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FILED/ENDORSED

NOV 17 2022

By T. Shaddix, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

MARION SCHWARZ, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

TRIWEST HEALTHCARE ALLIANCE
CORP., a Delaware corporation; and DOES 1
through 100, inclusive;

Defendants.

Case No.: 34-2019-00272292-CU-OE-GDS
[Consolidated with Case No. 34-2020-
00283283]

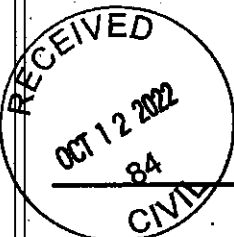
Assigned for All Purposes to:
Honorable Jill H. Talley
Department 25

CLASS ACTION

**~~PROPOSED~~ ORDER OF FINAL
APPROVAL AND JUDGMENT**

Hearing Date: November 4, 2022
Hearing Time: 9:00 a.m.
Hearing Place: Department 25

Complaint Filed: December 31, 2019
Trial Date: None Set



1 The Court, having read the papers filed regarding Plaintiffs Marion Schwarz's and Kurt
2 Leach's ("Plaintiffs," "Plaintiff Schwarz," and "Plaintiff Leach") Motion for Final Approval of
3 Class Action Settlement, and considering the papers submitted in support of the motion, including
4 the Joint Stipulation and Settlement Agreement ("Settlement Agreement," "Settlement," or
5 "Agreement"), hereby FINDS AND ORDERS:

6 Plaintiffs and Defendant TriWest Healthcare Alliance Corp. ("Defendant") entered the
7 Settlement Agreement on or about March 28, 2022, to settle this class action lawsuit.

8 The Court entered an Order dated May 23, 2022, preliminarily approving the settlement of
9 this class action lawsuit ("Preliminary Approval Order"), consistent with the Code of Civil
10 Procedure section 382 and California Rule of Court 3.769, ordering notice to be sent to Class
11 Members, scheduling a Final Approval Hearing on November 4, 2022, and providing Class
12 Members with an opportunity to object to the Settlement or exclude themselves from the Class.

13 The Court held a Final Approval Hearing on November 4, 2022, to determine whether to
14 give final approval to the Settlement of this class action lawsuit.

15 1. Incorporation of Other Documents. This Order of Final Approval and Judgment
16 ("Order and Judgment") incorporates the Settlement Agreement. Unless otherwise provided
17 herein, all capitalized terms in this Order and Judgment shall have the same meaning as set forth
18 in the Settlement Agreement.

19 2. Jurisdiction. Because adequate notice has been disseminated and the Class been
20 given the opportunity to request exclusion, the Court has personal jurisdiction with respect to the
21 claims of all Class Members. The Court also has subject matter jurisdiction over this lawsuit,
22 including jurisdiction to approve the Settlement, and grants final certification of the Class.

23 3. Final Class Certification. The Court finds the Class satisfies all applicable
24 requirements of Code of Civil Procedure section 382, California Rule of Court 3.769, and due
25 process. The Court certifies the Class consisting of any and all persons who have been employed
26 by Defendant as non-exempt employees in California at any time from December 31, 2015, to
27 August 31, 2021" ("Class," "Class Members," and "Class Period"). There are one thousand two
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1 hundred thirty-three (1,233) Class Members who did not submit valid and timely requests to
2 exclude themselves from the Class portion of the Settlement (“Participating Class Members”).¹

3 4. Adequacy of Representation. As Class Counsel, Douglas Han, Shunt Tatavos-
4 Gharajeh, and Jason Rothman of Justice Law Corporation have fully and adequately represented
5 the Class for purposes of entering and implementing the Settlement and have satisfied the
6 requirements of Code of Civil Procedure section 382.

7 5. Notice Packet. The Court finds the Notice of Class Action Settlement (“Class
8 Notice”) and the Election Not to Participate In (“Opt Out” From) Class Action Settlement
9 (“Exclusion Form”) (collectively, known as the “Notice Packet”) and its distribution to Class
10 Members were implemented pursuant to the Settlement and this Court’s Preliminary Approval
11 Order. The Court also finds the Notice Packet:

12 a. constitutes notice reasonably calculated to apprise Class Members of:
13 (i) pendency of the class action lawsuit; (ii) material terms and provisions of the Settlement and
14 their rights; (iii) their right to object to any aspect of the Settlement; (iv) their right to exclude
15 themselves from the Settlement; (v) their right to claim an Individual Settlement Share; (vi) their
16 right to appear at the Final Approval Hearing; and (vii) binding effect of the orders and judgment
17 in the class action lawsuit on all Participating Class Members;

18 b. constitutes notice that fully satisfied the requirements of Code of Civil
19 Procedure section 382, California Rule of Court 3.769, and due process;

20 c. constitutes the best practicable notice to Class Members under the
21 circumstances of the class action lawsuit; and

22 d. constitutes notice reasonable, adequate, and sufficient to Class Members.

23 6. Final Settlement Approval. The terms and provisions of the Settlement Agreement
24 have been entered in good faith and are the product of arm’s-length negotiations by experienced
25 counsel who have done a meaningful investigation of the claims. The Settlement Agreement and
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27 ¹ Phoenix mailed Notice Packets to one thousand two hundred thirty-seven (1,237) Class
28 Members and received four (4) requests for exclusion. Thus, there are one thousand two
hundred thirty-three (1,233) Participating Class Members.

1 all its terms and provisions are fully and finally approved as fair, reasonable, adequate, and in the
2 best interests of the Parties. The Parties are hereby directed to implement the Settlement
3 Agreement according to its terms and provisions.

4 7. Binding Effect. The terms and provisions of the Settlement and this Order and
5 Judgment are binding on Plaintiffs, Participating Class Members, and Eligible Aggrieved
6 Employees. In addition, those terms shall have res judicata and other preclusive effect in all
7 pending and future claims, lawsuits, or other proceedings maintained by or on behalf of any such
8 persons to the extent those claims, lawsuits, or other proceedings involve matters that were or
9 could have been raised in the class action lawsuit and are encompassed by the Released Class
10 Claims and Released Private Attorneys General Act of 2004 ("PAGA") Claims. The Settlement
11 will have no binding effect upon, and provide no res judicata preclusion to, those Class Members
12 who have submitted timely requests for exclusion.

13 8. Release of Claims. Upon the complete funding of the Gross Settlement Amount
14 and employer's share of payroll taxes, the Court adjudges all Participating Class Members, Eligible
15 Aggrieved Employees, and Plaintiffs shall conclusively be deemed to have jointly and severally
16 released and discharged any and all applicable Released Class Claims, Released PAGA Claims,
17 and claims covered by Plaintiffs' Comprehensive Release against any and all Released Parties, to
18 the extent provided in the Agreement. The Court bars and permanently enjoins all Participating
19 Class Members, Eligible Aggrieved Employees, and Plaintiffs from asserting, instituting, or
20 prosecuting, either directly or indirectly, any released claims against any of the Released Parties,
21 to the extent provided in the Agreement.

22 9. Enforcement of Settlement. Nothing in this Order and Judgment shall preclude any
23 action to enforce the terms and provisions of the Settlement Agreement.

24 10. Class Representative Enhancement Payments. The Court finds the Class
25 Representative Enhancement Payments totaling \$20,000, to be paid by Defendant in the amount
26 of \$10,000 to each Plaintiff out of the Gross Settlement Amount, to be reasonable and appropriate.
27 The Class Representative Enhancement Payments are to be paid pursuant to the terms and
28 provisions set forth in the Agreement.

- 1 a. The rationale for making enhancement payments is class representatives should be
2 compensated for the expense and risk they incurred in conferring a benefit on the
3 Class. Criteria courts consider include: (1) risk to the class representatives in
4 commencing suit; (2) notoriety and personal difficulties; (3) amount of time and
5 effort spent by the class representatives; (4) duration of the litigation; and (5)
6 personal benefit (or lack thereof) enjoyed by class representatives.
- 7 b. The Court reviewed Plaintiffs' declarations outlining their involvement. Given the
8 risks inherent in their services as the class representatives, duration of the case and
9 time involved, and benefits created, the Court approves the payment of the Class
10 Representative Enhancement Payments of \$10,000 to each Plaintiff.

11 11. Attorney Fee Award and Cost Award. The Court finds the Attorney Fee Award of
12 \$1,102,500, to be paid out of the Gross Settlement Amount by Defendant to Class Counsel, to be
13 reasonable and appropriate. The Court further finds the Cost Award as reimbursement for actual
14 litigation costs incurred of \$20,152.34, to be paid by Defendant to Class Counsel out of the Gross
15 Settlement Amount, to be reasonable and appropriate. Such fees and costs are to be paid pursuant
16 to the terms and provisions set forth in the Settlement. Defendant shall not be required to pay for
17 any other attorneys' fees and expenses, costs, or disbursements incurred by Class Counsel or any
18 other counsel representing Plaintiffs or Class Members. Defendant shall also not be required to
19 pay for any other attorneys' fees and expenses, costs, or disbursements incurred by Plaintiffs or
20 Class Members in connection with or related in any manner to this lawsuit, the Settlement, the
21 settlement administration, and/or the Released Class Claims and Released PAGA Claims.

- 22 a. The Court has an independent right and responsibility to review the requested
23 Attorney Fee Award and only award so much as it determines reasonable. (See
24 *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123,
25 127-28.) The Attorney Fee Award requested by Class Counsel of \$1,102,500 is
26 thirty-five percent (35%) of the common fund created for the benefit of the Class
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1 and is supported by use of the percentage-fee method.² (See *Laffitte v. Robert Half*
2 *International, Inc.* (2016) 1 Cal.5th 480, 504.) Considering the exceptional results
3 achieved, financial risk undertaken, novel and difficult nature of this litigation,
4 skills required, percentage fees award in previous and other cases, and contingent
5 fees charged in the marketplace, the Court finds the requested Attorney Fee Award
6 is consistent with the marketplace, is reasonable, and is approved.

- 7 b. The Court reviewed the declaration of Douglas Han regarding the costs expended
8 in prosecuting this case. Under the terms of the Settlement, Class Counsel may seek
9 reimbursement of up to \$25,000 in litigation costs. The Court finds Class Counsel
10 expended \$20,152.34 in litigation costs, and such costs were reasonable. Thus, the
11 Court approves the payment of the Cost Award of \$20,152.34 from the common
12 fund for the reimbursement of Class Counsel's litigation costs.

13 12. Administration Costs. The Court finds Administration Costs of \$12,995, to be paid
14 by Defendant to the Settlement Administrator out of the Gross Settlement Amount, to be
15 reasonable and appropriate. The Administration Costs are to be paid pursuant to terms and
16 provisions set forth in the Settlement Agreement.

- 17 a. The Court reviewed the declaration of Taylor Mitzner from Phoenix Class Action
18 Administration Solutions ("Phoenix"), the approved Settlement Administrator. The
19 Court finds notice was provided to the Class pursuant to the Preliminary Approval
20 Order, constitutes the best practicable notice to the Class, and satisfied due process.
21 Thus, the Court approves the payment of the Administration Costs of \$12,995 for
22 Phoenix's services in administering the Settlement.

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27 ² The Parties agreed to ask for an Attorney Fee Award that is thirty-five percent (35%) of
28 the Gross Settlement Amount instead of thirty-eight percent (38%) of the Gross Settlement
Amount that is reflected in the Settlement Agreement.

1 13. PAGA Payment. The Court finds the PAGA Payment of \$100,000, seventy-five
2 percent (75%) of which (\$75,000) will be distributed to the LWDA out of the Gross Settlement
3 Amount and twenty-five percent (25%) of which (\$25,000) shall be distributed to Eligible
4 Aggrieved Employees, on a pro rata basis, to be reasonable and appropriate. The PAGA Payment
5 is to be paid pursuant to the terms and provisions set forth in the Settlement Agreement.

6 14. Funding of the Settlement. No later than twenty-one (21) calendar days after the
7 Effective Final Settlement Date, Defendant shall deposit the Gross Settlement Amount of
8 \$3,150,000 needed to pay the entire Gross Settlement Amount by wiring the funds to the
9 Settlement Administrator. Defendant shall also at this time provide any tax information that the
10 Settlement Administrator may need to calculate each Participating Class Member's Individual
11 Settlement Share. Within fourteen (14) calendar days after the funding of the Settlement, the
12 Settlement Administrator shall calculate and pay all payments due under the Agreement

13 15. Fairness of the Settlement. As noted in the Preliminary Approval Order, the
14 Settlement is entitled to a presumption of fairness. In their moving papers, Plaintiffs contend the
15 Settlement was the product of arm's-length negotiations following extensive litigation, discovery,
16 and exchange of documentation. The negotiations were facilitated with the aid of Lynn Frank, an
17 experienced and well-respected class-action mediator.

18 a. The fairness of the Settlement is demonstrated by there being no objections to and
19 only four (4) requests for exclusion from the Settlement.

20 b. The fairness of the Settlement is further illustrated by the *average* Individual
21 Settlement Share being approximately \$1,536.38, and the *highest* Individual
22 Settlement Share being about \$4,972.84.

23 16. Uncashed Checks. Participating Class Members must cash or deposit their
24 Individual Settlement Share checks within one hundred eighty (180) calendar days after the checks
25 are mailed to them. Uncashed settlement checks will be canceled and paid to the *cy pres* recipient
26 California Veterans Assistance Foundation.

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1 17. Modification of Settlement Agreement. The Participating Class Members are
2 hereby authorized, upon approval of the Court, to agree to and adopt amendments to or
3 modifications of the Settlement Agreement by an express written instrument signed by counsel for
4 all Parties or their successors-in-interest. Such amendments or modifications shall be consistent
5 with this Order and Judgment and cannot limit the rights of Participating Class Members under
6 the Settlement Agreement.

7 18. Final Accounting and Compliance. The Court sets a final accounting and
8 compliance hearing for July 7, 2023 at 9:00 a.m. in Department 25. Within five (5) court days
9 before this hearing, Plaintiffs shall file a status report regarding compliance. Pursuant to Code of
10 Civil Procedure section 384, the status report shall specify the total amount paid to Participating
11 Class Members and the residual of the unclaimed settlement funds that will be paid to the entity
12 identified as the recipient of such funds in the Settlement Agreement.

13 19. Retention of Jurisdiction. The Court has jurisdiction to enter this Order and
14 Judgment. This Court expressly retains jurisdiction for the administration, interpretation,
15 effectuation, and/or enforcement of the Settlement Agreement and of this Order and Judgment,
16 and for any other necessary purpose, including, without limitation:

- 17 a. enforcing the terms and provisions of the Settlement and resolving any disputes,
18 claims, or causes of action in the class action that, in whole or in part, are related to
19 or arise out of the Settlement or this Order and Judgment;
- 20 b. entering such additional orders as may be necessary or appropriate to protect or
21 effectuate this Order and Judgment approving the Settlement, and permanently
22 enjoining Plaintiffs from initiating or pursuing related proceedings, or to ensure the
23 fair and orderly administration of the Settlement; and
- 24 c. entering any other necessary or appropriate orders to protect and effectuate this
25 Court's retention of continuing jurisdiction.

26 The Motion for Final Approval of Class Action Settlement, Attorney Fee Award, Cost
27 Award, and Class Representative Enhancement Payments is GRANTED. The Settlement
28 Administrator is directed to carry out the terms of the Settlement Agreement forthwith.

1 THE PARTIES ARE HEREBY ORDERED TO COMPLY WITH THE TERMS OF THE
2 SETTLEMENT AGREEMENT. PURSUANT TO CALIFORNIA RULES OF COURT 3.769,
3 THE COURT HEREBY ENTERS FINAL JUDGMENT BASED UPON THE TERMS OF THIS
4 ORDER AND SETTLEMENT AGREEMENT AND, WITHOUT AFFECTING THE FINALITY
5 OF THIS MATTER, RETAINS EXCLUSIVE AND CONTINUING JURISDICTION TO
6 ENFORCE THIS ORDER, THE SETTLEMENT AGREEMENT, AND THE JUDGMENT
7 THEREON.

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9 IT IS SO ORDERED.

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11 DATED: 11/17/22



12 HONORABLE JILL H. TALLEY
13 SUPERIOR COURT JUDGE
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**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Ave., Ste. 101 Pasadena, California 91103.

On November 21, 22, I served the foregoing document described as

ORDER OF FINAL APPROVAL AND JUDGMENT

for the following case: **Schwarz v. TriWest Healthcare Alliance Corp.**
LWDA/Court Case No.: **LWDA Case No.: CM-792749-20**
Court Case No.: 34-2019-00272292-CU-OE-GDS
Sacramento County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

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

Executed on November 21, 2022, at Pasadena, California.



Mariah Anderson