

1 HAROUT MESSRELIAN (SBN: 272020)

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF LOS ANGELES**

10 MIGUEL FIGUEROA,

11 Plaintiff,

12 vs.

13 EMCOD, INC.; SCOTT DRUCKER; and
14 DOES 1 to 25, inclusive

15 Defendants.

Case No.: 21STCV43225

**MOTION FOR APPROVAL OF PAGA
SETTLEMENT AND RELEASE**

Hearing Date: 5/8/23

Hearing Time: 8:30am

Hearing Dept: 48

Reservation ID: 998999318228

Submitted Herewith Under Separate Cover:

1. Declaration of Harout Messrelian In Support of Motion for Approval of PAGA Settlement and Release;
2. [Proposed] Order

1 **I. INTRODUCTION**

2 Plaintiff Miguel Figueroa (“Plaintiff”) and Defendants Emcod, Inc. and Scott Drucker
3 (“Emcod” or “Defendant(s)”) have reached an agreement to settle the above-captioned action
4 (the “Action”) on an individual basis. The parties have memorialized the terms of this settlement
5 in a Confidential Individual Settlement Agreement (the “Settlement Agreement”). By this
6 Motion and pursuant to California Labor Code § 2699(l), Plaintiff seeks an order permitting the
7 PAGA cause of action without prejudice. Plaintiff and Defendants are collectively referred to as
8 the “Parties” and any one of them individually may be referred to as a “Party.”

9 Defendants adamantly deny any liability or wrongdoing of any kind whatsoever
10 associated with the Action. It is the desire of the Parties to fully, finally, and forever compromise,
11 and discharge all claims known or unknown related to those alleged in the Action.

12 **II. ALLEGATIONS AND INVESTIGATION**

13 A. Defendant Emcod is a contract manufacturer of LED Drivers & Lighting
14 transformers. Plaintiff worked for Defendants for several years, starting in 2018, with Plaintiff’s
15 employment ending on or around January 2021 . At all times during his employment, Plaintiff
16 was considered an hourly, non-exempt employee.

17 B. Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit
18 under the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*
19 (“PAGA”). On February 9, 2021, Plaintiff, on behalf of himself and Defendant’s other current
20 and former non-exempt employees who were employed by Defendant in California (hereafter
21 collectively the “Aggrieved Employees” or “Aggrieved Employee” as singular, defined as all
22 current and former non-exempt employees of Defendant (including, but not limited to,
23 Plaintiff), who were employed by Defendant in California at any time during the “Covered
24 Period” running from September 19, 2020 to the present) gave written notice by electronic
25 service to the California Labor and Workforce Development Agency (“LWDA”) and via
26 certified mail to Defendants of his claims against Defendant. In his notice to the LWDA,
27 Plaintiff asserted on behalf of himself and the Aggrieved Employees that Defendant committed
28 the following labor violations against the Aggrieved Employees, including himself: (1) failure
to pay all wages for all hours worked, including, but not limited to, minimum wages; (2) failure
to pay all overtime; (3) failure to provide compliant rest periods; (4) failure to provide

1 compliant meal periods; (5) failure to timely pay all wages during employment as required by
2 applicable law; (6) failure to timely pay all wages at termination, and failure to pay applicable
3 waiting time penalties; (7) failure to provide compliant, complete and accurate itemized wage
4 statements; (8) failure to maintain accurate and complete timekeeping and payroll records; (9)
5 failure to reimburse all necessary business expenses, losses and/or costs; and (10) Failure to
6 provide worker's compensation coverage and failure to provide sick pay. Plaintiff filed his
7 initial lawsuit on November 23, 2021 in the Superior Court for the State of California, County
8 of Los Angeles, Case No. 21STCV43225. On March 16, 2022, Plaintiff filed a first amended
9 complaint in this matter, alleging 13 causes of action against Defendants. The causes of action
10 included individual wage and hour violations, a PAGA cause of action for penalties, retaliation
11 under Labor Code section 1102.5, wrongful termination in violation of public policy, and
12 violation of Business and Professions Code section 17200. The cause of action for penalties
13 under PAGA was based on the following legal theories: (1) failure to pay all wages for all
14 hours worked, including, but not limited to, minimum wages; (2) failure to pay all overtime; (3)
15 failure to provide compliant rest periods; (4) failure to provide compliant meal periods; (5)
16 failure to timely pay all wages during employment as required by applicable law; (6) failure to
17 timely pay all wages at termination, and failure to pay applicable waiting time penalties; (7)
18 failure to provide compliant, complete and accurate itemized wage statements; (8) failure to
19 maintain accurate and complete timekeeping and payroll records; (9) failure to reimburse all
20 necessary business expenses, losses and/or costs; and (10) failure to provide worker's
21 compensation coverage and sick pay.

22 C. Defendant denies any liability or wrongdoing of any kind whatsoever associated
23 with the lawsuit and the Representative PAGA Claim. It is the desire of the Parties to fully,
24 finally, and forever compromise, and discharge all claims known or unknown related to those
alleged in Plaintiff's lawsuit.

25 D. On June 6, 2022, the Parties attended a Resolve Law LA conference. At the
26 mediation, the Parties tentatively agreed to settle the matter on an individual basis with a
27 dismissal of the representative PAGA claim for violation of Labor Code § 2698, *et seq.* The
28 parties eventually memorialized their agreement via a Confidential Settlement Agreement,

1 which was signed on January 31, 2023. Before agreeing to the terms of the Settlement, the
2 Parties engaged in informal discovery regarding Defendant's policies, practices, operations,
3 time and payroll information and other topics. Defendant produced Plaintiff's personnel file,
4 including time and payroll data for Plaintiff and also produced the time records and payroll
5 records for a group of 6 employees who were within the PAGA period. Through extensive arm's
6 length negotiations at the mediation and only after discovery and investigation were performed,
the Parties agreed to settlement terms.

7 E. The Parties conducted investigation of the facts and law both before and after the
8 lawsuit was filed. Counsel for the Parties have further investigated the applicable law as applied
9 to the facts discovered regarding Plaintiff's claims, the defenses thereto, and the Labor Code
10 violations claimed by Plaintiff. Based on their own independent investigations and evaluations,
11 the Parties and their respective counsel are of the opinion that the Settlement for the
12 consideration and on the terms set forth in this confidential individual settlement agreement are
13 fair, reasonable and adequate and are in the best interests of the State of California, Plaintiff,
14 and the Aggrieved Employees in light of all known facts and circumstances and the risks
inherent in litigation.

15 **III. FAIRNESS OF THE REQUEST FOR DISMISSAL OF THE PAGA CAUSE OF**
16 **ACTION**

17 A. While the *Figueroa* lawsuit has a Representative PAGA Claim, the Parties are not
18 obligated to follow the class action procedural rules for obtaining approval of this settlement.
19 *Arias v. Superior Court (Angelo Dairy)* (2009) 46 Cal.4th 969.

20 B. On or around January 31, 2023, the parties came to an agreement to resolve this
21 case on an individual basis based on Plaintiff's claims for retaliation and wrongful termination.
22 The parties executed a confidential individual settlement agreement. No part of the settlement
amount is consideration for the PAGA cause of action.

23 C. Per the parties' agreement, Plaintiff's individual causes of action as well as the
24 PAGA cause of action were to be dismissed with prejudice. The PAGA cause of action is being
25 dismissed with prejudice based on the following factors.

26 a. On or around August 2022, defense counsel provided Plaintiff's counsel with
27 the payroll data of all employees in the PAGA period, which was comprised of 6 employees. The
28 data covered the period of July 1, 2020 through March 22, 2022. Per Plaintiff's data expert's

1 analysis, there was a 0.1% violation rate wherein an employee did not clock out for a meal period
2 and a 0.2% violation rate for late meal periods. There was a 1.3% violation rate for short meal
3 periods. The same type of figures would be extrapolated for rest breaks. Plaintiff's data expert
4 noted that hours were paid to the second decimal point and that overtime payments appeared to
5 be correct. The lack of violations as it relates to payment for all hours worked and overtime as
6 well as the lack of meal and rest period premiums due to essentially no violations would mean
7 that the derivative labor code claims under sections 203, 204, and 226 would also not be of any
8 value. Please *see* Declaration of Harout Messrelian, paragraph 5, filed concurrently.

9 b. Moreover, defense counsel produced an employee handbook with compliant
10 wage and hour policies, including two sections entitled "Meal, Rest, and Recovery Time" and
11 "Rest and Recovery Periods". Please *see* Declaration of Harout Messrelian, paragraph 6, filed
12 concurrently

13 c. Based on Plaintiff's expert's analysis, the small group of PAGA employees
14 (under 10 employees), and the fact that Defendant is not a large business, it is the desire of the
15 parties to dismiss the entire action with prejudice, including the PAGA cause of action. Please
16 *see* Declaration of Harout Messrelian, paragraph 7, filed concurrently

17 d. Any alleged aggrieved employees would not be prejudiced by this requested
18 dismissal in that it does not in any way prevent any alleged aggrieved employee from bringing
19 individual, non-representative claims against Defendant for alleged violations of the Labor Code.
20 Please *see* Declaration of Harout Messrelian, paragraph 8, filed concurrently

21 e. Based on Plaintiff's individual retaliation and wrongful termination claims,
22 and based on the analysis of the payroll data in this case, the consideration offered in the case is
23 for an individual settlement and is not for dismissal of the PAGA claims. Please *see* Declaration
24 of Harout Messrelian, paragraph 9, filed concurrently

25 **IV. RELEASED CLAIMS**

26 Upon the approval by the Court of this Settlement, Plaintiff, the State of California and
27 each Aggrieved Employee shall fully release and forever discharge Defendant and the Released
28 Parties from any and all claims, rights, demands, liabilities for violation of PAGA (Labor Code
§ 2699, et seq.) that arose during the Release Period as it relates to Labor Code section 2698, et
seq. for alleged violations of the California Labor Code, including unpaid minimum and overtime
wages, failure to provide meal periods, failure to provide rest periods, failure to issue accurate

1 and complete wage statements, failure to reimburse reasonably necessary business expenses, and
2 failure to timely pay wages during employment and at separation, in violation of Labor Code
3 sections 201, 202, 203, 204, 204b, 210, 226, 226.3, 226.7, 246, 510, 512, 558, 1174, 1174.5,
4 1194, 1197, 1197.1, 1198, 2802, 3700.5 and the applicable Industrial Welfare Commission
5 Orders including, but not limit to, Order No. 4-2001 or 10-2001.

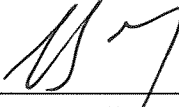
6 **V. CONCLUSION**

7 Plaintiff respectfully requests the Court grant this Motion.

8
9 Respectfully Submitted,

10 MESSRELIAN LAW INC.

11
12 DATED: April 14, 2023

13 By 

14 Harout Messrelia, Esq.
15 Attorneys for Plaintiff
16 MIGUEL FIGUEROA
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Attorneys for Plaintiff MIGUEL FIGUEROA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

MIGUEL FIGUEROA,

Plaintiff,

vs.

EMCOD, INC.; SCOTT DRUCKER; and
DOES 1 to 25, inclusive

Defendants.

) CASE NO.: 21STCV43225

)

) **DECLARATION OF HAROUT**
) **MESSRELIAN IN SUPPORT OF MOTION**
) **FOR APPROVAL OF PAGA SETTLEMENT**
) **AND RELEASE**

)

)

) Hearing Date: 5/8/23
) Hearing Time: 8:30am
) Hearing Dept: 48
) Reservation ID: 998999318228

)

) Submitted Herewith Under Separate Cover:

) 1. Motion for Approval of PAGA Settlement
) and Release; and
) 2. [Proposed] Order

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)

I, HAROUT MESSRELIAN, declare and state as follows:

1. I am an attorney duly licensed to practice before all the Courts of the State of California. I am the managing attorney of Messrelian Law Inc. and the attorney of record for Plaintiff Miguel Figueroa (individually, "Figueroa" or "Plaintiff") in his lawsuit against EMCOD, INC. and SCOTT DRUCKER (collectively "Defendant(s)" or "EMCOD").

2. On March 16, 2022, Plaintiff filed a first amended complaint in this matter, alleging 13 causes of action against Defendants. The causes of action included individual wage and hour violations, a PAGA cause of action for penalties, retaliation under Labor Code section

1 1102.5, wrongful termination in violation of public policy, and violation of Business and
2 Professions Code section 17200.

3 3. On or around January 31, 2023, the parties came to an agreement to resolve this
4 case on an individual basis based on Plaintiff's claims for retaliation and wrongful termination.
5 The parties executed a confidential individual settlement agreement. No part of the settlement
6 amount is consideration for the PAGA cause of action.

7 4. Per the parties' agreement, Plaintiff's individual causes of action as well as the
8 PAGA cause of action were to be dismissed with prejudice. The PAGA cause of action is being
9 dismissed with prejudice based on the following factors.

10 5. On or around August 2022, defense counsel provided my office with the payroll
11 data of all employees in the PAGA period, which was comprised of 6 employees. The data
12 covered the period of July 1, 2020 through March 22, 2022. Per my data expert's analysis, there
13 was a 0.1% violation rate wherein an employee did not clock out for a meal period and a 0.2%
14 violation rate for late meal periods. There was a 1.3% violation rate for short meal periods. The
15 same type of figures would be extrapolated for rest breaks. My data expert noted that hours were
16 paid to the second decimal point and that overtime payments appeared to be correct. The lack of
17 violations as it relates to payment for all hours worked and overtime as well as the lack of meal
18 and rest period premiums due to essentially no violations would mean that the derivative labor
19 code claims under sections 203, 204, and 226 would also not be of any value.

20 6. Moreover, defense counsel produced an employee handbook with compliant wage
21 and hour policies, including two sections entitled "Meal, Rest, and Recovery Time" and "Rest
22 and Recovery Periods".

23 7. Based on my expert's analysis, the small group of PAGA employees (under
24 10 employees), and the fact that Defendant is not a large business, it is the desire of the parties to
25 dismiss the entire action with prejudice, including the PAGA cause of action.

26 8. Any alleged aggrieved employees would not be prejudiced by this requested
27 dismissal in that it does not in any way prevent any alleged aggrieved employee from bringing
28 individual, non-representative claims against Defendant for alleged violations of the Labor Code.

9. Based on Plaintiff's individual retaliation and wrongful termination claims, and
based on the analysis of the payroll data in this case, the consideration offered in the case is for
an individual settlement and is not for dismissal of the PAGA claims.

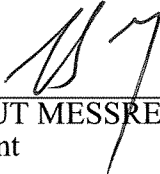
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Notice of PAGA Settlement to the LWDA

10. Pursuant to Lab. Code § 2699(1)(2), Plaintiff submitted a copy of this Motion with the LWDA at the same time the Motion is being filed with the Court. True and correct copies of Plaintiff's submission with the LWDA and the confirmation email are collectively attached as **Exhibit 1** to this declaration.

I declare under the penalty of perjury under the laws of the state of California that the foregoing is true and correct.

Executed on April 14, 2023, at Glendale, California.



HAROUT MESSRELIAN,
Declarant

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7 Attorneys for Plaintiff MIGUEL FIGUEROA

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**

10 MIGUEL FIGUEROA,

11 *Plaintiff,*

12 vs.

13
14 EMCOD, INC.; SCOTT DRUCKER; and
15 DOES 1 to 25, inclusive,

16 *Defendant(s).*

Case No.: 21STCV43225

**[PROPOSED] ORDER ON MOTION FOR
APPROVAL OF PAGA SETTLEMENT**

Action filed: 11/23/21

Date: 5/8/23
Time: 8:30am
Department: 48,
Hon. Thomas Long
Reservation ID: 998999318228

Submitted Herewith Under Separate Cover:
1. Motion for Approval of PAGA Settlement and
Release; and
2. Declaration of Harout Messrelian In Support of
Motion for Approval of PAGA Settlement and
Release

[PROPOSED] ORDER

Under Labor Code section 2699(1)(2) of the Private Attorneys General Act of 2004 ("PAGA"), the Plaintiff submitted a motion for Approval of the PAGA dismissal with prejudice.

Under PAGA, in any action brought by an aggrieved employee, the Court "shall review and approve any settlement of any civil action filed pursuant to this part." Lab. Code § 2699(1)(2). Accordingly, the Court, having considered the proposed settlement set forth in the Settlement Agreement, under Labor Code § 2699(1)(2), having considered the papers filed in support of the proposed settlement and the arguments of counsel, and good cause appearing, HEREBY ORDERS AS FOLLOWS:

1. The Court finds in favor of settlement approval, and therefore approves the Settlement of the above-captioned action with prejudice, including both the individual causes of action and the PAGA cause of action and finds that the settlement terms are just, reasonable, and adequate;

2. The Court finds further that Plaintiff, acting on behalf of himself, the Aggrieved Employees, and the State of California, by operation of this Order and Judgment hereby releases and forever discharges Defendants from any and all PAGA Released Claims, including penalties asserted in Plaintiff's Complaint, including any and all known and unknown claims for civil penalties under the Private Attorneys General Act, California Labor Code §§ 2698, *et seq.*, that arise;

3. The Court finds further that the foregoing release shall be binding on Plaintiff and the State of California, and shall bar any claim under PAGA brought by any person, including the Aggrieved Employees, on behalf of the State of California, as to the PAGA Released Claims and Released Parties;

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4. The PAGA Action is hereby DISMISSED WITH PREJUDICE as to all parties and all causes of action. The Court reserves exclusive and continuing jurisdiction over the Action and the Parties under Code of Civil Procedure § 664.6 for the purpose of supervising implementation, enforcement, construction, administration, and interpretation of the individual settlement agreement.

IT IS SO ORDERED.

HON. THOMAS LONG