and Class
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