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Attorneys for Plaintiff and Proposed Plaintiffs Class

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.: CVRI-2105284

CLASS and REPRESENTATIVE ACTION

**DECLARATION OF MATTHEW S.
DA VEGA IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

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

Date: March 22, 2023

Time: 8:30 a.m.

Location: Dept. 10 (Hon. Harold Hopp)

Reservation ID#: 020396507092

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.")

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 Preliminary Approval of Class Settlement.

1 **I. SETTLEMENT AGREEMENT**

2 6. Attached hereto as **Exhibit 1** is a true and correct copy of the **Joint Stipulation of**
3 **Class Action Settlement Agreement and Release (“Settlement Agreement”)** executed between
4 the Parties. The Settlement Agreement includes the following draft exhibits for the Court’s
5 consideration:

6 **Exhibit A: Second Amended Complaint** (a Stipulation and [Proposed] Order
7 Requesting Plaintiff Leave to File this Second Amended Complaint, for settlement
8 purposes only, will be simultaneously filed and served with this Motion);

9 **Exhibit B: [Proposed] Final Approval Order and Judgment;**

10 **Exhibit C: Notice of Class Action Settlement;**

11 **Exhibit D: Workweek Dispute Form;**

12 **Exhibit E: Request for Exclusion Form;**

13 **Exhibit F: Objection Form;**

14 **Exhibit G: [Proposed] Preliminary Approval Order;**

15
16 **II. LEAD COUNSEL BACKGROUND**

17 7. I am a graduate of the University of California, Santa Barbara (1993) and the
18 University of San Francisco School of Law (1997). I became a member of the State Bar of
19 California in 1998. After passing the bar I started working in private practice as a Plaintiff’s
20 attorney. During my entire career I have always practiced as a Plaintiff’s lawyer representing
21 individuals or groups of individuals, specializing in employment, personal injury, mass torts, and
22 product defect matters. I have done so now for approximately 23 years. I first worked for
23 Brayton & Purcell in Novato, CA representing individuals injured from exposure to asbestos and
24 other toxins. I then worked for Lieff Cabraser Heimann & Bernstein in San Francisco
25 representing individuals in mass torts, product defect, and employment matters both individually
26 and in class actions, including wage and hour class claims. I then worked for the firm of Cappello
27 & Noel in Santa Barbara, again representing plaintiffs in individual and class actions, including
28 employment claims, lender liability, and antitrust matters. A case of particular note that I

1 performed a substantial amount of work on was the Unruh Civil Rights Act class action trial case
2 of *Jones, et. al. v. Wells Fargo Bank* (Los Angeles Superior Court, Case No. BC337821, March
3 23, 2011) in which the jury determined that Wells Fargo discriminated based on race, with respect
4 to 880 home loans for a total award to the class of \$3.52M. The Court also awarded nearly \$15M
5 in attorney's fees.

6 8. In 2012 I then started my own Plaintiff's firm, Da Vega Fisher Mechtenberg LLP
7 with partners, Matthew Fisher (UC Berkeley undergrad and USC School of Law) and Ted
8 Mechtenberg (Notre Dame undergrad and Washington University School of Law, St. Louis),
9 whom each have over 15 years of experience practicing law. We are experienced counsel in
10 matters such as this and have recently settled similar matters as lead counsel - *Salvatierra v.*
11 *Intuitive Surgical, Inc.*, Santa Clara County Superior Court, Case No. 2014-1-CV-272069 (2016)
12 (\$4.6M gross settlement for class of 208 misclassified class member employees for unpaid
13 overtime wages); *Gibbins/Leal v. Hismeh Enterprises, Inc.*, Ventura County Superior Court, Case
14 No. 56-2015-00468352 (2017) (\$1M gross settlement for class of 4000+ delivery driver members
15 reimbursements); *Sena v. Facebook, Inc.*, San Mateo County Superior Court, Case No. 16-CIV-
16 00496 (2018) (\$4.25M gross settlement for class of 952 class member employees for unpaid
17 overtime wages); *Fregoso v. Eat Club, Inc.*, Santa Clara County Superior Court, Case No. 18-CV-
18 330433 (2021) (\$900K gross settlement for class of 1815 class member employees for unpaid
19 overtime wages); *Magpiong v. CareLinx, Inc.*, San Mateo County Superior Court, Case No. 21-
20 CIV-03038 (2022)(\$1.9M gross settlement for a class of 2058 Nurses for under-paid overtime
21 wages and misclassification as independent contractors).

22 **III. PROCEDURAL HISTORY**

23 9. **November 19, 2021 (Original Complaint Filed and PAGA Notice Sent):**
24 Plaintiff filed his original complaint and provided written PAGA notice (California Labor Code
25 §§ 2699 *et seq.*) via online submission and certified mail to the Labor and Workforce
26 Development Agency ("LWDA") and to Defendant (LWDA Case No.: LWDA-CM-852456-21).
27 It included the specific provisions of the Labor Code alleged to have been violated, and the facts
28 and theories to support the alleged violations, pursuant to Labor Code §2699.3.

1 Plaintiff's complaint alleged 5 causes of action, including:

- 2 1. Failure to Pay Overtime Wages,
- 3 2. Failure to Pay Minimum Wage,
- 4 3. Failure to Furnish Timely/Accurate Wage Statements,
- 5 4. Failure to Pay All Wages Due at Discharge in Timely Manner,
- 6 5. Unlawful Business Practices.

7 **The Putative Class Definition:** Plaintiff originally defined the class as:

8 *"All current and former Field Service Engineer employees who physically*
9 *performed work for Defendants in the state of California from November*
10 *19, 2017 until the entry of judgment."*

11 Plaintiff is a member of the proposed class and representative of other Field Service
12 Engineer employees and is acting on behalf of their interests. Plaintiff believes the class includes,
13 but is not limited to, both Field Service Engineer employees who have been misclassified as
14 exempt (collectively "Field Service Engineers").

15 10. **December 20, 2021 (Defendant Served with Original Class Complaint):**

16 Defendant Copan served with complaint.

17 11. **January 24, 2022 (First Amended Complaint [FAC] with PAGA cause of**
18 **action filed and served):** Plaintiff's FAC filed and served later in February 2022.

19 12. **March 9, 2022 (Parties Agree to Class-wide Mediation):** The Parties agreed to
20 mediate the matter on class basis. Defendant agreed to produce data related to the putative class
21 for the purposes of mediation.

22 13. **March 29-30, 2022 (Defendant filed/served answer to Complaint):** Defendant's
23 answer was filed/served.

24 14. **April 12, 2022 (The Parties Agreed to use Mediator Michael Loeb):** The
25 parties discussed potential mediators. The parties agreed upon use JAMS mediator Michael Loeb
26 and set the mediation for August 2, 2022.

27 15. **August 2, 2022 (Date of Mediation Proceedings):** The Parties participated in an
28 all-day mediation with JAMS Mediator Michael Loeb. At the mediation the Parties reached a
tentative settlement of the class and PAGA claims pending this Court's approval. The Parties
executed a confidential Memorandum of Understanding (MOU) regarding settlement. The Parties
then executed the long form settlement in the form of a Joint Stipulation of Class Action

1 Settlement and Release (see Da Vega Decl., Exhibit 1: Settlement Agreement). As part of the
2 settlement discussions and eventual settlement agreement/release the Parties agreed to included
3 additional California based labor code claims and a Fair Labor Standards Act (FLSA) claim (and
4 thus why those claims have been included in the simultaneously filed Stipulation and Proposed
5 Order to file Second Amended Complaint for settlement purposes) to meet the requirements of
6 *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, so as to “ensure that
7 class releases do not extend to claims that are beyond the scope of the allegations in the
8 complaint”. The settling plaintiff may release FLSA claims arising from the same facts even
9 though the settlement adopts California’s “opt-out” class procedure rather than the FLSA’s “opt-
10 in” procedure. The FLSA’s procedure governs who can be a Plaintiff not the scope of a
11 permissible release. *Amaro* at 539-540.

12 **IV. CASE INVESTIGATION, DISCOVERY, NEGOTIATIONS and MEDIATION**

13 16. The Parties vigorously investigated and debated the claims asserted against
14 Defendant. Plaintiff’s Counsel began their investigation into the claims long before the case was
15 filed. Plaintiff’s Counsel interviewed and obtained discovery/documents from various current and
16 former FSE employees regarding their experiences working for Defendant. After the Lawsuit was
17 initiated, the Parties’ Counsel engaged in informal discovery/data production, discussions and
18 negotiations before reaching this Settlement. Early in the litigation process the Parties’ Counsel
19 began having regular discussions regarding the claims, discovery, production of data, and the
20 possibility of a mediation and settlement.

21 **A. The Parties’ Dispute the Merits of the Case**

22 17. Throughout the litigation, Defendant have denied Plaintiff’s allegations, and
23 further have denied the case is appropriate for class certification. Further, in addition to generally
24 denying the allegations, Defendant have contended that the Field Service Engineers (“FSEs”)
25 are/were exempt employees and not misclassified, that Defendant paid these FSEs correctly for all
26 hours worked, provided compliant wage statements, and paid them correctly upon separation. On
27 the other hand, Plaintiff alleges that the FSEs were misclassified as exempt employees and as FSE
28 employees were subject to the same policy and practice promulgated by Defendant throughout the

1 Class Period. Plaintiff alleges they were misclassified as exempt employees and not paid for
2 overtime hours worked. As part of the investigation into the claims, Class Counsel interviewed
3 current and former FSE employees and reviewed various documents and handbooks related to
4 FSE employees work for Defendant. This investigation was crucial to the Parties' dispute over
5 both the merits of the case, as well as with respect to the appropriate scope of the Class.

6 **B. Document and Data Discovery and Expert Analysis**

7 18. Plaintiff and Defendant informally exchanged extensive documents and multiple
8 data points for the class (i.e. data for all class members of class period including job titles, wages
9 (salaries and bonuses), wage rates, weeks/shifts worked, start/end dates, hours worked in and
10 outside California, etc.) which at the time of filing includes approximately **25 Class Members**.
11 Plaintiff retained experts Desmond, Marcello & Amster - Valuation and Litigation Consultants
12 (www.dmavalue.com) ("Plaintiff's Expert"), to examine the data for mediation. Based on
13 analysis of the data, Plaintiff made various assessments of the data, unpaid overtime hours/wages,
14 correct pay rates, minimum wage violations, interest, penalties, FLSA unpaid overtime wages, and
15 calculated the potential damages. Further, Plaintiff's Counsel provided Defendant with Plaintiff's
16 position as to those calculation of damages at mediation. Those expert calculations estimate
17 Defendant's potential liability for alleged:

- 18 (1) California (CA) unpaid overtime wages at \$504,650;
- 19 (2) CA Interest on those unpaid overtime wages at \$101,826;
- 20 (3) CA Waiting time Penalties at \$73,360;
- 21 (4) CA Wage Statement Violation Penalties at \$15,550;
- 22 (5) CA Minimum Wage Violation Penalties at \$38,550,
- 23 (6) FLSA unpaid overtime wages at \$454,927

24 **Total Liability = \$1,190,864 (of which \$129,460 is CA penalties)**

25 The 25 putative Class Members worked approximately 9,280 shifts. If you take the
26 Estimated Net Settlement Amount of approximately \$225,500 divided by 9,280 shifts it equals
27 approximately \$24.29 of unpaid wages per shift. Further, the minimum shift(s) work by any Class
28

Members was 40 shifts, while the maximum worked by any Class Member was 1,130 shifts. The overall average was approximately 371.2 shifts per Class Member.

C. Mediation and Settlement

19. On August 2, 2022 the Parties engaged in a full day of mediation with the experienced JAMS employment and class action mediator Michael Loeb. After exchanging data, documents, and other evidence the Parties met for a full-day mediation via Zoom video conference with Plaintiff's counsel in-person with Plaintiff Gillette. The mediation was attended by Plaintiff's Counsel and the class representative, Wayne Gillette, Defense counsel, and Defendant's representative(s). The Parties ultimately executed a confidential memorandum of understanding ("MOU") at the mediation, which included settlement of the class and PAGA claims for the Gross Settlement Amount of **\$400,000 (Four Hundred Thousand Dollars)**, subject to Court approval. The Parties then later finalized the terms of the settlement in a long form Joint Stipulation of Class Action Settlement and Release (aka the "Settlement Agreement").

V. CLASS REPRESENTATIVE'S SERVICE TO THE CLASS

20. Plaintiff Wayne Gillette was the driving force behind this class action. Plaintiff played a critical role in retaining Matthew Da Vega and Matthew Fisher of Da Vega Fisher Mechtenberg LLP and providing information regarding his legal claims to make them successful. Plaintiff has experience as a Field Service Engineer ("FSE") employee and knew other putative class members that in turn provided additional information in support of the legal claims. With their help Plaintiff's counsel was able to gather additional evidence, and contact additional putative class members. Together, the Plaintiff worked dozens of hours to help Plaintiff's counsel, sacrificing his personal time and reputation to make the case successful.

21. In fact Plaintiff's counsel spoke to other witnesses who were afraid to participate in litigation for fear that it might result in damage to their careers. Plaintiff and witnesses feared that by initiating or participating a class action lawsuit might risk their future job opportunities. Despite this Plaintiff stepped up and worked diligently in support of the case. Plaintiff has had numerous meetings and telephone conversations with Class Counsel to aid in the initial investigation, factual development, mediation, and resolution of this case. He also reached out to

1 and communicated with other FSE employees about their work for Defendant, and encouraged by
2 Plaintiff, other FSE employees contacted Class Counsel to provide information about their time at
3 Defendant. In sum, the Settlement could never have been achieved without Plaintiff's service on
4 behalf of the Class.

5 **VI. KEY TERMS OF THE SETTLEMENT**

6 22. The Settlement provides for a significant settlement payment to each Class
7 Member. In exchange, Class Members will release claims, which were asserted or could have
8 been asserted in the Lawsuit based on the facts alleged in support of the class and PAGA claims.

9 **A. Definition of the Class**

10 Under the Settlement Agreement, the "Class" is defined as follows:

11 The "Class":

12 "All current and former Field Service Engineer employees who physically performed
13 work for Defendant in the State of California from November 19, 2017, until the entry of
14 judgment." "Class Member(s)" refers to a member(s) of the Class." (Settlement
Agreement §1.1)

15 "Class Period" refers to the period of time from November 19, 2017 through the date the
Court grants preliminary approval of the Settlement. (Settlement Agreement §1.7)

16 "Settlement Class Members" is defined to mean those Class Members who have not
17 "opted out" of the Class Settlement by submitting a timely and valid Request for
Exclusion. (Settlement Agreement §1.35)

18 **B. \$400,000 Gross Settlement Amount**

19 23. The Settlement provides for Defendant to make a maximum payment of **\$400,000**
20 **(Four Hundred Thousand Dollars)** in settlement of all class and PAGA claims in the case,
21 including the Class Counsel Award, all Settlement Administration Costs, the PAGA Penalty
22 Amount, all settlement payments to Settlement Class Members, and the Class Representative
23 Enhancement Payment. (the "Gross Settlement Amount") (Settlement Agreement §§1.16.; 2.1.)

24 24. The "Individual Settlement Amount Calculations" payment to the Class Members
25 will be based on the approximate number of Workweeks each Settlement Class Member worked
26 during the Class Period. The Settlement Administrator will determine the total number of
27 Workweeks worked by all Class Members during the Class Period and then divide that Net
28 Settlement Fund by the number of Total Workweeks to derive the "Workweek Value". Then for

1 each Settlement Class Member the Settlement Administrator shall multiply the number of their
2 Workweeks worked during the Class Period by the Workweek Value to determine each
3 Settlement Class Members Individual Settlement Amount. The Individual Settlement Amount(s)
4 will be allocated for tax purposes as follows: Thirty-Three (33%) of each Individual Settlement
5 Payment will be allocated as wages; Thirty-Three (33%) will be allocated interest, and Thirty-
6 Four (34%) as penalties. The portion allocated to wages will be reported on an IRS Form W-2
7 and the portions allocated to non-wages (interest and penalties) will be reported on an IRS Form
8 1099 by the Settlement Administrator. (Settlement Agreement § 7.1)

9 25. The portion of the Net Settlement Amount allocated to the Class shall be all-in and
10 settlement checks will be sent to all Settlement Class Members. Any settlement checks not cashed
11 after 120 days from the date of the class-wide distribution shall be void, and the Settlement
12 Administrator shall, as soon as practicable, redistribute such remaining funds pro-rata to
13 Settlement Class Members who have cashed their original checks sent during the initial
14 distribution in a second distribution. If after the second distribution there remains any uncashed
15 monies the Settlement Administrator will send it to the California State Controller's Unclaimed
16 Property Division in accordance with California Unclaimed Property Laws. (Settlement
17 Agreement §7.4)

18 **C. Released Claims**

19 26. *Released Claims:* Under the terms of the Settlement Agreement, upon Final
20 Approval by the Court, and subject to Defendant's deposit of the Gross Settlement with the
21 Settlement Administrator, Plaintiff and each Settlement Class Member shall be bound by the
22 Settlement, and, at the same time, will have released the Released Parties from the Released
23 Claims. The "Released Claims" with respect to the "Released Parties" (defined below) are, "all
24 known and unknown claims losses, damages, liquidated damages, penalties, interest, liabilities,
25 causes of action, civil complaints, arbitration demands or suits which arise from the facts asserted
26 in the Action, including, without limited to the foregoing, all claims under the Fair Labor
27 Standards Act (FLSA) for all worked performed inside and/or outside of California by any Class
28 Members, the California Labor Code as alleged in the Action, including violations for meal

1 periods, rest breaks, unpaid overtime and minimum wages, timely payment of wages, wage
2 statements, waiting time penalties, unreimbursed necessary business expenses, penalties under the
3 Private Attorneys General Act sections 2698, et seq., and violations of California Unfair
4 Competition Law (Cal. Bus. & Prof. Code §§ 17200, et seq.), the laws of the principal places of
5 work (“Home States”) of the Class Members, or other remuneration whether sought under statute,
6 tort, contract or as an unfair business practice, released by Plaintiff and each of the Settlement
7 Class Members, on behalf of themselves and each of their heirs, representatives, successors,
8 assigns and attorneys, which shall be fully, finally and forever released, relinquished and
9 discharged. (“Released Claims.”) (Settlement Agreement §1.30)

10 27. *Released Parties:* The term “Released Parties” means, “Copan and any parents,
11 subsidiaries, and affiliates thereof, including, without limitation, Copan Italia S.p.A., a company
12 organized under the laws of Italy, and, with respect to each of them, their predecessors or
13 successors; and, with respect to each such entities, all agents, employees (current and former),
14 officers, shareholders, owners, directors, insurers, attorneys, or assigns thereof, including, without
15 limitation, Norman Sharples, Gabriela Franco, and Brandi Swartz. (Settlement Agreement §1.31)
16 The Settlement Agreement also provides Defendant with a general release from named Plaintiff,
17 including a Civil Code § 1542 waiver. (Settlement Agreement §2.6)

18 **D. Attorneys’ Fees and Incurred Expenses**

19 28. Under the terms of the Settlement Agreement, Class Counsel will move for
20 reasonable attorney’s fees, not exceeding one-third (33%) or **\$132,000 (One Hundred and**
21 **Thirty Two Thousand Dollars)** of the Gross Settlement Amount (\$400,000). (Settlement
22 Agreement § 2.2). Class Counsel will also seek reimbursement of reasonable expenses incurred
23 by Class Counsel in connection with the Lawsuit, not exceeding **\$20,000 (Twenty Thousand**
24 **Dollars)**. (*Id.*) The Court need not rule on Class Counsel’s fees and expenses now; a formal
25 application will be filed prior to and to be heard at the same date and time as the Final Approval
26 Hearing. As will be explained in detail in the application, the requested fees and costs are
27 eminently reasonable considering the amount of time and expenses incurred by Class Counsel in
28

1 this case. In that application for fees and costs Class Counsel will provide a lodestar cross check
2 and itemization of costs so that the court can see the requests are reasonable.

3 **E. PAGA Penalty Amount, LWDA Payment, and Settlement Administrator**

4 29. **\$5,000 (Five Thousand Dollars)** of the Gross Settlement Fund is allocated to be
5 paid for the resolution of potential PAGA claims (the “PAGA Penalty Amount”). (Settlement
6 Agreement §1.27). Pursuant to PAGA, 75% of that amount, **\$3,750 (Three Thousand Seven**
7 **Hundred and Fifty Dollars)**, is to be paid to the California Labor and Workforce Development
8 Agency (the “LWDA Payment”) and 25% to the PAGA Group, **\$1,250 (One Thousand Two**
9 **Hundred and Fifty Dollars)**, (the “PAGA Group Amount”). (Settlement Agreement §§1.20,
10 1.25, 1.26, 1.27). Prior to the Final Approval/Fairness Hearing, Class Counsel will apply to the
11 Court for payment from the Gross Settlement Fund to compensate the Settlement Administrator,
12 CPT Group, Inc., for fees and costs associated with the administration of the settlement (not
13 exceeding **\$7,500 [Seven Thousand Five Hundred Dollars]**)(the “Settlement Administration
14 Costs”). (Settlement Agreement §§ 1.2, 1.3). (Attached hereto as **Exhibit 2: PAGA Submissions**
15 is a true and correct copy of this Motion and its supporting papers (including the Propose
16 Settlement and Stipulation re SAC) to the LWDA.

17 **F. Class Representative Enhancement Payment**

18 30. Pursuant to the terms of the Settlement, Class Counsel will seek an Enhancement
19 Payment of **\$10,000 (Ten Thousand Dollars)** for the Class Representative. (Settlement
20 Agreement §§1.8, 2.3) The Court need not rule on the Class Representative Enhancement
21 Payment now; a formal application will be filed prior to the Final Approval/Fairness Hearing. As
22 will be explained in detail in the application, the requested Enhancement Payment is reasonable
23 and justified based on the significant time, effort and risks the Class Representative incurred in
24 bringing this case on behalf of the Class, as well as the substantial benefits the resulting
25 Settlement provides the Class. The proposed Class Representative Enhancement Payment
26 represents only .025% of the total Gross Settlement Amount and will not significantly reduce the
27 awards of the Class Members. Public policy strongly supports service awards to plaintiffs in
28 employment class actions, and they are routinely granted by courts in this state and around the

country. Such awards compensate plaintiffs for the efforts and risks they have undertaken on behalf of the Class, without which no settlement would be possible. And, they provide an incentive for other employees to bring cases that vindicate the public interest in the lawful payment of wages.

VII. CONCLUSION

31. Based on my extensive experience in this type of litigation and thorough familiarity with the factual and legal issues in this case, I have reached the firm conclusion that the proposed Settlement is an excellent result for the Class and is in the Class Members' best interest.

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

DATED: February 28, 2023

DA VEGA | FISHER | MECHTENBERG LLP



By: _____

Matthew S. Da Vega
Attorneys for Plaintiff and Class

Gillette v. Copan Diagnostics, Inc.
Case No. CVRI-2105284

EXHIBIT 1
(Settlement Agreement)

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Attorney for Defendant
COPAN DIAGNOSTICS, INC.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF RIVERSIDE**

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

Plaintiff,

vs.

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

Defendants.

Case No.: CVRI-2105284

[Assigned to the Honorable Harold Hopp,
Department 10 of the Historic Court
Houser]

**CLASS ACTION AND
REPRESENTATIVE ACTION**

**JOINT STIPULATION OF CLASS
ACTION SETTLEMENT AND RELEASE**

Action Filed: November 19, 2021
FAC Filed: January 24, 2022

1 This Joint Stipulation of Class Action Settlement and Release (the “Agreement” or
 2 “Settlement Agreement”) is made and entered into by and between Plaintiff Wayne
 3 Douglas Gillette (“Plaintiff” or “Gillette”), as an individual and on behalf of all others
 4 alleged to be similarly situated, and Defendant Copan Diagnostics, Inc. (“Defendant” or
 5 “Copan”) (Plaintiff and Defendant each a “Party” and collectively the “Parties”). Except as
 6 otherwise specified, defined terms shall have the meanings set forth in the Recitals and
 7 Section 1 of this Agreement.
 8

9 RECITALS

10 A. Plaintiff initiated the above-captioned lawsuit by filing a Class Action
 11 Complaint against Defendant on or about November 19, 2021, in the Superior Court for
 12 the County of Riverside (“Court”), Case No. CVRI-2105284 (the “Action”). Plaintiff filed a
 13 First Amended Representative and Class Action Complaint against Defendant on or
 14 about January 28, 2022 (“First Amended Complaint”). The First Amended Complaint
 15 asserted causes of action for alleged: (1) failure to pay overtime wages, citing California
 16 Labor Code sections 204, 510, 1194, 1198, 1199 and applicable Wage Orders; (2) failure
 17 to pay minimum wage, citing California Labor Code sections 1182.12, 1194, 1194.2,
 18 1194.5, 1197, 1197.1 and applicable Wage Orders; (3) failure to provide timely and
 19 accurate wage statements, citing California Labor Code sections 226, 226.3, 1174,
 20 1174.5; (4) failure to pay all wages due at termination – waiting time penalties, citing
 21 California Labor Code sections 201, 202 and 203; (5) unlawful and/or unfair business
 22 practices under California Business & Professions Code section 17200, *et seq.* (“UCL”);
 23 and (6) violation of the Private Attorney General Act (“PAGA”), California Labor Code
 24 section 2698, *et seq.* Plaintiff’s First Amended Complaint asserted these claims on behalf
 25 of an alleged class of Field Service Engineers misclassified as exempt, and sought
 26 alleged unpaid or underpaid overtime compensation, unpaid minimum wage, wage
 27
 28

1 statement violations, waiting time penalties, statutory and civil penalties, interest, and
2 attorneys' fees and costs. As detailed below, a Second Amended Complaint will be filed
3 for purposes of Settlement only (to include all potential claims waived as part of this
4 Settlement including but not limited to FLSA claims), pursuant to Section 3.1 of this
5 Agreement (similar in form to the draft attached hereto as Exhibit A - Second Amended
6 Complaint) and to be filed at the same time as the Motion for Preliminary Approval of the
7 Class and PAGA settlement.

9 B. In accordance with the Court's 2/8/2022 Case Management Order (CMO)
10 and the Joint Case Management Statement (Joint Statement), Plaintiff and Defendant
11 engaged in informal discovery, including the exchange of documents and data, including
12 without limitation information regarding dates of employment, all Workweeks worked both
13 inside California and outside California by, and amounts paid to, Class Members during
14 the relevant period. Counsel for the Parties have investigated the law as applied to the
15 facts discovered regarding the alleged claims of the Class Members and potential
16 defenses thereto, and the damages claimed by Class Members.

18 C. On August 2, 2022, the Parties participated in an all-day mediation before
19 Michael Loeb (<https://www.jamsadr.com/loeb/>), a well-respected mediator with significant
20 experience mediating employment wage-and-hour class actions. After a full day of
21 mediation and additional post-mediation negotiations, the Parties agreed to the material
22 terms of this Agreement, which was documented in a signed Memorandum of
23 Understanding ("MOU").

24 D. At all times, Defendant has denied and continues to deny any wrongdoing
25 and denies that it committed, threatened, or attempted to commit, any of the wrongful
26 acts or violations of law or duty alleged in the First Amended Complaint, the anticipated
27 Second Amended Complaint or the Action, and instead contends that Defendant has
28

1 acted properly and lawfully, including under California law and the laws of the principal
2 places or work ("Home States") for all work performed inside and/or outside of California.
3 Defendant also denies that Plaintiff or any of the Class Members are entitled to any form
4 of wages, damages, penalties, interests, attorneys' fees, costs, or any relief whatsoever
5 (at law or at equity) based on the conduct alleged in the First Amended Complaint, the
6 anticipated Second Amended Complaint or the Action. In addition, Defendant maintains
7 that it has meritorious defenses to the claims alleged in the First Amended Complaint, the
8 anticipated Second Amended Complaint and the Action, and that it was prepared to
9 vigorously defend the Action. Nonetheless, taking into account the uncertainty and risks
10 inherent in litigation, Defendant has concluded that defense of the claims asserted in the
11 First and Second Amended Complaint and the Action would be burdensome and
12 expensive, and that it is desirable and beneficial to fully and finally settle and terminate
13 the Action in the manner and upon the terms and conditions set forth in this Agreement.
14

15 E. Plaintiff believes that the claims asserted in the Action have substantial
16 merit. Nonetheless, Plaintiff and his counsel, Matthew S. Da Vega and Matthew Fisher of
17 Da Vega Fisher Mechtenberg LLP ("Class Counsel"), recognize and acknowledge the
18 expense and length of continued prosecution of the Action against Defendant through
19 trial and any subsequent appeals. Plaintiff and Class Counsel have also taken into
20 account the uncertain outcome and risks of litigation, especially in complex actions, as
21 well as the difficulties and delays inherent in such litigation. Based on their evaluation,
22 Class Counsel have concluded that the terms and conditions of this Settlement
23 Agreement are fair, reasonable, and adequate to the Class, and that it is in the best
24 interests of the Class to settle the claims alleged in the First Amended Complaint and the
25 Action pursuant to the terms and provisions of this Settlement Agreement.
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1 F. The Gross Settlement Amount was negotiated and agreed-upon by the
2 Parties. The Gross Settlement Amount as defined in Section 1.16 below, is the maximum
3 amount to be paid by Defendant as a result of this Settlement, except as expressly
4 provided in Section 6.2 and Defendant, in addition to the Gross Settlement Amount, shall
5 separately pay any Employer payroll taxes (e.g. FICA, FUTA, payroll taxes, and/or any
6 similar tax or charge), on the wage portion of the settlement in accordance with the
7 Settlement. The value of the Gross Settlement Amount was expressly negotiated to
8 account for and cover the payment of the Class Representative Enhancement Payment,
9 the Settlement Administration Costs to the Settlement Administrator, the Class Counsel
10 Award to Class Counsel, the PAGA Penalty Payment (including LWDA Payment and
11 PAGA Group Amount), and as described in Section 7.1, all payments to Settlement Class
12 Members (all capitalized terms defined below). In no event shall Defendant be required to
13 pay more than the Gross Settlement Amount and Employer Payroll Taxes on the wage
14 portion of the settlement, except as expressly provided in Section 6.2.
15

16 G. This Agreement is made and entered into by and between Plaintiff,
17 individually and on behalf of all others alleged to be similarly situated, and Defendant,
18 and is subject to the terms and conditions hereof and the Court's approval. The Parties
19 expressly acknowledge that this Agreement is entered into solely for the purpose of
20 compromising significantly disputed complex claims and that nothing herein is an
21 admission of liability or wrongdoing by Defendant. The Agreement's provisions, and all
22 related drafts, communications and discussions, cannot be construed as or deemed to be
23 evidence of an admission or concession of any point of fact or law by any person or entity
24 and cannot be offered or received into evidence or requested in discovery in this Action
25 or any other action or proceeding as evidence of an admission or concession. If for any
26 reason the Agreement is not approved by the Court, it will be of no force or effect.
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AGREEMENT

1. DEFINITIONS.

The following section defines terms that are not defined above. Some definitions use terms that are defined later in this Section:

1.1 "Class" shall refer to the following group of individuals: "All current and former Field Service Engineer employees who physically performed work for Defendant in the State of California from November 19, 2017, until the entry of judgment." "Class Member(s)" refers to a member(s) of the Class.

1.2 "Settlement Administrator" means CPT Group, Inc., the third-party class action settlement administrator mutually agreed to by the Parties for the purposes of administering this Settlement. The Parties will each ensure and represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

1.3 "Settlement Administration Costs" means the costs payable to the Settlement Administrator for all fees and expenses reasonably and necessarily incurred as a result of administering this Settlement, including, but not limited to, the cost of providing notice of the proposed settlement to the Class, the cost of administering the settlement and any settlement fund created as a result of this Agreement. These costs will include, *inter alia*, required tax reporting on the Individual Settlement Amounts, the issuing of IRS Form 1099 and Form W-2, distributing the Notice, calculating and distributing the Class and PAGA Settlement amounts, and providing necessary reports and declarations. The Settlement Administration Costs are estimated to **not exceed seven thousand five hundred dollars (\$7,500.00)** and shall be payable from, and not in addition to, the Gross Settlement Amount. To the extent the Settlement Administrations

1 Costs are greater than the estimated amount such excess amount will also be deducted
2 from the Gross Settlement Amount.

3 **1.4** "Class Counsel" means Matthew S. Da Vega and Matthew Fisher of
4 Da Vega Fisher Mechtenberg LLP.

5 **1.5** "Class Counsel Award" means the amount awarded by the Court pursuant
6 to this Agreement to Class Counsel for reasonable attorneys' fees and reimbursement of
7 litigation costs and expenses incurred in connection with the litigation and resolution of
8 this Action, including, but not limited to, costs associated with documenting the
9 Agreement, securing the Court's approval of the Agreement, administering the
10 Agreement, obtaining entry of the judgment in the Action, and expenses for any experts
11 or consultants. The Class Counsel Award shall be paid from, and not in addition to, the
12 Gross Settlement Amount. Class Counsel shall request attorneys' fees of up to **thirty-**
13 **three percent (33% or \$132,000)** of the Gross Settlement Amount (\$400,000), plus the
14 reimbursement of reasonable costs and expenses not to exceed **Twenty Thousand**
15 **Dollars (\$20,000)**, both of which will be paid from the Gross Settlement Amount.
16 Defendant agrees not to oppose Class Counsel's fee and cost applications up to the
17 above-specified amounts. **Any** portion of the Class Counsel Award not awarded to Class
18 Counsel shall be added back to the Gross Settlement Amount for the benefit of
19 Settlement Class Members and PAGA Group.

20 **1.6** "Class List" means a complete list of the Class Members formatted in
21 Microsoft Office Excel and shall include each Class Member's full name; mailing address
22 and telephone number last known to Defendant; Social Security number; and estimated
23 number of Workweeks worked during the Class Period. The Settlement Administrator will
24 treat the Class List as confidential, and the Class List shall not be used for any purpose
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1 other than as set forth herein. The Settlement Administrator shall not disclose the Class
2 List to Class Counsel or any other person or entity.

3
4 **1.7** "Class Period" refers to the period of time from November 19, 2017 through
5 the date the Court grants preliminary approval of the Settlement. As a practical matter,
6 effective January 1, 2023, Defendant has reclassified the Field Service Engineers from
7 exempt to nonexempt.

8 **1.8** "Class Representative Enhancement Payment" means the amount to be
9 awarded by the Court pursuant to this Agreement to be paid to Plaintiff from the Gross
10 Settlement Amount in recognition of his effort and work in prosecuting the Action on
11 behalf of the Class Members and others similarly situated, and the associated risks of
12 acting as a class representative. The Class Representative Enhancement Payment shall
13 be reported on an IRS Form 1099. Plaintiff will request up to **Ten Thousand dollars**
14 **(\$10,000)** in recognition of his/her service, and Defendant will not oppose this request.

15 Any portion of the Class Representative Enhancement Payment not awarded by the
16 Court to Plaintiffs shall be added to the Class Settlement Amount for the benefit of
17 Participating Class Members and PAGA Group.

18
19 **1.9** "Class Settlement" means the settlement and resolution of the Released
20 Claims, not including claims under PAGA (the California Private Attorneys General Act,
21 California Labor Code section 2698, et seq.) detailed in the PAGA Release.

22 **1.10** "Complaint" means the original complaint filed on or about November 19,
23 2021, the First Amended Complaint filed by Plaintiff on or about January 28, 2022, and
24 the Second Amended Complaint to filed pursuant to Section 3.1 of this Agreement
25 (similar in form to the draft attached hereto as **Exhibit A - Second Amended**
26 **Complaint**) and to be filed at the same time as the Motion for Preliminary Approval of the
27 Class and PAGA settlement.
28

1 **1.11** "Copan's Counsel" shall mean Cozen O'Connor.

2 **1.12** "Effective Date" means the date of the entry of the Final Approval Order and
3 Judgment if there are no valid objections to the Settlement. However, if a valid objection
4 is made and an appeal or other effort to obtain reconsideration or review has been
5 initiated, the "Effective Date" shall instead mean two (2) court days after the date that
6 such appeal is withdrawn, or such appeal or other reconsideration or review has been
7 finally concluded in favor of the Final Approval Order and Judgment and the Final
8 Approval Order and Judgment is no longer subject to review, whether by appeal, petitions
9 for rehearing, petitions for rehearing en banc, petitions for certiorari, or otherwise.

10 **1.13** "Estimated Net Settlement Fund" means the Gross Settlement Amount
11 (\$400,000) less the current estimated amounts for a Class Counsel Award (i.e.,
12 -\$132,000 in attorneys' fees and -\$20,000 in attorney costs), the Settlement
13 Administration Costs (i.e., -\$7,500.), the Class Representative Enhancement Payment
14 (i.e., -\$10,000.00), and the PAGA Penalty Amount (i.e. -\$5,000 which includes the LWDA
15 Payment [i.e., -\$3,750 (75% of the \$5,000)] and PAGA Group Amount [i.e. - \$1,250 (25%
16 of the \$5,000)]. The actual Net Settlement Fund will be determined pursuant to Section
17 1.21.

18 **1.14** "Fairness Hearing" means the hearing at which the Court decides whether
19 to enter the Final Approval Order and Judgment.

20 **1.15** "Final Approval Order and Judgment" means an order finally approving the
21 Settlement as being fair, reasonable and adequate and certifying the Class (substantially
22 similar in form to draft attached hereto as **Exhibit B - Final Approval Order and**
23 **Judgment**).

24 **1.16** "Gross Settlement Amount" means a non-reversionary common fund in the
25 amount of **Four Hundred Thousand dollars (\$400,000)**, which includes the Class
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1 Counsel Award to Class Counsel, all Settlement Administration Costs, the LWDA
2 Payment, all settlement payments to Settlement Class Members, and the Class
3 Representative Enhancement Payment.
4

5 **1.17 INTENTIONALLY LEFT BLANK**

6 **1.18** "Individual Settlement Amount" means the amount paid in settlement
7 hereunder to each Settlement Class Member as determined pursuant to the terms set
8 forth in Section 7.1.

9 **1.19** "LWDA" means the California Labor and Workforce Development Agency.

10 **1.20** "LWDA Payment" means seventy-five percent (75%) of the PAGA Penalty
11 Amount or **Three Thousand Seven Hundred and Fifty Dollars (\$3,750)**, to be paid to
12 the LWDA.

13 **1.21** "Net Settlement Fund" means the Gross Settlement Amount less the Class
14 Counsel Award to Class Counsel, all Settlement Administration Costs, the Class
15 Representative Enhancement Payment, and the PAGA Penalty Amount (consisting of the
16 LWDA payment [75% of PAGA Penalty] and PAGA Group Amount [25% of PAGA
17 Penalty Amount]). To the extent the Court does not approve the full requested Class
18 Counsel Award to Class Counsel, the Class Representative Enhancement Payment, or
19 Settlement Administration Costs, the Net Settlement Fund will increase. Settlement
20 payments to Settlement Class Members will come out of the Net Settlement Fund.
21

22 **1.22** "Notice" or "Class Notice" means the notice of the proposed Settlement
23 terms, as approved by Class Counsel, Copan's Counsel and the Court, to be provided to
24 Class Members. The Class Notice must be substantially similar to the form attached as
25 **Exhibit C - Class Notice**, and contain: (a) information regarding the nature of the Action,
26 (b) a summary of the terms of the Agreement, (c) the definition of the Class, (d) the
27 formula for calculating the Net Settlement Fund (including the amounts sought for the
28

1 Class Counsel Award, Class Representative Enhancement Payment, Settlement
2 Administration Costs and the LWDA Payment) and Individual Settlement Amounts, (e)
3 the individual Class Member's estimated number of Workweeks worked during the Class
4 Period and Gross Allocated Amount (as defined in Section 7.1), (f) the dates which
5 comprise the Class Period, (g) instructions on how to submit a **Workweek Dispute/**
6 **Workweek Dispute Form** (i.e. via **Exhibit D - Workweek Dispute Form**), Request
7 Exclusion From the Settlement (aka "Opt Out")/Request for Exclusion Form (i.e. via
8 **Exhibit E - Request for Exclusion Form**), or Object to the Settlement/Objection Form
9 (i.e. via **Exhibit F - Objection Form**), and (h) the deadlines by which the **Workweek**
10 **Disputes, Requests for Exclusion, or Objections to the Settlement Agreement must be**
11 **submitted to the Settlement Administrator.**

12
13 **1.23 "Class Member(s)"** means all current and former Field Service Engineer
14 employees who physically performed work for Defendant in the State of California from
15 November 19, 2017 until the entry of judgment. All Class Members will be credited with at
16 least one (1) Workweek.

17
18 **1.24 "Objection"** means a Class Member's valid and timely objection to the
19 Settlement Agreement. For the Objection and/or Objection Form (i.e. **Exhibit F -**
20 **Objection Form**) to be valid, it must: (a) state the case name and number of the Action,
21 (b) contain the Class Member's name, current mailing address, most current telephone
22 number, and last four digits of his or her Social Security number, (c) state the basis for
23 the objection, (d) be signed by the Class Member, (e) be submitted to the Settlement
24 Administrator at the address specified in the Class Notice; and (f) be submitted with proof
25 of the submission date (such as a U.S. Postal Service postmark or another delivery
26 service date stamp) on or before the Response Deadline. If the Class Member wishes to
27 speak at the Fairness Hearing, he or she should (although they are not required to) file a
28

1 notice of intention to appear with the Court and provide a copy of this notice and their
2 Objection to counsel for both Parties.

3
4 **1.25** "PAGA Group" shall mean and include all Class Members.

5 **1.26** "PAGA Group Amount" means twenty-five percent (25%) of the PAGA
6 Penalty Amount (\$5,000), or **One Thousand Two Hundred and Fifty dollars (\$1,250)**,
7 to be distributed pro rata and paid to the PAGA Group by the Settlement Administrator
8 pursuant to Sections 7.2 and 7.3.

9 **1.27** "PAGA Penalty Amount" means **Five Thousand Dollars (\$5,000)** to be
10 paid to settle any and all claims for which penalties under PAGA may be sought or are
11 otherwise available, as set forth in Section 2.5 of this Agreement.

12 **1.28** "Preliminary Approval Order" means the Court order granting preliminary
13 approval of the Settlement Agreement. The proposed Preliminary Approval Order
14 submitted to the Court for its approval shall be substantially similar to the draft attached to
15 this Settlement Agreement as **Exhibit G - Preliminary Approval Order**.

16
17 **1.29** "QSF" means the "Qualified Settlement Fund" which is an interest- bearing
18 account designated and controlled by the Settlement Administrator as described in
19 Section 2.1.

20 **1.30** "Released Claims" is defined as follows: all known and unknown claims
21 losses, damages, liquidated damages, penalties, interest, liabilities, causes of action, civil
22 complaints, arbitration demands or suits which arise from the facts asserted in the Action,
23 including, without limited to the foregoing, all claims under the Fair Labor Standards Act
24 (FLSA) for all worked performed inside and/or outside of California by any Class
25 Members, the California Labor Code as alleged in the Action, including violations for meal
26 periods, rest breaks, unpaid overtime and minimum wages, timely payment of wages,
27 wage statements, waiting time penalties, unreimbursed necessary business expenses,
28

1 penalties under the Private Attorneys General Act sections 2698, *et seq.*, and violations
 2 of California Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, *et seq.*), the laws
 3 of the principal places of work ("Home States") of the Class Members, or other
 4 remuneration whether sought under statute, tort, contract or as an unfair business
 5 practice, released by Plaintiff and each of the Settlement Class Members, on behalf of
 6 themselves and each of their heirs, representatives, successors, assigns and attorneys,
 7 which shall be fully, finally and forever released, relinquished and discharged. ("Released
 8 Claims.") As a result of this Joint Stipulation, Class Members will be deemed to no longer
 9 to be aggrieved employees for the purposes of PAGA. The Released Claims shall
 10 include all such Released Claims, whether known or unknown by the Plaintiff or Class
 11 Members. Thus, even if Plaintiff or Settlement Class Members discover facts in addition
 12 to or different from those that they now know or believe to be true with respect to the
 13 subject matter of their respective Released Claims, those claims will remain released and
 14 forever barred.

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 17 **1.31** "Released Parties" means Copan and any parents, subsidiaries, and
 18 affiliates thereof, including, without limitation, Copan Italia S.p.A., a company organized
 19 under the laws of Italy, and, with respect to each of them, their predecessors or
 20 successors; and, with respect to each such entities, all agents, employees (current and
 21 former), officers, shareholders, owners, directors, insurers, attorneys, or assigns thereof,
 22 including, without limitation, Norman Sharples, Gabriela Franco, and Brandi Swartz.

23 **1.32** "Releasing Parties" means Plaintiff and all Class Members who do not
 24 timely submit a valid Request for Exclusion (aka "Opt Out"), and each of their successors,
 25 assigns, legatees, heirs, and personal representatives.

26 **1.33** "Request for Exclusion" (aka "Opt Out") means a timely and valid written
 27 request (i.e. **Exhibit E - Request for Exclusion Form**) submitted by a Class Member
 28

1 indicating that they request to be excluded from the Class Settlement. The Request for
2 Exclusion must: (a) state the case name and number of the Action, (b) set forth the name,
3 address, and telephone number of the Class Member requesting exclusion; (c) be signed
4 by the Class Member; (d) be addressed to the Settlement Administrator; and (e) be
5 postmarked on or before the Response Deadline.
6

7 **1.34 "Response Deadline"** means the deadline by which Class Members must
8 submit to the Settlement Administrator valid Workweek Disputes (i.e., via Exhibit D -
9 Workweek Dispute Form), Requests for Exclusion (i.e., via Exhibit E - Request for
10 Exclusion Form), or Objections to the Agreement (i.e., via Exhibit F - Objection Form).
11 Workweek Disputes, Requests for Exclusion and Objections to the Agreement must be
12 submitted with proof of the submission date (such as a U.S. Postal Service postmark or
13 another delivery service date stamp) on or before the Response Deadline. The Response
14 Deadline shall be **forty-five (45) calendar days** from the initial mailing of the Class
15 Notice to Class Members pursuant to Section 4. In the event of a re-mailed Class Notice,
16 the Response Deadline will be extended an additional fifteen (15) calendar days for that
17 individual Class Member.
18

19 **1.35 "Settlement Class Member(s)"** means a Class Member who has not "opted
20 out" of the Class Settlement by submitting a valid and timely Request for Exclusion.

21 **1.36 "Workweeks"** is the total number of Workweeks worked by a Settlement
22 Class Members during the Class Period.

23 **1.37 "Workweek Dispute"** means a workweek dispute or Workweek Dispute
24 Form (Exhibit D - Workweek Dispute Form) that a Class Member must submit to the
25 Settlement Administrator with proof of the submission date (such as a U.S. Postal Service
26 postmark or another delivery service date stamp) on or before the Response Deadline, if
27 they wish to dispute the number of Workweeks credited to them. The Workweek Dispute
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1 must: (a) state the case name and number of the Action, (b) set forth the Class Member's
2 name, address, and telephone number; (c) be signed by the Class Member; (d) include
3 any documentary evidence showing that the Workweek information is inaccurate, and (e)
4 be postmarked or submitted to the Settlement Administrator on or before the Response
5 Deadline.
6

7 **1.38 "Total Workweeks"** is the total number of Workweeks worked by all
8 Settlement Class Members during the Class Period.

9 **2. SETTLEMENT RELIEF AND RELEASES.**

10 **2.1 Gross Settlement Amount.**

11 (a) Defendant shall pay the **Gross Settlement Amount (\$400,000)**, into
12 the QSF within five (5) business days after the Effective Date.

13 (b) The Parties agree that the QSF is intended to be a "Qualified
14 Settlement Fund" under Section 468B of the Code and Treas. Reg. §1.468B-1, 26 CFR
15 §1.468B-1, et seq., and will be administered by the Settlement Administrator as such.
16 Among other duties of the Settlement Administrator provided by this Settlement, the
17 Settlement Administrator shall open and administer a settlement account in such a
18 manner as to qualify, and maintain the qualification of, the account as a "Qualified
19 Settlement Fund" under Section 468B of the Code and Treas. Reg. §1.468B-1 and satisfy
20 all federal, state and local income and other tax reporting, return, and filing requirements
21 with respect to the QSF. The Parties and the Settlement Administrator shall treat the
22 account as coming into existence as a Qualified Settlement Fund on the earliest date
23 permitted as set forth in 26 CFR §1.468B-1(j)(2)(i), and such election statement shall be
24 attached to the appropriate returns as required by 26 CFR §1.468B-1(j)(2)(ii). The Parties
25 agree to cooperate with the Settlement Administrator and one another to the extent
26 reasonably necessary to carry out the provisions of this section.
27
28

1 (c) The Gross Settlement Amount shall be used to pay all amounts
2 contemplated or required by this Agreement, including the Class Representative
3 Enhancement Payment to Plaintiff, Settlement Administration Costs to the Settlement
4 Administrator, the Class Counsel Award to Class Counsel, the PAGA Penalty Amount,
5 and as described in Section 7.1, to cover all payments to Settlement Class Members.
6

7 (d) Defendant or the Settlement Administrator will calculate the amounts
8 to be paid to Settlement Class Members in accordance with the terms and provisions of
9 this Agreement and in accordance with applicable state and federal law (including tax
10 regulations).

11 (e) No person or entity shall have any claim against Copan, Copan's
12 Counsel, any of the Released Parties, Plaintiff, Class Members, Class Counsel or any
13 Settlement Administrator based on distributions and payments made in accordance with
14 this Agreement.
15

16 **2.2 Class Counsel Award.** Subject to Court approval, Defendant agrees not to
17 object to Class Counsel's request for **attorneys' fees of up to thirty-three percent**
18 **(33%)** of the Gross Settlement Amount (\$400,000) or **One Hundred Thirty Two**
19 **Thousand Dollars (\$132,000)** to cover all attorneys' fees. Plaintiff and Class Counsel
20 agree to not seek an award of greater than thirty-three percent (33%) of the Gross
21 Settlement Amount (i.e., \$400,000) for fees and that Defendant will not be obligated to
22 pay any award in excess of thirty-three percent (33%) of the Gross Settlement Amount.
23 Subject to Court approval, Defendant agrees not to object to Class Counsel's request for
24 reasonable **litigation costs of up to Twenty Thousand Dollars (\$20,000)**. Class
25 Counsel will file any papers supporting the request for the Class Counsel Award with the
26 Court sixteen (16) court days before the Fairness Hearing. Class Counsel shall provide
27 the Settlement Administrator their current and valid Form W-9 within five (5) business
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1 days of the Effective Date. If the Court approves the Settlement of this Action and a
2 payment of a Class Counsel Award, and so long as Class Counsel has timely provided
3 the Settlement Administrator with their current and valid Form W-9, Class Counsel shall
4 be paid the Class Counsel Award approved by the Court out of the QSF within ten (10)
5 business days after the Effective Date.

7 **2.3 Class Representative Enhancement Payment.** Plaintiff agrees not to petition
8 the Court for more than **Ten Thousand dollars (\$10,000.00) for a Class**
9 **Representative Enhancement Payment.** While Defendant does not object to a
10 reasonable Class Representative Enhancement Payment, it takes no position on the
11 propriety of the amount sought by Plaintiff. Plaintiff will file any papers supporting the
12 request for a Class Representative Enhancement Payment with the Court at least sixteen
13 (16) court days prior to the Fairness Hearing. Plaintiff shall provide the Settlement
14 Administrator a current and valid Form W-9 within five (5) business days of the Effective
15 Date. If the Court approves the Settlement of this Action and a Class Representative
16 Enhancement Payment, so long as Plaintiff has timely provided the Settlement
17 Administrator a current and valid Form W-9, the Settlement Administrator shall pay the
18 Class Representative Enhancement Payment awarded by the Court to Plaintiff from the
19 QSF within ten (10) business days after the Effective Date. Plaintiff acknowledges that he
20 has obtained no tax advice from Copan or Copan's Counsel, and that Copan and
21 Copan's Counsel have not made any representation concerning the tax consequences, if
22 any, of the Class Representative Enhancement Payment. Plaintiff agrees that he is solely
23 responsible for the tax consequences of the Class Representative Enhancement
24 Payment.

26 **2.4 Reduction in Class Representative Enhancement Payment or the Class**
27 **Counsel Award.** In the event that the Court (or any appellate court) awards less than the
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1 amount requested for the Class Counsel Award or the Class Representative
2 Enhancement Payment, only the awarded amounts shall be paid and shall constitute
3 satisfaction of those obligations and full payment thereunder, and any remaining or un-
4 awarded portion of the requested Class Counsel Award and/or the Class Representative
5 Enhancement Payment shall be allocated to the Settlement Class Members pursuant to
6 the terms of Section 7. To the extent the Court does not approve any or all of the amount
7 of the Class Counsel Award and/or the Class Representative Enhancement Payment, the
8 Settlement shall remain binding, and this will not be a justification for Plaintiff to withdraw
9 from the Settlement. Plaintiff shall not have the right to revoke the Settlement Agreement
10 if the Court reduces or does not approve the requested Class Counsel Award, although
11 Plaintiff shall retain the right to appeal any reduction of the Class Counsel Award. Any
12 reduction of the amount of the Class Counsel Award and/or the Class Representative
13 Enhancement Payment by the Court or by an appellate court shall not affect any of the
14 Parties' other rights and obligations under this Agreement.
15

16
17 **2.5 Payment And Allocation Of The PAGA Penalty Amount. Five Thousand**
18 **Dollars (\$5,000)** (the PAGA Penalty Amount), representing 1.25 % of the Gross
19 Settlement Amount (\$400,000), will be paid from the Gross Settlement Amount for the
20 settlement, release and discharge of any and all claims for which penalties under PAGA
21 may be sought or could otherwise be available to any member of the PAGA Group as
22 stated in Section 2.8. Pursuant to the express requirements of California Labor Code
23 section 2699(i), the PAGA Penalty Amount shall be allocated as follows: (i) **Three**
24 **Thousand Seven Hundred Fifty Dollars (\$3,750) (75%) to be paid to the LWDA (the**
25 **"LWDA Payment");** and (ii) **One Thousand Two Hundred and Fifty Dollars (\$1,250)**
26 **(25%) (the "PAGA Group Amount")** for distribution to the PAGA Group. The LWDA
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1 Payment and the PAGA Group Amount shall be paid out of the QSF by the Settlement
2 Administrator within ten (10) business days after the Effective Date.

3
4 **2.6 Release of Claims by Plaintiff.** Upon the Effective Date, in addition to the
5 releases made by the Releasing Parties, as defined in section 1.32, and as set forth in
6 section 2.7 hereof, Plaintiff and each of his successors, assigns, legatees, heirs, and
7 personal representatives waive, release, forever discharge, and will not pursue any
8 manner of action, cause of action, claim, demand, right, suit, obligation, debt, contract,
9 agreement, promise, liability, or remedy of any nature whatsoever (including without
10 limitation any damages, charges, penalties, losses, costs, expenses, and attorneys' fees),
11 whether in law or in equity, under contract, tort or any other subject area, or under any
12 statute, rule, regulation, order, or law, whether federal, state, or local, on any grounds
13 whatsoever, arising out of or relating to any acts, facts, omissions or obligations, whether
14 known or unknown, whether foreseen or unforeseen, fixed or contingent, against any or
15 all of the Released Parties. This release shall not apply to claims for workers'
16 compensation benefits, unemployment insurance benefits, pension or retirement benefits,
17 or any other claim or right that cannot be waived or released as a matter of law. This
18 release specifically includes, but is not limited to, all claims arising under Released
19 Parties' policies and procedures, whether formal or informal; the United States or State of
20 California Constitutions; Title VII of the Civil Rights Act of 1964, as amended; the Civil
21 Rights Act of 1991; the Employee Retirement Income Security Act of 1974; the Age
22 Discrimination in Employment Act of 1967, as amended; the Fair Labor Standards Act of
23 1938; the Occupational Health and Safety Act; the Americans with Disabilities Act; the
24 Family and Medical Leave Act; the California Fair Employment and Housing Act; the
25 California Family Rights Act; the public policies set forth under all such statutes, all claims
26 arising under the California Labor Code and the Wage Orders adopted by the California
27
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1 Industrial Welfare Commission; the North Carolina Wage and Hour Act; the North
2 Carolina Retaliatory Employment Discrimination Act; any other applicable laws under the
3 state of North Carolina, whether in law or in equity, which Plaintiff asserts or could assert
4 under contract, at common law or under any statute, ordinance, rule, regulation, order or
5 law, whether federal, state, or local, or on any grounds whatsoever, including but not
6 limited to, any claims under any other federal, state or local statute, ordinance or
7 regulation. For the purpose of implementing a full and complete release, Plaintiff
8 expressly acknowledges that this release Plaintiff gives in this Agreement is intended to
9 include in its effect, without limitation, claims that Plaintiff did not know or suspect to exist
10 at the time of the execution hereof, regardless of whether the knowledge of such claims,
11 or the facts upon which they might be based, would materially have affected the
12 settlement of this matter, and that the consideration given under this Agreement is also
13 for the release of those claims and contemplates the extinguishment of any such
14 unknown claims. In furtherance of this Agreement, Plaintiff waives any rights Plaintiff may
15 have under California Civil Code Section 1542 (and other similar statutes and
16 regulations). Section 1542 states:

19 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
20 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT**
21 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**
22 **RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE**
23 **MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE**
24 **DEBTOR OR RELEASED PARTY.**

25 To the extent permitted by applicable law, the release and waiver set forth above
26 is valid and binding, whether the claims and rights released and waived arise under any
27 federal, state, or local statute, regulation or ordinance, under the common law or in equity
28 or under any policy, agreement, understanding, or promise, written or oral, formal or
informal, between the Settlement Parties. Plaintiff acknowledges that Plaintiff may

hereafter discover facts, matters or events different from or in addition to those Plaintiff now knows or believes to be true in respect to the claims, demands, damages, debts, liabilities, accounts, actions or causes of action herein released, and hereby agrees that these releases shall be and remain in effect in all respects as a complete general release as to the matters released, notwithstanding any such different or additional facts. Plaintiff agrees that this waiver is an essential and material term of this release and the settlement that underlies it and that without such waiver the settlement would not have been accepted.

2.7 Release of Claims by Class Members. Upon the Effective Date, all Releasing Parties shall waive and forfeit, and be deemed to have fully, finally and forever released and discharged all Released Claims against all Released Parties.

2.8 PAGA Release. Upon the Effective Date, Plaintiff shall on behalf of himself and the LWDA waive, release, and forever discharge the Released Parties from any and all claims or actions for civil penalties under PAGA (the California Private Attorneys General Act, California Labor Code section 2698, et seq.) that could have been sought by the Labor Commission for conduct or omissions during the Class Period based on or arising out of the factual allegations of the pre-filing letter and its attached Complaint, including without limitation any and all claims under California Labor Code sections 201, 202, 203, 204, 204.2, 206, 206.5, 207, 208, 210, 212, 218.5, 218.6, 221, 223, 224, 226, 226.7, 226.8, 227, 227.3, 230, 230.1, 233, 246, 432.5, 510, 511, 512, 513, 551, 552, 558, 976, 1025, 1102.5, 1174, 1182.12, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198, 1198.3, 1199, 1696.5, 2570.3, 2698, 2699, 2699.3, 2699.5, 2753, 2800, 2802, 2806, 6311, and 6399.7. Plaintiff does not release any aggrieved employee's claim for wages or damages.

3. PRELIMINARY APPROVAL PROCESS.

1 **3.1 Amended Complaint.** On or about November 19 2021, Plaintiff submitted a
2 PAGA letter and draft complaint to the LWDA. The Parties agree that Plaintiff shall file a
3 Second Amended Complaint in the Action on behalf of himself and the Class and PAGA
4 Group (as defined in Sections 1.1 and 1.25), for purposes of this Settlement only (to
5 include all potential claims waived as part of this Settlement including but not limited to
6 FLSA claims, and to include all potential claims including under California law and the
7 laws of the principal places or work ("Home States") for all work performed inside and/or
8 outside of California), and that is substantially similar to the form attached hereto as
9 **Exhibit A - Second Amended Complaint** (the "Second Amended Complaint"). Plaintiff
10 shall provide Defendant with a copy of the draft Joint Stipulation for Leave to File a
11 Second Amended Complaint and the Second Amended Complaint at least five (5) court
12 days prior to filing.

13 **3.2 Preliminary Approval Hearing.** As soon as practicable after this Agreement
14 is fully executed Plaintiff shall file a motion for preliminary approval (along with the Joint
15 Stipulation re Leave to File the Second Amended Complaint and Second Amended
16 Complaint) seeking an order from the Court for: (i) conditional certification of the Class for
17 settlement purposes only; (ii) preliminary approval of this Settlement Agreement; (iii)
18 setting a date for the Fairness Hearing; (iv) appointing Plaintiff as class representative for
19 settlement purposes only; and (v) appointing the law firm of Da Vega Fisher Mechtenberg
20 LLP as Class Counsel for settlement purposes only. Defendant will not oppose Plaintiff
21 seeking conditional certification of the Class for settlement purposes only. Plaintiff shall
22 provide a copy of the Agreement to the LWDA, pursuant to California Labor Code section
23 2699(I)(2), at the same time that it is submitted to the Court.

24 **3.3 Preliminary Approval of Notice.** In conjunction with the motion for entry of
25 the Preliminary Approval Order, Plaintiff shall submit for Court approval the proposed
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1 Class Notice. The Preliminary Approval Order shall also provide for the Class Notice to
2 be sent to all Class Members by the Settlement Administrator.

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4 **3.4 Preliminary Approval Briefing.** Class Counsel shall draft the motion for
5 preliminary approval of the Settlement and provide Defendant with a copy of the draft
6 preliminary approval pleadings and attachments at least 10 (10) court days prior to filing
7 so that Defendant may provide any comments to the drafts. Defendant shall be permitted,
8 but not required, to file its own brief in support of the Preliminary Approval Order.

9 **4. NOTICE TO THE CLASS, OBJECTIONS, AND REQUESTS FOR EXCLUSION.**

10 **4.1 Delivery of the Class List.** Within ten (10) calendar days after entry of the
11 Preliminary Approval Order, Defendant shall provide the Class List to the Settlement
12 Administrator.

13 **4.2 Notice by First-Class U.S. Mail.** Within thirty (30) calendar days after entry
14 of the Preliminary Approval Order, the Settlement Administrator shall mail the Class
15 Notice via First-Class U.S. Mail to all Class Members for whom it has a valid U.S. Postal
16 address. Each Class Member's Class Notice shall include the number of Workweeks with
17 which the Class Member has been credited. Each Class Member's Class Notice shall
18 also include a Exhibit D - Workweek Dispute Form, Exhibit E - Request for Exclusion
19 Form, and Exhibit F - Objection Form.

20
21 **4.3 Updating of Contact Information in the Class List.** After receiving the Class
22 List and prior to mailing the Class Notice, the Settlement Administrator shall perform a
23 search based on the National Change of Address Database for information to update and
24 correct for any known or identifiable address changes. If the Settlement Administrator
25 determines that a Class Member has more than one address and it cannot reasonably
26 determine which address is the most current, the Settlement Administrator shall mail the
27 Class Notice to all such addresses.
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1 **4.4 Re-Mailing of Notice.** Any Class Notice returned to the Settlement
2 Administrator as non-deliverable on or before the Response Deadline shall be sent
3 promptly via First-Class U.S. Mail to the forwarding address affixed thereto. With respect
4 to Class Notices returned to the Settlement Administrator without a forwarding address,
5 the Settlement Administrator shall make an attempt to locate an address by way of skip-
6 trace and promptly re-mail the returned Class Notice via First-Class U.S. Mail.

7 **4.5 Workweek Dispute Procedure.** To dispute the number of Workweeks with
8 which they have been credited, a Class Member must timely submit a Workweek Dispute
9 (i.e. via a Workweek Dispute Form [Exhibit D]) to the Settlement Administrator by the
10 Response Deadline. The Workweek Dispute may be submitted by U.S. Mail or other
11 delivery service. The submission date is deemed to be, in the case of submission by U.S.
12 Mail or other delivery service, the date the Workweek Dispute is sent, as evidenced by
13 the postmark or other delivery service date stamp. Class Members who timely submit
14 Workweek Disputes may produce evidence to the Settlement Administrator showing that
15 the Workweek information is inaccurate. The Settlement Administrator shall decide the
16 dispute. Defendant's records will be presumed correct, but the Settlement Administrator
17 will evaluate the evidence submitted by the Class Member and will make the final
18 decision as to the merits of the dispute. The Settlement Administrator may ask Defendant
19 to produce additional information regarding the Class Member disputing their credited
20 Workweeks for the purpose of resolving the dispute. Defendant shall strive to provide
21 such information within five (5) business days of the Settlement Administrator's request. It
22 is understood and agreed that any decision by the Settlement Administrator shall not
23 operate to increase the Gross Settlement Amount unless resolution of the Workweek
24 Dispute causes the Workweeks threshold in Section 6.2 to be exceeded.
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1 **4.6 Request for Exclusion Procedures.** Any Class Member wishing to opt out of
2 the Class Settlement must submit by U.S. Mail or other delivery service a written and
3 signed Request for Exclusion (i.e. via the Request for Exclusion Form [Exhibit E]) to the
4 Settlement Administrator (at the address set forth in the Class Notice) containing all the
5 information required by Section 1.33 of this Agreement, on or before the Response
6 Deadline. The date the Request for Exclusion is sent, as evidenced by the postmark or
7 other delivery service date stamp, shall be the exclusive means to determine whether a
8 Request for Exclusion has been timely submitted. Class Members who submit a timely
9 and valid Request for Exclusion will not be bound by the Class Settlement and will have
10 no standing to object to the Settlement; however, they will be bound by the PAGA
11 Release. As described in Sections 7.2 and 7.3, all Class Members will be entitled to a pro
12 rata share of the PAGA Group Amount regardless of whether they opt out under this
13 Section 4.6. If more than 10% of Class Members timely and validly opt out of the
14 Settlement, Defendant may elect to terminate the Agreement. If Defendant terminates the
15 Agreement under this provision, Defendant will bear any of the already incurred costs of
16 the provision of notice and third party settlement administration.

17 **4.7 Objection Procedures.** To object to the Class Settlement or the
18 Agreement, a Settlement Class Member must submit a valid Objection (i.e. via the
19 Objection Form [Exhibit F]), by U.S. Mail or other delivery service, to the Settlement
20 Administrator (at the address set forth in the Class Notice) on or before the Response
21 Deadline. The Objection must be signed by the Settlement Class Member and contain all
22 information required by Section 1.24 of this Agreement. The date the Objection is sent, as
23 evidenced by the postmark or other delivery service date stamp, shall be the exclusive
24 means to determine whether an Objection has been timely submitted. If a Class Member
25 wishes to speak at the Fairness Hearing, they should (but are not required to) file a notice
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1 of intention to appear with the Court and provide a copy of the notice and their Objection
2 to counsel for both Parties. All Settlement Class Members will be permitted to appear and
3 speak at the Fairness Hearing in order to have an Objection heard by the Court.

4 Settlement Class Members who fail to object in the manner specified in this Agreement
5 shall be deemed to have waived all objections to the Agreement and shall be foreclosed
6 from making any objections (whether by appeal or otherwise) to the Settlement.

7
8 **4.8 Settlement Administration Reports.** The Settlement Administrator shall
9 provide Copan's Counsel and Class Counsel a weekly report which certifies the number
10 of Class Members who have submitted (i) Workweek Disputes, (ii) Requests for
11 Exclusion, and (iii) Objections. Additionally, within five (5) calendar days of the Response
12 Deadline, the Settlement Administrator will provide to Copan's Counsel and Class
13 Counsel a report containing the above-mentioned information ("Final Response
14 Report"). The Settlement Administrator will also provide to counsel for both Parties any
15 updated reports regarding the administration of the Agreement as needed or requested
16 by either Party individually, or by the Parties jointly, subject to the terms of this
17 Agreement.

18
19 **4.9 Notice Sufficient.** The Parties agree not to engage in any other form of non-
20 Court-sanctioned notification or publicity relating to this Settlement or the Action.

21 **4.10 No Solicitation of Settlement Objections or Exclusions.** The Parties agree
22 that at no time shall any of the Parties or their counsel seek to solicit or otherwise
23 encourage Class Members to submit Objections or Requests for Exclusion, or to appeal
24 from the Court's Final Approval Order and Judgment.

25 **4.11 Certification of Completion.** The Settlement Administrator shall provide a
26 written declaration under oath certifying the completion of its notice-related tasks no later
27 than twenty-one (21) calendar days after the Response Deadline.

1 **5. FAIRNESS HEARING; JUDGMENT.**

2 **5.1 Fairness Hearing and Entry of the Final Approval Order and Judgment.**

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4 Upon expiration of the deadlines to submit Workweek Disputes, Requests for Exclusion,
5 or Objections to the Agreement as described above, a Fairness Hearing shall be
6 conducted to determine whether the Court should enter a Final Approval Order and
7 Judgment, providing for, among other things, payment of Individual Settlement Amounts
8 to Settlement Class Members and the amounts properly payable for (i) the Class Counsel
9 Award; (ii) the Class Representative Enhancement Payment; (iii) the PAGA Penalty
10 Amount; and (iv) all Settlement Administration Costs. Plaintiff shall request that the
11 Fairness Hearing be held within one hundred twenty (120) calendar days after entry of
12 the Preliminary Approval Order, subject to the Court's availability.

13 **5.2 Judgment and Continued Jurisdiction.** Pursuant to California Rules of Court,
14 Rule 3.769(h), upon final approval of this Agreement by the Court, the Parties shall
15 present the judgment to the Court for its approval. After entry of the judgment, the Court
16 shall have continuing jurisdiction solely for purposes of addressing: (i) the interpretation
17 and enforcement of the terms of the Agreement, (ii) Agreement administration matters,
18 and (iii) such post-judgment matters as may be appropriate under court rules or
19 applicable law, or as set forth in this Agreement.
20

21 **5.3 Settlement Terms Bind All Class Members Who Do Not Opt-Out.** Any Class
22 Member who does not affirmatively opt-out of the Class Settlement by submitting a timely
23 and valid Request for Exclusion shall be bound by all of the terms of the Agreement,
24 including those pertaining to the Released Claims, as well as any order that may be
25 entered by the Court if it grants final approval of this Agreement. Notwithstanding the
26 submission of any timely and valid Request for Exclusion, all Class Members (including
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1 the PAGA Group) will be bound by the PAGA Release under the Final Approval Order
2 and Judgment pursuant to *Arias v. Superior Court*, 46 Cal. 4th 969 (2009).

3
4 **6. NULLIFICATION OR MODIFICATION OF AGREEMENT.**

5 **6.1 Defendant's Right to Revoke.** Defendant may terminate and withdraw from
6 this Agreement at any time prior to the date the Court's approval of the Agreement
7 becomes "final" (i.e., not subject to appeal or reconsideration) if: (a) the Agreement is
8 construed in such a fashion that Defendant is required to pay more than the Gross
9 Settlement Amount and Employer payroll taxes on the wage portion of the settlement
10 (except as provided in Section 6.2); (b) the Court makes an order inconsistent with any of
11 the terms of this Agreement including, but not limited to, certifying for settlement
12 purposes a class or representative action that is different from the Class defined in
13 Section 1.1 or PAGA Group defined in Section 1.25, or any modification relating to the
14 release of all claims (except for an order reducing the Class Counsel Award or the Class
15 Representative Enhancement Payment); (c) following the signing of this Agreement, any
16 court certifies, whether on a conditional basis or not, a class, collective, or representative
17 action involving a claim covered by this Agreement; (d) any government department or
18 agency raises objections to the terms in the Agreement or otherwise indicates that it
19 intends to pursue remedies beyond those contemplated by the Agreement; or (e) more
20 than 10% of Class Members timely and validly opt out of the Class. If Defendant
21 terminates and withdraws under this provision, Defendant will bear any of the already
22 incurred Settlement Administration Costs. In the event that the basis for withdrawal is a
23 Court order as described in items (a) and (b) above, Defendant must provide written
24 notice to Plaintiff of its intent to terminate and withdraw within two (2) weeks of the date
25 on which the offending order is filed and served. Failure to provide timely notice will serve
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1 as a waiver of the right to revoke under the circumstances described in item (a) or (b)
2 above.

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4 **6.2** Modification Based on Increase in Number of Class Members. Defendant
5 has represented that there were approximately **25 Class Members**. If the number of
6 Class Members increases by more than 10% (i.e., more than 2 class members) through
7 the date of the Preliminary Approval Order, then the Gross Settlement Amount shall be
8 increased by the same number of percentage points above 10% by which the **actual**
9 **number of Class Members** exceeds 25. For **example**, and for purposes of **illustration only**,
10 if the number of Class Members increases by 11% (1% over the 10% "grace"), the Gross
11 Settlement Amount will increase by 1%.

12 **6.3** Action Status if Settlement Not Approved. This Agreement is being entered
13 into for Settlement purposes only. In the event that [1] Defendant invokes its rights under
14 Sections 4.6 or 6.1 of this Agreement, [2] the Court conditions its approval of either the
15 Preliminary Approval Order or the Final Approval Order and Judgment on any
16 modifications of this Agreement that are not acceptable to all Parties (including, but not
17 limited to, any modification of the Class or the claims and penalties being released)
18 **except for** any reduction of the Class Counsel Award or the Class Representative
19 Enhancement Payment, [3] the Court does not approve the Settlement Agreement or
20 enter the Final Approval Order and Judgment, or [4] the Court's approval of this
21 Agreement does not become "final" for any reason, then this Agreement will be deemed
22 null and void ab initio. In that event, (a) the Preliminary Approval Order, and/or Final
23 Approval Order and Judgment, and all of its or their provisions will be vacated by its or
24 their own terms, including, but not limited to, vacating conditional certification of the
25 Class, conditional appointment of Plaintiff as a class representative and conditional
26 appointment of Da Vega Fisher Mechtenberg LLP as Class Counsel, (b) the Action will
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1 revert to the status that existed before the execution date of the Memorandum of
2 Understanding, and (c) no term or draft of the Memorandum of Understanding or this
3 Agreement contemplated by it, 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. If the Court does not approve this
6 Agreement or enter the Final Approval Order and Judgment for any reason, or if the
7 Court's approval of this Agreement does not become "final" for any reason, Defendant
8 shall retain all its rights to object to the maintenance of the Action as a class and/or
9 representative action, and nothing in the Memorandum of Understanding or this
10 Agreement contemplated by it or other papers or proceedings related to the
11 Memorandum of Understanding or this Agreement contemplated by it shall be used as
12 evidence or argument by any Party concerning whether the Action may properly be
13 maintained as a class and/or representative action.
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15 **7. DISTRIBUTION.**

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17 **7.1 Individual Settlement Amounts Calculations.** The Individual Settlement
18 Amount is based upon the approximate number of Workweeks each Settlement Class
19 Member worked as a Class Member during the Class Period. Individual Settlement
20 Amounts shall be calculated and apportioned by the Settlement Administrator as follows:

21 (a) The Settlement Administrator shall determine the number of
22 Workweeks during the Class Period for each Settlement Class Member and the Total
23 Workweeks based on the Class List provided by Defendant.

24 (b) The Settlement Administrator shall divide the Net Settlement Fund by
25 the number of Total Workweeks to derive the "Workweek Value"

26 (c) For each Settlement Class Member, the Settlement Administrator
27 shall multiply the determined number of Workweeks they worked during the Class Period
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1 by the Workweek Value. The resulting figure shall be the "Individual Settlement Amount"
2 for each such Settlement Class Member.

3 (d) The Individual Settlement Amount(s) will be allocated for tax
4 purposes as follows: Thirty-Three (33%) of each Individual Settlement Payment will be
5 allocated as wages; Thirty-Three (33%) will be allocated interest, and Thirty-four (34%)
6 as penalties. The portion allocated to wages will be reported on an IRS Form W-2 and
7 the portions allocated to non-wages (interest and penalties) will be reported on an IRS
8 Form 1099 by the Settlement Administrator. Plaintiff and Class Members shall assume
9 full responsibility and liability for the payment of taxes due on such awards except that
10 Defendant shall solely be responsible for the employer portion of the payroll taxes on the
11 wages portion of such payments.
12

13 **7.2 Distribution of the PAGA Group Amount.** The Settlement Administrator shall
14 divide the PAGA Group Amount by the total number of PAGA Group members (i.e., the
15 total number of Class Members). The resulting figure shall be each Class Member's pro
16 rata share of the PAGA Group Amount, and these share amounts shall be reported on an
17 IRS Form 1099.
18

19 **7.3 Distribution Timing of Individual Settlement Amounts and the PAGA Group**
20 **Amount.** Individual Settlement Amounts shall be paid by check and mailed to Settlement
21 Class Members within ten (10) business days following the Effective Date. Class Member
22 pro rata shares of the PAGA Group Amount shall be paid by check and mailed to Class
23 Members within ten (10) business days following the Effective Date. If administratively
24 feasible, the Settlement Administrator will combine into one check a Settlement Class
25 Member's Individual Settlement Amount and their pro rata share of the PAGA Group
26 Amount.
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1 **7.4 Uncashed Settlement Checks.** If any checks mailed to Settlement Class
2 Members remain uncashed after the expiration of 120 days, or an envelope mailed to a
3 Settlement Class Member is returned and no forwarding address can be located for the
4 Settlement Class Member after reasonable efforts have been made (including, but not
5 limited to, skip tracing)(“Initial Distribution”); then the the Settlement Administrator, after
6 140 days from initial mailing, shall send a pro-rata Second Distribution of those uncashed
7 funds to the Settlement Class Members who cashed their original checks sent during the
8 Initial Distribution. The Second Distribution checks will expire 60 days after mailing. If
9 there remains any uncashed monies/checks after the Second Distribution those
10 uncashed monies will be sent by the Settlement Administrator to the California State
11 Controller’s Unclaimed Property Division in accordance with California Unclaimed
12 Property Laws. Settlement Class Member who fails to timely cash or deposit their
13 check(s) shall remain subject to the terms of the Settlement, including without limitation
14 all releases contained herein, and the Final Approval Order and Judgment from the
15 Court.
16

17 **7.5 Effect of Cashing or Depositing Checks.** The Second Amended Complaint,
18 which will be filed as part of and for settlement purposes only, alleges potential claims
19 under the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. (“FLSA”) but this is not an
20 FLSA “action” under 29 U.S.C. § 216(b). (*Amaro v. Anaheim Arena Management, LLC*
21 (2021) 69 Cal.App.5th 521.) The Parties agree this is an “opt-out” action under the
22 California Code of Civil Procedure that does not require an “opt-in” procedure to bind
23 Class Members to the terms of the Settlement, which includes the release of Released
24 Claims as defined in Sections 1.30 and 2.6. Nevertheless, and without prejudice to this
25 position and without changing the nature of this action, the Parties agree that Settlement
26 Class Members who cash or deposit an Individual Settlement Amount check are deemed
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1 to "opt-in" to the Settlement. Each Individual Settlement Amount check to Settlement
2 Class Members shall be affixed with the following language as further notice: "By cashing
3 or depositing this check, I confirm my consent to the Settlement, which includes releasing
4 claims under the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. ("FLSA")."

5
6 **8. MISCELLANEOUS PROVISIONS.**

7 **8.1 Cooperation.** The Parties shall cooperate fully with one another in seeking
8 approval of the Court of this Settlement and to use their respective best efforts to
9 consummate the Settlement and cause the Preliminary Approval Order and Final
10 Approval Order and Judgment to be entered and to become final. The Parties therefore
11 agree to cooperate in good faith to promptly prepare, execute and finalize all Settlement-
12 related documents, seek all necessary Court approvals, and do all other things necessary
13 to consummate the Settlement. No Party to this Agreement shall seek to evade his, her,
14 or its good faith obligations to seek approval and implementation of this Settlement by
15 virtue of any ruling, order, governmental report or other development, whether in the
16 Action, in any other litigation or otherwise that hereafter might occur and might be
17 deemed to alter the relative strengths of the Parties with respect to any claims or
18 defenses or their relative bargaining power with respect to negotiating.

19
20 **8.2 Further Assurances.** The Parties must execute and deliver any additional
21 papers, documents and other assurances, and must do any other acts reasonably
22 necessary, to perform their obligations under this Settlement Agreement and to carry out
23 its expressed intent. The Parties and their counsel will cooperate with each other and use
24 their best efforts to effect the implementation of this Agreement. If the Parties are
25 unable to reach agreement on the form or content of any document needed to implement
26 this Agreement, or on any supplemental provisions that may become necessary to
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1 effectuate the terms of this Agreement, the Parties may seek the assistance of the Court
2 to resolve such disagreement.

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4 **8.3** Extension of Postmark Deadlines Falling on a Sunday or Federal Holiday. If
5 the last day for a Class Member to submit any document under this Agreement falls on a
6 Sunday or state or Federal holiday, the deadline will be extended to the next day on
7 which the U.S. Postal Service is open.

8 **8.4** Exhibits Incorporated by Reference. The terms of this Agreement include
9 the terms set forth in any attached Exhibit, which are incorporated by this reference as
10 though fully set forth herein. Any Exhibit to this Agreement is an integral part of the
11 Settlement.

12 **8.5** Confidentiality. Plaintiff and Class Counsel will keep the Settlement
13 Agreement and related documents, and their settlement negotiations (including, but not
14 limited to, the negotiations in the course of mediation), confidential and will not disclose
15 that information to any third party until such time as Plaintiff files the motion seeking entry
16 of the Preliminary Approval Order. Plaintiff and Class Counsel will make no comments of
17 any kind regarding the Settlement Agreement to the press/media, or for purposes of
18 advertising. Plaintiff and Class Counsel agree that they will not issue any press releases
19 or post any statements regarding the Settlement Agreement on any websites or initiate
20 any contact with the media. If Plaintiff and/or Class Counsel are contacted by the media,
21 or any other third party, regarding the Settlement Agreement, they may only advise that
22 the Action has been amicably resolved and refer them to the public filings in the Action.
23 Plaintiff and Class Counsel agree that they will not disclose the terms of the Settlement
24 Agreement on any websites or in any other materials not necessary for the facilitation of
25 the Settlement Agreement. Plaintiff and Class Counsel shall retain the right to discuss the
26 Settlement Agreement with the Parties and the Class. Plaintiff and Class Counsel agree
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1 to maintain the confidentiality of any non-public information exchanged pursuant to the
2 Parties' mediation privilege and confidentiality and that they will not disclose any
3 settlement or mediation privileged communications. Plaintiff and Class Counsel also
4 agree and acknowledge that any breach of this Section 8.5 may cause irreparable harm
5 or damage to Defendant that is difficult to ascertain, and thus Plaintiff and Class Counsel
6 agree that any breach of this Section 8.5 shall give Defendant the right to obtain
7 injunctive or other applicable equitable relief, in addition to any other remedies available
8 in law or equity.

10 **8.6 Non-Disparagement.** Plaintiff further agrees that he shall not commit any act
11 or make any statement that is, or could reasonably be interpreted as, detrimental to the
12 business, reputation, or good will of Copan, including making any negative or disparaging
13 statements about its business, or its officers, directors, agents, and/or other personnel
14 (past and present), its employment policies and practices, operations, products, or
15 services, either as fact or opinion. Plaintiff acknowledges the terms of this Agreement
16 shall not preclude him from providing truthful testimony if mandated by subpoena or court
17 order to do so, or pursuant to any request from a government agency. Further, Plaintiff
18 acknowledges the terms of this Settlement Agreement shall not preclude him from
19 advocating in favor of Court approval of the Settlement.

21 **8.7 Grammar.** The neuter form of a pronoun shall be considered to include
22 within its meaning the masculine and feminine forms and binary of the pronoun, and vice
23 versa.

24 **8.8 No Conflict Intended.** Any inconsistency between this Settlement
25 Agreement and the attached exhibits will be resolved in favor of this Settlement
26 Agreement.

1 **8.9 Headings and Formatting of Definitions.** The various headings used in this
2 Settlement Agreement are solely for the Parties' convenience and may not be used to
3 interpret this Settlement Agreement. The headings and the formatting of the text in the
4 definitions do not define, limit, extend, or describe the Parties' intent or the scope of this
5 Settlement Agreement.
6

7 **8.10 Interim Stay of Proceedings.** The Parties agree to refrain from further
8 litigation of the Action, except such proceedings necessary to implement and obtain
9 entry of the Final Approval Order and Judgment. The Parties shall jointly seek to stay
10 all dates and deadlines in the Action pending final approval of this Stipulation. The Parties
11 further agree that the mutual, voluntary cessation of litigation shall terminate if the motion
12 for entry of the Preliminary Approval Order or the Final Approval Order and Judgment are
13 denied by the Court.
14

15 **8.11 No Injunctive Relief Against Defendant.** As part of this Settlement
16 Agreement, Defendant shall not be required to enter any consent decree, nor shall
17 Defendant be required to agree to any provision of injunctive relief.

18 **8.12 Waiver of Appeal.** Plaintiff and Class Counsel agree to waive appeals of an
19 order granting final approval of this Settlement Agreement or entering judgment in this
20 Action so long as such order is consistent with the material terms of this Agreement.

21 **8.13 Class List.** Within seven (7) months after the Effective Date and completion
22 of the administration, or in the event the Settlement is terminated pursuant to Section 4.6
23 or 6.1, all originals, copies, documents, transcriptions, iterations, or drafts of the Class
24 List or any portion thereof, including any updated Class Member contact information
25 obtained via, e.g., the National Change of Address database, shall be returned to
26 Defendant by the Settlement Administrator.
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1 **8.14 Entire Agreement.** This Agreement and any attached Exhibit constitutes the
2 entirety of the Parties' settlement terms. No other prior or contemporaneous written or
3 oral agreements may be deemed binding on the Parties.
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5 **8.15 Amendment or Modification.** This Agreement may be amended or modified
6 only by a written instrument signed by counsel for all Parties or their successors-in-
7 interest and if after entry of the Preliminary Approval Order, as approved by the Court.
8

9 **8.16 Real Party in Interest.** In executing this Settlement Agreement, the Parties
10 warrant and represent that they, including Plaintiff in his representative capacity on behalf
11 of the Class, PAGA Group and all others alleged to be similarly situated, are the only
12 persons having any interest in the claims asserted in the Action. Neither these claims, nor
13 any part of these claims, have been assigned, granted, or transferred in any way to any
14 other persons.

15 **8.17 Authorization to Enter Into Agreement.** Counsel for all Parties warrant and
16 represent they are expressly authorized by the Party whom they represent to negotiate
17 this Agreement and to take all appropriate action required or permitted to be taken by
18 such Parties pursuant to this Agreement to effectuate its terms, and to execute any other
19 documents required to effectuate the terms of this Agreement.

20 **8.18 Voluntary Agreement.** The Parties have negotiated the settlement at arms-
21 length and in good faith, with assistance from mediator Michael Loeb of JAMS, a
22 respected mediator, and have executed this Settlement Agreement knowingly, voluntarily,
23 and without duress or undue influence.

24 **8.19 Dispute Resolution.** The Parties agree to have mediator Michael Loeb of
25 JAMS seek to resolve any and all disputes that may arise in connection with interpreting
26 the terms of this Settlement Agreement. In the event the mediator is unavailable, the
27 Parties shall cooperate in good faith to identify another mediator. Defendant and Class
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1 Counsel shall split equally and pay for any mediator fees and costs associated with
2 seeking mediator assistance pursuant to this Section 8.19. Under no circumstances shall
3 any mediator fees or costs incurred pursuant to this Section 8.19 be taken out of the
4 Gross Settlement Amount.
5

6 **8.20 Cooperation and Drafting.** The Parties have cooperated in the drafting and
7 preparation of this Agreement. Hence, in any construction made to this Agreement, the
8 same shall not be construed against any of the Parties.

9 **8.21 Change of Time Periods.** All time periods and dates described in this
10 Settlement Agreement are subject to the Court's approval. These time periods and dates
11 may be changed by the Court or by the Parties' written agreement without notice to the
12 Class.

13 **8.22 Binding on Successors and Assigns.** This Agreement shall be binding upon
14 and inure to the benefit of the Parties and their respective heirs, trustees, executors,
15 administrators, successors and/or assigns.

16 **8.23 California Law Governs.** All terms of this Agreement and Exhibits hereto
17 shall be governed by and interpreted according to the laws of the State of California.
18 Provided that for all purposes any substantive issues regarding claims subject to this
19 Agreement shall be construed in accordance with the laws of the principal places of work
20 ("Home States") for all work performed outside of California without regard to any conflict
21 of law principles.
22

23 **8.24 Execution and Counterparts.** This Agreement may be executed in
24 counterparts which shall be deemed to be part of one original, and facsimile and
25 electronic image copies of signatures (including by PDF, DocuSign, or any electronic
26 signature complying with the U.S. federal ESIGN Act of 2000) or other transition method
27 shall be equivalent to original signatures.
28

1 **8.25 Enforceability**. The Parties intend this to be a binding, enforceable and
2 admissible settlement agreement under California Code of Civil Procedure section 664.6
3 and California Evidence Code section 1123(b).
4

5 **8.26 Inadmissibility**. This Settlement Agreement, whether approved or not
6 approved, revoked, or made ineffective for any reason, and any proceedings related to
7 this settlement and any discussions relating thereto shall be inadmissible as evidence of
8 any liability or wrongdoing whatsoever and shall not be offered as evidence of any liability
9 or wrongdoing in any Court or other tribunal in any state, territory, or jurisdiction, or in any
10 manner whatsoever. Further, neither this Settlement Agreement, nor any proceedings
11 taken pursuant to it, shall be construed, offered or received in evidence as an admission,
12 concession or presumption that class certification is appropriate, except to the extent
13 necessary for the consummation of this Agreement.
14

15 **8.27 Agreement Constitutes a Complete Defense**. To the extent permitted by
16 law, this Settlement Agreement may be pled as a full and complete defense to any action,
17 suit, or other proceedings that may be instituted, prosecuted or attempted against the
18 Released Parties contrary to any releases contained herein, including the release of the
19 Released Claims and the PAGA Release.

20 **8.28 Defendant's Position**. Defendant state that it has acted lawfully at all times
21 and its policies and practices have been lawful, fair and consistent with all relevant laws,
22 rules, and regulations. Defendant denies all claims as to liability, damages, penalties,
23 interest, fees, restitution, injunctive relief and all other forms of relief as well as the class
24 allegations asserted in the Action. To the extent this Agreement is deemed void,
25 Defendant does not waive, but rather expressly reserves, all rights to challenge all such
26 claims and allegations in the Action upon all procedural and factual grounds, including
27 without limitation the ability to challenge class, collective, and representative action
28

1 treatment on any grounds, as well as asserting any and all other potential defenses or
2 privileges. Plaintiff and his counsel agree that Defendant retains and reserves these
3 rights. Specifically, Plaintiff and his counsel agree not to argue or present any argument
4 that, in the event this Agreement is not approved in full, Defendant could not oppose any
5 class or collective certification motion, file a later motion for de-certification, contest any
6 class action or collective certification on any grounds, or assert any and all other potential
7 defenses and privileges if any or all of the Action were to proceed. Plaintiff and his
8 counsel hereby waive such arguments and agree they will not take a position contrary to
9 this provision.
10

11 **8.29 No Admission of Liability.** Nothing in the Memorandum of Understanding or
12 the Settlement Agreement may be construed as an admission or concession on any point
13 of fact or law by or against any Party.
14

15 **SIGNATURES - READ CAREFULLY BEFORE SIGNING**
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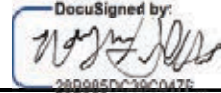
COZEN O'CONNOR
401 WILSHIRE BOULEVARD
SUITE 850
SANTA MONICA, CA 90401

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PLAINTIFF WAYNE DOUGLAS GILLETTE

2/15/2023

Dated: _____

DocuSigned by:

28D965DC39C047F

Wayne Douglas Gillette

COPAN DIAGNOSTICS, INC.

Dated: _____

Please Print Name of Authorized Signatory

APPROVED AS TO FORM:

Dated: _____

COZEN O'CONNOR

% : _____
C. Edward Langhammer Jr.

Attorneys for Defendants
COPAN DIAGNOSTICS, INC.

Dated: 2/15/2023

DA VEGA FISHER MECHTENBERG LLP

DocuSigned by:

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% : _____
Matthew S. Da Vega

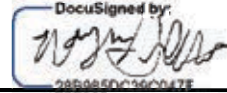
Attorneys for Plaintiff
WAYNE DOUGLAS GILLETTE

COZEN O'CONNOR
401 WILSHIRE BOULEVARD
SUITE 850
SANTA MONICA, CA 90401

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PLAINTIFF WAYNE DOUGLAS GILLETTE

Dated: 2/15/2023

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Wayne Douglas Gillette

COPAN DIAGNOSTICS, INC.

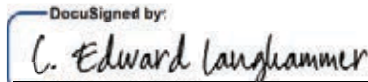
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Please Print Name of Authorized Signatory

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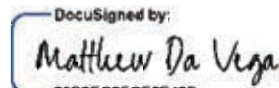
COZEN O'CONNOR

By: 
C. Edward Langhammer Jr.

Attorneys for Defendants
COPAN DIAGNOSTICS, INC.

Dated: 2/15/2023

DA VEGA FISHER MECHTENBERG LLP

By: 
Matthew S. Da Vega

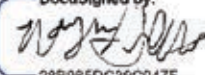
Attorneys for Plaintiff
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PLAINTIFF WAYNE DOUGLAS GILLETTE

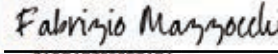
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Wayne Douglas Gillette

COPAN DIAGNOSTICS, INC.

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Fabrizio Mazzocchi

Please Print Name of Authorized Signatory

APPROVED AS TO FORM:

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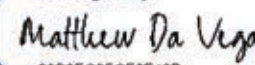
COZEN O'CONNOR

By: _____
C. Edward Langhammer Jr.

Attorneys for Defendants
COPAN DIAGNOSTICS, INC.

Dated: 2/15/2023

DA VEGA FISHER MECHTENBERG LLP

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By: _____
Matthew S. Da Vega

Attorneys for Plaintiff
WAYNE DOUGLAS GILLETTE

Gillette v. Copan Diagnostics, Inc.
Case No. CVRI-2105284

EXHIBIT A
(Second Amended Complaint)

Matthew S. Da Vega, SBN 195443
Matthew Fisher, SBN 229532
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Santa Barbara, CA 93101
Telephone: 805.232.4471
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Mdavega@mdmflaw.com

Attorneys for Plaintiff and the Proposed Plaintiff Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

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

Plaintiff,

v.

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

Defendants.

Case No. CVRI-2105284

**SECOND AMENDED CLASS and
REPRESENTATIVE ACTION**

COMPLAINT FOR:

- (1) FAILURE TO PAY OVERTIME
WAGES (CAL. LABOR CODE §§ 204,
510, 1194);**
- (2) FAILURE TO PAY MINIMUM WAGE
(CAL. LABOR CODE §§ 1182.12, 1194,
1197, 1197.1;);**
- (3) FAILURE TO FURNISH
TIMELY/ACCURATE WAGE
STATEMENTS (RECORD-KEEPING
VIOLATIONS) (CAL LABOR CODE §§
226, 1174);**
- (4) FAILURE TO PAY ALL WAGES DUE
AT DISCHARGE IN TIMELY MANNER
- “WAITING TIME PENALTIES”
(CAL. LABOR CODE §§ 201-203);**
- (5) UNLAWFUL AND/OR UNFAIR
BUSINESS PRACTICES (CAL. BUS. &
PROF. CODE §§ 17200, *et seq.*)(“UCL”);**
- (6) VIOLATION OF PRIVATE ATTORNEY
GENERAL ACT OF 2004
(“PAGA”)(LAB. CODE § 2698, *et seq.*;**
- (7) FAILURE TO PROVIDE MEAL
BREAKS (CAL. LABOR CODE §§
226.7, 512);**

- 1 (8) **FAILURE TO PROVIDE REST**
2 **BREAKS (CAL. LABOR CODE §**
3 **226.7);**
4 (9) **FAILURE TO REIMBURSE**
5 **NECESSARY BUSINESS EXPENSES**
6 **(CAL. LABOR CODE § 2802);**
7 (10) **VIOLATION OF THE FAIR LABOR**
8 **STANDARDS ACT (29 U.S.C. §§ 201, et**
9 **seq.)**

10 **DEMAND FOR JURY TRIAL**

11 Plaintiff Wayne Douglas Gillette (“Gillette” or “Plaintiff”), brings this action on behalf of
12 himself, and all others similarly situated (“Class Members”), and on information and belief
13 alleges against Defendants Copan Diagnostics, Inc. (“Copan” or “Defendant”), and Does 1-100
14 (collectively “Defendants”) the following:

15 **NATURE OF THE CASE**

16 1. This case is brought as a class action under California Code of Civil Procedure
17 (“CCP”) §382 to address Defendants’ violations of various California Labor Codes, Industrial
18 Welfare Commission (“IWC”) wage orders, and Unfair Competition Law (“UCL”). This Second
19 Amended Complaint adds a seventh cause of action (alleged meal period violations), an eighth
20 cause of action (alleged rest period violations), a ninth cause of action (alleged failure to
21 reimburse business expenses), and a tenth cause of action (alleged FLSA violations) for the
22 purposes of Class/PAGA settlement. Although Plaintiff has included a the Fair Labor Standards
23 Act (“FLSA”) cause of action, this is not an “FLSA action” under 29 U.S.C. § 216(b). The
24 purpose of these additional cause of action including the FLSA cause of action is to meet the
25 requirements of *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, to
26 “ensure that class releases do not extend to claims that are beyond the scope of the allegations in
27 the complaint”. The settling plaintiff may release FLSA claims arising from the same facts even
28 though the settlement adopts California’s “opt-out” class procedure rather than the FLSA’s “opt-
in” procedure. The FLSA’s procedure governs who can be a Plaintiff not the scope of a
permissible release. *Amaro* at 539-540. This case is also brought as a representative action for

1 recovery of penalties under the California Labor Code Private Attorney General Act of 2004
2 (“PAGA”), Cal. Lab. Code § 2698, *et seq.* Plaintiff alleges Defendants have engaged in, among
3 other things a system of willful violations of the California Labor Code, applicable IWC wage
4 orders, and UCL for the work performed by Class Members in and outside California.

5 2. Plaintiff and Class Members are “Field Service Engineers” for Copan: Plaintiff
6 was employed as a Field Service Engineer in the Field Service Department of Copan Diagnostics
7 which is headquartered in Murrieta, CA in Riverside County. Plaintiff and other Field Service
8 Engineers (“Class Members”) were misclassified as exempt from overtime/salaried employees by
9 Defendants and not paid overtime wages for overtime hours worked despite typically working in
10 excess of 8 hours a day and/or 40 hours a week while performing work in and outside California.
11 Plaintiff and Class Members worked for Defendant Copan by traveling to/from various client’s
12 and customer’s facilities, including in/at physical locations in and outside California. Despite
13 being given the misleading job title of “Field Service Engineer” the Plaintiff and Class Members
14 are/were not engineers and their job duties/work are/were largely manual labor including the
15 inspections and repairs of Copan’s diagnostic equipment (automated microbiology equipment).

16 3. Misclassification of “Field Service Engineers” as Exempt Employees: Defendants
17 acted intentionally and with deliberate indifference and conscious disregard for the rights of
18 Plaintiff and Class Members by intentionally misclassifying Field Service Engineers as Exempt
19 from overtime/salaried employees. During the Class Period Class Members performed physical
20 repair work in and outside the state of California including:

21 (a) Class Members who lived in California and performed daily manual labor work in
22 and outside California, and

23 (b) Class Members who lived outside of California and performed work outside of
24 California, but would often traveled to/from California at the direction of Defendants to perform
25 manual labor work within the state of California (i.e. Plaintiff although based in North Carolina
26 came to California approximately 1 time every 2 months [6x a year] to perform manual repair
27 work, while often working/staying in California for approximately a week at a time).

1 These Class Members were not paid overtime wages for overtime work performed in or
2 outside California (work over 8 hours a day and/or 40 hours in a week), not paid a minimum
3 wage for said work in and outside California, not provided timely/accurate wage statements
4 reflecting those overtime hours in and outside California, not paid meal/rest period premiums for
5 duty-filled meal/rest periods, not reimbursed necessary business expenses, and not paid waiting
6 time penalties upon separation from the Company for the work performed in California.

7 4. Failure to Pay Overtime, Failure to Pay Overtime at the Correct Overtime Rates,
8 Failure to Pay Minimum Wage, Failure to Provide Timely/Accurate Wage Statements, Meal/Rest
9 Period Violations, Reimbursement of Necessary Business Expenses, and Waiting Time Penalties:

10 Defendants intentionally misclassified Plaintiff and Class Members as exempt. As a result,
11 Defendants intentionally failed to pay Plaintiff and Class Members for all wages earned for work
12 performed in and outside California including failing to pay them for any overtime hours worked,
13 for overtime hours at the appropriate rate, minimum wage for hours worked, failing to keep and
14 provide accurate and timely records of wages earned and other legally mandated records, failing
15 to pay meal/rest period violation premiums, failing to reimburse necessary business expenses, and
16 failing to pay Plaintiff and Class Members whose employment has terminated (voluntarily
17 resigned or were terminated) a final payment of his or her wages in a prompt and timely manner
18 in conformity with Labor Codes §§ 201, 202, 203, 204, 216, 226, 226.3, 226.7, 510, 512, 1174,
19 1174.5, 1182.12, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198, 1199, 2802, and other unfair and
20 unlawful conduct in violation of the Business & Professional Code §17200, *et seq.* The policies,
21 practices and customs of Defendants described herein are also violations of California Industrial
22 Welfare Commission (I.W.C.) Wage Order 1 and Order 4 (“I.W.C. Wage Orders) and FLSA.

23 5. The policies, practices and customs of Defendants described herein have resulted
24 in unjust enrichment of Defendants and an unfair business advantage over businesses that
25 routinely adhere to the strictures of the California Labor Code and IWC wage orders, and thus
26 violate the UCL.

27 6. The “Class Period”: The Class Period is designated as the time from November
28 19, 2017 (4 years prior to the filing date of the original complaint), through the entry of judgment,

1 based on the allegation that the violations of California's wage and hour laws and UCL, as
2 described herein, have been ongoing for at least the four (4) years prior to the filing of the
3 original Complaint and are continuing.

4 7. During the relevant Class Period, Defendants have had a standard and uniform
5 policies that violate California's Labor Codes, I.W.C. Wage orders, and UCL as follows:

- 6 a. Defendants intentionally misclassified Plaintiff and Class Members (Field
7 Service Engineers who performed work in and outside California) as
8 Exempt/Salaried Employees in violation of Labor Codes §§ 510, 515 and
9 FLSA;
- 10 b. Defendants required Plaintiff and Class Members working for Defendants
11 in and outside California to perform work without full compensation
12 during overtime hours, and/or paid minimum wage for said hours worked
13 in and outside California. On a daily basis Field Service Engineers
14 are/were required to perform work in and outside California for which they
15 were not lawfully compensated in violation of Labor Code §§ 204, 510,
16 1182.11, 1182.12, 1194, 1197, 1197.1, 1198, and 1199 (and I.W.C. Orders)
17 and FLSA;
- 18 c. Defendants failed to provide Plaintiff and Class Members, with accurate
19 and timely pay stubs (accurate, semi-monthly, itemized statements of the
20 total number of hours each of them worked, applicable hourly rate of pay,
21 and/or wages earned) --- in violation of Labor Code § 226; and
- 22 d. Defendants have willfully failed to pay Plaintiff and Class Members whose
23 employment has terminated (voluntarily resigned or were terminated) a
24 final payment of his or her total wages in a prompt and timely manner ----
25 in violation of Labor Codes §§ 201 - 203.

26 8. Plaintiff, on behalf of himself and the proposed Class, seeks unpaid compensation
27 (including unpaid/underpaid regular hours, overtime hours, minimum wages), interest thereon,
28 waiting time penalties, penalties and relief for failure to provide accurate and timely itemized

1 statements of total hours worked/wages earned, and reasonable attorneys' fees and costs, under
2 Labor Code §§ 201, 202, 203, 204, 218.5, 218.6, 226, 510, 1174, 1194, 1197.1, 1199, 2699.3,
3 2699.5, C.C.P. § 1021.5, California common law, (and I.W.C. Wage orders) and FLSA.

4 9. Under California Business & Professions Code ("Cal. Bus. & Prof. Code")
5 §§ 17200, *et seq.* ("UCL"), and pursuant to class action procedures provided for in these statutes,
6 Plaintiff, on behalf of himself and all others similarly situated also seeks injunctive relief and
7 restitution of all benefits the Defendants have received from their violations, as described herein,
8 during the relevant Class Period.

9 **JURISDICTION AND VENUE**

10 10. **Jurisdiction:** This Court has jurisdiction over this matter pursuant to the laws of
11 the State of California including Code of Civil Procedure § 410.10. Defendants own and/or lease
12 property in Riverside County. Defendants regularly do business in Riverside County.
13 Defendant's headquarters are located at 26055 Jefferson Avenue, Murrieta, CA 92562 in
14 Riverside County. Defendants employ and/or employed approximately 25 (twenty-five) Field
15 Service Engineers during the Class Period who have performed work in and outside California
16 and have obtained the benefits of the laws of the State of California and the California labor
17 market. This Court has jurisdiction over Plaintiff's and Class Members' claims for: intentional
18 misclassification of Field Service Engineers as exempt from overtime pay; failure to pay overtime
19 and minimum wages; penalties for failure to provide itemized statements of hours worked and all
20 applicable hourly rates; penalties for failure to pay wages of discharged employees; and
21 injunctive relief and restitution of ill-gotten benefits arising from Defendants' unlawful business
22 practices.

23 11. **Venue:** Venue is proper in this county pursuant to California Code of Civil
24 Procedure §§395(a) and/or 395.5. Defendants transact business and may be found within
25 Riverside County. The unlawful acts, as well as the course of conduct alleged herein, occurred in
26 Riverside County. Defendants maintain offices, transact business, have agents, and employ
27 numerous Class Members in Riverside County and/or California, and are otherwise within this
28 Court's jurisdiction for purposes of service of process. The unlawful acts alleged herein have had

1 a direct effect on Plaintiff and those similarly situated within the State of California and within
2 Riverside County.

3 12. **PAGA Notice (November 19, 2021):** California Labor Code §§ 2699 et seq., the
4 "Labor Code Private Attorneys Generals Act" ("PAGA"), authorizes aggrieved employees to sue
5 directly for various civil penalties under the California Labor Code. On November 19, 2021 (the
6 same date of the original filing of the Complaint in this matter) Plaintiff provided written notice
7 ("PAGA Notice") and a draft copy of a First Amended Complaint ("FAC"), which included the
8 additional cause of action for alleged PAGA violations, by certified mail and electronic filing to
9 the California Labor and Workforce Development Agency ("LWDA"), via the LWDA website,
10 and to the Defendants with the specific provisions of the California Labor Code alleged to have
11 been violated, including the facts and theories to support the alleged violations, pursuant to
12 California Labor Code §2699.3. A true and correct copy of the PAGA Notice showing
13 compliance with Labor Code §2699.3 is attached hereto as **Exhibit A**. No notice of cure by
14 Defendants was provided and the LWDA has not provided Plaintiff with notice that it intends to
15 investigate this violation, although more than 65 days elapsed (as of January 24, 2022) since the
16 postmark date of Plaintiff's PAGA Notice.

17 **THE PARTIES**

18 13. **Plaintiff Wayne Douglas Gillette ("Gillette"):** Gillette is a single 37 year old
19 adult male and father of three. He is currently a resident and citizen of Raleigh, North Carolina.
20 He was employed by Copan Diagnostics from April 20, 2015 until October 15, 2021 (6 years and
21 5 months or 338.57 weeks), as Field Service Engineer. He was initially hired at a salary of
22 \$55,000/year + bonus (approximately \$5,000 in 2017) but at the time of his termination his salary
23 was \$69,000/year + bonus (approx. \$4,000 to \$5,000 in 2020) for a total \$73,000). As a Field
24 Service Engineer his job was performing manual repairs and administering manual preventive
25 maintenance, calibration, and electrical safety testing (EST) on automated microbiology
26 equipment like Copan's WASP [Walk Away Special Processor] and WASPLabs for automated
27 specimen processing (i.e. urine, stool, sputum and swab sample processing). He and Class
28 Members were, despite the job title, a field mechanic performing mostly manual labor/repairs,

1 monitor work order requests, complete said repairs, perform equipment inspections and
2 preventive maintenance, and documenting all service activities. Plaintiff estimates that 80%+ of
3 his and Class Members work is manual mechanical repairs versus 20% downloading/updating
4 software or hard drives on the equipment. Plaintiff alleges that he and other Class Members
5 typically worked 50+ hours a week but were not paid for any of the overtime hours work.
6 Defendants also did not provide compliant itemized wage statement in writing showing gross
7 wages, total hours worked, all deductions, net wages, applicable hourly rates, etc.

8 14. **Defendant Copan Diagnostics, Inc. (“Copan”):** At all relevant times, Defendant
9 Copan was and is a corporation organized under the laws of the State of New York, and
10 authorized and qualified to do business in California and Riverside County. Copan was founded
11 in 1979. COPAN stands for “Collection and Preservation for Analysis”. Copan is headquartered
12 at 26055 Jefferson Avenue, Murrieta, CA 92562 in Riverside County. Copan is a California
13 based manufacturer of laboratory products including bacteriology transport swabs, viral transport
14 media, transfer pipets, inoculation loops and needles, spreaders, and molecular systems. It has
15 manufactured the WASP: Walk-Away Specimen Processor, a modular open platform system
16 which enables the automatic planting and streaking of all types of bacteriological samples for
17 processing (See - <https://www.youtube.com/watch?v=Q6rKoPJ8RPw&t=262s>). Copan,
18 employs/employed Field Service Engineers in and outside California during the Class Period, and
19 has intentionally misclassified them as exempt employees. Plaintiff alleges that the practices and
20 policies that are complained of in this Complaint have been occurring throughout the Class Period
21 and are currently applied by Copan in and outside California. Copan is, and at all relevant times
22 has been, an employer subject to the California Labor Code.

23 **FICTITIOUS DEFENDANTS**

24 15. Defendants Does 1-100, inclusive, are sued herein under fictitious names. Their
25 true names and capacities are unknown to Plaintiff at this time. When their true names and
26 capacities are ascertained, Plaintiff will amend this Complaint by inserting their true names and
27 capacities. Plaintiff is informed and believe, and thereon allege that each of the fictitiously-
28 named Defendants is responsible in some manner for the occurrences alleged herein and that

1 Plaintiff's' and the proposed Class Members' damages and penalties alleged herein were
2 proximately caused by such Defendants.

3 **AGENCY**

4 16. Plaintiff is informed, believe, and thereon allege that each of the Defendants herein
5 was, at all times relevant in this action, the agent, employee, representing partner, and/or joint
6 venture of the remaining Defendants and was acting within the course and scope of that
7 relationship. Plaintiff is further informed, believe, and thereon allege that each of the Defendants
8 herein gave consent to, ratified, and authorized the acts alleged herein to the remaining
9 Defendants.

10 **CLASS ACTION ALLEGATIONS**

11 17. Plaintiff brings this action individually and as a class action on behalf of opt-out
12 classes (the "Class") defined as follows:

13 **All current and former Field Service Engineer employees who**
14 **physically performed work for Defendants in and outside the**
15 **state of California from November 19, 2017 until the entry of**
16 **judgment.**

17 18. Plaintiff is a member of the proposed class and representative of other Field
18 Service Engineer employees and are acting on behalf of their interests. Plaintiff believes this
19 includes, but is not limited to Defendants' Field Service Engineer employees misclassified as
20 exempt (collectively "Field Service Engineers") and other related job titles as their specific titles
21 may have changed over time. Plaintiff reserves the right under Rule 3.765(b), California Rules of
22 Court, to amend or modify the class description with greater specificity or further division into a
23 subclasses or limitations to particular issues.

24 19. The Plaintiff and Class Members assert the following claims:

- 25 a. Plaintiff and Class Members were intentionally misclassified as exempt in
26 violation of Labor Codes §§510, 515 and FLSA;
27 b. Plaintiff and Class Members were not paid all wages owed for all hours
28 work including regular hours, overtime hours, and/or minimum wage for
said hours worked as required by California Labor Code §§ 204, 510,

1 1182.11, 1182.12, 1194, 1197, 1197.1, 1198, and 1199 and I.W.C. Orders
2 and FLSA;

3 c. Plaintiff and Class members were not paid all wages due them upon their
4 separation from employment with Defendants as required by Labor Code
5 §§ 201 - 203;

6 d. Plaintiff and Class members did not receive pay stubs in conformity with
7 Labor Code §226;

8 e. Plaintiff and Class members were not provided duty-free meal periods (or
9 paid in lieu thereof) as required by Labor Code §§ 226.7, 512;

10 f. Plaintiff and Class members were not provided duty-free rest periods (or
11 paid in lieu thereof) as required by Labor Code §§ 226.7;

12 g. Plaintiff and Class members were not reimbursed for necessary business
13 expenses;

14 20. This action is brought, and may properly be maintained, as a class action pursuant
15 to California Code of Civil Procedure §382 (and the analogous provisions of Federal Rules of
16 Civil Procedure 23(a)(1)-(4) and 23(b)) as to violations of California Labor Codes, I.W.C. Wage
17 Orders, and UCL and FLSA for unpaid regular hours worked, overtime hours worked, and/or
18 minimum pay for said hours, waiting time penalties, failure to furnish timely, itemized wage
19 statements, meal/rest period violations, unreimbursed business expenses, and attorneys' fees and
20 costs. The similarly situated employees are known to Defendants and are readily identifiable and
21 locatable through Defendants' own employment records. There is a well-defined community of
22 interest in the litigation, and the proposed class is easily ascertainable. As described below, this
23 action also satisfies the numerosity, commonality, predominance, typicality, adequacy, and
24 superiority requirements of these provisions.

25 21. **Numerosity:** A class action is the only available method for the fair and efficient
26 adjudication of this controversy. Although the exact number and identities of all Class Members
27 are unknown to Plaintiff at this time and can only be ascertained through appropriate discovery,
28 Plaintiff is informed and believe that the Class includes over 50 persons. On information and

1 belief, therefore, Plaintiff alleges that the members of the Class are so numerous that joinder of all
2 members is impractical, if not impossible. Membership in the Class will be determined upon
3 analysis of, *inter alia*, records maintained by Defendants.

4 22. **Commonality and Predominance:** The Plaintiff and the Class share a
5 community of interest because there are numerous common issues of fact and law that
6 predominate over any questions and issues solely affecting individual members. Such common
7 factual and legal issues include, but are not limited to, the following:

- 8 a. Whether Plaintiff and Class Members served Defendants as exempt or non-
9 exempt employees under California law and FLSA;
- 10 b. Whether Defendants knowingly and willfully violated Labor Code §§ 204,
11 510, 1182.11, 1182.12, 1194, 1197, 1197.1, 1198, and 1199, and FLSA by
12 failing to pay all wages for regular hours worked, overtime hours worked,
13 and/or minimum wage for said hours, to Plaintiff and Class Members;
- 14 c. Whether Defendants violated Labor Code §§226 and 1174 by failing to
15 keep or provide accurate records of Plaintiff's and Class Members' gross
16 wages, total hours worked, deductions, net wages, dates of the pay period,
17 hourly rates, etc.;
- 18 d. Whether Defendants violated Labor Code §§201, 202, 203 by failing to
19 pay all wages due and owing at the time that Plaintiff's and Class
20 Members' employment with Defendants terminated;
- 21 e. Whether former employees are entitled to "waiting time" penalties
22 pursuant to Labor Code §203;
- 23 f. Whether Defendants knowingly and willfully violated the above wage and
24 hour laws; and
- 25 g. Whether Defendants various violation of the Labor Code, described above,
26 serve as a predicate violations of Business & Professions Code §§17200, *et*
27 *seq.* ("UCL").

1 23. **Typicality:** Plaintiff's claims are typical of the claims of the Class. Plaintiff and
2 all members of the Class sustained injuries and damages arising out of, and caused by,
3 Defendants' common course of conduct in violation of law as alleged herein.

4 24. **Adequacy of Representation:** Plaintiff is an adequate representative of the Class
5 in that Plaintiff have the same interests in the litigation of this case as the Class Members as they
6 include current and former Field Service Engineers working for Defendants. Plaintiff is
7 committed to vigorous prosecution of this case and have retained competent counsel who are
8 experienced in class actions and wage and hour litigation of this nature. Plaintiff is not subject to
9 any individual defenses different from those conceivably applicable to the Class as a whole.

10 25. **Superiority of Class Action:** A class action is superior to other available
11 methods for the fair and efficient adjudication of this controversy because individual litigation of
12 the claims of all Class Members is impractical.

13 26. The California Labor Code and Wage Order provisions upon which Plaintiff and
14 Class Members assert these claims are broadly remedial in nature. These laws and labor standards
15 serve an important public interest in establishing minimum working conditions and standards in
16 California. These laws and labor standards protect the average working employee from
17 exploitation by employers who may seek to take advantage of superior economic and bargaining
18 power in setting onerous terms and conditions of employment.

19 27. The nature of this action and the format of laws available to Plaintiff and members
20 of the class identified herein make the class action format a particularly efficient and appropriate
21 procedure to redress the wrongs alleged herein. If each employee were required to file an
22 individual lawsuit, the corporate Defendants would necessarily gain an unconscionable advantage
23 since they would be able to exploit and overwhelm the limited resources of each individual class
24 member with their vastly superior financial and legal resources. Requiring each class member to
25 pursue an individual remedy would also discourage the assertion of lawful claims by employees
26 who would be disinclined to file an action against their current or former employer for real and
27 justifiable fear of retaliation and permanent damage to their careers at subsequent employment.
28

1 28. Even if every Class Member could afford individual litigation, the court system
2 could not. It would be unduly burdensome to the courts in which individual litigation of
3 numerous cases would proceed. Individualized litigation would also present the potential for
4 varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all
5 parties and to the court system resulting from multiple trials of the same complex factual issues.
6 By contrast, the conduct of this action as a class action, with respect to some or all of the issues
7 presented herein, presents fewer management difficulties, conserves the resources of the parties
8 and the court system, and protects the rights of each Class Member. Plaintiff anticipate no
9 management difficulties in this litigation.

10 29. Further, the Defendants have also acted, or have refused to act, in respects
11 generally applicable to the Class, thereby making appropriate relief with regard to the members of
12 the Class as a whole, as requested herein.

13 **COMMON FACTUAL ALLEGATIONS**

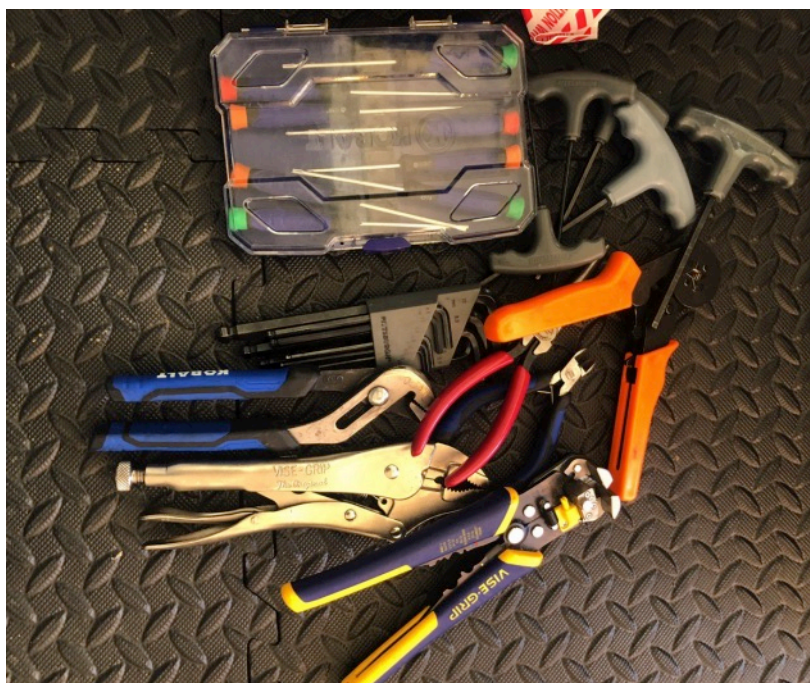
14 30. Plaintiff is informed and believes and based thereon allege the following:

15 31. Field Service Engineers and WASP Systems: Copan provides its WASP systems
16 nationwide to various labs and medical facilities. In order to install, operate, and repair these
17 WASP systems Copan employs “Field Service Engineers” throughout the Country, including
18 many who live and work in and outside California. Field Service Engineers’ job duties involve
19 traveling to various job sites each day, then inspecting, installing, and/or repairing WASP
20 equipment, performing maintenance and troubleshooting on the equipment, and operating the
21 equipment with the customer. (see picture of WASP system, below).
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32. Field Service Engineers' Essential Job Functions: Field Service Engineers' essential job functions, as articulated in its own materials, including: "the installation, maintenance, repair, troubleshooting and assembly of automated microbiology equipment ..."; "Achieves performance measures associated with the maintenance of equipment ..."; "Complete all necessary documentation of activities involving the servicing of equipment in accordance with manufacturer requirements"; "Serves as a resource for the proper operation and maintenance of equipment.", "Adheres to quality customer service while addressing customer concerns and requests." The manual labor duties performed by Plaintiff and the other Field Service Engineers is non-exempt work.

33. Basic Tools: The majority of their work is manual in nature, using hand tools and carrying heavy equipment (See picture below of Plaintiff's tools used to work on WASP systems).



34. Compensation as Misclassified Exempt Employees: Copan pays all of its Field Service Engineers under a uniform compensation policy. Field Service Engineers receive a salary and job bonus, regardless of the number of hours worked. Regardless of location, all Field Service Engineers were treated the same and denied overtime pay.

35. Long Unpaid Overtime Hours: Field Service Engineers work long and hard hours in the field (i.e. typically 50+ hours a week). However, Copan does not pay Field Service Engineers overtime wages.

36. Copan's Control Over and Policies Re Field Service Engineers: Beyond being manual in nature, every aspect of a Field Service Engineers' job is predetermined for them. Copan trains its Field Service Engineer employees on how to inspect, trouble shoot, and repair the WASP equipment. Field Service Engineers are instructed to contact their manager(s) or other Field Service Engineers in group communications for additional help, if needed. Field Service Engineers are not allowed to act on his or her own in the inspection, operation, or

1 maintenance/troubleshooting of issues. Field Service Engineers must comply with Copan strict
2 policies and procedures governing each issue that arises throughout the job.

3 37. No Higher Degree Required and Copan Training: No degree, no specific degree,
4 nor any advanced degree is required to be a Field Service Engineer for Copan. Plaintiff and
5 Class Members offer letters indicate only that, a “Bachelor’s Degree or equivalent formal related
6 training required” and “mininum 3-5 years laboratory technology experience” are required.
7 Copan provides all the training necessary to perform the job indicating that employee upon hire,
8 “Must be available to train for up to 4 weeks in Europe”.

9 38. Defendants have for years intentionally misclassified Plaintiff and Class Members
10 as Exempt in violation of Labor Code §§ 510, 515, and FLSA and, in so doing, have denied them
11 the benefits and protections of California employment law.

12 39. Defendants failed to: 1) pay Class Members all wages due for work performed
13 including regular hours, overtime hours, and/or minimum wage for said hours worked; 2) provide
14 Class Members accurate and timely wage statements; and 3) pay all wages due upon termination;
15 thereby enjoying a significant competitive edge over their competitors. Defendants have and had
16 a consistent and uniform policy, practice and procedure of willfully failing to comply with
17 California’s wage and hour laws, I.W.C orders and UCL and FLSA as described herein.

18 40. **Misclassification as Exempt:** Plaintiff and Class Members are current and former
19 persons employed by Defendants as Field Service Engineers providing services for Defendants’
20 clients (i.e. labs/health care facilities who purchases the WASP system). By intentionally
21 misclassifying Plaintiff and Class Members as exempt in violation of Defendants purposely and
22 willfully attempted to avoid their obligations under California labor law and FLSA. The United
23 States Department of Labor has issued two Opinion Letters addressing the exempt status of field
24 service engineers and technicians.

25 (1) Opinion Letter, 1985 DOLWH LEXIS 69 (July 11, 1985). That letter
26 states, in part, “ It is our position that work which consists of the performance of installation
27 repair, and/or operation of electronic or industrial equipment does not involve the use of
28

1 discretion and independent judgment within the meaning of the regulations. The fact that the field
2 service engineers may demonstrate such techniques to customers of the manufacturer does not
3 change this conclusion.” and “It is also our view that the above employees would not qualify for
4 exemption as bona fide professional employees since their primary duty does not consist of the
5 performance of work requiring knowledge of an advance type in a field of science or learning
6 customarily acquired by a prolonged course of specialized intellectual instruction and study ...”
7 “A ‘prolonged course of . . . study’ has generally been defined to mean at least a baccalaureate
8 degree or equivalent which includes a longer intellectual discipline in a particular course of study
9 as distinguished from a general academic course otherwise required for a baccalaureate degree.”
10 “It is our opinion that the above employees are best characterized as highly skilled technicians
11 who are nonexempt under section 13(a)(1) of the FLSA. Therefore, all of the employees must be
12 paid in accordance with the minimum wage and overtime pay provisions of the Act”

13 (2) Opinion Letter, 2000 WL 34444354 (July 14, 2000). That letter states, in
14 part, ““It has been our long-standing position that service employees and repair technicians, such
15 as the field service technicians, do not qualify for exemption as bona fide administrative
16 employees. Work which consists of the installation, diagnosis, and repair of equipment would
17 not involve the use of discretion and independent judgment within the meaning of the
18 regulations. Such employees are using skills and procedures or techniques acquired by special
19 training or experience. Their duties do not involve, with respect to matters of significance, the
20 comparison and evaluation of possible courses of conduct and the making of decisions after the
21 various possibilities have been considered. It is our opinion that the field service technicians are
22 best characterized as highly skilled technicians and would not qualify as exempt administrative
23 employees within the meaning of the regulations.”

24 These letters explain that field service engineers and technicians are not exempt (i.e. they
25 are entitled to overtime pay) either under what is known as the administrative or professional
26 exemptions.

27 41. **Regular Time, Overtime, and Minimum Wage Violations:** Specifically, as
28

1 alleged above, Defendants failed to compensate Plaintiff and Class Members all wages owed for
2 all hours worked including failing to pay minimum wages, regular wages, and overtime wages.
3 Therefore, Plaintiff and Class Members are entitled to recover wages and/or penalties as provided
4 by Labor Code §§ 204, 510, 1182.11, 1182.12, 1194, 1197, 1197.1, 1198, and 1199 and
5 applicable IWC Wage Orders and FLSA.

6 **42. Wage Statement Violations:** Defendants' practices and policies, as described
7 above, resulted in the systemic and uniform failure to provide timely and/or accurate wage
8 statements in violation of Labor Code §§ 226, 226.3, and 1174. Despite knowledge of Plaintiff's
9 and Class Members' entitlement to additional pay for hours worked (including overtime hours,
10 and minimum wage), Defendants have violated California Labor Code §1174 by failing to
11 provide or require the use, maintenance, or submission of accurate time records by members of
12 the Class. Defendants failed to take appropriate steps to correct its mistakes. As described above,
13 Class Members' were not provided accurate paystubs and timely ones, in part due to being
14 misclassified as exempt employees. The payments received by Class Members did not accurately
15 reflect all of the hours worked or correct pay rates, and Defendants did not provide its Field
16 Service Engineers payment for additional overtime hour(s) of work at the Class Member's
17 appropriate overtime rates. Defendants' failure to provide Plaintiff and Class Members with
18 timely and/or accurate, semi-monthly itemized statements was done knowingly and intentionally.

19 **43. Wages Owed Upon Separation/Termination Violations:** Defendants' practices
20 and policies resulted in the systemic and uniform failure to provide Plaintiff and Class Members,
21 upon termination or separation, the total wages they were owed. Plaintiff and Class Member's
22 employees who quit, were laid off, or were terminated were not paid the wages owed them in
23 accord with Labor Code §§ 201, 202, 203, 206, and 1174.

24 **44.** As a direct and proximate result of Defendants' unlawful conduct, as set forth
25 herein, Plaintiff and the Class Members have sustained damages, including for the lack of pay for
26 all hours worked (including regular hours, overtime hours, and/or minimum wage for said hours)
27 and loss of interest on those wages, in an amount to be established at trial. As a further direct and
28

1 proximate result of Defendants' unlawful conduct, as set forth herein, many Class Members
2 herein are entitled to recover "waiting time" penalties and penalties for failure to provide accurate
3 and timely semi-monthly statements, all in amounts to be established at trial. Plaintiff and the
4 Class Members are also entitled to recover prejudgment interest, attorneys' fees and costs,
5 pursuant to statute.

6 45. **PAGA Notice:** At all times herein set forth, PAGA was applicable to the
7 Plaintiff's employment by Defendants. Pursuant to PAGA, a civil action under PAGA may be
8 brought by an "aggrieved employee," who is any person that was employed by the alleged
9 violator and against whom one or more of the alleged violations was committed.

10 46. Plaintiff was employed by Defendants and the Labor Code violations alleged
11 herein were committed against him and other employees during their time of employment, and
12 they are therefore aggrieved employees. Plaintiff and other Class Members are "aggrieved
13 employees" as defined by California Labor Code §2699(c) in that they are all current or former
14 employees of Defendants, and one or more of the Labor Code violations alleged herein were
15 committed against them.

16 47. Pursuant to California Labor Code §§ 2699.3 and 2699.5, an aggrieved employee,
17 may pursue a civil action arising under PAGA after the following requirements have been met:

18 48. The aggrieved employees shall give written notice by certified mail/electronic
19 filing on website (hereinafter "PAGA Notice") to the California Labor and Workforce
20 Development Agency ("LWDA") and the employer(s) of the specific provisions of the California
21 Labor Code alleged to have been violated, including the facts and theories to support the alleged
22 violations.

23 49. The LWDA shall provide notice (hereinafter "LWDA Notice") to the employer
24 and the aggrieved employee by certified mail that it does not intend to investigate the alleged
25 violation within sixty (60) calendar days of the postmark date of the PAGA Notice. Upon receipt
26 of the LWDA Notice, or if the LWDA Notice is not provided within sixty-five (65) calendar days
27 of the postmark date of the employees' PAGA Notice, the aggrieved employee may commence a
28

1 civil action pursuant to California Labor Code § 2699 to recover civil penalties in addition to any
2 other penalties to which the employee may be entitled.

3 50. On **November 19, 2021** Plaintiff provided a written PAGA Notice and draft copy
4 of the First Amended Complaint by certified mail, and via the LWDA website, to the LWDA and
5 to the employer Defendants, of the specific provisions of the California Labor Code alleged to
6 have been violated, including the facts and theories to support the alleged violations, pursuant to
7 California Labor Code §2699.3. No notice of cure by Defendants was provided and
8 the LWDA has not provided Plaintiff with any LWDA Notice that it intends to investigate these
9 violations, although more than 65 days have elapsed since the postmark date of the Employee's
10 Notice

11 51. Therefore, Plaintiff has complied with the PAGA written notice requirements set
12 forth in California Labor Code §2699.3(a), and as of **January 24, 2022**, (66 calendar days post
13 PAGA notice) will be able to/and did file his First Amended Complaint with the additional
14 representative PAGA violations cause of action.

15 **CAUSES OF ACTION**

16 **FIRST CAUSE OF ACTION**

17 **FAILURE TO PAY OVERTIME WAGES** 18 **(Labor Code §§ 204, 510, 1194, 1199)** 19 **(Plaintiff Against All Defendants and Does 1-100)**

20 52. Plaintiff incorporates by reference in this cause of action each allegation of all of
21 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and
22 Does 1-100, and each of them, as follows:

23 53. During the Class Period Plaintiff and Class Members often worked in excess of 8
24 hours in a work day and/or 40 hours in a workweek without compensation in violation of Labor
25 Code §510. The precise number of hours will be proven at trial.

26 54. On information and belief, at all relative times, Defendants were aware of, and
27 were under a duty to comply with, various provisions of the California Labor Code. These
28 provisions include

a. Labor Code § 510: "Eight hours of labor constitutes a day's work. Any

1 work in excess of eight hours in one workday and any work in excess of 40 hours in any one
2 workweek and the first eight hours worked on the seventh day or work in any one workweek shall
3 be compensated at the rate of no less than one and one-half times the regular rate of pay for an
4 employee . . .”

5 b. Labor Code § 1194: “Notwithstanding any agreement to work for a lesser
6 wage, any employee receiving less than . . . the legal overtime compensation applicable to the
7 employee is entitled to recover in a civil action the unpaid balance of the full amount of this . . .
8 overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

9 c. Labor Code § 1198: “The maximum hours of work and the standard
10 conditions of labor fixed by the commission shall be the maximum hours of work and the
11 standard conditions of labor for employees. The employment of any employee for longer hours
12 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

13 d. Labor Code § 1199: “Every employer or other person acting either
14 individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and
15 is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less
16 than 30 days, or by both, who does any of the following: (a) Requires or causes any employee to
17 work for longer hours than those fixed, or under conditions of labor prohibited by an order of the
18 commission . . . [or] (c) Violates or refuses or neglects to comply with any provision of this
19 chapter or any order of the commission.”

20 55. By refusing to compensate Plaintiff and the Class Members for overtime wages
21 earned, Defendants violated and continue to violate those California Labor Codes and I.W.C.
22 wage orders, including Labor Code §§ 204, 510, 1194, 1198, 1199).

23 56. As a direct and proximate result of Defendants’ unlawful conduct, as set forth
24 herein, Plaintiff and the Class Members have sustained damages, including loss of earnings for
25 unpaid hours of overtime worked on behalf of Defendants in an amount to be established at trial.
26 As a further direct and proximate result of Defendants’ unlawful conduct, as set forth herein,
27 Plaintiff and Class Members are entitled to recover interest on the overtime wages earned but not
28

1 paid, at a rate of 10% per year, as well as attorneys' fees and costs per Labor Code §§218.5,
2 218.6, and 1194, and the assessment of any other statutory penalties provided by the Labor Code.

3
4 **SECOND CAUSE OF ACTION**
5 **FAILURE TO PAY MINIMUM WAGE**
6 **(Labor Code §§ 1182.12, 1194, 1197, 1197.1)**
7 **(Plaintiff Against All Defendants and Does 1-100)**

8 57. Plaintiff incorporates by reference in this cause of action each allegation of all of
9 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and
10 Does 1-100, and each of them, as follows:

11 58. Labor Code §§ 1182.12, 1194, 1197 and 1197.1 (and I.W.C. Wage Orders),
12 establish and protect the right of employees in California to receive minimum wages for their
13 work, in amounts set by California law. The applicable minimum wage in California during the
14 Class Period for employers with 26 employees or more, has been \$10.50/hr. from the beginning
15 of Class Period (November 19, 2017) until December 31, 2017; \$11/hr. from January 1, 2018 to
16 December 31, 2018; \$12/hr from January 1, 2019 to December 31, 2019; \$13/hr from January 1,
17 2020 to December 31, 2020; \$14/hr from January 1, 2021 to December 31, 2021.

18 59. At all relevant times, Defendants failed to pay Plaintiff and Class Members the
19 applicable minimum wage for all hours worked due to its failure to compensate Plaintiff and
20 Class Members for all work performed, specifically for work performed after/before scheduled
21 shifts and/or over 8 hours a day and/or 40 hours a week because they were misclassified as
22 exempt.

23 60. As a direct and proximate result of the Defendant's unlawful conduct, Plaintiff and
24 Class Members have been deprived of their minimum wages in an amount to be proven at trial,
25 and are entitled to recover such amounts, plus interest and penalties thereon, attorney's fees and
26 costs, under Labor Code §§ 218.5, 218.6, 558, 1182.12, 1194, 1194.2, 1197.1, I.W.C. Wage
27 Orders , and are entitled to injunctive relief.
28

THIRD CAUSE OF ACTION
FAILURE TO PROVIDE TIMELY AND ACCURATE WAGE STATEMENTS
(Labor Code § 226)
(Plaintiff Against All Defendants and Does 1-100)

61. Plaintiff incorporates by reference in this cause of action each allegation of all of the foregoing paragraphs as if fully restated herein, and further allege against Defendants and Does 1-100, and each of them, as follows:

62. Labor Code § 226(a) provides as follows:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee . . . (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions . . . , (5) net wages earned . . . and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

63. Labor Code § 226(e) provides as follows:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) shall be entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and shall be entitled to an award of costs and reasonable attorney fees.

64. During the relevant time period, Defendants failed to provide Plaintiff sand Class Members with accurate, semi-monthly itemized statements of the total hours worked, all applicable hourly rates in effect, and all gross and net wages earned during the pay period. On information and belief, this was the direct and proximate result of a willful refusal by Defendants to provide such accurate statements.

65. Defendants knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Plaintiff and Class Members in accordance with Labor Code § 226(a). The statements provided to Plaintiff and Class Members have not accurately reflected the total hours worked, all applicable hourly rates in effect, and all gross and net wages earned during the pay period.

1 66. As a direct and proximate result of Defendants' unlawful conduct in failing to
2 provide accurate itemized wages statements, Plaintiff and Class Members suffered actual
3 damages and harm by being unable to determine their applicable hourly rate or the amount of
4 regular time or overtime worked each pay period, which prevented them from becoming aware of
5 these violations and asserting their statutory protections under California law. Plaintiff and Class
6 Members are entitled to recover the greater of all actual damages or fifty dollars (\$50.00) for the
7 initial pay period in which a violation occurs and one hundred dollars (\$100.00) per employee for
8 each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand
9 dollars (\$4,000.00). Plaintiff and Class Members are entitled to seek penalties, and attorneys' fees
10 and costs as provided by Labor Code §§ 226(e), 226(h), 226.3, and 1174.5.
11

12 **FOURTH CAUSE OF ACTION**
13 **FAILURE TO PAY ALL WAGES DUE AT TERMINATION –**
14 **WAITING TIME PENALTIES**
15 **(Labor Code §§ 201, 202, 203)**
16 **(Plaintiff Against All Defendants and Does 1-100)**

17 67. Plaintiff incorporates by reference in this cause of action each allegation of all of
18 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and
19 Does 1-100, and each of them, as follows:

20 68. California Labor Code § 201 requires Defendants to pay its discharged employees
21 all wages due immediately upon discharge or termination of employment.

22 69. California Labor Code § 202 requires that if an employee quits his or her
23 employment, "his or her wages shall become due and payable not later than 72 hours thereafter,
24 unless the employee has given 72 hours previous notice of his or her intention to quit, in which
25 case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any
26 other provision of law, an employee who quits without providing a 72-hour notice shall be
27 entitled to receive payment by mail if he or she so requests and designates a mailing address."

28 70. California Labor Code § 203 provides that if an employer willfully fails to timely
pay any wages that are due to an employee who quits or is discharged, the employer must, as a
penalty, continue to pay the employees' wages until the back wages are paid in full or an action is

1 commenced. The penalty accrues for up to 30 days of wages. To this end, Labor Code § 203
2 provides as follows:

3 If an employer willfully fails to pay, without abatement or
4 reduction, in accordance with Sections 201, 201.5, 202 and 205.5,
5 any wages of an employee who is discharged or who quits, the
6 wages of the employee shall continue as a penalty from the due date
7 thereof at the same rate until paid or until an action therefore is
8 commenced; but the wages shall not continue for more than
9 30 days.

10 71. Plaintiff and Class Members who have been discharged or who have quit are
11 entitled to unpaid compensation, pursuant to Labor Code § 203, but to date have not received
12 such compensation.

13 72. During the relevant time period, Plaintiff and many Class Members were
14 employed by Defendants and were thereafter terminated or resigned from their positions with
15 Defendants. Defendants, however, did not pay such Plaintiff and Class Members all wages due
16 upon their termination or within 72 hours of their resignation of employment. On information
17 and belief, Plaintiff alleges that such non-payment was the direct and proximate result of a willful
18 refusal to do so by Defendants.

19 73. As a direct and proximate result of Defendants' unlawful and willful conduct in
20 not paying compensation for all hours worked, many Class Members are entitled to up to 30 days
21 wages as a penalty ("waiting time penalty") under Labor Code § 203, together with reasonable
22 attorneys' fees and costs.

23 **FIFTH CAUSE OF ACTION**
24 **UNFAIR PRACTICE UNDER THE UNFAIR COMPETITION ACT**
25 **(California Business & Professions Code §§ 17200-17208)**
26 **(Plaintiff Against All Defendants and Does 1-100)**

27 74. Plaintiff incorporates by reference in this cause of action each allegation of all of
28 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and
Does 1-100, and each of them, as follows:

75. Plaintiff brings this cause of action on behalf of himself and the Class as well as on
behalf of the general public, seeking equitable and statutory relief to stop the misconduct of

1 Defendants, as complained of herein, and to compel disgorgement of all profits obtained by
2 Defendants through the unfair, unlawful, and/or fraudulent business practices described herein.

3 76. The conduct of Defendants, as alleged herein, constitutes an unlawful business
4 practice as set forth in Business and Professions Code §§ 17200, *et seq.*

5 77. Specifically, Defendants conducted business activities while failing to comply
6 with California Labor Codes and IWC wage orders as described in this Complaint. Defendants,
7 and each of them, have intentionally and improperly failed to pay Class Members for all hours
8 worked including regular hours, overtime hours, and/or minimum wage for said hours; and failed
9 to provide other benefits in violation of the California Labor Code and IWC wage orders. Section
10 17200 of the Business and Professions Code prohibits unfair competition by prohibiting unlawful,
11 unfair, or fraudulent business practices or acts. Defendants' failure to adopt policies in
12 accordance and/or adherence with these laws, all of which are binding upon and burdensome to
13 Defendants' competitors, engenders an unfair competitive advantage for Defendants, thereby
14 constituting an unfair business practice, as set forth in California Business and Professions Code
15 §§ 17200, *et seq.*

16 78. Furthermore, Defendants has under-reported to federal and state authorities the
17 wages earned by their employees and, therefore, have underpaid state and federal taxes, employer
18 matching funds, unemployment premiums, Social Security, Medicare, and Workers'
19 Compensation premiums.

20 79. Defendants' conduct as alleged herein has damaged Plaintiff and the Class
21 Members by wrongfully denying them earned wages, failing to pay them all wages due upon
22 termination of employment, and failing to provide accurate and timely itemized wage statements.
23 Such conduct was substantially injurious to Plaintiff and the Class.

24 80. Under the circumstances alleged herein, it would be inequitable and result in a
25 miscarriage of justice for Defendants to continue to retain the property of Plaintiff and the Class
26 Members, entitling Plaintiff and the Class Members to restitution of the unfair benefits obtained
27 and disgorgement of Defendants' ill-gotten gains.
28

1 81. As a direct and proximate result of Defendants' unlawful and unfair business
2 practices, Plaintiff and Class Members are entitled to, and hereby do, seek restitution and
3 disgorgement of these ill-gotten gains, including but not limited to, restitution of all unpaid
4 wages, plus interest thereon, as well as attorney's fees and costs, and other appropriate injunctive
5 and other relief available under California Business and Professions Code §§ 17200, *et seq.*

6
7 **SIXTH CAUSE OF ACTION**
8 **VIOLATION OF THE PRIVATE ATTORNEY GENERAL ACT ("PAGA")**
9 **(California Labor Code §§ 2698, *et. seq.*)**
10 **(Plaintiff Against All Defendants and Does 1-100)**

11 82. Plaintiff incorporates by reference in this cause of action each allegation of all of
12 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and
13 Does 1-100, and each of them, as follows:

14 83. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover civil
15 penalties for the violation(s) of the Labor Code sections enumerated in Labor Code § 2699.5.

16 84. PAGA provides as follows, "[n]otwithstanding any other provision of law, a
17 Plaintiff may as a matter of right amend an existing complaint to add a cause of action arising
18 under this part at any time within 60 days of the time periods specified in this part."

19 85. Defendants' conduct, as alleged herein, violates numerous sections of the
20 California Labor Code and I.W.C. Wage Orders, including, but not limited to, the following:
21 violation of Labor Code § 510 and/or § 515 for misclassifying Class Members as exempt from
22 overtime/salaried employees; violation of Labor Code §§ 204, 510, 1182.11, 1182.12, 1194,
23 1197, 1197.1, 1198, and 1199 (for failure to pay wages for all hours worked including regular
24 hours, overtime hours, and/or paid minimum wage for said hours); violation of Labor Code §
25 226(a) (for failure to provide accurate wage statements as herein alleged); and violation of Labor
26 Code §§ 201, 202, and 203 (for failure to timely pay all earned wages upon discharge).

27 86. California Labor Code § 1198 makes it illegal to employ an employee under
28 conditions of labor that are prohibited by the applicable wage order. California Labor Code §1198
requires that, " ... the standard conditions of labor fixed by the commission shall be the ...

1 standard conditions of labor for employees. The employment of any employee ... under
2 conditions of labor prohibited by the order is unlawful."

3 87. California Labor Code § 204 requires that all wages earned by any person in any
4 employment between the 1st and the 15th days, inclusive, of any calendar month, other than those
5 wages due upon termination of an employee, are due and payable between the 16th and the 26th
6 day of the month during which the labor was performed, and that all wages earned by any person
7 in any employment between the 16th and the last day, inclusive, of any calendar month, other
8 than those wages due upon termination of an employee, are due and payable between the 1st and
9 the 10th day of the following month. California Labor Code § 204 also requires that all wages
10 earned for labor in excess of the normal work period shall be paid no later than the payday for the
11 next regular payroll period. During the relevant time period, Defendants failed to pay Plaintiff
12 and other aggrieved employees all wages due to them, including, but not limited to, overtime
13 wages, within any time period specified by California Labor Code § 204.

14 88. Defendants, at all times relevant to this complaint, were employers or persons
15 acting on behalf of an employer(s) who violated Plaintiff and other aggrieved employees' rights
16 by violating various sections of the California Labor Code as set forth above.

17 89. As set forth above, Defendants have violated numerous provisions of both the
18 Labor Code sections regulating hours and days of work as well as the applicable order of the
19 Industrial Welfare commission. Accordingly, Plaintiff seeks the remedies set forth in Labor Code
20 § 558 for themselves, the State of California, and all other aggrieved employees.

21 90. Pursuant to PAGA, and in particular California Labor Code §§ 2699(a), 2699.3,
22 2699.5, and 558, Plaintiff, acting in the public interest as a private attorney general, seeks
23 assessment and collection of unpaid wages and civil penalties for Plaintiff and all aggrieved
24 employees, and the State of California against Defendants, in addition to other
25 remedies, plus reasonable attorneys' fees and costs, pursuant to California Labor Code §§ 201,
26 202, 203, 204, 210, 218.5, 218.6, 226, 226(a), 226.3, 510, 1174, 1194, 1197, 1197.1, 1198, 1199,
27 C.C.P. § 1021.5, California common law, (and I.W.C. Wage orders).

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SEVENTH CAUSE OF ACTION
FAILURE TO PROVIDE MANDATED MEAL PERIODS
(Labor Code §§ 226.7, 512)
(Plaintiff Against All Defendants and Does 1-100)

91. Plaintiff incorporates by reference in this cause of action each allegation of all of the foregoing paragraphs as if fully restated herein, and further allege against Defendants and Does 1-100, and each of them, as follows:

92. Plaintiff and Class Members regularly work in excess of five (5) hours per day without being afforded a duty-free meal period of not less than 30 minutes as required by Labor Code §§ 226.7, 512 and I.W.C Wage Orders .

93. California Labor Code § 512 provides that an employer may not employ an employee for a work period of more than five (5) hours per day without providing the employee with a meal period of not less than 30 minutes.

94. Furthermore, California Labor Code § 226.7 provides that:

(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

95. As a direct and proximate result of Defendants' unlawful conduct in not providing for duty-free meal periods, Plaintiff and Class Members are entitled to one additional hour of pay at their regular rate as wages under Labor Code §§ 226.7, 512 for each day in which the proper meal period was not provided. In addition, Plaintiff and Class Members are entitled to interests, penalties, attorney's fees and costs pursuant to C.C.P. §1021.5.

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EIGHTH CAUSE OF ACTION
FAILURE TO PROVIDE MANDATED REST PERIODS
(Labor Code § 226.7)
(Plaintiff Against All Defendants and Does 1-100)

96. Plaintiff incorporates by reference in this cause of action each allegation of all of

1 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and
2 Does 1-100, and each of them, as follows:

3 97. Plaintiff and Class Members regularly work in excess of four (4) hours per day
4 without being afforded a rest period of not less than ten (10) minutes as required by Labor Code
5 § 226.7 and I.W.C Order 5-2001, 15-2001 (employees are entitled to 10 minutes rest for shifts
6 from 3 ½ hours to 6 hours in length, 20 minutes for shifts of more than 6 hours up to 10 hours, 30
7 minutes for shifts of more than 10 hours up to 14 hours, and so) (See *Brinker Restaurant Corp., et*
8 *al v. Superior Court (2012)*, 53 Cal. 4th 1004, 1029.

9 98. California Labor Code § 226.7 mandates that no employer shall require any
10 employee to work during any meal or rest period.

11 99. California Labor Code § 226.7 provides that:

12 (a) No employer shall require any employee to work during any
13 meal or rest period mandated by an applicable order of the
Industrial Welfare Commission.

14 (b) If an employer fails to provide an employee a meal period or
15 rest period in accordance with an applicable order of the Industrial
Welfare Commission, the employer shall pay the employee one
16 additional hour of pay at the employee's regular rate of
17 compensation for each work day that the meal or rest period is not
provided.

18 100. As a direct and proximate result of Defendants' unlawful conduct in not providing
19 for duty-free rest periods, Plaintiff and Class Members are entitled to one additional hour of pay
20 at their regular rate as wages under Labor Code § 226.7, for each day in which the proper rest
21 break was not provided. In addition, Plaintiff and Class Members are entitled to interests,
22 penalties, attorney's fees and costs pursuant to C.C.P. §1021.5.

23 **NINTH CAUSE OF ACTION**
24 **FAILURE TO REIMBURSE EMPLOYEES FOR NECESSARY BUSINESS EXPENSES**
(California Labor Code §2802)
25 **(Plaintiff Against All Defendants and Does 1-100)**

26 101. Plaintiff incorporates by reference in this cause of action each allegation of all of
27 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and
28 Does 1-100, and each of them, as follows:

1 102. Cal. Lab. Code § 2802 provides, in relevant part, that:

2 “An employer shall indemnify his or her employee for all necessary expenditures
3 or losses incurred by the employee in direct consequence of the discharge of his
4 or her duties, or of his or her obedience to the directions of the employer, even
5 though unlawful, unless the employee, at the time of obeying the directions
6 believed them to be unlawful.”

7 103. Pursuant to California Labor Code §2802, Defendants were required to reimburse
8 Plaintiffs and the Class Members for necessary business expenditures. The purpose of this
9 statute is to prevent employers from passing their operating costs and expenses onto their
10 employees. See *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal. 4th 554, 562.

11 104. At all relevant times herein, Defendants violated Cal. Lab. Code § 2802, by failing
12 to indemnify and reimburse Plaintiff and Class Members for required expenses incurred in the
13 discharge of their job duties for Defendants’ benefit. Specifically, Defendants failed to reimburse
14 Plaintiff and Class Members for expenses which included, but were not limited to, the cost
15 associated with the use of their personal cellular phones / mobile phones for Defendants’ benefit.

16 105. In order to work for Defendants, Plaintiff and other Class Members were required
17 to use a third-party mobile phone application called Homebase to track time, shifts, meal/rest
18 breaks, and as such it is/was mandatory to have a cell phone/mobile phone that is compatible with
19 that mobile application. As a result, in the course of their employment with Defendants, Plaintiff
20 and Class Members incurred unreimbursed business expenses which included, but were not
21 limited to, the costs related to the use of their personal cellular mobile phones all on behalf of and
22 for the benefit of Defendants. These expenses are necessary to complete the Class Members’
23 principal job duties.

24 106. Although these expenses are necessary expenses incurred by Plaintiff and Class
25 Members Defendants failed to indemnify and reimburse Plaintiff and Class members for these
26 expenses as an employer is required to do under the laws and regulations of California.

27 107. As a direct and proximate cause of Defendants’ conduct, Plaintiff and Class
28 Members have suffered substantial losses according to proof, as well as pre-judgment interest,
costs, and attorneys’ fees for the prosecution of this action. Plaintiff therefore demands

1 reimbursement for expenditures or losses incurred by Plaintiff and Class Members in the
2 discharge of their job duties for Defendants, or their obedience to the directions of Defendants,
3 with interest at the statutory rate and costs under Cal. Lab. Code § 2802. Further, by unlawfully
4 failing to indemnify Plaintiff and Class Members the Defendants are liable for reasonable
5 attorneys' fees and costs under Labor Code § 2802(c).
6

7 **TENTH CAUSE OF ACTION**
8 **VIOLATION OF FAIR LABOR STANDARDS ACT**
9 **(29 U.S.C. §§ 201, et seq.)**
10 **(Plaintiff Against All Defendants and Does 1-100)**

11 108. Plaintiff incorporates by reference in this cause of action each allegation of all of
12 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and
13 Does 1-100, and each of them, as follows:

14 109. Plaintiff is informed and believes that at all relevant times Defendants have been,
15 and continue to be, an "employer" engaged in interstate commerce within the meaning of 29
16 U.S.C. § 203. At all relevant times, Defendants have employed the Class Members and continue
17 to employ certain members of the Class, as "employee[s]" within the meaning of the FLSA. At
18 all relevant times, Defendant has had gross operating revenues in excess of \$500,000.00.

19 110. The FLSA requires that employers whose employees are engaged in commerce or
20 employed in an enterprise engaged in commerce pay their employees overtime wages at one and
21 one-half their regular rate for hours worked in excess of forty (40) hours during a work week. 29
22 U.S.C. § 207.

23 111. Defendants violated the FLSA by failing to pay the Class Members for all time
24 worked, including overtime pay. The FLSA requires each covered employer, such as Defendants,
25 to compensate all nonexempt employees at a rate of not less than one and one-half times the
26 regular rate of pay for work performed in excess of 40 hours in a workweek.

27 112. The Class Members are victims of a uniform and company-wide compensation
28 policy that systematically denies them their statutorily mandated overtime premium pay. This
uniform policy, in violation of the FLSA, has been applied to all Class Members.

113. By failing to compensate Plaintiff and the Class Members at a rate not less than

one and one-half times the regular rate of pay for work performed in excess of 40 hours in a workweek, Defendants violated the FLSA.

114. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

115. Plaintiff and the Class Members are entitled to recover an award in the amount of their unpaid overtime compensation including all interest, liquidated damages, applicable penalties, attorney fees and costs (pursuant to 29 U.S.C. § 216(b)), and such other legal and equitable relief as this Court deems just and proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the Proposed Class pray for judgment and the following specific relief against Defendants, jointly and separately, as follows:

A. That the Court determine that this action may be maintained and certified as a class action under California Code of Civil Procedure § 382;

B. That the Court appoint Plaintiff as representatives of the Class;

C. That the Court appoint Counsel for Plaintiff as Class Counsel;

D. That Defendants are found to have violated the provisions of the Labor Code and/or I.W.C. wage orders as to the Plaintiff and Class Members by failing to pay all wages owed including regular hours, overtime hours and/or minimum wage for said hours in violation of Labor Code §§ 204, 510, 1182.11, 1182.12, 1194, 1197, 1197.1, 1198, 1199 and I.W.C. Orders and FLSA;

E. That Defendants are found to have violated meal period and rest brake provisions of Labor Code §§226.7, 512 and I.W.C. Orders;

F. That Defendants are found to have violated the record-keeping provisions of Labor Code §§ 226, 1174(d), 1174.5, and I.W.C. Orders;

G. That Defendants are found to have violated the reimbursement of employee business expenses provisions of Labor Code §2802 and I.W.C Orders;

1 H. That Defendants are found to have violated Labor Code §§ 201-203 for willful
2 failure to pay all wages owed at the time of termination/separation of employment of Plaintiff and
3 Class Members formerly employed by Defendants, therefore owe waiting time penalties under
4 California Labor Code § 203;

5 I. That Defendants are found to have willfully misclassified as exempt from overtime
6 wages Plaintiff and Class Members, and have therefore violated California Labor Code § 510
7 and/or § 515 and FLSA; and that all damages proximately caused by Defendants' wrongful
8 conduct be reimbursed and/or applicable penalties be awarded to Plaintiff and the Class
9 Members.

10 J. That the Defendants are found to have committed unfair and unlawful business
11 practices in violation of California Business & Professions Code §§ 17200, *et seq.*, by their
12 violations of the Labor Code and Wage Order(s) as described above;

13 K. That Defendants be ordered and enjoined to pay restitution to Plaintiff and Class
14 Members due to Defendants' unlawful activities, pursuant to Business & Professions Code
15 §§ 17200, *et seq.*;

16 L. That Defendants further be ordered and enjoined to cease and desist from unlawful
17 activities in violation of Business & Professions Code §§ 17200, *et seq.*;

18 M. That Defendants' violations as described above are found to have been willful;

19 N. That Plaintiff and Class Members receive an award of damages for the amount of
20 unpaid compensation (including for regular hours, overtime hours, and minimum wage for said
21 hours), interest thereon, and liquidated damages and/or statutory penalties as set forth herein,
22 according to proof at trial;

23 O. That Plaintiff and the Class be awarded reasonable attorneys' fees, costs, interest,
24 penalties and liquidated damages pursuant to Labor Code §§ 200, 201, 202, 203, 204, 218.5,
25 218.6, 225.5, 226, 1174, 1174.5, 1182.11, 1182.12, 1194, 1194.2, 1197, 1197.1, 2699, *et seq.*;
26 Code of Civil Procedure § 1021.5; and FLSA; and/or other applicable law;
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1 P. That Plaintiff and the Class Members be awarded pre-judgment and/or post-
2 judgment interest on all damages and other relief awarded pursuant to Labor Code § 218.6 and
3 Civil Code § 3287, and FLSA, and/or other applicable law;

4 Q. Actual and/or liquidated damages pursuant to Labor Code §226(e);

5 R. For penalties as provided, per violation, under the Private Attorneys General Act
6 (PAGA) Labor Code § 2699, et seq., and as provided by Labor Code § 558, and distributed in
7 accordance with the Act.

8 S. That Plaintiff and the Class Members receive an award of such other and further
9 relief as this Court may deem appropriate.
10

11 Dated: March 22, 2023

12 By:  _____

13 Matthew S. Da Vega
14 **DA VEGA | FISHER | MECHTENBERG, LLP**
15 Attorneys for the Plaintiff, the Proposed Plaintiff Class
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DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all others similarly situated, hereby demands a trial by jury for all issues so triable.

Dated: March 22, 2023



By: _____

Matthew S. Da Vega
DA VEGA | FISHER | MECHTENBERG, LLP
Attorneys for the Plaintiff, the Proposed Plaintiff Class

Gillette v. Copan Diagnostics, Inc.
Case No. CVRI-2105284

EXHIBIT B
(Proposed Order)

Matthew S. Da Vega, SBN 195443
Matthew Fisher, SBN 229532
DA VEGA | FISHER | MECHTENBERG, LLP
232 E. Anapamu St.
Santa Barbara, CA 93101
Telephone: 805.232.4471
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Mdavega@mdmflaw.com

Attorneys for Plaintiff and the Proposed Plaintiff Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

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

Plaintiff,

vs.

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

Defendants.

Case No.: CVRI-2105284

CLASS AND REPRESENTATIVE ACTION

**[PROPOSED] JUDGMENT and ORDER
GRANTING PLAINTIFF'S MOTION FOR
FINAL APPROVAL OF CLASS
SETTLEMENT and ATTORNEYS' FEES and
COSTS**

[Assigned to the Honorable Harold Hopp Dept.
10]

Date: March 22, 2023
Time: 8:30 a.m.
Location: Dept. 10 (Hon. Harold Hopp)

Reservation ID#: 020396507092

Plaintiffs Wayne Douglas Gillette ("Plaintiff"), individually, and on behalf of similarly situated persons, and Defendant Copany Diagnostics, Inc. ("Defendants" or "Copan")(or together with the Plaintiff, the "Parties") reached a class action settlement, upon the terms and conditions set forth in the Parties' Joint Stipulation of Class Action Settlement and Release ("Settlement Agreement"), a copy of which was attached as **Exhibit 1** to the Declaration of Matthew S. Da Vega filed with the Court concurrently with Plaintiffs' Notice of Motion and Motion for Preliminary Approval of Class Action Settlement ("Motion").

On March 22, 2023, the Court issued its Order Granting Preliminary Approval of Class Settlement ("Preliminary Approval Order").

1 Due and adequate notice having been given to the Class Members, as defined below,
2 and the Court having considered Plaintiff's Notice of Motion and Motion for Final Approval of
3 Class Action Settlement and the exhibits thereto, all papers filed and proceedings had herein
4 and any written objections/disputes received regarding the proposed Settlement, and having
5 reviewed the record in the Action, and good cause appearing,

6 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

7 **RECITALS**

8 1. On February 23, 2023, Plaintiffs filed a Motion for Final Approval of Class
9 Settlement, Class Representative Enhancement Award, Settlement Administrator Costs and
10 Class Counsel's Fees and Costs.

11 2. On [REDACTED] the Court held a Final Approval/Fairness Hearing.

12 **FINDINGS**

13 3. **Fair, Adequate and Reasonable:** The Court finds that the Settlement is, in all
14 respects, fair, adequate, and reasonable. In making this finding, the Court considers the nature
15 of the claims and the risks inherent in such claims, the good result obtained, Defendant's
16 potential liability, and the fact that this settlement represents a compromise of the Parties'
17 respective positions rather than the result of a finding of liability at trial. The Court further
18 finds that the terms of the Settlement have no obvious deficiencies and do not improperly grant
19 preferential treatment to Plaintiff. Therefore, the Court finds that the Settlement was entered
into in good faith.

20 4. **Class Notice:** The Court additionally notes the significant benefits to the Class
21 Members under the Settlement Agreement, and finds that the distribution of the Class Notice of
22 Settlement to the Class Members as set forth in the Settlement Agreement has been completed
23 in conformity with the Settlement Agreement and order granting preliminary approval of the
24 Settlement. The Notice of Class Settlement provided adequate notice of the proceedings and
25 about the case, including the proposed settlement terms as set forth in the Settlement
26 Agreement. The Notice of Class Settlement fully satisfied due process requirements. The
27 Notice of Class Settlement was sent via first class U.S. Mail to all persons entitled to such
28 notice and to all Class Members. As executed, the Notice of Class Settlement was the best

1 notice practicable under the circumstances.

2 **ORDER**

3 5. The Court hereby **GRANTS FINAL APPROVAL** of the class settlement upon
4 the terms and conditions set forth in the Settlement Agreement.

5 6. **Class Definition:** The Court hereby certifies, for settlement purposes only, the
6 following class.

7 The settlement class is defined as:

8 “All current and former Field Service Engineer employees who
9 physically performed work for Defendant in the State of
10 California from November 17, 2019, until ([Date of Order re
11 Preliminary Approval]).”

12 The Settlement Class does not include class members who submit valid
13 Requests for Exclusion (aka “Opt Outs”) .

14 “Class Period” is from November 17, 2019 through the date the Court
15 grants preliminary approval.”

16 7. **Class Representative:** The Court hereby appoints Wayne Douglas Gillette as
17 Class Representative, for settlement purposes only.

18 8. **Class Counsel:** The Court hereby appoints Matthew S. Da Vega of Da Vega
19 Fisher Mechtenberg LLP as Class Counsel, for settlement purposes only.

20 9. **Implementation:** The Court hereby orders the Parties to implement the terms
21 of the Settlement Agreement, and directs Defendant to disburse the funds pursuant to the terms
22 of the Settlement and consistent with this Order and Judgment.

23 10. **Release:** All Class Members who did not “Opt-Out” of the Settlement shall be
24 bound by the releases provided in the Settlement Agreement and Notice of Class Settlement.

25 11. **Class Representative Enhancement Award:** The Court hereby approves a
26 Class Representative Enhancement Awards in the amount of **\$10,000** to the Class
27 Representatives to be paid out of the Settlement Amount.

28 12. **Class Counsel Fees and Costs:** The Court hereby approves an award of
reasonable attorneys’ fees to Class Counsel in the amount of **\$132,000** and reimbursement of
costs and expenses they incurred in this matter in the amount of **\$20,000** to be paid out of the
Gross Settlement Amount.

13. **Settlement Administrator Costs:** The Court hereby approves an award of **\$7,500** for Settlement Administration costs to be paid out of the Gross Settlement Amount.

14. **PAGA Payments:** The Court hereby approves payment for civil penalties under the Private Attorneys General Act of 2004 (“PAGA”) in the amount of **\$5,000** (“PAGA Penalty Amount”) (75% of that amount [**\$3,750**] is to be paid to the California Labor and Workforce Development Agency [“LWDA Payment”] and 25% to that amount [**\$1,250**] is to be paid to the PAGA Group (“PAGA Group Amount”).

15. The Court notes that Defendant does not oppose these amounts, and finds these amounts are fair and reasonable under the circumstances and under both the common fund approach and lodestar approach.

16. A Compliance Hearing will be held on _____.

17. A Compliance Status report shall be filed and served by [REDACTED].

JUDGMENT

18. This Judgment is intended to be a final disposition of this action in its entirety, and is intended to be immediately appealable. Pursuant to Rule 3.769(h) of the California Rules of Court, the Court retains jurisdiction over the Parties to enforce the terms of the Settlement and this Judgment.

IT IS SO ORDERED and JUDGMENT IS HEREBY ENTERED

DATED:

By: _____

Honorable Harold Hopp
Judge of the Superior Court

Gillette v. Copan Diagnostics, Inc.
Case No. CVRI-2105284

EXHIBIT C
(Class Notice)

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

WAYNE DOUGLAS GILLETTE,

v.

COPAN DIAGNOSTICS, INC.,

Case No. CVRI-2105284

NOTICE OF CLASS ACTION AND PROPOSED SETTLEMENT

TO: All current and former Field Service Engineer employees who physically performed work for Defendant in the State of California from November 17, 2019, until [Date of Order re Preliminary Approval]:

**IF YOU ARE A MEMBER OF THIS CLASS OF PERSONS, YOU SHOULD READ THIS NOTICE CAREFULLY BECAUSE IT
WILL AFFECT YOUR LEGAL RIGHTS AND OBLIGATIONS.**

A settlement ("Settlement") has been proposed in a class action lawsuit pending in Riverside County Superior Court ("Court") titled *Gillette v. Copan Diagnostics, Inc.*, Case No. CVRI-2105284 (the "Action"). If the Court gives final approval to the Settlement, Copan Diagnostics, Inc. ("Defendant") will provide each Settlement Class Member a payment as set forth in this notice. Here is a summary of your rights and options; they are described in more detail later in this document. If you have any questions, please contact the *Gillette v. Copan Diagnostics, Inc.*, c/o CPT Group Inc. 50 Corporate Park, Irvine, CA 92606.

Your Estimated Settlement Payment is \$<<estAmount>> based on the <<Workweeks>> Workweeks you worked during the Class Period, as shown in Defendant's records.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

GET A PAYMENT	If you do nothing, you will automatically receive a payment if the Settlement is finally approved by the Court.	N/A
SUBMIT A WORKWEEK DISPUTE	If you believe that the number of Workweeks with which you have been credited is incorrect, you must submit a Workweek Dispute to the Settlement Administrator. Detailed instructions for this option are set forth in Section 10 below.	Deadline: Date of Response Deadline - 45 days post mailing
EXCLUDE YOURSELF	If you wish to exclude yourself from the Settlement, you must submit to the Settlement Administrator a valid Request for Exclusion. If you exclude yourself from the Settlement, you will not receive a payment under the Settlement. Excluding yourself is the only option that allows you to bring or maintain your own claims or lawsuit against Defendant regarding the allegations in the Action. Detailed instructions for this option are set forth in Section 17 below.	Deadline: Date of Response Deadline - 45 days post mailing
OBJECT	If you wish to object to the Settlement, you must submit your objections to the Settlement Administrator. Submitting an objection does not exclude you from the Settlement. Detailed instructions for this option are set forth in Section 18 below.	Deadline: Date of Response Deadline - 45 days post mailing
APPEAR AT THE "FINAL APPROVAL HEARING"	The Court will hold a "Final Approval Hearing" to consider the Settlement, the request for attorneys' fees and costs by counsel representing the Class in the Action, and the Representative Plaintiff's request for service award for bringing the Action. You may, but are not required to, speak at the Final Approval Hearing about any objection to the Settlement that you submitted. If you intend to speak at the Final Approval Hearing, we ask that you also provide to the Settlement Administrator a "Notice of Intention to Appear" indicating your intent to do so. Instructions for this option are set forth in Section 18 below.	Hearing Date: 2023 at AM/ PM

The Court in charge of this Action has preliminarily approved the Settlement and must decide whether to give final approval to the Settlement. The relief provided to Class Members will be provided only if the Court gives final approval to the Settlement and, if there are any appeals, after the appeals are resolved in favor of the Settlement. ***Please be patient.***

WHAT THIS NOTICE CONTAINS

BACKGROUND INFORMATION	2
1. Why did I get this notice?	
2. What is this lawsuit about?	
3. Why is this a class action?	
4. Why is there a Settlement?	
5. How do I know if I am part of the Settlement?	
6. I'm still not sure if I am included.	
THE PROPOSED SETTLEMENT	3
7. What relief does the Settlement provide to the Class Members?	
PAYMENT TO THE CLASS	4
8. How can I get a payment?	
9. When will I get a payment?	
10. What if I disagree with the calculation regarding my estimated Settlement payment?	
11. If I receive a Settlement payment will I have to pay taxes on it?	
12. No retaliation or discrimination.	
THE LAWYERS IN THIS CASE AND THE REPRESENTATIVE PLAINTIFF	4
13. Do I have a lawyer in this case?	
14. How will the lawyers be paid?	
15. Will the Representative Plaintiff receive any compensation for their efforts in bringing this Action?	
RELEASE OF ALL CLAIMS.....	5
16. What am I giving up to obtain relief under the Settlement?	
HOW TO EXCLUDE YOURSELF FROM THE SETTLEMENT	5
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HOW TO OBJECT TO THE SETTLEMENT.....	5
18. How do I tell the Court that I do not like the Settlement?	
19. What is the difference between excluding myself and objecting to the Settlement?	
FINAL APPROVAL HEARING.....	6
20. What is the Final Approval Hearing?	
21. When and where is the Final Approval Hearing?	
22. May I speak at the hearing?	
ADDITIONAL INFORMATION	6
23. How do I get more information?	
24. What if my address or other information has changed?	

BACKGROUND INFORMATION**1. Why did I get this notice?**

You received this Notice because a Settlement has been reached in this Action. According to Defendant's available records you are a member of the Class and may be eligible for the relief detailed below.

This Notice explains the nature of the Action, the general terms of the proposed Settlement, and your legal rights and obligations. To obtain more information about the Settlement, including information about how you can see a copy of the Settlement Agreement (which defines the capitalized terms used in this Notice), see Section 23 below.

2. What is this lawsuit about?

Plaintiff Wayne Douglas Gillette (the "Plaintiff" or "Representative Plaintiff") filed a lawsuit against Copan Diagnostics ("Defendant") on behalf of himself and all others similarly situated. The lawsuit alleges that Defendant violated California and/or Federal law by, among other things, failing to classify non-exempt (hourly) as exempt employees (salaried), failing to pay overtime wages, failing to pay minimum wage, failing to provide timely/accurate wage statements, failing to pay all wages due at separation, failing to provide duty-free meal/rest periods, failing to reimburse necessary business expenses, and unfair business practices. The lawsuit also asserts claims under the California Private Attorneys General Act of 2004, Labor Code section 2698, et seq. ("PAGA").

Defendant denies each and every one of the allegations of unlawful conduct, any wrongdoing, and any liability whatsoever, and no court or other entity has made any judgment or other determination of any liability. Defendant further denies that any Class Member is entitled to any relief and, other than for Settlement purposes, that this Action is appropriate for certification as a class action.

The issuance of this Notice is not an expression of the Court's opinion on the merits or the lack of merits of the Plaintiff's claims in the Action.

For information about how to learn about what has happened in the Action to date, please see Section 23 below.

3. Why is this a class action?

In a class action lawsuit, one or more people called "Plaintiff" (in this Action, Wayne Douglas Gillette) sues on behalf of other people who allegedly have similar claims. For purposes of this proposed Settlement, one court will resolve the issues for all Class Members. The company sued in this case, Copan Diagnostics, is called the Defendant.

4. Why is there a Settlement?

The Plaintiff has made claims against Defendant. Defendant denies that they have done anything wrong or illegal and admit no liability. **The Court has not decided that the Plaintiff or the Defendant should win this Action. Instead, both sides agreed to a Settlement.** That way, they avoid the cost of a trial, and the Class Members will receive payment now rather than years from now, if at all.

5. How do I know if I am part of the Settlement?

The Court has decided that everyone who fits the following description is a Class Member for purposes of the proposed Settlement: "All current and former Field Service Engineer employees who physically performed work for Defendant in the State of California from November 17, 2019, until [Date of Order re Preliminary Approval]"

6. I'm still not sure if I am included.

If you are still not sure whether you are included, you can write to the Settlement Administrator for free help. The address of the Settlement Administrator is: *Gillette v. Copan Diagnostics*, c/o CPT Group Inc., 50 Corporate Park, Irvine, CA 92606.

THE PROPOSED SETTLEMENT**7. What relief does the Settlement provide to the Class Members?**

Defendant has agreed to fund a Settlement with a maximum value of **\$400,000 (four hundred thousand)**. The Settlement amount will be used to pay the claims of Settlement Class Members, the cost of providing notice to the Class and administering the Settlement (i.e., \$7,500); to pay any awards of the Court for attorneys' fees (i.e., \$132,000) and costs (i.e., \$20,000) to Plaintiff's counsel; any service award the Court awards to the Representative Plaintiff (i.e., \$10,000); and the amount allocated under the California Private Attorneys General Act of 2004, California Labor Code section 2698 et seq. ("PAGA") (i.e., \$5,000, the "PAGA Penalty Amount"), which includes the 75% payment to the California Labor Workforce and Development Agency ("LWDA Payment") (i.e., \$3,750) and the 25% "PAGA Group Amount" distributed to the PAGA Group (i.e., \$1,250).

Your Estimated Settlement Payment is \$<<estAmount>> based on the <<Workweeks>> Workweeks you worked during the Class Period, as shown in Defendant's records. Your estimated payment was calculated using Defendant's records. Individual Settlement Payments will be calculated and apportioned as follows:

(a) The "Net Settlement Fund" shall be calculated by subtracting, from the Gross Settlement Amount total of \$400,000 the payments to Class Counsel, the Representative Plaintiff, and the Settlement Administrator, and the PAGA Penalty Amount.

(b) For each Class Member, the Settlement Administrator shall determine the number of Workweeks worked by them during the Class Period based on Defendant's records. The sum of the Workweeks for all Class Members shall be the "Total Workweeks."

(c) The Net Settlement Fund shall be divided by the number of Total Workweeks; the resulting figure is the "Workweek Value."

(d) For each Settlement Class Member (i.e., Class Members who do not request to be excluded from the Settlement), the Settlement Administrator will multiply the number of Workweeks he or she worked during the Class Period by the Workweek Value. The resulting figure shall be the "Individual Settlement Amount" for each such Settlement Class Member.

(e) The Settlement Administrator shall divide the PAGA Group Amount by the total number of PAGA Group members (i.e., the total number of Class Members estimated to be 25 individuals); the resulting figure shall be each PAGA Group member's pro rata share of the PAGA Group Amount (estimated to be approximately \$50 for each PAGA Group member [\$1,250 divided by 25 persons = \$50]).

PAYMENT TO THE CLASS**8. How can I get a payment?**

If you wish to remain a Settlement Class Member and obtain any share of the Settlement that you may be entitled to receive, then you do not have to do anything and you will automatically receive a Settlement Payment check in the mail if the Court approves the proposed Settlement. You are not required to go to court or pay anything to the lawyers in this case. The Settlement Payment you will receive will be a full and final settlement of your Released Claims described below.

9. When will I get a payment?

As described in Sections 20 and 21, the Court will hold a hearing on _____ at _____ AM/PM, to decide whether to approve the Settlement. If the Court approves the Settlement, after that, there may be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. *Please be patient.*

10. What if I disagree with Defendant's calculation regarding my estimated Settlement payment?

If you believe that the number of Workweeks with which you have been credited is incorrect, you may produce evidence to the Settlement Administrator by **(Date of Response Deadline - 45 days post mailing)** showing that such information is inaccurate. The Settlement Administrator shall decide the dispute. Defendant's records will be presumed correct, but the Settlement Administrator will evaluate the evidence submitted by you and will make the final decision as to the merits of the dispute. You can submit a Workweek Dispute by mail to the Settlement Administrator at: *Gillette v. Copan Diagnostics*, c/o CPT Group Inc., 50 Corporate Park, Irvine, CA 92606.

11. If I receive a Settlement payment will I have to pay taxes on it?

Thirty Three and 1/3 Percent (33.33%) of your Settlement Payment will be considered to be wages and will be reported on IRS Form W-2, and/or the California state equivalent with all appropriate taxes withheld; Thirty Three and 1/3 Percent (33.33%) of your Settlement Payment will be considered penalties and Thirty Three and 1/3 Percent (33.33%) of your Settlement Payment will be considered interest, both the penalties and interest will be reported on IRS Form 1099. You should consult a tax professional for more information about your own specific situation.

12. No retaliation or discrimination.

Defendant respects your right to participate in this lawsuit and will take no adverse action against you should you accept payment under the Settlement.

THE LAWYERS IN THIS CASE AND THE REPRESENTATIVE PLAINTIFF**13. Do I have a lawyer in this case?**

The Court has ordered that the law firm of Da Vega, Fisher, Mechtenberg LLP ("Class Counsel") will represent the interests of all Class Members. You will not be separately charged for these lawyers. If you have a question about the Settlement, you may contact the Class Counsel by writing them at 232 E. Anapamu Street, Santa Barbara, California 93101, or emailing them at (mdavega@mdmflaw.com) or (mfisher@mdmflaw.com), or calling them at (805) 232-4471. If you want to be represented by your own lawyer, you may hire one at your own expense.

14. How will the lawyers be paid?

Defendant has agreed to pay Class Counsel's attorneys' fees up to **\$132,000** and costs and expenses of up to **\$20,000** for their services in litigating the Action, subject to approval by the Court. You will not be required to pay any attorneys' fees or costs yourself.

15. Will the Representative Plaintiff receive any compensation for their efforts in bringing this Action?

The Representative Plaintiff will request a service award (also known as an "incentive" award) of up to **\$10,000** for her service as class representative and her effort in bringing the Action. The Court will make the final decision as to the amount to be paid to the class representative.

RELEASE OF ALL CLAIMS**16. What am I giving up to obtain relief under the Settlement?**

If the Court approves the proposed Settlement, unless you exclude yourself from the Settlement, you will be releasing your claims against Defendant. This generally means that you will not be able to file a lawsuit, continue prosecuting a lawsuit, or be part of any other lawsuit against Defendant regarding the allegations in the Action. The Settlement Agreement, which is available by contacting the Settlement Administrator as described in Section 23 below, contains the full terms of the release.

HOW TO EXCLUDE YOURSELF FROM THE SETTLEMENT**17. How do I exclude myself from the Settlement?**

You may exclude yourself from the Class and the Settlement. If you want to be excluded, you must send a Request for Exclusion (i.e via the included “Request for Exclusion Form”) via U.S. Mail or other delivery service that states that includes: **(a)** the case name and number of the Action “*Gillette v. Copan Diagnostics*, Case No.CVRI-2105284”; **(b)** your full name, address, and telephone number; and **(c)** a statement that you do not wish to participate in the Settlement. You must sign and date the Request for Exclusion Form for it to be valid. The Request for Exclusion Form must be sent (i.e., postmarked or delivery date stamped) by no later than **(Date of Response Deadline - 45 days post mailing)** and sent to the Settlement Administrator at: *Gillette v. Copan Diagnostics*, c/o CPT Group Inc., 50 Corporate Park, Irvine, CA 92606.

If you timely request exclusion from the Class, you will be excluded from the Settlement Class, you will not be bound by the judgment entered in the Action, you will not be precluded from prosecuting any timely, individual claim against Defendant based on the conduct complained of in the Action, and you will not receive an Individual Settlement Payment.

Even if you request exclusion from the Settlement Class, however, you will still be bound by the Settlement Agreement’s release of PAGA Claims upon final approval of the Settlement Agreement and judgment. Requests for Exclusion do not apply to PAGA Claims. All Class Members will be sent a check for their pro rata share of the PAGA Group Amount, which are civil penalties enforced on behalf of the State of California.

HOW TO OBJECT TO THE SETTLEMENT**18. How do I tell the Court that I do not like the Settlement?**

At the date, time, and location stated in Section 21 below, the Court will hold a Final Approval Hearing to determine if the Settlement is fair, reasonable, and adequate, and to also consider Class Counsel’s request for an award of attorneys’ fees and costs, and service award to the Representative Plaintiff.

If you wish to object to the fairness, reasonableness, or adequacy of the Settlement Agreement or the proposed Settlement, you must submit via U.S. Mail or other delivery service a valid, written Objection (i.e via the included “Objection Form”) the to the Settlement Administrator at the address set forth below by no later than (i.e., postmarked or delivery date stamped by **(Date of Response Deadline - 45 days post mailing)**).

SETTLEMENT ADMINISTRATOR

Gillette v. Copan Diagnostics,
c/o CPT Group Inc.,
50 Corporate Park
Irvine, CA 92606

To be valid, any objection/Objection Form must: **(a)** state the name and case number of the Action “*Gillette v. Copan Diagnostics* Case No. CVRI-2105284”; **(b)** state your full name, current mailing address, most current telephone number, and last four digits of your Social Security number; **(c)** state your objection to the Settlement and the legal and/or factual arguments supporting the objection; **(d)** be submitted to the Settlement Administrator via U.S. Mail or other delivery service with proof of submission date (such as a U.S. Postal Service postmark or another delivery service date stamp) no later than **(Date of Response Deadline - 45 days post mailing)**. You must sign and date the objection/Objection Form for it to be valid. You may, but need not, submit your objection through counsel of your choice. If you make your objection through counsel, you will be responsible for your attorney’s fees and costs. **If you wish to appear at the Final Approval Hearing to object to the Settlement**, either in person or through personal counsel hired at your expense, we ask (although it is not required) that you include in your objection/Objection Form the statement, “Notice of Intention to Appear at Final Approval Hearing,” or that you otherwise provide to the Settlement Administrator a “Notice of Intention to Appear” indicating your intent to appear at the Final Approval Hearing. Doing so, however, does not obligate you to appear and again you are not required to do so in order to appear.

IF YOU DO NOT TIMELY MAKE YOUR OBJECTION, YOU WILL BE DEEMED TO HAVE WAIVED ALL OBJECTIONS.

19. What is the difference between excluding myself and objecting to the Settlement?

Objecting is telling the Court that you don't like something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you don't want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the Settlement no longer affects you.

FINAL APPROVAL HEARING**20. What is the Final Approval Hearing?**

The Court has preliminarily approved the Settlement meaning only that it concluded only that there is sufficient evidence to suggest that the Agreement falls within the range of possible approval as fair, reasonable, and adequate, and that the final determination of these issues will be made at the Final Approval Hearing. The purpose of the Final Approval Hearing will be for the Court to determine whether the Settlement should be approved as fair, reasonable, adequate, and in the best interests of the Settlement Class; to consider the award of attorneys' fees and expenses to Class Counsel; and to consider the request for service award to the Representative Plaintiff.

21. When and where is the Final Approval Hearing?

On _____ at _____ AM/PM, a hearing will be held on the fairness of the proposed Settlement (i.e. "Final Approval Hearing"). At the hearing, the Court will be available to hear any objections and arguments concerning the proposed Settlement's fairness. The hearing will take place before the Honorable Harold W. Hopp in Department 10 of the California Superior Court for the County of Riverside, located at the Historic Courthouse, 4050 Main Street, Riverside, CA 925013. The hearing may be postponed to a different date or time or location without notice.

22. May I speak at the hearing?

At that hearing, the Court will be available to hear any Objections and arguments concerning the fairness of the Settlement. You may attend, but you do not have to.

ADDITIONAL INFORMATION**23. How do I get more information?**

To see a copy of the Settlement Agreement, the Court's Preliminary Approval Order, and the operative Complaint filed in the Action, please contact Class Counsel by writing them at 232 E. Anapamu Street, Santa Barbara, California 93101, or emailing them at (mdavega@mdmflaw.com) or (mfisher@mdmflaw.com), or calling them at (805) 232-4471. The Settlement Agreement (aka "Joint Stipulation of Class Action Settlement and Release") is attached as an Exhibit 1 to the Declaration of Class Counsel Matthew S. Da Vega that was filed in support of the Plaintiff's Motion for Preliminary Approval.

This description of this Action is general and does not cover all of the issues and proceedings that have occurred. In order to see the complete file you may visit the Clerk's office at the Southwest Justice Center -30755-D Auld Road, Riverside, CA 90012, to obtain the file for inspection and copying at your own expense. Some documents and/or information may also be available online at: <https://www.riverside.courts.ca.gov/index.php>

24. What if my address or other information has changed?

It is your responsibility to inform the Settlement Administrator of your updated information. You may make corrections to your address by contacting the Settlement Administrator at: *Gillette v. Copan Diagnostics*, c/o CPT Group Inc. 50 Corporate Park, Irvine, CA 92606.

PLEASE DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO THE CLERK OF THE COURT OR THE JUDGE.

Gillette v. Copan Diagnostics, Inc.
Case No. CVRI-2105284

EXHIBIT D
(Work Week Dispute Form)

WORKWEEK DISPUTE FORM
Gillette v. Copan Diagnostics, Inc.
Riverside County Superior Court
Case No. CVRI-2105284

YOUR NUMBER OF CREDITED WORKWEEKS IS

CLASS MEMBER IDENTIFICATION

UNIQUE IDENTIFIER

NAME

Address

According to Defendant's payroll records, you are a Class member and worked approximately weeks as an employee during the Class Period (November 19, 2017 through March 22, 2023 [the date of the Court's order granting preliminary approval of this Settlement]). Based on information currently available, we estimate your total share of the settlement will be approximately \$. This is only an estimate.

The amount you ultimately receive as part of the Settlement may increase or decrease in accordance with the terms of the Settlement, and the Court's orders.

*** Defendants respect your right to participate in this lawsuit and will take no adverse action against you should you accept payment under the Settlement. ***

If you believe that the number of Workweeks with which you have been credited is incorrect, you must complete this **Workweek Dispute Form** by indicating what you believe is incorrect on the blank lines below and return it on or before [Month] [Day], 2023 (Response Date) to the Settlement Administrator, the CPT Group, via U.S. Mail or other delivery service with proof of the submission date (such as a postmark or delivery service date stamp.) You must also send any documents or other information that supports your belief that the information set forth above is incorrect. The Settlement Administrator will resolve any dispute based upon Defendant's records and any information you provide. Please be advised that the information on this Workweek Dispute Form is presumed to be correct unless the documents you submit are company records from Defendant.

Dated: _____

(mm/dd/yyyy)

(Signature)

(Print Name)

PLEASE RETURN THIS FORM IN THE ENVELOPE PROVIDED OR VIA UNITED STATES FIRST CLASS

MAIL TO:

GILLETTE v. COPAN DIAGNOSTICS, INC.

c/o CPT Group

50 Corporate Park, Irvine CA 92606

Phone: (800) XXX-XXX

QUESTIONS? Call CPT GROUP at Phone: (800) XXX-XXXX or visit their website at: <https://www.cptgroup.com/>

Gillette v. Copan Diagnostics, Inc.
Case No. CVRI-2105284

EXHIBIT E
(Request for Exclusion Form)

REQUEST FOR EXCLUSION FORM
Gillette v. Copan Diagnostics, Inc.
Riverside County Superior Court
Case No. CVRI-2105284

CLASS MEMBER IDENTIFICATION

UNIQUE IDENTIFIER

NAME

Address

TO BE EXCLUDED FROM AND NOT RECEIVE YOUR SHARE OF THE SETTLEMENT PAYMENT as described in the accompanying notice of class action and proposed settlement, you must complete and return this “request for exclusion form” on or before **[Month] [Day], 2023 (Response Date)** to the Settlement Administrator, CPT Group, via U.S. Mail or other delivery service with proof of the submission date (such as a postmark or delivery service date stamp.)

Return this form only if do NOT want to participate and YOU WILL NOT receive a settlement payment.

As a Class Member, I understand that I have the option to elect to request exclusion from (“opt-out” of) the Settlement Class, as described in the accompanying Notice of Class Action and Proposed Settlement. I understand that by electing to request exclusion from the *Gillette v. Copan Diagnostics, Inc.* matter, I will not receive any portion of the Settlement, which I would otherwise have been entitled to receive. I also understand that by exercising this option, I will remain free to prosecute my own claims, if any, against Defendant and/or the Released Parties subject to applicable statutes of limitations and other applicable restrictions (in which case, if I desire representation by an attorney, I will need to hire or otherwise retain an attorney for that purpose at my own expense).

With full understanding of the foregoing, I wish to exclude myself from this Action, the Settlement, and the Judgment.

Name (First, Middle, Last): _____ **[Required]**

Former Names (if any): _____ **[Required]**

Home Street Address: _____ **[Required]**

Telephone Number(s): Mobile: _____ Work: _____ **[Required]**

Last 4 digits of Social Security Number: XXX - XX- _____ **[Required]**

Dated: _____, 2023

Signature **[Required]**

PLEASE RETURN THIS FORM IN THE ENVELOPE PROVIDED OR VIA UNITED STATES FIRST CLASS

MAIL TO:

GILLETTE v. COPAN DIAGNOSTICS, INC.

c/o CPT Group

50 Corporate Park, Irvine CA 92606

Phone: (800) XXX-XXX

QUESTIONS? Call CPT GROUP at Phone: (800) **XXX-XXXX** or visit their website at: <https://www.cptgroup.com/>

Gillette v. Copan Diagnostics, Inc.
Case No. CVRI-2105284

EXHIBIT F
(Objection Form)

OBJECTION FORM
Gillette v. Copan Diagnostics, Inc.
Riverside County Superior Court
Case No. CVRI-2105284

CLASS MEMBER IDENTIFICATION

UNIQUE IDENTIFIER

NAME

Address

DO NOT FILL OUT OR SEND IN THIS FORM UNLESS YOU OBJECT TO THE TERMS AND/OR CONDITIONS OF THE PROPOSED SETTLEMENT.

You have a right to object to the Settlement, or any of its terms. In order to object, you must not have submitted a Request for Exclusion Form. If you choose to object, you must complete this form and send the signed form on or before **[Month] [Day], 2023 (Response Date)** to the Settlement Administrator, CPT Group, via U.S. Mail or other delivery service with proof of the submission date (such as a postmark or delivery service date stamp.)

Name (First, Middle, Last): _____ **[Required]**

Former Names (if any): _____ **[Required]**

Home Street Address: _____ **[Required]**

Telephone Number(s): Mobile: _____ Work: _____ **[Required]**

Last 4 digits of Social Security Number: XXX - XX- _____ **[Required]**

Describe the Basis of Your Objection: _____

_____ **[Required]**

I hereby conform that I want to object to the settlement for the reasons stated above.

Dated: _____, 2023

Signature **[Required]**

PLEASE RETURN THIS FORM IN THE ENVELOPE PROVIDED OR VIA UNITED STATES FIRST CLASS

MAIL TO:

GILLETTE v. COPAN DIAGNOSTICS, INC.
c/o CPT Group
50 Corporate Park, Irvine CA 92606

Phone: (800) XXX-XXX

QUESTIONS? Call CPT GROUP at Phone: (800) **XXX-XXXX** or visit their website at: <https://www.cptgroup.com/>

Gillette v. Copan Diagnostics, Inc.
Case No. CVRI-2105284

EXHIBIT G
(~~Proposed~~ Preliminary Approval Order)

1
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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

20
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.
27
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,
28

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
28

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
28

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