

LEVI & KORSINSKY, LLP

Adam M. Apton (SBN 316506)
75 Broadway, Suite 202-1908
San Francisco, California 94111
Telephone: (415) 373-1671
Facsimile: (415) 484-1294
Email: aapton@zlk.com

Gregory M. Nespole (*pro hac vice* forthcoming)
Daniel Tepper (*pro hac vice* forthcoming)
Ryan Messina (*pro hac vice* forthcoming)
55 Broadway, 10th Floor
New York, New York 10006
Telephone: (212) 363-7500
Facsimile: (212) 363-1294
Email: gnespole@zlk.com
dtepper@zlk.com
rmessina@zlk.com

Attorneys for Plaintiff Jeffrey Edelman

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

JEFFREY EDELMAN, Derivatively on)
Behalf of CAREDX, INC.,)

Plaintiff,)

v.)

MICHAEL D. GOLDBERG, REGINALD)
SEETO, GEORGE BICKERSTAFF, FRED)
COHEN, GRACE E. COLON, CHRISTINE)
COURNOYER, WILLIAM HAGSTROM,)
PETER MAAG, RALPH SNYDERMAN,)
ARTHUR TORRES, HANNAH)
VALANTINE, AND ANKUR DHINGRA,)

Individual Defendants,)

-and-)

CAREDX, INC.,)

Nominal Defendant.)

Case No. 3:22-cv-5379

**VERIFIED STOCKHOLDER
DERIVATIVE COMPLAINT**

1 Plaintiff Jeffrey Edelman (“Plaintiff”), by his attorneys, submits this Verified Stockholder
2 Derivative Complaint for violations of securities laws, insider trading, breach of fiduciary duty,
3 waste of corporate assets, and unjust enrichment. Plaintiff alleges the following upon information
4 and belief, except as to the allegations specifically pertaining to Plaintiff, which are based on
5 personal knowledge. This complaint is also based on the investigation of Plaintiff’s counsel,
6 which included, among other things, a review of public filings with the U.S. Securities and
7 Exchange Commission (“SEC”) and a review of news reports, press releases, and other publicly
8 available sources.

9 **NATURE AND SUMMARY OF THE ACTION**

10 1. This is a stockholder derivative action brought by Plaintiff on behalf of Nominal
11 Defendant CareDx, Inc. (“CareDx” or the “Company”) against members of its board of directors
12 (the “Board”) and members of upper management. The wrongdoing alleged herein has caused
13 substantial damage to CareDx’s reputation, goodwill, and standing in the business community
14 and has exposed CareDx to substantial potential liability for violations of federal securities laws
15 and the costs associated with defending itself. The violations of the law outlined herein have
16 damaged CareDx in the form of, among other things, millions of dollars in losses to the
17 Company’s market capitalization.

18 2. This action seeks to remedy wrongdoing committed by CareDx’s directors and
19 officers from February 24, 2021 through the present (the “Relevant Period”).

20 3. CareDx is a diagnostics company that provides services and products to the organ
21 transplant recipient community, offering diagnostic testing services, products, and digital
22 healthcare software for transplant patients and care providers. The information gathered through
23 the Company’s surveillance and tests purportedly enables clinicians to make treatment decisions
24 in the event of signs of organ rejection.

25 4. During the Relevant Period, testing services for kidney and heart transplant
26 recipients represented at least 85% of the Company’s total revenues. This has been the case since
27 at least the beginning of 2020. The Company’s AlloSure® blood test for transplant recipients
28

1 was, and is, the Company's primary source of revenue.

2 5. For testing services, the Company receives a higher payment from Medicare
3 reimbursements than from commercial payers. Therefore, the number of tests for which the
4 Company was able to get Medicare reimbursement correlated with the Company's comparably
5 higher average sales price ("ASP") for testing services. ASP was not specifically reported, but
6 investors were able to calculate ASP by dividing testing service revenue by the number or volume
7 of reported tests per financial period.

8 6. Throughout the Relevant Period, CareDx reported growing revenue and strong
9 demand in the Company's testing services segment. In February 2021, the start of the Relevant
10 Period, the Company reported a 51% year-over-year increase in total revenue, with testing
11 services revenue seeing a material increase from \$104.6 million in 2019 to \$163.5 million in 2020,
12 a 56% year-over-year increase. Defendant Reginald Seeto ("Seeto"), the current CEO, informed
13 the public that the Company "should be focused" on the testing services segment. Defendants
14 presented the testing services segment as the Company's growth driver. Seeto described the
15 Company's testing services segment as having "a winning formula" that would allow the
16 Company to capture a massive total addressable market ("TAM").

17 7. Seeto and the other Individual Defendants (defined below) also emphasized to
18 investors the success of the Company's RemoTraC service, an at-home blood draw service that
19 the Company launched in response to the Covid-19 pandemic. The public was told throughout
20 the Relevant Period that the RemoTraC service was a massive success that gave the Company the
21 ability to "drive margins" for testing services.

22 8. During the Relevant Period, the Individual Defendants caused the Company to
23 issue materially false and misleading statements regarding testing services. Specifically, the
24 Individual Defendants failed to disclose that certain CareDx officers had engaged in a number of
25 improper and illegal schemes to inflate testing services revenue, including: (i) pushing protocols
26 for surveillance of organ rejection through inaccurate marketing materials and in violation of
27 Medicare standards; (ii) offering extravagant inducements or kickbacks to physicians and other
28

1 providers; and (iii) improperly bundling expensive testing services with other blood tests as part
2 of the RemoTraC service. As a result of this misconduct, CareDx would be subject to an
3 undisclosed risk of regulatory scrutiny and the Company's testing services revenue and demand
4 reported throughout the Relevant Period was artificially inflated. As a result, Defendants' positive
5 statements about the Company's business, operations, and prospects were materially false and
6 misleading and/or omitted material facts necessary to make those statements not false and
7 misleading.

8 9. On October 28, 2021, the truth began to emerge when CareDx filed its quarterly
9 report for the third quarter of 2021. Under the heading "United States Department of Justice and
10 United States Securities and Exchange Commission Investigation," the Company revealed for the
11 first time that CareDx was the subject of at least three government investigations. Specifically,
12 the Company had received: (1) a civil investigative demand ("CID") from the U.S. Department
13 of Justice ("DOJ") requesting the Company produce documents in connection with the DOJ's
14 False Claims Act investigation; (2) a subpoena from the SEC in relation to an of matters similar
15 to those identified in the CID and certain accounting and public reporting practices; and (3) an
16 information request from an unnamed state regulatory agency (collectively the "Government
17 Investigations").

18 10. On this news, the Company's stock price dropped from \$70.34 per share on
19 October 28, 2021 to \$51 per share on October 29, 2021. The stock continued to decline over the
20 next week reaching \$47.04 per share on November 5, 2021. This represented a 33% decline from
21 the closing price on October 28, 2021.

22 11. The Company then remained silent on the status of the Government Investigations
23 for several months. But investors learned more about the extent of the Company's misconduct
24 and the nature of the Government Investigations on April 15, 2022, when the Company's former
25 Head of Community Nephrology, Dr. Michael Olymbios, filed a complaint in California Superior
26 Court that provided details regarding: (1) misconduct, including the use of RemoTraC to
27 improperly bundle the Company's most expensive testing services, including AlloSure, with other
28

1 blood tests, that led to the Government Investigations; (2) Defendant Peter Maag’s (“Maag”), the
2 former CEO and current director on the Company’s Board, and Seeto’s knowledge of the
3 misconduct throughout the Relevant Period; and (3) their attempts to conceal the misconduct.

4 12. On this news, the Company’s stock price fell to \$35.41 per share on April 14, 2022
5 and continued to fall the next trading day reaching \$32.55 per share, a 14% decrease from the
6 closing price of \$38.02 on April 13, 2022.

7 13. On May 5, 2022, the Company announced its results for the first quarter of 2022.
8 The disclosure reported that testing service revenue fell well short of analysts’ expectations and
9 there was a 4.9% decline in ASP versus the last quarter of 2021.

10 14. On this news, the stock price fell to \$25.78 on May 6, 2022 and continued to fall
11 the following trading day descending to \$22.46, a 29% drop from the closing price on May 5,
12 2022.

13 15. The Individual Defendants breached their fiduciary duties by failing to correct
14 and/or causing the Company to fail to correct these false and misleading statements and omissions
15 of material fact. The Individual Defendants also willfully or recklessly caused the Company to
16 fail to maintain an adequate system of oversight, disclosure controls and procedures, and internal
17 controls over financial reporting.

18 16. As detailed herein, and as alleged in the ongoing federal securities class action in
19 the Northern District of California styled *Plumbers & Pipefitters Local Union #295 Pension Fund*
20 *v. CareDx, Inc. et al.*, Case No. 3:22-cv-03023, (the “Federal Securities Class Action”), CareDx’s
21 officers and directors substantially damaged the Company by making false and misleading
22 statements that omitted material adverse facts concerning the Company’s worsening business
23 prospects.

24 **JURISDICTION AND VENUE**

25 17. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because
26 Plaintiff’s claims raise a federal question under Section 14(a) of the Exchange Act, 15 U.S.C.
27 §78n(a)(1), Rule 14a-9 of the Exchange Act, 17 C.F.R. § 240.14a-9, and Section 20(a) of the
28

1 Exchange Act (15 U.S.C. §§ 78j(b), 78t(a) and 78t-1) and raise a federal question pertaining to
 2 the claims made in the Federal Securities Class Action based on violations of the Exchange Act.
 3 This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. §
 4 1367(a).

5 18. This derivative action is not a collusive action to confer jurisdiction on a court of
 6 the United States that would not otherwise have such jurisdiction.

7 19. Venue is proper in this District because the Company is headquartered in this
 8 District and the Individual Defendants have been involved in business in this District. Further,
 9 Defendants' actions have had an effect in this District.

10 THE PARTIES

11 Plaintiff

12 20. Plaintiff Jeffrey Edelman is and has continuously been a stockholder of CareDx
 13 during the wrongdoing complained of herein.

14 Nominal Defendant

15 21. Defendant CareDx is a Delaware corporation with its principal executive offices
 16 at 8000 Marina Boulevard, Brisbane, California 94005. CareDx's shares trade on the Nasdaq
 17 under the ticker symbol "CDNA."

18 Individual Defendants

19 22. Defendant Michael D. Goldberg ("Goldberg") has served as a Company director
 20 since November 2011 and the Chairman of the Board since November 2021. He has served as a
 21 member of the Audit Committee since the start of the Relevant Period. During the Relevant
 22 Period, Goldberg made the following sales of stock:

23 Date	Shares Sold	Price	Proceeds
24 5/10/2021	15,442	\$68.59	\$1,064,561.41
25 5/11/2021	49,083	\$66.99	\$3,268,971.80
26 10/11/2021	500	\$62.50	\$31,250.00

1	11/9/2021	500	\$47.54	\$23,770.00
2	12/9/2021	500	\$45.41	\$22,705.25
3	1/10/2022	500	\$42.97	\$21,485.00
4	2/9/2022	500	\$42.96	\$21,480.00
5	3/9/2022	500	\$33.41	\$16,704.00
6	4/11/2022	500	\$36.01	\$18,006.40
7	Total Proceeds:			\$4,488,933.86

23. Defendant Seeto has served as CEO and as a Company director since November 2020. He has also served as President since November 2018. During the Relevant Period, Seeto made the following sales of stock:

Date	Shares Sold	Price	Proceeds
3/1/2021	10,704	\$84.46	\$914,700.48
6/7/2021	9,973	\$90.01	\$897,643.80
6/8/2021	500	\$90.00	\$45,001.00
6/9/2021	16,718	\$90.01	\$1,504,818.94
6/24/2021	10,602	\$95.31	\$1,010,513.73
6/25/2021	9,210	\$95.15	\$876,317.69
6/28/2021	13,212	\$95.88	\$1,264,990.34
7/8/2021	5,994	\$85.74	\$513,503.31
8/27/2021	658	\$80.00	\$52,640.00
1/18/2022	1,719	\$40.07	\$68,880.85
1/19/2022	3,137	\$40.05	\$125,633.71
2/1/2022	814	\$42.13	\$34,293.82
2/2/2022	3,182	\$41.25	\$131,257.50

2/4/2022	4,988	\$40.34	\$201,237.37
2/9/2022	2,550	\$45.00	\$114,758.93
3/1/2022	3,153	\$38.62	\$121,753.73
3/21/2022	2,888	\$40.43	\$116,774.26
Total Proceeds:			\$7,994,719.44

24. Defendant George Bickerstaff (“Bickerstaff”) has served as a Company director since April 2014. He has served as Chair of the Audit Committee since the start of the Relevant Period. During the Relevant Period, Bickerstaff made the following sales of stock:

Date	Shares Sold	Price	Proceeds
5/12/2021	10,000	\$63.39	\$630,746.94
5/21/2021	10,000	\$75.63	\$753,373.47
2/28/2022	25,000	\$39.11	\$977,672.50
Total Proceeds:			\$2,361,792.91

25. Defendant Fred Cohen (“Cohen”) has served as a Company director since 2003.

26. Defendant Grace E. Colon (“Colon”) has served as a Company director since 2019. During the Relevant Period, she made the following sales of stock:

Date	Shares Sold	Price	Proceeds
3/9/2022	1,393	\$34.56	\$48,146.12

27. Defendant Christine Cournoyer (“Cournoyer”) has served as a Company director since 2019. She has served as a member of the Audit Committee since the start of the Relevant Period.

28. Defendant William Hagstrom (“Hagstrom”) has served as a Company director since 2015. He has served as a member of the Audit Committee since the start of the Relevant Period. During the Relevant Period, he made the following sales of stock:

Date	Shares Sold	Price	Proceeds
5/14/2021	10,000	\$67.06	\$668,884.08
6/9/2021	5,000	\$88.14	\$440,706.00
Total Proceeds:			\$1,109,590.08

29. Defendant Maag has served as a Company director since 2012 and as Executive Chair from November 2020 until 2021. He also served as CEO of the Company from October 2012 until November 2020 and as President from October 2012 until November 2018. During the Relevant Period, Maag made the following sales of stock:

Date	Shares Sold	Price	Proceeds
3/5/2021	10,000	\$62.05	\$612,850.96
4/5/2021	10,000	\$72.15	\$724,015.43
5/3/2021	20,000	\$76.96	\$1,532,722.77
5/5/2021	10,000	\$73.48	\$733,191.89
5/10/2021	26,293	\$68.58	\$1,812,623.36
5/11/2021	87,128	\$66.99	\$5,802,799.21
5/25/2021	10,000	\$80.82	\$805,870.84
6/7/2021	26,500	\$87.52	\$2,285,752.20
6/8/2021	978	\$90.05	\$88,073.69
6/9/2021	2,522	\$90.00	\$226,981.51
6/24/2021	9,605	\$95.30	\$915,397.80
6/25/2021	395	\$95	\$37,525.00
7/6/2021	10,000	\$90.42	\$907,002.19
8/5/2021	10,000	\$83.04	\$831,312.94
9/7/2021	10,000	\$74.40	\$736,762.58

1	10/5/2021	10,000	\$65.02	\$646,729.45
2	11/5/2021	10,000	\$49.40	\$494,000.00
3	12/6/2021	10,000	\$42.04	\$416,189.87
4	1/5/2022	10,000	\$44.71	\$444,465.55
5	2/7/2022	10,000	\$42.06	\$420,668.28
6	3/7/2022	10,000	\$33.20	\$328,062.55
7	4/5/2022	10,000	\$38.91	\$386,394.32
8	Total Proceeds:			\$21,189,392.39

10 30. Defendant Ralph Snyderman (“Snyderman”) has served as a Company director
11 since 2005. During the Relevant Period, he made the following sales of stock:

12	Date	Shares Sold	Price	Proceeds
13	5/27/2021	1,966	\$81.01	\$159,265.66
14	5/28/2021	2,511	\$81.08	\$203,594.64
15	6/1/2021	2,512	\$77.30	\$194,173.33
16	6/2/2021	2,511	\$81.57	\$204,815.24
17	Total Proceeds:			\$761,848.87

19 31. As a result of these insider sales, Defendants Goldberg, Seeto, Bickerstaff, Colon,
20 Hagstrom, Maag, and Snyderman, avoided \$25.5 million in losses. The loss calculations are based
21 on a post-disclosure price of \$22.46, the second consecutive trading day after the truth fully
22 emerged.

23 32. Defendant Arthur Torres (“Torres”) has served as a Company director since
24 September 15, 2021.

25 33. Defendant Hannah Valentine (“Valentine”) has served as a Company director
26 since July 1, 2021.
27
28

1 34. Defendant Ankur Dhingra (“Dhingra”) served as the Company’s Chief Financial
2 Officer from March 25, 2021 until May 25, 2022.

3 35. Collectively, Defendants Goldberg, Bickerstaff, Cournoyer, and Hagstrom, are
4 referred to herein as the “Audit Committee Defendants.”

5 36. Collectively, Defendants Goldberg, Seeto, Bickerstaff, Cohen, Colon, Cournoyer,
6 Hagstrom, Maag, Snyderman, Torres, and Valantine, are referred to herein as the “Individual
7 Defendants.”

8 37. The Individual Defendants, because of their positions with CareDx, possessed the
9 power and authority to control the contents of CareDx’s reports to the SEC, press releases, and
10 presentations to securities analysts, money and portfolio managers, and institutional investors.
11 Each of the Individual Defendants was provided with copies of the Company’s reports and press
12 releases alleged herein to be misleading prior to or shortly after their issuance, and each had the
13 ability and opportunity to prevent their issuance or cause them to be corrected. Because of their
14 positions and access to material non-public information, each of the Individual Defendants knew
15 that the adverse facts specified herein had not been disclosed to and were being concealed from
16 the public and that the positive representations being made were then materially false and/or
17 misleading.

18 **SUBSTANTIVE ALLEGATIONS**

19 38. CareDx offers various testing services for transplant patients, such as: a donor-
20 derived cell-free DNA (“dd-cfDNA”) blood test for kidney transplant patients called AlloSure®
21 Kidney; a gene expression test for heart transplant patients known as AlloMap® Heart; and a dd-
22 cfDNA test for heart transplant patients called AlloSure® Heart.

23 39. The Company’s revenues are reported in three segments: testing services,
24 products, and patent and digital solutions. The testing services segment, which provides
25 diagnostic surveillance testing services for solid organ transplant patients, accounted for 87% of
26 the Company’s 2021 revenue.

27 40. AlloSure Kidney launched in 2017 and the Company has repeatedly stated that
28

1 AlloSure Kidney “has received positive coverage decisions for reimbursement from Medicare,”
2 with a reimbursement rate of \$2,841 per test. Indeed, the Company acknowledged that generating
3 testing service revenue was dependent upon, among other things, the number of tests performed
4 on transplant patients and the establishment of coverage policies by third-party insurers and
5 Medicare.

6 41. The amount the Company could charge for testing services varied from payer to
7 payer with the Company receiving its largest payments from Medicare reimbursement. Medicare
8 reimbursement continued to play an outsized role in the Company’s reported revenues and growth
9 leading up to and during the Relevant Period. In the Form 10-K filed February 24, 2021 for the
10 year ended December 31, 2020 (the “2020 10-K”), the Company reported that tests performed on
11 patients covered by Medicare represented 48% of all CareDx tests in 2020, but accounted for 67%
12 of all testing revenue from 2020 because Medicare reimbursement paid more than commercial
13 payers.

14 42. Likely due to the Covid-19 pandemic, the Company reported a significant
15 slowdown in testing services volume in early 2020. In response to the slowdown, CareDx
16 launched RemoTraC, a home-based blood draw solution for immune-compromised transplant
17 patients, in late March 2020. By early 2022, CareDx reported more than 11,000 kidney, heart,
18 and lung transplant patients had enrolled in RemoTraC.

19 **The Individual Defendants’ False and Misleading Statements**

20 ***February 24, 2021 Press Release, Form 10-K, and Earnings Call***

21 43. On February 24, 2021, the Company announced its financial results for the fourth
22 quarter and full year ended December 31, 2020. The press release announcing the results touted
23 “record full-year revenue of \$192.2 million, an increase of 51%” from the prior year and that
24 testing services revenue for the quarter was \$50.3 million, compared to \$29.1 million in the same
25 period of 2019. Defendant Seeto was quoted in the press release, stating “[o]ur record fourth
26 quarter result was the culmination of an extraordinary year for CareDx.” CEO Seeto referred to
27 the 2020 as “transformational” due to the Company extending its “leadership position in
28

1 transplant centers through RemoTraC.” 2021 guidance in the press release expected \$255 million
2 to \$265 million in revenue.

3 44. That same day, the Company filed the 2020 10-K. The 2020 10-K stated, in
4 relevant part:

5 While we believe that we are currently in material compliance with applicable laws and
6 regulations relating to our LDTs, we cannot be certain that the FDA or other regulatory
7 agencies would agree with our determination. A determination that we have violated these
8 laws, or a public announcement that we are being investigated for possible violation of
9 these laws, could hurt our business and our reputation.

10 45. The 2020 10-K did not disclose any present or impending claims that the Company
11 violated the federal False Claims Act, only stating: “Our future activities relating to billing,
12 compliance with certain regulations and Medicare reimbursement requirements, physician and
13 other healthcare provider financial relationships and the sale and marketing of our products may
14 be subject to scrutiny under these laws.” Defendants Seeto, Maag, Bickerstaff, Cohen, Colon,
15 Cournoyer, Goldberg, Snyderman, and Hagstrom signed the 2020 10-K.

16 46. Appended to the 2020 10-K as an exhibit was a signed certification pursuant to the
17 Sarbanes-Oxley Act of 2002 (“SOX”) by Defendant Seeto, attesting that “the information
18 contained in the [2020 10-K] fairly presents, in all material respects, the financial condition and
19 results of operations of the Company.”

20 47. Later on February 24, 2021, Defendant Seeto, among others, represented the
21 Company at an earnings call to discuss the fourth quarter and full year 2020 results. During the
22 call, Defendant Seeto stated that “2020 was an exceptional year for CareDx as demand continued
23 unabated for our innovative first-in-class suite of high-value health care solutions for transplant
24 patients and caregivers.”
25
26
27
28

1 ***May 5, 2021 Press Release, 10-Q, and Earnings Call***

2 48. On May 5, 2021, the Company announced its financial results for the first quarter
3 ended March 31, 2021. The press release announcing the results touted “strong start to 2021” and
4 that the Company was raising full-year guidance for revenue to a range of \$270 million to \$280
5 million. The press release reported a 76% increase in total revenue year-over-year and testing
6 services revenue of \$59.3 million, compared to \$31.4 million in the same period of 2020, an
7 88.8% increase year-over-year.

8 49. That same day, the Company filed Form 10-Q for the period ended March 31,
9 2021. Seeto and Dhingra signed the 10-Q and a certification pursuant to SOX attesting that “the
10 information contained in the [10-Q] fairly presents, in all material respects, the financial condition
11 and results of operations of the Company.” The financial results from the May 5, 2021 were
12 reiterated in the 10-Q.

13 50. That same day, Defendants Seeto and Dhingra represented the Company during
14 an earnings call discussing the first quarter 2021 results. During the call, Seeto stated that he was
15 “[r]eally excited about the testing services, which is growing well above the 50% range[.]”
16 Regarding the revised guidance, Dhingra stated “[w]e are updating our 2021 revenue expectations
17 to reflect our strong first quarter results and continued strong demand for our solutions.”
18 Regarding gross margins on testing services, Dhingra stated that “so on the margin side, we don't
19 see any structural issues there[.]”

20 ***June 1, 2021 Jefferies Healthcare Conference***

21 51. On June 1, 2021, Seeto represented the Company at the Jefferies Healthcare
22 Conference. During the conference Seeto stated that in “the kidney space...it’s an absolute
23 winning formula” and emphasized that of the “1,000- plus community nephrology practices, we
24 have more than 100 now using AlloSure as part of that.” Seeto further claimed that “there’s just
25 so much opportunity for us, overall testing services TAM.”

26 ***June 8, 2021 Goldman Sachs Global Healthcare Conference***

27 52. On June 8, 2021, Seeto and Dhingra represented the Company at the Goldman
28

1 Sachs 42nd Annual Global Healthcare Conference. During the conference, Seeto stated, in
2 relevant part:

3 I've been at a lot of companies that talked about patient first, patient centricity. And what
4 I can say is CareDx actually lives and believes it. And it's just incredible. Every single
5 town hall, we have these monthly starts off with the patient. As we look at every single
6 one of our presentations, it starts off with the patient. If we think of who we hire, everyone
7 has a connection to the patient.

6 ***July 29, 2021 Press Release, 10-Q, and Earnings Call***

7 53. On July 29, 2021, the Company announced its second quarter 2021 financial
8 results for the period ended June 30, 2021. The press release announced revenue growth of 77%
9 year-over-year and again raised guidance for 2021's revenue to a range of \$280 million to \$290
10 million. The press release also announced testing services revenues of \$64.9 million, compared
11 with \$36.3 million in the same period of 2020, a 78% year-over-year increase.

12 54. That same day, the Company filed Form 10-Q for the second quarter 2021 ended
13 June 30, 2021. The 10-Q reiterated the financial results in the press release. Seeto and Dhingra
14 signed the 10-Q and a certification pursuant to SOX attesting that "the information contained in
15 the [10-Q] fairly presents, in all material respects, the financial condition and results of operations
16 of the Company."

17 55. Also on that same day, Seeto and Dhingra represented the Company at an earnings
18 call to discuss the second quarter 2021 results. Regarding the Company's testing services revenue,
19 Seeto stated that "[t]he main driver of growth in the quarter was from our testing services revenue,
20 which increased 79% to \$64.9 million." Seeto also stated that "[o]ur direct to center approach
21 remains core to our strategy, where we are focused on building the moat through an expanded
22 portfolio of offerings within the transplant centers and by increasing the number of AlloSure
23 testing protocols." Dhingra stated that the basis of increased revenue guidance was a "continued
24 strong demand for our testing services in the United States." He added that "[w]e see great
25 demand for our services and continuation of very positive response from patients."

26 56. The Individual Defendants made materially false and misleading statements and/or
27
28

1 omissions designed to mislead the investing public. The Individual Defendants failed to disclose
2 that: (1) certain CareDx officers had engaged in a variety of improper and illegal schemes to
3 inflate testing services revenue and demand, including pushing a surveillance protocol through
4 inaccurate marketing materials, offering extravagant inducements or kickbacks to physicians and
5 other providers, and improperly bundling expensive testing services with other blood tests as part
6 of the RemoTraC service; (2) these practices, exposed the Company to an undisclosed risk of
7 regulatory scrutiny and/or liability under the federal False Claims Act; (3) these practices
8 rendered the Company's testing services revenue reported throughout the Relevant Period
9 artificially inflated; and (4) as a result, Individual Defendants' positive statements about the
10 Company's business, operations, and prospects were materially false and misleading at all
11 relevant times.

12 **The Truth Begins to Emerge**

13 ***October 28, 2021 Press Release, 10-Q, and Earnings Call***

14 57. On October 28, 2021, the Company issued a press release announcing its third
15 quarter 2021 results for the period ended September 30, 2021. The press release announced that
16 the Company "[g]rew testing services volume 86% year-over-year," however, testing services
17 revenue had only increased from \$45.5 million to \$66.5 million year-over-year, a 46% increase.
18 The Company again raised 2021 revenue guidance, this time to a range of \$290 million to \$293
19 million.

20 58. That same day, Seeto and Dhingra represented the Company on an earnings call
21 to discuss the third quarter 2021 results. During the call, an analyst from Craig-Hallum asked
22 Seeto and Dhingra to comment on the lower ASPs for testing service revenue the Company
23 reported during the quarter and asked whether they had seen "any changes in Medicare billing
24 practices[.]" Dhingra replied "any change in the billing practices? No, no change. We haven't
25 observed anything on the Medicare billing practices."

26 59. That same day, the Company filed its form 10-Q for the third quarter 2021. The
27 10-Q disclosed that the Company had recently received a CID from the DOJ requesting
28

1 documents for a False Claims Act investigation into the Company's kidney testing and
2 phlebotomy services, that the Company also received a subpoena from the SEC in connection
3 with a probe into similar matters being investigated by the DOJ and certain accounting and public
4 reporting practices, and that an unnamed state regulatory agency had also sent an information
5 request to the Company.

6 ***The BTIG Report***

7 60. On October 29, 2021, in response to the numerous regulatory agency
8 investigations, analysts at BTIG published a report about CareDx which stated that "[t]he fact
9 that [the Company] is being investigated by three different entities, both federal and at the state
10 level, is notable. Based on our experience, disclosures of these sort typically bear some degree of
11 merit[.]" BTIG also trimmed their price target for the Company from \$118 to \$100, a 15%
12 decrease.

13 61. On this news, the Company's stock price dropped to \$51 per share on October 29,
14 2021. The stock continued to decline over the next week reaching \$47.04 per share on November
15 5, 2021. This represented a 33% decline from the closing price of \$70.34 per share on October
16 28, 2021.

17 ***The Olymbios Complaint***

18 62. On April 15, 2022, Michael Olymbios, a medical doctor and the former Head of
19 Community Nephrology for CareDx, filed a complaint (the "Olymbios Complaint") in the
20 California Superior Court for San Mateo County alleging that the Company "engaged in an
21 unlawful campaign-bolstered by illegal inducements to physicians, misleading research, and
22 recommendations for clinically unsupported treatment-to pad its sales." Dr. Olymbios left the
23 Company because of these revelations and a "toxic company culture[.]" The action is styled
24 *Michael Olymbios v. CareDx, Inc.*, Case No. 22-cv-01582.

25 63. The Olymbios Complaint was predicated by an arbitration the Company initiated
26 against Dr. Olymbios before the Judicial Arbitration and Mediation Services ("JAMS"). His
27 action is to recover attorneys' fees and costs in connection with the arbitration and to "recover
28

1 damages caused by CareDx’s campaign of defamation against him.”

2 64. The Olymbios Complaint alleged that Dr. Olymbios “directly reported to Reginald
3 Seeto[.]” The Olymbios Complaint outlined the Company’s knowing use of various schemes to
4 improperly obtain Medicare reimbursement. Specifically, the Olymbios complaint listed the
5 following unlawful practices by the Company:

6 (a) pushing a “surveillance” protocol for AlloSure through inaccurate
7 marketing materials;

8 (b) offering extravagant inducements or kickbacks to physicians and other
9 providers to promote AlloSure;

10 (c) representing that CareDx did not bill patients for its tests;

11 (d) organizing “clinical studies” that were funded with condition-free grants;

12 (e) bundling AlloSure with other blood tests as part of a mobile phlebotomy
13 service to induce physicians to order AlloSure; and

14 (f) offering sham “advisory boards” to physicians that are little more than
15 captive marketing presentations.

16 65. The Olymbios Complaint further states that “Dr. Olymbios discussed his concerns
17 and those of other employees with more than ten other current or former CareDx employees,
18 including Peter Maag, then the Chief Executive Officer for CareDx, and Reg Seeto, the current
19 President and Chief Executive Officer of CareDx.”

20 66. According to the Olymbios Complaint, Seeto and Maag, among others, “took
21 active measures to avoid creating a paper trail of their misconduct. CareDx extensively used
22 personal phones for company work and would save sensitive communications for text messages,
23 such as the above text exchanges.” Specifically, the Olymbios Complaint alleged that Maag and
24 Seeto communicated through applications such as WhatsApp and Signal so they could have “off-
25 the record conversations and speak with candor about what they were actually doing. [Seeto]
26 and/or [Maag] also told Dr. Olymbios that their reason for switching from WhatsApp to Signal
27 was because of their belief that messages sent over Signal were not retrievable.”
28

1 ASP of the Company’s testing services.

2 72. That same day, Seeto and Dhingra represented the Company at an earnings call to
3 discuss the first quarter 2022 results. During the call, Dhingra conceded the ongoing impact of
4 the misconduct, stating that “This aggregate average price, declined by about 4.9% versus last
5 quarter of 2021.”

6 73. An analyst asked:

7 It was another big deterioration in price this quarter. We know there's going to be some
8 Medicare Advantage changes ahead of flush through, but I would say that's pretty change
9 quarter-over-quarter. So what particularly new happened in Q1 to reduce that accruals for
tests? And I guess, when do we reach a point where the ASP declines are going to stabilize
and we can start to see them reverse?

10 74. Dhingra responded, in part, “we are anticipating this decline to continue through
11 this year[.]”

12 75. After the call, an analyst from Raymond James reported that “the key testing
13 services bucket was nearly \$5M shy of our view, landing at \$66M.” Raymond James also lowered
14 their target price by \$7.

15 76. On May 6, 2022, Craig-Hallum also issued a report after the earnings call and
16 lowered its price target for the Company from \$87 to \$63. The report stated “ASPs were a miss
17 and dragged the Testing Services down well below our number and only an acquisition within
18 Digital/Other brought the whole business back even.”

19 77. On this news, the stock price fell to \$25.78 on May 6, 2022 and continued to fall
20 the following trading day descending to \$22.46, a 29% drop from the closing price on May 5,
21 2022.

22 **The False and Misleading Proxy Statement**

23 78. In addition to the foregoing, the Individual Defendants caused the Company to
24 issue a false and misleading proxy statement during the Relevant Period. Form DEF 14A filed
25 with the SEC on April 30, 2021 (the “2021 Proxy”).¹

26
27 ¹ These proxy allegations are based solely on negligence, they are not based on any allegations of
28

1 79. The 2021 Proxy recommended shareholders vote to elect Bickerstaff, Colon, and
2 Snyderman. The 2021 Proxy stated that the Audit Committee is responsible for “reviewing the
3 Company’s guidelines and policies with respect to risk assessment and risk management,
4 including risks relating to the Company’s accounting matters, financial reporting, legal and
5 regulatory compliance and general business risks and the steps taken by management to monitor
6 and control these exposures[.]”

7 80. The 2021 Proxy did not disclose, however, that (1) certain CareDx officers had
8 engaged in a variety of improper and illegal schemes to inflate testing services revenue and
9 demand, including pushing a surveillance protocol through inaccurate marketing materials,
10 offering extravagant inducements or kickbacks to physicians and other providers, and improperly
11 bundling expensive testing services with other blood tests as part of the RemoTraC service; (2)
12 these practices, exposed the Company to an undisclosed risk of regulatory scrutiny and liability
13 under the False Claims Act; (3) these practices rendered the Company’s testing services revenue
14 reported throughout the Relevant Period artificially inflated; and (4) as a result, Individual
15 Defendants’ positive statements about the Company’s business, operations, and prospects were
16 materially false and misleading at all relevant times.

17 81. Additionally, the 2021 Proxy contained an Audit Committee Report which stated
18 the following, in relevant part:

19
20 The Audit Committee has reviewed and discussed the Company’s audited consolidated
21 financial statements with management and Deloitte & Touche LLP (“Deloitte”), the
22 Company’s independent registered public accounting firm. The Audit Committee has
discussed with Deloitte the matters required to be discussed by the applicable
requirements of the Public Company Accounting Oversight Board and the SEC.

23 The Audit Committee has received and reviewed the written disclosures and the letter
24 from Deloitte required by the applicable requirements of the Public Company Accounting

25
26 _____

recklessness or knowing conduct by or on behalf of the Individual Defendants, and they did not
allege fraud. Plaintiff specifically disclaims any allegations of, reliance upon any allegation of, or
reference to any allegation of fraud, scienter, or recklessness with regard to the proxy allegations
and related claims.

1 Oversight Board regarding Deloitte's communications with the Audit Committee
concerning independence, and has discussed with Deloitte its independence.

2 Based on the review and discussions referred to above, the Audit Committee
3 recommended to the Board of Directors that the Company's audited consolidated financial
4 statements be included in the Company's Annual Report on Form 10-K for the fiscal year
ended December 31, 2020 for filing with the Securities and Exchange Commission.

5 82. The Audit Committee Report was signed by the Audit Committee Defendants.

6 83. The 2021 Proxy was false and misleading because, while it assured investors that,
7 it would keep stockholders informed and that the Audit Committee reviewed filings, including
8 the 2020 10-K, that was not the case as revealed by the numerous investigations by the
9 Government Investigations and the Olymbios Complaint. The revelation of existing
10 investigations and Olymbios Complaint show that the Individual Defendants allowed each other
11 and the Company to issue false and materially misleading statements during the Relevant Period.

12 **FIDUCIARY DUTIES**

13 84. By reason of their positions as officers and directors of the Company, each of the
14 Individual Defendants owed and owes CareDx and its stockholders fiduciary obligations of trust,
15 loyalty, good faith, and due care and was/is required to use his/her utmost ability to control and
16 manage CareDx in a fair, just, honest, and equitable manner. The Individual Defendants were/are
17 required to act in furtherance of the best interests of CareDx and its stockholders to benefit all
18 stockholders equally and not in furtherance of their personal interest or benefit.

19 85. Each Individual Defendant owed and owes CareDx, and its stockholders, the
20 fiduciary duty to exercise good faith and diligence in the administration of the affairs of the
21 Company and in the use and preservation of its property and assets.

22 86. The Individual Defendants, because of their positions of control and authority as
23 directors and/or officers of CareDx, were able to, and did, directly and/or indirectly, exercise
24 control over the wrongful acts complained of herein. Because of their executive and/or directorial
25 positions with CareDx, each of the Individual Defendants had knowledge of material, nonpublic
26 information regarding the Company. In addition, as officers and/or directors of a publicly held
27
28

1 company, the Individual Defendants had a duty to promptly disseminate accurate and truthful
2 information regarding the Company’s business practices, operations, financials, financial
3 prospects, compliance policies, and internal controls so that the market price of the Company’s
4 stock would be based on truthful and accurate information.

5 87. To discharge their duties, the Individual Defendants were/are required to exercise
6 reasonable and prudent supervision over the management, policies, practices, and controls of the
7 financial affairs of the Company. The Individual Defendants were required to, among other
8 things:

9
10 (a) ensure that the Company complied with its legal obligations and
11 requirements—including requirements involving the filing of accurate financial and
12 operational information with the SEC—and refrain from engaging in insider trading and
other deceptive conduct;

13 (b) conduct the affairs of the Company in compliance with all applicable
14 laws, rules, and regulations to make it possible to provide the highest quality
15 performance of its business, avoid wasting the Company’s assets, and maximize the
value of the Company’s stock;

16 (c) remain informed as to how CareDx conducted its operations, and, upon
17 receipt of notice or information of imprudent or unsound conditions or practices, make
18 a reasonable inquiry in connection therewith, and take steps to correct such conditions
or practices and make such disclosures as necessary to comply with applicable laws; and

19 (d) truthfully and accurately guide investors and analysts as to the business
20 operations of the Company at any given time.

21 **Duties Pursuant to the Company’s Code of Business Conduct and Ethics**

22 88. The Individual Defendants, as officers and/or directors of CareDx, were bound by
23 the Company’s Code of Business Conduct and Ethics² (the “Code of Conduct”) which required
24 the following:

25
26 ² See CareDx Code of Business Conduct and Ethics:
27 [https://s201.q4cdn.com/458786462/files/doc_downloads/gov-docs/2022/COMPLIANCE-022-Code-of-Business-Conduct-and-Ethics-\(released-in-MC-6-2-2022\).pdf](https://s201.q4cdn.com/458786462/files/doc_downloads/gov-docs/2022/COMPLIANCE-022-Code-of-Business-Conduct-and-Ethics-(released-in-MC-6-2-2022).pdf).

- honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;
- full, fair, accurate, timely and understandable disclosure in reports and documents we file with or submit to the U.S. Securities and Exchange Commission and in our other public communications;
- compliance with applicable laws, rules and regulations;
- the prompt internal reporting of violations of this Code;
- protection for persons reporting any behavior pursuant to this Code; and
- accountability for adherence to this Code.

89. The Code of Conduct requires compliance with the law:

You are responsible for complying with all laws, rules, regulations and regulatory orders applicable to the conduct of our business. In developing, implementing, and applying this Code and other applicable policies and procedures, the Company is guided by applicable industry guidance, including, the AdvaMed Code of Ethics in Interactions with Health Care Professionals, voluntary compliance guidance issued by the Department of Health and Human Services Office of the Inspector General (HHS-OIG), applicable provisions of the Federal Food Drug and Cosmetics Act, as well as regulations and guidance issued by the Food and Drug Administration (FDA) and the Federal Trade Commission...

Violations of laws, rules, regulations and orders may subject you to individual criminal or civil liability, in addition to discipline by the Company. Violations may also subject the Company to civil or criminal liability or the loss of business.

90. Regarding public communications, the Code of Conduct required, in part:

Individuals involved in the preparation of public reports and communications must use all reasonable efforts to comply with our disclosure controls and procedures, which are designed to ensure full, fair, accurate, timely and understandable disclosure in our public reports and communications.

If you believe that any disclosure is materially misleading or if you become aware of any material information that you believe should be disclosed to the public, it is your responsibility to bring this information to the attention of the Designated Legal Officer. If you believe that questionable accounting or auditing conduct or practices have occurred or are occurring, you should notify the Audit Committee of the Board.

91. Regarding the accuracy of records and reports, the Code of Conduct required that employees and directors keep accurate records: “the Company expects you, regardless of whether you are otherwise required to be familiar with finance or accounting matters, to use all reasonable

1 efforts to ensure that every business record or report with which you deal is accurate, complete
2 and reliable.”

3 92. The Code of Conduct further required employees and directors investigate and
4 report potential violations.

5 93. The Code of Conduct also prohibited insider trading:

6 You may not directly or indirectly—through, for example, significant others, family
7 members or controlled entities—buy or sell stocks or other securities of the Company or
8 any other Company based on nonpublic information obtained from your work at the
Company...

9 Under U.S. securities laws, it is unlawful for any person who has “material” nonpublic
10 information about a Company to trade in the stock or other securities of that Company or
11 to disclose such information to others who may trade. Material nonpublic information is
12 information about a Company that is not known to the general public and that a typical
investor would consider important in making a decision to buy, sell or hold securities.
Violations of U.S. securities laws may result in civil and criminal penalties, including
disgorgement of profits, civil judgments, fines and jail sentences.

13 94. Regarding the maintenance of records, the Code of Conduct states:

14 The Company is required by local, state, federal, foreign and other applicable laws, rules
15 and regulations to retain certain records and to follow specific guidelines in managing its
16 records. Records include paper documents, email, compact discs, computer hard drives,
17 floppy disks, microfiche, microfilm and all other recorded information, regardless of
medium or characteristics. Civil and criminal penalties for failure to comply with such
guidelines can be severe for employees, agents, contractors and the Company.

18 95. The Code of Conduct also enables the Company to take disciplinary action against
19 employees and directors who violate the Code of Conduct.

20 96. The Individual Defendants failed to adhere to the Code of Conduct when they
21 failed to: comply with the law, conduct honest and ethical business practices, and disclose the
22 truth regarding the Company’s business practices. The Individual Defendants also failed to adhere
23 to the Code of Conduct when they traded the Company’s stock based at least in part on insider
24 information and took proactive steps to make sure certain communications among themselves
25 were not able to be maintained. Specifically, the use of certain messaging applications with the
26 belief that messages sent through the applications were not retrievable.

1 **Duties Pursuant to the Company’s Audit Committee Charter**

2 97. In addition to these duties, the Audit Committee Defendants, who served on the
3 Audit Committee during the Relevant Period, owed specific duties to CareDx under the Audit
4 Committee Charter (the “Audit Charter”).³ Specifically, the Audit Charter provided for the
5 following responsibilities of the Audit Committee Defendants:

- 6 • Provide oversight of the Company’s accounting and financial reporting processes and
7 the audit of the Company’s financial statements;
- 8
- 9 • Assist the Board in oversight of (i) the integrity of the Company’s financial statements,
10 (ii) the Company’s compliance with legal and regulatory requirements, (iii) the
11 independent auditor’s qualifications, independence and performance, (iv) the Company’s
12 internal accounting and financial controls, and (v) the organization and performance of
13 the Company’s internal audit function; and
- 14
- 15 • Provide to the Board such information and materials as it may deem necessary to make
16 the Board aware of significant financial matters that require the attention of the Board.
- 17

18 98. Regarding review procedures, the Audit Committee Defendants are required to
19 “Review[] and discuss[] with management...the annual audited financial statements and quarterly
20 unaudited financial statements, including the Company’s disclosures under ‘Management’s
21 Discussion and Analysis of Financial Condition and Results of Operations,’ prior to filing the
22 Company’s Annual Report on Form 10-K and Quarterly Reports on Form 10-Q with the SEC[.]”

23 99. The review procedures further require reviews of the Company’s risk management
24 policies.

25 _____
26 ³ See CareDx Audit Charter at:
27 https://s201.q4cdn.com/458786462/files/doc_downloads/gov-docs/CareDx-Audit-Committee-Charter.pdf.

1 100. Regarding regulatory compliance, the Audit Committee Defendants' duties
2 required the following:

3
4 • Reviewing and discussing with management and the Company's independent auditors,
5 as appropriate, the Company's guidelines and policies with respect to risk assessment and
6 risk management, including risks relating to the Company's accounting matters, financial
reporting and legal and regulatory compliance and the steps taken by management to
monitor and control these exposures;

7 • In conjunction with the Board, reviewing and discussing with management, as
8 appropriate, general business risks, insurance programs, including director and officer
insurance, product liability insurance and general liability insurance;

9 ***

10 • Overseeing compliance with the requirements of the SEC for disclosure of auditor's
11 services and Audit Committee members, member qualifications and activities;

12 ***

13 • Providing a report for inclusion in the Company's proxy statement in accordance with
14 the rules and regulations of the SEC; and

15 • Establishing procedures for receiving, retaining and treating complaints received by the
16 Company regarding accounting, internal accounting controls or auditing matters and
17 procedures for the confidential, anonymous submission by employees of concerns
regarding questionable accounting or auditing matters.

18 101. The Audit Committee Defendants failed to uphold their duties required by the
19 Audit Charter by allowing the Company to issue materially false and misleading statements
20 regarding the Company's compliance with federal and state law. Regarding the complaints and
21 attempts by Dr. Olymbios to discuss his concerns, the Audit Committee Defendants failed to take
22 appropriate action proscribed by the Audit Charter.

23 **BREACHES OF DUTIES**

24 102. The conduct of the Individual Defendants complained of herein involves a
25 knowing and culpable violation of their obligations as officers and/or directors of CareDx, the
26 absence of good faith on their part, and a reckless disregard for their duties to the Company.
27
28

1 103. The Audit Committee Defendants had a duty to review the Company's earnings
2 press releases and regulatory filings. The Audit Committee Defendants breached their duty of
3 loyalty and good faith by approving the omission of material information, making the improper
4 statements detailed herein, and failing to properly oversee CareDx's public statements and
5 internal control function.

6 104. The Individual Defendants, because of their positions of control and authority as
7 officers and/or directors of CareDx, were able to and did, directly or indirectly, exercise control
8 over the wrongful acts complained of herein. The Individual Defendants also failed to prevent the
9 other Individual Defendants from taking such illegal actions. In addition, because of Individual
10 Defendants' improper course of conduct, the Company is now the subject of the Federal Securities
11 Class Action, which alleges violations of federal securities laws, numerous investigations by
12 regulatory agencies, and the Olymbios Complaint. As a result, CareDx has expended, and will
13 continue to expend, significant sums of money.

14 **DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS**

15 105. Plaintiff brings this action derivatively and for the benefit of CareDx to redress
16 injuries suffered, and to be suffered, because of the Individual Defendants' breaches of their
17 fiduciary duties as directors and/or officers of CareDx, insider trading, waste of corporate assets,
18 unjust enrichment, and violations of Sections 14(a) and 20(a) of the Exchange Act.

19 106. CareDx is named solely as a nominal party in this action. This is not a collusive
20 action to confer jurisdiction on this Court that it would not otherwise have.

21 107. Plaintiff is, and has been continuously at all relevant times, a stockholder of
22 CareDx. Plaintiff will adequately and fairly represent the interests of CareDx in enforcing and
23 prosecuting its rights, and, to that end, has retained competent counsel, experienced in derivative
24 litigation, to enforce and prosecute this action.

25 108. Plaintiff incorporates by reference and re-alleges each allegation stated above as
26 if fully set forth herein.

27 109. A pre-suit demand on the Board of CareDx is futile and, therefore, excused. At the
28

1 time of filing this action, the Board consists of eleven (11) directors—Individual Defendants
2 Goldberg, Seeto, Bickerstaff, Cohen, Colon, Cournoyer, Hagstrom, Maag, Snyderman, Torres,
3 and Valantine (the “Director Defendants”). Plaintiff needs only to allege demand futility as to a
4 majority (six) of the Director Defendants.

5 ***Seven of the Eleven Director Defendants Received a Material Personal Benefit Through***
6 ***Insider Trading***

7 110. During the Relevant Period, the Company’s stock price saw three drops of 33%,
8 14%, and 29%. When the truth fully emerged, the Company’s stock price fell as low as \$22.46
9 per share.

10 111. From May 10, 2021 through April 11, 2022, Goldberg reaped \$4.4 million from
11 insider sales while the Company’s stock price was artificially inflated. His sales ranged in prices
12 from \$33.41 to \$68.59 per share.

13 112. From March 1, 2021 through March 21, 2022, Seeto reaped \$7.9 million from
14 insider sales while the Company’s stock price was artificially inflated. His sales ranged in prices
15 from \$38.62 to \$95.88 per share. Seeto also personally made many of the materially false and
16 misleading statements described herein that caused the stock price to become artificially inflated.
17 Further, according to the Olymbios Complaint, he took affirmative steps to enable and help
18 conceal the Company’s unlawful conduct.

19 113. From May 12, 2021 through February 28, 2022, Bickerstaff reaped \$2.3 million
20 from insider sales while the Company’s stock price was artificially inflated. His sales ranged in
21 prices from \$39.11 to \$75.63 per share.

22 114. On March 9, 2022, Colon reaped \$48,146 from insider sales while the JAMS
23 matter with Dr. Olymbios was ongoing and less than a month before the Olymbios Complaint
24 was filed. Colon’s sales were made at \$34.56 per share.

25 115. From May 14, 2021 through June 9, 2021, Hagstrom reaped \$1.1 million from
26 insider sales while the Company’s stock price was artificially inflated. His sales ranged in prices
27 from \$67.06 to \$88.14 per share.
28

1 116. From March 5, 2021 through April 5, 2022, Maag reaped \$21.1 million from
2 insider sales while the Company's stock price was artificially inflated. His sales ranged in prices
3 from \$33.20 to \$95.30 per share. According to the Olymbios Complaint, he took affirmative steps
4 to enable and help conceal the Company's unlawful conduct.

5 117. From May 27, 2021 through June 2, 2021, Snyderman reaped \$761,000 from
6 insider sales while the Company's stock price was artificially inflated. His sales ranged from
7 \$77.30 to \$81.57 per share.

8 118. Therefore, demand is as excused as futile as to Defendants Goldberg, Seeto,
9 Bickerstaff, Colon, Hagstrom, Maag, and Snyderman because they all received a material
10 personal benefit as a result of the misconduct that would be the subject of a litigation demand.

11 ***All of the Director Defendants Face a Substantial Likelihood of Liability***

12 119. Demand is excused as to all of the Director Defendants because each one of them
13 faces, individually and collectively, a substantial likelihood of liability as a result of the scheme
14 in which they engaged, knowingly or recklessly, to make and/or cause the Company to make false
15 and misleading statements and omissions of material facts, which renders them unable to
16 impartially investigate the charges and decide whether to pursue action against themselves and
17 the other perpetrators of the scheme.

18 120. In abdication of their fiduciary duties, the Director Defendants either knowingly
19 or recklessly participated in making and/or causing the Company to make the materially false and
20 misleading statements alleged herein. The fraudulent scheme was intended to make the Company
21 appear more profitable and attractive to investors. As a result of the foregoing, the Director
22 Defendants breached their fiduciary duties, face a substantial likelihood of liability, are not
23 disinterested, and demand upon them is futile, and thus excused.

24 121. Defendants Seeto, Maag, Bickerstaff, Cohen, Colon, Cournoyer, Goldberg,
25 Snyderman, and Hagstrom further face a substantial likelihood of liability because they signed
26 and thus personally made the false and misleading statements in the 2020 10-K.

27 122. Seeto signed a SOX certification to the 2020 10-K; May 5, 2021 10-Q; and July
28

1 29, 2021 10-Q. Seeto also personally made materially misleading statements during the earnings
2 calls and conference described herein.

3 123. As trusted Company directors, the Director Defendants conducted little, if any,
4 oversight of the scheme to cause the Company to make false and misleading statements,
5 consciously disregarded their duties to monitor such controls over reporting and engagement in
6 the scheme, and consciously disregarded their duties to protect corporate assets. For the above
7 reasons, these Director Defendants breached their fiduciary duties, face a substantial likelihood
8 of liability, are not independent or disinterested, and thus demand upon them is futile and,
9 therefore, excused.

10 124. Pursuant to the Company's Audit Committee Charter, the Audit Committee
11 Defendants are responsible for overseeing, among other things, the integrity of the Company's
12 financial statements, the Company's compliance with laws and regulations, and the Company's
13 accounting and financial reporting practices and system of internal controls. The Audit
14 Committee Defendants failed to ensure the integrity of the Company's financial statements and
15 internal controls, as they are charged to do under the Audit Committee Charter, and allowed the
16 Company to issue false and misleading financial statements with the SEC. Thus, the Audit
17 Committee Defendants breached their fiduciary duties, are not disinterested, and demand is
18 excused as to them.

19 125. In violation of the Code of Conduct, the Director Defendants conducted little, if
20 any, oversight of the Company's engagement in the Individual Defendants' scheme to issue
21 materially false and misleading statements to the public and to facilitate and disguise the
22 Individual Defendants' violations of law, including insider trading, breaches of fiduciary duty,
23 waste of corporate assets, unjust enrichment, and violations of Sections 14(a) and 20(a) of the
24 Exchange Act. In further violation of the Code of Conduct, the Director Defendants failed to
25 comply with laws and regulations, maintain the accuracy of Company records and reports, avoid
26 conflicts of interest, conduct business in an honest and ethical manner, protect and properly use
27 corporate assets, and properly report violations of the Code of Conduct. Thus, the Director
28

1 Defendants face a substantial likelihood of liability and demand is futile as to them.

2 126. CareDx has been and will continue to be exposed to significant losses due to the
3 wrongdoing complained of herein, yet the Director Defendants have not filed any lawsuits against
4 themselves or others who were responsible for that wrongful conduct to attempt to recover for
5 CareDx any part of the damages CareDx suffered and will continue to suffer thereby. Thus, any
6 demand upon the Director Defendants would be futile.

7 127. The Individual Defendants' conduct described herein and summarized above
8 could not have been the product of legitimate business judgment as it was based on bad faith and
9 intentional, reckless, or disloyal misconduct. Thus, none of the Director Defendants can claim
10 exculpation from their violations of duty pursuant to the Company's charter (to the extent such a
11 provision exists). As a majority of the Director Defendants face a substantial likelihood of
12 liability, they are self-interested in the transactions challenged herein and cannot be presumed to
13 be capable of exercising independent and disinterested judgment about whether to pursue this
14 action on behalf of the shareholders of the Company. Accordingly, demand is excused as being
15 futile.

16 128. The acts complained of herein constitute violations of fiduciary duties owed by
17 CareDx's officers and directors, and these acts are incapable of ratification.

18 129. Thus, for all the reasons set forth above, all the Director Defendants, and, if not all
19 of them, at least a majority of them, cannot consider a demand with disinterestedness and
20 independence. Consequently, a demand upon the Board is excused as futile.

FIRST CLAIM

Against the Individual Defendants
for Violations of Section 14(a) of the Exchange Act

130. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above, as though fully set forth herein.

131. The Section 14(a) Exchange Act claims alleged herein are based solely on negligence. They are not based on any allegation of reckless or knowing conduct by or on behalf of the Individual Defendants. The Section 14(a) claims alleged herein do not allege and do not sound in fraud. Plaintiff specifically disclaims any allegations of, reliance upon any allegation of, or reference to any allegation of fraud, scienter, or recklessness with regard to these non-fraud claims.

132. Section 14(a) of the Exchange Act, 15 U.S.C. § 78n(a)(1), provides that “[i]t shall be unlawful for any person, by use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, in contravention of such rules and regulations as the [SEC] may prescribe as necessary or appropriate in the public interest or for the protection of investors, to solicit or to permit the use of his name to solicit any proxy or consent or authorization in respect of any security (other than an exempted security) registered pursuant to section 12 of this title [15 U.S.C. § 78l].”

133. Rule 14a-9, promulgated pursuant to § 14(a) of the Exchange Act, provides that no proxy statement shall contain “any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading.” 17 C.F.R. § 240.14a-9.

134. In the exercise of reasonable care, the Individual Defendants should have known that by misrepresenting or failing to disclose the foregoing material facts, the statements contained in the 2021 Proxy were materially false and misleading. The misrepresentations and omissions were material to Plaintiff in voting on the matters set forth for stockholder determination in the

1 2021 Proxy, including, but not limited to, election of directors, ratification of an independent
2 auditor, and the approval of executive compensation on an advisory basis.

3 135. The false and misleading elements of the 2021 Proxy led to the re-elections of
4 Bickerstaff, Colon, and Snyderman to serve until the 2024 annual meeting, allowing them to
5 continue breaching their fiduciary duties to CareDx.

6 136. The Company was damaged as a result of the Individual Defendants' material
7 misrepresentations and omissions in the 2021 Proxy.

8 137. Plaintiff, on behalf of CareDx, has no adequate remedy at law.

9 **SECOND CLAIM**

10 **Against the Individual Defendants**
11 *for Violations of Section 20(a) of the Exchange Act*

12 138. Plaintiff incorporates by reference and re-alleges each and every allegation set
13 forth above, as though fully set forth herein.

14 139. The Individual Defendants, by virtue of their positions with CareDx and their
15 specific acts, were, at the time of the wrongs alleged herein, controlling persons of CareDx and
16 officers and directors who made the false and misleading statements alleged herein within the
17 meaning of § 20(a) of the Exchange Act. The Individual Defendants had the power and influence,
18 and exercised same, to cause CareDx to engage in the illegal conduct and practices complained
19 of herein.

20 140. Plaintiff, on behalf of CareDx, has no adequate remedy at law.

21 **THIRD CLAIM**

22 **Against Individual Defendants**
23 *for Breach of Fiduciary Duties*

24 141. Plaintiff incorporates by reference and re-alleges each and every allegation set
25 forth above, as though fully set forth herein.

26 142. Each Individual Defendant owed to the Company the duty to exercise candor, good
27 faith, and loyalty in the management and administration of CareDx's business and affairs.
28

1 143. Each of the Individual Defendants violated and breached their fiduciary duties of
2 candor, good faith, loyalty, reasonable inquiry, oversight, and supervision.

3 144. The Individual Defendants' conduct set forth herein was due to their intentional or
4 reckless breach of the fiduciary duties they owed to the Company, as alleged herein. The
5 Individual Defendants intentionally or recklessly breached or disregarded their fiduciary duties
6 to protect the rights and interests of CareDx.

7 145. In breach of their fiduciary duties, the Individual Defendants caused the Company
8 to engage in the misconduct described herein.

9 146. Also in breach of their fiduciary duties, the Individual Defendants willfully or
10 recklessly made and/or caused the Company to make false and misleading statements during the
11 Relevant Period, that assured investors that CareDx was in regulatory compliance, yet failed to
12 disclose major problems which included that: (1) Individual Defendants had engaged in a variety
13 of improper and illegal schemes to inflate testing services revenue and demand, including pushing
14 a surveillance protocol through inaccurate marketing materials, offering extravagant inducements
15 or kickbacks to physicians and other providers, and improperly bundling expensive testing
16 services with other blood tests as part of the RemoTraC service; (2) these practices, and others,
17 subjected CareDx to an undisclosed risk of regulatory scrutiny and liability under the False Claims
18 Act; (3) these practices rendered the Company's testing services revenue reported throughout the
19 Relevant Period artificially inflated; and (4) as a result, Individual Defendants' positive
20 statements about the Company's business, operations, and prospects were materially false and
21 misleading.

22 147. The Individual Defendants failed to correct and/or caused the Company to fail to
23 rectify any of the wrongs described herein or correct the false and/or misleading statements and
24 omissions of material fact referenced herein, rendering them personally liable to the Company for
25 breaching their fiduciary duties.

26 148. The Individual Defendants had actual or constructive knowledge that the
27 Company issued materially false and misleading statements, and they failed to correct the
28

1 Company's public statements. The Individual Defendants either had actual knowledge of the
2 misrepresentations and omissions of material facts set forth herein or acted with reckless disregard
3 for the truth in that they failed to ascertain and disclose such facts, even though such facts were
4 available to them. Such material misrepresentations and omissions were committed knowingly or
5 recklessly and for the purpose and effect of artificially inflating the price of the Company's
6 securities.

7 149. These actions were not a good-faith exercise of prudent business judgment to
8 protect and promote the Company's corporate interests.

9 150. As a direct and proximate result of the Individual Defendants' breaches of their
10 fiduciary obligations, CareDx has sustained and continues to sustain significant damages. As a
11 result of the misconduct alleged herein, the Individual Defendants are liable to the Company.

12 151. Plaintiff, on behalf of CareDx, has no adequate remedy at law.

13 **FOURTH CLAIM**

14 **Against the Individual Defendants Goldberg, Seeto, Bickerstaff, Colon, Hagstrom, Maag,**
15 **and Snyderman**
16 *for Insider Trading*

17 152. Plaintiff incorporates by reference and re-alleges each and every allegation set
18 forth above, as though fully set forth herein.

19 153. When Defendants Goldberg, Seeto, Bickerstaff, Colon, Hagstrom, Maag, and
20 Snyderman sold over \$37.9 million worth of stock and avoided losses of \$25.5 million, they were
21 in possession of material, non-public information regarding the insiders' improper and illegal
22 schemes to inflate testing services revenue, the public disclosure of which would have an adverse
23 effect on the stock price. The revelation of this adverse information and the full truth concerning
24 Defendants Seeto's and Maag's involvement in the scheme would destroy millions in market
25 capitalization when revealed to the market.

26 154. The foregoing information was proprietary, material, adverse, and non-public
27 information regarding the Company's operations known only by CareDx insiders. The
28 information which formed the basis of the sales of stock made by Defendants Goldberg, Seeto,

1 Bickerstaff, Colon, Hagstrom, Maag, and Snyderman was the type of information upon which
2 they were specifically barred from trading. This information was a proprietary asset belonging to
3 CareDx, which was usurped for the benefit of Defendants Goldberg, Seeto, Bickerstaff, Colon,
4 Hagstrom, Maag, and Snyderman and to the detriment of the Company.

5 155. The use of this information by Defendants Goldberg, Seeto, Bickerstaff, Colon,
6 Hagstrom, Maag, and Snyderman was a breach of their fiduciary duty of loyalty. Their insider
7 sales of stock during the Relevant Period were predicated upon their possession of material,
8 adverse, non-public information to which they had access as CareDx insiders.

9 156. Plaintiff, on behalf of CareDx, has no adequate remedy at law.

10 **FIFTH CLAIM**

11 **Against Individual Defendants**
12 *for Unjust Enrichment*

13 157. Plaintiff incorporates by reference and re-alleges each and every allegation set
14 forth above, as though fully set forth herein.

15 158. By their wrongful acts, violations of law, false and misleading statements, and
16 omissions of material fact that they made and/or caused to be made, the Individual Defendants
17 were unjustly enriched at the expense and to the detriment of CareDx.

18 159. The Individual Defendants either benefitted financially from the improper
19 conduct, received unjust compensation tied to the false and misleading statements, received
20 bonuses, stock options, or similar compensation from CareDx tied to the performance or
21 artificially inflated valuation of CareDx, or received compensation that was unjust in light of the
22 Individual Defendants' bad faith conduct, or sold stock at artificially inflated prices during the
23 Relevant Period.

24 160. Under the circumstances it would be unjust and inequitable for the Individual
25 Defendants to retain their ill-gotten gains.

26 161. Plaintiff, on behalf of CareDx, has no adequate remedy at law.
27
28

PRAYER FOR RELIEF

162. **FOR THESE REASONS**, Plaintiff demands judgment in the Company’s favor against all Individual Defendants as follows:

A. Declaring that Plaintiff may maintain this action on behalf of CareDx, and that Plaintiff is an adequate representative of the Company;

B. Declaring that the Individual Defendants have breached their fiduciary duties to CareDx;

C. Declaring that the Individual Defendants violated Sections 14(a) and 20(a) of the Exchange Act;

D. Declaring that the Individual Defendants were unjustly enriched;

E. Determining and awarding to CareDx the damages sustained by it because of the violations set forth above from each of the Individual Defendants, jointly and severally, together with pre- and post-judgment interest thereon;

F. Directing CareDx and the Individual Defendants to take all necessary actions to reform and improve its corporate governance and internal procedures to comply with applicable laws and protect CareDx and its stockholders from a repeat of the damaging events described herein;

G. Awarding CareDx restitution from Individual Defendants;

H. Awarding Plaintiff the costs and disbursements of this action, including reasonable attorneys’ and experts’ fees, costs, and expenses; and

I. Granting such other and further relief as the Court may deem just and proper.

Dated: September 21, 2022

Respectfully submitted,

LEVI & KORSINSKY, LLP

/s/ Adam M. Apton

Adam M. Apton (SBN 316506)

75 Broadway, Suite 202-1908

San Francisco, California 94111

Telephone: (415) 373-1671

Facsimile: (415) 484-1294

Email: aapton@zlk.com

-
-and-


-
Gregory M. Nespole (*pro hac vice*
forthcoming)
Daniel Tepper (*pro hac vice* forthcoming)
Ryan Messina (*pro hac vice* forthcoming)
55 Broadway, 10th Floor
New York, New York 10006
Telephone: (212) 363-7500
Facsimile: (212) 363-1294
Email: gnespole@zlk.com
dtepper@zlk.com
rmessina@zlk.com

Attorneys for Plaintiff Jeffrey Edelman

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION

I, Jeffrey Edelman, under penalties of perjury, hereby do declare that I am a plaintiff in the foregoing complaint, that I have read the complaint, and that the facts therein are true to my own knowledge, except to matters stated therein to be alleged upon information and belief, and as to those matters, I believe them to be true and correct to the best of my knowledge, information, and belief.

Signed: 

Jeffrey Edelman

Print Name: Jeffrey Edelman

Date: 09/19/2021