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

SULENI ITZEP, ROBERTA MOSER,
individually, and on behalf of other members
of the general public similarly situated and
on behalf of aggrieved employees pursuant to
the Private Attorneys General Act
("PAGA");

Plaintiffs,

v.

AXONICS MODULATION
TECHNOLOGIES, INC., a Delaware
corporation; and DOES 1 through 100,
inclusive,

Defendant.

Case No.: 30-2020-01140962-CU-OE-CXC

Honorable Glenda Sanders
Department CX-101

CLASS ACTION

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194 and 1197 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (7) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
- (8) Violation of California Labor Code §§ 2698, *et seq.*, Private Attorney General Act of 2004; and
- (9) Violation of California Business &

Professions Code §§ 17200, *et seq.*

DEMAND FOR JURY TRIAL

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COMES NOW, Plaintiffs SULENI ITZEP and ROBERTA MOSER (“Plaintiffs”), individually, and on behalf of other members of the general public similarly situated, and alleges as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the California Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiffs exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. The “amount in controversy” for the named Plaintiffs, including claims for compensatory damages, restitution, penalties, wages, premium pay, and pro rata share of attorneys’ fees, is less than seventy-five thousand dollars (\$75,000).

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over Defendant because, upon information and belief, Defendant has sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because, upon information and belief, Defendant maintains offices, has agents, and/or transacts business in the State of California, including the County of Orange. The majority of the acts and omissions alleged herein relating to Plaintiffs took place in the State of California. Defendant employed Plaintiffs within the State of California.

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PARTIES

5. Plaintiff SULENI ITZEP is an individual residing in the State of California

6. Plaintiff ROBERTA MOSER is an individual residing in the State of California

7. Defendant AXONICS MODULATION TECHNOLOGIES, INC., at all times herein mentioned, was and is, upon information and belief, a Delaware corporation, and at all times herein mentioned, was and is, an employer whose employees are engaged throughout the State of California, including the County of Orange.

8. At all relevant times, Defendant AXONICS MODULATION TECHNOLOGIES, INC., was the “employer” of Plaintiffs within the meaning of all applicable California laws and statutes.

9. At all times herein relevant, Defendant AXONICS MODULATION TECHNOLOGIES, INC., and DOES 1 through 100, and each of them, were the agents, partners, joint venturers, joint employers, representatives, servants, employees, successors-in-interest, co-conspirators and assigns, each of the other, and at all times relevant hereto were acting within the course and scope of their authority as such agents, partners, joint venturers, joint employers, representatives, servants, employees, successors, co-conspirators and assigns, and all acts or omissions alleged herein were duly committed with the ratification, knowledge, permission, encouragement, authorization, and consent of each defendant designated herein.

10. The true names and capacities, whether corporate, associate, individual or otherwise, of Defendant DOES 1 through 100, inclusive, are unknown to Plaintiffs, who sue said defendant by such fictitious names. Plaintiffs are informed and believe, and based on that information and belief allege, that Defendant designated as a DOE is legally responsible for the events and happenings referred to in this Complaint, and unlawfully caused the injuries and damages to Plaintiffs and the other class members as alleged in this Complaint. Plaintiffs will seek leave of court to amend this Complaint to show the true names and capacities when the same have been ascertained.

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11. Defendant AXONICS MODULATION TECHNOLOGIES, INC., and DOES 1 through 100 will hereinafter collectively be referred to as “Defendant.”

12. Plaintiffs further allege that Defendant directly or indirectly controlled or affected the working conditions, wages, working hours, and conditions of employment of Plaintiffs and the other class members so as to make each of said Defendant’s employers and employers liable under the statutory provisions set forth herein.

CLASS ACTION ALLEGATIONS

13. Plaintiffs bring this action on their own behalf and on behalf of all other members of the general public similarly situated, and, thus, seek class certification under Code of Civil Procedure section 382.

14. The proposed Class is defined as follows:

All non-exempt employees and non-exempt contractor/staffing agency employees employed by Defendant in the state of California in a non-exempt position from June 14, 2017 to Final Judgment (“Class Period”).

15. Plaintiffs reserve the right to establish subclasses as appropriate.

16. The class is ascertainable and there is a well-defined community of interest in the litigation:

a. Numerosity: The class members are so numerous that joinder of all class members is impracticable. The membership of the entire class is unknown to Plaintiffs at this time; however, the class is estimated to be greater than one hundred forty-four (144) individuals and the identity of such membership is readily ascertainable by inspection of Defendant’s employment records.

b. Typicality: Plaintiffs’ claims are typical of all other class members’ claims as demonstrated herein. Plaintiffs will fairly and adequately protect the interests of the other class members with whom she has a well-defined community of interest.

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1 c. Adequacy: Plaintiffs will fairly and adequately protect the interests of
2 each class member, with whom she has a well-defined community of
3 interest and typicality of claims, as demonstrated herein. Plaintiffs have
4 no interest that is antagonistic to the other class members. Plaintiffs'
5 attorneys, the proposed class counsel, are versed in the rules governing
6 class action discovery, certification, and settlement. Plaintiffs have
7 incurred, and during the pendency of this action will continue to incur,
8 costs and attorneys' fees, that have been, are, and will be necessarily
9 expended for the prosecution of this action for the substantial benefit of
10 each class member.

11 d. Superiority: A class action is superior to other available methods for the
12 fair and efficient adjudication of this litigation because individual joinder
13 of all class members is impractical.

14 e. Public Policy Considerations: Certification of this lawsuit as a class
15 action will advance public policy objectives. Employers of this great
16 state violate employment and labor laws every day. Current employees
17 are often afraid to assert their rights out of fear of direct or indirect
18 retaliation. However, class actions provide the class members who are
19 not named in the complaint anonymity that allows for the vindication of
20 their rights.

21 17. There are common questions of law and fact as to the class members that
22 predominate over questions affecting only individual members. The following common
23 questions of law or fact, among others, exist as to the members of the class:

24 a. Whether Defendant failure to pay wages, without abatement or
25 reduction, in accordance with the California Labor Code, was willful;

26 b. Whether Defendant failed to pay their hourly-paid or non-exempt
27 employees within the State of California for all hours worked, missed
28 meal periods and rest breaks in violation of California law;

- 1 c. Whether Defendant required Plaintiffs and the other class members to
2 work over eight (8) hours per day and/or over forty (40) hours per week
3 and/or over six (6) consecutive days in a workweek and failed to pay the
4 legally required overtime compensation to Plaintiffs and the other class
5 members;
- 6 d. Whether Defendant properly calculated the regular rate for Plaintiffs and
7 the other class members to worked overtime and earned bonus,
8 commission or other incentive pay;
- 9 e. Whether Defendant properly calculated and paid the sick pay;
- 10 f. Whether Defendant deprived Plaintiffs and the other class members of
11 meal and/or rest periods or required Plaintiffs and the other class
12 members to work during meal and/or rest periods without compensation;
- 13 g. Whether Defendant failed to pay minimum wages to Plaintiffs and the
14 other class members for all hours worked;
- 15 h. Whether Defendant failed to pay all wages due to Plaintiffs and the other
16 class members within the required time upon their discharge or
17 resignation;
- 18 i. Whether Defendant failed to timely pay all wages due to Plaintiffs and
19 the other class members during their employment;
- 20 j. Whether Defendant complied with wage reporting as required by the
21 California Labor Code, including, inter alia, section 226;
- 22 k. Whether Defendant failed to reimburse Plaintiffs and the other class
23 members for necessary business-related expenses and costs;
- 24 l. Whether Defendant's conduct was willful or reckless;
- 25 m. Whether Defendant engaged in unfair business practices in violation of
26 California Business & Professions Code sections 17200, *et seq.*;
- 27 n. The appropriate amount of damages, restitution, and/or monetary
28 penalties resulting from Defendant's violation of California law; and

- 1 o. Whether Plaintiffs and the other class members are entitled to
2 compensatory damages pursuant to the California Labor Code.

3 **GENERAL ALLEGATIONS**

4 18. During the Class Period set forth herein, Defendant employed Plaintiffs and
5 other persons as hourly-paid or non-exempt employees within the State of California.

6 19. Defendant, jointly and severally, employed Plaintiffs as an hourly-paid, non-
7 exempt employee during the statutory period in the State of California.

8 20. Defendant had the authority to hire and terminate Plaintiffs and the other class
9 members; to set work rules and conditions governing Plaintiffs' and other class members'
10 employment; and to supervise their daily employment activities.

11 21. Defendant exercised sufficient authority over the terms and conditions of
12 Plaintiffs and the other class members' employment for them to be joint employers of
13 Plaintiffs and other class members.

14 22. Defendant directly hired and paid wages and benefits to Plaintiffs and the other
15 class members.

16 23. Defendant continues to employ hourly-paid or non-exempt employees within the
17 State of California.

18 24. Plaintiffs and other class members worked over eight (8) hours in a day, and/or
19 forty (40) hours in a week during their employment with Defendant.

20 25. Plaintiffs are informed and believe, and based thereon allege, that Defendant
21 engaged in a pattern and practice of wage abuse against their hourly-paid or non-exempt
22 employees within the State of California. This scheme involved, inter alia, failing to pay them
23 for all hours worked, missed meal periods, and missed rest breaks in violation of California
24 law.

25 26. Plaintiffs are informed and believe, and based thereon allege, that Defendant
26 knew or should have known that Plaintiffs and other class members were entitled to receive
27 certain wages for overtime compensation and that they were not receiving wages for overtime
28 compensation.

1 27. Plaintiffs are informed and believe, and based thereon allege, that Defendant
2 failed to provide Plaintiffs and other class members the required rest and meal periods during
3 the Class Period as required under the Industrial Welfare Commission Wage Orders and thus
4 they are entitled to any and all applicable penalties.

5 28. Plaintiffs are informed and believe, and based thereon allege, that Defendant
6 knew or should have known that Plaintiffs and other class members were entitled to receive all
7 timely and complete meal periods or payment of one additional hour of pay at Plaintiffs' and
8 the other class members' regular rate of pay when a meal period was missed, late or
9 interrupted, and they did not receive all timely and proper meal periods or payment of one
10 additional hour of pay at Plaintiffs' and other class members' regular rate of pay when a meal
11 period was missed.

12 29. Plaintiffs are informed and believe, and based thereon allege, that Defendant
13 knew or should have known that Plaintiffs and other class members were entitled to receive all
14 timely rest periods without interruption or payment of one additional hour of pay at Plaintiffs
15 and the other class members' regular rate of pay when a rest period was missed, late or
16 interrupted, and they did not receive all rest periods or payment of one additional hour of pay
17 at Plaintiffs' and the other class members' regular rate of pay when a rest period was missed.

18 30. Plaintiffs are informed and believe, and based thereon allege, that Defendant
19 knew or should have known that Plaintiffs and other class members were entitled to receive at
20 least minimum wages for compensation and that they were not receiving at least minimum
21 wages for all hours worked.

22 31. Plaintiffs are informed and believe, and based thereon allege, that Defendant
23 knew or should have known that Plaintiffs and other class members were entitled to receive the
24 wages owed to them upon discharge or resignation, including overtime and minimum wages
25 and meal and rest period premiums, and they did not, in fact, receive such wages owed to them
26 at the time of their discharge or resignation.

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1 32. Plaintiffs are informed and believe, and based thereon allege, that Defendant
2 knew or should have known that Plaintiffs and other class members were entitled to receive
3 complete and accurate wage statements in accordance with California law, but, in fact, they did
4 not receive complete and accurate wage statements from Defendant. The deficiencies included
5 without limitation, inter alia, the failure to include the total number of hours worked by
6 Plaintiffs and other class members. Plaintiffs are informed and believe, and based thereon
7 allege, that Defendant's wage statements also failed to completely and accurately report all
8 other information required by California Labor Code section 226(a).

9 33. Plaintiffs are informed and believe, and based thereon allege, that Defendant
10 knew or should have known that Plaintiffs and the other class members were entitled to
11 reimbursement for necessary business-related expenses (including without limitation
12 reimbursement for personal vehicle use, personal cell phone use, personal electronics use, etc.).

13 34. Plaintiffs are informed and believe, and based thereon allege, that Defendant
14 knew or should have known that Defendant had to keep complete and accurate payroll records
15 for Plaintiffs and other class members in accordance with California law, but, in fact, did not
16 keep complete and accurate payroll records.

17 35. Plaintiffs are informed and believe, and based thereon allege, that Defendant
18 knew or should have known that they had a duty to compensate Plaintiffs and other class
19 members pursuant to California law, and that Defendant had the financial ability to pay such
20 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
21 represented to Plaintiffs and other class members that they were properly denied wages, all in
22 order to increase Defendant's profits.

23 36. As a pattern and practice, during the Class Period set forth herein, Defendant
24 failed to pay overtime wages to Plaintiffs and other class members for all hours worked.
25 Plaintiffs and other class members were required to work more than eight (8) hours per day,
26 forty (40) hours per week, and/or more than six (6) consecutive days in a workweek without
27 overtime and/or double-time compensation.

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37. As a pattern and practice, during the Class Period set forth herein, Defendant failed to properly calculate and pay sick pay to Plaintiffs and other class members.

38. As a pattern and practice, during the Class Period set forth herein, Defendant failed to provide the requisite uninterrupted and timely meal and rest periods to Plaintiffs and other class members and fail to pay the appropriate meal/rest period premiums and/or failed to pay those premiums at the correct rate.

39. As a pattern and practice, during the Class Period set forth herein, Defendant failed to pay Plaintiffs and other class members at least minimum wages for all hours worked.

40. As a pattern and practice, during the Class Period set forth herein, Defendant failed to pay Plaintiffs and other class members the wages owed to them upon discharge or resignation.

41. As a pattern and practice, during the Class Period set forth herein, Defendant failed to provide complete or accurate wage statements to Plaintiffs and other class members.

42. As a pattern and practice, during the Class Period set forth herein, Defendant failed to keep complete or accurate payroll records for Plaintiffs and other class members.

43. As a pattern and practice, during the Class Period set forth herein, Defendant failed to properly compensate Plaintiffs and other class members pursuant to California law in order to increase Defendant's profits.

44. California Labor Code section 218 states that nothing in Article 1 of the Labor Code shall limit the right of any wage claimant to “sue directly . . . for any wages or penalty due to him [or her] under this article.”

FIRST CAUSE OF ACTION

(Violation of California Labor Code §§ 510 and 1198)

(Against AXONICS MODULATION TECHNOLOGIES, INC., and DOES 1 through 100)

45. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 44, and each and every part thereof with the same force and effect as though fully set forth herein.

1 46. California Labor Code section 1198 and the applicable Industrial Welfare
2 Commission (“IWC”) Wage Order provide that it is unlawful to employ persons without
3 compensating them at a rate of pay either time-and-one-half or two-times that person’s regular
4 rate of pay, depending on the number of hours worked by the person on a daily or weekly
5 basis.

6 47. Specifically, the applicable IWC Wage Order provides that Defendant is and
7 were required to pay Plaintiffs and other class members employed by Defendant, who
8 work(ed) more than eight (8) hours in a day or more than forty (40) hours in a workweek or
9 more than six (6) consecutive days in a workweek, at the rate of time-and-one-half for all hours
10 worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek or on
11 the seventh consecutive day of work in a workweek.

12 48. The applicable IWC Wage Order further provides that Defendant are and were
13 required to pay Plaintiffs and other class members overtime compensation at a rate of two
14 times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day or
15 more than eight (8) hours on the seventh consecutive day in the workweek.

16 49. California Labor Code section 510 codifies the right to overtime compensation
17 at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours
18 in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day
19 of work, and overtime compensation at twice the regular hourly rate for hours worked in
20 excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day
21 of work. Moreover, California Labor Code section 246 requires that any sick pay be calculated
22 using the methods enumerated therein.

23 50. During the Class Period set forth herein, Plaintiffs and other class members
24 worked in excess of eight (8) hours in a day, in excess of forty (40) hours in a week, and/or
25 more than six (6) consecutive days in a workweek as well as to earn sick pay.

26 51. As a pattern and practice, during the Class Period set forth herein, Defendant
27 intentionally and willfully failed to pay overtime wages owed to Plaintiffs and other class
28 members and failed to properly calculate and pay out overtime and the sick pay.

52. Defendant also failed to pay Plaintiffs and other class member all amounts owed for bonuses, commissions and/or other incentive payments, and/or failed to properly calculate Plaintiffs and other class members' regular rate of pay based on such payments, thus resulting in further violations of California law with respect to the payment of wages and overtime.

53. Defendant's pattern and practice of failing to pay Plaintiffs and other class members the unpaid balance of overtime compensation, as required by California laws, violates the provisions of California Labor Code sections 510 and 1198, and is therefore unlawful.

54. Pursuant to California Labor Code section 1194, Plaintiffs and other class members are entitled to recover unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION

(Violation of California Labor Code §§ 226.7 and 512(a))

(Against AXONICS MODULATION TECHNOLOGIES, INC., and DOES 1 through 100)

55. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 54, and each and every part thereof with the same force and effect as though fully set forth herein.

56. During the Class Period set forth herein, the IWC Order and California Labor Code sections 226.7 and 512(a) were applicable to Plaintiffs' and other class members' employment by Defendant.

57. During the Class Period set forth herein, California Labor Code section 226.7 provides that no employer shall require an employee to work during any meal or rest period mandated by an applicable order of the California IWC.

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1 58. During the Class Period set forth herein, the applicable IWC Wage Order and
2 California Labor Code section 512(a) provide that an employer may not require, cause or
3 permit an employee to work for a work period of more than five (5) hours per day without
4 providing the employee with a meal period of not less than thirty (30) minutes, except that if
5 the total work period per day of the employee is no more than six (6) hours, the meal period
6 may be waived by mutual consent of both the employer and employee.

7 59. During the Class Period set forth herein, the applicable IWC Wage Order and
8 California Labor Code section 512(a) further provide that an employer may not require, cause,
9 or permit an employee to work for a work period of more than ten (10) hours per day without
10 providing the employee with a second uninterrupted meal period of not less than thirty (30)
11 minutes, except that if the total hours worked is no more than twelve (12) hours, the second
12 meal period may be waived by mutual consent of the employer and the employee only if the
13 first meal period was not waived.

14 60. As a pattern and practice, during the Class Period set forth herein, Plaintiffs and
15 other class members who were scheduled to work for a period of time no longer than six (6)
16 hours, and who did not waive their legally-mandated meal periods by mutual consent, were
17 required to work for periods longer than five (5) hours without an uninterrupted meal period of
18 not less than thirty (30) minutes and/or without a rest period.

19 61. As a pattern and practice, during the Class Period set forth herein, Plaintiffs and
20 other class members who were scheduled to work for a period of time in excess of six (6) hours
21 were required to work for periods longer than five (5) hours without an uninterrupted meal
22 period of not less than thirty (30) minutes and/or without a rest period.

23 62. As a pattern and practice, during the Class Period set forth herein, Defendant
24 intentionally and willfully required Plaintiffs and other class members to work during meal
25 periods and failed to compensate Plaintiffs and the other class members the full meal period
26 premium at the correct rate for work performed during meal periods.

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63. As a pattern and practice, during the Class Period set forth herein, Defendant failed to pay Plaintiffs and other class members the full meal period premium at the correct rate due pursuant to California Labor Code section 226.7.

64. Defendant's conduct violates applicable IWC Wage Order and California Labor Code sections 226.7 and 512(a).

65. Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(b), Plaintiffs and other class members are entitled to recover from Defendant one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.

THIRD CAUSE OF ACTION

(Violation of California Labor Code § 226.7)

(Against AXONICS MODULATION TECHNOLOGIES, INC., and DOES 1 through 100)

66. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 65, and each and every part thereof with the same force and effect as though fully set forth herein.

67. During the Class Period set forth herein, the applicable IWC Wage Order and California Labor Code section 226.7 were applicable to Plaintiffs' and other class members' employment by Defendant.

68. During the Class Period set forth herein, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC.

69. During the Class Period set forth herein, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

70. As a pattern and practice, during the Class Period set forth herein, Defendant required Plaintiffs and other class members to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour period worked.

71. As a pattern and practice, during the Class Period set forth herein, Defendant willfully required Plaintiffs and other class members to work during rest periods and failed to pay Plaintiffs and the other class members the full rest period premium for work performed during rest periods.

72. As a pattern and practice, during the Class Period set forth herein, Defendant failed to pay Plaintiffs and the other class members the full rest period premium at the correct rate due pursuant to California Labor Code section 226.7

73. Defendant's conduct violates applicable IWC Wage Orders and California Labor Code section 226.7.

74. Pursuant to the applicable IWC Wage Orders and California Labor Code section 226.7(b), Plaintiffs and the other class members are entitled to recover from Defendant one additional hour of pay at the employees' regular hourly rate of compensation for each workday that the rest period was not provided.

FOURTH CAUSE OF ACTION

(Violation of California Labor Code §§ 1194 and 1197)

(Against AXONICS MODULATION TECHNOLOGIES, INC., and DOES 1 through 100)

75. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 74 and each and every part thereof with the same force and effect as though fully set forth herein.

76. During the Class Period set forth herein, California Labor Code sections 1194 and 1197 provide that the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed, is unlawful.

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77. As a pattern and practice, during the Class Period set forth herein, Defendant failed to pay minimum wages to Plaintiffs and other class members as required, pursuant to California Labor Code sections 1194 and 1197.

78. Defendant's failure to pay Plaintiffs and other class members the minimum wage as required violates California Labor Code sections 1194 and 1197. Pursuant to those sections, Plaintiffs and other class members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs, and attorney's fees, and liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

79. Pursuant to California Labor Code section 1194.2, Plaintiffs and other class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

FIFTH CAUSE OF ACTION

(Violation of California Labor Code §§ 201 and 202)

(Against AXONICS MODULATION TECHNOLOGIES, INC., and DOES 1 through 100)

80. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 79, and each and every part thereof with the same force and effect as though fully set forth herein.

81. During the Class Period set forth herein, California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

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82. As a pattern and practice, during the Class Period set forth herein, Defendant intentionally and willfully failed to pay Plaintiffs and other class members (but not all class members) who are no longer employed by Defendant their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendant's employ.

83. Defendant's pattern and practice of failing to pay Plaintiffs and other class members (but not all class members) who are no longer employed by Defendant their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendant's employ, is in violation of California Labor Code sections 201 and 202.

84. California Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

85. Plaintiffs and other class members are entitled to recover from Defendant the statutory penalty wages for each day they were not paid, up to the thirty (30) day maximum as provided by Labor Code section 203.

SIXTH CAUSE OF ACTION

(Violation of California Labor Code § 226(a))

(Against AXONICS MODULATION TECHNOLOGIES, INC., and DOES 1 through 100)

86. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 85, and each and every part thereof with the same force and effect as though fully set forth herein.

87. During the Class Period set forth herein, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the

1 inclusive dates of the period for which the employee is paid, (7) the name of the employee and
2 his or her social security number, (8) the name and address of the legal entity that is the
3 employer, and (9) all applicable hourly rates in effect during the pay period and the
4 corresponding number of hours worked at each hourly rate by the employee. The deductions
5 made from payments of wages shall be recorded in ink or other indelible form, properly dated,
6 showing the month, day, and year, and a copy of the statement or a record of the deductions
7 shall be kept on file by the employer for at least three years at the place of employment or at a
8 central location within the State of California.

9 88. As a pattern and practice, Defendant has intentionally and willfully failed to
10 provide Plaintiffs and other class members (but not all) with complete and accurate wage
11 statements. The deficiencies include failure to fully and accurately provide all information
12 required by California Labor Code section 226(a), including but not limited to the failure to
13 include the total number of hours worked by Plaintiffs and other class members and failure to
14 provide the other information required under Labor Code section 226(a).

15 89. As a result of Defendant's violation of California Labor Code section 226(a),
16 Plaintiffs and other class members (but not all) have suffered injury and damage to their
17 statutorily protected rights.

18 90. More specifically, Plaintiffs and other class members (but not all) have been
19 injured by Defendant's intentional and willful violation of California Labor Code section
20 226(a) because they were denied both their legal right to receive, and their protected interest in
21 receiving, accurate and itemized wage statements pursuant to California Labor Code section
22 226(a).

23 91. Plaintiffs and other class members (but not all) are entitled to recover from
24 Defendant the greater of their actual damages caused by Defendant's failure to comply with
25 California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand
26 dollars per employee.

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1 92. Plaintiffs and other class members (but not all) are also entitled to injunctive
2 relief to ensure compliance with this section, pursuant to California Labor Code section 226(g).

3 **SEVENTH CAUSE OF ACTION**

4 **(Violation of California Labor Code §§ 2800 and 2802)**

5 **(Against AXONICS MODULATION TECHNOLOGIES, INC., and DOES 1 through**
6 **100)**

7 93. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
8 through 92, and each and every part thereof with the same force and effect as though fully set
9 forth herein.

10 94. Pursuant to California Labor Code sections 2800 and 2802, an employer must
11 reimburse its employee for all necessary expenditures incurred by the employee in direct
12 consequence of the discharge of his or her job duties or in direct consequence of his or her
13 obedience to the directions of the employer.

14 95. Defendant has intentionally and willfully failed to reimburse Plaintiffs and other
15 class members (but not all) for all necessary business-related expenses and costs, including but
16 not limited to failure to reimburse for personal vehicle use, personal cellular phone use, personal
17 electronics use, and other required equipment and clothing needed to complete job duties.
18 Plaintiffs and other class members (but not all) are entitled to recover from Defendant their
19 business-related expenses and costs incurred during the course and scope of their employment,
20 plus interest accrued from the date on which the employee incurred the necessary expenditures at
21 the same rate as judgments in civil actions in the State of California.

22 **EIGHTH CAUSE OF ACTION**

23 **(Violation of California Labor Code §§ 2698, *et seq.*)**

24 **(Against AXONICS MODULATION TECHNOLOGIES, INC., and DOES 1 through**
25 **100)**

26 96. Plaintiffs incorporate by reference the allegations contained in all other
27 paragraphs of this First Amended Complaint and each and every part thereof with the same
28 force and effect as though fully set forth herein.

1 97. The Private Attorneys General Act of 2004 (“PAGA”) expressly establishes that
2 any provision of the California Labor Code of which provides for a civil penalty to be assessed
3 and collected by the Labor and Workforce Development Agency (“LWDA”), or any of its
4 departments, divisions, commissions, boards, agencies or employees for a violation of the
5 California Labor Code, may be recovered through a civil action brought by an aggrieved
6 employee on behalf of himself or herself, and other current or former employees.

7 98. Whenever the LWDA, or any of its departments, divisions, commissions,
8 boards, agencies, or employees has discretion to assess a civil penalty, court in a civil action is
9 authorized to exercise the same discretion, subject to the same limitations and conditions, to
10 assess a civil penalty.

11 99. On March 13, 2020 Plaintiff Itzep provided written notice to the LWDA and
12 Defendant of the specific provisions of the Labor Code she contends were violated, and the
13 theories supporting her contentions. Attached hereto as Exhibit 1 and incorporated by reference
14 is a copy of the written notice to the LWDA. Plaintiffs believes that as of May 17, 2020, the
15 sixty-five (65) day notice period expired as to Defendant. Therefore, Plaintiffs have exhausted
16 the statutory time period to bring this action and seeks to recover PAGA penalties for any
17 violations of the underlying alleged legal violations asserted in this complaint recoverable
18 under PAGA for the period from March 13, 2020 until present.

19 100. Plaintiffs and the other hourly-paid or non-exempt employees and staffing
20 agency/contractor employees are “aggrieved employees” as defined by Labor Code section
21 2699(c) in that they are all current and former employees and/or joint employees of Defendant,
22 and one or more of the alleged violations was committed against them.

23 101. In addition to civil penalties, California Labor Code Section 558 authorizes
24 collection of wages for violation of a section of this chapter or any provision regulating hours
25 and days of work in any order of the Industrial Welfare Commission.

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1 **Failure to Provide Meal and Rest Break Wages**

2 102. Defendant's failure to provide legally required meal and rest periods or to pay
3 premium wages at the correct rate for missed or interrupted meal and rest periods to Plaintiffs
4 and the other aggrieved employees was in violation of the Wage Orders and constitute
5 unlawful or unfair activity by California Labor sections 226.7 and 512(a).

6 **Failure to Pay Minimum Wages and Overtime Wages and Sick Pay**

7 103. Defendant's failure to pay legally required minimum wages and overtime wages
8 and sick pay to Plaintiffs and other aggrieved employees is in violation of the Wage Orders
9 and constitutes unlawful or unfair activity prohibited by California Labor Code section 510,
10 1194, and 1198.

11 **Failure to Pay Timely Wages**

12 104. Defendant's failure to timely pay wages to Plaintiffs and other aggrieved
13 employees upon termination of employment in accordance with Labor Code section 201 and
14 202 constitute unlawful and/or unfair activity prohibited by Labor Code section 203.

15 **Failure to Provide Complete and Accurate Wage Statements**

16 105. Defendant's failure to provide complete and accurate wage statements to
17 Plaintiffs and other aggrieved employees in accordance with Labor Code section 226(a)
18 constitutes unlawful and/or unfair activity prohibited by California Labor Code section 226(a).

19 **Failure to Reimburse Business Expense**

20 106. Defendant's failure to provide reimbursement for reasonable and necessary
21 business expenses as detailed above.

22 107. Pursuant to California Labor Code Section 2699, Plaintiffs, individually, and on
23 behalf of all aggrieved employees, request and are entitled to recover from Defendant and each
24 of them, unpaid wages, and/or untimely wages according to proof, interest, attorneys' fees and
25 costs pursuant to California Labor Code section 218.5, as well as statutory penalties against
26 Defendant, and each of them including, but not limited to:

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- 1 a. Penalties under California Labor Code section 2699 in the amount of a
2 hundred dollars (\$100) for each aggrieved employee per pay period for
3 the initial violation, and two hundred dollars (\$200) for each aggrieved
4 employee per pay period for each subsequent violation;
- 5 b. Penalties under California Code of Regulation Title 8 section 11070 in
6 the amount of fifty dollars (\$50) for each aggrieved employee per pay
7 period for the initial violation, and one hundred dollars (\$100) for each
8 aggrieved employee per pay period for each subsequent violation;
- 9 c. Penalties under California Labor Code section 210 in addition to, and
10 entirely independent and apart from, any other penalty, provided in the
11 California Labor Code in the amount of a hundred dollars (\$100) for
12 each aggrieved employee per pay period for each subsequent violation;
13 and
- 14 d. Any and all additional penalties and sums as provided by the California
15 Labor Code and/or other statutes.

16 108. Pursuant to California Labor Code section 2699(i), civil penalties recovered by
17 aggrieved employees shall be distributed as follows: seventy-five (75%) to the Labor and
18 Workforce Development Agency for the enforcement of labor laws and education of
19 employers and employees about their rights and responsibilities and twenty five percent (25%)
20 to the aggrieved employees. Wages covered pursuant to California Labor Code section 558
21 shall be paid directly to the affected employees.

22 Further, Plaintiffs are entitled to seek and recover reasonable attorneys' fees and costs
23 pursuant to California Labor Code section 2699, 218.5, and 210, and any other applicable statute.

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1 **Failure to Pay Sick Leave Pay**

2 109. California Labor Code section 246(1) allows an employer to calculate paid sick
3 leave for non-exempt employees using two (2) methods. Per section 246(1), Defendant may pay
4 sick leave either in the same manner as the regular rate of pay for the workweek in which the
5 employee uses paid sick time, whether or not the employee actually works overtime in that
6 workweek or by dividing the employee's total wages, not including overtime premium pay, by
7 the employee's total hours worked in the full pay periods of the prior 90 days of employment.
8 Lab. Code § 246(1)(1)-(2).

9 110. During the relevant time period, Defendant failed to provide sick leave in
10 accordance with California law and failed to pay Plaintiffs and class members all sick leave
11 pay owed.

12 **NINTH CAUSE OF ACTION**

13 **(Violation of California Business & Professions Code §§ 17200, *et seq.*)**

14 **(Against AXONICS MODULATION TECHNOLOGIES, INC., and DOES 1 through 100)**

15 111. Plaintiffs incorporates by reference the allegations contained in paragraphs 1
16 through 110, and each and every part thereof with the same force and effect as though fully set
17 forth herein.

18 112. Defendant's conduct, as alleged herein, has been, and continues to be unfair,
19 unlawful and harmful to Plaintiffss, other class members, to the general public, and
20 Defendant's competitors. Accordingly, Plaintiffss seeks to enforce important rights affecting
21 the public interest within the meaning of Code of Civil Procedure section 1021.5.

22 113. Defendant's activities as alleged herein are violations of California law, and
23 constitute unlawful business acts and practices in violation of California Business &
24 Professions Code section 17200, *et seq.*

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114. A violation of California Business & Professions Code section 17200, *et seq.* may be predicated on the violation of any state or federal law. In this instant case, Defendant's pattern and practice of requiring Plaintiffs and other class members work overtime and sick pay hours without paying them proper compensation violate California Labor Code sections 510, 1198 and 246. Additionally, Defendant's' pattern and practice of requiring Plaintiffs and other class members, to work through their meal and rest periods without paying them proper compensation violate California Labor Code sections 226.7 and 512(a). Moreover, Defendant's pattern and practice of failing to timely pay wages to Plaintiffs and other class members violate California Labor Code sections 201 and 202. Defendant also violated California Labor Code sections 226(a), 1194, 1197, 2800 and 2802.

115. As a result of the herein described violations of California law and the other violations described in paragraphs 1-111 above, Defendant unlawfully gained an unfair advantage over other businesses.

116. Plaintiffs and other class members have been personally injured by Defendant's unlawful business acts and practices as alleged herein, including but not necessarily limited to the loss of money and/or property.

117. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiffs and other class members are entitled to restitution of the wages withheld and retained by Defendant during a period that commences four years prior to the filing of this Complaint; an award of attorneys' fees pursuant to California Code of Civil procedure section 1021.5 and other applicable laws; and an award of costs.

DEMAND FOR JURY TRIAL

Plaintiffs, individually, and on behalf of other members of the general public similarly situated, requests a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all other members of the general public similarly situated, prays for relief and judgment against Defendant, jointly and severally, as follows:

Class Certification

1. That this action be certified as a class action;
2. That Plaintiffs be appointed as representative of the Class;
3. That counsel for Plaintiffs be appointed as Class Counsel; and
4. That Defendant provide to Class Counsel immediately the names and most current contact information (address, e-mail and telephone numbers) of all class members.

As to the First Cause of Action

5. That the Court declare, adjudge and decree that Defendant violated California Labor Code sections 246, 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages and sick pay due to Plaintiffs and the other class members;
6. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;
7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;
8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194; and
9. For such other and further relief as the court may deem just and proper.

As to the Second Cause of Action

10. That the Court declare, adjudge and decree that Defendant violated California Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all meal periods (including second meal periods) to Plaintiffs and the other class members;
11. That the Court make an award to Plaintiffs and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a meal period was not provided;
12. For all actual, consequential, and incidental losses and damages, according to proof;

- 1 13. For premium wages pursuant to California Labor Code section 226.7(b);
2 14. For pre-judgment interest on any unpaid wages from the date such amounts
3 were due;
4 15. For reasonable attorneys' fees and costs of suit incurred herein; and
5 16. For such other and further relief as the court may deem just and proper.

6 **As to the Third Cause of Action**

7 17. That the Court declare, adjudge and decree that Defendant violated California
8 Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all
9 rest periods to Plaintiffs and the other class members;

10 18. That the Court make an award to Plaintiffs and the other class members of one
11 (1) hour of pay at each employee's regular rate of compensation for each workday that a rest
12 period was not provided;

13 19. For all actual, consequential, and incidental losses and damages, according to
14 proof;

15 20. For premium wages pursuant to California Labor Code section 226.7(b);

16 21. For pre-judgment interest on any unpaid wages from the date such amounts
17 were due; and

18 22. For such other and further relief as the court may deem just and proper.

19 **As to the Fourth Cause of Action**

20 23. That the Court declare, adjudge and decree that Defendant violated California
21 Labor Code sections 1194 and 1197 by willfully failing to pay minimum wages to Plaintiffs
22 and the other class members;

23 24. For general unpaid wages and such general and special damages as may be
24 appropriate;

25 25. For pre-judgment interest on any unpaid compensation from the date such
26 amounts were due;

27 26. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
28 California Labor Code section 1194(a);

1 27. For liquidated damages pursuant to California Labor Code section 1194.2; and

2 28. For such other and further relief as the court may deem just and proper.

3 **As to the Fifth Cause of Action**

4 29. That the Court declare, adjudge and decree that Defendant violated California
5 Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the
6 time of termination of the employment of the other class members no longer employed by
7 Defendant;

8 30. For all actual, consequential, and incidental losses and damages, according to
9 proof;

10 31. For statutory wage penalties pursuant to California Labor Code section 203 for
11 the other class members who have left Defendant's employ;

12 32. For pre-judgment interest on any unpaid compensation from the date such
13 amounts were due; and

14 33. For such other and further relief as the court may deem just and proper.

15 **As to the Sixth Cause of Action**

16 34. That the Court declare, adjudge and decree that Defendant violated the record
17 keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders
18 as to Plaintiffs and other class members, and willfully failed to provide accurate itemized wage
19 statements thereto;

20 35. For actual, consequential and incidental losses and damages, according to proof;

21 36. For statutory penalties pursuant to California Labor Code section 226(e);

22 37. For injunctive relief to ensure compliance with this section, pursuant to
23 California Labor Code section 226(g); and

24 38. For such other and further relief as the court may deem just and proper.

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40. For actual, consequential and incidental losses and damages, according to proof;
41. For the imposition of civil penalties and/or statutory penalties;
42. For punitive damages and/or exemplary damages according to proof at trial;
43. For reasonable attorneys' fees and costs of suit incurred herein; and
44. For such other and further relief as the court may deem just and proper.

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1 50. For the appointment of a receiver to receive, manage and distribute any and all
2 funds disgorged from Defendant and determined to have been wrongfully acquired by
3 Defendant as a result of violation of California Business and Professions Code sections 17200,
4 *et seq.*;

5 51. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
6 California Code of Civil Procedure section 1021.5;

7 52. For injunctive relief to ensure compliance with this section, pursuant to
8 California Business and Professions Code sections 17200, *et seq.*; and

9 53. For such other and further relief as the court may deem just and proper.

10
11 Dated: October 18, 2021

JUSTICE LAW CORPORATION

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13 By: 
14 Douglas Han
15 Shunt Tatavos-Gharajeh
16 Phillip Song
17 *Attorneys for Plaintiff*
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EXHIBIT 1

March 13, 2020

BY U.S. EMAIL/ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov

State of California

Labor & Workforce Development Agency

800 Capitol Mall, MIC-55

Sacramento, California 95814

Re: AXONICS MODULATION TECHNOLOGIES, INC.

Dear Representative:

We have been retained to represent Suleni Itzep against Axonics Modulation Technologies, Inc. (including any and all affiliates, managers, members, subsidiaries, and parents, and their shareholders, officers, directors, and employees), any individual, owner, officer and managing agent, DOES 1-10 as an "Employer" or person acting on behalf of an "Employer" pursuant to California Labor Code section 558.1, and DOES 11-20¹ for violations of California wage-and-hour laws (hereinafter collectively referred to as "AXONICS").

Ms. Itzep is pursuing her California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 ("PAGA") claim on a representative basis. Therefore, Ms. Itzep may seek penalties and wages for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

Axonics Modulation Technologies, Inc. is a Delaware corporation headquartered at 26 Technology Drive, Irvine, California 92618.

AXONICS employed Ms. Itzep as an hourly-paid non-exempt Operator within one year of the date of this letter (until in or about January of 2020) in the State of California. AXONICS directly controlled the wages, hours and working conditions of Ms. Itzep's employment.

The "aggrieved employees" that Ms. Itzep may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees (whether hired directly or through staffing agencies or labor contractors) of AXONICS within the State of California.

¹ Ms. Itzep does not know the true names or capacities, whether individual, partner or corporate, of DOES 1 through 20, inclusive, and for that reason, said DOES are designated under such fictitious names. Ms. Itzep will amend this notice when the true names and capacities are known. Ms. Itzep is informed and believes that each DOE was responsible in some way for the matters alleged herein and proximately caused Ms. Itzep and other current and former aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

AXONICS failed to properly pay its hourly-paid or non-exempt employees for all hours worked, failed to properly provide or compensate minimum and overtime wages and for meal and rest breaks, failed to issue compliant wage statements and failed to reimburse for all necessary business-related costs and expenses, thus resulting in other Labor Code violations as stated below.

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Ms. Itzep has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees at AXONICS, regardless of their classification, job title, locations, or whether they were hired directly or through a labor contractor or staffing agency.

AXONICS has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code sections 510, 1194, and 1198 require employers to pay at least minimum wage for all hours worked, pay time-and-a-half, or double time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates. During the relevant time period, Ms. Itzep and other aggrieved employees routinely worked in excess of 8 hours in a day and 40 hours in a week. AXONICS failed to compensate Ms. Itzep and other aggrieved employees for all hours worked and performing off-the-clock work, including pre- and post-shift and during meal breaks. AXONICS also failed to factor non-discretionary bonuses and incentives in aggrieved employees' regular rate of pay for purposes of overtime compensation. Moreover, AXONICS maintained an illegal rounding policy that negatively affected Ms. Itzep and other aggrieved employees' time and pay. Therefore, Ms. Itzep and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

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California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided. During the relevant time period, AXONICS routinely required Ms. Itzep and other aggrieved employees to work through, interrupt, cut short, and/or delay their meal and rest breaks to comply with AXONICS policies and expectations, and meet production goals. Further, AXONICS failed to authorize and permit Ms. Itzep and other aggrieved employees to take the requisite number of meal and rest breaks, including second meal breaks and third rest breaks, when working shifts exceeding 10 hours in length. Despite these facts, AXONICS failed to compensate Ms. Itzep and other aggrieved employees all the premium wages they were owed.

California Labor Code section 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. California Labor Code section 202 requires that if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. California Labor Code section 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. During the relevant time period, AXONICS failed to pay Ms. Itzep and other aggrieved employees all wages, including for uncompensated off-the-clock work and premium wages for failing to provide legally mandated meal and rest breaks, due to them within any time period specified by California Labor Code sections 201 and 203 and therefore is liable under California Labor Code section 203.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, AXONICS failed to pay Ms. Itzep and other aggrieved employees all wages due to them within any time period specified by California Labor Code section 204.

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, AXONICS did not provide Ms. Itzep and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from AXONICS were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include (1) gross wages earned by Ms. Itzep and other aggrieved employees, (2) total hours worked by Ms. Itzep and other aggrieved employees, (3) the number of piece-rate units earned and any applicable piece rate by Ms. Itzep and other aggrieved employees (4) all deductions for Ms. Itzep and other aggrieved employees, (5) net wages earned by Ms. Itzep and other aggrieved employees, (6) the inclusive dates of the period for which Ms. Itzep and other aggrieved employees are paid, (7) the name of the aggrieved employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by Ms. Itzep and other aggrieved employees.

California Labor Code section 558 allows recovery of penalties. (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee. Ms. Itzep and other aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to penalties.

California Labor Code sections 1174(d) requires an employer to keep, 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 any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, AXONICS failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Ms. Itzep and other aggrieved employees.

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California Labor Code sections 1194, 1197 and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, AXONICS did not provide Ms. Itzep and other aggrieved employees with the minimum wages to which they were entitled despite constructive and actual knowledge of off-the-clock work, including pre- and post-shift and during meal breaks.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During their employment, Ms. Itzep and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by AXONICS, including for the use of their personal cellular phones and vehicles for work purposes.

We believe that Ms. Itzep and other current and former California-based hourly-paid or non-exempt employees are entitled to penalties and wages as allowed under California Labor Code section 2698, *et seq.* for violations of Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in questions and the California Labor & Workforce Development Agency setting forth the claims, and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by California Labor code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Ms. Itzep will seek these penalties and wages on her own behalf and on behalf of other similarly situated California-based hourly-paid or non-exempt employees of AXONICS within one year of the date of this letter, as allowed by law.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

LWDA
March 13, 2020
Page 6 of 6

Very truly yours,

JUSTICE LAW CORPORATION

A handwritten signature in black ink, appearing to read "D. Han", with a long horizontal flourish extending to the right.

Douglas Han, Esq.

CC: (By Certified U.S. Mail Only)

Kari Keese
c/o Axonics Modulation Technologies, Inc.
26 Technology Drive
Irvine, California 92618
Agent for Service of Process for Axonics Modulation Technologies, Inc.

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PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is aokada@justicelawcorp.com

On October 18, 2021, I served the foregoing document described as

FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES

for the following case: **Itzep v. Axonics Modulation Technologies, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM-778201-20**
Court Case No.: 30-2020-01140962-CU-OE-CXC
Orange County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 18, 2021, at Pasadena, California.



Anna Okada