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January 10, 2024

VIA Electronic Submission

Attn: PAGA Administrator
Labor Workforce Development Agency
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: John Barnickel's Notice of Labor Code Violations By BIOTRONIK, Inc., and Biotronik Corporate Services U.S., Inc. Pursuant to §2699, et seq., the California Private Attorneys General Act

To: The California Labor and Workforce Development Agency

I write on behalf of my client John Barnickel ("Mr. Barnickel") to provide notice pursuant to Labor Code § 2699.3 to the Labor and Workforce Development Agency ("LWDA"), BIOTRONIK, Inc., Biotronik Corporate Services U.S., Inc., and all affiliated entities (collectively, the "Company") that John Barnickel ("Mr. Barnickel") intends to file a civil lawsuit against the Company based on claims, among others, arising under the Private Attorney General Act, California Labor Code §§ 2699, et seq., ("PAGA"), for violations by the Company of Labor Code Sections 232(a)-(c), 232.5(a)-(c), 432.5, 1197.5(k)(1)&(k)(2), 98.6(a), 1102.5(a), and 2802.¹

Mr. Barnickel intends to bring PAGA claims representing himself, and former employees and current employees who were and are subjected to Labor Code violations by the Company, as described herein.

I. The Company Prohibited Employees from Discussing Wages and Working Conditions, In Violation of California Labor Code Sections 232, 232.5, 432.5 and 1197.5

Mr. Barnickel was employed by the Company as the Vice President, Pacific Area for Biotronik from June 2021 to November 2023. As a condition of employment, the Company required Mr. Barnickel and, upon information and belief, other employees who worked in California, to sign an "Employment Agreement" that unlawfully required them to refrain from discussing their working conditions and the amount of their wages, and prohibited them from disclosing their own wages.

¹ Some laws have been amended since the time of events in question. Citations throughout this notice are to the versions of the law in effect at the time of events in question unless otherwise stated.

Section 4 of Mr. Barnickel's agreement sets forth components of Mr. Barnickel's compensation, information about benefits, the terms and conditions for expense reimbursement, and other information concerning Mr. Barnickel's compensation and working conditions. Section 4 explicitly prohibits Mr. Barnickel from disclosing or discussing the contents of that section. The section states, "Employee agrees and understands that the terms of this Section 4 are strictly confidential as between BIOTRONIK and Employee, and should not be disclosed to other BIOTRONIK personnel." Mr. Barnickel was required to accept these terms as a condition of employment. Mr. Barnickel was required to and did sign this agreement. Upon information and belief, the Company likewise required other current and former California-based employees to sign employment agreements that contained the same language or language to the same effect, as a condition of employment.

These violations are continuing and ongoing. The above restrictions contained in the Company's employment agreements continued in effect throughout Mr. Barnickel's and others' employment and afterwards, restricting them on a continuing and ongoing basis.

Accordingly, the Company has violated and continues to violate California Labor Code Sections 232(a)-(b), 232.5(a)-(b), 432.5, and 1197.5(k)(1).

II. The Company Fraudulently Induced Mr. Barnickel to Join the Company

In the process of recruiting Mr. Barnickel, the Company, through its U.S. President Ryan Walters, misrepresented the kind and character of the work and the compensation therefor. Mr. Walters and Mr. Barnickel spent over two months negotiating Mr. Barnickel's role and compensation structure before Mr. Barnickel joined the Company. During these negotiations, Mr. Walters falsely represented to Mr. Barnickel that his compensation package would meet certain minimal parameters Mr. Barnickel set out in the course of their negotiations and estimated that Mr. Barnickel would earn close to \$1 million per year. Further, Mr. Walters falsely represented the Pacific Area, Mr. Barnickel's geography, as a desirable, high-profile geography, while concealing the fact that Biotronik's revenues in the Pacific Area were dropping precipitously and the Department of Justice was investigating Biotronik's sales practices in sections of the Pacific Area. These representations and omissions materially changed the nature and character of the role and made Mr. Walters's representations regarding compensation implausible. Upon information and belief, Mr. Walters was aware that these representations were untrue at the time he made them. Had the truth been disclosed to Mr. Barnickel, he would not have joined Biotronik or would only have done so under very different terms. In reliance upon these misrepresentations, Mr. Barnickel joined the Company.

III. The Company Further Restricted Mr. Barnickel from Engaging In Protected Conduct and Retaliated Against Him, In Violation of California Labor Code Sections 98.6, 232, 232.5, 1102.5, and 1197.5

In addition to the ongoing restrictions on speech discussed in Section I, above, during Mr. Barnickel's final year of employment, the Company, through its agent Ryan Walters, violated

California Labor Code Sections 232(a), 232.5(a) and 1197.5(k)(1)&(k)(2), and 1102.5(a) on multiple occasions by prohibiting Mr. Barnickel, and requiring that he refrain, from disclosing his own wages, including the amount of his wages, and disclosing working conditions, and by making, adopting, or enforcing a rule, regulation, or policy preventing him from disclosing information to persons with authority over him and to employees with authority to investigate, discover, or correct the violation or noncompliance.

Further, the Company violated California Labor Code Sections 232(c), 232.5(c), 1197.5(k)(1)&(k)(2), 98.6(a)-(b), and 1102.5(b)&(c) by threatening to and actually cutting Mr. Barnickel's compensation, denying him a promotions, threatening to and actually terminating his employment, and taking other adverse actions against him, in retaliation for his protected conduct or anticipated protected conduct, or his association with others who engaged in protected conduct. This protected conduct included but was not limited to: discussing and disclosing wages, including his own wages, and working conditions; disclosing information, or because the Company believed that he disclosed or may have being going to disclose information, to a person with authority over him or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, when he had reasonable cause to believe that the information disclosed a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation; refusing to participate in an activity that would result in a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation; engaging in conduct delineated in California Labor Code Section 1102.5; filing a bona fide complaint or claim or instituting or causing to be instituted any proceeding under or relating to his rights that are under the jurisdiction of the Labor Commissioner; making a written or oral complaint that they are owed unpaid wages; and exercising rights afforded to him, including under Labor Code Sections 232, 232.5, 1102.5, and 1197.5.

In late 2022, select members of BRAVE, Biotronik's women's affinity group, undertook an initiative to study gender equity to assess female representation across Biotronik's U.S. field positions. Mr. Barnickel agreed to be the group's executive sponsor, conducted an analysis of gender distribution across field-based sales roles in the CRM division, communicated with others at Biotronik about this project, and created a slide presentation of the results. The analysis shared in the presentation revealed substantial sex-based disparities within the United States CRM field-based roles that intensified at higher levels of seniority. For example, while approximately one third of entry-level field positions were held by women, only 7.8 percent of all sales and sales management roles above entry-level field positions were held by women, and none of the area Vice Presidents were women.

In or about December 2022, members of BRAVE shared this presentation with persons who possessed authority over Mr. Barnickel and had the authority to investigate, discover, or correct the violation or noncompliance, including Mr. Walters. Mr. Walters received it poorly. During or around the time of the presentation, Mr. Walters was made aware of Mr. Barnickel's role in the initiative, including as a sponsor of BRAVE and the person behind the data analysis. Mr. Walters reportedly reacted negatively to this as well. In addition, upon information and belief, Mr. Walters and other Company leaders also associated Mr. Barnickel with members of BRAVE who also engaged in advocacy on this subject.

Through his participation in the gender equity initiative, Mr. Barnickel engaged in protected activity, including: disclosing working conditions at Biotronik; disclosing information, and causing the Company to believe that he disclosed or may have been going to disclose information, to a person with authority over him or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, including Ryan Walters, other company leaders, and members of BRAVE, when he had reasonable cause to believe that the information disclosed a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, including but not limited to Title VII and the California Fair Employment and Housing Act, and related regulations; engaging in conduct delineated in California Labor Code Section 1102.5; filing a bona fide complaint or claim; and exercising rights afforded to him, including under Labor Code Sections 232.5 and 1102.5, and other laws.

In addition, from in or about December 2022 and continuing throughout 2023, Mr. Barnickel disclosed, complained of, and advocated for changes to a potentially unlawful leave policy that discriminates against employees who take leave. In or around late 2022, Mr. Barnickel became aware that Biotronik had a policy against paying commissions to employees on medical leaves (“the Leave Policy”). Upon information and belief, the Leave Policy could result in employees on leaves not receiving commissions earned, or not receiving commissions when similarly situated employees who were not on protected leaves would receive commissions. On multiple occasions after learning about this policy, Mr. Barnickel brought this policy and its effect on women to the attention of Biotronik and advocated for it to be revised, including through communications to Ramon Carasquillo. In addition, upon information and belief, Mr. Walters and other company leaders were aware of Mr. Barnickel’s communications on this subject, and his association with at least one other individual, a member of BRAVE, who also engaged in legally protected advocacy on this subject.

Through his communications regarding the Leave Policy, Mr. Barnickel engaged in protected activity, including: discussing and disclosing wages and inquiring about the wages of others; disclosing working conditions at Biotronik; disclosing information, and causing the Company to believe that he disclosed or may have been going to disclose information, to a person with authority over him or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, including Ryan Walters, Ramon Carasquillo, other company leaders, and members of BRAVE, when he had reasonable cause to believe that the information disclosed a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, including but not limited to Title VII, the Pregnancy Discrimination Act, the Family and Medical Leave Act, the Americans with Disabilities Act, the California Fair Employment and Housing Act, the California Family and Medical Leave Act, the California Labor Code, and related regulations; engaging in conduct delineated in California Labor Code Sections 1102.5 and 1197.5; filing a bona fide complaint or claim; and exercising rights afforded to him, including under Labor Code Sections 232.5, 1102.5, and 1197.5, and other laws.

After and, upon information and belief, because of the aforementioned protected activity, Biotronik retaliated against Mr. Barnickel by informing him that it would be cutting his pay and by threatening to terminate his employment or alternatively pressuring him to resign, in violation of California Labor Code Sections 232(c), 232.5(c), 98.6(a)-(b), 1102.5(b)&(c), 1197.5(k)(1)&(2)

and other laws. In January 2023, Mr. Walters informed Mr. Barnickel, that Biotronik would not be able to sustain Mr. Barnickel's compensation package, including his compensation guarantee, and that he would likely be switched to the usual Area Vice President plan, a reduction of more than 50%. This action departed sharply from industry norms of treating an offer package as a floor for future compensation, as well as Mr. Barnickel's reasonable expectations. Mr. Walters offered, in the alternative, to include Mr. Barnickel in the next round of layoffs (taking place around January 2023) and to pay Mr. Barnickel \$300,000 in severance. He represented that this severance would not necessarily be available if Mr. Barnickel opted to remain with the Company and was later terminated. Mr. Barnickel declined the layoff and severance offer and opted to remain with the Company. At the conclusion of this conversation, Mr. Walters directed Mr. Barnickel not to tell anyone about the call, in violation of Labor Code Sections 232(a), 232.5(a), 1197.5(k)(1), 1102.5(a), among other laws, and stated he would deny the conversation ever took place.

Biotronik retaliated further against Mr. Barnickel by denying him a promotion to the position of U.S. VP of Sales in or about late January 2023, in violation of California Labor Code Sections 232(c), 232.5(c), 98.6(a)-(b), 1102.5(b)&(c), 1197.5(k)(1)&(2) and other laws. Mr. Barnickel was eminently qualified to hold this position. Since Mr. Barnickel's hire, Mr. Walters had made clear repeatedly that he intended to promote Mr. Barnickel to this position. In December 2022, he had told Mr. Barnickel to prepare to speak with Biotronik's owner and CEO and leadership regarding the role. Instead, following Mr. Barnickel's protected conduct, Mr. Walters promoted Ramon Carrasquillo, who was less qualified for the position. After the formal announcement of this promotion, Mr. Walters called Mr. Barnickel to clear the air, in apparent acknowledgement of the glaring departure from the previously articulated and longstanding plan to promote Mr. Barnickel. In support of his decision, Mr. Walters offered only vague generalizations, making no reference to any issues with Mr. Barnickel's performance or to specific actions or events that had prompted him to change his mind.

Following the above-described retaliation, Mr. Barnickel engaged in further legally protected conduct. In addition to continuing to engage in the above-described protected communications concerning the Leave Policy, Mr. Barnickel disclosed and opposed the unlawful retaliation he was experiencing and refused to comply with Mr. Walters's unlawful restrictions on his speech about his own wages and working conditions. Further, Mr. Barnickel disclosed Mr. Walters's unlawful, retaliatory decision to cut his pay to Mr. Carrasquillo and other employees and discussed working conditions at Biotronik with them. In some of his communications, Mr. Barnickel also disclosed the fact that the pay cut and other working conditions contradicted Mr. Barnickel's reasonable expectations and Mr. Walters's representations to him prior to his hire regarding the job and the Company, and indicated that he would not have joined the Company if not for these inaccurate representations.

Through the foregoing communications, Mr. Barnickel engaged in protected activity, including but not limited to: discussing and disclosing wages; disclosing working conditions; disclosing information, and causing the Company to believe that he disclosed or may have been going to disclose information, to a person with authority over him or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, when he had reasonable cause to believe that the information disclosed a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation; engaging in

conduct delineated in California Labor Code Sections 1102.5 and 1197.5; refusing to participate in an activity that violates would result in a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation; filing a bona fide complaint or claim; opposing retaliation against him that violated California Labor Code provisions; and exercising rights afforded to him, including under Labor Code Sections 232, 232.5, 1102.5, and 1197.5, and other laws.

In June 2023, Biotronik retaliated further by severely cutting Mr. Barnickel's pay, in violation of California Labor Code Sections 232(c), 232.5(c), 98.6(a)-(b), 1102.5(b)&(c), 1197.5(k)(1)&(2) and other laws. During a 3-minute phone call on June 9, Mr. Walters informed Mr. Barnickel that he would "not be extending [Mr. Barnickel's] deal," or words to that effect, and that Mr. Barnickel would be changed to the usual Area VP compensation plan – a more than 50% reduction. At the end of this conversation, Mr. Walters also directed Mr. Barnickel to stop discussing their conversations with others in the company and to refrain from discussing the situation with others, in violation of Labor Code Sections 232(a), 232.5(a), 1197.5(k)(1), 1102.5(a), among other laws.

On November 9, 2023, Biotronik terminated Mr. Barnickel's employment in retaliation for the above-mentioned protected activity, in violation of California Labor Code Sections 232(c), 232.5(c), 98.6(a)-(b), 1102.5(b)&(c), 1197.5(k)(1)&(2) and other laws. November 9, 2023 was the designated day for set of terminations that Biotronik referred to as a "reduction in force" -- the next such set of "layoffs" after the January layoffs that Mr. Walters "offered" to include Mr. Barnickel in. Around 8:00 a.m. on November 9, 2023, before normal business hours, Mr. Walters made an unscheduled call to Mr. Barnickel. While it is routine for Human Resources or an employee's supervisor to participate in termination communications, Mr. Walters did not follow this standard practice. Mr. Walters told Mr. Barnickel words to the effect that Mr. Walters was "putting" or "including" Mr. Barnickel in the reduction in force. By way of explanation, Mr. Walters said that he knew that Mr. Barnickel was "not happy," or words to that effect, a transparent reference to Mr. Barnickel's months of protected conduct. He did not suggest that the termination was related to Mr. Barnickel's performance.² No explanations for the need to lay off an Area VP were tendered, and none were apparent.

After Mr. Barnickel's termination, Mr. Barnickel engaged in additional protected activity. In the early morning of November 10, Mr. Barnickel sent an email to Richard Fraizer, Senior Director of Human Resources at Biotronik, requesting confirmation that Jeremy Evans, Biotronik's General Counsel, was the appropriate contact for Mr. Barnickel's attorney to correspond with going forward.

Within hours, Biotronik retaliated by withdrawing Mr. Barnickel's severance offer, in violation of California Labor Code Sections 232(c), 232.5(c), 1102.5(b)&(c), 1197.5(k)(1)&(2) and other laws. At approximately 8:30 a.m. that morning, Mr. Walters called Mr. Barnickel, accusing him of engaging in several "inappropriate conversations," on November 9, 2023, and vaguely asserting that Mr. Barnickel had shared slides. When Mr. Barnickel objected that he did not know what Mr. Walters was talking about, Mr. Walters responded to the effect of, "I think you

² Mr. Barnickel had previously received overwhelmingly positive feedback on his performance.

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know what I am talking about and I am pulling your severance.” The severance offer on DocuSign was cancelled. While Mr. Barnickel does not know what Mr. Walters was specifically accusing him of doing, it is likely that, to the extent Mr. Walters was referring to conversations that actually took place, those conversations concerned working conditions at Biotronik, a common topic of conversation the day of the “reduction in force.”

For more than one month after the termination, Biotronik impeded Mr. Barnickel’s ability to submit his expenses for reimbursement, in violation of California Labor Code Section 2802.

* * *

Mr. Barnickel intends to seek all associated remedies, including without limitation all available civil penalties, costs, and attorneys’ fees, including under Labor Code Sections 2699(a) and 2699 (f)(2) and Section 2699(g)(1) (attorney’s fees and costs), for violations affecting himself and other current and former employees.

Should you have any questions or need further information, please contact our office on Mr. Barnickel’s behalf directly at (415)795-2022 and/or at the address at the top of the first page. Thank you for your attention to this matter.

Sincerely,



Danielle Fuschetti

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