

Michael A. Gould (SBN 151851)
Michael@wageandhourlaw.com
Aarin A. Zeif (SBN 247088)
Aarin@wageandhourlaw.com
THE GOULD LAW FIRM
A Professional Law Corporation
161 Fashion Lane, Suite 207
Tustin, California 92780
Telephone: (714) 669-2850
Telecopier: (714) 544-0800

Robert N. Phan (SBN 217283)
GARCIA & PHAN
A Professional Law Corporation
17011 Beach Blvd., Ste. 900
Huntington Beach, CA 92647
Telephone: 714-848-8200
Telecopier: 714-677-4005

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]

**PLAINTIFF LAM'S NOTICE OF
MOTION AND MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT, PLAINTIFF
LAM'S REQUEST FOR ATTORNEYS'
FEES AND COSTS, AND CLASS
REPRESENTATIVE SERVICE
PAYMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

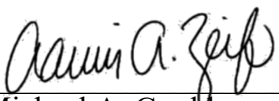
Date: February 1, 2024
Time: 2:00 p.m.
Dept: CX104

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

1 PLEASE TAKE NOTICE that on February 1, 2024 at 2:00 p.m. or as soon thereafter as
2 the matter may be heard, in Department CX 104 of the above-entitled Court located at 751 W.
3 Santa Ana Blvd. Santa Ana, Ca 92701, Plaintiff Kevin Lam ("Lam") will bring for hearing its
4 Motion for Final Approval of Class Action and PAGA Settlement, Plaintiff Lam's Request for
5 Attorneys' Fees and Costs, and Class Representative Service Payment.

6 This its Motion is based upon this Notice, the Memorandum of Points and Authorities in
7 support thereof, the Declaration of Michael A. Gould and attached Exhibits, the Declaration of
8 Plaintiff Kevin Lam, and the Declaration of Tarus Darcy, and attached Exhibits, the Proposed
9 Order lodged concurrently herewith, all pleadings, records and files herein, and upon such oral
10 argument as may be made at the hearing on this Motion.
11

12
13 Dated: January 12, 2024



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

TABLE OF CONTENTS

<u>I.</u>	<u>INTRODUCTION</u>	1
<u>II.</u>	<u>FACTUAL BACKGROUND</u>	2
<u>II.</u>	<u>SUMMARY OF SETTLEMENT TERMS</u>	3
<u>III.</u>	<u>APPROVAL OF THE SETTLEMENT IS APPROPRIATE</u>	5
A.	THE SETTLEMENT IS THE PRODUCT OF SERIOUS, INFORMED ARM’S-LENGTH NEGOTIATIONS CONDUCTED BY EXPERIENCED COUNSEL	6
B.	THE RISKS OF FURTHER, COMPLEX, AND LENGTHY LITIGATION ARE SUBSTANTIAL	6
C.	THE RISKS OF CERTIFYING THE CLASS AND MAINTAINING CLASS ACTION STATUS THROUGHOUT A TRIAL WEIGH HEAVILY FAVOR OF PRELIMINARY APPROVAL	7
D.	THE SETTLEMENT PROVIDES SUBSTANTIAL RELIEF FOR PARTICIPATING CLASS MEMBERS AND AGGRIEVED EMPLOYEES	7
E.	THE EXTENT OF DISCOVERY SUPPORTS SETTLEMENT APPROVAL	8
F.	PLAINTIFFS’ COUNSEL’S CLASS ACTION EXPERIENCE SUPPORTS APPROVAL	8
G.	THE CLASS RECEIVED ADEQUATE NOTICE	8
<u>V.</u>	<u>CLASS COUNSEL’S FEE AND COST REQUEST IS REASONABLE</u>	9
A.	THE FEE REQUEST IS A REASONABLE PERCENTAGE OF THE RECOVERY	9
B.	A LODESTAR CROSS-CHECK CONFIRMS THE REASONABLENESS OF THE REQUESTED FEE	10
C.	CLASS COUNSEL’S COST REQUEST IS REASONABLE AND APPROPRIATE	12
<u>VI.</u>	<u>CONCLUSION</u>	13

TABLE OF AUTHORITIES

Cartt v. Super. Ct.

(1975) 50 Cal. App. 3d 960 9

Class Plaintiffs v. City of Seattle

(9th Cir. 1992) 955 F.2d 1268 5

Dunk v. Ford Motor Co.

(1996) 48 Cal. App. 4th 1794 5

In re Heritage Bond Litig.

(C.D. Cal. June 10, 2005) 2005 WL 1594403 *9 6

In re Cellphone Fee Termination Cases

(2010) 186 Cal. App. 4th 1380 12

In re Mego Fin. Corp. Sec. Litig.

(9th Cir. 2000) 213 F.3d 454 7

Laffitte v. Robert Half Int'l, Inc.

(2016) 1 Cal. 5th 480 9

M. Berenson Co. v. Faneuil Hall Marketplace, Inc.

(D. Mass. 1987) 671 Supp. 819 6

Potter v. Pac. Coast Lumber Co. of Cal.

(1951) 37 Cal.2d 592 5

Stovall-Gusman v. W.W. Granger, Inc.

2015 WL 3776765 *4 7

Wershba v. Apple Computer, Inc. (2001)

91 Cal. App. 4th 224 5, 6, 9

1 **I. INTRODUCTION**

2 Plaintiff Kevin Lam (“Lam” or “Plaintiff”) moves the Court for final approval of the
3 class action and Private Attorneys General Act (“PAGA”) representative action settlement he
4 reached with Defendant M4D, LLC (“M4D” or “Defendant”) and for an order awarding
5 attorneys’ fees, costs, and class representative service payment. In the proposed Class Action and
6 PAGA Settlement Agreement (the “Agreement” or “Settlement”),¹ the Parties agreed to settle
7 class and PAGA representative claims on behalf of 87 current and former nonexempt employees
8 for a total Gross Settlement Amount of \$750,000.00 (exclusive of employer-side payroll taxes).
9 The Class consists of all individuals who worked for M4D as nonexempt employees in
10 California at any time between February 5, 2017 and August 28, 2022.

11 On October 18, 2023, this Court granted preliminary approval of the Settlement, finding
12 that it satisfied all criteria for preliminary settlement approval. The Court ordered that the Notice
13 of Class Action Settlement and Hearing Date for Final Approval (the “Class Notice”)² be sent to
14 the 87 Class Members informing them that if they wished to object to or opt out of the
15 Settlement, they had 60 days from the distribution of the Class Notice to do so (plus an
16 additional 14 days for Class Members whose Class Notice is re-mailed). Class Notice was
17 mailed to Class Members on November 20, 2023. *See* Declaration of Tarus Dancy on Behalf of
18 CPT Group, Inc. Regarding Settlement Administration and Class Notice (“Dancy Decl.”), ¶ 9.
19 Class Members, therefore, had until 60 days later—until January 19, 2024—to file objections or
20 request exclusion from the Class.

21 To date, *zero* Class Members have filed opted out or objected to the Settlement. Dancy
22 Decl., ¶¶ 12 and 13. As discussed below, the Settlement satisfies all criteria for final settlement
23 approval. It provides substantial relief—\$750,000.00—to the proposed Class Members,
24 amounting to an estimated average recovery of more than \$5,000.00 per Class Member. Such a

25 _____
26 ¹ A true and correct copy of the Settlement Agreement and Addendum thereto are attached collectively as
27 Exhibit 1 to the accompanying Gould Decl.

28 ² True and correct copies of the Class Notice, in both English and Vietnamese, are attached as Exhibits A
 and B to the Settlement Agreement and Addendum. *See also* Dancy Decl., Ex. A.

1 result is excellent in a case that presented substantial challenges to class certification and the
2 demonstration of liability and damages on a class-wide basis. Moreover, following Class Notice,
3 the reaction of Class Members to the Settlement has been overwhelmingly positive—again, with
4 *zero* Class Members objecting or opting out.

5 Class Counsel also respectfully requests an award of attorneys' fees in the amount of
6 \$250,000.00 (33.33% of the Gross Settlement Amount), litigation costs of \$10,345.35, and a
7 Class Representative Service Payment to Plaintiff Lam of \$10,000.00. As described below, the
8 requested fees, costs, and service award are reasonable and appropriate in light of the substantial
9 benefit Plaintiff and Class Counsel obtained for the Class, the time and effort expended to obtain
10 this recovery, and the risks Plaintiff and Plaintiff's Counsel assumed throughout nearly three
11 years of litigation to date. California courts have regularly approved fee awards of one-third of
12 the common fund in actively litigated common-fund cases such as this one. Facing a large, well-
13 funded corporation ably represented by experienced counsel, Plaintiff Lam and his counsel
14 successfully created a non-reversionary settlement fund of \$750,000.00. Class Counsel has
15 devoted a substantial amount of time and resources to the case while undertaking a significant
16 risk of no recovery. In the end, Class Counsel obtained an excellent result that has been well
17 received by the Class Members. Furthermore, the reasonableness of the requested percentage fee
18 award is confirmed by a lodestar cross-check. Under these circumstances, the requested fee and
19 cost award is reasonable and appropriate. Class Counsel's litigation costs of \$10,345.35 are also
20 reasonable. The costs incurred were necessary to successfully litigate the case. Finally, the
21 requested service award of \$10,000.00 for Plaintiff Lam is appropriate and falls within the range
22 of service awards in wage-and-hour class action cases approved by California Courts. Plaintiff
23 Lam incurred substantial risk in litigating this case, has devoted time and effort to representing
24 the Class Members, and conferred a significant benefit to the Class with this recovery.

25 **II. FACTUAL BACKGROUND**

26 On February 5, 2021, Plaintiff Trung Le filed a class action against M4D in Orange
27 County Superior Court. The initial Class Action Complaint generally alleged that Defendant
28 failed to provide meal and rest breaks, failed to pay all minimum wages, failed to pay all

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

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

III. SUMMARY OF SETTLEMENT TERMS

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

Payments to the Settlement Class. M4D has agreed to a Gross Settlement Amount of \$750,000.00, plus the employer payroll taxes owed on the Wage Portions of Individual Class Payments. *Id.* ¶¶ 1.21, 3.1. If approved by the Court, portions of the Gross Settlement Amount will be deducted to pay the Administration Expenses, Class Representative Service Payment, LWDA PAGA Payment, Individual PAGA Payments, and Class Counsel Fees and Litigation Expenses. *Id.* ¶¶ 1.21, 3.2-3.2.3, 3.2.5. The remainder (the “Net Settlement Amount”) will be

distributed to the Participating Class Members as Individual Class Payments. *Id.* ¶¶ 1.27, 3.2.4. Participating Class Members will receive a share of the Net Settlement Amount based on the number of Workweeks that each Participating Class Member worked during the Class Period. *Id.* ¶¶ 3.2.4, 1.44.

After the Settlement becomes effective, Participating Class Members and Aggrieved Employees will be sent their Settlement payments within 14 days of M4D funding the Gross Settlement Amount. *Id.* ¶¶ 1.18, 4.3-4.4. Participating Class Members and Aggrieved Employees will have 180 days to cash their Settlement checks. *Id.* ¶ 4.4.1. If, after the check-cashing period has expired, any checks remain uncashed, the Settlement Administrator will transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund. *Id.* ¶ 4.4.3.

PAGA Payments. \$25,000.00 of the Gross Settlement Amount will be set aside for the PAGA Penalties payments. *Id.* ¶¶ 1.33, 3.2.5. 75% of this amount (\$18,750.00) will be paid to the LWDA and 25% (\$6,250.00) will be distributed to the Aggrieved Employees as Individual PAGA Payments based on the number of PAGA Pay Periods each Aggrieved Employee worked during the PAGA Period. *Id.* ¶¶ 3.2.5, 1.23, 1.26, 1.29, 1.33.

Notice to Class Members. The Class Notice, attached as Exhibit A to the Agreement and Addendum, provides Class Members with information about how object to and/or opt out of the Class Settlement. *Id.* ¶¶ 6.3-6.6; *see also* Dancy Decl., Ex. A (Class Notice). The Settlement Administrator sent the Class Notice to all Class Members and Aggrieved Employees by first-class mail. Agreement ¶ 6.3.2; Dancy Decl., ¶ 9. The Class Notice conveys to each Class Member and Aggrieved Employee their number of Workweeks worked during the applicable Class and PAGA Periods, which Class Members and Aggrieved Employees may dispute. Agreement ¶¶ 6.3, 6.5; *see also* Class Notice.

Release of Claims. Class Members who do not opt out of the Class Settlement ("Participating Class Members") will release all claims that were asserted by Plaintiffs in the Operative Complaint or that could have been asserted based upon the facts alleged in the Operative Complaint, for the duration of the Class Period. Agreement ¶¶ 5.2-5.3, 1.38. Aggrieved Employees cannot object to or opt out of the PAGA component of the Settlement, and

will release all claims for PAGA penalties that were asserted by Plaintiffs in the Operative Complaint and in their PAGA Notices, or that could have been asserted based upon the facts alleged in the Operative Complaint and PAGA Notices, for the duration of the PAGA Period. *Id.* ¶¶ 5.3, 6.4.4, 1.32, 1.39.

Notice of Settlement to LWDA. The Settlement, the Motion for Final Approval, and corresponding paperwork have been submitted to the LWDA. *See* Declaration of Michael A. Gould in Support of Plaintiff’s Motion for Final Approval of Class Action Settlement and Request for Attorneys’ Fees, Costs, and Class Representative Service Payment (“Gould Decl.”), ¶ 14.

IV. FINAL APPROVAL OF THE SETTLEMENT IS APPROPRIATE

California and federal cases agree that the law favors settlement—particularly in class actions, where substantial resources can be conserved by avoiding the time and costs of formal, contested litigation. *See Potter v. Pac. Coast Lumber Co. of Cal.* (1951) 37 Cal.2d 592, 602-603; *Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276; *Von Bronkhorst v. Safeco Corp.* (9th Cir. 1976) 529 F.2d 943, 950; 4 *Newberg on Class Actions* § 13.1 (5th ed.). Here, the Court’s and the Parties’ resources can be conserved through the Settlement, which resolves the claims of 87 current and former nonexempt employees. A class action, however, may not be settled without the court’s approval. Cal. Rules of Ct. 3.769(a); Fed. R. Civ. Proc. 23(e).⁶ Trial courts have broad discretion to determine whether the settlement is fair and reasonable, and the court’s determination will be reversed on appeal only when the record discloses a clear abuse of discretion. *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 52; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 235, disapproved on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260, 269. In determining whether a settlement is fair, adequate, and reasonable, courts consider several factors, including the following: the strength of the plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, . . . and the reaction of the class members to the proposed settlement. *Dunk v. Ford Motor Co.*

(1996) 48 Cal.App.4th 1794, 1801; *see also In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723. These factors are not exclusive, and courts have discretion to weigh the factors “depending on the circumstances of each case.” *Wershba*, 91 Cal.App.4th at 245. “[A] presumption of fairness exists where (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128 (quoting *Dunk*, 48 Cal.App.4th at 1802). As discussed in detail below, the Settlement here satisfies the standard for final approval.

A. THE SETTLEMENT IS THE PRODUCT OF SERIOUS, INFORMED, ARM’S-LENGTH NEGOTIATIONS CONDUCTED BY EXPERIENCED COUNSEL

Arm’s-length negotiations conducted by competent, experienced counsel constitute *prima facie* evidence of fair settlements. *See M. Berenson Co., Inc. v. Faneuil Hall Marketplace, Inc.* (D. Mass. 1987) 671 F.Supp. 819, 822 (settlement after arm’s-length negotiation by capable counsel is presumptively fair); *In re Heritage Bond Litig.* (C.D. Cal. June 10, 2005) 2005 WL 1594403, at *9 (same, citing *M. Berenson*). The Settlement here resulted from arm’s-length negotiations over the course of a mediation session between Defendant and Plaintiff’s Counsel—who are experienced employment and class action attorneys familiar with the legal and factual issues of this case. *See* Gould Decl., ¶¶ 23-26. The Parties participated in mediation conducted by Hon. Judge Carl West, a retired complex judge and were able to resolve the matter.

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

Defendant disputes the merits of Plaintiffs’ claims. Throughout the suit, Defendant has maintained that Plaintiffs and Class Members were paid properly at all times. *Id.*, ¶ 4. Defendant has also asserted from the outset that its policies and practices complied with California law in all respects. *Id.* Defendant also argues that, except for settlement purposes, class certification or representative treatment of Plaintiffs’ claims is inappropriate for *any* claim in the Action. Plaintiffs faced challenges in certifying their claims as class claims, in maintaining that

1 certification through trial, and in demonstrating Plaintiffs' claims on the merits. Given the risks
2 that Plaintiffs would not be able to establish class-wide liability or damages, settlement at this
3 stage on the terms provided in the Settlement is in the Class Members' best interests. *Id.*, ¶ 12.

4 **C. THE RISKS OF CERTIFYING THE CLASS AND MAINTAINING CLASS**
5 **ACTION STATUS THROUGHOUT A TRIAL WEIGH IN FAVOR OF**
6 **SETTLEMENT APPROVAL**

7 In the absence of a settlement, Plaintiffs runs a substantial risk that the Court may find
8 that class certification is not appropriate and may also conclude that a PAGA trial would be
9 unmanageable. Defendant has argued consistently that Plaintiffs' claims are not subject to class
10 treatment. Although Plaintiffs believe that a Class and PAGA trial is manageable, they
11 nonetheless faces a substantial risk that this Court might conclude otherwise. In short, Plaintiffs
12 faced serious risks that the Court would conclude that the case presented individualized issues
13 preventing Plaintiffs from certifying a class, maintaining a certified class throughout a trial, or
14 effectively prosecuting a representative PAGA trial.

15 **D. THE SETTLEMENT PROVIDES SUBSTANTIAL RELIEF FOR CLASS**
16 **MEMBERS**

17 Despite the risks to class recovery described above, the Settlement commits Defendant to
18 funding a settlement of \$750,000.00. The Settlement allows Class Members to avoid the risks of
19 losing a class certification motion, losing one or more claims at trial, failing to bring a
20 representative PAGA claim to trial, and failing to demonstrate the full extent of their damages.
21 The Settlement means that Class Members will avoid the delay of continued litigation and
22 possible appeals and instead begin receiving payments promptly. The Settlement before the
23 Court provides substantial relief for the Class: an estimated average payment of \$5,122.47 per
24 Class Member. Dancy ¶ 18. Given the risks of continued litigation and the difficulty in
25 demonstrating class certification, a recovery of approximately 34.32% of the calculated liability
26 for the claims being released is fair, adequate, and reasonable. Gould Decl., ¶ 11. *See In re Mego*
27 *Fin. Corp. Sec. Litig.* (9th Cir. 2000) 213 F.3d 454, 459 (finding recovery of one sixth (16.67%)
28 of the potential recovery adequate in light of risks); *Stovall-Gusman v. W.W. Granger, Inc.* (N.D.
Cal. 2015) 2015 WL 3776765, at *4 (finding settlement amount of 10% of what a class might

1 have been awarded had they succeeded at trial to be reasonable in light of litigation risks); *Ma v.*
2 *Covidien Holding, Inc.* (C.D. Cal. 2014) 2014 WL 360196, at *5 (9.1% of total value of the
3 action to be within the range of reasonableness).

4 **E. THE EXTENT OF DISCOVERY SUPPORTS SETTLEMENT APPROVAL**

5 Plaintiffs conducted both formal and informal discovery in this case. Gould Decl., ¶¶ 5-7.
6 Prior to settlement discussions, Class Counsel obtained from Defendant: (1) a randomized
7 sampling of time and payroll records for 10% of the estimated 84 Class Members (when Class
8 Notices were sent out the total Class Members increased to 87); (2) Class data points, including,
9 for both current and formerly-employed Class Members between the start of the Class Period
10 (February 5, 2017) and the date of mediation (June 28, 2022), total numbers of Class Members,
11 average hourly rates of pay, and approximate total numbers of Workweeks worked and pay
12 periods; (3) PAGA (and wage statement penalty) group data points, including, for both current
13 and formerly-employed Aggrieved Employees between the start of the PAGA Period (February 5,
14 2020) and the date of mediation (June 28, 2022), total numbers of Aggrieved Employees and
15 approximate total numbers of Workweeks worked and pay periods; and (4) all wage and hour
16 policy documents and employee handbooks in effect during the Class and PAGA Periods. *Id.*, ¶ 7.
17 This data and documents allowed Class Counsel to analyze the claims in this Action and damages
18 thereto on a class-wide/representative basis. *Id.* Discovery, therefore, was sufficient to allow Class
19 Counsel to be fully informed about the strengths and weaknesses of Plaintiffs' claims and
20 Defendant's asserted defenses at the time the matter was mediated.

21 **F. PLAINTIFFS' COUNSEL'S CLASS ACTION EXPERIENCE SUPPORTS**
22 **SETTLEMENT APPROVAL**

23 Plaintiffs' Counsel have thirty-three years of experience litigating wage-and-hour class
24 actions. Gould Decl., ¶¶ 23-26. In negotiating the Settlement, Plaintiffs' Counsel had not only the
25 benefit of vast litigation experience, but also a close familiarity with the facts of this case.
26 Plaintiffs' Counsel fully support the Settlement as fair, adequate, and reasonable. *Id.*, ¶ 12.

27 **G. THE CLASS RECEIVED ADEQUATE NOTICE**

28 California courts are vested with broad discretion to fashion an appropriate settlement

1 class notice program. *See Wershba*, 91 Cal.App.4th at 251; *Cartt v. Super. Ct.* (1975) 50
2 Cal.App.3d 960, 973-74. Here, the Court-approved Class Notice adequately protected the due
3 process rights of all Class Members. The Notice apprised the Class of the Settlement terms and
4 their options with regard to participating in the Settlement, opting out of the Class portion, or
5 objecting to it. The Class Notice was mailed via first-class mail to all 87 Class Members, in both
6 English and Vietnamese. Dancy Decl. ¶¶ 3, 9, Ex. A. After Class Notices were mailed, some were
7 returned. CPT Group traced, and remailed those that were returned. At the end of this process,
8 only 1 of the almost 87 Notices remained undeliverable. *Id.*, ¶ 10. Accordingly, the Class Notice
9 and Notice procedure satisfy due process standards and the Rules of Court. *See* Cal. Rule of Ct.
10 3.769(f); *Wershba*, 91 Cal.App.4th at 251-52; 3 *Newberg*, § 8.14 (5th ed.).

11 **V. CLASS COUNSEL’S FEE AND COST REQUEST IS REASONABLE**

12 As described below, Plaintiffs’ Counsel’s fee request here is reasonable and appropriate
13 under both tests that California courts use in evaluating such requests in class action cases—the
14 percentage-of-the-fund method and the lodestar/multiplier method.

15 **A. THE FEE REQUEST IS A REASONABLE PERCENTAGE OF THE**
16 **RECOVERY**

17 **1. A Percentage-Based Fee Award is the Preferred Calculation Method**
18 **When a Common Fund has been Created**

19 In *Laffitte v. Robert-Half Int’l Inc.* (2016) 1 Cal.5th 480, 503, the California Supreme
20 Court endorsed the practice of assessing “the amount of a reasonable fee by choosing an
21 appropriate percentage of the fund created.” As *Laffitte* recognized, “most courts and
22 commentators now believe that the percentage method is superior [to the lodestar method].” *Id.* at
23 494 (citation omitted). This method has a tendency to better “align[] incentives between counsel
24 and the class . . . and [provides a] better approximation of market conditions in a contingency
25 case.” *Id.* at 503. Regardless of which fee calculation method (percentage or lodestar/multiplier) is
26 used, however, the goal is the same: to determine whether a requested fee is a “reasonable,”
27 market-based amount sufficient “to compensate counsel for their efforts.” *Id.* at 504. Class
28 Counsel here seek an award of attorneys’ fees of 33.33% of the total settlement payment, or

1 \$250,000.00. Plaintiff’s Counsel also seek an award of the out-of-pocket costs they have incurred
2 in litigating this case, which total approximately \$10,345.35. Gould Decl., ¶ 21. These fee and
3 cost amounts are within the range of fees and costs awarded by California Courts in wage-and-
4 hour class settlements as well as class action settlements in general.

5 **2. One-Third of the Settlement Recovery is a Well-Established**
6 **Contingency Fee Percentage in Common Fund Cases**

7 “California courts routinely award attorneys’ fees of one-third of the common fund.”
8 *Beaver v. Tarsadia Hotels* (S.D. Cal. 2017) 2017 WL 4310707, at *9 (surveying California state
9 cases). This consensus among California state courts was recently applied by the California
10 Supreme Court in *Laffitte*, which affirmed a percentage-based fee award equal to one-third of a
11 \$19 million wage-and-hour class action settlement amount. *Laffitte*, 1 Cal.5th at 485-86. Here,
12 Class Counsel’s requested fee award of one-third of the Gross Settlement Amount reflects the
13 percentages awarded in *Laffitte* and numerous other California class action cases. *See Chavez*, 162
14 Cal.App.4th at 66 n.11 (“Empirical studies show that, regardless whether the percentage method
15 or the lodestar method is used, fee awards in class actions average around one-third of recovery.”
16 *See, e.g., In re Pac. Enters. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 379 (affirming 33% fee
17 award); *Bright v. Kanzaki* (San Francisco Super. Ct., 1997) No. 964899 (33⅓% fee plus costs); *In re*
18 *Liquid Carbon Dioxide Cases* (San Diego Super. Ct. 1996) J.C.C.P. 3012 (33⅓% fee plus
19 costs); *In re Activision Sec. Litig.* (N.D. Cal. 1989) 723 F. Supp. 1373, 1379 (32.8% award); *In re*
20 *Cal. Indirect Purchases* (Alameda Super. Ct. Oct. 22, 1998) 1998 WL 1031494, at *9 (Robinson,
21 J) (awarding 30% fee and citing 11 actions in which California trial courts had awarded fees of
22 30% or greater). A 33.3% fee is particularly justified here, where *zero* Class Members have
23 objected to the Settlement and *zero* Class Members have opted out. Dancy Decl., ¶¶ 12, 13. This
24 outcome—secured by Class Counsel after nearly three years of litigation—fully supports the
25 requested fee award.

26 **B. A LODESTAR CROSS-CHECK CONFIRMS THE REASONABLENESS**
27 **OF THE REQUESTED FEE**

28 In evaluating attorneys’ fee requests, trial courts “have discretion to conduct a lodestar

1 cross-check on a percentage fee.” *Laffitte*, 1 Cal.5th at 506 (trial courts “have discretion to
2 conduct a lodestar cross-check on a percentage fee” or “retain the discretion to forego a lodestar
3 cross-check and use other means to evaluate the reasonableness of a requested percentage fee”);
4 *see also Six (6) Mexican Workers v. Ariz. Citrus Growers* (9th Cir. 1990) 904 F.2d 1301, 1311.
5 “A lodestar cross-check is simply a quantitative method for bringing a measure of the time spent
6 by counsel into the trial court’s reasonableness determination; as such, it is not likely to radically
7 alter the incentives created by a court’s use of the percentage method.” *Laffitte*, 1 Cal.5th at 505.

8 Under this method, the Court multiplies reasonable hourly rates of counsel by a
9 reasonable number of hours needed to litigate the case to a successful conclusion. *Id.* at 489.
10 “Once the court has fixed the lodestar, it may increase or decrease that amount . . . to take into
11 account a variety of other factors, including the quality of the representation, the novelty and
12 complexity of the issues, the results obtained, and the contingent risk presented.” *Id.* (quoting
13 *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 26). As the percentage-based method
14 focuses on tangible results rather than the attorney time expended, courts conducting a lodestar
15 cross check generally have “not been required to closely scrutinize each claimed attorney-hour,
16 but have instead used information on attorney time spent to focus on the general question of
17 whether the fee award appropriately reflects the degree of time and effort expended by the
18 attorneys.” *Laffitte*, 1 Cal.5th at 505 (internal quotations and citations omitted). In performing
19 this analysis, it is sufficient for the court to review attorney declarations summarizing overall
20 time spent. *Id.*

21 Plaintiffs’ Counsel collectively spent nearly 400 hours of attorney litigating this class
22 action to date. Gould Decl., ¶ 15; Exs. 2-4. The time reported by counsel results in a total lodestar
23 of \$273,787.50. *Id.*, ¶ 15. Class Counsel are not requesting a multiplier in this Action. Given the
24 work Plaintiffs’ Counsel put into the case and the skill displayed in achieving an outstanding
25 result here in light of the risks they faced in certifying the case and litigating it successfully,
26 Plaintiffs’ fee request is reasonable under both the percentage-of-the-fund method and the
27 lodestar/multiplier method of determining fees.

1 **C. CLASS COUNSEL’S COST REQUEST IS REASONABLE AND**
2 **APPROPRIATE**

3 Plaintiff is entitled to recover reasonable litigation costs in addition to attorneys’ fees. *See*
4 Cal. Lab. Code §§ 218.5, 1194; *see also* Cal. Cod. Civ. Proc. § 1021. In litigating this case,
5 Plaintiffs’ Counsel incurred costs for the following: filing fees; mediation fees, investigative fees,
6 and service fees. Gould Decl., ¶ 21, Ex. 5. The total amount of expenses for which Class Counsel
7 seeks reimbursement is \$10,345.35. *Id.*, ¶ 21. As noted above, no Class Member has filed an
8 objection to Class Counsel’s fee and cost request. Because these costs were reasonable and
9 necessary to the successful prosecution of this case over the course of nearly three years, the
10 request is reasonable and should be granted.

11 **VI. THE PROPOSED CLASS REPRESENTATIVE SERVICE PAYMENT TO**
12 **PLAINTIFF LAM IS REASONABLE**

13 Plaintiff Lam requests a service payment of \$10,000.00 to recognize his willingness to step
14 forward and litigate this case against Defendant and the time and effort he spent on behalf of the
15 Class. “Incentive awards to class representative are fairly typical in class action cases,” and “are
16 intended to compensate class representatives for work done on behalf of the class, [and] to make
17 up for financial or reputational risk undertaken in bringing the action.” *In re Cellphone Fee*
18 *Termination Cases* (2010) 186 Cal.App. 4th 1380, 1393–94. The Court of Appeal has noted,
19 “without a named plaintiff there can be no class action” and an appropriate incentive award “may
20 be necessary to induce him to participate in the suit.” *Id.* at 1394.

21 Plaintiff Lam took a tremendous risk in litigating this Action and agreeing to be a class
22 representative. Lam is a current employee of Defendant, which inherently risks the potential
23 stigma and potential retaliation from Defendant for joining the lawsuit and helping to finalize the
24 Settlement. Gould Decl., ¶27; Lam Decl., ¶¶ 7-10. Upon amendment to the Complaint, Lam
25 participated in the litigation and has been informed of all aspects of the litigation. *Id.* As part of
26 the Settlement, Lam will sign a general release of claims. Agreement ¶¶ 5.1-5.1.1. Additionally,
27 Lam accepted the potential risk of being liable for Defendant’s costs if the case was
28 unsuccessful.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

6
7
8
9
0
1
2
3
4
5
6
7
8
9
20
21
22
23
24
25
26
27
28

- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3
4
5
6
7
8
9
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE
STATE OF CALIFORNIA

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is: 161 Fashion Lane, Suite 207, Tustin, Ca 92780. On January 12, 2024, I served the within document(s):

- **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND REQUEST FOR ATTORNEYS' FEES, COSTS, AND CLASS REPRESENTATIVE SERVICE PAYMENT**
- **DECLARATION OF TARUS DANCY IN SUPPORT OF PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND REQUEST FOR ATTORNEYS' FEES, COSTS, AND CLASS REPRESENTATIVE SERVICE PAYMENT**
- **DECLARATION OF MICHAEL A. GOULD IN SUPPORT OF PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND REQUEST FOR ATTORNEYS' FEES, COSTS, AND CLASS REPRESENTATIVE SERVICE PAYMENT**
- **DECLARATION OF KEVIN LAM IN SUPPORT OF PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND REQUEST FOR ATTORNEYS' FEES, COSTS, AND REPRESENTATIVE CLASS SERVICE PAYMENT**
- **[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**

In the matter of **Le v. M4D LLC, 30-2021-01182977**

on the following interested party(ies) in this action:

O'HAGAN MEYER LLP Katherine C. Den Bleyker kdenbleyker@ohaganmeyer.com William B. Richards, Jr. wrichards@ohaganmeyer.com Tatyana Esmailian tesmailian@ohaganmeyer.com 550 S. Hope Street, Suite 2400 Los Angeles, California 90071 Tel: (213) 423-6006	Representing: Defendant(s): M4D LLC
--	---



(By Mail) The envelope was mailed with postage thereon fully prepaid. As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Tustin, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.



(By Hand Delivery) I delivered the within documents to the attorney service for delivery to the person(s) at the address(es) set forth below with instructions that such envelope be delivered personally on May 16, 2023.



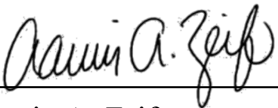
(By Overnight Mail) I am readily familiar with the firm's practice of collection and processing correspondence for mailing with FedEx. Under that practice it would be deposited with FedEx on that same day thereon fully prepaid at Tustin, California in the ordinary course of business. The envelope was sealed and placed for collection and mailing on that date following ordinary business practices.



(By Electronic Mail) The document listed above was transmitted via email to the email address(es) noted above

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 12, 2024, at Tustin, California



Aarin A. Zeif