

#31244820

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

JAN 13 2023

DAVID H. YAMASAKI, Clerk of the Court

BY: D. MIRANDA DEPUTY

**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;

Defendants.

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

Assigned for All Purposes to:
Honorable Lon F. Hurwitz
Department CX-103

CLASS ACTION

**~~PROPOSED~~ ORDER AND
JUDGMENT RE: FINAL APPROVAL
OF CLASS ACTION SETTLEMENT**

Hearing Date: January 13, 2023
Hearing Time: 1:30 p.m.
Hearing Place: Department CX-103

Complaint Filed: May 26, 2020
FAC Filed: October 18, 2021
Trial Date: None Set

1 On July 29, 2022, the Court granted approval of the Plaintiffs Suleni Itzep and
2 Roberta Moser's ("Plaintiffs") motion for preliminary approval of the proposed class action
3 settlement reached between Plaintiffs and Defendant Axonics, Inc. (formerly, known as Axonics
4 Modulation Technologies, Inc. and referred to herein as "Defendant") (collectively, the "Parties").
5 This matter having come before this Court for a hearing on January 13, 2023 at 1:30 p.m. on
6 Plaintiffs' unopposed Motion for Final Approval of Class Action Settlement, as set forth in the
7 Parties' Revised Joint Stipulation of Class Action and PAGA Settlement and Release ("Settlement
8 Agreement," "Settlement," or "Agreement")¹, pursuant to the Order Preliminarily Approving Class
9 Action Settlement and Setting Hearing for Final Approval of Settlement ("Preliminary Approval
10 Order"), adequate notice having been given as required in Preliminary Approval Order, the Court
11 having considered all papers filed and proceedings had herein, and good cause appearing, it is
12 ORDERED, ADJUDGED, AND DECREED THAT:

13 1. The Court has jurisdiction over the subject matter of the action and all Parties,
14 including the Plaintiffs and Class Members.

15 2. Based on a review of the papers submitted by Plaintiffs and a review of the
16 applicable law, the Court finds that the Gross Settlement Amount of \$225,000, and the terms set
17 forth in the Parties' Settlement Agreement are fair, reasonable, and adequate. The Settlement
18 Agreement is hereby incorporated into this Order and Judgment Re: Final Approval of Class
19 Action Settlement ("Order and Judgment") as though fully set forth herein. The terms used in this
20 Order and Judgment have the meaning assigned to them in the Settlement Agreement, Class
21 Notice, and Opt-Out Request Form (collectively, known as the "Notice Packet").

22 3. The Court has determined the Notice Packet provided to the Class pursuant to the
23 Preliminary Approval Order and Judgment fully and accurately informed all Class Members of the
24 material terms of the Settlement, constituted the best notice practicable under the circumstances,
25 and constituted valid, due, and sufficient notice to all Class Members. The Court finds and
26

27 ¹ The final Settlement Agreement is attached as **Exhibit 1** to the Joint Supplemental
28 Stipulation and Brief In Support of Motion For Preliminary Approval of Class Action Settlement
filed on May 19, 2022 (ROA # 106).

1 determines this notice procedure afforded adequate protections to Class Members and provides the
2 basis for the Court to make an informed decision regarding approval of the Settlement based on
3 the responses of the Class.

4 4. The Court hereby grants full, unconditional, and final approval of the Settlement as
5 fair, reasonable, and adequate in all respects, determines the Settlement was made in good faith
6 and in the best interests of the Parties, and orders the Parties to effectuate the Settlement in
7 accordance with the terms of the Settlement. The Court further finds the Settlement was the result
8 of arm's-length negotiations conducted after Class Counsel had thoroughly and adequately
9 investigated the claims and became familiar with the strengths and weaknesses of those claims. In
10 particular, the amount of monies allocated to the Class Members and the assistance of an
11 experienced mediator in the settlement process, among other factors, support the Court's
12 conclusion the Settlement is fair, reasonable, and adequate. The amounts agreed to be paid by
13 Defendant, including the Individual Settlement Payments to be paid to Class Members other than
14 those who opt-out ("Participating Class Members") as provided for by the Settlement, are fair and
15 reasonable under the facts of this case.

16 5. Pursuant to California Rule of Court 3.769(d), this Court makes final the
17 conditional class certification contained in the Preliminary Approval Order and certifies a class
18 defined as: "all non-exempt employees employed by Defendant in the State of California in a non-
19 exempt position during the period of time beginning on June 14, 2017 through September 14,
20 2021" ("Class," "Class Members," and "Class Period").

21 6. Plaintiffs are hereby appointed and designated, for all purposes, as the Plaintiffs
22 and representatives for the Class. Moreover, Douglas Han, Shunt Tatavos-Gharajeh, and Phillip
23 Song of the Justice Law Corporation are hereby appointed as Class Counsel.

24 7. The Court hereby finds the Notice Packet and all related documents have been
25 mailed to all Class Members as previously ordered by the Court. The Court finds such Notice
26 Packet fairly and adequately described the terms of the Agreement, the manner in which Class
27 Members could object to or participate in the Agreement, and the manner in which Class Members
28 could opt out of the Class. Next, the Court finds the distribution of the Notice Packet was: (a) best

1 notice practicable under the circumstances; (b) valid, due, and sufficient notice to all Class
2 Members; and (c) complied fully with California Rule of Court 3.769, due process and all other
3 applicable laws. The Court further finds a full and fair opportunity has been afforded to Class
4 Members to participate in the proceedings convened to determine whether the Agreement should
5 be given final approval. Accordingly, the Court hereby determines all Class Members who did not
6 file a timely and proper request to be excluded from the Agreement are bound by this Order and
7 Judgment.

8 8. The Court finds the Settlement Agreement is fair, reasonable, and adequate as to
9 the Class, Plaintiffs, State of California, and Defendant. The Court further finds the Settlement
10 Agreement is the product of good faith, intensive, serious, non-collusive, and arm's-length
11 negotiations between the Parties, is supported by an evidentiary record, involved experienced and
12 qualified Class Counsel who were assisted by an experienced mediator, and confers a significant
13 financial benefit to the Class commensurate with the likely recovery if Plaintiffs prevailed at trial
14 and the risks of continued litigation. The Court also finds the Settlement Agreement is consistent
15 with public policy, and fully complies with all applicable provisions of law, including the
16 provisions of Code of Civil Procedure section 382 and California Rule of Court 3.760. The nature
17 of the claims, strength of Defendant's defenses, amounts paid under the Settlement Agreement,
18 allocation of settlement proceeds among the Class Members and the fact a settlement represents a
19 compromise of the Parties' positions rather than the result of a finding of liability at trial all support
20 the Court's decision granting final approval. The following factors also support the decision
21 granting final approval: (a) risk, expense, complexity, and likely duration of further litigation; (b)
22 risk of attaining and maintaining class action status throughout the proceedings; and (c) extent of
23 discovery completed and the stage of the proceedings.

24 9. In response to the Notice Packet, zero (0) Class Members submitted disputes, zero
25 (0) Class Members objected to the Settlement, and only (1) Class Member submitted a request for
26 exclusion from the Settlement. The Class Member who requested exclusion is named Arjun Modi.

27 10. The reaction of the Class Members to the Agreement further supports the Court's
28 decision granting final approval. The Court is satisfied with the settlement administration statistics

1 and the explanation for those statistics provided by Phoenix Class Action Administration
2 Solutions, the Court-appointed Settlement Administrator, by way of the Declaration of Taylor
3 Mitzner.

4 11. The Court hereby approves payment of up to \$78,750 (35% of the Gross Settlement
5 Amount) to Class Counsel as the attorneys' fees and up to \$10,068.38 to Class Counsel as the
6 attorneys' costs pursuant to Class Counsel's application, payable pursuant to the Agreement.

7 12. The Court hereby approves payment of up to \$5,000 to each Plaintiff (totaling
8 \$10,000) as an enhancement and for a general release, payable pursuant to the Agreement.

9 13. The Court hereby approves payment of up to \$5,000 to the Settlement
10 Administrator for the services it has rendered and will render in administering the Settlement as
11 described more fully in the Settlement, payable pursuant to the Settlement.

12 14. Pursuant to Labor Code Section 2698, *et seq.*, the Court hereby approves allocation
13 of \$22,500 to resolve the claims under the Private Attorneys General Act of 2004 ("PAGA") and
14 to resolve and settle the Settled PAGA Claims, seventy-five percent (75%) of which (\$16,875),
15 shall be paid to the California Labor and Workforce Development Agency ("LWDA") and twenty-
16 five percent (25%) of which (\$5,625) shall be paid to PAGA Employees as directed in the
17 Agreement, payable pursuant to the Agreement. Requests for exclusion will have no impact on
18 the settlement of the claims under the PAGA as approved by the Court. All Settled PAGA Claims
19 will be released for the State of California and PAGA Employees for the PAGA Period (*i.e.*,
20 beginning on March 13, 2019 and ending on September 14, 2021) irrespective of whether a PAGA
21 Employee submits a request for exclusion. PAGA Employees are defined as: "all persons who are
22 employed or have been employed by Defendant in the State of California as non-exempt
23 employees during the period of time beginning on March 13, 2019 and ending on September 14,
24 2021" ("PAGA Employees" and "PAGA Period").

25 15. The Settlement Administrator shall calculate and administer from the Net
26 Distribution Fund the Individual Settlement Payments to Participating Class Members and PAGA
27 Employees (including the allocation from the Gross Settlement Amount of such amounts between
28 taxable wages, interest, and penalties, as specified in the Settlement Agreement), Attorneys' Fees

1 and Costs to Class Counsel, Enhancement and General Release Payment to Plaintiffs, and PAGA
2 Payment and Allocation to the LWDA, all of which shall be deducted from the Gross Settlement
3 Amount. The Settlement Administrator is hereby directed to take all other actions in furtherance
4 of the settlement administration as specified in the Settlement Agreement.

5 16. The releases, waivers, and covenants not to sue by Plaintiffs, Participating Class
6 Members, and PAGA Employees as set forth in the Agreement and Notice Packet are approved
7 and hereby incorporated by reference and made a part of this Order and Judgment as though fully
8 set forth herein. As set forth in the Agreement, by operation of the entry of this Order and Judgment
9 and pursuant to the Agreement, Plaintiffs and Participating Class Members waive and release the
10 Settled Claims, which are barred pursuant to this Order and Judgment. Plaintiffs and Participating
11 Class Members are permanently barred jointly and severally from prosecuting against the Released
12 Parties any and all of Plaintiffs' and Participating Class Members' Settled Claims. As set forth in
13 the Agreement, the release of the Settled Claims shall run from the start of the Class Period (*i.e.*,
14 beginning on June 14, 2017 through September 14, 2021).

15 17. The Court approves the settlement of claims under Labor Code Section 2698, *et*
16 *seq.* (PAGA) according to the terms and conditions in the Settlement. As set forth in the Settlement,
17 by operation of the entry of this Order and Judgment and pursuant to the Settlement, Plaintiffs, the
18 State of California, and PAGA Employees waive and release the Settled PAGA Claims, which are
19 barred pursuant to this Order and Judgment. Plaintiffs, the State of California, and PAGA
20 Employees are permanently barred jointly and severally from prosecuting against the Released
21 Parties any and all of the Settled PAGA Claims. The release of the Settled PAGA Claims shall run
22 from the start of the PAGA Period (*i.e.*, beginning on March 13, 2019 and ending on September
23 14, 2021).

24 18. Nothing in this Order and Judgment shall preclude any action to enforce the Parties'
25 obligations under the Settlement Agreement or under this Order and Judgment or alter or impact
26 any existing arbitration agreements between Defendant and any Class Member for claims not
27 released by this Order and Judgment.
28

1 19. Neither this Order and Judgment, Agreement, nor any document referred to herein,
2 nor any action taken to carry out the Agreement is, may be construed as, or may be used as an
3 admission by or against Defendant or any of the other Released Parties of any fault, wrongdoing,
4 or liability whatsoever. Nor is this Order and Judgment a finding of the validity of any claims in
5 this matter or of any wrongdoing by Defendant or any of the other Released Parties. The entering
6 or carrying out of the Agreement, and any negotiations or proceedings related thereto, shall not in
7 any event be construed as, or deemed to be evidence of, an admission or concession with regard
8 to the denials or defenses by Defendant or any of the other Released Parties and shall not be offered
9 in evidence against Defendant or any of the Released Parties in any action or proceeding in any
10 court, administrative agency, or other tribunal for any purpose whatsoever other than to enforce
11 the provisions of this Order and Judgment, Agreement, or any related agreement or release.
12 Notwithstanding these restrictions, Defendant and any of the Released Parties may file in this
13 matter or in any other proceeding this Order and Judgment, Agreement, or any other papers and
14 records on file in this matter as evidence of the settlement and to support a defense of res judicata,
15 collateral estoppel, release, waiver, or other theory of claim preclusion, issue preclusion, or similar
16 defense.

17 20. If the Settlement does not become final and effective in accordance with the terms
18 of the Settlement, resulting in the return and/or retention of the Settlement funds to Defendant
19 consistent with the terms of the Settlement, then this Order and Judgment and all orders entered in
20 connection herewith, including without limitation any order certifying the class of Class Members,
21 appointing class representatives or Class Counsel, shall be rendered null and void and shall be
22 vacated.

23 21. The Court hereby enters judgment, with prejudice, for the reasons set forth above,
24 and in accordance with the terms set forth in the Settlement Agreement.

25 22. Upon completion of administration of the Settlement, the Settlement Administrator
26 will provide written certification of such completion to the Court and counsel for the Parties.

27 23. After entry of this Order and Judgment, pursuant to California Rules of Court, Rule
28 3.769(h), the Court shall retain continuing jurisdiction to construe, interpret, implement, and

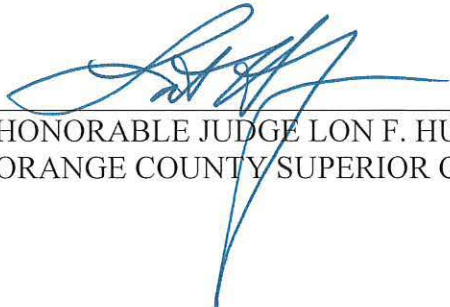
1 enforce the Settlement Agreement, to hear and resolve any contested challenge to a claim for
2 settlement benefits, and to supervise and adjudicate any dispute arising from or in connection with
3 the distribution of settlement benefits.

4 24. Once the Court grants and signs this Order and Judgment, the Settlement
5 Administrator will mail a notice of entry of judgment to Class Members alongside their settlement
6 checks by First-Class U.S. Mail. The notice of entry of judgment will state, "The Superior Court
7 of California, County of Orange, granted final approval of the *Suleni Itzep v. Axonics Modulation*
8 *Technologies, Inc.* matter, Case Number 30-2020-01140962-CU-OE-CXC, on January 13, 2023.
9 As a result, the Settlement Administrator has enclosed your settlement check alongside this notice
10 of entry of judgment."

11 25. The Court sets Final Accounting for ^{September 20,} ~~August 4,~~ 2023 in Department CX103. ^{11:30pm} At least
12 **nine (9)** court days before this hearing, Plaintiffs shall file a compliance status report. Pursuant to
13 Code of Civil Procedure section 384, the compliance status report shall specify the total amount
14 paid to Participating Class Members and the residual of the unclaimed settlement funds that will
15 be paid to the entity identified as the recipient of such funds in the Settlement Agreement.

16 26. Plaintiffs shall submit a copy of the Order and Judgment to the LWDA within ten
17 (10) calendar days after entry of the Order and Judgment.

18
19 Dated: JAN 13 2023


HONORABLE JUDGE LON F. HURWITZ
ORANGE COUNTY SUPERIOR COURT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 manderson@justicelawcorp.com

On January 17, 2023, I served the foregoing document described as

ORDER AND JUDGMENT RE: FINAL APPROVAL OF CLASS ACTION SETTLEMENT

for the following case: **Itzep, et al. 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 January 17, 2023, at Pasadena, California.



Mariah Anderson