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1 **CONSUMER WATCHDOG**

2 Jerry Flanagan (SBN: 271272)
3 jerry@consumerwatchdog.org
4 Daniel L. Sternberg (SBN: 329799)
5 danny@consumerwatchdog.org
6 6330 San Vicente Blvd., Suite 250
7 Los Angeles, CA 90048
8 Tel: (310) 392-0522
9 Fax: (310) 392-8874

6 **WHATLEY KALLAS, LLP**

7 Alan M. Mansfield (of counsel, SBN: 125998)
8 amansfield@whatleykallas.com
9 16870 W. Bernardo Dr., Suite 400
10 San Diego, CA, 92127
11 Tel: (858) 674-6641
12 Fax: (855) 274-1888

11 **Attorneys for Plaintiff**

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

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

18 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]*

**DECLARATION OF JERRY FLANAGAN IN
SUPPORT OF MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT, ORDER APPROVING
PAYMENT OF ATTORNEYS' FEES AND
REIMBURSEMENT OF EXPENSES, AND
PAYMENT TO THE CLASS
REPRESENTATIVE**

Final Approval Hearing Scheduled Per May 19, 2023
Preliminary Approval Order:

Date: August 25, 2023
Time: 10:00 a.m.

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**DECLARATION OF JERRY FLANAGAN IN SUPPORT OF PLAINTIFF'S MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT, AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES,
AND PAYMENT TO THE CLASS REPRESENTATIVE**

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1 I, JERRY FLANAGAN, declare as follows:

2 **I. INTRODUCTION**

3 1. I am an attorney admitted to practice in California. I am the Litigation Director for the
4 non-profit consumer rights organization Consumer Watchdog, and one of the attorneys of record for
5 Plaintiff John Doe and the proposed Settlement Class (collectively referred to as “Plaintiffs” or
6 “Settlement Class Members”) in the above-captioned action (the “*Doe Action*”).¹ I have personal
7 knowledge of the matters set forth in this Declaration, which is filed in support of Plaintiff’s Motion for
8 Final Approval of Class Action Settlement, Order Approving Payment of Attorneys’ Fees and
9 Reimbursement of Expenses, and Payment to the Class Representative. A true and correct copy of the
10 Executed Amended Settlement Agreement and Exhibits was filed with this Court on May 9, 2023 and
11 also available on the Settlement Website at <https://www.ThriveTribeSettlement.com/>. Consumer
12 Watchdog attorneys have actively participated in all aspects of this litigation, and I was one of the
13 principal negotiators of the Settlement along with co-counsel Alan M. Mansfield. I am familiar with the
14 facts set forth in this Declaration. If called to testify, I could and would competently testify to the
15 following facts.

16 2. In California, the protection of personal privacy is of paramount importance. The
17 California Constitution guarantees consumers the right to privacy. Furthermore, California law explicitly
18 recognizes that for those living with HIV or AIDS, the injury caused by a violation of their personal
19 medical privacy is particularly harmful. Due to the stigma and discrimination associated with HIV, the
20 disclosure of an individual’s HIV status can have far-ranging consequences including loss of housing and
21 employment, as well as severe health consequences as a result of increased stress that undermines the
22 immune system.

23 3. As more fully described in the operative First Amended Class Action Complaint, this
24 action arises from the conduct of Defendants Thrive Tribe Foundation (“Thrive Tribe”), Defendant Good
25 Health, Inc. d/b/a Premier Pharmacy Services (“Premier Pharmacy” or “Premier”), Evolve Healthcare,
26 Gary “Julian” Goldstein, the California Department of Public Health (“CDPH”), and Dr. Tomás Aragón

27 ¹ Unless otherwise specified, all defined terms in this Declaration have the same meaning as the meaning
28 described in the Executed Amended Settlement Agreement (“Settlement” and “Settlement Agreement”),
and those terms are incorporated here by this reference.

1 in his capacity as the Director of CDPH. These individuals and entities either allegedly orchestrated and
2 participated in, or in the case of CDPH, failed to prevent, the unauthorized access of confidential data
3 from Thrive Tribe belonging to Plaintiff and approximately 460 other individuals enrolled in two CDPH
4 programs that provide people living with HIV access to adequate healthcare—the AIDS Drug Assistance
5 Program (“ADAP”) and the Office of AIDS’s Health Insurance Premium Payment program (“OA-
6 HIPP”).

7 4. Plaintiff John Doe received a notification about a potential unauthorized access of data
8 from CDPH in approximately July 2020, and contacted me to conduct an investigation into the
9 background of this notice. Both before and after we filed this action on John Doe’s behalf on or about
10 August 25, 2020, we conducted an extensive investigation into the underlying factual and legal subject
11 matter of this action. Through this investigation we obtained significant evidence from multiple potential
12 witnesses confirming and strengthening the allegations in the operative First Amended Class Action
13 Complaint.

14 5. The non-public personal and medical information at issue here included Settlement Class
15 Members’ full names, dates of birth, personal phone numbers and email addresses, HIV status and other
16 medical conditions, health insurance provider information, public health program participant
17 information, and program eligibility dates.

18 6. The primary purpose of this lawsuit was to ensure the protection of Settlement Class
19 Members’ confidential personal and medical information, including their HIV status, and its
20 identification, segmentation, and deletion. The Settlement will provide substantial, meaningful, and
21 immediate benefits for all Settlement Class Members by ensuring this information is protected, as
22 discussed in detail in Section V.

23 7. The proposed Settlement of this action is a tremendous benefit to members of the
24 Settlement Class because the relief is specifically tailored to address the underlying issues in the
25 litigation. By providing the significant programmatic relief described below now, Settlement Class
26 Members will be able to mitigate any further unauthorized sharing of their data. In addition, the monetary
27 payment exceeds that provided in other similar HIV-related privacy settlements, and I believe it is the
28 largest individual non-claims made payment of its kind. Comparable settlements are discussed in ¶ 53.
This is particularly significant as the non-public Defendants are small entities with limited insurance

1 policies with eroding policy limits. In fact, both Thrive Tribe and Premier have contributed their
2 remaining insurance policy limits to this settlement, and Mr. Goldstein and Evolve have no applicable
3 insurance and no significant liquid assets or insurance coverage to contribute to this Settlement. The risk
4 of going to trial and collecting *nothing* from these Defendants, even if fully successful, is substantial.

5 8. Therefore, we were able to obtain in Settlement likely all we would have been able to
6 obtain and collect if this matter had gone to trial. It is on this basis, and for the reasons set forth below
7 and in the accompanying memoranda and declarations, that we seek final approval of the Settlement, as
8 well as an award of attorneys' fees and reimbursement of expenses and a payment of a class representative
9 service award. The amounts requested were agreed to by the Parties after all the significant benefits of
10 this Settlement for Class Members were agreed to in principle.

11 9. There will be no reversion of any settlement funds to any Defendants; any Settlement
12 Funds not distributed to Settlement Class members or otherwise allocated will be paid to the *cy pres*
13 recipient chosen by the Parties under Section 4.4 of the Settlement Agreement pursuant to Code of Civil
14 Procedure section 384: APLA Health. APLA Health's mission of restoring dignity and trust within
15 underserved communities in Los Angeles by providing world-class LGBTQ+ healthcare, support
16 services, and HIV specialty care directly benefits Settlement Class Members and similarly situated
17 individuals and furthers the purposes of this lawsuit. (Settlement Agreement, Ex. I.) As noted in the
18 Declarations from counsel of each party filed in support of our motion for Preliminary Approval of the
19 Settlement, none of the attorneys representing Plaintiff or any Defendant, nor the Parties themselves,
20 have any interests or involvement in the governance or work of APLA Health.

21 10. This Settlement is the culmination of protracted negotiations that were non-collusive and
22 overseen by two well-respected mediators, the Hon. Jan M. Adler (Ret.), former chief magistrate judge
23 of the U.S. District Court for the Southern District of California and now with Judicate West, and
24 Ralph O. Williams III, Esq., of ADR Services.

25 11. Both Consumer Watchdog and my co-counsel at Whatley Kallas are intimately familiar
26 with the factual and legal issues raised by this lawsuit and are experienced practitioners in class actions,
27 particularly in complex healthcare and HIV privacy litigation.

28 12. Defendants have also agreed to not oppose the payment out of the fund created for
monetary payments under the settlement of reasonable attorneys' fees and expenses in an amount not to

1 exceed \$763,000 and a supplemental payment to Plaintiff John Doe of \$10,000 in recognition of his
2 service as Class Representative, subject to approval by the Court. These provisions were agreed to after
3 the material substantive terms of the Settlement had been agreed to in principle between the Parties. As
4 set forth in the accompanying declarations of Daniel L. Sternberg and Alan M. Mansfield, the amount of
5 attorneys' fees requested reflects the work of Co-Lead Class Counsel to prosecute and successfully
6 resolve this litigation. Plaintiff John Doe has given written approval of the fee sharing agreement, as is
7 provided for in Cal. Rules of Professional Conduct, rule 1.5.1 and Cal. Rules of Court, rule 3.769(b).

8 13. As set forth herein and the Declaration of Daniel L. Sternberg, Co-Lead Class Counsel
9 have, among other things:

- 10 • After John Doe received notification of an unauthorized access to his data, Co-Lead Class
11 Counsel performed an extensive investigation of the underlying facts alleged in the action prior
12 to the filing of the action, including making two Public Records Act ("PRA") requests and
13 reviewing hundreds of pages of documents regarding this alleged unauthorized access of
14 confidential personal and medical information;
- 15 • We later demanded, obtained, and reviewed information from Defendants in response to informal
16 discovery requests;
- 17 • We conducted extensive interviews with Class Members and other individuals with first-hand
18 knowledge of the Incident;
- 19 • We drafted the initial 31-page Class Action Complaint with very detailed allegations and later
20 greatly expanded those allegations in the 41-page First Amended Class Action Complaint;
- 21 • We prepared and filed a California Tort Claims Act claim with the State of California on behalf
22 of Plaintiff John Doe;
- 23 • We interviewed Class Members and other individuals with first-hand knowledge of the Incident;
- 24 • After engaging in extensive negotiations with counsel for Defendants over a forensic computer
25 review to, as counsel described it, "contain the spill" of data, we negotiated and assisted in the
26 implementation of CDPH's forensic review of Premier's prescription drug database, which
27 resulted in CDPH identifying 125 Settlement Class Members whose names were contained in its
28 DocuTrak system, including John Doe's name, even though John Doe and the other Class
Members had not obtained prescriptions through Premier Pharmacy;

- 1 • We prepared for and participated in two full day mediations with separate mediators that
- 2 ultimately resulted in an agreement on the monetary aspects of the Settlement but left the details
- 3 of the programmatic relief to be negotiated;
- 4 • We participated in seven Case Management Conferences (“CMC”) with the Court and prepared
- 5 13 joint CMC statements and worked with counsel for Defendants to get approval for those
- 6 statements;
- 7 • We participated in hard fought and long-running settlement negotiations with counsel for
- 8 Defendants for more than two years over the programmatic aspects of the Settlement in order to
- 9 protect and vindicate the privacy rights of people living with HIV;
- 10 • As part of the dismissal of Adherence Project, we negotiated that agents for Adherence Project
- 11 would confirm in a Declaration filed with the Court on or about September 16, 2022 that the data
- 12 at issue was deleted from an Airtable cloud server at the request of Co-Lead Class Counsel. (See
- 13 Declaration of Joel Anderson, Sept. 15, 2022, filed with the Court in support of Plaintiff’s Request
- 14 for Dismissal of Adherence Project, Sept. 16, 2022.)
- 15 • We drafted and negotiated the detailed 31-page Settlement Agreement and 75 pages of Exhibits,
- 16 including a very detailed notice program to ensure the protection of Settlement Class Member
- 17 data as well as (at the Court’s direction) an Amended Settlement Agreement;
- 18 • We drafted the Preliminary Approval motion papers and declarations, participated in two
- 19 Preliminary Approval motion hearings, and prepared the motion for Final Approval and
- 20 supporting briefs and declarations; and
- 21 • We have also overseen the settlement notification and computer system review process, which
- 22 has required significant additional time.

22 (Declaration of Daniel L. Sternberg in Support of Motion for Order Approving Attorneys’ Fees and
23 Reimbursement of Expenses [“Sternberg Decl.”], ¶¶ 3–33, filed concurrently.)

24 **II. BACKGROUND OF LITIGATION**

25 14. On or about June 30, 2020, CDPH sent a notification letter to Plaintiff and Settlement
26 Class Members informing them that their confidential personal and medical information had been the
27 subject of an unauthorized disclosure (“CDPH Mailing”). Attached as Exhibit 2 to the First Amended
28 Class Action Complaint filed with this Court on October 6, 2022 is a true and correct redacted copy of

1 the CDPH Mailing received by Plaintiff. We began our investigation immediately thereafter.

2 15. Following notification of this breach, we submitted the two PRA requests to CDPH on
3 July 23, 2020 and August 7, 2020. Beginning in August 2020 we began to receive what were ultimately
4 several hundred pages of records regarding the events related to the unauthorized disclosure. These
5 documents included, *inter alia*, Thrive Tribe’s contract with CDPH; a summary of the services Thrive
6 Tribe provided pursuant to its contract with CDPH; detailed summaries of CDPH’s investigation into the
7 data breach and related documentary evidence; detailed statements from key witnesses concerning the
8 unauthorized disclosure; and communications between and among certain Defendants and their agents,
9 employees, and/or contractors concerning their respective conduct related to the Incident. In a Frequently
10 Asked Questions (FAQ) document produced by CDPH, the agency provided the name of the CDPH
11 contractor at issue (Thrive Tribe) and a list of individuals and entities that allegedly received the data that
12 was subject to the unauthorized disclosure: Evolve Healthcare, Adherence Project, and Premier
13 Pharmacy. The FAQ apparently was not posted on CDPH’s website, but only provided in response to
14 specific inquiries by Settlement Class members.

15 16. The documents obtained from CDPH through the two PRA requests corroborated both the
16 testimony of witnesses we identified and interviewed and the documentary evidence we were able to
17 obtain from other sources.

18 17. In August 2020, Co-Lead Class Counsel sent letters to each Defendant demanding that
19 they cure the conduct described herein and identified four security procedures and practices appropriate
20 to secure Plaintiff’s and Settlement Class Members’ Protected Health Information and/or Confidential
21 HIV-related Information.

22 18. While one of Thrive Tribe’s directors responded to the August 3, 2020 letter, he did not
23 provide any specifics that rebutted the information provided in Plaintiff’s letter and by CDPH, nor did he
24 offer to cure the unauthorized disclosure. Instead, he asserted that CDPH’s notification of the
25 unauthorized disclosure was in error and that the agency failed to adequately investigate and fully
26 adjudicate the matter. Nonetheless, we subsequently learned this assertion was in error, and that the
27 organization had taken several steps to cure the data breach in response to our demand. (Sternberg Decl.,
28 ¶ 14.)

19. On August 25, 2020, on behalf of Plaintiff John Doe, both individually and on behalf of a

1 putative class and for the benefit of the public, we filed the original Class Action Complaint captioned
2 *John Doe v. California Department of Public Health et al.*, Los Angeles County Superior Court Case No.
3 20STCV32364. That Complaint alleged in detail how Plaintiff’s and Settlement Class Members’
4 Protected Health Information and/or Confidential HIV-related Information, as well as other confidential
5 personal information, was disclosed without authorization in connection with interactions between
6 representatives of Thrive Tribe, which was a contractor for CDPH, Adherence Project, Evolve
7 Healthcare, Inc., and Gary “Julian” Goldstein (and later we learned, Premier Pharmacy).

8 20. In the course of our investigation, we learned that in approximately April 2019, Joel
9 Anderson—who was alleged to have acted as an employee and/or agent of Defendants Evolve
10 Healthcare, Goldstein, Thrive Tribe, and/or Premier Pharmacy—created a cloud-based database using a
11 third-party service provider called Airtable for the purposes of storing and utilizing Plaintiff’s and
12 Settlement Class Members’ Protected Health Information and/or Confidential HIV-related Information.

13 21. We subsequently notified Airtable that it had obligations concerning the preservation of
14 evidence, and Airtable implemented preservation procedures for this data in or about November 2020.

15 22. As a condition of agreeing to dismiss Adherence Project without prejudice as part of the
16 overall settlement of this action, Mr. Anderson confirmed in a Declaration filed with the Court on or
17 about September 16, 2022 that the data at issue here was deleted from Airtable at the request of Co-Lead
18 Class Counsel.

19 23. After focusing our investigation on the role of Premier Pharmacy (which are described in
20 the concurrently filed Sternberg Decl.), on October 6, 2022, we filed the First Amended Complaint on
21 behalf of Plaintiff adding significantly expanded allegations and naming Premier Pharmacy as a
22 Defendant.

23 24. Also during this timeframe, we started negotiating protocols for the identification of
24 Settlement Class members whose data may have ended up on some Defendants’ computers or servers
25 without their authorization or consent. We engaged a third-party forensics firm to assist in such
26 discussions, which ultimately lead to the search of Premier’s DocuTrak prescription drug database
27 servers.

28 **III. SETTLEMENT NEGOTIATIONS**

25. The settlement negotiations in this action are described in detail in the concurrently filed

1 Sternberg Decl. For the sake of efficiency and non-duplication, I refer the Court to this Declaration for
2 discussions of such negotiations.

3 **IV. PRELIMINARY APPROVAL OF THE SETTLEMENT**

4 26. On February 8, 2023, we filed a motion for preliminary approval of the Settlement to the
5 Court, as well as the supporting Memorandum of Points and Authorities along with supporting
6 declarations.

7 27. Due to scheduling issues, this motion could not be heard for several months. On April 28,
8 2023, the Court held an initial Preliminary Approval Hearing. At that hearing the Court requested the
9 Parties make a minor change to the Settlement Agreement regarding the timing of filing opt-out requests
10 and objections for Settlement Class Members whose Notice of Settlement is re-mailed pursuant to the
11 terms of the Settlement Agreement.

12 28. On May 9, 2023, the Parties filed an Amended Settlement Agreement reflecting the
13 requested changes, and on May 19, 2023, the Court held a second Preliminary Approval Hearing and
14 later that day entered the Updated Order Granting Plaintiff’s Unopposed Motion for Preliminary
15 Approval of Class Settlement, Certification of Settlement Class, and Qualified Protective Order
16 (“Updated Preliminary Approval Order”).

17 **V. THE TERMS OF THE SETTLEMENT AGREEMENT**

18 **A. Settlement Class**

19 29. As set forth in Sections 1.1(C) and 1.1(DD) of the Settlement Agreement, the Settlement
20 Class is composed of all persons to whom the CDPH Mailing was mailed, provided, or sent for delivery.

21 30. The Class List provided by CDPH to the Settlement Administrator included 460
22 Settlement Class Members.

23 **B. Consideration to Class**

24 31. The primary purpose of this action was to ensure the identification, protection, and control
25 and deletion if requested of Settlement Class Members’ confidential personal and medical information,
26 including their HIV status. The Settlement will provide substantial, meaningful, and immediate benefits
27 for all Settlement Class Members by ensuring this information is protected.

28 32. Under Sections 5.1 and 5.2 of the Settlement Agreement, Thrive Tribe agrees to take the
following actions:

- 1 • Thrive Tribe shall destroy any computer hard drives and other storage devices of any kind that
2 may contain any confidential information relating to Settlement Class Members. The data that
3 must be destroyed includes any private, personal, and medical information (excluding name,
4 address, or other contact information) of any individuals who Thrive Tribe enrolled in the ADAP
5 and OA-HIPP programs prior to June 2019.
- 6 • Thrive Tribe shall permanently delete any confidential or other information relating to
7 Settlement Class Members stored in the cloud or on servers.
- 8 • Thrive Tribe shall destroy any hard copies of any information that contain any confidential or
9 other identifying information for all Settlement Class Members.
- 10 • A representative of Thrive Tribe further agrees to provide an affidavit under penalty of perjury
11 that Thrive Tribe complied with these requirements. CDPH shall have the right, at its sole
12 discretion, to decide whether to audit the veracity of the affidavit by completing a site inspection
13 of all computer systems, storage devices, and/or cloud storage and/or servers.

14 33. Under Section 5.3 of the Settlement Agreement, Premier Pharmacy agrees to take the
15 following actions:

- 16 • Premier Pharmacy will participate in a forensic review of its email system and OneDrive system
17 to be conducted by CDPH to determine if it contains any Settlement Class Member's Protected
18 Health Information and/or Confidential HIV-related Information. Premier represents that to the
19 extent Premier's computer systems contain a Settlement Class Member's Protected Health
20 Information and/or Confidential HIV-related Information, such information can be electronically
21 stored only (1) on Premier's servers (and those servers can be accessed and searched, in full, by
22 the DocuTrak system), (2) within Premier's email system, or (3) on an individual user's
23 computer (and those individual computers can be searched, in full, on the OneDrive system).
24 Premier further represents that any such information stored on its servers can, and already has
25 been searched by CDPH in the prior forensic review of Premier's DocuTrak system, which
26 revealed the confidential information of 125 Settlement Class Members.
- 27 • Premier Pharmacy will provide any Settlement Class Member who does not opt out of the
28 Settlement and whose information is identified by CDPH as possibly having been entered in any
Premier Pharmacy server (as identified by the DocuTrak system), email system, or OneDrive
system for the first time after April 1, 2019 (in addition to the 125 Settlement Class Members
whom CDPH previously identified) the opportunity to remove his, her, or their name and any
Protected Health Information and/or Confidential HIV-related Information.
- Settlement Class Members whose confidential information is discovered in Premier's computer
systems will be sent the Supplemental Notice providing the opportunity to remove their
information. This procedure is designed to guarantee continuity of care for Settlement Class
Members in the event that those Settlement Class Members are now obtaining medications from
Premier. Moreover, Premier Pharmacy is required to retain certain data pursuant to state law,

1 federal law, and provider contracts.² If state law, federal law, or a provider contract prohibits
2 Premier from immediately deleting the Class Members' data, then Premier will (1) render that
3 Class Member's data inactive in a manner agreed to by Premier, Co-Lead Class Counsel, and
4 CDPH (or as directed by the Court if agreement cannot be reached), and (2) not use, sell, convey,
5 or transfer that data in any way except as required by state law, federal law, or provider contract.
6 Premier will delete all applicable data following the first date when such deletion would not
7 violate any applicable state law, federal law, or provider contract provision. CDPH, and Co-Lead
8 Class Counsel as necessary, will confer with Premier periodically after the Effective Date to
9 confirm such data has been deleted in conformance with the parties' agreed-to deletion schedule.
10 (Settlement Agreement, § 5.3(D)).

- 11 • Premier and CDPH are in the process of having CDPH engage in the next stage of data review
12 of Premier's computer systems as contemplated under the Settlement. At the end of the process
13 a representative of Premier further agrees to provide an affidavit under penalty of perjury that
14 Premier has complied with these requirements. If any data must be rendered inactive and retained
15 as noted above, Premier will provide an additional affidavit under penalty of perjury within 30
16 calendar days after permanently deleting any previously inactive and retained data. CDPH shall
17 have the right, at its sole discretion, to decide whether to audit the veracity of either affidavit by
18 completing a further inspection of Premier's servers, DocuTrak system, OneDrive system,
19 and/or email system.

20 34. Under Section 5.4 of the Settlement Agreement, Evolve Healthcare and Goldstein agree
21 to take the following actions:

- 22 • Evolve Healthcare and Goldstein will participate in a forensic review of a laptop computer,
23 which Evolve Healthcare and Goldstein represent is the only potential location of stored files in
24 their possession, custody, or control, to be conducted by CDPH to determine if that laptop
25 computer contains any Settlement Class Member's Protected Health Information and/or
26 Confidential HIV-related Information.
- 27 • Evolve Healthcare and Goldstein will provide any Settlement Class Member who does not opt
28 out of the Settlement and whose information is identified by CDPH as potentially having been
entered in the laptop computer for the first time after April 1, 2019 with the Supplemental Notice
providing the opportunity to remove his, her, or their name and any Protected Health Information
and/or Confidential HIV-related Information.

23 ² "All records of manufacture and of sale, acquisition, receipt, shipment, or disposition of" prescription
24 medications "shall be at all times during business hours open to inspection by authorized officers of the
25 law, and shall be preserved for at least three years from the date of making." (Cal. Bus. & Prof. Code
26 § 4081.) Under federal law, pharmacies must comply with Medicare laws and regulations and CMS
27 instructions and guidelines. CMS requires that records be maintained for a period of ten years. (42 CFR
28 423.505(d)(e)(2), 42 CFR 423.505(i)(2); see also 42 C.F.R. 438(h) [providers shall allow the Medicaid
program and other government agencies to inspect certain records for a period of ten years]; 45 C.F.R.
164.316(b)(2) [six-year record retention requirement]; 42 C.F.R. 482.24(b)(1).)

- 1 • Settlement Class Members whose confidential information is discovered on Evolve Healthcare
2 or Goldstein’s laptop computer will be sent a Supplemental Notice providing the opportunity to
3 remove their information. This procedure is designed to guarantee continuity of care for
4 Settlement Class Members in the event that those Settlement Class Members are now obtaining
5 healthcare services from Evolve Healthcare or Goldstein.
- 6 • Mr. Goldstein has delivered his laptop computer to CDPH so it can engage in the next stage of
7 data review contemplated under the Settlement. At the end of the process, Evolve Healthcare
8 and Goldstein further agree to provide an affidavit under penalty of perjury that Evolve
9 Healthcare and Goldstein complied with these requirements. CDPH shall have the right, at its
10 sole discretion, to decide whether to audit the veracity of the affidavit by completing a further
11 inspection of the laptop.

12 35. Premier and Goldstein/Evolve are in the process of having their computers and computer
13 systems reviewed to identify how many additional Settlement Class Members’ have data located in these
14 systems and therefore are entitled to receive the Supplemental Notice informing them of their right to
15 have their data deleted.

16 36. In addition to the programmatic relief summarized above, Settlement Class Members will
17 receive an automatic cash payment in the estimated amount of \$1,750. After the Effective Date, a check
18 will be sent directly to each affected Settlement Class Member who does not opt out of the settlement
19 and whose Notice of Settlement is not returned as undeliverable without a viable forwarding address. This
20 automatic payment recognizes that some Settlement Class Members may not want to submit additional
21 personal information in order to receive funds from the Settlement. The amount of the Settlement
22 Payment is “estimated” because it is dependent on the number of Settlement Class Members who opt out
23 of the Settlement and the number of Notices of Settlement returned as undeliverable, as Settlement
24 payments will not be sent to those individuals, as well as the amount of Attorneys’ Fees and
25 reimbursement of expenses and class representative payment approved by the Court, and any payment
26 approved by the Court in the event that the Settlement Administrator’s fees and costs exceed the \$40,000
27 Settlement Administration Cap. (Settlement Agreement, § 4.2; see also *id.*, Exhibits E and H.) Because
28 these payments and the number of opt-outs and undeliverable Notices of Settlement will not be known
until the settlement administration process is complete, the final amount of the Settlement Payment may
be lower or higher than the estimated payment. (*Ibid.*)

26 **C. Release and Discharge of Claims**

27 37. The Settlement Agreement provides that, as of the Settlement Effective Date, and in
28 consideration of the benefits provided to Settlement Class Members, “Plaintiff and each Settlement Class

1 Member who does not opt out of the Settlement . . . shall automatically be deemed to have, and by
2 operation of the Final Approval Order shall have, completely, fully, finally, irrevocably, and forever
3 released, relinquished, and discharged the Released Parties, and each of them, of and from any and all
4 liabilities, rights, claims, actions, causes of action, demands, damages, penalties, costs, attorneys' fees,
5 losses, and remedies, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal,
6 statutory, or equitable, that are based on the facts alleged in the Amended Complaint (collectively, the
7 "Released Claims"). (Settlement Agreement, § 7.1.)

8 **VI. THE NOTICE PLAN**

9 38. JND Legal Administration has been appointed by the Court as the Settlement
10 Administrator. The California Department of Justice selected JND on behalf of CDPH after it sought bids
11 for the administration from several reputable claims administrators to perform settlement administration
12 duties in compliance with the state laws outlined herein governing the data at issue over which CDPH
has primary responsibility.

13 39. Regarding the content of the Notice of Settlement ("Notice") pursuant to California Rules
14 of Court, rule 3.766(d), the notice must include a brief explanation of the case, a statement that the court
15 will exclude members from the class if the member so requests, a procedure for the member to follow in
16 requesting exclusion from the class, a statement that the judgment will bind all members who do not
17 request exclusion, and a statement that any member who does not request exclusion may enter an
18 appearance through counsel. (See Cal. Rules of Court, rule 3.766(d).) Similarly, pursuant to California
19 Rules of Court, rule 3.679(f), the notice must provide an explanation of the proposed settlement and
20 procedures for class members to follow in order to file written objections and procedures, if any, to follow
21 in order to appear at the settlement hearing. The Notice and Notice Plan complied with all applicable
22 rules as well as the requirements of the Updated Preliminary Approval Order.

23 40. The Notice and the Notice Plan were specifically designed by the Parties in consultation
24 with the Settlement Administrator to take into account the serious privacy concerns relating to people
25 living with HIV as detailed in Sections 3.2.3, 3.2.4, 3.5, 3.6, 3.7, 3.9, 3.10, and 4.7 and Exhibit H of the
26 Amended Settlement Agreement. Special steps were taken to ensure that the Settlement Administrator
27 did not inadvertently disclose protected health information in the mailing of the Notice of Settlement. An
28 anonymized code was generated for each individual Settlement Class Member to allow them to

1 communicate with the Settlement Administrator without disclosing their identity. Similarly, the
2 telephone system and script for call center staff was specifically designed to avoid requesting protected
3 health information from callers. As provided for in the Updated Preliminary Approval Order, the full
4 Settlement Notice was designed to inform Settlement Class Members of the existence of the action, the
5 Settlement, and the information needed to make informed decisions about their participation in the
6 Settlement. As required by Section 3.8 of the Amended Settlement Agreement, the notice program
7 consists of three overarching components: (a) the Notice that was sent by U.S. first class mail to each
8 Settlement Class Member; (b) notice through the Settlement Website and the automated telephone
9 system; and (c) an announcement mutually agreed upon by counsel for Defendants and Co-Lead Class
10 Counsel placed on the webpages maintained by Co-Lead Class Counsel. Pursuant to Section 3.7 of the
11 Settlement Agreement, the Settlement Administrator mailed the Notice in English with a conspicuous
12 tagline in Spanish informing Settlement Class Members that a Spanish version of the Notice is available
13 on the Settlement Website and/or are available to be mailed to them upon request. The footer of the
14 Notice also advises Spanish speakers of the availability of the toll-free number.

15 41. Pursuant to the Updated Preliminary Approval Order, the Settlement Administrator
16 mailed the Notice, substantially in the form of Exhibit B to the Settlement Agreement, via first class mail
17 on June 16, 2023, to each of the 460 Settlement Class Members' last known addresses, as reflected in the
18 records of CDPH and as updated by the Settlement Administrator. (Declaration of Settlement
19 Administrator Regarding Class Notice ("Initial Declaration of Settlement Administrator"), June 23,
20 2023.)

21 42. In order to protect the privacy of Settlement Class Members, per the terms of the
22 Settlement Agreement if a Notice package is returned as undeliverable, the Claims Team will skip-trace
23 for an updated address and "re-mail the Notice package only if they . . . are highly confident that the
24 updated address is for the Settlement Class Member." (Settlement Agreement, Ex. H.) Shortly after the
25 initial mailing, three Notice of Settlement packages were returned to JND as undeliverable. (Initial
26 Declaration of Settlement Administrator, at ¶ 9.) JND obtained updated mailing addresses for the three
27 undeliverable Notices from USPS. (*Ibid.*) JND regularly relies on forwarding addresses provided by
28 USPS in the course of re-mailing undeliverable notices and thus was highly confident the new addresses
are correct. Therefore, on June 23, 2023, JND re-mailed the Notice packages (including a slip sheet

1 advising recipients of their revised opt-out and objection deadlines—August 7, 2023) pursuant to the
2 terms of the Settlement Agreement. (*Ibid.*) As of June 30, 2023, JND had received 28 additional Notices
3 returned as undeliverable. After research on TransUnion’s skip trace software, JND discovered addresses
4 for 24 of those Class Members for which JND had a high degree of confidence. JND re-mailed those 24
5 Notices in compliance with the Settlement, including providing those Settlement Class Members with
6 their new opt-out and objection deadline—August 14, 2023. JND was not able to obtain new addresses
7 that met the “highly confident” criteria for 4 of the undeliverable Notices and therefore those Notices
8 were not re-mailed. Information about additional remailed Notices is provided in the Supplemental
9 Declaration of Ryan M. Bahry Regarding Settlement Administration attached as Exhibit 1 to this
10 Declaration.

11 43. Thus, all Settlement Class Members whose addresses could be identified through
12 reasonable effort and for which JND had a high degree of confidence will have received the Notice.
13 Pursuant to Section 6.4.2 of the Settlement Agreement, JND will provide an updated report on the
14 completion of the Class Notice program and the response from Settlement Class Members, including opt-
15 out requests and any objections related thereto, by August 11, 2023.

16 44. The Notice contains relevant information about the Settlement and the deadlines to opt
17 out and object, directs Settlement Class Members to the Settlement Website, and provides a toll-free
18 number that Settlement Class Members can call for general information about the Settlement. (Settlement
19 Agreement, § 3.7.)

20 45. The Settlement Website URL is www.ThriveTribeSettlement.com. As required by
21 Section 3.4 of the Settlement Agreement, a draft of the Settlement Website was reviewed and approved
22 by counsel for Defendants and Co-Lead Class Counsel before it was made available to the public. The
23 Settlement website contains downloadable .pdf copies of the Class Action Complaint and Amended Class
24 Action Complaint, the Amended Settlement Agreement and its Exhibits, the Notice of Settlement, and
25 the Updated Preliminary Approval Order, as well as a “Frequently Asked Questions” webpage.

26 46. The automated telephone system accessible by the toll-free number set forth above
27 provides the opportunity for Settlement Class Members to speak with a live operator during business
28 hours for further information. However, the live operators shall not have access to any PHI, Confidential
HIV-related Information, or non-de-identified personal information of any Settlement Class Members

1 unless that information is voluntarily offered by the Settlement Class Member. The toll-free telephone
2 system also provides an automated IVR script, approved by counsel for the Parties, providing answers to
3 “Frequently Asked Questions.”

4 47. On or around June 26, 2023, Co-Lead Class Counsel posted an announcement about the
5 Settlement, mutually agreed upon by counsel for Defendants, on their respective internet websites. Those
6 announcements are available here:

- 7 • Consumer Watchdog: <https://consumerwatchdog.org/in-the-courtroom/john-doe-v-california-department-of-public-health-et-al-los-angeles-superior-court-case-no-20stcv3236/>
- 8 • Whatley Kallas LLP: <https://whatleykallas.com/john-doe-v-california-department-of-public-health-et-al-los-angeles-superior-court-case-no-20stcv3236/>

10 **VII. VALUATION OF SETTLEMENT**

11 48. As set forth above, resolution of this action entailed intense and detailed settlement
12 negotiations lasting for more than two years. The process was overseen by two well-respected mediators.
13 The best interests of the Settlement Class remained our paramount consideration throughout the entire
14 course of settlement discussions.

15 49. Plaintiff filed this action to remedy the unauthorized access to Protected Health
16 Information and/or Confidential HIV-related Information, as well as other confidential personal
17 information, in connection with interactions between representatives of Thrive Tribe (CDPH’s
18 contractor), Evolve Healthcare, Mr. Goldstein, Adherence Project, and Premier Pharmacy. The terms of
19 the Settlement are tailored to address these concerns. The estimated value of the programmatic relief
20 detailed in Section 5 of the Settlement Agreement is \$2,300,000. Plaintiff’s conservative estimate was
21 based on the following calculation: 460 Settlement Class Members, multiplied by five Defendants—
22 including Adherence Project, which deleted the data in exchange for an agreement to dismiss the claims
23 against it, and the four settling Defendants listed above who are participating in the programmatic relief
24 aspect of the settlement—multiplied by \$1,000 in statutory damages per person per Defendant (or
25 \$460,000 per Defendant). \$1,000 is the minimum amount of available statutory damages under the
26 Confidentiality of Medical Information Act (“CMIA”). In addition, CDPH is providing significant
27 programmatic relief by carrying out the forensic reviews of the computer systems of Defendant Premier
28 and Evolve/Goldstein, which is not included in the estimated value of the programmatic relief.

1 50. This calculation was intended to establish a baseline monetary equivalent valuation for
2 requiring each of the above Defendants to take significant steps to secure Settlement Class Members'
3 confidential information, including their HIV status. This is a reasonable baseline as it takes into account
4 the range of statutory damages established to penalize improper disclosure of the confidential personal
5 and medical information at issue. The California State Legislature has placed a value on various types of
6 consumer data in terms of the impact on consumers resulting from its unauthorized disclosure. For
7 example, public health records relating to HIV/AIDS containing personally identifying information have
8 been valued at an amount not less than \$5,000 (Health & Saf. Code § 121025(e)(1)–(e)(4)). The CMIA
9 focuses on medical information concerning enrollees or subscribers of health care service plans, which,
10 based on the description of data provided by CDPH, is most closely analogous to the data at issue here.
11 The Legislature has valued that data at an amount not less than \$1,000 per affected consumer. (See Civ.
12 Code § 56.36(b)(1).)

13 51. This valuation is conservative, as it contemplates only a single statutory violation, though
14 three independent statutory violations were pled in the First Amended Complaint.

15 52. In addition to the programmatic relief summarized above, Defendants are making
16 payments into a fund totaling \$1.6 million for a total value of the Settlement in excess of \$3.9 million.
17 None of the monies to be contributed to this fund will revert to Defendants, as any Settlement funds not
18 distributed will be paid to the proposed *cy pres* recipient chosen by the Parties, which is AIDS Project
19 Los Angeles (“APLA Health”). (Settlement Agreement, § 4.4.)

20 53. This cash payment is reasonable in comparison with financial recoveries in other related
21 HIV-related privacy settlements. I am not aware of a HIV-related privacy settlement that provided an
22 automatic case settlement in excess of the amount Settlement Class Members are estimated to recover in
23 this action (\$1,750). For example:

- 24 • In *Doe v. CVS* (S.D. Oh. 2019) No. 2:18-CV-00238-EAS-CMV, CVS allegedly improperly
25 disclosed the HIV status of approximately 4,500 residents of Ohio in the code contained in a
26 public mailing to consumers. Both Consumer Watchdog and Whatley Kallas LLP were part of
27 the lead counsel team. The district court approved the creation of a class action settlement fund
28 in the amount of \$4,400,000, which was used to automatically send class members checks in the
approximate amount of \$600, as well as to pay claims for up to \$10,000 for specific identified

1 damages. While there have been unauthorized disclosures to third persons in this action, the issue
2 in the *CVS* case was that the public disclosure of HIV status was to unknown third parties, which
3 is why that latter provision was a relevant settlement component. To date, that has not been the
4 concern here, although containing the spread of this data is intended to prevent further
5 unauthorized access to the data.

- 6 • In *Beckett v. Aetna, Inc., et al.* (E.D. Pa. 2018) No. 2:17-CV-3864-JS, the plaintiffs alleged, *inter*
7 *alia*, that Aetna transmitted private health information improperly (i) to its own legal counsel and
8 a settlement administrator without having the proper authorizations to do so, and (ii) through the
9 mailing of a notice that was the responsibility of Aetna to send to certain individuals as part of a
10 non-class settlement to inform them of their ability to fill prescriptions for HIV medications at a
11 retail pharmacy. Each settlement class member whose information was allegedly disclosed
12 improperly by Aetna to its legal counsel and a settlement administrator received an automatic
13 payment of \$75 without being required to fill out a claim form or take any action, and each
14 settlement class member who experienced the second privacy breach received an automatic net
15 payment of at least \$500 (inclusive of the \$75 payment noted above) without being required to
16 fill out a claim form or take any action. They were also allowed to submit a claim form for up to
17 an additional \$20,000 for financial and non-financial harm resulting from the mailing of the
18 benefit notice. Thus, the amount of the automated payment in that case was in the range of \$575
19 per settlement class member there. The issue in the *Beckett* case was that the public disclosure of
20 HIV status was to unknown third parties, which is why that latter provision was a relevant
21 settlement component.

22 54. The arm's-length nature of the negotiations over the terms of this settlement and the
23 participation of experienced counsel further support the conclusion that a presumption of fairness should
24 apply here.

25 55. As indication of the Settlement Class's support of the Settlement, as of July 24, 2023, *zero*
26 *(0) Class Members out of a Settlement Class that includes approximately 460 members have elected to*
27 *opt out of the Settlement and none have filed any objections.* The deadline for opting out and objecting
28 to the Settlement is on August 1, 2023. I will update the Court on the response of the Settlement Class
members after the deadlines for opting out and objecting have passed.

1 **VIII. POTENTIAL FINANCIAL RECOVERY AT TRIAL**

2 56. I believe Plaintiff has a strong case, both individually and on a class-wide basis, but also
3 recognize the risks involved in continuing to litigate these disputes through trial and through any possible
4 appeals. For example, during the course of this litigation Defendants have argued that individualized
5 inquiries were necessary to determine the degree to which Settlement Class Members were harmed, as
6 well as to examine multiple different computer and email systems to determine whether each Settlement
7 Class Member's Protected Health Information and/or Confidential HIV-related Information was
8 disclosed without authorization, when it was disclosed, and by whom. Most significantly, the Non-State
9 Defendants are small entities with limited insurance policies with eroding policy limits. In fact, both
10 Thrive Tribe and Premier have contributed their remaining insurance policy limits to this Settlement, and
11 Mr. Goldstein and Evolve have no applicable insurance and no significant liquid assets or insurance
12 coverage to contribute to this Settlement. Thus, we have obtained as much as we would have at trial.
13 Moreover, the risk of collecting nothing from these Defendants, even after a fully successful trial, is
14 substantial given they would have likely fully eroded their insurance policies in the defense of the action.

15 57. Had Defendants been found to have intentionally disclosed, or requested the disclosure
16 of, Plaintiff's and Settlement Class Members' Protected Health Information and/or Confidential HIV-
17 related Information (which would be disputed but also could impact the availability of insurance
18 coverage), the amount that each of the 460 individuals affected by the breach could obtain from each
19 Defendant ranges between \$8,500 per person if all three of the statutory claims were established and a
20 maximum of \$28,500 per person in statutory damages. It is also possible, however, that Plaintiff would
21 only prevail on a single claim, such as the CMIA. In that case, the amount offered in settlement is more
22 than the Settlement Class Members would receive at trial.

23 58. Information Practices Act. If Defendants' conduct is determined to be intentional or
24 attributable to them, the minimum statutory violation of the Information Practices Act is \$2,500, or
25 \$1,150,000 for all Settlement Class Members, per party found to be responsible, per incident, plus
26 attorneys' fees and costs. (Civ. Code § 1798.53.)

27 59. AIDS Public Health Records Confidentiality Act. Each person who violates this statute is
28 liable to the person whose confidential public health record was disclosed for an amount not less than
\$5,000, or \$2,300,000 for all Settlement Class Members, per responsible party, up to \$25,000 per person,

1 or \$11,500,000 for all Settlement Class Members, plus attorneys' fees and costs. (See Health & Saf. Code
2 § 121025(e)(2).) The amount increases depending on the nature, extent, and intentionality of the
3 disclosure.

4 60. CMIA. The CMIA provides for damages, fines, and civil penalties, in addition to
5 compensatory damages to each individual whose medical information was used or disclosed without
6 authorization, as well as possible disgorgement of any proceeds or other consideration obtained as a result
7 of the violation, plus attorneys' fees and costs. If the conduct of Premier Pharmacy, Evolve Healthcare,
8 and/or Mr. Goldstein is determined to violate this statute, the minimum statutory violation for the CMIA
9 is \$1,000 per person, or \$460,000 for all Settlement Class Members, up to \$3,500 per person, or
10 \$1,610,000 for all Settlement Class Members, plus attorneys' fees and costs. CMIA is the most likely
11 applicable cause of action given the nature of the data at issue. It is also reasonable to presume that
12 Plaintiff would have a 50% chance of prevailing on motion practice, class certification, summary
13 judgment, and trial on the CMIA claim, which would result in the probability of a recovery less than we
14 were able to achieve under the Settlement. Assuming plaintiff had a 50% chance of prevailing on class
15 certification, then a 50% chance of prevailing on summary judgment, and then a 50% chance prevailing
16 a trial, their overall expected probability of prevailing would be 12.5%.

16 **IX. RISKS OF ESTABLISHING LIABILITY AND THE RISK OF MAINTAINING CLASS
17 ACTION STATUS THROUGH TRIAL**

18 61. Further litigation would create significant risks and cause additional expenses and delay
19 with no assurance of any recovery beyond what is being made available to Settlement Class Members
20 under this Settlement. Given the nature of the class claims, this action would be expensive and lengthy
21 to try. Absent settlement, numerous procedural hurdles (e.g., motion practice and appeals) in this complex
22 litigation would inevitably prolong the litigation for years and further delay or eliminate recovery by the
23 Settlement Class Members.

24 62. Defendants, who are represented by counsel with years of experience, denied any
25 wrongdoing or liability to Plaintiff or members of the Settlement Class. A trial on the merits would
26 require resolution of numerous highly complex issues of law and fact, which would be heavily contested
27 by Defendants during trial.

28 63. The Settlement Class has been preliminarily certified for settlement purposes. (See
Updated Preliminary Approval Order, ¶ 4.) However, if this case were to proceed to trial, Defendants

1 would contest class certification. Even if Plaintiff's motion for class certification was granted, class
2 certification orders are conditional in nature and may be changed, modified, or reversed at any time up
3 until final judgment.

4 64. Considering the above factors, the Settlement provides a very significant recovery for the
5 Settlement Class that obviates the need for a lengthy, uncertain, and expensive trial and possible appeal.
6 Significant additional work would be necessary if the case were to proceed to trial. A trial on the merits
7 would entail considerable expense, including numerous experts, pre-trial motions, and thousands more
8 hours of attorney time, and given the right to appeal, a trial would not end the litigation. Therefore, even
9 if the Class succeeded at every stage of the litigation, including trial and appeals, recovery would be
10 substantially delayed by years and we would not have been able to provide the timely benefits obtained
11 through the negotiation of this Settlement. The proposed Settlement ensures timely relief, thereby
12 maximizing the value of the Settlement Class Members' claims against Defendants.

13 65. I have spoken with my co-counsel on this matter, and we are collectively of the belief that
14 settling for the significant non-monetary relief set forth above, a Settlement Payment to each Settlement
15 Class Member without the need to file a claim in the estimated amount of \$1,750, and Defendant CDPH
16 agreeing to pay the costs associated with the Settlement Administrator's work up to the Settlement
17 Administration Cap of \$40,000 (as well as participating in the process of overseeing the implemental of
18 much of the non-monetary relief) constitutes a fair and reasonable settlement.

18 **X. ATTORNEYS' FEES AND EXPENSES**

19 66. The Settlement Class has been represented by counsel with years of experience in
20 litigating class and healthcare actions and who have entered into numerous class settlements that have
21 been approved by courts throughout California. (See Declaration of Alan M. Mansfield in Support of
22 Motion for Order Approving Payment of Attorneys' Fees and Reimbursement of Expenses ["Mansfield
23 Decl."]; Sternberg Decl., filed concurrently.) As set forth in detail in the Sternberg Decl. and the
24 Mansfield Decl., Plaintiff's Co-Lead Counsel have collectively expended substantial time litigating this
25 case and advanced all costs, without payment or reimbursement to date.

26 67. Section 8.1 of the Settlement Agreement provides that Defendants do not oppose Co-Lead
27 Class Counsel's application to the Court for approval of payment of their reasonable attorneys' fees and
28 reimbursement of expenses in an amount not to exceed \$763,000.

1 68. The attorneys' fees were calculated using the lodestar method. The requested attorneys'
2 fees are reasonable, as they are far below Co-Lead Class Counsel's actual combined lodestar, which is
3 \$1,500,550, reflecting 2721.4 hours of work as of July 16, 2023. Actual expenses in the case are
4 \$14,630.88. The foregoing attorneys' fees and costs were not agreed to until after the substantive terms
5 of the Settlement had been negotiated and agreed to in principle.

6 69. The attorneys and paralegals who worked for Co-Lead Class Counsel on this matter have
7 provided a summary of their lodestar and expenses from inception of the case to the present in the
8 Sternberg Decl. and the Mansfield Decl. A true and correct summary of the lodestar and expenses are
9 attached thereto. In order to build in enough time to prepare this filing, we agreed to use July 16, 2023 as
10 the cut-off date for the hours expended in the action. As reflected in the Sternberg Decl. and the Mansfield
11 Decl., Co-Lead Class Counsel anticipates we will need to expend conservatively an additional 70 hours
12 on the case before and after the Final Approval Hearing in order to oversee the programmatic computer
13 review contemplated by this settlement, complete the final approval papers and review and respond to
14 any objections that may be filed in response thereto (objections are due August 1; responses are due
15 August 22), review materials provided by the Settlement Administrator (the Settlement Administrator's
16 final report is due August 11), respond to Settlement Class Member inquiries, prepare any additional
17 briefing requested by the Court, prepare for the Final Approval Hearing, and oversee dissemination of
18 the Supplemental Notice to those Settlement Class Members determined to be eligible to receive it. I
19 believe the overall hours expended by counsel and staff were reasonable based on the nature and
20 complexity of this case, the information produced and obtained by Co-Lead Counsel that needed to be
21 reviewed, the legal and factual issues that needed to be addressed, and the protracted nature of the parties'
22 negotiations over this comprehensive settlement. In addition, based on my experience and the experience
23 of my co-counsel, the hourly rates used by counsel to make this lodestar calculation have been approved
24 by courts both in this state and nationwide and/or are comparable to the prevailing rates in their respective
25 legal communities for providing comparable professional legal services, rendered by counsel in similar
26 cases.

27 70. I believe under California law an upward adjustment of the lodestar amount using a
28 multiplier would be warranted. However, the requested attorneys' fee amount is considerably less than
Co-Lead Class Counsel's actual incurred lodestar and reflects a *negative* multiplier.

1 71. Co-Lead Class Counsel undertook this action on an entirely contingent fee basis, assuming
2 a substantial risk when they devoted a significant amount of time and incurred substantial expenses in
3 prosecuting this action without any assurance of being compensated for their efforts. The risk of no
4 recovery in complex class action cases of this type is real. There are many class actions in which counsel
5 expend hundreds of hours and incur substantial expenses, and yet receive no remuneration despite their
6 diligence and expertise. Yet despite these risks, Co-Lead Class Counsel take on cases such as this on a
7 contingency basis so that clients can obtain qualified representation and obtain results such as those
8 achieved here. Indeed, here, the contingent nature of this representation was extremely important to
9 obtain qualified representation, since Plaintiff did not have the funds to litigate this type of case in terms
10 of up-front expenses, let alone pay for the hourly rates of counsel who litigated this action for over three
11 years.

12 72. We also collectively incurred \$14,630.88 in litigation-related expenses, including, among
13 other things, court filing fees and e-service fees, Court reporter and transcription fees, mediator costs for
14 the two separate all day mediations, telephonic conferences, and research materials. These expenses were
15 critical to Co-Lead Class Counsel’s success in achieving the Settlement and were reasonable and
16 appropriately incurred.

17 73. Finally, the public interest at stake in this action was significant. Recent studies
18 demonstrate that even if people living with HIV, or at risk of contracting HIV, do not know and cannot
19 demonstrate who may have been made aware of their health status, acts such as the conduct alleged in
20 the operative First Amended Complaint increase their stress and anxiety due to the very real risks of the
21 loss of housing, relationships, and employment.

22 74. A national survey conducted in 2012 by *The Washington Post*/Kaiser Family Foundation
23 Survey Project found that fewer than half of respondents indicated that they would feel “very
24 comfortable” working with someone who has HIV or AIDS. (*The Washington Post* and Kaiser Family
25 Foundation, *2012 Survey of Americans on HIV/AIDS Summary and Chartpack* (July 2012) at 16,
26 <https://www.kff.org/wp-content/uploads/2013/01/8334-f.pdf>.) Only a third of respondents indicated that
27 they would feel “very comfortable” having a roommate who is HIV-positive, and fewer than a quarter
28 would feel “very comfortable” having food prepared by someone who is HIV-positive. (*Ibid.*)

 75. A 2016 meta-analysis published in the journal *AIDS and Behavior* concluded anxiety

1 related to the disclosure of one’s HIV status is “highly prevalent.” (Michael Evangeli and Abigail L.
2 Wroe, *HIV Disclosure Anxiety: A Systematic Review and Theoretical Synthesis*, AIDS Behavior (2017)
3 at 21:4, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5216111/pdf/10461_2016_Article_1453.pdf.)
4 The meta-analysis reviewed 119 studies, which the authors concluded “demonstrated that perceived
5 interpersonal risks are associated with HIV disclosure and outlined evidence of associations with anxiety,
6 fear and worry.” (*Id.* at 1; see also *Activities Combating HIV Stigma and Discrimination*, HIV.gov,
7 [https://www.hiv.gov/federal-response/federal-activities-agencies/activities-combating-hiv-stigma-and-](https://www.hiv.gov/federal-response/federal-activities-agencies/activities-combating-hiv-stigma-and-discrimination)
8 [discrimination](https://www.hiv.gov/federal-response/federal-activities-agencies/activities-combating-hiv-stigma-and-discrimination) (last visited July 18, 2023) [“HIV stigma and discrimination can pose complex barriers to
9 prevention, testing, treatment, and support for people living with or at risk for HIV. Some examples of
10 stigma include being shunned by family, peers, and the wider community; receiving poor treatment in
11 health care and education settings; and experiencing judgmental attitudes, insults, or harassment. Some
12 individuals with HIV have been denied or lost employment, housing, and other services; prevented from
13 receiving health care; denied access to educational and training programs; and have been victims of
14 violence and hate crimes. HIV-related stigma and discrimination prevents individuals from learning their
15 HIV status, disclosing their status even to family members and sexual partners, and/or accessing medical
16 care and treatment, weakening their ability to protect themselves from getting or transmitting HIV, and
17 to stay healthy.”].)

17 76. As a result, even in 2023, despite key advancements in the prevention and treatment of
18 HIV and AIDS, disclosure of one’s HIV status is still widely perceived as socially dangerous. For people
19 living with HIV or at risk of HIV, their personal health medical information is considered to be
20 sacrosanct. Therefore, I believe any person who lives with HIV or is at risk of contracting HIV should
21 have full control over when and with whom this information is shared.

22 **XI. INCENTIVE AWARD FOR PLAINTIFF JOHN DOE**

23 77. I also believe that a Class Representative service award to Plaintiff in the amount of
24 \$10,000 is reasonable, as it reflects the time Plaintiff put into prosecuting the case, which he estimates at
25 approximately 75 hours, and the risks to his privacy, including his HIV status. (Declaration of John Doe,
26 ¶¶ 8, 12–13, attached as Exhibit 2 to the Declaration of Daniel L. Sternberg in Support of Plaintiff’s
27 Unopposed Motion for Preliminary Approval of Settlement; Certification of Settlement Class; and
28 Qualified Protective Order, Feb. 7, 2023.)

1 78. Plaintiff John Doe expended this time fulfilling his obligations as the representative of the
2 Settlement Class in terms of responding to requests for information, helping to investigate, and bringing
3 numerous facts and issues to my attention that were relevant to the claims at issue in this action, as well
4 as consulting with me regarding the terms of the Settlement. The requested award for John Doe was not
5 conditioned on whether he supported the Settlement and was negotiated after all material Settlement
6 terms benefitting the Settlement Class Members had been agreed to in principle.

7 **XII. SETTLEMENT ADMINISTRATION COSTS**

8 79. The court-appointed Settlement Administrator, JND Legal Administration, anticipates
9 that its settlement administration costs will be in the range of \$25,000, which is less than the Settlement
10 Administration Cap of \$40,000. (Settlement Agreement, § 1.1, definition BB; see also Declaration of
11 Jennifer Keough on Behalf of JND Legal Administration, attached as Exhibit G to the Settlement
12 Agreement.) CDPH will pay the cost of settlement administration up to the Settlement Administration
13 Cap.

14 80. As of the date of this Declaration, zero Settlement Class Members have opted out of the
15 Settlement and none have objected to the Settlement. Pursuant to Section 6.4.2 of the Settlement
16 Agreement, JND will provide an updated report on dissemination of the Class Notice, opt-out requests,
17 and any objections by August 11, 2023.

18 81. Because the deadline for this filing falls before the August 1, 2023 opt-out deadline, opt-
19 out requests may be submitted after this filing. If any Settlement Class Members submit opt-out requests
20 after this date, we will submit an amended [Proposed] Final Approval Order with a list of anonymized
21 opt-outs attached as an exhibit thereto.

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

24 Executed this 20th day of July 2023 in Los Angeles, California.



25 _____
26 Jerry Flanagan
27 Consumer Watchdog
28

EXHIBIT 1

1 Class Members who could be identified through reasonable effort have been mailed a copy of the
2 Notice of Settlement.

3 **SETTLEMENT WEBSITE**

4 6. On May 26, 2023, JND established a Settlement Website
5 (www.ThriveTribeSettlement.com), which hosts copies of important case documents, including the
6 Settlement Agreement, Notice of Settlement (in English and Spanish pursuant to the Order), answers
7 to “Frequently Asked Questions,” the mailing address and telephone number for the Settlement
8 Administrator, contact information for Co-Lead Class Counsel, and relevant Court-imposed deadlines
9 including the date of the Final Approval Hearing, among other information. Additionally, the mailed
10 Notice of Settlement referred Settlement Class Members to the Settlement Website created by JND for
11 purposes of obtaining detailed information relating to the terms of the Settlement. The Settlement
12 Website complied with the requirements of the Order.

13 7. As of the date of this Supplemental Declaration, the Settlement Website has tracked
14 169 unique users with over 933 page views. JND will continue to update and maintain the Settlement
15 Website throughout the administration process.

16 **TOLL-FREE INFORMATION LINE**

17 8. On May 26, 2023, JND established a case-specific toll-free number (1-877-381-0385)
18 for Settlement Class Members to call to obtain information regarding the Settlement. Callers have the
19 option to listen to the Interactive Voice Response (“IVR”) system, or to speak with a live agent. The
20 toll-free number is accessible 24 hours a day, seven days a week. Additionally, the Notice of
21 Settlement provided the toll-free number to allow Settlement Class Members to obtain detailed
22 information relating to the terms of the Settlement and directed Settlement Class Members to the
23 Settlement Website. The toll-free number complied with the requirements of the Order.

24 9. As of the date of this Supplemental Declaration, the toll-free number has received 19
25 incoming calls. JND will continue to maintain the toll-free number throughout the settlement
26 administration process.

27
28

1 **REQUESTS FOR EXCLUSION**

2 10. The Notice of Settlement informed recipients that any Class Member who wished to
3 exclude themselves from the proposed Settlement (“opt-out”) must do so by mailing an exclusion
4 letter to the Settlement Administrator, postmarked on or before August 1, 2023. For any Settlement
5 Class Member whose Notice of Settlement was re-mailed, a slip sheet advising the recipient of their
6 revised exclusion deadline was added into the Notice of Settlement package to state the updated
7 postmarked deadline as no later than 45 calendar days after the date the Notice of Settlement was re-
8 mailed. The latest in time deadline for a Settlement Class Member to exclude themselves is August
9 28, 2023.

10 11. As of the date of this Supplemental Declaration, JND has not received, and is not aware
11 of, any requests for exclusion.

12 **OBJECTIONS**

13 12. The Notice of Settlement informed recipients that any Class Member who wished to
14 object to the proposed Settlement could do so by filing a written objection with the Court, postmarked
15 on or before August 1, 2023. For any Settlement Class Member whose Notice of Settlement was re-
16 mailed, a slip sheet advising the recipient of their revised objection deadline was added into the
17 Notice of Settlement package to state the updated postmarked deadline as no later than 45 calendar
18 days after the date the Notice of Settlement was re-mailed. The latest in time deadline for a
19 Settlement Class Member to object to the Settlement is August 28, 2023.

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1 13. As of the date of this Supplemental Declaration, JND has not received, and is not
2 aware of, any objections.

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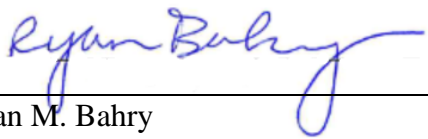
4 I declare under penalty of perjury under the laws of the State of California that the foregoing
5 is true and correct.

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7 Executed July 20, 2023 in Seattle, Washington.

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Ryan M. Bahry

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EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

If you participated in certain health programs sponsored by the California Department of Public Health before June 2019, your rights may be affected by a class action lawsuit.

The Superior Court of the State of California for Los Angeles County authorized this Notice.

This is not a solicitation from a lawyer.

- A participant (referred to as “Plaintiff”) in two health programs sponsored by the California Department of Public Health (“CDPH”) has sued CDPH and its Director Dr. Tomás J. Aragón, Thrive Tribe Foundation (“Thrive Tribe”), Evolve Healthcare, Gary “Julian” Goldstein, and Premier Pharmacy (collectively, “Defendants”). Plaintiff alleges that the Defendants disclosed or received your health and other confidential information without your authorization or consent, or failed to protect your information. Defendants dispute that they have done anything wrong and believe that they have complied with all applicable laws. The Court has not decided which side is right.
- A settlement has been reached in this lawsuit. The Settlement will require certain Defendants to change their practices and provide you the option of deleting any information Defendants may have about you from their computer systems as explained in this Notice. Under the terms of the Settlement, **you will also receive an estimated Settlement Payment of \$1,750**. You do not need to file a claim to receive the Settlement Payment.
- All individuals enrolled in CDPH’s AIDS Drug Assistance Program (“ADAP”) and the Office of AIDS Health Insurance Premium Payment Program (“OA-HIPP”) whose information was disclosed without their authorization or consent and were sent notice from CDPH in or about June 2020 are members of the Settlement Class (and are referred to as Settlement Class Members). If you are a Settlement Class Member, then you are part of this Settlement. Your legal rights are affected whether you act or don’t act. Read this notice carefully.
- Important: If this Notice was **not** sent to you in the mail by the Settlement Administrator (e.g., this Notice was sent to someone else but you are reading it now), but you believe you are a Settlement Class Member, you **MUST** contact the Settlement Administrator to receive any benefits under this Settlement, including the estimated Settlement Payment of \$1,750 and certain non-monetary benefits.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT

**DO
NOTHING**

You will automatically receive the Settlement Payment in the estimated amount of \$1,750 if you are a Settlement Class Member. By doing nothing, you are choosing to stay in the Settlement and you are entitled to the monetary and non-monetary benefits described in this Notice of Settlement, including requiring certain Defendants to delete your information. You will also give up the right to sue Defendants on your own about the legal claims resolved by the Settlement.

You do not have to file a claim to automatically receive the estimated Settlement Payment described above.

Questions? Call 1-877-381-0385 toll free or visit www.ThriveTribeSettlement.com

Si necesita asistencia en español, por favor llame al 1-877-381-0385

Para una notificación en español, www.ThriveTribeSettlement.com

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT

<p>OBJECT</p>	<p>You may write to the Court about what you don't like about the Settlement. In order to object to the Settlement, you must stay in the lawsuit and be bound by the Settlement and its releases. If you want to object, you must do so in writing and in accordance with the procedures in the Settlement Agreement (which are described in this Notice). Your written objection must be postmarked no later than August 1, 2023.</p> <p>For any Settlement Class Member whose Notice of Settlement is re-mailed as provided for in the Settlement Agreement, a written statement of the objection must be postmarked no later than forty-five (45) calendar days after the date the Notice of Settlement is re-mailed to the Settlement Class Member by the Settlement Administrator.</p>
<p>OPT OUT AND EXCLUDE YOURSELF</p>	<p>Get out of this Settlement. You will give up your right to <u>any</u> benefits from the Settlement, including requiring certain Defendants to delete your information. You will <u>not</u> receive the Settlement Payment described above or any other compensation. However, you will keep your rights to bring your own lawsuit. If you want to opt out and exclude yourself, you must do so in writing and in accordance with the procedures in the Settlement Agreement (which are described in this Notice). Your written opt-out notice must be postmarked no later than August 1, 2023.</p> <p>For any Settlement Class Member whose Notice of Settlement is re-mailed as provided for in the Settlement Agreement, the Settlement Class Member's written request to opt out must be postmarked no later than forty-five (45) calendar days after the date the Notice of Settlement is re-mailed by the Settlement Administrator.</p>

NOTICE OF CLASS ACTION SETTLEMENT (“NOTICE”)

WHAT THIS NOTICE CONTAINS

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Questions? Call 1-877-381-0385 toll free or visit www.ThriveTribeSettlement.com

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1. What is this Lawsuit and Settlement About?

You are receiving this Notice of Settlement because you have been identified as being part of a group of people whose protected health information (“PHI”), including other sensitive health-related information, is alleged to have been disclosed or received without your authorization or consent by certain Defendants as part of CDPH’s administration of the ADAP and OA-HIPP programs. Individuals who were enrolled in CDPH’s ADAP and OA-HIPP programs by Thrive Tribe prior to June 2019 might have been affected.

As a result of the disclosure, the Plaintiff filed suit against CDPH and its director Dr. Tomás J. Aragón, Thrive Tribe, Evolve Healthcare, Gary “Julian” Goldstein, and Premier Pharmacy. The lawsuit is *John Doe v. California Department of Public Health et al.*, No. 20STCV32364, and was filed in the Superior Court of California for Los Angeles County (the “Lawsuit”). In the Lawsuit, Plaintiff alleges that ADAP and OA-HIPP participants’ PHI was improperly disclosed.

The Settlement resolves the Lawsuit as to all Defendants. Adherence Project, which was named in the initial Complaint as a defendant, is a non-profit entity that has confirmed under penalty of perjury that it is not in possession of any of the data in question and does not have any assets or insurance. Adherence Project has been dismissed as a defendant and is not part of the Settlement.

The Settlement has been preliminarily approved by the Superior Court of the State of California for Los Angeles County (the “Court”), which is the Court overseeing the Lawsuit. This Notice provides information about the Lawsuit, the Settlement, and your options as a Settlement Class Member. Please read this Notice carefully because it affects your legal rights. The Court authorized sending this Notice of Settlement to you. This is not a solicitation from a lawyer.

2. Why Should I Read This Notice?

You are receiving this Notice of Settlement because CDPH’s records show that your information was part of the alleged unauthorized disclosure. As a result, you are a member of the Settlement Class. Members of the Settlement Class are referred to as Settlement Class Members. Your rights are affected by the Settlement, so you should read this Notice of Settlement carefully.

The Plaintiff in the Lawsuit alleged that Settlement Class Members’ PHI was disclosed by a former employee of Thrive Tribe to Evolve Healthcare, Gary “Julian” Goldstein, and Premier Pharmacy.

Adherence Project, which was named in the initial Complaint as a defendant, is a non-profit entity that has confirmed under penalty of perjury that it is not in possession of any of the data in question and does not have any assets or insurance. Adherence Project has been dismissed as a defendant and is not part of the Settlement.

Following an extensive mediation process overseen by two mediators, Plaintiff and Defendants CDPH, Thrive Tribe, Evolve Healthcare, Gary “Julian” Goldstein, and Premier Pharmacy have reached a settlement that has been preliminarily approved by the Court overseeing the Lawsuit. **All Settlement Class Members who do not opt out shall automatically receive the estimated Settlement Payment of \$1,750. Settlement Class Members do not need to submit a claim form to receive payment.**

Important: If this Notice of Settlement was sent to someone else but you are reading it now and you believe you are a Settlement Class Member, you MUST contact the Settlement Administrator to determine if you are entitled to receive any benefits under this Settlement.

Questions? Call 1-877-381-0385 toll free or visit www.ThriveTribeSettlement.com

Si necesita asistencia en español, por favor llame al 1-877-381-0385

Para una notificación en español, www.ThriveTribeSettlement.com

The Court will hold a hearing to consider whether the Settlement should be finally approved, as well as whether to approve requested Attorneys' Fees and Costs, and a Class Representative Payment to Plaintiff among other things. The Court will hold this Final Approval Hearing on **August 25, 2023 at 10:00 a.m.**, at the Superior Court of California for Los Angeles County, Spring Street Courthouse, Department 7, 312 North Spring Street, Los Angeles, California, 90012. Additional information about this case, the Settlement, or any changes to the date and time of the Final Approval Hearing can be found at www.ThriveTribeSettlement.com.

3. Why is this Lawsuit a Class Action?

In a class action, one or more people called representative plaintiffs or class representatives sue on behalf of all people who have similar claims. Together, all of these people are called a class and the individuals are called class members. One court resolves the issues for all class members, except for those who exclude themselves (opt out) from the class. Here, in this Settlement, the Plaintiff is the Class Representative, and this Settlement resolves the claims of all Settlement Class Members who do not opt out of the Settlement against the Defendants. Details about the Settlement, including the Settlement benefits as well as what Settlement Class Members are giving up in this Settlement, are set forth in this Notice of Settlement and in the Settlement Agreement, a copy of which is available at www.ThriveTribeSettlement.com.

The Court did not issue a ruling in favor of the Plaintiff or Defendants. Rather, both sides, with the assistance of two mediators, agreed to a settlement. The Settlement is not an admission that Defendants did something wrong, but rather is a compromise to end the lawsuit. By agreeing to settle, both sides avoid the cost and risk of a trial, and allow Settlement Class Members who do not opt out to receive compensation. The Class Representative and his attorneys believe the Settlement is fair, reasonable, and adequate and, thus, best for the Settlement Class.

4. How Do I Know if I am Included in the Settlement?

You are included in the Settlement if your information was part of the ADAP or OA-HIPP disclosure. Information about the disclosure is set forth above in Question 1.

5. What Are the Terms of the Settlement?

Under the terms of the Settlement, a copy of which is available at www.ThriveTribeSettlement.com, Defendants have agreed to pay the total cash amount of \$1,600,000 (the "Settlement Fund") to settle all claims arising out of or relating to the alleged disclosure of PHI (and other sensitive health-related information), and/or the facts and allegations in the Amended Complaint filed in the Action. The combined value of the Settlement Fund and non-monetary relief summarized below is estimated to be \$3,900,000. None of this money will be returned to Defendants. For a detailed description of the claims that Settlement Class Members are releasing, please see Question 6.

The Settlement Fund will be used to pay: (a) the Settlement Payments to all Settlement Class Members; (b) all settlement administration fees and costs that exceed a Settlement Administration Cap of \$40,000 as approved by the Court; (c) Plaintiff's counsel's Attorneys' Fees and Costs approved by the Court; and (d) any Class Representative Payment approved by the Court. The "Net Settlement Fund" is the amount left in the Settlement Fund after the Court-approved deductions for settlement administrator fees and costs that exceed the Settlement Administration Cap, Attorneys' Fees and Costs, and Class Representative Payment.

Questions? Call 1-877-381-0385 toll free or visit www.ThriveTribeSettlement.com

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A. Settlement Payment: All Settlement Class Members who do not opt out will automatically receive an estimated payment of \$1,750 without having to submit a claim form. In other words, you do not need to do anything to automatically receive this amount. The final amount of the Settlement Payment that Settlement Class Members will receive depends on the number of Settlement Class Members that opt-out of the Settlement, the number of undeliverable Notices of Settlement, the amount of Attorneys' Fees and Costs approved by the Court and the amount of the Class Representative Payment approved by the Court, as well as whether there are additional administration costs that exceed the Settlement Administration Cap as approved by the Court. Because these payments and the number of Settlement Class Members who opt-out and the number of undeliverable Notices will not be known until the Settlement is complete, the final amount of the Settlement Payment may be lower or higher than the estimated payment. The Settlement Payment will be mailed in the form of a check or checks. You will not receive a Settlement Payment if you opt-out of the Settlement Class or if your Notice of Settlement is returned as undeliverable.

B. Remaining Funds/Uncashed Checks. If there is money remaining in the Net Settlement Fund after deducting the Settlement Payments for all Settlement Class Members, Attorneys' Fees and Costs, the Class Representative Payment, and settlement administration costs in excess of the Settlement Administration Cap, and the passing of the deadline for negotiating all Settlement Payment checks, then the remaining money shall be distributed to a *cy pres* entity, AIDS Project Los Angeles also known as APLA Health.

In addition to the Settlement Payment, Thrive Tribe agrees to take the following actions:

A. Thrive Tribe shall destroy any computer hard drives and other storage devices of any kind that may contain any confidential information relating to Settlement Class Members. The data that must be destroyed includes any private, personal, and medical information (excluding name, address, or other contact information) of any individuals who Thrive Tribe enrolled in the ADAP and OA-HIPP programs prior to June 2019.

B. Thrive Tribe shall permanently delete any confidential or other information relating to Settlement Class Members stored in the cloud or on servers.

C. Thrive Tribe shall destroy any hard copies of any information that contain any confidential or other identifying information for all Settlement Class Members.

D. A representative of Thrive Tribe further agrees to provide an affidavit under penalty of perjury that Thrive Tribe complied with these requirements. CDPH shall have the right, at its sole discretion, to decide whether to audit the veracity of the affidavit by completing a site inspection of all computer systems, storage devices, and/or cloud storage and/or servers within thirty (30) days of receiving the affidavit.

Premier Pharmacy agrees to take the following actions:

A. Based on a reasonable search and investigation of its data environment, Premier represents that to the extent Premier's environment contains a Settlement Class Member's PHI and/or other sensitive health-related information, such information can be electronically stored only (1) on Premier's servers (and those servers can be accessed and searched, in full, by the DocuTrak system), (2) within Premier's email system, or (3) on an individual user's computer (and those individual computers can be searched, in full, on the OneDrive system). Premier further represents that any such information stored on its servers can, and already has been searched by CDPH using Premier's DocuTrak system. To the extent any such information is stored within Premier's email system or OneDrive system, Premier represents that such information can be searched using the eDiscovery tool found within the Microsoft Purview Compliance Portal. Premier will allow and assist CDPH's usage of Premier's Purview Compliance Portal to detect any readily evident Settlement Class Member's PHI and/or other sensitive

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health-related information. CDPH's effort is limited to use of the Microsoft Purview Compliance Portal and only to the extent reasonable under the circumstance to detect undeleted information.

B. Have the Settlement Administrator provide any Settlement Class Member whom CDPH identifies (pursuant to the preceding paragraph) as possibly having been entered (1) in any Premier server (as identified by the DocuTrak system), email system, or an individual user's computer (as identified by the OneDrive system) for the first time after April 1, 2019 (in addition to the 125 Settlement Class Members whom CDPH previously identified), and (2) who do not opt out of the Settlement the opportunity to render inactive and subsequently delete his, her or their name and any PHI and/or other sensitive health-related information. CDPH and Premier will work in good faith to complete the review of Premier's email system and OneDrive system in a timely manner.

Premier Pharmacy is required to retain certain data pursuant to state law, federal law, and provider contracts. If state law, federal law, or a provider contract prohibits Premier from immediately deleting the Class Members' data, then Premier will (1) render that Class Members' data inactive in a manner agreed to by Premier, Co-Lead Class Counsel, and CDPH (or as directed by the Court if agreement cannot be reached), and (2) not use, sell, convey or transfer that data in any way except as required by state law, federal law, or provider contract. Premier Pharmacy will permanently delete all data pertaining to Settlement Class Members as soon as it may do so.

C. A representative of Premier further agrees to provide Co-Lead Class Counsel an affidavit under penalty of perjury that these obligations have been complied with within 30 calendar days of the Effective Date. If any data must be rendered inactive and retained as noted above, Premier will provide an additional affidavit under penalty of perjury within 30 calendar days after permanently deleting any previously inactive and retained data. CDPH shall have the right, at its sole discretion, to decide whether to audit the veracity of either affidavit by completing a further inspection of Premier's servers, OneDrive system, and/or email system within thirty (30) calendar days of receiving the affidavit(s).

The Settlement Administrator will mail you a form that you must complete and return to inform Premier of your decision about your data.

Evolve Healthcare and Gary "Julian" Goldstein agree to take the following actions:

A. Participate in a review of the hard drive of a laptop computer, which Evolve Healthcare and Gary "Julian" Goldstein represent is the only potential location of stored files in their possession, custody or control, to be conducted by CDPH Information Technology Services Division (ITSD) personnel who will forensically preview and perform a keyword search of Settlement Class Member names for any readily evident Settlement Class Member's PHI and/or other sensitive health-related information. CDPH ITSD will perform this function using Opentext Encase Digital Forensic Software while utilizing Tableau hardware write blockers to image the hard drive in its original state and determine if that laptop contains any readily evident Settlement Class Member's PHI and/or other sensitive health-related information. CDPH, Evolve Healthcare, and Gary "Julian" Goldstein will work in good faith to complete the review of Evolve Healthcare and Gary "Julian" Goldstein's laptop computer in a timely manner. CDPH ITSD may need, and is entitled to, up to five business days' possession of the hard drive. Any image or copy of the hard drive will be kept strictly confidential, used for the sole purpose of the objective set forth in this section, and either returned to Goldstein or destroyed by CDPH once the objective is completed.

B. Have the Settlement Administrator provide any Settlement Class Member whom CDPH identifies (pursuant to the preceding paragraph) as having possibly been (1) entered on that laptop computer for the first time on or after April 1, 2019, and (2) who do not opt out of the Settlement, the opportunity to remove his, her or their name and/or any PHI and/or other sensitive health-related information from the laptop computer.

Questions? Call 1-877-381-0385 toll free or visit www.ThriveTribeSettlement.com

Si necesita asistencia en español, por favor llame al 1-877-381-0385
Para una notificación en español, www.ThriveTribeSettlement.com

C. Evolve Healthcare and Gary “Julian” Goldstein further agree to provide Co-Lead Class Counsel an affidavit under penalty of perjury that these obligations have been complied with within 30 calendar days of the Effective Date. CDPH shall have the right, at its sole discretion, to decide whether to audit the veracity of the affidavit by completing a further inspection of the laptop within thirty (30) calendar days of receiving the affidavit.

The Settlement Administrator will mail you a form that you must complete and return to inform Evolve Healthcare and Gary “Julian” Goldstein of your decision about your data.

6. What am I Giving up as Part of This Settlement?

In order to obtain your Settlement benefits you will give up the right to sue the Defendants for any claims related to the unauthorized disclosure described in response to Question 1.

The full release in Section 7.1 of the Settlement Agreement provides:

In consideration of the benefits provided to Settlement Class Members as described in the Settlement Agreement, upon the Effective Date, Plaintiff and each Settlement Class Member who does not opt out of the Settlement, on their own behalf and on behalf of their respective predecessors, successors, assigns, assignors, representatives, attorneys, agents, trustees, insurers, heirs, estates, beneficiaries, executors, administrators, and any natural, legal, or juridical person or entity to the extent he, she, they or it is or will be entitled to assert any claim on behalf of any Settlement Class Member (collectively, the “Releasers”), shall automatically be deemed to have, and by operation of the Final Approval Order shall have, completely, fully, finally, irrevocably, and forever released, relinquished, and discharged the Released Parties, and each of them, of and from any and all liabilities, rights, claims, actions, causes of action, demands, damages, penalties, costs, attorneys’ fees, losses, and remedies, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, that are based on the facts alleged in the Amended Complaint (collectively, the “Released Claims”).

7. How Do I Get a Payment?

You will *automatically* receive an estimated Settlement Payment in the amount of \$1,750 if you are a Settlement Class Member. You do not need to file a claim. The Settlement Payment will be mailed in the form of a check or checks to each Settlement Class Member who does not opt-out of the Settlement Class and whose Notice of Settlement is not returned as undeliverable.

The actual Settlement Payment that Settlement Class Members will receive depends on the number of Settlement Class Members that opt-out of the Settlement, the number of undeliverable Notices of Settlement, the amount of Attorneys’ Fees and Costs approved by the Court and the amount of the Class Representative Payment approved by the Court, as well as whether there are additional administration costs that exceed the amount of the Settlement Administration Cap as approved by the Court. Because these payments and the number of Settlement Class Members who opt-out and the number of undeliverable Notices will not be known until the Settlement is complete, the final amount of the Settlement Payment may be lower or higher than the estimated payment.

Important - If this Notice of Settlement was not sent to you in the mail (e.g., this Notice was sent to someone else but you are reading it now), and you believe you are a Settlement Class Member, you **MUST** contact the Settlement Administrator to receive any benefits under this Settlement, including the estimated Settlement Payment. It is also your responsibility to let the Settlement Administrator know if your mailing address changes at any time before you receive a Settlement Payment or if you want future mail sent to a different mailing address. If you fail to keep your address current, you may not receive your benefits under the Settlement.

Questions? Call 1-877-381-0385 toll free or visit www.ThriveTribeSettlement.com

Si necesita asistencia en español, por favor llame al 1-877-381-0385

Para una notificación en español, www.ThriveTribeSettlement.com

8. When Will I Get Paid?

The Court will hold a Final Approval Hearing on **August 25, 2023 at 10:00 a.m.** to decide whether to finally approve the Settlement. If the Court approves the Settlement, there may be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. Please be patient. Additional information about this case, the timing of any settlement payments, or any changes to the time and date of the Final Approval Hearing will be posted at www.ThriveTribeSettlement.com.

9. How do I Exclude Myself From the Settlement?

If you wish to exclude yourself from the Settlement (also known as “opting out” of the Settlement) so that you do not receive any Settlement benefits and are not bound by any releases in the Settlement, then you must submit a written request to opt out to the Settlement Administrator at the address below stating “I wish to exclude myself from the Settlement Class in *John Doe v. California Department of Public Health et al.*, Los Angeles County Superior Court Case No. 20STCV32364” (or substantially similar clear and unambiguous language).

The written opt out request must contain your unique Class Member ID listed above. Requests to opt out cannot be made on a group or class basis. The written request to opt out must be sent to the Settlement Administrator at the address set out in response to Question 10 and **postmarked** no later than **August 1, 2023**.

For any Settlement Class Member whose Notice of Settlement is re-mailed as provided for in Section 3.7 of the Settlement Agreement and Exhibit H to the Settlement Agreement, the Settlement Class Member’s written request to opt out must be postmarked no later than forty-five (45) calendar days after the date the Notice of Settlement is re-mailed by the Settlement Administrator and must contain the same language set forth above.

The opt out request need only include your unique Class Member ID set forth above in order to maintain your privacy. The list of the persons who submit timely and valid opt outs will be maintained by the Settlement Administrator until the terms of the Settlement have been effectuated, and then retained by CDPH. The Settlement Administrator may share information relating to an opt out request with CDPH solely to determine if they are a Settlement Class Member.

Any person who timely and validly requests to opt out of the Settlement will **not** be entitled to any of the Settlement benefits described above. Moreover, any person who timely and validly requests to opt out of the Settlement will **not** be bound by the Settlement (including its releases) and will **not** have any right to object or appeal.

All Settlement Class Members who do **not** timely and properly opt out of the Settlement Class will in all respects be bound by all terms of the Settlement and the Final Approval Order (including without limitation all releases in the Settlement Agreement and Final Approval Order), and upon the Effective Date, will be entitled to all benefits described in this Notice of Settlement and the Settlement Agreement.

You may withdraw your request for exclusion by submitting a written request to the Settlement Agreement at the address set out below in response to Question 10 stating your desire to revoke your request for exclusion along with your unique Class Member ID set forth above, so long as the request is received no later than three (3) days prior to the Final Approval Hearing (the date, location, and time of which is set forth in response to Question 10).

Please note that if you submit a request to opt out, and then you initiate a subsequent action or proceeding against a Released Party concerning the Incident or matters alleged in the Amended Complaint, CDPH will cooperate with that Released Party to determine whether you submitted a timely and valid opt out request to be excluded from the Settlement Class.

Questions? Call 1-877-381-0385 toll free or visit www.ThriveTribeSettlement.com

Si necesita asistencia en español, por favor llame al 1-877-381-0385

Para una notificación en español, www.ThriveTribeSettlement.com

10. How Do I Object to the Settlement?

If you wish to remain in the Settlement and accept the Settlement's benefits but submit an objection to the Settlement, you must submit a written objection to the Settlement Administrator explaining why you believe that the Settlement should not be approved by the Court as fair, reasonable, and adequate. To be valid, the written objection must comply with the requirements below and be sent to the Settlement Administrator at the address below, postmarked no later than **August 1, 2023**.

For any Settlement Class Member whose Notice of Settlement is re-mailed as provided for in Section 3.7 of the Settlement Agreement and Exhibit H to the Settlement Agreement, a written statement of the objection must be postmarked no later than forty-five (45) calendar days after the date the Notice of Settlement is re-mailed to the Settlement Class Member by the Settlement Administrator.

The written statement must include (i) your unique Class Member ID set forth above AND NOT YOUR NAME OR OTHER PERSONALLY IDENTIFYING INFORMATION; (ii) a detailed statement of all of your objection(s); (iii) the specific reasons for each objection, including any evidence, legal authority, supporting papers, materials, and briefs you contend support the objection and wish to bring to the Court's attention; (iv) the name and contact information for all counsel representing you, if any; (v) a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection; and (vi) a list, by case name, court, and docket number, of all other cases in which you (directly or through counsel) have filed an objection to any proposed class action settlement within the last three (3) years.

The Settlement Administrator shall provide copies of any objections to Co-Lead Class Counsel and counsel for Defendants, with all personally identifying information redacted. The Settlement Administrator shall be authorized in the Preliminary Approval Order to disclose to Co-Lead Class Counsel and Counsel for Defendants the name and potentially other identifying information of any objector to the extent that Co-Lead Class Counsel and Counsel for Defendants mutually agree that this information is necessary to adequately respond to the objection.

The Settlement Administrator or Co-Lead Class Counsel will submit your objection in the public docket *but with all personally identifying information redacted*.

You may object on your own behalf or through an attorney. However, all attorneys who are involved in any way asserting objections on your behalf must file a notice of appearance with the Court at the time when the objection is submitted, or as the Court may otherwise direct.

You may also attend the Final Approval Hearing set for **August 25, 2023, at 10:00 a.m., at the Superior Court of California for Los Angeles County, Spring Street Courthouse, Department 7, 312 North Spring Street, Los Angeles, California, 90012**. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are timely objections, the Court will consider them. Any changes to the date and time of the Final Approval Hearing shall be posted at www.ThriveTribeSettlement.com.

Questions? Call 1-877-381-0385 toll free or visit www.ThriveTribeSettlement.com

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Para una notificación en español, www.ThriveTribeSettlement.com

Your unique Class Member ID is [XXXXXXX].

Contact Information for Settlement Administrator

Thrive Tribe Settlement
c/o JND Legal Administration
P.O. Box 91306
Seattle, WA 98111
Telephone 1-877-381-0385
info@ThriveTribeSettlement.com

11. Can the Settling Defendants Retaliate Against Me For Participating In This Settlement?

No. The Defendants agree that they shall not retaliate against Plaintiff or any Settlement Class Member in any fashion for having participated in this Lawsuit and/or Settlement Agreement.

12. Who Are The Attorneys Representing The Class?

The attorneys who represent the Settlement Class are listed below.

Consumer Watchdog
Jerry Flanagan
jerry@consumerwatchdog.org
Daniel L. Sternberg
danny@consumerwatchdog.org
6330 San Vicente Blvd., Suite 250
Los Angeles, CA 90048

Whatley Kallas LLP
Alan M. Mansfield (of counsel)
amansfield@whatleykallas.com
16870 W. Bernardo Dr., Suite 400
San Diego, CA, 92127

13. How Will The Attorneys For The Settlement Class Be Paid?

You do not have to pay the attorneys who represent the Settlement Class. The Settlement Agreement provides that Co-Lead Class Counsel's Attorneys' Fees and Costs will be paid subject to the approval of the Court. The attorneys' request for fees will not exceed \$750,000 plus reimbursement of reasonable out-of-pocket costs not to exceed \$13,000.

14. How Will The Class Representative Be Paid?

The Plaintiff who initiated this lawsuit as "John Doe" will request the Court approve a Class Representative Payment of up to \$10,000 for his willingness to be the Plaintiff in this action and for his services to the class. The Class Representative Payment is subject to Court approval. Co-Lead Class Counsel contend this payment is justified and reasonable due to Plaintiff's significant assistance to Co-Lead Class Counsel and because Plaintiff's participation in the Lawsuit risked public disclosure of his sensitive health-related information.

15. What Happens if I Do Nothing?

You will receive an estimated Settlement Payment of \$1,750 if you are a Settlement Class Member. By doing nothing, you are choosing to stay in the Settlement and you are entitled to the monetary and non-monetary

Questions? Call 1-877-381-0385 toll free or visit www.ThriveTribeSettlement.com

Si necesita asistencia en español, por favor llame al 1-877-381-0385
Para una notificación en español, www.ThriveTribeSettlement.com

Your unique Class Member ID is [XXXXXXX].

benefits described in this Notice of Settlement. You will also give up the right to sue Defendants on your own about the legal claims resolved by the Settlement as described in this Notice and in the Settlement Agreement.

The Settlement Administrator, the Defendants and Co-Lead Class Counsel cannot provide tax advice as to how to treat this payment. However, 50% of the Settlement Payment shall be deemed payment for all claims of negligence Settlement Class Members may have, and 50% shall be deemed payment for all claims for statutory damages under the laws set forth in the Amended Complaint.

Before you cash your Settlement Payment check you should contact your ADAP Enrollment Worker to confirm that the Settlement Payment will not cause you to exceed the income eligibility limits for the ADAP and OA-HIPP programs. If you elect not to cash your Settlement Payment check that money will go to the *cy pres* entity—AIDS Project Los Angeles—as noted in the response to Question 5.

16. Who May I Contact If I Have Further Questions?

If you need more information or have any questions, you may contact the Settlement Administrator or Co-Lead Class Counsel using the contact information provided in response to Question 10 and Question 12.

This Notice of Settlement only summarizes the Lawsuit, the Settlement and related matters. For more information, you may also download the Settlement Agreement, Amended Complaint and other documents and find additional information about this case and the Settlement at www.ThriveTribeSettlement.com.

PLEASE DO NOT CONTACT THE COURT.

Questions? Call 1-877-381-0385 toll free or visit www.ThriveTribeSettlement.com

Si necesita asistencia en español, por favor llame al 1-877-381-0385

Para una notificación en español, www.ThriveTribeSettlement.com

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PROOF OF SERVICE
State of California, County of Los Angeles

I am employed in the City and County of Los Angeles in the State of California. I am over the age of 18 years and not a party to the within action. My business address is 6330 San Vicente Boulevard, Suite #250, Los Angeles, California 90048, and I am employed in the city and county where this service is occurring.

On July 20, 2023, I caused service of true and correct copies of the document entitled

DECLARATION OF JERRY FLANAGAN IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, ORDER APPROVING PAYMENT OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES, AND PAYMENT TO THE CLASS REPRESENTATIVE


upon the persons named in the attached service list, in the following manner:

SEE ATTACHED LIST

(BY EMAIL OR ELECTRONIC SERVICE) Per the Court's Order dated October 22, 2020 authorizing electronic service, I caused the above-entitled document to be served through Case Anywhere addressed to all parties appearing on the Case Anywhere electronic service list for the above-entitled case.

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

Executed on July 20, 2023, at Los Angeles, California.


Kaitlyn Genile

1
2 **Service List**

3 **WHATLEY KALLAS, LLP**

Attorneys for Plaintiff John Doe

4 Joe R. Whatley, Jr.
5 jwhatley@whatleykallas.com
6 Edith M. Kallas
7 ekallas@whatleykallas.com
8 152 W. 57th Street, 41st Floor
9 New York, NY 10019
10 Tel: (212) 447-7060
11 Fax: (800) 922-4851

12 **WHATLEY KALLAS, LLP**

Attorneys for Plaintiff John Doe

13 Alan M. Mansfield
14 amansfield@whatleykallas.com
15 16870 W. Bernardo Dr., Suite 400
16 San Diego, CA, 92127
17 Tel: (858) 674-6641
18 Fax: (855) 274-1888

19 **WHATLEY KALLAS, LLP**

Attorneys for Plaintiff John Doe

20 Henry C. Quillen
21 hquillen@whatleykallas.com
22 159 Middle Street, Suite 2C
23 Portsmouth, NH 03801
24 Tel.: (603) 294-1591
25 Fax: (800) 922-4851

26 **DEPARTMENT OF JUSTICE**

*Attorneys for Defendants California Department
of Public Health and Sandra Shewry*

27 Jennifer M. Kim
28 Supervising Deputy Attorney General
Jennifer.Kim@doj.ca.gov
Tel. (213) 269-6262
Andrew Z. Edelstein
Deputy Attorney General
Andrew.Edelstein@doj.ca.gov
Tel. (213) 269-6346
300 S. Spring Street, Suite 1702
Los Angeles, CA 90013
Fax: (916) 731-2125

1
2 **DEPARTMENT OF JUSTICE**
3 Grant Lien
4 Deputy Attorney General V
5 Grant.Lien@doj.ca.gov
6 Health, Education, and Welfare Section
7 1300 I Street, Suite 125
8 Sacramento, CA 95814
9 Tel.: (916) 210-7920
10 Fax: (916) 324-5567

*Attorneys for Defendants California Department
of Public Health and Sandra Shewry*

8 **CRUSER, MITCHELL, NOVITZ,
9 SANCHEZ, GASTON & ZIMET, LLP**
10 Kevin R. Lussier
11 KLussier@cmlawfirm.com
12 Katherine S. Bekken
13 kbekken@cmlawfirm.com
14 800 Wilshire Boulevard, 15th Floor
15 Los Angeles, CA 90017
16 Tel.: (213) 689-8500
17 Fax: (213) 689-8501

Attorneys for Defendant Thrive Tribe Foundation

15 **ROB D. CUCHER, ATTORNEY AT LAW**
16 Rob D. Cucher
17 cucherlaw@msn.com
18 315 S. Beverly Drive, Suite 310
19 Beverly Hills, CA 90212
20 Tel.: (310) 795-5356
21 Fax: (310) 837-1996

*Attorneys for Defendants Evolve Healthcare and
Gary Goldstein*

20 **LEWIS BRISBOIS BISGAARD & SMITH**
21 Kamran Salour
22 Kamran.Salour@lewisbrisbois.com
23 650 Town Center Dr. Ste 1400
24 Costa Mesa, California 92626
25 Tel.: (213) 379-2240

*Attorneys for Defendant Good Health, Inc. d/b/a
Premier Pharmacy Services*