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FILED
ALAMEDA COUNTY

SEP 08 2021

CLERK OF THE SUPERIOR COURT

By

Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDAFRANK FERNANDEZ, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

CONFLUENT MEDICAL TECHNOLOGIES,
INC., a Delaware corporation; and DOES 1
through 100, inclusive;

Defendants.

Case No. RG19012821

Assigned for All Purposes to:
Honorable Brad Seligman
Department 23**CLASS ACTION****[PROPOSED] REVISED ORDER OF
FINAL APPROVAL AND JUDGMENT****[Reservation ID: R-2252977]**Hearing Date: September 7, 2021
Hearing Time: 3:00 p.m.
Hearing Place: Department 23Complaint Filed: March 28, 2019
FAC Filed: February 22, 2021
Jury Trial: None Set

1 The Court, having read the papers filed regarding Plaintiffs Frank Fernandez's and
2 Debbie Puma's ("Plaintiffs," "Plaintiff Fernandez," and "Plaintiff Puma") Motion for Final
3 Approval of a Class Action Settlement, the Attorney Fee Award, the Cost Award, and the Class
4 Representative Enhancement Payment, and after considering the papers submitted in support of
5 the motion, including the Joint Stipulation and Settlement Agreement ("Settlement Agreement,"
6 "Settlement," or "Agreement"), **HEREBY FINDS AND ORDERS AS FOLLOWS:**

7 This is a putative class action. Plaintiffs are former employees of Defendant Confluent
8 Medical Technologies, Inc. ("Defendant"). The operative complaint in the action asserts ten (10)
9 causes of action for alleged violations of the California Labor Code and Business and
10 Professions Code. Plaintiffs have brought this action on behalf of all current and former
11 California-based hourly-paid or non-exempt employees (either directly or through any staffing
12 agency or labor contractor with the exception of Ryzen Solutions) employed by Defendant at any
13 time during the Class Period ("Class"). The Class Period is the time period from March 28, 2015,
14 to February 3, 2021 ("Class Period"). As of August 6, 2021, there are seven hundred seventy-two
15 (772) members in the Class.¹

16 On April 12, 2021, the Court granted Preliminary Approval of the Settlement. Plaintiffs
17 now move for Final Approval of the Settlement.

18 The terms used in this Order of Final Approval and Judgment shall have the same
19 meaning as defined in the Settlement Agreement except as may otherwise be ordered.

20 The following Class is certified for purposes of settlement only: all current and former
21 California-based hourly-paid or non-exempt employees (either directly or through any staffing
22 agency or labor contractor with the exception of Ryzen Solutions) employed by Defendant at any
23 time during the time period from March 28, 2015, to February 3, 2021.

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27 ¹ Phoenix mailed out Notice Packets to seven hundred seventy-six (776) Class Members and received four (4) valid
28 and timely requests for exclusion. Thus, there are seven hundred seventy-two (772) Participating Class Members.

1 Defendant will pay a Gross Settlement Amount of \$2,500,000 which includes: (1) the
2 Administration Costs in the amount of \$10,250; (2) the Private Attorneys General Act of 2004
3 (“PAGA”) Payment in the sum of \$100,000, seventy-five percent (75%) of which (\$75,000) shall
4 be paid to the California Labor and Workforce Development Agency (“LWDA”) and twenty-five
5 percent (25%) of which (\$25,000) shall be distributed to the aggrieved employees that are
6 eligible to recover Individual PAGA Shares that consist of current and former California-based
7 hourly-paid or non-exempt employees (either directly or through a staffing agency or labor
8 contractor with the exception of Ryzen Solutions) employed or engaged by Defendant between
9 September 24, 2019 through February 3, 2021 (“Eligible Aggrieved Employees,” “PAGA
10 Timeframe,” and “Individual PAGA Share”), on a pro rata basis; (3) a Class Representative
11 Enhancement Payment in the amount \$10,000 to Plaintiff Fernandez; (4) the Attorney Fee
12 Award in a sum not to exceed thirty percent (30%) of the Gross Settlement Amount or \$750,000;
13 and (5) the Cost Award in the sum of \$16,057.59. Defendant’s portion of payroll taxes on the
14 wage portion of the Class Members’ Individual Settlement Payment shall be a separate
15 obligation from the Gross Settlement Amount. No portion of the Gross Settlement Amount will
16 revert to Defendant for any reason. Class Members who do not submit a valid and timely request
17 to exclude themselves from the Settlement (“Participating Class Members”) are not required to
18 submit a claim form to receive their Individual Settlement Shares. There is no reversion.
19 Funding of the Settlement will be made as follows:

20 No later than twenty-one (21) calendar days after the Effective Final Settlement Date,
21 Defendant shall deposit the Gross Settlement Amount of \$2,500,000 needed to pay the entire
22 Gross Settlement Amount by wiring the funds to the Settlement Administrator. In the event there
23 are objectors to the Settlement Agreement, payment shall be made within twenty-one (21)
24 calendar days after the time to appeal has run or all appeals have been exhausted, whichever
25 occurs later. Defendant shall also at this time provide any tax information that the Settlement
26 Administrator may need to calculate each Participating Class Members’ Individual Settlement
27 Share. Afterwards, within fourteen (14) calendar days after the Funding of the Settlement, the
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1 Settlement Administrator shall calculate and pay all payments due under the Settlement
2 Agreement, including all Individual Settlement Shares, the Attorney Fee Award, the Cost Award,
3 the Class Representative Enhancement Payment, the PAGA Payment, and the Administration
4 Costs. The Settlement Administrator will also forward a check for seventy-five percent (75%) of
5 the PAGA Payment to the LWDA for settlement of the PAGA claim.

6 Participating Class Members must cash or deposit their Individual Settlement Share
7 checks within one hundred eighty (180) calendar days after the checks are mailed to them. If any
8 checks are not redeemed or deposited within ninety (90) calendar days after mailing, the
9 Settlement Administrator will send a reminder postcard. If any checks remain uncashed or not
10 deposited by the expiration of the 90-day period after mailing the reminder notice, the Settlement
11 Administrator will, within two hundred (200) calendar days after the checks are mailed, pay the
12 amount of the Individual Settlement Share to Legal Aid at Work, a cy pres designee.

13 Plaintiffs have explained the risks and costs associated with continuing with the litigation
14 and the benefits conferred upon Class Members in the form of immediate compensation.
15 Plaintiffs have satisfactorily assessed the maximum value of the claims and of the reasonableness
16 of the discount accepted in the settlement considering these risks. Finally, the Declaration of the
17 Settlement Administrator, Kevin Lee, states that Notice of Class and Representative Action
18 Settlement ("Class Notices") and the Election Not To Participate In ("Opt Out" From) Class
19 Action Settlement form ("Exclusion Form") (collectively, known as the "Notice Packets") were
20 mailed to seven hundred seventy-six (776) Class Members, and there were no objections to the
21 Settlement and only four (4) timely and valid requests for exclusion from the Settlement. This is
22 further proof of the fairness of the Settlement. Finally, the Declaration of Class Counsel provides
23 sufficient information about counsel's experience in litigating class action lawsuits.

24 The amount of attorney's fees requested by Class Counsel in the sum of \$750,000 is
25 thirty percent (30%) of the common fund created for the benefit of the Class Members and is
26 supported by use of the percentage-fee method. The Court finds that the fee request is
27 reasonable, and it is therefore approved.

1 Consistent with the Court's custom and practice, the Settlement Administrator shall
2 withhold ten percent (10%) of the Attorney Fee Award granted in the amount of \$75,000 in an
3 interest-bearing account, pending the submission and approval of a final compliance status report
4 after completion of the distribution process. The compliance status report must be filed (with a
5 courtesy copy delivered directly to Dept. 23) at least five (5) court days prior to the compliance
6 hearing. A compliance hearing will be set for **July 12, 2022 at 3:00 p.m.** in Department 23.

7 Pursuant to Code of Civil Procedure § 384 the Parties shall submit a compliance status
8 report to the court specifying the total amount paid to class members, and the residual of the
9 unclaimed funds that will be paid to the entity identified as recipients of such funds in the
10 proposed settlement, along with a proposed amended judgment. No later than 5 days after receipt
11 of notice of the entry of the amended judgment, the parties shall submit the amended judgment to
12 the Judicial Council, pursuant to Code of Civil Procedure § 384.5, and shall file a proof of
13 service with this court confirming this.

14 The Court has also reviewed Class Counsel's declarations regarding the costs expended
15 in the prosecution of this litigation. Under the terms of the settlement, Plaintiffs may seek
16 reimbursement of up to \$30,000 in litigation costs. The Court finds that Plaintiffs have expended
17 \$16,057.59 in litigation costs and that such costs were reasonable. Therefore, the Court approves
18 the payment of the Cost Award in the amount of \$16,057.59 from the Gross Settlement Amount
19 for the reimbursement of Class Counsel's litigation costs.

20 The Court has reviewed the Declaration of Plaintiff Fernandez, which outlines his
21 involvement in the lawsuit. Given the risks inherent in service as the Class Representative, the
22 duration of the case and time involved, and the benefits created for the Class, the Court approves
23 a Class Representative Enhancement Payment in the amount of \$10,000 to Plaintiff Fernandez.

24 The Court has reviewed the Declaration of Kevin Lee, the Case Manager for Phoenix
25 Class Action Administration Solutions ("Phoenix"), the Court-approved Settlement
26 Administrator. The Court finds that notice was provided to the Class pursuant to the Preliminary
27 Approval Order, and that notice was sufficient and that it satisfies due process. Phoenix has
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1 discharged its duties to provide notice to the Class and approves a payment of Administration
2 Costs in the amount of \$10,250 for its services in administering this settlement, including the
3 mailing of settlement awards according to the terms of the Settlement Agreement.

4 As of the Effective Final Settlement Date, the claims from which Plaintiffs and the other
5 Participating Class Members are releasing the Released Parties in exchange for the consideration
6 provided by the Agreement are all claims, demands, rights, liabilities, and/or causes of action,
7 known and unknown, which were pleaded in the Class Action or could have been pleaded based
8 upon the factual allegations set forth in the Complaint filed in this Class Action and arising
9 during the Class Period, including but not limited to claims for: (1) failure to pay overtime; (2)
10 failure to provide meal breaks; (3) failure to authorize and permit rest breaks 4) failure to pay
11 minimum wages; (5) failure to timely pay final wages; (6) failure to comply with itemized
12 employee wage statement provisions; (7) failure to reimburse business expenses; and (8)
13 violation of the Unfair Competition Law. The foregoing release only applies to a Class Member
14 during periods of time when he or she was a Class Member (i.e., excluding any periods of time
15 during the Class Period during which the Class Member held an exempt position) (“Released
16 Non-PAGA Claims”). Moreover, the Released PAGA Claims are those claims from which
17 Plaintiffs on behalf of themselves, the State of California and Class Members, are fully and
18 irrevocably releasing the Released Parties, including: all claims, known and unknown, for PAGA
19 civil penalties that were stated or could have been stated based on the facts alleged in the
20 Complaint, including but not limited to claims for PAGA civil penalties based on alleged
21 violations of California Labor Code 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, 203, 204, 205.5,
22 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1194.2, 1197,
23 1197.1, 1198, 1199, 2800 and 2802, the IWC Wage Orders, and all derivative claims for interest,
24 attorneys’ fees, costs and other amounts recoverable under PAGA. The period of the Released
25 PAGA Claims shall be September 24, 2019 through February 3, 2021 (“Released PAGA
26 Claims”). The Released Parties include Defendant; each of the Defendant’s respective past,
27 present, and future parent companies, subsidiaries, affiliates, principals, and divisions; any other
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1 person, corporation, association or partnership responsible or potentially responsible for any
2 claims made or that could have been made in the class litigation, including any individual or
3 entity which could be determined to be jointly liable with Defendant; and the past, present and
4 future shareholders, directors, officers, agents, employees, heirs, representatives, accountants,
5 auditors, consultants, attorneys, insurers and reinsurers, predecessors, and successors and assigns
6 of any of the foregoing ("Released Parties").

7 Defendant makes no admission of liability or wrongdoing by virtue of entering the
8 Agreement. Additionally, Defendant reserves the right to contest any issues relating to class
9 certification and liability if the Settlement is not approved. Defendant denies that it has engaged
10 in any unlawful activity, has failed to comply with the law in any respect, has any liability to
11 anyone under the claims asserted in the Class Action, or that but for the Settlement, a Class
12 should be certified in the Class Action. The Agreement is entered into solely for the purpose of
13 compromising highly disputed claims. Nothing in the Agreement is intended or will be construed
14 as an admission by Defendant of liability or wrongdoing. The Settlement and Plaintiffs' and
15 Defendant's willingness to settle the Class Action will have no bearing on, and will not be
16 admissible in connection with, any litigation, administrative proceeding, or other special
17 proceeding (other than solely in connection with the Settlement).

18 For the reasons set forth above, the Motion for Final Approval of Class Action
19 Settlement, the Attorney Fee Award, the Cost Award, and the Class Representative Enhancement
20 Payment is GRANTED. The Settlement Administrator is directed to carry out the terms of the
21 Settlement Agreement forthwith.

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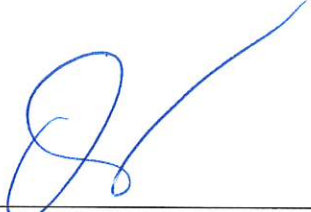
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1 THE PARTIES ARE HEREBY ORDERED TO COMPLY WITH THE TERMS OF
2 THE SETTLEMENT AGREEMENT. PURSUANT TO CALIFORNIA RULES OF COURT
3 3.769, THE COURT HEREBY ENTERS FINAL JUDGMENT BASED UPON THE TERMS
4 OF THIS ORDER AND SETTLEMENT AGREEMENT AND, WITHOUT AFFECTING THE
5 FINALITY OF THIS MATTER, RETAINS EXCLUSIVE AND CONTINUING
6 JURISDICTION TO ENFORCE THIS ORDER, THE SETTLEMENT AGREEMENT, AND
7 THE JUDGMENT THEREON.

8 IT IS SO ORDERED.

9
10 DATED: 9/8/21



HONORABLE BRAD SELIGMAN
SUPERIOR COURT JUDGE

**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, California 91103 and my electronic service address is aokada@justicelawcorp.com

On September 9, 21, I served the foregoing document described as

REVISED ORDER OF FINAL APPROVAL AND JUDGMENT

for the following case: **Fernandez v. Confluent Medical Technologies, Inc.**
LWDA/Court Case No.: **LWDA-CM-807621-20**
RG19012821
Alameda County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 9, 2021, at Pasadena, California.



Anna Okada