

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This Class Action and PAGA Settlement Agreement (the “Agreement”) is made by and between Plaintiff Kevin Lam (“Plaintiff”) and Defendant M4D, LLC (“Defendant” or “M4D”). The Agreement refers to Plaintiff Lam and Defendant M4D collectively as the “Parties,” or individually as a “Party.”

1. **DEFINITIONS.**

- 1.1. “Action” means the lawsuit alleging wage and hour violations against M4D captioned Le et al. v. M4D, LLC initiated on February 5, 2021 and pending in the Superior Court of the State of California, County of Orange, Case No. 30-2021-01182977-CU-OE-CXC.
- 1.2. “Administrator” means CPT Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “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.
- 1.5. “Class” means all individuals who worked for M4D as nonexempt employees in California at any time between February 5, 2017 and August 28, 2022.
- 1.6. “Class Counsel” means The Gould Law Firm and Garcia & Phan.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8. “Class Data” means Class Member identifying information in M4D’s possession including the Class Member’s name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods.
- 1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).
- 1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class

Members.

- 1.11 “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.12. “Class Period” means the period from February 5, 2017 to August 28, 2022.
- 1.13 “Class Representative” means named Plaintiff Kevin Lam.
- 1.14 “Class Representative Service Payment” means the payment to the Class Representative for providing services in support of the Action.
- 1.15 “Court” means the Superior Court of the State of California, County of Orange.
- 1.16 “Defendant” or “M4D” means named Defendant M4D, LLC.
- 1.17 “Defense Counsel” means Lewis Brisbois Bisgaard & Smith LLP.
- 1.18 “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
- 1.19 “Final Approval” means the Court’s order granting final approval of the Settlement.
- 1.20 “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.21 “Gross Settlement Amount” means \$750,000.00 (Seven Hundred Fifty Thousand Dollars and Zero Cents) which is the total amount M4D agrees to pay under the Settlement except as provided in Paragraph 7 below and any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment, and the Administrator’s Expenses.
- 1.22 “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.

- 1.23 “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods during the PAGA Period.
- 1.24 “Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.
- 1.25 “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.26 “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.27 “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.28 “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.29 “PAGA Pay Period” means any Pay Period (bi-weekly) during which an Aggrieved Employee worked for M4D as a nonexempt employee in California during the PAGA Period, based on hire date, re-hire date(s) (as applicable), last date(s) worked (as applicable), and date(s) of any transition between nonexempt and exempt status (as applicable).
- 1.30 “PAGA Period” means the period from February 5, 2020 to August 28, 2022.
- 1.31 “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698, *et seq.*).
- 1.32 “PAGA Notices” means Plaintiff Trung Le’s letter to M4D and the LWDA dated February 5, 2021 and Kevin Lam’s letter to M4D and the LWDA dated August 17, 2022 providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.33 “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$6,250.00) and the 75% to LWDA (\$18,750.00) in settlement of PAGA claims.
- 1.34 “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.35 “Plaintiff” means named Plaintiff Kevin Lam.
- 1.36 “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.

- 1.37 “Preliminary Approval Order” means the Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.38 “Released Class Claims” means the claims being released as described in Paragraph 5.2 below.
- 1.39 “Released PAGA Claims” means the claims being released as described in Paragraph 5.3 below.
- 1.40 “Released Parties” means: M4D, LLC, and each of its former, present, and future owners, parents, and subsidiaries, and all of their current, former, and future, officers, directors, members, managers, employees, consultants, partners, shareholders, joint ventures, agents, predecessors, successors, assigns, accountants, insurers, reinsurers, and or legal representatives.
- 1.41 “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.42 “Response Deadline” means 60 days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) mail Requests for Exclusion from the Settlement, or (b) mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.
- 1.43 “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.
- 1.44 “Workweek” means any week during which a Class Member worked for M4D as a nonexempt employee in California during the Class Period, based on hire date, re-hire date(s) (as applicable), last date(s) worked (as applicable), and date(s) of any transition between nonexempt and exempt status (as applicable).

2. RECITALS

- 2.1. On February 5, 2021, Plaintiff Trung Le commenced this Action by filing a Class Action Complaint alleging causes of action against M4D for (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); and (6) failure to provide meal and rest breaks (Cal. Lab. Code §§ 512, 226.2, and 226.7). On August 11, 2022, the Complaint was amended adding Kevin Lam as a Plaintiff in the Action and a seventh cause of action for violations of PAGA (Cal. Lab. Code §§ 2698, *et seq.*). The First Amended Class Action Complaint is the operative complaint in the Action (the “Operative Complaint”). M4D denies the allegations

in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint and denies any and all liability for the causes of action alleged.

- 2.2. Pursuant to Labor Code section 2699.3, subd.(a), M4D and the LWDA received timely written notice of the PAGA Notices.
- 2.3. On June 28, 2022, the Parties participated in an all-day mediation presided over by Hon. Carl West (Ret.), which led to this Agreement to settle the Action.
- 2.4. Prior to mediation, Plaintiff obtained, through formal and informal discovery, information and documents, including, *inter alia*: (1) a randomized sampling of time and payroll records for 10% of the estimated 84 Class Members; (2) Class data points, including, for both current and formerly-employed Class Members between the start of the Class Period (February 5, 2017) and the date of mediation (June 28, 2022), total numbers of Class Members, average hourly rates of pay, and approximate total numbers of workweeks worked and pay periods; (3) PAGA (and wage statement penalty) group data points, including, for both current and formerly-employed Aggrieved Employees between the start of the PAGA Period (February 5, 2020) and the date of mediation (June 28, 2022), total numbers of Aggrieved Employees and approximate total numbers of workweeks worked and pay periods; and (4) all wage and hour policy documents and employee handbooks in effect during the Class and PAGA Periods. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").
- 2.5. The Court has not granted class certification.
- 2.6. The Parties, Class Counsel, and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

- 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 7 below, M4D promises to pay \$750,000.00 and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. M4D has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to M4D.
- 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

- 3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$10,000.00, in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member. M4D will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.
- 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 33.33% of the Gross Settlement Amount, which, unless escalated pursuant to Paragraph 7 of this Agreement, is currently estimated to be \$250,000.00, and a Class Counsel Litigation Expenses Payment of actual litigation costs not to exceed \$12,500.00. M4D will not oppose requests for these payments provided that do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds M4D harmless, and indemnifies M4D from any dispute or controversy regarding any division or sharing of any of these Payments.
- 3.2.3 To the Administrator: An Administrator Expenses Payment as approved by the Court.
- 3.2.4 To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.

3.2.4.1 Tax Allocation of Individual Class Payments. 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

3.2.4.2 Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

3.2.5 To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$25,000.00 to be paid from the Gross Settlement Amount, with 75% (\$18,750.00) allocated to the LWDA PAGA Payment and 25% (\$6,250.00) allocated to the Individual PAGA Payments.

3.2.5.1 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$6,250.00) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payments.

3.2.5.2 If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1 Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, M4D estimates there are 84 Class Members who collectively worked a total of approximately 10,500 Workweeks (between the start of the Class Period on February 5, 2017 and the date of mediation on June 28, 2022), and 42 Aggrieved Employees who collectively worked a total of approximately 2,000 PAGA Pay Periods (between the start of the PAGA Period on February 5, 2020 and the date of mediation on June 28, 2022).

- 4.2 Class Data. Not later than 15 calendar days after the Court grants Preliminary Approval of the Settlement, M4D will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. M4D has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted Class Member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. The Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.
- 4.3 Funding of Gross Settlement Amount. M4D shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay M4D's share of payroll taxes by transmitting the funds to the Administrator no later than 14 calendar days after the Effective Date.
- 4.4 Payments from the Gross Settlement Amount. Within 14 calendar days after M4D funds the Gross Settlement Amount, the Administrator will mail checks for 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.
- 4.4.1 The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.
- 4.4.2 The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within 7 calendar days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to

Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

4.4.3 For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).]

4.4.4 The payment of Individual Class Payments and Individual PAGA Payments shall not obligate M4D to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. **RELEASES OF CLAIMS.** Effective on the date when M4D fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows:

5.1 Class Representative's Release. Class Representative and his former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences relating to or arising out of the Class Representative's relationship with the Defendant, including, without limitation: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint or ascertained during the Action and released under Paragraph 5.2 below; and (b) all PAGA claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint, the PAGA Notices, or ascertained during the Action and released under Paragraph 5.2 below ("Class Representative's Release"). Class Representative's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Class Representative acknowledges that he may discover facts or law different from, or in addition to, the facts or law that Class Representative now knows or believes to be true but agrees, nonetheless, that Class Representative's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Class Representative's discovery of them.

5.1.1. Class Representative's Waiver of Rights Under California Civil Code Section 1542. For purposes of Class Representative's Release, Class Representative expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which

reads:

“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or Released Party.”

- 5.2 Release by Participating Class Members Who Are Not Aggrieved Employees: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from any and all claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint in the Action, or that could have arisen out of the allegations in the Operative Complaint in the Action, for the duration of the Class Period, including, e.g., any and all claims involving: (1) any alleged failure to pay overtime wages; (2) any alleged failure to pay minimum wages; (3) any alleged failure to provide compliant meal periods, or compensation in lieu thereof; (4) any alleged failure to provide compliant rest periods, or compensation in lieu thereof; (5) any alleged failure to pay wages due upon termination or resignation; (6) any alleged failure to provide compliant wage statements; and (7) any alleged unlawful, unfair, or fraudulent business acts or practices under California Business and Professions Code sections 17200, *et seq.* arising out of the Labor Code and Industrial Welfare Commission (“IWC”) Wage Order violations referenced in the Operative Complaint. Except as set forth in Paragraph 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment benefits, disability benefits, social security benefits, workers’ compensation benefits, or claims based on facts occurring outside the Class Period.
- 5.3 Release by Non-Participating/Participating Class Members Who Are Aggrieved Employees: All Non-Participating/Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint in the Action and in the PAGA Notices, or that could have arisen out of the allegations in the Operative Complaint in the Action and in the PAGA Notices, for the duration of the PAGA Period, including, e.g., any and all claims for PAGA penalties pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 in connection with: (1) any alleged failure to pay overtime wages; (2) any alleged failure to pay minimum wages; (3) any alleged failure to provide compliant meal periods, or compensation in lieu thereof; (4) any alleged failure to provide compliant rest periods, or compensation in lieu thereof; (5) any alleged failure to pay wages due upon termination or resignation; and (6) any alleged failure to provide compliant wage statements.

6. SETTLEMENT ADMINISTRATION.

- 6.1 Selection of Administrator. The Parties have jointly selected CPT Group, Inc. to serve as the Administrator and verified that, as a condition of appointment, CPT Group, Inc. agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 6.2 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.
- 6.3 Notice to Class Members.
- 6.3.1 No later than 4 calendar days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.
- 6.3.2 Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.
- 6.3.3 Not later than 5 calendar days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.
- 6.3.4 The deadlines for Class Members’ written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 calendar days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-

mailed.

- 6.3.5 If the Administrator, M4D, or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in good faith in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever are later.

6.4 Requests for Exclusion (Opt-Outs).

- 6.4.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by mail, a signed written Request for Exclusion not later than 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address, and email address or telephone number. To be valid, a Request for Exclusion must be timely postmarked by the Response Deadline.
- 6.4.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.
- 6.4.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 5.2 and 5.3 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.
- 6.4.4 Every Class Member who submits a valid and timely Request for Exclusion

is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. However, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 5.3 of this Agreement and are eligible for an Individual PAGA Payment.

6.5 Challenges to Calculation of Workweeks. Each Class Member shall have 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

6.6 Objections to Settlement.

6.6.1 Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or Class Representative Service Payment.

6.6.2 Participating Class Members may send written objections by mail to the Administrator. Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 60 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re- mailed).

6.6.3 Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

6.7 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

6.7.1 Email Address and Toll-Free Number. The Administrator will also maintain and monitor an email address and a toll-free telephone number to

receive Class Member calls and emails.

- 6.7.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5 calendar days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).
- 6.7.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.
- 6.7.4 Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.
- 6.7.5 Administrator’s Declaration. Not later than 14 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.
- 6.7.6 Final Report by Settlement Administrator. Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number

only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

7. **CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE** Based on its records, M4D estimates that there are 84 Class Members and approximately 10,500 Total Workweeks (between the start of the Class Period on February 5, 2017 and the date of mediation on June 28, 2022). If the number of Workweeks is ten percent (10%) higher, or 11,550 Workweeks worked, then the Gross Settlement Amount shall be increased proportionally by the Workweeks worked in excess of 11,550 workweeks multiplied by the per Workweek Value.
8. **M4D, LLC'S RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10% of the total of all Class Members, M4D may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if M4D withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, M4D will remain responsible for paying all Settlement Administration Expenses incurred to that point. M4D must notify Class Counsel and the Court of its election to withdraw within 14 days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.
9. **MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in good faith, to resolve any disagreements concerning the Motion for Final Approval.
 - 9.1. **Response to Objections.** Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.
 - 9.2. **Duty to Cooperate.** If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this Paragraph.

- 9.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.
- 9.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs, or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.
- 9.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

10. **AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

11. **ADDITIONAL PROVISIONS.**

- 11.1. No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by M4D that any of the allegations in the Operative Complaint have merit or that M4D has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that M4D's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval, or enter Judgment,

M4D reserves the right to contest certification of any class for any reasons, and M4D reserves all available defenses to the claims in the Action, and Plaintiffs reserve the right to move for class certification on any grounds available and to contest M4D's defenses. The Settlement, this Agreement, and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

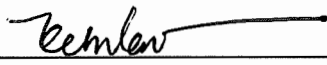
- 11.2. Confidentiality Prior to Preliminary Approval. Class Representative, Class Counsel, M4D, and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate, and/or publicize, or cause or permit another person to disclose, disseminate, or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys or accountants; (2) to the extent necessary to report income to appropriate taxing authorities; (3) in response to a court order or subpoena; or (4) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Class Representative, Class Counsel, M4D, and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This Paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 11.3. No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this Paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 11.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 11.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Class Representative and M4D, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 11.6. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other

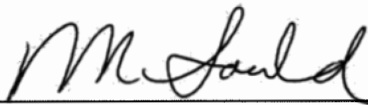
things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

- 11.7. No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 11.8. No Tax Advice. Neither Plaintiff, Class Counsel, M4D, nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 11.9. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 11.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 11.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 11.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 11.13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 11.14. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 11.15. Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 11.16. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for

purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

- 11.17. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

Dated: 02.03.23. By: 
Plaintiff Kevin Lam

Dated: 2/16/23 By: 
By: Michael A. Gould
Counsel for Plaintiff Kevin Lam

Dated: By: _____
Defendant M4D, LLC
By: _____
Its: _____

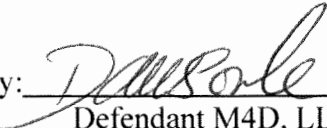
Dated: By: _____
By: Katherine Den Bleyker
Counsel for Defendant M4D, LLC


purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

- 11.17. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

Dated: _____ By: _____
Plaintiff Kevin Lam

Dated: _____ By: _____
By: Michael A. Gould
Counsel for Plaintiff Kevin Lam

Dated: 2/1/2023 By:  _____
Defendant M4D, LLC
By: DAWSON LE
Its: CEO

Dated: 2/2/2023 By:  _____
By: Katherine Den Bleyker
Counsel for Defendant M4D, LLC