

BIBIYAN LAW GROUP, P.C.
David D. Bibiyan, Esq. (SBN 287811)
8484 Wilshire Boulevard, Suite 500
Beverly Hills, California 90211
Tel: (310) 438-5555; Fax: (310) 300-1705

J. GILL LAW GROUP, P.C.
Jasmin K. Gill, Esq. (SBN 315090)
515 South Flower Street, Suite 1800
Los Angeles, California 90071
Tel: (213) 459-6023; Fax: (310) 728-2137

Attorneys for Plaintiff, EDVIN AGUILAR, an individual and on behalf of all others similarly situated,

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

EDVIN AGUILAR, an individual and on behalf of all others similarly situated,

Plaintiff,

v.

BIONESE INC., a Delaware corporation;
BIOVENTUS LLC, a Delaware limited liability company; KENNETH REALI, an individual; and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 21STCV41702

[Assigned to the Hon. Lawrence P. Riff in Dept. SS-14]

JOINT STIPULATION RE: CLASS ACTION AND REPRESENTATIVE ACTION SETTLEMENT

Action Filed: November 10, 2021
Trial Date: None Set.

This Joint Stipulation re: Class Action and Representative Action Settlement (“Settlement” or “Agreement” or “Settlement Agreement”) is made by and between plaintiff Edvin Aguilar (“Plaintiff”), individually and on behalf of the Settlement Class, as defined below, on the one hand; and defendants Bioness Inc., Bioventus LLC, and Kenneth Reali (collectively, “Defendants”), on the other hand; in the lawsuit entitled *Aguilar v. Bioness Inc., et al.*, filed in Los Angeles County Superior Court, Case No. 21STCV41702 (the “Action”). Plaintiff and Defendants shall be, at times, collectively referred to as the “Parties” and individually as a “Party”. This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge and settle the claims as set forth herein, based upon and subject to the terms and conditions of this Agreement.

1. DEFINITIONS

A. “Action” means *Aguilar v. Bioness Inc., et al.*, filed in Los Angeles County Superior Court, Case No. 21STCV41702.

B. “Aggrieved Employees” means Class Members working for Defendants as non-exempt employees in California during the PAGA Period.

C. “Class Counsel” means: David D. Bibiyan of Bibiyan Law Group, P.C. as well as Jasmin K. Gill of J. Gill Law Group, P.C. The term “Class Counsel” shall be used synonymously with the term “Plaintiff’s Counsel.”

D. “Class Period” means the period from November 4, 2020 through June 6, 2023.

E. “Complaint” shall mean the initial Complaint filed in the Action on January 10, 2022.

F. “Court” means the Superior Court of the State of California for the County of Los Angeles.

G. “Class Notice” means and refers to the notice sent to Class Members after preliminary approval of the Settlement in the manner described in Paragraph 10(A) of this Agreement.

H. “Defendants” shall refer collectively to defendants Bioness Inc., Bioventus LLC, and Kenneth Reali.

1 **I. “Effective Date”** or “Effective” means: the date when all of the following events
2 have occurred: (1) the Settlement Agreement has been executed by all Parties, Class Counsel,
3 and Defendants’ Counsel; (2) the Court has given preliminary approval to the Settlement; (3) the
4 Notice has been mailed to the Class Members, providing them with an opportunity to object to
5 the terms of the Settlement or opt out of the Settlement; (4) the Court has held a formal fairness
6 hearing and entered an order granting Final Approval of the Settlement Agreement; and (5) the
7 later of the following events: (A) if no timely objections are filed, or if all objections are
8 withdrawn, the date upon which the Court enters an order granting Final Approval of the
9 Settlement Agreement; or (B) in the event there are written objections filed prior to the formal
10 fairness hearing which are not later withdrawn or denied, the later of the following events: (i)
11 when the period for filing any appeal, writ or other appellate proceeding opposing the Settlement
12 has elapsed without any appeal, writ or other appellate proceeding having been filed; (ii) when
13 any appeal, writ or other appellate proceeding opposing the Settlement has been dismissed finally
14 and conclusively with no right to pursue further remedies or relief; or (iii) when any appeal, writ
15 or other appellate proceeding has upheld the Court’s order granting Final Approval of the
16 Settlement Agreement with no right to pursue further remedies or relief.

17 **J. “Employer Taxes”** means employer-funded taxes and contributions imposed on
18 the wage portions of the Individual Settlement Payments under the Federal Insurance
19 Contributions Act, the Federal Unemployment Tax Act, and any similar state and federal taxes
20 and contributions required of employers, such as for unemployment insurance.

21 **K. “Final Approval Date”** means the date the Court enters an order granting final
22 approval of the Settlement Agreement.

23 **L. “General Release”** means the general release of claims by Plaintiff, which is in
24 addition to his limited release of claims as a Participating Class Member and Aggrieved
25 Employee, neither of which include and both of which expressly exclude any release for any and
26 all claims that may be brought, have been brought, or could have been brought by Plaintiff for
27 wrongful termination, discrimination, retaliation, harassment, failure to prevent harassment or
28

1 discrimination or under the Fair Employment and Housing Act, California Family Rights Act
2 and/or any other comparable state or federal laws.

3 **M. “Gross Settlement Amount”** means a non-reversionary fund in the sum of One
4 Hundred Eighty-Five Thousand Dollars and Zero Cents (\$185,000.00), which may be increased
5 in accordance with Paragraph 18 herein, which shall be paid by Defendants, and from which all
6 payments for the Individual Settlement Payments to Participating Class Members, Individual
7 PAGA Payments to Aggrieved Employees and the Court-approved amounts for attorneys’ fees
8 and reimbursement of litigation costs and expenses to Class Counsel, Settlement Administration
9 Costs, a Service Award to Plaintiff, and the LWDA Payment for resolution of Plaintiff’s cause
10 of action for civil penalties under the Labor Code Private Attorneys’ General Act, codified at
11 Labor Code Section 2698, *et seq.* (“PAGA”), interest and certain taxes shall be paid. It expressly
12 excludes Employer Taxes, which shall be paid by Defendant separate and apart from the Gross
13 Settlement Amount.

14 **N. “Individual PAGA Payment”** means a payment to an Aggrieved Employee of
15 his or her share of the PAGA Payment.

16 **O. “Individual Settlement Payment”** means a payment to a Participating Class
17 Member of his or her net share of the Net Settlement Amount, excluding any PAGA Payment to
18 which he or she may be entitled if he or she is also an Aggrieved Employee.

19 **P. “Individual Settlement Share”** means the gross amount of the Net Settlement
20 Amount that a Participating Class Member is projected to receive based on the number of
21 Workweeks that he or she worked as a Settlement Class Member during the Class Period if he or
22 she does not submit a timely and valid Request for Exclusion, excluding any PAGA Payment to
23 which he or she may be entitled if he or she is also an Aggrieved Employee.

24 **Q. “LWDA Payment”** means the payment to the LWDA for its seventy-five percent
25 (75%) share of the total amount allocated toward penalties under the PAGA, which is to be paid
26 from the Gross Settlement Amount. The Parties have agreed that Twenty Thousand Dollars and
27 Zero Cents (\$20,000.00) shall be allocated toward PAGA penalties, of which Fifteen Thousand
28 Dollars and Zero Cents (\$15,000.00) will be paid to the LWDA (*i.e.*, the LWDA Payment) and

Five Thousand Dollars and Zero Cents (\$5,000.00) will remain a part of the Net Settlement Amount for payment to Aggrieved Employees on a *pro rata* basis, based on the Workweeks worked for Defendants as a non-exempt employee in California in the PAGA Period (“PAGA Payment”).

R. “Net Settlement Amount” means the portion of the Gross Settlement Amount that is available for distribution to Participating Class Members after deductions for the Court-approved allocations for Settlement Administration Costs, a Service Award to Plaintiff, an award of attorneys’ fees, reimbursement of litigation costs and expenses to Class Counsel, and the LWDA Payment. It excludes the PAGA Payment.

S. “Operative Complaint” or “First Amended Complaint” means, collectively, the First Amended Complaint to be filed with the Court in the Action as set forth in this Agreement.

T. “PAGA Payment” is the \$5,000.00 payment payable to Aggrieved Employees in addition to their Individual Settlement Share, if they do not opt out of the Settlement of the Class Released Claims.

U. “PAGA Period” means the period from November 4, 2020 through the end of the Class Period.

V. “Participating Class Members” means all Settlement Class Members who do not submit a timely and valid Request for Exclusion from the Class Released Claims.

W. “Participating Individual Settlement Share” means the gross amount of the Net Settlement Amount that a Participating Class Member is eligible to receive based on the number of Workweeks that he or she worked as a Settlement Class Member during the Class Period once all opt-outs have been factored in, excluding any Individual PAGA Payment to which he or she may be entitled if he or she is also an Aggrieved Employee.

X. “Parties” shall refer to Plaintiff and Defendants collectively.

Y. “Plaintiff” shall refer to Plaintiff Edwin Aguilar.

Z. “Preliminary Approval Date” means the date on which the Court enters an Order granting preliminary approval of the Settlement.

1 **AA. “Released Parties”** shall mean Defendants Bioness Inc., Bioventus LLC, and
2 Kenneth Reali as well as each of Bioness Inc.’s and Bioventus LCC’s present and former
3 respective affiliates, parents, subsidiaries, predecessors, successors, divisions, joint ventures and
4 assigns, and each of these entities’ past or present directors, officers, employees, partners,
5 members, principals, agents, insurers, shareholders, attorneys, and personal or legal
6 representatives.

7 **BB. “Response Deadline”** means the deadline for Settlement Class Members to mail
8 any Requests for Exclusion, Objections, or Workweek Disputes to the Settlement Administrator,
9 which is forty-five (45) calendar days from the date that the Class Notice is first mailed in English
10 and Spanish by the Settlement Administrator, unless a Class Members’ notice is re-mailed. In
11 such an instance, the Response Deadline shall be fifteen (15) calendar days from the re-mailing,
12 or forty-five (45) calendar days from the date of the initial mailing, whichever is later, in which
13 to postmark a Request for Exclusion, Workweek Dispute or Objection. The date of the postmark
14 shall be the exclusive means for determining whether a Request for Exclusion, Objection, or
15 Workweek Dispute was submitted by the Response Deadline.

16 **CC. “Request for Exclusion”** means a written request to be excluded from the Class
17 Released Claims pursuant to Section 10.C below.

18 **DD. “Service Award”** means monetary amount to be paid to Plaintiff of up to Seven
19 Thousand, Five Hundred Dollars and Zero Cents (\$7,500.00) which, subject to Court approval,
20 will be paid out of the Gross Settlement Amount.

21 **EE. “Settlement Administration Costs”** means all costs incurred by the Settlement
22 Administrator in administration of the Settlement, including, but not limited to, translating the
23 Class Notice to Spanish, the distribution of the Class Notice to the Settlement Class in English
24 and Spanish, calculating Individual Settlement Shares and Individual Settlement Payments and
25 associated taxes and withholdings, providing declarations, generating Individual Settlement
26 Payment checks and related tax reporting forms, doing administrative work related to unclaimed
27 checks, transmitting payment to Class Counsel for the Court-approved amounts for attorneys’
28 fees and reimbursement of litigation costs and expenses, to Plaintiff for his Service Award, and

1 to the LWDA from the LWDA Payment, providing weekly reports of opt-outs, objections and
2 related information, and any other actions of the Settlement Administrator as set forth in this
3 Agreement, all pursuant to the terms of this Agreement. The Settlement Administration Costs
4 are estimated not to exceed \$5,995. If the actual amount of the Settlement Administration Costs
5 is less than \$5,995, the difference between \$5,995 and the actual Settlement Administration Costs
6 shall be a part of the Net Settlement Amount. If the Settlement Administration Costs exceed
7 \$5,995, then such excess will be paid solely from the Gross Settlement Amount and Defendants
8 will not be responsible for paying any additional funds in order to pay these additional costs.

9 **FF. “Settlement Administrator”** means the Third-Party Administrator chosen to be
10 responsible for the administration of the Settlement including, without limitation, translating the
11 Class Notice in Spanish, the distribution of the Individual Settlement Payments to be made by
12 Defendants from the Gross Settlement Amount and related matters under this Agreement.

13 **GG. “Settlement Class”, “Settlement Class Members” or “Class Members”** means
14 all current and former non-exempt employees who worked in California for Defendants at any
15 time during the Class Period.

16 **HH. “Workweek”** means the number of weeks that a Settlement Class Member was
17 employed by Defendants in a non-exempt position during the Class Period in California, based
18 on hire dates, re-hire dates (as applicable) and termination dates (as applicable).

19 **2. BACKGROUND**

20 **A.** On November 4, 2021, Plaintiff filed with the Labor and Workforce Development
21 Agency (“LWDA”) and served on Defendants a notice under Labor Code section 2699.3 (the
22 “PAGA Notice”) stating Plaintiff intended to serve as a proxy of the LWDA to recover civil
23 penalties for Aggrieved Employees. The PAGA Notice includes violations of law pled in the
24 Operative Complaint, including for alleged failure to pay minimum wages and overtime
25 (including for alleged off-the-clock work, on-call time, split-shift premiums, reporting time pay,
26 failure to pay overtime at the regular rate, rounding, and unauthorized edits to time entries),
27 failure to pay sick leave and/or Covid supplemental sick leave, failure to provide compliant meal
28 and rest periods, failure to pay meal period penalties, inaccurate wage statements, failure to

1 timely pay wages during employment and upon separation, failure to reimburse necessary
2 business expenses, failure to comply with notice requirements, and unfair business practices, in
3 violation of Labor Code sections 96, 98.6, 200, 201, 202, 203, 210, 226, 226.7, 227.3, 232, 232.5,
4 510, 512, 558, 558.1, 1102.5, 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.5, 1199, 2802, in
5 addition to a request for penalties pursuant to Labor Code sections 204, 226.3, 246, 432, 1174,
6 1198.5, 2810.5, 2698, et seq.

7 **B.** On November 10, 2021, Plaintiff filed a Class Action Complaint in the Superior
8 Court of California for the County of Los Angeles, Case Number 21STCV41702 (the “Action”).
9 Plaintiff alleged that during the Class Period, with respect to Plaintiff and the Class Members,
10 Defendants, *inter alia*, failed to pay overtime and minimum wages; failed to provide complaint
11 meal and rest periods or compensation in lieu thereof; waiting time penalties; wage statement
12 violations; violated Labor Code section 2802; failed to timely pay wages; and engaged in unfair
13 competition based on the alleged Labor Code violations.

14 **C.** On January 11, 2022, Plaintiff filed a PAGA Complaint in the Superior Court of
15 California for the County of Los Angeles, Case Number 22STCV011067 (the “PAGA Action”).
16 Plaintiff alleged that during the PAGA Period, with respect to Plaintiff and the allegedly
17 Aggrieved Employees, Defendants, *inter alia*, failed to pay overtime and minimum wages; failed
18 to provide complaint meal and rest periods or compensation in lieu thereof; waiting time
19 penalties; wage statement violations; violated Labor Code section 2802; failed to timely pay
20 wages; and engaged in unfair competition based on the alleged Labor Code violations, which
21 included claims for civil penalties under PAGA.

22 **D.** On April 28, 2022, the Court issued an Order Granting Defendants’ Motion to
23 Compel Arbitration, Dismiss Class Claims and Stay Proceedings (“Arbitration Order”).

24 **E.** During the pendency of this Action and the PAGA Action, the Parties agreed to
25 attend mediation. Prior to mediation, Class Counsel was provided with, among other things: (1)
26 the number of current and former non-exempt employees of Defendants working in California
27 during the Class Period; (2) hire dates, re-hire dates (as applicable), separation dates (as
28 applicable), and final rates of pay for the fifty-nine (59) Class Members working for Defendants

1 during the Class Period; (3) a collective 50% sampling of time and payroll records for Class
2 Members; (4) all relevant wage and hour policies in effect during the Class Period, including
3 employee handbooks and policy memoranda; (5) an exemplar of a purported arbitration
4 agreement; (6) class contact information for Class Members pursuant to a protective order; and
5 (7) Plaintiff's personnel file.

6 **F.** On July 25, 2022, the Parties participated in a mediation before Eve Wagner, Esq.,
7 a well-regarded mediator experienced in mediating complex civil disputes. With the aid of the
8 mediator's evaluation, the Parties reached the Settlement to resolve the Action at mediation. The
9 Parties have since agreed that, for the purposes of settlement only, to stipulate to Plaintiff's filing
10 of the Proposed First Amended Complaint attached hereto as **Exhibit "B"**, which (1)
11 encompasses all of the claims alleged in the PAGA Notice and PAGA Action, including class
12 claims on behalf of all current and former non-exempt employees of Defendants during the Class
13 Period; and (2) includes claims for civil penalties pursuant to the PAGA.

14 **G.** Class Counsel has conducted significant investigation of the law and facts relating
15 to the claims asserted in the Action, stated in the Proposed First Amended Complaint, and the
16 PAGA Notice, and have concluded that the Settlement set forth herein is fair, reasonable,
17 adequate, and in the best interests of the Settlement Class, taking into account the sharply
18 contested issues involved, the expense and time necessary to litigate the Action through trial and
19 any appeals, the risks and costs of further litigation of the Action, the risk of an adverse outcome,
20 the uncertainties of complex litigation, the information learned through informal discovery
21 regarding Plaintiff's allegations, and the substantial benefits to be received by the Settlement
22 Class Members.

23 **H.** Defendants have concluded that, because of the substantial expense of defending
24 against the Action, the length of time necessary to resolve the issues presented herein, and the
25 inconvenience involved, and the concomitant disruption to their business operations, it is in
26 Defendants' best interest to accept the terms of this Agreement. Defendants deny each of the
27 allegations and claims asserted against them in the Action. However, Defendants nevertheless
28 desire to settle the Action for the purpose of avoiding the burden, expense and uncertainty of

1 continuing litigation and for the purpose of putting to rest the controversies engendered by the
2 Action.

3 **I.** This Agreement is intended to and does effectuate the full, final, and complete
4 resolution of all Class Released Claims of Plaintiff and Participating Class Members, and all
5 PAGA Released Claims of Plaintiff and, to the extent permitted by law, of the State of California
6 and Aggrieved Employees.

7 **3. JURISDICTION**

8 The Court has jurisdiction over the Parties and the subject matter of the Action. The
9 Action includes claims that, if proven, would authorize the Court to grant relief pursuant to the
10 applicable statutes. After the Court has granted Final Approval of the Settlement and entered
11 judgment, the Court shall retain jurisdiction over the Parties to enforce the terms of the judgment
12 pursuant to California Rule of Court, rule 3.769, subdivision (h).

13 **4. STIPULATION OF CLASS CERTIFICATION**

14 The Parties stipulate to the certification of the Settlement Class under this Agreement for
15 purposes of settlement only. If, for any reason, the Settlement is not approved, the stipulation to
16 certification will be void. The Parties further agree that certification for purposes of the
17 Settlement is not an admission that class action certification is proper under the standards applied
18 to contested certification motions and that this Agreement will not be admissible in this or any
19 other proceeding as evidence that either: (a) a class action should be certified or (b) Defendants
20 are liable to Plaintiff or any Class Member, other than according to the Settlement's terms.

21 **5. MOTIONS FOR APPROVAL OF SETTLEMENT**

22 After full execution of this Agreement, Plaintiff will move for an order granting
23 preliminary approval of the Settlement, approving and directing the mailing of the proposed
24 Notice of Class Action Settlement ("Class Notice") attached hereto as **Exhibit "A"**, conditionally
25 certifying the Settlement Class for settlement purposes only, and approving the deadlines
26 proposed by the Parties for the submission of Requests for Exclusion, Workweek Disputes, and
27 Objections. If and when the Court preliminarily approves the Settlement, and after
28 administration of the Class Notice in a manner consistent with the Court's Preliminary Approval

Order, Plaintiff will move for an order finally approving the Settlement and seek entry of a Judgment in line with this Settlement.

6. FIRST AMENDED COMPLAINT

Prior to filing the Motion for Preliminary Approval, Defendants agree to enter into a stipulation for Plaintiff to file a First Amended Complaint and requesting a court order allowing for same. The Parties intend Plaintiff to file with the Court the Proposed First Amended Complaint attached hereto as **Exhibit "B"**, which amends Plaintiff's original complaint to include all of the alleged Labor Code violations set forth in Plaintiff's November 4, 2021 PAGA Notice letter to the Labor and Workforce Development Agency and to include class claims on behalf of Plaintiff and Class Members for the Class Period as well as claims for civil penalties under PAGA for the alleged Labor Code violations asserted in the PAGA Notice and the PAGA Action. Defendants shall file an Answer to Plaintiff's First Amended Complaint within thirty (30) days after Plaintiff serves a conformed copy of the First Amended Complaint on Defendants, although Defendants deny all allegations therein consistent with this Agreement. The First Amended Complaint, when filed, shall be the operative complaint. If the Court does not grant Preliminary and Final Approval of the Class Action Settlement, Plaintiff's class allegations shall be stricken from the First Amended Complaint. However, Plaintiff's individual and representative PAGA claims and allegations shall remain a part of the First Amended Complaint and not be stricken, unless the Court compels Plaintiff's individual PAGA claim to arbitration, or otherwise strikes the individual and/or representative PAGA claims at a later date pursuant to a properly noticed motion by Defendants. Additionally, upon the Court's entry of an order granting Plaintiff leave to file the First Amended Complaint referenced herein, Plaintiff shall file a Request for Dismissal of the PAGA Action without prejudice.

7. STATEMENT OF NO ADMISSION

Defendants deny any wrongdoing of any sort and further deny any liability to Plaintiff, the Settlement Class and Aggrieved Employees with respect to any claims or allegations asserted in the Action. This Agreement shall not be deemed an admission by Defendants of any claims or allegations asserted in the Action. Except as set forth elsewhere herein, in the event that this

1 Agreement is not approved by the Court, or any appellate court, is terminated, or otherwise fails
2 to be enforceable, Plaintiff will not be deemed to have waived, limited or affected in any way
3 any claims, rights or remedies, or defenses in the Action, and Defendants will not be deemed to
4 have waived, limited, or affected in any way any of their objections or defenses in the Action.
5 The Parties shall be restored to their respective positions in the Action prior to the entry of this
6 Settlement.

7 **8. RELEASE OF CLAIMS**

8 **A. Release by All Participating Class Members.**

9 Effective only upon the Effective Date, and payment by Defendants to the Settlement
10 Administrator of the full Gross Settlement Amount and Employer's Taxes necessary to effectuate
11 the Settlement, Plaintiff and all Participating Class Members release the Released Parties of all
12 claims against the Released Parties asserted in the Complaint, or any and all claims that may be
13 asserted against the Released Parties based on the factual allegations in the Complaint and
14 Proposed First Amended Complaint attached as **Exhibit B**, as follows: For Participating Class
15 Members, the release includes, for the duration of the Class Period: (a) all claims for failure to
16 pay minimum wages; (b) all claims for failure to pay overtime wages; (c) all claims for failure to
17 provide compliant meal and rest periods or compensation in lieu thereof; (d) failure to timely pay
18 all wages due upon termination or resignation; (e) all claims for non-compliant wage statements;
19 (f) failure to reimburse business expenses; and (g) all claims asserted through California Business
20 & Professions Code § 17200 *et seq.* arising out of the Labor Code violations referenced in the
21 Complaint and Proposed First Amended Complaint attached as **Exhibit B**, including Labor Code
22 section 96, 98.6, 200, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 232, 232.5, 246, 432,
23 510, 512, 558, 558.1, 1102.5, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198.5, 1199,
24 2802, and 2810.5 (the "Class Released Claims").

25 **B. Release by All Aggrieved Employees**

26 For Aggrieved Employees, the release includes, for the duration of the PAGA Period, all
27 claims asserted in the PAGA Notice submitted to the LWDA, alleged in the Complaint, and
28 alleged in the Proposed First Amended Complaint attached as **Exhibit B**, for PAGA civil

1 penalties, including all claims for civil penalties under PAGA arising out of Labor Code Sections
2 96, 98.6, 200, 201, 202, 203, 210, 226, 226.3, 226.7, 227.3, 232, 232.5, 510, 512, 558, 558.1,
3 1102.5, 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.5, 1199, 2802, and 2699 based on the factual
4 allegations and Labor Code sections alleged to have been violated in the PAGA Notice,
5 Complaint and Operative Complaint, which includes, Labor Code sections 204, 226.3, 246, 432,
6 1174, 1198.5, and 2810.5 (the “PAGA Released Claims”). The Class Released Claims and
7 PAGA Released Claims shall be referred to herein as the “Released Claims”.

8 **C. Claims Not Released**

9 The releases above as well as the General Release below expressly exclude all other
10 claims, including claims for vested benefits, wrongful termination, unemployment insurance,
11 disability, social security, workers’ compensation, and any other claims outside of the Class
12 Released Claims of Participating Class Members, including Plaintiff, arising during the Class
13 Period and the PAGA Released Claims of Aggrieved Employees including Plaintiff arising
14 outside of the PAGA Period (and, to the extent permitted by law, the State of California).

15 **D. General Release.**

16 Only upon the Effective Date, and payment by Defendants to the Settlement
17 Administrator of the full Gross Settlement Amount and Employers’ Taxes necessary to effectuate
18 the Settlement, in addition to the Released Claims, Plaintiff makes the additional following
19 General Release: Plaintiff releases the Released Parties from all claims, demands, rights,
20 liabilities and causes of action of every nature and description whatsoever, known or unknown,
21 asserted or that might have been asserted, whether in tort, contract, or for violation of any state
22 or federal statute, rule, law or regulation arising out of, relating to, or in connection with any act
23 or omission of the Released Parties through the date of full execution of this Agreement in
24 connection with his employment or the termination thereof. With respect to the General Release,
25 Plaintiff stipulates and agrees that, through the Effective Date, Plaintiff shall be deemed to have,
26 and by operation of the Final Judgment and payment to the Settlement Administrator shall have,
27 expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights
28

1 and benefits of Section 1542 of the California Civil Code, or any other similar provision under
2 federal or state law, which provides:

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

8 Plaintiff's Limited Release of Claims as a Participating Class Member and Aggrieved
9 Employee as well as Plaintiff's General Release and Civil Code section 1542 waiver does not
10 include and expressly excludes any release or waiver for any and all claims that may be brought,
11 have been brought, or could have been brought by Plaintiff for wrongful termination,
12 discrimination, retaliation, harassment, failure to prevent harassment or discrimination or under
13 the Fair Employment and Housing Act, California Family Rights Act and/or any other applicable
14 state or federal laws.

15 **9. SETTLEMENT ADMINISTRATOR**

16 Plaintiff and Defendants, through their respective counsel, have selected Phoenix
17 Settlement Administrators to administer the Settlement, which includes but is not limited to
18 translating the Class Notice to Spanish, distributing and responding to inquiries about the Class
19 Notice and calculating all amounts to be paid from the Gross Settlement Amount. Charges and
20 expenses of the Settlement Administrator, currently estimated to be \$5,995 will be paid from the
21 Gross Settlement Amount. If the actual amount of the Settlement Administration Costs is less
22 than \$5,995, the difference between \$5,995 and the actual Settlement Administration Costs shall
23 be a part of the Net Settlement Amount. If the Settlement Administration Costs exceed \$5,995,
24 then such excess will be paid solely from the Gross Settlement Amount and Defendants will not
25 be responsible for paying any additional funds in order to pay these additional costs.

26 **10. NOTICE, WEEKLY PAY PERIOD DISPUTE, OBJECTION, AND EXCLUSION**
27 **PROCESS**

28 **A. Notice to the Settlement Class Members.**

(1) Within ten (10) calendar days after the Preliminary Approval Date,
Defendants' Counsel shall provide the Settlement Administrator, in Microsoft Excel format, with

1 information with respect to each Settlement Class Member, including his or her: (1) name, last
2 known address(es) and last known telephone number(s) currently in Defendants' possession,
3 custody, or control; (2) Social Security Number in Defendants' possession, custody, or control;
4 and (3) the hire dates, re-hire dates (if applicable) and termination dates (if applicable) for each
5 Settlement Class Member ("Class List"). The Settlement Administrator shall perform an address
6 search using the United States Postal Service National Change of Address ("NCOA") database
7 and update the addresses contained on the Class List with the newly found addresses, if any.
8 Within seven (7) calendar days of receiving the Class List from Defendants, the Settlement
9 Administrator shall mail the Class Notice in English and Spanish to the Settlement Class
10 Members via first-class regular U.S. Mail using the most current mailing address information
11 available. The Settlement Administrator shall maintain a list with names and all addresses to
12 which notice was given, and digital copies of all the Settlement Administrator's records
13 evidencing the giving of notice to any Settlement Class Member, for at least four (4) years from
14 the Effective Date. Such information shall be available to Class Counsel and Defendants'
15 Counsel upon request.

16 (2) The Class Notice will set forth:

- 17 (a) the Settlement Class Member's estimated Individual Settlement
- 18 Payment and Individual PAGA Payment, and the basis for each;
- 19 (b) the information required by California Rule of Court, rule 3.766,
- 20 subdivision (d);
- 21 (c) the material terms of the Settlement;
- 22 (d) the proposed Settlement Administration Costs;
- 23 (e) the definition of the Settlement Class;
- 24 (f) a statement that the Court has preliminarily approved the
- 25 Settlement;
- 26 (g) how the Settlement Class Member can obtain additional
- 27 information, including contact information for Class Counsel;
- 28 (h) information regarding opt-out and objection procedures;

- 1 (i) the date and location of the Final Approval Hearing; and
- 2 (j) that the Settlement Class Member must notify the Settlement
- 3 Administrator no later than the Response Deadline if the
- 4 Settlement Class Member disputes the accuracy of the number of
- 5 Weekly Pay Periods as set forth on his or her Class Notice
- 6 (“Workweek Dispute”). If a Settlement Class Member fails to
- 7 timely dispute the number of Workweeks attributed to him or her
- 8 in conformity with the instructions in the Class Notice, then he or
- 9 she shall be deemed to have waived any objection to its accuracy
- 10 and any claim to any additional settlement payment based on
- 11 different data.

12 (3) If a Class Notice from the initial notice mailing is returned as

13 undeliverable, the Settlement Administrator will attempt to obtain a current address for the

14 Settlement Class Member to whom the returned Class Notice had been mailed, within five (5)

15 calendar days of receipt of the returned Class Notice, by: (1) contacting the Settlement Class

16 Member by phone, if possible, and (2) undertaking skip tracing. If the Settlement Administrator

17 is successful in obtaining a new address, it will promptly re-mail the Class Notice to the

18 Settlement Class Member. Further, any Class Notices that are returned to the Settlement

19 Administrator with a forwarding address before the Response Deadline shall be promptly re-

20 mailed to the forwarding address affixed thereto.

21 (4) No later than seven (7) calendar days from the Response Deadline, the

22 Settlement Administrator shall provide counsel for the Parties with a declaration attesting to the

23 completion of the notice process, including the number of attempts to obtain valid mailing

24 addresses for and re-sending of any returned Class Notices, as well as the identities, number of,

25 and copies of all Requests for Exclusion and objections/comments received by the Settlement

26 Administrator.

27 **B. Objections.**

28 Only Participating Class Members may object or comment regarding the Settlement. In

1 order for any Settlement Class Member to object to this Settlement in writing, or any term of it,
2 he or she must do so by mailing a written objection to the Settlement Administrator at the address
3 or phone number provided on the Class Notice no later than the Response Deadline. The
4 Settlement Administrator shall email a copy of the objection forthwith to Class Counsel and
5 Defendants' counsel and attach each objection, if any, to the declaration that Class Counsel files
6 with the Court in support of the Motion for Final Approval. The objection should set forth in
7 writing: (1) the Objector's name; (2) the Objector's address; (3) the last four digits of the
8 Objector's Social Security Number; (4) the Objector's signature; (5) a statement of whether the
9 Objector plans to appear at the Final Approval Hearing; and (6) the reason(s) for the Objection,
10 along with whatever legal authority, if any, the Objector asserts in support of the Objection. If a
11 Settlement Class Member objects to the Settlement, the Settlement Class Member will remain a
12 member of the Settlement Class and if the Court approves this Agreement, the Settlement Class
13 Member will be bound by the terms of the Settlement in the same way and to the same extent as
14 a Settlement Class Member who does not object. The date of mailing of the Class Notice to the
15 objecting Settlement Class Member shall be conclusively determined according to the records of
16 the Settlement Administrator. Settlement Class Members need not object in writing to be heard
17 at the Final Approval Hearing; they may object or comment in person at the hearing at their own
18 expense. Class Counsel and Defendants' Counsel may respond to any objection lodged with the
19 Court up to five (5) court days before the Final Approval Hearing.

20 **C. Requesting Exclusion.**

21 Any Settlement Class Member may request exclusion from (*i.e.*, "opt out" of) the Class
22 Released Claims by mailing a written request to be excluded from the Class Released Claims
23 ("Request for Exclusion") to the Settlement Administrator, postmarked on or before the
24 Response Deadline. To be valid, a Request for Exclusion must include: (1) the Class Member's
25 name; (2) the Class Member's Social Security Number; (3) the Class Member's signature; and
26 (4) the following statement or something to its effect: "Please exclude me from the Class
27 Released Claims in the *Edvin Aguilar v. Bioness Inc., et al.* matter" or any statement of similar
28 meaning standing for the proposition that the Class Member does not wish to participate in the

1 settlement of the Class Released Claims. The Settlement Administrator shall immediately notify
2 Class Counsel and Defendants' Counsel of all Requests for Exclusion and shall report the
3 Requests for Exclusions that it receives, to the Court, in its declaration to be provided in advance
4 of the Final Approval Hearing. Any Settlement Class Member who requests exclusion using this
5 procedure will not be entitled to receive payment from the Net Settlement Amount and will not
6 be bound by the Class Released Claims or have any right to object to, appeal, or comment on the
7 Settlement. Any Settlement Class Member who does not opt out of the Settlement by submitting
8 a timely and valid Request for Exclusion will be bound by all terms of the Settlement, including
9 those pertaining to the Released Claims, as well as any Judgment that may be entered by the
10 Court if Final Approval of the Settlement is granted. A Settlement Class Member cannot submit
11 both a Request for Exclusion and an objection. If a Settlement Class Member submits an
12 objection and a Request for Exclusion, the Request for Exclusion will control and the Objection
13 will be void. Settlement Class Members who worked during the PAGA Period that submit a valid
14 Request for Exclusion will still be deemed Aggrieved Employees, will still receive their
15 Individual PAGA Payment, and pursuant to *Arias v. Superior Ct. (Dairy)*, 46 Cal. 4th 969 (2009),
16 will be bound by the release encompassed in the PAGA Released Claims.

17 **D. Disputes Regarding Settlement Class Members' Workweeks Data.**

18 Class Members will have an opportunity to dispute the information provided in their Class
19 Notice. To the extent Class Members dispute the number of Workweeks to which they have been
20 credited, Class Members may produce evidence to the Settlement Administrator showing that
21 such information is inaccurate. Absent evidence rebutting Defendants' records, Defendants'
22 records will be presumed determinative. However, if a Class Member produces evidence to the
23 contrary, the Settlement Administrator will evaluate the evidence submitted by the Class Member
24 and will make the final decision as to the number of Workweeks that should be applied. All such
25 disputes are to be resolved not later than ten (10) calendar days after the Response Deadline.

26 **E. Extension of Response Deadline for Remailing**

27 If a Class Member's notice is re-mailed, the Class Member shall have fifteen (15) days
28 from the re-mailing, or forty-five (45) days from the date of the initial mailing, whichever is later,

in which to postmark a Request for Exclusion, written Objection or to dispute their attributed workweek count in the Class Period and/or PAGA Period.

11. INDIVIDUAL SETTLEMENT PAYMENTS AND INDIVIDUAL PAGA PAYMENTS TO PARTICIPATING CLASS MEMBERS

Individual Settlement Payments will be calculated and distributed to Participating Class Members from the Net Settlement Amount on a *pro rata* basis, based on the Participating Class Members' respective number of Workweeks during the Class Period. Individual PAGA Payments to Aggrieved Employees will be calculated and distributed to Aggrieved Employees from the PAGA Payment on a *pro rata* basis based on Aggrieved Employees' respective number of Workweeks during the PAGA Period. Specific calculations of the Individual Settlement Shares and Individual PAGA Payments to Aggrieved Employees will be made as follows:

A. The Settlement Administrator will determine the total number of Workweeks worked by each Settlement Class Member during the Class Period ("Class Member's Workweeks"), as well as the aggregate number of Workweeks worked by all Settlement Class Members during the Class Period ("Class Workweeks"). Additionally, the Settlement Administrator will determine the total number of Workweeks worked by each Aggrieved Employee during the PAGA Period ("Aggrieved Employee's Workweeks"), as well as the aggregate number of Workweeks worked by all Aggrieved Employees during the PAGA Period ("PAGA Workweeks").

B. To determine each Settlement Class Member's Individual Settlement Share, the Settlement Administrator will use the following formula: Individual Settlement Share = (Settlement Class Member's Workweeks ÷ Class Workweeks) × Net Settlement Amount.

C. To determine each Participating Class Member's Participating Individual Settlement Share, the Settlement Administrator will determine the aggregate number of Workweeks worked by all Participating Class Members during the Class Period ("Participating Class Workweeks") and use the following formula: Individual Settlement Share =

(Participating Class Member's Workweeks ÷ Participating Class Workweeks) × Net Settlement Amount.

D. The net amount of the Participating Individual Settlement Share is to be paid out to Participating Class Members by way of check and is referred to as "Individual Settlement Payment(s)".

E. To determine each Aggrieved Employee's Individual PAGA Payment, the Settlement Administrator will use the following formula: Aggrieved Employee's Individual PAGA Payment = ([Aggrieved Employee's Workweeks ÷ PAGA Workweeks] x \$5,000.00) (the "PAGA Payment").

F. Individual Settlement Payments and Individual PAGA Payments shall be paid to Participating Class Members and/or Aggrieved Employees by way of check. When a Participating Class Member is also an Aggrieved Employee, one check may be issued that aggregates both the Individual Settlement Payment and the Individual PAGA Payment.

12. DISTRIBUTION OF PAYMENTS

A. Distribution of Individual Settlement Payments.

Participating Class Members will receive an Individual Settlement Payment. All Aggrieved Employees, regardless of whether they submit a valid Request for Exclusion or not, will receive their Individual PAGA Payment. Individual Settlement Payment checks and Individual PAGA Payment checks shall remain valid and negotiable for one hundred and eighty (180) calendar days after the date of their issuance. Within seven (7) calendar days after expiration of the 180-day period, any checks from this distribution shall be canceled and the funds associated with such checks shall be considered unpaid, unclaimed, or abandoned cash residue pursuant to California Code of Civil Procedure § 384 ("Unpaid Residue"). The Unpaid Residue plus accrued interest, if any, as provided in California Code of Civil Procedure section 384, shall be transmitted as follows: to Legal Aid at Work, 180 Montgomery Street, Suite 600, San Francisco, California 94104 for use in Los Angeles County. The Settlement Administrator shall prepare a report regarding the distribution plan pursuant to California Code of Civil Procedure section 384 and the report shall be presented to the Court by Class Counsel along

1 with a proposed amended judgment that is consistent with the provisions of California Code of
2 Civil Procedure section 384.

3 **B. Funding of Settlement.**

4 Defendants shall, within thirty (30) calendar days after the Effective Date, pay the Gross
5 Settlement Amount of One Hundred Eighty-Five Thousand Dollars and Zero Cents
6 (\$185,000.00) unless the same is escalated pursuant to Paragraph 18 below (and in such event,
7 the escalated Gross Settlement Amount) to the Settlement Administrator in addition to related
8 Employer's Taxes pursuant to Internal Revenue Code section 1.468B-1 for deposit in an interest-
9 bearing qualified settlement account ("QSA") with an FDIC insured banking institution, for
10 distribution in accordance with this Agreement and the Court's orders and subject to the
11 conditions described herein.

12 Individual Settlement Payments and Individual PAGA Payments shall be paid
13 exclusively from the QSA, pursuant to the settlement formula set forth herein. Payments from
14 the QSA shall be made for (1) the Service Award to Plaintiff as specified in this Agreement and
15 approved by the Court; (2) the Attorneys' Fees and Cost Award to be paid to Class Counsel, as
16 specified in this Agreement and approved by the Court; (3) the Settlement Administrator Costs,
17 as specified in this Agreement and approved by the Court; and (4) the LWDA Payment, as
18 specified in this Agreement. \$5,000 shall be allocated to payment to Aggrieved Employees of
19 Individual PAGA Payments as set forth herein. The balance and any accrued interest thereon
20 remaining shall constitute the Net Settlement Amount from which Individual Settlement
21 Payments shall be made to Participating Class Members, less applicable taxes and withholdings.
22 All interest accrued shall be for the benefit of Participating Class Members and distributed on a
23 *pro rata* basis.

24 **C. Time for Distribution.**

25 No more than seven (7) calendar days after payment of the full Gross Settlement Amount
26 (as the same may be increased to in accordance with Paragraph 18) by Defendants, as well as
27 Employer Taxes, or after the Final Order and Judgment following a Final Fairness and Approval
28 hearing, whichever is later, the Settlement Administrator shall distribute all payments due under

1 the Settlement, including the Individual Settlement Payments to Participating Class Members
2 and Individual PAGA Payments to Aggrieved Employees, as well as the Court-approved
3 payments for the Service Award to Plaintiff, attorneys' fees and litigation costs and expenses to
4 Class Counsel, administration costs to the Settlement Administrator, and the LWDA Payment to
5 the LWDA.

6 **13. ATTORNEYS' FEES AND LITIGATION COSTS**

7 Class Counsel shall apply for, and Defendants shall not oppose, an award of attorneys'
8 fees of up to thirty-five percent (35%) of the Gross Settlement Amount, which, unless increased
9 pursuant to Paragraph 18, shall amount to Sixty-Four Thousand Seven Hundred Fifty Dollars and
10 Zero Cents (\$64,750.00). Class Counsel shall further apply for, and Defendants shall not oppose,
11 an application or motion by Class Counsel for reimbursement of actual costs associated with
12 Class Counsel's prosecution of this matter as set forth by declaration testimony in an amount up
13 to Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00). Awards of attorneys' fees and
14 costs shall be paid out of the Gross Settlement Amount, for all past and future attorneys' fees and
15 costs necessary to prosecute, settle, and obtain Final Approval of the settlement in the Action.
16 The "future" aspect of the amounts stated herein includes, without limitation, all time and
17 expenses expended by Class Counsel (including any appeals therein), except for any matters that
18 arise from Defendants' failure to materially comply with the terms of this Agreement. There will
19 be no additional charge of any kind to either the Settlement Class Members or request for
20 additional consideration from Defendants for such work unless, in the event of a material breach
21 of this Agreement by Defendants, Plaintiff is required to move the Court for enforcement of this
22 Agreement. Should the Court approve attorneys' fees and/or litigation costs and expenses in
23 amounts that are less than the amounts provided for herein, then the unapproved portion(s) shall
24 be a part of the Net Settlement Amount.

25 **14. SERVICE AWARD TO PLAINTIFF**

26 Plaintiff shall seek, and Defendants shall not oppose, a Service Award in an amount not
27 to exceed Seven Thousand, Five Hundred Dollars and Zero Cents (\$7,500.00) for participation
28 in and assistance with the Action. Any Service Award awarded to Plaintiff shall be paid from

the Gross Settlement Amount and shall be reported on an IRS Form 1099. If the Court approves a Service Award to Plaintiff in less than the amounts sought herein, then the unapproved portion(s) shall be a part of the Net Settlement Amount.

15. TAXATION AND ALLOCATION

A. Each Individual Settlement Share shall be allocated as follows: 20% as wages (to be reported on an IRS Form W2); and 80% as interest and penalties (to be reported on an IRS Form 1099). The Individual PAGA Payments to the Aggrieved Employees shall be allocated entirely as penalties (to be reported on an IRS Form 1099). The Parties agree that the employee's share of taxes and withholdings with respect to the wage-portion of the Individual Settlement Share will be withheld from the Individual Settlement Share in order to yield the Individual Settlement Payment. The amount of federal income tax withholding will be based upon a flat withholding rate for supplemental wage payments in accordance with Treas. Reg. § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also be made pursuant to applicable state and/or local withholding codes or regulations.

B. Forms W-2 and/or Forms 1099 will be distributed by the Settlement Administrator at times and in the manner required by the Internal Revenue Code of 1986 (the "Code") and consistent with this Agreement. If the Code, the regulations promulgated thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes set forth in this Section may be modified in a manner to bring Defendants into compliance with any such changes.

C. All Employer Taxes shall be paid by Defendants separate, apart and above from the Gross Settlement Amount. Defendants shall remain liable to pay the employer's share of payroll taxes as described above.

D. Neither Counsel for Plaintiff nor Defendants intend anything contained in this Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Agreement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended) or otherwise.

1 **16. PRIVATE ATTORNEYS' GENERAL ACT ALLOCATION**

2 The Parties agree to allocate Twenty Thousand Dollars and Zero Cents (\$20,000.00) of
3 the Gross Settlement Amount toward PAGA penalties. Pursuant to the PAGA, seventy-five
4 percent (75%) of the amount allocated toward PAGA (\$15,000.00) will be paid to the LWDA
5 (*i.e.*, the LWDA Payment), and twenty-five percent (25%) of the amount allocated toward PAGA
6 (\$5,000.00) shall be deemed the "PAGA Payment" and distributed to Aggrieved Employees on
7 a *pro rata* basis based upon their respective Workweeks worked during the PAGA Period (*i.e.*,
8 the Individual PAGA Payments).

9 **17. COURT APPROVAL**

10 This Agreement is contingent upon an order by the Court granting Final Approval of the
11 Settlement, that the LWDA does not intervene and/or object to the Settlement and that this
12 Agreement becomes Effective, as defined in Paragraph 1(I), above. In the event it becomes
13 impossible to secure approval of the Settlement by the Court and the LWDA or the Agreement
14 does not become Effective, the Parties shall be restored to their respective positions in the Action
15 prior to entry of this Settlement. If this Settlement Agreement is voided, not approved by the
16 Court or approval is reversed on appeal, it shall have no force or effect and no Party shall be
17 bound by its terms except to the extent: (a) the Court reserves any authority to issue any
18 appropriate orders when denying approval; and/or (b) there are any terms and conditions in this
19 Settlement Agreement specifically stated to survive the Settlement Agreement being voided or
20 not approved, and which control in such an event.

21 **18. INCREASE IN WORKWEEKS**

22 Defendants represent and warrant that there are no more than fifty-nine (59) Settlement
23 Class Members and that there are no more than three thousand one hundred twenty (3,120)
24 Workweeks worked by fifty-nine (59) Settlement Class Members during the Class Period. In
25 the event the number of Workweeks during the Class Period increases by more than 10%, or
26 312 Workweeks, then the Gross Settlement Amount shall be increased proportionally by the
27 Workweeks in excess of 3,432 (3,120 Workweeks + 312 Workweeks) multiplied by the
28 Workweek Value. The Workweek Value shall be calculated by dividing the Gross Settlement

1 Amount (\$185,000.00) by 3,120. The Parties agree that the Workweek Value amounts to
2 \$59.29 (\$185,000.00 / 3,120 workweeks). Thus, for example, should there be 3,500
3 Workweeks in the Class Period, then the Gross Settlement Amount shall be increased by
4 \$4,031.72. (3,500 Workweeks – 3,432 Workweeks x \$59.29.)

5 **19. VOIDING OF SETTLEMENT AND RETURN OF GROSS SETTLEMENT**
6 **AMOUNT AND EMPLOYERS' TAXES**

7 Defendants have the option of voiding this Agreement within ten (10) calendar days after
8 expiration of the opt-out period if five percent (5%) of the Settlement Class members opt out of
9 the Settlement, which option shall be exercised by providing written notice to Class Counsel and
10 the Settlement Administrator no later than twenty (20) calendar days after expiration of the opt-
11 out period. If the foregoing occurs, this Agreement shall be null and void *ab initio*, no Party shall
12 be bound by the terms thereof, and this Agreement shall not be admissible or offered into
13 evidence in the litigation or any other action for any purpose whatsoever, and any order or
14 judgment entered by the Court in furtherance of this Agreement shall be treated as withdrawn or
15 vacated by stipulation of the Parties. In such case, the Parties shall be returned to their respective
16 positions as of the date immediately prior to the execution of this Agreement, the Parties shall
17 proceed in all respects as if this Agreement had not been executed, Defendants shall have no
18 obligation to make any payments to Plaintiff, Counsel for Plaintiff, the LWDA, or any Class
19 Member, and the Settlement Administrator shall return the entirety of the Gross Settlement
20 Amount and Employers' Taxes to Defendants within seven (7) calendar days of receipt of
21 Defendants' written notice exercising the option to void this Agreement. In the event that
22 Defendants void the Settlement pursuant to the terms of this Agreement, any amounts owed to
23 the Settlement Administrator shall be paid by Defendants solely.

24 **20. NOTICE OF JUDGMENT**

25 In addition to any duties set out herein, the Settlement Administrator shall provide notice
26 of the Final Judgment entered in the Action by posting the same on its website for at least four
27 (4) years after the Judgment becomes final.
28

1 **21. MISCELLANEOUS PROVISIONS**

2 **A. Interpretation of the Agreement.**

3 This Agreement constitutes the entire agreement between Plaintiff and Defendants with
4 respect to its subject matter. Except as expressly provided herein, this Agreement has not been
5 executed in reliance upon any other written or oral representations or terms, and no such extrinsic
6 oral or written representations or terms shall modify, vary or contradict its terms. In entering
7 into this Agreement, the Parties agree that this Agreement is to be construed according to its
8 terms and may not be varied or contradicted by extrinsic evidence. The Agreement will be
9 interpreted and enforced under the laws of the State of California, both in its procedural and
10 substantive aspects, without regard to its conflict of law provisions. Any claim arising out of or
11 relating to the Agreement, or the subject matter hereof, will be resolved solely and exclusively
12 in the Superior Court of the State of California for the County of Los Angeles, and Plaintiff and
13 Defendants hereby consent to the personal jurisdiction of the Court in the Action over it solely
14 in connection therewith. Plaintiff, on Plaintiff's own behalf and on behalf of the Settlement
15 Class, and Defendants participated in the negotiation and drafting of this Agreement and had
16 available to them the advice and assistance of independent counsel. As such, neither Plaintiff
17 nor Defendants may claim that any ambiguity in this Agreement should be construed against the
18 other. The Agreement may be modified only by a writing signed by counsel for the Parties and
19 approved by the Court.

20 **B. Further Cooperation.**

21 Plaintiff, Defendants, and their respective attorneys shall proceed diligently to prepare
22 and execute all documents, to seek the necessary approvals from the Court, and to do all things
23 reasonably necessary to consummate the Settlement as expeditiously as possible. The Parties
24 agree that they will not take any action inconsistent with this Agreement, including, without
25 limitation, encouraging Class Members to opt out of the Settlement. In the event the Court finds
26 that any Party has taken actions inconsistent with the Settlement, including, without limitation,
27 encouraging Class Members to opt out of the Settlement, the Court may take any corrective
28 actions, including enjoining any Party from communicating regarding the Settlement on an *ex*

1 *parte* basis, issuing (a) corrective notice(s), awarding monetary, issue, evidentiary and/or
2 terminating sanctions against that Party, and/or enforcing this Agreement despite the presence of
3 opt-outs and/or objections.

4 **C. Counterparts.**

5 The Agreement may be executed in one or more actual or non-original counterparts, all
6 of which will be considered one and the same instrument and all of which will be considered
7 duplicate originals.

8 **D. Authority.**

9 Each individual signing below warrants that he or she has the authority to execute this
10 Agreement on behalf of the party for whom or which that individual signs.

11 **E. No Third-Party Beneficiaries.**

12 Plaintiff, Participating Class Members, Aggrieved Employees, Class Counsel, the State
13 of California and Defendants are direct beneficiaries of this Agreement, but there are no third-
14 party beneficiaries.

15 **F. Deadlines Falling on Weekends or Holidays.**

16 To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday,
17 or legal holiday, that deadline shall be continued until the following business day.

18 **G. Severability.**

19 In the event that one or more of the provisions contained in this Agreement shall for any
20 reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
21 unenforceability shall in no way effect any other provision if Defendants' Counsel and Class
22 Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed
23 as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

24 **H. Acknowledgement that the Settlement is Fair and Reasonable.**

25 The Parties believe this Settlement Agreement is a fair, adequate, and reasonable
26 settlement of the Action and have arrived at this Settlement after arm's-length negotiations and
27 in the context of adversarial litigation, taking into account all relevant factors, present and
28 potential. The Parties further acknowledge that they are each represented by competent counsel
and that they have had an opportunity to consult with their counsel regarding the fairness and

1 reasonably of this Settlement.

2 **I. Invalidity of Any Provision.**

3 Before declaring any provision of this Agreement invalid, the Court will first attempt to
4 construe the provision as valid to the fullest extent possible consistent with applicable precedents
5 so as to define all provisions of this Agreement valid and enforceable.

6 **J. Waiver of Certain Appeals.**

7 The Parties agree to waive appeals as to any Court Order approving this Settlement
8 Agreement and to stipulate to class certification for purposes of this Settlement only; except,
9 however, that either party may appeal any court order that materially alters the Settlement
10 Agreement's terms.

11 **K. Captions.**

12 The captions and section numbers in this Agreement are inserted for the reader's
13 convenience, and in no way define, limit, construe or describe the scope or intent of the
14 provisions of this Agreement.

15 **L. Waiver.**

16 No waiver of any condition or covenant contained in this Settlement Agreement or failure
17 to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute
18 a further waiver by such party of the same or any other condition, covenant, right or remedy.

19 **M. Mutual Preparation.**

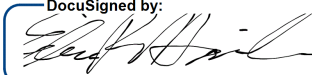
20 The Parties have had a full opportunity to negotiate the terms and conditions of this
21 Agreement. Accordingly, this Agreement will not be construed more strictly against one Party
22 than another merely by virtue of the fact that it may have been prepared by counsel for one of the
23 Parties, it being recognized that, because of the arms-length negotiations between the Parties, all
24 Parties have contributed to the preparation of this Settlement Agreement.

25 **N. Representation By Counsel.**

26 The Parties acknowledge that they have been represented by counsel throughout all
27 negotiations that preceded the execution of this Agreement, and that this Agreement has been
28 executed with the consent and advice of counsel and reviewed in full. Further, Plaintiff and Class
Counsel warrant and represent that there are no liens on the Agreement.

IT IS SO AGREED:

Dated: 5/31/2023, 2023

DocuSigned by:

DCEF241DFE3D43B...
EDVIN AGUILAR
Plaintiff and Class Representative

Dated: , 2023

BIONEISS INC.
Defendant
By:
Its:

Dated: , 2023

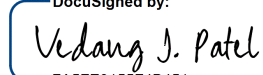
BIOVENTUS LLC
Defendant
By:
Its:

Dated: , 2023

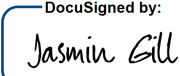
KENNETH REALI
Defendant

AGREED AS TO FORM ONLY:

Dated: 5/31/2023, 2023

DocuSigned by:

7A5FE9155F4B451...
DAVID D. BIBIYAN
VEDANG PATEL
Bibiyan Law Group, P.C.
Counsel for Plaintiff Edvin Aguilar

Dated: 5/31/2023, 2023

DocuSigned by:

5D32084045BA4D2...
JASMIN K. GILL
J. Gill Law Group, P.C.
Counsel for Plaintiff Edvin Aguilar

Dated: , 2023

SHIVA SHIRAZI DAVOUDIAN
JAMES PAYER
Littler Mendelson, P.C.
**Counsel for Defendants Bioness Inc.,
Bioventus LLC, and Kenneth Reali**

1 **IT IS SO AGREED:**

2 Dated: _____, 2023

EDVIN AGUILAR
Plaintiff and Class Representative

3
4 Dated: May 31, 2023


BIONESS INC.

Defendant

By: Anthony D'Adamo

Its: Secretary

5
6
7
8 Dated: May 31, 2023


BIOVENTUS LLC

Defendant

By: Anthony D'Adamo

Its: Secretary

9
10
11
12 Dated: May 31, 2023



KENNETH REALI

Defendant

13
14 **AGREED AS TO FORM ONLY:**

15
16
17 Dated: _____, 2023

DAVID D. BIBIYAN
VEDANG PATEL
Bibiyon Law Group, P.C.
Counsel for Plaintiff Edvin Aguilar

18
19
20
21 Dated: _____, 2023

JASMIN K. GILL
J. Gill Law Group, P.C.
Counsel for Plaintiff Edvin Aguilar

22
23
24 Dated: May 31, 2023



SHIVA SHIRAZI DAVOUDIAN
JAMES PAYER
Littler Mendelson, P.C.
**Counsel for Defendants Bioness Inc.,
Bioventus LLC, and Kenneth Real**

EXHIBIT A

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL APPROVAL*Edvin Aguilar v. Bioness Inc., et al.*

(County of Los Angeles, California Superior Court Case No. 21STCV41702)

As a current or former non-exempt California employee for Bioness Inc. and/or Bioventus LLC you are entitled to receive money from a class action settlement.

Please read this Notice carefully. This Notice relates to a proposed settlement of class action litigation. If you are a Class Member, it contains important information about your right to receive a payment from the Settlement fund.

You have received this Notice of Class Action Settlement because the records of Bioness Inc. and Bioventus LLC (“Defendants”) show you are a “Class Member,” and therefore entitled to a payment from this class action Settlement. Class Members are all persons currently or formerly employed by Defendants as non-exempt employees in the State of California any time from November 4, 2020 through June 6, 2023.

- The settlement resolves a class action lawsuit, *Aguilar v. Bioness Inc., et al.* (the “Lawsuit”), which alleges Defendants: (1) failed to pay Class Members overtime wages, (2) failed to pay Class Members minimum wages, (3) failed to provide Class Members legally-compliant meal and rest breaks under California law, (4) failed to provide Class Members with legally compliant wage statements, (5) failed to timely pay all wages due upon termination or resignation, (6) failed to reimburse employees for business expenses, and (7) engaged in unfair business practices (“Class Claims”). Based on these and other alleged Labor Code violations, Plaintiff also seek penalties under the California Labor Code Private Attorney Generals Act (“PAGA”).
- On [REDACTED], the Los Angeles County Superior Court granted preliminary approval of this class action Settlement and ordered that all Class Members be notified of the Settlement. The Court has not made any determination of the validity of the claims in the Lawsuit. Defendants vigorously deny the claims in the Lawsuit and contend that they fully complied with all applicable laws.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE PAYMENT	Get a payment, and give up your legal rights to pursue claims released by the settlement of the Lawsuit.
OPT OUT OF THE SETTLEMENT	Exclude yourself from the Settlement of the Class Claims, get no payment for settlement of the Class Claims, and retain your legal rights to individually pursue the Class Claims that would otherwise be released by the settlement of the Lawsuit. If you worked from November 4, 2020 through and including the end of the Class Period (“PAGA Period”) as a non-exempt employee of Defendants, then you will be also be deemed an “Aggrieved Employee” and you will still receive your share of the proceeds available from the settlement of the PAGA Released Claims, defined below, (your “Individual PAGA Payment”) regardless of whether you opt out of the class settlement.
OBJECT TO THE SETTLEMENT	If you do not opt out, you may write to the Settlement Administrator, Phoenix Settlement Administrators, about why you object to the settlement and they will forward your

Questions? Contact the Settlement Claims Administrator toll free at [PHONE NUMBER]

	concerns to counsel which will then be provided to the Court. If the Court approves the Settlement despite your objection, you will still be bound by the Settlement. If you timely object, you or your attorney may also address the Court during the Final Approval hearing scheduled for [DATE AND TIME] in the Spring Street Courthouse of Los Angeles County Superior Court, located at 312 North Spring Street, Los Angeles, California 90012.
--	---

The Final Fairness and Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at [REDACTED] .m. on [REDACTED], in the Spring Street Courthouse of the Los Angeles County Superior Court, located at 312 North Spring Street, Department SS-7, Los Angeles, California 90012. You are not required to attend the Hearing, but you are welcome to do so.

Why Am I Receiving This Notice?

Defendants' records show that you currently work, or previously worked, for Defendants as a non-exempt employee in the State of California any time from November 4, 2020 through June 6, 2023. You were sent this Class Notice because you have a right to know about a proposed settlement of a class action lawsuit, and about all of your options before the Court decides whether to finally approve the settlement. If the Court approves the settlement and then any objections and appeals are resolved, a "Settlement Administrator" appointed by the Court will make the payments described in this Notice. This Notice explains the Lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

What Is This Case About?

Edvin Aguilar was a non-exempt employee for Defendants in California. He is the "Plaintiff" in this case and is suing on behalf of himself and Class Members for Defendants' alleged failure to pay overtime wages, failure to pay minimum wages, failure to provide legally-compliant meal and rest breaks under California law, failure to provide compliant wage statements, failure to timely pay all wages due upon termination or resignation, failure to reimburse employees for business expenses, and engagement in unfair business practices. Based on these and other alleged Labor Code violations, Plaintiff also seeks to recover penalties under the PAGA.

Defendants deny all of the allegations made by Plaintiff and deny that they violated any law. The Court has made no ruling on the merits of Plaintiff's claims. The Court has only preliminarily approved this Class Action Settlement. The Court will decide whether to give final approval to the Settlement at the Final Fairness and Approval Hearing.

Summary of the Settlement Terms

Plaintiff and Defendants have agreed to settle this case on behalf of themselves and the Class Members for the Gross Settlement Amount of \$185,000.00, unless the Gross Settlement Amount is escalated pursuant to the Agreement. The Gross Settlement includes: (1) Administration Costs of up to \$5,995.00; (2) a service payment of up to \$7,500.00 to Plaintiff for his time and effort in pursuing this case and in exchange for a broader release of claims against Defendants; (3) up to 35% in attorneys' fees which, unless the Gross Settlement Amount is escalated pursuant to the Agreement, amounts to \$64,750.00 in attorneys' fees; (4) actual litigation costs up to \$25,000.00 to Class Counsel; and (5) payment allocated to PAGA penalties in the amount of \$20,000.00, \$15,000.00 of which will be payable to the Labor and Workforce Development Agency ("LWDA") and \$5,000.00 of which will be payable to Aggrieved Employees. After deducting these sums, a total of approximately \$61,755.00 will be available for distribution to Class Members ("Net Settlement Amount"), and an additional \$5,000.00 to Aggrieved Employees. In addition to the Gross Settlement,

Questions? Contact the Settlement Claims Administrator toll free at [PHONE NUMBER]

Defendants will separately pay all employer-side payroll tax payments due and payable to federal and state tax authorities as a result of this Settlement.

Distribution to Class Members and Aggrieved Employees

Class Members who do not opt out will receive a *pro rata* payment based on the number of verified actual weeks worked by Class Members for Defendants during the Class Period (“Eligible Workweeks”). Specifically, Class Members’ payments will be calculated by dividing the number of Eligible Workweeks attributed to the Class Member by all Eligible Workweeks attributed to members of the Settlement Class, multiplied by the Net Settlement Amount. Otherwise stated, the formula for a Class Member is: (individual’s Eligible Workweeks ÷ total Settlement Class Eligible Workweeks) x Net Settlement Amount. In addition, Class Members who worked during the PAGA Period will receive a pro rata share of the \$5,000 allocated as PAGA penalties, whether or not they opt out, based on the number of workweeks worked by the Class Member during the PAGA Period.

Defendants’ records indicate that you worked [Eligible Workweeks] as a non-exempt employee in California during the Class Period and [Eligible Pay Periods] during the PAGA Period. Based on these records, your estimated payment as a Class Member would be [\$Estimated Award] and your estimated payment for PAGA civil penalties would be [\$Estimated Award]. If you believe this information is incorrect and wish to dispute it, you must mail a dispute to the Settlement Administrator no later than [RESPONSE DEADLINE]. Please include any documentation you have that you contend supports your dispute.

Tax Reporting

100% of the payments for PAGA penalties to Aggrieved Employees will be allocated as penalties reported on an IRS Form 1099; 20% of each Settlement Payment will be allocated as wages and reported on an IRS Form W-2; and 80% will be allocated as penalties and interest reported on an IRS Form 1099. This notice is not intended to provide legal or tax advice on your Settlement Share.

Your Options Under the Settlement

Option 1 – Do Nothing and Receive Your Payment

If you do not opt out, you are automatically entitled to your Settlement Check because you are a Class Member. If you do not dispute your settlement share calculation and do not opt out of the settlement, you will be bound by the settlement and receive a settlement payment. **In other words, if you are a Class Member, you do not need to take any action to receive the settlement payment set forth above.**

Settlement payment checks must be cashed soon after receipt. The Settlement checks will be able to be cashed for 180 days after they are issued. Within 7 days after expiration of the 180-day period, the Settlement checks will no longer be able to be cashed. Any funds represented by Settlement checks remaining uncashed for more than 180 days after issuance shall be considered unpaid, unclaimed or abandoned funds and shall be transmitted to Legal Aid at Work, 180 Montgomery Street, Suite 600, San Francisco, California 94104 for use in the County of Los Angeles, State of California.

Class Members who do not submit a valid and timely opt out (pursuant to Section 2 below), will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released Claims he or she may have or had upon final approval of this Settlement, entry of judgment, and payment by Defendants to the Settlement Administrator of the full Gross Settlement Amount and Employer’s Taxes pursuant to the Agreement.

Questions? Contact the Settlement Claims Administrator toll free at [PHONE NUMBER]

“Class Released Claims” means all claims against the Released Parties asserted in the Operative Complaint, or any and all claims that may be asserted against the Released Parties based on the factual allegations in the Operative Complaint, as follows: For Participating Class Members, the release includes, for the duration of the Class Period: (a) all claims for failure to pay minimum wages; (b) all claims for failure to pay overtime wages; (c) all claims for failure to provide compliant meal and rest periods or compensation in lieu thereof; (d) all claims for failure to timely pay all wages due upon termination or resignation; (e) all claims for non-compliant wage statements; (f) all claims for failure to reimburse business expenses; and (g) all claims asserted through California Business & Professions Code § 17200 *et seq.* arising out of the Labor Code violations referenced in the Operative Complaint, including Labor Code section 96, 98.6, 200, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 232, 232.5, 246, 432, 510, 512, 558, 558.1, 1102.5, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198.5, 1199, 2802, and 2810.5 (the “Class Released Claims”).

For Aggrieved Employees, the release includes, for the duration of the PAGA Period, all claims asserted in the PAGA Notice and alleged in the Operative Complaint, including all claims for civil penalties under PAGA arising out of Labor Code sections 96, 98.6, 200, 201, 202, 203, 210, 226, 226.3, 226.7, 227.3, 232, 232.5, 510, 512, 558, 558.1, 1102.5, 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.5, 1199, 2802, and 2699 based on the factual allegations and Labor Code sections alleged to have been violated in the PAGA Notice and Operative Complaint, which includes, without limitation, Labor Code sections 204, 226.3, 246, 432, 1174, 1198.5, and 2810.5 (the “PAGA Released Claims”).

“Class Period” means the period from November 4, 2020 through June 6, 2023.

“PAGA Period” means the period from November 4, 2020 through the end of the Class Period.

“Released Parties” shall mean Defendants Bioness Inc., Bioventus LLC, and Kenneth Reali as well as each of Bioness Inc.’s and Bioventus LLC’s present and former respective affiliates, parents, subsidiaries, predecessors, successors, divisions, joint venturers and assigns, and each of these entities’ past or present directors, officers, employees, partners, members, principals, agents, insurers, shareholders, attorneys, and personal or legal representatives.

Option 2 – Opt Out of the Settlement

If you do not wish to participate in the Settlement, you may exclude yourself by submitting a written request to be excluded from the Class. Your written request must expressly and clearly indicate that you do not want to participate in the Settlement, and you desire to be excluded from the Settlement. The written request for exclusion must include your name, your Social Security Number, your signature, and the following statement or something to its effect: “Please exclude me from the Settlement Class in the *Edvin Aguilar v. Bioness Inc., et al.* matter”. Sign, date, and mail your written request for exclusion by U.S. First-Class Mail to the address below.

The proposed settlement includes the settlement of the PAGA Released Claims. An employee may not request exclusion from the settlement of the PAGA Released Claims. Thus, if the court approves the settlement, then even if you request exclusion from the settlement, you will still receive an individual settlement share for the PAGA Released Claims and will be deemed to have released the PAGA Released Claims. A request for exclusion will preserve your right to individually pursue only the remaining Class Released Claims.

[Settlement Administrator]

[Mailing Address]

The written request to be excluded from the Settlement must be postmarked or received by the Administrator not later than **[RESPONSE DEADLINE]**. If you exclude yourself from the Settlement then you will get no payment, and retain your legal rights to pursue claims that would otherwise be released by the settlement of the Lawsuit.

Questions? Contact the Settlement Claims Administrator toll free at [PHONE NUMBER]

Option 3 – File an Objection to the Settlement

If you wish to object to the Settlement, you may file an objection in writing stating why you object to the Settlement. Your objection must provide your full name, your address, the last 4 digits of your social security number, your signature, a statement of whether you plan to appear at the Final Fairness and Approval Hearing, and your reasons for why you think the Court should not approve the Settlement, along with whatever legal authority, if any, you assert supports your objection. Your objection must be mailed to the Administrator no later than **[RESPONSE DEADLINE]**. Please note that you cannot both object to the Settlement and exclude yourself. If the Court overrules your objection, you will be bound by the Settlement and will receive your Settlement Share.

Final Fairness Hearing

You may, if you wish, also appear at the Final Fairness and Approval Hearing set for **[REDACTED]** at **[REDACTED]** .m. in the Spring Street Courthouse of the Los Angeles County Superior Court, located at 312 North Spring Street, Department SS-7, Los Angeles, California 90012, and discuss your objections with the Court and the Parties at your own expense. You may also retain an attorney to represent you at the Hearing at your own expense.

Additional Information

This Notice of Class Action Settlement is only a summary of this case and the Settlement. For a more detailed statement of the matters involved in this case and the Settlement, you may visit **www.[REDACTED].com**, call the Settlement Administrator at **[PHONE NUMBER]** or Class Counsel, who may be reached as follows:

BIBIYAN LAW GROUP, P.C.

David D. Bibiyan
david@tomorrowlaw.com
Diego Aviles (habla Español)
diego@tomorrowlaw.com
Vedang Patel
vedang@tomorrowlaw.com
8484 Wilshire Blvd., Suite 500
Beverly Hills, CA 90211
Telephone: (310) 438-5555
Facsimile: (310) 300-1705

J. GILL LAW GROUP, P.C.

Jasmin K. Gill
jasmin@jkgilllaw.com
Sacha Pomares
sacha@jkgilllaw.com
515 South Flower Street, Suite 1800
Los Angeles, CA 90071
Telephone: (213) 459-6023 (habla Español)
Facsimile: (310) 728-2137

You may also refer to the pleadings, the Settlement Agreement, and other papers filed in this case, which may be inspected at the Office of the Clerk of the Los Angeles County Superior Court, located at **[ADDRESS]**, during regular business hours of each court day.

All inquiries by Class Members regarding this Notice of Class Action Settlement and/or the Settlement should be directed to the Settlement Administrator.

**PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE,
DEFENDANTS, OR DEFENDANTS' ATTORNEYS WITH INQUIRIES.**

Questions? Contact the Settlement Claims Administrator toll free at **[PHONE NUMBER]**

EXHIBIT B

1 BIBIYAN LAW GROUP, P.C.

David D. Bibiyan, Esq. (Cal Bar No. 287811)

2 Vedang Patel, Esq. (Cal Bar No. 328647)

8484 Wilshire Boulevard, Suite 500

3 Beverly Hills, California 90211

Tel: (310) 438-5555; Fax: (310) 300-1705

4 J. GILL LAW GROUP, P.C.

Jasmin K. Gill, Esq. (Cal Bar No. 315090)

5 Sacha Pomares, Esq. (Cal Bar No. 337642)

515 South Flower Street, Suite 1800

6 Los Angeles, California 90071

Tel: (213) 459-6023; Fax: (310) 728-2137

7 Attorneys for Plaintiff, EDVIN AGUILAR, as an individual and on behalf of all others
8 similarly situated and aggrieved,**9 SUPERIOR COURT OF THE STATE OF CALIFORNIA****10 FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE****11**
12 EDVIN AGUILAR, as an individual and on
13 behalf of all others similarly situated and
14 aggrieved,

CASE NO.: 21STCV41702

[Assigned to the Hon. Lawrence P. Riff in Dept.
SS-7]**FIRST AMENDED COMPLAINT FOR:****15 Plaintiffs,****16 v.****17 BIONESS INC., a Delaware corporation;**
18 BIOVENTUS LLC, a Delaware limited
19 liability company; KENNETH REALI, an
20 individual; and DOES 1 through 100,
21 inclusive,**22 Defendants.**

1. VIOLATION OF PAGA;
2. FAILURE TO PAY OVERTIME WAGES;
3. FAILURE TO PAY MINIMUM WAGES;
4. FAILURE TO PROVIDE MEAL PERIODS;
5. FAILURE TO PROVIDE REST PERIODS;
6. WAITING TIME PENALTIES;
7. WAGE STATEMENT VIOLATIONS;
8. FAILURE TO INDEMNIFY;
9. FAILURE TO TIMELY PAY WAGES PER LABOR CODE § 210; and
10. UNFAIR COMPETITION;

23 DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

COMES NOW plaintiff EDVIN AGUILAR (“Plaintiff”), on behalf of Plaintiff and all others similarly situated and aggrieved, and alleges as follows:

GENERAL ALLEGATIONS

INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against BIONESS INC. (“Bioness”), BIOVENTUS LLC (“BioVentus”), KENNETH REALI (“Real”), and any of their respective subsidiaries or affiliated companies within the State of California (Bioness, BioVentus, Real, and DOES 1 through 100, as further defined below, are collectively hereinafter referred to as “Defendants”) on behalf of Plaintiff and all other current and former non-exempt California employees employed by or formerly employed by Defendants (“Class Members”).

2. This is also an individual and representative PAGA action, pursuant to the Labor Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), against Defendants, and any of their respective subsidiaries or affiliated companies within the State of California, as a proxy of the Labor and Workforce Development Agency of the State of California (“LWDA”), on behalf of Plaintiff and all other current and former non-exempt employees of Defendants working within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims for failure to comply with Labor Code section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 227.3, Labor Code section 246, *et seq.*, Labor Code section 2802, restraints on competition, whistleblowing and freedom of speech on behalf of all employees of Defendants working within the Civil Penalty Period (collectively, “Aggrieved Employees”).

PARTIES

A. Plaintiff

3. Plaintiff EDVIN AGUILAR is a resident of the State of California. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges that Defendants employed Plaintiff as a non-exempt employee, with duties that included, but were not limited to, testing and troubleshooting software and products as well as customer service and consumer support duties. Plaintiff is informed and believes, and based thereon alleges that Plaintiff EDVIN AGUILAR

1 worked for Defendants from approximately 2013 through August 31, 2022.

2 **B. Defendants**

3 4. Plaintiff is informed and believes and based thereon alleges that defendant Bioness
4 is, and at all times relevant hereto was, a corporation organized, authorized, and licensed to do
5 business in the State of Delaware. Plaintiff is further informed and believes, and based thereon
6 alleges, that defendant Bioness is authorized to, and does in fact, operate and do business in the
7 County of Los Angeles, State of California. At all relevant times herein, defendant Bioness
8 employed Plaintiff and similarly situated and aggrieved employees within the State of California.

9 5. Plaintiff is informed and believes and based thereon alleges that defendant Bioness
10 is, and at all times relevant hereto was, a “person” as defined in Labor Code section 17 and Cal.
11 Bus. & Prof. Code § 17201.

12 6. Plaintiff is informed and believes and based thereon alleges that defendant
13 BioVentus is, and at all times relevant hereto was, a limited liability company organized and existing
14 under and by virtue of the laws of the State of Delaware. Plaintiff is further informed and believes,
15 and based thereon alleges, that BioVentus is, and at all times relevant hereto was, authorized to and
16 operating and doing business in the County of Los Angeles, State of California with members and
17 managers domiciled in and citizens of the State of California. At all relevant times herein, defendant
18 BioVentus employed Plaintiff and similarly situated and aggrieved employees within the State of
19 California.

20 7. Plaintiff is informed and believes and based thereon alleges that defendant
21 BioVentus is, and at all times relevant hereto was, a “person” as defined in Labor Code section 17
22 and Cal. Bus. & Prof. Code § 17201.

23 8. Plaintiff is informed and believes and based thereon alleges that defendant RealI is,
24 and at all times relevant hereto was, an individual residing in California, as well as the principal,
25 owner, officer, director, member, manager and/or managing agent for Bioness, BioVentus and
26 DOES 1 through 100, as further defined below. Plaintiff is further informed and believes and based
27 thereon alleges that RealI violated, or caused to be violated, the above-referenced and below-
28 referenced Labor Code provisions in violation of Labor Code section 558.1.

9. The true names and capacities, whether individual, corporate, associate, or otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff, who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed and believes and based thereon alleges that each of the defendants designated herein as DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the defendants designated hereinafter as DOES when such identities become known. Plaintiff is informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the other defendants. Whenever, heretofore or hereinafter, reference is made to "Defendants," it shall include Bioness, BioVentus, Reali, and any of their parent, subsidiary, or affiliated companies within the State of California, as well as DOES 1 through 100 identified herein.

JOINT LIABILITY ALLEGATIONS

10. Plaintiff is informed and believes and based thereon alleges that all the times mentioned herein, each of the Defendants was the agent, principal, employee, employer, representative, joint venture or co-conspirator of each of the other defendants, either actually or ostensibly, and in doing the things alleged herein acted within the course and scope of such agency, employment, joint venture, and conspiracy.

11. All of the acts and conduct described herein of each and every corporate defendant was duly authorized, ordered, and directed by the respective and collective defendant corporate employers, and the officers and management-level employees of said corporate employers. In addition thereto, said corporate employers participated in the aforementioned acts and conduct of their said employees, agents, and representatives, and each of them; and upon completion of the aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded, acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the aforementioned corporate employees, agents and representatives.

1 12. Plaintiff is further informed and believes and based thereon alleges that Reali
2 violated, or caused to be violated, the above-referenced and below-referenced Labor Code
3 provisions in violation of Labor Code section 558.1.

4 13. Plaintiff is informed and believes, and based thereon alleges, that there exists such a
5 unity of interest and ownership between and among Defendants, and each of them, that their
6 individuality and separateness have ceased to exist.

7 14. Plaintiff is informed and believes, and based thereon alleges that despite the
8 formation of the purported corporate, DBA, and/or limited liability existence of Bioness, BioVentus,
9 and DOES 1 through 50, inclusive (the “Alter Ego Defendants”), they, and each of them, are one
10 and the same with Reali, and DOES 51 through 100 (“Individual Defendants”), and each of them,
11 due to, but not limited to, the following reasons:

- 12 a. The Alter Ego Defendants are completely dominated and controlled by the
13 Individual Defendants who personally committed the wrongful and illegal acts
14 and violated the laws as set forth in this Complaint, and who has hidden and
15 currently hide behind the Alter Ego Defendants to perpetrate frauds,
16 circumvent statutes, or accomplish some other wrongful or inequitable
17 purpose;
- 18 b. The Individual Defendants derive actual and significant monetary benefits by
19 and through the Alter Ego Defendants’ unlawful conduct, and by using the
20 Alter Ego Defendants as the funding source for the Individual Defendants’
21 own personal expenditures;
- 22 c. Plaintiff is informed and believes and thereon alleges that the Individual
23 Defendants and the Alter Ego Defendants, while really one and the same, were
24 segregated to appear as though separate and distinct for purposes of
25 perpetrating a fraud, circumventing a statute, or accomplishing some other
26 wrongful or inequitable purpose;
- 27 d. Plaintiff is informed and believes and thereon alleges that the business affairs
28 of the Individual Defendants and the Alter Ego Defendants are, and at all

1 relevant times mentioned herein were, so mixed and intermingled that the
2 same cannot reasonably be segregated, and the same are inextricable
3 confusion. The Alter Ego Defendants are, and at all relevant times mentioned
4 herein were, used by the Individual Defendants as mere shells and conduits
5 for the conduct of certain of their, and each of their affairs. The Alter Ego
6 Defendants are, and at all relevant times mentioned herein were, the alter egos
7 of the Individual Defendants;

8 e. The recognition of the separate existence of the Individual Defendants and
9 the Alter Ego Defendants would promote injustice insofar that it would
10 permit defendants to insulate themselves from liability to Plaintiff for
11 violations of the Civil Code, Labor Code, and other statutory violations. The
12 corporate existence of these defendants should thus be disregarded in equity
13 and for the ends of justice because such disregard is necessary to avoid fraud
14 and injustice to Plaintiff herein;

15 f. Accordingly, the Alter Ego Defendants constitute the alter ego of the
16 Individual Defendants (and vice versa), and the fiction of their separate
17 corporate, limited liability, and/or DBA existence must be disregarded.

18 15. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
19 thereon alleges that Defendants, and each of them, are joint employers.

20 **JURISDICTION**

21 16. Jurisdiction exists in the Superior Court of the State of California pursuant to Code
22 of Civil Procedure section 410.10.

23 17. Venue is proper in Los Angeles County, California pursuant to Code of Civil
24 Procedure sections 392, *et seq.* because, among other things, Los Angeles County is where the
25 causes of action complained of herein arose; the county in which the employment relationship
26 began; the county in which performance of the employment contract, or part of it, between Plaintiffs,
27 or some of them, and Defendants was due to be performed; the county in which the employment
28 contract, or part of it, between Plaintiffs, or some of them, and Defendants was actually performed;

1 the county in which Defendants, or some of them, have their principal place of business; and the
2 county in which Defendants, or some of them, reside. Moreover, the unlawful acts alleged herein
3 have a direct effect on Plaintiff, Class Members, and Aggrieved Employees in Los Angeles County,
4 and because Defendants employ numerous Class Members and Aggrieved Employees in Los
5 Angeles County.

6 18. Plaintiff is an “aggrieved employee” under PAGA, as Plaintiff was employed by
7 Defendants during the applicable statutory period and suffered one or more of the Labor Code
8 violations set forth herein. Accordingly, Plaintiff seeks to recover civil penalties, as the term “civil
9 penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code
10 Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”) plus
11 reasonable attorneys’ fees and costs, for Plaintiff and all other aggrieved current and former
12 employees of Defendants during the Civil Penalty Period.

13 19. Specifically, Plaintiff seeks to recover PAGA civil penalties through an individual
14 and representative action permitted by PAGA and the California Supreme Court in, among other
15 authorities, *Arias v. Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class
16 certification of the PAGA allegations described herein is not required.

17 20. During the period beginning one (1) year preceding the provision of notice to the
18 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
19 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226,
20 226.3, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512, 558, 558.1, 1102.5, 1174, 1174.5, 1194,
21 1194.2, 1197, 1197.1, 1197.5, 1198.5, 2699, 2802, and 2810.5, among others.

22 21. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees
23 such as Plaintiff, on behalf of Plaintiff and all other aggrieved current and former employees within
24 the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures
25 specified in Labor Code section 2699.3.

26 22. On or around November 4, 2021, Plaintiff provided written notice pursuant to Labor
27 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants’
28 violation of various, including the herein-described, provisions of the Labor Code, to the LWDA,

1 as well as by certified mail, with return receipt requested to Defendants, and each of them.

2 23. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
3 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
4 calendar days of the November 4, 2021 postmarked date of the herein-described notice sent by
5 Plaintiff to the LWDA and Defendants.

6 **FACTUAL BACKGROUND**

7 24. At all relevant times mentioned herein, Defendants had and have a policy or practice
8 of failing to pay overtime wages to Plaintiff, Class Members and other Aggrieved Employees in the
9 State of California in violation of California state wage and hour laws as a result of, without
10 limitation, Plaintiff, Class Members and other Aggrieved Employees working over eight (8) hours
11 per day, forty (40) hours per week, and/or seven (7) consecutive workdays in a workweek without
12 being properly compensated for hours in excess of (8) hours per day in a work day, twelve (12)
13 hours per day in a work day, forty (40) hours per week in a work week, and/or hours worked on the
14 seventh consecutive work day in a work week by, among other things, failing to accurately track
15 and/or pay for all minutes and hours actually worked at the proper overtime rate of pay; engaging,
16 suffering, or permitting employees to work off the clock, including, without limitation, by requiring
17 employees: to clock out for meal periods and continue working and/or suffering under Defendants'
18 control; to make or respond to telephone calls, emails and/or text messages off the clock; detrimental
19 rounding of employee time entries, editing and/or manipulation of time entries to show lesser hours
20 than actually worked; to remain on-call, to suffer under Defendants' control to complete pre-shift
21 tasks before clocking in and post-shift tasks after clocking out, to attend company meetings off the
22 clock; failing to include all forms of remuneration, including non-discretionary bonuses, incentive
23 pay, meal allowances, and other forms of remuneration into the regular rate of pay for the pay
24 periods where overtime was worked and the additional compensation was earned for the purpose of
25 calculating the overtime rate of pay; for paying straight pay instead of overtime pay or otherwise
26 paying overtime hours and minutes worked at the improper rate(s) of pay; and to suffer under
27 Defendants' control due to long lines for clocking in, to the detriment of Plaintiff, Class Members
28 and other Aggrieved Employees.

1 25. At all relevant times mentioned herein, Defendants had and have a practice or policy
2 of failing to accurately track and/or pay for all minutes and hours actually worked or otherwise
3 under Defendants' control at Plaintiff's, Class Members, and/or Aggrieved Employees' regular rate
4 of pay that is above the minimum wage; engaging, suffering, or permitting employees to work off
5 the clock, including, without limitation, by requiring employees: to clock out for meal periods and
6 continue working and/or suffering under Defendant's control, to make or respond to telephone calls,
7 emails, and/or text messages off the clock; detrimental rounding of employee time entries; editing
8 and/or manipulation of time entries to show lesser hours than actually worked, to the detriment of
9 Plaintiff and Class Members; to remain on-call; to suffer under Defendants' control to complete pre-
10 shift tasks before clocking in and post-shift tasks after clocking out; to attend company meetings off
11 the clock; failing to pay reporting time pay; paid time off and vacation time owed; and failing to pay
12 split shift premiums to the detriment of Plaintiff, Class Members and other Aggrieved Employees.

13 26. At all relevant times mentioned herein, Defendants had and have a policy or practice
14 of failing to provide Plaintiff, Class Members and other Aggrieved Employees, or some of them, a
15 full, timely thirty (30) minute, duty-free uninterrupted meal period for days on which the employee
16 worked in excess of five (5) hours in a work day and a second thirty (30) minute uninterrupted meal
17 period for days on which they worked in excess of ten (10) hours per day, including without
18 limitation: by interrupting meal periods; not providing timely meal periods; failing to provide first
19 and second meal periods; providing short meal periods; otherwise requiring on-duty/on-call meal
20 periods; auto-deducting meal periods that could not be auto-deducted by law or during which
21 employees worked; requiring that employees carry cellular telephones, radios or walkie-talkies
22 during meal periods; not permitting employees to leave the premises; and failing to provide
23 compensation for such unprovided meal periods as required by California wage and hour laws.

24 27. At all relevant times mentioned herein, Defendants had and have a policy or practice
25 of failing to authorize and permit Plaintiff, Class Members and other Aggrieved Employees, or
26 some of them, to take rest periods of at least ten (10) minutes per four (4) hours worked or major
27 fraction thereof in which they are completely relieved of all their duties, including, without
28 limitation, by failing to provide rest periods all together; requiring that they be bundled together

1 and/or with meal periods; interrupting them; not providing them in a timely fashion; not permitting
2 employees to leave the premises; requiring on-duty/on-call rest periods; requiring that employees
3 carry cellular telephones, radios or walkie-talkies during rest periods; and failing to provide
4 compensation for such unprovided rest periods as required by California wage and hour laws.

5 28. At all relevant times mentioned herein, Defendants had and have a policy or practice
6 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
7 Plaintiff, Class Members and other Aggrieved Employees, or some of them, with itemized wage
8 statements that accurately reflect gross wages earned; total hours worked by the employee; net wages
9 earned; all deductions; all applicable hourly rates in effect during the pay period and the
10 corresponding number of hours worked at each hourly rate by the employee; the legal name of the
11 employer and/or the name and address of the legal entity securing the employer's services; and other
12 such information as required by Labor Code section 226, subdivision (a). As a result, Defendants
13 have further failed to furnish employees with an accurate calculation of gross and net wages earned,
14 as well as gross and net wages paid.

15 29. At all relevant times mentioned herein, Defendants had and have a policy or practice
16 of failing to comply with Labor Code section 226, subdivision (a) by failing to keep adequate or
17 accurate time records including wage statements and similar payroll documents under Labor Code
18 section 226, intentionally failing to furnish Plaintiff, Class Members and other Aggrieved
19 Employees, or some of them, with documents signed to obtain or hold employment under Labor
20 Code section 432, personnel records under Labor Code section 1198.5, and time records under Labor
21 Code section 1174, making it difficult for Plaintiff, Class Members and other Aggrieved Employees
22 to calculate their unpaid wages and/or premium payments, to the detriment of Plaintiff, Class
23 Members and other Aggrieved Employees.

24 30. At all relevant times mentioned herein, Defendants had and have a policy or practice
25 of failing to timely pay Plaintiff, Class Members and other Aggrieved Employees, or some of them,
26 among other wages, all wages owed as a result of Defendants' practice or policy of failing to pay,
27 among other wages, overtime wages, minimum wages, premium wages, paid time off and vacation
28 time owed as required by Labor Code sections 201, 202, and 203.

1 31. At all relevant times herein, Defendants had and have a policy or practice of failing
2 to pay Plaintiff, Class Members and Aggrieved Employees, or some of them, their paid time off and
3 vacation time owed upon separation of employment as wages at their final rate of pay in violation
4 of Labor Code section 227.3 and applicable Wage Orders.

5 32. At all relevant times mentioned herein, Defendants have had a policy or practice of
6 failing and refusing, and continue to fail and refuse, to reimburse employees, including, without
7 limitation, Plaintiff, Class Members and other Aggrieved Employees, with their costs incurred for
8 driving personal vehicles (*i.e.*, mileage and gas), separately laundering mandatory uniforms, for the
9 purchase of personal protective equipment (including, e.g., face masks, sanitizers and ,
10 disinfectants), for the purchase of tools and safety equipment (including steel-toe boots and gloves),
11 for the purchase and maintenance of cellular phones and cellular phone plans, in direct consequence
12 of the discharge of their duties, or of their obedience to the directions of Defendants, as required by
13 Labor Code section 2802, and other statutory and common law offenses.

14 33. At all relevant times mentioned herein, Defendants have had a policy or practice of
15 failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft
16 Protection Act of 2011) by, among other things, failing to provide Plaintiff, Class Members and
17 other Aggrieved Employees with the rates of pay and overtime rates of pay applicable to their
18 employment; allowances claimed as part of the minimum wage; the regular payday designated by
19 Defendants; the name, address, and telephone number of the workers' compensation insurance
20 carrier; information regarding paid sick leave; and other pertinent information required to be
21 disclosed by Defendants under Labor Code section 2810.5.

22 34. At all relevant times mentioned herein, Defendants failed to provide Plaintiff, Class
23 Members and other Aggrieved Employees with the amount of paid sick leave required to be
24 provided pursuant to California and local laws (including, without limitation Labor Code section
25 246, 248.2 and/or 2021 COVID-19 Supplemental Paid Sick Leave Laws, *et seq.*), and also did not
26 permit its use upon request as contemplated under California laws, to the detriment of Plaintiff,
27 Class Members and all other Aggrieved Employees.

28 ///

1 35. At all relevant times mentioned herein, Defendants have had a policy or practice of
2 failing to pay Plaintiff, Class Members and Aggrieved Employees, or some of them, their wages in
3 accordance with Labor Code Section 204, which requires that: “[l]abor performed between the 1st
4 and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of
5 the month during which the labor was performed, and labor performed between the 16th and the last
6 day, inclusive of any calendar month, shall be paid for between the 1st and 10th day of the following
7 month.”

8 36. At all relevant times mentioned herein, Defendants had and have a policy or practice
9 of preventing Plaintiff and/or Aggrieved Employees from using or disclosing the skills, knowledge
10 and experience they obtained at Defendants for purposes of competing with Defendants, including,
11 without limitation, preventing Employees from disclosing their wages in negotiating a new job with
12 a prospective employer, and from disclosing who else works at Defendants and under what
13 circumstances that they might be receptive to an offer from a rival employer. Plaintiff is informed
14 and believes that this policy and/or practice violates Business and Professions Code sections 17200,
15 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor
16 Code sections 232, 232.5, and 1197.5, subdivision (k).

17 37. Defendants had and have a policy or practice of preventing Plaintiff and/or other
18 Aggrieved Employees from disclosing violations of state and federal law, either within Defendants
19 to their managers or outside to private attorneys or government officials, among others, in violation
20 of Business and Professions Code section 17200, and, thus, in violation of Labor Code section
21 1102.5. In addition, Plaintiff is informed and believes that Defendants’ herein-described policies
22 and/or practices prevent Plaintiff and/or other Aggrieved Employees from disclosing information
23 about unsafe or discriminatory working conditions, or about wage and hour violations in violation
24 of Labor Code section 232 and 232.5.

25 38. Defendants had and have a policy or practice of preventing Plaintiff and/or other
26 Aggrieved Employees from engaging in lawful conduct during non-work hours, thus violating state
27 statutes entitling employees to disclose wages, working conditions, and illegal conduct, including,
28 without limitation, Labor Code sections 96, subdivision (k), 98.6, 232, 232.5, and 1197.5,

1 subdivision (k). Plaintiff is informed and believes that this lawful conduct includes the exercise of
2 Plaintiff's and/or other Aggrieved Employee's constitutional rights of freedom of speech and
3 economic liberty.

4 39. Plaintiff, in Plaintiff's individual and representative capacity, seeks civil penalties
5 under Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 for the herein-described acts,
6 which violate the California Labor Code as described above, including on behalf of Plaintiff and
7 other Aggrieved Employees pursuant to PAGA.

8 40. Plaintiff, on his own behalf and on behalf of Class Members, brings this action
9 pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 210, 226,
10 226.7, 227.3, 510, 512, 558.1, 1194, 1194.2, 1197, 2802, and the applicable rules and regulations of
11 the IWC California Wage Orders, seeking overtime wages, minimum wages, payment of premium
12 wages for missed meal and rest periods, failure to pay timely wages, waiting time penalties, wage
13 statement penalties, reimbursement for expenses incurred in furtherance of work duties, penalties,
14 other such provisions of California law, and reasonable attorneys' fees and costs.

15 41. Plaintiff, on Plaintiff's own behalf and on behalf of Class Members, pursuant to
16 Business and Professions Code sections 17200 through 17208, also seeks (an) injunction(s)
17 prohibiting Defendants from further violating the Labor Code and requiring the establishment of
18 appropriate and effective means to prevent further violations, as well as all monies owed but
19 withheld and retained by Defendants to which Plaintiff and Class Members are entitled, as well as
20 restitution of amounts owed.

21 **CLASS ACTION ALLEGATIONS**

22 42. Plaintiff brings this action on behalf of Plaintiff and Class Members as a class action
23 pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a class of all current
24 and former non-exempt employees of Defendants within the State of California at any time
25 commencing four (4) years preceding the filing of Plaintiff's complaint up until the time that notice
26 of the class action is provided to the class (collectively referred to as "Class Members").

27 43. Plaintiff reserves the right under California Rule of Court rule 3.765, subdivision (b)
28 to amend or modify the class description with greater specificity, further divide the defined class

1 into subclasses, and to further specify or limit the issues for which certification is sought.

2 44. This action has been brought and may properly be maintained as a class action under
3 the provisions of Code of Civil Procedure section 382 because there is a well-defined community
4 of interest in the litigation and the proposed Class is easily ascertainable.

5 **A. Numerosity**

6 45. The potential Class Members as defined are so numerous that joinder of all the
7 members of the Class is impracticable. While the precise number of Class Members has not been
8 determined yet, Plaintiff is informed and believes that there are at least seventy-five (75) Class
9 Members employed by Defendants within the State of California.

10 46. Accounting for employee turnover during the relevant periods necessarily increases
11 this number. Plaintiff alleges Defendants' employment records would provide information as to the
12 number and location of all Class Members. Joinder of all members of the proposed Class is not
13 practicable.

14 **B. Commonality**

15 47. There are questions of law and fact common to Class Members. These common
16 questions include, but are not limited to:

- 17 A. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay all
18 minutes worked at a proper overtime rate of pay?
- 19 B. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to pay
20 for all other time worked at the employee's regular rate of pay and a rate of pay that
21 is greater than the applicable minimum wage?
- 22 C. Did Defendants violate Labor Code section 512 by not authorizing or permitting
23 Class Members to take compliant meal periods?
- 24 D. Did Defendants violate Labor Code section 226.7 by not providing Class Members
25 with additional wages for missed or interrupted meal periods?
- 26 E. Did Defendants violate applicable Wage Orders by not authorizing or permitting
27 Class Members to take compliant rest periods?
- 28 F. Did Defendants violate Labor Code section 226.7 by not providing Class Members

1 with additional wages for missed rest periods?

2 G. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class
3 Members upon termination or resignation all wages earned?

4 H. Are Defendants liable to Class Members for waiting time penalties under Labor Code
5 section 203?

6 I. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing
7 Class Members with accurate wage statements?

8 J. Did Defendants fail to pay Class Members in a timely fashion as required under
9 Labor Code section 204?

10 K. Did Defendants fail to indemnify Class Members for all necessary expenditures or
11 losses incurred in direct consequence of the discharge of their duties or by obedience
12 to the directions of Defendants as required under Labor Code section 2802?

13 L. Did Defendants violate the Unfair Competition Law, Business and Professions Code
14 section 17200, *et seq.*, by their unlawful practices as alleged herein?

15 M. Are Class Members entitled to restitution of wages under Business and Professions
16 Code section 17203?

17 N. Are Class Members entitled to costs and attorneys' fees?

18 O. Are Class Members entitled to interest?

19 **C. Typicality**

20 48. The claims of Plaintiff herein alleged are typical of those claims which could be
21 alleged by any Class Members, and the relief sought is typical of the relief which would be sought
22 by each Class Member in separate actions. Plaintiff and Class Members sustained injuries and
23 damages arising out of and caused by Defendants' common course of conduct in violation of laws
24 and regulations that have the force and effect of law and statutes as alleged herein.

25 **D. Adequacy of Representation**

26 49. Plaintiff will fairly and adequately represent and protect the interest of Class
27 Members. Counsel who represents Plaintiff is competent and experienced in litigating wage and
28 hour class actions.

1 **E. Superiority of Class Action**

2 50. A class action is superior to other available means for the fair and efficient
3 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
4 questions of law and fact common to Class Members predominate over any questions affecting only
5 individual Class Members. Class Members, as further described therein, have been damaged and
6 are entitled to recovery by reason of Defendants' policies and/or practices that have resulted in the
7 violation of the Labor Code at times, as set out herein.

8 51. Class action treatment will allow Class Members to litigate their claims in a manner
9 that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of
10 any difficulties that are likely to be encountered in the management of this action that would
11 preclude its maintenance as a class action.

12 **FIRST CAUSE OF ACTION**

13 **(Violation of PAGA – Against All Defendants)**

14 52. Plaintiff realleges and incorporates by reference all of the allegations contained in
15 the preceding paragraphs as though fully set forth hereat.

16 **Civil Penalties Under Labor Code § 210**

17 53. At all relevant times herein, Labor Code section 204, requires and required that:
18 “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for
19 between the 16th and 26th day of the month during which the labor was performed, and labor
20 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
21 between the 1st and 10th day of the following month.”

22 54. At all relevant times herein, Labor Code section 210, subdivision (a) states and
23 stated that “[i]n addition to, and entirely independent and apart from, any other penalty
24 provided in this article, every person who fails to pay the wages of each employee as provided in
25 Sections 201.3, 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as
26 follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each
27 employee” and “(2) For each subsequent violation, or any willful or intentional violation, two
28 hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount

1 unlawfully withheld.”

2 55. At all relevant times herein, Defendants have had a consistent policy or practice of
3 failing to pay Plaintiff and/or Aggrieved Employees during their employment on a timely basis as
4 per Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiff and other
5 Aggrieved Employees are entitled to recover civil penalties for Defendants’ violations of Labor
6 Code section 204, in the amount of one hundred dollars (\$100) for each Aggrieved Employee for
7 each initial violation per employee, and two hundred dollars (\$200) for each Aggrieved Employee
8 for each subsequent violation in connection with each payment that was made in violation of Labor
9 Code section 204.

10 Civil Penalties Under Labor Code § 226.3

11 56. Defendants had and have a policy or practice of failing to comply with Labor Code
12 section 226, subdivision (a) by intentionally failing to furnish Plaintiff and Aggrieved Employees
13 with itemized wage statements that accurately reflect: reflect gross wages earned; total hours
14 worked; net wages earned; all applicable hourly rates in effect during the pay period and the
15 corresponding number of hours worked at each hourly rate; and other such information as required
16 by Labor Code section 226, subdivision (a).

17 57. Labor Code section 226.3 states that “[a]ny employer who violates subdivision (a)
18 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
19 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
20 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
21 deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

22 58. Labor Code section 226.3 further provides that “[t]he civil penalties provided for in
23 this section are in addition to any other penalty provided by law.”

24 59. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
25 and have a policy or practice of failing to furnish non-exempt employees, including, without
26 limitation, Plaintiff, itemized wage statements that accurately reflect: reflect gross wages earned;
27 total hours worked; net wages earned; all applicable hourly rates in effect during the pay period and
28 the corresponding number of hours worked at each hourly rate; and other such information as

Violation of Labor Code § 558

(3) Wages recovered pursuant to this section shall be paid to the affected employee.

/ / /

63. As a direct and proximate result of the herein-described Labor Code violations, pursuant to Labor Code section 558, Plaintiff and other Aggrieved Employees are entitled to recover civil penalties for Defendants' herein-described Labor Code violations in the amount fifty dollars (\$50) for each Aggrieved Employee per pay period for the initial violation, and one hundred dollars (\$100) for each Aggrieved Employee per pay period for each subsequent violation.

Violation of Labor Code § 1174.5

64. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required every person employing labor in California to "[a]llow any member of the commission or the employees of the Division of Labor Standards Enforcement free access to the place of business or employment of the person to secure any information or make any investigation that they are authorized by this chapter to ascertain or make. The commission may inspect or make excerpts, relating to the employment of employees, from the books, reports, contracts, payrolls, documents, or papers of the person."

65. At all times mentioned herein, Labor Code section 1174, subdivision (c) has required every person employing labor in California to "[k]eep a record showing the names and addresses of all employees employed and the ages of all minors."

66. At all times mentioned herein, Labor Code section 1174, subdivision (d) has required every person employing labor in California to "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned."

67. Pursuant to Labor Code section 1174.5, "[a]ny person employing labor who willfully fails to maintain the records required by subdivision (c) of [Labor Code] Section 1174 or accurate and complete records required by subdivision (d) of [Labor Code] Section 1174, or to allow any

1 member of the commission or employees of the division to inspect records pursuant to subdivision
2 (b) of [Labor Code] Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

3 68. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
4 willfully failed keep adequate or accurate time records including wage statements and similar
5 payroll documents under Labor Code section 226, documents signed to obtain or hold employment
6 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
7 under Labor Code section 1174.

8 69. As a direct and proximate result of the herein-described Labor Code violations,
9 pursuant to Labor Code section 1174.5, Plaintiff and other Aggrieved Employees are entitled to
10 recover civil penalties for Defendants' herein-described Labor Code violations in the amount of five
11 hundred dollars (\$500) per violation per Aggrieved Employee.

12 Violation of Labor Code § 1197.1

13 70. Pursuant to Labor Code section 1197.1, subdivision (a): "Any employer or
14 other person acting either individually or as an officer, agent, or employee of another person, who
15 pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable
16 state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of
17 wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant
18 to Section 203 as follows:

19 A. For any initial violation that is intentionally committed, one hundred dollars (\$100)
20 for each underpaid employee for each pay period for which the employee is underpaid. This amount
21 shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant
22 to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

23 B. For each subsequent violation for the same specific offense, two hundred fifty
24 dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid
25 regardless of whether the initial violation is intentionally committed. This amount shall be in
26 addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section
27 1194.2, and any applicable penalties imposed pursuant to Section 203.

28 ///

1 C. Wages, liquidated damages, and any applicable penalties imposed pursuant to
2 Section 203, recovered pursuant to this section shall be paid to the affected employee.”

3 71. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
4 Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants, without
5 limitation, routinely failing to pay Plaintiff or other Aggrieved Employees’ to pay minimum wages
6 for all hours worked or otherwise under Defendants’ control due to, without limitation, routinely
7 failing to accurately track and/or pay for all minutes and hours actually worked at their regular rate
8 of pay that is above the minimum wage; by requiring employees: to remain on-call; to suffer under
9 Defendants’ control to complete pre-shift tasks before clocking in and after clocking out, to clock
10 out for meal periods and continue working and/or suffering under Defendants’ control, to attend
11 company meetings off the clock, to make or respond to telephone calls, emails and/or text messages
12 off the clock; detrimental rounding of employee time entries, editing and/or manipulation of time
13 entries to show less hours than actually worked; failing to pay reporting time pay; paid time off and
14 vacation time owed; and failing to pay split shift premiums, entitling Plaintiff and other Aggrieved
15 Employees to actual and liquidated damages.

16 72. As a direct and proximate result of the herein-described Labor Code violations,
17 pursuant to Labor Code section 1197.1, Plaintiff and other Aggrieved Employees are entitled to
18 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount one
19 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and
20 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each
21 subsequent violation.

22 Civil Penalties Under Labor Code § 2699

23 73. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other
24 provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed
25 and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or
26 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil
27 action brought by an aggrieved employee on behalf of himself or herself and other current or former
28 employees pursuant to the procedures specified in Labor Code section 2699.3.

74. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the Labor Code except those for which a civil penalty is specifically provided, the established civil penalty for a violation of those provisions is as follows: if, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

75. Plaintiff is informed and believes, and based thereon allege that Defendants, and each of them, violated the Labor Code sections described herein, including, without limitation, for the failure to: pay overtime wages and minimum wages; provide meal and rest periods or compensation in lieu thereof; provide accurate, itemized wage statements; pay wages after employment separation; provide employees the opportunity to inspect employment records; failure to maintain accurate and complete records; reimburse Aggrieved Employees for costs incurred in furtherance of their work duties; provide notice as required under Labor Code section 2810.5; provide the proper accrual and use of paid sick leave pursuant to California and local laws; paying employees all owed paid time off and vacation time owed by separation at the proper rate of pay; and placing restraints on competition, whistleblowing and freedom of speech, entitling Plaintiff and other Aggrieved Employees to civil penalties for each of these Labor Code violations in the amounts set forth in Labor Code section 2699, subdivision (f).

76. Moreover, Plaintiffs and other Aggrieved Employees within the State of California whom he seeks to represent are entitled to an award of reasonable attorneys' fees and costs in connection with their herein-described claims for civil penalties.

SECOND CAUSE OF ACTION

(Failure to Pay Overtime Wages – Against All Defendants)

77. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

78. At all relevant times, Plaintiff and Class Members were employees or former employees of Defendants covered by Labor Code sections 510, 1194 and 1199, as well as applicable Wage Orders.

1 79. At all times relevant to this Complaint, Labor Code section 510 was in effect and
2 provided: “(a) Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in
3 one workday and any work in excess of forty hours in any one workweek . . . shall be compensated
4 at the rate of no less than one and one-half times the regular rate of pay for an employee.”

5 80. At all times relevant to this Complaint, Labor Code section 510 further provided that
6 “[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than twice
7 the regular rate of pay for an employee. In addition, any work in excess of eight hours on any
8 seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of
9 pay.”

10 81. At all relevant times herein mentioned, Plaintiff and Class Members, at times,
11 worked for Defendants during shifts that consisted of more than eight (8) hours in a workday, more
12 than twelve (12) hours in a workday, and/or more than forty hours in a workweek, and/or seven (7)
13 consecutive workdays in a workweek, without being properly compensated for hours in excess of
14 (8) hours per day in a work day, twelve (12) hours per day in a work day, forty (40) hours per week
15 in a work week, and/or hours worked on the seventh consecutive work day in a work week by,
16 among other things, failing to accurately track and/or pay for all minutes and hours actually worked
17 at the proper overtime rate of pay; engaging, suffering, or permitting employees to work off the
18 clock, including, without limitation, by requiring employees: to clock out for meal periods and
19 continue working and/or suffering under Defendants’ control; to make or respond to telephone calls,
20 emails and/or text messages off the clock; detrimental rounding of employee time entries, editing
21 and/or manipulation of time entries to show lesser hours than actually worked; to remain on-call,
22 to suffer under Defendants’ control to complete pre-shift tasks before clocking in and post-shift
23 tasks after clocking out, to attend company meetings off the clock; failing to include all forms of
24 remuneration, including non-discretionary bonuses, incentive pay, meal allowances, and other forms
25 of remuneration into the regular rate of pay for the pay periods where overtime was worked and the
26 additional compensation was earned for the purpose of calculating the overtime rate of pay, for
27 paying straight pay instead of overtime pay or otherwise paying overtime hours and minutes worked
28 at the improper rate(s) of pay; and to suffer under Defendants’ control due to long lines for clocking

1 in, to the detriment of Plaintiff and Class Members.

2 82. Accordingly, by requiring Plaintiff and Class Members to, at times, work greater
3 than eight (8) hours per workday, twelve (12) hours per workday, forty (40) hours per workweek,
4 and/or seven (7) straight workdays without properly compensating overtime wages at the proper
5 overtime rate of pay, Defendants, on occasion, willfully violated the provisions of the Labor Code,
6 among others, sections 510, 1194, and applicable IWC Wage Orders, and California law.

7 83. As a result of the unlawful acts of Defendants, Plaintiff and Class Members have
8 been deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery,
9 plus interest and penalties thereon, attorneys' fees and costs, pursuant to Labor Code section 1194
10 and 1199, Code of Civil Procedure section 1021.5 and 1032, and Civil Code section 3287.

11 **THIRD CAUSE OF ACTION**

12 **(Failure to Pay Minimum Wages – Against All Defendants)**

13 84. Plaintiff realleges and incorporates by reference all of the allegations contained in
14 the preceding paragraphs as though fully set forth hereat.

15 85. At all relevant times, Plaintiff and Class Members were employees or former
16 employees of Defendants covered by Labor Code sections 1197, 1199 and applicable Wage Orders.

17 86. Pursuant to Labor Code section 1197 and applicable Wage Orders, Plaintiff and
18 Class Members were entitled to receive minimum wages for all hours worked or otherwise under
19 Defendants' control.

20 87. At all relevant times herein mentioned, Defendants failed, at times, to accurately
21 track and/or pay for all minutes and hours actually worked or otherwise under Defendants' control
22 at Plaintiff and/or Class Members' regular rate of pay that is above the minimum wage; engaged,
23 suffered, or permitted employees to work off the clock, including, without limitation, by requiring
24 employees: to clock out for meal periods and continue working and/or suffering under Defendants'
25 control, to make or respond to telephone calls, emails, and/or text messages off the clock;
26 detrimental rounding of employee time entries; editing and/or manipulation of time entries to show
27 lesser hours than actually worked, to the detriment of Plaintiff and Class Members; to remain on-
28 call; to suffer under Defendants' control to complete pre-shift tasks before clocking in and post-shift

1 tasks after clocking out, to attend company meetings off the clock, failing to pay reporting time pay,
2 paid time off and vacation time owed; and failing to pay split shift premiums to the detriment of
3 Plaintiff and Class Members.

4 88. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
5 suffered damages in an amount, subject to proof, to the extent they were not paid minimum wages
6 for all hours worked or otherwise due.

7 89. Pursuant to Labor Code sections 218.6, 1194, 1194.2, Code of Civil Procedure
8 sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to
9 recover the full amount of unpaid minimum wages, interest and penalties thereon, liquidated
10 damages, reasonable attorneys' fees and costs of suit.

11 **FOURTH CAUSE OF ACTION**

12 **(Failure to Provide Meal Periods – Against All Defendants)**

13 90. Plaintiff realleges and incorporates by reference all of the allegations contained in
14 the preceding paragraphs as though fully set forth hereat.

15 91. At all relevant times, Plaintiff and Class Members were employees or former
16 employees of Defendants covered by Labor Code section 512 and applicable Wage Orders.

17 92. Pursuant to Labor Code section 512 and applicable Wage Orders, no employer shall
18 employ an employee for a work period of more than five (5) hours without a timely meal break of
19 not less than thirty (30) minutes in which the employee is relieved of all of his or her duties.
20 Furthermore, no employer shall employ an employee for a work period of more than ten (10) hours
21 per day without providing the employee with a second timely meal period of not less than thirty (30)
22 minutes in which the employee is relieved of all of his or her duties.

23 93. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
24 with a meal period as provided in the applicable Wage Order of the Industrial Welfare Commission,
25 the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate
26 of compensation for each workday that the meal period is not provided.

27 94. At all relevant times herein mentioned, Plaintiff and Class Members were, at times,
28 not provided a full, timely thirty (30) minute, duty-free uninterrupted meal periods every five hours

1 of work without waiving the right to take them, as permitted. Moreover, at times, Defendants failed
2 to provide one (1) additional hour of pay at the Class Member's regular rate of compensation on the
3 occasions that Class Members were not provided compliant meal periods.

4 95. By their failure to provide Plaintiff and Class Members compliant meal periods as
5 contemplated by Labor Code section 512, among other California authorities, and failing, at times,
6 to provide compensation for such unprovided meal periods, as alleged above, Defendants willfully
7 violated the provisions of Labor Code section 512 and applicable Wage Orders.

8 96. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
9 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay
10 owed for missed, untimely, interrupted, incomplete and/or on-duty meal periods.

11 97. Plaintiff and Class Members are entitled to recover the full amount of their unpaid
12 additional pay for unprovided compliant meal periods, in amounts to be determined at trial, plus
13 interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7,
14 Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

15 **FIFTH CAUSE OF ACTION**

16 **(Failure to Provide Rest Periods – Against All Defendants)**

17 98. Plaintiff realleges and incorporates by reference all of the allegations contained in
18 the preceding paragraphs as though fully set forth hereat.

19 99. At all relevant times, Plaintiff and Class Members were employees or former
20 employees of Defendants covered by applicable Wage Orders.

21 100. California law and applicable Wage Orders require that employers "authorize and
22 permit" employees to take ten (10) minute rest periods in about the middle of each four (4) hour
23 work period "or major fraction thereof." Accordingly, employees who work shifts of three and-a-
24 half (3 ½) to six (6) hours must be provided ten (10) minutes of paid rest period, employees who
25 work shifts of more than six (6) and up to ten (10) hours must be provided with twenty (20) minutes
26 of paid rest period, and employees who work shifts of more than ten (10) hours must be provided
27 thirty (30) minutes of paid rest period.

28 ///

1 101. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
2 with a meal period or rest period as provided in the applicable Wage Order of the Industrial Welfare
3 Commission, the employer shall pay the employee one (1) additional hour of pay at the employee's
4 regular rate of compensation for each work day that the rest period is not provided.

5 102. At all relevant times herein mentioned, Plaintiff and Class Members were, at times,
6 not authorized or permitted to take complete, timely 10-minute, duty-free uninterrupted rest periods
7 every four (4) hours of work or major fraction thereof. Moreover, at times, Defendants failed to
8 provide one (1) additional hour of pay at the Class Member's regular rate of compensation on the
9 occasions that Class Members were not authorized or permitted to take compliant rest periods.

10 103. By their failure, at times, to authorize and permit Plaintiff and Class Members to take
11 rest periods contemplated by California law, and one (1) additional hour of pay at the employee's
12 regular rate of compensation for such unprovided rest periods, as alleged above, Defendants
13 willfully violated the provisions of Labor Code section 226.7 and applicable Wage Orders.

14 104. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
15 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay
16 owed for rest periods that they were not authorized or permitted to take.

17 105. Plaintiff and Class Members are entitled to recover the full amount of their unpaid
18 additional pay for unprovided compliant meal periods, in amounts to be determined at trial, plus
19 interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7,
20 Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

21 **SIXTH CAUSE OF ACTION**

22 **(Failure to Pay All Wages Due Upon Termination – Against All Defendants)**

23 106. Plaintiff realleges and incorporates by reference all of the allegations contained in
24 the preceding paragraphs as though fully set forth hereat.

25 107. At all relevant times, Plaintiff and Class Members were employees or former
26 employees of Defendants covered by Labor Code sections 201, 202 and 203, as well as applicable
27 Wage Orders.

28 ///

1 108. Pursuant to Labor Code sections 201 and 202, Plaintiff and Class Members were
2 entitled upon termination to timely payment of all wages earned and unpaid prior to termination.
3 Discharged Class Members were entitled to payment of all wages earned and unpaid prior to
4 discharge immediately upon termination. Class Members who resigned were entitled to payment
5 of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation
6 or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and
7 unpaid at the time of resignation.

8 109. Plaintiff is informed and believes, and based thereon alleges, that at all relevant times
9 herein mentioned, Defendants, due to the failure, at times, to provide overtime wages mentioned
10 above, failed to pay Plaintiff and Class Members all wages earned prior to resignation or termination
11 in accordance with Labor Code sections 201 or 202, including, without limitation, overtime wages,
12 minimum wages, premium wages, and paid time off and/or vacation pay pursuant to Labor Code
13 section 227.3.

14 110. Plaintiff is informed and believes Defendants' failure, at times, to pay Plaintiff and
15 Class Members all wages earned prior to termination or resignation in accordance with Labor Code
16 sections 201 and 202 was willful. Defendants had the ability to pay all wages earned by Plaintiff
17 and Class Members at the time of termination in accordance with Labor Code sections 201 and 202,
18 but intentionally adopted policies or practices incompatible with the requirements of Labor Code
19 sections 201 and 202 resulting in the failure, at times, to pay all wages earned prior to termination
20 or resignation.

21 111. Pursuant to Labor Code section 203, Plaintiff and Class Members are entitled to
22 waiting time penalties from the date their earned and unpaid wages were due, upon termination or
23 resignation, until paid, up to a maximum of thirty (30) days.

24 112. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
25 suffered damages in an amount subject to proof, to the extent they were not paid for all wages earned
26 prior to termination or resignation.

27 113. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections
28 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover

1 waiting time penalties, interest, and their costs of suit, as well.

2 **SEVENTH CAUSE OF ACTION**

3 **(Failure to Provide Accurate Wage Statements – Against All Defendants)**

4 114. Plaintiff realleges and incorporates by reference all of the allegations contained in
5 the preceding paragraphs as though fully set forth hereat.

6 115. At all relevant times, Plaintiff and Class Members were employees or former
7 employees of Defendants covered by Labor Code section 226, as well as applicable Wage Orders.

8 116. Pursuant to Labor Code section 226, subdivision (a), Plaintiff and Class Members
9 were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
10 statement that accurately reflects, among other things, gross wages earned; total hours worked; net
11 wages earned; all deductions; all applicable hourly rates in effect during the pay period and the
12 corresponding number of hours worked at each hourly rate; and the name(s) and address(es) of the
13 legal entity(ies) that is/are the employer(s), among other things.

14 117. Plaintiff is informed and believes, and based thereon alleges, that at all relevant times
15 herein mentioned, Defendants failed to comply with Labor Code section 226, subdivision (a) by
16 adopting policies and practices that resulted in their failure, at times, to furnish Plaintiff and Class
17 Members with accurate itemized statements that accurately reflect, among other things, gross wages
18 earned; total hours worked; net wages earned; all deductions; all applicable hourly rates in effect
19 during the pay period and the corresponding number of hours worked at each hourly rate; and the
20 name(s) and address(es) of the legal entity(ies) that is/are the employer(s), among other things.

21 118. Defendants' failure to, at times, provide Plaintiff and Class Members with accurate
22 wage statements was knowing, intentional, and willful. Defendants had the ability to provide
23 Plaintiff and the other Class Members with accurate wage statements, but, at times, willfully
24 provided wage statements that Defendants knew were not accurate.

25 119. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
26 suffered injury. The absence of accurate information on Class Members' wage statements at times
27 has delayed timely challenge to Defendants' unlawful pay practices; requires discovery and
28 mathematical computations to determine the amount of wages owed; causes difficulty and expense

1 in attempting to reconstruct time and pay records; and led to submission of inaccurate information
2 about wages and amounts deducted from wages to state and federal governmental agencies, among
3 other things.

4 120. Pursuant to Labor Code section 226, subdivision (e), Plaintiff and Class Members
5 are entitled to recover \$50 for the initial pay period during the period in which violation of Labor
6 Code section 226 occurred and \$100 for each violation of Labor Code section 226 in a subsequent
7 pay period, not to exceed an aggregate \$4,000.00 per employee.

8 121. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil
9 Procedure section 1032, Civil Code section 3287, Plaintiff and Class Members are entitled to
10 recover the full amount of penalties due under Labor Code section 226, subdivision (e), reasonable
11 attorneys' fees, and costs of suit.

12 **EIGHTH CAUSE OF ACTION**

13 **(Violation of Labor Code § 2802 – Against All Defendants)**

14 122. Plaintiff realleges and incorporates by reference all of the allegations contained in
15 the preceding paragraphs as though fully set forth hereat.

16 123. At all relevant times, Plaintiff and Class Members were employees or former
17 employees of Defendants covered by Labor Code section 2802 and applicable Wage Orders.

18 124. Labor Code section 2802, subdivision (a) provides that “an employer shall indemnify
19 his or her employee for all necessary expenditures or losses incurred by the employee in direct
20 consequence of the discharge of his or her duties . . .”

21 125. At all relevant times herein mentioned, Defendants required Plaintiff and Class
22 Members, or some of them, to incur, at times, necessary expenditures or losses in direct consequence
23 of the discharge of their duties or at the obedience to the directions of Defendants that included,
24 without limitation: costs incurred for driving personal vehicles (*i.e.*, mileage and gas), separately
25 laundering mandatory uniforms, for the purchase of personal protective equipment (*i.e.*, sanitizers,
26 disinfectants, and face masks), for the purchase of tools and safety equipment (including steel-toe
27 boots and gloves), and for the purchase and maintenance of cellular phones and cellular phone plans.

28 ///

1 126. During that time period, Plaintiff is informed and believes, and based thereon alleges
2 that Defendants failed and refused, and still fail and refuse, at times, to reimburse Plaintiff and Class
3 Members for those losses and/or expenditures.

4 127. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
5 suffered damages in an amount subject to proof, to the extent they were not reimbursed for the
6 herein-described losses and/or expenditures.

7 128. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and
8 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
9 reimbursement for their herein-described losses and/or expenditures, reasonable attorneys' fees and
10 costs of suit.

11 **NINTH CAUSE OF ACTION**

12 **(Failure To Timely Pay Wages During Employment Per Labor Code § 210 – Against**
13 **All Defendants)**

14 129. Plaintiff realleges each and every allegation set forth in the preceding paragraphs and
15 incorporates each by reference as though fully set forth hereat.

16 130. At all relevant times, Plaintiff and Class Members were employees or former
17 employees of Defendants covered by Labor Code section 204 and applicable Wage Orders.

18 131. At all relevant times herein, Labor Code section 204, requires and required that:
19 “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for
20 between the 16th and 26th day of the month during which the labor was performed, and labor
21 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
22 between the 1st and 10th day of the following month.”

23 132. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated
24 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this
25 article, every person who fails to pay the wages of each employee as provided in Sections 201.3,
26 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1)
27 For any initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2)
28 For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)

1 for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

2 133. At all relevant times herein, Defendants have had a consistent policy or practice of
3 failing to pay Plaintiff and Class Members, or some of them, during their employment on a timely
4 basis as required by Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiff
5 and Class Members, or some of them, are entitled to recover civil penalties for Defendants’
6 violations of Labor Code section 204, in the amount of one hundred dollars (\$100) for each Class
7 Member for each initial violation per employee, and two hundred dollars (\$200) for each Class
8 Member for each subsequent violation in connection with each payment that was made in violation
9 of Labor Code section 204, plus 25 percent of the amount unlawfully withheld.

10 134. Pursuant to Labor Code section 218.6, Code of Civil Procedure sections 1021.5 and
11 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recovery of penalties,
12 interest, and their costs of suit, as well.

13 **TENTH CAUSE OF ACTION**

14 **(Unfair Competition – Against All Defendants)**

15 135. Plaintiff realleges and incorporates by reference all of the allegations contained in
16 the preceding paragraphs as though fully set forth hereat.

17 136. Plaintiff is informed and believes, and based thereon alleges that the unlawful
18 conduct of Defendants alleged herein constitutes unfair competition within the meaning of Business
19 and Professions Code section 17200. Due to their unlawful business practices in violation of the
20 Labor Code, Defendants have gained a competitive advantage over other comparable companies
21 doing business in the State of California that comply with their obligations to compensate employees
22 in accordance with the Labor Code.

23 137. As a result of Defendants’ unfair competition as alleged herein, Plaintiff and Class
24 Members have suffered injury in fact and lost money or property.

25 138. Pursuant to Business and Professions Code section 17203, Plaintiff and Class
26 Members are entitled to (an) injunction(s) prohibiting Defendants from further violating the Labor
27 Code and requiring the establishment of appropriate and effective means to prevent further
28 violations, as well as restitution of all wages and other monies owed to them under the Labor Code,

1 including interest thereon, in which they had a property interest and which Defendants nevertheless
2 failed to pay them and instead withheld and retained for themselves. Restitution of the money owed
3 to Plaintiff and Class Members is necessary to prevent Defendants from becoming unjustly enriched
4 by their failure to comply with the Labor Code.

5 139. Plaintiff and Class Members are entitled to costs of suit under Code of Civil
6 Procedure section 1032 and interest under Civil Code section 3287.

7 **DEMAND FOR JURY TRIAL**

8 140. Plaintiff demands a trial by jury on all causes of action contained herein.

9 **PRAYER**

10 WHEREFORE, on behalf of Plaintiff, Class Members, and Aggrieved Employees, Plaintiff
11 prays for judgment against Defendants as follows:

- 12 A. An order certifying this case as a Class Action;
- 13 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's
14 counsel as class counsel;
- 15 C. Damages for all wages earned and owed, including minimum, overtime wages and
16 unpaid wages for vested vacation time and/or paid time off, under Labor Code
17 sections 227.3, 510, 558.1, 1194, 1197 and 1199;
- 18 D. Liquidated damages pursuant to Labor Code sections 558.1 and 1194.2;
- 19 E. Damages for unpaid premium wages from missed meal and rest periods under,
20 among other Labor Code sections, 512, 558.1 and 226.7;
- 21 F. Penalties for inaccurate wage statements under Labor Code sections 226, subdivision
22 (e) and 558.1;
- 23 G. Waiting time penalties under Labor Code sections 203 and 558.1;
- 24 H. Damages under Labor Code sections 2802 and 558.1;
- 25 I. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558, 558.1,
26 1174.5, 1197.1, and 2699;
- 27 J. Preliminary and permanent injunctions prohibiting Defendants from further violating
28 the California Labor Code and requiring the establishment of appropriate and

effective means to prevent future violations;

K. Restitution of wages and benefits due which were acquired by means of any unfair business practice, according to proof;

L. Pre-judgment and post-judgment interest at the maximum rate allowed by law;

M. For attorneys' fees in prosecuting this action and all claims and allegations associated with this action;

N. For costs of suit incurred herein; and

O. For such other and further relief as the Court deems just and proper.

Dated: May 25, 2023

J. GILL LAW GROUP, P.C.

BY: /s/ Jasmin K. Gill

JASMIN K. GILL

Attorneys for Plaintiff EDVIN AGUILAR, as an individual and on behalf of all others similarly situated and aggrieved