

JOINT STIPULATION AND SETTLEMENT AGREEMENT

Subject to final approval by the Court, this Settlement Agreement is between Plaintiffs Frank Fernandez and Debbie Puma (“Plaintiffs”) and Defendant Confluent Medical Technologies, Inc. (“Defendant”). Plaintiffs and Defendant collectively are referred to in this Agreement as the “Parties.”

I. DEFINITIONS

In addition to the other terms defined in this Agreement, the terms below have the following meaning:

- A. **Administration Costs**: The costs to be incurred by the Settlement Administrator to administer this Settlement, which are currently estimated at \$18,500 and shall not exceed \$25,000. All Administration Costs shall be paid from the Qualified Settlement Fund.
- B. **Agreement, Settlement Agreement, Joint Stipulation, or Settlement**: The settlement agreement reflected in this document, titled “Joint Stipulation and Settlement Agreement.”
- C. **Attorney Fee Award**: The amount, not to exceed 35% of the Gross Settlement Amount or \$875,000, finally approved by the Court and awarded to Class Counsel. The Attorney Fee Award shall be paid from the Qualified Settlement Fund and will not be opposed by Defendant.
- D. **Case or Class Action**: The lawsuit filed by Plaintiff Frank Fernandez on March 28, 2019 entitled *Frank Fernandez v. Confluent Medical Technologies, Inc.*, Case No. RG19012821 in the State of California, Alameda County Superior Court.
- E. **Class**: All current and former California-based hourly-paid or non-exempt employees (either directly or through any staffing agency or labor contractor with the exception of Ryzen Solutions) employed by Defendant at any time during the Class Period.
 - i. Defendant represents that, as of November 13, 2020, there are approximately 809 Class Members who worked approximately 114,147 workweeks during the Class Period.
- F. **Class Counsel**: Douglas Han, Shunt Tatavos-Gharajeh, and Areen Babajanian of Justice Law Corporation.
- G. **Class Member**: Each person eligible to participate in this Settlement who is a member of the Class as defined above.

- H. **Class Notice or Notice:** The Notice of Class Action Settlement, substantially similar to the form attached hereto as **Exhibit A**, subject to Court approval.
- I. **Class Period:** The time period from March 28, 2015 to February 3, 2021 or the date of Preliminary Approval, whichever date is earlier.
- J. **Class Representative:** Frank Fernandez.
- K. **Class Representative Enhancement Payment:** The amount the Court awards to Plaintiff Frank Fernandez for his services as a Class Representative, which will not exceed \$10,000 each. This payment shall be paid from the Qualified Settlement Fund and will not be opposed by Defendant. This enhancement is subject to approval of the Court. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
- L. **Complaint:** The First Amended Complaint filed in [January 2021] by Plaintiffs Frank Fernandez and Debbie Puma in the case entitled *Frank Fernandez et al. v. Confluent Medical Technologies, Inc.*, Case No. RG19012821 in the State of California, Alameda County Superior Court.
- M. **Cost Award:** The amount that the Court awards Class Counsel for payment of actual litigation costs, which shall not exceed \$30,000. The Cost Award will be paid from the Qualified Settlement Fund and will not be opposed by Defendant. The Cost Award is subject to Court approval. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
- N. **Counsel for Defendant:** Attorney Stephen Tausch of Goodwin Procter LLP.
- O. **Court:** The State of California, Alameda County Superior Court.
- P. **Defendant:** Confluent Medical Technologies, Inc.
- Q. **Effective Final Settlement Date:** The effective date of this Settlement will be when the final approval of the settlement can no longer be appealed, or, if there are no objectors and no Plaintiffs in intervention at the time the Court grants final approval of the settlement, the date the court enters judgment granting final approval of the settlement. If a notice of appeal is filed, the Effective Final Settlement Date will be the date upon which all appellate and/or other proceedings resulting from the notice of appeal have been finally terminated in such a manner as to permit Final Approval and the Judgment to take effect in substantially the form described herein.
- R. **Eligible Aggrieved Employees:** The aggrieved employees eligible to recover the Individual PAGA Shares shall consist of current and former California-

based hourly-paid or non-exempt employees (either directly or through a staffing agency or labor contractor with the exception of Ryzen Solutions) employed or engaged by Defendant between September 24, 2019 through February 3, 2021 or the date of Preliminary Approval, whichever date is earlier (“PAGA Timeframe”).

- S. **Exclusion Form:** The Election Not To Participate or Opt-out Form, substantially similar to the form attached hereto as **Exhibit B**, subject to Court approval.
- T. **Judgment or Final Approval:** The final order entered by the Court finally approving this Agreement.
- U. **Gross Settlement Amount or GSA:** The total value of the Settlement is a non-reversionary Two Million Five Hundred Thousand Dollars and Zero Cents (\$2,500,000). This is the maximum gross amount Defendant can be required to pay under this Settlement Agreement, which includes without limitation: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) Attorney Fee Award and Cost Award to Class Counsel for attorneys’ fees and costs, as approved by the Court; (3) the Class Representative Enhancement payment paid to the Class Representatives, as approved by the Court; (4) Administration Costs, as approved by the Court; and (5) the PAGA Payment to the LWDA and to Eligible Aggrieved Employees, as approved by the Court. Defendant’s portion of payroll taxes on the wage portion of the Class Members’ Individual Settlement Payment shall be a separate obligation from the Gross Settlement Amount. No portion of the Gross Settlement Amount will revert to Defendant for any reason.
- V. **Individual PAGA Share(s):** The amount payable to each Eligible Aggrieved Employee for settlement of PAGA claims, under the terms of this Settlement Agreement.
- W. **Individual Settlement Share(s):** The amount payable to each Participating Class Member from the Net Settlement Amount under the terms of this Settlement Agreement. Participating Class Members are not required to submit a claim form to receive their Individual Settlement Shares pursuant to this Agreement. Rather, Participating Class Members will receive an Individual Settlement Share automatically, without the return of a claim form.
- X. **LWDA:** California Labor and Workforce Development Agency.
- Y. **Net Settlement Amount or NSA:** The total amount of money available for payout to Participating Class Members, which is the GSA less the Attorney Fee Award, Cost Award, Class Representative Enhancement, the portion of the PAGA Payment paid to the LWDA and Eligible Aggrieved Employees, and Administration Costs. In other words, the NSA is the portion of the GSA that

will be distributed to Class Members who do not request exclusion from the Settlement.

- Z. PAGA:** The California Labor Code Private Attorneys General Act of 2004 (Cal. Labor Code §§ 2698 *et seq.*).
- AA. PAGA Payment:** The PAGA Payment consists of \$100,000 of the Gross Settlement Amount allocated to satisfy the PAGA penalties claim as alleged in the First Amended Complaint. Seventy-five percent (75%) of the PAGA Payment (\$75,000) shall be paid to the LWDA, and twenty-five percent (25%) (\$25,000) of the PAGA Payment shall be distributed to Eligible Aggrieved Employees, on a pro rata basis, as set forth below.
- BB. Participating Class Members:** All Class Members who do not submit a valid and timely request to exclude themselves from this Settlement.
- CC. Parties:** Frank Fernandez individually and as Class Representative, Debbie Puma individually and as proposed PAGA Representative, and Defendant Confluent Medical Technologies, Inc.
- DD. Plaintiffs:** Frank Fernandez and Debbie Puma.
- EE. Preliminary Approval or Preliminary Approval Order:** The Court's order preliminarily approving the proposed Settlement.
- FF. Qualified Settlement Fund or QSF:** A fund within the meaning of Treasury Regulation § 1.46B-1, 26 C.F.R. § 1.468B-1 *et seq.*, that is established by the Settlement Administrator for the benefit of Participating Class Members, Plaintiffs and Class Counsel.
- GG. Released Non-PAGA Claims:** As of the Effective Final Settlement Date, the claims that Plaintiffs and the other Participating Class Members are releasing in exchange for the consideration provided for by this Agreement are all claims, demands, rights, liabilities, and/or causes of action, known and unknown, which were pleaded in the Action or could have been pleaded based upon the factual allegations set forth in the Complaint filed in this Action and arising during the Class Period, including but not limited to claims for 1) failure to pay overtime; 2) failure to provide meal breaks; 3) failure to authorize and permit rest breaks 4) failure to pay minimum wages; 5) failure to timely pay final wages; 6) failure to comply with itemized employee wage statement provisions; 7) failure to reimburse business expenses; and 8) violation of the Unfair Competition Law. The foregoing release only applies to a Class Member during periods of time when he or she was a Class Member (i.e., excluding any periods of time during the Class Period during which the Class Member held an exempt position).

- HH. Released PAGA Claims:** The Released PAGA Claims are those claims from which Plaintiffs on behalf of themselves, the State of California and Class Members, are fully and irrevocably releasing the Released Parties, including: all claims, known and known, for PAGA civil penalties that were stated or could have been stated based on the facts alleged in the Complaint, including but not limited to claims for PAGA civil penalties based on alleged violations of California Labor Code 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, 203, 204, 205.5, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800 and 2802, the IWC Wage Orders, and all derivative claims for interest, attorneys' fees, costs and other amounts recoverable under PAGA. The period of the Released PAGA Claims shall be September 24, 2019 through February 3, 2021 or the date of Preliminary Approval, whichever date is earlier.
- II. Released Parties:** Defendant; each of the Defendant's respective past, present, and future parent companies, subsidiaries, affiliates, principals, and divisions; any other person, corporation, association or partnership responsible or potentially responsible for any claims made or that could have been made in the class litigation, including any individual or entity which could be determined to be jointly liable with Defendant; and the past, present and future shareholders, directors, officers, agents, employees, heirs, representatives, accountants, auditors, consultants, attorneys, insurers and reinsurers, predecessors, and successors and assigns of any of the foregoing.
- JJ. Representative Plaintiff:** Debbie Puma.
- KK. Response Deadline:** Sixty (60) calendar days from the initial mailing of the Notice.
- LL. Settlement Administration:** The Settlement Administrator will conduct a National Change of Address Database search for the address of all former employee Class Members. The Settlement Administrator will mail the Notice by first class U.S. mail to all Class Members at the address Defendant has on file for those Class Members and to all former employee Class Members at the address resulting from the NCOA database search. The Notice will inform Class Members that they have until the Response Deadline to either object to the Settlement or to opt-out of the Settlement. Any Class Member who does not receive Notice after the steps outlined above have been taken will still be bound by the Settlement and/or Judgment.
- MM. Settlement Administrator:** The third party administrator agreed upon by Parties to administer this Settlement is Phoenix Class Action Administration Solutions
- NN. Superior Court:** The State of California, Alameda County Superior Court.

II. RECITALS

- A. Prior to the mediation attended by the Parties on September 2, 2020 before mediator Mark S. Rudy, the Parties conducted significant investigation and discovery of the facts and law both before and after the Class Action was filed. Prior to mediation, Defendant produced hundreds of documents relating to its policies, practices, and procedures regarding reimbursement of business expenses, paying non-exempt employees for all hours worked, meal and rest period policies, and payroll and operational policies. As part of Defendant's production, Plaintiffs also reviewed time records, pay records, and information relating to the size and scope of the Class, as well as data permitting Plaintiffs to understand the number of workweeks in the Class Period. Plaintiffs also interviewed dozens of Class Members who worked for Defendant throughout the Class Period. The Parties agree that the above-described investigation and evaluation, as well as the information exchanged during the settlement negotiations, are more than sufficient to assess the merits of the respective Parties' positions and to compromise the issues on a fair and equitable basis.
- B. **Benefits of Settlement to Class Members.** Plaintiffs and Class Counsel recognize the expense and length of continued proceedings necessary to continue the litigation against Defendant through class certification and trial and through any possible appeals. Plaintiffs and Class Counsel also have taken into account the uncertainty and risk of further litigation, the potential outcome, and the difficulties and delays inherent in such litigation. Plaintiffs and Class Counsel have conducted extensive settlement negotiations, including formal mediation on September 22, 2020. Based on the foregoing, Plaintiffs and Class Counsel believe the Settlement set forth in this Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the Class Members.
- C. **Defendant's Reasons for Settlement.** Defendant recognizes that the defense of this litigation will be protracted and expensive. Substantial amounts of time, energy, and resources of Defendant have been and, unless this Settlement is made, will continue to be devoted to the defense of the claims asserted by Plaintiffs. Defendant, therefore, has agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the Released Non-PAGA Claims and the Released PAGA Claims.
- D. **Defendant's Denial of Wrongdoing.** Defendant generally and specifically denies any and all liability or wrongdoing of any sort with regard to any of the claims alleged, makes no concessions or admissions of liability of any sort, and contends that for any purpose other than settlement, the Class Action is not appropriate for class treatment. Defendant asserts a number of defenses to the claims, and has denied any wrongdoing or liability arising out of any of the alleged facts or conduct in the Class Action. Neither this Agreement, nor any document referred to or contemplated herein, nor any action taken to carry out this Agreement, is or may be construed as, or may be used as an admission,

concession, or indication by or against Defendant or any of the Released Parties of any fault, wrongdoing, or liability whatsoever. Nor should the Agreement be construed as an admission that Plaintiffs can serve as an adequate Class Representatives. There has been no final determination by any court as to the merits of the claims asserted by Plaintiffs against Defendant or as to whether a class or classes should be certified. Under this Agreement, Defendant consents to certification by the Court of the Class for settlement purposes only.

- E. Plaintiffs' Claims.** Plaintiffs assert that Defendant's defenses are without merit. Neither this Agreement nor any documents referred to or contemplated herein, nor any action taken to carry out this Agreement is, may be construed as, or may be used as an admission, concession or indication by or against Plaintiffs, Class Members, or Class Counsel as to the merits of any claims or defenses asserted, or lack thereof, in the Class Action. However, in the event that this Settlement is finally approved by the Court, none of Plaintiffs, Class Members, or Class Counsel will oppose Defendant's efforts to use this Agreement to prove that Plaintiffs and Class Members have resolved and are forever barred from re-litigating the Released Non-PAGA Claims, the Released PAGA Claims, or Plaintiff Fernandez's released claims.

III. SETTLEMENT TERMS AND CONDITIONS

- A. Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the maximum Gross Settlement Amount that Defendant shall be obligated to pay under this Settlement Agreement is Two Million Five Hundred Thousand Dollars and Zero Cents (\$2,500,000).
- B. Notice to the Labor and Workforce Development Agency ("LWDA").** On September 24, 2020, Plaintiff Debbie Puma filed and served her Notice of Labor Code Violations Pursuant to Labor Code Section 2699.3. Thus, notice obligations under the PAGA have been satisfied.
- C. Filing of First Amended Complaint.** Solely for the purposes of this Settlement, the Parties stipulated and agreed to the filing of the First Amended Complaint. The Parties agree that, in the event this Settlement does not become final, that the First Amended Complaint will become null and void.
- D. Class Certification.** Solely for the purposes of this Settlement, the Parties stipulate and agree to certification of the claims asserted on behalf of Class Members. As such, the Parties stipulate and agree that in order for this Settlement to occur, the Court must certify the Class as defined in this Agreement for the sole purposes of settling this matter. Should the Court not approve either the Class or PAGA portions of the settlement, no inference regarding the suitability for Class or PAGA treatment shall be taken from this Agreement.

- E. Conditional Nature of Stipulation for Certification.** The Parties stipulate and agree to the certification of the claims asserted on behalf of Plaintiffs and Class Members for purposes of this Settlement only. If the Settlement does not become effective, the fact that the Parties were willing to stipulate to certification as part of the Settlement shall not be admissible or used in any way in connection with, the question of whether the Court should certify any claims in a non-settlement context in this Class Action or in any other lawsuit. If the Settlement does not become effective, Defendant reserves the right to contest any issues relating to class certification and liability.
- F. Appointment of Class Representative and Representative Plaintiff.** Solely for the purposes of this Settlement, the Parties stipulate and agree Plaintiff Fernandez shall be appointed as the Class Representative and Plaintiff Puma shall be appointed as the Representative Plaintiff..
- G. Appointment of Class Counsel.** Solely for the purpose of this Settlement, the Parties stipulate and agree that the Court appoint Class Counsel to represent the Class.
- H. Individual Settlement Share Calculation.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay an Individual Settlement Share from the Net Settlement Amount for settlement of non-PAGA claims to each Participating Class Member. Each Participating Class Member will receive a proportionate share of the Net Settlement Amount that is equal to (i) the number of weeks he or she was actively employed as a non-exempt employee during the respective Class Periods based on the Class data provided by Defendant, divided by (ii) the total number of weeks any and all Class Members in the Class were actively employed during the Class Period based on the same Class data, which is then multiplied by the Net Settlement Amount. One day worked in a given week will be credited as a week for purposes of this calculation. Therefore, the value of each Participating Class Member's Individual Settlement Share ties directly to the number of weeks that he or she was actively employed during the Class Period.
- I. Individual PAGA Share Calculation.** Subject to the terms and conditions of this Agreement, the Settlement Administrator shall pay an Individual PAGA Share to each Eligible Aggrieved Employee from the portion of the PAGA Payment allocated to Eligible Aggrieved Employees (i.e., \$25,000) for settlement of PAGA claims. The Individual PAGA Share will be calculated according to the following methodology: (i) \$25,000 will be divided by the aggregate number of pay periods that Eligible Aggrieved Employees were actively employed during the PAGA Timeframe, based on the Class data provided by Defendant; and (ii) for each Eligible Aggrieved Employee, that quotient will be multiplied by such Eligible Aggrieved Employee's total number of pay periods actively employed during the PAGA Timeframe to determine the amount of such individual's Individual PAGA Share. Therefore, the value of each Eligible Aggrieved Employee's Individual

PAGA Share ties directly to the number of pay periods that he or she was actively employed during the PAGA Timeframe.

J. Tax Withholdings. Each Participating Class Member's Individual Settlement Share will be apportioned as follows: one-third as wages and two-thirds as interest, penalties, and reimbursements. Each Eligible Aggrieved Employee's Individual PAGA Share will be treated as penalties. The amounts paid as wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported by W-2 forms. Payment of all amounts will be made subject to backup withholding unless a duly executed W-9 form is received from the payee(s). The amounts paid as penalties and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported on IRS 1099 forms. The employees' share of payroll tax withholdings shall be withheld from each persons' Individual Settlement Share.

K. Settlement Disbursement. Subject to the terms and conditions of this Agreement, the Settlement Administrator will make the following payments out of the Gross Settlement Amount:

- 1. To the Class Representative.** In addition to his respective Individual Settlement Share, and subject to the Court's approval, Plaintiff Fernandez will receive up to Ten Thousand Dollars and Zero Cents (\$10,000) as a Class Representative Enhancement Payment. The Settlement Administrator will pay the Class Representative Enhancement Payment out of the Qualified Settlement Fund. An IRS Form 1099 will be issued to Plaintiff Fernandez with respect to his Class Representative Enhancement Payment. In the event the Court does not approve the entirety of the application for the Class Representative Enhancement Payment, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendant nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Plaintiffs, the difference shall become part of the NSA and be available for distribution to Participating Class Members.
- 2. To Class Counsel.** Class Counsel will apply to the Court for, and Defendant agrees not to oppose, a total Attorney Fee Award not to exceed thirty-five percent (35%) or \$875,000 of the GSA and a Cost Award not to exceed \$30,000. The Settlement Administrator will pay the court-approved amounts for the Attorney Fee Award and Cost Award out of the Gross Settlement Fund. The Settlement Administrator may purchase an annuity to utilize US treasuries and bonds or other attorney fee deferral vehicles for Class Counsel. Payroll tax withholding and deductions will not be taken from the Attorney Fee Award or the Cost Award. IRS Forms 1099 will be

issued to Class Counsel with respect to these payments. In the event the Court does not approve the entirety of the application for the Attorney Fee Award and/or Cost Award, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendant nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Class Counsel for the Attorney Fee Award and/or Cost Award, the difference shall become part of the NSA and be available for distribution to Participating Class Members.

- 3. To the Responsible Tax Authorities.** The Settlement Administrator will pay the amount of the Participating Class Members' portion of normal payroll withholding taxes out of each person's Individual Settlement Share. The Settlement Administrator will calculate the amount of the Participating Class Members' and Defendant's portion of payroll withholding taxes and pay those amounts from the GSA. The Settlement Administrator will submit Defendant's portion of payroll withholding tax and forward those amounts along with each person's Individual Settlement Share withholdings to the appropriate taxing authorities.
- 4. To the Settlement Administrator.** The Settlement Administrator - Phoenix Class Action Administration Solutions - will pay to itself Administration Costs (reasonable fees and expenses) approved by the Court not to exceed \$25,000. These Administration Costs will be paid out of the Qualified Settlement Fund. If the actual amount of Administration Costs is less than the amount estimated and/or requested, the difference shall become part of the NSA and be available for distribution to Participating Class Members.
- 5. To Class Members.** The Settlement Administrator will pay Participating Class Members according to the Individual Settlement Share calculations set forth above. All payments to Participating Class Members shall be made from the Qualified Settlement Fund.
- 6. To Eligible Aggrieved Employees.** The Settlement Administrator shall pay each Eligible Aggrieved Employee according to the Individual PAGA Share calculations set forth above.

L. Appointment of Settlement Administrator. Solely for the purposes of this Settlement, the Parties stipulate and agree that Phoenix Class Action Administration Solutions shall be retained to serve as Settlement Administrator. The Settlement Administrator shall be responsible for preparing, printing, and mailing the Notice to the putative Class Members; keeping track of any objections or requests for exclusion from Class Members; performing skip traces and remailing Notices and Individual Settlement Shares to Class Members; calculating any and all payroll tax deductions as required by law; calculating each Class

Member's Individual Settlement Share; providing weekly status reports to Defendant's Counsel and Class Counsel, which is to include updates on any objections or requests for exclusion that have been received; providing a due diligence declaration for submission to the Court prior to the Final Approval hearing; mailing Individual Settlement Shares to Participating Class Members; calculating and mailing the PAGA Payment to the LWDA and Eligible Aggrieved Employees; distributing the Attorney Fee Award and Cost Award to Class Counsel; printing and providing Class Members and Plaintiffs with W-2s and 1099 forms as required under this Agreement and applicable law; providing a due diligence declaration for submission to the Superior Court upon the completion of the Settlement; providing any funds remaining in the QSF as a result of uncashed checks to a cy pres designee, Legal Aid at Work,, including the administration of related tax reimbursements; and for such other tasks as the Parties mutually agree. The Parties each represent that they do not have any financial interest in Phoenix Class Action Administration Solutions or otherwise have a relationship with Phoenix Class Action Administration Solutions that could create a conflict of interest.

M. Tax Liability. The Parties make no representations as to the tax treatment or legal effect of the payments specified herein, and Class Members are not relying on any statement or representation by the Parties, Class Counsel or Defendant's Counsel in this regard. Class Members and Class Counsel understand and agree that they shall be responsible for the payment of all taxes and penalties assessed on the payments specified herein, and shall hold the Parties, Class Counsel and Defendant's Counsel free and harmless from and against any claims resulting from treatment of such payments as non-taxable, including the treatment of any such payments or portions thereof as not subject to withholding or deduction for payroll and employment taxes.

N. 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 advisors, 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 U.S. Treasury Dept. Circular 230 (31 C.F.R. 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 advisor to any Other Party to avoid any tax penalty that may be imposed on the Acknowledging Party; and
- (3) No attorney or advisor 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 any transaction contemplated by this Agreement.

O. Procedure for Approving Settlement.

1. Motion for Preliminary Approval and Conditional Certification.

- a.** Plaintiffs will move for an order conditionally certifying the Class for settlement purposes only, giving Preliminary Approval of the Settlement, setting a date for the Final Approval hearing, and approving the Class Notice and Exclusion Form. Class counsel will submit to Defendant's counsel for approval, at least five court days in advance of filing, drafts of Motion for Preliminary Approval, the Class Notice and Exclusion Form ("Notice Packets") to Class Members. In compliance with Section 2699(1)(2) of the California Labor Code, Plaintiffs shall submit this Agreement to the Labor and Workforce Development Agency at the same time it is submitted to the Court.
- b.** At the Preliminary Approval hearing, the Plaintiffs will appear, support the granting of the motion, and submit a proposed order granting conditional certification of the Class and preliminary approval of the Settlement; appointing the Class Representatives, Class Counsel, and Settlement Administrator; approving the Class Notice; and setting the Final Approval hearing.
- c.** Should the Court decline to conditionally certify the Class or to preliminarily approve all material aspects of the Settlement, the Settlement will be null and void, and the Parties will have no further obligations under it. Provided, however, that the amounts of the Attorney Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement shall be determined by the Court, and the Court's determination on these amounts shall be final and binding, and that the Court's approval or denial of any amount requested for these items are not conditions of this Settlement Agreement, and are to be considered separate and apart from the fairness, reasonableness, and adequacy of the Settlement. Any order or proceeding relating to an application for the Attorney Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement shall not operate to terminate or cancel this Settlement Agreement.

- 2. Notice to Class Members.** After the Court enters its Preliminary Approval Order, every Class Member will be sent the Class Notice in accordance with the following procedure:

- a. Within thirty (30) calendar days after entry of the Preliminary Approval Order, Defendant shall deliver to the Settlement Administrator an electronic database, which will list for each Class Member: (1) first and last name; (2) last known mailing address; (3) social security number; and (4) the total number of weeks during which the Class Member was actively employed during the Class Period as a member of the Class. (“Database”). If any or all of this information is unavailable to Defendant, Defendant will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon how to deal with the unavailable information. The Settlement Administrator will conduct a skip trace for the address of all former Defendant employee Class Members. The Database shall be based on Defendant’s payroll, personnel, and other business records. The Settlement Administrator shall maintain the Database and all data contained within the Database as private and confidential other than to use it to effectuate the terms of this Settlement.
- b. Within fourteen (14) calendar days after the receipt of the Class Member Database, the Settlement Administrator will mail the Class Notice to all identified Class Members via first-class regular U.S. Mail, using the mailing address information provided by Defendant and the results of the skip trace performed on all former Defendant employee Class Members.
- c. If a Class Notice is returned because of an incorrect address, within ten (10) days from receipt of the returned Notice, the Settlement Administrator will conduct a search for a more current address for the Class Member and re-mail the Class Notice to the Class Member. The Settlement Administrator will use the National Change of Address Database and skip traces to attempt to find the current address. The Settlement Administrator will be responsible for taking reasonable steps to trace the mailing address of any Class Member for whom a Class Notice is returned by U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to Class Members for whom new addresses are found. If the Settlement Administrator is unable to locate a better address, the Class Notice shall be re-mailed to the original address. If the Class Notice is re-mailed, the Settlement Administrator will note for its own records the date and address of each re-mailing. Those Class Members who receive a re-mailed Class Notice, whether by skip-trace or

forwarded mail, will have an additional ten (10) days to postmark an Exclusion Form, or file, serve an objection to the Settlement, or dispute the days worked. The Settlement Administrator shall mark on the envelope whether the Class Notice is a re-mailed notice.

- d. Class Members may dispute the information provided in their Class Notice, but must do so in writing, via first class mail, and it must be postmarked by the Response Deadline. To the extent Class Members dispute the number of weeks to which they have been credited or the amount of their Individual Settlement Share, Class Members must produce evidence to the Settlement Administrator showing that such information is inaccurate. Absent evidence rebutting Defendant's records, Defendant's records will be presumed determinative. However, if a Class Member produces evidence to the contrary, the Settlement Administrator will evaluate the evidence submitted by the Class Member and will make the final decision as to the number of eligible weeks that should be applied and/or the Individual Settlement Share to which the Class Member may be entitled. However, the Settlement Administrator's determination shall be subject to review by Class Counsel, Defendant's Counsel and the Court. Any dispute not resolved by the Settlement Administrator or the Parties concerning the administration of the Settlement shall be resolved by the Court.
- e. Class Members who do not submit a valid and timely Exclusion Form on or before the Response Deadline shall be bound by all terms of the Settlement and the Final Order and Judgment entered in this Action if the Settlement is finally approved by the Court.
- f. If any Exclusion Form received is incomplete or deficient, the Settlement Administrator shall send a letter informing the Class Member of the deficiency and allow fourteen (14) days to cure the deficiency. If after the cure period the Exclusion Form is not cured, it will be determined that the Class Member did not exclude himself or herself from the Settlement and he or she will be bound by the Settlement.
- g. The Settlement Administrator shall provide a weekly status report to the Parties. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defendant's Counsel of the number of Notice Packets mailed, the number of Notice Packets returned as undeliverable, the number of Notice Packets re-mailed, and the number of Exclusion Forms received.

- h. No later than fourteen (14) calendar days after the Response Deadline, the Settlement Administrator will serve on the Parties a declaration of due diligence setting forth its compliance with its obligations under this Agreement. The declaration from the Settlement Administrator shall also be filed with the Court by Class Counsel no later than ten (10) calendar days before the Final Approval hearing. Before the Final Approval hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.
3. **Objections to Settlement.** The Class Notice will provide that the Class Members who wish to object to the Settlement may do so in writing, signed, dated, and mailed to the Settlement Administrator postmarked no later than the Response Deadline.
- a. **Format.** Any Objections shall be signed by the Class Member and shall state: (a) the objecting person's full name, address, telephone number, and the last four digits of the Class Member's Social Security Number; (b) the words "Notice of Objection" or "Formal Objection;" (c) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (d) list identifying witness(es) the objector may call to testify at the Final Approval hearing; (e) state whether the Class Member intends to appear at the Final Approval hearing; and (f) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval hearing.
- b. **Notice of Intent to Appear.** Class Members who file objections to the Settlement may (but are not required to) appear at the Final Approval Hearing, either in person or through the objector's own counsel.
4. **Request for Exclusion from the Settlement ("Opt-Out").** The Class Notice will provide that Class Members who wish to exclude themselves from the Settlement must mail to the Settlement Administrator an Exclusion Form. The written request for exclusion must: (a) include the Class Member's name, address, and last four digits of the social security number; (b) be addressed to the Settlement Administrator; (c) be signed by the Class Member or his or her lawful representative; and (d) be postmarked no later than the Response Deadline. Any Class Member who timely and properly requests to be excluded from the Settlement shall not be entitled to any benefits under the Settlement and shall not be bound by the terms of the Settlement, nor shall the Class Member have any right to object to the Settlement or appeal from the entry of the final order and Judgment.

- a. Confirmation of Authenticity.** If there is a question about the authenticity of a signed request for exclusion, the Settlement Administrator may demand additional proof of the Class Member's identity. Any Class Member who returns a timely, valid, and executed Exclusion Form will not participate in or be bound by the Settlement and Judgment and will not receive an Individual Settlement Share. A Class Member who does not complete and mail a timely Exclusion Form will automatically be included in the Settlement, will receive an Individual Settlement Share, and be bound by all terms and conditions of the Settlement, if the Settlement is approved by the Court, and by the Judgment, regardless of whether he or she has objected to the Settlement.
- b. Report.** No later than seven (7) calendar days after the Response Deadline, the Settlement Administrator will provide the Parties with a complete and accurate accounting of the number of Notices mailed to Class Members, the number of Notices returned as undeliverable, the number of Notices re-mailed to Class Members, the number of re-mailed Notices returned as undeliverable, the number of Class Members who objected to the Settlement and copies of their submitted objections, the number of Class Members who returned valid requests for exclusion, and the number of Class Members who returned invalid requests for exclusion.
- c. Defendant's Option to Terminate.** If more than three percent (3%) of the Class Members submit Exclusion Forms, Defendant, at its sole option, may withdraw from the Settlement and this Agreement is null and void.

5. No Solicitation of Objection or Requests for Exclusion. Neither the Parties nor their respective counsel will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, request exclusion from the Settlement, or appeal from the Judgment.

6. Motion for Final Approval.

- a.** Class Counsel will file unopposed motions and memorandums in support thereof for Final Approval of the Settlement and the following payments in accord with the terms of the Settlement: (1) the Attorney Fee Award; (2) the Cost Award; (3) Administrative Costs; (4) the Class Representative Enhancement; and (5) PAGA Payment. Class Counsel will also move the Court for an order of Final Approval (and associated entry of Judgment) releasing and

barring any Released Non-PAGA Claims of the Class Members who do not opt out of the Settlement.

- b. If the Court does not grant Final Approval of the Settlement, or if the Court's Final Approval of the Settlement is reversed or materially modified on appellate review, then this Settlement will become null and void and the Parties will be restored to their respective positions in the Action as of [September 22, 2020]. This includes that Defendant's stipulation to the filing of the First Amended Complaint, to which Defendant stipulated solely for the purpose of settlement of the Action, shall be null and void. If that occurs, the Parties 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 Agreement, and this Agreement shall not be used in this or any other proceeding for any purpose. Further, should this occur, the Parties agree they shall be equally responsible for the Settlement Administrator's Administration Costs through that date. An award by the Court of a lesser amount than sought by Plaintiffs and Class Counsel for the Class Representative Enhancement, the Attorney Fee Award, and/or the Cost Award, will not constitute a material modification to the Settlement within the meaning of this paragraph.
 - c. Upon Final Approval of the Settlement, the Parties shall present to the Court a proposed Final Approval Order, approving the Settlement and entering Judgment in accordance therewith. After entry of Judgment, the Court shall have continuing jurisdiction over the Class Action for purposes of: (1) enforcing this Settlement Agreement; (2) addressing settlement administration matters, and (3) addressing such post-Judgment matters as may be appropriate under Court rules and applicable law.
7. **Vacating, Reversing, or Modifying Judgment on Appeal.** If, after a notice of appeal, the reviewing court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement, and that court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher court, then this Settlement will become null and void and the Parties will have no further obligations under it. A material modification would include, but not necessarily be limited to, any alteration of the Gross Settlement Amount.
8. **Disbursement of Settlement Shares and Payments.** Subject to the Court finally approving the Settlement, the Settlement Administrator shall distribute funds pursuant to the terms of this Agreement and the Superior Court's Final Approval Order and Judgment. The maximum amount

Defendant can be required to pay under this Settlement for any purpose is the Gross Settlement Amount. The Settlement Administrator shall keep Defendant's Counsel and Class Counsel apprised of all distributions from the Gross Settlement Amount. The Settlement Administrator shall respond to questions from Defendant's Counsel and Class Counsel.

- a. **Funding the Settlement:** No later than twenty-one (21) calendar days after the Effective Final Settlement Date, Defendant shall deposit the Gross Settlement Amount of Two Million Five Hundred Thousand Dollars and Zero Cents (\$2,500,000) needed to pay the entire GSA by wiring the funds to the Settlement Administrator. In the event there are objectors to the Joint Stipulation and Settlement Agreement, payment shall be made within twenty-one (21) calendar days after the time to appeal has run or all appeals have been exhausted, whichever occurs later. Defendant shall also at this time provide any tax information that the Settlement Administrator may need to calculate each Participating Class Members' Individual Settlement Share.
 - b. **Disbursement:** Within fourteen (14) calendar days after the Funding of the Settlement, the Settlement Administrator shall calculate and pay all payments due under the Settlement Agreement, including all Individual Settlement Shares, the Attorney Fee Award, the Cost Award, the Class Representative Enhancements, the PAGA Payment, and the Administration Costs. The Settlement Administrator will forward a check for 75% of the PAGA Payment to the LWDA for settlement of the PAGA claim. After such payment, Defendant shall have no liability for PAGA claims by or on behalf of Participating Class Members during the Class Period, which are released under this Agreement.
 - c. **QSF:** The Parties agree that the QSF is intended to be a "Qualified Settlement Fund" under Section 468B of the Code and Treasury Regulations § 1.468B-1, 26 C.F.R. § 1.468B-1 *et seq.*, and will be administered by the Settlement Administrator as such. The Parties and Settlement Administrator shall treat the QSF as coming into existence as a Qualified Settlement Fund on the earliest date permitted as set forth in 26 C.F.R. § 1.468B-1, and such election statement shall be attached to the appropriate returns as required by law.
9. **Uncashed Checks.** Participating Class Members must cash or deposit their Individual Settlement Share checks within one hundred eighty (180) calendar days after the checks are mailed to them. If any checks are not redeemed or deposited within ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard indicating that

unless the check is redeemed or deposited in the next ninety (90) calendar days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced. If any checks remain uncashed or not deposited by the expiration of the 90-day period after mailing the reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks are mailed, pay the amount of the Individual Settlement Share to Legal Aid at Work, a cy pres designee.

10. Final Report by Settlement Administrator. Within ten (10) calendar days after the disbursement of all funds, the Settlement Administrator will serve on the Parties a declaration providing a final report on the disbursements of all funds.

11. Defendant's Legal Fees. Defendant is responsible for paying for all of Defendant's own legal fees, costs, and expenses incurred in this Class Action outside of the Gross Settlement Fund.

P. Release of Non-PAGA Claims. As of the Effective Final Settlement Date, Class Members, who do not submit a timely and valid request for exclusion, hereby release, remise and forever discharge the Released Parties from the Released Non-PAGA Claims for the Class Period. Participating Class Members agree not to sue or otherwise make a claim against any of the Released Parties for any of the Released Non-PAGA Claims.

Q. Release of PAGA Claims. As of the Effective Final Settlement Date, this settlement forever bars Plaintiffs, the LWDA, and any other representative, proxy, or agent thereof, including, but not limited to, any and all Eligible Aggrieved Employees during the PAGA Timeframe, from pursuing any action under the California Labor Code Private Attorneys General Act of 2004 ("PAGA"), Labor Code §§ 2698, *et seq.*, against, the Released Parties based on or arising out of the Labor Code violations alleged in the First Amended Complaint and the PAGA Notice.

R. Civil Code Section 1542. Relating solely to the Released PAGA Claims and the Released Non-PAGA Claims, Settlement Class Members shall be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits they may otherwise have had under Section 1542 of the California Civil Code, which provides as follows: *A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.*

S. Plaintiff Fernandez's Release of Claims and General Release. As of the Effective Final Settlement Date, and in exchange for the Class Representative Enhancement Payment to Plaintiff Fernandez, in recognition of his work and efforts in obtaining the benefits for the Class, and undertaking the risk for the payment of

costs in the event this matter had not successfully resolved, Plaintiff Fernandez hereby provides a general release of claims for himself and his spouse, heirs, successors and assigns, and forever releases, remises, and discharges the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties and expenses of any nature whatsoever, arising from the beginning of time through the date of the Court grants Preliminary Approval, known or unknown, suspected or unsuspected, whether in tort, contract, equity, or otherwise, for violation of any federal, state or local statute, rule, ordinance or regulation, including but not limited to all claims arising out of, based upon, or relating to his employment or engagement with Defendant or the remuneration for, or termination of, such employment or engagement. This release includes, without limiting the generality of the foregoing: any and all claims, demands, causes of actions, obligations, charges, liabilities, attorneys' fees, costs, actual, compensatory and punitive damages, and all claims for any other type of relief relating to, arising out of, or based upon: all claims of harassment, discrimination, and/or retaliation in violation of local, state or federal law; all claims for failure to prevent harassment, discrimination, and/or retaliation; all claims for failure to engage in the interactive process and/or to provide reasonable accommodation; all claims of violation of public policy, including a claim for wrongful and/or constructive termination of employment; all claims based on tort and/or breach of contract, whether written or oral, express or implied, and any covenant of good faith and fair dealing; all claims for misrepresentation, fraud, fraudulent inducement, detrimental reliance, and other similar claims; all claims for unpaid commissions, wages, or other benefits, including minimum wage, overtime, double time, vacation, associated penalties and/or premiums, and expense reimbursement; all claims for rest or meal periods and associated penalties and/or premiums; any claim for unlawful or unfair business practices; all claims for emotional distress; any and all claims which were or could have been asserted by Plaintiff Fernandez and all claims generally relating to Plaintiff Fernandez's application for employment, alleged employment and the cessation thereof, including any alleged violation of any federal, state or other governmental statute, regulation, ordinance, or executive order, including without limitation:

- (a) The Civil Rights Acts of 1866, 1964, and 1991, as amended;
- (b) 42 U.S.C. § 1981;
- (c) The California Fair Employment and Housing Act;
- (d) Section 503 of the Rehabilitation Act of 1973;
- (e) The Fair Labor Standards Act (including the Equal Pay Act);
- (f) The California and United States Constitutions;
- (g) The California Labor Code;
- (h) The California Business and Professions Code;
- (i) The California Government Code;
- (j) The Employee Retirement Income Security Act, as amended;
- (k) The California Family Rights Act;
- (l) The Americans with Disabilities Act;

- (m) The Family Medical Leave Act;
- (n) The California Pregnancy Discrimination Act;
- (o) The California Wage Orders;
- (p) The National Labor Relations Act;
- (q) The Immigration Reform and Control Act;
- (r) The California Occupational Safety and Health Act, or the Federal equivalent;
- (s) The Worker Adjustment and Retraining Notification Act;
- (t) The Age Discrimination in Employment Act of 1967, as amended;
- (u) The Older Workers' Benefit Protection Act;
- (v) The California Whistleblower Protection Act;
- (w) The Fair Credit Reporting Act;
- (x) The California Consumer Credit Reporting Agencies Act;
- (y) The California Investigative Consumer Reporting Agencies Act; and
- (z) The Families First Coronavirus Response Act and similar local, state, and federal laws.

This Release in all respects has been voluntarily and knowingly executed with the express intention of effecting the legal consequences provided in the California Civil Code section 1541, that is, the extinguishment of obligations herein designated. Plaintiff Fernandez's Release of Claims also includes a waiver of California Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

The foregoing release is intended to be as broad as the Parties can possibly create and includes but is not limited to any liability whatsoever:

- which arises directly or indirectly out of or is in any manner related to Plaintiff Fernandez's employment or engagement by Defendant;
- which arises directly or indirectly out of or is in any manner related to the causes of action or injuries or damages alleged in the Action; or
- which arises directly or indirectly out of or is in any manner related to any of the matters, occurrences or transactions which were raised or could have been raised in the Action, including without limitation, any and all claims for compensatory, economic, non-economic, punitive or other damages.

If any claim is not subject to release, Plaintiff Fernandez waives any right or ability to be a class or collective action representative or to otherwise participate in any putative or certified class, collective or multi-party action or proceeding based on

such a claim in which Defendant or any of the other Released Parties identified in this Settlement Agreement is a party.

T. Miscellaneous Terms

- 1. No Admission of Liability.** Defendant makes no admission of liability or wrongdoing by virtue of entering into this Agreement. Additionally, Defendant reserves the right to contest any issues relating to class certification and liability if the Settlement is not approved. Defendant denies that it has engaged in any unlawful activity, has failed to comply with the law in any respect, has any liability to anyone under the claims asserted in the Class Action, or that, but for the Settlement, a Class should be certified in the Class Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant of liability or wrongdoing. This Settlement and Plaintiffs' and Defendant's willingness to settle the Class Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with this Settlement).
- 2. No Effect on Employee Benefits.** The Class Representative Enhancement Payments and/or Individual Settlement Shares paid to Plaintiffs and Participating Class Members shall not be deemed to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (e.g., vacation, holiday pay, retirement plans, etc.) of Plaintiffs or the Participating Class Members. The Parties agree that any Class Representative Enhancements and/or Individual Settlement Shares paid to Plaintiffs or the Participating Class Members under the terms of this Agreement do not represent any modification of Plaintiff's or Participating Class Members' previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by Defendant. Further, any Class Representative Enhancement Payments shall not be considered "compensation" in any year for purposes of determining eligibility for, or benefit accrual within, an employee pension benefit plan or employee welfare benefit plan sponsored by Defendant.
- 3. No Solicitation of Individual Settlements.** Defendant and its Counsel agree that until and unless the Court does not grant Final Approval of the Settlement and/or the Settlement Agreement becomes null and void, Defendant and its Counsel will not attempt to procure any individual settlements from the Class Members. Should this clause be violated, Plaintiffs reserve the right to terminate the Settlement Agreement. Plaintiffs and their counsel agree that until and unless the Court does not grant Final Approval of the Settlement and/or the Settlement Agreement becomes null and void, Plaintiffs and their counsel shall not attempt to

procure from Class Members any requests for exclusion from the Settlement. Should this clause be violated, Defendant reserves the right to terminate the Settlement Agreement.

- 4. Publicity.** Class Counsel and Plaintiffs agree to discuss the terms of this Settlement only in declarations submitted to a court to establish Class Counsel's adequacy to serve as class counsel, in declarations submitted to a court in support of motions for preliminary approval, Final Approval, for attorneys' fees/costs, and any other pleading filed with the Court in conjunction with the Settlement, and in discussions with Class Members in the context of administering this Settlement until the Preliminary Approval Order is issued. Class Counsel and Plaintiffs agree to decline to respond to any media inquiries concerning the Settlement. Plaintiffs and Class Counsel represent and agree that they have not and will not issue any press release, publication, or otherwise disclose this Agreement or the this Settlement to the press, media, websites, or any service which reports verdicts and settlements. Plaintiffs and Class Counsel further agree not to, at any time or in any manner, talk about, write about, disclose, or otherwise publicize or cause to be publicized, the confidential, proprietary, or trade secret information of the Released Parties.
- 5. Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire Agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any party concerning this Agreement or its exhibits, other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.
- 6. Authorization to Enter Into Settlement Agreement.** Class Counsel and Defendant's Counsel warrant and represent that they are authorized by Plaintiffs and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties under this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement this Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court, and in all cases, all such documents, supplemental provisions, and assistance of the Court will be consistent with this Agreement.
- 7. Exhibits and Headings.** The terms of this Agreement include the terms set forth in the attached exhibits, which are incorporated by this reference as

though fully set forth herein. Any exhibits to this Agreement are an integral part of the Settlement and must be approved substantially as written. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.

- 8. Interim Stay of Proceedings.** The Parties agree to stay and hold all proceedings in the Class Action in abeyance, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the Court.
- 9. Amendment or Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by counsel for all Parties or their successors-in-interest.
- 10. Agreement Binding on Successors and Assigns.** This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Parties, as previously defined.
- 11. No Prior Assignment.** Plaintiffs hereby represents, covenants, and warrants that he has 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 herein released and discharged.
- 12. Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.
- 13. Fair, Adequate, and Reasonable Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Class Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.
- 14. No Tax or Legal Advice.** The Parties understand and agree that the Parties are neither providing tax or legal advice, nor making representations regarding tax obligations or consequences, if any, related to this Agreement, and that Class Members will assume any such tax obligations or consequences that may arise from this Agreement, and that Class Members shall not seek any indemnification from the Parties or any of the Released Parties in this regard. The Parties agree that, in the event that any taxing body determines that additional taxes are due from any Class Member, such Class Member assumes all responsibility for the payment of such taxes.

- 15. Jurisdiction of the Superior Court.** The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgment entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Superior Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders and judgments in connection therewith.
- 16. Invalidity of Any Provision; Severability.** Before declaring any provision of this Agreement invalid, the Parties request that the Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. In the event any provision of this Agreement shall be found unenforceable, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.
- 17. Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 18. Execution in Counterpart.** This Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile or PDF signatures will be accepted. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
- 19. Class Size Escalator.** Defendant represents that, as of November 13, 2020, the Class Members were, in the aggregate, actively employed during approximately 114,147 workweeks during the Class Period. If the actual number of total workweeks during which Class Members were, in the aggregate, actively employed during the Class Period is five percent (5%) or more greater than 114,147, the Gross Settlement Amount will increase on a pro-rata basis equal to one percent (1%) for every one percent (1%) increase in workweeks over the five percent (5%) threshold.

-Signature Page Follows-

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

Dated: _____, 2021

FRANK FERNANDEZ

Dated: _____, 2021

DEBBIE PUMA

Dated: 2/4/2021, 2021

CONFLUENT MEDICAL TECHNOLOGIES, INC.

DocuSigned by:

Dean Schauer

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Dean Schauer

President and CEO

Approved as to form and content:

Dated: 2/4/2021, 2021

GOODWIN PROCTER LLP

DocuSigned by:

Stephen Taensch

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Stephen Taensch, Esq.

Attorneys for Defendant Confluent Medical Technologies, Inc.

Dated: _____, 2021

JUSTICE LAW CORPORATION

Douglas Han, Esq.

Attorneys for Plaintiff Frank Fernandez and Debbie Puma, on behalf of themselves and all others similarly situated

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

Dated: 2/3/2021, 2021

FRANK FERNANDEZ



Dated: 2/4/2021, 2021

DEBBIE PUMA



Dated: _____, 2021

**CONFLUENT MEDICAL TECHNOLOGIES,
INC.**

Dean Schauer
President and CEO

Approved as to form and content:

Dated: _____, 2021

GOODWIN PROCTER LLP

Stephen Taeusch, Esq.
Attorneys for Defendant Confluent Medical
Technologies, Inc.

Dated: _____, 2021

JUSTICE LAW CORPORATION

Douglas Han, Esq.
Attorneys for Plaintiff Frank Fernandez and Debbie
Puma, on behalf of themselves and all others
similarly situated

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

Dated: 2/3/2021, 2021

FRANK FERNANDEZ



Dated: _____, 2021

DEBBIE PUMA

Dated: _____, 2021

**CONFLUENT MEDICAL TECHNOLOGIES,
INC.**

Dean Schauer
President and CEO

Approved as to form and content:

Dated: _____, 2021

GOODWIN PROCTER LLP

Stephen Taeusch, Esq.
Attorneys for Defendant Confluent Medical
Technologies, Inc.

Dated: 2/4/, 2021

JUSTICE LAW CORPORATION



Douglas Han, Esq.
Attorneys for Plaintiff Frank Fernandez and Debbie
Puma, on behalf of themselves and all others
similarly situated

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On March 17, 21, I served the foregoing document described as

JOINT STIPULATION AND SETTLEMENT AGREEMENT

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.

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

Executed on March 17, 2021, at Pasadena, California.


Allana Rivera