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

AMIN AHMED, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

CAREDX, INC., a Delaware corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No.: 22-CIV-02294

(Assigned to the Hon. Marie S. Weiner, Dept. 2)

**[PROPOSED] ORDER GRANTING
PLAINTIFF’S MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT**

Date: April 25, 2023

Time: 2:00 p.m.

Dept.: 2

Complaint Filed: June 6, 2022

FAC Filed: December 27, 2022

Trial Date: None Set

1 Plaintiff Amin Ahmed’s (“Plaintiff”) application for an Order Granting Preliminary
2 Approval of Class Action and PAGA Settlement was filed with the Court on April 3, 2023, and a
3 hearing was held before this Court on April 25, 2023. Appearances for Plaintiff and Defendant
4 CareDx, Inc. (“Defendant”) at the hearing were noted on the record.

5 The Court has considered the Joint Stipulation of Class Action and PAGA Settlement and
6 Release (“Settlement Agreement”) and all other papers filed in this action.

7 **A. Background and Settlement Terms**

8 Plaintiff filed an initial class action complaint on June 6, 2022. On December 27, 2022,
9 Plaintiff filed the operative first amended complaint (“Complaint”), adding representative action
10 claims. The Complaint alleges causes of action for violation of Labor Code § 226 and Labor
11 Code § 2698, *et seq.*, the Private Attorneys General Act (“PAGA”). Specifically, the Complaint
12 alleges that the wage statements issued to Plaintiff and other employees incorrectly identified the
13 total hours worked whenever shift differential wages were paid.

14 The settlement would create a settlement fund of \$70,000.00 (“Maximum Settlement
15 Amount”). The Parties have agreed to an Enhancement Award to Plaintiff in the amount of
16 \$5,000.00. Attorneys’ fees are allocated in the amount of \$23,333.00, or approximately one-third
17 of the Maximum Settlement Amount. Litigation costs are allocated in an amount not to exceed
18 \$4,000.00. Settlement administration costs of Phoenix Settlement Administrators are estimated
19 to be \$5,750.00. PAGA penalties are allocated in the amount of \$5,000.00, resulting in a
20 payment of \$3,750.00 to the California Labor and Workforce Development Agency (“LWDA”),
21 and \$1,250.00 to be paid to class members. The net amount after deducting the above amounts
22 (“Net Settlement Amount”) is estimated to be \$32,667.00 and shall be paid to the class members
23 who do not opt-out of the settlement. The fund is non-reversionary. There are an estimated 90
24 Class Members. Based on the estimated class size, the average net payment for each Class
25 Member is approximately \$363.

26 The entire settlement amount will be deposited with the settlement administrator within
27 20 days of the Effective Date.

1 The proposed settlement would certify a class of “all current and former hourly
2 employees of Defendant, who worked in California and were paid shift differential wages at any
3 time during the Class Period.”

4 Class Members will not be required to file a claim. Class Members may object or opt out
5 of the class portion of the settlement; however, Class Members may not opt out of the PAGA
6 portion of the settlement.

7 Various prescribed follow-up steps will be taken with respect to mail that is returned as
8 undeliverable. Any unclaimed or uncashed funds will be distributed to the *cy pres* recipient
9 Legal Aid at Work.

10 The settlement contains release language covering “any and all California state law wage-
11 and-hour claims, rights, demands, liabilities, and/or causes of action of every nature and
12 description, arising from or related to any and all claims that were asserted or could have been
13 asserted based on the facts alleged in the Operative Complaint on file with the court in the
14 Lawsuit during the Class Period, including, without limitation, claims for penalties, attorneys’
15 fees, and litigation costs” (“Released Class Claims”), as well as “any and all individual and
16 representative claims that could have been assessed upon and collected from the Released Parties
17 under California Labor Code section 2698, et seq. based on the factual allegations contained in
18 the PAGA notices and Operative Complaint on file with the court in this action during the Class
19 Period, including but not limited to California Labor Code sections 226 and 226.3 and any
20 resulting claim for attorneys’ fees and costs under PAGA” (“Released PAGA Claims”). Under
21 recent appellate authority, the limitation to those claims with the “same factual predicate” as
22 those alleged in the complaint is critical. *Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.
23 App. 5th 521, 537 (“A court cannot release claims that are outside the scope of the allegations of
24 the complaint.” “Put another way, a release of claims that goes beyond the scope of the
25 allegations in the operative complaint’ is impermissible.”) *Id.*, quoting *Marshall v. Northrop*
26 *Grumman Corp.* (C.D. Cal. 2020) 469 F. Supp. 3d 942, 949. Here, the scope of the release is
27 limited to the claims in the complaint and related PAGA notice.

28 After the reasonable exchange of information and evaluation of the claims, the matter

settled after arm's-length negotiations.

Counsel also has provided an analysis of the case, and how the settlement compares to the potential value of the case, after allowing for various risks and contingencies. This included an estimate of class claims at a "maximum possible liability," including derivative PAGA penalties. Class counsel opines that the settlement is about 19% of the maximum exposure. Which is fair, adequate, and reasonable.

The potential liability needs to be adjusted for various evidence and risk-based contingencies, including problems of proof. PAGA penalties are difficult to evaluate for a number of reasons: they derive from other violations, they include "stacking" of violations, the law may only allow application of the "initial violation" penalty amount, and the total amount may be reduced in the discretion of the court. *See* Labor Code § 2699(e)(2) (PAGA penalties may be reduced where "based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust arbitrary and oppressive, or confiscatory.")

Counsel attest that notice of the proposed settlement was transmitted to the LWDA concurrently with the filing of the motion.

B. Legal Standards

The primary determination to be made is whether the proposed settlement is "fair, reasonable, and adequate" under *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801, including "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the state of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction...to the proposed settlement." *See also Amaro v. Anaheim Arena Mgmt., LLC, supra*, 69 Cal. App. 5th 521.

Because this matter also proposes to settle PAGA claims, the Court also must consider the criteria that apply under that statute. Recently, the Court of Appeal's decision in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal. App. 5th 56, provided guidance on this issue. In *Moniz*, the court found that the "fair, reasonable, and adequate" standard applicable to class actions applies

1 to PAGA settlements. *Id.* at 64. The Court also held that the trial court must assess “the fairness
2 of the settlement’s allocation of civil penalties between the affected aggrieved employees[.]” *Id.*
3 at 64-65.

4 California law provides some general guidance concerning judicial approval of any
5 settlement. First, public policy generally favors settlement. *Neary v. Regents of University of*
6 *California* (1992) 3 Cal. 4th 273. Nonetheless, the court should not approve an agreement
7 contrary to law or public policy. *Bechtel Corp. v. Superior Court* (1973) 33 Cal. App. 3d 405,
8 412; *Timney v. Lin* (2003) 106 Cal. App. 4th 1121, 1127. Moreover, “[t]he court cannot
9 surrender its duty to see that the judgment to be entered is a just one, nor is the court to act as a
10 mere puppet in the matter.” *California State Auto. Assn. Inter-Ins. Bureau v. Superior Court*
11 (1990) 50 Cal. 3d 658, 664. As a result, courts have specifically noted that *Neary* does not
12 always apply, because “[w]here the rights of the public are implicated, the additional safeguard
13 of judicial review, though more cumbersome to the settlement process, serves a salutatory
14 purpose.” *Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.
15 App. 4th 48, 63.

16 C. Attorneys’ Fees

17 Plaintiff seeks approximately one-third of the total settlement amount as fees, relying on
18 the “common fund” theory. Even a proper common fund-based fee award, however, should be
19 reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International Inc.* (2016) 1
20 Cal. 5th 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to
21 determine whether the percentage allocated is reasonable. It stated: “If the multiplier calculated
22 by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider
23 whether the percentage used should be adjusted so as to bring the imputed multiplier within a
24 justifiable range, but the court is not necessarily required to make such an adjustment.” *Id.* at
25 505. Following typical practice, however, the fee award will not be considered at this time, but
26 only as part of final approval.

27 Similarly, litigation costs of up to \$4,000.00 and the requested enhancement payment of
28 \$5,000.00 will be reviewed at time of final approval. Criteria for evaluation of representative

1 payment requests are discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.
2 App. 4th 785, 804-07.

3 **D. Discussion and Conclusion**

4 The Court finds that the settlement is sufficiently fair, reasonable, and adequate to justify
5 preliminary approval.

6 **NOW THEREFORE, IT IS HEREBY ORDERED:**

7 1. The Court grants preliminary approval to the settlement based on the terms set
8 forth in Settlement Agreement. This Order incorporates by reference the definitions in the
9 Settlement Agreement, and all terms defined therein shall have the same meaning in this Order
10 as set forth in the Settlement Agreement.

11 2. The settlement provides for Defendant to pay the Maximum Settlement Amount
12 of \$70,000.00. The Court preliminarily finds that the settlement is fair, adequate, and reasonable
13 to the Class, and preliminarily approves the terms of the settlement. This preliminary approval is
14 subject to the objections of Class Members and final review by the Court.

15 3. A Final Approval Hearing shall be held before this Court on _____,
16 2023, at ____ a.m. in Department 2 of the Superior Court of the State of California for the
17 County of San Mateo, to determine all necessary matters concerning the settlement, including:
18 whether the proposed settlement of the Action on the terms and conditions provided for in the
19 settlement is fair, adequate, and reasonable and should be finally approved by the Court; whether
20 the Final Approval Order and Judgment should be entered; whether the plan of allocation
21 contained in the settlement should be approved as fair, adequate, and reasonable to the Class
22 Members; and whether to finally approve the PAGA Payment, Attorneys' Fees Award,
23 Litigation Costs Award, Class Representative Enhancement Payment, and Settlement
24 Administration Costs. The motion for final approval and the motion for award of attorneys' fees
25 and costs shall be filed no later than sixteen (16) court days before the Final Approval Hearing.

26 4. The Court recognizes that the Plaintiff and the Defendant stipulate and agree to
27 certification of the Class for settlement purposes only. This stipulation will not be deemed
28 admissible in this or any other proceeding should this settlement not become final. Whether or

1 not the settlement is finally approved, neither the Settlement Agreement, nor any document,
2 statement, proceeding, or conduct related to the Settlement Agreement may be admitted in any
3 proceeding as an admission by Defendant or any of the Released Parties, Plaintiff, or any person
4 within the definition of the Class.

5 5. The Class Period is from June 6, 2021 through and including October 7, 2022.
6 The PAGA Period is from September 24, 2020 through August 31, 2022. For settlement
7 purposes only, the Court certifies the following Class: “all current and former hourly employees
8 of Defendant, who worked in California and were paid shift differential wages at any time during
9 the Class Period.”

10 6. The Court hereby appoints Amin Ahmed as the representative of the Class. The
11 Court further appoints Diversity Law Group, P.C. and Polaris Law Group as counsel for the
12 Class (“Class Counsel”).

13 7. The Court hereby approves, as to form and content, the Notice of Class Action
14 Settlement (“Class Notice”) attached as Exhibit A to the Settlement Agreement. The Court finds
15 that the distribution of the Class Notice substantially in the manner and form set forth in the
16 Settlement Agreement and this Order meets the requirements of due process, is the best notice
17 practicable under the circumstances, and shall constitute due and sufficient notice to all persons
18 entitled thereto. The Court hereby approves on a preliminary basis the Maximum Settlement
19 Amount as provided for in the Settlement Agreement. It appears to the Court on a preliminary
20 basis that the settlement amount and terms are fair, adequate, and reasonable as to all potential
21 Class Members when balanced against the probable outcome of further litigation relating to
22 liability and damages issues. It further appears that: investigation and research have been
23 conducted such that counsel for the Parties at this time are able to reasonably evaluate their
24 respective positions; that settlement at this time will avoid substantial additional costs by all
25 Parties, as well as avoid the delay and risks that would be presented by the further prosecution of
26 the Action; and that the settlement has been reached as the result of intensive, serious, and non-
27 collusive, arm’s-length negotiations.

28 8. The Court hereby appoints Phoenix Settlement Administrators as the Settlement

1 Administrator. Within 20 days of this Order, Defendant will provide to the Settlement
2 Administrator an electronic database containing the Class Information. Within 14 days of receipt
3 of the Class Information from Defendant, the Settlement Administrator will mail the Class
4 Notice to all Class Members via first-class regular U.S. Mail to their most current, known
5 mailing address.

6 9. Any Class Member may choose to opt out of and be excluded from the class
7 portion of the settlement, as provided in the Class Notice by following the instructions for
8 requesting exclusion from the Class. Class Members may not opt out of the PAGA portion of the
9 settlement. All Requests for Exclusion must be submitted within 45 days from the initial date of
10 mailing the Class Notice, with an additional 14 days for those Class Notices that have been re-
11 sent. Any such person who chooses to opt out of and be excluded from the Class will not be
12 entitled to any recovery under the non-PAGA portion of the settlement and will not be bound by
13 the non-PAGA portion of the settlement or have any right to object, appeal, or comment thereon.
14 Any written request to opt out must comply with the instructions in the Class Notice and be
15 signed by each such person opting out. Class Members who have not validly requested exclusion
16 shall be bound by all determinations of the Court, the Agreement, and the Judgment.

17 10. Any Class Member who has not opted out may appear at the final approval
18 hearing and may object or express their views regarding the settlement and may present evidence
19 and file briefs or other papers that may be proper and relevant to the issues to be heard and
20 determined by the Court as provided in the Class Notice. Class Members will have 45 days from
21 the date the Class Notice is mailed to submit their written objections to the Settlement
22 Administrator. Class Members who fail to timely submit objections in the manner specified
23 above shall be deemed to have waived any objections and shall be foreclosed from making any
24 objection (whether by appeal or otherwise) to the settlement.

25 11. The settlement is not a concession or admission and shall not be used against
26 Defendant as an admission or indication with respect to any claim of any fault or omission by
27 Defendant. Whether or not the settlement is finally approved, neither the settlement, nor any
28 document, statement, proceeding, or conduct related to the settlement, nor any reports or

1 accounts thereof, shall in any event be construed as, offered, or admitted in evidence as, received
2 as or deemed to be evidence for any purpose adverse to the Defendant, including, but not limited
3 to, evidence of a presumption, concession, indication, or admission by Defendant of any liability,
4 fault, wrongdoing, omission, concession, or damage.

5 12. In the event the settlement does not become effective in accordance with the
6 terms of the Settlement Agreement, or the settlement is not finally approved, or is terminated or
7 fails to become effective for any reason, this Order shall be rendered null and void and shall be
8 vacated, and the Parties shall revert to their respective positions as of before entering into the
9 Settlement Agreement.

10 13. The Court reserves the right to adjourn or continue the date of the final approval
11 hearing and all dates provided for in the Settlement Agreement without further notice to Class
12 Members and retains jurisdiction to consider all further applications arising out of or connected
13 with the proposed settlement.

14 **IT IS SO ORDERED.**

15 DATED: _____

HON.MARIE S. WEINER
SUPERIOR COURT OF CALIFORNIA