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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 Peter Wilson, Dept. CX101]

) **PLAINTIFF LAM'S NOTICE OF**
) **MOTION AND MOTION FOR**
) **CONDITIONAL CLASS**
) **CERTIFICATION AND PRELIMINARY**
) **APPROVAL OF CLASS ACTION AND**
) **PAGA SETTLEMENT; MEMORANDUM**
) **OF POINTS AND AUTHORITIES IN**
) **SUPPORT THEREOF; DECLARATION**
) **OF MICHAEL A. GOULD; [PROPOSED]**
) **ORDER**

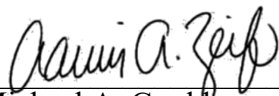
) **Date: May 25, 2023**
) **Time: 2:00 p.m.**
) **Dept.: CX101**

) **Complaint Filed: February 5, 2021**
) **Trial Date: None Set**

1 PLEASE TAKE NOTICE that on May 25, 2023 at 2:00 p.m. or as soon thereafter as the
2 matter may be heard, in Department CX 101 of the above-entitled Court located at 751 W. Santa
3 Ana Blvd. Santa Ana, Ca 92701, Plaintiff Kevin Lam ("Lam") will bring for hearing its Motion
4 for Conditional Class Certification and Preliminary Approval of Class Action and PAGA
5 Settlement.

6 This its Motion for Conditional Class Certification and Preliminary Approval of Class
7 Action and PAGA Settlement is based upon this Notice, the Memorandum of Points and
8 Authorities in support thereof, the Declaration of Michael A. Gould and attached Exhibits, the
9 Proposed Order lodged concurrently herewith, all pleadings, records and files herein, and upon
10 such oral argument as may be made at the hearing on this Motion.
11

12
13 Dated: May 3, 2023



Michael A. Gould
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Trung Le and Kevin Lam

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13

1 Plaintiff Kevin Lam (“Lam”) moves the Court for preliminary approval of the Class
2 Action and PAGA Settlement Agreement (the “Agreement” or “Settlement”) reached with
3 Defendant M4D, LLC (“M4D” or “Defendant”), and for conditional certification of the proposed
4 Settlement Class pursuant to Cal. Rules of Ct. 3.764. The proposed Settlement has two main
5 parts: (1) a settlement of class claims requiring M4D to fund Individual Class Payments to
6 Settlement Class Members; and (2) a settlement of claims under the California Private Attorneys
7 General Act (“PAGA”) requiring M4D to fund Individual PAGA Payments to Aggrieved
8 Employees and pay penalties to the California Labor and Workforce Development Agency
9 (“LWDA”). The Class Settlement covers approximately 84 Settlement Class Members (between
10 the start of the Class Period on February 5, 2017 and the date of mediation on June 28, 2022) for
11 a Gross Settlement Amount of \$750,000.00 (exclusive of employer-side payroll taxes). The
12 Class Members are individuals who worked for M4D as nonexempt employees in California at
13 any time between February 5, 2017 and August 28, 2022. The PAGA Aggrieved Employees are
14 individuals who worked as nonexempt employees in California at any time between February 5,
15 2020 and August 28, 2022. There are approximately 42 Aggrieved Employees (between the start
16 of the PAGA Period on February 5, 2020 and the date of mediation on June 28, 2022).

17 The Settlement satisfies all criteria for preliminary settlement approval. It provides
18 substantial relief to the Class and Aggrieved Employees—particularly in light of the substantial
19 risks to recovery. In addition, the proposed Settlement Class is appropriate for certification for
20 settlement purposes because it meets all class certification criteria. Plaintiff Lam, therefore,
21 moves the Court to (1) grant preliminary settlement approval; (2) preliminarily certify the
22 proposed Settlement Class for settlement purposes; (3) approve the Settlement Class Notice; (4)
23 appoint The Gould Law Firm and Garcia & Phan as Settlement Class Counsel; (5) appoint
24 Plaintiff Lam as the Class Representative; (6) appoint CPT Group, Inc. as Settlement
25 Administrator; and (7) schedule a hearing regarding final approval, attorneys’ fees, litigation
26 costs, and a service award.

27 **I. FACTUAL BACKGROUND**

28 On February 5, 2021, Plaintiff Trung Le (“Le”) filed a class action against M4D in

1 Orange County Superior Court. The initial Class Action Complaint generally alleged that
2 Defendant failed to provide meal periods, failed to provide rest breaks, failed to pay all
3 minimum wages, failed to pay all overtime wages, failed to provide all final wages due at
4 separation, and failed to provide proper and accurate itemized statements. On August 11, 2022,
5 the Complaint was amended to add a seventh cause of action for violations of the California
6 Private Attorneys General Act (“PAGA”) (Cal. Lab. Code §§ 2698, *et seq.*) and to add Kevin
7 Lam as a Plaintiff in the action. Therefore, the operative First Amended Class Action Complaint
8 alleges: (1) failure to pay overtime wages (Cal. Lab. Code §§ 510, 1194); (2) failure to provide
9 accurate itemized wage statement (Cal. Lab. Code § 226); (3) failure to pay all wages due at
10 termination (Cal. Lab. Code §§ 201, 202, and 203); (4) unfair and unlawful business practices
11 (Cal. Bus. & Prof. Code §§ 17200, *et seq.*); (5) failure to pay minimum wages (Cal. Lab. Code §
12 1197, 1194, 1194.2, and 204); (6) failure to provide meal and rest breaks (Cal. Lab. Code §§ 512,
13 226.2, and 226.7); and (7) PAGA penalties (Cal. Lab. Code §§ 2699 *et seq.*).

14 After an exchange of formal and informal discovery, the Parties agreed to attend a
15 mediation with experienced mediator and retired judge, Hon. Carl West (Ret.). With Hon. Judge
16 Carl West’s assistance, the Parties were able to resolve the matter at mediation for a total Gross
17 Settlement Amount of \$750,000.00 (exclusive of employer-side payroll taxes).

18 **II. SUMMARY OF SETTLEMENT TERMS**

19 **The Settlement Class.** The “Class” or “Settlement Class” is defined as “all individuals
20 who worked for M4D as nonexempt employees in California at any time between February 5,
21 2017 and August 28, 2022.” Agreement ¶ 1.5. This Settlement also releases PAGA claims by
22 Aggrieved Employees. An “Aggrieved Employee” means “an individual who worked for M4D
23 as a nonexempt employee in California at any time between February 5, 2020 and August 28,
24 2022.” *Id.* ¶ 1.4.

25 **Payments to the Settlement Class.** M4D has agreed to a Gross Settlement Amount of
26 \$750,000.00, plus the employer payroll taxes owed on the Wage Portions of Individual Class
27 Payments. *Id.* ¶¶ 1.21, 3.1. If approved by the Court, portions of the Gross Settlement Amount
28 will be deducted to pay the Administration Expenses, Class Representative Service Payment,

1 LWDA PAGA Payment, Individual PAGA Payments, and Class Counsel Fees and Litigation
2 Expenses. *Id.* ¶¶ 1.21, 3.2-3.2.3, 3.2.5. The remainder (the “Net Settlement Amount”) will be
3 distributed to the Participating Class Members as Individual Class Payments. *Id.* ¶¶ 1.27, 3.2.4.
4 If all of the requested amounts are approved by the Court, the Net Settlement Amount will be
5 approximately \$452,000. Gould Decl., ¶ 16. Participating Class Members will receive a share of
6 the Net Settlement Amount based on the number of Workweeks that each Participating Class
7 Member worked during the Class Period. Agreement ¶¶ 3.2.4, 1.44.

8 Participating Class Members and Aggrieved Employees will be sent their Settlement
9 payments within 28 days after the Settlement becomes effective. *Id.* ¶¶ 4.3-4.4. Participating
10 Class Members and Aggrieved Employees will have 180 days to cash their Settlement checks.
11 *Id.* ¶ 4.4.1. If, after the check-cashing period has expired, any checks remain uncashed, the
12 Settlement Administrator will transmit the funds represented by such checks to the California
13 Controller’s Unclaimed Property Fund. *Id.* ¶ 4.4.3.

14 **PAGA Payments.** \$25,000.00 of the Gross Settlement Amount will be set aside for the
15 PAGA Penalties payments. *Id.* ¶¶ 1.33, 3.2.5. Seventy-five percent of this amount (\$18,750.00)
16 will be paid to the LWDA and 25% (\$6,250.00) will be distributed to the Aggrieved Employees
17 as Individual PAGA Payments based on the number of PAGA Pay Periods each Aggrieved
18 Employee worked during the PAGA Period. *Id.* ¶¶ 3.2.5, 1.23, 1.26, 1.29, 1.33.

19 **Notice to Class Members.** The Notice of Class Action Settlement and Hearing Date for
20 Final Approval (the “Class Notice”), attached as Exhibit A to the Agreement, provides Class
21 Members with information about how object to and/or opt out of the Class Settlement. *Id.* ¶¶ 6.3-
22 6.6. The Settlement Administrator will send the Class Notice to all Class Members and
23 Aggrieved Employees by first-class mail. *Id.* ¶ 6.3.2. The Class Notice will convey to each Class
24 Member and Aggrieved Employee their number of Workweeks worked during the applicable
25 Class and PAGA Periods, which Class Members and Aggrieved Employees may dispute. *Id.* ¶¶
26 6.3, 6.5; *see also* Class Notice.

27 **Release of Claims.** Class Members that do not opt out of the Class Settlement
28 (“Participating Class Members”) will release all claims that were asserted by Plaintiffs in the

1 Operative Complaint or that could have been asserted based upon the facts alleged in the
2 Operative Complaint, for the duration of the Class Period. Agreement ¶¶ 5.2-5.3. Aggrieved
3 Employees cannot object to or opt out of the PAGA component of the Settlement, and will
4 release all claims for PAGA penalties that were asserted by Plaintiffs in the Operative Complaint
5 and in their PAGA Notices, or that could have been asserted based upon the facts alleged in the
6 Operative Complaint and PAGA Notices, for the duration of the PAGA Period. *Id.* ¶¶ 5.3, 6.4.4,
7 6.6.1, 1.32.

8 **Notice of Settlement to LWDA.** The Settlement, the Notice of Motion for Conditional
9 Class Certification and Preliminary Approval of Class Action and PAGA Settlement, and the
10 brief in support of the Motion have been submitted to the LWDA. Gould Decl., ¶ 19.

11 **III. PRELIMINARY APPROVAL OF THE SETTLEMENT IS WARRANTED**

12 California and federal cases agree that the law favors settlement, particularly in class
13 actions, where substantial resources can be conserved by avoiding the time and costs of formal,
14 contested litigation. *Potter v. Pac. Coast Lumber Co. of Cal.* (1951) 37 Cal.2d 592, 602-603;
15 *Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276. Here, the Court's and the
16 Parties' resources can be conserved through the Settlement, which resolves the claims of
17 approximately 84 current and former M4D employees. A class action, however, may not be
18 settled without court approval. Cal. Rules of Ct. 3.769(a); Fed. R. Civ. Proc. 23(e).4 *The Manual*
19 *for Complex Litigation* (4th ed. 2004) describes a three-step procedure for settlement approval.
20 First, the court holds a hearing to decide whether to grant preliminary approval. Second, notice is
21 sent to the class members, which allows them the opportunity to opt out of or object to the class
22 settlement. Third, the court holds a final approval hearing, at which class members may weigh in
23 on the settlement, and at which evidence concerning the fairness, adequacy, and reasonableness
24 of the settlement may be presented. *Manual for Complex Litigation*, §§ 21.632-34.

25 The decision to approve or reject a proposed class settlement is committed to the trial
26 court's sound discretion. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 234-
27 235. To grant preliminary approval, the Court need find only that the settlement falls within the
28 range of possible final approval and thus whether notice to the class of the settlement's terms is

1 worthwhile. *See, e.g., In re Traffic Exec. Ass'n Eastern Railroads* (2d Cir. 1980) 627 F.2d 631,
2 633-34; *see also* 5 *Newberg* § 13.13; *Wershba*, 91 Cal. App. 4th at 34-235. To make this fairness
3 determination, courts consider several relevant factors, including the following: the strength of
4 the plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk
5 of maintaining class action status through trial, the amount offered in settlement, the extent of
6 discovery completed and the stage of the proceedings, [and] the experience and views of counsel
7*Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801; *see also In re Microsoft I-V*
8 *Cases* (2006) 135 Cal. App. 4th 706, 723. A proposed class settlement may be approved by the
9 trial court if it is determined to be fundamentally "fair, adequate, and reasonable." *City of*
10 *Seattle*, 955 F.2d at 1291 (citing *Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.
11 2d 615, 625). A court considers the recovery reached through the settlement and the range of
12 outcomes that could have occurred if the case had been litigated through trial.

13 As discussed in detail below, the Settlement here was negotiated at arm's-length by the
14 Parties over the course of a full-day mediation followed by months of negotiation of
15 the detailed Settlement terms. *See* Agreement ¶¶ 2.3-2.4. The Settlement falls well within the
16 range of possible final approval. California courts may look to Federal Rule of Civil Procedure
17 23 and federal cases applying it for guidance in considering class issues. *See Vasquez v. Superior*
18 *Court* (1971) 4 Cal. 3d 800, 821; *Green v. Obledo* (1981) 29 Cal. 3d 126, 145-46.

19 **A. THE SETTLEMENT IS THE PRODUCT OF SERIOUS, INFORMED**
20 **ARM'S-LENGTH NEGOTIATIONS CONDUCTED BY EXPERIENCED**
21 **COUNSEL**

22 Arm's-length negotiations conducted by competent counsel constitute *prima facie*
23 evidence of fair settlements. *See M. Berenson Co. v. Faneuil Hall Marketplace, Inc.* (D. Mass.
24 1987) 671 Supp. 819, 822; *In re Heritage Bond Litig.* (C.D. Cal. June 10, 2005) 2005 WL
25 1594403, *9. As described below, the Settlement here resulted from arm's-length negotiations
26 between counsel who are experienced employment and class action attorneys familiar with the
27 legal and factual issues of this case. Gould Decl., ¶ 9. The Parties participated in settlement
28 negotiations during a full-day mediation session conducted by experienced mediator and retired
judge, Hon. Carl West (Ret.). Gould Decl., ¶¶ 6 and 8; Agreement ¶¶ 2.3. In negotiating the

1 Settlement, Plaintiffs' Counsel were familiar with the facts of this case because of the informal
2 and formal discovery conducted revealing the strengths and limitations of the claims and
3 defenses. *See* Agreement ¶ 2.4. Plaintiffs' Counsel fully supports the Settlement as fair—
4 particularly in light of the substantial challenges presented in the Action. Gould Decl., ¶¶ 17-18.

5 **B. THE RISKS OF FURTHER, COMPLEX, AND LENGTHY LITIGATION**
6 **ARE SUBSTANTIAL**

7 Throughout this litigation, Defendant has disputed Plaintiffs' claims. Gould Decl., ¶ 4.
8 M4D disputes the merits of each of Plaintiffs' claims. Defendant argues that it had compliant
9 written meal and rest policies, provided all nonexempt employees with compliant meal periods
10 and rest breaks at all times, prohibited all nonexempt employees from working during meal and
11 rest periods, provided all employees with compliant itemized wage statements, and paid all
12 nonexempt employees all wages owed. Gould Decl., ¶ 4. Moreover, Plaintiffs faced risks in
13 demonstrating the full extent of the class damages, successfully obtaining class certification, and
14 establishing manageability of the PAGA representative claims. Gould Decl., ¶¶ 15-18. Given the
15 risks that Plaintiffs would not be able to establish class wide liability or damages, settlement at
16 this stage on the terms provided in the Settlement is in the best interests of Class Members and
Aggrieved Employees. Gould Decl., ¶¶ 15-18.

17 **C. THE RISKS OF CERTIFYING THE CLASS AND MAINTAINING CLASS**
18 **ACTION STATUS THROUGHOUT A TRIAL WEIGH HEAVILY**
19 **FAVOR OF PRELIMINARY APPROVAL**

20 In the absence of a settlement, Plaintiffs run the risk that the Court may find that class
21 certification is not appropriate and may also conclude that it should not be brought on a
22 representative basis under PAGA because the claims are not manageable. Defendant has
23 consistently argued that it had compliant written meal and rest policies and always provided all
24 nonexempt employees with compliant meal and rest periods, thereby making it difficult to prove
25 commonality even if meal and/or periods were missed. Although Plaintiffs believe that common
26 issues predominate over individual issues and a PAGA trial is manageable, Plaintiffs nonetheless
27 face a substantial risk that the Court may conclude otherwise. In short, Plaintiffs faced risks that
28 the Court would conclude that the Action presented individualized issues preventing Plaintiffs

1 from certifying a class and maintaining a certified class throughout a trial or effectively
2 prosecuting a representative PAGA claim at trial.

3 **D. THE SETTLEMENT PROVIDES SUBSTANTIAL RELIEF FOR**
4 **PARTICIPATING CLASS MEMBERS AND AGGRIEVED EMPLOYEES**

5 Despite the risks described above, the Settlement commits M4D to funding a settlement
6 worth a total of \$750,000.00 (exclusive of employer-side payroll taxes owed on the Wage
7 Portions of Individual Class Payments) paid on a non-reversionary basis to settle this Action.
8 The Settlement allows Class Members to avoid the risks of losing a class certification motion,
9 losing one or more claims at trial, and failing to demonstrate the full extent of damages. The
10 Settlement means that Participating Class Members will avoid the delay of continued litigation
11 and any possible appeals and begin receiving payments promptly. The Settlement does not
12 permit any reversion to M4D—all of the Net Settlement Amount of the Settlement will be
13 distributed to Class Members and Aggrieved Employees. *See* Agreement ¶ 3.

14 **Meal and Rest Periods and Overtime/Straight Time Pay Relating Thereto.**

15 Plaintiffs' Counsel's review of a randomized sampling of putative Class Members' time
16 records determined that the records revealed a facial meal period noncompliance rate of
17 approximately 33%. An employer who fails to provide a meal or rest period in violation of
18 California law must pay the employee one additional hour of pay at the employee's regular rate
19 of compensation for each workday that the meal or rest period was not provided. *See* Cal. Lab.
20 Code § 226.7(c); IWC Wage Order 1-2001 §§ 11(D), 12(B). Therefore, it is estimated that
21 maximum meal and rest period damages on a class wide basis amount to \$599,098.50 [10,500
22 (total Class Workweeks) x 10 (violations per Workweek) x \$17.29 (average rate of pay) x .33
23 (noncompliance rate)]. Moreover, Plaintiffs sought damages in this action for overtime and
24 minimum wages owed for alleged interrupted meal and rest periods. My office estimates
25 maximum damages for these causes action to amount to approximately \$113,474.70 [10,500
26 (total Class Workweeks) x .4167 (25 minutes per week) x \$17.29 (average rate of pay) x 1.5
27 (overtime rate). Gould Decl., ¶ 11.
28

1 **Wage Statements.** California Labor Code § 226 provides that employers must
2 provide itemized wage statements showing, *inter alia*, gross and net wages, total hours worked,
3 hourly rates, and the number of hours worked at each rate. An employer who knowingly violates
4 § 226 is liable for \$50 for the initial pay period in which the violation occurred, and then \$100
5 per employee for each subsequent pay period, with a \$4,000 aggregate cap per employee. *See*
6 Cal. Lab. Code § 226(e)(1). Counsel’s review of the sampled Class Members’ time records
7 determined that maximum penalties under California Labor Code § 226 are estimated to be
8 approximately \$168,000 [42 (number of aggrieved employees) x \$4,000 (maximum penalty
9 under the statute)] Gould Decl., ¶ 12.

10 **Waiting Time Penalties.** Under California Labor Code § 203, an employer that
11 “willfully fails to pay” an employee wages owed upon termination shall continue to pay the
12 employee until the wages are actually paid, for up to thirty days. Under this claim, Plaintiffs
13 allege that former employees are potentially owed wages due to missed meal and rest periods
14 and unpaid overtime/minimum wages. Maximum penalties under California Labor Code § 203
15 are estimated to be approximately \$236,527.20 [57 (number of former class members) x \$17.29
16 (average rate of pay) x 8 x 30).]. Gould Decl., ¶ 13.

17 **PAGA Penalties.** PAGA penalties are calculated based on the amount set forth in
18 the Labor Code provision at issue. If the individual code provision does not set forth a penalty
19 amount, the default penalty set forth in Labor Code § 2699(f) is used: \$100 for each aggrieved
20 employee per pay period for the initial violation and \$200 for each subsequent violation.
21 Maximum PAGA penalties are estimated to amount to \$199,900 (1,999 (total pay periods during
22 PAGA Period) x \$100 (initial penalty). Gould Decl., ¶ 14. *See Amaral v. Cintas Corp. No. 2*
23 (2008) 163 Cal.App.4th 1157, 1207 holding that the “subsequent” violation penalty rate for a
24 Labor Code violation does not apply until an employer is notified that its conduct violates the
25 law. Moreover, in exploring the settlement of any PAGA action, the critical fact that Courts have
26 broad discretion in approving PAGA penalties must be heavily taken into consideration.
27 California Labor Code § 2699(e)(2) states, “[i]n any action by an aggrieved employee seeking
28 recovery of a civil penalty . . . a court may award a lesser amount than the maximum civil

1 penalty amount specified by this part if, based on the facts and circumstances of the particular
2 case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
3 confiscatory.”

4 **Total Estimated Recovery.** The total estimated potential liability in this matter is
5 as follows: \$599,098.50 (meal and rest periods) + 113,474.70 (overtime) + \$168,000 (§ 226
6 penalties) + \$236,527.20 (§ 203 penalties) + \$199,900 (PAGA Penalties) = \$1,317,000.40.
7 Gould Decl., ¶ 15. Viewing the Net Settlement amount of \$452,000 as a percentage of this
8 potential liability means that under the Settlement, Participating Class Members will receive
9 \$452,000 ÷ \$1,317,000.40 or 34.32% of reasonable estimated liability recovery for these claims.
10 The Settlement provides substantial relief for the Class: an estimated average payment of over
11 \$5,380 per Class Member. Gould Decl, ¶ 16. Given the risks of continued litigation and the
12 difficulty in demonstrating class certification and PAGA manageability, a recovery of
13 approximately 34.32% of the calculated liability for the claims being released is fair, adequate,
14 and reasonable. *See In re Mego Fin. Corp. Sec. Litig.*, (9th Cir. 2000) 213 F.3d 454, 459 (finding
15 recovery of one sixth (16.67%) of the potential recovery adequate in light of risks); *Stovall-*
16 *Gusman v. W.W. Granger, Inc.*, 2015 WL 3776765, at *4 (N.D. Cal. June 17, 2015) (finding
17 settlement amount of 10% of what a class might have been awarded had they succeeded at trial
18 to be reasonable in light of litigation risks); *Ma v. Covidien Holding, Inc.*, 2014 WL 360196, at
19 *5 (C.D. Cal. Jan. 31, 2014) (9.1% of total value of the action to be within the range of
20 reasonableness).

21 **E. THE EXTENT OF DISCOVERY SUPPORTS PRELIMINARY** 22 **SETTLEMENT APPROVAL**

23 Plaintiffs have conducted both formal and informal discovery in this matter. Plaintiffs
24 propounded written discovery, analyzed Defendant’s responses thereto, and read and review
25 relevant documents relevant to this action, including Plaintiffs’ employment files, payroll
26 records, and Defendant’s written policies and practices. Gould Decl., ¶ 5. Moreover, prior to
27 mediation, Defendant provided to Plaintiffs (1) a randomized sampling of time and payroll
28 records for 10% of the estimated 84 Class Members; (2) Class data points, including, for both

1 current and formerly-employed Class Members between the start of the Class Period (February
2 5, 2017) and the date of mediation (June 28, 2022), total numbers of Class Members, average
3 hourly rates of pay, and approximate total numbers of workweeks worked and pay periods; (3)
4 PAGA (and wage statement penalty) group data points, including, for both current and formerly-
5 employed Aggrieved Employees between the start of the PAGA Period (February 5, 2020) and
6 the date of mediation (June 28, 2022), total numbers of Aggrieved Employees and approximate
7 total numbers of workweeks worked and pay periods; and (4) all wage and hour policy
8 documents and employee handbooks in effect during the Class and PAGA Periods. Gould Decl.,
9 ¶ 7; Agreement ¶ 2.4. Discovery, therefore, was sufficient to allow counsel to be fully informed
10 about the strengths and weaknesses of Plaintiffs' claims and M4D's defenses.

11 **F. PLAINTIFFS' COUNSEL'S CLASS ACTION EXPERIENCE SUPPORTS**
12 **PRELIMINARY APPROVAL**

13 Plaintiffs' Counsel has decades of experience litigating wage-and-hour class
14 actions. Gould Decl., ¶¶ 28-31. Plaintiffs' Counsel fully support the Settlement as
15 fair, adequate, and reasonable. Gould Decl., ¶¶ 15-18.

16 **G. THE PROPOSED SERVICE PAYMENT TO PLAINTIFF LAM IS**
17 **REASONABLE**

18 Plaintiff Lam intends to request a Class Representative Service Payment of \$10,000.00
19 (1.3% of the total Gross Settlement Amount) to recognize his willingness to step forward and
20 resolve this matter against M4D and the time and effort he spent on behalf of the Class.
21 Agreement ¶ 3.2.1. "Incentive awards to class representative are fairly typical in class action
22 cases," and "are intended to compensate class representatives for work done on behalf of the
23 class, [and] to make up for financial or reputational risk undertaken in bringing the action"
24 *In re Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1382, 1393–94 (internal
25 citations and citation omitted). The Court of Appeal has noted, "without a named plaintiff there
26 can be no class action" and an appropriate incentive award "may be necessary to induce him to
27 participate in the suit." *Id.* at 1394. Here, Plaintiff Lam took a tremendous risk in settling this
28 Action and agreeing to be a class representative. Gould Decl., ¶ 32. Notably, Lam is a current
employee of Defendant, which inherently risks the potential stigma and potential retaliation from

1 Defendant for joining the lawsuit and helping to finalize the settlement. Upon amendment to the
2 Complaint, Lam participated in the litigation and has been informed of all aspects of the
3 litigation. As part of the settlement, Lam will sign a general release of claims. Agreement ¶ 5.1.
4 Additionally, Lam accepted the potential risk of being liable for Defendant's costs if the case
5 was unsuccessful. For those services, and for his willingness to resolve this Action against M4D
6 despite the risks of doing so, a Class Representative Service Payment of \$10,000 is reasonable. If
7 the Court grants preliminary settlement approval, Plaintiffs' Counsel will present further
8 evidence of the time and effort Lam spent on the case as part of the final approval motion.

9 **H. THE REQUESTED ATTORNEYS' FEES AND COSTS ARE JUSTIFIED**

10 Under the equitable "common fund" doctrine, attorneys who create a common fund for a
11 group of persons may be awarded their fees and costs out of the fund, and their fees are
12 calculated as a percentage of the total fund. *See Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.
13 5th 480, 506 (affirming viability of the "percentage-of-the-fund method" and holding that trial
14 courts "have discretion to conduct a lodestar cross-check on a percentage fee" and also "retain
15 the discretion to forego a lodestar cross-check and use other means to evaluate the
16 reasonableness of a requested percentage fee"); *Serrano v. Priest* (1977) 20 Cal. 3d 25, 34.
17 As provided in the Settlement, Plaintiffs' Counsel intend to seek an award of attorneys' fees
18 of 33.33 % of the Gross Settlement Amount, or \$250,000.00. Agreement ¶ 3.2.2. Plaintiffs'
19 Counsel will also seek an award of the out-of-pocket costs they incur in litigating this case,
20 currently estimated to be \$10,175.83 *Id.*; Gould Decl., ¶ 26. These fee and cost amounts are
21 within the range of fees and costs awarded in wage-and-hour class settlements as well as class
22 action settlements in general. *Laffitte* 1 Cal. 5th at 504, 506 (affirming 1/3 fee). Moreover,
23 Plaintiffs' Counsel agreed to a fee sharing agreement—which Plaintiffs were advised of and
24 agreed to—whereby the Gould Law Firm and Garcia and Phan would split all attorney's fees
50/50. Gould Decl., ¶ 23.

25 **IV. PROVISIONAL CLASS CERTIFICATION IS APPROPRIATE**

26 Provisional class certification is appropriate where, as here, the proposed Class has not
27 previously been certified, and the Class meets the certification requirements. 5 *Newberg* § 13.16.

1 The purpose of provisional class certification is to facilitate distribution of notice to the Class of
2 the proposed settlement's terms, the deadlines for opting out of and objecting to the settlement,
3 and the date and time of the final approval hearing. *See Manual for Complex Litigation* §§
4 21.632-33.

5 Plaintiffs request that the Court provisionally certify the following Class for settlement
6 purposes: "all individuals who worked for M4D as nonexempt employees in California at any
7 time between February 5, 2017 and August 28, 2022." M4D stipulates to the certification of this
8 Class for settlement purposes only. Agreement ¶ 11.1. In doing so, M4D does not waive its
9 arguments regarding class certification should the Settlement not become final and asserts that it
10 would oppose certification other than for settlement purposes—as it has done throughout this
11 litigation. *Id.* Class certification is appropriate when the class is ascertainable and there is "a
12 well-defined community of interest in the questions of law and fact involved affecting the parties
13 to be represented." *Dunk*, 48 Cal. App. 4th at 1806 (internal quotation marks omitted); *see* Cal.
14 Code Civ. Proc. § 382. Civil Procedure Code § 382's requirements essentially mirror those of
15 Federal Rule 23: numerosity, typicality, adequacy of representation, predominance of common
16 issues, and superiority. *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 435 (2000) ("The community
17 of interest requirement involves three factors: (1) predominant common questions of law or fact;
18 (2) class representatives with claims or defenses typical of the class; and (3) class representatives
19 who can adequately represent the class") (internal quotations and citations omitted). As
discussed below, all requirements of certification for settlement purposes are met here.

20 **A. THE PROPOSED SETTLEMENT CLASS IS ASCERTAINABLE**

21 The proposed Settlement Class is ascertainable because all Class Members are or were
22 employees of M4D and can be identified through their payroll and time records. *Noel v. Thrifty*
23 *Payless, Inc.* (2019) 7 Cal. 5th 955, 961 (class is ascertainable when "the ultimate identification
24 of class members [is] possible when that identification becomes necessary.").

25 **B. THE PROPOSED SETTLEMENT CLASS IS NUMEROUS**

26 The numerosity requirement is met if the proposed class is so large that joinder of all
27 members would be impracticable. Cal. Code Civ. Proc. § 382. Courts have found the numerosity
28

1 requirement satisfied when a class includes at least 28 members. *Hebbard v. Colgrove* (1972) 28
2 Cal. App. 3d 1017, 1030 (no set numerosity prerequisite, but class of 28 is acceptable). Here,
3 numerosity is easily satisfied because the proposed Class includes approximately 84 members.
4 Gould Decl., ¶ 10.

5 **C. THE COMMONALITY REQUIREMENT IS MET**

6 Commonality is present if there are questions of law or fact common to the class.
7 *Williams v. Superior Court* (2013) 221 Cal. App. 4th 1353, 1369 (even a single common
8 question can suffice to create commonality) (citing *Wal-Mart Stores, Inc. v. Dukes* (2011) 564
9 U.S. 338, 359); *Hanlon v. Chrysler Corp.* (9th Cir.1998) 150 F.3d 1011, 1019. The common
10 questions presented here include, *inter alia*, the following: (1) Did Class Members receive all
11 required meal periods or premiums in lieu thereof? (2) Did Class Members receive all required
12 rest breaks or premiums in lieu thereof? (3) Did formerly employed Class Members receive all
13 wages due at termination? (4) Did Class Members get paid the minimum wage for all hours
14 worked? (5) Did Class Members receive overtime pay for all hours worked in excess of eight (8)
15 hours per workday and/or forty (40) hours per workweek? (6) Did Class Members' wage
16 statements reflect all hours worked and all earned wages? For settlement purposes, the proposed
17 Class satisfies the commonality requirement.

18 **D. THE TYPICALITY REQUIREMENT IS MET**

19 The typicality requirement is met if the named representative's claims are similar to those
20 of the Class, though "they need not be substantially identical." *Hanlon*, 150 F. 3d at 1020; *see*
21 *also Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46-47. Plaintiff Lam's claims are typical
22 because they arise from the same factual bases and legal theories as the Class claims. *See J.P.*
23 *Morgan & Co. Inc. v. Superior Court* (2003) 113 Cal. App. 4th 195, 212; *Caro v. Procter &*
24 *Gamble Co.* (1993) 18 Cal. App. 4th 644, 663-64 (typicality equates to membership in the
25 proposed class). Plaintiff Lam worked in California as nonexempt employee for M4D, and
26 alleges that he and proposed Class Members were subject to similar wage and hour practices,
27 including failing to receive all meal and rest periods, failing to receive all wages for all hours
28

1 worked, including minimum wages and overtime wages, failing to receive accurate itemized
2 wage statements, and failing to receive all wages due upon termination (for former employees).

3 **E. THE ADEQUACY REQUIREMENT IS MET**

4 The adequacy requirement is met if the named plaintiff and his counsel have no interests
5 adverse to the proposed class and are committed to vigorously prosecuting the case on behalf of
6 the class. *McGhee v. Bank of America* (1976) 60 Cal. App. 3d 442, 450-51. Those standards are
7 met here. Plaintiff Lam's interest in obtaining the best recovery possible for the Class fully
8 comport with the Class's interests, given that he possesses the same claims as the Class. In
9 addition, Plaintiffs' Counsel, is an experienced employment law and class action attorneys and
10 has demonstrated commitment to litigating the case vigorously on behalf of the Class. Gould
11 Decl., ¶¶ 27-31.

12 **F. COMMON ISSUES PREDOMINATE HERE**

13 Certification is appropriate when common questions of law and fact predominate over
14 individual questions and when the use of the class device is superior to individual litigation.
15 *Richmond v. Dart Industries, Inc.* (1981) 29 Cal. 3d 462, 470. When assessing predominance and
16 superiority, courts may consider whether the class will be certified for settlement purposes only,
17 rendering trial manageability irrelevant. *Amchem Prods., Inc. v. Windsor* (1997) 521 U.S. 591,
18 620. Plaintiffs allege that, *inter alia*, M4D failed to provide its nonexempt employees with meal
19 periods and rest breaks, and required nonexempt employees to work off the clock due to
20 interrupted meal periods. For settlement purposes, common legal and factual questions about
21 these practices predominate over any individual questions particularly in the settlement context,
22 class resolution is superior to other available methods of adjudication. *See Hanlon*, 150 F.3d at
23 1023; *Dunk*, 48 Cal. App. 4th at 1087 n.19. Here, the alternative methods of adjudication are
24 repetitive individual cases relying on the same facts and legal argument, which would waste
25 judicial resources. *See Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal. 4th 319, 340;
26 *Bell v. Farmers Ins. Exchange* (2004), 115 Cal. App. 4th 715, 745. Use of the class device will
27 provide redress for many employees who are unwilling to file individual suits, including those
28

1 whose claims may be too small to warrant an individual suit. For these reasons, a class action
2 settlement is the preferred method of resolution of the Class claims.

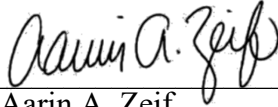
3 **V. THE PROPOSED CLASS NOTICE IS APPROPRIATE**

4 Class notice must “have a reasonable chance of reaching a substantial percentage of the
5 class members.” *Cartt v. Super. Ct.* (1975) 50 Cal. App. 3d 960, 974. The proposed notice plan
6 here involves sending individual notice by first class mail to each Class Member. Agreement ¶
7 6.3.2. Such personal notification is preferred by the California Rules of Court. *See* Cal. Rules of
8 Ct. 3.766(f). Before sending by first class mail, the Administrator will check Class Members’
9 information against the Change of Address Database. *Id.* ¶ 6.3.2. The Parties propose
10 experienced administrator CPT Group, Inc. as the settlement administrator. CPT Group, Inc.
11 estimates that its fees for administering this Settlement—which involve sending notice and
12 payments to approximately 84 Class Members—shall be no more than \$6,750.00. The proposed
13 Class Notice fairly apprises Class Members of the Settlement’s terms and their options regarding
14 the Class Settlement. *See Wershba*, 91 Cal. App. 4th at 251-52. It informs Class Members of the
15 relief the Settlement will provide, the Class definition, the nature of the Action, the method of
16 calculating their settlement awards, the amounts of the proposed service award to Plaintiff Lam
17 and of Plaintiffs’ Counsel’s requested attorneys’ fees and costs, and the date and time of the Final
18 Approval Hearing. Class Members, therefore, will know what their options are regarding the
19 Class Settlement. *See* Cal. Rule of Ct. 3.769(t); Fed. R. Civ. P. 23(c)(2), 23(e).

20 **VI. CONCLUSION**

21 Plaintiff Lam respectfully request that the Court (1) grant preliminary settlement
22 approval; (2) preliminarily certify the proposed Class for settlement purposes; (3) approve the
23 Class Notice; (4) appoint CPT Group, Inc. as Settlement Administrator; (5) appoint the Gould
24 Law Firm and Garcia & Phan as Class Counsel; (6) appoint Plaintiff Lam as the Class
25 Representative; and (7) set a final approval hearing.

26 Dated: May 3, 2023

27 
28 Aaron A. Zeif
THE GOULD LAW FIRM
Attorneys for Plaintiffs