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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ORANGE**

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

Plaintiffs,

vs.

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

Defendants.

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

**SECOND SUPPLEMENTAL
DECLARATION OF KYLE NORDREHAUG
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
SETTLEMENT**

Hearing Date: May 7, 2026
Hearing Time: 2:00 p.m.
Reservation No. 74628324

Judge: Hon. Layne H. Melzer
Dept.: CX102

Action Filed: August 15, 2023
Trial Date: Not Set

1 I, Kyle Nordrehaug, declare as follows:

2 1. I am a partner of the law firm of Blumenthal Nordrehaug Bhowmik De Blouw LLP,
3 counsel of record for Plaintiffs Daraphone Simma and Wendy Santos (“Plaintiffs”) in this matter.
4 As such, I am fully familiar with the facts, pleadings and history of this matter. The following facts
5 are within my own personal knowledge, and if called as a witness, I could testify competently to the
6 matters stated herein. This supplemental declaration is being submitted in support of Plaintiffs’
7 motion for preliminary approval of the proposed class action settlement with Defendant Biosense
8 Webster, Inc. (“Defendant”) and in response to the Court’s Order dated January 15, 2026 [ROA
9 #126].
10

11 REVISIONS TO THE SETTLEMENT DOCUMENTS

12 2. The Parties have prepared and executed the First Amended Class Action and PAGA
13 Settlement Agreement (“Agreement”) with revised Exhibits to address the Court’s issues in the
14 Order dated January 15, 2026. The Agreement with revised Exhibits is attached hereto as Exhibit
15 #1. A redline showing the revisions to the Agreement and Exhibits is attached hereto as Exhibit #2.
16

17 ISSUE 1 - Class Period:

18 3. The Class Action and PAGA Settlement Agreement (“Agreement”) provides for a
19 Class Period from August 15, 2019 through either: (i) September 19, 2024, or (ii) the latest date
20 when there are no more than 61,600 Workweeks collectively worked by the Class Members,
21 whichever of these two dates occurs later. (Agreement at ¶ 1.13.) The Parties have conferred and
22 have agreed that the Class Period will end on **August 31, 2025**, which is the date the 61,600
23 Workweeks threshold is met. A proposed order reflecting this definite Class Period is submitted
24 herewith.
25

26 ISSUE 2 - PAGA Period:

27 4. In that the settled definite end date of the Class Period is August 31, 2025, the PAGA
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1 Period end date is now August 31, 2025.

2
3 ISSUE 3 - Estimated Individual Class Payments and Individual PAGA Payments:

4 5. The estimated high, average and low Individual Class Payments are \$5,650.08,
5 \$2,447.77, and \$17.88 (for one Workweek), respectively. Of the \$40,000 in PAGA Penalties, 25%
6 (\$10,000) is allocated to Aggrieved Employees, which means the estimated high, average and low
7 Individual PAGA Payments are \$53.46, \$28.90, and \$0.33 (for one PAGA Workweek),
8 respectively.

9
10 ISSUE 4 - Escalator Provision in Paragraph 9:

11 6. The final class figures are 450 Class Members and 61,600 Workweeks, and as such,
12 the escalator provision in paragraph 9 was not triggered. The scenario where the Class Period is
13 shortened will not occur and the Class Period end date is the definite date of August 31, 2025. The
14 Agreement was revised to remove the option to shorten the Class Period.

15
16 ISSUE 5 - Further Valuation Explanation:

17 7. In paragraph 8 below, I include the original valuation analysis, but now include the
18 additional “**Valuation Discounting**” analysis per the Court’s Order.

19 8. The calculations to compensate for the amount due for the Class at the time of the
20 mediation were calculated by Berger Consulting, Plaintiffs’ damages expert. As to the Class whose
21 claims are at issue, Plaintiffs used the expert to analyze the data and determine the potential unpaid
22 wages for the employees. The maximum potential damages as calculated by Plaintiffs’ expert were
23 calculated to be \$66,240 for the alleged unpaid wages due to rounding, \$394,056 for the alleged
24 unpaid overtime wages due to the miscalculation of the regular rate, \$2,098,449 for the alleged
25 unpaid wages due to off-the-clock work based upon 1 hour per week, \$102,195 in alleged underpaid
26 meal premiums and sick pay due to the miscalculation of the regular rate, \$4,272,783 for alleged
27 meal period damages based upon a 66% potential violation rate observed in the time records for
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1 shifts worked and after deducting meal premiums already paid by Defendant, \$4,555,687 for alleged
2 rest period damages based upon the same 66% potential violation rate observed in the time records
3 for meal periods., and \$63,605 for alleged unreimbursed business expenses for personal cell phone
4 usage at \$5 per month. As a result, the total damage valuation was calculated that Defendant was
5 subject to a maximum damage claim in the amount of \$11,551,716. As to potential penalties,
6 Plaintiffs calculated that potential waiting time penalties were a maximum of between \$756,555 and
7 \$1,187,792, depending on the predicate violation, and potential wage statement penalties were
8 \$1,092,000. Defendant vigorously disputed Plaintiffs' calculations and exposure theories.
9 Consequently, the Gross Settlement Amount of \$1,800,000 represents more than 15.5% of the
10 maximum value of the alleged damages at issue in this case at the time this Settlement was
11 negotiated. Importantly, the recent decision that good faith belief of compliance by the employer in
12 *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065 (2024), could completely negate the
13 claims for waiting time and wage statement penalties, even if wages were owed to the Class. The
14 above maximum calculations should then be adjusted in consideration for both the risk of class
15 certification and the risk of establishing class-wide liability on all claims. Given the amount of the
16 settlement as compared to the potential value of claims in this case and the defenses asserted by
17 Defendant, this settlement is fair and reasonable. Specific details as to the calculation and the
18 *Kullar* valuation of the claims for purposes of mediation and the negotiation of the Settlement and
19 now including a discussion of the valuation discounting are as follows:

20 **A. Class Size, Payroll and Timekeeping Data.** As to the Class size, Defendant
21 provided the data points before the mediation as to the number of employees in the class (396) and
22 the number of workweeks (50,000).¹ In addition, Defendant provided a 20% sampling of time and
23 payroll data for the Class. Plaintiffs received and Plaintiffs' expert analyzed time punch data which
24 covered 85 employees during the period 8/15/2019 to 2/8/2024 and payroll data which covered 79
25 employees and 9,766 workweeks from 8/15/2019 to 4/4/2024. As such, for mediation Plaintiffs'

26 _____
27 ¹ These were the figures used for mediation as of June 2024. The final class figures increased
28 slightly because the class period extends to 61,600 Workweeks.

1 expert extrapolated this 20% data to cover the entire class. The time punch data covered 43,039
2 shifts worked and 9,766 work weeks. This means that Plaintiffs' expert analyzed time and payroll
3 data covering 43,039 shifts (out of a total of 220,451 shifts) which sampling was spread out over
4 nearly the entire class period. The average hourly rate is \$28.44 and is based on the pay data.

5 **B. Alleged Miscalculation of the Regular Rate for Overtime.** The following
6 additional remunerations were not fully incorporated in the regular rate for paying overtime: SHIFT
7 PREMIUM (308 payments, \$29,044 total), SIGN ON BONUS (3 payments, \$20,000 total),
8 PATENT BONUS (5 payments, \$8,000 total), ENCORE AWARD (14 payments, \$4,350 total),
9 COMMISSION NON SP (1 payment, \$1,500), RECRUITMENT AWARD (1 payment, \$1,500),
10 COMMISSION SP (1 payment, \$1,500), LUMPSUM MERIT INCREASE (2 payments, \$5,255
11 total), ANNUAL BONUS - US (202 payments, \$784,377 total), RETENTION BONUS (9
12 payments, \$153,908 total), Inspire Cash US (44 payments, \$51,500 total), Inspire Points US - Gross
13 (382 payments, \$85,156 total). 77% of employees and 48.8% of pay periods had overtime paid and
14 any of the remunerations earned. The damages are calculated as the differences between the
15 overtime earnings assuming all remunerations were incorporated in the regular rate and the actual
16 payouts. The alleged unpaid wages from the miscalculation of the regular rate applicable to
17 overtime pay was calculated to total \$394,056. **Valuation Discounting** - Plaintiffs believe this
18 claim presented a good basis for liability as a matter of pure math, however, the damages for the
19 Class as a whole are low. Plaintiffs maintain that there is a high degree this claim would be certified
20 and a good degree that liability could be establish on a class-wide basis. As a result, Plaintiffs
21 applied a risk rating to this claim by multiplying the valuation by 75% for risks of liability and
22 applied a risk rating to this claim by multiplying the valuation by 75% for the risks of certification
23 when evaluating the reasonableness of a settlement, resulting in a discounted value of \$221,657.

24 **C. Alleged Miscalculation of the Regular Rate for Meal Premiums and Sick**
25 **Pay.** The remunerations above were also not included in the regular rate for paying sick pay and
26 meal premiums. 84.7% of employee and 7.7% of pay periods have sick pay and any of the
27 remunerations earned. 45.9 % of employee and 2.9% of pay periods have meal premiums and any of
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1 the remunerations earned. The damages are calculated as the differences between the earnings
2 assuming meal premiums and sick pay are paid properly at the regular rate incorporating all the
3 remunerations above and the actual payouts. The alleged underpaid wages from the miscalculation
4 of the regular rate applicable to meal premiums and sick pay was calculated to total \$102,195.

5 **Valuation Discounting** - Plaintiffs believe that liability was strong, however, the recovery of
6 damages for the Class are difficult and uncertain given that there is not a clear established private
7 cause of action to recover sick pay wages, particularly for current employees. Plaintiffs maintain
8 that there is a high degree this claim would be certified and a medium degree that liability could be
9 establish on a class-wide basis. As a result, Plaintiffs applied a risk rating to this claim by
10 multiplying the valuation by 75% for the risk of certification, and then applied a risk rating to this
11 claim by multiplying the valuation by 50% for the risk of a class wide recovery, resulting in a
12 discounted value of \$38,323.

13 **D. Alleged Off-The-Clock Work.** The off-the-clock claim is based on
14 allegations that Defendant's practices required pre-shift work activities before logging in at the time
15 clock such as COVID checks or clock in delays, which is alleged to be uncompensated work time.
16 Off-the-Clock damages assume employees were not paid 1 hour per workweek (91.7% are assume
17 overtime). As a result, the maximum value of the claim for unpaid wages due to alleged off-the-
18 clock work was \$2,098,449. **Valuation Discounting** - In light of the Defendant's policies requiring
19 work time to be recorded in the manner required by the Defendant, Plaintiffs believe that class
20 certification for this claim is a medium risk and off-the-clock claims are difficult to prove on a
21 class-wide basis for liability and recovery given the lack of documentation and the potential for
22 individual variances as to time and experience, not to mention Defendant's position that this work
23 time is in fact recorded. Plaintiffs applied a risk rating to this claim by multiplying the valuation by
24 50% for the risk of certification and applied a risk rating to this claim by multiplying the valuation
25 by 50% for the risks of class-wide liability, resulting in a discounted value of \$524,612.

26 **E. Alleged Unpaid Wages Due to Rounding.** By comparing time data to
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1 payroll data, there appears to be quarter hour rounding. There is a net total of 6,911 hours underpaid
2 due to rounding and 1.9 minutes underpaid per shift on average. 21.5% of employees were net
3 overpaid by rounding and 70.9% were net underpaid. 28.9% of pay periods were overpaid and
4 57.6% were underpaid by rounding. The maximum unpaid wages due to rounding were calculated
5 to be \$66,240. **Valuation Discounting** - The rounding claim presents a difficulty in liability
6 because the rounding worked both ways, such that at times employees were overpaid and underpaid,
7 resulting in a net underpayment of 1.9 minutes per shift. As such, Plaintiffs believed the rounding
8 claims presented a good likelihood of certification (75%), but a low likelihood of class-wide
9 liability which including the risk of establishing class wide damages (25%). Plaintiffs applied a risk
10 rating to this claim by multiplying the valuation by 75% for the risk of class certification and
11 applied a risk rating to this claim by multiplying the valuation by 25% for the risk of liability.
12 Applying these discounted valuations from the risks presented resulted in a discounted value of
13 \$12,420.

14 **F. Alleged Meal Period Violations.** The meal period claim is based upon the
15 analysis of time punch records reflect a potential meal break violation rate in 66% of all shifts
16 (138,982 unique potential violations out of 209,574 shifts greater than 6 hours). The pay data
17 reflects meal break premiums paid for 2,124 instances, therefore roughly 1.5% of facial violations
18 have had a premium paid. The 138,982 meal break violations include 97,624 late (after 5th hour),
19 4,024 missed (for shifts greater than 6 hours), 87,108 short (under 30 minutes), and 3,999 missed
20 2nd meal breaks (for shifts greater than 12 hours). The damages for a missed period is one hour of
21 pay under Labor Code §§266.7 and 512. As a result, the maximum potential damages for alleged
22 meal period violations using the 66% potential violation rate, and after deducting premiums paid of
23 \$68,549, were estimated to be \$4,272,783. **Valuation Discounting** - The meal period claim
24 presents a medium likelihood of class certification, and a medium likelihood that class-wide
25 recovery could be obtained at trial. Plaintiffs applied a risk rating to this claim by multiplying the
26 valuation by 50% for the risk of certification and applied a risk rating to this claim by multiplying
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1 the valuation by 50% for the risks of class-wide liability, resulting in a discounted value of \$1,068,196.

2 **G. Alleged Rest Period Violations.** The rest period claim is difficult to
3 calculate because California law does not require rest periods to be recorded. For this claim,
4 Plaintiffs used the same 66% violation assumption observed for meal breaks based upon the fact
5 that the circumstances resulting in the meal period violation could likewise result in a similar failure
6 to provide off duty rest periods. This likely overstates the rest period claim value as there were
7 likely some times a rest period was taken by Class Members even where a meal period was missed
8 given the rest periods are easier to take. The damages for a missed period is one hour of pay under
9 Labor Code §§266.7 and 512. As a result, the maximum potential damages for alleged rest period
10 violations using a 66% violation rate were estimated to be \$4,555,687. **Valuation Discounting -**
11 Because of the absence of records for rest breaks, the rest period claim presents a low likelihood of
12 class certification and a low likelihood that class-wide recovery could be obtained at trial. Plaintiffs
13 applied a risk rating to this claim by multiplying the valuation by 30% for the risk of certification
14 and applied a risk rating to this claim by multiplying the valuation by 30% for the risks of class-
15 wide liability, resulting in a discounted value of \$410,012.

16 **H. Alleged Business Expenses Reimbursement.** The expense reimbursement
17 claim was based upon the personal cellphone usage for work purposes. The value of this claim used
18 was \$5 per month over 12,661 months to calculate that the maximum potential damages for the
19 alleged failure to reimburse business expenses were \$63,605. **Valuation Discounting -** Plaintiffs
20 believe that there is a high likelihood of class certification for this claim, and medium likelihood of
21 class-wide liability. Defendant contended that any personal cell phone usage was merely convenient
22 and voluntary such that reimbursement was not legally required. This defense could result in a
23 denial of a denial of liability on this claim. Plaintiffs applied a risk rating to this claim by
24 multiplying the valuation by 75% for the risk of certification and applied a risk rating to this claim
25 by multiplying the valuation by 50% for the risks of class-wide liability and recovery, resulting in a
26 discounted value of \$23,852.

27 **I. Alleged Waiting Time Penalties.** Waiting Time Penalties are calculated
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1 assuming 157 terminated employees x 30 days x (8 hours per day x average rate of pay + 0.6 hours
2 per day x 1.5 x average rate of pay). An alternate Waiting Time Penalty was calculated for 100
3 terminated employees with alleged regular rate of pay issues. As such, the maximum value of the
4 potential waiting time penalties were calculated to be between \$756,555 and \$1,187,792, depending
5 on the predicate violation. **Valuation Discounting** - Given the above risks concerning the predicate
6 claims, the most realistic basis for waiting time penalties would be based on the off-the-clock claim.
7 This claim is entirely derivative of the unpaid wage claims above, and therefore suffers from the
8 same risks as the off-the-clock claim, plus Defendant maintains additional defenses of a good faith
9 defense specific to this claim. The recent decision that good faith belief dispute as to wages owed
10 by the employer in *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065 (2024), could
11 completely negate this claim even if wages were owed to the class. In light of the state of the law,
12 and applying not only the above risk discounts from the predicate off-the-clock claim (50% for risk
13 of certification and 50% for risk of liability), but also a risk discount as a result of the good faith
14 defense to the waiting penalties claim presenting an additional risk discount by multiplying the
15 valuation by 25%, Plaintiffs discounted this claim significantly to \$74,237. However, there was a
16 real possibility that the realistic value of this claim could be \$0 under *Naranjo*.

17 **J. Alleged Wage Statement Penalties.** Wage Statement Penalties are
18 calculated at \$50 for the initial violation and \$100 for each subsequent violation with a max of
19 \$4,000 per employee, assuming 100% violation rate. The Wage Statement claim is predicated and
20 is derivative of the above claims, so the maximum valuation assumed there was a violation in every
21 pay period within the applicable one-year statute of limitation. The maximum value of the potential
22 wage statement penalties were therefore calculated to be \$1,092,000. **Valuation Discounting** -
23 This claim is entirely derivative of the unpaid wage claims above, and therefore suffers from the
24 same risks, plus Defendant maintains additional defenses of a lack of knowing and willful conduct
25 specific to this claim. The decision that good faith belief of compliance by the employer in *Naranjo*
26 *v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065 (2024), also applies to this wage statement
27 claim and could completely negate this claim even if wages were owed to the class. In light of the
28

1 state of the law, and applying not only the above risk discounts from the predicate off-the-clock
2 claim (50% for risk of certification and 50% for risk of liability), but also a risk discount as a result
3 of the good faith defense to the waiting penalties claim presenting an additional risk discount by
4 multiplying the valuation by 25%, Plaintiffs discounted this claim significantly to \$68,250.
5 However, there was a real possibility that the realistic value of this claim could be \$0 under
6 *Naranjo*.

7 **K. Total Discounted Valuation.** Based upon the above discounted valuations
8 for each of the above class claims, the total discounted valuation for all class claims would be
9 \$2,441,559, which compares favorably to the Gross Settlement Amount in this Settlement because
10 the Gross Settlement Amount is more than 73% of the realistic discounted valuation.

11 **L. Alleged PAGA Claim.** The PAGA claim is not a class claim and the PAGA
12 penalties are paid primarily (75%) to the State of California, and do not compensate for or release
13 the individual claims of the employees. As such, the PAGA claim is not included in this above
14 valuation, however, even if considered, the PAGA claim would not significantly increase the
15 recovery to the class. For mediation, Plaintiffs calculated the value of the alleged PAGA claim as to
16 the Aggrieved Employees for civil penalties to be between \$1,005,000 and \$2,010,000 for a single
17 violation in every one of the estimated 20,100 pay periods at issue in the PAGA Period, depending
18 on whether the violation was \$50 per pay period as in the case of Labor Code § 558(a)(1) or the
19 standard amount of \$100 per pay period for violation of Labor Code § 1198. The PAGA Claim is
20 predicated on the above wage claims, so using the risk rating from the most viable liability - the off-
21 the-clock claim (25%), and applying the additional risk of a penalty reduction of to only 5% of the
22 maximum amount as demonstrated by *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018)
23 (reduction of \$100 to \$5 per violation), the Plaintiffs discounted this claim significantly to \$25,125.
24 However, only 25% of the PAGA recovery is paid to the aggrieved employees, which means the
25 discounted realistic recovery to employees would be only \$6,281.

26
27 ISSUE 6 - Requests For Exclusion:
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1 8. The Agreement was revised at Paragraph 8.5(b) to provide that the Court has final
2 say on the validity and authenticity of requests for exclusion.

3
4 ISSUE 7 - Workweek Disputes:

5 9. The Agreement was revised at Paragraph 8.6 to provide that the Court shall have the
6 authority to review and make a final ruling as to any decision by the Administrator as regarding any
7 challenges to the Administrator's determination of Class Workweeks and PAGA Workweeks.

8
9 ISSUE 8 - Released PAGA Claims:

10 10. The full PAGA Notice by Plaintiffs including the attachment incorporated therein
11 which was submitted to the LWDA is attached hereto as Exhibit #3. The alleged predicate violation
12 for failure to provide business expenses appears on page 2 of the PAGA Notice which cites to a
13 violation of Labor Code § 2802, and with more specificity in the attachment at paragraphs 22, 23,
14 106, 107 and 108. As a result, the alleged violation for failure to pay business expenses is within
15 the scope of the PAGA Notice.

16 11. The reference to Labor Code § 1198.5 in the “Released PAGA Claims” definition in
17 paragraph 1.39 has been removed from the Agreement.

18
19 ISSUE 9 - Continuing Jurisdiction:

20 12. Paragraph 11.3 of the Agreement has been revised to specific that the Court’s
21 continuing jurisdiction is pursuant to both Code of Civil Procedure section 664.6 and California
22 Rule of Court, rule 3.769(h).

23
24 ISSUE 10 - Concurrent Pending Cases:

25 13. Counsel’s declarations that there are no concurrent pending cases that may be
26 affected by this settlement were correct. The reference to the Guzman PAGA Action in the Class
27 Notice was an inadvertent typographical error from a prior case. This erroneous sentence has been
28

1 removed from the Class Notice.

2
3 ISSUE 11 - Class Notice:

4 14. The Class Notice has been revised in accordance with the Court's Order.

5 Specifically, the following revisions to the Class Notice were made:

- 6 a. The Class Notice was revised to be consistent with the issues above.
- 7 b. The sentence on pag 3 was bolded.
- 8 c. The fourth option of disputing workweeks was inserted into the "Summary"
- 9 on page 1 of the Class Notice.
- 10 d. The reference to a Order transferring the PAGA Action in the Class Notice
- 11 was an inadvertent typographical error from a prior case. This erroneous
- 12 sentence has been removed from the Class Notice.
- 13 e. The reference to the Guzman PAGA Action in the Class Notice was an
- 14 inadvertent typographical error from a prior case. This erroneous sentence
- 15 has been removed from the Class Notice.
- 16 f. The Class Notice was revised to state that initial PAGA Action was dismissed
- 17 following the filing of the Second Amended Complaint which included the
- 18 PAGA claim.
- 19 g. The Class Notice was revised to correct the Judge assigned to the case to be
- 20 Honorable Layne H. Melzer.
- 21 h. The Parties have prepared an Objection Form which is attached in Exhibit A
- 22 to the Agreement and is now included as part of the "Class Notice Packet" in
- 23 paragraph 1.12 of the Agreement that is being mailed to the Class.
- 24 i. The Class Notice has been revised in Section 5 to state that "100% of
- 25 Individual PAGA Payments are allocated to non-wages and penalties, are not
- 26 subject to wage withholdings, and will be reported on an IRS Form 1099."
- 27 j. The Class Notice has been revised in Section 8 to state that "Any Class
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1 Member who does not request exclusion may also, if the Class Member so
2 desires, enter an appearance through counsel (Cal. Rules of Court, rule
3 3.766(d)(5).)”

4 ISSUE 12 - Proposed Order:

5 15. The Proposed Order has been revised in accordance with the Court’s Order.
6 Specifically, the following revisions to the Proposed Order were made:

- 7 a. The Proposed Order was revised to be consistent with the issues above.
- 8 b. The attorney information was deleted from the caption page.
- 9 c. The title of the Proposed Order was revised to add “and PAGA”.
- 10 d. The continued hearing date of May 7, 2026 has been filled in.
- 11 e. The Proposed Order at paragraph 1 has been revised to refer to the Second
12 Supplemental Declaration of Kyle Nordrehaug and to include the ROA
13 number.
- 14 f. The Proposed Order at paragraph 2 has been revised to specify the amounts
15 proposed to the allocated to attorneys’ fees, litigation costs, service awards,
16 administration costs and PAGA Penalties.
- 17 g. The Proposed Order at (new) paragraph 8 has been revised to state the
18 definitions of Aggrieved Employees and the PAGA Period.
- 19 h. In paragraph 5 of the Proposed Order, the proposed Final Approval Hearing
20 date of September 17, 2026 at 2:00 p.m. has been inserted.
- 21 i. The Proposed Order at paragraph 15 has been revised to provide for the
22 Court’s continuing jurisdiction “pursuant to California Code of Civil
23 Procedure Section 664.6 and California Rule of Court Rule 3.769(h).”

24
25 ISSUE 13 - Service on the LWDA:

26 16. The LWDA was served with the Court’s January 15, 2026 Order, and the Proof of
27
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1 Service verifying this service appears at ROA #128. The LWDA was served with the entire initial
2 motion and the Proof of Service verifying this service appears at ROA #94. The LWDA is being
3 served with this Second Supplemental Declaration and the revised Proposed Order, which service is
4 verified by the Proof of Service accompanying this filing.

5
6 I declare under penalty of perjury under the laws of the State of California that the foregoing
7 is true and correct. Executed this 14th day of April, 2026, at La Jolla, California.

8
9 By: /s/ Kyle Nordrehaug
Kyle Nordrehaug

EXHIBIT #1

FIRST AMENDED CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This First Amended 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, Objection 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 August 31, 2025.
- 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 Andrew Lichtenstein of Littler Mendelson, 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 B 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 B 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), including the draft court complaint attached thereto.
- 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 C 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, 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, (b) submit challenges to Workweeks and PAGA Pay Periods, or (c) 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. 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 that Aggrieved Employee 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 457 Class Members who collectively worked a total of approximately 61,869 Workweeks during the Class Period and roughly 346 Aggrieved Employees who worked a total of approximately 30,224 PAGA Workweeks during the PAGA Period.
- 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 Packet 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 Court shall have the authority to review and shall have the final

say on the validity of any Request for Exclusion. Absent intervention from the Court, 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 Court shall have the authority to review and shall have the final say on the authenticity of any Request for Exclusion. Absent intervention from the Court, 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 Paragraphs 6.3 and 1.39 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, except that the Court shall have the authority to review and make a final ruling as to any decision by the Administrator regarding any challenges to the Administrator's determination of Class Workweeks and PAGA Workweeks. 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; and (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).

- (c) Class Workweek and/or PAGA Workweek Challenges. Subject to review by the Court, 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. Absent intervention from the Court, 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**. Based on the Class Data, the Administrator provided a final count of are 457 class members who worked 61,869 workweeks during the Class Period. If the actual number

of Workweeks during the Class Period exceeds this amount, then the Parties agree to meet and confer on a solution, reach an agreement, and propose it to the Court.

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 (s), 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 and California Rule of Court, rule 3.769(h) 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 reviewing 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:

Andrew Lichtenstein
Littler Mendelson, P.C.
2049 Century Park East, 5th Floor
Los Angeles, CA 90067
Tele.: (310) 553-0308
Fax: (800) 715-1330
E-Mail: alichtenstein@littler.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: 04/08/2026 *Daraphone Simma*
Daraphone Simma (Apr 8, 2026 10:05:17 PDT)
Plaintiff Daraphone Simma

Dated: 04/08/2026 *Wendy Santos*
Wendy Santos (Apr 8, 2026 10:24:06 PDT)
Plaintiff Wendy Santos

Dated: _____
Betina Lackner
For Defendant Biosense Webster, Inc.

Dated: 4/8/26 *Kyle Nordrehaug*
Kyle Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw LLP
Attorney for Plaintiffs

Dated: _____
Andrew Lichtenstein
Littler Mendelson, P.C.
Attorney for Defendant

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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: _____
Plaintiff Daraphone Simma

Dated: _____
Plaintiff Wendy Santos

Dated: 04/10/2026
BETINA TINOCO
Electronically signed by BETINA TINOCO
Reason: I am approving this document
Date: Apr 10, 2026 12:43:32 ADT
Betina Lackner
For Defendant Biosense Webster, Inc.

Dated: _____
Kyle Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw LLP
Attorney for Plaintiffs

Dated: 4/10/26

Andrew Lichtenstein
Littler Mendelson, 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 AND PAGA 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 August 31, 2025).

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 and PAGA 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.
Dispute Your Workweeks	Your Workweeks during the Class Period are based on Defendant’s records and are listed in Section 5 below. If you believe the number of Workweeks list below in

The Response Deadline is _____	Section 5 is incorrect, you may submit a challenge as to your Workweeks to the Administrator. Directions regarding Workweeks disputes are provided in Section 5 below.
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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).

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: (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 is referred to as the “Operative Complaint”. The initial PAGA Action was dismissed following the filing of the Second Amended Complaint which included the PAGA claim.

Pursuant to a court order, you are hereby notified that Plaintiffs and Defendant have reached a proposed class action and PAGA 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 Layne H. Melzer 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’ First Amended 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 August 31, 2025.

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 during the PAGA Period.
 - The “PAGA Period” is July 25, 2022 to August 31, 2025.
 - “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 during the Class Period. “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, 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 August 31, 2025).

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, except that the Court will have the final say as to any decision. 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. 100% of Individual PAGA Payments are allocated to non-wages and penalties, are not subject to wage withholdings, and will be reported on an IRS Form 1099.

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 of Released Class Claims, and 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 _____. The Court has the final say on the validity and authenticity of requests for exclusion. 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. Any Class Member who does not request exclusion may also, if the Class Member so desires, enter an appearance through counsel (Cal. Rules of Court, rule 3.766(d)(5).) 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. An Objection form is included with this Notice.

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
Littler Mendelson P.C.
2049 Century Park East, 5th Floor
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

OBJECTION FORM

USE THIS FORM ONLY IF YOU WANT TO OBJECT TO THE SETTLEMENT. TO OBJECT TO THE TERMS OF THE SETTLEMENT, YOU MUST SIGN AND COMPLETE THIS FORM ACCURATELY, INCLUDING YOUR FULL NAME, CURRENT ADDRESS, LAST FOUR DIGITS OF YOUR SOCIAL SECURITY NUMBER, AND YOUR SIGNATURE. YOU MUST MAIL THIS FORM BY FIRST CLASS U.S. MAIL TO THE ADMINISTRATOR AT THE ADDRESS BELOW, EMAIL THIS FORM TO <<____>>, OR FAX THIS FORM TO _____. THE DEADLINE TO EMAIL, FAX OR POSTMARK VIA MAIL YOUR WRITTEN OBJECTION IS _____.

[] I OBJECT to the *Simma v. Biosense Webster, Inc.* Settlement for the following reasons:

(Print Your Name)

(Signature)

(Date)

(Your Address)

(Cite/State/ Zip Code)

(Print Last Four Digits of SSN)

Submit your fully completed and signed Objection Form as follows:

MAIL FAX OR EMAIL TO THE ADMINISTRATOR NOT LATER THAN _____ TO:
Simma v. Biosense Webster, Inc. Administrator
c/o ILYM Group, Inc.,
[address], [Fax], [Email]

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

[FINAL APPROVAL ORDER AND JUDGMENT]

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

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

Plaintiffs,

vs.

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

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 First Amended Class Action and PAGA Settlement Agreement
3 (“Agreement”) with Defendant Biosense Webster, Inc. (“Defendant”), attorneys’ fees and costs,
4 service payments, and the expenses of the Administrator duly came on for hearing on
5 _____ before the 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 Packet, in the
2 form attached to the Declaration of the Administrator, was mailed by first class mail to members
3 of the Class at their last known addresses on or about _____. Mailing of the Class
4 Notice to their last known addresses was the best notice practicable under the circumstances and
5 was reasonably calculated to communicate actual notice of the litigation and the proposed
6 settlement to the Class. The Class Notice given to the Class Members fully and accurately
7 informed the Class Members of all material elements of the proposed Settlement and of their
8 opportunity to object to or comment thereon or to seek exclusion from the Settlement; was valid,
9 due, and sufficient notice to all Class Members; and complied fully with the laws of the State of
10 California, the United States Constitution, due process and other applicable law. The Class Notice
11 fairly and adequately described the Settlement and provided Class Members adequate instructions
12 and a variety of means to obtain additional information.

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

22 **Fairness Of Settlement**

23 8. The Agreement is entitled to a presumption of fairness. *Dunk v. Ford Motor Co.*
24 48 Cal.App.4th 1794, 1801 (1996).

25 a. The settlement was reached through arm's-length bargaining between the
26 parties during an all-day mediation before Kevin Barnes, a respected and experienced mediator of
27 wage and hour class actions. Prior to mediation, Plaintiffs conducted an investigation of the facts
28

1 and claims, and the Parties also exchanged informal discovery, which included time and pay data
2 for the class and relevant policies. There has been no collusion between the parties in reaching the
3 proposed settlement.

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

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

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

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

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

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

24 **Attorneys' Fees and Costs**

25 11. An award of \$600,000 for attorneys' fees, representing one-third of the Gross
26 Settlement Amount, and \$ _____ for litigation costs and expenses, is reasonable, in light of
27 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 during the PAGA Period.
26 "Aggrieved Employees" are all individuals who are or previously were employed by Defendant in
27 California and classified as a non-exempt employee at any time during the PAGA Period. The
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1 “PAGA Period” is July 25, 2022 to August 31, 2025. The LWDA was notified of the settlement
2 and served with a copy of the Agreement, and the LWDA has not objected to the Settlement. The
3 Court finds this PAGA Penalties amount to be reasonable and hereby approves the Settlement of
4 PAGA claims pursuant to California Labor Code § 2699.

5 **II.**

6 **ORDERS**

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

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

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

12 The Class Period is August 15, 2019, through August 31, 2025.

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

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

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

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

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

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

FINAL APPROVAL ORDER AND JUDGMENT

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

15 9. Notice of entry of this Final Approval Order and Judgment shall be given to all
16 Parties by Class Counsel on behalf of Plaintiffs and all Class Members and Aggrieved Employees.
17 The Final Approval Order and Judgment shall be posted on the Administrator's website as set
18 forth in the Class Notice to the Class. It shall not be necessary to send notice of entry of this Final
19 Approval Order and Judgment to individual Class Members. Pursuant to Labor Code section
20 2699, subdivision (s)(3), Class Counsel shall submit a copy of this Final Approval Order and
21 Judgment to the LWDA within 10 days after its entry.

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

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

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

6 2. Pursuant to California Code of Civil Procedure section 664.6 and California Rules
7 of Court Rule 3.769(h), the Court shall retain jurisdiction to construe, interpret, implement and
8 enforce the Agreement, to hear and resolve any contested challenge to a claim for settlement
9 benefits, and to supervise and adjudicate any dispute arising from or in connection with the
10 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, and 2802, as
7 well as the corresponding provisions of the applicable Wage Order(s), expressly excluding all
8 other claims including claims for vested benefits, wrongful termination, violation of the Fair
9 Employment and Housing Act, unemployment insurance, disability insurance, social security
10 benefits, and workers' compensation. The release of the Released PAGA Claims shall be effective
11 as to all Aggrieved Employees, regardless of whether an Aggrieved Employee submitted a request
12 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 CODE OF CIVIL PROCEDURE
26 SECTION 664.6 AND CALIFORNIA RULE OF COURT 3.769, THE COURT HEREBY
27 ENTERS FINAL JUDGMENT BASED UPON THE TERMS OF THIS ORDER AND THE
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1 AGREEMENT AND, WITHOUT AFFECTING THE FINALITY OF THIS MATTER,
2 RETAINS EXCLUSIVE AND CONTINUING JURISDICTION TO ENFORCE THIS ORDER,
3 THE SETTLEMENT AGREEMENT, AND THE JUDGMENT THEREON.
4 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO ORDERED.**

5

6 Dated: _____

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HON. LAYNE H. MELZER
JUDGE, SUPERIOR COURT OF CALIFORNIA

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EXHIBIT C

[ORDER GRANTING PRELIMINARY APPROVAL]

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

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

Plaintiffs,

vs.

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

Defendants.

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

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

Hearing Date: May 7, 2026
Hearing Time: 2:00 p.m..

Judge: Hon. Layne H. Melzer
Dept.: CX102

Action Filed: August 15, 2023
Trial Date: Not Set

This matter, having come before the Honorable Layne H. Melzer of the Superior Court of the State of California, in and for the County Orange, on May 7, 2026, which was continued from January 15, 2026, for the motion by Plaintiffs Daraphone Simma and Wendy Santos (“Plaintiffs”) for preliminary approval of the class and PAGA settlement with Defendant Biosense Webster, Inc. (“Defendant”). The Court, having considered the briefs, argument of counsel and all matters

1 presented to the Court and good cause appearing, hereby GRANTS Plaintiffs' Motion for
2 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 First Amended Class Action and PAGA Settlement Agreement ("Agreement")
6 attached as Exhibit #1 to the Second Supplemental Declaration of Kyle Nordrehaug in Support of
7 Plaintiffs' Motion for Preliminary Approval of Class Action Settlement [ROA # ____]. This is
8 based on the Court's determination that the Settlement set forth in the Agreement is within the
9 range of possible final approval, pursuant to the provisions of Section 382 of the California Code
10 of Civil Procedure and California Rules of Court, rule 3.769. This Order incorporates by reference
11 the definitions in the Agreement, and all terms defined therein shall have the same meaning in this
12 Order as set forth in the Agreement. Capitalized terms herein shall have the definitions set forth in
13 the Agreement.

14 2. The Gross Settlement Amount is One Million Eight Hundred Thousand Dollars
15 (\$1,800,000) and provides for the following disbursements from the Gross Settlement Amount
16 subject to Court approval: (1) Class Counsel Fees Payment not exceed one-third of the Gross
17 Settlement Amount, which would presently be \$600,000; (2) Class Counsel Litigation Expenses
18 Payment not to exceed \$30,000; (3) Administration Expenses Payment not to exceed \$8,500; (4)
19 the Class Representative Service Payments to the Plaintiffs in an amount not to exceed \$10,000
20 each; and (5) the PAGA Penalties payment of \$40,000 to be allocated 75% to the California Labor
21 and Workforce Development Agency ("LWDA") and 25% to the Aggrieved Employees as their
22 Individual PAGA Payments. The amount remaining in the Gross Settlement Amount after the
23 deduction of Court-approved amounts for the PAGA Penalties payment, the Class Representative
24 Service Payments, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
25 Payment, and the Administration Expenses Payment is the "Net Settlement Amount," which shall
26 be allocated to Class Members as their Individual Class Payments.

1 3. Based on a review of the motion papers, it appears to the Court on a preliminary
2 basis that the Settlement is fair, adequate and reasonable to the Class. It further appears that
3 investigation and research have been conducted such that counsel for the Parties are able to
4 reasonably evaluate their respective positions. It further appears to the Court that settlement at this
5 time will avoid substantial additional costs by all Parties, as well as avoid the delay and risks that
6 would be presented by the further prosecution of the Action. It further appears that the Settlement
7 has been reached as the result of serious and non-collusive, arms-length negotiations after
8 mediation with a respected mediator, Kevin Barnes, Esq. The Court therefore preliminarily finds
9 that the Settlement is fair, adequate, and reasonable when balanced against the probable outcome
10 of further litigation and the significant risks relating to certification, liability, and damages issues.
11 The Settlement falls within the range of reasonableness and appears to be presumptively valid,
12 subject only to any objections that may be raised at the Final Approval Hearing and final approval
13 by this Court.

14 4. The Court provisionally appoints Plaintiffs as the representatives of the Class. The
15 Court provisionally appoints Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik,
16 Jeffrey S. Herman, Sergio J. Puche, Trevor G Moran of Blumenthal Nordrehaug Bhowmik De
17 Blouw LLP as Class Counsel for the Class.

18 5. A Final Approval Hearing on the question of whether the Settlement should be
19 finally approved as fair, reasonable and adequate as to all Class Members who do not submit a
20 valid and timely request to exclude themselves from the Settlement is scheduled for September 17,
21 2026 at 2:00 p.m. in Department CX102 of the Orange County Superior Court. Other matters for
22 determination at the Final Approval Hearing shall include whether the Final Approval Order and
23 Judgment should be entered herein; and whether the plan of allocation contained in the Agreement
24 should be approved as fair, adequate and reasonable to the Class Members. The motion for final
25 approval and for attorneys' fees, costs and service awards shall be heard at the Final Approval
26 Hearing and the papers are to be filed with the Court and served on all counsel no later than
27 sixteen (16) court days before the hearing.

1 6. Plaintiffs shall serve this Order on the LWDA.

2 7. For settlement purposes only, the Court conditionally certifies the following Class:
3 “all individuals who are or previously were employed by Defendant Biosense Webster, Inc. in
4 California and classified as a non-exempt employee at any time during the Class Period.” The
5 Class Period is August 15, 2019, through August 31, 2026 There are approximately 457
6 individuals in the Class.

7 8. The Agreement provides for a PAGA Penalties payment of \$40,000 in resolution of
8 the claim for penalties under PAGA, 75% (\$30,000) allocated to the LWDA PAGA Payment and
9 25% (\$10,000) allocated to the “Individual PAGA Payments” to the Aggrieved Employees. Each
10 Individual PAGA Payment shall be calculated by (a) dividing the amount of the Aggrieved
11 Employees’ 25% share of PAGA Penalties (\$10,000) by the total number of Workweeks worked
12 by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each
13 Aggrieved Employee’s Workweeks during the PAGA Period. “Aggrieved Employees” are all
14 individuals who are or previously were employed by Defendant in California and classified as a
15 non-exempt employees at any time during the PAGA Period (July 25, 2022 through August 31,
16 2025).

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

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

9 11. The Court approves, as to the form and content, the Objection form, the Dispute
10 Form, and the Request for Exclusion Form that the Class Members may use to object to the
11 settlement, dispute the Administrator's calculations of their Class and/or PAGA Workweeks, or
12 opt out of the Settlement, respectively, attached hereto as Exhibits #2, #3 and #4, respectively.

13 12. The Court hereby approves the proposed procedure for exclusion from the
14 Settlement. Any Class Member may individually choose to opt out of and be excluded from the
15 Class as provided in the Class Notice by following the instructions for requesting exclusion from
16 the Class that are set forth in the Class Notice. All requests for exclusion must be postmarked by
17 no later than sixty (60) calendar days after the date of the mailing of the Class Notice and received
18 by the Administrator. If a Class Notice Packet is re-mailed, the response date for opt-outs will be
19 extended an additional 14 days. Any such person who chooses to opt out of and be excluded from
20 the Class will not be entitled to any recovery under the Settlement and will not be bound by the
21 Settlement or have any right to object, appeal or comment thereon (except that no Aggrieved
22 Employee may opt out of the PAGA portion of the settlement and any Aggrieved Employee who
23 requests exclusion from the Class will still recover their portion of the PAGA Penalties and will be
24 bound by the release of the Released PAGA Claims). Class Members who have not timely
25 requested exclusion shall be bound by all determinations of the Court, the Agreement and the
26 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 13. 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 14. 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 15. 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 pursuant to California Code of Civil Procedure Section 664.6 and California
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1 Rule of Court Rule 3.769(h) to consider all further applications arising out of or connected with
2 the proposed Settlement.

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

5 **IT IS SO ORDERED.**

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7 Dated: _____

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HON. LAYNE H. MELZER
JUDGE, SUPERIOR COURT OF CALIFORNIA

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EXHIBIT #2

FIRST AMENDED CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This First Amended 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, Objection 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~~August 31, 2025.
- 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~~Andrew Lichtenstein

of ~~Epstein Becker & Green~~ Littler Mendelson, 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-B 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-B 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), [including the draft court complaint attached thereto](#).
- 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-C](#) 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, (b) submit challenges to Workweeks and PAGA Pay Periods, or (bc) 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 that Aggrieved Employee 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 4570 Class Members ~~from August 15, 2019 through approximately June 15, 2024~~ who collectively worked a total of approximately ~~56,000~~61,869 Workweeks ~~from August 15, 2019 through approximately June 15, 2024~~ during the Class Period and roughly ~~236~~346 Aggrieved Employees who worked a total of approximately ~~30,224~~20,100 PAGA Workweeks ~~from August 15, 2019 through approximately June 15, 2024~~ during the PAGA Period. ~~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 [Packet](#) 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 Court shall have the authority to review and shall have the final say on the validity of any Request for Exclusion. Absent intervention from the Court, ~~t~~The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge, ~~except that the Court shall have the authority to review and shall have the final say on the validity of any Request for Exclusion.~~ 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 Court shall have the authority to review and shall have the final say on the authenticity of any Request for Exclusion. Absent intervention from the Court, ~~t~~The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge, ~~except that the Court shall have the authority to review and shall have the final say on the authenticity of any Request for Exclusion.~~
- (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 Paragraphs 6.3 and 1.39 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, except that the Court shall have the authority to review and make a final ruling as to any decision by the Administrator as to regarding any challenges to the Administrator's determination of Class Workweeks and PAGA Workweeks. 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; and (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).

- (c) Class Workweek and/or PAGA Workweek Challenges. Subject to review by the Court, ~~the~~ 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 Absent intervention from the Court,~~ 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. Based on the Class Data, the Administrator provided a final count of are 457 class members who worked 61,869 workweeks during the Class Period.~~ If the actual number of Workweeks during the Class Period exceeds this amount ~~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 the Parties agree to meet and confer on a solution, reach an agreement, and propose it to the Court. ~~Defendant will have the option to either: (i) allow the Gross Settlement Amount to will 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 (sf), 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 [and California Rule of Court, rule 3.769\(h\)](#) ~~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-reviewing](#) 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:

~~[Andrew Lichtenstein](#)~~~~[Michael S. Kun](#)~~
~~[Kevin D. Sullivan](#)~~

~~EPSTEIN BECKER & GREEN, P.C.~~
Littler Mendelson, P.C.
~~1925-2049~~ Century Park East, ~~Suite 500~~^{5th} Floor
Los Angeles, CA 90067
Tele.: (310) 553-03086-8861
Fax: (~~800340~~) ~~715553-13302165~~
E-Mail: alichtenstein@littler.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: _____
Plaintiff Daraphone Simma

Dated: _____
Plaintiff Wendy Santos

Dated: _____
Betina Lackner _____ [name]
For Defendant Biosense Webster, Inc.

Dated: _____

Kyle Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw LLP
Attorney for Plaintiffs

Dated: _____

~~Andrew Lichtenstein~~~~Michael S. Kun~~
~~Kevin D. Sullivan~~
~~Epstein Becker & Green, P.C.~~Littler Mendelson, 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 [AND PAGA](#) 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 [August 31, 2025](#)_____).

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 [and PAGA](#) 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.
Dispute Your Workweeks	Your Workweeks during the Class Period are based on Defendant’s records and are listed in Section 5 below. If you believe the number of Workweeks list below in

**The Response
Deadline is**

Section 5 is incorrect, you may submit a challenge as to your Workweeks to the Administrator.

Directions regarding Workweeks disputes are provided in Section 5 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”. The initial PAGA Action was dismissed following the filing of the Second Amended Complaint which included the PAGA claim.

Pursuant to a court order, you are hereby notified that Plaintiffs and Defendant have reached a proposed class action and PAGA 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. HofferLayne H. Melzer 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’ First Amended 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 August 31, 2025.

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 _____. August 31, 2025.
 - “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 \$ _____. 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 during the Class Period. “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 _____). ~~August 31, 2025).~~

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, except that the Court will have the final say as to any decision. 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. [100% of Individual PAGA Payments are allocated to non-wages and penalties, are not subject to wage withholding-s, and will be reported on an IRS Form 1099.](#)

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~~[settlement of Released Class Claims](#), 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 _____. [The Court has the final say on the validity and authenticity of requests for exclusion.](#) 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. [Any Class Member who does not request exclusion may also, if the Class Member so desires, enter an appearance through counsel \(Cal. Rules of Court, rule 3.766\(d\)\(5\).\)](#) 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. [An Objection form is included with this Notice.](#)

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](#)
[Littler Mendelson P.C.-](#)
[2049 Century Park East, 5th Floor](#)
[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.

OBJECTION FORM

USE THIS FORM ONLY IF YOU WANT TO OBJECT TO THE SETTLEMENT. TO OBJECT TO THE TERMS OF THE SETTLEMENT, YOU MUST SIGN AND COMPLETE THIS FORM ACCURATELY, INCLUDING YOUR FULL NAME, CURRENT ADDRESS, LAST FOUR DIGITS OF YOUR SOCIAL SECURITY NUMBER, AND YOUR SIGNATURE. YOU MUST MAIL THIS FORM BY FIRST CLASS U.S. MAIL TO THE ADMINISTRATOR AT THE ADDRESS BELOW, EMAIL THIS FORM TO <<_____,_____,_____,_____>>, OR FAX THIS FORM TO _____. THE DEADLINE TO EMAIL, FAX OR POSTMARK VIA MAIL YOUR WRITTEN OBJECTION IS _____.

[] I OBJECT to the *Simma v. Biosense Webster, Inc.* Settlement for the following reasons:

(Print Your Name)

(Signature)

(Date)

(Your Address)

(Cite/State/ Zip Code)

(Print Last Four Digits of SSN)

Submit your fully completed and signed Objection Form as follows:

MAIL FAX OR EMAIL TO THE ADMINISTRATOR NOT LATER THAN _____ TO:
Simma v. Biosense Webster, Inc. Administrator
c/o ILYM Group, Inc.,
[address], [Fax], [Email]

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

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

EXHIBIT B

[FINAL APPROVAL ORDER AND JUDGMENT ORDER GRANTING PRELIMINARY
APPROVAL]

**~~BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP~~**

~~—Norman B. Blumenthal (State Bar #068687)~~

~~Kyle R. Nordrehaug (State Bar #205975)~~

~~Aparajit Bhowmik (State Bar #248066)~~

~~2255 Calle Clara~~

~~La Jolla, CA 92037~~

~~Telephone: (858) 551-1223~~

~~Facsimile: (858) 551-1232~~

~~Attorneys for Plaintiffs~~

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

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

Plaintiffs,

vs.

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

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

FINAL APPROVAL ORDER AND JUDGMENT

1 The motion of Plaintiffs Daraphone Simma and Wendy Santos (“Plaintiffs”) for an order
2 finally approving the [First Amended](#) Class Action and PAGA Settlement Agreement
3 (“Agreement”) with Defendant Biosense Webster, Inc. (“Defendant”), attorneys’ fees and costs,
4 service payments, and the expenses of the Administrator duly came on for hearing on
5 _____ before the 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 Packet, in the
2 form attached to the Declaration of the Administrator, was mailed by first class mail to members
3 of the Class at their last known addresses on or about _____. Mailing of the Class
4 Notice to their last known addresses was the best notice practicable under the circumstances and
5 was reasonably calculated to communicate actual notice of the litigation and the proposed
6 settlement to the Class. The Class Notice given to the Class Members fully and accurately
7 informed the Class Members of all material elements of the proposed Settlement and of their
8 opportunity to object to or comment thereon or to seek exclusion from the Settlement; was valid,
9 due, and sufficient notice to all Class Members; and complied fully with the laws of the State of
10 California, the United States Constitution, due process and other applicable law. The Class Notice
11 fairly and adequately described the Settlement and provided Class Members adequate instructions
12 and a variety of means to obtain additional information.

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

22 **Fairness Of Settlement**

23 8. The Agreement is entitled to a presumption of fairness. *Dunk v. Ford Motor Co.*
24 48 Cal.App.4th 1794, 1801 (1996).

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

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

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

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

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

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

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

24 **Attorneys' Fees and Costs**

25 11. An award of \$600,000 for attorneys' fees, representing one-third of the Gross
26 Settlement Amount, and \$ _____ for litigation costs and expenses, is reasonable, in light of
27 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 August 31, 2025. The LWDA was notified of the settlement and served with a copy of the
3 Agreement, and the LWDA has not objected to the Settlement. The Court finds this PAGA
4 Penalties amount to be reasonable and hereby approves the Settlement of PAGA claims pursuant
5 to California Labor 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 _____August 31, 2025.

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 and Aggrieved Employees.
19 The Final Approval Order and Judgment shall be posted on the Administrator's website as set
20 forth in the Class Notice to the Class. It shall not be necessary to send notice of entry of this Final
21 Approval Order and Judgment to individual Class Members. Pursuant to Labor Code section
22 2699, subdivision (s)(32), Class Counsel shall submit a copy of this Final Approval Order and
23 Judgment to the LWDA within 10 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 [and California Rules](#)
8 [of Court Rule 3.769\(h\)](#), the Court shall retain jurisdiction to construe, interpret, implement and
9 enforce the Agreement, to hear and resolve any contested challenge to a claim for settlement
10 benefits, and to supervise and adjudicate any dispute arising from or in connection with the
11 distribution of settlement benefits.

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

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

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

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

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

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

11 7. Effective on the date when Defendant fully funds the entire Gross Settlement
12 Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class
13 Payments, all Aggrieved Employees and the LWDA are deemed to release, on behalf of
14 themselves and their respective former and present representatives, agents, attorneys, heirs,
15 administrators, successors, and assigns, the Released Parties from the Released PAGA Claims.
16 The "Released PAGA Claims" are any and all rights or claims for statutory penalties, attorneys'
17 fees, and costs pursuant to PAGA arising under the California Labor Code or Wage Orders alleged
18 in Plaintiffs' PAGA Notice or that could have been asserted in the Action based on the facts
19 alleged in the PAGA Notice which occurred during the PAGA Period, including: (a) any alleged
20 failure by Defendant to (1) pay Aggrieved Employees all regular and minimum wages purportedly
21 due; (2) pay Aggrieved Employees all overtime and double time wages purportedly due; (3)
22 provide Aggrieved Employees with compliant meal periods or sufficient compensation in lieu
23 thereof; (4) provide Aggrieved Employees with compliant rest periods or sufficient compensation
24 in lieu thereof; (5) provide Aggrieved Employees with compliant, accurate wage statements; (6)
25 timely pay Aggrieved Employees all wages purportedly due during or at the end of employment,
26 including but not limited to vested paid time off and holiday pay; (7) reimburse Aggrieved
27 Employees for all purportedly necessary business expenses; (8) provide Aggrieved Employees

1 adequate and proper paid sick leave; (9) provide Aggrieved Employees with all reporting time pay
2 purportedly due; and (10) provide Aggrieved Employees with suitable seating; and (b) any
3 violation of the California Labor Code or other state or federal statute, rule or regulation
4 (including Wage Orders) that could have been asserted in this Action based on the facts alleged in
5 Plaintiffs' PAGA Notice and addressed in (a)(1) through (a)(10) above, including violation of
6 California Labor Code sections 201, 202, 203, 204, 210, 218, 221, 226, 226.3, 226.7, 227.3, 233,
7 246, 246.5, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, ~~1198.5~~, and
8 2802, as well as the corresponding provisions of the applicable Wage Order(s), expressly
9 excluding all other claims including claims for vested benefits, wrongful termination, violation of
10 the Fair Employment and Housing Act, unemployment insurance, disability insurance, social
11 security benefits, and workers' compensation. The release of the Released PAGA Claims shall be
12 effective as to all Aggrieved Employees, regardless of whether an Aggrieved Employee submitted
13 a request for an exclusion from the Class.

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

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

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

25 11. THE PARTIES ARE HEREBY ORDERED TO COMPLY WITH THE TERMS
26 OF THE AGREEMENT. PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE
27 SECTION 664.6 AND CALIFORNIA RULE OF COURT 3.769, THE COURT HEREBY
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1 ENTERS FINAL JUDGMENT BASED UPON THE TERMS OF THIS ORDER AND THE
2 AGREEMENT AND, WITHOUT AFFECTING THE FINALITY OF THIS MATTER,
3 RETAINS EXCLUSIVE AND CONTINUING JURISDICTION TO ENFORCE THIS ORDER,
4 THE SETTLEMENT AGREEMENT, AND THE JUDGMENT THEREON.
5 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO ORDERED.**

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7 Dated: _____

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HON. LAYNE H. MELZER
JUDGE, SUPERIOR COURT OF CALIFORNIA

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EXHIBIT C

**[FINAL APPROVAL ORDER AND JUDGMENT ORDER GRANTING PRELIMINARY
APPROVAL]**

**~~BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP~~**

~~—Norman B. Blumenthal (State Bar #068687)~~

~~—Kyle R. Nordrehaug (State Bar #205975)~~

~~—Aparajit Bhowmik (State Bar #248066)~~

~~2255 Calle Clara~~

~~La Jolla, CA 92037~~

~~Telephone: (858) 551-1223~~

~~Facsimile: (858) 551-1232~~

~~Attorneys for Plaintiffs~~

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

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

Plaintiffs,

vs.

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

Defendants.

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

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

Hearing Date: May 7, 2026

Hearing Time: 2:00 p.m. 10:00 a.m.

Judge: Hon. Layne H. Melzer

Dept.: CX102

Action Filed: August 15, 2023

Trial Date: Not Set

This matter, having come before the Honorable Layne H. Melzer of the Superior Court of
the State of California, in and for the County Orange, on _____, May 7, 2026, which was
continued from January 15, 2026, for the motion by Plaintiffs Daraphone Simma and Wendy
Santos (“Plaintiffs”) for preliminary approval of the class and PAGA settlement with Defendant

1 Biosense Webster, Inc. (“Defendant”). The Court, having considered the briefs, argument of
2 counsel and all matters presented to the Court and good cause appearing, hereby GRANTS
3 Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement.

4 **IT IS HEREBY ORDERED:**

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

15 [2. ____](#) The Gross Settlement Amount is One Million Eight Hundred Thousand Dollars
16 (\$1,800,000) [and provides for the following disbursements from the Gross Settlement Amount](#)
17 [subject to Court approval: \(1\) Class Counsel Fees Payment not exceed one-third of the Gross](#)
18 [Settlement Amount, which would presently be \\$600,000; \(2\) Class Counsel Litigation Expenses](#)
19 [Payment not to exceed \\$30,000; \(3\) Administration Expenses Payment not to exceed \\$8,500; \(4\)](#)
20 [the Class Representative Service Payments to the Plaintiffs in an amount not to exceed \\$10,000](#)
21 [each; and \(5\) the PAGA Penalties payment of \\$40,000 to be allocated 75% to the California Labor](#)
22 [and Workforce Development Agency \(“LWDA”\) and 25% to the Aggrieved Employees as their](#)
23 [Individual PAGA Payments. The amount remaining in the Gross Settlement Amount after the](#)
24 [deduction of Court-approved amounts for the PAGA Penalties payment, the Class Representative](#)
25 [Service Payments, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses](#)
26 [Payment, and the Administration Expenses Payment is the “Net Settlement Amount,” which shall](#)
27 [be allocated to Class Members as their Individual Class Payments.](#)

1 2.3. Based on a review of the motion papers, it ~~it~~ appears to the Court on a preliminary
2 basis that the Settlement is fair, adequate and reasonable to the Class. It further appears that
3 investigation and research have been conducted such that counsel for the Parties are able to
4 reasonably evaluate their respective positions. It further appears to the Court that settlement at this
5 time will avoid substantial additional costs by all Parties, as well as avoid the delay and risks that
6 would be presented by the further prosecution of the Action. It further appears that the Settlement
7 has been reached as the result of serious and non-collusive, arms-length negotiations after
8 mediation with a respected mediator, Kevin Barnes, Esq. The Court therefore preliminarily finds
9 that the Settlement is fair, adequate, and reasonable when balanced against the probable outcome
10 of further litigation and the significant risks relating to certification, liability, and damages issues.
11 The Settlement falls within the range of reasonableness and appears to be presumptively valid,
12 subject only to any objections that may be raised at the Final Approval Hearing and final approval
13 by this Court.

14 3.4. The Court provisionally appoints Plaintiffs as the representatives of the Class. The
15 Court provisionally appoints Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik,
16 Jeffrey S. Herman, Sergio J. Puche, Trevor G Moran of Blumenthal Nordrehaug Bhowmik De
17 Blouw LLP as Class Counsel for the Class.

18 4.5. A Final Approval Hearing on the question of whether the Settlement should be
19 finally approved as fair, reasonable and adequate as to all Class Members who do not submit a
20 valid and timely request to exclude themselves from the Settlement is scheduled for
21 September 17, 2026 at 2:00 p.m.~~10:00 a.m.~~ in Department CX102 of
22 the Orange County Superior Court. Other matters for determination at the Final Approval Hearing
23 shall include whether the Final Approval Order and Judgment should be entered herein; and
24 whether the plan of allocation contained in the Agreement should be approved as fair, adequate
25 and reasonable to the Class Members. The motion for final approval and for attorneys' fees, costs
26 and service awards shall be heard at the Final Approval Hearing and the papers are to be filed with
27 the Court and served on all counsel no later than sixteen (16) court days before the hearing.

1 5-6. Plaintiffs shall serve this Order on the LWDA.

2 7. For settlement purposes only, the Court conditionally certifies the following Class:
3 “all individuals who are or previously were employed by Defendant Biosense Webster, Inc. in
4 California and classified as a non-exempt employee at any time during the Class Period.” The
5 Class Period is August 15, 2019, through August 31, 2026. There are
6 approximately 4570 individuals in the Class.

7 6-8. The Agreement provides for a PAGA Penalties payment of \$40,000 in resolution of
8 the claim for penalties under PAGA, 75% (\$30,000) allocated to the LWDA PAGA Payment and
9 25% (\$10,000) allocated to the “Individual PAGA Payments” to the Aggrieved Employees. Each
10 Individual PAGA Payment shall be calculated by (a) dividing the amount of the Aggrieved
11 Employees’ 25% share of PAGA Penalties (\$10,000) by the total number of Workweeks worked
12 by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each
13 Aggrieved Employee’s Workweeks worked during the PAGA Period. “Aggrieved Employees”
14 are all individuals who are or previously were employed by Defendant in California and classified
15 as a non-exempt employees at any time during the PAGA Period (July 25, 2022 through August
16 31, 2025).”

17 7-9. The Court hereby appoints ILYM Group, Inc. as Administrator. No later than 15
18 calendar days after preliminary approval of the Settlement by the Court, Defendant shall provide
19 to the Administrator an electronic spreadsheet with the Class Data. The Administrator will
20 perform address updates and verifications as necessary prior to the mailing of the Class Notice.
21 Using best efforts to mail it as soon as possible, and in no event later than 14 days after receiving
22 the Class information spreadsheet, the Administrator will mail the Class Notice Packet to all Class
23 Members via first-class U.S. Mail.

24 8-10. The Court hereby approves, as to form and content, the Court Approved Notice of
25 Class Action Settlement and Hearing Date for Final Court Approval (“Class Notice”) attached
26 hereto as Exhibit #1. The Court finds that the Class Notice appears to fully and accurately inform
27 the Class of all material elements of the proposed Settlement, Class Members’ right to be excluded
28

1 from the Class by submitting a written opt-out request, and each member's right and opportunity
2 to object to the Settlement. The Court further finds that the distribution of the Class Notice
3 substantially in the manner and form set forth in the Agreement and this Order meets the
4 requirements of due process, is the best notice practicable under the circumstances, and shall
5 constitute due and sufficient notice to all persons entitled thereto. The font of the Class Notice
6 shall not be smaller than what was provided to the Court. The Court orders the mailing of the
7 Class Notice Packets by first class mail, pursuant to the terms and implementation schedule set
8 forth in the Agreement.

9 9.11. The Court approves, as to the form and content, the Request for Exclusion
10 Form Objection form, ~~and~~ the Dispute Form, and the Request for Exclusion Form that the Class
11 Members may use to object to the settlement, dispute the ~~if employment dates~~ Administrator's
12 calculations of their Class and/or PAGA Workweeks, or opt out of the Settlement, respectively,
13 attached hereto as Exhibits #2, #3 and #34, respectively.

14 10.12. 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
28

1 affect an opt out of a group, class, or subclass of individuals is not permitted and will be deemed
2 invalid.

3 ~~11.13.~~ 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 ~~12.14.~~ 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 ~~13.15.~~ 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 pursuant to California Code of Civil Procedure Section 664.6 and California
27
28

1 [Rule of Court Rule 3.769\(h\)](#) to consider all further applications arising out of or connected with
2 the proposed Settlement.

3 [14.16.](#) The Action is stayed, and all trial and related pre-trial dates are vacated, subject to
4 further orders of the Court at the Final Approval Hearing.

5 **IT IS SO ORDERED.**

6
7 Dated: _____

8
9 _____
HON. LAYNE [H.](#) MELZER
JUDGE, SUPERIOR COURT OF CALIFORNIA

EXHIBIT #3

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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WRITERS E-MAIL:

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WRITERS EXT:

1004

July 25, 2023

CA3017

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Biosense Webster, Inc.
Certified Mail #9589071052700182373043
CT Corporation System
AMANDA GARCIA
330 N BRAND BLVD, Suite 700
GLENDALE, CA 91203

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 et seq., 210, 218, 221, 226(a), 226.7, 227.3, 246 et seq., 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 of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Biosense Webster, Inc. in California, including any employees staffed with Biosense Webster, Inc. by a third party, and classified as non-exempt employees during the time period of July 25, 2022 until a date as determined by the Court. Our offices represent Plaintiff Daraphone Simma (“Plaintiff”) and other Aggrieved Employees in a lawsuit against Biosense Webster, Inc. (“Defendant”). Plaintiff was employed from to December of 2021 to April of 2023 by Defendant in California. Plaintiff was at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods.

See Vaquero v. Stoneledge Furniture, LLC, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to Plaintiff, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates 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 of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all Aggrieved Employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

DARAPHONE SIMMA, an individual, on behalf of
herself and on behalf of all persons similarly
situated,

Plaintiff,

vs.

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

Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE § 510;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203; and,
9. FAILURE TO PAY SICK PAY WAGES IN VIOLATION OF CAL. LAB. CODE §§ 201-204, 233, 246.

DEMAND FOR A JURY TRIAL

1 Daraphone Simma (“PLAINTIFF”), an individual, on behalf of herself and all other
2 similarly situated current and former employees alleges on information and belief, except for
3 her own acts and knowledge which are based on personal knowledge, the following.

4
5 **THE PARTIES**

6 1. Biosense Webster, Inc. (“DEFENDANT”) is a California Corporation that at all
7 relevant times mentioned herein conducted and continues to conduct substantial business in
8 California.

9 2. DEFENDANT is a global leader in the science of diagnosing and treating heart
10 rhythm disorders.

11 3. PLAINTIFF was employed by DEFENDANT in California from December of
12 2021 to April of 2023. PLAINTIFF was at all times classified by DEFENDANT as a non-
13 exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest
14 periods and payment of minimum and overtime wages due for all time worked.

15 4. PLAINTIFF brings this Class Action on behalf of herself and a California class,
16 defined as all individuals who are or previously were employed by DEFENDANT in California,
17 including any employees staffed with DEFENDANT by a third party, and classified as non-
18 exempt employees (the “CALIFORNIA CLASS”) at any time during the period beginning four
19 (4) years prior to the filing of this Complaint and ending on the date as determined by the Court
20 (the “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate claim
21 of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

22 5. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
23 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred
24 during the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s policy and practice
25 which failed to lawfully compensate these employees. DEFENDANT’s policy and practice
26 alleged herein was an unlawful, unfair and deceptive business practice whereby
27 DEFENDANT retained and continues to retain wages due PLAINTIFF and the other
28 members of the CALIFORNIA CLASS. PLAINTIFF and the other members of the

1 CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the
2 future, relief for the named PLAINTIFF and the other members of the CALIFORNIA
3 CLASS who have been economically injured by DEFENDANT's past and current unlawful
4 conduct, and all other appropriate legal and equitable relief.

5 6. The true names and capacities, whether individual, corporate, subsidiary,
6 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are
7 presently unknown to PLAINTIFF who therefore sues these Defendants by such fictitious
8 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this
9 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when
10 they are ascertained. PLAINTIFF is informed and believes, and based upon that information
11 and belief alleges, that the Defendants named in this Complaint, including DOES 1 through
12 50, inclusive, are responsible in some manner for one or more of the events and happenings
13 that proximately caused the injuries and damages hereinafter alleged.

14 7. The agents, servants and/or employees of the Defendants and each of them
15 acting on behalf of the Defendants acted within the course and scope of his, her or its
16 authority as the agent, servant and/or employee of the Defendants, and personally
17 participated in the conduct alleged herein on behalf of the Defendants with respect to the
18 conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to
19 the other Defendants and all Defendants are jointly and severally liable to PLAINTIFF and
20 the other members of the CALIFORNIA CLASS, for the loss sustained as a proximate result
21 of the conduct of the Defendants' agents, servants and/or employees.

22 **THE CONDUCT**

23
24 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
25 was required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time
26 worked, meaning the time during which an employee is subject to the control of an
27 employer, including all the time the employee is suffered or permitted to work.
28 DEFENDANT requires PLAINTIFF and CALIFORNIA CLASS Members to work without

1 paying them for all the time they are under DEFENDANT's control. Among other things,
2 DEFENDANT requires PLAINTIFF to work while clocked out during what is supposed to
3 be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by
4 work assignments while clocked out for what should have been PLAINTIFF's off-duty meal
5 break. DEFENDANT, as a matter of established company policy and procedure, administers
6 a uniform practice of rounding the actual time worked and recorded by PLAINTIFF and
7 CALIFORNIA CLASS Members, always to the benefit of DEFENDANT, so that during the
8 course of their employment, PLAINTIFF and CALIFORNIA CLASS Members are paid less
9 than they would have been paid had they been paid for actual recorded time rather than
10 "rounded" time. Additionally, DEFENDANT engages in the practice of requiring
11 PLAINTIFF and CALIFORNIA CLASS Members to perform work off the clocking that
12 DEFENDANT, as a condition of employment, required these employees to submit to
13 mandatory temperature checks and symptom questionnaires for COVID-19 screening prior
14 to clocking into DEFENDANT's timekeeping system for the workday. As a result,
15 PLAINTIFF and other CALIFORNIA CLASS Members forfeit minimum wage, overtime
16 wage compensation, and off-duty meal breaks by working without their time being correctly
17 recorded and without compensation at the applicable rates. DEFENDANT's policy and
18 practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time
19 worked, is evidenced by DEFENDANT's business records.

20 9. State and federal law provides that employees must be paid overtime and meal
21 and rest break premiums at one-and-one-half times their "regular rate of pay." PLAINTIFF
22 and other CALIFORNIA CLASS Members are compensated at an hourly rate plus incentive
23 pay that is tied to specific elements of an employee's performance.

24 10. The second component of PLAINTIFF's and other CALIFORNIA CLASS
25 Members' compensation is DEFENDANT's non-discretionary incentive program that paid
26 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
27 performance for DEFENDANT. The non-discretionary incentive program provided all
28 employees paid on an hourly basis with incentive compensation when the employees met the

1 various performance goals set by DEFENDANT. However, when calculating the regular
2 rate of pay in order to pay overtime and meal and rest break premiums to PLAINTIFF and
3 other CALIFORNIA CLASS Members, DEFENDANT failed to include the incentive
4 compensation as part of the employees' "regular rate of pay" for purposes of calculating
5 overtime pay and meal and rest break premium pay. Management and supervisors described
6 the incentive program to potential and new employees as part of the compensation package.
7 As a matter of law, the incentive compensation received by PLAINTIFF and other
8 CALIFORNIA CLASS Members must be included in the "regular rate of pay." The failure
9 to do so has resulted in a underpayment of overtime compensation and meal and rest break
10 premiums to PLAINTIFF and other CALIFORNIA CLASS Members by DEFENDANT.

11 11. As a result of their rigorous work schedules, PLAINTIFF and other
12 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute
13 off duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF
14 and other CALIFORNIA CLASS Members were required from time to time to perform
15 work as ordered by DEFENDANT for more than five (5) hours during some shifts without
16 receiving a meal break. Further, DEFENDANT from time to time failed to provide
17 PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period for
18 some workdays in which these employees were required by DEFENDANT to work ten (10)
19 hours of work. DEFENDANT also engaged in the practice of rounding the meal period
20 times to avoid paying penalties to PLAINTIFF and other CALIFORNIA CLASS Members.
21 PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeit meal breaks
22 without additional compensation and in accordance with DEFENDANT's corporate policy
23 and practice.

24 12. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
25 CALIFORNIA CLASS Members were also required from time to time to work in excess of
26 four (4) hours without being provided ten (10) minute rest periods. Further, these employees
27 were denied their first rest periods of at least ten (10) minutes for some shifts worked of at
28 least two (2) to four (4) hours from time to time, a first and second rest period of at least ten

1 (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to
2 time, and a first, second and third rest period of at least ten (10) minutes for some shifts
3 worked of ten (10) hours or more from time to time. PLAINTIFF and other CALIFORNIA
4 CLASS Members were also not provided with one hour wages in lieu thereof. Additionally,
5 the applicable California Wage Order requires employers to provide employees with off-
6 duty rest periods, which the California Supreme Court defined as time during which an
7 employee is relieved from all work related duties and free from employer control. In so
8 doing, the Court held that the requirement under California law that employers authorize and
9 permit all employees to take rest period means that employers must relieve employees of all
10 duties and relinquish control over how employees spend their time which includes control
11 over the locations where employees may take their rest period. Employers cannot impose
12 controls that prohibit an employee from taking a brief walk - five minutes out, five minutes
13 back. Here, DEFENDANT's policy restricted PLAINTIFF and other CALIFORNIA
14 CLASS Members from unconstrained walks and is unlawful based on DEFENDANT's rule
15 which states PLAINTIFF and other CALIFORNIA CLASS Members cannot leave the work
16 premises during their rest period.

17 13. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to
18 accurately record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the
19 actual amount of time these employees worked. Pursuant to the Industrial Welfare
20 Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and other
21 CALIFORNIA CLASS Members for all time worked, meaning the time during which an
22 employee was subject to the control of an employer, including all the time the employee was
23 permitted or suffered to permit this work. DEFENDANT required these employees to work
24 off the clock without paying them for all the time they were under DEFENDANT's control.
25 As such, DEFENDANT knew or should have known that PLAINTIFF and the other
26 members of the CALIFORNIA CLASS were under compensated for all time worked. As a
27 result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited time worked by
28 working without their time being accurately recorded and without compensation at the

1 applicable minimum wage and overtime wage rates. To the extent that the time worked off
2 the clock does not qualify for overtime premium payment, DEFENDANT fails to pay
3 minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,
4 1197, and 1197.1.

5 14. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
6 other members of the CALIFORNIA CLASS with complete and accurate wage statements
7 which failed to show, among other things, the correct gross and net wages earned. Cal. Lab.
8 Code § 226 provides that every employer shall furnish each of his or her employees with an
9 accurate itemized wage statement in writing showing, among other things, gross wages
10 earned and all applicable hourly rates in effect during the pay period and the corresponding
11 amount of time worked at each hourly rate. PLAINTIFF and CALIFORNIA CLASS
12 Members were paid on an hourly basis. As such, the wage statements should reflect all
13 applicable hourly rates during the pay period and the total hours worked, and the applicable
14 pay period in which the wages were earned pursuant to California Labor Code Section
15 226(a). The wage statements DEFENDANT provided to PLAINTIFF and other
16 CALIFORNIA CLASS Members failed to identify such information. More specifically, the
17 wage statements failed to identify the accurate total hours worked each pay period. When
18 the hours shown on the wage statements were added up, they did not equal the actual total
19 hours worked during the pay period in violation of Cal. Lab. Code 226(a)(2). Aside, from
20 the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF
21 an itemized wage statement that lists all the requirements under California Labor Code 226
22 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFF and the other
23 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code
24 § 226.

25 15. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be
26 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
27 the wages are paid not more than seven (7) calendar days following the close of the payroll
28 period. Cal. Lab. Code § 210 provides:

1 in [I]n addition to, and entirely independent and apart from, any other penalty provided
2 this article, every person who fails to pay the wages of each employee as provided in
3 Sections. . . 204. . . shall be subject to a civil penalty as follows: (1) For any initial
4 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For
each subsequent violation, or any willful or intentional violation, two hundred dollars
(\$200) for each failure to pay each employee, plus 25 percent of the amount
unlawfully withheld.

5 16. DEFENDANT from time to time failed to pay PLAINTIFF and members of
6 the CALIFORNIA LABOR SUB-CLASS Members within seven (7) days of the close of the
7 payroll period in accordance with Cal. Lab. Code § 204(d), including but not limited to for
8 the “Hourly” regular wage payments.

9 17. DEFENDANT underpaid sick pay wages to PLAINTIFF and other
10 CALIFORNIA CLASS Members by failing to pay such wages at the regular rate of pay in
11 violation of Cal. Lab. Code Section 246. Specifically, PLAINTIFF and other non-exempt
12 employees earn non-discretionary remuneration. Rather than pay sick pay at the regular rate
13 of pay, DEFENDANT underpaid sick pay to PLAINTIFF and other CALIFORNIA CLASS
14 Members at their base rates of pay.

15 18. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
16 employees be calculated by dividing the employee’s total wages, not including overtime
17 premium pay, by the employee’s total hours worked in the full pay periods of the prior 90
18 days of employment.

19 19. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay
20 at the regular rate of pay. PLAINTIFF and CALIFORNIA CLASS Members routinely
21 earned non-discretionary incentive wages which increased their regular rate of pay.
22 However, when sick pay was paid, it was paid at the base rate of pay for PLAINTIFF and
23 members of the CALIFORNIA CLASS, as opposed to the correct, higher regular rate of pay,
24 as required under Cal. Lab. Code Section 246.

25 20. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF
26 and other members of the CALIFORNIA CLASS their correct wages and accordingly owe
27 waiting time penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is
28 informed and believes and based thereon alleges that such failure to pay sick pay at regular

1 rate was willful, such that PLAINTIFF and members of the CALIFORNIA CLASS whose
2 employment has separated are entitled to waiting time penalties pursuant to Cal. Lab. Code
3 Sections 201-203.

4 21. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
5 to collect or receive from an employee any part of wages theretofore paid by said employer
6 to said employee." DEFENDANT failed to pay all compensation due to PLAINTIFF and
7 other CALIFORNIA LABOR SUB-CLASS Members, made unlawful deductions from
8 compensation payable to PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members,
9 failed to disclose all aspects of the deductions from compensation payable to PLAINTIFF
10 and CALIFORNIA LABOR SUB-CLASS Members, and thereby failed to pay these
11 employees all wages due at each applicable pay period and upon termination. PLAINTIFF
12 and members of the CALIFORNIA LABOR SUB-CLASS seek recovery of all illegal
13 deductions from wages according to proof, related penalties, interest, attorney fees and costs.

14 22. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
15 PLAINTIFF and the other CALIFORNIA CLASS Members for required business expenses
16 incurred by the PLAINTIFF and other CALIFORNIA CLASS Members in direct
17 consequence of discharging their duties on behalf of DEFENDANT. Under California
18 Labor Code Section 2802, employers are required to indemnify employees for all expenses
19 incurred in the course and scope of their employment. Cal. Lab. Code § 2802 expressly
20 states that "an employer shall indemnify his or her employee for all necessary expenditures
21 or losses incurred by the employee in direct consequence of the discharge of his or her
22 duties, or of his or her obedience to the directions of the employer, even though unlawful,
23 unless the employee, at the time of obeying the directions, believed them to be unlawful."

24 23. In the course of their employment PLAINTIFF and other CALIFORNIA
25 CLASS Members as a business expense, were required by DEFENDANT to use their own
26 personal cellular phones as a result of and in furtherance of their job duties as employees for
27 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost
28 associated with the use of their personal cellular phones for DEFENDANT's benefit.

1 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by
2 DEFENDANT to use their personal cellular phones. As a result, in the course of their
3 employment with DEFENDANT, PLAINTIFF and other members of the CALIFORNIA
4 CLASS incurred unreimbursed business expenses which included, but were not limited to,
5 costs related to the use of their personal cellular phones all on behalf of and for the benefit
6 of DEFENDANT.

7 24. In violation of the applicable sections of the California Labor Code and the
8 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,
9 DEFENDANT as a matter of company policy, practice and procedure, intentionally,
10 knowingly and systematically failed to provide PLAINTIFF and the other Aggrieved
11 Employees suitable seating when the nature of these employees' work reasonably permitted
12 sitting.

13 25. DEFENDANT knew or should have known that PLAINTIFF and other
14 Aggrieved Employees were entitled to suitable seating and/or were entitled to sit when it did
15 not interfere with the performance of their duties, and that DEFENDANT did not provide
16 suitable seating and/or did not allow them to sit when it did not interfere with the
17 performance of their duties.

18 26. By reason of this conduct applicable to PLAINTIFF and all Aggrieved
19 Employees, DEFENDANT violated California Labor Code Section 1198 and California
20 Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Wage Order
21 4-2001, Section 14 by failing to provide suitable seats. PLAINTIFF seeks penalties on
22 behalf of PLAINTIFF and other Aggrieved Employees as provided herein. Providing
23 suitable seating is the DEFENDANT's burden. As a result of DEFENDANT's intentional
24 disregard of the obligation to meet this burden, DEFENDANT violated the California Labor
25 Code and regulations promulgated thereunder as herein alleged.

26 27. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
27 required off-duty meal and rest breaks to PLAINTIFF as required by the applicable Wage
28 Order and Labor Code and failed to pay PLAINTIFF all minimum and overtime wages due

1 to PLAINTIFF. DEFENDANT did not have a policy or practice which provided timely off-
2 duty meal and rest breaks to PLAINTIFF and also failed to compensate PLAINTIFF for
3 PLAINTIFF's missed meal and rest breaks. The nature of the work performed by the
4 PLAINTIFF did not prevent PLAINTIFF from being relieved of all of PLAINTIFF's duties
5 for the legally required off-duty meal periods. As a result, DEFENDANT's failure to
6 provide PLAINTIFF with the legally required meal periods is evidenced by DEFENDANT's
7 business records. The amount in controversy for PLAINTIFF individually does not exceed
8 the sum or value of \$75,000.

9 **JURISDICTION AND VENUE**

10 28. This Court has jurisdiction over this Action pursuant to California Code of
11 Civil Procedure, Section 410.10 and California Business & Professions Code, Section
12 17203. This action is brought as a Class Action on behalf of PLAINTIFF and similarly
13 situated employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

14 29. Venue is proper in this Court pursuant to California Code of Civil Procedure,
15 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
16 DEFENDANT (i) currently maintains and at all relevant times maintained offices and
17 facilities in this County and/or conducts substantial business in this County, and (ii)
18 committed the wrongful conduct herein alleged in this County against members of the
19 CALIFORNIA CLASS.

20 **THE CALIFORNIA CLASS**

21 30. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and
22 Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
23 "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a
24 California class, defined as all individuals who are or previously were employed by
25 DEFENDANT in California, including any employees staffed with DEFENDANT by a third
26 party, and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time
27
28

1 during the period beginning four (4) years prior to the filing of this Complaint and ending on
2 the date as determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount
3 in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five
4 million dollars (\$5,000,000.00).

5 31. To the extent equitable tolling operates to toll claims by the CALIFORNIA
6 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
7 accordingly.

8 32. DEFENDANT, as a matter of company policy, practice and procedure, and in
9 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage
10 Order requirements, and the applicable provisions of California law, intentionally,
11 knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed to record all
12 meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members,
13 even though DEFENDANT enjoyed the benefit of this work, required employees to perform
14 this work and permits or suffers to permit this work.

15 33. DEFENDANT has the legal burden to establish that each and every
16 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
17 required by California laws. The DEFENDANT, however, as a matter of policy and
18 procedure failed to have in place during the CALIFORNIA CLASS PERIOD and still fails
19 to have in place a policy or practice to ensure that each and every CALIFORNIA CLASS
20 Member is paid as required by law. This common business practice is applicable to each
21 and every CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as
22 unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.*
23 (the “UCL”) as causation, damages, and reliance are not elements of this claim.

24 34. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
25 CLASS Members is impracticable.

26 35. DEFENDANT violated the rights of the CALIFORNIA CLASS under
27 California law by:
28

- 1 (a) Committing an act of unfair competition in violation of , Cal. Bus. &
2 Prof. Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly
3 and/or deceptively having in place company policies, practices and
4 procedures that failed to record and pay PLAINTIFF and the other
5 members of the CALIFORNIA CLASS for all time worked, including
6 minimum wages owed and overtime wages owed for work performed
7 by these employees; and,
8 (b) Committing an act of unfair competition in violation of the UCL, by
9 failing to provide the PLAINTIFF and the other members of the
10 CALIFORNIA CLASS with the legally required meal and rest periods.

11 36. This Class Action meets the statutory prerequisites for the maintenance of a
12 Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 13 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
14 that the joinder of all such persons is impracticable and the disposition
15 of their claims as a class will benefit the parties and the Court;
16 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
17 issues that are raised in this Complaint are common to the
18 CALIFORNIA CLASS will apply to every member of the
19 CALIFORNIA CLASS;
20 (c) The claims of the representative PLAINTIFF are typical of the claims
21 of each member of the CALIFORNIA CLASS. PLAINTIFF, like all
22 the other members of the CALIFORNIA CLASS, was classified as a
23 non-exempt employee paid on an hourly basis who was subjected to the
24 DEFENDANT's deceptive practice and policy which failed to provide
25 the legally required meal and rest periods to the CALIFORNIA CLASS
26 and thereby underpaid compensation to PLAINTIFF and
27 CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a
28 result of DEFENDANT's employment practices. PLAINTIFF and the

1 members of the CALIFORNIA CLASS were and are similarly or
2 identically harmed by the same unlawful, deceptive and unfair
3 misconduct engaged in by DEFENDANT; and,

- 4 (d) The representative PLAINTIFF will fairly and adequately represent and
5 protect the interest of the CALIFORNIA CLASS, and has retained
6 counsel who are competent and experienced in Class Action litigation.
7 There are no material conflicts between the claims of the representative
8 PLAINTIFF and the members of the CALIFORNIA CLASS that would
9 make class certification inappropriate. Counsel for the CALIFORNIA
10 CLASS will vigorously assert the claims of all CALIFORNIA CLASS
11 Members.

12 37. In addition to meeting the statutory prerequisites to a Class Action, this action
13 is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- 14 (a) Without class certification and determination of declaratory, injunctive,
15 statutory and other legal questions within the class format, prosecution
16 of separate actions by individual members of the CALIFORNIA
17 CLASS will create the risk of:

- 18 1) Inconsistent or varying adjudications with respect to individual
19 members of the CALIFORNIA CLASS which would establish
20 incompatible standards of conduct for the parties opposing the
21 CALIFORNIA CLASS; and/or,
22 2) Adjudication with respect to individual members of the
23 CALIFORNIA CLASS which would as a practical matter be
24 dispositive of interests of the other members not party to the
25 adjudication or substantially impair or impede their ability to
26 protect their interests.

- 27 (b) The parties opposing the CALIFORNIA CLASS have acted or refused
28 to act on grounds generally applicable to the CALIFORNIA CLASS,

1 making appropriate class-wide relief with respect to the CALIFORNIA
2 CLASS as a whole in that DEFENDANT failed to pay all wages due to
3 members of the CALIFORNIA CLASS as required by law;

4 1) With respect to the First Cause of Action, the final relief on
5 behalf of the CALIFORNIA CLASS sought does not relate
6 exclusively to restitution because through this claim
7 PLAINTIFF seeks declaratory relief holding that the
8 DEFENDANT's policy and practices constitute unfair
9 competition, along with declaratory relief, injunctive relief, and
10 incidental equitable relief as may be necessary to prevent and
11 remedy the conduct declared to constitute unfair competition;

12 (c) Common questions of law and fact exist as to the members of the
13 CALIFORNIA CLASS, with respect to the practices and violations of
14 California law as listed above, and predominate over any question
15 affecting only individual CALIFORNIA CLASS Members, and a Class
16 Action is superior to other available methods for the fair and efficient
17 adjudication of the controversy, including consideration of:

18 1) The interests of the members of the CALIFORNIA CLASS in
19 individually controlling the prosecution or defense of separate
20 actions in that the substantial expense of individual actions will
21 be avoided to recover the relatively small amount of economic
22 losses sustained by the individual CALIFORNIA CLASS
23 Members when compared to the substantial expense and burden
24 of individual prosecution of this litigation;

25 2) Class certification will obviate the need for unduly duplicative
26 litigation that would create the risk of:

27 A. Inconsistent or varying adjudications with respect to
28 individual members of the CALIFORNIA CLASS, which

1 would establish incompatible standards of conduct for the
2 DEFENDANT; and/or,

3 B. Adjudications with respect to individual members of the
4 CALIFORNIA CLASS would as a practical matter be
5 dispositive of the interests of the other members not
6 parties to the adjudication or substantially impair or
7 impede their ability to protect their interests;

8 3) In the context of wage litigation because a substantial number of
9 individual CALIFORNIA CLASS Members will avoid asserting
10 their legal rights out of fear of retaliation by DEFENDANT,
11 which may adversely affect an individual's job with
12 DEFENDANT or with a subsequent employer, the Class Action
13 is the only means to assert their claims through a representative;
14 and,

15 4) A class action is superior to other available methods for the fair
16 and efficient adjudication of this litigation because class
17 treatment will obviate the need for unduly and unnecessary
18 duplicative litigation that is likely to result in the absence of
19 certification of this action pursuant to Cal. Code of Civ. Proc. §
20 382.

21 38. This Court should permit this action to be maintained as a Class Action
22 pursuant to Cal. Code of Civ. Proc. § 382 because:

23 (a) The questions of law and fact common to the CALIFORNIA CLASS
24 predominate over any question affecting only individual CALIFORNIA
25 CLASS Members because the DEFENDANT's employment practices
26 are applied with respect to the CALIFORNIA CLASS;

27 (b) A Class Action is superior to any other available method for the fair
28 and efficient adjudication of the claims of the members of the

1 CALIFORNIA CLASS because in the context of employment litigation
2 a substantial number of individual CALIFORNIA CLASS Members
3 will avoid asserting their rights individually out of fear of retaliation or
4 adverse impact on their employment;

5 (c) The members of the CALIFORNIA CLASS are so numerous that it is
6 impractical to bring all members of the CALIFORNIA CLASS before
7 the Court;

8 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not
9 be able to obtain effective and economic legal redress unless the action
10 is maintained as a Class Action;

11 (e) There is a community of interest in obtaining appropriate legal and
12 equitable relief for the acts of unfair competition, statutory violations
13 and other improprieties, and in obtaining adequate compensation for
14 the damages and injuries which DEFENDANT's actions have inflicted
15 upon the CALIFORNIA CLASS;

16 (f) There is a community of interest in ensuring that the combined assets of
17 DEFENDANT are sufficient to adequately compensate the members of
18 the CALIFORNIA CLASS for the injuries sustained;

19 (g) DEFENDANT has acted or refused to act on grounds generally
20 applicable to the CALIFORNIA CLASS, thereby making final class-
21 wide relief appropriate with respect to the CALIFORNIA CLASS as a
22 whole;

23 (h) The members of the CALIFORNIA CLASS are readily ascertainable
24 from the business records of DEFENDANT; and,

25 (i) Class treatment provides manageable judicial treatment calculated to
26 bring a efficient and rapid conclusion to all litigation of all wage and
27 hour related claims arising out of the conduct of DEFENDANT as to
28 the members of the CALIFORNIA CLASS.

1 39. DEFENDANT maintains records from which the Court can ascertain and
2 identify by job title each of DEFENDANT's employees who have been intentionally
3 subjected to DEFENDANT's company policy, practices and procedures as herein alleged.
4 PLAINTIFF will seek leave to amend the Complaint to include any additional job titles of
5 similarly situated employees when they have been identified.

6
7 **THE CALIFORNIA LABOR SUB-CLASS**

8 40. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh,
9 Eighth and Ninth causes Action on behalf of a California sub-class, defined as all members
10 of the CALIFORNIA CLASS who are or previously were employed by DEFENDANT in
11 California, including any employees staffed with DEFENDANT by a third party, and
12 classified as non exempt employees (the "CALIFORNIA LABOR SUB-CLASS") at any
13 time during the period three (3) years prior to the filing of the complaint and ending on the
14 date as determined by the Court (the "CALIFORNIA LABOR SUB-CLASS PERIOD")
15 pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate
16 claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars
17 (\$5,000,000.00).

18 41. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
19 Commission ("IWC") Wage Order requirements, and the applicable provisions of California
20 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT
21 failed to correctly calculate compensation for the time worked by PLAINTIFF and the other
22 members of the CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to
23 these employees, even though DEFENDANT enjoyed the benefit of this work, required
24 employees to perform this work and permitted or suffered to permit this work.
25 DEFENDANT has denied these CALIFORNIA LABOR SUB-CLASS Members wages to
26 which these employees are entitled in order to unfairly cheat the competition and unlawfully
27 profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR
28

1 SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD
2 should be adjusted accordingly.

3 42. DEFENDANT maintains records from which the Court can ascertain and
4 identify by name and job title, each of DEFENDANT's employees who have been
5 intentionally subjected to DEFENDANT's company policy, practices and procedures as
6 herein alleged. PLAINTIFF will seek leave to amend the complaint to include any
7 additional job titles of similarly situated employees when they have been identified.

8 43. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
9 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

10 44. Common questions of law and fact exist as to members of the CALIFORNIA
11 LABOR SUB-CLASS, including, but not limited, to the following:

- 12 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
13 compensation due to members of the CALIFORNIA LABOR SUB-
14 CLASS for missed meal and rest breaks in violation of the California
15 Labor Code and California regulations and the applicable California
16 Wage Order;
- 17 (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other
18 members of the CALIFORNIA LABOR SUB-CLASS with accurate
19 itemized wage statements;
- 20 (c) Whether DEFENDANT has engaged in unfair competition by the
21 above-listed conduct;
- 22 (d) The proper measure of damages and penalties owed to the members of
23 the CALIFORNIA LABOR SUB-CLASS; and,
- 24 (e) Whether DEFENDANT's conduct was willful.

25 45. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-
26 CLASS under California law by:

- 27 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the
28 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-

1 CLASS all wages due for overtime worked, for which DEFENDANT is
2 liable pursuant to Cal. Lab. Code § 1194;

3 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
4 accurately pay PLAINTIFF and the members of the CALIFORNIA
5 LABOR SUB-CLASS the correct minimum wage pay for which
6 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;

7 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and
8 the members of the CALIFORNIA LABOR SUB-CLASS with an
9 accurate itemized statement in writing showing the corresponding
10 correct amount of wages earned by the employee;

11 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
12 PLAINTIFF and the other members of the CALIFORNIA LABOR
13 SUB-CLASS with all legally required off-duty, uninterrupted thirty
14 (30) minute meal breaks and the legally required off-duty rest breaks;

15 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
16 when an employee is discharged or quits from employment, the
17 employer must pay the employee all wages due without abatement, by
18 failing to tender full payment and/or restitution of wages owed or in the
19 manner required by California law to the members of the
20 CALIFORNIA LABOR SUB-CLASS who have terminated their
21 employment; and,

22 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF
23 and the CALIFORNIA LABOR SUB-CLASS members with necessary
24 expenses incurred in the discharge of their job duties.

25 46. This Class Action meets the statutory prerequisites for the maintenance of a
26 Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

27 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS
28 are so numerous that the joinder of all CALIFORNIA LABOR SUB-

1 CLASS Members is impracticable and the disposition of their claims as
2 a class will benefit the parties and the Court;

3 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
4 issues that are raised in this Complaint are common to the
5 CALIFORNIA LABOR SUB-CLASS and will apply to every member
6 of the CALIFORNIA LABOR SUB-CLASS;

7 (c) The claims of the representative PLAINTIFF are typical of the claims
8 of each member of the CALIFORNIA LABOR SUB-CLASS.
9 PLAINTIFF, like all the other members of the CALIFORNIA LABOR
10 SUB-CLASS, was a non-exempt employee paid on an hourly basis who
11 was subjected to the DEFENDANT's practice and policy which failed
12 to pay the correct amount of wages due to the CALIFORNIA LABOR
13 SUB-CLASS. PLAINTIFF sustained economic injury as a result of
14 DEFENDANT's employment practices. PLAINTIFF and the members
15 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
16 identically harmed by the same unlawful, deceptive, and unfair
17 misconduct engaged in by DEFENDANT; and,

18 (d) The representative PLAINTIFF will fairly and adequately represent and
19 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and
20 has retained counsel who are competent and experienced in Class
21 Action litigation. There are no material conflicts between the claims of
22 the representative PLAINTIFF and the members of the CALIFORNIA
23 LABOR SUB-CLASS that would make class certification
24 inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
25 will vigorously assert the claims of all CALIFORNIA LABOR SUB-
26 CLASS Members.

27 47. In addition to meeting the statutory prerequisites to a Class Action, this action
28 is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- 1 (a) Without class certification and determination of declaratory, injunctive,
2 statutory and other legal questions within the class format, prosecution
3 of separate actions by individual members of the CALIFORNIA
4 LABOR SUB-CLASS will create the risk of:
- 5 1) Inconsistent or varying adjudications with respect to individual
6 members of the CALIFORNIA LABOR SUB-CLASS which
7 would establish incompatible standards of conduct for the
8 parties opposing the CALIFORNIA LABOR SUB-CLASS; or,
9 2) Adjudication with respect to individual members of the
10 CALIFORNIA LABOR SUB-CLASS which would as a
11 practical matter be dispositive of interests of the other members
12 not party to the adjudication or substantially impair or impede
13 their ability to protect their interests.
- 14 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have
15 acted or refused to act on grounds generally applicable to the
16 CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide
17 relief with respect to the CALIFORNIA LABOR SUB-CLASS as a
18 whole in that DEFENDANT fails to pay all wages due. Including the
19 correct wages for all time worked by the members of the
20 CALIFORNIA LABOR SUB-CLASS as required by law;
- 21 (c) Common questions of law and fact predominate as to the members of
22 the CALIFORNIA LABOR SUB-CLASS, with respect to the practices
23 and violations of California Law as listed above, and predominate over
24 any question affecting only individual CALIFORNIA LABOR SUB-
25 CLASS Members, and a Class Action is superior to other available
26 methods for the fair and efficient adjudication of the controversy,
27 including consideration of:
28

- 1) The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
- 2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
 - A. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,
 - B. Adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- 3) In the context of wage litigation because a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,
- 4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class

1 treatment will obviate the need for unduly and unnecessary
2 duplicative litigation that is likely to result in the absence of
3 certification of this action pursuant to Cal. Code of Civ. Proc. §
4 382.

5 48. This Court should permit this action to be maintained as a Class Action
6 pursuant to Cal. Code of Civ. Proc. § 382 because:

- 7 (a) The questions of law and fact common to the CALIFORNIA LABOR
8 SUB-CLASS predominate over any question affecting only individual
9 CALIFORNIA LABOR SUB-CLASS Members;
- 10 (b) A Class Action is superior to any other available method for the fair
11 and efficient adjudication of the claims of the members of the
12 CALIFORNIA LABOR SUB-CLASS because in the context of
13 employment litigation a substantial number of individual
14 CALIFORNIA LABOR SUB-CLASS Members will avoid asserting
15 their rights individually out of fear of retaliation or adverse impact on
16 their employment;
- 17 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
18 numerous that it is impractical to bring all members of the
19 CALIFORNIA LABOR SUB-CLASS before the Court;
- 20 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS
21 Members, will not be able to obtain effective and economic legal
22 redress unless the action is maintained as a Class Action;
- 23 (e) There is a community of interest in obtaining appropriate legal and
24 equitable relief for the acts of unfair competition, statutory violations
25 and other improprieties, and in obtaining adequate compensation for
26 the damages and injuries which DEFENDANT's actions have inflicted
27 upon the CALIFORNIA LABOR SUB-CLASS;
28

- 1 (f) There is a community of interest in ensuring that the combined assets of
2 DEFENDANT are sufficient to adequately compensate the members of
3 the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 4 (g) DEFENDANT has acted or refused to act on grounds generally
5 applicable to the CALIFORNIA LABOR SUB-CLASS, thereby
6 making final class-wide relief appropriate with respect to the
7 CALIFORNIA LABOR SUB-CLASS as a whole;
- 8 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
9 ascertainable from the business records of DEFENDANT. The
10 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
11 CLASS Members who worked for DEFENDANT in California at any
12 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- 13 (i) Class treatment provides manageable judicial treatment calculated to
14 bring a efficient and rapid conclusion to all litigation of all wage and
15 hour related claims arising out of the conduct of DEFENDANT as to
16 the members of the CALIFORNIA LABOR SUB-CLASS.

17
18 **FIRST CAUSE OF ACTION**

19 **For Unlawful Business Practices**

20 **[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]**

21 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**

22 49. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege
23 and incorporate by this reference, as though fully set forth herein, the prior paragraphs of
24 this Complaint.

25 50. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof.
26 Code § 17021.

27 51. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”)
28 defines unfair competition as any unlawful, unfair, or fraudulent business act or practice.

1 Section 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to
2 unfair competition as follows:

3 Any person who engages, has engaged, or proposes to engage in unfair
4 competition may be enjoined in any court of competent jurisdiction. The court
5 may make such orders or judgments, including the appointment of a receiver,
6 as may be necessary to prevent the use or employment by any person of any
7 practice which constitutes unfair competition, as defined in this chapter, or as
8 may be necessary to restore to any person in interest any money or property,
9 real or personal, which may have been acquired by means of such unfair
10 competition.

11 Cal. Bus. & Prof. Code § 17203.

12 52. By the conduct alleged herein, DEFENDANT has engaged and continues to
13 engage in a business practice which violates California law, including but not limited to, the
14 applicable Industrial Wage Order(s), the California Code of Regulations and the California
15 Labor Code including Sections 204, 210, 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1,
16 1198, 2802 and the Fair Labor Standards Act and federal regulations promulgated
17 thereunder, for which this Court should issue declaratory and other equitable relief pursuant
18 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct
19 held to constitute unfair competition, including restitution of wages wrongfully withheld.

20 53. By the conduct alleged herein, DEFENDANT's practices were unlawful and
21 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
22 unscrupulous or substantially injurious to employees, and were without valid justification or
23 utility for which this Court should issue equitable and injunctive relief pursuant to Section
24 17203 of the California Business & Professions Code, including restitution of wages
25 wrongfully withheld.

26 54. By the conduct alleged herein, DEFENDANT's practices were deceptive and
27 fraudulent in that DEFENDANT's policy and practice failed to provide the legally mandated
28 meal and rest periods, the required amount of compensation for missed meal and rest
periods and overtime and minimum wages owed, failed to timely pay wages, and failed to
reimburse all necessary business expenses incurred, and failed to provide Fair Labor
Standards Act overtime wages due for overtime worked as a result of failing to include non-

1 discretionary incentive compensation into their regular rates of pay for purposes of
2 computing the proper overtime pay due to a business practice that cannot be justified,
3 pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements
4 in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue
5 injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
6 restitution of wages wrongfully withheld.

7 55. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
8 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and
9 the other members of the CALIFORNIA CLASS to be underpaid during their employment
10 with DEFENDANT.

11 56. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
12 unfair and deceptive in that DEFENDANT's policies, practices and procedures failed to
13 provide all legally required meal breaks to PLAINTIFF and the other members of the
14 CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

15 57. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
16 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty
17 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of
18 pay for each workday in which a second off-duty meal period was not timely provided for
19 each ten (10) hours of work.

20 58. PLAINTIFF further demands on behalf of herself and each member of the
21 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off
22 duty paid rest period was not timely provided as required by law.

23 59. By and through the unlawful and unfair business practices described herein,
24 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and
25 the other members of the CALIFORNIA CLASS, including earned wages for all time
26 worked, and has deprived them of valuable rights and benefits guaranteed by law and
27 contract, all to the detriment of these employees and to the benefit of DEFENDANT so as to
28 allow DEFENDANT to unfairly compete against competitors who comply with the law.

1 60. All the acts described herein as violations of, among other things, the
2 Industrial Welfare Commission Wage Orders, the California Code of Regulations, and the
3 California Labor Code, were unlawful and in violation of public policy, were immoral,
4 unethical, oppressive and unscrupulous, were deceptive, and thereby constitute unlawful,
5 unfair and deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et*
6 *seq.*

7 61. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled
8 to, and do, seek such relief as may be necessary to restore to them the money and property
9 which DEFENDANT has acquired, or of which PLAINTIFF and the other members of the
10 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
11 unfair business practices, including earned but unpaid wages for all time worked.

12 62. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
13 entitled to, and do, seek a declaration that the described business practices are unlawful,
14 unfair and deceptive, and that injunctive relief should be issued restraining DEFENDANT
15 from engaging in any unlawful and unfair business practices in the future.

16 63. PLAINTIFF and the other members of the CALIFORNIA CLASS have no
17 plain, speedy and/or adequate remedy at law that will end the unlawful and unfair business
18 practices of DEFENDANT. Further, the practices herein alleged presently continue to occur
19 unabated. As a result of the unlawful and unfair business practices described herein,
20 PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will
21 continue to suffer irreparable legal and economic harm unless DEFENDANT is restrained
22 from continuing to engage in these unlawful and unfair business practices.

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1 implementing a policy and practice that denies accurate compensation to PLAINTIFF and
2 the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum
3 wage pay.

4 71. In committing these violations of the California Labor Code, DEFENDANT
5 inaccurately calculated the correct time worked and consequently underpaid the actual time
6 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
7 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and
8 other benefits in violation of the California Labor Code, the Industrial Welfare Commission
9 requirements and other applicable laws and regulations.

10 72. As a direct result of DEFENDANT's unlawful wage practices as alleged
11 herein, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did
12 not receive the correct minimum wage compensation for their time worked for
13 DEFENDANT.

14 73. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
15 required, permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
16 Members to work without paying them for all the time they were under DEFENDANT's
17 control. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
18 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked
19 that they were entitled to, constituting a failure to pay all earned wages.

20 74. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
21 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
22 CLASS for the true time they worked, PLAINTIFF and the other members of the
23 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an
24 economic injury in amounts which are presently unknown to them and which will be
25 ascertained according to proof at trial.

26 75. DEFENDANT knew or should have known that PLAINTIFF and the other
27 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their
28 time worked. DEFENDANT elected, either through intentional malfeasance or gross

1 nonfeasance, to not pay employees for their labor as a matter of company policy, practice
2 and procedure, and DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF
3 and the other members of the CALIFORNIA LABOR SUB-CLASS the correct minimum
4 wages for their time worked.

5 76. In performing the acts and practices herein alleged in violation of California
6 labor laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-
7 CLASS for all time worked and provide them with the requisite compensation,
8 DEFENDANT acted and continues to act intentionally, oppressively, and maliciously
9 toward PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
10 with a conscious and utter disregard for their legal rights, or the consequences to them, and
11 with the despicable intent of depriving them of their property and legal rights, and otherwise
12 causing them injury in order to increase company profits at the expense of these employees.

13 77. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
14 CLASS therefore request recovery of all unpaid wages, according to proof, interest,
15 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT,
16 in a sum as provided by the California Labor Code and/or other applicable statutes. To the
17 extent minimum wage compensation is determined to be owed to the CALIFORNIA
18 LABOR SUB-CLASS Members who have terminated their employment, DEFENDANT's
19 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also
20 be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought
21 herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's
22 conduct as alleged herein was willful, intentional and not in good faith. Further,
23 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek
24 and recover statutory costs.

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1 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
2 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
3 including overtime work.

4 84. DEFENDANT's unlawful wage and hour practices manifested, without
5 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
6 implementing a policy and practice that failed to accurately record overtime worked by
7 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members and denied accurate
8 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
9 CLASS for overtime worked, including, the overtime work performed in excess of eight (8)
10 hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
11 workweek.

12 85. In committing these violations of the California Labor Code, DEFENDANT
13 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
14 PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT
15 acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in
16 violation of the California Labor Code, the Industrial Welfare Commission requirements
17 and other applicable laws and regulations. As a direct result of DEFENDANT's unlawful
18 wage practices as alleged herein, the PLAINTIFF and the other members of the
19 CALIFORNIA LABOR SUB-CLASS did not receive full compensation for overtime
20 worked.

21 86. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
22 from the overtime requirements of the law. None of these exemptions are applicable to the
23 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
24 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were not
25 subject to a valid collective bargaining agreement that would preclude the causes of action
26 contained herein this Complaint. Rather, PLAINTIFF brings this Action on behalf of
27 herself and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations
28 of non-negotiable, non-waiveable rights provided by the State of California.

1 87. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
2 the other members of the CALIFORNIA LABOR SUB-CLASS have been paid less for
3 overtime worked that they are entitled to, constituting a failure to pay all earned wages.

4 88. DEFENDANT failed to accurately pay the PLAINTIFF and the other
5 members of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they
6 worked which was in excess of the maximum hours permissible by law as required by Cal.
7 Lab. Code §§ 510, 1194 & 1198, even though PLAINTIFF and the other members of the
8 CALIFORNIA LABOR SUB-CLASS were required to work, and did in fact work, overtime
9 as to which DEFENDANT failed to accurately record and pay as evidenced by
10 DEFENDANT's business records and witnessed by employees.

11 89. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
12 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
13 CLASS for the true amount of time they worked, PLAINTIFF and the other members of the
14 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an
15 economic injury in amounts which are presently unknown to them and which will be
16 ascertained according to proof at trial.

17 90. DEFENDANT knew or should have known that PLAINTIFF and the other
18 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for all
19 overtime worked. DEFENDANT elected, either through intentional malfeasance or gross
20 nonfeasance, to not pay employees for their labor as a matter of company policy, practice
21 and procedure, and DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF
22 and the other members of the CALIFORNIA LABOR SUB-CLASS for overtime worked.

23 91. In performing the acts and practices herein alleged in violation of California
24 labor laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-
25 CLASS for all overtime worked and provide them with the requisite overtime compensation,
26 DEFENDANT acted and continues to act intentionally, oppressively, and maliciously
27 toward PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
28 with a conscious of and utter disregard for their legal rights, or the consequences to them,

1 and with the despicable intent of depriving them of their property and legal rights, and
2 otherwise causing them injury in order to increase company profits at the expense of these
3 employees.

4 92. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
5 CLASS therefore request recovery of all overtime wages, according to proof, interest,
6 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT,
7 in a sum as provided by the California Labor Code and/or other applicable statutes. To the
8 extent minimum and/or overtime compensation is determined to be owed to the
9 CALIFORNIA LABOR SUB-CLASS Members who have terminated their employment,
10 DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore these
11 individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which
12 penalties are sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS
13 Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in
14 good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
15 are entitled to seek and recover statutory costs.

16
17 **FOURTH CAUSE OF ACTION**

18 **For Failure to Provide Required Meal Periods**

19 **[Cal. Lab. Code §§ 226.7 & 512]**

20 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
21 **Defendants)**

22 93. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
23 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
24 paragraphs of this Complaint.

25 94. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time
26 failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other
27 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order
28 and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA

1 LABOR SUB-CLASS MEMBERS did not prevent these employees from being relieved of
2 all of their duties for the legally required off-duty meal periods. As a result of their rigorous
3 work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
4 were from time to time not fully relieved of duty by DEFENDANT for their meal periods.
5 Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA
6 LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th)
7 hour of work is evidenced by DEFENDANT's business records from time to time. Further,
8 DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a
9 second off-duty meal period in some workdays in which these employees were required by
10 DEFENDANT to work ten (10) hours of work from time to time. As a result, PLAINTIFF
11 and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal
12 breaks without additional compensation and in accordance with DEFENDANT's strict
13 corporate policy and practice.

14 95. DEFENDANT further violates California Labor Code §§ 226.7 and the
15 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA
16 LABOR SUB-CLASS Members who were not provided a meal period, in accordance with
17 the applicable Wage Order, one additional hour of compensation at each employee's regular
18 rate of pay for each workday that a meal period was not provided.

19 96. As a proximate result of the aforementioned violations, PLAINTIFF and
20 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
21 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
22 suit.

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1 **FIFTH CAUSE OF ACTION**

2 **For Failure to Provide Required Rest Periods**

3 **[Cal. Lab. Code §§ 226.7 & 512]**

4 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
5 **Defendants)**

6 97. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
7 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
8 paragraphs of this Complaint.

9 98. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were
10 from time to time required to work in excess of four (4) hours without being provided ten
11 (10) minute rest periods. Further, these employees from time to time were denied their first
12 rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
13 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of
14 between six (6) and eight (8) hours, and a first, second and third rest period of at least ten
15 (10) minutes for some shifts worked of ten (10) hours or more from time to time.

16 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not
17 provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
18 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were periodically
19 denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

20 99. DEFENDANT further violated California Labor Code §§ 226.7 and the
21 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA
22 LABOR SUB-CLASS Members who were not provided a rest period, in accordance with
23 the applicable Wage Order, one additional hour of compensation at each employee's regular
24 rate of pay for each workday that rest period was not provided.

25 100. As a proximate result of the aforementioned violations, PLAINTIFF and
26 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
27 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
28 suit.

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1 wage statements should reflect all applicable hourly rates during the pay period and the total
2 hours worked, and the applicable pay period in which the wages were earned pursuant to
3 California Labor Code Section 226(a). The wage statements DEFENDANT provided to
4 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members failed to identify
5 such information. More specifically, the wage statements failed to identify the accurate total
6 hours worked each pay period. When the hours shown on the wage statements were added
7 up, they did not equal the actual total hours worked during the pay period in violation of Cal.
8 Lab. Code 226(a)(2). Aside, from the violations listed above in this paragraph,
9 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the
10 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time
11 to time provided PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
12 CLASS with wage statements which violated Cal. Lab. Code § 226.

13 104. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab.
14 Code § 226, causing injury and damages to PLAINTIFF and the other members of the
15 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
16 expended calculating the correct wages for all missed meal and rest breaks and the amount
17 of employment taxes which were not properly paid to state and federal tax authorities.
18 These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of
19 the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty
20 dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred
21 dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code §
22 226, in an amount according to proof at the time of trial (but in no event more than four
23 thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the
24 CALIFORNIA LABOR SUB-CLASS herein).

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1 and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify
2 and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for
3 these expenses as an employer is required to do under the laws and regulations of California.

4 108. PLAINTIFF therefore demands reimbursement for expenditures or losses
5 incurred by herself and the CALIFORNIA LABOR SUB-CLASS members in the discharge
6 of their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT,
7 with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

8
9 **EIGHTH CAUSE OF ACTION**

10 **For Failure to Pay Wages When Due**

11 **[Cal. Lab. Code §§ 201, 202, 203]**

12 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**
13 **and Against All Defendants)**

14 109. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
15 CLASS, reallege and incorporate by reference, as though fully set forth herein, the prior
16 paragraphs of this Complaint.

17 110. Cal. Lab. Code § 200 provides, in relevant part, that:

18 As used in this article:

19 (a) "Wages" includes all amounts for labor performed by employees of
20 every description, whether the amount is fixed or ascertained by the
21 standard of time, task, piece, Commission basis, or other method of calculation.

22 (b) "Labor" includes labor, work, or service whether rendered or
23 performed under contract, subcontract, partnership, station plan, or other
24 agreement if the labor to be paid for is performed personally by the person
25 demanding payment.

26 111. Cal. Lab. Code § 201 provides, in relevant part, "that If an employer
27 discharges an employee, the wages earned and unpaid at the time of discharge are due and
28 payable immediately."

112. Cal. Lab. Code § 202 provides, in relevant part, that:

If an employee not having a written contract for a definite period quits his
or her employment, his or her wages shall become due and payable not
later than 72 hours thereafter, unless the employee has given 72 hours
previous notice of his or her intention to quit, in which case the employee
is entitled to his or her wages at the time of quitting. Notwithstanding any
other provision of law, an employee who quits without providing a 72-

1 hour notice shall be entitled to receive payment by mail if he or she so
2 requests and designates a mailing address. The date of the mailing shall
3 constitute the date of payment for purposes of the requirement to provide
4 payment within 72 hours of the notice of quitting.

5 113. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR
6 SUB-CLASS Members' employment contract.

7 114. Cal. Lab. Code § 203 provides, in relevant part, that:

8 If an employer willfully fails to pay, without abatement or reduction, in
9 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
10 employee who is discharged or who quits, the wages of the employee shall
11 continue as a penalty from the due date thereof at the same rate until paid
12 or until an action therefor is commenced; but the wages shall not continue
13 for more than 30 days.

14 115. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
15 CLASS Members has terminated and DEFENDANT has not tendered payment of all wages
16 owed as required by law. Additionally, at all times during the term of PLAINTIFF's
17 employment with DEFENDANT, PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
18 Members earned and accrued vested vacation and holiday time on the date of their
19 termination pursuant to DEFENDANT's uniform vacation policies and applicable California
20 law. The amount of vacation pay PLAINTIFF and the other CALIFORNIA LABOR SUB-
21 CLASS Members earned and accumulated is evidenced by DEFENDANT's business
22 records. Additionally, DEFENDANT also underpaid accrued vested vacation wages to
23 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS MEMBERS by failing to pay
24 such wages at the regular rate of pay and more specifically the final rate of pay that included
25 all non-discretionary incentive compensation. Rather than pay vacation wages at the regular
26 rate of pay, DEFENDANT underpaid vacation wages to PLAINTIFF and other
27 CALIFORNIA LABOR SUB-CLASS Members at their base rates of pay, instead of
28 including all of PLAINTIFF's and CALIFORNIA LABOR SUB-CLASS Members' non-
discretionary incentive compensation into the vacation wage payment calculations.
DEFENDANT failed to specify in DEFENDANT's written vacation policy the rate at which
PLAINTIFF and other CALIFORNIA LABOR CLASS Members would be paid vacation
upon leaving employment with DEFENDANT. As a result of DEFENDANT's unlawful

1 practice, policy and procedure to deny paying the PLAINTIFF and the other members of the
2 CALIFORNIA LABOR SUB-CLASS all of their vested vacation and holiday time,
3 DEFENDANT failed to pay the PLAINTIFF and the members of the CALIFORNIA
4 LABOR SUB-CLASS all vested vacation time as wages due upon employment termination,
5 in violation of the California Labor Code, Sections 201, 202, 203 and 227.3. Similarly,
6 DEFENDANT underpaid waiting time penalties to PLAINTIFF and other CALIFORNIA
7 LABOR SUB-CLASS Members at their base rates of pay, instead of including all of
8 PLAINTIFF's' and CALIFORNIA LABOR SUB-CLASS Members' non-discretionary
9 compensation into the waiting time penalty calculations. This failure by DEFENDANT is
10 believed to be the result of DEFENDANT's unlawful, unfair and deceptive refusal to
11 provide compensation for earned, accrued and vested vacation and holiday time, as well as
12 the corresponding waiting time penalties that were paid. DEFENDANT perpetrated this
13 unlawful, unfair and deceptive practice to the detriment of the PLAINTIFF and the members
14 of the CALIFORNIA LABOR SUB-CLASS . DEFENDANT's uniform practice and policy
15 of failing to pay the LABOR SUB-CLASS Members for all vested vacation and holiday
16 time accumulated at employment termination violated and continues to violate Section 227.3
17 of the California Labor Code.

18 116. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the
19 members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated
20 and who have not been fully paid their wages due to them, PLAINTIFF demands thirty days
21 of pay as penalty for not paying all wages due at time of termination for all employees who
22 terminated employment during the CALIFORNIA LABOR SUB-CLASS PERIOD and
23 demands an accounting and payment of all wages due, plus interest and statutory costs as
24 allowed by law.

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1 **NINTH CAUSE OF ACTION**

2 **For Failure to Pay Sick Pay Wages**

3 **[Cal. Lab. Code §§ 201-204, 210, 233, 246]**

4 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**

5 **and Against All Defendants)**

6 117. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
7 CLASS, reallege and incorporate by reference, as though fully set forth herein, the prior
8 paragraphs of this Complaint.

9 118. Cal Lab. Code § 233 provides that an employer must permit an employee to
10 use accrued sick leave in accordance with Cal Lab. Code § 246.5 at the employee's then
11 current rate of entitlement. Cal Lab. Code § 246 provides that an employee is entitled to
12 sick pay wages for use of accrued sick leave pursuant to Cal Lab. Code § 246.5.
13 Specifically, once accrued sick leave is used as paid sick time, an employee has a vested
14 right to sick pay wages, which an employer must calculate and compensate based on one of
15 two calculations: (i) "Paid sick time for nonexempt employees shall be calculated in the
16 same manner as the regular rate of pay for the workweek in which the employee uses paid
17 sick time, whether or not the employee actually works overtime in that workweek," or (ii)
18 "Paid sick time for nonexempt employees shall be calculated by dividing the employee's
19 total wages, not including overtime premium pay, by the employee's total hours worked in
20 the full pay periods of the prior 90 days of employment." Under Cal Lab. Code §§ 218 and
21 233, employees may sue to recover underpaid sick pay wages as damages.

22 119. As a matter of policy and practice, DEFENDANT pays sick pay wages to
23 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS at the
24 incorrect rate of pay. PLAINTIFF and the other members of the CALIFORNIA LABOR-
25 SUB-CLASS regularly use accrued sick leave in the workweeks in which they also earn
26 non-hourly remuneration. As a matter of policy and practice, DEFENDANT pays sick pay
27 wages to PLAINTIFF and the other members of the CALIFORNIA LABOR-SUB-CLASS
28 at the base hourly pay, as opposed to the regular rate of pay, which would consider all non-

1 hourly remuneration in addition to base hourly wages, or the rate resulting from dividing the
2 employee's total wages, not including overtime premium pay, by the employee's total hours
3 worked in the full pay periods of the prior 90 days of employment. As a result,
4 DEFENDANT underpaid sick pay wages to PLAINTIFF and the other members of the
5 CALIFORNIA LABOR-SUB-CLASS.

6 120. Cal. Lab. Code § 204 provides that wages generally are due and payable twice
7 during each calendar month and are to be paid no later than the payday for the next regular
8 payroll period. Consistent with Cal. Lab. Code § 204, Cal. Lab. Code § 246 specifically
9 requires that, upon use of accrued sick leave, vested sick pay wages are due and to be paid
10 no later than the payday for the next regular payroll period after accrued sick leave is used as
11 paid sick time. Similarly, Cal. Lab. Code § 201 provides that if an employer discharges an
12 employee, wages earned and unpaid at the time of discharge are due and payable
13 immediately. Cal. Lab. Code § 202 provides that an employee is entitled to receive all
14 unpaid wages no later than 72 hours after an employee quits his or her employment, unless
15 the employee has given 72-hour notice of his or her intention to quit, in which case the
16 employee is entitled to his or her wages at the time of quitting. The Labor Code penalizes
17 untimely payments. For example, Cal. Lab. Code § 203 provides that if an employer
18 willfully fails to pay wages owed in accordance with Cal. Lab. Code §§ 201-202, then the
19 wages of the employee shall continue as a penalty from the due date, and at the same rate
20 until paid, but the wages shall not continue for more than thirty (30) days. Likewise, Cal.
21 Lab. Code § 210 provides penalties for violations of Cal. Lab. Code § 204 and untimely
22 payments during employment. Under Cal. Lab. Code §§ 203, 210 and 218, employees may
23 sue to recover applicable penalties.

24 121. As alleged herein and as a matter of policy and practice, DEFENDANT
25 routinely underpays sick pay wages and thus did not timely pay PLAINTIFF and the other
26 members of the CALIFORNIA LABOR-SUB-CLASS all owing and underpaid sick pay
27 wages. As a result, DEFENDANT violates Cal. Lab. Code §§ 201-204, 210, 233, and 246,
28 among other Labor Code provisions. PLAINTIFF is informed and believes that

1 DEFENDANT was advised by skilled lawyers and knew, or should have known, of the
2 mandates of the Labor Code as it relates to PLAINTIFF's allegations, especially since the
3 California Supreme Court has explained that "[c]ourts have recognized that 'wages' also
4 include those benefits to which an employee is entitled as a part of his or her compensation,
5 including money, room, board, clothing, vacation pay, *and sick pay*." *Murphy v. Kenneth*
6 *Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103 (2007)(emphasis added). Because DEFENDANT
7 willfully fails to timely pay PLAINTIFF and the other members of the CALIFORNIA
8 LABOR-SUB-CLASS all sick pay wages due, DEFENDANT is subject to applicable
9 penalties.

10 122. Such a pattern, practice, and uniform administration of corporate policy is
11 unlawful and entitles PLAINTIFF and the other members of the CALIFORNIA LABOR-
12 SUB-CLASS to underpaid sick pay wages, including interest thereon, applicable penalties,
13 attorney's fees, and costs of suit.

14 15 **PRAYER FOR RELIEF**

16 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
17 severally, as follows:

18 1. On behalf of the CALIFORNIA CLASS:

- 19 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
20 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
21 B) An order temporarily, preliminarily and permanently enjoining and restraining
22 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
23 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully
24 withheld from compensation due to PLAINTIFF and the other members of the
25 CALIFORNIA CLASS; and,
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1 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
2 for restitution of the sums incidental to DEFENDANT's violations due to
3 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

4 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

5 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth
6 and Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-
7 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

8 B) Compensatory damages, according to proof at trial, including compensatory
9 damages for minimum and overtime compensation due PLAINTIFF and the other
10 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
11 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
12 statutory rate;

13 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
14 in which a violation occurs and one hundred dollars (\$100) per each member of
15 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
16 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
17 an award of costs for violation of Cal. Lab. Code § 226;

18 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
19 the applicable IWC Wage Order;

20 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
21 1197;

22 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
23 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
24 costs of suit.; and,

25 G) The wages of all terminated employees in the CALIFORNIA LABOR
26 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
27 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

28 3. On all claims:

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- A) An award of interest, including prejudgment interest at the legal rate;
- B) Such other and further relief as the Court deems just and equitable; and,
- C) An award of penalties, attorneys’ fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §221, §226, §1194, and/or §2802.

Dated: July 24, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Nicholas J. De Blouw
Attorneys for Plaintiff

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DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

Dated: July 24, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Nicholas J. De Blouw
Attorneys for Plaintiff