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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.: **CVRI 2404116**

**PAGA REPRESENTATIVE ACTION
COMPLAINT:**

1. Civil Penalties Under PAGA [Cal. Lab.
Code §§ 2698, *et seq.*]

DEMAND FOR JURY TRIAL

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1 Plaintiff David Ghusar (“Plaintiff”), based upon facts that either have evidentiary support
2 or are likely to have evidentiary support after a reasonable opportunity for further investigation
3 and discovery, alleges as follows:

4 **INTRODUCTION & PRELIMINARY STATEMENT**

5 1. Plaintiff brings this action against Defendants ECMD, Inc., and Does 1 through 10
6 (collectively referred to as “Defendants”) for civil penalties under the Private Attorneys General
7 Act of 2004, California Labor Code §§ 2698, *et seq.* (“PAGA”), stemming from Defendants’
8 failure to pay minimum wages, failure to pay overtime wages, failure to provide meal periods,
9 failure to authorize and permit rest periods, failure to maintain accurate records of hours worked
10 and meal periods, failure to timely pay all wages to terminated employees, failure to indemnify
11 necessary business expenses, and failure to furnish accurate wage statements.

12 2. For over 50 years, California’s courts and legislature have recognized that this
13 State’s wage-and-hour laws serve a compelling public interest of fostering a stable job market.
14 Wages are not ordinary debts. Because of the economic position of the average worker and his or
15 her family, it is essential to the public welfare that employers obey the wage-and-hour laws so that
16 employees are promptly paid the minimum/overtime wages that the Legislature has required for
17 employees. So fundamental are California’s wage-and-hour laws that the Legislature has
18 criminalized certain types of violations. In extending extra protection to deter violations of these
19 underlying statutes—since Plaintiff is not seeking general and/or special damages, restitution or
20 other damages other than civil penalties—California has enacted the PAGA to permit an individual
21 to bring an action on behalf of herself and on behalf of others for PAGA penalties only, which is
22 the precise and sole nature of this action.

23 3. Plaintiff brings this Action individually, the State of California, and certain current
24 and former employees of Defendants who are or were harmed by Defendants’ illegal practices
25 (hereinafter collectively referred to as the “Aggrieved Employees”). The Aggrieved Employees
26 consists of Plaintiff and all other persons who have been employed by any Defendants in California
27 as an hourly-paid, non-exempt employee during the statute of limitations period applicable to the
28 claims pleaded here.

1 4. Plaintiff brings this Action against Defendants seeking only to recover penalties for
2 himself, on behalf of all the Aggrieved Employees, and on behalf of the State of California.
3 Plaintiff does not seek to recover anything other than penalties as permitted by California Labor
4 Code § 2699 at this time. To the extent that statutory violations are mentioned for wage violations,
5 Plaintiff does not seek underlying general and/or special damages for those violations, but simply
6 penalties as permitted by California Labor Code § 2699, declaratory relief, and injunctive relief
7 for himself and all the Aggrieved Employees as permitted by the PAGA.

8 5. Defendants own/owned and operate/operated an industry, business, and
9 establishment within the State of California, including Riverside County. As such, and based upon
10 all the facts and circumstances incident to Defendants' business in California, Defendants are
11 subject to the California Labor Code and Wage Orders issued by the Industrial Welfare
12 Commission ("IWC").

13 6. Despite these requirements, throughout the statutory period Defendants maintained
14 a systematic, company-wide policy and practice of:

- 15 (a) Failing to pay employees for all hours worked, including all minimum
16 wages, and overtime wages in compliance with the California Labor Code
17 and IWC Wage Orders;
- 18 (b) Failing to provide employees with timely and duty-free meal periods in
19 compliance with the California Labor Code and IWC Wage Orders, failing
20 to maintain accurate records of all meal periods taken or missed, and failing
21 to pay an additional hour's pay for each workday a meal period violation
22 occurred;
- 23 (c) Failing to authorize and permit employees to take timely and duty-free rest
24 periods in compliance with the California Labor Code and IWC Wage
25 Orders, and failing to pay an additional hour's pay for each workday a rest
26 period violation occurred;
- 27 (d) Failing to indemnify employees for all necessary business expenses
28 incurred;

- 1 (e) Willfully failing to pay employees all minimum wages, overtime wages,
2 meal period premium wages, and rest period premium wages due within the
3 time period specified by California law when employment terminates;
4 (f) Failing to maintain accurate records of the hours that employees worked;
5 and
6 (g) Failing to provide employees with accurate, itemized wage statements
7 containing all the information required by the California Labor Code and
8 IWC Wage Orders.

9 7. On information and belief, Defendants, and each of them were on actual and
10 constructive notice of the improprieties alleged herein and intentionally refused to rectify their
11 unlawful policies. Defendants' violations, as alleged above, during all relevant times herein were
12 willful and deliberate.

13 8. At all relevant times, Defendants were and are legally responsible for all of the
14 unlawful conduct, policies, practices, acts, and omissions as described in each and all of the
15 foregoing paragraphs as the employer of Plaintiff and the Aggrieved Employees. Further,
16 Defendants are responsible for each of the unlawful acts or omissions complained of herein under
17 the doctrine of "respondeat superior".

18 **THE PARTIES**

19 **A. Plaintiff**

20 9. Plaintiff is a California resident that worked for Defendants in the County of
21 Riverside, State of California as a driver from approximately October 2023 to March 2024.

22 10. Plaintiff reserves the right to seek leave to amend this complaint to add new
23 plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v.*
24 *American Savings and Loan Association* (1971) 5 Cal.3d 864, 872, and other applicable law.

25 **B. Defendants**

26 11. Plaintiff is informed and believes, and based upon that information and belief
27 alleges, that Defendants are:

- 28 (a) Business entities with their principal places of business in Riverside,

California.

(b) Business entities conducting business in numerous counties throughout the State of California, including in Riverside County; and

(c) The former employers of Plaintiff, and the current and/or former employers of the Aggrieved Employees. Defendants suffered and permitted Plaintiff and the Aggrieved Employees to work, and/or controlled their wages, hours, or working conditions; and

(d) At all times mentioned herein, Defendants are and were the joint employers of Plaintiff and the Aggrieved Employees.

12. Plaintiff does not currently know the true names or capacities of the persons or entities sued herein as Does 1-10, inclusive, and therefore sues said Defendants by such fictitious names. Each of the Doe Defendants was in some manner legally responsible for the damages suffered by Plaintiff and the Aggrieved Employees as alleged herein. Plaintiff will amend this complaint to set forth the true names and capacities of these Defendants when they have been ascertained, together with appropriate charging allegations, as may be necessary.

13. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and each of them, were residents of, doing business in, availed themselves of the jurisdiction of, and/or injured a significant number of Plaintiff and the Aggrieved Employees in the State of California.

14. Plaintiff is informed and believes, and thereon alleges, that at all relevant times each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and the Aggrieved Employees, and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes, and thereon alleges, that, at all relevant times, each Defendant was the principal, agent, partner, joint venturer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest, and/or predecessor in interest of some or all of the other Defendants, and was engaged with some or all of the other Defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other Defendants so as to be liable for their conduct with respect to the matters alleged below. Plaintiff is informed and believes, and thereon alleges, that each Defendant acted pursuant to and within the scope of

1 the relationships alleged above, that each Defendant knew or should have known about, and
2 authorized, ratified, adopted, approved, controlled, aided, and abetted the conduct of all other
3 Defendants.

4 **FACTUAL ALLEGATIONS**

5 15. Plaintiff is a California resident who worked for Defendants in the County of
6 Riverside, State of California during the statutory period. During the statutory time period,
7 Defendants classified Plaintiff as a non-exempt employee. Plaintiff was typically scheduled to
8 work at least 5 days in a workweek, and typically in excess of 8 hours in a single workday.

9 16. Throughout the statutory period, Defendants failed to pay Plaintiff for all hours
10 worked (including, but not limited to, minimum wages and overtime wages), failed to provide
11 Plaintiff with uninterrupted meal periods, failed to authorize and permit Plaintiff to take
12 uninterrupted rest periods, failed to indemnify Plaintiff for all necessary business expenses, failed
13 to timely pay all final wages to Plaintiff when Defendants terminated Plaintiff's employment, and
14 failed to furnish accurate wage statements to Plaintiff. As discussed below, Plaintiff's experience
15 working for Defendants was typical and illustrative.

16 17. Throughout the statutory period, Defendants maintained a policy and practice of not
17 paying Plaintiff and the Aggrieved Employees for all hours worked, including, but not limited to,
18 all overtime wages. Throughout the statutory period, Plaintiff and the Aggrieved Employees were
19 required to work off the clock, and uncompensated. For example, Plaintiff and the Aggrieved
20 Employees were required to wait in line in order to clock into work and when returning from meal
21 breaks, off the clock and uncompensated. In those instances where Plaintiff and the Aggrieved
22 Employees clocked in through an application on their cellular telephones, Plaintiff and the
23 Aggrieved Employees were often required to attempt several times because of the bad reception,
24 leading to additional off the clock time. Also, prior to clocking into work, Plaintiff and the
25 Aggrieved Employees were required to inspect the trucks. Also prior to clocking into work,
26 Plaintiff and the Aggrieved Employees were required to enter a security code to enter the facility,
27 including waiting in line, which took time and was uncompensated. Also after clocking out of
28 work, Plaintiff and the Aggrieved Employees were required to clean the trucks, uncompensated.

1 Also, Plaintiff and the Aggrieved Employees' meal breaks were sometimes interrupted, leading to
2 uncompensated work time. Also during the statutory period, Plaintiff and the Aggrieved
3 Employees received different types of remuneration. However, Defendants failed to include all
4 remuneration when calculating the correct overtime rate of pay, meal break premium rate of pay,
5 and sick day rate of pay, leading to underpayment.

6 18. Throughout the statutory period, Defendants have wrongfully failed to provide
7 Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendants
8 sometimes, but not always, required Plaintiff and the Aggrieved Employees to work in excess of
9 five consecutive hours a day without providing 30-minute, continuous and uninterrupted, duty-free
10 meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved
11 Employees for meal periods that were not provided by the end of the fifth hour of work or tenth
12 hour of work. Defendants also did not adequately inform Plaintiff and the Aggrieved Employees
13 of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than
14 10 hours, by the end of the tenth hour of work. Accordingly, Defendants' policy and practice was
15 to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with
16 California law.

17 19. Throughout the statutory period, Defendants have wrongfully failed to authorize
18 and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods.
19 Defendants sometimes, but not always, required Plaintiff and the Aggrieved Employees to work in
20 excess of four consecutive hours a day without Defendants authorizing and permitting them to take
21 a 10-minute, continuous and uninterrupted, rest period for every four hours of work (or major
22 fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest
23 periods that were not authorized or permitted. Defendants also did not adequately inform Plaintiff
24 and the Aggrieved Employees of their right to take a rest period. Moreover, Defendants did not
25 have adequate policies or practices permitting or authorizing rest periods for Plaintiff and the
26 Aggrieved Employees, nor did Defendants have adequate policies or practices regarding the timing
27 of rest periods. Defendants also did not have adequate policies or practices to verify whether
28 Plaintiff and the Aggrieved Employees were taking their required rest periods. Further, Defendants

1 did not maintain accurate records of employee work periods, and therefore Defendants cannot
2 demonstrate that Plaintiff and the Aggrieved Employees took rest periods during the middle of
3 each work period. Accordingly, Defendants' policy and practice was to not authorize and permit
4 Plaintiff and the Aggrieved Employees to take rest periods in compliance with California law.

5 20. Throughout the statutory period, Defendants wrongfully required Plaintiff and the
6 Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for
7 Defendants without reimbursement, such as requiring Plaintiff and the Aggrieved Employees to
8 purchase cleaning supplies to clean the trucks, specific types of shoes, snow chains, and were
9 required to use their personal cellular telephones for work purposes. Also, Plaintiff and the
10 Aggrieved Employees were sometimes required to use their personal vehicles for work purposes.

11 21. Throughout the statutory period, Defendants willfully failed and refused to timely
12 pay Plaintiff and the Aggrieved Employees at the conclusion of their employment all wages for all
13 minimum wages, overtime wages, meal period premium wages, and rest period premium wages.
14 Further, Defendants did not pay Plaintiff and the Aggrieved Employees their final paychecks
15 immediately upon termination.

16 22. Throughout the statutory period, Defendants failed to furnish Plaintiff and the
17 Aggrieved Employees with accurate, itemized wage statements showing all applicable hourly rates,
18 and all gross and net wages earned (including correct hours worked, correct wages earned for hours
19 worked, correct overtime hours worked, correct wages for meal periods that were not provided in
20 accordance with California law, correct wages for rest periods that were not authorized and
21 permitted to take in accordance with California law, and Defendant's address). Further, the wage
22 statements do not show Defendant's address as required by California law. As a result of these
23 violations of California Labor Code § 226(a), the Plaintiff and the Aggrieved Employees suffered
24 injury because, among other things:

- 25 (a) the violations led them to believe that they were not entitled to be paid
26 minimum wages, overtime wages, meal period premium wages, and rest
27 period premium wages and business reimbursements to which they were
28 entitled, even though they were entitled;

- 1 (b) the violations led them to believe that they had been paid the minimum,
2 overtime, meal period premium, and rest period premium wages and
3 business reimbursements, even though they had not been;
- 4 (c) the violations led them to believe they were not entitled to be paid minimum,
5 overtime, meal period premium, and rest period premium wages at the
6 correct California rate even though they were;
- 7 (d) the violations led them to believe they had been paid minimum, overtime,
8 meal period premium, and rest period premium wages at the correct
9 California rate even though they had not been;
- 10 (e) the violations hindered them from determining the amounts of minimum,
11 overtime, meal period premium, and rest period premium wages and
12 business reimbursements owed to them;
- 13 (f) in connection with their employment before and during this action, and in
14 connection with prosecuting this action, the violations caused them to have
15 to perform mathematical computations to determine the amounts of wages
16 owed to them, computations they would not have to make if the wage
17 statements contained the required accurate information;
- 18 (g) by understating the wages truly due them, the violations caused them to lose
19 entitlement and/or accrual of the full amount of Social Security, disability,
20 unemployment, and other governmental benefits;
- 21 (h) the wage statements inaccurately understated the wages, hours, and wages
22 rates to which Plaintiff and the Aggrieved Employees were entitled, and
23 Plaintiff and the Aggrieved Employees were paid less than the wages and
24 wage rates to which they were entitled.

25 Thus, Plaintiff and the Aggrieved Employees are owed the amounts provided for in California
26 Labor Code § 226(e), including actual damages.

27 ///

28 ///

1 **FIRST CAUSE OF ACTION**

2 **(Against all Defendants for Civil Penalties Under the Private Attorneys General Act of**
3 **2004, Cal. Lab. Code §§ 2698, *et seq.*)**

4 23. Plaintiffs incorporate by reference and re-allege all preceding paragraphs of this
5 Complaint as though fully set forth herein.

6 24. At all times herein mentioned, Defendants were subject to the Labor Code of the
7 State of California and the applicable Industrial Welfare Commission Orders.

8 25. California Labor Code § 2699(a) specifically provides for a private right of action
9 to recover penalties for violations of the Labor Code: “Notwithstanding any other provision of law,
10 any provision of this code that provides for a civil penalty to be assessed and collected by the
11 California Labor and Workforce Development Agency (“LWDA”) or any of its departments,
12 divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an
13 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
14 herself or herself and other current or former employees pursuant to the procedures specified in
15 Section 2699.3.”

16 26. Plaintiff have exhausted his administrative remedies pursuant to California Labor
17 Code § 2699.3. On May 19, 2024, he gave written notice by online filing to the LWDA and by
18 certified mail to Defendant ECMD, Inc. of the specific provisions of the Labor Code that
19 Defendants have violated against Plaintiff and the Aggrieved Employees, including the facts and
20 theories to support the violations. Plaintiff also paid the filing fee. Plaintiff’s PAGA case number
21 is LWDA-CM-1029239-24.

22 27. The statute of limitations is tolled while a plaintiff exhausts his/her administrative
23 remedies with the LWDA prior to suit, which is required by the statute. (*See* Cal. Lab. Code §
24 2699.3(d).)

25 28. More than 65 days has elapsed since Plaintiff provided notice, but the LWDA has
26 not indicated that it intends to investigate Defendants’ Labor Code violations discussed in the
27 notice. Accordingly, Plaintiff may commence a civil action to recover penalties under California
28 Labor Code § 2699, pursuant to California Labor Code § 2699.3, for the violations of the California

1 Labor Code described in Plaintiff's notice and in this Complaint. These penalties include, but are
2 not limited to, penalties under California Labor Code §§ 210, 226.3, 1197.1, and 2699(f)(2).

3 29. In addition, Plaintiff seeks penalties for Defendants' violation of California Labor
4 Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity,
5 employing labor who willfully fails to maintain accurate and complete records required by
6 California Labor Code § 1174 is subject to a penalty under California Labor Code § 1174.5.
7 Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing
8 when the employee begins and ends each work period. Meal periods and total hours worked daily
9 shall also be recorded. Additionally, pursuant to the applicable IWC Order § 7(A)(5), every
10 employer shall keep total hours worked in the payroll period and applicable rates of pay.

11 30. During the time period of employment for Plaintiff and the Aggrieved Employees,
12 Defendants failed to maintain records pursuant to the California Labor Code and IWC Orders by
13 failing to maintain accurate records showing meal periods, and accurate records showing when
14 employees begin and end each work period. Defendants' failure to provide and maintain records
15 as required by the California Labor Code and IWC Wage Orders deprived Plaintiff and the
16 Aggrieved Employees the ability to know, understand, and question the accuracy and frequency of
17 meal periods and the accuracy of their hours worked stated in Defendants' records. Therefore,
18 Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages,
19 all of which resulted in an unjustified economic enrichment to Defendants. As a direct result,
20 Plaintiff and the Aggrieved Employees have suffered, and continue to suffer, substantial losses
21 related to the use and enjoyment of such wages, lost interest on such wages, expenses, and
22 attorneys' fees in seeking to compel Defendants to fully perform their obligation under state law,
23 all to their respective damage in amounts according to proof at trial. Because of Defendants'
24 knowing failure to comply with the California Labor Code and applicable IWC Wage Orders,
25 Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented
26 from knowing, understanding, and disputing the wage payments paid to them.

27 31. Based on the conduct described in this Complaint, Plaintiff is entitled to an award
28 of civil penalties on behalf of himself, the State of California, and similarly Aggrieved Employees

1 of Defendants. The exact amount of the applicable penalties, in all, is in an amount to be shown
2 according to proof at trial. These penalties are in addition to all other remedies permitted by law.

3 32. In addition, Plaintiff seeks an award of reasonable attorneys' fees and costs pursuant
4 to California Labor Code § 2699(g)(1), which states, "Any employee who prevails in any action
5 shall be entitled to an award of reasonable attorney's fees and costs."

6 **PRAYER FOR RELIEF**

7 Plaintiff, individually, and on behalf of all others similarly situated and the State of
8 California, prays for relief and judgment against Defendants, jointly and severally, as follows:

9 1. That the Court declare, adjudge, and decree that Defendants violated the California
10 Labor Code by failing to pay wages for all hours worked (including, but not limited to, minimum
11 wages and overtime wages), failing to provide meal periods, failing to authorize and permit rest
12 periods, failing to furnish accurate wage statements, failing to reimburse all business expenses, and
13 failing to maintain accurate records of all hours worked and meal periods;

14 2. An award of civil penalties on behalf of himself, all similarly Aggrieved Employees,
15 and the State of California pursuant to PAGA;

16 3. Pre-judgment and post-judgment interest at the maximum rate allowed;

17 4. Attorneys' fees and costs reasonably incurred;

18 5. Injunctive and declaratory relief to the extent allowed by PAGA;

19 6. That counsel for Plaintiff be appointed as PAGA Counsel; and

20 7. For any additional relief that the Court deems just and proper.

21
22 Dated: July 24, 2024

Respectfully submitted,

23 MOON LAW GROUP, PC

24
25 By:


Kane Moon
Allen Feghali
Charlotte Mikat-Stevens
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury as to all causes of action triable by jury.

Dated: July 24, 2024

MOON LAW GROUP, PC

By:


Kane Moon
Allen Feghali
Charlotte Mikat-Stevens
Attorneys for Plaintiff