

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiffs Daraphone Simma and Wendy Santos (“Plaintiffs”) and defendant Biosense Webster, Inc. (“Defendant”). The Agreement refers to Plaintiffs and Defendant collectively as the “Parties,” or individually as “Party.”

1. DEFINITIONS

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

- 1.1. “Action” collectively means the Plaintiffs’ lawsuits alleging wage and hour violations against Defendant captioned: (1) *Daraphone Simma v. Biosense Webster, Inc.*, Case No. 30-2023-01342539-CU-OE-CXC, initiated on August 15, 2023, and pending in the Superior Court of the State of California, County of Orange; and (2) *Daraphone Simma v. Biosense Webster, Inc.*, Case No. 30-2023-01356697-CU-OE-CXC, PAGA Notice sent on July 25, 2023, filed on October 23, 2023, and pending in the Superior Court of the State of California, County of Orange.
- 1.2. “Administrator” means ILYM Group, Inc. the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval.
- 1.4. “Aggrieved Employees” means all individuals who are or previously were employed by Defendant in California and classified as a non-exempt employee at any time during the PAGA Period.
- 1.5. “Class” means all individuals who are or previously were employed by Defendant in California and classified as a non-exempt employee at any time during the Class Period.
- 1.6. “Class Counsel” means Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik, Nicholas J. De Blouw, Jeffrey S. Herman, Sergio J. Puche, and Trevor G. Moran of Blumenthal Nordrehaug Bhowmik De Blouw LLP.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts to be paid to Class Counsel for fees and expenses, respectively, as approved by the Court, to compensate Class Counsel for their legal work in connection with the Action, including their pre-filing investigation, their filing of the Action, all related litigation activities, all Settlement work, all post-Settlement compliance procedures, and related litigation expenses billed in connection with the Action.

- 1.8. “Class Data” means Class Member identifying information in Defendant’s possession including the Class Member’s name, last-known mailing address, Social Security number, and number of Workweeks during the Class Period and PAGA Period (if any).
- 1.9. “Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non- Participating Class Member who qualifies as an Aggrieved Employee).
- 1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members by use of available email addresses, phone numbers, social security numbers, credit reports, LinkedIn and Facebook.
- 1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.12. “Class Notice Packet” means the Class Notice to be provided to the Class Members by the Administrator in the form set forth as Exhibit A to this Agreement (other than formatting changes to facilitate printing by the Administrator) along with a Request for Exclusion form and Dispute form substantively in the forms attached hereto as Exhibit A.
- 1.13. “Class Period” means the period of time from August 15, 2019 through either: (i) September 19, 2024, or (ii) the latest date when there are no more than 61,600 Workweeks collectively worked by the Class Members, whichever of these two dates occurs later.
- 1.14. “Class Representative” means the named Plaintiffs in the Operative Complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.15. “Class Representative Service Payment(s)” means the service payment(s) made to the Plaintiffs as Class Representatives in order to compensate for initiating the Action, performing work in support of the Action, undertaking the risk of liability for Defendant’s expenses, and for the general release of all known and unknown claims by the Plaintiffs.
- 1.16. “Court” means the Superior Court of California, County of Orange.
- 1.17. “Defendant” means Biosense Webster, Inc.
- 1.18. “Defense Counsel means Michael S. Kun and Kevin D. Sullivan of Epstein Becker & Green, P.C.

- 1.19. “Effective Date” means the date on which the Court’s order approving the settlement and its entry of judgment become Final, which shall mean the latest of the following as applicable: (i) if there is no appeal, the date that is 61 days after notice of entry of the judgment is submitted to the LWDA in accordance with Labor Code section 2699, subdivision (1)(3); (ii) if there is an appeal of the Court’s judgment, the date the order and judgment approving the settlement are affirmed on appeal, the date of dismissal of such appeal, or the expiration of the time to file a petition for writ of certiorari to the California Supreme Court; or (iii) if a petition for writ of certiorari is filed, the date of denial of the petition for writ of certiorari, or the date the order and judgment approving the settlement are affirmed pursuant to such petition.
- 1.20. “Final Approval” means the Court’s order granting final approval of the Settlement substantially in the form attached hereto as Exhibit C to this Agreement and incorporated by reference into this Agreement.
- 1.21. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement to determine whether to approve finally and implement the terms of this Agreement and enter the Judgment.
- 1.22. “Gross Settlement Amount” means One Million Eight Hundred Thousand Dollars (\$1,800,000) which is the total amount to be paid by Defendant as provided by this Agreement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment and the Administration Expenses Payment. This Gross Settlement Amount is an all-in amount without any reversion to Defendant, and excludes any employer payroll taxes, if any, due on the portion of the Individual Class Payments allocated to wages which shall not be paid from the Gross Settlement and shall be the separate additional obligation of Defendant.
- 1.23. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.
- 1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period.
- 1.25. “Judgment” means the judgment entered by the Court based upon Final Approval substantially in the form attached hereto as Exhibit C to this Agreement and incorporated by reference into this Agreement.
- 1.26. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subdivision (i).

- 1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subdivision (i).
- 1.28. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The Net Settlement Amount is to be paid to Participating Class Members as Individual Class Payments.
- 1.29. “Non-Participating Class Member” means a Class Member who opts out of the Class Settlement by submitting a valid and timely Request for Exclusion to the Administrator.
- 1.30. “PAGA Workweek” means any Workweek during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.
- 1.31. “PAGA Period” means the period of time from July 25, 2022 through the end date of the Class Period.
- 1.32. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698 et seq.).
- 1.33. “PAGA Notice” means the Plaintiff Simma’s July 25, 2023 letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.34. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$10,000) and the 75% to LWDA (\$30,000) in settlement of PAGA claims.
- 1.35. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion.
- 1.36. “Plaintiffs” means Daraphone Simma and Wendy Santos, the named plaintiffs in the Action.
- 1.37. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement, substantially in the form attached hereto as Exhibit B to this Agreement and incorporated by this reference herein.
- 1.38. “Released Class Claims” means any and all causes of action, claims, rights, damages, penalties, liabilities, expenses, losses, attorneys’ fees, and costs alleged in the Operative Complaint or that could have been asserted in this Action based on the facts alleged in the Operative Complaint, including: (a) any alleged failure by Defendant to (1) pay Class Members all regular and minimum wages purportedly due; (2) pay Class Members all overtime and double time wages purportedly due; (3) provide Class Members with

compliant meal periods or sufficient compensation in lieu thereof; (4) provide Class Members with compliant rest periods or sufficient compensation in lieu thereof; (5) provide Class Members with compliant, accurate wage statements; (6) timely pay Class Members all wages purportedly due during or at the end of employment, including but not limited to vested paid time off and holiday pay; (7) reimburse Class Members for all purportedly necessary business expenses; (8) provide Class Members adequate and proper paid sick leave; (9) provide Class Members with all reporting time pay purportedly due; and (10) provide Class Members with suitable seating; (b) any right or claim for unfair business practices in violation of California Business & Professions Code section 17200, *et seq.*, based on the alleged failures set forth in (a)(1) through (a)(10) above; and (c) any violation of the California Labor Code or other state or federal statute, rule or regulation (including Wage Orders) that could have been asserted in this Action based on the facts alleged in the Operative Complaint and addressed in (a)(1) through (a)(10) above, including violation of California Labor Code sections 201, 202, 203, 204, 210, 218, 221, 226, 226.3, 226.7, 227.3, 233, 246, 246.5, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, and 2802, as well as the corresponding provisions of the applicable Wage Order(s), and any and all corresponding claims brought and that could have been brought under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. section 201, *et seq.* based on the facts alleged in the Operative Complaint and in accordance with *Rangel v. PLS Check Cashers of Cal., Inc.* (9th Cir. 2018) 899 F.3d 1106, 1110–11 [holding opt-out release of California state law claims was res judicata against FLSA claims “which were direct federal law counterparts to the state law claims settled”]; accord, *Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 539–541 [affirming release of FLSA claims]; *Richardson v. Wells Fargo Bank, N.A.* (5th Cir. 2016) 839 F.3d 442, 451–52 [plaintiff who became party to the opt-out Rule 23 settlement was bound by all settlement terms, including release of FLSA claims]. Except as expressly set forth in this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability insurance, social security benefits, workers’ compensation, or Class claims based on facts occurring outside the Class Period.

- 1.39. “Released PAGA Claims” means any and all rights or claims for statutory penalties, attorneys’ fees, and costs pursuant to PAGA arising under the California Labor Code or Wage Orders alleged in Plaintiffs’ PAGA Notice or that could have been asserted in the Action based on the facts alleged in the PAGA Notice which occurred during the PAGA Period, including: (a) any alleged failure by Defendant to (1) pay Aggrieved Employees all regular and minimum wages purportedly due; (2) pay Aggrieved Employees all overtime and double time wages purportedly due; (3) provide Aggrieved Employees with compliant meal periods or sufficient compensation in lieu thereof; (4) provide Aggrieved Employees with compliant rest periods or sufficient compensation in lieu thereof; (5) provide Aggrieved Employees with compliant, accurate wage statements; (6) timely pay Aggrieved Employees all wages purportedly due during or at the end of employment, including but not limited to vested paid time off and holiday pay; (7) reimburse Aggrieved

Employees for all purportedly necessary business expenses; (8) provide Aggrieved Employees adequate and proper paid sick leave; (9) provide Aggrieved Employees with all reporting time pay purportedly due; and (10) provide Aggrieved Employees with suitable seating; and (b) any violation of the California Labor Code or other state or federal statute, rule or regulation (including Wage Orders) that could have been asserted in this Action based on the facts alleged in Plaintiffs' PAGA Notice and addressed in (a)(1) through (a)(10) above, including violation of California Labor Code sections 201, 202, 203, 204, 210, 218, 221, 226, 226.3, 226.7, 227.3, 233, 246, 246.5, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, and 2802, as well as the corresponding provisions of the applicable Wage Order(s), expressly excluding all other claims including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability insurance, social security benefits, and workers' compensation.

- 1.40. "Released Parties" means: Defendant and all of its present and former parent entities, subsidiaries, and/or affiliates, predecessors and successors, as well as all of its or their present or former divisions, affiliates, former and present officers, owners, predecessors, directors, employees, agents, shareholders, fiduciaries, representatives, attorneys, insurers, benefit plans, and each and all of the foregoing persons' heirs, assigns, executors, administrators and successors, or any of them, or anyone claiming by, through, under, or on behalf of any of them, or any individual or entity that could be liable for any of the released claims.
- 1.41. "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.42. "Response Deadline" means sixty (60) calendar days after the Administrator mails Class Notice Packet to Class Members and Aggrieved Employees and shall be the last date on which Class Members may: (a) submit Requests for Exclusion from the Settlement, or (b) submit his or her Objection to the Settlement. Class Members to whom Class Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.
- 1.43. "Settlement" means the disposition of the Action and all related claims effectuated by this Agreement and the Judgment.
- 1.44. "Workweek" means any week during the Class Period in which a Class Member performed work for Defendant as a Class Member for at least one day.

2. RECITALS

The Class Action

2.1. On August 15, 2023, Plaintiff Simma commenced this Action by filing a Class Action Complaint against Defendant in the Superior Court of the State of California, County of Orange (the “Class Action”). Plaintiff Simma’s Class Action Complaint asserted the following causes of action against Defendant:

- (a) Violated California Business and Professions Code § 17200 *et seq.*;
- (b) Failed to pay minimum wages in violation of California Labor Code §§ 1194, 1197 & 1197.1.
- (c) Failed to pay overtime wages in violation of California Labor Code § 510, *et seq.*;
- (d) Failed to provide required meal periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order;
- (e) Failed to provide required rest periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order;
- (f) Failed to provide accurate itemized wage statements in violation of California Labor Code § 226;
- (g) Failed to reimburse employees for required expenses in violation of California Labor Code § 2802;
- (h) Failed to provide wages when due in violation of California Labor Code §§ 201, 202 and 203; and
- (i) Failure to pay sick pay wages in violation of California Labor Code §§ 201-204, 233, 246.

2.2. On January 2, 2024, Plaintiff Simma filed a First Amended Complaint, removing class allegations pertaining to an alleged failure to provide seating under California Code of Regulations, Title 8, Section 10080(14).

2.3. On February 12, 2024, Defendant filed an Answer to the First Amended Complaint.

The PAGA Action

2.4. On October 23, 2023, Plaintiff Simma filed a separate Representative Action Complaint against Defendant (the “PAGA Action”). Plaintiff Simma’s Representative Action Complaint asserted claims against Defendant for Civil Penalties Pursuant to Labor Code §§ 2699, *et seq.* for alleged violations of Labor Code §§ 201, 202, 203, 204, *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040 Subdivision 5(A)-(B), California Code Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and the applicable Wage Order(s).

2.5. On February 12, 2024, Defendant filed an Answer to the Representative Action Complaint.

Pleading Amendment

2.6. As part of this Agreement, the Parties stipulate to the filing of a Second Amended Class and Representative Action Complaint in the Class Action that adds: (1) Wendy Santos as an additional plaintiff and Class Representative, (ii) the alleged facts and theories of liability raised by Class Counsel at mediation, namely that Class Members' overtime wages, double time wages, meal period premiums, rest period premiums, reporting time pay, and paid sick leave were not calculated at the regular rate of pay when taking into account all types of remuneration including, but not limited to, incentives, shift differential pay, and bonuses, and (iii) the claims and parties from Plaintiff Simma's second-filed PAGA Action. The Second Amended Class and Representative Action Complaint shall be the operative complaint in the Action (the "Operative Complaint"), which was filed on November 14, 2024. Plaintiffs will subsequently dismiss the separate PAGA Action without prejudice.

Mediation and Settlement

2.7. On June 19, 2024, the Parties participated in an all-day mediation presided over by Kevin Barnes, Esq., a respected mediator of wage and hour representative and class actions. Following the mediation, each side, represented by its respective counsel, was able to agree to settle the Action based upon a mediator's proposal which was memorialized in the form of a Memorandum of Understanding. This Agreement replaces and supersedes the Memorandum of Understanding and any other agreements, understandings, or representations between the Parties.

2.8. Prior to mediation, Plaintiffs obtained sufficient documents and information to sufficiently investigate the claims such that Plaintiffs' investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

2.9. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant that the claims in the Action of Plaintiffs or the Class have merit or that Defendant bears any liability to Plaintiffs or the Class on those claims or any other claims, or as an admission by Plaintiffs that Defendant's defenses in the Action have merit. The Parties agree to certification of the Class for purposes of this Settlement only. If for any reason the Settlement does not become effective, Defendant reserves the right to contest certification of any class for any reason and reserves all available defenses to the claims in the Action.

2.10. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending wage and hour or PAGA matters or actions asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendant promises to pay \$1,800,000 and no more as the Gross Settlement Amount. This amount is all-inclusive of all payments contemplated in this resolution, excluding any employer-side payroll taxes on the portion of the Individual Class Payments allocated to wages which shall be separately paid by Defendant to the Administrator. Defendant has no obligation to pay the Gross Settlement Amount (or any employer-side payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

3.2. Payments from the Gross Settlement Amount. Subject to the terms and conditions of this Agreement, the Administrator will make the following payments out of the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval.

(a) To Plaintiffs: Class Representative Service Payments to the Class Representatives of not more than \$10,000 each (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendant will not oppose Plaintiffs' request for Class Representative Service Payments that do not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiffs will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves Class Representative Service Payments less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiffs assume full responsibility and liability for employee taxes owed on the Class Representative Service Payments.

(b) To Class Counsel: A Class Counsel Fees Payment of not more than one-third (1/3) of the Gross Settlement Amount, which is currently estimated to be \$600,000, and a Class Counsel Litigation Expenses Payment of not more than \$30,000. Defendant will not oppose requests for these payments provided that do not exceed these amounts. Plaintiffs and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released

Parties shall have no liability to Class Counsel or any other Plaintiffs' Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these payments.

- (c) To the Administrator: An Administration Expenses Payment not to exceed \$8,500 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses Payment is less, or the Court approves payment less than \$8,500, the Administrator will retain the remainder in the Net Settlement Amount for distribution to Participating Class Members.
- (d) To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$40,000 to be paid from the Gross Settlement Amount, with 75% (\$30,000) allocated to the LWDA PAGA Payment and 25% (\$10,000) allocated to the Individual PAGA Payments.
 - i. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$10,000) by the total number of Workweeks worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's Workweeks worked by all Aggrieved Employees during the PAGA Period. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.
 - ii. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.
- (e) To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.
 - i. Tax Allocation of Individual Class Payments. 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for non-wages, accountable expense reimbursement, interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will

be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

- ii. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

4. SETTLEMENT FUNDING

- 4.1. Class Workweeks and Aggrieved Employee Workweeks. Based on its records, Defendant has represented that the Class consists of roughly 450 Class Members from August 15, 2019 through approximately June 15, 2024 who collectively worked a total of approximately 56,000 Workweeks from August 15, 2019 through approximately June 15, 2024 and roughly 236 Aggrieved Employees who worked a total of approximately 20,100 PAGA Workweeks from August 15, 2019 through approximately June 15, 2024. Defendant will notify Class Counsel of the final figures and the Class Period end date prior to the hearing on the Motion for Preliminary Approval.
- 4.2. Class Data. Not later than 15 days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted Class Member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.
- 4.3. Funding of the Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than twenty-one (21) days after the Effective Date.

5. PAYMENTS FROM THE GROSS SETTLEMENT AMOUNT

- 5.1. Thirty (30) days after the Effective Date, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment,

the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payments.

- 5.2. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the “void date”, which is 180 days after the date of mailing, when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Class Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Administrator must update the recipients’ mailing addresses using the National Change of Address Database. If a Participating Class Member’s or Aggrieved Employee’s check is not cashed within 120 days after its last mailing to the affected individual, the Administrator will also send the individual a notice informing him or her that unless the check is cashed by the void date, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced but not cashed.
- 5.3. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.
- 5.4. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller’s Unclaimed Property Fund in the name of the Class Member thereby leaving no “unpaid residue” subject to the requirements of California Code of Civil Procedure section 384, subdivision (b).
- 5.5. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

- 6. RELEASE OF CLAIMS.** Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs, Participating Class Members, Aggrieved Employees and the LWDA will release claims against all Released Parties as follows:

6.1. Plaintiffs' Release. Plaintiffs and their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiff Simma's PAGA Notice ("Plaintiffs' Release"). Plaintiffs' Release does not extend to any claims or actions to enforce this Agreement or the Memorandum of Understanding, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, or workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiffs acknowledge that Plaintiffs may discover facts or law different from, or in addition to, the facts or law that Plaintiffs now know or believe to be true but agree, nonetheless, that Plaintiffs' Release' shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiffs' discovery of them.

- (a) Plaintiffs' Waiver of Rights Under Civil Code Section 1542. For purposes of Plaintiffs' Release, Plaintiffs expressly waive and relinquish the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or Released Party.

6.2. Release by Participating Class Members. Upon full funding of the Gross Settlement Agreement, all Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from the Released Class Claims.

6.3. Release of PAGA Claims. Upon entry of Final Judgment and funding of the Gross Settlement Amount, all Aggrieved Employees and the LWDA are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from the Released PAGA Claims.

- 7. MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with the Court's procedures and instructions.

- 7.1. Defendant's Responsibilities. Within 14 days of the full execution of this Agreement, Defendant will prepare and deliver to Class Counsel a signed Declaration disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator. In the Declaration, Defendant shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.
- 7.2. Plaintiffs' Responsibilities. Plaintiffs will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code section 2699, subdivision (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiffs, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiffs confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or the Administrator; (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); and (vi) all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator. In their Declarations, Plaintiffs and Class Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.
- 7.3. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.
- 7.4. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work

together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

8. SETTLEMENT ADMINISTRATION

- 8.1. Selection of Administrator. The Parties have jointly selected ILYM Group, Inc. to serve as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc. agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Administrator's duties will include preparing, printing, and mailing the Class Notice Packet to all Class Members; conducting a National Change of Address search to update Class Member addresses before mailing the Class Notice Packets; re-mailing Class Notice Packets that are returned to the Class Member's new address; setting up a toll-free telephone number and email and a fax number to receive communications from Class Members; receiving and reviewing for validity completed Requests for Exclusion; providing the Parties with weekly status reports about the delivery of Class Notice Packets and receipt of Requests for Exclusion, objections and disputes; calculating Individual Class Payments and Individual PAGA Payments; issuing the checks to effectuate the payments due under the Settlement; issuing the tax reports required under this Settlement; and otherwise administering the Settlement pursuant to this Agreement. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 8.2. Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for the purposes of calculating payroll tax withholdings and providing reports to the state and federal tax authorities.
- 8.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.
- 8.4. Notice to Class Members.
- (a) No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Class Workweeks, and PAGA Workweeks in the Class Data.
 - (b) Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts

of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Class Workweeks and PAGA Workweeks (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

- (c) Not later than 7 days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.
- (d) The deadlines for Class Members' written objections, Challenges to Class Workweeks and/or PAGA Workweeks, and Requests for Exclusion will be extended an additional 14 days beyond the Response Deadline provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.
- (e) If the Administrator, the Parties, Defense Counsel, or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever are later.

8.5. Requests for Exclusion (Opt-Outs).

- (a) Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than the Response Deadline (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.
- (b) The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall

accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

- (c) Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraph 6.2 of the Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.
- (d) Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 6.3 of this Agreement and are eligible for an Individual PAGA Payment. If a Class Member submits both a Request for Exclusion and an objection, only the Request for Exclusion will be accepted, and the objection will be void.

8.6. Challenges to Calculation of Workweeks. Each Class Member shall have until the Response Deadline (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Workweeks (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Class Workweeks and/or PAGA Workweeks shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Class Workweeks and/or PAGA Workweeks to Defense Counsel and Class Counsel and the Administrator's determination as to the challenges

8.7. Objections to Settlement.

- (a) Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement,

and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

- (b) Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, or in addition to a written objection, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than the Response Deadline (plus an additional 14 days for Class Members whose Class Notice was re-mailed).
- (c) Non-Participating Class Members have no right to object to any of the class action components of the Settlement. If a Class Member submits both a Request for Exclusion and an objection, only the Request for Exclusion will be accepted, and the objection will be void.

8.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

- (a) Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.
- (b) Request for Exclusion (Opt-Outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 7 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).
- (c) Class Workweek and/or PAGA Workweek Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member and/or Aggrieved Employee challenges over the calculation of Class Workweeks and/or PAGA Workweeks. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.

- (d) Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Class Workweeks and/or PAGA Workweeks received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.
- (e) Administrator’s Declaration. Not later than 7 days before the date by which Plaintiffs are required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.
- (f) Final Report by Administrator. Within 10 days after the Administrator disburses all funds of the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 7 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court. If a second declaration attesting to the distribution of uncashed checks is required, the Administrator shall provide this second declaration at least 7 days before any deadline for a second declaration and Class Counsel shall be responsible for filing the second declaration with the Court.

9. CLASS SIZE MODIFICATION AND ESCALATOR CLAUSE. Based on its records, Defendant provided figures as to the Class size as set forth in paragraph 4.1 above. If the actual number of Workweeks during the Class Period exceeds the 56,000 estimated number by more than 10% (i.e., if there were actually 61,601 Workweeks or more collectively worked by the Class Members during the Class Period), then Defendant will have the option to either: (i) allow the Gross Settlement Amount to increase on a pro rata basis above 10% to the extent the threshold is exceeded (e.g., if the total number of Workweeks during the Class Period is actually 11% more than 56,000 Workweeks, the Gross Settlement Amount shall increase by

1%), or (ii) shorten the Class Period and PAGA Period such that the threshold is not exceeded – i.e., such that there is not an increase in the total number of Workweeks more than 10%.

10. DEFENDANT’S RIGHT TO WITHDRAW. If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 5% of the total of all Class Members, Defendant may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant will remain responsible for paying all Administration Expenses incurred as of the date Defendant makes this election to withdraw. Defendant must notify Class Counsel and the Court of its election to withdraw not later than 7 days after the Administrator sends the final Exclusion List to Defense Counsel. Invalid Requests for Exclusion will have no effect on this threshold for an election.

11. MOTION FOR FINAL APPROVAL. Unless otherwise ordered by the Court, not later than 16 court days before the calendared Final Approval Hearing, Plaintiffs will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subdivision (I), a Proposed Final Approval Order and a proposed Judgment (collectively “Motion for Final Approval”). Plaintiffs shall provide drafts of these documents to Defense Counsel not later than 7 days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

11.1. Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

11.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final Approval. The Court’s decision to award less than the amounts requested for a Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administration Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

11.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement under Code of Civil Procedure section 664.6 solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

11.4. Waiver of the Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

11.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on an equal basis, any additional Administration Expenses reasonably incurred at the time of remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

12. AMENDED JUDGMENT. If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

13. ADDITIONAL PROVISIONS

13.1. No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiffs that Defendant's defenses in the Action have merit. The Parties agree that Class certification and PAGA representative treatment is for purposes of this Settlement only. If, for any reason the Court does not grant Preliminary Approval, Final Approval or Judgment pursuant to this Agreement, Defendant reserves the right to contest certification of any class for any reasons, and Defendant reserves all available defenses to the claims in the Action, and Plaintiffs reserve the right to move for class certification on any grounds available and to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no

bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

- 13.2. Confidentiality Prior to Preliminary Approval. Plaintiffs, Class Counsel, Defendant, and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiffs, Class Counsel, Defendant, and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 13.3. No Solicitation. The Parties separately agree that they and their respective counsel and employees have not and will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 13.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 13.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiffs and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 13.6. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree

upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will first seek the assistance of a mediator and then the Court for resolution.

- 13.7. Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 13.8. Tax Advice. Neither Plaintiffs, Class Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 13.9. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 13.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 13.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 13.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 13.13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 13.14. Use and Return of Class Data. Information provided to Class Counsel pursuant to Evidence Code section 1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiffs shall destroy, all paper and electronic versions of Class Data received from Defendant.

13.15. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

13.16. Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

13.17. Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiffs and the Class:

Norman B. Blumenthal
Kyle R. Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw LLP
2255 Calle Clara
La Jolla, CA 92037
Tel.: (858) 551-1223
Fax: (858) 551-1232
E-Mail: norm@bamlawca.com
kyle@bamlawca.com

To Defendant:

Michael S. Kun
Kevin D. Sullivan
EPSTEIN BECKER & GREEN, P.C.
1925 Century Park East, Suite 500
Los Angeles, CA 90067
Tele.: (310) 556-8861
Fax: (310) 553-2165
E-Mail: mkun@ebglaw.com
ksullivan@ebglaw.com

13.18. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

13.19. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to Code of Civil Procedure section 583.330 to extend the date to bring a case to trial under section 583.310 for a period of not less than one (1) year starting from the date of the signing of this Agreement by all parties until the entry of the final approval order and judgment or if not entered the date this Agreement shall no longer be of any force or effect..

13.20. Arms-Length Settlement. The Parties, Class Counsel and Defense Counsel represent and warrant that they have arrived at this Agreement through arms-length negotiations.

14. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: 03/26/2025 
Daraphone Simma (Mar 26, 2025 15:47 PDT)
Plaintiff Daraphone Simma

Dated: 03/26/2025 
Wendy Santos (Mar 26, 2025 18:57 PDT)
Plaintiff Wendy Santos

Dated: March 25, 2025 
Fahmi Nahas
Global Head of Human Resources
For Defendant Biosense Webster, Inc.

Dated: 3/27/25 
Kyle Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw LLP
Attorney for Plaintiffs

Dated: March 26, 2025 
Michael S. Kun
Kevin D. Sullivan
Epstein Becker & Green, P.C.
Attorney for Defendant

EXHIBIT A

[NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION AND HEARING DATE FOR
FINAL COURT APPROVAL]

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

***Simma v. Biosense Webster, Inc., Superior Court of the
State of California, County of Orange, Case No. 30-2023-01342539-CU-OE-CXC***

*A court authorized this notice. This is not a solicitation.
This is not a lawsuit against you, and you are not being sued.*

To: All individuals who are or previously were employed by Defendant Biosense Webster, Inc. in California and classified as a non-exempt employee at any time during the Class Period (August 15, 2019, through _____).

The Superior Court of the State of California, County of Orange has granted preliminary approval of a proposed settlement of the above-captioned action. Because your rights may be affected by this settlement, please read this Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval (“Class Notice”) carefully. The purpose of this Class Notice is to provide a description of the claims alleged in the action, the key terms of the settlement, and your rights and options with respect to the settlement.

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT ACT. PLEASE
READ THIS CLASS NOTICE CAREFULLY.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	To receive a cash payment from the Settlement, you do not have to do anything. Your estimated Individual Class Payment is: \$<< __ >>. See the explanation in Section 5 below. After final approval by the Court, the payment will be mailed to you at the same address as this Class Notice. In exchange for the settlement payment, you will release claims against the Defendant as detailed in Section 4 below. If your address has changed, you must notify the Administrator as explained in Section 6 below.
Exclude Yourself The Response Deadline is _____.	To exclude yourself, you must send a written request for exclusion to the Administrator as provided below. If you request exclusion, you will receive no money from the class action portion of the Settlement and you will not be bound by the class action portion of the Settlement. If you are an Aggrieved Employee and exclude yourself, you will still be paid your share of the PAGA Penalties and will remain subject to the release of the Released PAGA Claims regardless of whether you submit a request for exclusion. Instructions are set forth in Section 7 below.
Object The Response Deadline is _____.	Write to the Administrator about why you do not agree with the settlement or appear at the Final Approval Hearing to make an oral objection. The Court’s Final Approval Hearing is scheduled to take place on _____ at _____ a.m., at the Orange County Superior Court, located at 751 West Santa Ana Blvd., Santa Ana, CA 92701, before Judge Layne H. Melzer in Department CX102. Directions regarding Objections are provided in Section 8 below.

1. Why did I receive this Class Notice?

On August 15, 2023, Plaintiff Simma filed a lawsuit alleging class claims against Biosense Webster, Inc. (“Defendant”) in the Superior Court of the State of California, County of Orange (the “Class Action”). The Class Action asserted the following class claims against Defendant: unfair competition, failure to pay minimum wages, failure to pay overtime wages, failure to provide required meal periods, failure to provide required rest periods, failure to provide accurate itemized wage statements, failure to reimburse employees for required expenses, failure to provide wages when due, and failure to pay sick wages. On January 2, 2024, Plaintiff Simma filed a First Amended Complaint, removing class allegations pertaining to an alleged failure to provide seating under California Code of Regulations, Title 8, Section 10080(14).

Separately, on October 23, 2023, Plaintiff Simma filed a separate Representative Action Complaint against Defendant (the “PAGA Action”). Plaintiff Simma’s Representative Action Complaint asserted claims against Defendant for Civil Penalties Pursuant to Labor Code §§ 2699, *et seq.* for alleged violations of Labor Code §§ 201, 202, 203, 204, *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040 Subdivision 5(A)-(B), California Code Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and the applicable Wage Order(s). On October 20, 2021, the Court signed the Order transferring the PAGA Action to the Orange County Superior Court. On October 21, 2021, Plaintiff Guzman filed a separate Representative Action Complaint against Defendant in the Superior Court of the State of California, County of San Bernardino (the “Guzman PAGA Action”) also alleging a PAGA claim.

As part of this Settlement, on November 14, 2024, Plaintiffs Daraphone Simma and Wendy Santos (“Plaintiffs”) filed a Second Amended Class and Representative Action Complaint in the Class Action that adds: (i) Wendy Santos as an additional plaintiff and Class Representative, (ii) the alleged facts and theories of liability raised by Class Counsel at mediation, namely that Class Members’ overtime wages, double time wages, meal period premiums, rest period premiums, reporting time pay, and paid sick leave were not calculated at the regular rate of pay when taking into account all types of remuneration including, but not limited to, incentives, shift differential pay, and bonuses, and (iii) the claims and parties from Plaintiff Simma’s second-filed PAGA Action. The Second Amended Class and Representative Action Complaint is referred to as the “Operative Complaint”.

Pursuant to a court order, you are hereby notified that Plaintiffs and Defendant have reached a proposed class action settlement (the “Settlement”) of the above-captioned action pending in the Superior Court of the State of California, in and for the County of Orange (the “Court”) has been reached between Plaintiffs and Defendant. The Honorable David A. Hoffer has been assigned as the judge overseeing the Action and Settlement.

The Court held a hearing on [REDACTED]. After the hearing, the Court granted Preliminary Approval of the Settlement. The Court conditionally certified the Class for settlement purposes only and directed that you receive this Class Notice to provide a summary of the Settlement so that you may better understand your rights and options under the Settlement. Capitalized terms in this Class Notice are defined herein and/or in the Parties’ Class Action and PAGA Settlement Agreement (“Agreement”).

You have received this Class Notice because you have been identified as a member of the Class and may be entitled to receive money from this Settlement.

The Class is defined as:

All individuals who were employed by Defendant in the State of California and classified as a non-exempt employee at any time during the Class Period.

The Class Period is August 15, 2019, through _____.

It is important that you read this Class Notice carefully as your rights may be affected by the Settlement.

2. What is this class action lawsuit about?

In the Operative Complaint, Plaintiffs allege the following class claims against Defendant: (1) unfair competition; (2) failure to pay minimum wages; (3) failure to pay overtime wages; (4) failure to provide meal periods; (5) failure to provide rest periods; (6) failure to provide accurate itemized statements; (7) failure to reimburse employees for required expenses; (8) failure to provide wages when due; and (9) failure to pay sick wages. The Operative Complaint also alleges a representative claim under the California Private Attorneys General Act, Cal. Labor Code §§ 2698, *et seq.* (“PAGA”) for civil penalties based upon the above alleged violations.

Defendant expressly denies any wrongdoing or legal liability arising out of the claims alleged in the Operative Complaint. Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint, and denies any and all liability for the causes of action alleged in the Operative Complaint. Defendant further denies that, for any purpose other than settling the claims, that Plaintiffs’ class claims are appropriate for class or representative treatment. Defendant has asserted numerous procedural and legal defenses to the Action and contends that the facts and applicable law do not allow for any monetary or other relief to Plaintiffs or the Class. Defendant wishes to settle these claims only to avoid costly, disruptive, and time-consuming litigation. The Settlement represents a compromise and settlement of highly disputed claims. Nothing in the Settlement is intended or will be construed as an admission by Defendant that Plaintiffs’ claims in the lawsuit have merit, that it has any liability to Plaintiffs or the group of individuals that Plaintiffs seeks to represent in this lawsuit, or that it engaged in any wrongdoing.

The Court has not made any determination as to whether Plaintiffs’ claims have any merit. In other words, the Court has not determined whether any laws have been violated, nor has it decided in favor of Plaintiffs or Defendant. Instead, both sides agreed to resolve the Action with no decision or admission of who is right or wrong.

The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved the Plaintiffs to serve as the Class Representatives, and the law firm Blumenthal Nordrehaug Bhowmik De Blouw LLP to serve as Class Counsel. In granting preliminary approval of the Settlement, the Court has determined that there is sufficient evidence that the proposed Settlement is fair, adequate, and reasonable, and that any final determination of those issues will be made at the Final Approval Hearing concerning the Settlement.

3. What are the terms of the Settlement?

Gross Settlement Amount. Defendants have agreed to pay an “all in” amount of One Million Eight Hundred Thousand Dollars (\$1,800,000) to fund the settlement of the Action.

Amounts to be Paid From the Gross Settlement Amount. The Settlement provides for certain payments to be made from the Gross Settlement Amount as follows, which will be subject to final Court approval, and which will be deducted from the Gross Settlement Amount before Individual Class Payments are made to Class Members who do **not** submit a valid and timely Request for Exclusion (“Participating Class Members”):

- *Administration Expenses Payment.* Payment to the Administrator, estimated not to exceed \$8,500, for expenses, including notifying the Class Members of the Settlement, distributing Individual Class Payments and tax forms, and handling questions about the Settlement.
- *Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment.* Payment to Class Counsel of reasonable attorneys' fees not to exceed one-third (1/3) of the Gross Settlement Amount, which is presently \$600,000, and an additional amount to reimburse actual litigation costs incurred by the Plaintiff not to exceed \$30,000. Class Counsel has been prosecuting these claims on behalf of Plaintiffs and the Class on a contingency fee basis (that is, without being paid any money) and has been paying all litigation costs and expenses.
- *Class Representative Service Payments.* A Class Representative Service Payment in an amount not to exceed \$10,000 each to the Plaintiffs, subject to Court approval, to compensate Plaintiffs for services on behalf of the Class in initiating and prosecuting the claims, and for the risks Plaintiffs undertook.
- *PAGA Penalties.* A payment of \$40,000 relating to the claim for penalties under PAGA, 75% (\$30,000) of which will be paid to the California Labor Workforce Development Agency ("LWDA"), and 25% (\$10,000) of which shall be distributed as "Individual PAGA Payments" to the Aggrieved Employees, calculated by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$10,000) by the total number of Workweeks worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's Workweeks worked by all Aggrieved Employees during the PAGA Period.
 - The "PAGA Period" is July 25, 2022 to _____.
 - "Aggrieved Employees" means all individuals who are or previously were employed by Defendant in California and classified as a non-exempt employee at any time during the PAGA Period. As part of the resolution of the PAGA claim through this PAGA Payment, Aggrieved Employees will release all Released PAGA Claims for civil penalties as set forth below, whether or not they submit requests for exclusion from the Settlement.

Calculation of Payments to Class Members ("Individual Class Payments").

The "Net Settlement Amount" means the total sum available for payout to Participating Class Members, which equals the Gross Settlement Amount minus the above-described Class Representative Service Payments, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, the PAGA Penalties, and the Administration Expenses Payment. The Net Settlement Amount is estimated to be at least \$ [REDACTED]. The Administrator will pay an Individual Class Payment from the Net Settlement Amount to each Participating Class Member. The Individual Class Payment for each Participating Class Member will be calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. "Workweek(s)" means any week during the Class Period in which a Class Member worked for Defendant as a Class Member for at least one day. The number of Workweeks will be based on Defendant's records, however, Class Members may challenge the number of Workweeks as explained below.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order granting final approval of the Settlement and entering Judgment.

4. What Do I Release Under the Settlement?

Released Class Claims. Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from the Released Class Claims. The “Released Class Claims” are any and all causes of action, claims, rights, damages, penalties, liabilities, expenses, losses, attorneys’ fees, and costs alleged in the Operative Complaint or that could have been asserted in this Action based on the facts alleged in the Operative Complaint, including: (a) any alleged failure by Defendant to (1) pay Class Members all regular and minimum wages purportedly due; (2) pay Class Members all overtime and double time wages purportedly due; (3) provide Class Members with compliant meal periods or sufficient compensation in lieu thereof; (4) provide Class Members with compliant rest periods or sufficient compensation in lieu thereof; (5) provide Class Members with compliant, accurate wage statements; (6) timely pay Class Members all wages purportedly due during or at the end of employment, including but not limited to vested paid time off and holiday pay; (7) reimburse Class Members for all purportedly necessary business expenses; (8) provide Class Members adequate and proper paid sick leave; (9) provide Class Members with all reporting time pay purportedly due; and (10) provide Class Members with suitable seating; (b) any right or claim for unfair business practices in violation of California Business & Professions Code section 17200, *et seq.*, based on the alleged failures set forth in (a)(1) through (a)(10) above; and (c) any violation of the California Labor Code or other state or federal statute, rule or regulation (including Wage Orders) that could have been asserted in this Action based on the facts alleged in the Operative Complaint and addressed in (a)(1) through (a)(10) above, including violation of California Labor Code sections 201, 202, 203, 204, 210, 218, 221, 226, 226.3, 226.7, 227.3, 233, 246, 246.5, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, and 2802, as well as the corresponding provisions of the applicable Wage Order(s), and any and all corresponding claims brought and that could have been brought under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. section 201, *et seq.* based on the facts alleged in the Operative Complaint and in accordance with *Rangel v. PLS Check Cashers of Cal., Inc.* (9th Cir. 2018) 899 F.3d 1106, 1110–11 [holding opt-out release of California state law claims was res judicata against FLSA claims “which were direct federal law counterparts to the state law claims settled”]; accord, *Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 539–541 [affirming release of FLSA claims]; *Richardson v. Wells Fargo Bank, N.A.* (5th Cir. 2016) 839 F.3d 442, 451–52 [plaintiff who became party to the opt-out Rule 23 settlement was bound by all settlement terms, including release of FLSA claims]. Except as expressly set forth in the Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability insurance, social security benefits, workers’ compensation, or Class claims based on facts occurring outside the Class Period.

This means that, if you do not timely exclude yourself from the Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against the Released Parties for the Released Class Claims resolved by this Settlement. It also means that all of the Court’s orders in the Action will apply to you and legally bind you.

Released PAGA Claims. Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all Aggrieved Employees and the LWDA are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from the Released PAGA Claims. The “Released PAGA Claims” are any and all rights or claims for statutory penalties, attorneys’ fees, and costs pursuant to PAGA arising under the California Labor Code or Wage Orders alleged in Plaintiffs’ PAGA Notice or that could have been asserted in the Action based on the facts alleged in the PAGA Notice, which occurred during the PAGA Period, including: (a) any alleged failure by Defendant to (1) pay Aggrieved Employees all regular and minimum wages purportedly due; (2) pay Aggrieved Employees all overtime and double time wages purportedly due; (3) provide Aggrieved Employees with compliant meal periods or sufficient compensation in lieu thereof; (4) provide Aggrieved Employees with compliant rest

periods or sufficient compensation in lieu thereof; (5) provide Aggrieved Employees with compliant, accurate wage statements; (6) timely pay Aggrieved Employees all wages purportedly due during or at the end of employment, including but not limited to vested paid time off and holiday pay; (7) reimburse Aggrieved Employees for all purportedly necessary business expenses; (8) provide Aggrieved Employees adequate and proper paid sick leave; (9) provide Aggrieved Employees with all reporting time pay purportedly due; and (10) provide Aggrieved Employees with suitable seating; and (b) any violation of the California Labor Code or other state or federal statute, rule or regulation (including Wage Orders) that could have been asserted in this Action based on the facts alleged in Plaintiffs' PAGA Notice and addressed in (a)(1) through (a)(10) above, including violation of California Labor Code sections 201, 202, 203, 204, 210, 218, 221, 226, 226.3, 226.7, 227.3, 233, 246, 246.5, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, and 2802, as well as the corresponding provisions of the applicable Wage Order(s). Except as expressly set forth in the Agreement, all Aggrieved Employees and the LWDA do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability insurance, social security benefits, and workers' compensation. The release of the Released PAGA Claims shall be effective as to all Aggrieved Employees, regardless of whether an Aggrieved Employee submitted a request for an exclusion from the Class.

"Released Parties" collectively mean: Defendant and all of its present and former parent entities, subsidiaries, and/or affiliates, predecessors and successors, as well as all of its or their present or former divisions, affiliates, former and present officers, owners, predecessors, directors, employees, agents, shareholders, fiduciaries, representatives, attorneys, insurers, benefit plans, and each and all of the foregoing persons' heirs, assigns, executors, administrators and successors, or any of them, or anyone claiming by, through, under, or on behalf of any of them, or any individual or entity that could be liable for any of the released claims.

5. How much will my payment be?

Defendant's records reflect that you have << _____ >> Workweeks during the Class Period (August 15, 2019 to _____).

Although the exact share of the Net Settlement Amount cannot be precisely calculated at this time, based on this information, your estimated Individual Class Payment is << _____ >>.

[if applicable - In addition, your Individual PAGA Payment is << _____ >>.]

If you wish to challenge the information set forth above, then you must submit a written, signed dispute challenging the information along with supporting documents, to the Administrator at the address provided in this Class Notice no later than the Response Deadline, which is _____ [sixty (60) days after the mailing of the Class Notice or an additional 14 days in the case of re-mailing]. You may also fax the dispute to _____ or email the dispute to _____ by no later than the Response Deadline. Any dispute should include credible written evidence and will be resolved by the Administrator. A Dispute form is included with this Class Notice.

Tax Matters. Each Participating Class Member's Individual Class Payment will be apportioned as follows: (1) twenty percent (20%) shall be allocated to alleged wages for which an IRS Form W-2 will issue and which shall be subject to tax withholdings customarily made from an employee's wages and all other authorized and required withholdings; and (2) eighty percent (80%) shall be allocated to settlement of claims for non-wages, accountable expense reimbursement, interest and penalties, not subject to wage withholdings, for which an IRS Form 1099 will issue.

Neither Class Counsel nor Defendant's Counsel intend anything contained in this Class Notice to constitute advice regarding taxes or taxability. The tax issues for each Participating Class Member are unique to him/her, and each Participating Class Member may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

6. How can I get a payment?

To get money from the Settlement, **you do not have to do anything**. A check for your Individual Class Payment, and any Individual PAGA Payment (if applicable), will be mailed automatically to the same address as this Class Notice. If your address is incorrect or has changed, you must notify the Administrator. The Administrator is: ILYM Group, Inc., _____ (800) _____.

If the Court grants final approval of the Settlement and enters Judgment on the Settlement, and there are no objections or appeals, your Settlement payment will be mailed approximately three months after final approval. If there are objections or appeals the payments will be delayed because resolving them can take time, usually more than a year. Please be patient.

7. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or "opt out." **If you opt out, you will receive NO money from the Settlement, and you will not be bound by its terms, which means you will retain your right to sue the Defendant as to the Released Class Claims resolved by this Settlement.** However, Aggrieved Employees who opt out will still be paid their Individual PAGA Payment and will remain bound by the release of the Released PAGA Claims regardless of their request for exclusion.

To opt out, you must mail to the Administrator, by First Class Mail, a written, signed and dated request to opt-out postmarked no later than the Response Deadline which is _____ [sixty (60) days after the mailing of the Class Notice or an additional 14 days in the case of re-mailing]. You may also fax your request to opt out to _____ or email it to _____ by no later than the Response Deadline. A Request for Exclusion form is included with this Class Notice. The Request for Exclusion should state in substance: "I wish to be excluded from the Class in the *Simma v. Biosense Webster, Inc.* lawsuit." The Request for Exclusion must state the Class Member's full name, address, telephone number, and the name and number of the case, which is *Simma v. Biosense Webster, Inc.*, Case No. 30-2023-01342539-CU-OE-CXC. The Request for Exclusion must be completed by you. No other person may opt-out for a living member of the Class.

The address for the Administrator is _____. Absent good cause found by the Court, written requests for exclusion that are faxed, emailed, or postmarked after _____, or are incomplete or unsigned will be rejected, and those Class Members will remain bound by the Settlement and the release(s) described above.

8. How do I tell the Court that I don't agree with the Settlement?

Any Class Member who has not opted out and believes that the Settlement should not be finally approved by the Court for any reason may object to the proposed Settlement, either in writing or in person. Objections that are in writing should state (1) the Class Member's name, current address, telephone number, and the dates of employment in California by Defendant; (2) the words "Notice of Objection" or "Formal Objection"; (3) describe why you believe the Settlement is unfair; and (4) the name and number of the case, which is *Simma v.*

Biosense Webster, Inc., in the Superior Court of the State of California, County of Orange, Case No. 30-2023-01342539-CU-OE-CXC.

All written objections must be mailed to the Administrator at _____ with copies to the Parties' counsel, no later than the Response Deadline of _____ [sixty (60) days after the mailing of the Class Notice or an additional 14 days in the case of re-mailing]. You may also fax the objection to _____ or email the objection to _____ by no later than this Response Deadline.

Alternatively, Class Members may appear at the Final Approval Hearing to make an oral objection without submitting a written objection. At this time, the Court now hears matters both in person and remotely through Zoom through the court's online check-in process. If you need assistance, you may contact Class Counsel. Please check the Court's website for current information and instructions concerning appearances and how to view Court proceedings: <https://www.occourts.org/media-relations/civil.html>.

To object to the Settlement, you must not opt out, and if the Court approves the Settlement despite your objection, you will be bound by the terms of the Settlement in the same way as Class Members who do not object and you will still be mailed a check for your Individual Class Payment and any Individual PAGA Payment owed. Absent good cause found by the Court, any Class Member who does not object in the manner provided in this Class Notice shall have waived any objection to the Settlement, whether by appeal or otherwise.

9. Who are the attorneys representing the Parties?

The addresses for Parties' counsel are as follows:

Class Counsel:

Norman Blumenthal
Kyle Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw LLP
2255 Calle Clara
La Jolla, CA 92037
Tel: 858-551-1223 / Fax: 858-551-1232
Email: kyle@bamlawca.com
Website: www.bamlawca.com

Counsel for Defendant:

Andrew Lichtenstein
EPSTEIN BECKER & GREEN, P.C.
1925 Century Park East, Suite 500
Los Angeles, CA 90067

12. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at _____ a.m. on _____, in Department CX102 of the Superior Court of California, County of Orange, 751 West Santa Ana Blvd., Santa Ana, CA 92701, before Judge Layne H. Melzer. At this hearing the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval of the Settlement. If there are objections, the Court will consider them. This hearing may be rescheduled by the Court without further notice to you. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

13. How do I get more information about the Settlement?

You may contact the Administrator or contact Class Counsel for more information. The Administrator's contact information is as follows:

Administrator:

Name of Company: ILYM Group, Inc.

Email Address: _____

Mailing Address: _____

Telephone Number: _____

Fax Number: _____

Settlement Website: _____

This Class Notice summarizes the proposed Settlement. More details are in the Agreement. You may receive a copy of the Agreement, the Final Judgment or other Settlement documents by going to The Administrator's website at <<_____>> where they will be posted as they become available. You may also get more details by examining the Court's file via the Civil Case and Document Access for the California Superior Court for the County of Orange (<https://www.occourts.org/online-services/case-access/>) and entering the Case No. 30-2023-01342539.

PLEASE DO NOT CALL THE COURT ABOUT THIS CLASS NOTICE.

IMPORTANT:

- You must inform the Administrator of any change of address to ensure receipt of your Settlement payment.
- Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the Administrator will pay all unclaimed funds to the paid to the California Controller's Unclaimed Property Fund in the name of the Participating Class Member where the funds may be claimed at https://www.sco.ca.gov/upd_msg.html.
- If your check is lost or misplaced, you should contact the Administrator immediately to request a replacement.

REQUEST FOR EXCLUSION FORM

***Simma v. Biosense Webster, Inc.*, Superior Court of the
State of California, County of Orange, Case No. 30-2023-01342539-CU-OE-CXC**

I confirm that I have received the Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval, which describes my rights and the options I may take in response to the parties' proposed Settlement in the above-referenced lawsuit.

By signing and returning this Request for Exclusion Form, I confirm that I wish to be removed from the proposed Class, that I do not want to participate as a Class Member, and that I do not want to be included in the proposed Class Settlement.

I understand and acknowledge that, by signing and submitting this form: (1) I will not receive any money from the proposed Settlement except my portion, if any, of the civil penalties that is allocated in settlement of the California Labor Code Private Attorney General Act of 2004 claim alleged by Plaintiffs; (2) I will not be bound by the class portion of the proposed Settlement and will only be bound by the release of the Released PAGA Claims; and (3) I will not have any right to object to the proposed Settlement.

THE EXCLUSION FORM MUST BE SIGNED, DATED, AND MAILED BY FIRST CLASS U.S. MAIL, POSTMARKED NO LATER THAN [INSERT DATE] TO: SIMMA V. BIOSENSE WEBSTER ADMINISTRATOR, C/O ILYM GROUP, INC., [INSERT ADDRESS]

Name: _____

Address: _____

Telephone Number: _____

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

(Sign your name here)

Date

DISPUTE FORM

***Simma v. Biosense Webster, Inc., Superior Court of the
State of California, County of Orange, Case No. 30-2023-01342539-CU-OE-CXC***

Indicate Name/Address Changes, if any:

<<Name>>

<<Address>>

<<City>>, <<State>> <<Zip Code>>

XX - XX - _ _ _ _

If you were employed by Defendant Biosense Webster, Inc. in California and classified as a non-exempt employee at any time during the Class Period (August 15, 2019, through _____), then you may be a Class Member.

The amount of your estimated Individual Class Payment is based upon the Workweeks you worked during the Class Period based on Defendant's company records, as set forth below and in the Class Notice you received.

I. YOUR COMPENSABLE WORKWEEKS

Defendant's records show that during the Class Period, you worked as a non-exempt employee in California, which qualifies you as a Class Member, and your total number of Workweeks during the Class Period are:

<<NUMBER OF WORKWEEKS>>.

II. YOUR ESTIMATED INDIVIDUAL CLASS PAYMENT

Based upon the above numbers of Workweeks listed above, your estimated pre-tax Individual Class Payment is

<<INSERT>>.

III. CHALLENGE TO WEEKS WORKED

If you believe that the number of Workweeks stated above is correct, you do not have to do anything.

If you wish to dispute the number of Workweeks worked listed above, you must complete and postmark this Dispute Form, and provide all supporting information and/or documentation, to the Administrator by

<<RESPONSE DEADLINE>>.

Check the box below ONLY if you wish to dispute the information listed above:

☐ I wish to dispute the number of Workweeks listed above. I believe the correct amount of my Workweeks during the Class Period is _____. I have also included information and/or documentary evidence that support my dispute. I understand that, by submitting this dispute, I hereby authorize the Administrator to review Defendant's records and make a determination as to the validity of my dispute based upon Defendant's records as well as the records and information that I submit to the Administrator.

I declare under penalty of perjury under the laws of the State of California that the information I provided in this Dispute Form is true and correct.

Dated: _____

Signature: _____

Print or Type Name: _____

THIS DISPUTE FORM MUST BE SIGNED, DATED, AND MAILED BY FIRST CLASS U.S. MAIL, POSTMARKED NO LATER THAN [INSERT DATE] TO:]

Simma v. Biosense Webster, Inc. Administrator

c/o ILYM Group, Inc.

address

EXHIBIT B

[ORDER GRANTING PRELIMINARY APPROVAL]

1 **BLUMENTHAL NORDREHAUG BHOWMIK**
2 **DE BLOUW LLP**

3 Norman B. Blumenthal (State Bar #068687)

4 Kyle R. Nordrehaug (State Bar #205975)

5 Aparajit Bhowmik (State Bar #248066)

6 2255 Calle Clara

7 La Jolla, CA 92037

8 Telephone: (858)551-1223

9 Facsimile: (858) 551-1232

10 Attorneys for Plaintiffs

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **COUNTY OF ORANGE**

13 DARAPHONE SIMMA and WENDY
14 SANTOS, individuals, on behalf of themselves
15 and on behalf of all persons similarly situated,
16 and on behalf of the State of California, as
17 private attorney general,

18 Plaintiffs,

19 vs.

20 BIOSENSE WEBSTER, INC., a California
21 Corporation; and DOES 1 through 50,
22 inclusive,

23 Defendants.

CASE NO.: **30-2023-01342539-CU-OE-CXC**

**[PROPOSED] ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Hearing Date:

Hearing Time: 10:00 a.m.

Judge: Hon. Layne H. Melzer

Dept.: CX102

Action Filed: August 15, 2023

Trial Date: Not Set

24 This matter, having come before the Honorable Layne H. Melzer of the Superior Court of
25 the State of California, in and for the County Orange, on _____, for the motion by
26 Plaintiffs Daraphone Simma and Wendy Santos ("Plaintiffs") for preliminary approval of the class
27 settlement with Defendant Biosense Webster, Inc. ("Defendant"). The Court, having considered
28

PRELIMINARY APPROVAL ORDER

1 the briefs, argument of counsel and all matters presented to the Court and good cause appearing,
2 hereby GRANTS Plaintiffs' Motion for Preliminary Approval of Class Action Settlement.

3 **IT IS HEREBY ORDERED:**

4 1. The Court grants preliminary approval of the Settlement based upon the terms set
5 forth in the Class Action and PAGA Settlement Agreement ("Agreement") attached as Exhibit #1
6 to the Declaration of Kyle Nordrehaug in Support of Plaintiffs' Motion for Preliminary Approval
7 of Class Action Settlement [ROA # ____]. This is based on the Court's determination that the
8 Settlement set forth in the Agreement is within the range of possible final approval, pursuant to the
9 provisions of Section 382 of the California Code of Civil Procedure and California Rules of Court,
10 rule 3.769. This Order incorporates by reference the definitions in the Agreement, and all terms
11 defined therein shall have the same meaning in this Order as set forth in the Agreement.

12 Capitalized terms herein shall have the definitions set forth in the Agreement.

13 2. The Gross Settlement Amount is One Million Eight Hundred Thousand Dollars
14 (\$1,800,000). It appears to the Court on a preliminary basis that the Settlement is fair, adequate
15 and reasonable to the Class. It further appears that investigation and research have been conducted
16 such that counsel for the Parties are able to reasonably evaluate their respective positions. It
17 further appears to the Court that settlement at this time will avoid substantial additional costs by
18 all Parties, as well as avoid the delay and risks that would be presented by the further prosecution
19 of the Action. It further appears that the Settlement has been reached as the result of serious and
20 non-collusive, arms-length negotiations after mediation with a respected mediator, Kevin Barnes,
21 Esq. The Court therefore preliminarily finds that the Settlement is fair, adequate, and reasonable
22 when balanced against the probable outcome of further litigation and the significant risks relating
23 to certification, liability, and damages issues. The Settlement falls within the range of
24 reasonableness and appears to be presumptively valid, subject only to any objections that may be
25 raised at the Final Approval Hearing and final approval by this Court.

26 3. The Court provisionally appoints Plaintiffs as the representatives of the Class. The
27 Court provisionally appoints Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik,
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1 Jeffrey S. Herman, Sergio J. Puche, Trevor G Moran of Blumenthal Nordrehaug Bhowmik De
2 Blouw LLP as Class Counsel for the Class.

3 4. A Final Approval Hearing on the question of whether the Settlement should be
4 finally approved as fair, reasonable and adequate as to all Class Members who do not submit a
5 valid and timely request to exclude themselves from the Settlement is scheduled for
6 _____ at 10:00 a.m. in Department CX102 of the Orange County Superior
7 Court. Other matters for determination at the Final Approval Hearing shall include whether the
8 Final Approval Order and Judgment should be entered herein; and whether the plan of allocation
9 contained in the Agreement should be approved as fair, adequate and reasonable to the Class
10 Members. The motion for final approval and for attorneys' fees, costs and service awards shall be
11 heard at the Final Approval Hearing and the papers are to be filed with the Court and served on all
12 counsel no later than sixteen (16) court days before the hearing.

13 5. Plaintiffs shall serve this Order on the LWDA.

14 6. For settlement purposes only, the Court conditionally certifies the following Class:
15 "all individuals who are or previously were employed by Defendant Biosense Webster, Inc. in
16 California and classified as a non-exempt employee at any time during the Class Period." The
17 Class Period is August 15, 2019, through _____. There are approximately 450
18 individuals in the Class.

19 7. The Court hereby appoints ILYM Group, Inc. as Administrator. No later than 15
20 calendar days after preliminary approval of the Settlement by the Court, Defendant shall provide
21 to the Administrator an electronic spreadsheet with the Class Data. The Administrator will
22 perform address updates and verifications as necessary prior to the mailing of the Class Notice.
23 Using best efforts to mail it as soon as possible, and in no event later than 14 days after receiving
24 the Class information spreadsheet, the Administrator will mail the Class Notice Packet to all Class
25 Members via first-class U.S. Mail.

26 8. The Court hereby approves, as to form and content, the Court Approved Notice of
27 Class Action Settlement and Hearing Date for Final Court Approval ("Class Notice") attached
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1 hereto as Exhibit #1. The Court finds that the Class Notice appears to fully and accurately inform
2 the Class of all material elements of the proposed Settlement, Class Members' right to be excluded
3 from the Class by submitting a written opt-out request, and each member's right and opportunity
4 to object to the Settlement. The Court further finds that the distribution of the Class Notice
5 substantially in the manner and form set forth in the Agreement and this Order meets the
6 requirements of due process, is the best notice practicable under the circumstances, and shall
7 constitute due and sufficient notice to all persons entitled thereto. The font of the Class Notice
8 shall not be smaller than what was provided to the Court. The Court orders the mailing of the
9 Class Notice Packets by first class mail, pursuant to the terms and implementation schedule set
10 forth in the Agreement.

11 9. The Court approves, as to the form and content, the Request for Exclusion Form
12 and the Dispute Form that the Class Members may use to dispute their employment dates or opt
13 out of the Settlement, respectively, attached hereto as Exhibits #2 and #3, respectively.

14 10. The Court hereby approves the proposed procedure for exclusion from the
15 Settlement. Any Class Member may individually choose to opt out of and be excluded from the
16 Class as provided in the Class Notice by following the instructions for requesting exclusion from
17 the Class that are set forth in the Class Notice. All requests for exclusion must be postmarked by
18 no later than sixty (60) calendar days after the date of the mailing of the Class Notice and received
19 by the Administrator. If a Class Notice Packet is re-mailed, the response date for opt-outs will be
20 extended an additional 14 days. Any such person who chooses to opt out of and be excluded from
21 the Class will not be entitled to any recovery under the Settlement and will not be bound by the
22 Settlement or have any right to object, appeal or comment thereon (except that no Aggrieved
23 Employee may opt out of the PAGA portion of the settlement and any Aggrieved Employee who
24 requests exclusion from the Class will still recover their portion of the PAGA Penalties and will be
25 bound by the release of the Released PAGA Claims). Class Members who have not timely
26 requested exclusion shall be bound by all determinations of the Court, the Agreement and the
27 Judgment. A request for exclusion may only opt out that particular individual, and any attempt to
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1 affect an opt out of a group, class, or subclass of individuals is not permitted and will be deemed
2 invalid.

3 11. Any Class Member who has not opted out may object or express the Member's
4 views regarding the Settlement, may appear at the final approval hearing, and may present
5 evidence and file briefs or other papers that may be proper and relevant to the issues to be heard
6 and determined by the Court as provided in the Notice. Class Members will have sixty (60) days
7 from the date of the mailing of the Class Notices to submit their written objections to the
8 Administrator in accordance with the instructions in the Class Notice. If a Class Notice Packet is
9 re-mailed, the response date for written objections will be extended an additional 14 days.
10 Alternatively, Class Members may appear at the Final Approval Hearing to make an oral
11 objection.

12 12. Neither the Agreement, nor any exhibit, document, or instrument delivered
13 thereunder shall be construed as a concession or admission by Defendant in any way that the
14 claims asserted have any merit or that this Action was properly brought as a class or representative
15 action, and shall not be used as evidence of, or used against Defendant as, an admission or
16 indication in any way, including with respect to any claim of any liability, wrongdoing, fault or
17 omission by Defendant or with respect to the truth of any allegation asserted by any person.
18 Whether or not the Settlement is finally approved, neither the Settlement, Agreement, nor any
19 exhibit, document, statement, proceeding or conduct related to the Settlement, nor any reports or
20 accounts thereof, shall in any event be construed as, offered or admitted in evidence as, received
21 as or deemed to be evidence for any purpose adverse to the Defendant, including, but not limited
22 to, evidence of a presumption, concession, indication or admission by Defendant of any liability,
23 fault, wrongdoing, omission, concession or damage.

24 13. The Court reserves the right to adjourn or continue the date of the final approval
25 hearing and all dates provided for in the Agreement without further notice to Class Members and
26 retains jurisdiction to consider all further applications arising out of or connected with the
27 proposed Settlement.

1 14. The Action is stayed, and all trial and related pre-trial dates are vacated, subject to
2 further orders of the Court at the Final Approval Hearing.

3 **IT IS SO ORDERED.**

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5 Dated: _____

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HON. LAYNE MELZER
JUDGE, SUPERIOR COURT OF CALIFORNIA

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PRELIMINARY APPROVAL ORDER

EXHIBIT C

[FINAL APPROVAL ORDER AND JUDGMENT]

1 **BLUMENTHAL NORDREHAUG BHOWMIK**
2 **DE BLOUW LLP**

3 Norman B. Blumenthal (State Bar #068687)

4 Kyle R. Nordrehaug (State Bar #205975)

5 Aparajit Bhowmik (State Bar #248066)

6 2255 Calle Clara

7 La Jolla, CA 92037

8 Telephone: (858)551-1223

9 Facsimile: (858) 551-1232

10 Attorneys for Plaintiffs

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF ORANGE
13

14 DARAPHONE SIMMA and WENDY
15 SANTOS, individuals, on behalf of themselves
16 and on behalf of all persons similarly situated,
17 and on behalf of the State of California, as
18 private attorney general,

19 Plaintiffs,

20 vs.

21 BIOSENSE WEBSTER, INC., a California
22 Corporation; and DOES 1 through 50,
23 inclusive,

24 Defendants.

CASE NO.: 30-2023-01342539-CU-OE-CXC

**[PROPOSED] FINAL APPROVAL
ORDER AND JUDGMENT**

Hearing Date:

Hearing Time:

Judge: Layne H. Melzer

Dept.: CX102

Action Filed: August 15, 2023

Trial Date: Not Set

1 The motion of Plaintiffs Daraphone Simma and Wendy Santos (“Plaintiffs”) for an order
2 finally approving the Class Action and PAGA Settlement Agreement (“Agreement”) with
3 Defendant Biosense Webster, Inc. (“Defendant”), attorneys’ fees and costs, service payments, and
4 the expenses of the Administrator duly came on for hearing on _____ before the
5 Honorable Layne H. Melzer.

6 **I.**

7 **FINDINGS**

8 Based on the oral and written argument and evidence presented in connection with the
9 motion, the Court makes the following findings:

10 1. All terms used herein shall have the same meaning as defined in the Agreement.

11 2. This Court has jurisdiction over the subject matter of this litigation pending before
12 the California Superior Court for the County of Orange, and over all Parties to this litigation,
13 including the Class as that term is defined in the Agreement.

14 3. Based on a review of the papers submitted by Plaintiffs and a review of the
15 applicable law, the Court finds that the Gross Settlement Amount of One Million Eight Hundred
16 Thousand Dollars (\$1,800,000), and the terms set forth in the Agreement are fair, reasonable, and
17 adequate.

18 4. The Court further finds that the Settlement was the result of arm’s length
19 negotiations conducted after Class Counsel had adequately investigated the claims and became
20 familiar with the strengths and weaknesses of those claims. In particular, the amount of the
21 Settlement, the risks relating to certification, liability, and damages issues, and the assistance of an
22 experienced mediator in the settlement process, among other factors, support the Court’s
23 conclusion that the Settlement is fair, reasonable, and adequate.

24 **Preliminary Approval of the Settlement**

25 5. On _____, the Court granted preliminary approval of the Settlement and
26 approved conditional certification of the Class for settlement purposes only.

27 **Notice to the Class**

1 6. In compliance with the Preliminary Approval Order, the Class Notice was mailed
2 by first class mail to members of the Class at their last known addresses on or about
3 _____. Mailing of the Class Notice to their last known addresses was the best notice
4 practicable under the circumstances and was reasonably calculated to communicate actual notice
5 of the litigation and the proposed settlement to the Class. The Class Notice given to the Class
6 Members fully and accurately informed the Class Members of all material elements of the
7 proposed Settlement and of their opportunity to object to or comment thereon or to seek exclusion
8 from the Settlement; was valid, due, and sufficient notice to all Class Members; and complied
9 fully with the laws of the State of California, the United States Constitution, due process and other
10 applicable law. The Class Notice fairly and adequately described the Settlement and provided
11 Class Members adequate instructions and a variety of means to obtain additional information.

12 7. The deadline for opting out of the Class or submitting written objections to the
13 Settlement was _____. There was an adequate interval between notice and the deadline
14 to permit Class Members to choose what to do and act on their decision. A full opportunity has
15 been afforded to the Class Members to participate in the final approval hearing, and all Class
16 Members and other persons wishing to be heard have been heard. Class Members also have had a
17 full and fair opportunity to exclude themselves from the proposed Settlement and Class.
18 Accordingly, the Court determines that all Class Members who did not timely and properly submit
19 a request for exclusion are bound by the Settlement and this Final Approval Order and Judgment.

20 **Fairness Of Settlement**

21 8. The Agreement is entitled to a presumption of fairness. *Dunk v. Ford Motor Co.*
22 48 Cal.App.4th 1794, 1801 (1996).

23 a. The settlement was reached through arm's-length bargaining between the
24 parties during an all-day mediation before Kevin Barnes, a respected and experienced mediator of
25 wage and hour class actions. Prior to mediation, Plaintiffs conducted an investigation of the facts
26 and claims, and the Parties also exchanged informal discovery, which included time and pay data
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1 for the class and relevant policies. There has been no collusion between the parties in reaching the
2 proposed settlement.

3 b. Plaintiffs' investigation and discovery have been sufficient to allow the
4 Court and counsel to act intelligently.

5 c. Counsel for both parties are experienced in similar employment class action
6 litigation. All counsel recommended approval of the Agreement. Furthermore, the Court
7 specifically finds that Class Members and Aggrieved Employees were adequately represented by
8 Plaintiffs and Class Counsel. The Court further finds that Plaintiffs satisfied the statutory
9 perquisites under California Labor Code § 2699.3 for pursuing claims under the California Labor
10 Code Private Attorneys General Act ("PAGA") and have standing to settle such claims on behalf
11 of Aggrieved Employees.

12 d. The percentage of objectors and requests for exclusion is small. _____
13 objections were received. _____ timely requests for exclusion were received.

14 e. The participation rate was high. _____ Class Members will be mailed a
15 settlement payment, representing _____ of the overall Class.

16 9. The consideration to be given to the Class Members under the terms of the
17 Agreement is fair, reasonable and adequate considering the strengths and weaknesses of the claims
18 asserted in this Action and is fair, reasonable and adequate compensation for the release of Class
19 Members' claims, given the uncertainties and significant risks of the litigation and the delays
20 which would ensue from continued prosecution of the Action.

21 10. The Agreement is approved as fair, adequate and reasonable and in the best
22 interests of the Class Members.

23 **Attorneys' Fees and Costs**

24 11. An award of \$600,000 for attorneys' fees, representing one-third of the Gross
25 Settlement Amount, and \$ _____ for litigation costs and expenses, is reasonable, in light of
26 the contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and the results
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1 achieved by Class Counsel. The requested award has been supported by Class Counsel's lodestar
2 and litigation expense billing statement.

3 **Class Representative Service Payments**

4 12. The Agreement provides for Class Representative Service Payments of not more
5 than \$10,000 each to the Plaintiffs, subject to the Court's approval. The Court finds that Class
6 Representative Service Payments in the amount of \$10,000 each to the Plaintiffs is reasonable in
7 light of the risks and burdens undertaken by the Plaintiffs in this litigation and for their time and
8 effort in bringing and prosecuting this matter on behalf of the Class. In making this award, the
9 Court has considered only the factors set forth in *Golba v. Dick's Sporting Goods, Inc.* (2015) 238
10 Cal.App.4th 1251 and *Clark v. Am. Residential Servs. LLC* (2009) 175 Cal.App.4th 785.

11 **Administration Expenses Payment**

12 13. The Administrator shall calculate and administer the payments to be made to the
13 Participating Class Members and Aggrieved Employees, transmit payment for attorneys' fees and
14 costs to Class Counsel, transmit the Class Representative Service Payments to the Plaintiffs,
15 distribute the PAGA Penalties, issue any required tax reporting forms, calculate withholdings and
16 perform the other remaining duties set forth in the Agreement. The Administrator has documented
17 \$_____ in fees and expenses, and this amount is reasonable in light of the work
18 performed by the Administrator.

19 **PAGA Penalties**

20 14. The Agreement provides for PAGA Penalties in the amount of \$40,000 to be paid
21 out of the Gross Settlement Amount, which shall be allocated 75% (\$30,000) to the LWDA PAGA
22 Payment and 25% (\$10,000) to the Individual PAGA Payments to be distributed by (a) dividing
23 the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$10,000) by the total
24 number of Workweeks worked by all Aggrieved Employees during the PAGA Period and (b)
25 multiplying the result by each Aggrieved Employee's Workweeks worked by all Aggrieved
26 Employees during the PAGA Period. "Aggrieved Employees" are all individuals who are or
27 previously were employed by Defendant in California and classified as a non-exempt employee at
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1 any time during the PAGA Period. The “PAGA Period” is July 25, 2022 to _____.
2 The LWDA was notified of the settlement and served with a copy of the Agreement, and the
3 LWDA has not objected to the Settlement. The Court finds this PAGA Penalties amount to be
4 reasonable and hereby approves the Settlement of PAGA claims pursuant to California Labor
5 Code § 2699.

6 **II.**
7 **ORDERS**

8 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:

9 1. The Class is certified for the purposes of settlement only. The Class is hereby
10 defined as follows:

11 All individuals who are or previously were employed by Defendant in California
12 and classified as a non-exempt employee at any time during the Class Period.

13 The Class Period is August 15, 2019, through _____.

14 2. All persons who meet the foregoing definition are members of the Class, except for
15 those individuals who filed a valid request for exclusion (“opt out”) from the Class: [identify any
16 requests for exclusion].

17 3. The Agreement is hereby finally approved as fair, reasonable, adequate, and in the
18 best interest of the Class. Defendant shall fully fund the Gross Settlement Amount, and also fund
19 the amounts necessary to fully pay Defendant’s share of payroll taxes by transmitting the funds to
20 the Administrator no later than twenty-one (21) days after the Effective Date.

21 4. Class Counsel are awarded attorneys' fees in the amount of \$600,000 and costs in
22 the amount of \$ _____. Class Counsel shall not seek or obtain any other compensation or
23 reimbursement from Defendant, Plaintiffs or members of the Class.

24 5. The payment of the Class Representative Service Payments in the amount of
25 \$10,000 each to the Plaintiffs is approved.

26 6. The payment of \$ _____ to the Administrator for their fees and expenses
27 is approved.

1 7. The PAGA Penalties amount of \$40,000 is approved to be distributed in
2 accordance with the Agreement.

3 8. The Agreement and this Settlement are not an admission by Defendant, nor is this
4 Final Approval Order and Judgment a finding of the validity of any claims in the Action, any
5 wrongdoing by Defendant, or that this Action is appropriate for class treatment (other than for
6 settlement purposes). Neither this Final Approval Order and Judgment, the Agreement, nor any
7 document referred to herein, nor any action taken to carry out the Agreement is, may be construed
8 as, or may be used as an admission by or against Defendant of any fault, negligence, wrongdoing,
9 or liability whatsoever. The entering into or carrying out of the Agreement, and any negotiations
10 or proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of,
11 any liability, culpability, negligence, or wrongdoing on the part of Defendant, or an admission or
12 concession with regard to the denials or defenses by Defendant. Notwithstanding these
13 restrictions, Defendant may file in the Action or in any other proceeding this Final Approval Order
14 and Judgment, the Agreement, or any other papers and records on file in the Action as evidence of
15 the Settlement to support a defense of res judicata, collateral estoppel, release, or other theory of
16 claim or issue preclusion or similar defense as to the claims being released by the Settlement.

17 9. Notice of entry of this Final Approval Order and Judgment shall be given to all
18 Parties by Class Counsel on behalf of Plaintiffs and all Class Members. The Final Approval Order
19 and Judgment shall be posted on the Administrator's website as set forth in the Class Notice to the
20 Class. It shall not be necessary to send notice of entry of this Final Approval Order and Judgment
21 to individual Class Members. Pursuant to Labor Code section 2699, subdivision (l)(2), Class
22 Counsel shall submit a copy of this Final Approval Order and Judgment to the LWDA within 10
23 days after its entry.

24 10. If the Agreement does not become final and effective in accordance with the terms
25 of the Agreement, then this Final Approval Order and Judgment, and all orders entered in
26 connection herewith, shall be rendered null and void and shall be vacated, and the Parties shall
27 revert to their respective positions as of before entering into the Agreement, and expressly reserve
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1 their respective rights regarding the prosecution and defense of this Action, including all available
2 defenses and affirmative defenses, and arguments that any claim in the Action could not be
3 certified as a class action and/or managed as a representative action.

4 **IT IS HEREBY ORDERED, ADJUDICATED AND DECREED THAT:**

5 1. Except as set forth in the Agreement and this Final Approval Order and Judgment,
6 Plaintiffs, and all members of the Class, shall take nothing in the Action.

7 2. Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain
8 jurisdiction to construe, interpret, implement and enforce the Agreement, to hear and resolve any
9 contested challenge to a claim for settlement benefits, and to supervise and adjudicate any dispute
10 arising from or in connection with the distribution of settlement benefits.

11 3. The Parties are authorized, without further approval from the Court, to agree to and
12 to adopt such amendments, modifications and expansions of the Agreement and all exhibits
13 attached thereto which are consistent with this Final Approval Order and Judgment and do not
14 limit the rights of the Parties or Class Members under the Agreement.

15 4. Each party shall bear its own attorneys' fees and costs, except as otherwise
16 provided in the Agreement and in this Final Approval Order and Judgment.

17 5. Effective on the date when Defendant fully funds the entire Gross Settlement
18 Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class
19 Payments, all Participating Class Members, on behalf of themselves and their respective former
20 and present representatives, agents, attorneys, heirs, administrators, successors, and assigns,
21 release Released Parties from the Released Class Claims.

22 6. As used in paragraph 5 above, the quoted terms have the meanings set forth below:

23 (a) "Released Class Claims" means any and all causes of action, claims, rights,
24 damages, penalties, liabilities, expenses, losses, attorneys' fees, and costs alleged in the Operative
25 Complaint or that could have been asserted in this Action based on the facts alleged in the
26 Operative Complaint, including: (a) any alleged failure by Defendant to (1) pay Class Members all
27 regular and minimum wages purportedly due; (2) pay Class Members all overtime and double
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1 time wages purportedly due; (3) provide Class Members with compliant meal periods or sufficient
2 compensation in lieu thereof; (4) provide Class Members with compliant rest periods or sufficient
3 compensation in lieu thereof; (5) provide Class Members with compliant, accurate wage
4 statements; (6) timely pay Class Members all wages purportedly due during or at the end of
5 employment, including but not limited to vested paid time off and holiday pay; (7) reimburse
6 Class Members for all purportedly necessary business expenses; (8) provide Class Members
7 adequate and proper paid sick leave; (9) provide Class Members with all reporting time pay
8 purportedly due; and (10) provide Class Members with suitable seating; (b) any right or claim for
9 unfair business practices in violation of California Business & Professions Code section 17200, *et*
10 *seq.*, based on the alleged failures set forth in (a)(1) through (a)(10) above; and (c) any violation of
11 the California Labor Code or other state or federal statute, rule or regulation (including Wage
12 Orders) that could have been asserted in this Action based on the facts alleged in the Operative
13 Complaint and addressed in (a)(1) through (a)(10) above, including violation of California Labor
14 Code sections 201, 202, 203, 204, 210, 218, 221, 226, 226.3, 226.7, 227.3, 233, 246, 246.5, 510,
15 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, and 2802, as well as
16 the corresponding provisions of the applicable Wage Order(s), and any and all corresponding
17 claims brought and that could have been brought under the Fair Labor Standards Act (“FLSA”),
18 29 U.S.C. section 201, *et seq.* based on the facts alleged in the Operative Complaint and in
19 accordance with *Rangel v. PLS Check Cashers of Cal., Inc.* (9th Cir. 2018) 899 F.3d 1106, 1110–
20 11 [holding opt-out release of California state law claims was res judicata against FLSA claims
21 “which were direct federal law counterparts to the state law claims settled”]; accord, *Amaro v.*
22 *Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 539–541 [affirming release of FLSA
23 claims]; *Richardson v. Wells Fargo Bank, N.A.* (5th Cir. 2016) 839 F.3d 442, 451–52 [plaintiff
24 who became party to the opt-out Rule 23 settlement was bound by all settlement terms, including
25 release of FLSA claims]. Except as expressly set forth in the Agreement, Participating Class
26 Members do not release any other claims, including claims for vested benefits, wrongful
27 termination, violation of the Fair Employment and Housing Act, unemployment insurance,
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1 disability insurance, social security benefits, workers' compensation, or Class claims based on
2 facts occurring outside the Class Period.

3 (b) "Released Parties" collectively mean: Defendant and all of its present and
4 former parent entities, subsidiaries, and/or affiliates, predecessors and successors, as well as all of
5 its or their present or former divisions, affiliates, former and present officers, owners,
6 predecessors, directors, employees, agents, shareholders, fiduciaries, representatives, attorneys,
7 insurers, benefit plans, and each and all of the foregoing persons' heirs, assigns, executors,
8 administrators and successors, or any of them, or anyone claiming by, through, under, or on behalf
9 of any of them, or any individual or entity that could be liable for any of the released claims.

10 7. Effective on the date when Defendant fully funds the entire Gross Settlement
11 Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class
12 Payments, all Aggrieved Employees and the LWDA are deemed to release, on behalf of
13 themselves and their respective former and present representatives, agents, attorneys, heirs,
14 administrators, successors, and assigns, the Released Parties from the Released PAGA Claims.
15 The "Released PAGA Claims" are any and all rights or claims for statutory penalties, attorneys'
16 fees, and costs pursuant to PAGA arising under the California Labor Code or Wage Orders alleged
17 in Plaintiffs' PAGA Notice or that could have been asserted in the Action based on the facts
18 alleged in the PAGA Notice which occurred during the PAGA Period, including: (a) any alleged
19 failure by Defendant to (1) pay Aggrieved Employees all regular and minimum wages purportedly
20 due; (2) pay Aggrieved Employees all overtime and double time wages purportedly due; (3)
21 provide Aggrieved Employees with compliant meal periods or sufficient compensation in lieu
22 thereof; (4) provide Aggrieved Employees with compliant rest periods or sufficient compensation
23 in lieu thereof; (5) provide Aggrieved Employees with compliant, accurate wage statements; (6)
24 timely pay Aggrieved Employees all wages purportedly due during or at the end of employment,
25 including but not limited to vested paid time off and holiday pay; (7) reimburse Aggrieved
26 Employees for all purportedly necessary business expenses; (8) provide Aggrieved Employees
27 adequate and proper paid sick leave; (9) provide Aggrieved Employees with all reporting time pay
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1 purportedly due; and (10) provide Aggrieved Employees with suitable seating; and (b) any
2 violation of the California Labor Code or other state or federal statute, rule or regulation
3 (including Wage Orders) that could have been asserted in this Action based on the facts alleged in
4 Plaintiffs' PAGA Notice and addressed in (a)(1) through (a)(10) above, including violation of
5 California Labor Code sections 201, 202, 203, 204, 210, 218, 221, 226, 226.3, 226.7, 227.3, 233,
6 246, 246.5, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, and
7 2802, as well as the corresponding provisions of the applicable Wage Order(s), expressly
8 excluding all other claims including claims for vested benefits, wrongful termination, violation of
9 the Fair Employment and Housing Act, unemployment insurance, disability insurance, social
10 security benefits, and workers' compensation. The release of the Released PAGA Claims shall be
11 effective as to all Aggrieved Employees, regardless of whether an Aggrieved Employee submitted
12 a request for an exclusion from the Class.

13 8. Effective on the date when Defendant fully funds the entire Gross Settlement
14 Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class
15 Payments, Plaintiffs have generally and fully released and discharged the Released Parties from
16 the Plaintiffs' Release, as fully set forth in the Agreement.

17 9. If a settlement check remains uncashed by the expiration date, the funds from such
18 uncashed checks will be paid to the California State Controller's Unclaimed Property Fund in the
19 name of the Participating Class Member/Aggrieved Employee.

20 10. Pursuant to CCP §384(b), Plaintiffs shall submit to the Court a final report on or
21 before _____ setting forth the actual amounts paid to class members and other
22 amounts disbursed pursuant to the settlement. Upon receiving the report, the Court will determine
23 whether further reports and/or a hearing will be necessary.

24 11. THE PARTIES ARE HEREBY ORDERED TO COMPLY WITH THE TERMS
25 OF THE AGREEMENT. PURSUANT TO CALIFORNIA RULE OF COURT 3.769, THE
26 COURT HEREBY ENTERS FINAL JUDGMENT BASED UPON THE TERMS OF THIS
27 ORDER AND THE AGREEMENT AND, WITHOUT AFFECTING THE FINALITY OF THIS
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1 MATTER, RETAINS EXCLUSIVE AND CONTINUING JURISDICTION TO ENFORCE THIS
2 ORDER, THE SETTLEMENT AGREEMENT, AND THE JUDGMENT THEREON.

3 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO ORDERED.**

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5 Dated: _____

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HON. LAYNE MELZER
JUDGE, SUPERIOR COURT OF CALIFORNIA

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