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

IA BROWN, an individual, on behalf of herself, all others similarly situated, and the general public,

Plaintiff,

v.

AUDIOLOGY DISTRIBUTION, LLC, a Delaware limited liability company; CRAIG CAMERON, an individual; HEARX WEST, INC., A California corporation; STEVE MAHON, an individual; TINO SCHWEIGHOEFER, an individual; HEARX WEST LLC, a Delaware limited liability company; WS 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

[PROPOSED] ORDER AND JUDGMENT ON MOTION FOR FINAL APPROVAL OF CLASS AND COLLECTIVE ACTION SETTLEMENT

DATE: December 6, 2024
TIME: 10:00 AM
LOCATION: Courtroom 8C, 8th Floor

Case Filed: June 22, 2022
Trial Date: January 7, 2025

1 **I. INTRODUCTION**

2 This lawsuit having come before this Court for a hearing on August 28, 2015,
3 pursuant to this Court’s Order Preliminarily Approving Proposed Settlement Between
4 Plaintiffs and Defendant dated April 24, 2015 (the “Preliminary Approval Order,”
5 Doc. # 191) to consider and determine the matters set forth in the Preliminary
6 Approval Order; and due notice of said hearing having been published and given; and
7 all persons who made timely objections to or decisions to opt out of the proposed
8 settlement set forth in the Settlement Agreement, and described in the Class Notice,
9 having been given an opportunity to present such objections to the Court; and the
10 Court having considered the matter, including all papers filed in connection therewith,
11 and the oral presentations of counsel at said hearing; and good cause appearing,

12 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

13 **II. DEFINITIONS**

14 Each term and phrase used in this Final Order Approving Class Action Settlement
15 shall have the same definition and meaning as in the Settlement

- 16 1. The “**Action**” means the above-captioned Case No. 2:22-cv-04271-
17 DMGMRW,
18 filed by Plaintiff against Defendants and pending in the Central District of
19 California (the “Court”).
- 20 2. The “**Plaintiff**” means Plaintiff Ia Brown.
- 21 3. The “**Business Entity Defendants**” means Audiology Distribution, LLC;
22 HearX West LLC; HearX West, Inc.; Sivantos, Inc.; and/or WS Audiology
23 (California).
- 24 4. The “**Parties**” means Plaintiff, the Class (as defined below), and
25 Defendants.
- 26 5. “**Class Counsel**” is Paul T. Cullen of the Cullen Law Firm, APC, who is
27 counsel of record for Plaintiff.

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

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

6 a. **FLSA1 Regular Rate Class:** All non-exempt hourly paid
7 employees, including but not limited to Hearing Aid Dispensers and
8 Hearing Aid Specialists, employed by the Business Entity Defendants
9 who also received commissions and/or bonuses at any time between June
10 22, 2019 and the date on which Preliminary Approval is granted;

11 b. **California Regular Rate Class:** All nonexempt hourly paid
12 employees, including but not limited to Hearing Aid Dispensers and
13 Hearing Aid Specialists, employed by the Business Entity Defendants,
14 who also received commissions and/or bonuses at any time between
15 December 26, 2017 and the date on which Preliminary Approval is
16 granted;

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

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

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

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

1 10. “**Settlement Class**” or “**Settlement Class Members**” are all Class
2 Members

3 who do not timely opt-out of or opt-in to the Class in the manner prescribed by
4 the Class Notice.

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

15 12. The “**Released Claims**” include all claims that were actually alleged or
16 that could have been alleged based on the facts, claims, and allegations alleged
17 in the Complaint (“Complaint”) for unpaid wages, overtime or other
18 compensation or payments, fees/costs, liquidated damages, penalties, and all
19 other relief under the Fair Labor Standards Act, the California Labor Code, and
20 all other state and local wage/hour and wage payment laws and common law
21 theories arising or accruing prior to the date of Preliminary Approval,
22 including but not limited to all of the following claims for relief: failure to pay
23 overtime wages in violation of the FLSA and the California Labor Code; failure
24 to pay minimum wages for all hours worked; failure to pay overtime wages for
25 all hours worked; failure to provide meal/rest breaks; failure to provide accurate
26 wage statements; failure to timely pay all wages due and owing; and unfair
27 business practices.

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

22 In addition, and without limiting the foregoing, the Released Claims
23 include all claims that could have been pleaded based on the factual allegations
24 contained in the Complaint, such as: Defendants did not pay the Class for all
25 “hours worked” under California law and Agreement, as follows. the FLSA;
26 Defendants did not pay the Class for all overtime hours worked and/or failed to
27 compensate all overtime hours worked at a proper overtime rate of pay; Defendants
did not properly include bonuses and other incentive compensation in the “regular

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

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

18 **III. OBJECTIONS, DISPUTES, OPT-OUTS, AND OPT INS**

19 **A. Objections and Disputes**

20 The Court finds that there have been no objections to the settlement in general,
21 and no objections to the timely filed motion for approval of Class Counsel’s fees and
22 costs. (ECF 44.) There have also been no disputes regarding the claims process. (ECF
23 46-2 at 5:17.)

24 **B. Opt-outs from the California Class**

25 As for the California Class and subclasses, there have only been three (3)
26 requests for exclusion from the settlement. They were by Gutierrez, Tzenni Bah;
27 Segobia, Judy; and Anthis, Robert. (ECF 46-2 at 5:19.) Thus, out of the 406 potential

1 participants, 403 California Class Members have participated, representing a 99.26%
2 participation rate within the California Class. (ECF 46-2 at 5:19-21.)

3 **C. Opt-ins for the FLSA Collective Class**

4 With respect to FLSA Collective Class members, the Claims Administrator
5 received 138 valid Claim Forms, representing a 13.41% participation rate within the
6 FLSA Collective Class. Those 138 valid Claim Forms included three that were
7 submitted after the deadline, but which were Claim Forms that belong to class
8 members. The late claims were submitted by Amissa Scott, Michelle Tomszay, and
9 Desiree Cruz. (ECF 46-2 at 4:5-15.) No party objected to the inclusion of these late
10 claims; hence, they will be permitted to participate in the settlement.

11 For purposes of the confirmation of this Court's jurisdiction over the settlement
12 of their claims, the names of the Participating FLSA Collective Class Members, which
13 includes the names of the late claimant's, are as follows: Albergo, Richard; Aldeen,
14 April; Argento, Madison; Arman, Daniel Adams; Asmus, Kerri; Audino, Alyssa;
15 Bennett, Sandra; Berhalter, Penny; Binder, Wendy; Bonham, Brett; Bonistalli,
16 Gregory; Bowie, Tammie Washington; Braver, Justin; Bravo, Ariel; Brockman,
17 Jonathan; Brown, Lee; Brown, Tanya E; Burrell, Dustin; Caltagirone, Nicole; Cepero,
18 Elizabeth; Chambery, Nancy; Chavoen, Olivia Irene; Christensen, Anna B; Clark,
19 Susan; Cramer, Valerie; Cruz, Desiree; Debenedictis, Valerie; Desuno, Anthony;
20 Dirrell, Janina; Dittenhoefer, Joyce; Domine, Mckenzie; Dronen, Andrea; Drummond,
21 Kimberly; Duque, Michelle; Eimann, Mark; Falero, Joel; Farnsworth, Alecia; Feroce,
22 Anthony; Flynn, Melissa Knapp; Fullmer, Max M; Genetz, Kathleen; Gilbert, Sandy;
23 Gillingham, Tabatha; Gomez, Elizabeth; Goss, Iris; Greene, Kevin S; Gregoire,
24 Rochelle; Griewahn, Amanda; Griffin, Ja Meia; Grimaldi, Patricia; Harvey,
25 Katherine; Hastad, Blake J; Hedding, Trevor; Hegyi, Kellyanne; Hendrix, Marianne;
26 Hernandez, Cynthia; Herrada, Lilian; Heskin, Kathryn; Holland, M Rita; Howden,
27 Laura; Hubert, Michael; Hufstetler, Kaitlynn; Iannuzzi, Michele; Johnson, Kathryn;
Johnson, Lisa Suarez; Jones, Crystal; Joyce, Dennis; Keeler, Rebecca; Kell, Nora L;

1 Kellam, Jamie L; Kilpatrick, Sandra; King, Nichole; Knowles, Lavinia A; Kosies,
2 Julie; Koukouras, Steven; Kurzawa, Haley; Lawal, Sade; Lee, Kathleen; Leister,
3 Tyler; Lippmann, Sarah; Lopez, Alba; Lyons, Joelle; Manis, Beverley A; Martin,
4 Latoya; Mckinney, Rosemary; Mcvickers, Linda; Messer, Ingrid; Michel, Deborah;
5 Milano, Jennifer; Miranda, Michele; Montgomery, Taysia; Murtha, Jacqueline;
6 Mutschler, Jenessa; Nagell, Julia; Nazarei, Zora; Nicolopoulos, Susan; Ortiz, Rafael;
7 Parsons, Julie L; Paz, Leonor; Perrino, Steven; Phillips, Alyssa; Piggott, Christine;
8 Pilizota, Solange; Quartermain, Richard; Riga, Terri; Rivera, Nichelle; Schiefer,
9 Delores; Schindler, Wade; Scott, Amissa; Sibgatullina, Renata; Simpson, Melissa;
10 Singh, Bethany; Sinibaldi, Robert; Sleboda, Tanya; Smith, Danielle; Smith, Donna;
11 Soto, Antonella; Steiner, Wanda; Stoneking, Yvette; Stoops, Roger; Surrette, Aj;
12 Sustaita, Jeniffer; Teves, Jaime; Thompson, Tammara; Timmerman, Kelly J;
13 Tomszay, Michelle; Torres, Camile Burgos; Traub, Amanda; Villatoro, Nora;
14 Warsame, Latoya; Weinberg, Suzanne; Wilkerson, Kimberly; Williams, Deyatra;
15 Williams, Makayla W; Wood, Amanda; Woodard, Robert; Yanda, Angela; and
Zimmerly, Barbara. (ECF 46-2 at 4:15-5:14.

16 Each of these Claimants has submitted a declaration consenting to be joined in
17 this lawsuit. (See Exhibit D to ECF 46-2)

18 **IV. CLASS AND SUBCLASS DEFINITIONS**

19 On July 19, 2024, the Court certified for the purposes of settlement only, the
20 following classes and subclasses:

21 “(1) a nationwide collective class for claims arising under the FLSA, but with
22 excludes Defendants’ affected workers in California, and

23 (2) a California class, which has two subclasses. These classes are defined as
24 follows:

- 25 • FLSA Regular Rate Class: All non-exempt hourly paid employees,
26 including but not limited to Hearing Aid Dispensers and Hearing
Aid Specialists, employed by the Business Entity Defendants who

1 also received commissions and/or bonuses at any time between
2 June 22, 2019 and July 19, 2024;

- 3 • California Regular Rate Class: All non-exempt hourly paid
4 employees, including but not limited to Hearing Aid Dispensers
5 and Hearing Aid Specialists, employed by the Business Entity
6 Defendants, who also received commissions and/or bonuses at any
7 time between December 26, 2017 and July 19, 2024;
- 8 ○ California Itemized Wage Statement Subclass: All California
9 Regular Rate Class Members who were employed at any time
10 during the period between December 26, 2020 and July 19,
11 2024;
- 12 ○ California Waiting Time Penalties Subclass: All California
13 Regular Rate Class Members who were employed at any time
14 during the period between December 26, 2018 and July 19,
15 2024.”

16 (ECF 43 at 2:23-3:9.)

17 The California Regular Rate Class, the California Itemized Wage Statement
18 Subclass, and the California Waiting Time Penalties Subclass were certified for
19 settlement purposes only pursuant to Federal Rule of Civil Procedure 23 as an “opt
20 out” class. (ECF 43 at 3:9-14.)

21 The FLSA Regular Rate Class was preliminarily approved for settlement
22 purposes only under the FLSA, 29 U.S.C. § 216. As required by statute, FLSA Class
23 Members were required to “opt in.” (ECF 43 at 3:9-14.)

24 **V. THE SETTLEMENT IS FAIR, ADEQUATE AND REASONABLE**

25 The settlement of this lawsuit was not the product of collusion between
26 Plaintiffs and Defendants or their respective counsel, but rather was the result of *bona fide*
27 and arms’-length negotiations conducted in good faith by the Parties and their
counsel, with the assistance of an independent mediator, Hunter Hughes.

1 The Settlement Agreement and the settlement set forth therein are hereby approved
2 and found to be fair, adequate, reasonable, in the best interest of the Class, FLSA Collective
3 Class, and subclasses, both in satisfaction of Rule 23 of the Federal Rules of Civil Procedure
4 and due process requirements.

5 The Court finds that the financial terms of the settlement are very favorable to the
6 Class Members and FLSA Collective Class Members that are participating in the settlement.
7 As set forth in the declaration of Jennifer Forst of CPT Group, Inc., the Claims
8 Administrator, “The Settlement Agreement and the settlement set forth therein are hereby
9 approved and found to be fair, adequate, reasonable, in the best interest of the Class as a
10 whole, and in satisfaction of Rule 23 of the Federal Rules of Civil Procedure and due process
11 requirements.” (ECF 46-2 at 6:6-11.)

12 As set forth in the motion for preliminary approval, and the papers filed in
13 conjunction therewith, this settlement represents 102% of the projected value of the case,
14 without adding attorney’s fees or costs. (ECF 37-1 at 7:9-11.) The Court finds this to be an
15 exceptional result warranting approval.

16 **VI. NOTICE**

17 The Court finds that the declaration of the Claims Administrator’s
18 representative, Jennifer Forst, confirms that notice was provided to all Class and
19 FLSA Collective Class members in accordance with this Court’s preliminary approval
20 order. The notice given to the Class Members and FLSA Collective Class members
21 was given in compliance with the requirements of Rule 23 of the Federal Rules of
22 Civil Procedure and due process, and the Court finds that this was the best notice
23 practicable under the circumstances, constituting due and sufficient notice to all
24 parties entitled thereto.

25 Due and adequate notice of the proceedings having been given to the Class and
26 Collective Class a full opportunity having been offered to the Class and Collective
27 Class to participate in this HEARING, it is hereby determined that (A) all California
Class and Subclass Members, with the exception of those who have opted out, are

1 bound by this order and judgment, and (B) all FLSA Collective Class Members, who
2 have opted-in to this Action by submitting claims, are likewise bound by this order
3 and judgment.

4 **VII. TERMS OF PAYMENT FROM THE CLASS FUND**

5 The total monetary settlement herein is \$1.8 million, inclusive of attorneys' fees
6 in the amount of \$600,000, costs in the amount of \$6,319.95, and all costs of class
7 administration in the amount of \$24,000, as well as a class representative service fee
8 of \$20,000. That leaves \$1,149,680.05 to be distributed among participating Class and
9 FLSA Collective Class members. The Court having approved the foregoing
10 deductions from the gross settlement fund (i.e., deductions for attorney's fees as
11 requested, costs, administration, and the class representative service fee), hereby
12 directs the Claims Administrator to distribute the net settlement fund to participating
13 Class and FLSA Collective Class members in accordance with the terms of the
14 settlement agreement. (ECF 41.)

14 **VIII. CLAIMS ADMINISTRATOR**

15 The Court hereby reaffirms the appointment of CPT Group, Inc. as the Claims
16 Administrator and hereby authorizes CPT Group, Inc., to be paid \$24,000 for its
17 administration of this Settlement. The Claims Administrator shall preserve all written
18 communications from Class Members in response to the Class for at least 2 years or
19 pursuant to further order of the Court. All communications received by the Claims
20 Administrator from the Class and FLSA Collective Class members shall be available
21 at all reasonable times for inspection and copying by Counsel for the Parties. At the
22 conclusion of the distribution of funds pursuant to the Settlement, the Claims
23 Administrator shall submit a report to the Court summarizing the payments made to
24 the Class and Collective Class.

24 **IX. CONTINUING JURISDICTION OF THE COURT**

25 The Court shall retain jurisdiction over this settlement and its provisions and over the
26 claims administration and distribution of the funds.

1 **X. FINAL RESOLUTION**

2 All California Class members, who have not opted out of the settlement, and all
3 FLSA Collective Class members, who have opted in to the settlement, are hereby
4 bound by the terms of the settlement and the releases set forth therein.

5 Notwithstanding the payments made hereunder, neither this order and judgment, nor
6 any of the terms or negotiations or papers related thereto, shall constitute evidence of
7 an admission by any Defendant as to any of the acts of wrongdoing alleged to have
8 been committed by them. Moreover, this order and judgment approving the settlement
9 shall not be offered or received into evidence for any purpose whatsoever, in this or
10 any other matter or proceeding in any court, administrative agency, arbitration, or
11 other tribunal, other than as expressly set forth in the Settlement Agreement.

12 Pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Court finds
13 that there is no just reason for delay and therefore directs entry of this **FINAL**
14 **ORDER AND JUDGMENT OF APPROVAL OF CLASS AND COLLECTIVE**
15 **ACTION SETTLEMENT.** Inasmuch as this disposes of all claims asserted in the
16 Action, the Court further directs the Clerk to enter this Judgment of Dismissal with
17 prejudice pursuant to Fed. R. Civ. P. 41(a)(2), so that payment pursuant to the terms
18 of the settlement may issue forthwith.

19 **IT IS SO ORDERED.**

20 Dated:

21 By: _____
22 Chief Judge of the District Court

CERTIFICATE OF SERVICE

I, Paul T. Cullen, certify and declare as follow:

1. I am over the age of 18 and not a party to this action.

2. My business address is 9800 Topanga Canyon Boulevard; Suite D, PMB 325; Chatsworth, CA 91311-4057.

3. On November 1, 2024, I caused a copy of **[PROPOSED] ORDER AND JUDGMENT ON MOTION FOR FINAL APPROVAL OF CLASS AND COLLECTIVE ACTION SETTLEMENT** to be served upon the following counsel via the Court’s CM/ECF system:

YURI MIKULKA (State Bar No. 185926)
MARTHA S. DOTY (State Bar No. 143287)
LISA L. GARCIA (State Bar No. 301362)

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Attorneys for DEFENDANTS AUDIOLOGY DISTRIBUTION, LLC;
HEARX WEST, INC.; and HEARX WEST LLC

I declare under penalty of perjury under the laws of the United States that the forgoing is true and correct. Executed on November 1, 2024, at Los Angeles, California.

/s/ Paul T. Cullen
Class and Collective Class Counsel and
Attorneys for Plaintiff IA BROWN