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Attorneys for Plaintiffs
Trung Le and Kevin Lam

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

TRUNG LE, individually, KEVIN LAM,
individually, and on behalf of other members
of the general public similarly situated,

Plaintiff,

v.

M4D LLC, and DOES 1 through 25,

Defendants.

CASE NO.: 30-2021-01182977

[Honorable Judge Melissa R. McCormick,
Dept. CX104]

**SUPPLEMENTAL BRIEF IN SUPPORT
OF PLAINTIFF LAM'S MOTION FOR
FINAL APPROVAL OF CLASS ACTION
AND PAGA SETTLEMENT**

Date: June 6, 2024

Time: 2:00 p.m.

Dept.: CX104

FAC Filed: August 11, 2022

Complaint Filed: February 5, 2021

Trial Date: None Set

1 Plaintiff Kevin Lam hereby submits the following additional information to the Court in
2 support of his Motion for Final Approval of Class Action and PAGA Settlement:

3
4 1. Service of Preliminary Approval Order on the LWDA

5 The LWDA was served with the PA Order on 10/24/23 and again on 5/23/24. (See Proof
6 of Service, filed concurrently herewith).

7 2. High, Low, and Average Individual PAGA Payments

8 The estimated average PAGA payment to each Aggrieved Employee is \$130.21. The
9 highest estimated PAGA payment is \$181.32. The lowest estimated PAGA payment is \$6.98.
10 See Supplemental Dancy Decl., ¶ 7, filed with Court on January 31, 2024.

11 3. Garcia & Phan Declaration

12 Plaintiff has submitted declarations of Mr. Juan Garcia and Mr. Robert Phan from Garcia
13 & Phan including the additional items requested by the Court. (See Declarations filed
14 concurrently herewith).

15 4. Claims Administrator Invoice

16 The Settlement Administrator's Invoice is attached to the Supplemental Declaration of
17 Tarus Dancy. See Supplemental Dancy Decl., ¶ 8, Exhibit B, filed with the Court on January 31,
18 2024.

19 5. Proposed Order & Judgment

20 The term "Settlement Class" has been inserted pursuant to the Court's Order. See
21 redlined Proposed Order & Judgment attached hereto as Exhibit No. 1.

22 6. Proposed Order & Judgment

23 The Order and Judgment has been updated to reflect that no disputes were received. See
24 redlined Proposed Order & Judgment attached hereto as Exhibit No. 1.
25
26
27
28

1 7. Proposed Order & Judgment

2 The Order and Judgment has been updated to reflect “Payment” instead of “Payments.”
3 See redlined Proposed Order & Judgment attached hereto as Exhibit No. 1.
4

5 8. Notice of Entry of Judgment

6 The parties believe the notice of entry of judgment can be mailed to class members with
7 settlement checks.

8 9. Final Accounting

9 The Parties do not propose a date for a Final Accounting at this time, due to an issue that
10 has recently arisen, which is discussed below. See paragraph 11.

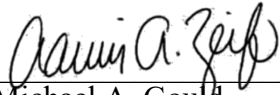
11 10. Service on the LWDA

12 The Court’s February 1, 2024 Order, this supplemental brief, the Declaration of Robert
13 Phan, the Declaration of Juan Garcia, and the Proposed Order & Judgment have been served on
14 the LWDA. (See Proof of Service, filed concurrently herewith).

15 11. Defendant’s Ability to Pay

16 Defendant recently informed Plaintiff that Defendant is unable to pay the judgment and it
17 will need to make monthly payments to satisfy the judgment. The Parties seek guidance from
18 the Court on specifically what will be required to approve the Parties’ settlement with the
19 Defendant making payments to satisfy the judgment.
20

21 Dated: May 23, 2024



Michael A. Gould
Aarin A. Zeif
THE GOULD LAW FIRM
A Professional Law Corporation
Attorneys for Plaintiffs
Trung Le and Kevin Lam

Exhibit No. 1

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

TRUNG LE, individually, KEVIN LAM,
individually, and on behalf of other members
of the general public similarly situated,

Plaintiff,

v.

M4D LLC, and DOES 1 through 25,

Defendants.

) **CASE NO.: 30-2021-01182977**
) [Honorable Judge Melissa R. McCormick,
) Dept. CX104]
)

) **[PROPOSED] ORDER AND JUDGMENT**
) **GRANTING PLAINTIFF LAM'S**
) **MOTION FOR FINAL APPROVAL OF**
) **CLASS ACTION AND PAGA**
) **SETTLEMENT, PLAINTIFF LAM'S**
) **REQUEST FOR ATTORNEYS' FEES**
) **AND COSTS, AND CLASS**
) **REPRESENTATIVE SERVICE**
) **PAYMENT**

) **Date: ~~June 6, 2024~~ February 1, 2024**
) **Time: 2:00 p.m.**
) **Dept: CX104**

) FAC Filed: August 11, 2022
) Complaint Filed: February 5, 2021
) Trial Date: None Set

1 Before the Court is Plaintiff Kevin Lam’s (“Lam” or “Plaintiff”) unopposed Motion for
2 Final Approval of Class Action and PAGA Settlement and for Attorneys’ Fees, Costs, and Class
3 Representative Service Payment (the “Motion”). Plaintiff and Defendant M4D, LLC (“M4D” or
4 “Defendant”) (collectively, the “Parties”) have entered into a Class Action and PAGA
5 Settlement Agreement (the “Agreement” or “Settlement”) and an Addendum to Class Action and
6 PAGA Settlement Agreement (the “Addendum”). The Court, having reviewed and considered
7 the Motion, its accompanying memorandum, the Agreement and Addendum, and the
8 declarations in support thereof (and all exhibits thereto), finds that the Motion should be, and
9 hereby is, GRANTED. The Court finds and concludes as follows: This Order incorporates the
10 Agreement and Addendum. The Court has jurisdiction over the subject matter of this proceeding
11 and over all Parties to this proceeding. In addition, the Court has personal jurisdiction over all
12 parties with respect to the Action and the Agreement and Addendum. The Court hereby finds the
13 Agreement involves the resolution of a bona fide dispute and was entered into in good faith.

14 **CERTIFICATION OF SETTLEMENT CLASS**

15 Plaintiff Kevin Lam previously moved for entry of an order conditionally certifying the
16 following proposed Class for settlement purposes: “all individuals who worked for M4D as
17 nonexempt employees in California at any time between February 5, 2017 and August 28,
18 2022.” ([“Settlement Class”](#)) By Court Order dated October 18, 2023, the Court granted that
19 motion. Class certification is appropriate when the class is ascertainable and there is “a well
20 defined community of interest in the questions of law and fact involved affecting the parties to
21 be represented.” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1806; see Cal. Code Civ.
22 Proc. § 382. Civil Procedure Code § 382’s requirements essentially mirror those of Federal Rule
23 23: numerosity, typicality of the class representatives’ claims, adequacy of representation,
24 predominance of common issues, and superiority. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th
25 429, 435 (“The community of interest requirement involves three factors: (1) predominant
26 common questions of law or fact; (2) class representatives with claims or defenses typical of the
27 class; and (3) class representatives who can adequately represent the class.”) (internal quotations
28 and citations omitted); see also Fed. R. Civ. P. 23(a); *Hanlon v. Chrysler Corp.* (9th Cir. 1998)

1 150 F.3d 1011, 1019, overruled on other grounds by *Wal-Mart Stores, Inc. v. Dukes* (2011) 564
2 U.S. 338.

3 The Court, having considered the Parties' arguments and the evidence submitted in
4 support of those arguments, finds that all requirements of certification for settlement purposes
5 continue to be met for the proposed Settlement Class.

6 The Court therefore confirms its previous conditional certification of the Settlement
7 Class for settlement purposes and confirms its previous Order appointing The Gould Law Firm
8 and Garcia & Pham to serve as Class Counsel.

9 **FINAL APPROVAL OF THE PROPOSED SETTLEMENT**

10 For the reasons stated in greater detail below, the Court grants final approval to the
11 proposed Settlement as fair, reasonable, and adequate. *See* Cal. Rules of Ct. 3.769(a); Fed. R.
12 Civ. P. 23(e)(1)(B)(i). The Court finds that the individual Class Payments provided for by the
13 terms of the Agreement are fair and reasonable. The Court orders the payment of those
14 individual Class Payments to Settlement Class Members in accordance with the terms of the
15 Agreement and Addendum. Based on a review of the papers submitted by Plaintiff, the Court
16 finds that the Settlement: (a) resulted from efforts by Plaintiff and Class Counsel who adequately
17 represented the Class; (b) was negotiated at arm's length with the assistance of an experienced
18 class action mediator; (c) provides relief for the Class that the Court finds to be adequate, taking
19 into account (i) the costs, risks, and delay of trial and appeal; (ii) the proposed method of
20 distributing relief to the Class, including the method of processing payments to Settlement Class
21 Members; and (iii) the terms of the proposed award of attorneys' fees, including timing of
22 payment; and (d) treats Settlement Class Members equitably relative to one another. In making
23 this final approval finding, the Court considered the nature of the claims, the amounts of benefits
24 paid and received in the Settlement, the allocation of settlement payments among Settlement
25 Class Members, the fact that Defendant does not admit any liability and does not characterize
26 this Settlement as an admission of liability, and the fact that the Settlement represents a
27 compromise of the Parties' respective positions rather than the result of a finding of liability at
28

1 trial. The Court further finds that the terms of the Agreement and Addendum have no obvious
2 deficiencies and do not improperly grant preferential treatment to any individual Class Member.

3 **NOTICE AND ADMINISTRATION**

4 The Parties have designated CPT Group, Inc. as the Settlement Administrator. CPT
5 Group has submitted a declaration, which this Court has reviewed, which confirmed that Class
6 Notice was provided to the Settlement Class pursuant to the Preliminary Approval Order of
7 October 18, 2023, and the procedures set forth in the Agreement. The Settlement Administrator
8 shall continue to perform all the duties of the Settlement Administrator set forth in the
9 Agreement. Settlement Administrator CPT Group will calculate Individual Class Payments to
10 Class Members and distribute those awards. The Court finds that the Class Notice provided to
11 the Settlement Class, as described in CPT Group's Declaration, satisfied the requirements of due
12 process and California law and provided the best notice practicable under the circumstances,
13 including individual notice to all Settlement Class Members who could be identified through
14 reasonable effort. The Class Notice was reasonably calculated to apprise Settlement Class
15 Members of the nature of this litigation; the scope of the Settlement Class, the Class claims,
16 issues, or defenses; the terms of the Settlement Agreement; the right of Settlement Class
17 Members to appear, object to the Settlement Agreement, and exclude themselves from the
18 Settlement Class and the process for doing so; of the Final Approval Hearing; and of the binding
19 effect of a class judgment on the Settlement Class.

20 **OBJECTIONS AND EXCLUSIONS**

21 The Court notes that zero Class Members filed objections to the Settlement, zero Class
22 Members requested to opt out of the Settlement, [and there were zero workweek challenges, i.e.](#)
23 [no disputes were received](#). All Settlement Class Members shall be bound by the terms of the
24 Agreement and Addendum upon entry of this Final Approval Order.

25 **PAGA**

26 As part of the Settlement, Plaintiff seeks approval of PAGA Penalties to the
27 California Labor and Workforce Development Agency ("LWDA") and Aggrieved Employees
28 defined as "an individual who worked for M4D as a nonexempt employee in California at any

1 time between February 5, 2020 and August 28, 2022.” Defendant’s records reflect that there
2 are 48 Aggrieved Employees (between the start of the PAGA Period on February 5, 2020 and
3 the date of mediation on June 28, 2022). The Court approves \$25,000.00 of the Gross
4 Settlement Amount to be allocated for PAGA Penalties, with 75% (\$18,750.00) allocated to
5 the LWDA PAGA Payment and 25% (\$6,250.00) allocated to the Individual PAGA
6 Payments. The Court finds the settlement of PAGA Penalties in this Action to be fair,
7 reasonable, to serve public interest, and to be consistent with PAGA’s objectives.

8 **ATTORNEYS’ FEES, COSTS, AND CLASS REPRESENTATIVE SERVICE PAYMENT**

9 The Court has reviewed the declarations regarding Plaintiff’s efforts in this case and
10 hereby determines that the requested Class Representative Service Payments to Class
11 Representative Kevin Lam of \$10,000.00 is appropriate under the circumstances of the case and
12 the time and effort spent by Plaintiff in litigating the case on behalf of the Class. The Court finds
13 and determines that the attorneys’ fees request of \$250,000.00, or one third of the Gross
14 Settlement Amount, is reasonable under both methods used in California courts for determining
15 fee awards in class action cases: the lodestar method and the percentage-of-the recovery method.
16 The percentage requested is within the range of percentage awards approved in California. *See*
17 *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (“Empirical studies show that,
18 regardless whether the percentage method or the lodestar method is used, fee awards in class
19 actions average around one-third of the recovery.” The Court further finds and determines that
20 the litigation costs request of \$10,345.35 is relevant to the litigation and reasonable in amount.
21 Class Counsel has submitted a declaration showing that these costs were necessary to secure the
22 resolution of this litigation. Pursuant to the terms of the Settlement, and the authorities, evidence,
23 and argument submitted by Class Counsel, the Court hereby awards Class Counsel attorneys’
24 fees in the amount of \$250,000.00 and litigation costs in the amount of \$10,345.35 to be paid
25 from the Gross Settlement Amount as final payment for and complete satisfaction of any and all
26 attorneys’ fees and costs incurred by and/or owed to Class Counsel. The Court finds and
27 determines that the payment to CPT Group in the amount of \$9,000.00 is fair and reasonable for
28 settlement administration in a class of this size. The Court hereby awards CPT Group the amount

1 of \$9,000.00 as an Administrative Expenses Payment for its work on the settlement
2 administration in this case. Defendant or any Released Parties, as defined in the Agreement, shall
3 not have any further liability in this Action for costs, expenses, interest, attorneys' fees, or for
4 any other charge, expense, or liability, except as provided for by the Agreement and Addendum
5 or in any action to enforce the terms of the Agreement. The Court finds and determines that the
6 Releases contained in the Settlement Agreement are appropriate and shall bind all Class
7 Members who did not timely opt out of the class portion of the Settlement.

8 **JUDGMENT**

9 The Court hereby enters FINAL JUDGMENT in this case in accordance with the terms
10 of the Agreement and Addendum, Preliminary Approval Order, and this Order. Nothing in this
11 Order or Judgment shall preclude any action to enforce the Parties' obligations pursuant to the
12 Agreement or pursuant to this Order, including the requirement that Defendant make payments
13 in accordance with the terms of the Agreement. In accordance with, and for the reasons stated in
14 this Order, judgment shall be entered within the meaning and for purposes of California Code of
15 Civil Procedure §§ 577, 904.1(a) and Rules 3.769 and 8.104 of the California Rules of Court.
16 Pursuant to California Rule of Court 3.769(h), California Code of Civil Procedure § 664.6, and
17 the Addendum to the Agreement, this Court shall retain jurisdiction over the Parties to enforce
18 the terms of the Judgment. CPT Group, Inc. shall disburse the settlement funds in accordance
19 with the Class Action and PAGA Settlement Agreement and Addendum to Class Action and
20 PAGA Settlement Agreement.

21
22 DATED: _____

23 JUDGE OF THE SUPERIOR COURT
24 Hon. Melissa R. McCormick
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