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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF SACRAMENTO**

12 LORRAINE WALTERS, JENNIFER)
13 THORNTON, AMPARITO)
DOMINGUEZ, TAMERIA HARTLEY,)
14 MARIEL JINN GARCIA, MARINA)
MARTINEZ, TWINKLE TUTTLE,)
15 MARIA SALDANA JONES, EUNICE)
LEON, OSVALDO LEON, ELIZABETH)
16 HARBERT, KYLE C. BURKARDT, and)
CATALINA ROSALES, as individuals,)
17 on behalf of themselves and on behalf of)
all persons similarly situated,)

18 Plaintiffs,

19 vs.

20 TOTAL RENAL CARE, INC., DAVITA,)
INC., RENAL TREATMENT)
21 CENTERS-CALIFORNIA, INC., DVA)
RENAL HEALTHCARE, INC., DAVITA)
22 HEALTHCARE PARTNERS, INC.,)
VILLAGEHEALTH DM, LLC, AND)
23 PATIENT PATHWAYS, LLC; and)
DOES 1 through 50, inclusive,)

24 Defendants.)
25)
26)
27)
28)

CASE NO.: **34-2022-00319163-CU-OE-GDS**

**DECLARATION OF MATTHEW J. GUSTIN
IN SUPPORT OF APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Hearing Date: February 7, 2025

Hearing Time: 9:00 a.m.

Reservation ID # A-319163-001

Judge: Hon. Lauri A. Damrell

Dep't.: 22

Date Action Filed: May 2, 2022

Trial Date: None Set

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I, Matthew J. Gustin, declare as follows:

1. I am an attorney in good standing of the bar of the State of California and have been admitted to practice before this Court. I am the owner of The Law Office of Matthew J. Gustin, and counsel for the named Plaintiffs Elizabeth Harbert and Kyle Burkardt (“Plaintiffs”) and the Proposed Settlement Class, including the Aggrieved Employees, in the above-captioned matter. I have personal knowledge of the matters stated herein and if called and sworn as a witness, I would and could competently testify under oath thereto.

2. This Declaration is submitted in support of Plaintiffs' Motion for Preliminary Approval of the Class Action Settlement.

3. I graduated from California State University, Fullerton in 2012 with a degree in Business Administration – Management, with an Emphasis in Legal Studies. I later graduated summa cum laude from Western State University College of Law in 2015, third in my class.

4. While at Western State University College of Law I obtained honors in several classes and had an article published in the 2015 Law Review. While in law school I worked as a Law Clerk for the Law Office of Brett D. Szmanda, my co-counsel in this action, focusing on employment law including wage and hour Class and PAGA litigation.

5. After graduating from law school and being sworn in as an attorney, I continued working for The Law Office of Brett D. Szmanda, which thereafter became Szmanda Law Group, P.C., and is currently Szmanda Law Firm, P.C., as an Associate Attorney, focusing on employment law and wage and hour Class and PAGA litigation. As the only other attorney at the firm, I was intimately involved with all aspects of wage and hour litigation and gained valuable experience initiating and litigating those claims as well as resolving those claims.

6. On September 29, 2017, I was approved as Class-Counsel when Szmanda Law Group, P.C., obtained final approval of *Kunz v Snow Summit, LLC*, Case No CIV-DS-1614574, a wage and hour class and PAGA action filed with the San Bernardino Superior Court on

1 September 6, 2016. Through that settlement, I was able to recover \$1,100,000.00 on behalf of
2 over 3,000 class members.

3 7. On October 19, 2018, I was approved as Class-Counsel when Szmanda Law
4 Group, P.C., obtained final approval of *Rogan vs. Montage Hotels & Resorts, LLC*, Case No: 30-
5 2017-00963331-CU-OE-CXC, another wage and hour class and PAGA action that culminated
6 with a settlement in the amount of \$1,250,000.00 on behalf of a class of 2,089 employees.

7 8. While at Szmanda Law Group, P.C., I was counsel on *Dang v Allegis Group, Inc.,*
8 *et al*, Case No.: 30-2017-00903358-CU-OE-CXC, a PAGA only action seeking civil penalties on
9 behalf of over 100,000 alleged Aggrieved Employees.

10 9. While at Szmanda Law Group, P.C., I was counsel on the *Amazon Flex Wage And*
11 *Hour Cases*, Coordinated Proceeding No. 5078, which is another PAGA only action seeking
12 civil penalties on behalf of over 100,000 alleged Aggrieved Employees. This proceeding is
13 before the Orange County Superior Court, Civil Complex Center.

14 10. At Szmanda Law Group, P.C., I also helped achieve favorable results in several
15 individual actions in which I served as counsel for both plaintiffs and defendants. As the only
16 other attorney with the firm, I was intimately involved with all aspects of the litigation. These
17 include, but are not limited to the following:

18 • Rodriguez v. Lee, Case No.: BC553210 – Los Angeles Superior Court
19 (landlord/tenant action in which I represented the defendant);

20 • Mejia v. ServiceLink NLS, LLC et al., Case No.: 30-2015-00789783 – Orange
21 County Superior Court (wage and hour/wrongful termination in violation of public policy);

22 • Workman v. ServiceLink, Inc., Case No.: 8:16-CV-00754 JLS (ASx) – Central
23 District of California (wage and hour/wrongful termination in violation of public policy);

24 • Starr v. ServiceLink Inc., et al., Case No.: 30-2015-00785276 – Orange County
25 Superior Court (wage and hour/wrongful termination in violation of public policy);

26 • Gonzalez v. ServiceLink, Inc., et al., Case No.: 8:15-cv-01007-CJC-AS – Central
27 District of California (wage and hour/wrongful termination in violation of public policy);

28 • Brown v. LSI Title Company, et al., Consolidated Case Nos.: 30-2014-00721104-
CU-OE-CJC and 30-2015-00777737-CU-WT-CJC – Orange County Superior Court, Civil
Complex Center (wage and hour/wrongful termination in violation of public policy);

1 • Stone v. Loya Casualty Ins. Co., et al., Case No.: 30-2016-00837804-CU-PA-CJC
2 – Orange County Superior Court (personal injury);

3 • Juana Gonzalez v. ServiceLink, Inc., Case No. 30-2015-00785282-CU-WT-CJC,
4 which ServiceLink removed to the United States District Court for the Central District of
5 California, Case No. 8:15-CV-01007-CJC (ASx) (wage and hour/wrongful termination in
6 violation of public policy);

7 11. In 2018, I voluntarily left Szmanda Law Group, P.C., and was hired at Garcia &
8 Artigliere, a prominent litigation firm as an Associate Attorney. At Garcia & Artigliere I headed
9 their small employment and wage and hour department which included representative PAGA
10 litigation. I also played a significant role in their consumer Class Action department. With the
11 assistance of my efforts the firm secured a \$12,000,000.00 class action settlement as well as a
12 \$9,000,000.00 settlement against two major skilled nursing chains for chronic understaffing.
13 While at Garcia Artigliere I was also intimately involved as the handling attorney with a full set
14 of individual Elder Abuse and Wrongful Death cases, many of which were subject to preferential
15 trial setting giving the often infirm health of the elderly Plaintiffs. We settled dozens of these
16 cases which I handled from case inception through resolution, and obtained excellent results on
17 behalf of each those individuals. With the assistance of my efforts the firm obtained approval of
18 a \$38.6 million individual settlement, considered to be the largest Elder Abuse and Dependent
19 Adult Civil Protection Act settlement (EADACPA) in California history.

20 12. In late 2020, I voluntarily left Garcia & Artigliere and started The Law Office of
21 Matthew J. Gustin, where a large part of my practice has been devoted to employment and in
22 particular wage and hour Class and PAGA litigation on both the Plaintiff's side and the Defense,
23 in association with other firms including but not limited to Szmanda Law Group, P.C. As
24 Defense Counsel in wage and hour Class and PAGA litigation I gained valuable insight and
25 experience into the processes of the Defense in wage and hour litigation.

26 13. In the fall of 2024, I joined Lavi & Ebrahimian, LLP as an Associate Attorney,
27 where I work exclusively on wage and hour class and representative PAGA actions. I am in the
28

process of winding down The Law Office of Matthew J. Gustin, including this case, which is one of the final matters I have pending.

14. On July 13, 2021, Plaintiffs Elizabeth Harbert and Kyle C. Burkardt, through my office, along with the office of my co-counsel Brett D. Szmanda of Szmanda Law Firm, P.C., filed a representative PAGA lawsuit entitled *Elizabeth Harbert, et al. v. DaVita Inc., et al.*, Riverside Superior Court Case No. CVRI2103134. (The “*Harbert*” Action). The *Harbert* Action seeks PAGA penalties as a result of minimum wage violations, failure to pay all overtime wages, meal period violations, rest period violations, wage statement violations, failure to pay wages at time of termination or resignation and failure to pay waiting time penalties.

15. During pre-filing discussions, the Parties had executed a tolling agreement which applied to all pertinent claims and which was effective from March 26, 2021 through April 15, 2021. On or around January 11, 2023, the Parties decided to stay the litigation, including tolling any applicable statutes of limitations for class claims, in favor of attending the global mediation, which was originally set for June 14, 2023. This second tolling agreement remained effective through November 27, 2023.

16. On February 22, 2024 Plaintiff Elizabeth Harbert, through my office, along with the office of my co-counsel Brett D. Szmanda of Szmanda Law Firm, P.C., filed a Class Action lawsuit entitled *Elizabeth Harbert v. DaVita Inc., et al.*, Riverside Superior Court Case No. CVRI2400379. (The “*Harbert II*” Action). The *Harbert II* Action alleges causes of actions for minimum wage violations, failure to pay all overtime wages, meal period violations, rest period violations, wage statement violations, waiting time penalties and unfair competition.

17. Upon learning that there were other related Class and representative PAGA actions against the same and similar Defendants pending in California, we worked cooperatively with the additional Plaintiffs’ counsel in scheduling an all-day global mediation, with well-respected wage and hour mediator Steven G. Mheta, Esq. Plaintiffs Harbert and Burkardt participated in the global mediation session along with the related cases on March 19, 2024. A global settlement was reached shortly thereafter.

18. As co-counsel for Plaintiffs and the proposed Settlement Class, including the Aggrieved Employees, I have been personally involved in this entire litigation for over four years. I believe that the proposed Settlement is a great result for the Settlement Class including the Aggrieved Employees.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on January 10, 2025, in Whittier, California.

By: Matthew J. Gustin
Matthew J. Gustin