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Attorneys for Plaintiff MONICA MELISSA GUTIERREZ,
Individually and on behalf of all others similarly situated

[Additional counsel listed on next page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

ADAM BADIS, ANGELICA REYES, and
MONICA MELISSA GUTIERREZ,
individually, and on behalf of other members
of the general public similarly situated;

Plaintiffs,

vs.

COPAN DIAGNOSTICS INC., a New York
corporation; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: CVRI2203991

[Assigned for all purposes to the Hon. Harold W.
Hopp, Dept. 10]

**DECLARATION OF JAMES HAWKINS
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: December 5, 2024
Time: 08:30 a.m.
Dept.: 1

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DECLARATION OF JAMES HAWKINS

I, James Hawkins, declare as follows:

1. I am an individual over the age of 18. I am a partner at the law firm of James Hawkins, APLC. I am one of the attorneys of record for Plaintiff Monica Melissa Gutierrez, who along with Plaintiffs Adam Badis and Angelica Reyes (hereinafter referred to as “Plaintiffs” or “Class Representatives”) moves this Court for Preliminary Approval of the Class Action Settlement. I submit this declaration in support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement, which Plaintiffs filed concurrently herewith, along with the supporting Memorandum of Points and Authorities. I have personal knowledge of the facts set forth below, and if called to testify regarding them, I could and would do so competently.

BRIEF HISTORY OF GUTIERREZ CASES

2. On October 24, 2023, Plaintiff Gutierrez gave notice to the Labor and Workforce Development Agency (“LWDA”) of her claims that Defendant Copan Diagnostics Inc., (“Defendant”) had violated the Labor Code and Wage Order by, *inter alia*, failing to provide meal breaks, and failing to pay for all hours worked.

3. On October 24, 2023, Plaintiff Gutierrez filed a class action complaint against Defendant in Riverside County Superior Court Case No. CVRI2305684.

4. On December 12, 2023, Plaintiff Gutierrez filed a separate PAGA complaint in Riverside County Case No. CVRI2306963.

5. On April 18, 2024, Plaintiff Gutierrez filed a First Amended Class Action Complaint.

MEDIATION EFFORTS

6. On January 17, 2024 Plaintiffs Badis, Reyes, and Defendant attended an all-day mediation with noted mediator Lisa Klerman.

7. On April 5, 2024 the Parties attended a second mediation day before Lisa Klerman.

8. As a result of the Parties’ settlement efforts, the Parties reached a class-wide and PAGA settlement.

1 **INVESTIGATION OF CLAIMS**

2 9. Plaintiffs' Counsel conducted a thorough investigation into the factual and legal
3 issues implicated by Plaintiffs' claims, and were able to objectively assess the settlement's
4 reasonableness. For example, prior to filing the action, Plaintiffs contacted Plaintiffs' Counsel to
5 discuss the factual bases for pursuing their actions against Defendant for Labor Code violations.

6 10. Plaintiffs were intimately familiar with Defendant's labor policies and practices,
7 and over the course of multiple interviews, knowledgeably summarized those policies and
8 practices to Plaintiffs' Counsel. During those conversations, Plaintiffs' Counsel explained how the
9 policies and practices were instituted and provided valuable insight into how they gave rise to the
10 alleged Labor Code violations. Based on these interviews with Plaintiffs, Plaintiffs' Counsel
11 determined that there were legally sufficient grounds for pursuing the Actions against Defendant.
12 And in preparation for drafting the complaints, Plaintiffs' Counsel conducted their own
13 independent preliminary investigations into the factual bases for Plaintiff's claims, which entailed,
14 *inter alia*, a careful examination of Plaintiffs' personnel files and associated records.

15 11. Over the course of litigation, Plaintiffs' Counsel received a considerable amount of
16 documents and data, including employee demographic data, time and pay records, and
17 Defendant's policies and procedures manuals which covered a broad range of topics including,
18 *inter alia*, employee clock-in policies and procedures, attendance policies, meal periods/rest
19 periods, overtime & premium pay, etc. and sampled time and pay records for the Class Members.
20 The document and data exchanges allowed Plaintiffs' Counsel to fully assess the nature and
21 magnitude of the claims being settled, as well as the impediments to recovery, and ultimately
22 enabled Plaintiffs' Counsel so as to make an independent assessment of the reasonableness of the
23 settlement's terms.

24 12. In summary, Plaintiffs' Counsel performed a thorough investigation into the claims
25 at issue, which included: (1) determining Plaintiffs' suitability as class representatives and private
26 attorneys general through interviews, background investigations, and analyses of their
27 employment files and related records; (2) evaluating all of Plaintiffs' potential representative
28 claims; (3) researching similar wage and hour class actions as to the claims brought, the nature of

1 the positions, and the type of employer; (4) analyzing employees' time and wage records; (5)
2 reviewing Defendant's employment policies and practices; (6) researching settlements in similar
3 cases; (7) evaluating Plaintiffs' claims and estimating Defendant's liability for purposes of
4 settlement; (8) drafting the mediation brief; and (9) participating in the mediation.

5 13. By engaging in such a thorough investigation and evaluation of Plaintiffs' claims,
6 Plaintiffs' Counsel can opine that the Settlement, for the consideration and on the terms set forth
7 in the Settlement Agreement, is fair, reasonable, an adequate, and is in the best interests of Class
8 Members in light of all known facts and circumstances, including the risk of significant delay and
9 uncertainty associated with litigation, and various defenses asserted by Defendant.

10 14. Plaintiffs' counsel balanced the terms of the proposed Settlement against the risk of
11 litigation and probable outcome at the class certification stage, and if any Class were certified, at
12 trial. Based on their own respective independent investigations and evaluations, and after taking
13 into account the sharply disputed factual and legal issues involved in this matter, the risks
14 attending further prosecution of the case, and the monetary benefits received under the Settlement
15 despite the questionable nature of the claims, Plaintiffs' counsel is of the opinion that Settlement
16 for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable and
17 adequate and is in the best interests of Plaintiff and the Class. Counsel for the Parties investigated
18 the applicable law as applied to the facts discovered regarding the claims of Plaintiff, Defendants'
19 defenses thereto and the damages claimed by Plaintiff on behalf of the Settlement Class.

20 15. I believe that the consideration and terms set forth in the Settlement Agreement are
21 fair, reasonable, and adequate and are in the best interests of the Settlement Class in light of all
22 known facts and circumstances, including the various defenses asserted by Defendant, and
23 numerous potential appellate issues. In addition, the prospect of a potential adverse summary
24 judgment ruling, as well as the uncertainty of class certification, the difficulties of complex
25 litigation, the lengthy process of establishing specific damages and various possible delays and
26 appeals, were also carefully considered in agreeing to the proposed Settlement.

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1 **DAMAGE ANALYSIS**

2 16. The mediation centered around the Labor Code 226 claim, Labor Code 2802, the
3 meal and rest period claims and PAGA claims. The Labor Code 226 claim had a potential value of
4 approximately \$526,300 for approximately 178 employee in the 1 year statutory period. This
5 assumes full potential penalties using the \$50/\$100 amounts. This also assumes the Plaintiff
6 would be successful on the derivative underlying claims. For instance, using the meal period pay
7 period violations count used for PAGA, the Labor Code 226 claim would be \$254,600 based on
8 approximately 2,546 pay statements potentially defective. The meal period damages were valued
9 at approximately \$189,839 (9,171 alleged meal break violations multiplied by \$20.70). This value
10 could drop give the payment of some meal period premiums and alleged waivers. Lastly,
11 further investigation revealed the Labor Code 2802 and rest period claims lacked sufficient
12 evidence to support any finding of class wide failure.

13 **PAGA ANALYSIS**

14 17. Based on the information and documents obtained through informal discovery,
15 Plaintiffs assessed the maximum value of the PAGA claims to be released by the settlement to be
16 approximately \$267,600.00 (at the rate of a reasonable \$50.00 penalty per pay period) for
17 approximately 5,352 pay periods at issue for the meal period or Labor Code 226 penalties.

18 18. Turning to Plaintiffs' meal and rest period theories, with the assistance of an expert,
19 Plaintiffs' calculated that at most there were 2,546 pay periods where a statutorily compliant meal
20 period was not reflected in employees' time records. Assuming a PAGA default penalty of \$50
21 for each of those pay periods, Plaintiffs assert this equals a potential exposure of \$127,300.00 for
22 meal period violations.

23 19. The PAGA exposure could increase if stacking were permitted and the Court
24 awarded maximum damages. An unlikely scenario here given the policies and protocols in place.

25 20. Plaintiffs, however, recognize that this total does not take into account any
26 potential discount by the Court and do not take into account *Donahue, Domingo*, and Defendant's
27 evidence of its punch system. As discussed above, a Court may award lesser amounts than the
28 maximum civil penalty based on the facts and circumstances of the matter. Defendant asserts that

1 there are no underlying Labor Code violations and no basis for the award of any penalties under
2 PAGA. For example, Defendant contends that when punch guarding and premiums are taken into
3 account, Defendant has fully complied with California's meal and rest break requirements.
4 Defendant also contends that, even if penalties were awarded for any purported Labor Code
5 violation, penalties under PAGA cannot be stacked: at most, just one PAGA penalty can be
6 awarded to an aggrieved employee in any one pay period. See Labor Code section 2699(f)(2)
7 (authorizing awardable PAGA penalties to be measure by "each aggrieved employee per pay
8 period"); *Smith v. Lux Retail North America, Inc.*, No. C 13-01579 WHA, 2013 WL 2932243, at
9 *3-4 (N.D. Cal. June 13, 2013) (emphasis in original) (rejecting a pleading that sought the
10 "stacking of penalties"; "[f]or the single mistake of failing to include commissions in the overtime
11 base, plaintiff has asserted five (count them, five) separate labor code violations that could lead to
12 statutory penalties;" "is it plausible that we would really pile one penalty on another for a single
13 substantive wrong?"; noting that "no actual holding in any judicial decision has ever blessed such
14 stacking").

15 21. In light of the above, Plaintiffs recognize that there were significant risks in
16 proceeding in litigation of this matter. Plaintiffs faced risks of not prevailing on the merits,
17 prevailing on certain claims for certain periods, reduced penalty amounts awarded by the trial
18 Court, and reversal on appeal.

19 22. The Total Settlement Amount allocated for PAGA penalties calculates to
20 approximately \$6 per pay period in which Plaintiffs calculated a rebuttable presumption of a meal
21 period violation ($\$30,000 / 5,352 \text{ pay periods} = \5.63). This means the per pay period value is
22 approximately 34% of the potential maximum reasonable value of 267,600,000.00 in default
23 PAGA penalties Plaintiffs calculate for pay periods with a rebuttable presumption of a meal period
24 violation. Notably, this percentage is reflective of courts' reduction PAGA penalties following a
25 trial and where finding of liability is determined, as discussed above. Moreover, this Settlement
26 provides for the recovery of penalties under PAGA now, rather than in the future to some
27 undetermined date and undetermined amounts. Based on Defendant's potential defenses to the
28 violations at issue, the risks and costs of continued litigation, Plaintiffs and their attorneys believe

1 that the PAGA Settlement is fair and reasonable.

2 23. Despite the complexity of the case, Plaintiffs' counsel has, through the investment
3 of substantial effort and the resources of my law firm and co-counsel have been able to secure an
4 outstanding settlement on behalf of the Class. Plaintiffs would have faced substantial legal and
5 factual obstacles in demonstrating that class certification was appropriate. Plaintiffs would also
6 have been required to establish a significant amount of witness testimony, pattern and practice
7 evidence, statistical evidence, sampling evidence, expert testimony, and other evidence in order to
8 present their case both at the class certification stage and trial. Defendant vigorously contested
9 liability, the amount of claimed damages, and the propriety of class certification, and would have
10 continued to do so through trial. Accordingly, I believe the Settlement to be fair, reasonable, and
11 adequate and in the best interests of the Class. The fairness and adequacy of the Settlement is
12 confirmed by all known facts and circumstances, including the risk of significant delay and
13 uncertainty associated with litigation, the various defenses asserted by Defendant, and numerous
14 potential appellate issues.

15 **CLASS COUNSEL EXPERIENCE**

16 24. I have a great deal of experience in wage and hour class action litigation. I have
17 obtained certification of several classes, I have been approved as class counsel in many other
18 wage/hour class actions, and I am currently litigating numerous others. Although not an all
19 inclusive list, over the years I have prosecuted the following class action matters as lead and/or co-
20 lead counsel, all of which implicated similar law and facts to those associated with this action:

21 a. *Aguilar v. 7-Eleven, Inc., et. al.*, Orange County Superior Court- Case No.: 30-
22 2009-00268714-CU-OE-CXC. Certified Wage and Hour Class action seeking premium
23 wages for meal period and rest periods and resultant penalties. Class
24 Notice pending.

25 b. *Carey, et. al. v. Arthur J. Gallagher, et. al.*, USDC, SOUTHERN DISTRICT- Case
26 No.: 09-cv-0168. Wage and Hour Class action seeking past wages of overtime for mis-
27 classification of insurance claims adjusters employed by Gallagher Bassett, a third
28 party administrator (TPA) in the State of California. Certification granted. Plaintiffs'

1 counsel co-lead counsel. Case settled, Final Approval granted, no objections and funds
2 fully distributed.

3 c. *Dao v. 3M Company*, et al. USDC, CENTRAL DISTRICT, Case No. CV-08-
4 04554. Wage and Hour Class Action case seeking past wages for “off the clock”,
5 overtime and meal and rest break violations for production workers in the State of
6 California. Plaintiffs’ Counsel appointed as Lead Counsel. Case settled, Final
7 Approval granted, no objections and funds fully distributed.

8 d. *Ortiz v. Kmart*, USDC, CENTRAL DISTRICT, Case No. SACV 06-638 ODW.
9 Wage and Hour Class Action case seeking past wages for meal and rest period
10 violations for retail employees in the State of California. Plaintiffs’ counsel appointed
11 co-lead counsel. Case settled, Final Approval granted, no objections and funds fully
12 distributed.

13 e. *Morgan v. Aramark Campus, LLC*, USDC, CENTRAL DISTRICT, Case No.
14 SACV08-00412. Wage and Hour Class Action case seeking past wages for meal and
15 rest period violations for retail employees in the State of California. Plaintiffs’
16 Counsel appointed as Lead Counsel. Case settled, Final Approval granted, no
17 objections and funds fully distributed.

18 f. *West v Iron Mountain Information Management, Inc, et. al.*; Los Angeles County
19 Superior Court, Case No. BC393709. Wage and Hour Class Action seeking past
20 wages for overtime, meal and rest break violations for driver employees in the State of
21 California. Settlement for “binding arbitration.” Arbitration Award for Plaintiff Class.
22 Arbitration Award confirmed. Plaintiffs’ counsel, lead trial counsel and class counsel.

23 g. *Gonzalez v. Superior Industries Inter, Inc., et al.*, Los Angeles County Superior
24 Court, Case No. BC 357912. Wage and Hour Class Action seeking past wages for
25 overtime, meal and rest breaks violations for production employees in the State of
26 California. Plaintiffs’ counsel appointed as lead counsel. Case settled, Final Approval
27 granted, no objections and funds fully distributed.

28 h. *Acosta v. Fleetwood Travel Trailers of California, Inc., et al.*, Riverside County

1 Superior Court, Case No. RIC 440630. Wage and Hour Class Action seeking past
2 wages for overtime, meal and rest break violations for production employees in the
3 State of California. Plaintiffs' counsel appointed as co-lead counsel. Case settled,
4 Final Approval granted, no objections and funds fully distributed.

5 i. *Walker v. Sharkeez, et al.*, Orange County Superior Court, Case No. 05CC00293.
6 Wage and Hour Class Action seeking past wages for unlawful deductions, meal and
7 rest break violations for restaurant employees in the State of California. Plaintiffs'
8 counsel appointed as lead counsel. Case settled, Final Approval granted and funds
9 fully distributed.

10 j. *Padron v. Universal Protection Service, et al*, Orange County Superior Court, Case
11 No. 05CC00013. Wage and Hour Class Action seeking past wages for overtime, meal
12 and rest break violations for security officers in the State of California. Plaintiffs'
13 counsel appointed as co-lead counsel. Case settled, Final Approval granted, no
14 objections and funds fully distributed.

15 k. *Martinez v. Securitas Security Services USA, et al.*, Santa Clara Superior Court,
16 Case No. 105-CV047499, et al. J.C.C.P. No. 4460. Wage and Hour Class Action
17 seeking past wages for meal and rest break violations for security officers employed by
18 defendant in the State of California. Plaintiffs' counsel and co-counsel. Case settled,
19 Final Approval granted and funds fully distributed.

20 l. *Velasquez-Lopez v. Hotel Cleaning Services, Inc. et al.*, Riverside Superior Court,
21 Case No. RIC 420909. Wage and Hour Class Action seeking past wages for overtime,
22 meal and rest break violations for housekeepers employed by defendant in the State of
23 California. Plaintiffs' counsel appointed as lead counsel. Case settled, Final Approval
24 granted, no objections and funds fully distributed.

25 m. *Ruiz, et al. v. Unisource Worldwide, Inc., et al.*, USDC, CENTRAL DISTRICT,
26 Case No. CV09-05848. Wage and Hour Class Action seeking past wages for meal and
27 rest period violations for non-exempt employees employed by defendant in the state of
28 California. Case settled. Awaiting Preliminary Approval hearing. Plaintiff has

1 petitioned the Court for Lead Counsel.

2 n. *Herrador v. Culligan International Company, et al.*, USDC, CENTRAL
3 DISTRICT, Case No. SACV 08-680. Wage and Hour Class Action seeking past wages
4 for field and branch employees of defendant in the State of California. Plaintiffs'
5 counsel appointed as lead counsel. Case settled and awaiting Final Approval.

6 o. *Defries v. Domain Restaurants, et al.*, Orange County Superior Court, Case No.
7 05CC00128. Wage and Hour Class Action seeking past wages for restaurant
8 employees of defendant in the State of California. Plaintiffs' counsel appointed as lead
9 counsel. Case settled, Final Approval granted, no objections and funds fully
10 distributed.

11 p. *Denton v. BLB Enterprises, Inc., et al.*, Orange County Superior Court, Case No.
12 07CC01292. Wage and Hour Class Action seeking unpaid overtime, meal and rest
13 break violations for security guards employed by defendant in the State of California.
14 Plaintiffs' counsel appointed as lead counsel. Case settled, Final Approval granted, no
15 objections and funds fully distributed.

16 q. *Rios v. Sandberg Furniture Manufacturing Co., Inc, et al.*, Los Angeles Superior
17 Court, Case No. BC411477. Wage and Hour Class Action seeking unpaid meal and
18 rest break violations for production employees employed by defendant in the State of
19 California. Plaintiff counsel appointed as lead counsel. Case settled, Final Approval
20 granted, no objections and funds fully distributed.

21 r. *McMurray v. Dave and Busters, Inc.*, et al., Orange County Superior Court, Case
22 No. 06CC00099. Wage and Hour Class Action seeking past wages for meal and rest
23 break violations for restaurant employees employed by defendant in the State of
24 California. Plaintiffs' counsel appointed as co-lead counsel. Case settled, Final
25 Approval granted, no objections and funds fully distributed.

26 s. *Osuna v. DFG Restaurants, Inc.*, et al., Los Angeles Superior Court, Case No. BC
27 330145. Wage and Hour Class Action seeking past wages of overtime for mis-
28 classification of managers employed by Defendant, DBA Carl's Jrs. in the State of

1 California. Plaintiffs' counsel appointed as co-lead counsel. Case settled, Final
2 Approval granted, no objections and funds fully distributed.

3 t. *Burns v. Gymboree Operations, Inc., et al.*, San Francisco Superior Court, Case No.
4 CGC-07-461612. Wage and Hour Class Action seeking past wages for meal and rest
5 break violations for retail employees employed by defendant in the State of California.
6 Plaintiffs' counsel appointed lead counsel. Case settled, Final Approval granted, no
7 objections and funds fully distributed.

8 u. *Willems v. Diedrich Coffee, Inc., et al.*, Orange County Superior Court, Case No.
9 07CC00015. Wage and Hour Class Action seeking past wages of overtime for mis-
10 classification of managers employed by Defendant in the State of California.
11 Plaintiffs' counsel appointed lead counsel. Case settled, Final Approval granted, no
12 objections and funds fully distributed.

13 v. *Davila, et al. v. Beckman Coulter, Inc., et al.*, Orange County Superior Court, Case
14 No. 07CC01347. Wage and Hour Class Action seeking past wages for overtime, meal
15 and rest break violations for production workers employed by defendant in the State of
16 California. Plaintiffs' counsel appointed lead counsel. Case settled; final approval
17 granted; no objections and funds fully distributed.

18 w. *Perez v. Naked Juice Company of Glendora, Inc.*, Los Angeles Superior Court,
19 Case No. BC387088. Wage and Hour Class Action seeking past wages for overtime,
20 meal and rest period violations for production employees employed by defendant in the
21 State of California. Plaintiff counsel appointed as lead counsel. Case settled, Final
22 Approval granted, no objections and funds fully distributed.

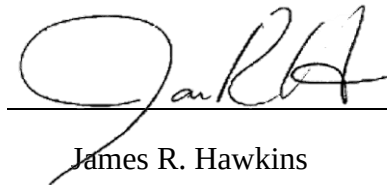
23 25. Here, the Parties' agreement to pay Class Counsel Fees of 33% of the Gross
24 Settlement Amount is reasonable. Plaintiffs' counsel have borne the entire risk and cost of this
25 litigation on a pure contingency fee basis. The legal issues raised drew significantly upon my
26 firms and co-counsel's experience and the extensive review and analysis of documents and
27 information by me and others at my firm and our co-counsel. In a complex action such as this,
28 the proposed attorneys' fees are, at the very least, on the low side of the market rate for

1 contingency fees.

2 26. At this juncture, with the addition of more hours due to the administration of the
3 Settlement by Class Counsel, administration of the Settlement, and preparation for final approval,
4 counsel for plaintiff will provide a detailed analysis of its time in advance of the final approval
5 hearing.

6 27. Plaintiffs have caused to be served onto the LWDA the Settlement Agreement and
7 this Motion for Preliminary Approval.

8 I declare under penalty of perjury that the foregoing is true and correct. Executed on
9 November 4, 2024 at Irvine, California.

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11 _____
12 James R. Hawkins
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