

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
AREEN BABAJANIAN (SBN 290130)
JUSTICE LAW CORPORATION
751 N. Fair Oaks Avenue, Suite 101
Pasadena, California 91103
Telephone (818) 230-7502
Facsimile (818) 230-7502
Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

FRANK 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

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194 and 1197 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (7) Collection of Due and Unpaid Wages per California Labor Code § 229.)
- (8) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
- (9) Violation of California Labor Code §§ 2698, *et seq.*, Private Attorney General Act of 2004; and
- (10) Violation of California Business & Professions Code § 17200, *et seq.*

DEMAND FOR JURY TRIAL

COME NOW, Plaintiffs FRANK FERNANDEZ AND DEBBIE PUMA (collectively “Plaintiffs,” “Plaintiff Fernandez,” and “Plaintiff Puma”), individually, and on behalf of other members of the general public similarly situated, and alleges as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the California Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiffs exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over Defendants because, upon information and belief, Defendants are citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

4. The Court also has jurisdiction over this action pursuant to California Labor Code section 229, which allows actions for the collection of due and unpaid wages despite any private agreement to arbitrate.

5. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, and/or transact business in the State of California, including the County of Alameda. The majority of the acts and omissions alleged herein relating to Plaintiffs took place in the State of California. Defendants employed Plaintiffs within the State of California.

///

///

///

PARTIES

6. Plaintiffs FRANK FERNANDEZ AND DEBBIE PUMA are individuals residing in the State of California, County of Alameda.

7. Defendant CONFLUENT MEDICAL TECHNOLOGIES, INC., at all times herein mentioned, was and is, upon information and belief, a California company with its principle place of business in Alameda County, and at all times herein mentioned, was and is, an employer whose employees are engaged throughout the State of California, including the County of Alameda.

8. At all times herein relevant, Defendants CONFLUENT MEDICAL TECHNOLOGIES, INC. and DOES 1 through 100, and each of them, were the agents, partners, joint venturers, joint employers, representatives, servants, employees, successors-in-interest, co-conspirators and assigns, each of the other, and at all times relevant hereto were acting within the course and scope of their authority as such agents, partners, joint venturers, joint employers, representatives, servants, employees, successors, co-conspirators and assigns, and all acts or omissions alleged herein were duly committed with the ratification, knowledge, permission, encouragement, authorization, and consent of each defendant designated herein.

9. The true names and capacities, whether corporate, associate, individual or otherwise, of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiffs, who sues said defendants by such fictitious names. Plaintiffs are informed and believe, and based on that information and belief allege, that each of the Defendants designated as a DOE is legally responsible for the events and happenings referred to in this Complaint, and unlawfully caused the injuries and damages to Plaintiffs and the other class members as alleged in this Complaint. Plaintiffs will seek leave of court to amend this Complaint to show the true names and capacities when the same have been ascertained.

10. Defendants CONFLUENT MEDICAL TECHNOLOGIES, INC. and DOES 1 through 100 will hereinafter collectively be referred to as "Defendants."

11. Plaintiffs further allege that Defendants directly or indirectly controlled or affected the working conditions, wages, working hours, and conditions of employment of

1 Plaintiffs and the other class members so as to make each of said Defendants employers and
2 employers liable under the statutory provisions set forth herein.

3 **CLASS ACTION ALLEGATIONS**

4 12. Plaintiff Fernandez brings this action on his own behalf and on behalf of all
5 other members of the general public similarly situated, and, thus, seeks class certification
6 under Code of Civil Procedure section 382.

7 13. The proposed class is defined as follows:

8 All current and former California-based hourly-paid or non-exempt employees
9 (either directly or through a staffing agency or labor contractor with the
10 exception of Ryzen Solutions) employed by Defendants within the State of
11 California at any time during the period from four years preceding the filing of
12 this Complaint to final judgment.

13 14. Plaintiff Fernandez reserves the right to establish subclasses as appropriate.

14 15. The class is ascertainable and there is a well-defined community of interest in
15 the litigation:

16 a. Numerosity: The class members are so numerous that joinder of all class
17 members is impracticable. The membership of the entire class is
18 unknown to Plaintiffs at this time; however, the class is estimated to be
19 greater than fifty (50) individuals and the identity of such membership is
20 readily ascertainable by inspection of Defendants' employment records.

21 b. Typicality: The claims of Plaintiff Fernandez claims are typical of all
22 other class members' claims as demonstrated herein. Plaintiffs will
23 fairly and adequately protect the interests of the other class members
24 with whom he has a well-defined community of interest.

25 c. Adequacy: Plaintiff Fernandez will fairly and adequately protect the
26 interests of each class member, with whom he has a well-defined
27 community of interest and typicality of claims, as demonstrated herein.
28 Plaintiffs Fernandez has no interest that is antagonistic to the other class

members. Plaintiff Fernandez's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff Fernandez has incurred, and during the pendency of this action will continue to incur, costs and attorneys' fees, that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

d. Superiority: A class action is superior to other available methods for the fair and efficient adjudication of this litigation because individual joinder of all class members is impractical.

e. Public Policy Considerations: Certification of this lawsuit as a class action will advance public policy objectives. Employers of this great state violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. However, class actions provide the class members who are not named in the complaint anonymity that allows for the vindication of their rights.

16. There are common questions of law and fact as to the class members that predominate over questions affecting only individual members. The following common questions of law or fact, among others, exist as to the members of the class:

- a. Whether Defendants' failure to pay wages, without abatement or reduction, in accordance with the California Labor Code, was willful;
- b. Whether Defendants failed to pay their hourly-paid or non-exempt employees within the State of California for all hours worked, missed meal periods and rest breaks in violation of California law;
- c. Whether Defendants required Plaintiff Fernandez and the other class members to work over eight (8) hours per day and/or over forty (40) hours per week and failed to pay the legally required overtime compensation to Plaintiff Fernandez and the other class members;

- 1 d. Whether Defendants deprived Plaintiff Fernandez and the other class
2 members of meal and/or rest periods or required Plaintiff Fernandez and
3 the other class members to work during meal and/or rest periods without
4 compensation;
- 5 e. Whether Defendants failed to pay minimum wages to Plaintiff Fernandez
6 and the other class members for all hours worked;
- 7 f. Whether Defendants failed to pay all wages due to Plaintiff Fernandez
8 and the other class members within the required time upon their
9 discharge or resignation;
- 10 g. Whether Defendants failed to timely pay all wages due to Plaintiff
11 Fernandez and the other class members during their employment;
- 12 h. Whether Defendants complied with wage reporting as required by the
13 California Labor Code, including, inter alia, section 226;
- 14 i. Whether Defendants' conduct was willful or reckless;
- 15 j. Whether Defendants failed to reimburse necessary business expenses as
16 required by California Labor Code section 2802;
- 17 k. Whether Defendants engaged in unfair business practices in violation of
18 California Business & Professions Code section 17200, *et seq.*;
- 19 l. The appropriate amount of damages, restitution, and/or monetary
20 penalties resulting from Defendants' violation of California law; and
- 21 m. Whether Plaintiffs and the other class members are entitled to
22 compensatory damages pursuant to the California Labor Code.

23 **GENERAL ALLEGATIONS**

24 17. During the relevant time period set forth herein, Defendants employed Plaintiffs
25 and other persons as hourly-paid or non-exempt employees within the State of California,
26 including the County of Alameda.

27 18. Defendants, jointly and severally, employed Plaintiffs as hourly-paid, non-
28 exempt employees, in the State of California.

1 19. Defendants, jointly and severally, hired Plaintiffs and other class members and
2 classified them as hourly-paid, non-exempt employees, and failed to compensate them for all
3 hours worked, missed meal periods, and/or missed rest breaks.

4 20. Defendants had the authority to hire and terminate Plaintiffs and the other class
5 members; to set work rules and conditions governing Plaintiff's and other class members'
6 employment; and to supervise their daily employment activities.

7 21. Defendants exercised sufficient authority over the terms and conditions of
8 Plaintiffs and other class members' employment for them to be joint employers of Plaintiffs
9 and other class members.

10 22. Defendants directly hired and paid wages and benefits to Plaintiffs and other
11 class members.

12 23. Defendants continue to employ hourly-paid or non-exempt employees within the
13 State of California.

14 24. Plaintiffs and other class members worked over eight (8) hours in a day, and/or
15 forty (40) hours in a week during their employment with Defendants.

16 25. Plaintiffs are informed and believe, and based thereon allege, that Defendants
17 engaged in a pattern and practice of wage abuse against their hourly-paid or non-exempt
18 employees within the State of California. This scheme involved, inter alia, failing to pay them
19 for all hours worked, missed meal periods, and missed rest breaks in violation of California
20 law.

21 26. Plaintiffs are informed and believe, and based thereon allege, that Defendants
22 knew or should have known that Plaintiffs and other class members were entitled to receive
23 certain wages for overtime compensation and that they were not receiving wages for overtime
24 compensation.

25 27. Plaintiffs are informed and believe, and based thereon allege, that Defendants
26 failed to provide Plaintiffs and other class members the required rest and meal periods during
27 the relevant time period as required under the Industrial Welfare Commission Wage Orders
28 and thus they are entitled to any and all applicable penalties.

1 28. Plaintiffs are informed and believe, and based thereon allege, that Defendants
2 knew or should have known that Plaintiffs and other class members were entitled to receive all
3 timely and complete meal periods or payment of one additional hour of pay at Plaintiffs' and
4 the other class members' regular rate of pay when a meal period was missed, late or
5 interrupted, and they did not receive all timely and proper meal periods or payment of one
6 additional hour of pay at Plaintiffs' and other class members' regular rate of pay when a meal
7 period was missed.

8 29. Plaintiffs are informed and believe, and based thereon allege, that Defendants
9 knew or should have known that Plaintiffs and other class members were entitled to receive all
10 timely rest periods without interruption or payment of one additional hour of pay at Plaintiffs'
11 and the other class members' regular rate of pay when a rest period was missed, late or
12 interrupted, and they did not receive all rest periods or payment of one additional hour of pay
13 at Plaintiffs' and the other class members' regular rate of pay when a rest period was missed.

14 30. Plaintiffs are informed and believe, and based thereon allege, that Defendants
15 knew or should have known that Plaintiffs and other class members were entitled to receive at
16 least minimum wages for compensation and that they were not receiving at least minimum
17 wages for all hours worked.

18 31. Plaintiffs are informed and believe, and based thereon allege, that Defendants
19 knew or should have known that Plaintiffs and other class members were entitled to receive the
20 wages owed to them upon discharge or resignation, including overtime and minimum wages
21 and meal and rest period premiums, and they did not, in fact, receive such wages owed to them
22 at the time of their discharge or resignation.

23 32. Plaintiffs are informed and believe, and based thereon allege, that Defendants
24 knew or should have known that Plaintiffs and other class members were entitled to receive
25 complete and accurate wage statements in accordance with California law, but, in fact, they did
26 not receive complete and accurate wage statements from Defendants. The deficiencies
27 included, inter alia, the failure to include the total number of hours worked by Plaintiffs and
28 other class members.

1 33. Plaintiffs are informed and believe, and based thereon allege, that Defendants
2 knew or should have known that Defendants had to keep complete and accurate payroll records
3 for Plaintiffs and other class members in accordance with California law, but, in fact, did not
4 keep complete and accurate payroll records.

5 34. Plaintiffs are informed and believe, and based thereon allege, that Defendants
6 knew or should have known that they had a duty to compensate Plaintiffs and other class
7 members pursuant to California law, and that Defendants had the financial ability to pay such
8 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
9 represented to Plaintiffs and other class members that they were properly denied wages, all in
10 order to increase Defendants' profits.

11 35. As a pattern and practice, during the relevant time period set forth herein,
12 Defendants failed to pay overtime wages to Plaintiffs and other class members for all hours
13 worked. Plaintiffs and other class members were required to work more than eight (8) hours
14 per day and/or forty (40) hours per week without overtime compensation.

15 36. As a pattern and practice, during the relevant time period set forth herein,
16 Defendants failed to provide the requisite uninterrupted and timely meal and rest periods to
17 Plaintiffs and other class members.

18 37. As a pattern and practice, during the relevant time period set forth herein,
19 Defendants failed to pay Plaintiffs and other class members at least minimum wages for all
20 hours worked.

21 38. As a pattern and practice, during the relevant time period set forth herein,
22 Defendants failed to pay Plaintiffs and other class members the wages owed to them upon
23 discharge or resignation.

24 39. As a pattern and practice, during the relevant time period set forth herein,
25 Defendants failed to provide complete or accurate wage statements to Plaintiffs and other class
26 members.

27 40. As a pattern and practice, during the relevant time period set forth herein,
28 Defendants failed to reimburse Plaintiffs for necessary work-related expenses.

41. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to keep complete or accurate payroll records for Plaintiffs and other class members.

42. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to properly compensate Plaintiffs and other class members pursuant to California law in order to increase Defendants' profits.

43. California Labor Code section 218 states that nothing in Article 1 of the Labor Code shall limit the right of any wage claimant to “sue directly . . . for any wages or penalty due to him [or her] under this article.”

FIRST CAUSE OF ACTION

(Violation of California Labor Code §§ 510 and 1198)

(By Plaintiff Fernandez Against DEFENDANTS and DOES 1 through 100)

44. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 43, and each and every part thereof with the same force and effect as though fully set forth herein.

45. California Labor Code section 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person’s regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

46. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiffs and other class members employed by Defendants, who work(ed) more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

47. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiffs and other class members overtime compensation at a rate of two times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

48. California Labor Code section 510 codifies the right to overtime compensation at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

49. During the relevant time period set forth herein, Plaintiffs and other class members worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week.

50. As a pattern and practice, during the relevant time period set forth herein, Defendants intentionally and willfully failed to pay overtime wages owed to Plaintiffs and other class members.

51. Defendants' pattern and practice of failing to pay Plaintiffs and other class members the unpaid balance of overtime compensation, as required by California laws, violates the provisions of California Labor Code sections 510 and 1198, and is therefore unlawful.

52. Pursuant to California Labor Code section 1194, Plaintiffs and other class members are entitled to recover unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION

(Violation of California Labor Code §§ 226.7 and 512(a))

(By Plaintiff Fernandez Against DEFENDANTS and DOES 1 through 100)

53. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 52, and each and every part thereof with the same force and effect as though fully set forth herein.

54. During the relevant time period set forth herein, the IWC Order and California Labor Code sections 226.7 and 512(a) were applicable to Plaintiffs' and other class members' employment by Defendants.

1 55. During the relevant time period set forth herein, California Labor Code section
2 226.7 provides that no employer shall require an employee to work during any meal or rest
3 period mandated by an applicable order of the California IWC.

4 56. During the relevant time period set forth herein, the applicable IWC Wage
5 Order and California Labor Code section 512(a) provide that an employer may not require,
6 cause or permit an employee to work for a work period of more than five (5) hours per day
7 without providing the employee with a meal period of not less than thirty (30) minutes, except
8 that if the total work period per day of the employee is no more than six (6) hours, the meal
9 period may be waived by mutual consent of both the employer and employee.

10 57. During the relevant time period set forth herein, the applicable IWC Wage
11 Order and California Labor Code section 512(a) further provide that an employer may not
12 require, cause, or permit an employee to work for a work period of more than ten (10) hours
13 per day without providing the employee with a second uninterrupted meal period of not less
14 than thirty (30) minutes, except that if the total hours worked is no more than twelve (12)
15 hours, the second meal period may be waived by mutual consent of the employer and the
16 employee only if the first meal period was not waived.

17 58. As a pattern and practice, during the relevant time period set forth herein,
18 Plaintiffs and other class members who were scheduled to work for a period of time no longer
19 than six (6) hours, and who did not waive their legally-mandated meal periods by mutual
20 consent, were required to work for periods longer than five (5) hours without an uninterrupted
21 meal period of not less than thirty (30) minutes and/or without a rest period.

22 59. As a pattern and practice, during the relevant time period set forth herein,
23 Plaintiffs and other class members who were scheduled to work for a period of time in excess
24 of six (6) hours were required to work for periods longer than five (5) hours without an
25 uninterrupted meal period of not less than thirty (30) minutes and/or without a rest period.

26 60. As a pattern and practice, during the relevant time period set forth herein,
27 Defendants intentionally and willfully required Plaintiffs and other class members to work
28 during meal periods and failed to compensate Plaintiffs and the other class members the full

1 meal period premium for work performed during meal periods.

2 61. As a pattern and practice, during the relevant time period set forth herein,
3 Defendants failed to pay Plaintiffs and other class members the full meal period premium due
4 pursuant to California Labor Code section 226.7.

5 62. Defendants' conduct violates applicable IWC Wage Order and California Labor
6 Code sections 226.7 and 512(a).

7 63. Pursuant to the applicable IWC Wage Order and California Labor Code section
8 226.7(b), Plaintiffs and other class members are entitled to recover from Defendants one
9 additional hour of pay at the employee's regular rate of compensation for each work day that
10 the meal or rest period is not provided.

11 **THIRD CAUSE OF ACTION**

12 **(Violation of California Labor Code § 226.7)**

13 **(By Plaintiff Fernandez Against DEFENDANTS and DOES 1 through 100)**

14 64. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
15 through 63, and each and every part thereof with the same force and effect as though fully set
16 forth herein.

17 65. During the relevant time period set forth herein, the applicable IWC Wage
18 Order and California Labor Code section 226.7 were applicable to Plaintiffs' and other class
19 members' employment by Defendants.

20 66. During the relevant time period set forth herein, California Labor Code section
21 226.7 provides that no employer shall require an employee to work during any rest period
22 mandated by an applicable order of the California IWC.

23 67. During the relevant time period set forth herein, the applicable IWC Wage
24 Order provides that "[e]very employer shall authorize and permit all employees to take rest
25 periods, which insofar as practicable shall be in the middle of each work period" and that the
26 "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes
27 net rest time per four (4) hours or major fraction thereof" unless the total daily work time is
28 less than three and one-half (3 ½) hours.

68. As a pattern and practice, during the relevant time period set forth herein, Defendants required Plaintiffs and other class members to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour period worked.

69. As a pattern and practice, during the relevant time period set forth herein, Defendants willfully required Plaintiffs and other class members to work during rest periods and failed to pay Plaintiffs and the other class members the full rest period premium for work performed during rest periods.

70. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to pay Plaintiffs and the other class members the full rest period premium due pursuant to California Labor Code section 226.7

71. Defendants' conduct violates applicable IWC Wage Orders and California Labor Code section 226.7.

72. Pursuant to the applicable IWC Wage Orders and California Labor Code section 226.7(b), Plaintiffs and the other class members are entitled to recover from Defendants one additional hour of pay at the employees' regular hourly rate of compensation for each work day that the rest period was not provided.

FOURTH CAUSE OF ACTION

(By Plaintiff Fernandez Violation of California Labor Code §§ 1194 and 1197)

(Against DEFENDANTS and DOES 1 through 100)

73. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 72 and each and every part thereof with the same force and effect as though fully set forth herein.

74. During the relevant time period set forth herein, California Labor Code sections 1194 and 1197 provide that the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed, is unlawful.

75. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to pay minimum wages to Plaintiffs and other class members as required, pursuant to California Labor Code sections 1194 and 1197.

76. Defendants' failure to pay Plaintiffs and other class members the minimum wage as required violates California Labor Code sections 1194 and 1197. Pursuant to those sections, Plaintiffs and other class members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs, and attorney's fees, and liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

77. Pursuant to California Labor Code section 1194.2, Plaintiffs and other class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

FIFTH CAUSE OF ACTION

(Violation of California Labor Code §§ 201 and 202)

(By Plaintiff Fernandez Against DEFENDANTS and DOES 1 through 100)

78. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 77, and each and every part thereof with the same force and effect as though fully set forth herein.

79. During the relevant time period set forth herein, California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

80. As a pattern and practice, during the relevant time period set forth herein, Defendants intentionally and willfully failed to pay Plaintiffs and other class members (but not all class members) who are no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ.

81. Defendants' pattern and practice of failing to pay Plaintiffs and other class members (but not all class members) who are no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ, is in

violation of California Labor Code sections 201 and 202.

82. California Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

83. Plaintiffs and other class members are entitled to recover from Defendants the statutory penalty wages for each day they were not paid, up to the thirty (30) day maximum as provided by Labor Code section 203.

SIXTH CAUSE OF ACTION

(Violation of California Labor Code § 226(a))

(By Plaintiff Fernandez Against DEFENDANTS and DOES 1 through 100)

84. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 83, and each and every part thereof with the same force and effect as though fully set forth herein.

85. During the relevant time period set forth herein, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (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 and his or her 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. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

1 86. As a pattern and practice, Defendants have intentionally and willfully failed to
2 provide Plaintiffs and other class members (but not all) with complete and accurate wage
3 statements. The deficiencies include but are not limited to: the failure to include the total
4 number of hours worked by Plaintiffs and other class members.

5 87. As a result of Defendants' violation of California Labor Code section 226(a),
6 Plaintiffs and other class members (but not all) have suffered injury and damage to their
7 statutorily protected rights.

8 88. More specifically, Plaintiffs and other class members (but not all) have been
9 injured by Defendants' intentional and willful violation of California Labor Code section
10 226(a) because they were denied both their legal right to receive, and their protected interest in
11 receiving, accurate and itemized wage statements pursuant to California Labor Code section
12 226(a).

13 89. Plaintiffs and other class members (but not all) are entitled to recover from
14 Defendants the greater of their actual damages caused by Defendants' failure to comply with
15 California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand
16 dollars per employee.

17 90. Plaintiffs and other class members (but not all) are also entitled to injunctive
18 relief to ensure compliance with this section, pursuant to California Labor Code section 226(g).

19 **SEVENTH CAUSE OF ACTION**

20 **(Collection of Due and Unpaid Wages)**

21 **(By Plaintiff Fernandez Against DEFENDANTS and DOES 1 through 100)**

22 91. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
23 through 90, and each and every part thereof with the same force and effect as though fully set
24 forth herein.

25 92. California Labor Code section 1198 and the applicable Industrial Welfare
26 Commission ("IWC") Wage Order provide that it is unlawful to employ persons without
27 compensating them at a rate of pay either time-and-one-half or two-times that person's regular
28 rate of pay, depending on the number of hours worked by the person on a daily or weekly

1 basis.

2 93. Specifically, the applicable IWC Wage Order provides that Defendants are and
3 were required to pay Plaintiffs and the other class members employed by Defendants, who
4 work(ed) more than eight (8) hours in a day or more than forty (40) hours in a workweek, at
5 the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more
6 than forty (40) hours in a workweek.

7 94. The applicable IWC Wage Order further provides that Defendants are and were
8 required to pay Plaintiffs and the other class members overtime compensation at a rate of two
9 times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

10 95. California Labor Code section 510 codifies the right to overtime compensation
11 at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours
12 in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day
13 of work, and no overtime compensation at twice the regular hourly rate for hours worked in
14 excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day
15 of work.

16 96. During the relevant time period, Plaintiffs and the other class members worked
17 in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week.

18 97. During the relevant time period, Defendants intentionally and willfully failed to
19 pay overtime wages owed to Plaintiffs and the other class members.

20 98. Defendants' failure to pay Plaintiffs and the other class members the unpaid
21 balance of overtime compensation, as required by California laws, violates the provisions of
22 California Labor Code sections 510 and 1198, and is therefore unlawful.

23 99. Pursuant to California Labor Code section 1194, Plaintiffs and the other class
24 members are entitled to recover unpaid minimum wage and overtime compensation, as well as
25 interest, costs, and attorneys' fees.

26 100. During the relevant time period, Defendants failed to pay minimum wages to
27 Plaintiffs and the other class members as required, pursuant to California Labor Code sections
28 11194, 1197, and 1197.1.

101. Defendants' failure to pay Plaintiffs and the other class members the minimum wage as required violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to those sections, Plaintiffs and the other class members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs, and attorney's fees, and liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

102. Plaintiffs and the other class members seek these due and unpaid wages, which includes minimum wage, underpayment of wages and overtime wages.

EIGHTH CAUSE OF ACTION

(Violation of California Labor Code §§ 2800 and 2802)

(By Plaintiff Fernandez Against DEFENDANTS and DOES 1 through 100)

103. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 102, and each and every part thereof with the same force and effect as though fully set forth herein.

104. Pursuant to California Labor Code sections 2800 and 2802, an employer must reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer.

105. Defendants have intentionally and willfully failed to reimburse Plaintiffs and other class and subclass members (but not all) for all necessary business-related expenses and costs. Plaintiffs and other class and subclass members are entitled to recover from Defendants their business-related expenses and costs incurred during the course and scope of their employment, plus interest accrued from the date on which the employee incurred the necessary expenditures at the same rate as judgments in civil actions in the State of California.

NINTH CAUSE OF ACTION

(Violation of California Labor Code §§ 2698, *et seq.*)

(By Plaintiff Puma Against DEFENDANTS and DOES 1 through 100)

106. Plaintiff Puma incorporates by reference the allegations contained in paragraphs 1 through 105, and each and every part thereof with the same force and effect as though fully

1 set forth herein.

2 107. The Private Attorneys General Act of 2004 (“PAGA”) expressly establishes that
3 any provision of the California Labor Code of which provides for a civil penalty to be assessed
4 and collected by the Labor and Workforce Development Agency (“LWDA”), or any of its
5 departments, divisions, commissions, boards, agencies or employees for a violation of the
6 California Labor Code, may be recovered through a civil action brought by an aggrieved
7 employee on behalf of himself or herself, and other current or former employees.

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

12 109. On September 24, 2020 Plaintiff Puma provided written notice to the LWDA
13 and Defendants of the specific provisions of the Labor Code she contends were violated, and
14 the theories supporting her contentions. Attached hereto as **EXHIBIT 1** and incorporated by
15 reference is a copy of the written notice to the LWDA. Plaintiff Puma believed that on or about
16 November 28, 2020, the sixty-five (65) day notice period expired as to all Defendants, and the
17 LWDA did not take any action to investigate or prosecute this matter. Therefore, Plaintiff
18 Puma has exhausted the statutory period to bring this action.

19 110. Plaintiff Puma and the other hourly-paid or non-exempt employees are
20 “aggrieved employees” as defined by Labor Code section 2699(c) in that they are all current
21 and former employees of Defendants who worked for Defendants at any time during the period
22 from September 24, 2019 to the present, and one or more of the alleged violations was
23 committed against them.

24 111. In addition to civil penalties, California Labor Code Section 558 authorizes
25 collection of wages for violation of a section of this chapter or any provision regulating hours
26 and days of work in any order of the Industrial Welfare Commission.

27 ///

28 ///

Failure to Provide Meal and Rest Break Wages

112. Defendants' failure to provide legally required meal and rest periods or to pay premium wages for missed or interrupted meal and rest periods to Plaintiff Puma and the other aggrieved employees was in violation of the Wage Orders and constitute unlawful or unfair activity by California Labor sections 226.7 and 512(a).

Failure to Pay Minimum Wages and Overtime Wages

113. Defendants' failure to pay legally required minimum wages and overtime wages to Plaintiff Puma and other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity prohibited by California Labor Code section 510, 1194, and 1198.

Failure to Pay Timely Wages During Employment

114. Defendants' failure to timely pay wages to Plaintiff Puma and other aggrieved employees within a specified time period in accordance with Labor Code section 204 constitutes unlawful or unfair activity prohibited by Labor Code section 204.

Failure to Pay Timely Wages Upon Termination

115. Defendant's failure to timely pay wages to Plaintiff Puma and other aggrieved employees upon termination in accordance with Labor Code section 201 and 202 constitute unlawful and/or unfair activity prohibited by Labor Code section 203.

Failure to Provide Complete and Accurate Wage Statements

116. Defendants' failure to provide complete and accurate wage statements to Plaintiff Puma and other aggrieved employees in accordance with Labor Code section 226(a) constitutes unlawful and/or unfair activity prohibited by California Labor Code section 226(a).

Failure to Reimburse Necessary Business Expenses

117. Defendants' failure to reimburse necessary business-related expenses in accordance with Labor Code section 2802 constitutes unlawful and/or unfair activity prohibited by California Labor Code section 2802.

///

///

Penalties

118. Pursuant to California Labor Code Section 2699, Plaintiff Puma, individually, and on behalf of all aggrieved employees, requests and is entitled to recover from Defendants and each of them, unpaid wages, and/or untimely wages according to proof, interest, attorneys' fees and costs pursuant to California Labor Code section 218.5, as well as statutory penalties against Defendants, and each of them including, but not limited to:

- a. Penalties under California Labor Code section 2699 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;
- b. Penalties under California Code of Regulation Title 8 section 11070 in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;
- c. Penalties under California Labor Code section 210 in addition to, and entirely independent and apart from, any other penalty, provided in the California Labor Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation; and
- d. Any and all additional penalties and sums as provided by the California Labor Code and/or other statutes.

119. Pursuant to California Labor Code section 2699(i), civil penalties recovered by aggrieved employees shall be distributed as follows: seventy-five (75%) to the Labor and Workforce Development Agency for the enforcement of labor laws and education of employers and employees about their rights and responsibilities and twenty five percent (25%) to the aggrieved employees. Wages covered pursuant to California Labor Code section 558 shall be paid directly to the affected employees.

///

1 120. Further, Plaintiff Puma is entitled to seek and recover reasonable attorneys' fees
2 and costs pursuant to California Labor Code section 2699, 218.5, and 210, and any other
3 applicable statute.

4 **TENTH CAUSE OF ACTION**

5 **(Violation of California Business & Professions Code §§ 17200, *et seq.*)**

6 **(By Plaintiff Fernandez Against DEFENDANTS and DOES 1 through 100)**

7 121. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
8 through 120, and each and every part thereof with the same force and effect as though fully set
9 forth herein.

10 122. Defendants' conduct, as alleged herein, has been, and continues to be unfair,
11 unlawful and harmful to Plaintiffs, other class members, to the general public, and Defendants'
12 competitors. Accordingly, Plaintiffs seek to enforce important rights affecting the public
13 interest within the meaning of Code of Civil Procedure section 1021.5.

14 123. Defendants' activities as alleged herein are violations of California law, and
15 constitute unlawful business acts and practices in violation of California Business &
16 Professions Code section 17200, *et seq.*

17 124. A violation of California Business & Professions Code section 17200, *et seq.*
18 may be predicated on the violation of any state or federal law. In this instant case, Defendants'
19 pattern and practice of requiring Plaintiffs and other class members work overtime hours
20 without paying them proper compensation violate California Labor Code sections 510 and
21 1198. Additionally, Defendants' pattern and practice of requiring Plaintiffs and other class
22 members, to work through their meal and rest periods without paying them proper
23 compensation violate California Labor Code sections 226.7 and 512(a). Moreover,
24 Defendants' pattern and practice of failing to timely pay wages to Plaintiffs and other class
25 members violate California Labor Code sections 201 and 202. Defendants also violated
26 California Labor Code sections 1194 and 1197.

27 125. As a result of the herein described violations of California law, Defendants
28 unlawfully gained an unfair advantage over other businesses.

126. Plaintiffs and other class members have been personally injured by Defendants' unlawful business acts and practices as alleged herein, including but not necessarily limited to the loss of money and/or property.

127. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiffs and other class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this Complaint; an award of attorneys' fees pursuant to California Code of Civil procedure section 1021.5 and other applicable laws; and an award of costs.

DEMAND FOR JURY TRIAL

Plaintiffs, individually, and on behalf of other members of the general public similarly situated, requests a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all other members of the general public similarly situated, prays for relief and judgment against Defendants, jointly and severally, as follows:

Class Certification

1. That this action be certified as a class action;
2. That Plaintiff Fernandez be appointed as class representative;
3. That counsel for Plaintiffs be appointed as Class Counsel; and
4. That Defendants provide to Class Counsel immediately the names and most current contact information (address, e-mail and telephone numbers) of all class members.

As to the First Cause of Action

5. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due to Plaintiffs and the other class members;
6. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;

1 7. For pre-judgment interest on any unpaid overtime compensation commencing
2 from the date such amounts were due;

3 8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
4 California Labor Code section 1194; and

5 9. For such other and further relief as the court may deem just and proper.

6 **As to the Second Cause of Action**

7 10. That the Court declare, adjudge and decree that Defendants violated California
8 Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to
9 provide all meal periods (including second meal periods) to Plaintiffs and the other class
10 members;

11 11. That the Court make an award to Plaintiffs and the other class members of one
12 (1) hour of pay at each employee's regular rate of compensation for each workday that a meal
13 period was not provided;

14 12. For all actual, consequential, and incidental losses and damages, according to
15 proof;

16 13. For premium wages pursuant to California Labor Code section 226.7(b);

17 14. For pre-judgment interest on any unpaid wages from the date such amounts
18 were due;

19 15. For reasonable attorneys' fees and costs of suit incurred herein; and

20 16. For such other and further relief as the court may deem just and proper.

21 **As to the Third Cause of Action**

22 17. That the Court declare, adjudge and decree that Defendants violated California
23 Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all
24 rest periods to Plaintiffs and the other class members;

25 18. That the Court make an award to Plaintiffs and the other class members of one
26 (1) hour of pay at each employee's regular rate of compensation for each workday that a rest
27 period was not provided;

28 19. For all actual, consequential, and incidental losses and damages, according to

1 proof;

2 20. For premium wages pursuant to California Labor Code section 226.7(b);

3 21. For pre-judgment interest on any unpaid wages from the date such amounts
4 were due; and

5 22. For such other and further relief as the court may deem just and proper.

6 **As to the Fourth Cause of Action**

7 23. That the Court declare, adjudge and decree that Defendants violated California
8 Labor Code sections 1194 and 1197 by willfully failing to pay minimum wages to Plaintiffs
9 and the other class members;

10 24. For general unpaid wages and such general and special damages as may be
11 appropriate;

12 25. For pre-judgment interest on any unpaid compensation from the date such
13 amounts were due;

14 26. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
15 California Labor Code section 1194(a);

16 27. For liquidated damages pursuant to California Labor Code section 1194.2; and

17 28. For such other and further relief as the court may deem just and proper.

18 **As to the Fifth Cause of Action**

19 29. That the Court declare, adjudge and decree that Defendants violated California
20 Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the
21 time of termination of the employment of the other class members no longer employed by
22 Defendants;

23 30. For all actual, consequential, and incidental losses and damages, according to
24 proof;

25 31. For statutory wage penalties pursuant to California Labor Code section 203 for
26 the other class members who have left Defendants' employ;

27 32. For pre-judgment interest on any unpaid compensation from the date such
28 amounts were due; and

1 33. For such other and further relief as the court may deem just and proper.

2 **As to the Sixth Cause of Action**

3 34. That the Court declare, adjudge and decree that Defendants violated the record
4 keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders
5 as to Plaintiffs and other class members, and willfully failed to provide accurate itemized wage
6 statements thereto;

7 35. For actual, consequential and incidental losses and damages, according to proof;

8 36. For injunctive relief to ensure compliance with this section, pursuant to
9 California Labor Code section 226(g); and

10 37. For such other and further relief as the court may deem just and proper.

11 **As to the Seventh Cause of Action**

12 38. That the Court declare, adjudge and decree that Defendants violated California
13 Labor Code sections 510, 1194, and 1198 and applicable IWC Wage Orders by willfully
14 failing to pay all wages due and owing to Plaintiffs and the other class members;

15 39. For general unpaid wages at minimum wage rates, or overtime wage rates and
16 such general and special damages as may be appropriate;

17 40. For pre-judgment interest on any unpaid overtime compensation commencing
18 from the date such amounts were due;

19 41. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
20 California Labor Code section 218.5 and 1194; and

21 42. For such other and further relief as the court may deem just and proper.

22 **As to the Eighth Cause of Action**

23 43. That the Court declare, adjudge and decree that Defendants violated California
24 Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiffs and other class
25 members for all necessary business-related expenses as required by California Labor Code
26 sections 2800 and 2802;

27 44. For actual, consequential and incidental losses and damages, according to proof;

28 45. For the imposition of civil penalties and/or statutory penalties;

- 1 46. For punitive damages and/or exemplary damages according to proof at trial;
2 47. For reasonable attorneys' fees and costs of suit incurred herein; and
3 48. For such other and further relief as the court may deem just and proper.

4 **As to the Ninth Cause of Action**

5 51. That the Court declare, adjudge, and decree that Defendants violated California
6 Labor Code §§ 2698, *et seq.*, the PAGA, for civil penalties pursuant to Defendants' violations of
7 Labor Code §§ 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d),
8 1194, 1197, 1197.1, 1198, 2800 and 2802.

9 52. Upon the Cause of Action, for costs and attorneys' fees pursuant to Labor Code
10 §§ 210, 218.5, 1194, and 2699, and any other applicable statute; and

11 53. For such other and further relief the court may deem just and proper.

12 **As to the Tenth Cause of Action**

13 49. That the Court declare, adjudge and decree that Defendants violated California
14 Business and Professions Code sections 17200, *et seq.* by failing to provide Plaintiffs and other
15 class members all overtime compensation due to them, failing to provide all meal and rest
16 periods to Plaintiffs and the other class members, failing to pay at least minimum wages to
17 Plaintiffs and the other class members, failing to pay Plaintiffs' and other class members'
18 wages timely as required by California Labor Code section 201, 202.

19 50. For restitution of unpaid wages to Plaintiffs and other class members and all
20 pre-judgment interest from the day such amounts were due and payable;

21 51. For the appointment of a receiver to receive, manage and distribute any and all
22 funds disgorged from Defendants and determined to have been wrongfully acquired by
23 Defendants as a result of violation of California Business and Professions Code sections
24 17200, *et seq.*;

25 52. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
26 California Code of Civil Procedure section 1021.5;

27 53. For injunctive relief to ensure compliance with this section, pursuant to
28 California Business and Professions Code sections 17200, *et seq.*; and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

54. For such other and further relief as the court may deem just and proper.

Dated: February 19, 2021

JUSTICE LAW CORPORATION

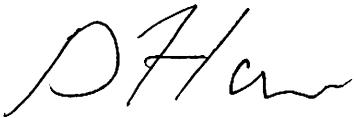
By: 
Douglas Han
Attorneys for Plaintiffs

EXHIBIT 1

September 24, 2020

BY U.S. EMAIL/ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov

State of California

Labor & Workforce Development Agency

800 Capitol Mall, MIC-55

Sacramento, California 95814

Re: CONFLUENT MEDICAL TECHNOLOGIES, INC.

Dear Representative:

We have been retained to represent Debbie Puma against Confluent Medical Technologies, Inc. (including any and all affiliates, managers, members, subsidiaries, and parents, and their shareholders, officers, directors, and employees), any individual, owner, officer and managing agent, DOES 1-10 as an "Employer" or person acting on behalf of an "Employer" pursuant to California Labor Code section 558.1, and DOES 11-20¹ for violations of California wage-and-hour laws (hereinafter collectively referred to as "CMT").

Ms. Puma is pursuing her California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 ("PAGA") claim on a representative CMT. Therefore, Ms. Puma may seek penalties and wages for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

Confluent Medical Technologies, Inc. is a Delaware corporation located at 6263 N. Scottsdale Road, Suite 224, Scottsdale, Arizona 85250.

CMT employed Ms. Puma as an hourly-paid non-exempt Quality Inspector within one year of the date of this letter (until in or about November of 2019²) in the State of California. Ms. Puma was placed at Confluent Medical Technologies, Inc. through a staffing agency. CMT directly controlled the wages, hours and working conditions of Ms. Puma and other aggrieved employees' employment, including daily supervision of their work, compliance with meal and rest break policies and timekeeping procedures, and termination.

¹ Ms. Puma does not know the true names or capacities, whether individual, partner or corporate, of DOES 1 through 20, inclusive, and for that reason, said DOES are designated under such fictitious names. Ms. Puma will amend this notice when the true names and capacities are known. Ms. Puma is informed and believes that each DOE was responsible in some way for the matters alleged herein and proximately caused Ms. Puma and other current and former aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

² Per Emergency Rule 9 (Tolling statute of limitations for civil causes of action) of the Judicial Council's Emergency Rules Related to COVID-19, all statute of limitations for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020. Therefore, the one (1) year statute of limitations for Ms. Puma's PAGA cause of action is tolled.

The “aggrieved employees” that Ms. Puma may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees (whether hired directly or through staffing agencies) of CMT within the State of California.

CMT failed to properly pay its hourly-paid or non-exempt employees for all hours worked, failed to properly provide or compensate minimum and overtime wages and for meal and rest breaks, failed to issue compliant wage statements and failed to reimburse for all necessary business-related costs and expenses, thus resulting in other Labor Code violations as stated below.

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Ms. Puma has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees at CMT, regardless of their classification, job title, locations, or whether they were hired directly or through a staffing agency.

CMT has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code sections 510, 1194, and 1198 require employers to pay at least minimum wage for all hours worked, pay time-and-a-half, or double time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates. During the relevant time period, Ms. Puma and other aggrieved employees routinely worked in excess of 8 hours in a day and 40 hours in a week. CMT failed to compensate Ms. Puma and other aggrieved employees for all hours worked and performing off-the-clock work, including pre- and post-shift, donning and doffing, waiting in line to clock in and out and during meal breaks. CMT also failed to include non-discretionary bonuses and incentives in aggrieved employees’ regular rate of pay for purposes of overtime compensation. CMT also maintained an illegal rounding policy that negatively affected Ms. Puma and other aggrieved employees’ time and pay. Moreover, CMT automatically deducted meal breaks from Ms. Puma and other aggrieved employees’ time regardless whether they were provided the breaks. Therefore, Ms. Puma and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

///

///

California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided. During the relevant time period, CMT routinely required Ms. Puma and other aggrieved employees to work through, interrupt, cut short, and/or delay their meal and rest breaks to comply with CMT policies and expectations, and meet production goals. CMT also failed to adequately staff its facilities to provide coverage to Ms. Puma and other aggrieved employees so they may be relieved of all work duties and take their meal and rest breaks. Moreover, CMT failed to authorize and permit Ms. Puma and other aggrieved employees to take the requisite number of meal and rest breaks, including second meal breaks and third rest breaks, when working shifts exceeding 10 hours in length. Despite these facts, CMT failed to compensate Ms. Puma and other aggrieved employees all the premium wages they were owed.

California Labor Code section 551 states "[e]very person employed in any occupation of labor is entitled to one day's rest therefrom in seven." Section 552 further states "[n]o employer of labor shall cause his employees to work more than six days in seven." CMT required aggrieved employees to work seven days in a row or more without one day's rest.

California Labor Code section 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. California Labor Code section 202 requires that if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. California Labor Code section 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. During the relevant time period, CMT failed to pay Ms. Puma and other aggrieved employees all wages due to them within any time period specified by California Labor Code sections 201 and 203, including for all hours worked, uncompensated off-the-clock work, uncompensated overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks, and therefore is liable under California Labor Code section 203.

///

///

///

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, CMT failed to pay Ms. Puma and other aggrieved employees all wages due to them within any time period specified by California Labor Code section 204, including for all hours worked, uncompensated off-the-clock work, uncompensated overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks.

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, CMT did not provide Ms. Puma and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from CMT were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include (1) gross wages earned by Ms. Puma and other aggrieved employees, (2) total hours worked by Ms. Puma and other aggrieved employees, (3) the number of piece-rate units earned and any applicable piece rate by Ms. Puma and other aggrieved employees (4) all deductions for Ms. Puma and other aggrieved employees, (5) net wages earned by Ms. Puma and other aggrieved employees, (6) the inclusive dates of the period for which Ms. Puma and other aggrieved employees are paid, (7) the name of the aggrieved employee 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 Ms. Puma and other aggrieved employees.

California Labor Code section 558 allows recovery of penalties. (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) 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. (2) 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. (3) Wages recovered pursuant to this section shall be paid to the affected employee. Ms. Puma and other aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to penalties.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, 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 with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, CMT failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Ms. Puma and other aggrieved employees.

California Labor Code sections 1194, 1197 and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, CMT did not provide Ms. Puma and other aggrieved employees with the minimum wages to which they were entitled despite constructive and actual knowledge of failing to pay them for all hours worked and off-the-clock work, including pre- and post-shift, donning and doffing, waiting in line to clock in and out and during meal breaks.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During their employment, aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by CMT, including for purchasing gear they were required to wear while working.

We believe that Ms. Puma and other current and former California-based hourly-paid or non-exempt employees are entitled to penalties as allowed under California Labor Code section 2698, *et seq.* for violations of Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in questions and the California Labor & Workforce Development Agency setting forth the claims, and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

///

///

///

LWDA

September 24, 2020

Page 6 of 6

The purpose of this letter is to satisfy the requirement created by California Labor code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Ms. Puma will seek these penalties and wages on her own behalf and on behalf of other similarly situated California-based hourly-paid or non-exempt employees of CMT within one year of the date of this letter, as allowed by law.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

JUSTICE LAW CORPORATION

A handwritten signature in black ink, appearing to read 'D. Han', with a stylized flourish at the end.

Douglas Han, Esq.

CC: (By Certified U.S. Mail Only):

C T Corporation System
c/o Confluent Medical Technologies, Inc.
818 West Seventh Street, Suite 930
Los Angeles, California 90017
Agent for Service of Process for Confluent Medical Technologies, Inc.

CC: (By Electronic Mail Only):

Stephen Taeusch, Esq.
STaeusch@goodwinlaw.com
GOODWIN PROCTER LLP
Counsel of Record for Confluent Medical Technologies, Inc.

