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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: October 31, 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:

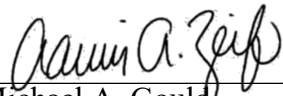
3
4 1. Timing of Settlement Payments

5 Due to M4D LLC's current financial situation, it is unable to pay the Gross Settlement
6 Amount of \$750,000 in a single lump sum payment under the terms of the February 2023 Class
7 Action and PAGA Settlement Agreement. See Declaration of Sam Lahham and attached Exhibits
8 filed concurrently herein. Accordingly, the Parties have agreed to an Amendment to the
9 Settlement Agreement ("the Amendment"). (See Amendment to Class Action and PAGA
10 Settlement Agreement attached hereto is Exhibit No. 1). The Amendment requires M4D to fully
11 fund the Settlement in four equal installment payments by transmitting the funds to the Settlement
12 Administrator every six months over a two-year period, with the Administrator to make distributions
13 of pro-rata disbursements after receiving each installment payment from M4D. (See the Amendment
14 ¶¶ 1-3). Any additional administration fees incurred as a result of this change in distribution shall be
15 paid solely by M4D LLC outside of the settlement. (See the Amendment ¶ 3).

16 2. Notice of Entry of Judgment

17 The Order/Judgment shall be posted on the settlement administrator's website for 180
18 days. The Proposed Order/Judgment has been amended to reflect this requirement. See attached
19 Exhibit No. 2., which is a redlined Proposed Order/Judgment.

20
21
22 Dated: October 10, 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

1 **THE GOULD LAW FIRM**

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10 Attorneys for Plaintiffs Trung Le and Kevin Lam

11 **O'HAGAN MEYER LLP**

12 KATHERINE C. DEN BLEYKER (SBN: 257187)
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13 WILLIAM B. RICHARDS, JR. (SBN: 298552)
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14 TATYANA ESMAILIAN (SBN: 336012)
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15 550 S. Hope Street, Suite 2400
Los Angeles, California 90071
16 Telephone: 213.647.0041
Facsimile: 213.647.1799

17 Attorneys for Defendant M4D LLC
18

19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
20 **COUNTY OF ORANGE, CIVIL COMPLEX CENTER**
21

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

24 Plaintiffs,

25 vs.

26 M4D LLC, and DOES 1 through 25,

27 Defendants.
28

Case No. 30-2021-01182977-CU-OE-CXC
[Honorable Judge Melissa R. McCormick,
Dept. CX104]

**AMENDMENT TO CLASS ACTION AND
PAGA SETTLEMENT AGREEMENT**

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

1 **AMENDMENT TO CLASS ACTION AND PAGA SETTLEMENT AGREEMENT**

2 This Amendment (the “Amendment”) to Class Action and PAGA Settlement Agreement (the
3 “Agreement”) is made by and between Plaintiff Kevin Lam (“Plaintiff”) and Defendant M4D, LLC
4 (“Defendant” or “M4D”). The Agreement, the Addendum thereto, and this Amendment thereto refer
5 to Plaintiff Lam and Defendant M4D collectively as the “Parties,” or individually as a “Party.”

6 **RECITALS**

7 A. WHEREAS, in February 2023, the Parties entered into the Agreement.

8 B. WHEREAS, Paragraph 11.9 of the Agreement states:

9 Modification of Agreement. This Agreement, and all parts of it, may be amended,
10 modified, changed, or waived only by an express written instrument signed by all
11 Parties or their representatives, and approved by the Court.

12 C. WHEREAS, Paragraph 11.5 of the Agreement states:

13 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and
14 represent that they are authorized by Class Representative and M4D, respectively, to
15 take all appropriate action required or permitted to be taken by such Parties pursuant
16 to this Agreement to effectuate its terms, and to execute any other documents
17 reasonably required to effectuate the terms of this Agreement including any
18 amendments to this Agreement.

19 D. WHEREAS, on September 18, 2023, the Parties entered into an Addendum to Class
20 Action and PAGA Settlement Agreement (the “Addendum”), incorporating into the Agreement the
21 following additional provision:

22 The Parties agree that the Court shall have continuing jurisdiction over the Agreement
23 and settlement terms pursuant to California Code of Civil Procedure § 664.6.

24 E. WHEREAS, the Parties now wish to amend the Agreement solely to alter the manner
25 and timing of settlement funding and disbursement by way of an installment payment plan.

26 NOW THEREFORE, based on the foregoing Recitals, the Parties, by and through
27 their respective undersigned attorneys of record, agree that the following provisions of the Agreement
28 are hereby amended in the manner indicated as follows:

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AMENDMENTS TO THE AGREEMENT

1. Paragraph 4.3 of the Agreement is hereby amended and replaced to read as follows:

Funding of Gross Settlement Amount. M4D shall fully fund the Gross Settlement Amount in four (4) equal Installments of \$187,500.00, and also fund the amounts necessary to fully pay M4D's share of payroll taxes on the pro-rata portions of Individual Class Payments along with each Installment, by transmitting the funds to the Administrator as follows: the First Installment shall be paid no later than 6 months after the Effective Date; the Second Installment shall be paid no later than 12 months after the Effective Date; the Third Installment shall be paid no later than 18 months after the Effective Date; and the Fourth Installment shall be paid no later than 24 months after the Effective Date

2. Paragraph 4.4 of the Agreement is hereby amended and replaced to read as follows:

Payments from the Gross Settlement Amount. Within 14 calendar days after M4D funds each Installment payment, the Administrator will distribute the amounts of the Installments received by the Administrator pro-rata, by mailing checks for the pro-rata portions of all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the approved Administration Expenses Payment, the approved Class Counsel Fees Payment, the approved Class Counsel Litigation Expenses Payment, and the approved Class Representative Service Payment. For each Installment, disbursement of the pro-rata portions of the approved Class Counsel Fees Payment, the approved Class Counsel Litigation Expenses Payment, and the approved Class Representative Service Payment shall not precede disbursement of the pro-rata portions of the Individual Class Payments and Individual PAGA Payments.

3. M4D shall be solely responsible for any additional administration fees over \$9,000.00 associated with the above mentioned distributions. In other words, any additional amounts owed to CPT Group, Inc. for distribution above \$9,000.00 shall be paid by M4D outside of the Gross Settlement Amount.

Dated: August 15, 2024

THE GOULD LAW FIRM
A Professional Law Corporation

By: /s/ Aarin A. Zeif
Michael A. Gould
Aarin Zeif
Attorneys for Plaintiff Kevin Lam

Dated: August 14, 2024

O'HAGAN MEYER LLP
Katherine C. Den Bleyker
William B. Richards, Jr.
Tatyana Esmailian

By: /s/ William B. Richards, Jr.
William B. Richards, Jr.
Attorneys for Defendant M4D, LLC

Exhibit No. 2

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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: ~~October 31, 2024~~ 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 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~~
6 ~~and PAGA Settlement Agreement (the “Addendum”),~~ and an Amendment to Class Action and
7 PAGA Settlement (the “Amendment”). The Court, having reviewed and considered the Motion,
8 its accompanying memorandum, the Agreement, ~~the and~~ Addendum, and the Amendment, and
9 the declarations in support thereof (and all exhibits thereto), finds that the Motion should be, and
10 hereby is, GRANTED. The Court finds and concludes as follows: This Order incorporates the
11 Agreement, ~~the and~~ Addendum, and the Amendment. The Court has jurisdiction over the
12 subject matter of this proceeding and over all Parties to this proceeding. In addition, the Court
13 has personal jurisdiction over all parties with respect to the Action and the Agreement, ~~the and~~
14 Addendum, and the Amendment. The Court hereby finds the ~~Agreement Settlement~~ involves the
15 resolution of a bona fide dispute and was entered into in good faith.

16 **CERTIFICATION OF SETTLEMENT CLASS**

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

1 class; and (3) class representatives who can adequately represent the class.”) (internal quotations
2 and citations omitted); see also Fed. R. Civ. P. 23(a); *Hanlon v. Chrysler Corp.* (9th Cir. 1998)
3 150 F.3d 1011, 1019, overruled on other grounds by *Wal-Mart Stores, Inc. v. Dukes* (2011) 564
4 U.S. 338.

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

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

11 **FINAL APPROVAL OF THE PROPOSED SETTLEMENT**

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

1 represents a compromise of the Parties' respective positions rather than the result of a finding of
2 liability at trial. The Court further finds that the terms of the Agreement, the -and- Addendum,
3 and the Amendment have no obvious deficiencies and do not improperly grant preferential
4 treatment to any individual Class Member.

5 **NOTICE AND ADMINISTRATION**

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

22 **OBJECTIONS AND EXCLUSIONS**

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

27 **PAGA**

28 As part of the Settlement, Plaintiff seeks approval of PAGA Penalties to the

1 California Labor and Workforce Development Agency (“LWDA”) and Aggrieved Employees
2 defined as “an individual who worked for M4D as a nonexempt employee in California at any
3 time between February 5, 2020 and August 28, 2022.” Defendant’s records reflect that there
4 are 48 Aggrieved Employees within the PAGA Period. The Court approves \$25,000.00 of the
5 Gross Settlement Amount to be allocated for PAGA Penalties, with 75% (\$18,750.00)
6 allocated to the LWDA PAGA Payment and 25% (\$6,250.00) allocated to the Individual
7 PAGA Payments. The Court finds the settlement of PAGA Penalties in this Action to be fair,
8 reasonable, to serve public interest, and to be consistent with PAGA’s objectives.

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

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

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

10 **JUDGMENT**

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

24 The Settlement Administrator shall post a copy of this order/judgment on the website it
25 maintains for this matter for 180 days.

26 DATED: _____

27 _____
28 JUDGE OF THE SUPERIOR COURT
Hon. Melissa R. McCormick

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 October 14, 2024, I served the within document(s):

- **SUPPLEMENTAL BRIEF IN SUPPORT OF PLAINTIFF LAM'S MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT**
- **[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**
- **DECLARATION OF SAM LAHAM**
- **MINUTE ORDER DATED 6/6/24**

In the matter of **Le v. M4D LLC, 30-2021-01182977**, on the following interested party(ies) in this action:

William Richards wrichards@ohaganmeyer.com Katherine C. Den Bleyker kdenbleyker@ohaganmeyer.com O'HAGAN MEYER 4695 MacArthur Ct., Suite 900 Newport Beach, Ca 92660	Representing: Defendant M4D LLC
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☐

(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 October 10, 2024.

☐

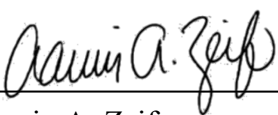
(By Overnight Mail) I am readily familiar with the firm's practice of collection and processing correspondence for mailing with FedEx. Under that practice it would be deposited with FedEx on that same day thereon fully prepaid at Tustin, California in the ordinary course of business. The envelope was 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 October 14, 2024, at Tustin, California



Arin A. Zeif