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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Sophia Felix, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

CELENE HERNANDEZ, individually, and
on behalf of other members of the general
public similarly situated;

Plaintiff,

v.

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

Defendants.

Case No.: 37-2020-00020200-CU-OE-CTL

**THIRD 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) Violation of California Business & Professions Code § 17200, *et seq.*;
- (8) Violation of California Labor Code § 2698, *et seq.* (California Labor Code Private Attorneys General Act of 2004); and

DEMAND FOR JURY TRIAL

COME NOW, Plaintiffs Celene Hernandez and Richard Sotelo (“Plaintiffs,” “Plaintiff Hernandez,” and “Plaintiff Sotelo”), individually, and on behalf of other members of the general public similarly situated, and on behalf of aggrieved employees pursuant to the Private Attorneys General Act of 2004 (“PAGA”), alleges as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiffs exceeds 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. 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 San Diego. 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, County of San Diego.

PARTIES

5. Plaintiff Hernandez is an individual residing in the State of California, County of San Diego.

6. Plaintiff Sotelo is an individual residing in the State of California, County of San Diego.

7. Defendant SENDX MEDICAL, INC., at all times herein mentioned, was and is, upon information and belief, a Delaware corporation, and at all times herein mentioned, was and is, an employer whose employees are engaged throughout the State of California, including the County of San Diego.

8. At all times herein relevant, Defendant SENDX MEDICAL, INC. was the “employer” of Plaintiffs within the meaning of all applicable laws and statutes.

9. At all times herein relevant, Defendants SENDX MEDICAL, 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.

10. 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 alleges, 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.

11. Defendants SENDX MEDICAL, INC. and DOES 1 through 100 will hereinafter collectively be referred to as “Defendants.”

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1 12. Plaintiffs further allege that Defendants directly or indirectly controlled or
2 affected the working conditions, wages, working hours, and conditions of employment of
3 Plaintiffs and the other class members so as to make each of said Defendants employers and
4 employers liable under the statutory provisions set forth herein.

5 **CLASS ACTION ALLEGATIONS**

6 13. Plaintiffs brings this action on their own behalf and on behalf of all other
7 members of the general public similarly situated, and, thus, seeks class certification under
8 Code of Civil Procedure section 382.

9 14. The proposed class is defined as follows:

10 All current and former hourly-paid or non-exempt employees of Defendants
11 employed in California at any time during the period from June 12, 2016,
12 through January 7, 2023.

13 15. Plaintiffs reserve the right to establish subclasses as appropriate.

14 16. 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: Plaintiffs' claims are typical of all other class members'
22 claims as demonstrated herein. Plaintiffs will fairly and adequately
23 protect the interests of the other class members with whom they have a
24 well-defined community of interest.

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1 c. Adequacy: Plaintiffs will fairly and adequately protect the interests of
2 each class member, with whom they have a well-defined community of
3 interest and typicality of claims, as demonstrated herein. Plaintiffs have
4 no interest that is antagonistic to the other class members. Plaintiffs'
5 attorneys, the proposed class counsel, are versed in the rules governing
6 class action discovery, certification, and settlement. Plaintiffs have
7 incurred, and during the pendency of this action will continue to incur,
8 costs and attorneys' fees, that have been, are, and will be necessarily
9 expended for the prosecution of this action for the substantial benefit of
10 each class member.

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

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

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

24 a. Whether Defendants' failure to pay wages, without abatement or
25 reduction, in accordance with the Labor Code, was willful;

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- 1 b. Whether Defendants failed to pay their hourly-paid or non-exempt
2 employees within the State of California for all hours worked, missed
3 meal periods and rest breaks in violation of the law;
- 4 c. Whether Defendants required Plaintiffs and other class members to work
5 over eight (8) hours per day and/or over forty (40) hours per week and
6 failed to pay the legally required overtime compensation to Plaintiffs and
7 the other class members;
- 8 d. Whether Defendants properly calculated the regular rate for Plaintiffs
9 and the other class members to worked overtime and earned bonuses
10 and/or incentive pay;
- 11 e. Whether Defendants deprived Plaintiffs and other class members of meal
12 and/or rest periods or required Plaintiffs and the other class members to
13 work during meal and/or rest periods without compensation;
- 14 f. Whether Defendants failed to pay minimum wages to Plaintiffs and other
15 class members for all hours worked;
- 16 g. Whether Defendants failed to pay all wages due to Plaintiffs and other
17 class members within the required time upon their discharge or
18 resignation;
- 19 h. Whether Defendants failed to timely pay all wages due to Plaintiffs and
20 other class members during their employment;
- 21 i. Whether Defendants complied with wage reporting as required by the
22 Labor Code, including, *inter alia*, section 226;
- 23 j. Whether Defendants' conduct was willful or reckless;
- 24 k. Whether Defendants engaged in unfair business practices in violation of
25 Business & Professions Code section 17200, *et seq.*;
- 26 l. The appropriate amount of damages, restitution, and/or monetary
27 penalties resulting from Defendants' violation of the law; and
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m. Whether Plaintiffs and other class members are entitled to compensatory damages pursuant to the Labor Code.

GENERAL ALLEGATIONS

18. During the relevant time period set forth herein, Defendants employed Plaintiffs and other persons as hourly-paid or non-exempt employees within the State of California.

19. Defendants, jointly and severally, employed: (a) Plaintiff Hernandez as hourly-paid, non-exempt employee from in or about November of 2017, and Defendants later terminated her employment in or around May 8, 2018 in the State of California, County of San Diego; and (b) Plaintiff Sotelo as an hourly paid, non-exempt employee from in or about July of 2021.

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

21. Defendants had the authority to hire and terminate Plaintiffs and other class members; to set work rules and conditions governing Plaintiffs' and the other class members' employment; and to supervise their daily employment activities.

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

23. Defendants directly hired and paid wages and benefits to Plaintiffs and other class members.

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

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

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

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

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

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

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

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1 31. Plaintiffs are informed and believe, and based thereon allege, that Defendants
2 knew or should have known that Plaintiffs and the other class members were entitled to receive
3 at least minimum wages for compensation and that Plaintiffs and the other class members were
4 not receiving at least minimum wages for all hours worked.

5 32. Plaintiffs are informed and believe, and based thereon alleges, that Defendants
6 knew or should have known that Plaintiffs and other class members were entitled to receive
7 the wages owed to them upon discharge or resignation, including overtime and minimum
8 wages and meal and rest period premiums, and they did not, in fact, receive such wages owed
9 to them at the time of their discharge or resignation.

10 33. Plaintiffs are informed and believe, and based thereon allege, that Defendants
11 knew or should have known that Plaintiffs and other class members were entitled to receive
12 complete and accurate wage statements in accordance with the law, but, in fact, they did not
13 receive complete and accurate wage statements from Defendants. The deficiencies included,
14 *inter alia*, the failure to include the total number of hours worked by Plaintiffs and other class
15 members.

16 34. Plaintiffs are informed and believes, and based thereon allege, that Defendants
17 knew or should have known that Defendants had to keep complete and accurate payroll records
18 for Plaintiffs and other class members in accordance with the law, but, in fact, did not keep
19 complete and accurate payroll records.

20 35. Plaintiffs are informed and believe, and based thereon allege, that Defendants
21 knew or should have known that they had a duty to compensate Plaintiffs and other class
22 members pursuant to the law, and that Defendants had the financial ability to pay such
23 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
24 represented to Plaintiffs and other class members that they were properly denied wages, all in
25 order to increase Defendants' profits.

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

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

38. During the relevant time period set forth herein, Defendants failed to pay Plaintiffs and the other class members at least minimum wages for all hours worked.

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

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

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 the law in order to increase Defendants' profits.

43. 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."

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1 **FIRST CAUSE OF ACTION**

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

3 **(Against SENDX MEDICAL, INC. and DOES 1 through 100)**

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

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

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

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

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

24 49. During the relevant time period set forth herein, Plaintiffs and other class
25 members worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in
26 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 the laws, violates the provisions of Labor Code sections 510 and 1198, and is therefore unlawful.

52. Pursuant to 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))

(Against SENDX MEDICAL, INC. 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 Wage Order and Labor Code sections 226.7 and 512(a) were applicable to Plaintiffs' and other class members' employment by Defendants.

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

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

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

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

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

17 60. As a pattern and practice, during the relevant time period set forth herein,
18 Defendants intentionally and willfully required Plaintiffs and other class members to work
19 during meal periods and failed to compensate Plaintiffs and the other class members the full
20 meal period premium for work performed during meal periods.

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

24 62. Defendants' conduct violates applicable IWC Wage Order and Labor Code
25 sections 226.7 and 512(a).

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

THIRD CAUSE OF ACTION

(Violation of California Labor Code § 226.7)

(Against SENDX MEDICAL, INC. and DOES 1 through 100)

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

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

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

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

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69. As a pattern and practice, during the relevant time period set forth herein, Defendants willfully required Plaintiffs and the 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 Labor Code section 226.7.

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

72. Pursuant to the applicable IWC Wage Orders and 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 workday that the rest period was not provided.

FOURTH CAUSE OF ACTION

(Violation of California Labor Code §§ 1194 and 1197)

(Against SENDX MEDICAL, INC. 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, 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. During the relevant time period set forth herein, Defendants failed to pay minimum wages to Plaintiffs and the other class members as required, pursuant to Labor Code sections 1194 and 1197.

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76. Defendants' failure to pay Plaintiffs and the other class members the minimum wage as required violates 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 Labor Code section 1194.2, Plaintiffs and the 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)

(Against SENDX MEDICAL, INC. and DOES 1 through 100)

78. Plaintiffs incorporate 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, Labor Code section 201 provides that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

80. As a pattern and practice, during the relevant time period set forth herein, Defendants intentionally and willfully failed to immediately pay Plaintiffs and other class members who are no longer employed by Defendants their wages, earned and unpaid.

81. Defendants' pattern and practice of failing to immediately pay Plaintiffs and other class members who are no longer employed by Defendants their wages, earned and unpaid, is in violation of Labor Code section 201.

82. Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in accordance with section 201, 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 a thirty (30) day maximum pursuant to Labor Code section 203.

SIXTH CAUSE OF ACTION

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

(Against SENDX MEDICAL, INC. 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, Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized statement in writing showing: (a) gross wages earned; (b) total hours worked by the employee; (c) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (d) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (e) net wages earned; (f) the inclusive dates of the period for which the employee is paid; (g) the name of the employee and his or her social security number; (h) the name and address of the legal entity that is the employer; and (i) 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.

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

1 87. As a result of Defendants' violation of Labor Code section 226(a), Plaintiffs and
2 other class members have suffered injury and damage to their statutorily protected rights.

3 88. More specifically, Plaintiffs and other class members have been injured by
4 Defendants' intentional and willful violation of Labor Code section 226(a) because they were
5 denied both their legal right to receive, and their protected interest in receiving, accurate and
6 itemized wage statements pursuant to Labor Code section 226(a).

7 89. Plaintiffs and other class members are entitled to recover from Defendants their
8 actual damages caused by Defendants' failure to comply with Labor Code section 226(a).

9 90. Plaintiffs and other class members are also entitled to injunctive relief to ensure
10 compliance with this section, pursuant to Labor Code section 226(g).

11 **SEVENTH CAUSE OF ACTION**

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

13 **(Against SENDX MEDICAL, INC. and DOES 1 through 100)**

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

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

21 93. Defendants' activities as alleged herein are violations of the law, and constitute
22 unlawful business acts and practices in violation of Business & Professions Code section
23 17200, *et seq.*

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94. A violation of Business & Professions Code section 17200, *et seq.* may be predicated on the violation of any state or federal law. In this instant case, Defendants' policy and practice of requiring Plaintiffs and the other class members work overtime hours without paying them proper compensation violate Labor Code sections 510 and 1198. Further, Defendants' policy and practice of requiring Plaintiffs and other members of the putative class to incur business expenses without reimbursement in violation of Labor Code section 2800 and 2802. Defendants' policy and practice of requiring Plaintiffs and the other class members, to work through their meal and rest periods without paying them proper compensation violate Labor Code sections 226.7 and 512(a). Moreover, Defendants' policy and practice of failing to timely pay wages to Plaintiffs and the other class members violate Labor Code sections 201 and 202. Defendants also violated Labor Code sections 226(a), 1194, and 1197.

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

96. 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.

97. Pursuant to Business & Professions Code section 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 Code of Civil procedure section 1021.5 and other applicable laws; and an award of costs.

EIGHTH CAUSE OF ACTION

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

(Against SENDX MEDICAL, INC. and DOES 1 through 100)

98. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 97, and each and every part thereof with the same force and effect as though fully set forth herein.

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

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

101. On or around April 18, 2022, Plaintiff Sotelo provided written notice to the LWDA and Defendants of the specific provisions of the Labor Code he contends were violated, and the theories supporting his contentions. Attached hereto as **Exhibit 1** and incorporated by reference is a copy of the April 18, 2022 written notice to the LWDA. Plaintiff Sotelo believe that on or about June 22, 2022, the sixty-five (65) day notice period expired, and the LWDA did not take any action to investigate or prosecute this matter. Plaintiff Sotelo has exhausted the statutory time period to bring this action.

102. Plaintiff Sotelo and the other non-exempt or hourly-paid employees are “aggrieved employees” as defined by Labor Code section 2699(c) in that they are all current and former hourly-paid or non-exempt employees of Defendants employed in California at any time during the period from June 12, 2019, through January 7, 2023 and one or more of the alleged violations was committed against them.

Failure to Pay Overtime

103. Defendant's failure to calculate and pay legally required overtime wages to Plaintiff Sotelo and the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity prohibited by Labor Code sections 510 and 1198.

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104. Defendant's failure to pay legally required minimum wages to Plaintiff Sotelo and the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity prohibited by Labor Code sections 1194 and 1197.

Failure to Provide Meal Periods

105. Defendant's failure to provide legally required meal periods or to pay premium wages for missed or interrupted meal periods to Plaintiff Sotelo and the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity prohibited by Labor Code sections 226.7 and 512(a).

Failure to Provide Rest Periods

106. Defendant's failure to provide legally required rest periods or to pay premium wages for missed or interrupted meal periods to Plaintiff Sotelo and the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity prohibited by Labor Code section 226.7.

Failure to Pay Timely Wages During Employment

107. Defendant's failure to timely pay wages to Plaintiff Sotelo and the other aggrieved employees during employment in accordance with Labor Code section 204 constitutes unlawful and/or unfair activity prohibited by Labor Code section 204.

Failure to Timely Pay Wages Upon Termination

108. Defendant's failure to timely pay wages to Plaintiff Sotelo and the other aggrieved employees upon termination of employment in accordance with Labor Code sections 201 and 202 constitutes unlawful and/or unfair activity prohibited by Labor Code section 203.

Failure to Provide Complete and Accurate Wage Statements

109. Defendant's failure to provide complete and accurate wage statements to Plaintiff Sotelo and the other aggrieved employees in accordance with Labor Code section 226(a) constitutes unlawful and/or unfair activity prohibited by Labor Code section 226(a).

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1 **Failure to Keep Complete and Accurate Payroll Records**

2 110. Defendant's failure to keep complete and accurate payroll records relating to
3 Plaintiff Sotelo and the other aggrieved employees in accordance with Labor Code section
4 1174(d) constitutes unlawful or unfair activity prohibited by Labor Code section 1174(d).

5 **Failure to Reimburse Necessary Business-Related Expenses and Costs**

6 111. Defendant's failure to reimburse Plaintiff Sotelo and the other aggrieved
7 employees for necessary business-related expenses and costs in accordance with Labor Code
8 sections 2800 and 2802 constitutes unlawful and/or unfair activity prohibited by Labor Code
9 sections 2800 and 2802.

10 **Penalties**

11 112. Pursuant to Labor Code section 2699, Plaintiffs Sotelo, individually, and on behalf
12 of all aggrieved employees, request and are entitled to recover from Defendants and each of
13 them, unpaid wages, and/or untimely wages according to proof, interest, attorneys' fees and
14 costs pursuant to Labor Code section 218.5, as well as all statutory penalties against Defendants,
15 and each of them, including, but not limited to:

- 16 a. Penalties under Labor Code section 2699 in the amount of a hundred
17 dollars (\$100) for each aggrieved employee per pay period for the initial
18 violation, and two hundred dollars (\$200) for each aggrieved employee
19 per pay period for each subsequent violation;
- 20 b. Penalties under Code of Regulations Title 8 section 11070 in the amount
21 of fifty dollars (\$50) for each aggrieved employee per pay period for the
22 initial violation, and one hundred dollars (\$100) for each aggrieved
23 employee per pay period for each subsequent violation;

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- 1 c. Penalties under Labor Code section 210 in addition to, and entirely
2 independent and apart from, any other penalty provided in the Labor
3 Code in the amount of a hundred dollars (\$100) for each aggrieved
4 employee per pay period for the initial violation, and two hundred dollars
5 (\$200) for each aggrieved employee per pay period for each subsequent
6 violation; and
- 7 d. Wages under Labor Code section 558 in addition to, and entirely
8 independent and apart from, any other penalty provided in the Labor
9 Code; and
- 10 e. Any and all additional penalties and sums as provided by the Labor Code
11 and/or other statutes.
- 12 f. Attorneys' fees and costs pursuant to Labor Code sections 210, 1194, and
13 2699, and any other applicable statute.

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

20 114. Plaintiff Sotelo is entitled to seek and recover reasonable attorneys' fees and costs
21 pursuant to Labor Code sections 2699, 218.5, and 210 and any other applicable statute.

22 **DEMAND FOR JURY TRIAL**

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

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Class Certification

1. That this action be certified as a class action;
2. That Plaintiffs be appointed as representatives of the Class;
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.

5. That the Court declare, adjudge, and decree that Defendants violated 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;

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

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

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

24

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

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

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

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

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

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

As to the Third Cause of Action

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

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

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

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

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

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

As to the Fourth Cause of Action

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

1 24. For general unpaid wages and such general and special damages as may be
2 appropriate;

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

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

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

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

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

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

13 30. For all actual, consequential, and incidental losses and damages, according to
14 proof;

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

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

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

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

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

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

26 36. For injunctive relief to ensure compliance with this section, pursuant to Labor
27 Code section 226(g); and
28

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

As to the Seventh Cause of Action

38. That the Court declare, adjudge, and decree that Defendants violated Business and Professions Code sections 17200, *et seq.* by failing to provide Plaintiffs and the other class members all overtime compensation due to them, failing to provide all meal and rest periods to Plaintiffs and the other class members, failing to pay at least minimum wages to Plaintiffs and the other class members, failing to pay Plaintiffs' and the other class members' wages timely as required by Labor Code section 201 and 202, and requiring Plaintiffs and other members of the putative class to incur business expenses without reimbursement in violation of Labor Code section 2800 and 2802.

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

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

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

42. For injunctive relief to ensure compliance with this section, pursuant to Business and Professions Code section 17200, *et seq.*; and

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

As to the Eighth Cause of Action

44. That the Court declare, adjudge, and decree that Defendants violated Labor Code sections 2698, *et seq.*, the PAGA, for civil penalties pursuant to Defendants' violations of Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226.3, 226.7, 246, 432.5, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 2800, and 2802;

45. Upon this Cause of Action, for costs and attorneys' fees pursuant to Labor Code sections 210, 1194, and 2699, and any other applicable statute; and

1 46. For such other and further relief as the Court may deem just and proper.
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3 Dated: April 29, 2024

JUSTICE LAW CORPORATION

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5 By: 
6 Douglas Han
7 Shunt Tatavos-Gharajeh
8 Attorneys for Plaintiffs
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EXHIBIT 1

April 18, 2022

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: Sendx Medical, Inc.

Dear Representative:

We have been retained to represent Richard Sotelo against Sendx Medical, 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 "SMI").

Mr. Sotelo is pursuing his California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 ("PAGA") claim on a representative basis. Therefore, Mr. Sotelo 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.

Sendx Medical, Inc. is a Delaware corporation located at 1945 Palomar Oaks Way, Carlsbad, California 92011.

SMI employs Mr. Sotelo as an hourly-paid non-exempt Manufacturing Technician within one year (until in or around February of 2022) of the data of this letter in the State of California. SMI directly controlled the wages, hours and/or working conditions of Mr. Sotelo and other aggrieved employees' employment, including direction, retention, scheduling, supervision, and termination.

The "aggrieved employees" that Mr. Sotelo may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees (whether hired directly or through a staffing agency) of SMI within the State of California.

¹ Mr. Sotelo 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. Mr. Sotelo will amend this notice when the true names and capacities are known. Mr. Sotelo is informed and believes that each DOE was responsible in some way for the matters alleged herein and proximately caused Mr. Sotelo and other current and former aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

SMI 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, Mr. Sotelo has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees at SMI, regardless of their classification, job title, location, or whether they were hired directly or through a staffing agency.

SMI 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, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 432.5, 510, 512(a), 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, aggrieved employees routinely worked in excess of 8 hours in a day and 40 hours in a week. SMI failed to compensate aggrieved employees for all hours worked and performing off-the-clock work, including pre- and post-shift, donning and doffing uniforms, attending meetings, and during meal breaks. SMI also failed to include non-discretionary bonuses and incentives in aggrieved employees' regular rate of pay for purposes of overtime compensation. Therefore, aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

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California Labor Code section 246 requires that employers provide employees with paid sick leave of not less than one hour per every 30 hours worked. California Labor Code section 246(l) also requires that paid sick leave be paid at a non-exempt employee's regular rate of pay for the workweek in which the employee uses paid sick time or at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment. During the relevant time period, SMI failed to pay Mr. Sotelo and other aggrieved employees with paid sick leave that complied with California Labor Code section 246, by, for example, failing to pay paid sick leave at non-exempt employee's regular rate of pay or at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

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, SMI routinely required Mr. Sotelo and other aggrieved employees to work through, interrupt, cut short, and/or delay their meal and rest breaks to comply with SMI's policies and expectations. SMI failed to provide coverage to Mr. Sotelo and other aggrieved employees so they may be relieved of all work duties and take legally mandated meal and rest breaks. Lastly, SMI also failed to authorize and permit Mr. Sotelo 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, SMI failed to compensate Mr. Sotelo and other aggrieved employees all the premium wages they were owed, including failing to pay premium wages at Mr. Sotelo and other aggrieved employees' regular rate of pay.

California Labor Code section 432.5 states "[n]o employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law." SMI required aggrieved employees to execute arbitration agreements as a condition of employment despite knowing that such agreements are prohibited under Labor Code section 432.6.

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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, SMI failed to pay Mr. Sotelo and other aggrieved employees all wages, including for uncompensated off-the-clock work, unpaid overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks, due to them within any time period specified by California Labor Code sections 201 and 203 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, SMI failed to pay Mr. Sotelo and other aggrieved employees all wages due to them, including for uncompensated off-the-clock work, unpaid overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks within any time period specified by California Labor Code section 204.

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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, SMI did not provide Mr. Sotelo and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from SMI 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 Mr. Sotelo and other aggrieved employees, (2) total hours worked by Mr. Sotelo and other aggrieved employees, (3) the number of piece-rate units earned and any applicable piece rate by Mr. Sotelo and other aggrieved employees (4) all deductions for Mr. Sotelo and other aggrieved employees, (5) net wages earned by Mr. Sotelo and other aggrieved employees, (6) the inclusive dates of the period for which Mr. Sotelo 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 Mr. Sotelo 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. Mr. Sotelo 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, SMI failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Mr. Sotelo and other aggrieved employees.

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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, SMI did not provide aggrieved employees with the minimum wages to which they were entitled despite constructive and actual knowledge of off-the-clock work, including pre- and post-shift, donning and doffing uniforms, attending meetings, 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 SMI.

We believe that Mr. Sotelo 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, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 432.5, 510, 512(a), 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.

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.

Mr. Sotelo will seek these penalties on his own behalf and on behalf of other similarly situated California-based hourly-paid or non-exempt employees of SMI within one year of the date of this letter, as allowed by law.

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LWDA
April 18, 2022
Page 7 of 7

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 long horizontal flourish extending to the right.

Douglas Han, Esq.

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

C T Corporation System
c/o Sendx Medical, Inc.
330 N. Brand Blvd. Ste. 700
Glendale, California 91203
Agent for Service of Process for Sendx Medical, Inc.

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

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On April 29, 2024, I served the foregoing document described as

THIRD AMENDED CLASS ACTION COMPLAINT FOR DAMAGES

on interested parties in this action a true and correct copy thereof to the email addresses as follows:

Timothy M. Rusche (trusche@seyfarth.com) SEYFARTH SHAW LLP 601 South Figueroa Street, Suite 3300 Los Angeles, California 90017	Romtin Parvaresh (rparvaresh@seyfarth.com) Legal Staff: Laura Thixton (lthixton@seyfarth.com) 2029 Century Park East, Suite 3500 SEYFARTH SHAW LLP Los Angeles, California 90067
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Attorney(s) for Defendant SenDX Medical, Inc.

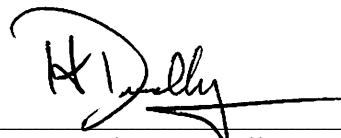
[X] BY ELECTRONIC SERVICE

E-mailing the document(s) to the persons at the e-mail address(es) listed based on notice previously provided that, during the Coronavirus (Covid-19) pandemic, this office will be primarily working remotely, unable to send physical mail as usual, and is therefore using only electronic mail. We will assume our email service was successful on the date of transmission unless we receive an electronic message or other indication that the transmission was not received on that date.

[X] STATE

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

Executed on April 29, 2024, at Pasadena, California.



Heather Donnelly

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

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On April 30, 2024, I served the foregoing document described as

THIRD AMENDED CLASS ACTION COMPLAINT FOR DAMAGES

for the following case: **Hernandez, et al. v. Sendx Medical, Inc.**
LWDA/Court Case No.: **LWDA-CM-879155-22**
37-2020-00020200-CU-OE-CTL
San Diego County Superior Court

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

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

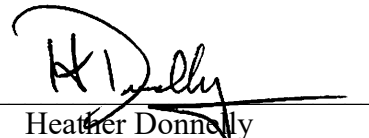
[X] BY ELECTRONIC SUBMISSION

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

[X] STATE

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

Executed on April 30, 2024, at Pasadena, California.


Heather Donnelly