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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

MARIA TERESA PEREZ, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

ADVANCED BIONICS, LLC, a Delaware
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No. 20STCV26408

CLASS ACTION

*[Assigned for all purposes to the Hon.
Kenneth R. Freeman; Dept. SSC-14]*

**DECLARATION OF PAUL K. HAINES
IN SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: May 31, 2022
Time: 8:30 a.m.
Dept.: SSC-14

1 I, PAUL K. HAINES, declare as follows:

2 1. I am a shareholder and principal of Haines Law Group, APC, and counsel for the
3 named Plaintiff Maria Teresa Perez (“Plaintiff”) and the proposed Settlement Class in the above-
4 captioned matter. I am a member in good standing of the bar of the State of California and am
5 admitted to practice in this Court. I have personal knowledge of the facts stated in this declaration
6 and could testify competently to them if called upon to do so.

7 2. I am a 2006 graduate of Pepperdine University School of Law, where I graduated
8 cum laude. During law school, I worked as a law clerk for the appellate firm of Horvitz & Levy,
9 located in Encino, California. I also spent a semester in law school working as an extern for the
10 Honorable Edward Rafeedie, District Judge for the United States District Court for the Central
11 District of California.

12 3. Since graduating from law school, my practice has focused almost exclusively on
13 employment litigation. In September 2007, I began working as an associate attorney at the
14 international law firm of Littler Mendelson P.C., at its Los Angeles office, which according to its
15 website is the “largest U.S.-based law firm exclusively devoted to representing management in
16 every aspect of labor and employment law.” While at Littler Mendelson, I was primarily staffed
17 on wage and hour class actions venued in both state and federal courts, and I also worked on a
18 number of single and multi-plaintiff wage and hour matters as well.

19 4. During my employment at Littler Mendelson, I played a significant role in the
20 class actions that I was staffed on, as I was often the only associate staffed on such cases. In
21 particular, I received a wide-array of wage and hour class action experience performing the
22 following types of tasks: drafting demurrers, motions to strike and/or dismiss; removing actions
23 from state court to federal court; drafting and responding to written discovery; drafting and
24 opposing discovery related motions; arguing discovery related motions; drafting motions to
25 consolidate related matters; interviewing putative class members and obtaining declarations in
26 connection with class certification; drafting oppositions to motions for class certification; drafting
27 motions for decertification following class certification; conducting exposure analyses to assess
28 the strengths and weaknesses of asserted claims, the likelihood of prevailing at class certification

1 and potential damages resulting from such claims; drafting mediation briefs; serving as the
2 primary contact to in-house counsel; deposing named plaintiffs and putative class members;
3 deposing retained expert witnesses; and defending the depositions of corporate witnesses. In
4 short, I played an integral role in all aspects of litigation from the inception of a matter through
5 and beyond class certification. I also supervised the work of several junior attorneys who were
6 staffed on the same wage and hour class actions.

7 5. In June 2011, I voluntarily resigned from Littler Mendelson in order to accept an
8 associate attorney position with the international law firm of Morgan, Lewis & Bockius LLP, at
9 its Los Angeles office, where I began working in July 2011. During my employment at Morgan,
10 Lewis & Bockius LLP, I worked exclusively on the defense of wage and hour class and collective
11 actions. For the vast majority of these cases, I was the only associate staffed on the matter, and I
12 performed the same job duties as described in the immediately preceding paragraph. In addition
13 to working on wage and hour class actions, at Morgan, Lewis & Bockius I also worked on a
14 number of “hybrid” actions asserting nationwide wage and hour claims under the Fair Labor
15 Standards Act (“FLSA”), as well as California-specific claims under Rule 23 of the Rules of Civil
16 Procedure.

17 6. In July 2012, I transitioned into litigating wage and hour class actions from the
18 Plaintiff’s side, first as a Partner with the law firm of Boren, Osher & Luftman, LLP, and since
19 February 2016, as a Shareholder of the Haines Law Group, APC. Currently, over ninety percent
20 (90%) of my practice is dedicated exclusively to the prosecution of wage and hour class actions,
21 and I am currently responsible for prosecuting over fifty (50) wage and hour class actions filed in
22 both State and Federal courts throughout California. A few examples of the matters in which I
23 have been appointed as Class Counsel, all of which have been granted final approval, include the
24 following: *Sanchez v. Res-Care, Inc.*, Case No. BC526175, California Superior Court, County of
25 Los Angeles, Hon. John Shepard Wiley, Jr., presiding; *Prado v. Warehouse Demo Services, Inc.*,
26 Case No. CV14-3170 JFW (Ex), United States District Court, Central District of California, Hon.
27 John F. Walter presiding; *Tesla Motors Wage and Hour Litigation*, JCCP 4792, California
28 Superior Court, Santa Clara County, Hon. Peter H. Kirwan presiding; *Bower v. Cycle Gear, Inc.*,

Case No. CV14-2712 HSG, United States District Court, Northern District of California, Hon. Haywood S. Gilliam, Jr. presiding; *Longstreth v. PAQ, Inc., dba Food 4 Less*, Case No. 15CV-0206, California Superior Court, County of San Luis Obispo, Hon. Charles S. Crandall presiding; *Nunez v. CompuCom Systems, Inc.*, Case No. BC618385, California Superior Court, County of Los Angeles, Hon. John Shepard Wiley, Jr. presiding; *Mansilla v. Haeco Americas Line Services, LLC, et al*, Case No. BC615310, Superior Court of California, County of Los Angeles, Hon. Elihu M. Berle presiding; *Leverage, et al v. Traeger Pellet Grills, LLC, et al*, Case No. 4:16-cv-00784-KAW, United States District Court, Northern District of California, Hon. Kandis A. Westmore presiding.

7. I have also moved to certify and have received an order certifying a class action and/or conditionally certifying a collective action, in the following cases:

- *Medeiros v. Vortex Financial Management Inc.*, Case No. 30-2013-00644741-CU-OE-CXC, California Superior Court, County of Orange, Honorable Judge Gail A. Andler, presiding (certifying a class of employees who were misclassified as independent contractors);
- *Javine v. San Luis Ambulance Service, Inc.*, Case No. CV13-07480 BRO (SSx), United States District Court, Central District of California, Honorable Judge Beverly Reid O'Connell, presiding (conditionally certifying an unpaid FLSA overtime wage class);
- *Prado v. Warehouse Demo Services, Inc.*, Case No. CV14-3170 JFW (Ex), United States District Court, Central District of California, Honorable Judge John F. Walter, presiding (certifying a rest period violation class and conditionally certifying an FLSA unpaid overtime wage class);
- *Bower v. Cycle Gear, Inc.*, Case No. CV14-2712 HSG, United States District Court, Northern District of California, Honorable Judge Haywood S. Gilliam, Jr., presiding (conditionally certifying an unpaid FLSA overtime wage class);
- *Vega v. Weatherford U.S., Limited Partnership*, Case No. CV14-1790-JLT, United States District Court, Eastern District of California, Honorable Jennifer L. Thurston, presiding (conditionally certifying an unpaid FLSA overtime wage class);

- 1 • *Galvan v. AMVAC Chemical Corporation*, Case No. 30-2014-00716103-CU-OE-CXC,
2 California Superior Court, County of Orange, Honorable Judge William Claster, presiding
3 (certifying unpaid overtime wage class and waiting time penalty class);
- 4 • *Camacho v. Residential Fire Systems, Inc.*, Case No. 30-2015-775372-CU-OE-CXC,
5 California Superior Court, County of Orange, Honorable Glenda Sanders, presiding
6 (certifying piece rate pay plan classes, expense reimbursement class, wage statement
7 class, and waiting time penalties class);
- 8 • *Ontiveros v. Safelite Fulfillment, Inc., et al*, Case No. CV 15-7118-DMG (RAOx), United
9 States District Court, Central District of California, Honorable Dolly M. Gee presiding
10 (certifying six classes of employees for rest period violations, wage statement violations,
11 meal period violations, and overtime and double-time violations);
- 12 • *Vazquez, et al v. Kraft Heinz Foods Company*, Case No. 16-cv-2749-WQH-BLM, United
13 States District Court, Southern District of California, Honorable William Q. Hayes
14 presiding (certifying six classes of employees for unpaid wages, meal period violations,
15 wage statement violations, and waiting time penalties);
- 16 • *Caudle, et al. v. Sprint/United Management Company, et al.* Case No. C 17-06874-WHA,
17 United States District Court, Northern District of California, Honorable William H. Alsup
18 presiding (certifying three classes of employees for unlawful wage deduction violations,
19 wage statement violations, and waiting time violations);
- 20 • *Staublein v. Wells Fargo Bank*, No. CIVDS1712267, San Bernardino County Superior
21 Court, Honorable David S. Cohn presiding (certifying wage statement class);
- 22 • *Perez v. Sunbelt Rentals, Inc.* Case No. 37-2018-00026405-CU-OE-CTL, California
23 Superior Court, County of San Diego, Honorable Eddie C. Sturgeon presiding (certifying
24 class of employees for wage statement violations); and
- 25 • *Bowlin-Burdick, et al v. Life Care Centers of America, Inc.*, Case No. BC657139, Los
26 Angeles County Superior Court, Honorable Maren E. Nelson presiding (certifying four
27 classes for meal period violations, rest period violations, wage statement violations, and
28 waiting time penalties).

1 8. In 2015, 2016, and 2017, Thomson Reuters recognized me as a Top Young
2 Attorney in Southern California in the annual Rising Stars Edition of Super Lawyer. This is an
3 honor awarded to no more than two-and-a-half percent of attorneys under the age of forty in
4 Southern California each year. In 2018, 2019, 2020, and 2021, Thomson Reuters recognized me
5 as a “Super Lawyer” in the annual Super Lawyer magazine, an honor awarded to no more than
6 five percent of all attorneys in Southern California each year.

7 9. As counsel for Plaintiff and the proposed Settlement Class, I have been intimately
8 involved in every aspect of this case from its inception through the present, and I believe that the
9 proposed Settlement is a favorable result for the Settlement Class.

10 10. Defendant Advanced Bionics, LLC (“AB”) develops and manufactures advanced
11 cochlear implants, and has operations in over 50 countries around the world. AB’s manufacturing
12 is performed at its Los Angeles-area plant. Plaintiff is a former non-exempt employee of AB who
13 worked for AB during the proposed Class Period.

14 11. On July 14, 2020, Plaintiff, through my office, filed the instant action, alleging
15 claims failure to pay overtime and minimum wages, meal period violations, rest period violations,
16 wage statement penalties, and a claim for unfair competition. On December 10, 2020, Plaintiff,
17 through my office, filed a First Amended Complaint, which added a claim for PAGA civil
18 penalties. On May 3, 2022, pursuant to the Settlement and the parties’ stipulation, Plaintiff,
19 through my office, filed a Second Amended Complaint adding a claim for waiting time penalties.

20 12. In preparation for mediation, the parties engaged in extensive informal discovery.
21 AB produced timekeeping and payroll records for all putative class members for a vast majority
22 of the putative class period; relevant wage and hour policies; a class list which each putative class
23 member’s hire date, termination date, rate of pay, and other information; and other relevant data
24 and information. My office hired a labor economist with a Ph.D. in economics to analyze and
25 extrapolate the data produced by AB and assist in creating damages models. This discovery
26 allowed the parties to assess the merits and value of Plaintiff’s claims and AB’s defenses, as well
27 as the chances for class certification.

28 ///

13. The parties attended a full-day mediation on April 9, 2021 with Michael Dickstein, Esq, an experienced and well-respected wage and hour class action mediator. The parties vigorously debated their legal positions, the likelihood of certification of Plaintiff's claims, and the legal bases for the claims and defenses. At the end of mediation, the parties, with Mr. Dickstein's assistance, agreed to a resolution in principle. Over the next several months, the parties negotiated the finer terms of the settlement, ultimately resulting in the Settlement now before the Court. A true and correct copy of the Settlement is attached hereto as **Exhibit 1**. The Class Notice and Notice of Estimated Settlement Award are attached as Exhibits **A and B**, respectively, to the Settlement Agreement.

14. The monetary terms of the Settlement are summarized below:

• Gross Settlement Amount ("GSA"):	\$2,8500,000.00
• Minus Court-approved attorneys' fees (one-third):	\$950,000.00
• Minus Court-approved verified costs (up to):	\$55,000.00
• Minus Court-approved Representative Payment:	\$7,500.00
• Minus Amount Set Aside as PAGA penalties:	\$150,000.00
• <u>Minus estimated settlement administration costs:</u>	<u>\$12,000.00</u>
Net Settlement Amount ("NSA"):	\$1,675,500.00
PLUS 25% "PAGA Amount" to Settlement Class:	\$37,500.00
Total Amount Paid to Settlement Class:	\$1,713,000.00

15. AB represents there are approximately 636 Settlement Class members. Thus, the average Settlement Award is projected to be \$2,693.40.

16. Plaintiff alleges that AB failed to pay all overtime wages to Plaintiff and other Settlement Class members by failing to include the value of all non-discretionary remuneration, including several types of bonuses, into the "regular rate" of pay. Based on Plaintiff's expert's review and extrapolation of the payroll records produced by AB, and assuming that every category of compensation at issue should have been incorporated into the "regular rate," Plaintiff estimated that AB employees were underpaid by approximately \$136,471. AB contends that the vast majority of additional payments at issue are discretionary spot bonuses, discretionary end-of-year bonuses, and/or percentage-of-total-earnings bonuses and thus do not need to be included in the regular rate for overtime purposes under the relevant regulations. AB also contends that differences in the amount, type, and frequency of bonuses paid to different employees would

1 require hundreds of mini-trials and render class certification of this claim inappropriate. Based on
2 these defenses, Plaintiff discounted the maximum exposure by 15% for risk of non-certification,
3 and by an additional 30% for risk of losing on the merits or failing to recover the full amount
4 sought, to arrive at a realistic exposure of \$81,200.

5 17. Plaintiff alleges that, until October 2018, AB rounded its employees' time entries
6 in a manner that underpaid AB employees. prior time-rounding practice resulted in an
7 underpayment of wages. Based on data provided by AB and Plaintiff's expert's analysis of AB's
8 timekeeping and payroll records, Plaintiff estimates that as a result of AB's prior rounding
9 practice, Settlement Class members were underpaid by approximately 1,153 hours during the
10 Class Period. The average minimum wage in California during the rounding period was
11 approximately \$11.75. Thus, Plaintiff estimates AB's maximum exposure for this claim at
12 \$27,096 (1,153 hours * \$11.75 min. wage * 2 [liquidated damages per Lab. Code § 1194.2]). AB
13 contends that it utilized an even-handed timekeeping system that, on balance, resulted in
14 employees being paid for all hours actually worked. AB further argues that even assuming all
15 time on-the-clock were otherwise compensable, employees were either paid for all time on-the-
16 clock or *overpaid* because of rounding, on more than half of all shifts. AB also argues the amount
17 of unpaid time per shift is *de minimis* (less than one minute, on average) and thus non-
18 compensable. While Plaintiff points to *Troester v. Starbucks*, 5 Cal.5th 829 (2018), where the
19 California Supreme Court held California's labor laws generally do not recognize a *de minimis*
20 defense, AB argues *Troester* should be limited to its facts. AB also contends this claim was not
21 certifiable, since its rounding policy was facially neutral and individualized inquiries would be
22 necessary as to whether each employee was in fact underpaid or overpaid for each workday in
23 question, resulting in an unmanageable series of hundreds of mini-trials. Although these defenses
24 warranted discounting the maximum exposure, in light of the relatively small amount of
25 underpayment, Plaintiff did not discount this claim for purposes of her damages analysis.

26 18. Plaintiff alleges that AB failed to provide timely meal periods, such that meal
27 periods sometimes commenced after the completion of the fifth hour of work, due to work
28 demands placed on Plaintiff and other employees. Plaintiff also alleges that AB frequently failed

1 to provide second meal periods on shifts over 10 hours. Plaintiff's expert's analysis of AB's
2 timekeeping data revealed that there were approximately 77,183 potential first and second meal
3 period violations on shifts worked by Settlement Class members during the Class Period.
4 Plaintiff's expert further calculated that the average rate of pay for putative class members during
5 the Class Period was approximately \$18.85. Thus, Plaintiff estimated AB's maximum exposure
6 for meal period violations at \$1,454,900. However, AB argues that it maintained legally-
7 compliant meal period policies throughout the Class Period, for both first and second meal
8 periods, and that under *Brinker* it is only required to "provide" the opportunity to take meal
9 periods, not "ensure" meal periods are taken. AB further argues that its timekeeping records
10 reflect a very high compliance rate for first meal periods, demonstrating that it takes its meal period
11 obligations seriously and consistently relieves employees of all duty for timely, 30-minute meal
12 periods. Any failure by employees to take a timely meal period is the result of employee choice,
13 AB argues, not any AB policy or practice. With respect to second meal periods, AB points to
14 second meal period waivers signed by its employees as evidence that it does, in fact, provide
15 second meal periods on shifts over 10 hours, and that any employee's failure to take a second
16 meal period is a result of waiver, not any policy or practice of AB. Lastly, AB argues
17 individualized inquiries would be required to determine whether individual employees received
18 a late meal period or did not receive a second meal period on each individual shift, and why any
19 meal period was otherwise late or missed, thereby precluding certification of this claim. Given
20 these defenses, Plaintiff discounted AB's maximum exposure by 15% to account for the risk of
21 non-certification, and an additional 25% to account for AB's defenses on the merits and the
22 possibility of not recovering the full amount sought, to arrive at an estimated total of \$927,499.

23 19. Plaintiff alleges that AB failed to authorize and permit all legally required rest
24 periods, including third rest periods on shifts over 10 hours. Plaintiff's expert's analysis of AB's
25 timekeeping data revealed approximately 32,532 shifts over 10 hours worked by Settlement Class
26 members during the Class Period. Plaintiff thus estimated AB's exposure at \$613,228 (32,532 *
27 \$18.85 rest period premium). For its part, AB argues that its written rest period policy authorizes
28 and permits all required rest periods, in that it specifically authorizes and permits a 10-minute (or

1 15-minute) rest period for each 4 hours worked or major fraction thereof, as required under the
2 Wage Order. The rest period policy further specifies the amount of rest period time authorized
3 for employees who work 3.5-6.0 hours, over 6.0 hours, over 10.0 hours, etc., as specified under
4 *Brinker*. Thus, AB argues, any failure by employees to take a rest period is the result of employee
5 choice rather than an AB policy or practice. Finally, AB argues this claim is not amenable to class
6 treatment as individualized inquiries would be required to determine whether individual
7 employees missed a rest period on any particular shift, and if so, why the rest period was missed,
8 resulting in a series of unmanageable mini-trials for each employee. This manageability issue is
9 especially present with respect to rest periods, AB argues, since rest periods are not – and need
10 not be – recorded. In light of these defenses, Plaintiff discounted AB’s maximum exposure by
11 20% for risk of non-certification, and an additional 30% for risk of losing on the merits, to arrive
12 at an estimated realistic exposure of \$343,408 for this claim.

13 20. As a result of the foregoing alleged violations, Plaintiff asserts AB failed to comply
14 with its wage statement obligations. Data provided by AB reflected that there were approximately
15 17,416 pay periods worked by Settlement Class members within the one-year liability window
16 under Labor Code § 226. In calculating AB’s exposure, Plaintiff assumed she could recover the
17 “initial” wage statement penalty of \$50 for each violation, for a total of \$870,800 (17,416 pay
18 periods * \$50) in potential penalties. However, in addition to its arguments regarding Plaintiff’s
19 underlying claims – which Plaintiff would need to overcome in order to prevail on a derivative
20 wage statement claim – AB further contends any alleged wage statement violations could not be
21 shown to be “knowing and intentional,” particularly given its good-faith defenses; that Plaintiff
22 cannot show she or other employees “suffer[ed] injury” due to alleged wage statement violations,
23 as required by Lab. Code § 226(e); and that the wage statements always accurately reflected
24 amounts *paid* to employees. AB also contends that wage statement claim cannot be premised on
25 meal or rest period claim, as some courts have held (and which issue is currently before the
26 California Supreme Court in *Naranjo v. Spectrum Security Services*). Based on these defenses,
27 Plaintiff discounted the maximum exposure by 20% for risk of non-certification, and by an
28 additional 30% for risk of losing on the merits, for an estimated realistic exposure of \$487,648.

21. Plaintiff further asserts that, as a result of its failure to pay wages, AB failed to comply with its final payment obligations and therefore owes former employees waiting time penalties under Labor Code § 203. Based on data provided by AB, there are approximately 292 employees who separated their employment with AB since April 6, 2017. Based on the average rate of pay of \$18.85, Plaintiff estimated an average waiting time penalty of \$4,524 ($\$18.85 * 8 \text{ hours} * 30 \text{ days}$), and calculated AB's maximum potential waiting time penalty exposure as approximately \$1,321,008 ($292 * \$4,524$). However, AB asserts it has strong, good-faith defenses to Plaintiff's underlying claims and thus, even if Plaintiff were able to recover on her underlying claims, she would not be able to recover waiting time penalties since waiting time penalties are not available where the employer has a "good faith defense" to the underlying wage claim. Moreover, because the waiting time claim is derivative of Plaintiff's underlying claims, Plaintiff would need to overcome AB's defenses, both as to class certification and as to the merits, to her underlying claims. AB further argues that, as with wage statement penalties, waiting time penalties may not be premised on meal or rest period violations under the relevant case law. Based on these defenses, Plaintiff discounted AB's maximum exposure by 20% for risk of non-certification and by an additional 25% for risk of losing on the merits, to arrive at an estimated total of \$792,605.

22. Plaintiff also seeks civil penalties under PAGA based on the aforementioned claims. Plaintiff estimated a maximum PAGA exposure of \$1,741,600, based on approximately 17,416 pay periods worked by Settlement Class members during the PAGA Period at the \$100 "initial" violation rate under Lab. Code § 2699(f). AB contends Plaintiff's PAGA claim fails because the underlying claims fail, for the reasons described above. In addition, AB argues that even if Plaintiff were to prevail on some of her underlying claims, she could not show a violation in each pay period in the PAGA Period. For example, the rounding practice stopped in October 2018, before the beginning of the PAGA Period, and thus there could be no PAGA liability for that claim; and AB contends Plaintiff would not be able to show a late meal period for *every* employee in *every* pay period in the PAGA Period. AB further maintains that given its good-faith defenses, the Court would substantially reduce PAGA civil penalties even if it were to find in

1 favor of Plaintiff on one or more of her underlying claims. Thus, Plaintiff discounted the
2 maximum figure by 45% for risk of losing on the merits and/or not recovering a PAGA penalty
3 for each pay period, and by an additional 60% for risk of the Court reducing penalties, to arrive
4 at an estimated exposure of \$383,152.

5 23. Using these estimated figures, Plaintiff predicted the realistic total recovery for the
6 Class would be approximately \$3,042,608. The proposed settlement of \$2,850,000 therefore
7 represents over 93% of Plaintiff's reasonably forecasted recovery.

8 24. At final approval, Plaintiff's counsel will request attorneys' fees of one-third of
9 the Gross Settlement Award (currently estimated at \$950,000), and up to \$55,000 in litigation
10 costs. My office has incurred substantial attorneys' fees conducting pre-filing investigation;
11 analyzing Plaintiff's claims; conducting legal research; analyzing timekeeping, payroll, and other
12 data with our retained expert to create a comprehensive damages model; preparing for and
13 attending mediation; negotiating and preparing the Settlement Agreement; preparing this Motion;
14 and otherwise prosecuting this case. I anticipate that my office will incur significant future
15 attorneys' fees in overseeing the Notice process, fielding phone calls from Settlement Class
16 members, preparing the Final Approval Motion and supporting documents, and appearing at the
17 Final Approval Hearing.

18 25. As will be fully briefed at final approval, Plaintiff's requested incentive payment
19 is in recognition of the time and effort she expended on behalf of the Settlement Class, including
20 providing factual information and documents to my office, identifying potential witnesses,
21 attending in-person and telephonic meetings with my office to, among other things, discuss the
22 claims and theories at issue in the litigation, and otherwise actively participating in the
23 prosecution of this case.

24 26. Although the parties engaged in significant informal discovery, they had not
25 completed formal written and deposition discovery, which would have required expenditure of
26 substantial time and resources. Plaintiff also still had to file for class certification. Even if Plaintiff
27 obtained certification, the parties would incur considerable attorneys' fees and costs through a
28 possible decertification motion, motions for summary judgment, trial, and potential appeals.

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct. Executed on May 3, 2022, at El Segundo, California.

3 

4 _____
Paul K. Haines

EXHIBIT 1

SETTLEMENT AGREEMENT

This Settlement Agreement (or “Settlement”) is reached by and between Plaintiff Maria Teresa Perez (“Plaintiff”), individually and on behalf of all members of the Settlement Class (defined below), on the one hand, and Defendant Advanced Bionics, LLC (“AB” or “Defendant”), on the other hand. Plaintiff and Defendant are referred to herein collectively as the “Parties.” Plaintiff and the Settlement Class are represented by Paul K. Haines, Tuvia Korobkin, Neil M. Larsen, and Alexandra R. McIntosh of Haines Law Group, APC (“Class Counsel”). AB is represented by Paul DeCamp and Adriana S. Kosovych of Epstein Becker & Green P.C. (“Defense Counsel”).

Plaintiff filed a proposed class action complaint against AB in Los Angeles County Superior Court, titled *Maria Teresa Perez v. Advanced Bionics, LLC, et al*, Case No. 20STCV26408, on July 14, 2020 (the “Action”). The First Amended Complaint in the Action alleges claims against AB for: (i) minimum wage violations; (ii) failure to pay all overtime wages; (iii) meal period violations; (iv) rest period violations; (v) wage statement violations; (vi) unfair competition; and (vii) civil penalties under the Labor Code Private Attorneys General Act (“PAGA”), Labor Code § 2698 *et seq.* As part of this Settlement, the Parties have agreed to stipulate to the filing of a Second Amended Complaint (“Complaint”) adding a claim for waiting time penalties.

Given the uncertainty of litigation, the Parties wish to settle Plaintiff’s claims on a classwide basis. Accordingly, Plaintiff and AB agree as follows:

1. **Settlement Class.** For purposes of this Settlement Agreement only, Plaintiff and AB stipulate to the certification of a Settlement Class, which shall be defined as:

All current and former non-exempt employees who worked for AB in California at any time from April 6, 2016 through July 9, 2021 (the “Class Period”).

AB represents there are approximately 636 Settlement Class members.

The Parties agree that certification for purpose of settlement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure in a non-settlement context. The Parties also agree that representative treatment for purpose of settlement is not an admission that representative treatment is proper in a non-settlement context. If for any reason this Settlement is not approved or is terminated, this conditional agreement to class certification and representative treatment will not be admissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement.

2. **Releases.**

- A. **Release by Settlement Class.** Once this Settlement Agreement receives final approval and the Court enters judgment, and upon the Settlement being fully funded, Plaintiff and every participating Settlement Class member will release and discharge AB, and its current and former officers, directors, and agents, and the successors and assigns of all such entities and individuals (“Released Parties”), for the duration of the Class Period, from any and all causes of action, claims, rights, damages, punitive or statutory damages, penalties, liabilities, expenses, and losses

under California law that were alleged in the operative complaint in the Action or that could have been alleged based on the facts alleged in the operative complaint in the Action including, but not limited to: (a) any alleged failure by AB (1) to pay minimum wages; (2) to pay overtime wages; (3) to provide meal periods or compensation in lieu thereof; (4) to authorize and permit rest periods or compensation in lieu thereof; (5) to provide compliant wage statements; (6) to timely pay wages at the end of alleged employment; (b) any right or claim for unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*, based on the alleged failures set forth in (a)(1) through (a)(6) above; and (c) any violation of the California Labor Code arising from or related to the conduct alleged in (a)(1) through (a)(6) above, including, without limitation, violation of California Labor Code sections 201–204, 226, 226.7, 510, 512, 516, 558, 1182.12, 1174, 1194, 1194.2, 1197, 1197.1, 1198, or any other state statute, rule and/or regulation (Wage Order) during the Class Period (“California Released Claims”). In addition, all Settlement Class members (whether or not they opt out) who worked for AB in California at any point from April 6, 2019 through the end of the Class Period (the “PAGA Period”) shall release any right or claim pursuant to the Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* (the “PAGA”), arising during the PAGA Period based on the facts alleged in the Complaint and Plaintiff’s PAGA letter or that could have been alleged based on the facts alleged in the Complaint and in Plaintiff’s PAGA letter (“PAGA Released Claims”).

- B. **Release by Plaintiff.** In light of Plaintiff’s Class Representative Incentive Award (discussed below), Plaintiff has agreed to release, in addition to the Class Released Claims and PAGA Released Claims described above, all claims, whether known or unknown, under federal or state law, against the Released Parties, to the extent permitted by law, through the date this Settlement is signed by Plaintiff (“Plaintiff’s Released Claims”). Plaintiff understands that this release includes unknown claims and that she is, with respect to Plaintiff’s Released Claims, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

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

Specifically excluded from Plaintiff’s Released Claims are any claims that cannot be released as a matter of law, such as claims for workers’ compensation benefits or unemployment benefits. No workers’ compensation claims are being resolved under this Settlement.

3. **Gross Settlement Amount.** As consideration, AB agrees to pay a “Gross Settlement Amount” or “GSA” of Two Million Eight Hundred Fifty Thousand Dollars and Zero Cents (\$2,850,000.00) in full and complete settlement of this matter, as follows:

- A. The Parties have agreed to engage Phoenix Settlement Administrators (“Phoenix”) as the “Settlement Administrator” to administer this Settlement.

- B. The Gross Settlement Amount shall be deposited with the Settlement Administrator within thirty (30) calendar days after the Effective Date. The “Effective Date” of the settlement agreement shall be the day after both of the following have occurred: (i) final approval of the settlement is granted by the Court, and (ii) Judgment approving the settlement becomes Final. “Final” means the latest of: (i) if there is an appeal of the Court’s Judgment, the date the Judgment is affirmed on appeal, the date of dismissal of such appeal, or the expiration of the time to file a petition for review with the California Supreme Court or a writ of certiorari to the United States Supreme Court, as applicable; (ii) if a petition for review or a writ of certiorari is filed, the date of denial of the petition for review or writ of certiorari, or the date the Judgment is affirmed pursuant to such petition; or (iii) if no appeal is filed, the expiration date of the time for filing or noticing any appeal of the Judgment.
- C. This is a non-reversionary settlement. The Gross Settlement Amount includes:
- (1) All payments (including interest) to the Settlement Class;
 - (2) All costs of the Settlement Administrator and settlement administration, which are anticipated to be no greater than \$12,000.00;
 - (3) Up to \$7,500.00 for Plaintiff’s Class Representative Incentive Award, in recognition of her contributions to the Action and her service to the Settlement Class;
 - (4) Class Counsel attorney fees of one-third of the GSA (currently estimated to be \$950,000.00), plus litigation costs and expenses incurred by Class Counsel in relation to the Action as supported by declaration, which are currently estimated to be no greater than \$55,000.00;
 - (5) The Parties have set aside \$150,000.00 of the GSA as PAGA civil penalties. Per Labor Code § 2699(i), 75% of such penalties, or \$112,500.00, will be payable to the Labor & Workforce Development Agency (“LWDA”), and the remaining 25%, or \$37,500.00, will be payable to certain Settlement Class members as the “PAGA Amount” as discussed below.
- D. AB’s share of payroll taxes on any wage portion of the payments to the Settlement Class shall be paid by AB separately from, and in addition to, the Gross Settlement Amount. AB’s share of payroll taxes shall be deposited by AB with the Settlement Administrator at the same time it deposits the Gross Settlement Amount.
- E. **Plaintiff’s Option to Rescind.** The data provided by Defendant prior to mediation reflected that there were 636 Settlement Class members, and that those Settlement Class members worked a total of 65,434 workweeks between July 14, 2016 to July 31, 2020. If the number of Settlement Class members, or the number of workweeks worked by Settlement Class members between July 14, 2016 and July 31, 2020, is actually 5% or more greater than these numbers (i.e., if there are 668 or more Settlement Class members, and/or 68,706 or more workweeks worked during the aforementioned time period), Plaintiff shall have the option, in her sole discretion, to rescind the settlement. However, Defendant may preempt this option by increasing the Gross Settlement Amount commensurate with the amount of

increase to Settlement Class members and/or workweeks. For example, if the number of Settlement Class members, and/or the number of workweeks worked during the aforementioned time period, is 7% greater than the numbers stated herein, then Defendant can preempt Plaintiff's right to rescind by increasing the Gross Settlement Amount by 7%.

- F. **Defendant's Option to Rescind.** AB will have the right to revoke the Settlement if more than five percent (5%) of the Settlement Class members validly opt out of the settlement, as measured by the number of unique Settlement Class members, pursuant to the opt-out provisions described below. Neither Plaintiff, AB, Class Counsel, nor Defense Counsel shall solicit, request, or encourage any Settlement Class member to opt out of the Settlement. AB shall notify Class Counsel and the Settlement Administrator in writing of its intent to exercise its right to rescind within five (5) business days of the date the Settlement Administrator first informs the Parties that more than 5% of Settlement Class members have validly opted out of the Settlement.

4. **Payments to the Settlement Class.** Settlement Class members are not required to submit a claim form to receive a payment from the Settlement ("Settlement Award").

Settlement Awards will be determined and paid as follows:

- A. The Settlement Administrator shall first deduct from the Gross Settlement Amount the amounts approved by the Court for Class Counsel's attorneys' fees, Class Counsel's costs and expenses, Plaintiff's Class Representative Incentive Award, the Settlement Administrator's administration costs, and PAGA civil penalties. The remaining amount shall be known as the "Net Settlement Amount" or "NSA." Settlement Awards will be the total of each Settlement Class member's (i) payment from NSA and (ii) payment, if any, from the PAGA Amount, as described below.
- B. Payments from the Net Settlement Amount: The Settlement Administrator will calculate payments from the NSA based on each participating Settlement Class member's proportionate workweeks worked for AB as a non-exempt employee in California ("Workweeks") during the Class Period. Specifically, each participating Settlement Class member's payment from the NSA will be calculated by multiplying the NSA by a fraction, the numerator of which is the participating Settlement Class member's number of Workweeks worked during the Class Period, and the denominator of which is the total Workweeks worked by all participating Settlement Class members during the Class Period.
- C. Payments from the PAGA Amount: In addition to the NSA, 25% of the amount allocated to PAGA civil penalties (i.e., \$37,500.00) has been set aside as the "PAGA Amount," as mentioned above. The PAGA Amount shall be paid to all Settlement Class members (regardless whether they opt out) who worked for AB at any time during the PAGA Period, based on their proportional number of pay periods worked for AB in California during the PAGA Period ("Pay Periods"). Specifically, each Settlement Class member's payment from the PAGA Amount will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the Settlement Class member's number of Pay Periods worked during

the PAGA Period, and the denominator of which is the total Pay Periods worked by all Settlement Class members during the PAGA Period.

- D. Within seven (7) business days following AB's deposit of the Gross Settlement Amount and the employer's share of payroll taxes with the Settlement Administrator, the Settlement Administrator will calculate Settlement Awards, and provide the same to Class Counsel and Defense Counsel for review and approval. Within five (5) business days of approval by counsel, the Settlement Administrator will prepare and mail Settlement Awards, less applicable taxes and withholdings, to participating Settlement Class members, as well as the Plaintiff's Incentive Award to Plaintiff, the PAGA payment to the LWDA, and Class Counsel's attorneys' fees and costs to Class Counsel. The Settlement Administrator shall simultaneously pay all applicable withholdings to the applicable authorities with the necessary reports, submitting copies to Defense Counsel.
 - E. For purposes of calculating applicable taxes and withholdings for payments to Settlement Class members, each Settlement Award shall be allocated as follows: for amounts paid from the PAGA Amount, 100% penalties; for amounts paid from the Net Settlement Amount, 50% wages, 25% as penalties, and 25% as interest. The Settlement Administrator will be responsible for issuing to participating Settlement Class members an IRS Form W-2 for amounts deemed "wages" and an IRS Form 1099 for the portions allocated as penalties and interest. As stated above, AB is responsible for its share of the payroll taxes on the wage portion of the Settlement Awards, and these taxes will not be deducted from the Gross Settlement Amount. Notwithstanding the treatment of the payments to each Settlement Class member above, none of the payments called for by this Settlement Agreement are to be treated as earnings, wages, pay, or compensation for any purpose of any applicable bonus, benefit, or retirement plan, unless required by such plans.
 - F. Each Settlement Class member who is mailed a Settlement Award must cash his/her Settlement Award check within 180 days from the date the Settlement Administrator mails it. Any funds payable to Settlement Class members whose checks were not cashed within 180 days after mailing will be deposited by the Settlement Administrator with *cy pres* recipient Bet Tzedek Employment Rights Project.
 - G. Neither Plaintiff nor AB, nor their respective counsel, shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.
5. **Attorneys' Fees and Costs.** Class Counsel will request a total award of attorneys' fees of one-third of the Gross Settlement Amount (currently estimated at \$950,000.00), plus actual costs and expenses as supported by declaration in an amount not to exceed \$55,000.00. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. As noted above, the Settlement

Administrator will mail Class Counsel the attorneys' fees and cost award when it mails the Settlement Awards to Settlement Class members. The Settlement Administrator will issue Class Counsel IRS Forms 1099 when the Settlement Administrator pays the fee and cost award allowed by the Court.

6. **Class Representative Incentive Award.** Plaintiff will request a Class Representative Incentive Award of \$7,500.00 from the Gross Settlement Amount for Plaintiff's release of claims, her time and risks in prosecuting the Action, and her service to the Settlement Class. This award will be in addition to Plaintiff's Settlement Award as a Settlement Class member and shall be reported on an IRS Form 1099 by the Settlement Administrator. The Settlement Administrator will mail Plaintiff the Class Representative Incentive Award and issue Plaintiff an IRS Form 1099 when it mails the Settlement Awards to participating Settlement Class members.
7. **Settlement Administrator.** The parties will request the appointment of Phoenix as Settlement Administrator. AB will not object to Plaintiff's seeking permission to pay up to \$12,000.00 from the Gross Settlement Amount for the Settlement Administrator's services. The Settlement Administrator shall be responsible for establishing a Qualified Settlement Fund pursuant to Section 468B(g) of the Internal Revenue Code for the purpose of administering the Settlement. The Settlement Administrator will also be responsible for sending notices in English and Spanish, calculating Settlement Awards and preparing all checks and mailings, posting the Judgment to its website, and other duties as described in this Settlement Agreement. The Settlement Administrator shall be authorized to pay itself from the Gross Settlement Amount only after Settlement Awards have been mailed to Settlement Class members.
8. **Preliminary Approval.** Within a reasonable time after execution of this Settlement Agreement by the Parties, Plaintiff shall apply to the Court for the entry of an Order:
 - A. Conditionally certifying the Settlement Class for purposes of this Settlement Agreement;
 - B. Appointing Paul K. Haines, Tuvia Korobkin, Neil M. Larsen, and Alexandra R. McIntosh of Haines Law Group, APC as Class Counsel;
 - C. Appointing Plaintiff as Class Representative for the Settlement Class;
 - D. Approving Phoenix as Settlement Administrator;
 - E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
 - F. Approving the form and content of the Notice Packet (which is comprised of the Class Notice and the Notice of Estimated Settlement Award, attached hereto as Exhibits A and B, respectively), and directing the mailing of same; and
 - G. Scheduling a Final Approval hearing.
9. **Notice to Settlement Class.** Following preliminary approval, the Settlement Class shall be notified as follows:
 - A. Within ten (10) business days after notice of entry of an order preliminarily approving this Agreement, AB will provide the Settlement Administrator with the

name, ID number, last known address, last known phone number, social security number, dates of employment as a non-exempt employee in California (including the dates of any leaves of absence), for each Settlement Class member (the “Class Data”). The Class Data shall be provided to the Settlement Administrator in an electronic format satisfactory to the Settlement Administrator.

- B. Within ten (10) business days from receipt of the Class Data, the Settlement Administrator shall (i) run the names of all Settlement Class members through the National Change of Address (“NCOA”) database to determine any updated addresses for Settlement Class members; (ii) update the addresses of any Settlement Class member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Settlement Award for each Settlement Class member, and provide Class Counsel and Defense Counsel with its calculations for their approval; (iv) provide Class Counsel and Defense Counsel with formatted versions of the Notice Packets to be sent to Settlement Class members; and (v) after receiving approval from all counsel, mail a Notice Packet (in English and Spanish) to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.
- C. Requests for Exclusion. Any Settlement Class member who wishes to opt-out of the settlement must complete and mail a Request for Exclusion (defined below) to the Settlement Administrator on or before sixty (60) calendar days after the date of the initial mailing of the Notice Packets (the “Response Deadline”). The Request for Exclusion is a document prepared by the Settlement Class member that must: (1) contain the Settlement Class member’s name, address, telephone number, and last four digits of his/her Social Security number; (2) contain a statement that the Settlement Class member wishes to be excluded from the Settlement; (3) be signed by the Settlement Class member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from this settlement, except a Request for Exclusion not containing a Settlement Class member’s last four digits of the Social Security number will be deemed valid. The date of the postmark on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class member who excludes himself or herself from the Settlement Class will not be entitled to any recovery under this Settlement Agreement (except for any share from the PAGA Amount, if applicable), will not be bound by the terms of the Settlement Agreement (except for release of the PAGA Released Claims, if applicable), and will not have any right to object, appeal, or comment thereon. The Settlement Administrator will provide the Parties with weekly updates regarding the number of Requests for Exclusion received. The Parties and their counsel agree not to take any action to encourage any Settlement Class member to opt out of the settlement.
- D. Objections. Members of the Settlement Class who do not request exclusion may object to this Settlement Agreement by either (a) submitting a written objection to the Settlement Administrator as explained in the Class Notice; and/or (b) objecting orally at the Final Approval Hearing. The Settlement Administrator shall, within two (2) business days of receipt, serve any written objection(s) as received on Class

Counsel and Defense Counsel, and Class Counsel shall then file all such objections with the Court. Defense Counsel and Class Counsel shall file and serve any responses to written objections no later than five (5) calendar days prior to the Final Approval hearing. To be valid, any written objection must: (1) contain the objecting Settlement Class member's full name, current address, and telephone number, as well as contact information for any attorney representing the objecting Settlement Class member for purposes of the objection; (2) include all objections and the factual and legal bases for same; (3) include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence supporting the objection; and (4) be postmarked no later than the Response Deadline. A Settlement Class member who wishes to object but who fails to comply with the procedures set forth herein and/or in the Class Notice shall be deemed not to have objected. Any attorney who intends to represent an objecting Settlement Class member at the Final Approval hearing must submit a Notice of Appearance to the Court and serve it on all Parties on or before the Response Deadline. The Parties and their counsel agree not to take any action to encourage any Settlement Class member to object to the settlement.

- E. Notice of Estimated Settlement Award / Disputes. Each Notice Packet mailed to Settlement Class members shall contain a Notice of Estimated Settlement Award, in which shall be disclosed the amount of the Settlement Class member's estimated Settlement Award as well as all of the information that was gleaned from AB's records in order to calculate the Settlement Award, including their number of Workweeks worked during the Class Period and number of Pay Periods, if any, worked during the PAGA Period. Settlement Class members will have the opportunity, should they disagree with AB's records regarding the information stated in their Notice of Estimated Settlement Award, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with counsel for the Parties to determine whether an adjustment to the Settlement Class member's Settlement Award is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Settlement Award under the terms of this Settlement. The Settlement Administrator's determination of the eligibility for and amount of any Settlement Award shall be binding upon the Settlement Class member and the Parties.
- F. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a "skip trace," to obtain an updated mailing address within three (3) business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Settlement Class member within two (2) business days of obtaining the updated address. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class member. Settlement Class members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have fourteen (14) calendar days from the date of re-mailing, or until the Response Deadline, whichever is later,

to submit a Request for Exclusion, Objection, or dispute, as applicable. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline, if applicable. If a Settlement Class member's Notice Packet is returned to the Settlement Administrator more than once as non-deliverable, then an additional Notice Packet need not be mailed. Nothing else shall be required of, or done by, the Parties, Class Counsel, or Defense Counsel to provide notice of the proposed settlement.

10. **Final Approval.** Following preliminary approval and the close of the period for submitting Requests for Exclusion, Objections, or disputes under this Settlement Agreement, Plaintiff shall apply to the Court for entry of an Order:
 - A. Granting final approval of the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;
 - B. Approving Plaintiff's and Class Counsel's application for attorneys' fees, costs, Class Representative Incentive Award, PAGA civil penalties to the LWDA, and settlement administration costs; and
 - C. Entering judgment pursuant to California Rule of Court 3.769.
11. **Right to Revoke.** The Gross Settlement Amount, the Net Settlement Amount, and the release are material and essential to the settlement. If these terms are materially modified by the Court, Defendant shall have the right to revoke the settlement, although Defendant will meet and confer with Plaintiff in good faith to attempt to revise the Settlement in order to obtain Court approval before exercising its option to revoke. Final approval of the settlement is a material and essential term. If the settlement does not receive final approval, the Parties shall have the right to revoke the settlement. If Defendant revokes the Settlement under this provision because of a material modification to the Settlement, or under its Option to Rescind in Section 3(F) above, Defendant shall be responsible for any costs incurred by the Settlement Administrator through the date Defendant provides notice of its intent to revoke the Settlement. If the Settlement is revoked by Plaintiff under her Right to Rescind in Section 3(E) above, then Plaintiff shall be responsible for any costs incurred by the Settlement Administrator through the date Plaintiff provides notice of her intent to revoke the Settlement. If the Settlement is otherwise revoked by the Parties under this provision, the settlement administration costs incurred by the Settlement Administrator shall be split evenly by the Parties.
12. **Non-Admission of Liability.** AB denies liability as to the matters alleged in the Complaint. Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification or representative treatment is appropriate in any context other than this settlement. Each of the Parties has entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code § 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code § 1152.
13. **Confidentiality.** Plaintiff and Class Counsel agree that, prior to filing a Motion for Preliminary Approval, they will not disclose or publicize the Settlement Agreement

contemplated herein, the fact of the Settlement Agreement, its terms or contents, or the negotiations underlying the Settlement Agreement, in any manner or form, to any person or entity, except to Settlement Class members and as shall be contractually required to effectuate the terms of the Settlement Agreement as set forth herein, and except to Plaintiff's spouse or to her attorneys or tax preparers as necessary for those professionals to provide their professional services to Plaintiff.

14. **Continuing Jurisdiction.** Except as otherwise specifically provided for herein, the Court shall retain jurisdiction to construe, interpret and enforce this Settlement, to supervise all notices, the administration of the Settlement, and to hear and adjudicate any dispute arising from or related to the Settlement. The Parties agree that the Court has jurisdiction over the Settlement pursuant to California Code of Civil Procedure, Section 664.6.
15. **Waiver and Amendment.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by counsel for all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.
16. **Enforcement Action.** In the event either Party brings an action to enforce the terms of this Settlement, the prevailing party in such action shall be entitled to recover his/her/its reasonable attorneys' fees and costs incurred.
17. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

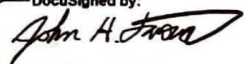
if to AB: Paul DeCamp, Epstein, Becker & Green, P.C., 1227 25th Street, NW, Washington, D.C. 20037; pdecamp@ebglaw.com

if to Plaintiff: Paul K. Haines, Haines Law Group, APC, 2155 Campus Drive, Suite 180, El Segundo, CA 90245; phaines@haineslawgroup.com
18. **Applicable Law.** All terms and conditions of this Settlement Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law or choice of law principles.
19. **Captions and Interpretations.** Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.
20. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.
21. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

22. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Settlement. This Settlement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

AGREED TO AND APPROVED BY:

DATED: 12/29/2021, 2021

DocuSigned by:

287E7B12F8FB46A...
John Tanouye
VP Finance

Advanced Bionics, LLC

DocuSigned by:

By: 12/29/2021
02E4F89A51F14CB
Victoria CarrBrendel
Its: GVP, Cochlear Implants

DATED: _____, 2021

Maria Teresa Perez

Plaintiff and Class Representative

APPROVED AS TO FORM:

DATED: December 29, 2021

EPSTEIN, BECKER & GREEN, P.C.

By: 
Paul DeCamp
Attorneys for Defendant

DATED: _____, 2021

HAINES LAW GROUP, APC

By: _____
Paul K. Haines
Attorneys for Plaintiff

22. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Settlement. This Settlement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

AGREED TO AND APPROVED BY:

DATED: _____, 2021

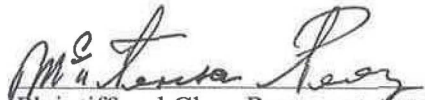
Advanced Bionics, LLC

By: _____

Its: _____

DATED: 11/25/, 2021

Maria Teresa Perez


Plaintiff and Class Representative

APPROVED AS TO FORM:

DATED: _____, 2021

EPSTEIN, BECKER & GREEN, P.C.

By: _____

Paul DeCamp
Attorneys for Defendant

DATED: 02/07, 2022

HAINES LAW GROUP, APC

By: 

Paul K. Haines
Attorneys for Plaintiff

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

MARIA TERESA PEREZ,

Plaintiff,

vs.

ADVANCED BIONICS, LLC

Defendants.

Case No. 20STCV26408

**NOTICE OF PROPOSED CLASS AND
REPRESENTATIVE ACTION SETTLEMENT**

To: All current and former non-exempt employees who worked for Advanced Bionics, LLC in California at any time from April 6, 2016 through <<END OF CLASS PERIOD>> (“Class Period”).

**PLEASE READ THIS NOTICE CAREFULLY.
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT.**

Why should you read this Notice?

The Los Angeles County Superior Court (“Court”) has granted preliminary approval of a proposed class and representative action settlement (the “Settlement”) in *Maria Teresa Perez v. Advanced Bionics, LLC*, Los Angeles County Superior Court Case No. 20STV26408 (the “Action”). Because your rights may be affected by the Settlement, it is important that you read this Notice carefully.

You may be entitled to money from the Settlement. Advanced Bionics, LLC’s (“AB”) records show that you worked for AB as a non-exempt employee in California at some point between April 6, 2016 through <<END OF CLASS PERIOD>> and are therefore part of the proposed “Settlement Class.” The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this Notice is to provide you with a brief description of the Action, to inform you of the terms of the proposed Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound by the terms of the Settlement and any final judgment. If final judgment is entered in this case, it will be posted to the Settlement Administrator’s website, www.phoenixclassaction.com.

What is this case about?

Plaintiff Maria Teresa Perez (“Plaintiff”) has filed a lawsuit alleging that AB violated California law by: (i) failing to pay all overtime wages due; (ii) failing to pay at least the minimum wage for all hours worked; (iii) failing to provide meal periods; (iv) failing to authorize and permit rest periods; (v) failing to issue accurate itemized wage statements; (vi) failing to pay all wages owing upon separation of employment; and, as a result of the above, (vii) engaging in unlawful business practices. In addition, Plaintiff seeks recovery of derivative civil penalties under the California Labor Code Private Attorneys General Act (“PAGA”), interest, and attorneys’ fees and costs. Plaintiff is known as the “Class Representative.” Plaintiff’s attorneys, who also represent the interests of all Settlement Class members, are known as “Class Counsel.”

AB has denied and continues to deny that it has done anything wrong, and believes it has acted in compliance with all applicable laws and that Plaintiff’s claims have no merit. AB also denies that it owes any wages, restitution, penalties, or other damages. By agreeing to settle, AB is not admitting liability on any of the factual allegations or claims asserted in the Action or that the Action can or should proceed as a class or representative action in a non-settlement context.

The Court has not ruled on the merits of Plaintiff’s claims. However, to avoid additional expense, inconvenience, and interference with its business operations, AB has concluded that it is in its best interests

to settle the Action on the terms summarized in this Notice. After AB provided relevant information to Class Counsel, the Settlement was reached after mediation and arm's-length negotiations between the parties.

The Class Representative and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to AB, the risk of denial of class certification and maintaining representative status, the inherent risks of trial on the merits, and the delays and uncertainties associated with litigation.

If you are still employed by AB, your decision about whether to participate in the Settlement will not affect your employment. California law and AB's company policies strictly prohibit unlawful retaliation. AB will not take any adverse employment action against or otherwise target, retaliate, or discriminate against any Settlement Class member because of the Settlement Class member's decision to either participate or not participate in the Settlement.

Who are the Attorneys?

Attorneys for Plaintiff / the Settlement Class: HAINES LAW GROUP, APC Paul K. Haines phaines@haineslawgroup.com Tuvia Korobkin tkorobkin@haineslawgroup.com Neil M. Larsen nlarsen@haineslawgroup.com 2155 Campus Drive, Suite 180 El Segundo, California 90245 Tel: (424) 292-2350 Fax: (424) 292-2355 www.haineslawgroup.com	Attorneys for AB: EPSTEIN, BECKER & GREEN, P.C. Paul DeCamp pdecamp@ebglaw.com Adriana S. Kosovych akosovych@ebglaw.com 1227 25th Street, NW Washington, D.C. 20037 Tel.: (202) 861-0900 Fax: (202) 861-3571 www.ebglaw.com
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What are the terms of the Settlement?

On <<PRELIM APPROVAL DATE>>, the Court granted preliminary approval of the Settlement on behalf of a Settlement Class consisting of all current and former non-exempt employees who worked for AB in California and at any time from April 6, 2016 through <<END OF CLASS PERIOD>>. Settlement Class members who do not opt out of the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release claims against AB as specifically described below.

AB has agreed to pay \$2,850,000.00 (the "Gross Settlement Amount") to fully resolve all claims in the Action, including claims by Settlement Class members, attorneys' fees, costs, settlement administration costs, PAGA civil penalties, and the Class Representative's enhancement award.

The following deductions from the Gross Settlement Amount will be requested by the parties:

Settlement Administration Costs. The Court has approved **Phoenix Settlement Administrators** to act as the "Settlement Administrator," who is sending this Notice to you and will perform many other duties relating to the Settlement. The Court has approved setting aside up to \$12,000 from the Gross Settlement Amount to pay the Settlement administration costs.

Attorneys' Fees and Expenses. Class Counsel will ask for fees of up to one-third of the Gross Settlement Amount, currently estimated to be \$950,000.00, as reasonable compensation for the work Class Counsel performed, and will continue to perform in this Action through Settlement finalization. Class Counsel also will ask for reimbursement of up to \$55,000 for reimbursement of verified costs Class Counsel incurred in connection with the Action.

Class Representative Enhancement Award. Class Counsel will ask the Court to approve an enhancement award of \$7,500 to the Class Representative. This award is to compensate the Class Representative for her service and extra work provided on behalf of the Settlement Class members.

PAGA Civil Penalties. The parties have agreed to allocate \$150,000.00 of the Gross Settlement Amount as alleged civil penalties for the settlement of Plaintiff's PAGA claim. Pursuant to the requirements of the PAGA, 75% of that amount, or \$112,500.00, will be paid to the California Labor & Workforce Development Agency ("LWDA"). The remaining \$37,500.00 has been designated as the "PAGA Amount" and will be paid to certain Settlement Class members as described below.

Calculation of Settlement Class Members' Settlement Awards. After deducting the Court-approved amounts above, the balance of the Gross Settlement Amount will form the Net Settlement Amount ("NSA"), which will be distributed to all Settlement Class members who do not submit a valid and timely Request for Exclusion (described below). The NSA is estimated to be approximately \$1,675,500.00. Together with the \$37,500 PAGA Amount, the total amount to be distributed to Settlement Class members is estimated to be \$1,713,000.00. Settlement Class members' payments will be calculated as follows:

- (i) Payment from NSA: The NSA will be distributed to all Settlement Class members, and will be allocated proportionally based on each Settlement Class member's total weeks worked for AB as a non-exempt employee in California ("Workweeks") during the Class Period.
- (ii) Payment from PAGA Amount: In addition to the NSA, \$37,500.00 of the Gross Settlement Amount has been designated as the "PAGA Amount" as described above, and will be allocated to all Settlement Class members who worked for AB in California at any time from April 6, 2019 to <<END OF CLASS PERIOD>> (the "PAGA Period"), in proportion to the number of pay periods that each Settlement Class member worked for AB in California during that time period.

Deposit of Gross Settlement Amount. If the Court finally approves the Settlement and enters judgment, AB will deposit the Gross Settlement Amount with the Settlement Administrator within 30 days of the date the judgment becomes "Final," which is defined as the date on which the Court's judgment approving the Settlement can no longer be appealed.

Payments to Settlement Class Members: Settlement Class members payments, known as "Settlement Awards," will be mailed approximately 12 business days after AB deposits the Gross Settlement Amount with the Settlement Administrator.

Allocation and Taxes. For tax purposes, Settlement Awards shall be treated as follows: all amounts from the PAGA Amount will be treated as 100% penalties, and all amounts from the NSA will be treated as 50% wages, 25% penalties, and 25% interest. The Settlement Administrator will issue IRS forms W-2 for all amounts designated as "wages," and will issue IRS forms 1099 for all amounts designated as penalties and interest. Settlement Class members are responsible for the proper income tax treatment of the Settlement Awards. The Settlement Administrator, AB and its counsel, the Class Representative and Class Counsel cannot provide tax advice. Accordingly, Settlement Class members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. If the Court enters judgment on the Settlement, then upon the Settlement being fully funded, the Class Representative, and every member of the Settlement Class (except those who opt out) will release and discharge AB, and its current and former officers, directors, and agents, and the successors and assigns of all such entities and individuals ("Released Parties"), for the duration of the Class Period, from any and all causes of action, claims, rights, damages, punitive or statutory damages, penalties, liabilities, expenses, and losses under California law that were alleged in the operative complaint in the Action or that could have been alleged based on the facts alleged in the operative complaint in the Action including, but not limited to: (a) any alleged failure by AB (1) to pay minimum wages; (2) to pay overtime wages; (3) to provide meal periods or compensation in lieu thereof; (4) to authorize and permit rest periods or compensation in lieu thereof; (5) to provide compliant wage statements; (6) to timely pay wages at the end of alleged employment; (b) any right or claim for unfair business practices in violation of California Business & Professions Code sections 17200, et seq., based on the alleged failures set forth in (a)(1) through (a)(6) above; and (c) any violation of the California Labor Code arising from or related to the conduct alleged in (a)(1) through (a)(6) above, including, without limitation, violation of California Labor Code sections 201–204, 226, 226.7, 510, 512, 516, 558, 1182.12, 1174, 1194, 1194.2, 1197, 1197.1, 1198, or any other state statute, rule and/or regulation (Wage Order) during the Class Period ("California Released Claims"). In addition, all Settlement Class members (whether or not they opt out) who worked for AB in California at any point during the PAGA Period

shall release any right or claim pursuant to the PAGA arising during the PAGA Period based on the facts alleged in the Complaint and in Plaintiff's PAGA letter or that could have been alleged based on the facts alleged in the Complaint and in Plaintiff's PAGA letter ("PAGA Released Claims").

Conditions of Settlement. By granting preliminary approval of the Settlement, the Court has determined that the Settlement falls within the range of possible approval as fair, reasonable, and adequate. This Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement.

How can I claim money from the Settlement?

Do Nothing. You do not need to do anything if you want to receive payment from and participate in the Settlement. If you do nothing, you will be entitled to your Settlement Award based on the number of Workweeks you worked for AB in California during the Class Period, and the number of pay periods, if any, you worked for AB in California during the PAGA Period. Your estimated individual Settlement Award is included in the enclosed Notice of Estimated Settlement Award. You also will be bound by the Settlement, including the release of claims stated herein.

Check Cashing Deadline and Uncashed Checks. You must cash or deposit your Settlement Award checks within 180 days from the date that the Settlement Administrator mails the check to you. If you do not cash or deposit your check within 180 days, your check will be voided and the funds from the check will be sent to *cy pres* recipient Bet Tzedek Employment Rights Project, a nonprofit that provides legal services to indigent clients.

What other options do I have?

Disputing Information in Notice of Estimated Settlement Award. Your estimated Settlement Award has been calculated and is included in the enclosed Notice of Estimated Settlement Award. As stated above, your estimated Settlement Award is based on the number of Workweeks you worked for AB in California during the Class Period, and the number of pay periods, if any, you worked for AB in California during the PAGA Period. The information gleaned from AB's records regarding each of these factors is listed on the accompanying Notice of Estimated Settlement Award. If you disagree with the information in your Notice of Estimated Settlement Award, you may submit a dispute, along with any supporting documentation, in accordance with the procedures stated in the Notice of Estimated Settlement Award. Any disputes, along with supporting documentation, must be postmarked no later than **<<RESPONSE DEADLINE>>**. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.** The parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Settlement Class members. The Settlement Administrator's decision regarding any dispute will be final.

Exclude Yourself from the Settlement. If you **do not** wish to take part in the class Settlement, you may exclude yourself by sending to the Settlement Administrator a written "Request for Exclusion" letter or postcard, postmarked no later than **<<RESPONSE DEADLINE>>**, with your full name (as well as any former names you used while you were employed by AB), your current address, telephone number, last 4 digits of your social security number, and your signature. The Request for Exclusion should state:

"I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE PEREZ V. ADVANCED BIONICS LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THE CLASS CLAIMS IN THIS LAWSUIT."

Send the Request for Exclusion directly to the Settlement Administrator at **<<INSERT ADMINISTRATOR CONTACT INFO>>**. Any person who submits a valid and timely Request for Exclusion shall, upon receipt, no longer be a Settlement Class member with respect to the class claims alleged, shall be barred from participating in the class portion of the Settlement, and shall receive no benefits from the class portion of the Settlement. Any person who submits a valid and timely Request for Exclusion will also lack standing to submit any objection to the Settlement. However, all Settlement Class members who worked for AB during the PAGA Period, including those who submit Request for Exclusion, will be bound by the PAGA portion of the Settlement and will receive a portion from the PAGA Amount.

Objecting to the Settlement. If you do not submit a Request for Exclusion, you have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you must either mail a written Objection to the Settlement Administrator and/or object orally at the Final Approval Hearing. Any written Objection must include your full name (as well as any former names used while employed by AB), current address and phone number, last 4 digits of your social security number, the name and contact information of any attorney representing you, the case name and number, each specific reason in support of your objection, and any legal or factual support for each objection, including any supporting papers, briefs, written evidence, declarations, and/or other evidence. All objections or other correspondence must state the name and number of the case, which is *Maria Teresa Perez v. Advanced Bionics, LLC*, Los Angeles County Superior Court Case No. 20STCV26408. Any written Objections must be postmarked on or before **<<RESPONSE DEADLINE>>**.

If you choose to object to the Settlement, you may also appear at the Final Approval Hearing. You do not need to submit a written objection in order to appear and/or object at the Final Approval Hearing. You have the right to appear either in person or through your own attorney at this hearing. If you wish to appear at the Final Approval Hearing and/or retain an attorney to represent you at the hearing, you must do so at your own expense. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before **<<RESPONSE DEADLINE>>**. All objections or other correspondence must state the name and number of the case, which is *Maria Teresa Perez v. Advanced Bionics, LLC*, Los Angeles County Superior Court Case No. 20STCV26408.

If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class members who do not object. In other words, by submitting an Objection, you are not excluding yourself from the Settlement.

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on **<<FINAL APPROVAL HEARING DATE/TIME>>**, in Department SSC-14 of the Los Angeles County Superior Court, located at 312 N. Spring Street, Los Angeles, California 90012. At the Final Approval Hearing, the Court also will be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of expenses, the incentive award to the Class Representative, the payment to the LWDA, and the Settlement administration costs. The Final Approval Hearing may be postponed without further notice to the Settlement Class. **You are not required to attend the Final Approval Hearing, although any Settlement Class member is welcome to attend the hearing at their own expense.**

If you plan on attending the hearing or otherwise visiting the Court, please consult the Court's "Here for You, Safe for You" webpage, <http://www.lacourt.org/newsmedia/ui/HfySfy.aspx>, for information regarding court operations during COVID-19 as well as face covering and social distancing requirements.

How can I get additional information?

This Notice is only a summary of the Action and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Office of the Clerk of the Los Angeles County Superior Court, located at 312 N. Spring Street, Los Angeles, California 90012, during regular court hours. You may also contact the Settlement Administrator or Class Counsel using the contact information listed above for more information.

PLEASE DO NOT CALL OR WRITE THE COURT FOR INFORMATION ABOUT THIS SETTLEMENT.

REMINDER AS TO TIME LIMITS

The deadline for submitting any Disputes, Requests for Exclusion, or Objections is **<<RESPONSE DEADLINE>>**. These deadlines will be strictly enforced.

EXHIBIT B

NOTICE OF ESTIMATED SETTLEMENT AWARD

MARIA TERESA PEREZ v. ADVANCED BIONICS, LLC
LOS ANGELES COUNTY SUPERIOR COURT CASE NO. 20STCV26408

Please complete, sign, and return this Form to <<ADMINISTRATOR CONTACT INFO>> **ONLY IF** (1) your personal contact information has changed, and/or (2) you wish to dispute any of the items listed in Section (III), below. It is your responsibility to keep a current address on file with the Settlement Administrator.

(I) Please type or print your name:

(First, Middle, Last)

(II) Please type or print the following identifying information if your contact information has changed:

Former Names (if any)

New Street Address

City

State

Zip Code

Phone number (if you wish to be contacted by phone)

(III) Information Used to Calculate Your Estimated Settlement Award:

Based on information contained in Advanced Bionics, LLC's ("AB") records:

- (a) you worked _____ Workweeks as a non-exempt employee for AB in California between April 6, 2016 and <<END OF CLASS PERIOD>>; and
- (b) you worked _____ pay periods as a non-exempt employee for AB in California between April 6, 2019 and <<END OF CLASS PERIOD>>.

Based on the above, your Settlement Award is estimated at \$ _____.

(IV) If you disagree with either of the items (a) or (b) in Section (III) above, please explain why in the space below and include copies of any supporting evidence or documentation with this Form:

If you dispute the above information gleaned from AB's records, AB's records will control unless you are able to provide documentation that establishes that AB's records are mistaken. If there is a dispute about whether AB's information or yours is accurate, the dispute will be resolved by the Parties and the Settlement Administrator as described in the "Notice of Proposed Class and Representative Action Settlement" that accompanies this Form. The Settlement Administrator's determination will be final.

Date: _____

Signature: _____

ANY DISPUTES (INCLUDING SUPPORTING DOCUMENTS) MUST BE POSTMARKED NO LATER THAN <<RESPONSE DEADLINE>>.