

1 **BIBIYAN LAW GROUP, P.C.**
David D. Bibiyan, Esq. (SBN 287811)
2 *david@tomorrowlaw.com*
Vedang K. Patel, Esq. (SBN 328647)
3 *vedang@tomorrowlaw.com*
8484 Wilshire Boulevard, Suite 500
4 Beverly Hills, California 90211
Tel: (310) 438-5555; Fax: (310) 300-1705

5 **J. GILL LAW GROUP, P.C.**
Jasmin K. Gill, Esq. (SBN 315090)
6 *jasmin@jgilllaw.com*
Sacha Pomares, Esq. (SBN 337642)
7 *sacha@jkgilllaw.com*
515 South Flower Street, Suite 1800
8 Los Angeles, California 90071
Tel: (213) 459-6023; Fax: (310) 728-2137

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

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

12 **FOR THE COUNTY OF LOS ANGELES**

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

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,
inclusive,

21 Defendants.
22
23
24
25
26
27
28

FILED
Superior Court of California
County of Los Angeles

03/29/2024

David W. Slayton, Executive Officer / Clerk of Court

By: A. Morales Deputy

CASE NO.: 21STCV41702

[Assigned to the Hon. Lawrence P. Riff in
Dept. SS-7]

**[PROPOSED] ORDER GRANTING FINAL
APPROVAL OF CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT, APPLICATION FOR
ATTORNEYS' FEES AND COSTS, AND
ENHANCEMENT AWARD**

**[Lodged concurrently with Motion for Final
Approval]**

HEARING INFORMATION:

DATE: March 28, 2024

TIME: 10:00 a.m.

DEPT: SS-7

1 This matter having come before the Court on March 28, 2024 for a final fairness hearing
2 pursuant to the Order of this Court dated November 13, 2023, granting preliminary approval
3 (“Preliminary Approval Order”) of the class and representative action settlement upon the terms set
4 forth in the Joint Stipulation Re: Class Action and Representative Action Settlement (“Settlement
5 Agreement”) submitted in support of Motion for Preliminary Approval of the Class and
6 Representative Action Settlement and Certifying Class for Settlement Purposes; and due and
7 adequate notice having been given to the Class Members as required in the Preliminary Approval
8 Order; and the Court having considered all papers filed and proceedings had herein and otherwise
9 being fully informed and good cause appearing therefor, it is hereby **ORDERED, ADJUDGED**

10 **AND DECREED THAT:**

11 1. The Motion for Final Approval of Class Action and Representative Action
12 Settlement; Enhancement Award; and Reasonable Attorneys’ Fees and Costs is hereby granted in
13 its entirety.

14 2. The definitions set out in the Settlement Agreement are incorporated by reference
15 into this Order; all terms defined therein shall have the same meaning in this Order as defined in the
16 Settlement Agreement.

17 3. This Court has jurisdiction over the subject matter of this litigation and over all
18 Parties to this litigation, including all Class Members.

19 4. Distribution of the Notice of Settlement of Class Action Lawsuit (“Class Notice”)
20 directed to the Class Members as set forth in the Settlement Agreement and the other matters set
21 forth herein have been completed in conformity with the Preliminary Approval Order, including
22 individual notice to all Class Members who could be identified through reasonable effort, and was
23 the best notice practicable under the circumstances. This Class Notice provided due and adequate
24 notice of the proceedings and of the matters set forth therein, including the proposed class settlement
25 set forth in the Settlement Agreement, to all persons entitled to such Class Notice, and the Class
26 Notice fully satisfied the requirement of due process.

27 5. Zero Class Members opted out and zero Class Members objected to the settlement.

1 6. The Court further finds that the settlement is fair, reasonable and adequate and that
2 plaintiff Edwin Aguilar (“Plaintiff”) has satisfied the standards and applicable requirements for final
3 approval of class action settlement under California law, including the provisions of Code of Civil
4 Procedure section 382 and Federal Rules of Civil Procedure, rule 23, approved for use by the
5 California state courts in *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821.

6 7. This Court hereby approves the class settlement set forth in the Settlement
7 Agreement and finds that the settlement is, in all respects, fair, adequate and reasonable and directs
8 the parties to effectuate the settlement according to its terms. The Court finds that the settlement
9 has been reached as a result of intensive, serious and non-collusive arm’s length negotiations. The
10 Court further finds that the parties have conducted extensive and costly investigation and research
11 and counsel for the parties are able to reasonably evaluate their respective positions. The Court also
12 finds that settlement at this time will avoid additional substantial costs, as well as avoid the delay
13 and risks that would be presented by the further prosecution of this action. The Court has noted the
14 significant benefits to the Class Members under the settlement. The Court also finds that the class
15 is properly certified as a class for settlement purposes only.

16 8. For settlement purposes only, the Court certifies the following class: all current and
17 former non-exempt employees who worked for Defendants Bioness Inc. and Bioventus LLC at any
18 time during the period between November 4, 2020 through June 6, 2023 (“Class Period”) in
19 California (“Class Members”).

20 9. Neither the Settlement nor any of the terms set forth in the Agreement is an admission
21 by Defendants, or any of the other Released Parties, nor is this Final Order a finding of the validity
22 of any claims in the Action or of any wrongdoing by Defendants, or any of the other Released
23 Parties. Neither this Final Order, the Agreement, nor any document referred to herein, nor any action
24 taken to carry out the Agreement is, may be construed as, or may be used as, an admission by or
25 against Defendants, or any of the other Released Parties, of any fault, wrongdoing or liability
26 whatsoever. The entering into or carrying out of the Agreement, and any negotiations or proceedings
27 related thereto, shall not in any event be construed as, or deemed to be evidence of, an admission or
28 concession with regard to the denials or defenses by Defendants, or any of the other Released Parties,

1 and shall not be offered in evidence in any action or proceeding in any court, administrative agency
2 or other tribunal for any purpose whatsoever other than to enforce the provisions of this Final Order,
3 the Agreement, the Released Claims, or any related agreement or release. Notwithstanding these
4 restrictions, any of the Released Parties may file in the Action, or submit in any other proceeding,
5 the Final Order, the Agreement, and any other papers and records on file in the Action as evidence
6 of the Settlement to support a defense of *res judicata*, collateral estoppel, release, or other theory of
7 claim or issue preclusion or similar defense as to the Released Class Claims and Released PAGA
8 claims.

9 10. Effective only upon the entry of an Order granting Final Approval of the Settlement,
10 entry of Judgment, and payment by Defendants to the Settlement Administrator of the full Gross
11 Settlement Amount and Employer's Taxes necessary to effectuate the Settlement, Plaintiff and all
12 Participating Class Members release the Released Parties as defined in the parties' Settlement
13 Agreement of all claims against the Released Parties asserted in the Operative Complaints, or any
14 and all claims that could have been asserted against the Released Parties based on the factual
15 allegations in the Operative Complaint, as follows: For Participating Class Members, the release
16 includes, for the duration of the Class Period: (a) all claims for failure to pay minimum
17 wages; (b) all claims for failure to pay overtime wages; (c) all claims for failure to provide
18 compliant meal and rest periods or compensation in lieu thereof; (d) failure to timely pay all
19 wages due upon termination or resignation; (e) all claims for non-compliant wage
20 statements; (f) all claims for failure to reimburse business expenses; and (g) all claims asserted
21 through California Business & Professions Code § 17200 *et seq.* arising out of the Labor Code
22 violations referenced in the Operative Complaint in this Action, which includes, without limitation,
23 Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 232, 232.5,
24 246, 432, 510, 512, 558, 558.1, 1102.5, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198.5,
25 1199, 2802 and 2810.5 ("Class Released Claims"). For Aggrieved Employees, the release includes,
26 for the duration of the PAGA Period (*i.e.*, March 11, 2021 through the end of the Class Period), all
27 claims asserted in the PAGA Notice submitted to the LWDA and alleged in the Operative Complaint
28 in this Action, including all claims for civil penalties under PAGA arising out of Labor Code

1 sections 96, 98.6, 200, 201, 202, 203, 210, 226, 226.3, 226.7, 227.3, 232, 232.5, 510, 512, 558,
2 558.1, 1102.5, 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.5, 1199, 2802, and 2699 based on the
3 factual allegations and Labor Code sections alleged to have been violated in the PAGA Notice and
4 Operative Complaint in this Action, which includes, Labor Code sections 204, 226.3, 246, 432,
5 1174, 1198.5, and 2810.5 (“PAGA Released Claims”).

6 11. Except for those claims which cannot be released as a matter of law, upon the funding
7 of the Gross Settlement Amount, in consideration for their Service Award, Plaintiff Edwin Aguilar—
8 for himself only— hereby waive, release, acquit and forever discharge the Released Parties, from
9 any and all claims, actions, charges, complaints, grievances and causes of action, of whatever nature,
10 whether known or unknown, which exist or may exist on Plaintiff’s behalf. Plaintiff has expressly
11 waived and relinquished any and all claims, rights or benefits that he may have under California
12 Civil Code§ 1542.

13 12. Each of the Parties has entered into this Settlement Agreement with the intention to
14 avoid further disputes and litigation, and the attendant inconvenience and expense.

15 13. The Settlement Agreement provides for a Gross Settlement Amount of \$197,035.87.
16 From the Gross Settlement Amount individual settlement payments to Class Members, Court
17 approved attorneys' fees of \$68,962.55 and costs of \$29,338.42. Settlement Administrator costs of
18 \$5,995.00, an enhancement Award to Edwin Aguilar of \$7,500.00, and PAGA penalties in the
19 amount of \$20,000.00, of which \$15,000.00 (75%) will be paid to the LWDA and \$5,000.00 (25%)
20 will be paid to Aggrieved Employees. The payment of the settlement funds by Defendants, as well
21 as the payment of individual settlement checks to Class Members and Employers’ Taxes, will be
22 made as set forth in the Settlement Agreement.

23 14. The Court hereby awards Class Counsel attorneys' fees in the total amount of
24 \$68,962.55, which is thirty-five percent (35%) of the escalated Gross Settlement Amount and to be
25 deducted therefrom. In addition, the Court awards Class Counsel reimbursement of their costs of
26 \$29,338.42 to be deducted from the Gross Settlement Amount. Attorneys' fees and costs will be paid
27 by the Settlement Administrator from the Gross Settlement Amount as set forth in the Settlement
28 Agreement. In approving the payment of attorneys’ fees, the Court finds that the Settlement

1 conferred a significant benefit on the Class and the necessity and financial burden of private
2 enforcement of California labor laws makes an attorney fee award to Plaintiff's Class Counsel
3 appropriate. The amount of this award is based on the lodestar analysis, subject to a reasonable
4 multiplier, for awarding reasonable attorney's fees and costs and is reasonable, fair and eminently
5 justified. In setting an award of attorneys' fees, costs and expenses, this Court has considered the
6 following factors: (a) the time and labor required; (b) preclusion of other employment; (c) the
7 contingent nature of the cases; (d) the experience, reputation and ability of Plaintiff's Counsel and
8 the skill they displayed in the litigation; (e) the reasonable hourly rate of attorneys' fees assessed by
9 Class Counsel associated with prosecution of this Class Action: David D. Bibiyan, Esq.: \$1,000,
10 Jasmin K. Gill, Esq.: \$600, Vedang Patel: \$550; Brandon Chang: \$500; Iona Levin: \$400; (f) the
11 results achieved and benefits conferred on the Class; and (g) the reaction of Plaintiff and the
12 Settlement Class Members. (See, e.g. *Serrano v. Priest* (1977) 20 Cal.3d 25, 49; *Dunk v. Ford Motor*
13 *Co.* (1996) 48 Cal.App.4th 1794, 1810 fn. 21.)

14 15. The Court hereby approves an enhancement award to Edwin Aguilar in the amount
15 of \$7,500.00 in consideration for his time, effort and risk incurred on behalf of the Settlement Class.
16 The Enhancement Award will be paid to Plaintiff by the Settlement Administrator from the Gross
17 Settlement Amount as set forth in the Settlement Agreement.

18 16. The Court hereby approves the Settlement Administrator's cost in the amount of
19 \$5,995.00. The Settlement Administrator, Phoenix Settlement Administrators ("Phoenix"), shall be
20 paid the cost of administration of the settlement from the Gross Settlement Amount.

21 17. Except as expressly provided herein, the parties each shall bear all of their own fees
22 and costs in connection with this matter.

23 18. The Court approves Edwin Aguilar as both the Class and Private Attorneys General
24 Act representative.

25 19. The Court approves Jasmin K. Gill of J. Gill Law Group, P.C. and David D. Bibiyan
26 of Bibiyan Law Group, P.C. as Class Counsel.

27 20. The Court approves Phoenix as the Settlement Administrator.

1 21. Class Members will have one hundred eighty (180) calendar days from the date of
2 mailing of the check to cash their check. For any checks from the distribution that are not cashed
3 by Participating Class Members and Aggrieved Employees within one hundred eighty (180)
4 calendar days from the date of mailing of the checks, within seven (7) calendar days after the
5 expiration of the 180-day period, such checks shall be canceled and funds associated with such
6 checks shall be considered unpaid, unclaimed or abandoned cash residue pursuant to Code of Civil
7 Procedure section 384 (“Unpaid Residue”). The Unpaid Residue plus accrued interest, if any, as
8 provided in Code of Civil Procedure section 384, shall be transmitted as follows: to Legal Aid at
9 Work, 180 Montgomery Street, Suite 600, San Francisco, California 94101 for use in Los Angeles
10 County. The Settlement Administrator shall prepare a report regarding the distribution plan pursuant
11 to Code of Civil Procedure section 384 and the report shall be presented to the Court along with a
12 proposed amended judgment that is consistent with the provisions of Code of Civil Procedure
13 section 384.

14 22. The Court finds that class settlement on the terms set forth in the Settlement
15 Agreement was made in good faith, and constitutes a fair, reasonable and adequate compromise of
16 the released claims against Defendants.

17 23. Within thirty (30) calendar days after the date of this Order, Defendants shall deposit
18 the escalated Gross Settlement Amount of \$197,035.87 to the Settlement Administrator in addition
19 to related Employer’s Taxes to be determined by the Settlement Administrator pursuant to Internal
20 Revenue Code section 1.468B-1 for deposit in an interest-bearing qualified settlement account
21 (“QSA”) with an FDIC insured banking institution, for distribution in accordance with the
22 Settlement Agreement.

23 24. Within seven (7) calendar days after payment of the full escalated Gross Settlement
24 pursuant to the terms of the Settlement Agreement as well as Employer’s Taxes owed by Defendants
25 under the terms of the Settlement Agreement, the Settlement Administrator shall distribute all
26 payments due under the Settlement, including Individual Settlement Payments to Participating Class
27 Members and Individual PAGA Payments to Aggrieved Employees, as well as the Court-approved
28 payments for the Service Award to Plaintiff, attorneys’ fees and litigation costs and expenses to

1 Class Counsel, Administration Costs to the Settlement Administrator, and the portion of the LWDA
2 payment payable to the LWDA.

3 25. The Settlement Administrator is ordered to provide notice of the Final Judgment
4 entered in this Action by posting the same on its website for a period of no less than four (4) years.

5 26. An Order to Show Cause Hearing Re: Final Administration of the Class Action
6 Settlement is hereby scheduled for October 31, 2024, at 9:00 a.m., in Department SS-7 of the
7 Los Angeles County Superior Court, Spring Street Courthouse. At least seven calendar
8 days prior to said OSC hearing, the parties shall file a declaration confirming that the claims have
9 been paid and that administration of all of the terms and conditions of the class action settlement
10 have been completed. Should the Court find that said Declaration has sufficiently evidenced full and
11 complete administration of the class action settlement, said OSC hearing will go off-calendar.

12 27. Without affecting the finality of the Judgment in any way, this Court hereby retains
13 continuing jurisdiction over the interpretation, implementation and enforcement of the settlement
14 and all orders and judgments entered in connection therewith.

15 **IT IS SO ORDERED.**

16 Dated: 03/29/2024, 2024



Lawrence P. Riff/Judge
Judge of the Superior Court

17
18 4882-3633-7330.1 / 070749-1060
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 633 West 5th Street, 63rd Floor, Los Angeles, California 90071. On March 28, 2024, I served the within document(s):

[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT, APPLICATION FOR ATTORNEYS' FEES AND COSTS, AND ENHANCEMENT AWARD

☐ **By electronic service.** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. The electronic notification address of the person making the service is laispuro@littler.com.

☒ **Case Anywhere:** Based on a court order, I caused a true and correct copy to be served on counsel of record by transmission through CASE ANYWHERE.

Jasmin K. Gill, Esq.
Sacha Pomares, Esq.
J. GILL LAW GROUP, P.C.
515 South Flower Street, Suite 1800
Los Angeles, California 90071
Tel: (213) 459-6023 / Fax: (310) 728-2137
jasmin@jkgilllaw.com
sacha@jkgilllaw.com
Attorneys for Plaintiff Edvin Aguilar

David D. Bibiyan
Vedang Patel
Henry Glitz
Jennifer Echeverria
Emanuel Munguia
BIBIYAN LAW GROUP, P.C.
1460 Westwood Boulevard
Los Angeles, California 90024
david@tomorrowlaw.com
vedang@tomorrowlaw.com
henry@tomorrowlaw.com
jennifer@tomorrowlaw.com
emanuel@tomorrowlaw.com
Attorneys for Plaintiff Edvin Aguilar

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on March 28, 2024, at Los Angeles, California.



Laura Aispuro