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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

DAVID GHUSAR, individually, and on behalf of all others similarly situated, Plaintiff, vs. ECMD, INC., a North Carolina corporation; and DOES 1 through 10, inclusive, Defendants	Case No.: CVRI2404116 [Hon. John D. Molloy, Dept. 5] **PAGA SETTLEMENT AGREEMENT** Action filed: July 24, 2024 Trial date: Not set

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement ("Agreement") is made by and between Plaintiff David Ghusar ("Plaintiff") and Defendant ECMD, Inc. ("Defendant"). The Agreement refers to Plaintiff and Defendant collectively as "Parties," or each individually as a "Party."

1. DEFINITIONS

1.1. "Action" means the Plaintiff's lawsuit alleging wage and hour violations against Defendant captioned *David Ghusar v. ECMD, Inc.* initiated on July 24, 2024, and pending in the Superior Court of the State of California, County of Riverside.

1.2. "Administrator" means Phoenix Class Action Settlement Administration, the neutral entity the Parties have agreed to appoint to administer the Settlement following a competitive bidding process, or such other settlement administrator as may be approved by the Court.

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 bid submitted to the Court in connection with approval of the Settlement.

1.4. "Aggrieved Employee" means all current and former non-exempt employees (including drivers) who worked for Defendant in California at any time during the PAGA Period.

1.5. "Aggrieved Employee Data" means Aggrieved Employee identifying information in Defendant's possession including, for each Aggrieved Employee, his or her full name, last-known mailing address or email address, Social Security Number, dates of employment, and number of PAGA Pay Periods.

1.6. "Aggrieved Employee Address Search" means the Administrator's investigation and search for current Aggrieved Employee 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 Aggrieved Employees.

1.7. "Approval Order" means the Court Order Granting Approval of PAGA Settlement.

1.8. "Court" means the Superior Court of California, County of Riverside.

1.9. "Defendant" means ECMD, Inc., the named Defendant in the Action.

1.10. "Defense Counsel" means the attorneys of Pierson Ferdinand LLP.

1.11. "Effective Date" means the date the Court enters a Judgment on its Approval Order.

1.12. "Employee Notice" means the Court-approved *Notice of PAGA Settlement*, substantively in the form attached hereto as "Exhibit A," without material variation, with a Spanish translation by the Administrator, to be mailed to Aggrieved Employees with their Individual PAGA Payments.

1.13. "General Release Payment" means the payment to Plaintiff for initiating and providing services in support of the Action, in recognition for the risks attendant to the role as named Plaintiff and PAGA Representative, and in exchange for Plaintiff's General Release. This payment shall be in addition to the amount Plaintiff is eligible to receive as an Aggrieved Employee.

1.14. "Gross Settlement Amount" means $195,000.00, which is the total amount Defendant agrees to pay under the Settlement, subject to potential increase under the Escalator Clause (Paragraph 8) and entry of the Court's Approval Order. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, Plaintiff's General Release Payment, and the Administration Expenses Payment.

1.15. "Individual PAGA Payment" means an Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.

1.16. "Judgment" means the judgment entered by the Court based upon the Court's Approval Order.

1.17. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code § 2699(i).

1.18. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code § 2699.

1.19. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: the LWDA PAGA Payment, PAGA Counsel Fees

Payment, PAGA Counsel Litigation Expenses Payment, Plaintiff's General Release Payment, and the Administration Expenses Payment. The remainder is to be paid to Aggrieved Employees through Individual PAGA Payments.

1.20. "Operative Complaint" means Plaintiff's PAGA Representative Action Complaint filed in this Court on July 24, 2024.

1.21. "PAGA" means the California Private Attorneys General Act (Labor Code §§ 2698, *et seq*.).

1.22. "PAGA Counsel" means Kane Moon, Allen Feghali, and Charlotte Mikat-Stevens of Moon Law Group, PC.

1.23. "PAGA Counsel Fees Payment" mean the amount allocated to PAGA Counsel for reasonable attorneys' fees incurred to prosecute the Action.

1.24. "PAGA Counsel Litigation Expenses Payment" mean the amount allocated to PAGA Counsel for reimbursement of actual expenses incurred to prosecute the Action.

1.25. "PAGA Notice" means Plaintiff's letter dated May 19, 2024, pursuant to Labor Code § 2699.3(a) that was submitted online to the LWDA, served on Defendant via certified mail, and provided notice of alleged Labor Code violations.

1.26. "PAGA Pay Period" means any pay period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.

1.27. "PAGA Period" means the period from May 19, 2023, through the date of entry of the Court's Approval Order.

1.28. "PAGA Penalties" means the total amount of civil penalties to be paid from the Gross Settlement Amount pursuant to PAGA, allocated as 25% to Aggrieved Employees and the 75% to the LWDA, in settlement of the Released PAGA Claims.

1.29. "Plaintiff" means David Ghusar, the named plaintiff in the Action.

1.30. "Released PAGA Claims" means the claims being released as described in Paragraph 5.2 below.

1.31. "Released Parties" means: Defendant and each of its past, present and future owners, parents, affiliates, related companies, divisions, subsidiaries, and all their past, present and future officers, directors, partners, members, managers, consultants, shareholders, joint venturers, agents, predecessors, successors, affiliates, assigns, advisors, accountants, attorneys, insurers, reinsurers, trustees, heirs, executors, administrators, and representatives.

1.32. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.

2. RECITALS

2.1. On May 19, 2024, pursuant to Labor Code § 2699.3(a), Plaintiff gave timely written notice to Defendant and the LWDA of alleged Labor Code violations through the PAGA Notice.

2.2. On May 21, 2024, Plaintiff filed a Class Action Complaint in this Court against Defendant alleging eight wage-and-hour causes of action under the Labor Code and Business & Professions Code. On June 21, 2024, Defendant removed the class action to the U.S. District Court for the Central District of California on the basis of diversity (class action) jurisdiction. Defendant then filed a motion to compel arbitration and stay of proceedings pending arbitration. Following motion practice and meet-and-confer efforts between the Parties regarding arbitration, Plaintiff agreed to dismiss the federal and state class action matters, proceed with a state PAGA-only matter, and the Parties scheduled mediation.

2.3. On July 24, 2024, Plaintiff initiated the instant Action by filing a PAGA Representative Action Complaint (the "Operative Complaint") in the Riverside Superior Court, which was timely filed following the expiration of his administrative exhaustion period under PAGA and timely. On August 2, 2024, pursuant to Labor Code § 2699, Plaintiff timely submitted a file-stamped copy of the Operative Complaint to the LWDA that contained the case number assigned by the Court. To date, the LWDA has not indicated any intent to investigate the allegations or intervene in the Action.

2.4. On August 16, 2024, the Court entered an Order staying this Action pending arbitration of Plaintiff's individual claims and/or resolution of the claims through mediation.

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

2.6. On January 16, 2025, the Parties participated in an all-day mediation presided over by the

Honorable Angela Bradshaw (ret.), which led to this Agreement to settle the Action.

2.7. Prior to mediation, Plaintiff obtained from Defendant, through informal discovery, information sufficient to meaningfully evaluate the claims at issue in the Action, including information regarding a separate class action settlement in *Brandon Madison v. ECMD, Inc.*, Cal. Central District Case No. 2:24-CV-07887-SVW-MAA (state action filed on July 12, 2024; removal on September 12, 2024) (the "*Madison* Action"), that includes all of Plaintiff's PAGA claims against Defendant alleged in this Action, except the minimum wage, failure to maintain records, expense reimbursement claims, and related PAGA claims, with a release period beginning May 19, 2023, applicable written documents regarding Defendant's wage-and-hour policies and practices in effect during the statutory period, Plaintiff's personnel file, and a 10% sampling of time and corresponding payroll records for Aggrieved Employees. PAGA Counsel's investigation was sufficient to satisfy the criteria for court approval. As part of this evaluation, PAGA Counsel have conducted a diligent and thorough investigation into the facts and claims alleged in the Operative Complaint, including an extensive review and analysis of the pre-mediation discovery. Based on their own independent investigation and evaluation, Plaintiff and PAGA Counsel are of the opinion that the Settlement, and on the terms set forth herein, is fair, reasonable, and adequate and in the best interest of the LWDA and Aggrieved Employees in light of all known facts and circumstances.

2.8 The Parties, PAGA 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. The pending *Madison* Action does not include claims for minimum wage, failure to maintain records, and expense reimbursement claims, and the releases of claims described in Paragraph 5 below are limited to Plaintiff's minimum wage, failure to maintain records, expense reimbursement, and related PAGA claims alleged in the instant Action and Plaintiff's individual claims.

3. <u>MONETARY TERMS</u>

3.1. <u>Gross Settlement Amount</u>. Except as otherwise provided by Paragraph 8 below, Defendant promises to pay $195,000.00, and no more, as the Gross Settlement Amount, subject to entry of the Court's Approval Order. Defendant has no obligation to pay the Gross Settlement Amount 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 Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

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 Approval Order:

3.2.1. To Plaintiff. A General Release Payment to Plaintiff of $7,500.00, in addition to any Individual PAGA Payment that Plaintiff is entitled to receive as an Aggrieved Employee. Defendant will not oppose a request for this payment provided that it does not exceed this amount. As part of the application or motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment, Plaintiff will seek Court approval for the General Release Payment no later than sixteen (16) court days prior to the approval hearing. If the Court approves a General Release Payment less than the amount requested, the Administrator will allocate the remainder to the PAGA Penalties. The Administrator will pay the General Release Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for any taxes owed on the General Release Payment.

3.2.2. To PAGA Counsel. A PAGA Counsel Fees Payment of not more than one-third (33%) of the Gross Settlement Amount, which is currently estimated to be $65,000.00, and a PAGA Counsel Litigation Expenses Payment of not more than $17,000.00. Defendant will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiff and/or PAGA Counsel will file an application or motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the PAGA Penalties. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these payments.

3.2.3. <u>To the Administrator.</u> An Administration Expenses Payment not to exceed $5,000.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than $5,000.00, the Administrator will retain the remainder to the PAGA Penalties.

3.2.4. <u>To the LWDA and Aggrieved Employees.</u> PAGA Penalties (in the amount of no less than $100,500.00) to be paid from the Gross Settlement Amount, with 75% (no less than $75,375.00) allocated to the LWDA PAGA Payment and 25% (no less than $25,125.00) allocated to the Individual PAGA Payments.

3.2.4.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties 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. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

4. SETTLEMENT FUNDING AND PAYMENTS

4.1. <u>Aggrieved Employee Pay Periods.</u> Based on a review of its records as of the date of the Parties' mediation (January 16, 2025), Defendant estimates there are 5,350 cumulative PAGA Pay Periods worked by approximately 108 Aggrieved Employees.

4.2. Aggrieved Employee Data. Within 14 calendar days of the Court's Approval Order, and pursuant to the Parties' Stipulated Protective Order, Defendant will simultaneously deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employees' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Aggrieved Employee Data to the Administrator, 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 Aggrieved Employee Data.

4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount by transmitting the funds into a Qualified Settlement Fund established and maintained by the Administrator within thirty (30) calendar days of the Court's Approval Order.

4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, Plaintiff's General Release Payment, the PAGA Counsel Fee Payment, and the PAGA Counsel Litigation Expenses Payment. Disbursement of the Administration Expenses Payment, Plaintiff's General Release Payment, the PAGA Counsel Fee Payment, and the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments or the LWDA PAGA Payment. Disbursement of Individual PAGA Payments shall be accompanied by the Employee Notice.

4.4.1. The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 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. Before mailing any checks, the Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2. The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are retuned undelivered without USPS forwarding address. Within seven 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 Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.

4.4.3. For any Aggrieved Employee whose 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 State Controller's Office to be held pursuant to the Unclaimed Property Law, California Civil Code §§ 1500, *et seq.*, in the name of the Aggrieved Employee, until such time that he or she claims his or her property. In this manner, the Parties and their respective counsel attest that there will be no "unpaid residue" subject to the requirements of California Code of Civil Procedure § 384, subd. (b).

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

5. **RELEASES OF CLAIMS**

5.1. Plaintiff's Release.

5.1.1. Scope of Plaintiff's Release. Upon entry of the Court's settlement approval order and Defendant's full funding of the Gross Settlement Amount, Plaintiff will release the Released Parties from any and all claims that Plaintiff has or may have against them related to or arising from Plaintiffs employment with Defendant ("Plaintiff's General Release"). Plaintiff acknowledges that Plaintiff may discover facts and/or law different from and/or in addition to the facts and/or law that Plaintiff now knows or believes to be true, but agrees, nonetheless, that Plaintiff's General Release shall be and remain effective in all respects notwithstanding the existence of such different and/or additional facts and/or law or Plaintiff's discovery of them. Plaintiff's General Release does not extend to any claims or actions to enforce this Agreement, to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, or workers' compensation benefits that arose at any time, to any claims that are not releasable as a matter of law or public policy, or to any claims arising after January 17, 2025.

5.1.2. Plaintiff's Waiver of Rights Under California Civil Code § 1542. For purposes of Plaintiff's General Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of California Civil Code section 1542, 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."**

5.1.3. *Madison v. ECMD, Inc.*, Class and PAGA Action Settlement. Plaintiff's General Release does not extend to claims settled in the overlapping class and PAGA action in *Brandon Madison v. ECMD, Inc.*, Ventura County Superior Court Case No. 2024CUOE026931 (filed July 12, 2024); or *Brandon Madison v. ECMD, Inc.*, U.S. District, Central District of California Case No. 2:24-CV-07887 (removed September 12, 2024) (together, the "*Madison* Action"). Upon any court settlement approval order in the *Madison* Action, Plaintiff will receive any amount he may be entitled to as a participating class member and/or aggrieved employee in the *Madison* Action.

5.2. Released PAGA Claims: Upon entry of the Court's settlement approval order and Defendant's full funding of the Gross Settlement Amount, the LWDA and all Aggrieved Employees will be bound by a release of all claims for civil penalties under the California Private Attorney's General Act of 2004, Lab. Code §§ 2698, *et seq.*, arising during the PAGA Period and which were alleged in Plaintiff's May 19, 2024 PAGA Notice to the LWDA, or that reasonably could have been alleged based on the facts asserted therein, and only to the extent asserted in Plaintiff's July 24, 2024 PAGA Representative Action Complaint filed in the Action ("Released PAGA Claims"). The Released PAGA Claims are limited to all alleged claims for unpaid minimum wages, failure to maintain records, unreimbursed business expenses, and related PAGA penalties alleged in this PAGA action.

6. MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT

The Parties agree to jointly prepare and file an application or motion for approval of this Settlement.

6.1. Plaintiff's Responsibilities. Plaintiff will prepare and file all documents necessary for obtaining approval of this Settlement under Labor Code § 2699, subd. (f)(2), including (i) a draft proposed Approval Order; (ii) a signed declaration from the Administrator attaching its bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data breach, defalcation of funds, or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the

LWDA; and the nature and extent of any financial relationship with Plaintiff, PAGA Counsel, or Defense Counsel; (iii) a signed declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Lab. Code § 2699.3(a)), Operative Complaint (Lab. Code § 2699), this Agreement (Labor Code § 2699); and (iv) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator. In their declaration, PAGA shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement. As part of the process for requesting the Court's approval of this Settlement and/or upon the Court's Approval Order, Plaintiff will seek to have the Action dismissed with prejudice, on behalf of himself and all Aggrieved Employees with regard to the Released PAGA Claims. The remaining claims are subject to a settlement in the *Madison* Action, in which the parties in that action have reached a settlement on behalf a PAGA and a putative class and the settlement will be subject to approval by the *Madison* court. As a result, Plaintiff will seek that his remaining individual and PAGA representative claims that overlap with the *Madison* Action be dismissed without prejudice.

6.2. Responsibilities of PAGA Counsel. PAGA Counsel is responsible for expeditiously finalizing and filing the application or motion for approval of this Settlement no later than 30 days after the full execution of this Agreement and obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the motion. PAGA Counsel is responsible for delivering the Court's Order Approval to the Administrator and LWDA.

6.3. Duty to Cooperate. If the Parties disagree on any aspect of the proposed application or motion for approval of this Settlement and/or the supporting declarations and documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant the application or motion for approval of this Settlement or conditions its approval on any material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. <u>SETTLEMENT ADMINISTRATION</u>

7.1. <u>Selection of Administrator</u>. The Parties have jointly selected Phoenix Class Action Settlement Administration ("Phoenix") to serve as the Administrator and verified that, as a condition of appointment, Phoenix 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.

7.2. <u>Employer Identification Number</u>. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.

7.3. <u>Qualified Settlement Fund</u>. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation § 468B-1.

7.4. <u>Administrator Duties</u>. 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.

8. <u>AGGRIEVED EMPLOYEE SIZE ESTIMATES AND ESCALATOR CLAUSE</u>

The Gross Settlement Amount was negotiated based on Defendant's estimation that as of the date of the Parties' mediation (January 16, 2025), there are 5,350 cumulative PAGA Pay Periods worked by approximately 108 Aggrieved Employees. If the actual number of PAGA Pay Periods as of the Court's Approval Order is more than 10% of the estimated count (i.e., if the actual number of PAGA Pay Periods is more than 5,885), Defendant agrees and has the option to either (a) make a pro-rata increase to the Gross Settlement Amount for each additional pay period above the escalator or (b) have the PAGA Period end on the date when the escalator is triggered (i.e., when the number of PAGA Pay Periods reaches 5,350).

9. <u>CONTINUING JURISDICTION AND WAIVER OF RIGHT TO APPEAL</u>

9.1. <u>Enforceability and Continuing Jurisdiction of the Court</u>. This Agreement will be final, binding, and enforceable pursuant to California Code of Civil Procedure § 664.6. The Parties agree that, after entry of the Court's Approval Order and Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement, the Approval Order, and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

9.2. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment, the Parties, their respective counsel 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 another party 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.

10. ADDITIONAL PROVISIONS

10.1. No Admission of Liability 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 Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement, Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to contest Defendant'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).

10.2. Integrated Agreement. Upon execution by all Parties and their respective counsel, this Agreement together with its attached exhibit(s) shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all written or oral representations, warranties, covenants, or inducements made to or by any Party.

10.3. Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, 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.

10.4. Cooperation. The Parties and their respective counsel will cooperate with each other and use their best efforts, expeditiously and in good faith, to implement the Settlement by, among other things, modifying this Agreement or 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 their mediator and/or the Court for resolution.

10.5. 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.

10.6. No Tax Advice. Neither Plaintiff, PAGA Counsel, Defendant, 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.

10.7. 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.

10.8. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, any successors of each of the Parties.

10.9. Applicable Law. All terms and conditions of this Agreement and its exhibit(s) will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.

10.10. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. Therefore, this Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting of this Agreement.

10.11. 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. In response to any inquiries, Plaintiff and PAGA Counsel will state that "the case was resolved," or something similar to that effect.

10.12. Use and Return of Aggrieved Employee Data. Information provided to PAGA Counsel pursuant to Cal. Evid. Code § 1152, and all copies and summaries of the Aggrieved Employee Data provided to PAGA Counsel by Defendant in connection with the mediation, settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and for no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, rule of court, or the Parties' Stipulated Protective Order. Upon final resolution of this matter, including, but not limited to, administration of any approved class settlement, PAGA Counsel will have thirty (30) days to notify Defendant that all materials produced by Defendant and designated as "CONFIDENTIAL" have been destroyed, PAGA Counsel is required by law to maintain this information for a period of time following final resolution.

10.13. 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.

10.14. 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.

10.15. Notice. All notices, demands, or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

MOON LAW GROUP, PC
Kane Moon, Esq.
Allen Feghali, Esq.
Charlotte Mikat-Stevens, Esq.
725 S. Figueroa St., 31st Floor
Los Angeles, California 90017
E-mail: kmoon@moonlawgroup.com
E-mail: afeghali@moonlawgroup.com
E-mail: cmikat-stevens@moonlawgroup.com

To Defendant:

PIERSON FERDINAND LLP
Dessi N. Day
12100 Wilshire Blvd., Suite 800
Los Angeles, CA 90025
E-mail: dessi.day@pierferd.com

10.16. 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.

10.17. Stay of Litigation. The Parties agree that pursuant to the Court's Order entered on August 14, 2024, which stayed this Action pending completion of arbitration and/or resolution, this Action has been stayed except to effectuate the terms of this Agreement and the Settlement. Pursuant to California Code of Civil Procedure § 583.330, the Parties further agree that as of August 14, 2024, the date to bring a case to trial under California Code of Civil Procedure

§ 583.310 shall be extended for the duration of the settlement approval process.

10.18. No Publicity. The Parties and PAGA Counsel will not publicize the Settlement or disclose it to third parties, except as required or necessary to effectuate its terms and comply with law, including the payment of taxes. Specifically, Plaintiff and PAGA Counsel shall not publicize the Settlement on their websites, in advertising/marketing materials, or on social media. Notwithstanding the foregoing, PAGA Counsel is authorized to make a limited disclosure to the Court and the LWDA for purposes of obtaining settlement approval. This disclosure is limited to court filings and electronic submission of settlement documents to the LWDA. Further, nothing in this provision is intended to prohibit: (i) Plaintiff from discussing the Settlement with his immediate family members, attorneys, or tax advisors; (ii) PAGA Counsel from citing the Settlement as evidence supporting their competence as counsel in wage/hour and/or class and/or PAGA action matters; (iii) PAGA Counsel from meeting any fiduciary duties owed to Aggrieved Employees; or (iv) PAGA Counsel from communicating with Plaintiff, the LWDA, or with the Court. The Parties and their counsel agree that they will not issue any press releases or initiate any contact with the media about the fact, amount, or terms of the Settlement.

AGREED AND UNDERSTOOD BY:

Plaintiff:

Dated: By: ______________________________
David Ghusar

Defendant:

Dated: February 19, 2025 By: Karen McQuinn
Defendant ECMD, Inc.

Title: VP. Human Resources

APPROVED AS TO FORM ONLY BY:

Plaintiff's Counsel:

Dated: MOON LAW GROUP, PC

By:

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AGREED AND UNDERSTOOD BY:

Plaintiff:

Dated: 2/20/2024 By: David Ghusar (Feb 20, 2025 01:58 PST)
David Ghusar

Defendant:

Dated: By: ______________________
Defendant ECMD, Inc.

Title: ______________________

APPROVED AS TO FORM ONLY BY:

Plaintiff's Counsel:

Dated: February 20, 2025 MOON LAW GROUP, PC

By:

Kane Moon
Allen Feghali
Charlotte Mikat-Stevens

Attorneys for Plaintiff David Ghusar

Defendant's Counsel:

Dated: PIERSON FERDINAND LLP

By: ______________________________
Dessi N. Day

Attorneys for Defendant ECMD, Inc.

Kane Moon
Allen Feghali
Charlotte Mikat-Stevens

Attorneys for Plaintiff David Ghusar

Defendant's Counsel:

Dated: 2/24/2025

PIERSON FERDINAND LLP

By: Dessi Day

Dessi N. Day

Attorneys for Defendant ECMD, Inc.

EXHIBIT A

NOTICE OF PAGA SETTLEMENT

Ghusar v. ECMD, Inc., Riverside County California Superior Court, Case No. CVRI2404116

TO: All current and former non-exempt employees (including drivers) who worked for ECMD, Inc., in California at any time between May 19, 2023, through the date of entry of the Court's Approval Order.

Read this Notice carefully. This is not a solicitation by a lawyer. You are not being sued.

A settlement (the "PAGA Settlement") has been reached in a lawsuit for civil penalties under the California Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.* ("PAGA"), as a result of alleged California Labor Code violations by Defendant ECMD, Inc. ("Defendant"). The purpose of this Notice is to advise you as to why you are receiving a portion of the PAGA Settlement proceeds and how your rights are being affected by the PAGA Settlement. The Riverside County Superior Court has approved the PAGA Settlement.

Who is affected by this PAGA Settlement?

The Court has designated, for settlement purposes only, the following persons as "Aggrieved Employees":

> All current and former non-exempt employees (including drivers) who worked for Defendant in California at any time during the PAGA Period. The "PAGA Period" is May 19, 2023, through the date of entry of the Court's Approval Order.

According to Defendant's business records, you are an Aggrieved Employee. Therefore, you are entitled to the enclosed check (your "Individual PAGA Payment"[1]), which constitutes your pro-rata share from the PAGA Penalties allocation: <<**PAGAPaymentAmount**>>.

> Your share was calculated based on the number of Pay Periods you worked as an Aggrieved Employee during the PAGA Period, as determined by a review of Defendant's records: <<**PAGAPayPeriods**>>.

What is this PAGA Settlement about?

Plaintiff David Ghusar ("Plaintiff") filed this lawsuit on July 24, 2024, in the California Superior Court, County of Riverside, entitled *Ghusar v. ECMD, Inc.*, Case No. CVRI2404116 (the "Action"). Plaintiff's Action seeks, on behalf of himself, other Aggrieved Employees, and the State of California, civil penalties pursuant to PAGA for Defendant's alleged violations of the California Labor Code.

Defendant expressly denies all allegations and deny any failure to comply with the laws identified in the Action. Plaintiff maintains his allegations have merit. Nonetheless, both sides have agreed to settle, in recognition of the substantial risks, duration, and costs associated with continued litigation. The PAGA Settlement fully resolves Plaintiff's alleged claims in the Action for minimum wages, failure to maintain records, expense reimbursement and related PAGA claims, and these claims will be dismissed with prejudice. The remaining claims are subject to a settlement in another matter, which was filed during the same time period by a different employee—*Brandon Madison v. ECMD, Inc.*, Cal. Central District Case No. 2:24-CV-07887-SVW-MAA (state action filed on July 12, 2024; removal on September 12, 2024)—and in which the parties in that action have reached a settlement on behalf a PAGA and a putative class, which will be submitted for court approval in that matter. As a result, Plaintiff's remaining claims that overlap with the *Madison* matter are dismissed without prejudice. The PAGA Settlement is not an admission of liability on the part of Defendant, nor is it an admission on the part of Plaintiff that the claims do not have merit.

[1] One hundred percent (100%) of your Individual PAGA Payment will be considered penalties for tax reporting purposes. Your Individual PAGA Payment will be reported to the appropriate tax authorities on an IRS 1099 Form, and may be subject to local, state, or federal tax withholdings. You should discuss with your own tax advisors as to the tax consequences, if any, of your Individual PAGA Payment. Neither the Parties nor their attorneys have made any representations or warranties regarding the taxation of your Individual PAGA Payment.

What are the terms of the PAGA Settlement?

Following the Court's approval of the PAGA Settlement, Defendant paid **$195,000.00** (the "Gross Settlement Amount"), which will be used to pay: (a) General Release Payment in the amount of **$______** to Plaintiff; (b) PAGA Counsel Fees Payment in the amount of **$______** (which is one-third of the Gross Settlement Amount), as reasonable consideration for litigation work performed; (c) PAGA Counsel Litigation Expenses Payment in the amount of **$_______**, as reimbursement for actual costs incurred in the Action; (d) Administration Expenses Payment in the amount of **$_______**, for the Administrator's services in administering the PAGA Settlement; and (e) a PAGA Penalties allocation in the amount of **$______**, which will be distributed as 75% (**$_______**) to the California Labor and Workforce Development Agency (the "LWDA") and 25% (**$_______**) to be paid to Aggrieved Employees through Individual PAGA Payments, pursuant to PAGA.

Upon entry of the Court's settlement approval order and Defendant's full funding of the Gross Settlement Amount, the PAGA Settlement shall be effective as a full and final accord and satisfaction and settlement of, and as a bar to, the Released PAGA Claims against the Released Parties by Plaintiff, on behalf of himself, the LWDA and all Aggrieved Employees.

> The "Released PAGA Claims" are: all claims for civil penalties under the California Private Attorney's General Act of 2004, Lab. Code §§ 2698, *et seq.*, arising during the PAGA Period and which were alleged in Plaintiff's May 19, 2024 PAGA Notice to the LWDA, or that reasonably could have been alleged based on the facts asserted therein, and only to the extent asserted in Plaintiff's July 24, 2024 PAGA Representative Action Complaint filed in the Action. The Released PAGA Claims are limited to all alleged claims for unpaid minimum wages, failure to maintain records, unreimbursed business expenses, and related PAGA penalties alleged in this PAGA Action.
>
> The "Released Parties" are: Defendant and each of its past, present and future owners, parents, affiliates, related companies, divisions, subsidiaries, and all their past, present and future officers, directors, partners, members, managers, consultants, shareholders, joint venturers, agents, predecessors, successors, affiliates, assigns, advisors, accountants, attorneys, insurers, reinsurers, trustees, heirs, executors, administrators, and representatives.

The PAGA Settlement is limited to a release of claims alleged by Plaintiff, pursuant to PAGA, for unpaid minimum wages, failure to maintain records, unreimbursed business expenses, and related PAGA penalties. Additionally, the PAGA Settlement is limited to claims arising inside of the PAGA Period. The PAGA Settlement does not release any other claims you may have against the Released Parties.

What if I lose my check?

Your Individual PAGA Payment check will remain valid and negotiable for one hundred eighty (180) days from the date of the check's issuance, as stated on your check (the "Void Date"). If you do not cash your check before the Void Date, the Administrator will cancel your check and transmit those funds to the California State Controller's Unclaimed Property Fund in your name. To obtain your funds from the Unclaimed Property Fund, please consult: https://www.sco.ca.gov/search_upd.html.

If your check is lost or misplaced, you should contact the Administrator to request a replacement. They can be contacted as follows:

<<Administrator Name>>

<<Address>>

<<Tel. Number>>

<<Email>>

PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THIS SETTLEMENT.