

1 **CONSUMER WATCHDOG**

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11 **Attorneys for Plaintiff**

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

15 JOHN DOE, on behalf of himself and all others
16 similarly situated and for the benefit of the general
17 public,

17 Plaintiff,

19 v.

20 CALIFORNIA DEPARTMENT OF PUBLIC
21 HEALTH, *et al.*

22 Defendants.

Case No. 20STCV32364

*[Assigned to the Hon. Lawrence P. Riff in Dept.
7 of Spring Street Courthouse]*

[PROPOSED] FINAL APPROVAL ORDER

1 On _____, this Court entered an order granting Plaintiff’s Motion for
2 preliminary approval of the Settlement Agreement between Plaintiff, for himself and on behalf of
3 the Settlement Class, on the one hand, and CALIFORNIA DEPARTMENT OF PUBLIC
4 HEALTH, DR. TOMÁS J. ARAGÓN, Director of the California Department of Public Health (in
5 his official capacity), THRIVE TRIBE FOUNDATION, EVOLVE HEALTHCARE, INC., GARY
6 GOLDSTEIN, and GOOD HEALTH, INC. d/b/a PREMIER PHARMACY SERVICES
7 (collectively, “Defendants”) on the other hand, as memorialized in the Court’s Preliminary
8 Approval Order.¹

9 Pursuant to the notice requirements set forth in the Settlement Agreement and in the
10 Preliminary Approval Order, the Settlement Class was notified of the terms of the proposed
11 Settlement Agreement, the right of Settlement Class Members to opt out, the right of Settlement
12 Class Members to object to the Settlement Agreement, and the right to be heard at the Final
13 Approval Hearing.

14 On _____, Plaintiff filed a Motion for Final Approval of the Class Action
15 Settlement (“Final Approval Motion”) and accompanying Memorandum of Points and Authorities
16 and supporting exhibits, and Co-Lead Class Counsel filed their Motion for approval of payments
17 of attorneys’ fees, reasonable costs and expenses, payment of the Settlement Administrator’s fees
18 and expenses to the extent they were in excess of the Settlement Administration Cap, and Class
19 Representative Award to Plaintiff.

20 On _____, the Court held a Final Approval Hearing to determine, *inter*
21 *alia*, whether (a) the proposed Settlement Class should be finally certified for settlement purposes;
22 (b) the Settlement should be finally approved as fair, reasonable and adequate and in accordance
23 with the Settlement’s terms and as required by California Rule of Court Rule 3.769(h) with this
24 Court retaining continuing jurisdiction to enforce the terms of the Settlement; (c) Settlement Class
25 Members should be bound by the releases set forth in the Settlement; (d) the proposed Final
26 Approval Order should be entered; (e) the Motion of Co-Lead Class Counsel for an award of

27 _____
28 ¹ The capitalized terms used in this Final Approval Order and Judgment shall have the same meaning as defined in the Settlement Agreement except as may otherwise be indicated.

1 attorneys' fees, costs and expenses, and class representative payment to Plaintiff should be
2 approved; and (f) any other matters the Court deemed necessary and appropriate.

3 The Court is satisfied that Settlement Class Members were properly notified of their right
4 to appear at the Final Approval Hearing in support of or in opposition to the proposed Settlement
5 Agreement, and the award of attorneys' fees, costs and expenses, and a service award to the Class
6 Representative.

7 Having given an opportunity to be heard to all requesting persons in accordance with the
8 Preliminary Approval Order, having heard the presentation of Co-Lead Class Counsel and counsel
9 for all Defendants, having reviewed all of the submissions presented with respect to the proposed
10 Settlement Agreement, having determined that the Settlement Agreement is fair, adequate, and
11 reasonable, having considered the motion made by Co-Lead Class Counsel for (i) payment of
12 attorneys' fees ("Fee Award"), (ii) payment of reasonable costs and expenses ("Expense Award"),
13 and (iii) payment of a service award to the Plaintiff ("Class Representative Payment"), and having
14 reviewed the materials in support thereof, and good cause appearing in the record, Plaintiff's Final
15 Approval Motion is **GRANTED** and Co-Lead Class Counsel's Motion for the Fee Award,
16 Expense Award, and Class Representative Payment is **GRANTED**.

17 **IT IS HEREBY ORDERED THAT:**

18 1. The Court has jurisdiction over the subject matter of this action and over all claims
19 raised therein and all Parties thereto, including the Settlement Class.

20 2. The Settlement Agreement was entered into in good faith following arm's-length
21 negotiations and is non-collusive.

22 3. The Settlement Agreement is, in all respects, fair, reasonable, and adequate, is in
23 the best interests of the Settlement Class, and is therefore approved. The Court finds that the
24 Parties to the Settlement faced significant risks, expenses, delays and uncertainties, including as
25 to the outcome, including on appeal, of continued litigation of this complex matter, which further
26 supports the Court's finding that the Settlement Agreement is fair, reasonable, adequate and in the
27 best interests of the Settlement Class Members. The Court finds that the uncertainties of continued
28

1 litigation in both the trial and appellate courts, as well as the expense associated with it, weigh in
2 favor of granting approval of the Settlement reflected in the Settlement Agreement.

3 4. This Court grants Final Approval of the Settlement Agreement, including the
4 releases in the Settlement Agreement and the plans for implementation and distribution of the
5 Settlement relief. The Court finds that the Settlement Agreement is in all respects fair, reasonable,
6 and in the best interests of the Settlement Class Members. Therefore, all Settlement Class Members
7 who have not timely and validly opted out are bound by the Settlement Agreement, this Final
8 Approval Order and the Judgment, including without limitation all releases therein.

9 5. The Parties shall effectuate the Settlement Agreement in accordance with its terms.
10 The Settlement Agreement and every term and provision thereof shall be deemed incorporated
11 herein as if explicitly set forth herein and shall have the full force of an Order of this Court.

12 **OBJECTIONS AND OPT-OUTS**

13 6. _____ objections were filed by Settlement Class Members. The Court has
14 considered all objections and finds the objections do not counsel against approving the Settlement
15 Agreement, and the objections are hereby overruled in all respects.

16 7. All persons who have not objected to the Settlement Agreement in the manner
17 provided in the Settlement Agreement and Preliminary Approval Order are deemed to have waived
18 any objections to the Settlement Agreement, including without limitation by appeal, collateral
19 attack, or otherwise.

20 8. A list of Settlement Class Members, identified only by unique identification
21 number in order to protect their privacy, who opted out of the Settlement Class is set forth in
22 Exhibit 1. Those Settlement Class Members identified in Exhibit 1 (the “Opt-Out Members”) are
23 not bound by the Settlement Agreement or this Final Approval Order or the Judgment. Opt-Out
24 Members shall not be entitled to any of the benefits afforded to the Settlement Class Members
25 under the Settlement Agreement. The list of the persons who submit timely and valid opt outs will
26 be maintained by the Settlement Administrator until the terms of the Settlement have been
27 effectuated, and thereafter retained by the California Department of Public Health (“CDPH”).
28

1 **CLASS CERTIFICATION**

2 9. For purposes of the Settlement Agreement and this Final Approval Order and
3 Judgment only, the Court hereby finally certifies the following Settlement Class: All persons to
4 whom the CDPH Mailing was mailed, provided, or sent for delivery, as identified on the Class
5 List.

6 10. The Court determines that for settlement purposes the Settlement Class meets all
7 the requirements of C.C.P. Section 382, namely that the class is so numerous that joinder of all
8 members is impractical and that the Class is ascertainable; that there are common issues of law
9 and fact; that the claims of the Plaintiff are typical of absent Class Members; that the Plaintiff
10 fairly and adequately protected the interests of the Settlement Class as he has no interests
11 antagonistic to or that irreconcilably conflict with the members of the Settlement Class and has
12 retained experienced and competent Co-Lead Class Counsel to prosecute this matter; that common
13 issues predominate over any individual issues; and that a class action is the superior means of
14 adjudicating the controversy for purposes of settlement.

15 11. The Court grants final approval to the appointment of Plaintiff John Doe as Class
16 Representative. The Court concludes that the Class Representative has fairly and adequately
17 represented the Settlement Class.

18 12. The Court grants final approval to the appointment of Whatley Kallas, LLP and
19 attorneys for Consumer Watchdog as Co-Lead Class Counsel. The Court concludes that Co-Lead
20 Class Counsel have adequately represented the Settlement Class.

21 **NOTICE TO THE CLASS**

22 13. The Court finds that the Notice of Settlement as set forth in the Settlement
23 Agreement and Plaintiff's Unopposed Motion for Preliminary Approval of the Settlement, and
24 effectuated pursuant to the Preliminary Approval Order, satisfied the requirements of California
25 law and the Rules of this Court, was the best notice practicable under the circumstances, was
26 reasonably calculated to provide and did provide due and sufficient notice to the Settlement Class
27 of the pendency of the litigation, certification of the Settlement Class for settlement purposes only,
28 the existence and terms of the Settlement Agreement, and of the Settlement Class Member's right

1 to object and to appear at the Final Approval Hearing or to exclude themselves from the Settlement
2 Class, and satisfied the requirements of the United States and California Constitutions, and other
3 applicable law.

4 **AWARD OF ATTORNEYS' FEES, COSTS AND EXPENSES, AND CLASS**

5 **REPRESENTATIVE PAYMENT**

6 14. The Court has considered Co-Lead Class Counsel's Motion for Attorneys' Fees,
7 Expenses, and Class Representative Payment.

8 15. The Court awards Co-Lead Class Counsel the sum of \$_____ as the
9 Fee Award and \$_____ as the Expense Award. The Court finds these amounts to
10 be fair and reasonable. These amounts shall be paid in accordance with the terms of the Settlement
11 Agreement.

12 16. The Court grants Co-Lead Class Counsel's request for a class representative service
13 award to the Plaintiff and awards \$_____. The Court finds that this payment is justified
14 by his service to the Settlement Class. This payment shall be paid in accordance with the
15 Settlement Agreement.

16 17. [The Court authorizes a payment to the Settlement Administrator in excess of the
17 Settlement Administration Cap in the amount of \$_____.]

18 **RELEASES AND OTHER PROVISIONS**

19 18. The Parties to the Settlement Agreement shall carry out their respective obligations
20 thereunder.

21 19. Within the time period set forth in the Settlement Agreement, the relief provided
22 for in the Settlement Agreement shall be made available to the Settlement Class Members pursuant
23 to the terms and conditions of the Settlement Agreement.

24 20. In consideration of the benefits provided to Settlement Class Members as described
25 in the Settlement Agreement, upon the Effective Date, Plaintiff and each Settlement Class Member
26 who did not submit a timely and valid request for exclusion and is not listed on Exhibit 1 hereto,
27 on their own behalf and on behalf of their respective predecessors, successors, assigns, assignors,
28 representatives, attorneys, agents, trustees, insurers, heirs, estates, beneficiaries, executors,

1 administrators, and any natural, legal, or juridical person or entity to the extent he, she, they or it
2 is or will be entitled to assert any claim on behalf of any Settlement Class Member (collectively,
3 the “Releasers”), shall automatically be deemed to have, and by operation of this Final Approval
4 Order shall have, completely, fully, finally, irrevocably, and forever released, relinquished, and
5 discharged the Released Parties, and each of them, of and from any and all liabilities, rights, claims,
6 actions, causes of action, demands, damages, penalties, costs, attorneys’ fees, losses, and remedies,
7 existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or
8 equitable, that are based on the facts alleged in the Amended Complaint (collectively, the
9 “Released Claims”).

10 21. This Final Approval Order and the Settlement Agreement, and all acts, statements,
11 documents or proceedings relating to the Settlement Agreement are not, and shall not be construed
12 as, used as, or deemed to be evidence of, an admission by or against Defendants of any claim, any
13 fact alleged in the *Doe Action*, any fault, any wrongdoing, any violation of law, or any liability of
14 any kind on the part of Defendants or of the validity or certifiability of any claims that have been,
15 or could have been, asserted in the *Doe Action*.

16 22. This Final Approval Order, the Settlement Agreement, all acts, statements,
17 documents or proceedings relating to the Settlement Agreement shall not be offered or received or
18 be admissible in evidence in any action or proceeding, or be used in any way as an admission or
19 concession or evidence of any liability or wrongdoing of any nature or that Plaintiffs, any
20 Settlement Class Member, or any other person has suffered any damage; provided, however, that
21 the Settlement Agreement, this Final Approval Order and the Judgment may be filed in any action
22 by Co-Lead Class Counsel, Defendants or Settlement Class Members seeking to enforce the
23 Settlement Agreement or this Final Approval Order (including but not limited to enforce the
24 releases contained herein). The Settlement Agreement and this Final Approval Order shall not be
25 construed or admissible as an admission by Defendants that Plaintiff’s claims or any similar claims
26 are suitable for class treatment.

27 23. The Settlement’s terms shall have *res judicata* and preclusive effect in all pending
28 and future lawsuits or other proceedings as to Released Claims (and other prohibitions set forth in

1 this Final Approval Order and the Judgment) that are brought, initiated, or maintained by, or on
2 behalf of, any Settlement Class Member who did not timely and validly request exclusion from
3 the Settlement Class or any other person subject to the provisions of this Final Approval Order
4 against the Defendants.

5 24. If the Settlement is terminated according to its terms or if the Effective Date does
6 not occur for any reason, this Final Approval Order, the Judgment and the Preliminary Approval
7 Order shall be deemed automatically vacated *nunc pro tunc* and shall have no force and effect
8 whatsoever; the Settlement Agreement shall be considered null and void; all of the Parties'
9 obligations under the Settlement Agreement, the Preliminary Approval Order, and this Final
10 Approval Order and the Judgment shall cease to be of any force and effect and the Parties shall
11 return to the *status quo ante* in the *Doe Action* as if the Parties had not entered into the Settlement
12 Agreement. In such an event, the Parties shall be restored to their respective positions in the *Doe*
13 *Action* as if the Settlement Agreement had never been entered into and without prejudice to any of
14 the Parties' respective positions on the issue of class certification or any other issue.

15 25. Without affecting the finality of this Final Approval Order, the Court will retain
16 jurisdiction over the subject matter of the *Doe Action* and the Parties with respect to the
17 interpretation and implementation of the Settlement for all purposes, including enforcement of its
18 terms at the request of any Party and resolution of any disputes that may arise relating in any way
19 to, or arising from, the implementation of the Settlement or the implementation of this Final
20 Approval Order including any request for the identities of persons who submitted timely and valid
21 requests for exclusion.

22
23 DATED: _____, 2023

HON. LAWRENCE P. RIFF