SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

GUANG TIAN; YAN NIE; JING JIAN WU; ZHEN SHENG YIN; TIE QUAN MA; MING FANG TIE; JIAN EN LIN; YUN YING LIN; YU HONG CHANG; YI WU, on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

MA LABORATORIES, INC.,

Defendants.

Case No.: 1-11-CV-195373

ORDER AFTER HEARING ON AUGUST 7, 2015

Motion for Final Approval of Class Action Settlement; Motion for Leave to File a Fourth Amended Complaint; Ex Parte Application by Plaintiffs for an Order Vacating Trial Date on Wrongful Termination Claims; Motions to be Relieved as Counsel for Plaintiffs; Applications to Seal Documents

The above-entitled matter came on regularly for hearing on Friday, August 7, 2015 at 9:00 a.m. in Department 1 (Complex Civil Litigation), the Honorable Peter H. Kirwan presiding. The appearances are as stated in the record. The Court, having reviewed and considered the written submission of all parties, having heard and considered the oral argument

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of counsel, and being fully advised, orders that Exhibit A attached to and incorporated herein is the Order of the Court.

IT IS SO ORDERED.

Dated: 8/10/15

Honorable Peter H. Kirwan
Judge of the Superior Court

EXHIBIT A

Calendar line 2

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Case Name: Guang Tian, et al v. Ma Laboratories, Inc., et al.
Case No.: 1-11-CV-195373

I. Motion for Final Approval of Class Action Settlement

This is a motion for final approval of class action settlement. Under the proposed settlement, Ma Labs agrees to pay a non-reversionary sum of **$2,850,000** for full settlement of all class and PAGA claims.[1] The Settlement Class consists of approximately 569 current and former hourly employees who worked for Ma Labs in California any time between March 1, 2007 and October 21, 2014. Out of the net settlement amount, **$37,500** will be paid to the California Labor and Workforce Development Agency as civil penalties under the Private Attorneys General Act ("PAGA") (Cal. Lab. Code, § 2699 et seq.) A total of **$66,000** in service awards will be paid to Class and PAGA Representatives as follows: Class Representatives Yu Hong Chang and Yi Wu will each receive service awards of $13,000; Class/PAGA Representative Christopher Cavaliere, Class Representative Chao Hui Liu, and Class Representative Bao Jie Zhang will each receive service awards of $10,000; and PAGA representative Steven Lee will receive $10,000. Class Counsel will receive **$1,650,000** for attorneys' fees and litigation expenses.[2] Each Settlement Class Member will share pro rate in the Net Class Payment Amount of **$1,096,500** and payments will be calculated based on the actual number of workweeks each Settlement Class Member worked within the period of March 1, 2007 to October 21, 2014.

On April 17, 2015, the Court granted preliminary approval of the proposed settlement as well as the proposed method of notifying the Settlement Class of the settlement by mail.

Both parties request judicial notice of various court records filed in this matter. The requests are **GRANTED**. (See Cal. Evid. Code, § 452, subd. (d) [judicial notice of court records].)

"The well-recognized factors that the trial court should consider in evaluating the reasonableness of a class action settlement agreement include 'the strength of 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, the presence

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[1] The January 27, 2015 settlement agreement explicitly carves out the sixth cause of action for wrongful termination/retaliation by individual Plaintiffs Guang Tian, Yan Nie, Jing Jian Wu, Tie Quan Ma, and Ming Fang Tie, the seventh cause of action for wrongful termination/retaliation by individual plaintiff Steven Lee, and the eighth cause of action for retaliation under California Labor Code section 98.6 by Steven Lee. (Decl. David Sanford ISO Pltfs' Mot. for Final Approv., Exh. 1 at p. 2, ¶ 4.) Prior to the settlement, the named Plaintiffs moved to sever their individual wrongful termination/retaliation claims, and on January 30, 2015, the Court granted the named Plaintiffs' ex parte application for severance of the sixth cause of action for wrongful termination/retaliation.

[2] Settlement administration expenses in the amount of **$14,565** will be paid to Rust Consulting out of Class Counsel's attorneys' fees and expenses and will not reduce the Class fund. (See Decl. Stacy Roe on behalf of Rust Consulting, Inc. ¶ 24, filed Jul. 14, 2015; Decl. David Sanford ISO Pltfs' Mot. for Final Approv. ¶¶ 97-98.)

of a governmental participant, and the reaction of the class members to the proposed settlement.' [Citations.] This list 'is not exhaustive and should be tailored to each case.' [Citation.]" (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.) "[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. [Citation.]" (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.)

Here, the settlement is entitled to a presumption of fairness because it was reached through arm's-length bargaining between experienced counsel after extensive litigation and formal mediation with the Honorable Rebecca Westerfield (Ret.) and court-appointed referee Thomas HR Denver. Regarding the extent of discovery, the case involved extensive motion practice on discovery and merits issues over more than four years, giving both parties' counsel a clear sense of the strengths and weaknesses of the case and the defense.[3] After the Settlement Administrator Rust Consulting ("Rust") conducted the court-approved notice process,[4] there were only five objectors to the proposed settlement: individual named Plaintiffs Ming Fang Tie, Yan Nie, and Guang Tian,[5] and two other class members: Xin Jin and Chi Zhang.[6] The small percentage of objectors further supports the presumption of fairness.

Regarding the reasonableness of the settlement, on average Class Members will receive an amount equal to 26% of their best possible recovery on the class claims, and will receive more than 100% of the maximum amount of damages with respect to the strongest claims, the "time-shaving" and "second meal period" claims.[7] Balancing the settlement amount with the risks of further litigation, including Defendants' motions to decertify, the settlement amount reflects a reasonable compromise and still provides significant benefits to the Class.

Plaintiff Nie objects to the settlement on the grounds that "the defendant did not admit his violations of the law, and in the content of specific compensation, there is no payment for those two compensations of lunch and break during work." Nie further states, "I believe that in the content of this settlement, the defendant did not fully compensate the litigation demands of the plaintiffs; the defendant did not think that they violated the labor law."[8] Tie's objections are nearly identical to Nie's.[9] Likewise, Tian objects on the grounds that "in the settlement notice of this class action, the defendant did not admit his violations of the law."[10] The

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[3] See Decl. Sanford ¶¶ 22-37.

[4] In or around October of 2014, following class certification, Rust mailed class notices to approximately 620 individuals, resulting in 23 timely opt-outs and 45 notices returned as undeliverable. (See Decl. Stacy Roe ¶¶ 10-11, filed Jan. 22, 2015; Decl. Roe ¶ 6, filed Jul. 14, 2015.) In April 2015, Rust received information that of the 45 individuals whose notices were returned as undeliverable, 4 were current Ma Labs employees, and their addresses were either confirmed or updated. (Decl. Roe ¶7.) On May 27, 2015, the Court ordered Rust to redeliver the notices to 8 individuals whose notices were returned as undeliverable after the December 10, 2014 opt-out deadline, and 4 current employees whose notices were returned as undeliverable. These two lists overlapped by 2 individuals, so there were 10 individuals subject to redelivery. (Decl. Roe ¶ 8.) On June 22, 2015, Rust mailed notices to the 10 individuals, giving them 45 days from June 22, 2015 to opt out. (Decl. Roe ¶ 18.) Rust only received **one request to opt out** as a result of the redelivery. (Decl. Roe ¶ 22.)

[5] Exhs. A-C to Decl. Xinying Valerian ISO Pltfs' Resp. to Objections to Class Settlement. Ms. Valerian provides both the Chinese language objections and a translation by Richard W. Peng, a third-party certified translator.

[6] See Defs' Notice of Receipt of Class Objections.

[7] Decl. Sanford ¶¶ 56-60.

[8] See Valerian Exh. A.

[9] See Valerian Exh. B.

[10] See Valerian Exh. C.

objections are not well-taken. The proposed settlement is not unreasonable for lack of an express admission of guilt by Defendants since it provides considerable monetary redress for the alleged wrongs. It is unclear why Nie contends the settlement does not provide payment for meal and break claims. To the extent the settlement compromises the extent and amount of recovery, this merely reflects the compromised nature of settlement. "A settlement need not obtain 100 percent of the damages sought in order to be fair and reasonable. [Citations.] Compromise is inherent and necessary in the settlement process. Thus, even if 'the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated,' this is no bar to a class settlement because 'the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.' [Citation.]" (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 250.) The fact that named Class Representatives object to the settlement does not preclude court approval. "[A]greement of the named plaintiffs is not essential to approval of a settlement which the trial court finds to be fair and reasonable. . . . [T]he named plaintiffs should not be permitted to hold the absentee class hostage by refusing to assent to an otherwise fair and adequate settlement in order to secure their individual demands." (*Parker v. Anderson* (5th Cir. 1982) 667 F.2d 1204, 1211.) Although the Court does not question the motives or good faith of the objecting Class Representatives, their objections fail to take into account the compromise inherent in settlement, and they stand to deny considerable benefits to the overwhelming majority of the Settlement Class. The objections are **OVERRULED**.

Regarding the attorney's fee award, the "common fund" doctrine allows a party recovering a fund for the benefit of others to recover attorney's fees from the fund itself. (See *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110-111.) Here, the proposed $1,150,000 in attorneys' fees represents approximately 40% of the settlement amount, which exceeds a typical contingency fee allocation. A lodestar cross-check is a further way of evaluating the reasonableness of the attorney's fee award. (See *Lealao v. Beneficial Cal. Inc.* (2000) 82 Cal.App.4th 19, 46-47.) Here, Class Counsel submits billing statements supporting a lodestar of $10,636,585.25, based on over 23,000 hours in attorney and paralegal time.[11] While the Court questions the reasonableness of some of the billing rates used in calculating the lodestar, the Court does not doubt that a considerable amount of time was spent on the case, or that the proposed fee award is probably a significant discount from any reasonable lodestar amount.[12] The requested $500,000 expense award is supported by documentation of Class Expenses in the amount of $545,461.[13] The request for attorneys' fees and costs in the amount of $1,650,000 is **GRANTED**.

The Class Representative awards are appropriate based on the amount of time and effort expended by the Class Representatives in assistance of the prosecution of this suit and the risks of filing suit, including reputational harms.[14] (See *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393.) Regarding PAGA Representative Steven Lee, on May 1, 2015, Plaintiffs submitted the Declaration of Steven Lee ISO Plaintiffs' Supplemental Brief to Application for Preliminary Approval, describing Mr. Lee's assistance in the case,

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[11] See Decl. Sanford ¶ 79; Decl. Thomas Marc Litton ¶80, Exh. A; Decl. Edward Chapin ¶ 6, Exh. B; Decl. Daniel Qualls ¶ 5, Exh. 1.

[12] In connection with the discussion on the lodestar amount, Plaintiffs submitted the declaration of David Borgen to support the reasonableness of the attorneys' fee request. Defendants submitted written evidentiary objections to the Borgen declaration. The objections are **OVERRULED**.

[13] See Decl. Sanford, Exh. 5.

[14] See Decl. Sanford ¶¶ 67-69.

including his attendance at two depositions, his termination on March 7, 2014 allegedly in retaliation for participating in the lawsuit against Ma Labs, and the mental anguish and emotional distress he has allegedly suffered since joining the lawsuit.[15] Defendants oppose a service award to Mr. Lee on the grounds that the parties did not intend to provide PAGA representatives with incentive payments. Defendants point out that the settlement only refers to "class representative enhancements." Defendants also submit objections to Mr. Lee's May 1, 2015 declaration, but these objections are **OVERRULED**. There is authority providing for incentive payments to non-class representatives (e.g., *Equal Rights Ctr. v. Wash. Metro. Area Transit Auth.* (D.D.C. 2008) 573 F.Supp.2d 205, 214, fn. 10 [awards to 16 deposed class members not named in complaint]; *Romero v. Producers Diary Foods, Inc.* (E.D. Cal. 2007) 2007 U.S. Dist. LEXIS 86270, at *10-11 [after named class representatives, non-class representatives actually deposed received remaining portion of award in equal shares]), and Mr. Lee supports the time and effort he expended in support of this case, including his attendance for two depositions. Defendants argue that most of Mr. Lee's assistance in the case was in support of his own individual claims, but Class Counsel supports Mr. Lee's assistance to the class claims.[16] Even if a PAGA representative award was not explicitly negotiated by the parties, the award does not change Defendants' obligations under the settlement, and the Settlement Class did not object to Mr. Lee receiving an award. Thus, the Court **GRANTS** final approval of the Class Representative and PAGA awards.

For all of these reasons, the Court hereby approves the settlement and finds that it is, in all respects, fair, adequate and reasonable. The motion for final approval is **GRANTED**.

II. Motion for Leave to File a Fourth Amended Complaint

Plaintiffs Guang Tian, Yan Nie, Jing Jian Wu, Tie Quan Ma, and Ming Fang (the "Wrongful Termination Plaintiffs" or "WT Plaintiffs") move for leave to file a Fourth Amended Complaint ("4AC") that would "clarify" the legal bases for the sixth cause of action for Wrongful Termination in Violation of Public Policy, Retaliation. Currently, the operative Third Amended Complaint ("3AC") labels the sixth cause of action as brought under "Common Law and California Government Code §§12940, *et seq.*" The proposed FAC would replace this with Labor Code sections 98.6, 232.5, 1102.5, and 6310. Plaintiffs' counsel contends they did not discover the problem with the statutory aspect of the sixth cause of action until Defendants filed a motion for judgment on the pleadings in April 2015, and in preparing the opposition, Plaintiffs' counsel discovered the claim was incorrectly labeled as restitution under the Fair Employment and Housing Act ("FEHA"), not the Labor Code.

Defendants oppose the motion on the grounds that Plaintiffs' delay is not excused, and Defendants will be prejudiced by the amendment because the proposed new statutory claims have new elements and are subject to new defenses that Defendants have not had the opportunity to investigate or explore in discovery, and witnesses memories' have faded during the four-year duration of this lawsuit. Finally, Defendants argue that amendment would be futile because the WT Plaintiffs did not opt out of the class settlement and are bound by its broad release provisions that encompass the claims they now seek to raise by amendment, and the amended claims would be untimely.

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[15] See docket no. 722.
[16] See Decl. Sanford ¶¶68-69.

Judicial policy favors resolution of all disputed matters between the parties in the same lawsuit, and thus, the court's discretion on allowing leave to amend will usually be exercised liberally to permit amendment of pleadings. (See *Nestle v. Santa Monica* (1972) 6 Cal.3d 920, 939.) "If the motion to amend is timely made and the granting of the motion will not prejudice the opposing party, it is error to refuse permission to amend and where the refusal also results in a party being deprived of the right to assert a meritorious cause of action or a meritorious defense, it is not only error but an abuse of discretion." (*Morgan v. Superior Court* (1959) 172 Cal.App.2d 527, 530.)

A motion to amend a pleading before trial must:

(1) Include a copy of the proposed amendment or amended pleading, which must be serially numbered to differentiate it from previous pleadings or amendments;

(2) State what allegations in the previous pleading are proposed to be deleted, if any, and where, by page, paragraph, and line number, the deleted allegations are located; and

(3) State what allegations are proposed to be added to the previous pleading, if any, and where, by page, paragraph, and line number, the additional allegations are located.

(b) Supporting declaration A separate declaration must accompany the motion and must specify:

(1) The effect of the amendment;
(2) Why the amendment is necessary and proper;
(3) When the facts giving rise to the amended allegations were discovered; and
(4) The reasons why the request for amendment was not made earlier.

(Cal. Rules of Court, rule 3.1324(a), (b).) Here, the moving papers include a proposed 4AC, and Attachment A to the moving brief indicates by page and line number all of the proposed amendments to the 3AC. The supporting declaration of Xinying Valerian complies with rule 3.1324(b). Ms. Valerian specifies that the effect of the amendment is to correct the statutory bases for the WT Plaintiffs' individual claims and that the need for the amendment was discovered after Defendants' filed a motion for judgment on the pleadings. Plaintiffs' counsel further explains in the reply brief that the state of the law was not clear until December of 2014 whether subdivision (g) of Labor Code section 98.7, which states that an employee need not exhaust administrative remedies before filing a wrongful discharge suit under the Labor Code, applied retroactively. (See *Satyadi v. W. Contra Costa Healthcare Dist.* (2014) 232 Cal.App.4th 1022, 1027-1028.)

In the 3AC's sixth cause of action, the WT Plaintiffs allege that "[t]he public policy of the State of California, as articulated in Government Code §§12940, et seq., the California Constitution, and many other statues, prohibits employers from taking adverse employment actions against employees for engaging in legally protected activities."[17] "Plaintiffs Guang

[17] 3AC ¶ 190.

Tian, Yan Nie, Jing Jian Wu, Tie Quan Ma, and Ming Fang Tie engaged in protected activities, including questioning to management a legal agreement they believed was unfair and suspected was unlawful; protecting unlawful discrimination against limited English proficient immigrant workers in the form of requiring them to sign agreements that they could not read; and complaining about unsafe working conditions."[18] "By imposing various releases and waivers, through its timekeeping system, through paper-based waivers and releases such as the 2010 Supplement, Defendants violated Labor Code section 206.5 and Civil Code section 1668. By refusing to sign the 2010 Supplement, which contained an illegal and one-sided 'general release,' and by refusing to sign the entire agreement and submit to mandatory mediation and mandatory arbitration without first receiving a written Chinese translation, [the WT Plaintiffs] engaged in protected activity."[19] Defendants allegedly targeted and retaliated against the WT Plaintiffs for engaging in protected activities via harassment, discipline, and other adverse conditions of employment, including termination.[20]

The WT Plaintiffs propose to change the statutory bases from FEHA to Labor Code sections 98.6, 232.5, 1102, and 6310. To summarize these statutes, Labor Code section 98.6 prohibits discriminatory, retaliatory or adverse actions against employees engaged in lawful conduct or for filing a bona fide complaint or claim relating to his or her rights that are under the jurisdiction of the Labor Commissioner. Labor Code section 232.5 prohibits employers from requiring employees as a condition of employment to refrain from disclosing or waive the right to disclose information about the employer's working conditions, and from disciplining employees who disclose information about the employer's working conditions. Labor Code section 1102 prohibits employers from making rules or policies that prevent employees from disclosing information to a government or law enforcement agency, to a person with authority over the employee, to another employee who has authority to investigate violations or noncompliance, or to any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation. Labor Code section 6310 prohibits any person from discharging or discriminating against any employee because the employee has made any complaint to governmental agencies regarding occupational safety or health.

Significantly, the proposed amendments do not include any new substantive factual allegations. The statutes themselves do not seem to add any new elements to the claim, and merely provide a distinct legal basis for claiming that Ma Labs' allegedly retaliatory conduct was prohibited by law. The WT Plaintiffs contend that discovery throughout the lawsuits was directed at their allegations of retaliation for resisting the "Supplemental Agreement" and for complaining about workplace safety issues. Ms. Valerian supports the position that Defendants have already explored the factual basis for the WT Plaintiffs' retaliation claims, including the WT Plaintiffs' workplace safety complaints.[21] Thus, Defendants do not stand to be prejudiced by the proposed amendments. Defendants argue that because the new statutory sections include policies regarding the disclosure of information to the government or law enforcement agencies, they "open the door to the assertion of new and different factual

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[18] 3AC ¶ 191.
[19] 3AC ¶ 192.
[20] 3AC ¶¶ 193-194.
[21] See Decl. Valerian ¶¶ 15-19.

allegations by the WT Plaintiffs."[22] However, the proposed 4AC does not actually add any new or different factual allegations and remains focused on the same issues raised in prior iterations of the 6th cause of action, namely, whether it was unlawful to require the WT Plaintiffs to sign a "general release" document and submit to mandatory mediation and arbitration, and whether the WT Plaintiffs were retaliated against for their complaints to management and refusal to sign the release documents.

Regarding any preclusive effect of the class action settlement, as discussed above, the WT Plaintiffs' individual claims for retaliation and wrongful termination were expressly carved out of the settlement and severed. Thus, there was no need for them to opt out of the class action settlement to preserve their individual claims.

Regarding the timeliness of the proposed amendment, as discussed above, the claims will not be changed in terms of the underlying factual allegations. So long as the WT Plaintiffs' claims for retaliation and wrongful termination are based on the same general set of facts, seek recovery against the same defendants for the same injuries, and refer to the same incident as alleged in the prior complaints, they will relate back to earlier filing dates. (See *Barrington v. A.H. Robins Co.* (1985) 39 Cal.3d 146, 150.) Defendants may raise any statute of limitations issues by demurrer or motion for summary judgment/adjudication.

For all of these reasons, the WT Plaintiffs' motion for leave to file a 4AC is **GRANTED**.

III. Ex Parte Application by Plaintiffs for an Order Vacating Trial Date on Wrongful Termination Claims

The current trial date on the WT Plaintiffs' individual claims for wrongful termination and retaliation is September 14, 2015. On July 27, 2015, the WT Plaintiffs filed an ex parte application requesting a trial date past December 1, 2015 (or an order vacating the current trial date). The WT Plaintiffs argue that continuing or vacating the current trial date is necessary to avoid prejudice to them in light of the breakdown in the working relationship between them and their counsel. They argue this is only the first continuance of trial of the individual claims. According to the WT Plaintiffs, Defendants' position is that they are not in a position to commit to a new trial date given the change in potential change in Plaintiffs' legal representation, and also due to a scheduling conflict in December 2015.

"To ensure the prompt disposition of civil cases, the dates assigned for a trial are firm. All parties and their counsel must regard the date set for trial as certain." (Cal. Rules of Court, rule 3.1332(a).) "A party seeking a continuance of the date set for trial…must make the request for a continuance by a noticed motion or an ex parte application…as soon as reasonably practical once the necessity for the continuance is discovered." (*Id.* at subd. (b).) "Although continuances of trials are disfavored, each request for a continuance must be considered on its own merits. The court may grant a continuance only on an affirmative showing of good cause requiring the continuance. Circumstances that may indicate good cause include: … (1) The unavailability of an essential lay or expert witness because of death, illness, or other excusable circumstances; (2) The unavailability of a party because of death, illness, or other excusable circumstances; (3) The unavailability of trial counsel because of death, illness,

[22] See Defs' Memo. Pts. & Auth. ISO Opp. to Mot. for Leave at p. 9:2-3.

or other excusable circumstances; (4) The substitution of trial counsel, but only where there is an affirmative showing that the substitution is required in the interests of justice; (5) The addition of a new party if: (A) The new party has not had a reasonable opportunity to conduct discovery and prepare for trial; or (B) The other parties have not had a reasonable opportunity to conduct discovery and prepare for trial in regard to the new party's involvement in the case; (6) A party's excused inability to obtain essential testimony, documents, or other material evidence despite diligent efforts; or (7) A significant, unanticipated change in the status of the case as a result of which the case is not ready for trial." (*Id.* at subd. (c).)

"In ruling on a motion or application for continuance, the court must consider all the facts and circumstances that are relevant to the determination. These may include: (1) The proximity of the trial date; (2) Whether there was any previous continuance, extension of time, or delay of trial due to any party; (3) The length of the continuance requested; (4) The availability of alternative means to address the problem that gave rise to the motion or application for a continuance; (5) The prejudice that parties or witnesses will suffer as a result of the continuance; (6) If the case is entitled to a preferential trial setting, the reasons for that status and whether the need for a continuance outweighs the need to avoid delay; (7) The court's calendar and the impact of granting a continuance on other pending trials; (8) Whether trial counsel is engaged in another trial; (9) Whether all parties have stipulated to a continuance; (10) Whether the interests of justice are best served by a continuance, by the trial of the matter, or by imposing conditions on the continuance; and (11) Any other fact or circumstance relevant to the fair determination of the motion or application." (*Id.* at subd. (d).)

As discussed below, the breakdown in relationship between the WT Plaintiffs and counsel is the subject of counsels' unopposed motion to withdraw from representing the WT Plaintiffs. It is unknown whether the WT Plaintiffs have retained substitute counsel. Certainly, the substitution of counsel this late in the litigation constitutes a significant, unanticipated change in the status of the case that affects the WT Plaintiffs' readiness for trial in a month. (See Cal. Rules of Court, rule 3.1332(c).) Given the proximity of the trial date and the potential prejudice to the WT Plaintiffs in having to substitute counsel and be prepared for trial in such a short amount of time, the interests of justice are served by a continuance of the trial date. For these reasons, the ex parte application is **GRANTED** and the September 14, 2015 trial date is **VACATED**. A trial-setting conference and further Case Management Conference is set for **Friday, September 11, 2015 at 10:00 a.m.**

IV. Motions to be Relieved as Counsel for Plaintiffs

Four motions have been filed by David Sanford on behalf of Sanford Heisler Kimpel, LLP, Thomas Marc Litton, Dan Qualls on behalf of Kastner Kim, LLP, to be relieved as counsel for each of the four named Plaintiffs Ming Fang Tie, Yan Nie, Tie Quan Ma, and Guang Tian.

"The attorney in an action or special proceeding may be changed at any time before or after judgment of final determination, as follows: [¶] 1. Upon the consent of both client and attorney, filed with the clerk, or entered upon the minutes; [¶] 2. Upon the order of the court, upon the application of either client or attorney, after notice from one to the other." (Cal. Code Civ. Proc., § 284.) "A notice of motion and motion to be relieved as counsel under Code of Civil Procedure section 284(2) must be directed to the client and must be made on the Notice

of Motion and Motion to Be Relieved as Counsel--Civil (form MC-051)." (Cal. Rules of Court, rule 3.1362(a).) "The motion to be relieved as counsel must be accompanied by a declaration on the Declaration in Support of Attorney's Motion to Be Relieved as Counsel--Civil (form MC-052). The declaration must state in general terms and without compromising the confidentiality of the attorney-client relationship why a motion under Code of Civil Procedure section 284(2) is brought instead of filing a consent under Code of Civil Procedure section 284(1)." (*Id.*, subd. (c).)

"The notice of motion and motion, the declaration, and the proposed order must be served on the client and on all other parties who have appeared in the case. The notice may be by personal service or mail. If the notice is served on the client by mail under Code of Civil Procedure section 1013, it must be accompanied by a declaration stating facts showing that either: [¶] (1) The service address is the current residence or business address of the client; or [¶] (2) The service address is the last known residence or business address of the client and the attorney has been unable to locate a more current address after making reasonable efforts to do so within 30 days before the filing of the motion to be relieved. [¶] As used in this rule, 'current' means that the address was confirmed within 30 days before the filing of the motion to be relieved. Merely demonstrating that the notice was sent to the client's last known address and was not returned is not, by itself, sufficient to demonstrate that the address is current. If the service is by mail, Code of Civil Procedure section 1011(b) applies." (*Id.*, subd. (d).)

"The proposed order relieving counsel must be prepared on the Order Granting Attorney's Motion to Be Relieved as Counsel--Civil (form MC-053) and must be lodged with the court with the moving papers. The order must specify all hearing dates scheduled in the action or proceeding, including the date of trial, if known. If no hearing date is presently scheduled, the court may set one and specify the date in the order. After the order is signed, a copy of the signed order must be served on the client and on all parties that have appeared in the case. The court may delay the effective date of the order relieving counsel until proof of service of a copy of the signed order on the client has been filed with the court." (*Id.*, subd. (e).)

The moving papers comply with all statutory requirements and rules. The motions and accompanying declarations are made on the proper MC-051 and 052 Judicial Council forms, and the declarations show that the motion papers were served personally and/or by mail on the Plaintiffs, with the appropriate declarations for service by mail. Finally, the motions include a proposed order on form MC-053 specifying all hearing dates scheduled in the action. Furthermore, Qiaojing Zheng, an attorney at Sanford Heisler, states in a declaration filed on July 23, 2015 that the Plaintiffs were served electronically with a Chinese and English version of a July 14, 2015 letter regarding the motions to be relieved as counsel, as well as electronic copies of the moving papers, and on July 15, 2015, hard copies of the motion were mailed to each Plaintiff.[23] According to Zheng, all four Plaintiffs confirmed receipt of the documents, either orally or electronically.[24]

The motions are unopposed. According to the attorney declarations, there has been an irreparable breakdown in the working relationship between counsel and the clients, and the Plaintiffs continue to refuse counsels' legal advice. Counsel is also concerned that they may

[23] Decl. Qiaojing Zheng Re Service of Not. of Mot. to Be Relieved, ¶¶ 5-9.
[24] Decl. Zheng ¶¶ 5-8.

have to take a litigation position that is adverse to these Plaintiffs during the class settlement approval process. In light of the potential conflict of interest, and given the vacation of the current trial date for the WT Plaintiffs' retaliation/wrongful termination claims, the Court finds there is good cause to relieve counsel from continued representation, and that withdrawal will not cause any reasonably foreseeable prejudice to the rights of the WT Plaintiffs. (See California Rules of Professional Conduct, Rule 3-700(A)(2).) The motions to be relieved as counsel are **GRANTED**.

V. Applications to Seal

Defendants move to seal the following records: Exhibit G and paragraph 19 of the Declaration of Christine Long in Response to Plaintiffs' Motion for Final Approval of Class Action Settlement and portions of Defendants' memorandum of points and authorities ISO their response to the final approval motion.[25] According to Defendants, the portions to be sealed include highly sensitive and confidential settlement terms that are subject to a binding contractual agreement not to disclose, as well as highly sensitive and private information concerning Defendants' business operations contained in the records.[26]

Plaintiffs move to seal portions of the WT Plaintiffs' Reply Memorandum of Points and Authorities ISO Plaintiffs' Motion for Leave to File a 4AC.[27] Plaintiff argue the redacted portions of the reply brief contain highly sensitive and confidential settlement terms that are subject to a binding contractual agreement not to disclose.

The Sealed Records Rules "do not apply to records that are required to be kept confidential by law." (Cal. Rules of Court, rule 2.550(a)(2).) "Unless confidentiality is required by law, court records are presumed to be open." (Cal. Rules of Court, rule 2.550(c).)[28] "A record must not be filed under seal without a court order. The court must not permit a record to be filed under seal based solely on the agreement or stipulation of the parties." (Cal. Rules of Court, rule 2.551(a).) "The court may order that a record be filed under seal only if it expressly finds facts that establish: [¶] (1) There exists an overriding interest that overcomes the right of public access to the record; [¶] (2) The overriding interest supports sealing the record; [¶] (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; [¶] (4) The proposed sealing is narrowly tailored; and [¶] (5) No less restrictive means exist to achieve the overriding interest." (Cal. Rules of Court, rule 2.550(d).) A party moving to seal a record must file a memorandum and a declaration containing facts sufficient to justify the sealing. (Cal. Rules of Court, rule 2.551(b)(1).) A declaration supporting a motion to seal should be specific, not conclusory, as to the facts supporting the overriding interest. If the court finds that the supporting

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[25] These portions are page iii, line 1; page 2, lines 1-3; pages 6, line 21 to 7, line 7; page 10, lines 5-20; and page 15, lines 14-16.

[26] Decl. C. Long ISO Appl. to Seal ¶ 4.)

[27] These portions are found on page 9, lines 7-8, 14-15, and 16-28.

[28] Although "[a]ll communications, negotiations, or settlement discussions by and between participants in the course of a mediation or a mediation consultation shall remain confidential" (Cal. Evid. Code, § 1119, subd. (c)), this does not apply to written settlement agreements prepared in the course of, or pursuant to, a mediation where: the agreement provides that it is admissible or subject to disclosure, or that it is enforceable or binding, or all parties to the agreement expressly agree in writing to its disclosure, or the agreement is used to show fraud, duress or illegality that is relevant to a disputed issue. (See Cal. Evid. Code, § 1123, subds. (a)-(d).) The parties do not contend that the records to be sealed constitute records that are required to be kept confidential by law.

declarations are conclusory or otherwise unpersuasive, it may conclude that the moving party has failed to demonstrate an overriding interest that overcomes the right of public access. (*In re Providian Credit Card Cases* (2002) 96 Cal.App.4th 292, 305.)

Here, the records at issue contain terms and discussions of certain settlement negotiations. The document found in Long Exhibit G contains a confidentiality provision that is binding on both parties. Enforcement of a binding contractual obligation not to disclose may be an overriding interest sufficient to justify sealing records. (*Universal City Studios, Inc. v. Superior Court* (2003) 110 Cal.App.4th 1273, 1286; *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178, 1222, n.46.) However, "a settlement agreement which had a confidentiality provision [can] not be sealed unless there [is] a showing [that] serious injury . . . would result from public disclosure." (*Huffy Corp. v. Superior Court* (2003) 112 Cal.App.4th 97, 106.) Here, the declarations of counsel supporting the applications to seal do not show that a serious injury would result from public disclosure of the unredacted records. Both parties' attorneys merely conclude that the overriding interest will be prejudiced if the records are not sealed, and that the parties "and third parties would face great harm if this information were to be disclosed to the public."[29] Defendants' counsel argues that the unredacted records also contain highly sensitive and private information concerning Defendants' business operations,[30] but it is not clear what portion of the records Ms. Long is referring to.

For these reasons, the applications to seal are **DENIED WITHOUT PREJUDICE**. The clerk shall return the lodged records to the submitting parties, and they shall have 10 days after the date of this order denying the applications to seal to notify the clerk in writing that the records are to be filed. (See Cal. Rules of Court, rule 2.551(b)(6).)

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[29] See Decl. Christine H. Long ISO Appl. to Seal, ¶ 5; Decl. Xinying Valerian ISO Appl. to Seal ¶ 5.
[30] Decl. Long ¶ 4.