

**EXHIBIT 1 TO DECLARATION OF  
PAUL T. CULLEN IN SUPPORT OF  
MOTION FOR PRELIMINARY APPROVAL  
OF CLASS AND COLLECTIVE ACTION  
SETTLEMENT**

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18 **DISTRIBUTION, LLC; HEARX WEST, INC.;**  
19 **and HEARX WEST LLC**

14 **UNITED STATES DISTRICT COURT**  
15 **CENTRAL DISTRICT OF CALIFORNIA**

16 IA BROWN, an individual, on behalf of  
17 herself, all others similarly situated, and  
18 the general public,  
19  
20 **Plaintiff,**

19 v.

20 AUDIOLOGY DISTRIBUTION, LLC, a  
21 Delaware limited liability company;  
22 CRAIG CAMERON, an individual;  
23 HEARX WEST, INC., A California  
24 corporation; STEVE MAHON, an  
25 individual; TINO SCHWEIGHOEFER, an  
26 individual; HEARX WEST LLC, a  
27 Delaware limited liability company; WS  
28 AUDIOLOGY (CALIFORNIA), PC, A  
California professional corporation;  
SIVANTOS, INC., a Delaware  
corporation; and DOES 1 to 100,  
inclusive,

**Defendants.**

Case No. 2:22-cv-04271-DMG-MRW  
**SETTLEMENT AGREEMENT AND  
RELEASE OF CLAIMS**

1 This Settlement Agreement and Release of Claims (“Settlement Agreement” or  
2 “Settlement”) is made and entered into by and between plaintiff Ia Brown (“Plaintiff”),  
3 individually and on behalf of all others similarly situated, Plaintiff’s counsel of record, and  
4 defendants Audiology Distribution, LLC, HearX West, Inc., and HearX West LLC  
5 (collectively “Audiology” or “Defendants” or “Business Entity Defendants”).

6  
7 1. The “**Action**” means the above-captioned Case No. 2:22-cv-04271-DMG-  
8 MRW, filed by Plaintiff against Defendants and pending in the Central District of California  
9 (the “Court”).

10 2. The “**Plaintiff**” means Plaintiff Ia Brown.

11 3. The “**Business Entity Defendants**” means Audiology Distribution, LLC;  
12 HearX West LLC; HearX West, Inc.; Sivantos, Inc.; and/or WS Audiology (California).

13 4. The “**Parties**” means Plaintiff, the Class (as defined below), and Defendants.

14 5. “**Class Counsel**” is Paul T. Cullen of the Cullen Law Firm, APC, who is  
15 counsel of record for Plaintiff.

16 6. “**Class Period**” and the “**Release Period**” each refer to the period beginning  
17 on December 26, 2017 and ending on the date on which Preliminary Approval is granted.

18 7. “**Class**” and “**Class Members**” shall refer to all persons, including Plaintiff,  
19 who are members of the classes defined in the Action, i.e., the

20 a. **FLSA<sup>1</sup> Regular Rate Class**: All non-exempt hourly paid employees,  
21 including but not limited to Hearing Aid Dispensers and Hearing Aid  
22 Specialists, employed by the Business Entity Defendants who also received  
23 commissions and/or bonuses at any time between June 22, 2019 and the date  
24 on which Preliminary Approval is granted;

25 b. **California Regular Rate Class**: All nonexempt hourly paid employees,  
26 including but not limited to Hearing Aid Dispensers and Hearing Aid  
27 Specialists, employed by the Business Entity Defendants, who also received

28 <sup>1</sup> Fair Labor Standards Act, i.e., 29 U.S.C. § 201 *et seq.* (“FLSA.”)

1 commissions and/or bonuses at any time between December 26, 2017 and the  
2 date on which Preliminary Approval is granted;

3 c. **California Itemized Wage Statement Subclass:** All California Regular Rate  
4 Class Members who were employed at any time during the period of  
5 commencing December 26, 2020 and the date on which Preliminary Approval  
6 is granted; and

7 d. **California Waiting Time Penalties Subclass:** All California Regular Rate  
8 Class Members who were employed at any time during the period between  
9 December 26, 2018 and the date on which Preliminary Approval is granted.

10 8. “**Class Notice**” means Exhibit A hereto, in the form ultimately approved by the  
11 Court.

12 9. The “**Complaint**” is Plaintiff’s Complaint, which was filed on June 22, 2022.

13 10. “**Settlement Class**” or “**Settlement Class Members**” are all Class Members  
14 who do not timely opt-out of or opt-in to the Class in the manner prescribed by the Class  
15 Notice.

16 11. The “**Effective Date**” of this Settlement Agreement shall be on the *latest* of the  
17 following dates: (a) the date of the Court’s final approval of the Settlement Agreement and  
18 entry of judgment thereon, if no objections by or on behalf of Class Members have been  
19 made or filed; (b) the date on which the time for appeal has expired, if an objection has been  
20 made or filed and no appeal has been filed; or (c) the final resolution of any appeal that has  
21 been made or filed, if an objection has been made or filed and an appeal is filed. The Parties  
22 acknowledge that any Class Member who fails to make or file a timely and valid objection  
23 lacks standing to appeal from any final approval order and judgment entered pursuant to the  
24 Settlement Agreement.

25 12. The “**Released Claims**” include all claims that were actually alleged or that  
26 could have been alleged based on the facts, claims, and allegations alleged in the Complaint  
27 (“**Complaint**”) for unpaid wages, overtime or other compensation or payments, fees/costs,  
28 liquidated damages, penalties, and all other relief under the Fair Labor Standards Act, the

1 California Labor Code, and all other state and local wage/hour and wage payment laws and  
2 common law theories arising or accruing prior to the date of Preliminary Approval,  
3 including but not limited to all of the following claims for relief: failure to pay overtime  
4 wages in violation of the FLSA and the California Labor Code; failure to pay minimum  
5 wages for all hours worked; failure to pay overtime wages for all hours worked; failure to  
6 provide meal/rest breaks; failure to provide accurate wage statements; failure to timely pay  
7 all wages due and owing; and unfair business practices.

8 Accordingly, the Released Claims include all claims that Defendants: (1) violated the  
9 Fair Labor Standards Act (“FLSA”), 29 U.S.C. Section 207(a), by failing to pay overtime to  
10 Plaintiff and the Class Members; (2) violated California Labor Code Sections 558, 1179.1,  
11 1194, 1194.2(a) and 1197 by failing pay to minimum wages to Plaintiff and the Class  
12 Members (including the alleged failure to pay for all hours worked and pay the proper  
13 minimum wage for all hours worked); (3) violated California Labor Code Sections 510, 558  
14 and 1198 by failing to pay overtime to Plaintiff and the Class Members (including the  
15 alleged failure to pay for all overtime hours worked and to pay a proper overtime rate for  
16 overtime hours worked); (4) violated California Labor Code Sections 226.7 and 512 and  
17 corresponding provisions of the Industrial Welfare Commission Wage Order by failing to  
18 provide meal and rest periods to Plaintiff and the Class Members and/or failing to pay meal  
19 and rest period premiums owed to Plaintiff and the Class Members; (5) violated California  
20 Labor Code Sections 226 and 226.3 by failing to provide accurate itemized wage statements  
21 to Plaintiff and the Class Members; (6) violated California Labor Code Sections 201, 202  
22 and 203 by failing to pay all wages due upon separation of employment to Plaintiff and the  
23 Class Members; and (7) engaged in unfair competition in violation of California Business &  
24 Professions Code Sections 17200, et seq., through each of the foregoing alleged violations of  
25 California law.

26 In addition, and without limiting the foregoing, the Released Claims include all claims  
27 that could have been pleaded based on the factual allegations contained in the Complaint,  
28 such as: Defendants did not pay the Class for all “hours worked” under California law and

1 the FLSA; Defendants did not pay the Class for all overtime hours worked and/or failed to  
2 compensate all overtime hours worked at a proper overtime rate of pay; Defendants did not  
3 properly include bonuses and other incentive compensation in the “regular rate” for wage  
4 payment purposes; Defendants interrupted employees’ meal and rest breaks, provided short  
5 or late meal or rest breaks and/or did not provide the opportunity to take meal or rest breaks  
6 and/or failed to pay meal and rest period premiums owed; Defendants did not specify an  
7 accurate number of hours worked or an accurate regular rate on wage statements and/or did  
8 not provide other required wage statement information; and Defendants did not pay all final  
9 wages due to employees upon separation of employment, given additional wages due and  
10 owing in light of the Complaint’s off-the-clock, overtime, regular rate and/or meal/rest break  
11 claims.

12 13. The “**Released Parties**” shall mean: (a) Defendants Audiology Distribution,  
13 LLC; HearX West, Inc.; HearX West LLC; Sivantos, Inc.; WS Audiology (California), PC;  
14 Craig Cameron; Steve Mahon; and Tino Schweighoefer; and (b) each of the Defendants’  
15 respective past, present, and future parents, subsidiaries, and affiliates; (c) the past, present,  
16 and future shareholders, directors, officers, agents, employees, clients, attorneys, insurers,  
17 predecessors, successors, and assigns of any of the foregoing; and (d) any individual or entity  
18 which could be jointly liable with any of the foregoing.

19 14. **No Admission.** Each of the Defendants denies any liability or wrongdoing of  
20 any kind associated with the claims alleged in the Action, and further denies that the Action  
21 is appropriate for class or representative treatment for any purpose other than this Settlement.  
22 Each Defendant contends it has complied at all times with the California Labor Code and the  
23 FLSA. It is each Defendant’s position that, if this case were to be litigated, class  
24 certification would be inappropriate because Plaintiff is not an adequate class representative,  
25 the Plaintiff’s claims are not typical of putative class members, and individual issues  
26 predominate over class issues. The Action, the negotiation and execution of this Settlement  
27 Agreement, and all acts performed or documents executed pursuant to or in furtherance of  
28 the Settlement shall not be used as an admission or evidence of wrongdoing on behalf of any

1 Defendant, shall not be an admission or evidence of fault on behalf of any Defendant in any  
2 action before a civil, criminal, or administrative agency, and shall not be deemed to be, and  
3 may not be used as, an admission or evidence of the appropriateness of these or similar  
4 claims for class certification in the Action or with respect to any other proceeding. Pursuant  
5 to California Evidence Code section 1152 and Federal Rule of Evidence 408, this Settlement  
6 Agreement is inadmissible in any proceeding other than this Action or an action to interpret  
7 or enforce this Settlement Agreement.

8 15. Plaintiff and Class Counsel contend that each Defendant violated the California  
9 Labor Code and the FLSA and that this case is appropriate for class and collective action  
10 treatment. Class Counsel have conducted a thorough investigation into the facts and law  
11 during the prosecution of this case, including the exchange of substantial formal and  
12 informal discovery and the review and verification of statistical data and other facts and  
13 information provided by Defendants. Counsel for the Parties have investigated the  
14 applicable law as applied to the facts discovered regarding Plaintiff's claims, the potential  
15 defenses thereto, and Plaintiff's asserted damages.

16 16. On March 11, 2024, the Parties participated in mediation with Hunter Hughes,  
17 a respected mediator with extensive experience resolving employment actions and class  
18 actions nationally. The basic terms of the Settlement were reached on March 11, 2024 and  
19 memorialized in a Memorandum of Understanding. The mediation occurred only after  
20 months of extensive direct negotiations and informational exchanges by the Parties.

21 17. Based on his own independent investigation and evaluation, Class Counsel is  
22 of the opinion (and will so represent to the Court in a motion for preliminary approval) that  
23 settlement for the consideration and on the terms set forth in this Settlement Agreement is  
24 fair, reasonable, and adequate and is in the best interests of the Settlement Class in light of  
25 all known facts and circumstances, including the risk of significant delay, the risk the Class  
26 will not be certified by the Court, and the defenses asserted by Defendants.

27 18. The Parties agree that the class described herein may be certified and that any  
28 motion for preliminary approval seeking, *inter alia*, certification of the class is for purposes



1 of this Settlement Agreement only. If for any reason the Settlement is not approved, the for-  
2 settlement-purposes-only certification will have no force or effect. The Parties further agree  
3 that certification for purposes of the settlement is in no way an admission that class  
4 certification is proper under the more stringent standard applied for litigation and that  
5 evidence of this limited stipulation for settlement purposes only will not be admissible for  
6 any purpose in this or any other proceeding.

7 19. **Total Settlement Amount:** The Parties agree to settle this Action for a non-  
8 reversionary payment of exactly \$1,800,000 (“Total Settlement Amount”). The Total  
9 Settlement Amount includes all payments to Settlement Class Members, attorneys’ fees and  
10 costs, a service award/general release payment to Plaintiff, actual costs of administration, all  
11 penalties and interest, and all taxes on the settlement payments, *excluding only* the taxes  
12 normally borne by the employer with respect to the portion of the Individual Payment  
13 Amounts treated as wages for tax purposes.

14 20. **Net Settlement Amount:** The Net Settlement Amount is equal to the Total  
15 Settlement Amount minus all court authorized deductions for attorneys’ fees and costs, the  
16 service award/general release payment for Plaintiff, the actual costs of administration.

17 21. **Class Member Allocation:** “Class Member Allocation” means the amount that  
18 will be divided, pro rata, as defined further below, and paid to Settlement Class Members.  
19 The Class Member Allocation is equal to the Net Settlement Amount. Any amounts that  
20 would have been paid to either (a) California Class and/or Subclass Members who timely  
21 exclude themselves from the settlement (i.e., “Opt-Out”) or (b) FLSA Regular Rate class  
22 members (but who are not California Class and/or Subclass members) who do not timely  
23 Opt-In, will be added to the Class Member Allocation.

24 22. **Calculation of the Individual Payment Amounts:** “Individual Payment  
25 Amount” means the portion of the Class Member Allocation distributable to each Settlement  
26 Class Member. The Net Settlement Amount (“NSA”)/Class Member Allocation shall be  
27 allocated as follows: Each participating Settlement Class Member will be paid at least \$25.  
28 After the deductions from the Total Settlement Amount for the costs of claims



1 administration, the class representative service payment, attorney's fees and costs, and the  
2 \$25 payable to each participating Settlement Class Member, the remaining NSA will be  
3 allocated to the FLSA Regular Rate Class, the California Regular Rate Class, the California  
4 Itemized Wage Statement Subclass, and, where applicable, the California Waiting Time  
5 Penalties Subclass. A participating Settlement Class Member will be paid on a pro-rata basis  
6 from the remainder of the NSA, which shall be computed by comparing the potential dollar  
7 value of the Settlement Class Member's individual claims in the Action to the aggregate  
8 potential dollar value of all the claims of all participating Settlement Class Members and  
9 multiplying that pro-rata share by the allocated amount of the Net Settlement Amount. The  
10 potential claim value will be computed based upon the actual dollar value that would have  
11 been owed if the claims asserted in the Action were successful, the number of payroll periods  
12 worked during the Class Settlement Period that would have allowed a California Itemized  
13 Wage Statement Settlement Subclass Member to assert claims for alleged wage statement  
14 violations, and, for those California Waiting Time Penalties Settlement Subclass Members  
15 who are former employee participating class members, the number of days, up to 30, that  
16 have elapsed since the end of their employment.

17 23. **Tax allocations:** For tax purposes, each Individual Payment Amounts shall be  
18 allocated as 18% to wages (for which a W-2 shall be issued) and 82% for interest and  
19 penalties (for which the appropriate IRS form 1099 shall be issued and no withholdings shall  
20 be made).

21 24. **Service Award/General Release Payment to Plaintiff:** The amount awarded  
22 to Plaintiff as a service award, and for a general release of claims, will be set by the Court in  
23 its discretion, not to exceed \$20,000. This amount will not be treated as wages for tax  
24 purposes. Defendant agrees not to dispute or otherwise object to the service award/general  
25 release payment requested, consistent with this Settlement Agreement.

26 25. **Attorneys' Fees:** An award to Class Counsel of attorneys' fees will be in an  
27 amount to be set by the Court, not to exceed one-third, or 33 1/3% of the Total Settlement  
28 Amount. Defendant agrees not to dispute or otherwise object to the attorneys' fee award

1 requested by Class Counsel consistent with this Settlement Agreement.

2 26. **Attorneys' Costs and Expenses:** Class Counsel will be reimbursed from the  
3 Total Settlement Amount in an amount to be set by the Court for actual litigation costs and  
4 expenses. Defendant agrees not to dispute or otherwise object to Class Counsel's request for  
5 actual costs and expenses, so long as the claimed costs and expenses do not exceed  
6 \$10,000.00.

7 27. **Settlement Administration Costs:** The fees and other charges of the  
8 Settlement Administrator, expected to total no more than \$25,000, and will be paid from the  
9 Total Settlement Amount. These fees shall include any costs associated with the required tax  
10 reporting on all Individual Payment Amounts, and the issuing of all W-2 and 1099 forms.  
11 Subject to approval of the Court, the Parties have agreed that CPT Group will serve as a  
12 neutral third-party claims administrator ("Settlement Administrator") to perform all acts  
13 related to providing notice to the Settlement Class. The Settlement Administrator shall be  
14 responsible for: (a) printing and distributing the Class Notice to all Class Members; (b)  
15 administering the settlement; (c) processing Opt-Out submissions; (d) resolving disputes; (e)  
16 distributing the Total Settlement Amount; (f) tax reporting; (g) providing weekly status  
17 reports; and (h) other duties and responsibilities set forth herein.

18 28. **Release By Settlement Class Members.** Upon the Effective Date, and subject  
19 to Defendants' payment of the Total Settlement Amount, all Settlement Class Members who  
20 are also California Class and Subclass Members (i.e., members of the California Regular  
21 Rate Class, California Itemized Wage Statements Subclass, and/or California Waiting Time  
22 Penalties Subclass) will be deemed to have released all Released Parties from all Released  
23 Claims, including claims arising under the FLSA, in accordance with *Rangel v. PLS Check*  
24 *Cashers of Cal., Inc.*, 899 F.3d 1106, 1110-11 (9th Cir. 2018) (holding opt-out release of  
25 California state law claims was res judicata against FLSA claims "which were direct federal  
26 law counterparts to the state law claims settled"). *Accord Richardson v. Wells Fargo Bank,*  
27 *N.A.*, 839 F.3d 442, 451-52 (5th Cir. 2016) (plaintiff who became party to the opt-out Rule  
28 23 settlement was bound by all settlement terms, including release of FLSA claims). The

1 Parties agree that all FLSA claims in the Complaint are wholly subsumed by the California  
2 Labor Code claims in the Complaint. For example and without limitation, the FLSA  
3 overtime claim applies to hours worked beyond 40 in a week from June 22, 2019, to the date  
4 of Preliminary Approval, while the California overtime claim applies to hours worked  
5 beyond 40 in a week *and* over 8 in a day, from December 26, 2017, to the date of  
6 Preliminary Approval.

7 Likewise, upon the Effective Date, and subject to Defendants' payment of the Total  
8 Settlement Amount, FLSA Regular Rate Class members, who are not California Class and/or  
9 Subclass members, and who have affirmatively opted in to the settlement, shall be deemed to  
10 have released all Released Parties from all Released Claims.

11 Plaintiff Ia Brown will be provided with a Class Notice, but she is automatically part  
12 of the Settlement Class and shall not Opt-Out of the Settlement Class. (*i.e.*, even if she were  
13 to submit a timely Opt-Out form, it shall be deemed null and void).

14 29. **Release By Plaintiff Ia Brown.** Upon the Effective Date, and subject to  
15 Defendant's payment of the Total Settlement Amount, Plaintiff will have released all  
16 Released Parties as to all Released Claims. In addition, Plaintiff will provide the following  
17 additional "**General Release**": Plaintiff, on her own behalf and on behalf of her heirs,  
18 spouses, executors, administrators, attorneys, agents and assigns, fully and finally releases  
19 the Released Parties from all claims, demands, rights, liabilities and causes of action of every  
20 nature and description whatsoever, known or unknown, asserted or that might have been  
21 asserted, whether in tort, contract, or for violation of any state or federal statute, rule or  
22 regulation arising out of, relating to, or in connection with any act or omission by or on the  
23 part of any of the Released Parties committed or omitted prior to the Effective Date of this  
24 Settlement Agreement. Plaintiff acknowledges that this General Release includes both  
25 known and unknown claims and, accordingly, waives Section 1542 of the California Civil  
26 Code, which provides: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
27 THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
28

1 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND  
2 THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS  
3 OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.” The  
4 significance of this General Release has been explained to Plaintiff by Class Counsel.

5 30. **Release By Class Counsel:** Upon the Effective Date, and subject to  
6 Defendants’ payment of the Total Settlement Amount, Class Counsel will have released all  
7 Released Parties from any and all claims for attorneys’ fees and expenses arising from the  
8 Action or any claims released by the Plaintiffs and Class Members, whether known and  
9 unknown, whether under federal, state and/or local law, statute, ordinance, regulation,  
10 common law, or other source of law (“Class Counsel’s Released Claims”). Class Counsel’s  
11 Released Claims include, but are not limited to, claims for attorneys’ fees and expenses  
12 arising from or dependent on the FLSA, the California Civil Code, the California Code of  
13 Civil Procedure, the California Labor Code, the wage orders of the California Industrial  
14 Welfare Commission, the California Business and Professions Code section 17200 et seq.,  
15 and the California common law of contract and tort.

16 31. **Waiver Of Appeal:** Any Settlement Class Member who does not timely make  
17 or file an objection waives any and all rights to appeal from the final approval order and  
18 judgment in this case, including all rights to any post-judgment proceeding and appellate  
19 proceeding such as a motion to vacate judgment, motion for new trial, and extraordinary  
20 writs. Both Parties also waive their right to appeal any final approval order or judgment that  
21 is consistent with this Settlement Agreement.

22 32. **Notice Procedure.**

23 a. **Form of Notice:** The Settlement Administrator shall send the Class Notice to  
24 each Class Member. The Class Notice shall contain clear instructions to Class  
25 Members regarding how they may Opt-Out of the Settlement Agreement. The  
26 Class Notice will also contain personalized information setting forth each Class  
27 Member’s potential dollar value of their individual claims in the Action and  
28 estimated Individual Payment Amount.

- 1           b. Mailing the Notice: Within 21 days after entry of an order preliminarily  
2           approving this Settlement Agreement, Defendant shall send the “**Class Data**”  
3           (full names, last known mailing address, hours worked during the Class Period,  
4           and SSN, for each Class Member) to the Settlement Administrator. Within 14  
5           days thereafter, the Settlement Administrator shall send the Class Notice to  
6           each Class Member.
- 7           c. Remailing and Skip Tracing: Settlement Administrator shall, as soon as  
8           practicable, re-mail any Class Notice returned with a forwarding address.  
9           Settlement Administrator shall promptly perform reasonable methods of skip  
10          tracing (*e.g.*, National Change of Address and/or Experian searches), to find  
11          new addresses for any Class Notice returned undeliverable without a  
12          forwarding address.
- 13          d. Response Deadlines: A Class Member’s Opt-Out must be postmarked within  
14          45 calendar days of the mailing date of the Class Notice (“**Response**  
15          **Deadline**”). Any Opt-Out postmarked after the Response Deadline is null and  
16          void. Failure to submit a timely Opt-Out in the manner prescribed by the Class  
17          Notice means that the Class Member will be a Settlement Class Member for all  
18          purposes. The Response Deadline shall not be extended, for any individual or  
19          for any circumstance, absent mutual agreement by the Parties and Court  
20          approval.
- 21          e. Defective Responses: If a Class Member’s Opt-Out is incomplete, the  
22          Settlement Administrator will give the individual one chance to cure any  
23          defects *before* the Response Deadline. An incomplete and uncured Opt-Out  
24          will be null and void, just like an untimely Opt-Out.
- 25          f. Class Member Disputes: To the extent a Class Member disputes any of the  
26          information listed on his or her Class Notice (for example, Individual Total  
27          Hours Worked), the Class Member may produce evidence to the Settlement  
28          Administrator showing such information the Class Member contends should be

1 reflected in the Class Notice. Defendant’s records are presumed to be correct  
2 in the absence of contrary documentation submitted by the Class Member.  
3 However, and the Settlement Administrator’s decision on such disputes matters  
4 will be final.

5 g. Objections: In order to object to the Settlement Agreement (to become an  
6 “**Objector**”) a Class Member must participate in the Settlement, which means  
7 that (1) a Class Member who is a California Class or Subclass member must  
8 *not* Opt-Out of the Settlement, or, in the case of a FLSA Regular Rate Class  
9 member who is not also a California Class or Subclass member, that Class  
10 Member must affirmative Opt-In to the Settlement. Then, and only then, may  
11 the participating Class Member (2) submit a written objection to the Settlement  
12 Administrator or directly to the Court, postmarked no later than the Response  
13 Deadline. The Settlement Administrator shall immediately provide all  
14 materials provided by timely Objectors to counsel for both Parties, and Class  
15 Counsel shall lodge any such timely submitted materials with the Court for the  
16 Court’s consideration. Class Members who do not submit timely written  
17 objections may appear at the final approval hearing to voice their objections  
18 only with leave of Court.

19 h. Declaration of Due Diligence: Within ten (10) days of the Response Deadline,  
20 the Settlement Administrator shall provide to the Parties a declaration of due  
21 diligence describing in detail the mailing and response tracking process  
22 described above.

23 i. Funding the Settlement: Defendant shall wire the Total Settlement Amount (in  
24 the amount ultimately approved by the Court) to the Settlement Administrator  
25 no later than ten (10) calendar days after the Effective Date. Defendant will  
26 add any employer-side payroll taxes in the amount wired to the Settlement  
27 Administrator.

28 j. Disbursement Schedule: The Settlement Administrator shall disburse the Total



1 Settlement Amount to the Settlement Class Members, Class Counsel, Plaintiff,  
2 and itself (for administration expenses) within ten (10) days of Defendant’s  
3 transmission of the Total Settlement Amount.

4 k. Deadlines: Settlement Class Members must cash their settlement checks within  
5 180 calendar days after the settlement checks are mailed by the Settlement  
6 Administrator. The value of any checks uncashed more than 180 days after  
7 mailing shall be transmitted by the Settlement Administrator to the State of  
8 California, to be held and disposed of by the Controller in accordance with  
9 California’s Unclaimed Property Law for the benefit of the Participating Class  
10 Members who did not cash the settlement checks until such time that they  
11 claim their property. The Parties agree that this disposition results in no  
12 “unpaid residue,” as the entire Net Settlement Amount will be paid out to  
13 Participating Class Members, whether or not they timely cash their Individual  
14 Settlement Payments.

15 33. **Preliminary Approval.** Promptly after execution of this Settlement  
16 Agreement, Plaintiff shall move the Court for preliminary approval of the settlement and  
17 entry of an order: scheduling a hearing on the question of whether the proposed settlement  
18 should be finally approved as fair, reasonable and adequate as to the Class Members;  
19 approving as to form and content the proposed Class Notice; preliminarily certifying the  
20 Class for purposes of settlement; and preliminarily approving all other terms of the  
21 Settlement Agreement. This Settlement Agreement and any and all negotiations that led up  
22 to the Settlement shall remain strictly confidential until the filing of Plaintiff’s preliminary  
23 approval motion. The Parties shall cooperate to ensure that all government entities and  
24 agencies receive timely notice of the Settlement pursuant to the Class Actions Fairness Act  
25 (CAFA).

26 34. **Final Approval.** Class Counsel will draft and timely submit a motion for final  
27 approval of the Settlement together with a proposed final order consistent with this  
28 Settlement Agreement, which requests that the Court: approve the Settlement and hold that



1 the terms of the Settlement are fair, reasonable and adequate; approve the issuance of the  
2 payments to the Settlement Class Members, Class Counsel’s application for an award of  
3 attorneys’ fees and reimbursement of litigation costs and expenses, the service award/general  
4 release payment to the Plaintiff, and the costs of administering the settlement; order that all  
5 Released Claims by Settlement Class Members, against all Released Parties, are forever  
6 barred by the Settlement; and entering judgment in this Action in accordance with this  
7 Settlement Agreement.

8 **35. Dismissal With Prejudice.** The Final Approval Order shall provide for a  
9 judgment and dismissal with prejudice of the Complaint.

10 **36. Continuing Jurisdiction.** The Court will have continuing jurisdiction over the  
11 terms and conditions of the settlement until all payments and obligations contemplated by  
12 the settlement have been fully carried out.

13 **37. Tax Issues and Qualified Settlement Fund.** This Settlement Agreement does  
14 not constitute tax advice to any recipient of monies. The Parties understand and agree that  
15 the Total Settlement Amount will qualify and be characterized as a Qualified Settlement  
16 Fund (“QSF”) under the provisions of the U.S. Treasury Regulations 1.468B-1 and 1.468B-  
17 5, and the QSF will be taxed as a separate entity for purposes of all federal, state and local  
18 taxes, and further agree to treat the QSF on a basis consistent therewith, that the QSF will be  
19 characterized as the employer of all Settlement Class Members for purposes of determining  
20 all tax obligations associated with any and all payments under this Settlement Agreement,  
21 and the QSF will bear full responsibility for all taxes associated with the QSF and Individual  
22 Payment Amounts under this Settlement Agreement.

23 The Settlement Administrator shall be responsible for ensuring that all taxes  
24 associated with the Settlement Agreement are timely paid to the appropriate authorities. The  
25 Settlement Administrator’s responsibilities include the following: (i) filing all federal, state  
26 and local employment tax returns, income tax returns, and other tax returns associated with  
27 the taxes, (ii) timely and proper filing of all required federal, state and local information  
28 returns (e.g., 1099s, W-2s, etc.) with the appropriate taxing authorities, and (iii) completion

1 of any other steps necessary for compliance with any tax obligations of the QSF under  
2 federal, state and/or local law. In addition, the Settlement Administrator shall timely make  
3 such elections as necessary or advisable to carry out the provisions of this paragraph. Such  
4 elections shall be made in compliance with the procedures and requirements contained in the  
5 QSF regulations. It shall be the responsibility of the Settlement Administrator to timely and  
6 properly prepare and deliver all necessary documentation for signature as may be required,  
7 and thereafter to cause the appropriate filing of such documentation to occur. To the extent  
8 that, for any period of time, the QSF is not treated as a “qualified settlement fund” within the  
9 meaning of the U.S. Treasury Regulations 1.468B-1 and 1.468B-5, the Settlement  
10 Administrator shall promptly notify Class Counsel and counsel for Defendant of that fact.

11 All taxes (including any interest or penalties) arising with respect to income  
12 earned by the QSF, including any taxes or tax detriments that may be imposed upon or  
13 incurred by Defendant with respect to any income earned by the QSF for any period during  
14 which the QSF does not qualify as a “qualified settlement fund” for federal or state income  
15 tax purposes, shall be paid from the QSF. All expenses and costs incurred in connection  
16 with the operation and implementation of this section (including without limitation, expenses  
17 of attorneys and/or accountants and mailing and distribution expenses related to filing (or  
18 failing to file) the tax returns described herein) shall be paid from the QSF.

19 **38. Voiding the Agreement.** A failure of the Court to approve any material  
20 condition of this Settlement Agreement which effects, as a matter of law, a fundamental  
21 change to the terms of the Settlement, or if the Settlement is reversed or materially modified  
22 on appellate review, shall render the entire Settlement Agreement voidable and  
23 unenforceable as to all Parties herein at the option of any Party.

24 **39. Opt-Out Threshold.** If 5% or more of the Class Members submit a timely  
25 and valid Opt-Out, Defendants may, in Defendants’ sole discretion, void this Settlement  
26 Agreement. If Defendants elect to void this Agreement based on this section, it must provide  
27 notice to Class Counsel in writing no later than ten (10) calendar days after the Settlement  
28

1 Administrator gives its final report regarding the number of individuals who submitted a  
2 timely and valid Opt-Out, and Defendant must pay all actual and necessary administration  
3 expenses incurred by the Settlement Administrator through the date of Defendant's voiding  
4 of the Settlement.

5 40. **Declaration Regarding Class Lists:** Prior to Plaintiff's filing of a motion for  
6 preliminary approval, Defendants agree to provide a sworn statement from a person most  
7 knowledgeable certifying that the information Defendants provided regarding the class lists  
8 and payroll data was true and correct.

9 41. **Size of Settlement Classes:** The Parties agree that as of the date of signing the  
10 Settlement Agreement, there are approximately the following number of class members: 995  
11 FLSA Regular Rate Class Members; 391 California Regular Rate Class Members; 363  
12 Itemized Wage Statement Subclass Members; and 160 Waiting Time Penalties Subclass  
13 Members.

14 42. **Pay Periods; Effect of Increase:** This settlement is based on the Plaintiff's  
15 understanding (based on representations made by Defendants) that there were 61,283 pay  
16 periods between December 26, 2017, and March 11, 2024 (date of mediation) (based upon  
17 an estimated extrapolation of data through the date of mediation, subject to good faith  
18 confirmation by Defendants). As of the date of mediation, the Parties agreed that if it is  
19 determined that the number of pay periods between December 26, 2017, and March 11,  
20 2024, exceeds 65,880 (a 7.5% increase of that figure), the Parties would meet and confer in  
21 good faith regarding a potential increase in the Gross Settlement Amount. If the parties did  
22 not agree, then Plaintiff, in her sole discretion, was permitted to nullify this settlement in its  
23 entirety by giving notice to Defendants. Subsequent to the mediation date, Defendants  
24 notified Class Counsel that the adjusted number of pay periods was 74,449. The Parties met  
25 and conferred and agreed to adjust the Gross Settlement Amount to \$1,800,000 for the period  
26 from December 26, 2017 through the date of Preliminary Approval.

27 43. **Publicity:** With respect to this Settlement and the settlement agreement,  
28 Named Plaintiff, Defendants, and their respective counsel agree not to publicize, contact the

1 media, or disclose any information about the Settlement or the negotiation process, with the  
2 exception of informing the Court of the manner in which the settlement was obtained, and  
3 the reasons in support of the fairness of the settlement, and Plaintiff's counsel responding to  
4 inquiries from individual class members.

5 44. **Parties' Authority.** The signatories hereto represent that they are fully  
6 authorized to enter into this Settlement Agreement and bind the Parties hereto to the terms  
7 and conditions hereof.

8 45. **Mutual Full Cooperation.** The Parties agree to fully cooperate with each  
9 other to accomplish the terms of this Settlement Agreement, including but not limited to,  
10 execution of such documents and such other action as may reasonably be necessary to  
11 implement the terms of this Settlement Agreement. The Parties to this Settlement  
12 Agreement shall use their best efforts, including all efforts contemplated by this Settlement  
13 Agreement and any other efforts that may become necessary by order of the Court, or  
14 otherwise, to implement this Settlement Agreement and the terms set forth herein.

15 46. **No Prior Assignments.** The Parties hereto represent, covenant, and warrant  
16 that they have not directly or indirectly, assigned, transferred, encumbered, or purported to  
17 assign, transfer, or encumber to any person or entity any portion of any liability, claim,  
18 demand, action, cause of action or rights released and discharged by this Settlement  
19 Agreement.

20 47. **Construction.** The Parties hereto agree that the terms and conditions of this  
21 Settlement Agreement are the result of lengthy, intensive arms' length negotiations between  
22 the Parties and that this Settlement Agreement shall not be construed in favor of or against  
23 any Party by reason of the extent to which any Party or her or its counsel participated in the  
24 drafting of this Settlement Agreement.

25 48. **Captions and Interpretations.** Paragraph titles or captions contained herein  
26 are inserted as a matter of convenience and for reference, and in no way define, limit, extend,  
27 or describe the scope of this Settlement Agreement or any provision hereof. Each term of  
28 this Settlement Agreement is contractual and not merely a recital.

1 49. **Modification.** This Settlement Agreement may not be changed, altered, or  
2 modified, except in writing and signed by the Parties hereto, and approved by the Court.

3 This Settlement Agreement may not be discharged except by performance in accordance  
4 with its terms or by a writing signed by each of the Parties hereto on their attorneys.

5 50. **Integration Clause.** This Settlement Agreement contains the entire agreement  
6 between the Parties relating to the settlement and transactions contemplated hereby, and all  
7 prior or contemporaneous agreements, understandings, representations, and statements,  
8 whether oral or written and whether by a Party or such Party's legal counsel, are merged  
9 herein. No rights hereunder may be waived except in writing. *[Signatures on following*  
10 *page]*

11 51. **Binding On Assigns.** This Settlement Agreement shall be binding upon and  
12 inure to the benefit of the Parties hereto and their respective heirs, trustees, executors,  
13 administrators, successors and assigns.

14 52. **Signatures of All Class Members Unnecessary to be Binding.** It is agreed  
15 that, because the Class Members are numerous, it is impossible or impractical to have each  
16 Settlement Class Member execute this Settlement Agreement. The Class Notice will advise  
17 all Class Members of the binding nature of the release provided herein and such shall have  
18 the same force and effect as if this Settlement Agreement were executed by each Settlement  
19 Class Member.

20 53. **Counterparts.** This Settlement Agreement may be executed in counterparts,  
21 and when each Party has signed and delivered at least one such counterpart, each counterpart  
22 shall be deemed an original, and when taken together with other signed counterparts, shall  
23 constitute one fully-signed Settlement Agreement, which shall be binding upon and effective  
24 as to all Parties.

25 54. **Non-Disclosure/Non-Publication.** Excluding all necessary filings in support  
26 of preliminary and final approval, Plaintiff, Class Counsel and Defendant each agree not to  
27 disclose or publicize the Settlement Agreement contemplated herein, the fact of the  
28 Settlement Agreement, its terms or contents, or the negotiations underlying the Settlement

1 Agreement, in any manner or form, directly or indirectly, to any person or entity, except to  
2 Settlement Class members and as shall be contractually required to effectuate the terms of  
3 the Settlement Agreement as set forth herein. However, for the limited purpose of allowing  
4 Class Counsel to prove adequacy as class counsel in other actions, Class Counsel may  
5 disclose the names of the Parties in this Action, the venue/case number of this Action, and a  
6 general description of the Action, to a court in a declaration by Class Counsel. Class  
7 Counsel may also include a general description of the Settlement on their website, but may  
8 not include the name(s) of any of the Parties, or the case name or case number of the Action.

9 55. **Related Cases.** The Parties agree to jointly request that this Court  
10 immediately enjoin any related case (under Local Rule 3-12(a)) that is commenced after the  
11 execution of this Settlement Agreement, including, but not limited to, any case that raises

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1 any Released Claims on behalf of any or all Class Members against any of the Released  
2 Partiers.

3 **IT IS SO STIPULATED AND AGREED.**

4  
5 Dated: June \_\_, 2024

\_\_\_\_\_  
\_\_\_\_\_  
(print name)

\_\_\_\_\_  
(title)  
For Defendant AUDIOLOGY  
DISTRIBUTION, LLC

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9 Dated: June \_\_, 2024

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\_\_\_\_\_  
(print name)

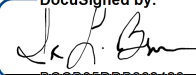
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(title)  
For Defendant HEARX WEST, INC.

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13 Dated: June \_\_, 2024


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\_\_\_\_\_  
(print name)

\_\_\_\_\_  
(title)  
For Defendant HEARX WEST, LLC

14  
15  
16  
17 Dated: June <sup>5</sup> \_\_, 2024

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\_\_\_\_\_  
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Plaintiff IA BROWN

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19  
20 Dated: June <sup>5</sup> \_\_, 2024

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\_\_\_\_\_  
8D00208344CE403  
Paul T. Cullen  
The Cullen Law Firm, APC  
Attorneys for Plaintiff  
IA BROWN

21  
22  
23  
24 Dated: June \_\_, 2024

\_\_\_\_\_  
Martha S. Doty  
Alston & Bird  
Attorneys for AUDIOLOGY  
DISTRIBUTION, LLC; HEARX WEST,  
INC.; and HEARX WEST LLC



1 any Released Claims on behalf of any or all Class Members against any of the Released  
2 Parties.

3 **IT IS SO STIPULATED AND AGREED.**

4  
5 Dated: June \_\_, 2024

\_\_\_\_\_  
\_\_\_\_\_  
(print name)

\_\_\_\_\_  
(title)  
For Defendant AUDIOLOGY  
DISTRIBUTION, LLC

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9 Dated: June \_\_, 2024

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(print name)

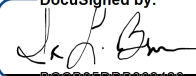
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For Defendant HEARX WEST, INC.

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13 Dated: June \_\_, 2024

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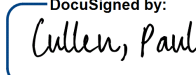
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(title)  
For Defendant HEARX WEST, LLC

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17 Dated: June <sup>5</sup> \_\_, 2024

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Plaintiff IA BROWN

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20 Dated: June <sup>5</sup> \_\_, 2024

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Paul T. Cullen  
The Cullen Law Firm, APC  
Attorneys for Plaintiff  
IA BROWN

21  
22  
23  
24 Dated: June \_\_, 2024

\_\_\_\_\_  
Martha S. Doty  
Alston & Bird  
Attorneys for AUDIOLOGY  
DISTRIBUTION, LLC; HEARX WEST,  
INC.; and HEARX WEST LLC