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12 *Attorneys for Plaintiff and the Putative Class*

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **COUNTY OF MONTEREY**

15
16 V.C. individually, and on behalf of all others
similarly situated,)

Case No.: 20CV001923

17 Plaintiff,)

CLASS ACTION

18 v.)

**PLAINTIFF'S EX PARTE
APPLICATION TO REQUEST (1)
LEAVE TO PROVIDE SUPPLEMENTAL
NOTICE TO THE CLASS, (2) AN
EXTENSION OF THE CLAIMS
DEADLINE AND (3) CONTINUANCE OF
THE FINAL APPROVAL;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF
AND DECLARATION OF JOSHUA B.
SWIGART**

19)
20 Salinas Valley Memorial Healthcare,)

21 Defendant.)

Date: October 11, 2022

Time: 8:30 a.m.

Dept.: 15

1 **TO THIS HONORABLE COURT, ALL PARTIES, AND THEIR RESPECTIVE COUNSEL**
2 **OF RECORD:**

3 PLEASE TAKE NOTICE THAT on October 11, 2022 at 8:30 a.m. in Department 15 of the
4 Superior Court of California, County of Monterey, located at 240 Church St., Salinas, CA 93901,
5 Plaintiff V.C., by and through her attorneys of record, hereby respectfully will and hereby does
6 apply ex parte for an order:

- 7 (1) Providing leave to disseminate supplemental notice of the class action settlement and
8 availability of a settlement fund to make a claim for damages;
9 (2) Extending the claims deadline for 30-days from the revised notice deadline;
10 (3) Continuing the Final Approval hearing currently set for October 28, 2022 for
11 approximately 45-days.

12 This application is made pursuant to Code of Civil Procedure section 1048(a) and California
13 Rules of Court, Rules 3.350 and 3.1200 et seq., the accompanying Memorandum of Points and
14 Authorities, the concurrently filed Declaration of Joshua B. Swigart, all pleadings, papers, and
15 records on file in this action, such matters of which this Court may take judicial notice, and upon
16 such further oral argument and documentary evidence as may be presented at the time of hearing, if
17 any.

18 NOTICE TO ALL PARTIES has been provided as follows: counsel for Plaintiff had a
19 telephone discussion with counsel for Defendant on October 4, 2022 and discussed this instant
20 proposed ex parte application. Written notice was provided via email on October 6, 2022. Counsel
21 for Plaintiff also served copies of this application and supporting papers on counsel for all Parties on
22 October 6, 2022

23
24
25 Date: October 6, 2022

SWIGART LAW GROUP, APC

26 By: s/ Joshua B. Swigart
27 Joshua B. Swigart, Esq.
28 Josh@SwigartLawGroup.com
Attorneys for Plaintiff

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 This Court granted preliminary approval of this class action settlement arising out of a data breach
4 incident involving Defendant in April and June of 2020. Notice was properly administered by the
5 Claims Administrator pursuant to the Preliminary Approval Order. The mailed notice resulted in a
6 total of 22 claims (11 confirmed valid at this time, another 11 in the deficiency addressing process)
7 from a class of 2,384, or approximately 0.05%. There were no objections to the settlement or requests
8 for exclusion. While the settlement provides substantial benefit to the Class, of pocket losses and time
9 spent in mitigation, Class counsel feels it appropriate to bring this to the court’s attention prior to
10 engaging in the final approval hearing. In this regard, Class Counsel request leave to provide a
11 supplemental postcard notice be sent to the class, allowing more time for any class member to make
12 claims and to assure all class members who were damaged as a result of the data breach have the
13 opportunity to make claims for monetary compensation.

14 **II. STATEMENT OF FACTS**

15 Consistent with the Court’s preliminary approval order the class list of 2,384 was sent to the Claims
16 Administrator, CPT who then provided mailed notice. As of the date the claims deadline expired there were a total
17 of 22 claims submitted by class members. Of those 22 claims, 11 were approved by the Administrator as valid,
18 while 11 were deficient. Decl. J. Swigart, ¶ 5. The Claims Administrator is currently in the process of attempting to
19 cure the 11 deficient claims. If none of the deficient claims are cured the class notice, as disseminated, produced a
20 claims rate of 0.05%. While the reaction of the class to the proposed class settlement has been positive (no opt outs
21 and no objections) Class counsel wishes to alert the court to this claims rate prior to the hearing on final approval.
22 Further, class counsel requests the court grant leave for an additional round of notice to be mailed to the class,
23 allowing any class member who is eligible for the settlement monetary benefits, a reminder and additional time to
24 submit claims for monetary compensation. The hearing on final approval is currently set for October 28, 2022.

25 **III. AUTHORITY FOR EX PARTE RELIEF**

26 A request for *ex parte* relief is proper when presented in writing, supported by a declaration making
27 the required factual showing, and accompanied by a declaration based on personal knowledge of notice
28

1 of the application, a memorandum, and a proposed order. (See, Cal. Rules of Court, Rule 3.1200, et
2 seq.) This Application contains all of the elements required by Rule 3.1200, et seq.

3 **A. Notice to All Parties**

4 All counsel have been notified of the present *ex parte* application, in compliance with Cal. Rules
5 of Court, Rule 3.1200, et seq. Specifically, on October 4, 2022, counsel for Plaintiff had a telephone
6 call with counsel for Defendant advising of our intention on filing this *ex parte* application and our
7 anticipated hearing date. Additional notice was then provided once the court confirmed the hearing
8 date and time, along with service of a copy of these papers. (See Swigart Decl., ¶ 2.)

9 **B. Identification of Parties and Attorneys, and Expected Opposition**

10 It is currently unknown at this time whether counsel for defendant will oppose this application.
11 (Swigart Decl., ¶ 3.) Pursuant to California Rule of Court 3.1202 and 3.350(a)(1)(A), all parties and
12 their counsel are listed below:

13 Joshua B. Swigart (SBN 225557) 14 josh@swigartlawgroup.com 15 SWIGART LAW GROUP, APC 16 2221 Camino Del Rio S., Ste. 308 San Diego, CA 92108 Telephone: (866) 219-3343 Facsimile: (866) 219-8344	Attorneys for Plaintiff
17 Gayle M. Blatt (SBN 122048) 18 gmb@cglaw.com 19 CASEY GERRY SCHENK 20 FRANCAVILLA BLATT & PENFIELD, LLP 110 Laurel Street San Diego, CA 92101 P: (619) 238-1811; F: (619) 544-9232	Attorneys for Plaintiff
22 Spencer Persson, Esq. 23 DAVIS WRIGHT TREMAINE, LLP 24 865 S. Figueroa St., Suite 2400 Los Angeles, CA 90017 25 spencerpersson@dwt.com	Attorney for Defendant, Salinas Valley Memorial Healthcare

1 **C. Disclosure of Previous Applications**

2 The parties have not previously requested this relief.

3 **IV. GOOD CAUSE EXISTS FOR THE PRESENT APPLICATION**

4 **A. Additional Notice Will Ensure All Damaged Class Members Will Get A Full**
5 **Opportunity to Participate in the Monetary Settlement Fund**

6 In addition to robust injunctive relief in the form of agreed upon changes in practices directed
7 at improving data security, Defendant made available a settlement fund for any Class Member to
8 submit a claim for compensation for certain losses. The total settlement fund was \$340,000, from
9 which Class Members may request up to \$750 for reimbursement for (a) out-of-pocket expenses
10 reasonably traceable to the Salinas Data Breach, supported by documentation, and (b) time spent
11 remediating the effects of the Data Breach at a rate of \$25 per hour, up to four hours. At the time of
12 the claim deadline 22 Class Members out of the class of 2,384 were received. Of those 22, 11 claims were
13 deficient. If all deficient claims are cured, the claims rate will be approximately 1%. While Class Counsel believes
14 that the direct mailed notice was the best practical, Class Counsel wishes to provide the class with an additional
15 opportunity to claim monetary compensation. This will ensure that the class has received more than required notice,
16 each Class Member, who was in fact, damaged by Defendant's data breach will have more than an opportunity to
17 make a claim for monetary relief. If after the reminder notice is sent only a marginal increase in the claims rate
18 occurs, the Court can be assured that all Class Members who sustained monetary losses as a result of Defendant's
19 data breach will have had more than adequate opportunity to make a claim for damages, and that the class' losses
20 have been well addressed by the settlement.

21 **B. The Cost of Additional Notice Is Minimal**

22 From the \$340,000 settlement fund, Defendant would only be required to pay a small sum for
23 supplemental notice. The Claims Administrator advises that additional notice can be sent to all Class
24 Members for \$5,400.24. This would include:

- 25 a) The sending of a reminder postcard notice to 1,488 class members (in a secure fold over
26 postcard);
- 27 b) The sending of a reminder email to 769 class members;
- 28 c) Skip tracing 2,290 records for cell phone numbers;

- d) Sending a text message notice to an estimated 1,500 class members;
- e) The sending of a second reminder postcard notice one week later (in a secure fold over postcard); and
- f) The sending of a second reminder email one week later.

This additional notice will ensure that all those Class Members who incurred monetary losses as a result of the data breach have a full opportunity to make a claim for monetary compensation.

C. Any Prejudice Based on a Delayed Final Approval Hearing Would Be De minimis

Allowing additional reminder notice sent to the class would cause a continuance of the final approval hearing. But such delay in final approval does not prejudice Defendant as we are still moving forward toward full and final resolution. Additionally, those Class Members having submitted valid claims would still receive their monetary compensation in the near future (after final approval), but the benefit to the larger class as a whole (allowing additional time to make claims) outweighs the inconvenience of slightly delayed payment. The following modifications to the current schedule would be recommended::

Event:	Continued Date:
Additional Notice Sent	10/14/2022
Additional Notice Completed	10/21/2022
Additional Claims Period; Expiration	11/14/2022
Filing of Supplemental Final Approval Motion	11/18/2022
Continued Final Approval Hearing	12/16/2022

V. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this court grant this ex parte application and order:

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1. Additional notice be sent consistent with the proposal included herein;
2. The Claims period will remain open until November 14, 2022;
3. Plaintiff may file a Supplemental Final Approval Brief on or before November 18, 2022;
4. The hearing on Final Approval shall be continued to a date on or after December 16, 2022.

Respectfully submitted,

Date: October 6, 2022

SWIGART LAW GROUP, APC

By: s/ Joshua B. Swigart
Joshua B. Swigart, Esq.
Josh@SwigartLawGroup.com
Attorneys for Plaintiff

Declaration of Joshua B. Swigart

I, Joshua B. Swigart, declare as follows:

1. I am an attorney at law duly licensed to practice in all the courts of the state of California and am one of the attorneys for Plaintiff in this matter. I am familiar with the facts and circumstances in the above-entitled matter as they relate to this declaration and, if called upon, I could and would competently testify thereto.
2. **Notice of Ex Parte Application.** All counsel have been notified of the present ex parte application, in compliance with Cal. Rules of Court, Rule 3.1200, et seq. Specifically, on October 4, 2022 I have a telephone call with counsel for the defendant wherein we discussed these issues and I provided notice that we intended to obtain an ex parte hearing for the week of October 12, 2022. I reconfirmed this date and counsel’s availability via email on October 6, 2022. Once confirmed with the court, I provided counsel for defendant formal notice and served a copy of the supporting papers on counsel more than one day prior to the hearing.
3. **Expected Opposition.** During our telephone call on October 4, 2022, counsel for defendant indicated that he would have to confer with his client about whether to oppose our request and that if his client did not agree with our moving papers, he would file an opposition., At t the time of our call he could not answer definitively if there would be any opposition.
4. **Prior Applications/Continuances.** The parties have not previously sought the same relief as that required in this application.
5. After conferring with the Claims Administrator, CPT, I was informed that at the deadline of the claims period there were a total of 22 valid claims submitted. 11 of those claims were deficient and CPT was attempting to cure those.

According to CPT the additional notice to the class will only cost \$5,400.24. This would include:

- g) The sending of a reminder postcard notice to 1,488 class members (in a secure fold over postcard);
- h) The sending of a reminder email to 769 class members;
- i) Skip tracing 2,290 records for cell phone numbers;

- 1 j) sending a text message notice to an estimated 1,500 class members;
 - 2 k) second reminder postcard notice one week later (in a secure fold over postcard); and
 - 3 l) second reminder email one week later.
- 4 6. The current schedule would only have to be modified slightly to accomplish this additional
- 5 notice.

6 I declare under the penalty of perjury under the laws of the State of California that the foregoing

7 is true and correct to the best of my knowledge.

8 Executed on October 5, 2022, in San Diego, California

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10 Joshua B. Swigart

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2 **PROOF OF SERVICE**

3 I, Joshua B. Swigart, am employed in the County of San Diego, State of California. I am over
4 the age of eighteen and not a party to the within action. My business address is 2221 Camino Del
5 Rio S., Suite 308, San Diego, CA 92108. On **October 6, 2022**, in this case of V.C. v. Salinas Valley
6 Memorial Healthcare, Monterey County Superior Court Case Number 20CV001923 I served the
7 foregoing documents:

- 8
- 9 **1. PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL,**
 - 10 **ATTORNEYS' FEES AND EXPENSES, AND SERVICE AWARD**
 - 11 **2. DECLARATION OF JOSHUA B. SWIGART IN SUPPORT OF MOTION**
 - 12 **3. DECLARATION OF KATIE TRAN IN SUPPORT OF MOTION**
 - 13 **4. PROPOSED ORDER**

14 on the interested party(ies) below, using the following means:

15 Spencer Persson, Esq. *Attorney for Defendant*
16 **DAVIS WRIGHT TREMAINE, LLP** **Salinas Valley Memorial Healthcare**
17 865 S. Figueroa St., Suite 2400
18 Los Angeles, CA 90017
19 spencerpersson@dwt.com

20 Joshua B. Swigart *Attorneys for Plaintiff and the Class*
21 **SWIGART LAW GROUP, APC**
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27 Gayle M. Blatt
28 **CASEY GERRY SCHENK FRANCAVILLA**
110 Laurel St.,
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P: (619) 238-1811
F: (619) 544-9232

<input checked="" type="checkbox"/>	(BY UNITED STATES MAIL) I sealed the envelope(s), with postage thereon fully prepaid, and on the date below, following ordinary business practices, I placed it for collection and mailing in the United States Postal Service, in San Francisco, California.
<input checked="" type="checkbox"/>	(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

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Joshua B. Swigart