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

11 **COUNTY OF ORANGE**

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

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15 Plaintiff,

16 v.

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18 M4D LLC, and DOES 1 through 25,
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20 Defendants.
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) **CASE NO.: 30-2021-01182977**
) [Honorable Judge Melissa R. McCormick,
) Dept. CX104]
)
)

) **[PROPOSED] ORDER GRANTING**
) **PLAINTIFF LAM'S MOTION FOR**
) **CONDITIONAL CLASS**
) **CERTIFICATION AND PRELIMINARY**
) **APPROVAL OF CLASS ACTION AND**
) **PAGA SETTLEMENT**
)
)

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

1 Before the Court is Plaintiff Kevin Lam's unopposed Motion for Conditional Class
2 Certification and Preliminary Approval of Class Action and PAGA Settlement (the "Motion").
3 The Parties have entered into a Class Action and PAGA Settlement Agreement (the "Settlement"
4 or "Agreement" and Addendum to Class Action and PAGA Settlement collectively attached
5 hereto as Exhibit No. 1). The proposed Settlement has two main parts: (1) a settlement of class
6 claims requiring Defendant M4D LLC ("M4D" or "Defendant") to fund Individual Class
7 Payments to Settlement Class Members; and (2) a settlement of claims under the California
8 Private Attorneys General Act ("PAGA") requiring M4D to fund Individual PAGA Payments to
9 Aggrieved Employees and pay penalties to the California Labor and Workforce Development
10 Agency ("LWDA"). The Court, having reviewed and considered the Motion, its accompanying
11 memorandum, the Agreement, and the declarations in support thereof (and all exhibits thereto),
12 finds that the Motion should be, and hereby is, GRANTED. The Court finds and concludes as
13 follows:

14 The Court has jurisdiction over the subject matter of this proceeding and over all Parties
15 to this proceeding. In addition, the Court has personal jurisdiction over all Parties with respect to
16 this Action and the Agreement.

17 The Court hereby finds the Agreement involves the resolution of a bona fide dispute and
18 was entered into in good faith.

19 **CONDITIONAL CERTIFICATION OF SETTLEMENT CLASS**

20 Plaintiff Kevin Lam ("Lam") has moved for entry of an order conditionally certifying the
21 following proposed Class for settlement purposes: "all individuals who worked for M4D as
22 nonexempt employees in California at any time between February 5, 2017 and August 28, 2022."
23 Class certification is appropriate where the class is ascertainable and there is "a well-defined
24 community of interest in the questions of law and fact involved affecting the parties to be
25 represented." *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1806 (internal quotation
26 marks omitted); *see* Cal. Code Civ. Proc. § 382. Civil Procedure Code § 382's requirements
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1 essentially mirror those of Federal Rule 23: numerosity, typicality of the class representatives’
2 claims, adequacy of representation, predominance of common issues, and superiority. *Linder v.*
3 *Thrifty Oil Co.*(2000) 23 Cal. 4th 429, 435 (“The community of interest requirement involves
4 three factors: (1) predominant common questions of law or fact; (2) class representatives with
5 claims or defenses typical of the class; and (3) class representatives who can adequately
6 represent the class”) (internal quotations and citations omitted); *see also* Fed. R. Civ. P. 23(a);
7 *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1019, *overruled on other grounds by*
8 *Wal-Mart Stores, Inc. v. Dukes* (2011) 564 U.S. 338.

9 The Court, having considered all arguments presented in the Motion and the evidence
10 submitted in support of those arguments, finds that all requirements of certification for
11 settlement purposes are met for the proposed Settlement Class.

12 The Court therefore conditionally CERTIFIES the Class for settlement purposes. The
13 Court conditionally APPOINTS the law firm of The Gould Law Firm and Garcia & Phan to
14 serve as Class Counsel.

15 **LIKELY APPROVAL OF THE PROPOSED CLASS SETTLEMENT**

16 For the reasons stated in greater detail below, the Court finds on a preliminary basis that
17 it will likely be able to approve the proposed Settlement—including the Individual Class
18 Payments and the process by which Settlement Class Members may object to or request
19 exclusion from the Class Settlement—as fair, reasonable, and adequate. *See* Cal. Rules of Ct.
20 3.769(a); Fed. R. Civ. P. 23(e)(1)(B)(i).

21 Based on a review of the moving papers, the Court finds on a preliminary basis that the
22 Settlement: (a) resulted from efforts by Lam and Class Counsel who adequately represented the
23 putative Class; (b) was negotiated at arm’s-length with the assistance of an experienced class
24 action mediator; (c) provides relief for the Class that appears at this stage to be adequate, taking
25 into account (i) the costs, risks, and delay of trial and appeal; (ii) the proposed method of
26 distributing relief to the Class, including the method of processing Individual Class Payments to
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1 Participating Class Members; and (iii) the terms of the proposed award of attorneys' fees,
2 including timing of payment; and (d) treats Settlement Class Members equitably relative to one
3 another. In making this preliminary finding, the Court considered, *inter alia*, the nature of the
4 claims; the amounts of benefits to be paid and received through the Settlement, and the
5 allocation of Individual Class Payments among Participating Class Members; and the fact that
6 Defendant does not admit any liability and does not characterize the Settlement as an admission
7 of liability, and that the Settlement represents a compromise of the Parties' respective positions
8 rather than the result of a finding of liability at trial. The Court further preliminarily finds that the
9 terms of the Agreement have no obvious deficiencies and do not improperly grant preferential
10 treatment to any individual Class Member.

11 Accordingly, the Court preliminarily approves:

- 12 (1) A Class Representative Service Payment to Kevin Lam not to exceed
13 \$10,000.00;
- 14 (2) An Administration Expense Payment to CPT Group, Inc. not to exceed
15 \$9,000.00;
- 16 (3) A payment of Attorneys' fees to the Gould Law Firm and Garcia & Phan not
17 to exceed 250,000.00 (33.33% of the Gross Settlement Amount), and
18 litigation costs, currently estimated to be \$10,175.83 (not to exceed \$12,500).

19 **CLASS NOTICE AND SETTLEMENT ADMINISTRATION**

20 The Parties have designated CPT Group, Inc. as the settlement administrator (the
21 "Administrator"). The Administrator shall perform all the duties of the Administrator set forth in
22 the Agreement. Administrator CPT Group, Inc. will calculate Individual Class Payments to
23 Participating Class Members and Individual PAGA Payments to Aggrieved Employees.
24 Defendant will provide CPT Group, Inc. with the information necessary to make these
25 calculations.

1 The Court finds that the provisions for Notice of Class Action Settlement and Hearing
2 Date for Final Approval (the “Class Notice”), attached as Exhibits A and B to the Agreement,
3 satisfy the requirements of due process and California law and provide the best notice practicable
4 under the circumstances, including individual notice to all Class Members and Aggrieved
5 Employees who can be identified through reasonable effort. The Class Notice is reasonably
6 calculated to apprise Settlement Class Members and Aggrieved Employees of the nature of this
7 litigation; the scope of the Settlement Class, the Class and PAGA claims, issues, and defenses;
8 the terms of the Agreement; the right of Settlement Class Members to appear the Final Approval
9 Hearing, object to the Class Settlement, and/or exclude themselves from the Class Settlement,
10 and the process for doing so; the Final Approval Hearing date; and of the binding effect of a
11 judgment on the Settlement Class and Aggrieved Employees. The Court therefore approves the
12 proposed methods of providing notice and directs CPT Group, Inc. to proceed with providing
13 notice to Class Members and Aggrieved Employees, pursuant to the terms of the Agreement and
14 this Order.

15 Prior to the Final Fairness Hearing, Plaintiffs’ Counsel shall file a declaration by CPT
16 Group, Inc. attesting that the Class Notice was disseminated as ordered.

17 **OBJECTIONS AND EXCLUSIONS**

18 Settlement Class Members who wish to exclude themselves from the Class Settlement
19 may do so by submitting such request in writing to the Administrator consistent with the
20 specifications listed in the Class Notice no later than 60 days from the mailing date of the Class
21 Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). All
22 exclusions and issues regarding authenticity shall be submitted to the Court for a final decision at
23 the Final Approval Hearing. All Settlement Class Members who do not opt out and exclude
24 themselves from the Class Settlement shall be bound by the terms of the Agreement upon entry
25 of the Final Approval Order and Judgment. Settlement Class Members who wish to object to the
26 Court’s approval of the Class Settlement must do so in a communication to the Administrator
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1 consistent with the specifications listed in the Class Notice no later than 60 days from the
2 mailing date of the Class Notice (plus an additional 14 days for Class Members whose Class
3 Notice is re-mailed). Aggrieved Employees cannot object to or opt out of the PAGA component
4 of the Settlement. The Class Notice makes clear that Settlement Class Members are permitted to
5 appear at the Final Fairness Hearing and speak to the Court if they wish to do so, regardless of
6 whether they file an objection or a Notice of Intent to Appear at the hearing. The Class Notice
7 includes instructions on how the Settlement Class Members may do so. Class Members may
8 also challenge the number of Workweeks and/or Pay Periods credited to them by preparing a
9 letter and submitting it to the Claims Administrator via mail or email no later than 60 days from
10 the mailing date of the Class Notice (plus an additional 14 days for Class Members whose Class
11 Notice is re-mailed). All Workweek and/or Pay Period disputes shall be submitted to the Court
12 for a final ruling at the Final Approval Hearing.

13 **PAGA**

14 As part of the Settlement, Lam seeks approval of PAGA Penalties to Aggrieved
15 Employees defined as “an individual who worked for M4D as a nonexempt employee in
16 California at any time between February 5, 2020 and August 28, 2022.” Defendant’s records
17 reflect that there are approximately 42 Aggrieved Employees (between the start of the PAGA
18 Period on February 5, 2020 and the date of mediation on June 28, 2022). The Court approves
19 \$25,000.00 of the Gross Settlement Amount to be allocated for PAGA Penalties, with 75%
20 (\$18,750.00) allocated to the LWDA PAGA Payment and 25% (\$6,250.00) allocated to the
21 Individual PAGA Payments. The Court finds the settlement of PAGA Penalties in this Action
22 to be fair, reasonable, to serve public interest, and to be consistent with PAGA's objectives.

23 **FINAL APPROVAL HEARING AND SCHEDULE**

24 The Court will hold a hearing on entry of final approval of the Settlement, an award of
25 attorneys’ fees and litigation expenses to Class Counsel, and a service award to the Class
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1 Representative on February 1, 2024 at 2:00 p.m. in Department CX 104 of the Orange County
2 Superior Court located at 751 West Santa Ana Boulevard, Santa Ana, California 92701.

3 At the Final Approval Hearing, the Court will consider: (a) whether the Settlement
4 should be approved as fair, reasonable, and adequate for the Settlement Class, and judgment
5 entered on the terms stated in the Settlement Agreement; and (b) whether the application for an
6 award of attorneys' fees and expenses to Class Counsel and service award to the Class
7 Representative should be granted. The Court may adjust the date of the Final Approval Hearing
8 and related deadlines, without further notice to the Class.

9 **IT IS SO ORDERED.**

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11 DATED: _____

12 JUDGE OF THE SUPERIOR COURT
13 Hon. Melissa R. McCormick
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