Exhibit 1

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

BRANDON MADISON, on behalf of himself and all others similarly situated,

Plaintiffs,

v.

ECMD, INC., a North Carolina Corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No. 2:24-cv-07887-MWC-MAA

Action Date: July 12, 2024

CLASS ACTION AND PAGA ACTION SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

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This Class Action and PAGA Action Settlement Agreement and Release of Claims is entered into by and between Plaintiff Brandon Madison ("Plaintiff"), individually, on behalf of himself and the putative class/PAGA Employees, and Defendant ECMD, Inc., ("Defendant") (collectively "the Parties"). The Parties hereby stipulate and agree as follows:

DEFINITIONS

As used herein, for the purposes of this Settlement Agreement only, the following terms shall be defined as set forth below:

1. "Action" or "Lawsuit" means and refers to the class case entitled *Brandon Madison v. ECMD, Inc.*, Superior Court of California County of Ventura, Case No.: 2024CUOE026931, which was removed to the United States District Court, Central District of California, Case No.: 2:24-cv-07887-MWC-MAA.

2. "Agreement" or "Settlement Agreement" shall mean this Class Action and PAGA Action Settlement Agreement and Release of Claims.

3. "Administrator" or "Settlement Administrator" means Ilym Class Action Administrators, the neutral third-party class action settlement administrator agreed to by the Parties to administer the Settlement.

4. "Administration Costs" or "Settlement Administration Costs" means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses to administers the Settlement as provided in this Agreement.

5. "Class" or "Settlement Class" means all current and former California hourly non-exempt employees of Defendant who were employed by Defendant in California, including Drivers, at any time during the Class Period. Defendant represents that there are approximately 177 eligible Class Members.

6. "Class Counsel" refers to David P. Myers, Jason Hatcher, Andriana N. Bravo and the Myers Law Group, APC.

7. "Class Data" means a complete list that Defendant will diligently and in

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good faith compile from its records and provide to the Settlement Administrator on one spreadsheet and shall include the Settlement Class Members' full names; last known addresses; Social Security Numbers; the dates of employment and total Pay Periods Worked during the PAGA Period for each PAGA Employee, and the total Pay Periods Worked during the Class Period for each Settlement Class Member, with distinction between number of Pay Periods as a Territory Service Representative and Non-Territory Service Representative.

8. "Class Counsel Fees Payment" means the attorneys' fees paid to compensate Class Counsel for their services rendered, and to be rendered, to Plaintiff, the Participating Settlement Class Members and the PAGA Employees in connection with the Action. The Class Counsel Fee Payment is not to exceed one-third (33.3333%) of the Gross Settlement Amount ($400,000.00), i.e. the sum of One Hundred Thirty-Three Thousand Three-Hundred Thirty-Three Dollars and Thirty-Three Cents ($133,333.33), absent the application of the Escalator Clause in Paragraph 53.

9. "Class Counsel Litigation Expenses Payment" means the amount allocated to Class Counsel for reimbursement of reasonable expenses and costs incurred to prosecute the Action. The Class Counsel Litigation Expenses Payment is not to exceed Ten Thousand Dollars and Zero Cents ($10,000.00).

10. "Class Member" or "Settlement Class Member" means a person currently or formerly employed in California as an hourly non-exempt employee of Defendant, including Drivers, at any time during the Class Period.

11. "Class Period" means the time period from December 10, 2021 to February 10, 2025.

12. "Class Representative" or "Plaintiff" means and refers to the named Plaintiff Brandon Madison in the Action seeking Court approval to serve as Class Representative.

13. "Class Representative Service Payment" or "Class Representative

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Service Award" means the amount that the Court authorizes to be paid to Plaintiff, not to exceed Ten Thousand Dollars and Zero Cents ($10,000.00) in addition and separate to any other payments to Plaintiff in this Settlement (if applicable, e.g. Individual Class Settlement Payment and/or Individual PAGA Payment), in exchange for a general release pursuant to Civil Code §1542 and recognition of his efforts and work in prosecuting the Action on behalf of the Settlement Class Members and PAGA Employees.

14. "Complaint" means the operative Second Amended Complaint in the Action. The Parties agree to enter into a joint stipulation such that Plaintiff will file a Second Amended Complaint to effectuate this agreement. The Second Amended Complaint will be filed with the Motion for Preliminary Approval and is attached hereto as Exhibit B. The Motion for Preliminary Approval will request that the Court deem the Second Amended Complaint filed and answered by Defendant's Answer to Plaintiff's First Amended Complaint.

15. "Court" means the United States District Court for the Central District of California, Western Division.

16. "Defendant" means and refers to ECMD, Inc.

17. "Defendant's Counsel" or "Defense Counsel" means and refers to Dessi N. Day and Pierson Ferdinand LLP.

18. "Effective Date": The terms of settlement embodied in this Settlement shall become effective when all of the following events have occurred: (i) this Settlement Agreement has been executed by all Parties and their respective counsel; (ii) the Court has given preliminary approval to the Settlement Agreement; (iii) the Notice of Settlement has been given to the class, providing them with an opportunity to dispute information contained in the Notice of Settlement, to opt out of the Settlement Agreement, or to object to the Settlement Agreement; (iv) the Court has held a final approval hearing and entered a final order and judgment certifying the Class and approving this Settlement; and (v) the later of the following events: (a) the

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date final approval is granted if there are no objections to the settlement; (b) sixty-five (65) days following notice of entry of the Court's final order approving the Settlement Agreement if there are any objections by any Class Member; or (c) if any appeal, writ or other appellate proceeding opposing this Settlement has been filed within sixty-five (65) days following notice of entry of the Court's final order approving the Settlement, then twenty (20) days after when any appeal, writ or other appellate proceeding opposing the Settlement Agreement has been resolved finally and conclusively with no right to pursue further remedies or relief. In this regard, it is the intention of the Parties that the Settlement Agreement shall not become effective until the Court's order approving the Settlement is completely final, and there is no further recourse by an appellant or objector who seeks to contest the Settlement.

19. "Employer Taxes" means Defendant's share of any employer payroll taxes to be paid in connection with the Settlement (i.e. FICA, FUTA, payroll taxes, and/or any similar tax or charge) shall be paid separate and in addition to the Gross Settlement Amount.

20. "Final Approval" means the Court order granting final approval of this Settlement Agreement and entering a judgment approving this Agreement on substantially the terms provided herein or as the same may be modified by subsequent agreement of the Parties.

21. "Gross Settlement Amount" means the non-reversionary maximum amount of Four Hundred Thousand Dollars and Zero Cents ($400,000.00), subject to the Escalator Clause in Paragraph 53, and exclusive of any and all Employer Taxes that may become due on any amount of this Settlement which are classified as wages.

22. "Individual Class Settlement Payment(s)" means the Participating Settlement Class Member's pro rata share of the Net Settlement Amount as calculated by the formula in Paragraph 55.

23. "Individual PAGA Payment(s)" means the PAGA Employee's pro rata

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share of 35% of the PAGA Payment calculated according to the number of Pay Periods for each PAGA Employees within the relevant PAGA Period.

24. "LWDA Notice" means the letter sent by Plaintiff to the Labor and Workforce Development Agency ("LWDA") on July 12, 2024 providing notice pursuant to the Private Attorneys General Act, Labor Code §§ 2698, *et seq*., (LWDA Case No. LWDA-CM-1039402-24).

25. "LWDA PAGA Payment" means the 65% of the PAGA Payment made to the LWDA.

26. "Net Settlement Amount" or "NSA" means the portion of the Gross Settlement Amount after deducting the following payments from the Gross Settlement Amount: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Settlement Administration Costs. The Net Settlement Amount is to be paid to Participating Settlement Class Members on a pro rata basis as Individual Class Settlement Payments.

27. "Notice of Class Action and PAGA Action Settlement" or "Notice of Settlement" means the notice of settlement of class action and PAGA action that will be sent to the Settlement Class Members, substantially in the form attached hereto as Exhibit A.

28. "Objecting Settlement Class Member" means a Settlement Class Member, other than Plaintiff, who submits a valid and timely objection to the terms of this Agreement pursuant to Paragraphs 87 and 88 below.

29. "PAGA Employees" or "PAGA Employee" means all current and former California hourly non-exempt employees of Defendant who performed work for Defendant in California at any time during the PAGA Period.

30. "PAGA Payment" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 35% to the PAGA Employees ($14,000.00) and the 65% to the Labor and Workforce Development Agency

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("LWDA") ($26,000.00) in settlement of the PAGA claims alleged in the Second Amended Complaint and the LWDA Notice.

31. "PAGA Period" means the period of May 8, 2023 to February 10, 2025.

32. "PAGA Released Claims" means all claims for PAGA civil penalties that were alleged in the Second Amended Complaint and all claims for PAGA civil penalties that could have been brought based on the factual allegations set forth in the Second Amended Complaint and the LWDA Notice for this Action for the PAGA Period.

33. "Participating Class Member(s)" or "Participating Settlement Class Member(s)" means any and all Settlement Class Members who do not submit a valid and timely Request for Exclusion from the Settlement.

34. "Pay Periods Worked" or "Eligible Pay Periods" means all pay periods during the Class Period in which the Settlement Class Member was employed by Defendant, including as a Driver, and performed work for Defendant as a non-exempt employee in California for a least one day during a pay period. The Settlement Administrator will calculate the number of Pay Periods for the Class during the Class Period based on the Class Data provided by Defendant.

35. "PAGA Pay Periods" means all pay periods during the PAGA Period in which the PAGA Employee was employed by Defendant and performed work for Defendant as a non-exempt employee in California for a least one day during a pay period. The Settlement Administrator will calculate the number of PAGA Pay Periods for the PAGA Employees during the PAGA Period based on the Class Data provided by Defendant.

36. "Preliminary Approval Date" means the date the Court enters an order granting preliminary approval of the Settlement.

37. "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval of the Settlement.

38. "QSF" means the Qualified Settlement Fund set up by the Settlement

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Administrator for the benefit of the Participating Settlement Class and from which the settlement payments shall be made, and which is intended to be a fund that qualifies under Internal Revenue Code Sec. 468.

39. "Released Class Claims" means all claims asserted in the Second Amended Complaint and all claims, wages, penalties, interest, debts, demands, rights, liabilities, costs, compensation, damages, injunctive and/or declaratory relief, attorneys' fees, actions, and/or causes of action that were pleaded or could have been brought based on the factual allegations set forth in the Second Amended Complaint, excluding the PAGA Cause of Action, for the Class Period; including but not limited to all claims under the California Labor Code for failure to pay overtime and double time, failure to provide meal periods and to pay premium pay for missed or noncompliant meal break periods, failure to provide rest periods and to pay premium pay for missed or noncompliant rest break periods, failure to pay final wages earned and due at the time of separation, wage statement violations, interest, statutory penalties, and attorneys' fees, waiting time penalties and claims pursuant to Labor Code §§ 200, 200.3, 202, 203, 204, 208, 210, 218, 218.5, 218.6, 219, 226, 226, 226.7, 510, 512, 516, 558.1, 1174, 1194, 1194.2, 1198, Wage Order 1-2001, derivative claims under California Business & Professions Code §§ 17200 et seq., and Civil Code § 3287, for the Class Period.

40. "Released Parties" means Defendant and its past, present and future subsidiaries, parents, affiliated and related companies, divisions, successors, predecessors or assigns; and their past, present, and future employees, attorneys, officers, directors, shareholders, partners, agents, insurers, employee, advisors, accountants, auditors, consultants, insurers and reinsurers, representatives, trustees, heirs, executors, administrators, predecessors, successors or assigns of any of the foregoing.

41. "Response Deadline" means 45 days after the Administrator mails Notice of Settlement to Settlement Class Members and PAGA Employees, and shall

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be the last date on which Settlement Class Members may: (a) email, or mail Requests for Exclusion from the Settlement, or (b) email, or mail his or her Objection to the Settlement. Class Members to whom Notice of Settlement are re-sent after having been returned undeliverable to the Administrator shall have an additional 15 calendar days beyond the Response Deadline has expired.

42. "Request for Exclusion" means a Class Member's submission of a written request to be excluded pursuant to 86 below.

RECITALS

43. Plaintiff filed a class action lawsuit against Defendant and Does 1 through 100 on July 12, 2024, and a First Amended Complaint adding a Private Attorneys General Act ("PAGA") cause of action on October 30, 2024. The complaints allege causes of action on a class or representative PAGA basis for: (1) Failure to Pay Overtime and Double Time Wages, (2) Failure to Provide Meal Periods, (3) Failure to Provide Rest Breaks, (4) Failure to Provide Accurate Wage Statements, (5) Failure to Pay All Wages Due at Separation, (6) Unfair Competition pursuant to Business and Professions Code §17200 *et seq.*, and (7) Private Attorneys General Act.

44. On September 12, 2024, Defendant removed the Class Action to the United States District Court for the Central District of California. The Parties stayed the proceedings to prepare for and attend mediation of the Class and PAGA claims.

45. Defendant denies Plaintiff's claims and allegations and contends that the Action is not suitable for class certification or manageable as a class or representative action.

46. The Class Representative believes he can proceed with his representative and class claims, that the Action is meritorious, and that class certification is appropriate.

47. The Parties have conducted a thorough investigation into the facts of the Action. This includes conducting an extensive exchange of informal discovery,

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including Defendant's written policies and practices and the production of payroll and timekeeping records for a random sampling of approximately 27 Settlement Class Members, which represents approximately 15% of the overall class. Class Counsel is both knowledgeable about and has done extensive research with respect to the applicable law and potential defenses to the claims of the Settlement Class. Class Counsel has diligently pursued an investigation of the Class Members' claims against Defendant. Based on the foregoing data and on their own independent investigation and evaluation, Class Counsel is of the opinion that the settlement with Defendant for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Class Members in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation, various defenses asserted by Defendant (including, but not limited to, arbitrability issues and dismissal of the class claims), and numerous potential appellate issues.

48. On December 5, 2024, Plaintiff and Defendant participated in mediation before the Honorable William Pate, a retired Judge who served on the San Diego County Superior Court bench and now serves as mediator on wage and hour class action cases among other matters. The Action resolved at mediation pursuant to a mediator's recommendation.

49. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts to be performed or judgments to be entered pursuant to the terms of the Settlement and Agreement, shall be construed as an admission by Defendant of any wrongdoing or violation of any statute or law or liability on the claims or allegations in this Action.

50. Stipulation to Class Certification and Representative Treatment. For settlement purposes only, Defendant will stipulate that the Settlement Class Members described herein who do not submit a timely Request for Exclusion from the Settlement Class may be conditionally certified as a settlement class and that the

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PAGA Employees are appropriate for representative treatment for purposes of settlement. This stipulation to certification and representative treatment is in no way an admission that class action certification and/or representative treatment is proper and shall not be admissible in this or in any other action except for the sole purpose of enforcing this Agreement. Nor should Defendant's stipulation to conditional class certification and representative treatment be deemed as a waiver to any additional defenses against class or representative action treatment, including but not limited to Defendant's right to argue to exclude individuals who signed binding arbitration agreements from participating in this Action should the Court fail to issue Final Approval of this Settlement. Should, for whatever reason, the Court fail to issue Final Approval, the Parties' stipulation to class certification and representative treatment as part of the Settlement shall become null and void ab initio and shall have no bearing on, and shall not be admissible in connection with, the issue of whether or not certification and/or representative treatment would be appropriate in a non-settlement context. Defendant expressly reserves its rights and declares that it would continue to oppose class certification, representative treatment, and the substantive merits of the case should the Court decline to issue Final Approval. Plaintiff expressly reserves his rights and declares that he will continue to pursue class certification, representative treatment, and a trial should the Court decline to issue Final Approval.

51. The Parties stipulate and agree to the certification of the proposed class for settlement purposes only. The Parties further agree that this Stipulation will not be admissible in this or any other proceeding as evidence that (i) a class action should be certified, (ii) a representative action is appropriate or manageable, or (iii) Defendant is liable to Plaintiff or any Class Member, other than for the obligations under this Agreement.

TERMS OF SETTLEMENT

52. Gross Settlement Amount: The Parties agree to settle this Action for Four Hundred Thousand Dollars ($400,000) ("the Gross Settlement Amount"). The

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Gross Settlement Amount is the maximum amount that will be paid, subject to the Escalator Clause in Paragraph 53, and includes the Individual Class Settlement Payments, Individual PAGA Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, Administration Costs, and LWDA PAGA Payment. Defendant shall separately pay, in addition to the Gross Settlement Amount, the Employer Taxes.

53. Escalator Clause: If the actual total number of Pay Periods for the Class Members for the Class Period exceeds 13,165, the Gross Settlement Amount will be increased by the same percentage without offset. For example, if the actual total number of Pay Periods for the Class Members for the Class Period is 13,823 (4.99% more than 13,165), the Gross Settlement Amount will be increased by 4.99%. Other than provided herein, Defendant will not be obligated to pay more than the Gross Settlement Amount, except that Defendant will be and is responsible for its own attorney's fees and costs of litigation in this Action as well as the Employer Taxes as provided herein.

54. Net Settlement Amount: The "Net Settlement Amount" is defined as the Gross Settlement Amount less the court-approved: Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Administration Costs, Class Representative Service Payment, and PAGA Payment. The Net Settlement Amount will be increased or decreased should the Court increase or reduce any of the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Administration Costs, Class Representative Service Payment, and PAGA Payment, accordingly.

55. Individual Class Settlement Payments: Individual Class Settlement Payments for the Participating Settlement Class will be calculated and apportioned from the Net Settlement Amount based on the number of Eligible Pay Periods of the Participating Settlement Class Members as follows:

55.1 The Net Settlement Amount will be divided into two funds. **Fund 1** represents 60% of the Net Settlement Amount and is allocated to Pay

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Periods Worked by Participating Class Members who worked as Territory Service Representatives. **Fund 2** represents 40% of the Net Settlement Amount and is allocated to Pay Periods Worked by Participating Class Members who did not work as Territory Service Representatives (Non-Territory Service Representatives).

55.2 **Participating Class Member's Individual Class Settlement Payment.** All Participating Class Members will automatically receive their proportionate share of the Net Settlement Amount. The NSA shall be distributed to the individual Participating Class Members based on their Pay Periods Worked as a Territory Service Representative and/or Non-Territory Service Representative. The Individual Class Settlement Payment for each individual Participating Class Member will be the sum of the proportionate share of Fund 1 and Fund 2.

55.3 **Fund 1.** All Participating Class Members with Pay Periods Worked as a Territory Service Representative will have a proportionate share derived from **Fund 1** by dividing **Fund 1** by the total number of Pay Periods Worked as a Territory Service Representative by Participating Class Members and then multiplying that Pay Period value by the individual Participating Class Member's total Pay Periods Worked as a Territory Service Representative.

55.4 **Fund 2.** All Participating Class Members with Pay Periods Worked as a Non-Territory Service Representative will have a proportionate share derived from **Fund 2** by dividing **Fund 2** by the total number of Pay Periods Worked as a Non-Territory Service Representative by Participating Class Members and then multiplying that Pay Period value by the individual Participating Class Member's total Pay Periods Worked as a Non-Territory Service Representative.

56. Allocation of Individual Class Settlement Payments: The Individual

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Class Settlement Payments will be allocated based on the allegations in the Action as follows: Thirty percent (30%) of each Individual Class Settlement Payment is intended to settle each Participating Class Member's claims for unpaid wages (the "Wage Portion"). The Wage Portion will be reduced by applicable payroll tax withholdings and deductions; the Settlement Administrator will issue an IRS Form W-2 with respect to the Wage Portion withheld from each Participating Class Member. Seventy percent (70%) of the Individual Class Settlement Payment is intended to settle each Participating Class Member's non-wage claims without limitation, claims for interest and penalties. This portion will not be subject to payroll tax withholding and deductions. The Settlement Administrator will issue each Participating Class Member an IRS Form 1099 with respect to this portion of his/her Individual Class Settlement Payment.

57. Individual PAGA Payment: The Settlement Administrator shall determine the amounts of all Individual PAGA Payments for all PAGA Employees by (a) dividing $14,000.00 (35% of the PAGA Payment) by the total number of PAGA Pay Periods by all PAGA Employees during the PAGA Period and (b) multiplying the result by each PAGA Employee's individual PAGA Pay Periods during the PAGA Period. The Individual PAGA Payment will be allocated as non-wage penalties and the Administrator will report the Individual PAGA Payments on IRS 1099 Forms without withholdings or deductions.

58. Class Representative Service Payment: Class Representative Service Payment to Plaintiff of not more than Ten Thousand Dollars and Zero Cents ($10,000.00), in addition to any Individual Class Payment and any Individual PAGA Payment that Plaintiff is entitled to receive as a Participating Class Member and PAGA Employee, respectively. Defendant agrees not to oppose this request if Plaintiff does not request exclusion from the Settlement Class and does not take any action, directly or indirectly, to undercut this Settlement. The Service Payment to Plaintiff will be paid out of the Gross Settlement Amount. The Class Representative

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will be issued IRS Form 1099 in connection with this payment. Plaintiff shall be solely and legally responsible to pay any and all applicable individual taxes for the Class Representative Service Payment and assumes full responsibility and liability for the same. If the Court approves a Class Representative Service payment less than the amount requested, the difference between the requested amount and reduced amount shall be allocated to the Net Settlement Amount to be distributed to the Participating Settlement Class Members. The Parties agree that any amount awarded as the Class Representative Service Payment to Plaintiff that is less than the requested amount shall not be a basis to void this Settlement Agreement. Should the Court approve a lesser amount for the Service Payment, the difference shall be added to the Net Settlement amount to be distributed to the Participating Class Members.

59. Class Counsel Fees Payment: Defendant will take no position on and agrees not to oppose a request by Class Counsel to the Court for an award of attorneys' fees. A Class Counsel Fees Payment of not more than one-third of the Gross Settlement Amount, equal to $133,333.33 absent the application of the Escalator Clause in Paragraph 53, shall be paid to Class Counsel based on Court approval. Defendant will not oppose requests for the Class Counsel Fees Payment provided it does not exceed one-third of the Gross Settlement Amount, subject to the Escalator Clause. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 28 days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment less than the amount requested, the difference between the requested amount and reduced amount shall be allocated to the Net Settlement Amount to be distributed to the Participating Settlement Class Members. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using IRS 1099 Forms.

60. Class Counsel Litigation Expenses Payment: A Class Counsel Litigation Expenses Payment of not more than Ten Thousand Dollars and Zero Cents ($10,000.00) for actual expenses incurred to be reimbursed to Class Counsel based

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on Court approval. Defendant will not oppose requests for the Class Counsel Litigation Expenses Payment provided it does not exceed $10,000.00 and is supported by evidence of litigation expenses incurred. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 28 days prior to the Final Approval Hearing. If the Court approves a Class Counsel Litigation Expenses Payment less than the amount requested, the difference between the requested amount and reduced amount shall be allocated to the Net Settlement Amount to be distributed to the Participating Settlement Class Members. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using IRS 1099 Forms. The Parties agree that any amount awarded as attorneys' fees and costs to Class Counsel that is less than the amount requested by Class Counsel shall not be a basis for Class Counsel to rescind or otherwise void this Settlement Agreement.

61. Administration Costs: The fees and other charges of the Settlement Administrator (defined in Paragraph 4) will be paid from the Gross Settlement Amount and shall not exceed Six Thousand Five Hundred Dollars and Zero Cents ($6,500.00), except for a showing of good cause and as approved by the Court, Plaintiff and Defendant. To the extent the Administration Costs are less, or the Court approves payment less, than $6,500.00, the difference between the approved amount and allocated amount shall be allocated to the Net Settlement Amount to be distributed to the Settlement Class Members.

62. PAGA Payment: The Parties agree that $40,000 is allocated to PAGA Penalties and is to be paid from the Gross Settlement Amount, subject to the Court's approval. Of this amount, $26,000 (65% of the PAGA Payment) represents the LWDA PAGA Payment that shall be paid to the LWDA in satisfaction of civil penalties under the Private Attorney General Act of 2004, Labor Code §§2698, *et seq.* and a total of $14,000 (35% of the PAGA Payment) will be paid to the PAGA Employees as Individual PAGA Payments pursuant to Paragraph 57 in satisfaction

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of civil penalties under the Private Attorney General Act of 2004, Labor Code §§2698, *et seq.*. Class Counsel shall give proper notice to the LWDA of the Settlement.

63. Uncashed Settlement Share Checks: Participating Settlement Class Members and PAGA Employees must cash or deposit their Individual Class Settlement Payment and/or Individual PAGA Payment within one hundred eighty (180) days after the checks are mailed to them. If any checks remain uncashed or not deposited by the expiration of the one hundred eighty (180) day period, the Settlement Administrator will pay the funds represented by such unredeemed checks, including any interests thereon, to the State of California's State Controller's Unclaimed Property Fund on behalf of the particular Participating Settlement Class Member and/or PAGA Employee who did not cash his or her settlement check, to be held pursuant to California's Unclaimed Property Law for the benefit of those Participating Settlement Class Members and/or PAGA Employees who did not cash their checks within the 180 day period and will be held under the California Controller's Unclaimed Property Fund until such time that they claim their property. The Parties agree that this disposition results in no "unpaid residue" under California CCP §384, as the entire Net Settlement Amount will be paid out to the Participating Settlement Class Members and PAGA Employees, whether or not they all cash their Individual Class Settlement Payments and/or Individual PAGA Payments.

64. No Tax Avice: Class Counsel, Defendant, and Defendant's counsel make no representations as to the tax treatment or legal effect of payment called for hereunder; and Plaintiff, the Participating Settlement Class Members, and PAGA Employees are not relying on any statement or representation by Class Counsel, Defendant, or Defendant's counsel in this regard. Plaintiff, Participating Class Members, and PAGA Employees understand and agree that they will be solely responsible for the payment of any taxes and penalties assessed upon them as individuals for their respective Individual Class Settlement Payments and/or

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Individual PAGA Payments and will hold Defendant harmless from and against any claims resulting from their individual tax liability of such payments.

65. CIRCULAR 230 DISCLAIMER: EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING

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ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

66. No Credit Toward Benefit Plans: The Individual Class Settlement Payments made to Participating Class Members under this Agreement, the Individual PAGA Payment to PAGA Employees under this Agreement, as well as any other payments made pursuant to this Agreement, shall not be utilized to calculate any additional benefits under any benefit plans to which any Participating Settlement Class Members or PAGA Employees may be eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase or other types of equity plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. It is the Parties' intention that this Settlement will not affect any rights, contributions, or amounts to which any Participating Settlement Class Members and/or PAGA Employees may be entitled under any such benefit plans.

67. Non-Reversionary Settlement: This is a "non-reversionary" settlement. Under no circumstances will any portion of the Gross Settlement Amount revert to Defendant. Participating Class Members will not have to make a claim in order to receive an Individual Class Settlement Payment, and PAGA Employees will not have to make a claim in order to receive their share of PAGA Payment. Distributions in the form of Individual Class Settlement Payments will be made directly to each Participating Class Member and in the form of Individual PAGA Payments direct to each PAGA Employee. The Settlement Administrator shall be responsible for accurately and timely reporting and remittance obligations with respect to unclaimed funds as a result of a Participating Class Member or PAGA Employee not cashing an Individual Class Settlement Payment by the check cashing deadline, as set forth herein.

RELEASES OF CLAIMS

68. Release by Participating Settlement Class Members: Upon the Effective Date, and Defendant's funding of the Gross Settlement Amount and all Employer Taxes owed as provided herein, and except as to such rights or claims as may be

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created by this Settlement Agreement, all Participating Class Members will completely release and discharge, for the Class Period only, against Defendant and the Released Parties the Released Class Claims as defined in Paragraph 39. It is the intent of the Parties, that upon the Effective Date, and Defendant's funding of the Gross Settlement Amount and funds all Employer Taxes owed, and except as to such rights or claims as may be created by this Settlement Agreement, there is full equitable and collateral estoppel and *res judicata* effect upon all Participating Settlement Class Members for the Released Class Claims. Each Participating Settlement Class Member will be deemed to have made the Released Class Claims as if by manually signing this Agreement.

69. Class Representative, on behalf of himself and the Participating Class Members, acknowledges and agrees that the claims, including claims for unpaid wages and untimely payment of wages alleged in the Second Amended Complaint, are disputed, and that the payments set forth herein constitute payment of all sums allegedly due to them. Class Representative, on behalf of himself and the Participating Class Members, acknowledges and agrees that California Labor Code Section 206.5 is not applicable to the claims in the Second Amended Complaint. Section 206.5 provides in pertinent part as follows:

> An employer shall not require the execution of any release of any claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made.

70. Plaintiff and Defendant intend that the Settlement described in this Agreement will release and preclude any further claim, whether by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind, by each and all of the Participating Class Members to obtain a recovery based on, arising out of, and/or related to any and all of the Released Class Claims for the Class Period. The Class Members shall be so notified in the Notice of Settlement. This paragraph

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only applies to Participating Class Members and, thus, does not apply to any Class Member who timely and validly submits a Request for Exclusion, nor does it apply to PAGA Employees with respect to the PAGA Released Claims.

71. PAGA Released Claims: Upon the Effective Date, and Defendant's funding of the Gross Settlement Amount and all Employer Taxes owed as provided herein, and except as to such rights or claims as may be created by this Settlement Agreement, Plaintiff, standing in the shoes of the Labor Commissioner/LWDA and on behalf of the State of California, and all PAGA Employees will forever completely release and discharge, for the PAGA Period only, Defendant and the Released Parties of the PAGA Released Claims as defined in Paragraph 32. It is the intent of the Parties, that upon the Effective Date, and Defendant's funding of the Gross Settlement Amount and all Employer Taxes owed provided herein, and except as to such rights or claims as may be created by this Settlement Agreement, there is full equitable and collateral estoppel and *res judicata* effect and be final and binding upon all PAGA Employees for the PAGA Released Claims for the PAGA Period. Each PAGA Employee and the LWDA will be deemed to have made the PAGA Released Claims for the PAGA Period as if by manually signing this Settlement Agreement.

72. Plaintiff and Defendant also intend that the Settlement described in this Agreement will release and preclude any further PAGA claim, whether by lawsuit, administrative claim or action, arbitration, demand, or other PAGA action of any kind, by each and all of the PAGA Employees to obtain a recovery based on, arising out of, and/or related to any and all of the PAGA Released Claims. The PAGA Employees shall be so notified in the Notice of Settlement and Class Counsel shall provide appropriate notice to the LWDA of this Agreement contemporaneously to filing of the Motion for Preliminary Approval. This section is not intended to preclude any PAGA Employee or the LWDA from bringing a PAGA claim different than the PAGA Released Claims for the PAGA Period covered in this Settlement Agreement.

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73. Class Representative Release: As a material inducement to Defendant to enter into this Settlement Agreement and in consideration of the Service Payment, and in addition to the Class Representative's release of the Released Class Claims and PAGA Released Claims, Class Representative (and only Class Representative) is subject to the following Class Representative Release:

> Upon the Effective Date, and Defendant's funding of the Gross Settlement Amount and all Employer Taxes owed as provided herein, and except as to such rights or claims as may be created by this Settlement Agreement, Class Representative does hereby, for himself and for his respective spouses, domestic partners, marital community, children, estates, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, personal representatives, and assigns forever and completely release and discharge and covenants not to sue the Released Parties with respect to any and all claims, demands, liens, agreements, contracts, covenants, actions, suits, causes of action, wages, obligations, debts, liquidated damages, penalties, interest, costs, expenses, attorneys' fees, damages, judgments, orders and liabilities of whatever kind or nature in law, equity or otherwise, whether now known or unknown, suspected or unsuspected, concealed or hidden, which Plaintiff now owns or holds or has at any time heretofore owned or held as against said Released Parties, or any of them. Such released claims include specifically, but not exclusively and without limiting the generality of the foregoing, any and all claims, demands, agreements, obligations and causes of action, known or unknown, suspected or unsuspected, concealed or hidden, including but not limited to all claims arising out of, based upon, or relating to Class Representative's employment with Defendant or the remuneration for or termination of such employment, as alleged in the operative Second Amended Complaint, arising out of or in any way connected with any transactions, occurrences, acts or omissions set forth, or facts alleged, in any and all charges, complaints, claims or pleadings filed by Class Representative against any Released Party prior to the date hereof with any city, county, state or federal agency, commission, office or tribunal whatsoever; or arising out of or in any way connected with any transactions, occurrences, acts or omissions occurring prior to the date this Settlement is signed by Plaintiff, including specifically without limiting the generality of the foregoing

Docusign Envelope ID: CB09F04B-DE4D-4BC8-999B-98452EEEB2B3

any claim under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act (29 U.S.C. Section 621 et seq.), the Americans with Disabilities Act, the Employee Retirement Income Security Act, the National Labor Relations Act, the Fair Labor Standards Act, the Family and Medical Leave Act, the California Constitution, the California Labor Code, the California Civil Code, the California Government Code, the California Business & Professions Code, the California Family Rights Act, the California Fair Employment and Housing Act, or any other federal, state, or local statute or regulation (collectively, the "Class Representative's Claims").

Class Representative agrees that there is a risk that any injury that he may have suffered by reason of the Released Parties' relationship with him might not now be known, and there is a further risk that said injuries, whether known or unknown at the date of this Settlement Agreement, might possibly become progressively worse, and that as a result thereof further damages may be sustained. Nevertheless, Class Representative agrees to forever and fully release and discharge the Released Parties, and understands that by Plaintiff's execution of this Settlement Agreement no further claims for any such injuries that existed at the time of Plaintiff's execution of this Settlement Agreement may ever be asserted by Class Representative with respect to claims arising in the time period from the beginning of time to Plaintiff's execution of this Settlement Agreement. Class Representative agrees not to seek future employment with Defendant.

Class Representative expressly waives and relinquishes all rights and benefits afforded by Section 1542 of the Civil Code of the State of California and does so understanding and acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code of the State of California states:

> 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

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AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge of the Released Parties, Class Representative expressly acknowledges that this Settlement Agreement is intended to include in its effect, without limitation, all claims that Class Representative knew of, as well as all claims that he does not know or suspect to exist in his favor against the Released Parties, or any of them, for the time period from the beginning of time to Plaintiff's execution of this Settlement Agreement, and that this Settlement Agreement contemplates the extinguishment of any such Class Representative's claims. Notwithstanding the above, the general release by Class Representative shall not extend to claims for workers' compensation benefits, claims for unemployment benefits, or other claims that may not be released by law.

74. Class Representative represents and warrants that he has not filed and will not file any other lawsuit, administrative claim or action, arbitration, demand, or other action of any kind against Defendant or the Released Parties. Class Representative represents and warrants that the only pending claims against Defendant or the Released Parties are included in this Action.

75. Interim Stay of Proceedings: Pending completion of all of the prerequisites necessary to effectuate this Settlement, the Parties agree, subject to Court's approval, to a stay of all proceedings in the Action except such as are necessary to effectuate the Settlement.

DUTIES OF THE PARTIES PRIOR TO THE COURT'S APPROVAL

76. Stipulation to file a Second Amended Complaint: The Parties agree to enter into a joint stipulation such that Plaintiff will file a Second Amended Complaint to effectuate this agreement. The Second Amended Complaint will be filed with the Motion for Preliminary Approval and is attached hereto as Exhibit B. The Motion for Preliminary Approval will request that the Court deem the Second Amended Complaint filed and answered by Defendant's Answer to Plaintiff's First Amended

Docusign Envelope ID: CB09F04B-DE4D-4BC8-999B-98452EEEB2B3

Complaint.

77. Motion for Preliminary Approval: Promptly after execution of this Settlement Agreement, Plaintiff will move the Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order accomplishing the following:

a. Scheduling the Final Approval Hearing on the issue of whether this Settlement should be finally approved as fair, reasonable and adequate as to the Participating Class Members and a hearing on fees, costs and the Service Payment;

b. Approving as to form and content of the proposed Notice;

c. Directing the mailing of the Notice by first class mail to the Settlement Class Members;

d. Preliminarily approving this Settlement; and

e. Preliminarily certifying the class solely for purposes of this Settlement.

78. Duty to Cooperate: If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class 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.

79. Reallocation of Settlement Proceeds: In the event the Court fails, on its first hearing, to approve this Agreement because the amount of the PAGA Penalties is not adequate, then the Parties shall cooperate in good faith to reallocate the total settlement proceeds, within this Agreement, in order to try to achieve Final Approval of the Agreement upon any subsequent Court hearings.

SETTLEMENT ADMINISTRATION

80. Appointment of Settlement Administrator: The Parties agree to the appointment of Ilym Class Action Administrators as the Settlement Administrator to

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perform the duties of a settlement administrator, including mailing the Notice of Settlement, using standard devices to obtain forwarding addresses, independently reviewing and verifying documentation associated with any claims or opt-out requests, resolving any disputes regarding the calculation or application of the formula for determining the Individual Class Settlement Payments and Individual PAGA Payments, drafting and mailing the settlement checks to Participating Settlement Class Members and PAGA Employees, issuing W-2 and 1099 Tax Forms, performing unclaimed funds due diligence, reporting and performing remittance obligations, and performing such other tasks as set forth herein or as the Parties mutually agree or that the Court orders. The Settlement Administrator shall also be responsible for issuing to Plaintiff, Participating Settlement Class Members, PAGA Employees, and Class Counsel any W-2, 1099, or other Tax Forms as may be required by law for all amounts paid pursuant to this Agreement. The Settlement Administrator shall also be responsible for setting up all necessary tax accounts and forwarding all payroll taxes and penalties to the appropriate government authorities.

81. Disputes Regarding Settlement Administration: Any and all disputes relating to administration of the Settlement by the Settlement Administrator (except for disputes regarding Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Settlement Agreement, until Plaintiff and Defendant notify the Court that all payments and obligations contemplated by this Settlement Agreement have been fully carried out. Prior to presenting any issue to the Court, counsel for the Parties will confer in good faith to resolve the dispute without the necessity of Court intervention.

82. Class Data: Within 14 calendar days after entry of the Preliminary Approval Order, Defendant shall provide the Class Data to the Settlement Administrator. The Settlement Administrator will run a check of the Class Members' addresses against those on file with the U.S. Postal Service's National Change of Address Database. The Class Data provided to the Settlement Administrator will

Docusign Envelope ID: CB09F04B-DE4D-4BC8-999B-98452EEEB2B3

remain confidential, pursuant to the Court's Preliminary Approval Order, and shall be used solely to administer the Settlement, and it will not be used or disclosed to anyone but Class Counsel who is only authorized to use the Class Data for effecting Final Approval of this Settlement, except as required by applicable tax authorities, pursuant to Defendant's express written consent, or by order of the Court. The Settlement Administrator is only authorized to use the Class Data for the administration of the terms of this Settlement, except as required by applicable tax authorities, pursuant to Defendant's express written consent, or by order of the Court. Nothing herein shall prevent Class Counsel from communicating with Class Members regarding the Action and Settlement. The Settlement Administrator shall use due care with respect to the storage, custody, use, and/or dissemination of the confidential information in the Class Data. Such information must be stored in a secure fashion and all persons who access the data must agree to keep it confidential.

83. Notice of Class Action and PAGA Action Settlement: The Notice of Settlement, as approved by the Court, shall be sent by the Settlement Administrator to the Settlement Class Members, by first class mail, in English, within ten (10) calendar days following the Settlement Administrator's receipt of the Class Data. The Settlement Administrator shall use standard devices, including a skip trace, to obtain forwarding addresses of Settlement Class Members if any envelopes are returned.

84. Returned Notices of Settlement: The Settlement Administrator will take steps to ensure that the Notice of Settlement is received by all Settlement Class Members, including utilization of the National Change of Address Database maintained by the United States Postal Service to review the accuracy of and, if possible, update a mailing address. Notices of Settlement will be re-mailed to any Settlement Class Member for whom an updated address is located within ten (10) calendar days following both the Settlement Administrator learning of the failed mailing and its receipt of the updated address. The re-mailed Notice of Settlement shall be identical to the original Notice of Settlement, except that it shall notify the

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Settlement Class Member that the exclusion (opt-out) request or objection must be returned by the later of the Notice Response Deadline or fifteen (15) calendar days after the remailing of the Notice.

85. Disputes Regarding Information on Notices of Settlement: Class Members are deemed to participate in the Settlement, unless they timely opt-out. PAGA Employees may not opt out of the PAGA action settlement and the PAGA Released Claims. The Notice of Settlement will inform Class Members of his/her estimated Individual Class Settlement Payment and the number of Pay Periods during the Class Period as a Territory Service Representative and/or Non-Territory Service Representative as well as her/her estimated Individual PAGA Payment and the number of PAGA Pay Periods during the PAGA Period. Class Members and/or PAGA Employees may dispute their Pay Periods and/or PAGA Pay Periods if they feel they should be credited with more Pay Periods and/or PAGA Pay Periods than Defendant's records show by timely submitting evidence to the Settlement Administrator. Defendant's records will be presumed determinative absent reliable evidence to rebut Defendant's records, but the Settlement Administrator will evaluate the evidence submitted by the Class Member and/or PAGA Employees and provide the evidence submitted to Class Counsel and Defense Counsel who agree to meet and confer in good faith about the evidence to determine the Class Member's and/or PAGA Employees actual number of Pay Periods and/or PAGA Pay Periods. If Class Counsel and Defense Counsel are unable to agree, they agree to submit the dispute to the Court to render a final decision. Class Members and/or PAGA Employees will have until the Notice Response Deadline to dispute Pay Periods and/or PAGA Pay Periods, unless extended by the Court. In the event that there is an increase to the number of Pay Periods for any Settlement Class Member and/or PAGA Pay Periods for any PAGA Employee, then the Settlement Administrator will recalculate the Participating Class Members' Individual Settlement Payments and/or Individual PAGA Payments; accordingly, in no event will Defendant be required to increase the

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Gross Settlement Amount other than provided in the Escalator Clause provided in Paragraph 53.

86. Request for Exclusion: Class Members who wish to exclude themselves from, i.e. opt-out of, the Class Action portion of the Settlement must send the Administrator, by fax, email, or mail, a signed written request to be excluded no later than the Response Deadline. A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline. Any Settlement Class Member who submits a valid Request for Exclusion: (i) will not have any rights under the class action portion of this Agreement; (ii) will not be entitled to receive an Individual Class Settlement Payment; (ii) will not have the right to object to the Settlement, oppose the Final Approval Motions, be heard at the Final Approval Hearing, or appeal the Final Approval; (iii) will not be bound by this Agreement, or the Judgment, with respect to the Released Class Claims. PAGA Employees may not request exclusion from the PAGA portion of the Settlement and all PAGA Employees will still be subject to the PAGA portion of this Settlement regardless of whether or not the same individual submitted a Request for Exclusion.

87. Objections to Settlement by Participating Settlement Class Members: Any Settlement Class Member, other than Plaintiff, may object to the terms of this Agreement, except as to the terms for the PAGA action settlement and PAGA Released Claims. To object to the Settlement, a Settlement Class Member shall inform the Settlement Administrator, in writing, which must be postmarked by the Notice Response Deadline at the address set forth in the Notice of Settlement. Such objection shall include the objecting Participating Settlement Class Member's full name, address, telephone number, last four digits of the social security number or date of birth, signature, and dates of employment with Defendant, in addition to the

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case name and number, the basis for the objection, including any legal support and each specific reason in support of the objection, as well as any documentation or evidence in support thereof, and, if the Objecting Settlement Class Member is represented by counsel, the name and address of his or her counsel. The Settlement Administrator shall provide objections, if any, to Class Counsel and Defense Counsel within three (3) calendar days of receipt. Any unresolved objections shall be submitted to the Court as part of the Motion for Final Approval. Any Participating Settlement Class Member who files an objection will remain as a Participating Class Member in the Settlement including but not limited to receiving the Individual Class Settlement Payment and be bound by the Release of Class Claims as provided herein. Plaintiff and Defendant shall not be responsible for any fees, costs, or expenses incurred by any Participating Class Member and/or his or her counsel related to any objections to the Settlement. PAGA Employees may not object to or opt-out of the Settlement with respect to the PAGA action settlement (Individual PAGA Payment and PAGA Released Claims). This paragraph does not bar any Participating Settlement Class Member from objecting to the Rule 23(h) motion for attorney fees and litigation cost reimbursement after the Response Deadline.

88. Failure to Object: Any Participating Settlement Class Member who desires to object to the Released Class Claims in the Settlement but fails to timely submit a written objection to the Settlement waives any right to object to the Settlement and will be foreclosed from making any objection to this Settlement. Any Participating Settlement Class Member who failed to timely submit a written objection to the Settlement or a Rule 23(h) objection or intervene in the Action lacks standing to appeal the Court's approval and/or Judgment of the Settlement.

89. Responses to Objections: Counsel for the Parties may file a response to any objections submitted by objecting Settlement Class Members at least fourteen (14) calendar days before the date of the Final Approval Hearing. Settlement Class Members will have until the Notice Response Deadline to object or submit a Request

Docusign Envelope ID: CB09F04B-DE4D-4BC8-999B-98452EEEB2B3

for Exclusion to the Settlement Administrator by U.S. Mail. The Settlement Administrator shall disclose jointly to Class Counsel and Defendant's counsel what objections or Requests for Exclusion were timely submitted on a weekly basis, and upon the request of Class Counsel or Defense Counsel.

90. Defective Submissions: If a Settlement Class Member's Request for Exclusion or objection is defective as to the requirements listed herein, that Settlement Class Member will be given an opportunity to cure the defect(s). The Settlement Administrator will mail the Settlement Class Member a cure letter within three (3) business days of receiving the defective submission to advise the Settlement Class Member that his or her submission is defective and that the defect must be cured to render the Request for Exclusion or objection valid. The Settlement Class Member will have the later of (i) the Notice Response Deadline or (ii) 15 calendar days from the date of the cure letter, to postmark or fax a revised Request for Exclusion or objection. If the revised Request for Exclusion or objection is not postmarked or received by fax within that period, it will be deemed untimely and disregarded.

91. Binding Effect on Participating Class Members: Except for those Settlement Class Members who exclude themselves in compliance with the procedures set forth above, all Settlement Class Members will: (i) be deemed to be Participating Class Members for all purposes under this Agreement; (ii) will be bound by the terms and conditions of this Agreement, the Judgment, and the Released Class Claims set forth herein; and (iii) except as otherwise provided in Paragraphs 87 and 88, will be deemed to have waived all objections and oppositions to the fairness, reasonableness, and adequacy of the Settlement.

92. Declaration of Due Diligence: The Settlement Administrator shall provide counsel for the Parties, at least thirty-eight (38) calendar days prior to the final approval hearing, a declaration of due diligence and proof of mailing with regard to the mailing of the Notices of Settlement.

Docusign Envelope ID: CB09F04B-DE4D-4BC8-999B-98452EEEB2B3

93. Funding of the Gross Settlement Amount: Defendant shall deposit into the QSF the Gross Settlement Amount and Employer Taxes within fifteen (15) calendar days after the Effective Date. Defendant shall separately pay its share of employer payroll taxes as calculated and directed by the Settlement Administrator. Once Defendant has complied with its obligation set forth in this paragraph, it shall be deemed to have satisfied all of the terms and conditions of this Settlement Agreement, shall be entitled to all the protections afforded it under the Settlement Agreement, and shall have no further obligations under the Settlement Agreement, regardless of what occurs with respect to the further administration of the Settlement. The Settlement Administrator (and not Defendant) shall issue the applicable W-2s and IRS Form 1099 reflecting all payments to all Participating Class Members.

94. Distribution of Funds: No later than ten (10) calendar days after the deposit of the Gross Settlement Amount and the Employer Taxes into the QSF, the Settlement Administrator will mail the Individual Class Settlement Payments to the Participating Settlement Class Members; the Individual PAGA Payments to the PAGA Employees, the payment to Class Counsel for the Class Counsel Fees Payment; the payment to Class Counsel for the Class Counsel Litigation Expenses Payment; the payment for the Class Representative Service Payment to the Class Representative; the payment to the LWDA for LWDA PAGA Payment; and will pay itself the Settlement Administration Costs. No person shall have any claim against Defendant or the Released Parties, Defendant's Counsel, Plaintiff, or Class Counsel based on mailings, distributions, payments or reports made in accordance with or pursuant to this Agreement. This provision does not, however, prevent a Party from seeking enforcement of this Agreement.

95. Without prejudice to any other remedies, the Settlement Administrator shall agree to be responsible for any breach of its obligations (whether committed by the Settlement Administrator or its agents) and to indemnify and hold the Parties and their counsel harmless from and against all liabilities, claims, causes of action, costs

Docusign Envelope ID: CB09F04B-DE4D-4BC8-999B-98452EEEB2B3

and expenses (including legal fees and expenses) arising out of any breach committed by the Settlement Administrator or its agents.

DUTIES OF THE PARTIES PRIOR TO FINAL APPROVAL

96. Final Approval Motions: No later than 28 days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (s)(2), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval. Class Counsel shall submit a proposed Final Approval Order:

a. Approving the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;

b. Approving Class Counsel's application for an award of attorneys' fees and reimbursement of litigation costs and expenses, the Service Payment to the Class Representative, and the payment to the Settlement Administrator for costs of administering the settlement; and

c. Entering Final Judgment based on the terms set forth in this Agreement, thereby permanently barring all Participating Class Members from prosecuting any Release Class Claims against any of the Released Parties and permanently barring all PAGA Employees and the LWDA from prosecuting any PAGA Released Claims against any of the Released Parties.

VOIDING THE AGREEMENT

97. If ten percent (10%) or more of the Class Members submit a timely and valid Request for Exclusion, Defendant will have, in its sole discretion, the right to

Docusign Envelope ID: CB09F04B-DE4D-4BC8-999B-98452EEEB2B3

void and withdraw from the Settlement by giving written notice to Class Counsel and the Settlement Administrator within ten (10) days after expiration of the Notice of Settlement Response Deadline.

98. All Parties, signatories, and their counsel shall not encourage opt-outs or objections to this Agreement. The Parties specifically agree not to solicit opt-outs, directly or indirectly, through any means.

99. If the Settlement is voided or fails for any reason, Plaintiff and Defendant will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount, or any amounts that otherwise would have been owed under this Settlement.

100. If the Settlement is voided or fails for any reason, any costs incurred by the Settlement Administrator shall be borne equally by Defendant and Plaintiff, unless otherwise specified in this Agreement, except that if Defendant voids the settlement pursuant to Paragraph 97 then the Settlement Administrator's costs shall be the sole responsibility of Defendant.

ADDITIONAL PROVISIONS

101. Waiver: The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

102. No Waiver of Defendant's Arbitration Agreements: The Parties agree that this Settlement and any effort to obtain the Court's approval of the Settlement, including but not limited to, seeking conditional certification of the Class for the sole purpose of settlement, does not constitute a waiver of Defendant's right to seek to enforce any alleged arbitration agreements entered into between Defendant and some Class Members in the Action for any future proceedings.

103. Full and Complete Defense: Upon and after the Effective Date, and Defendant's funding of the Gross Settlement Amount and all Employer Taxes owed as provided herein, this Agreement may be pleaded by any Released Party as a full

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and complete defense to and may be used as the basis for an injunction against, any action, suit, or other proceeding that has been or may be instituted, prosecuted or attempted, asserting any Released Class Claims and/or PAGA Released Claims.

104. Parties' Authority: The signatories hereto represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof. The signatories hereto further represent that the Parties to this Agreement are represented by competent counsel, and they have had an opportunity to consult with counsel prior to authorizing its execution.

105. No Undue Publicity: The Parties 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 Plaintiff's counsel shall not publicize the settlement on their websites, in advertising/marketing materials or on social media. 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. If counsel for any party receives an inquiry about the settlement from the media, counsel may respond only after the motion for preliminary approval of the settlement has been filed and only by confirming the accurate terms of the settlement. Nothing in this provision shall prevent Defendant, Defense Counsel, Plaintiff, or Plaintiff's Counsel from making any required legal disclosures. Nothing in this Agreement prevents Plaintiff from discussing or disclosing information about unlawful acts in the workplace or any other conduct that Plaintiff has reason to believe is/was unlawful. Nothing in this Section is intended to interfere with Class Counsel's duties and obligations to faithfully discharge their duties as Class Counsel, including but not limited to, communicating with Settlement Class Members or Participating Settlement Class Members or PAGA Employees or retained plaintiffs or retained putative plaintiffs regarding the Settlement. Nothing prevents Class Counsel from referencing this Settlement Agreement in future attorney's fee applications.

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106. Mutual Full Cooperation: The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of Defendant and Defendant's Counsel, take all necessary steps to secure the Court's preliminary and final approval of the settlement, and the final entry of judgment. Class Counsel shall provide Defendant's Counsel with copies of the Preliminary Approval Motion and Final Approval Motion for review, at least seven (7) calendar days, prior to filing the same.

107. No Prior Assignments: The Parties hereto represent, covenant, and warrant that they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights released and discharged by this Settlement Agreement.

108. No Admission: Defendant denies any and all liability to Plaintiff and/or any Settlement Class Member in this Action, as to any and all causes of action that were asserted or that might have been asserted in this Action. Nonetheless, Defendant wishes to settle and compromise the matters at issue in the Complaint to avoid further substantial expense and the inconvenience and distraction of protracted and burdensome litigation. Defendant also has taken into account the uncertainty and risks inherent in litigation, and without conceding any infirmity in the defenses that they have asserted or could assert against Plaintiff, have determined that it is desirable and beneficial that Plaintiff's claims be settled in the manner and upon the terms and

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conditions set forth in this Agreement.

109. Inadmissibility of Agreement: Whether or not the Court issues the Final Approval Order, nothing contained herein, nor the consummation of this Settlement Agreement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this Settlement Agreement with the intention of avoiding further disputes and litigation with the attendant inconvenience and expenses. This Settlement Agreement is a settlement document, and it shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be inadmissible in evidence in any proceeding, except an action or proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement. The stipulation for class certification as part of this Settlement Agreement is for settlement purposes only and if, for any reason the settlement is not approved, the stipulation will have no force or effect.

110. Notices: Unless otherwise specifically provided herein, all notices, demands, or other communications pursuant to this Agreement shall be in writing addressed to:

For the Settlement Class Members and PAGA Employees:

David P. Myers (SBN 206137)
dmyers@myerslawgroup.com
Jason Hatcher (SBN 285481)
jhatcher@myerslawgroup.com
Andriana N. Bravo (SBN 349191)
abravo@myerslawgroup.com
The Myers Law GROUP, A.P.C.
9327 Fairway View Place, Suite 100
Rancho Cucamonga, CA 91730
Telephone: (909) 919-2027
Facsimile: (888) 375-2102

For Defendant and the Released Parties:

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Dessi N. Day, SBN 207699
dday@pierferd.com
PIERSON FERDINAND, LLP
12100 Wilshire Blvd., Suite 800
Los Angeles, CA 90025
Telephone: (629) 278-4515

111. Construction: The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arm's length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his or its counsel participated in the drafting of this Settlement Agreement. Plaintiff and Defendant expressly waive the common-law and statutory rule of construction that ambiguities should be construed against the drafter of an agreement and further agree, covenant, and represent that the language in all parts of this Agreement shall be in all cases construed as a whole, according to its fair meaning.

112. Captions and Interpretations: Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.

113. Modification: This Settlement Agreement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by all of the Parties hereto.

114. Court Retains Jurisdiction: The Parties agree that upon the entry of judgment of dismissal pursuant to the terms of this Agreement, that, pursuant to Code of Civil Procedure Section 664.6 and the Federal Rules of Civil Procedure, the Court shall retain exclusive and continuing equity jurisdiction of this Action over all Parties to interpret, enforce, and effectuate the terms, conditions, intents, and obligations of

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this Agreement.

115. Choice of Law: This Settlement Agreement shall be governed by and construed, enforced and administered in accordance with the laws of the State of California.

116. Integration Clause: This Settlement Agreement contains the entire agreement between the Parties relating to the settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

117. Binding On Assigns: This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

118. Signatures of All Participating Class Members Unnecessary to be Binding: It is agreed that, because the members of the Settlement Class are numerous, it is impossible or impractical to have each Participating Class Member execute this Settlement Agreement. The Notice of Settlement will advise all Participating Settlement Class Members of the binding nature of the Released Class Claims provided herein and such shall have the same force and effect as if this Settlement Agreement were executed by each Participating Settlement Class Member.

119. Invalidity of Any Provision: Before declaring any provision of this Settlement Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

120. Counterparts: This Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully signed Settlement

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Agreement, which shall be binding upon and effective as to all Parties. Electronic signatures shall have the same force and effect as an original.

121. The Parties and attorneys will keep the terms of the settlement confidential until the filing of the motion for preliminary approval of the class settlement. Thereafter, the Parties agree to make no comments to the media or otherwise publicize the terms of the Settlement to any settlement or verdict reporting service or on their websites or social media. Class Counsel will not include or use the settlement for any marketing or promotional purposes other than as expressly allowed above.

PLAINTIFF AND CLASS REPRESENTATIVE:

Signed by:

_____ Dated: March 27, 2025

Brandon Madison

DEFENDANT:

ECMD, INC.

_____ Dated: March ___, 2025

By: _____

Title: _____

CLASS COUNSEL APPROVED AS TO FORM:

THE MYERS LAW GROUP, APC

BY: _____ Dated: March 27, 2025

David P. Myers,
Jason Hatcher,
Andriana N. Bravo
Attorneys for Plaintiff and all others similarly situated

Agreement, which shall be binding upon and effective as to all Parties. Electronic signatures shall have the same force and effect as an original.

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PLAINTIFF AND CLASS REPRESENTATIVE:

_____ Dated: March ___, 2025
Brandon Madison

DEFENDANT:

ECMD, INC.

Karen McQuinn Dated: March 24, 2025

By: Karen McQuinn

Title: VP-Human Resources

CLASS COUNSEL APPROVED AS TO FORM:

THE MYERS LAW GROUP, APC

BY: _____ Dated: March ___, 2025
David P. Myers,
Jason Hatcher,
Andriana N. Bravo
Attorneys for Plaintiff and all others similarly situated

DEFENSE COUNSEL:

PIERSON FERDINAND LLP

BY: Dessi Day

Dessi N. Day
Attorneys for Defendant ECMD, Inc.

Dated: March 24, 2025

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Exhibit A

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COURT APPROVED NOTICE OF CLASS ACTION AND PAGA ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL

Brandon Madison v. ECMD, Inc.
United States District Court
Central District of California Case No.: 2:24-cv-07887-MWC-MAA

The U.S. District Court for the Central District of California authorized this Notice. Read it Carefully! It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.

You may be eligible to receive money from an employee class action and Private Attorneys General Act ("PAGA") lawsuit ("Action") against Defendant ECMD, Inc. (referred to as "ECMD" or "Defendant") for alleged employment wage and hour violations.

The proposed Settlement has two main parts: (1) a Class Settlement, and (2) a PAGA Settlement. The Action was filed by former employee Brandon Madison ("Plaintiff") and seeks payments of (1) back wages and other relief for a class of hourly employees who worked for ECMD, in California, during the Class Period of December 10, 2021 to February 10, 2025 ("Class Period"); and (2) civil penalties for hourly employees who worked for ECMD, in California, during the PAGA Period of May 8, 2023 through February 10, 2025 ("PAGA Period").

Based on ECMD's records, **your Individual Class Payment is estimated to be $_____ (less withholding) and your Individual PAGA Payment is estimated to be $_____.** The actual amount you might receive may change depending on a number of factors as identified below.

The above estimates are based on ECMD's records showing that **you worked _____ Pay Periods** during the Class Period and **you worked _____ PAGA Pay Periods** during the PAGA Period. If no amount is stated for your Individual PAGA Payment, then according to ECMD's records you were not an hourly employee who worked for ECMD, in California, during the PAGA Period. If you believe that you worked more Pay Periods or PAGA Pay Periods, you can submit a challenge by the deadline date as outlined below.

The Settlement Class is defined as means all current and former California hourly non-exempt employees of Defendant who were employed by Defendant in California, including Drivers, at any time during the Class Period of December 10, 2021 to February 10, 2025.

The PAGA Employees are defined as all current and former California hourly non-exempt employees of Defendant who performed work for Defendant in California at any time during the PAGA Period of May 8, 2023 to February 10, 2025.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this notice carefully. You will be deemed to have carefully read

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and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement, and enter a judgment, which will require ECMD to make payments under the Settlement in exchange for Participating Class Members and PAGA Employees releasing claims against ECMD as stated herein.

ECMD will not retaliate against you for any actions you take with respect to the proposed Settlement

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
Do Nothing and Receive a Payment	To receive the cash payment for the Individual Class Payment from this Settlement, you do not have to do anything. **Your estimated Individual Class Payment is estimated to be $_____. See the explanation below.** If you are a PAGA Employee you will also receive the Individual PAGA Payment. **Your estimated Individual PAGA Payment is estimated to be $_____. See the explanation below.**
Exclude Yourself from the Class Action Settlement **The Opt-out Deadline is _____**	If you do not want to fully participate in the proposed Class Settlement, you can opt-out of the Class Settlement by sending the Administrator the Opt-Out Notice (Exhibit 1). If you request exclusion, you will receive **no money from the Class Action portion of the Settlement.** However, if you are a PAGA Employee, you will still receive your PAGA Payment as you cannot opt-out of the proposed PAGA Settlement.
Participating Class Members Can Object to the Class Settlement **Written Objections Deadline is _____**	All Class Members who do not opt-out ("Participating Class Members") can object to the proposed Class Settlement. Directions are provided below.
You May Participate at the _____ Final Approval Hearing	You do not have to attend the Final Approval Hearing, but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person.

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You Can Challenge the Calculation of Your Pay Periods Worked and/or PAGA Pay Periods **Written Challenges Must be Submitted by _____**	The amount of your Individual Class Payment depends on how many Pay Periods Worked during the Class Period, including as a Driver, and the PAGA Payment depends on how many PAGA Pay Periods you worked at least one day during the PAGA Period. The number of Pay Periods Worked and the PAGA Pay Periods you worked that are reported for you in this Notice derive from ECMD's data. If you disagree with either of number you may challenge this data pursuant to the process detailed below.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former ECMD employee. The Second Amended Complaint accuses ECMD of violating California labor laws by failing to: pay overtime and double time wages, provide compliant meal and/or rest periods, provide accurate wage statements, and pay all wages due at separation. Based on the same claims, Plaintiff has also asserted a claim for restitution under California's Unfair Competition Law and for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) ("PAGA"), which is the subject of the proposed Settlement.

Plaintiff is represented by attorneys: The Myers Law Group, APC (referred to as "Class Counsel").

ECMD strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether ECMD or Plaintiff is correct on the merits.

In the meantime, Plaintiff and ECMD hired an experienced, neutral mediator, Hon. William Pate (Ret.), in an effort to resolve the Action by negotiating an end to the case via a settlement agreement rather than continuing the expensive and time-consuming process of litigation. The mediation negotiations were successful and resulted in the parties signing the Class Action and PAGA Action Settlement Agreement and Release of Claims (the "Settlement Agreement" or "proposed Settlement Agreement" or "Agreement" or "Settlement"). Both sides agree the proposed Settlement Agreement is a compromise of disputed claims. By agreeing to settle, ECMD does not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because: (1) ECMD has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) the Settlement is in the best interests of the Class Members and PAGA Employees. The Court preliminarily approved the proposed Settlement Agreement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

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3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

ECMD Will Pay $400,000.00 as the Gross Settlement Amount (Gross Settlement). ECMD has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel's attorney's fees and expenses, the Administrator's expenses/cost, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, ECMD will fund the Gross Settlement not more than 15 calendar days after the Judgment entered by the Court becomes final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.

Requested Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:

A. Up to $133,333.33 (one-third of the Gross Settlement) to Class Counsel for attorneys' fees and up to $10,000.00 for their actual litigation expenses incurred. To date, Class Counsel have worked and incurred expenses on the Action without payment.

B. Up to $10,000 as a Class Representative Award to Plaintiff for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiff will receive other than her Individual Class Payment and any Individual PAGA Payment under this Settlement.

C. Up to $6,500.00 to the Administrator for services and costs for administering the Settlement.

D. Up to $40,000.00 for PAGA Penalties, allocated 65% to the LWDA PAGA Payment and 35% in Individual PAGA Payments to the PAGA Employees based on their PAGA Period Pay Periods.

Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class Members on a pro rata basis as detailed below.

Taxes Owed on Payments to Class Members. Plaintiff and ECMD are asking the Court to approve an allocation of 30% of each Individual Class Payment to taxable wages ("Wage Portion") and 70% to interest and penalties ("Non-Wage Portion"). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. ECMD will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage

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Portions of the Individual Class Payments on IRS 1099 Forms.

Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you do not cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name. You should consult the California Controller's Unclaimed Property Fund instructions to determine how to retrieve your money should you not timely cash any check you receive as part of this proposed Settlement.

Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than _____, that you wish to opt-out via the attached form by the _____ Response Deadline. Excluded Class Members (i.e., those who opt-out of the Class Settlement) will not receive Individual Class Payments and will not release the Released Class Claims but will preserve their rights to personally pursue wage and hour claims against ECMD.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement and who also qualify as a PAGA Employee will still receive the Individual PAGA Payment and are required to give up their right to assert PAGA claims against ECMD for the Released PAGA Claims detailed below.

Administrator. The Court has appointed a neutral company Ilym Class Action Administrators (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also process Class Member Challenges to the number of Pay Periods Worked and/or the PAGA Pay Periods worked, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator's contact information is contained in Section 9 of this Notice.

Participating Class Members' Release. After the Judgment is final and ECMD has fully funded the Gross Settlement and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the Released Class Claims under the Settlement against the Released Parties. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Juni Learning for the Released Class Claims. The Released Parties is defined as Defendant and its past, present and future subsidiaries, parents, affiliated and related companies, divisions, successors, predecessors or assigns; and their past, present, and future employees, attorneys, officers, directors, shareholders, partners, agents, insurers, employee, advisors, accountants, auditors, consultants, insurers and reinsurers, representatives, trustees, heirs, executors, administrators, predecessors, successors or assigns of any of the foregoing.

Upon the Effective Date, and Defendant's funding of the Gross Settlement Amount and all Employer Taxes owed as provided herein, and except as to such rights or claims as may be created by this Settlement Agreement, all Participating Class Members will completely release and discharge, for the Class Period only, against Defendant and the Released Parties the Released Class

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Claims defined as:

> All claims asserted in the Second Amended Complaint and all claims, wages, penalties, interest, debts, demands, rights, liabilities, costs, compensation, damages, injunctive and/or declaratory relief, attorneys' fees, actions, and/or causes of action that were pleaded or could have been brought based on the factual allegations set forth in the Second Amended Complaint, excluding the PAGA Cause of Action, for the Class Period; including but not limited to all claims under the California Labor Code for failure to pay overtime and double time, failure to provide meal periods and to pay premium pay for missed or noncompliant meal break periods, failure to provide rest periods and to pay premium pay for missed or noncompliant rest break periods, failure to pay final wages earned and due at the time of separation, wage statement violations, interest, statutory penalties, and attorneys' fees, waiting time penalties and claims pursuant to Labor Code §§ 200, 200.3, 201.3, 202, 203, 204, 208, 210, 218, 218.5, 218.6, 219, 226, 226, 226.7, 510, 512, 516, 558.1, 1174, 1194, 1194.2, 1198, Wage Order 1-2001, derivative claims under California Business & Professions Code §§ 17200 et seq., and Civil Code § 3287, for the Class Period.

PAGA Employees' PAGA Release Claims. After the Court's judgment is final, and ECMD has paid the Gross Settlement and separately paid the employer-side payroll taxes, all PAGA Employees will be barred from asserting the Released PAGA Claims against ECMD, whether or not they exclude themselves as a Class Member from the Class Action Settlement. This means that all PAGA Employees, including those who are Participating Class Members and those who are not Participating Class Member (i.e. opt-out of the Class Settlement), cannot sue, continue to sue, or participate in any other PAGA claim against ECMD, for the Released PAGA Claims.

Upon the Effective Date, and Defendant's funding of the Gross Settlement Amount and all Employer Taxes owed, all PAGA Employees will forever completely release and discharge, for the PAGA Period only, Defendant and the Released Parties of the PAGA Released Claims defined as:

> All claims for PAGA civil penalties that were alleged in the Second Amended Complaint and all claims for PAGA civil penalties that could have been brought based on the factual allegations set forth in the Second Amended Complaint and the LWDA Notice for this Action for the PAGA Period.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) allocating 60% of the Net Settlement Amount to the Participating Class Members who worked as Territory Service Representatives (Fund 1) and 40% of the Net Settlement Amount to the Participating Class Members who did not work as Territory Service Representatives (Non-Territory Service Representatives) (Fund 2); (b) dividing Fund 1 by the total number of Pay Periods Worked as a Territory Service Representative by Participating Class Members and then multiplying that Pay Period value by the individual Participating Class Member's total Pay Periods

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Worked as a Territory Service Representative; (c) dividing Fund 2 by the total number of Pay Periods Worked as a Non-Territory Service Representative by Participating Class Members and then multiplying that Pay Period value by the individual Participating Class Member's total Pay Periods Worked as a Non-Territory Service Representative.

Individual PAGA Payments. The Administrator will calculate each Individual PAGA Payment by (a) dividing $14,000.00 (35% of the PAGA Payment) by the total number of PAGA Pay Periods worked by all PAGA Employees during the PAGA Period and (b) multiplying the result by each PAGA Employee's individual PAGA Pay Periods. PAGA Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

Pay Periods Worked/Pay Period Challenges. The number of Pay Periods Worked for the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in ECMD's records, are stated in the first page of this Notice. You have until _____ to challenge the numbers credited to you. You can submit your challenge by signing and sending a letter and any supporting documentation to the Administrator via mail, email or fax.

You need to support your challenge by timely submitting evidence that the credited numbers of Pay Periods Worked during the Class Period and/or the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in ECMD's records, are inaccurate. You should send copies rather than originals because the documents will not be returned to you. The Settlement Administrator will evaluate the evidence submitted by the Class Member and/or PAGA Employees and provide the evidence submitted to Class Counsel and Defense Counsel who agree to meet and confer in good faith about the evidence to determine the Class Member's and/or PAGA Employees actual number of Pay Periods and/or PAGA Pay Periods. If Class Counsel and Defense Counsel are unable to agree, they agree to submit the dispute to the Court to render a final decision.

5. HOW WILL I GET PAID?

Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) and all those individuals who qualify as PAGA Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment as applicable.

PAGA Employees Who Are Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every PAGA Employee who opted out of the Class Settlement.

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

If you do not want to participate as a Settlement Class Member, you may "opt out", which will remove you from the Class Settlement and you will not receive an Individual Class Payment. That

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is, if the Court grants final approval of the settlement, you will not receive any money for the Individual Class Payment and you will not give up the right to sue ECMD for the Released Class Claims. If you choose to opt out you must timely send the Administrator, by fax, email, or mail, a signed written request to be excluded no later than _____, that reasonably communicates your election to be excluded from the Settlement and includes your name, address and email address or telephone number. Please note that opting out of the Class Settlement does not affect PAGA Employee status or the Released PAGA Claims.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object substantively to the Class Settlement. To object to the Settlement, you must inform the Settlement Administrator, in writing, by _____ _____, of your objection which must be postmarked by the Notice Response Deadline at the Settlement Administrator's address in Section 9.

However, you may also file an objection to Class Counsel's motion for attorney fees and litigation costs after the response deadline prior to the Final Approval Hearing. At least 28 calendar days before _____, the Final Approval Hearing date, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, reasonable, and adequate; and (2) a Motion for Fees, Litigation Expenses and Service Awards stating the amount Class Counsel is requesting as a Class Counsel Fees Payment; Class Counsel Litigation Expenses Payment; Class Representative Service Awards; and Administration Expenses Payment.

To object to the Settlement, you must inform the Settlement Administrator, in writing, by _____ _____, of your objection which must be postmarked by the Notice Response Deadline at the Settlement Administrator's address in Section 9. Any objection must include your full name, address, telephone number, last four digits of the social security number or date of birth, signature, and dates of employment with ECMD, in addition to the case name and number (located at the top of this Notice), the basis for the objection, including any legal support and each specific reason in support of the objection, as well as any documentation or evidence in support thereof, and, whether you are represented by separate and independent counsel and the name and address of your separate and independent counsel. The Settlement Administrator shall provide objections, if any, to Class Counsel and Defense Counsel. Any unresolved objections shall be submitted to the Court as part of the Motion for Final Approval. Failure to timely submit a written objection to this Settlement waives any right to object to the Settlement.

If you submit an objection you will remain as a Participating Class Member in the Settlement including but not limited to receiving the Individual Class Settlement Payment and be bound by the Release of Class Claims as provided herein. Settlement Class Members who opt-out of the Settlement may not object to the Settlement. Plaintiff and ECMD shall not be responsible for any fees, costs, or expenses incurred by you and/or your separate and independent counsel related to any objections to the Settlement. PAGA Employees may not object to or opt-out of the Settlement with respect to the PAGA action settlement.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

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You may, but do not have to, attend the Final Approval Hearing on _____ at _____ in Courtroom 6A of the U.S. District Court Central District of California, First Street Courthouse, located at 350 W. 1st Street, Los Angeles, CA 90012. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator.

It's possible the Court will reschedule the Final Approval Hearing. You should check the docket for the Action at https://pacer.login.uscourts.gov/csologin/login.jsf?pscCourtId=CACDC&appurl=https://ecf.cacd.uscourts.gov/cgi-bin/iquery.pl, Case No.: 2:24-cv-07887-MWC-MAA, or contact Class Counsel, to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything ECMD and Plaintiff have promised to do under the proposed Settlement. To obtain a copy of the Agreement, the Judgment or any other Settlement documents is to obtain the same from the case docket at at https://pacer.login.uscourts.gov/csologin/login.jsf?pscCourtId=CACDC&appurl=https://ecf.cacd.uscourts.gov/cgi-bin/iquery.pl, Case No.: 2:24-cv-07887-MWC-MAA, or request a copy from Class Counsel or the Administrator using the contact information listed below.

DO NOT TELEPHONE THE U.S. DISTRICT COURT, COURTROOM 6A TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

Class Counsel:
Name of Attorney: David Myers, Jason Hatcher, Andriana N. Bravo
Email Address: jhatcher@myerslawgroup.com or abravo@myerslawgroup.com
Name of Firm: The Myers Law Group, APC
Mailing Address: 9327 Fairway View Place, Suite 100, Rancho Cucamonga, CA 91730
Telephone: (909) 375-2102

Settlement Administrator:
Name of Company:
Email Address:
Mailing Address:
Telephone:
Fax Number:

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your Settlement check before cashing it, the Administrator will replace an uncashed check as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the Unclaimed Property Fund at https://www.sco.ca.gov/upd_msg.html for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

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If you move or otherwise change your mailing address after receipt of this notice, you should immediately notify the Administrator, at the contact information in Section 9 above, in order to ensure you check is mailed to the correct address.

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Exhibit B

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Attorneys for Plaintiff Brandon Madison, and all others similarly situated.

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

BRANDON MADISON, on behalf of himself and all others similarly situated

PLAINTIFF,

v.

ECMD, INC., a North Carolina Corporation; and DOES 1 through 100, inclusive

DEFENDANTS.

Case No.: 2:24-CV-07887-MWC-MAA

SECOND AMENDED CLASS ACTION COMPLAINT

1. **Failure to Pay Overtime and Double Time Wages;**
2. **Failure to Provide Meal Periods;**
3. **Failure to Provide Rest Periods;**
4. **Failure to Provide Accurate Wage Statements;**
5. **Failure to Pay All Wages Due at Separation;**
6. **Unfair Competition**
7. **Private Attorneys General Act**

DEMAND FOR JURY TRIAL

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I. INTRODUCTION

This is an action brought by Plaintiff BRANDON MADISON ("Plaintiff"), on his behalf and all others similarly situated, against ECMD, INC., a North Carolina Corporation, and other as of yet unnamed DOE Defendants 1-100 (hereinafter collectively "Defendants") alleging, among other things violations of the California Labor Code and Unfair Competition Law. Plaintiff seeks damages, attorneys' fees and costs of suit. Plaintiff is informed and believes, and on that basis alleges as follows:

II. GENERAL ALLEGATIONS

1. This class action arises from wage and hour violations for, among other things, Defendants' failure to compensate hourly non-exempt employees in compliance with California law. As more fully described herein, Defendants failed and continue to fail compensate Plaintiff and class members the full amount of overtime and double time wages owed, provide meal breaks or meal period premium pay at the correct regular rate of pay in lieu thereof, provide rest breaks or rest period premium pay at the correct regular rate of pay in lieu thereof, provide accurate wage statements, and pay all wages due at separation. Additionally, Defendants violated and continue to violate the California Unfair Competition Law.

2. Plaintiff seeks, among other things, all wages, restitutionary disgorgement, and statutory penalties. Plaintiff seeks to represent the following Class:

> All current and former California hourly non-exempt employees of Defendants who provide lumber distribution services for Defendants at any time from four years prior to the filing of this action through the date of class certification. (The "Class").

3. This Court is the proper court, and this action is properly filed in Ventura County and in this judicial district because Defendants do business in Ventura County, out of Ventura, California, and because Defendants' obligations and liabilities arise therein.

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4. Plaintiff is a former hourly non-exempt employee for Defendants in the state of California and a resident of California.

5. Plaintiff is informed and believes, and thereon alleges that Defendant ECMD, INC., is a North Carolina Corporation.

6. The true names and capacities, whether individual, corporate, associate, or otherwise, of DOES 1 through 100 are unknown to Plaintiff, who therefore sues the DOE Defendants by fictitious names. Plaintiff will amend this Complaint to show their true names and capacities when they have been ascertained.

7. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein were performed by, and/or are attributable to, all Defendants, each acting as agents and/or employees, and/or under the direction and control of each of the other Defendants, and that said acts and failures to act were within the course and scope of said agency, employment and/or direction and control. Plaintiff is informed and believes, and thereon alleges, that at all times material hereto Defendants were and are the agents of each other.

8. Plaintiff is informed and believes, and thereon alleges, that Defendants DOES 1 through 100 are the partners, owners, shareholders, managers, joint employers, or alter egos of Defendants, and were acting on behalf of Defendants in the payment of wages to Plaintiff and the Class.

9. At all relevant times alleged herein Plaintiff was employed by Defendants, and Plaintiff performed work for Defendants in Ventura County in the state of California.

III. FACTS COMMON TO MORE THAN ONE CAUSE OF ACTION

10. Plaintiff and the Class worked as hourly non-exempt employees in the state of California for Defendants.

11. Throughout the period of four (4) years prior to the filing of this action through the date of class certification ("Class Period"), Plaintiff and all Class members were and are employees of Defendants in the state of California, entitled

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to all of the protections afforded to employees under the Labor Code and applicable IWC Wage Order.

12. Defendants' primary business is lumber distribution services. This work is accomplished in part by Plaintiff and the Class members.

13. Defendants are liable to Plaintiff and the Class for failing to pay for all hours worked, including overtime and double time wages, provide legally compliant meal and rest periods, failing to provide accurate wage statements, failing to pay all wages owed at separation, and unfair competition.

14. Plaintiff is a member of and seeks to be the representative for the Class of similarly situated employees who all have been exposed to, have suffered, and/or were permitted to work under, Defendant's unlawful employment practices as alleged herein.

15. Throughout the Class Period, Defendants knowingly and willfully engaged and continue to engage in an unlawful scheme to avoid complying with California wage and hour laws and other employee rights and benefits.

16. Throughout the Class Period, Defendants failed to pay Plaintiff and Class members' overtime and double time wages in accordance with the law.

17. Throughout the Class Period, Plaintiff and Class members worked in excess of eight (8) hours per workday or forty (40) hours per work week. Defendants failed to pay Plaintiff and Class members one-and-one-half times their regular rate of pay for hours worked in excess of eight (8) hours per day or forty (40) hours per workweek. Defendants also failed to pay Plaintiff and Class members at a rate no less than twice the regular rate of pay for work in excess of twelve (12) hours in one day.

18. Throughout the Class Period, Defendants failed to authorize and permit legally compliant meal breaks. Plaintiff and Class members were assigned to and required to work shifts lasting over five (5) hours and were not provided nor allowed to take a timely thirty (30) minute uninterrupted off-duty meal break without

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exemption. Plaintiff and Class members were assigned to and required to work shifts lasting over ten (10) hours without a second thirty (30) minute uninterrupted off-duty meal break without exemption.

19. Throughout the Class Period, Defendants failed and continue to fail to pay for meal period violations at the correct regular rate of pay.

20. Throughout the Class Period, Defendants failed to authorize and provide paid rest periods compliant with the provisions of the California Labor Code and applicable Wage Order. Plaintiff and Class members were assigned to and required to work shifts lasting over four (4) hours and were not provided nor allowed to take a non-captive paid ten-minute uninterrupted rest break during each four (4) hour work period, or major fraction thereof, at the direction of Defendants and/or with Defendants knowledge and acquiescence.

21. Throughout the Class Period, Defendants failed and continue to fail to pay for rest period violations at the correct regular rate of pay.

22. The wage statements provided by Defendants failed to provide accurate information reflecting the gross and net wages earned for all hours worked, the pay period and/or and meal and/or rest period premium payments.

23. Defendants failed to pay Plaintiff and the Class all earned wages timely upon termination. This includes but is not limited to overtime, double time wages, and meal and/or rest period premiums at the regular rate of pay.

24. The underpayment of wages, Labor Code violations and Wage Order violations upon Plaintiff and the Class are a consequence of Defendants' unlawful policies and practices which were centrally devised, implemented, communicated, and applied to Plaintiff and the Class.

25. Because of Defendants' unlawful conduct, Plaintiff and the Class have been and continue to be systematically deprived of their benefits of the Labor Code and applicable IWC Wage Orders, to the detriment of Plaintiff, the Class, and the public at large.

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CLASS DEFINITION AND CLASS ALLEGATIONS

26. Plaintiff brings this action on his own behalf and on behalf of all others similarly situated, pursuant to California Code of Civil Procedure §382, and as a member of the Class defined as follows:

> All current and former California hourly non-exempt employees of Defendants who provide lumber distribution services for Defendants at any time from four (4) years prior to the filing of this action through the date of class certification. (The "Class").
>
> **Sub-Class 1**
>
> All current and former California hourly non-exempt employees of Defendants who provide lumber distribution services for Defendants at any time from four (4) years prior to the filing of this action through the date of class certification who worked at least one (1) day of more than eight (8) hours in a day or more than forty (40) hours in a week, and received a bonus or incentive. ("Regular-Rate" Sub-Class).
>
> **Sub-Class 2**
>
> All current and former California hourly non-exempt employees of Defendants who provide lumber distribution services for Defendants at any time from four (4) years prior to the filing of this action through the date of class certification who worked at least one shift of more than five (5) hours. ("Meal Period" Sub-Class).
>
> **Sub-Class 3**
>
> All current and former California hourly non-exempt employees of Defendants who provide lumber distribution services for Defendants at any time from four (4) years prior to the filing of this action through the date of class certification and who worked at least one shift of more than ten (10) hours. ("Second Meal Period" Sub-Class).
>
> **Sub-Class 4**
>
> All current and former California hourly non-exempt employees of Defendants who provide lumber distribution services for Defendants at any time from four (4) years prior to the filing of this action through the date of class certification who worked at least one shift of three and a half (3.5) hours or more. ("Rest Period" Sub-Class).
>
> **Sub-Class 5**
>
> All current and former California hourly non-exempt employees of Defendants who provide lumber distribution services for Defendants at

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any time from one (1) year prior to the filing of this action through the date of class certification who are members of Sub-Class 1 and/or 2 and/or 3 and/or 4. ("Wage Statement Class" Sub-Class).

Sub-Class 6

All former California hourly non-exempt employees of Defendants who provided lumber distribution services for Defendants at any time from three (3) years prior to the filing of this action through the date of class certification who are members of Sub-Class 1 and/or 2 and/or 3 and/or 4. ("Waiting Time Penalties" Sub-Class).

27. Plaintiff reserves the right to amend or otherwise alter the class definition presented to the Court at the appropriate time, or to alter, propose or eliminate sub-classes, in response to facts learned through discovery, legal arguments advanced by Defendants or otherwise.

28. Further, this action is brought for the benefit of the public, who are entitled to restitution of those funds improperly withheld by Defendants.

29. This action has been brought and may be properly maintained as a class action pursuant to the provisions of the Code of Civil Procedure §382 and other applicable law.

30. **Numerosity:** Members of the Class are so numerous that their individual joinder is impracticable. It is possible to ascertain the number of former and current employees who are members of the proposed class, but they are so numerous that joinder is impracticable. The proposed Class includes future employees (persons who are hired by defendant within the class period, but who are not now class members as current or former employees) whose joinder is currently impossible. The precise number of Class members and their addresses can be determined by Defendants' business records and will become known to Plaintiff through discovery. Class members may be notified of the pendency of this action by mail, e-mail, the internet, or published and posted notice.

31. **Typicality:** Plaintiff's claims are typical of the claims of members of the proposed classes. Defendants employed Plaintiff during the statutory period, and

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Plaintiff has been subjected to Defendants' unlawful employment practices, as alleged in this Complaint.

32. **Adequacy of Class Representative:** Plaintiff will fairly and adequately protect the interests of the classes. Plaintiff's interests do not conflict with Class members' interests, and Plaintiff has retained competent and experienced counsel. The interests of Class members will be fairly and adequately protected by Plaintiff and his counsel.

33. **Common Questions of Law and Fact:** Common questions of law and fact exist as to all Class members and predominate over any questions affecting solely individual members of the proposed Class:

1) Whether Defendants engaged in a pattern or practice of failing to pay Plaintiff and the members of the Class the full amount of overtime and double-time wages in violation of the applicable Labor Code provisions including §§510 and 1194;

2) Whether Defendants improperly retained, appropriated or deprived Plaintiff and members of the proposed Plaintiff class of the use of monies or sums to which they were legally entitled;

3) Whether Defendants engaged in unlawful, unfair, and/or fraudulent business practices;

4) Whether Defendants, and each of them, was/were participants in the alleged unlawful conduct;

5) Whether Defendants engaged in a pattern or practice of failing to provide Plaintiff and the members of the Class meal periods in violation of the applicable Wage Order and Labor Code §§ 226.7, 512 by failing to timely provide the required number of 30-minute uninterrupted meal periods to Plaintiff and Class members;

6) Whether Defendants engaged in a pattern or practice of failing to

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pay meal period premium payments at the correct regular rate of pay to Plaintiff and Class members;

7) Whether Defendants engaged in a pattern or practice of failing to provide Plaintiff and the members of the Class legally compliant rest periods in violation of the applicable Wage Order and Labor Code §§226.7, 512 by failing to provide legally compliant rest periods;

8) Whether Defendants engaged in a pattern or practice of failing to pay rest period premium payments at the correct regular rate of pay to Plaintiff and Class members;

9) Whether Defendants violated Labor Code §203 by failing to pay all wages due upon separation;

10) Whether Defendants engaged in unfair practice and violated California Business and Professions Code §17200 *et seq*.;

11) Whether Defendants failed to provide accurate wage statements to Plaintiff and members of the Class; and

12) The nature and extent of class-wide injury and measure of damages for the injury.

34. **Superiority and Substantial Benefit:** A class action is the superior method for the fair and efficient adjudication of this controversy. Defendants implemented illegal schemes that are generally applicable to the members of the proposed plaintiff class and sub-classes. Damages suffered by each Class member may be relatively small given the burden and expense of individual prosecution of the complex and expensive litigation necessitated by Defendants' conduct. Further, it would be virtually impossible for the Class members to redress the wrongs done to them on an individual basis. Even if Class members could afford such individual litigation, the court system could not. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of a single adjudication,

Docusign Envelope ID: CB09F04B-DE4D-4BC8-999B-98452EEEB2B3

economies of scale, and comprehensive supervision by a single court.

35. Plaintiff knows of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action. Plaintiff is informed and believes, and on that basis alleges, that the amount of money due each Class member as economic damages is ascertainable from Defendants' records or may readily be determined by other means.

36. The Classes should also be certified because:

1) The prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudications with respect to individual Class members, which would establish incompatible standards of conduct for Defendants;

2) The prosecution of separate actions by individual Class members creates the risk of adjudication with respect to them, which would, as a practical matter, be dispositive of the interests of the other Class members not parties to the adjudications, or would substantially impair or impede their ability to protect their interests; and

3) Defendants have acted or have refused to act on grounds generally applicable to the class and/or the general public, thereby making final and injunctive relief, as well as declaratory relief, with respect to the Class as a whole, appropriate.

FIRST CAUSE OF ACTION

FAILURE TO PAY OVERTIME AND DOUBLE TIME WAGES

Violation of Labor Code §§510 and 1194 and IWC Wage Order No. 1-2001

(Against all Defendants)

37. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein, paragraphs 1 through 36 of this Complaint.

38. Plaintiff and class members were and are employed and scheduled as a

Docusign Envelope ID: CB09F04B-DE4D-4BC8-999B-98452EEEB2B3

matter of established company policy to work in excess of eight (8) hours per day and/or in excess of forty (40) hours per workweek and/or in excess of twelve (12) hours per day. Defendants employed and scheduled Plaintiff and the class members without providing the full amount of overtime and double time compensation for such excess hours worked in violation of Labor Code §§510 and 1194 and the relevant California Industrial Welfare Commission (IWC) orders.

39. Labor Code §510 mandates: "Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work." The California overtime requirement and wage requirement are non-waivable rights pursuant to LC §219.

40. Section 3(a)(1) of Wage Order No. 1-2001 mandates that employers pay one and one-half times the employees' regular rate of pay for employees who work more than eight hours in a day or forty hours in a week and two times their regular rate of pay for any work in excess of twelve hours in one day.

41. Labor Code §1194(a) states: "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of

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suit."

42. Pursuant to Labor Code §§218 and 1194(a), Plaintiff may bring a civil action for overtime wages directly against the employer without first filing a claim with the Division of Labor Standards Enforcement ("DLSE") and may recover such wages, together with interest thereon, penalties, attorneys' fees and costs. Further, pursuant to Labor Code §1198, it is unlawful to employ person for longer than the hours set by the IWC or under conditions prohibited by the applicable IWC Wage Orders. IWC Wage Order No. 1, as amended, applies to Plaintiff and the class.

43. Labor Code §558.1 provides that any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Section1194 may be held liable as the employer for such violation.

44. Defendants, and each of them, consistently administered a corporate policy which required Plaintiff and the class members to work overtime without proper premium overtime and double time pay based on the regular rate of pay. Accordingly, Plaintiff and class members were and are entitled to overtime and double time compensation, under California law, based on the appropriate regular rate of pay, this includes but is not limited to the failure to include bonus and incentive payments to Plaintiff and the Class members.

45. Plaintiff and the class members have been deprived of rightfully earned overtime and double time compensation as a direct and proximate result of Defendants' common policies, practices, and refusal to pay the full amount of compensation earned for all overtime and double time hours worked at the correct regular rate of pay.

46. Plaintiff and the class are entitled to and seek the full amount of all earned unpaid overtime and double time pay, attorneys' fees and costs, and interest pursuant to LC §1194 in an amount to be determined at trial.

Docusign Envelope ID: CB09F04B-DE4D-4BC8-999B-98452EEEB2B3

47. Pursuant to Labor Code §218.6 and Civil Code §3287, Plaintiff and the Class Members seek recover of pre-judgment interest on all amounts recovered herein.

48. Plaintiff and the class are entitled to and seek attorneys' fees and costs, and interest pursuant to Labor Code §1194 in the amount to be determined at trial.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

Violation of Labor Code §§226.7, 512, & Wage Order No. 1-2001

(Against all Defendants)

49. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein, paragraphs 1 through 36 of this Complaint.

50. Labor Code §226.7 requires an employer to pay one additional hour of compensation, at the regular rate of pay, per day for each meal period the employer fails to provide pursuant to the Labor Code and/or applicable Wage Order. Plaintiff alleges that Defendants failed to provide legally compliant meal periods to Plaintiff and the Class members; in addition to impeding, discouraging, and/or dissuading employees from taking legally compliant meal periods. Employees are entitled to a meal period of at least thirty (30) minutes per five (5) hours work period. Plaintiff and the Class consistently worked over five (5) hour shifts without timely meal periods due to Defendants' policy of discouraging, dissuading and/or impeding Plaintiff and the Class from taking timely meal periods. Defendants further failed to obtain legally compliant meal period waivers for shifts lasting longer than 10 hours or on-duty meal period agreements. Pursuant to the Code, Plaintiff and the Class were/are entitled to a meal period of not less than thirty (30) minutes prior to exceeding five (5) hours of employment and a second meal period for hours worked over ten (10) hours in a day.

51. Pursuant to Labor Code §512 and the applicable Wage Order, employees are entitled to a meal period of at least thirty (30) minutes per five (5)

Docusign Envelope ID: CB09F04B-DE4D-4BC8-999B-98452EEEB2B3

hour work period. Plaintiff and the class consistently worked over five (5) hour shifts without meal periods due to Defendants' policy of discouraging, dissuading and/or impeding Plaintiff and the class members from taking meal periods.

52. Labor Code §558.1 provides that any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 226.7 may be held liable as the employer for such violation.

53. IWC Wage Order No. 1-2001 applies to Defendants and provides, in pertinent part, that if an employer fails to allow an employee to take meal periods in accordance with the applicable provisions of this Order, the employer shall pay the employee one hour of pay at the employee's regular rate of compensation for each workday that the meal period was not provided.

54. During the relevant statutory time period, Defendants failed to authorize and permit timely, duty-free, uninterrupted meal breaks. Plaintiff and Class members were routinely required to work longer than five hours without a meal break at the direction of Defendants and/or with Defendants' knowledge or acquiescence.

55. During the relevant statutory time period, Defendants failed to authorize and permit timely, duty-free, uninterrupted meal breaks. Plaintiff and Class members were routinely required to work longer than ten hours without a second meal break at the direction of Defendants and/or with Defendants' knowledge or acquiescence.

56. By their actions in requiring employees to work through meal periods and/or its failure to relieve Plaintiff and the Class members of their duties for off-duty meal periods, Defendants have violated California Labor Code §226.7 and §11 of IWC Wage Order No. 1-2001, and are liable to Plaintiff and the Class.

57. Defendants further failed to provide, impeded and/or discouraged

Docusign Envelope ID: CB09F04B-DE4D-4BC8-999B-98452EEEB2B3

Plaintiff and the other class members from taking timely and compliant meal breaks of not less than thirty (30) minutes as required by the Labor Code and IWC Wage Order No. 1-2001.

58. Pursuant to Labor Code §226.7, Plaintiff and the Class are entitled to damages in an amount equal to one (1) hour of wages at the regular rate of pay per missed meal break per day, in a sum to be proven at trial.

59. Pursuant to Labor Code §218.5, Plaintiff and the Class seek attorney's fees and costs for the non-payment of these wages of one (1) hour of pay at no less than the regular rate of compensation. *Betancourt v. OS Restaurant Services, LLC* (2022) 83 Cal.App.5th 132.

60. Pursuant to Labor Code §218.6 and Civil Code §3287, Plaintiff and the Class Members seek recovery of pre-judgment interest on all amounts recovered herein.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE REST PERIODS

Violation of Labor Code §§226.7, 512 & Wage Order 1-2001

(Against all Defendants)

61. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein, paragraphs 1 through 36 of this Complaint.

62. Labor Code §226.7(b) provides that "An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health."

63. Labor Code §516 provides that the Industrial Welfare Commission "may adopt or amend working condition orders with respect to break periods, meal periods, and days of rest for any workers in California consistent with the health and welfare of those workers."

Docusign Envelope ID: CB09F04B-DE4D-4BC8-999B-98452EEEB2B3

64. Labor Code §558.1 provides that any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Section 226.7 may be held liable as the employer for such violation.

65. IWC Wage Order No. 1-2001 provides, in pertinent part, that if an employer fails to allow an employee to take rest periods in accordance with the applicable provisions of this Order, the employer shall pay the employee one hour of pay at the employee's regular rate of compensation for each workday that a rest period was not provided. The authorized rest period is based on the total hours worked daily at the rate of ten minutes net rest time per four hours or major faction thereof.

66. Section §12 of the IWC Wage Order No. 1-2001 states: "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages."

67. Defendants, and each of them, failed and or refused to implement a relief system by which Plaintiff and the Class members could receive paid non-captive, ten (10) minute rest breaks and/or work free of interruption for every four hours worked, or major fraction thereof. Furthermore, due to Defendants' uniform lack of a relief system, Plaintiff and the Class members did not receive their rest breaks within the required statutory time frame. By and through their actions, Defendants intentionally and improperly denied rest periods to the Plaintiff and Class members in violation of Labor Code §§226.7 and 512.

Docusign Envelope ID: CB09F04B-DE4D-4BC8-999B-98452EEEB2B3

68. Defendants, and each of them, systematically and uniformly failed and/or refused to implement a relief system by which Plaintiff and the Class members could receive paid non-captive, rest breaks and/or work free rest breaks for every four (4) hours worked or major fraction thereof. By and through its actions, Defendants intentionally and improperly denied rest periods to Plaintiff and the Class members in violation of Labor Code §226.7.

69. During the relevant time period, Defendants failed to authorize and permit non-captive, rest breaks and the Class members, including Plaintiff, were routinely required to work through or without rest breaks at the direction of Defendants and/or with Defendants knowledge or acquiescence.

70. Labor Code §226.7(b) and Section 12(B) of the Wage Order require an employer to pay one additional hour of compensation, at the regular rate of pay, per day for each rest period the employer failed to provide pursuant to the Labor Code and/or applicable Wage Order.

71. Plaintiff and the Class members worked over four (4) hours per shift and/or over six (6) hours per shift.

72. Plaintiff and the Class members were entitled to a non-captive, duty-free, paid rest period of not less than ten (10) minutes for every four hours worked or major fraction thereof, or premium pay remedy of one hours pay at the regular rate of pay for each day in lieu of the same.

73. During the relevant time period, Defendants failed to provide legally compliant non-duty free ten (10) minute paid rest periods to Plaintiff and the Class members and/or Defendants failed to provide the requisite premium pay remedy for non-compliant and/or missed rest periods.

74. As such, as a matter of Defendants' established company policy, Defendants failed to authorize and permit all required paid rest periods established by Labor Code §§226.7 and 516 and Section 12 of the applicable Wage Order.

75. As a result of the unlawful acts of Defendants, Plaintiff and the Class

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members have been deprived of legally compliant paid rest breaks and are entitled to recover damages under Labor Code §226.7(b) and §12 of IWC Wage Order No. 1-2001 in the amount of one additional hour of compensation at their regular rate of pay for each day a paid rest break was not provided.

76. Pursuant to Labor Code §218.5, Plaintiff and the Class seek attorney fees and costs for the non-payment of these wages of one (1) hour of pay at no less than the regular rate of compensation. *Betancourt v. OS Restaurant Services, LLC* (2022) 83 Cal.App.5th 132.

77. Pursuant to Labor Code §218.6 and Civil Code §3287, Plaintiff and the Class Members seek recovery of pre-judgment interest on all amounts recovered herein.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS

Violation of Labor Code §226

(Against all Defendants)

78. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein, paragraphs 1 through 36 of this Complaint.

79. California Labor Code §226 provides:

> (a) Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee

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> and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer…, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...

80. Labor Code §1174 requires employers to keep at a central location in the state or at the plants or establishments at which employees are employed, accurate payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

81. Labor Code §558.1 provides that any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Section 226 may be held liable as the employer for such violation.

82. Section 7(A) of the Wage Order requires accurate information pertaining to total wages paid each payroll period, total hours worked in the payroll period and applicable rates of pay, and incentive plan formula provided to the employees.

83. Labor Code §226(e) provides that an employee is entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation of §226 occurs and one hundred dollars ($100) for each subsequent pay period not to exceed an aggregate penalty of four thousand dollars ($4,000), as well as an award of costs and reasonable attorneys' fees, for all pay periods in which the employer knowingly and intentionally failed to provide timely and accurate itemized

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statements to the employees.

84. Plaintiff and the Class members suffered injury as a result of Defendants' knowing and intentional failure to provide accurate itemized wage statements as Plaintiff and the Class member were owed but not paid overtime and double compensation at the correct regular rate of pay, and premium payments for rest and meal period violations which were not reflected on the wage statements. Plaintiff and the Class members suffered injury as a reasonable person could not promptly and easily determine from the wage statements alone the accurate amount of gross wages, the net wages earned for the pay period, the number of meal period premium payments, the applicable hourly rates at the corresponding hours worked, and/or the number of rest period premium payments on the wage statements.

85. At all material times, Defendants knowingly and intentionally failed to provide Plaintiff and Class Members with accurate wage statements reflecting the gross wages earned, net wages earned, and/or list the meal and rest period premium payments on the wage statement.

86. Plaintiff and the Class members are entitled to the greater of actual damages or statutory penalties pursuant to Labor Code §226(e) for these violations, in an amount to be determined at trial.

87. Plaintiff and the Class members are entitled to and seek costs and reasonable attorneys' fees pursuant to Labor Code §226(e).

88. Plaintiff further seeks injunctive relief and reasonable attorneys' fees and costs pursuant to Labor Code §226(h).

FIFTH CAUSE OF ACTION

FAILURE TO PAY ALL WAGES DUE AT SEPARATION

Violation of Labor Code §§201, 202, 203

(Against all Defendants)

89. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein, paragraphs 1 through 36 of this Complaint.

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90. Plaintiff and the Class members whose employment ended with Defendants during the relevant time period were entitled to be promptly paid all earned and unpaid wages at the time of termination, as required pursuant to Labor Code §§201 and 202, *et seq*. Defendants refused and/or intentionally failed to promptly compensate Plaintiff and the other Class members all earned overtime and double time wages, meal and rest period premium pay. Based on this, Plaintiff and the Class members seek and are entitled to damages in the form of statutory waiting time penalties pursuant to LC §203.

91. Labor Code §558.1 provides Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Section 203 may be held liable as the employer for such violation.

92. Plaintiff and the Class members whose employment terminated during the relevant time period were employees of Defendants covered by Labor Code §203.

93. Accordingly, pursuant to Labor Code §203, Plaintiff and the Class members are entitled to waiting time penalties at an amount to be proven at trial.

SIXTH CAUSE OF ACTION

UNFAIR COMPETITION

Violation of Business and Professions Code §§17200, *et seq*.

(Against all Defendants)

94. Plaintiff and the class re-allege and incorporate by reference and re-allege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

95. Beginning on an exact date unknown to Plaintiff but believed to have occurred at least since four (4) years before the filing of this action, Defendants have engaged in a pattern and practice of acts of unfair competition in violation of B&PC

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§17200, including the practices alleged herein.

96. Defendants, and each of them, are "persons" as defined by Business and Professions Code §17201.

97. Plaintiff seeks to enforce important rights affecting the public interest. Plaintiff sues on his own behalf and on behalf of the current, former, and future employees of the Defendants that were denied overtime and double time pay, and required to work shifts without legally compliant meal and/or rest breaks periods, due to Defendants' unfair business practices.

98. Plaintiff and the Class have suffered injuries-in-fact and have lost money as a result of the Defendants' unfair competition alleged herein.

99. Defendants have previously or continue to engage in unlawful, unfair, and/or fraudulent business practices, as alleged in this Complaint, in violation of California's B&PC §17200 *et seq.* by:

a. Failing and refusing to pay the class, including Plaintiff, earned overtime and double time wages in violation of Labor Code §§510, 1194, 204 and the IWC Wage Order 1-2001;

b. Failing and refusing to provide Plaintiff and the Class members legally compliant, uninterrupted, timely meal breaks or premium payments, at the regular rate of pay, for said violations in violation of Labor Code §§226.7, 512 and IWC Wage Order No. 1-2001;

c. Failing and refusing to provide Plaintiff and the Class members legally compliant non-captive, duty-free, paid, ten-minute rest periods or premium payments, at the regular rate of pay, for said violations in violation of Labor Code §§226.7, 512 and IWC Wage Order No. 1-2001;

100. All of these allegations constitute unfair business practices and/or unlawful business practices in violation of California B&PC §17200, *et seq.*

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101. Defendants have avoided payment of wages, overtime and double time wages and other benefits as required by the California Labor Code, the California Code of Regulations and applicable IWC Wage Orders. As a result of Defendants' unfair business practices, Defendants have reaped unfair benefits and illegal profits at the expense of Plaintiff, the Class members, and others similarly situated, and the members of the public. Defendants should be made to disgorge their ill-gotten gains and to restore them to the Class, including Plaintiff.

102. Plaintiff and the Class members seek full restitution of said monies, as necessary and according to proof, to restore any and all monies withheld and/or acquired by Defendants by means of the unfair, unlawful, and fraudulent business practices complained of herein. Plaintiff seeks, on behalf of all current and former employees of Defendants, restitution of monies retained by Defendants. Plaintiff further seeks on behalf of himself and the Class members, the appointment of a receiver, as necessary, to establish the total restitutionary relief from Defendants. The restitution includes all wages withheld by Defendants as a result of the unfair, unlawful, and/or fraudulent business practices; including interest thereon. Absent a statutory provision specifically governing the type of claim at issue, the prejudgment interest rate is 10 percent. The acts complained of herein occurred, at least in part, within the last four (4) years preceding the filing of the Complaint.

103. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned, Defendants have engaged in unlawful, deceptive, and unfair business practices prohibited by California B&PC §17200, thereby depriving their employees and the Class members, the minimum working condition, standards and conditions due to them under the California labor laws and Industrial Welfare commission wage orders as specifically described herein. Plaintiff further seeks an order requiring Defendants to identify by full name, telephone number, and last known address employees who worked or still work for Defendants for the Class members from four (4) years preceding the filing of the original Complaint through

Docusign Envelope ID: CB09F04B-DE4D-4BC8-999B-98452EEEB2B3

the date of class certification. Plaintiff further seeks an order requiring Defendants to timely pay restitution to all current and former employees, including back wages, and interest.

104. By and through its unfair, unlawful, and/or fraudulent business practices and acts described herein, Defendants have obtained valuable services from Plaintiff and all persons similarly situated, and has deprived Plaintiff and all persons similarly situated of valuable rights and benefits guaranteed by law, all to their detriment.

105. Plaintiff, and all persons similarly situated, and all persons in interest, are entitled to and do seek such relief as may be necessary to restore to them the money and property which Defendants have acquired, or of which Plaintiff and class members have been deprived by mean of the herein described unfair, unlawful, and/or fraudulent business practices.

106. Plaintiff, and all persons similarly situated, and all persons in interest, are further entitled to and do seek a declaration that the above-described business practices are unfair, unlawful, and/or fraudulent, and declaratory relief of Defendants engaging in any of the herein described unfair, unlawful, and/or fraudulent business practices.

107. Plaintiff and the Class members request attorney's fees and costs pursuant to Code of Civil Procedure §1021.5 since this action is brought to vindicate important rights of a large class and the public.

SEVENTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

Violation of Labor Code §§ 2698, *et seq.*

(Against all Defendants)

108. Plaintiff on behalf of himself and on behalf of all other aggrieved employees herein re-alleges and incorporates each and every one of the allegations in the preceding paragraphs as if fully set forth herein.

Docusign Envelope ID: CB09F04B-DE4D-4BC8-999B-98452EEEB2B3

109. Labor Code §§2698-2699, the Labor Code Private Attorney General Act of 2004, provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (LWDA), or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the Labor Code, may be recovered through a civil action by an aggrieved employee on behalf of himself or herself, and collectively on behalf of all other current or former employees.

110. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies or employees, has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions to assess a civil penalty.

111. Plaintiff and all of Defendants' non-exempt hourly employees in California are "aggrieved employees" as defined by Labor Code §2699, who did/do work as lumber distribution employees for Defendants, in that they are all current or former employees of Defendants in California, and one or more of the alleged violations was committed against them.

112. Plaintiff gave written notice electronically to the LWDA on or about July 12, 2024, and by certified mail to Defendants on or about July 16, 2024 of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violations as required by Labor Code §2699.3. More than 65 days have lapsed since notice to the LWDA and the LWDA has not indicated that it intends to investigate Defendants' Labor Code violations. Accordingly, Plaintiff may commence a civil action to recover civil penalties for himself and other current and former employees under Labor Code §2699 pursuant to §2699.3.

113. Plaintiff asserts all the claims in this Complaint against Defendants, individually and on behalf of all aggrieved employees in their capacity as private attorney general and seeks all applicable civil penalties available under the Labor Code, for the period of May 8, 2023 to the present ("PAGA Period").

114. Pursuant to Labor Code §2699, Plaintiff, individually and on behalf of

Docusign Envelope ID: CB09F04B-DE4D-4BC8-999B-98452EEEB2B3

all aggrieved employees, requests and seeks to recover from the Defendants for: unpaid overtime and double time wages, meal and rest period violations, wage statement violations, and waiting time penalties according to proof. Plaintiff is further entitled to attorneys' fees and costs pursuant to Labor Code §2699(k)(1), as well as all civil penalties, including, but not limited to:

1) Penalties under Code of Regulations, Title 8 §11010 in the amount of $50 for each aggrieved employee per pay period for the initial violation, and $100 for each aggrieved employee per pay period for each subsequent violation;

2) Penalties under Labor Code §558, in addition to and entirely independent and apart from other penalties provided under the Labor Code, in the amount of $50 for each underpaid aggrieved employee for each pay period the aggrieved employee was underpaid in addition to an amount sufficient to recover underpaid wages, and $100 for each subsequent violation for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages, with all wages recovered pursuant to Labor Code §558 provided to the affected employees;

3) Penalties under Labor Code §210, in addition to and entirely independent and apart from any other penalty, for $100 for each initial violation for each failure to pay and for $200 for each subsequent violation or any willful or intentional failure to pay each employee, plus 25 percent of the amount unlawfully withheld;

4) Penalties under Labor Code §226.3, for violations of Labor Code §226(a) for $250 per violation in an initial citation per aggrieved employee and $1,000 per violation for each subsequent violation

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per aggrieved employee;

5) Penalties under Labor Code §1174.5 for $500 for each willfully failure to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174;

6) Penalties under Labor Code §2699(f)(2)(A), in addition to and entirely independent and apart from other penalties provided in the Labor Code and for Labor Code violations without a specific civil penalty, in the amount of $100 for each aggrieved employee per pay period for each violation, or pursuant to Labor Code §2699(f)(2)(B) for $200 for each aggrieved employee per pay period for each violation;

115. Any and all additional civil penalties and sums as provided by the Labor Code and/or other statutes.

116. Plaintiff seeks and is entitled to have 65% of all penalties obtained be allocated to the LWDA and 35% to aggrieved employees.

117. Further, Plaintiff is entitled to seek and recover reasonable attorney's fees and costs pursuant to Labor Code §§2699(k)(1).

IV. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. An order that the action be certified as a class action;
2. An order that Plaintiff be appointed class representative;
3. An order that counsel for Plaintiff be appointed class counsel;
4. An order requiring Defendants to identify, by name, email address, address and telephone number all current and former California hourly non-exempt employees of Defendants who provided lumber distribution services for Defendants at any time from four (4) years prior to the filing of this action through the date of class certification;

Docusign Envelope ID: CB09F04B-DE4D-4BC8-999B-98452EEEB2B3

5. For all unpaid wages due to Plaintiff and each Class member and liquidated damages, in amounts to be proven at trial;
6. For restitution of all unpaid wages due to Plaintiff and each Class member;
7. For the full amount of unpaid overtime and double time wages due to Plaintiff and each class member pursuant to Labor Code §1194;
8. For recovery as authorized by Labor Code §226(e);
9. For all applicable statutory penalties, in amounts to be proven at trial;
10. For all applicable civil penalties, in amounts to be proven at trial;
11. For an award of waiting time penalties pursuant to section 203 of the California Labor Code, in amounts to be proven at trial;
12. For general damages including compensatory damages according to proof;
13. For pre-judgment interest as allowed by Labor Code §§218.6 and 1194(a) and Cal. Civil Code §3287 and to the extent permitted by law, the California Constitution, and/or deemed equitable by the Court;
14. For all applicable interest on damages, wages, expenses, and penalties due;
15. For injunctive relief to prevent further violations of the California Labor Code;
16. For declaratory relief that Defendants engaged in unfair practices;
17. For declaratory relief that Defendants violated Labor Code §§ 201-203, 226, 226.7, 510, 512, and 1194;
18. For restitution of all moneys due to Plaintiffs and Class members, and disgorged profits from the unlawful and/or unfair business practices of Defendants, pursuant to California Business & Professions Code §17200;
19. For one (1) hour of pay at each of the employees' regular rate of compensation for each workday that a legally compliant meal break was not provided, impeded, discouraged, and/or dissuaded;
20. For one (1) hour of pay at each of the employees' regular rate of compensation for each workday that a legally compliant rest break was not provided,

Docusign Envelope ID: CB09F04B-DE4D-4BC8-999B-98452EEEB2B3

impeded, discouraged, and/or dissuaded;

21. For costs of suit, expenses and attorneys' fees pursuant to Labor Code §§226(e) and (h), 218.5, 1194(a), 2699(k)(1), Code of Civil Procedure §1021.5, *et seq.*, and all other applicable law;

22. On behalf of Plaintiff and all other aggrieved employees and the LWDA, for all civil penalties authorized by LC §2699, including but not limited to:

a. For civil penalties pursuant to LC §558 as follows:

i. For any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages;

ii. For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages;

b. For civil penalties per Code of Regulations, Title 8 §11010 in the amount of $50 for each aggrieved employee per pay period for the initial violation, and $100 for each aggrieved employee per pay period for each subsequent violation;

c. For civil Penalties under Labor Code §2699(f)(2)(A), in addition to and entirely independent and apart from other penalties provided in the Labor Code and for Labor Code violations without a specific civil penalty, in the amount of $100 for each aggrieved employee per pay period for each violation, or pursuant to Labor Code §2699(f)(2)(B) for $200 for each aggrieved employee per pay period for each violation and;

23. For all such other and further relief that the Court may deem just and proper.

Docusign Envelope ID: CB09F04B-DE4D-4BC8-999B-98452EEEB2B3

Date:

THE MYERS LAW GROUP, A.P.C.

By: _____
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