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IN ARBITRATION BEFORE THE AAA

JOHN BARNICKEL,

Claimant,

v.

BIOTRONIK, Inc. and all successors in
interest; Biotronik Corporate Services U.S.,
Inc. and all successors in interest; and DOES 1
to 25,

Respondents.

Case No. 01-24-0000-5684

**AMENDED DEMAND FOR
ARBITRATION:**

1. Retaliation – FEHA
2. Retaliation – Cal. Lab. Code § 1197.5
3. Retaliation – Cal. Lab. Code § 1102.5
4. Retaliation – Cal. Lab. Code § 232
5. Retaliation – Cal. Lab. Code § 232.5
6. Retaliation – Cal. Lab. Code § 98.6
7. Wrongful Termination in Violation of
Public Policy
8. California Private Attorneys General Act,
Cal. Lab. Code § 2898 *et seq.*

1 Claimant JOHN BARNICKEL brings this action against BIOTRONIK, Inc., Biotronik
2 Corporate Services U.S., Inc., (together “Biotronik” or the “Company”), their successors in
3 interest, and DOES 1 to 25 (Biotronik, their successors, and defendants DOES 1 to 25, collectively,
4 “Respondents”). Claimant alleges as follows:

5 **INTRODUCTION**

6 1. This case concerns Biotronik’s retaliation against Claimant for his disclosure of
7 information about unlawful and inequitable conditions impacting wages and working conditions,
8 and his opposition to discriminatory conditions and Biotronik’s failure to take reasonable steps to
9 prevent discrimination.

10 2. Claimant is a seasoned, executive-level leader with more than twenty-five years
11 of experience in the field of medical device sales. In 2021, BIOTRONIK’s President Ryan
12 Walters aggressively recruited Claimant to leave an executive role at another medical device
13 company to join Biotronik as Area Vice President of the Pacific Area. In the course of
14 persuading Claimant to join Biotronik, Mr. Walters painted a rosy picture of the Company’s
15 sales performance and represented that he was building a “destination organization”— the kind
16 of business that people aspire to work for.

17 3. Claimant was employed by Biotronik from June 2021 through November 2023.
18 Upon joining Biotronik, Claimant encountered a business and workplace that fell far short of the
19 “destination organization” Mr. Walters described in many regards. Poor decisions by the
20 Company had severely damaged the Company’s reputation in the Pacific Area, and revenues in
21 the geography were falling. The U.S. Department of Justice (“DOJ”) was actively investigating
22 fraudulent sales conduct in the Pacific Area. The sales workforce was suffering from low morale
23 and high attrition. There were workplace policies that erected barriers to success for pregnant
24 employees and mothers. There were shocking disparities in the representation of women versus
25 men in field-based sales roles, a divide that only grew at higher levels of the organization.
26 Despite these challenges, Claimant excelled in his role, receiving praise from many, both within
27 and outside Biotronik, including from Mr. Walters, who repeatedly expressed his intention to
28 promote Claimant to Vice President of U.S. Sales.

1 4. Claimant’s career at Biotronik ran aground around January 2023 as a direct result
2 of his legally protected efforts to engage in frank, fact-driven, and productive discussions about
3 the working conditions at the Company in order to rectify these issues. Claimant’s legally
4 protected conduct included opposition to and disclosure of discrimination and failures by
5 Biotronik to take reasonable steps to prevent discrimination, disclosure and discussion of wages
6 and working conditions at Biotronik, and Biotronik’s association of Claimant with others
7 engaged in similar protected activity.

8 5. In December 2022, Claimant sponsored and provided data analysis and other
9 assistance to support an initiative by BRAVE—Biotronik women’s affinity group—to study sex-
10 based disparities within the U.S. Cardiac Rhythm Management (“CRM”) organization of
11 Biotronik. The analysis Claimant prepared revealed that women were severely underrepresented
12 across all levels of the field-based CRM organization, with worsening disparities at higher levels,
13 highly probative of sex-based discrimination. Claimant further supported the group voicing their
14 findings, concerns, and recommendations for steps the Company could consider by putting
15 together a slide deck. The slide deck was included in a presentation the group made to President
16 Walters concerning the gender disparities and steps that could be taken to improve conditions at
17 Biotronik for female employees.

18 6. In addition, beginning in or about December 2022 and continuing throughout
19 2023, Claimant disclosed and opposed a discriminatory leave policy. Under this policy,
20 Biotronik denied commissions for the sales the employees generated before they took leave,
21 including maternity leave, under circumstances that would otherwise generally result in a
22 payment. Claimant brought this policy and its effect on women to the attention of Biotronik and
23 advocated for it to be revised on multiple occasions, making clear that he believed the policy was
24 unfair to women.

25 7. In January 2023, Biotronik retaliated against Claimant. Without warning or
26 explanation, Mr. Walters told Claimant that the Company planned to discontinue the
27 compensation package it had negotiated with Claimant before his hire and downgrade his
28 compensation package, reducing his compensation by more than 50 percent when his contract

1 expired in June 2023. As an alternative, Mr. Walters suggested that Claimant could leave the
2 Company as part of a “reduction in force”—a term Biotronik uses for employee termination—
3 (“RIF”) and offered Claimant a severance package of \$300,000 by way of inducement. Mr.
4 Walters directed Claimant not to tell anyone about this conversation and stated he would deny
5 the conversation ever took place. Later in January, President Walters, without explanation,
6 denied Claimant the opportunity to interview and passed over Claimant for the position of U.S.
7 Vice President of Sales—a promotion President Walters had stated on multiple occasions that he
8 intended for Claimant.

9 8. From January through June 2023, Claimant engaged in further legally protected
10 conduct by opposing and disclosing the foregoing unlawful retaliation and by engaging in further
11 disclosures concerning his own and others’ wages and working conditions at Biotronik, as well
12 as conduct by Biotronik that was or was reasonably believed to be fraudulent.

13 9. In response, in June of 2023, Biotronik retaliated further by slashing Claimant’s
14 pay by more than 50 percent in effect. In the call in which Mr. Walters informed Claimant of the
15 pay-cut, he also directed Claimant to cease communicating with others about the pay-cut and
16 specifically to cease telling others about their conversations on these matters.

17 10. When this pay-cut failed to induce Claimant to resign, Biotronik retaliated again
18 by terminating Claimant’s employment on November 9, 2023, under the auspices of a so-called
19 “reduction in force,” just as Mr. Walters had proposed in January. By way of explanation for the
20 termination, Mr. Walters said only that he knew Claimant was “not happy,” or words to that
21 effect, alluding to Claimant’s protected conducts.

22 11. On November 9, 2023, Claimant was offered a severance package through
23 DocuSign. On the next morning, Claimant contacted the Company’s Senior Director of Human
24 Resources (“HR”) to confirm the appropriate contact for his attorney to correspond with going
25 forward. Within hours, Biotronik retaliated by retracting the severance offer.

26 12. Accordingly, Claimant brings claims against Respondents for retaliation in
27 violation of the California Fair Employment and Housing Act and California Labor Code §§ 232,
28 232.5, 98.6, 1102.5, and 1197.5, wrongful termination in violation of public policy, and a so-

called “individual” claim under the California Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et seq.* (“PAGA”).

THE PARTIES

13. **Claimant John Barnickel** is a seasoned, executive-level leader with more than twenty-five years of experience in the field of medical device sales, including more than a decade of experience in executive roles at top companies in the field.

14. Claimant resides in Santa Clara County and was employed in Santa Clara County during all relevant times by of BIOTRONIK, Inc. and, upon information and belief, of Biotronik Corporate Services U.S., Inc.

15. Claimant was employed by Biotronik from June 2021 through November 9, 2023, as Area Vice President (“AVP”) of the Pacific Area.

16. **Respondent BIOTRONIK, Inc.** is a Delaware corporation doing business in, among other places, California.

17. **Respondent Biotronik Corporate Services U.S., Inc.** is a Delaware corporation doing business in, among other places, California.

18. Upon information and belief, BIOTRONIK, Inc. and Biotronik Corporate Services U.S., Inc. are United States-based subsidiaries of a global medical device manufacturer BIOTRONIK SE & Co. KG, headquartered in Germany.

19. The true names and capacities of **Respondents** named herein as **Does 1 through 25**, inclusive, whether individual, corporate, associate or otherwise, and the true involvement of Respondents sued herein as Does 1 through 25, inclusive, are unknown to Claimant, who therefore sues said Respondents by such fictitious names. Claimant will amend this demand (“Demand”) to show the true names, capacities, and involvement of Does 1 through 25, inclusive, when ascertained. Claimant is informed and believes and thereon alleges that each of the Respondents designated as a “Doe” is responsible in some manner for the events and happenings referred to herein, and that Claimant’s injuries and damages as hereinafter set forth were proximately caused by said Respondents.

20. Claimant is informed and believes and thereon alleges that each of the Respondents

1 is or was the agent, employee, partner, and/or representative of one or more of the other
2 Respondents, and each of them was at all times acting within the purpose and scope of such agency
3 and employment. Claimant is further informed and believes that each of the Respondents sued
4 herein gave consent to, ratified, and authorized the acts alleged herein to each of the other
5 Respondents.

6 **JURISDICTION AND VENUE**

7 21. Claimant's Arbitration Agreement with Biotronik is attached as **Exhibit A** hereto.

8 **PROCEDURAL ALLEGATIONS**

9 22. Claimant has exhausted administrative remedies for his claims. On February 6,
10 2024, Claimant filed a charge of discrimination concerning the claims asserted herein with the
11 California Civil Rights Department ("CRD") and received a notice of right to sue, which Claimant
12 served via certified mail.

13 23. Claimant has provided the requisite notice of his claims under the PAGA to the
14 California Labor and Workforce Development Agency ("LWDA"), and Biotronik and all affiliated
15 entities. On January 10, 2024, Claimant filed a notice setting forth Labor Code violations that are
16 the basis for his PAGA claims with the LWDA, Ex. A, hereto, and served the notice on the
17 Company's counsel and authorized agent for service, Bryan Hawkins, via certified mail.

18 **FACTUAL ALLEGATIONS**

19 **A. Biotronik Aggressively Recruited Claimant to Join Biotronik.**

20 24. Efforts to recruit Claimant to Biotronik began in 2019, when Ryan Walters—the
21 President of BIOTRONIK—approached Claimant to discuss his joining Biotronik. Mr. Walters
22 and Claimant had previously worked for the same employer. As such, Mr. Walters was well aware
23 of what Claimant could bring to the Company.

24 25. In March of 2021, Mr. Walters again approached Claimant to inquire about his
25 interest in joining Biotronik. Biotronik and Claimant spent over two months negotiating
26 Claimant's role and compensation structure at Biotronik. Mr. Walters personally handled the
27 negotiation.

28 26. At this time, Biotronik did not have an open role. Mr. Walters restructured

1 Biotronik's sales areas to create the Pacific Area, a geography specifically established with
2 Claimant in mind. Mr. Walters characterized the Pacific Area as a profitable and highly desirable
3 geography and represented that he was building a "destination organization"—the kind of business
4 that people aspire to work for.

5 27. Ultimately, Claimant and Biotronik agreed upon a compensation package that
6 included an income guarantee, retention bonuses, and upside income opportunities for revenue
7 growth and sales quota attainment, which was in line with Claimant's average earnings for the last
8 ten years. Mr. Walters estimated that this compensation package would be worth approximately at
9 least \$1 million per year.

10 28. Biotronik required Claimant to sign an employment agreement ("Employment
11 Agreement") that contained a clause prohibiting Claimant from disclosing details about his
12 compensation and working conditions. Section 4 of the Agreement sets forth the components of
13 Claimant's compensation, information about benefits, the terms and conditions for expense
14 reimbursement, and other information concerning Claimant's compensation and working
15 conditions. Section 4 explicitly prohibits Claimant from disclosing or discussing the contents of
16 that section. The section states, "Employee agrees and understands that the terms of this Section 4
17 are strictly confidential as between BIOTRONIK and Employee, and should not be disclosed to
18 other BIOTRONIK personnel." Claimant was required to accept these terms as a condition of
19 employment. Claimant was required to and did sign this Agreement.

20 **B. Facing Significant Headwinds, Claimant's Performance at Biotronik Nonetheless**
21 **Met or Exceeded Expectations.**

22 29. When Claimant joined Biotronik, the Company was struggling with a series of
23 challenges, none of which were attributable to Claimant's performance. Poor decisions by the
24 Company had severely damaged the Company's reputation in the Pacific Area, and revenues in
25 the geography were falling. In addition, the DOJ was actively investigating fraudulent sales
26 conduct in the Pacific Area—an investigation that eventually became publicized, with significant
27 consequences for Biotronik's reputation. The sales workforce was suffering from low morale and
28 high attrition, and had developed a culture that some described as "toxic."

1 30. Despite these challenges, in little more than two years, Claimant delivered
2 measurable results for the Company across multiple metrics. Drawing on his personal network and
3 reputation, Claimant recruited numerous high-caliber professionals to Biotronik—including
4 nationally ranked top sales representatives—both within and outside of the Pacific Area. These
5 recruits bolstered Biotronik’s revenues. In 2022, the Pacific Area’s national ranking ascended from
6 the last of the four geographies in the Company to the second.

7 31. Claimant’s performance earned him praise from Mr. Walters and others, both
8 within and beyond Biotronik. Biotronik employees, competitors, and physicians recognized the
9 momentum of Claimant’s organization under his leadership and the improvements he made. Mr.
10 Walters praised Claimant’s performance extensively, both orally and in writing.

11 32. Further evidencing his high opinion of Claimant’s performance, on multiple
12 occasions, Mr. Walters indicated that Claimant was first in line for the position of U.S. Vice
13 President of Sales. That position was vacated in July 2021—a month after Claimant Barnickel
14 arrived at Biotronik. At various points during the Claimant’s tenure before the end of 2022, Mr.
15 Walters indicated he planned to promote Claimant into this open position as soon as Claimant had
16 become familiar enough with the Company.

17 33. In December 2022, Mr. Walters directed Claimant prepare to discuss the U.S. Vice
18 President of Sales role with Biotronik’s owner Max Schaldach and CEO Alexander Uhl during a
19 meeting that month in New York. Mr. Walters further stated that he did not ask any other AVP to
20 prepare for such a conversation.

21 **C. Biotronik Retaliated Against Claimant for Engaging in Protected Activity.**
22

23 34. Claimant’s prospects at Biotronik faded suddenly in January 2023, as a direct result
24 of retaliation against him for engaging in protected conduct in relation to discriminatory and
25 inequitable conditions adversely affecting women at Biotronik or, upon information and belief, his
26 association with others engaged in similar protected conduct.

a. Claimant Assisted in Conducting a Gender Equity Analysis that Revealed Sex-Based Inequities at Biotronik.

35. Biotronik's U.S. field-based salesforce is overwhelmingly dominated by men. Women are especially underrepresented in sales, managerial, and leadership roles—a divide that only grew at higher levels of the organization.

36. In late 2022, select members of BRAVE—Biotronik's women's affinity group—undertook to conduct a study of gender equity across Biotronik's U.S. CRM field positions. Biotronik was not supportive. Upon information and belief, when BRAVE approached Biotronik's HR department to request the Company's assistance, Biotronik refused to provide BRAVE with data to conduct the analysis.

37. Upon request, Claimant agreed to be the group's executive sponsor for the gender equity study and cooperated with BRAVE in conducting the study. Once the BRAVE members completed construction of a national dataset, a step necessitated by Biotronik's refusal to cooperate with the study in any way, Claimant analyzed the data and created a slide deck presenting his analysis, which he shared with the BRAVE members.

38. The analysis in the presentation revealed substantial sex-based disparities strongly suggestive of sex-based discrimination throughout the United States CRM field-based roles. Women held only one third of entry-level field positions. The representation of women dwindled progressively among higher-ranking positions. Only approximately 7.8 percent of all sales and sales management roles above entry-level field positions were held by women.

39. There were also relative differences in the disparities between men and women between geographic regions. While women were approximately 34 and 36 percent of the field-based salesforce in the Pacific and West sales areas, respectively, they accounted for only approximately 24 and 26 percent of the Southern and Eastern sales areas.

40. By way of example of the contents of the BRAVE gender equity presentation, Table 1 contains a chart from the BRAVE presentation that incorporated Claimant's analysis. It shows the major categories of non-entry level roles across Biotronik's entire U.S. field-based CRM salesforce. As it reflects, none of the leadership roles—Territory Manager ("TM"), Regional Sales Manager ("RSM"), and AVP—were held by women at the time of the analysis. Women held just

4 of the 16 Regional Sales Director (“RSD”) roles, up from 2 due to Claimant’s promotion of women in his region.

Table 1. Chart Depicting Number of Male and Female Employees by Role Within Biotronik U.S. Field-Based CRM Non-Entry-Level Roles

	National			Role as		
	Male	Female	Total	% of Total	% Male	% Female
TM	16	0	16	3.7%	100%	0%
RSD	12	4	16	3.7%	75%	25%
RSM	3	0	3	0.7%	100%	0%
AVP	4	0	4	0.9%	100%	0%
TOTAL	35	4	35	8.1%	100%	11.4%

41. Upon information and belief, in or about December 2022, members of BRAVE shared this presentation with Mr. Walters. The presentation included Claimant’s analysis and slides. In addition to Claimant’s statistical analysis, the presentation BRAVE group ultimately shared with leadership contained a slide dedicated to potential changes Biotronik could make, but had not made, to help improve conditions for women at the Company. Upon information and belief, these suggestions constituted reasonable steps to prevent sex-based discrimination.

42. After the meeting, the BRAVE members informed Claimant that Mr. Walters received it poorly. As one member of BRAVE reported, Mr. Walters responded defensively, “like [they] were calling his baby ugly.”

43. One or more members of BRAVE further reported to Claimant that, during or around the time of the presentation, Mr. Walters was made aware of Claimant’s role in the BRAVE gender equity study, including as a sponsor and the person behind the data analysis. Mr. Walters reportedly reacted negatively to this as well, questioning why Claimant was involved, in an aggressive or disapproving tone.

b. Claimant Reported Biotronik’s Discriminatory Leave Policy to Company Leadership.

44. In or about December 2022 and continuing throughout 2023, Claimant also disclosed, complained of, and advocated for changes to a potentially unlawful leave policy that discriminates against employees who take leave.

45. In or around late 2022, Claimant became aware that Biotronik had a policy against

1 paying commissions to employees on medical leaves or maternity leave (“the Leave Policy”).
2 Upon information and belief, the Leave Policy could result in employees on leaves not receiving
3 commissions earned, or not receiving commissions when similarly situated employees who were
4 not on protected leaves would receive commissions. Certain members of BRAVE brought this
5 Policy to Claimant’s attention, expressing concern about the Policy’s unfair impact on a female
6 salesperson whose work generated sales for which she was not paid while on a maternity leave.

7 46. On multiple occasions after learning about this Policy, Claimant brought this Policy
8 and its effect on women to the attention of Biotronik, via communications with Ramon
9 Carrasquillo—Claimant’s boss—and advocated for it to be revised.

10 47. In addition, upon information and belief, Mr. Walters and other leaders of the
11 Company were aware of Claimant’s communications on this subject, and his association with at
12 least one other individual—a member of BRAVE—who was also engaged in advocacy regarding
13 this Policy around the same time as Claimant.

14 **c. Biotronik Retaliated Against Claimant by Threatening to Cut His Pay,**
15 **Pressuring Him to Resign, and Denying Him a Promotion.**

16 48. After the aforementioned protected activity, Biotronik retaliated against Claimant
17 Barnickel by informing him that it would be cutting his pay and by threatening to terminate his
18 employment or alternatively pressuring him to resign and denying him the promotion to U.S. Vice
19 President of Sales.

20 49. On an evening in January 2023, mere weeks after the BRAVE presentation
21 concerning the gender equity study, Claimant received an unscheduled call from Mr. Walters after
22 ordinary business hours on Friday. Without explanation or warning, Mr. Walters told Claimant
23 that Biotronik could not sustain Claimant’s compensation package, and that Claimant would likely
24 be switched to a general AVP compensation plan, a change that would have reduced his
25 compensation by over 50 percent. This action departed sharply from industry norms of treating an
26 offer package as a floor for future compensation, as well as Claimant’s reasonable expectations.
27 Mr. Walters offered, in the alternative, to include Claimant in the next round of layoffs called the
28 RIF scheduled in the same month. Mr. Walters then offered Claimant a severance of \$300,000,

1 which he represented would not necessarily be available if Claimant opted to remain with the
2 Company and was later terminated. Claimant declined this offer and shared his plans to stay with
3 the Company and his hope that Mr. Walters would reevaluate. At the end of the call, Mr. Walters
4 directed Claimant not to tell anyone about the call and stated that he would deny the conversation
5 ever took place.

6 50. Also in January 2023, Mr. Walters dramatically cut Claimant's department's
7 budgets. These cuts reduced Claimant's expense budget by 63 percent and his Area budget by 49
8 percent, which would serve to impede the success of his region significantly. When Claimant
9 questioned Mr. Walters on the steep cuts, he replied that he would have cut Claimant's budget
10 even more, but that he had been overruled. In addition, Mr. Walters forbade Claimant from
11 incurring business expenses in the month of January and directed him to cancel scheduled
12 leadership and recruiting meetings.

13 51. Later in January 2023, Claimant learned that Biotronik had passed him over for the
14 position of the U.S. Vice President of Sales—the position Mr. Walters had long said he intended
15 Claimant to fill. Instead of Claimant, Mr. Walters promoted Ramon Carrasquillo—then South
16 AVP at Biotronik. Mr. Carrasquillo possessed less sales experience and less executive sales
17 leadership experience than Claimant. Mr. Walters had never suggested he was considering Mr.
18 Carrasquillo, or anyone else, in all of their conversations about the role. After the formal
19 announcement of Mr. Carrasquillo's promotion, Mr. Walters called Claimant to clear the air. He
20 stated that, in the context of the announcement, he wanted to ensure that there was “no elephant in
21 the room” prior to an upcoming leadership meeting in Dallas where both Mr. Walters and Claimant
22 would attend. However, he offered only vague rationalizations in support of his decision.

23 **d. When Claimant Opposed the Foregoing Retaliation and Engaged in**
24 **Additional Protected Conduct, Biotronik Followed Through on Its Threat to**
25 **Cut Claimant's Pay in Half.**

26 52. Throughout the Spring of 2023, Claimant opposed the foregoing retaliation by
27 reporting it to Mr. Carrasquillo who became his boss and attempting to persuade Mr. Walters to
28 reconsider the anticipated pay-cut.

1 53. In March 2023, Claimant briefed Mr. Carrasquillo on the January pay-cut
2 conversation with Mr. Walters, thereby opposing both the retaliatory pay-cut and Mr. Walters's
3 unlawful directive not to disclose the conversation concerning Claimant's wages. Mr. Carrasquillo
4 expressed sympathy for Claimant's situation and volunteered to advocate for him, which, upon
5 information and belief, he did.

6 54. On or about April 24, 2023, Claimant had a video conference with Mr. Carrasquillo
7 and Mr. Walters. During the call, Claimant presented a slide deck in which he discussed the reasons
8 why the pay-cut was unfair. The slide deck also contained information about Claimant's
9 compensation, working conditions, and other information regarding some of the ways Mr. Walters
10 had misled Claimant while negotiating Claimant's original offer package in 2021, which Claimant
11 reasonably believed were fraudulent. Mr. Walters sat silent through most of the presentation, but
12 eventually became animated and hostile, and ended the call abruptly. Claimant followed up by
13 sending the slide deck to Mr. Walters.

14 55. Mr. Carrasquillo subsequently reported that, during a conference in New Orleans
15 in or about May 2023, Mr. Walters asked Mr. Carrasquillo for his recommendation regarding
16 Claimant's compensation. Mr. Carrasquillo indicated that he applauded Claimant's work,
17 commented favorably on the potential of Claimant's Pacific Area, suggested keeping Claimant's
18 compensation guarantee in place or, at most, considering a modest reduction of \$50,000, if
19 Mr. Walters wanted to show savings to his superiors.

20 56. From January through June 2023, Claimant also disclosed Mr. Walters's plan to cut
21 his pay and to discontinue his compensation guarantee to several colleagues, as was Claimant's
22 right under California law.

23 57. In June 2023, unmoved by Claimant's efforts and Mr. Carrasquillo's advice, Mr.
24 Walters slashed Claimant's pay. During a three-minute phone call on June 9, Mr. Walters informed
25 Claimant that he would "not be extending [Claimant's] deal," or words to that effect, and that
26 Claimant's compensation plan would change to the baseline AVP compensation plan—a more
27 than 50 percent reduction. Mr. Walters also directed Claimant to stop discussing conversations
28 between himself and Claimant with others in the Company and to refrain from discussing

1 Claimant's situation with others.

2 **e. When Cutting Claimant's Pay Did Not Cause Him to Resign, Biotronik**
3 **Retaliated Further by Terminating Claimant's Employment.**

4 58. Mr. Walters likely expected that a 50 percent reduction in compensation would
5 cause Claimant to resign, as he had suggested during their conversation in January 2023 when he
6 offered the two as alternatives. However, Claimant elected to remain at Biotronik, out of a sense
7 of commitment to the organization he had been building.

8 59. While Claimant remained at the Company, he did continue to engage in protected
9 conduct by disclosing and opposing the unlawful retaliation he was facing, disclosing facts about
10 his wages and working conditions implicated by the pay-cut, and discussing others' wages and
11 working conditions. He also continued to engage in protected conduct by disclosing and opposing
12 the Leave Policy through communications with Mr. Carrasquillo.

13 60. November 9, 2023 was the designated day set for terminations that Biotronik refer
14 to as the RIF—the first RIF following the January RIF Claimant had declined to be included in.
15 Around 8:00 a.m. on November 9, 2023, before normal business hours, Mr. Walters made an
16 unscheduled call to Claimant. Mr. Walters told Claimant words to the effect that Mr. Walters was
17 “putting” Claimant in the RIF. By way of explanation, Mr. Walters said that he knew that Claimant
18 was “not happy,” or words to that effect—a transparent reference to Claimant's months of
19 protected conduct.

20 61. No explanations for the need to lay off an AVP were tendered, and none were
21 apparent. No criticism of Claimant's performance was raised or implied by way of explanation.

22 62. While it is common for HR or a supervisor to attend or run such termination calls,
23 none were present for this conversation.

24 **f. Biotronik Retaliated Further by Rescinding Claimant's Severance Offer.**

25 63. Claimant received a separation agreement through a DocuSign email on the
26 afternoon of November 9, 2023. The separation provided for a monetary payment to Claimant.

27 64. At around 6 a.m. on the next day, November 10, Claimant emailed Richard
28 Fraizer—Senior Director of HR at Biotronik—to confirm the appropriate contact for Claimant's

1 attorney to correspond with going forward.

2 65. At approximately 8:30 a.m. that morning, Mr. Walters called Claimant, accusing
3 him of engaging in several “inappropriate conversations” on November 9, 2023, and vaguely
4 asserting that Claimant had shared slides with someone. When Claimant objected that he did not
5 know what Mr. Walters was talking about, Mr. Walters responded to the effect of, “I think you
6 know what I am talking about and I am pulling your severance.” The severance offer on DocuSign
7 was cancelled.

8 66. Subsequently, the Company retaliated against Claimant further by changing its
9 pretextual explanation for firing Claimant from a lay-off to a for-cause termination after
10 Claimant’s counsel informed Biotronik’s counsel of his claims.

11 **CAUSES OF ACTION**

12 **FIRST CAUSE OF ACTION**

13 **RETALIATION**

14 **(California Fair Employment and Housing Act, Cal. Gov. Code § 12940(h) *et seq.*)**

15 **(Against all Respondents)**

16 67. Claimant incorporates by reference all allegations in this Demand as if fully set
17 forth herein.

18 68. Claimant engaged in protected activity under California Fair Employment and
19 Housing Act (“FEHA”) opposing discriminatory and retaliatory practices prohibited under FEHA,
20 including through opposing actual or reasonably believed sex discrimination in connection with
21 the BRAVE Gender Equity Analysis, opposing actual or reasonably believed discrimination on
22 the basis of sex, pregnancy, disability, or having taken protected leave in connection with the Leave
23 Policy, opposing actual or reasonably believed interference with and retaliation for protected leave
24 and legally protected reasonable accommodations in connection with the Leave Policy, opposing
25 actual or reasonably believed failure by Respondents to take all reasonable steps necessary to
26 prevent discrimination from occurring, being associated with others who were also engaged in
27 conduct protected under FEHA, including with respect to the BRAVE Gender Equity Analysis
28 and the Leave Policy, and opposing actual or reasonably believed retaliation he experienced as a

1 result of this protected conduct.

2 69. Respondents were aware of Claimant's protected activity.

3 70. As a result, Respondents subjected Claimant to adverse employment actions,
4 including threatening to and actually reducing his compensation, denying him a promotion,
5 terminating his employment, rescinding his severance offer, reclassifying his termination as for-
6 cause, denying him support and resources, subjecting him to increased scrutiny, and subjecting
7 him to other adverse actions.

8 71. Claimant's protected conduct was a substantial motivating reason for Respondents'
9 decisions.

10 72. Respondents' retaliatory acts against Claimant were a direct and proximate result
11 of his protected activities.

12 73. A reasonable employee would find Respondents' retaliatory acts materially adverse
13 and such acts would dissuade a reasonable person from engaging in legally protected activity.

14 74. As a direct, foreseeable, and proximate result of Respondents' unlawful retaliatory
15 actions, Claimant has suffered and/or will suffer harm, including but not limited to lost earnings,
16 lost benefits, lost future employment opportunities, and other economic damages, as well as
17 humiliation, embarrassment, emotional and physical distress, and mental anguish, all to Claimant's
18 damage in an amount to be proven at the time of arbitration hearing.

19 75. Respondents committed the acts herein despicably, maliciously, fraudulently, and
20 oppressively, with the wrongful intention of injuring Claimant from an improper and evil motive
21 amounting to malice, and in conscious disregard of Claimant's rights, thus entitling Claimant to
22 recover punitive damages from Respondents in an amount according to proof at arbitration
23 hearing.

24 76. Claimant is therefore entitled to all legal and equitable remedies available for
25 violations of FEHA, including lost compensation (including salary, bonuses, and restricted stock
26 units), back pay, front pay, compensatory damages, punitive damages, attorneys' fees, costs, and
27 any other appropriate relief.

1 **SECOND CAUSE OF ACTION**

2 **RETALIATION**

3 **(California Equal Pay Act, Cal. Lab. Code § 1197.5(k)(1) *et seq.*)**

4 **(Against all Respondents)**

5 77. Claimant re-alleges and incorporates by reference each and every allegation
6 contained in the previous paragraphs of this Demand as though fully set forth herein.

7 78. Claimant engaged in protected activity under the California Equal Pay Act by
8 disclosing his own wages, discussing the wages of others, and inquiring about another employee's
9 wages through his communications concerning the Leave Policy.

10 79. As a result, Respondents subjected Claimant to adverse employment actions,
11 including threatening to and actually reducing his compensation, denying him a promotion,
12 terminating his employment, rescinding his severance offer, reclassifying his termination as for-
13 cause, denying him support and resources, subjecting him to increased scrutiny, and subjecting
14 him to other adverse actions.

15 80. Respondents' retaliatory acts against Claimant were a direct and proximate result
16 of his protected activities.

17 81. A reasonable employee would find Respondents' retaliatory acts materially adverse
18 and such acts would dissuade a reasonable person from engaging in legally protected activity.

19 82. As a direct, foreseeable, and proximate result of Respondents' unlawful
20 discrimination, Claimant has suffered and will suffer harm, including but not limited to lost
21 earnings, lost benefits, and other financial losses, as well as non-economic damages.

22 83. Claimant is therefore entitled to all legal and equitable remedies available under
23 law, including lost compensation (including salary, bonuses, and restricted stock units), wages,
24 interest, attorneys' fees, costs, and any other appropriate relief.

1 **THIRD CAUSE OF ACTION**

2 **RETALIATION**

3 **(California Whistleblower Protection Act, Cal. Lab. Code § 1102.5(a)-(c))**

4 **(Against all Respondents)**

5 84. Claimant incorporates by reference all allegations in this Demand as if fully set
6 forth herein.

7 85. Biotronik, through Mr. Walters's statements, unlawfully prohibited Claimant from
8 disclosing information to a person with authority over the employee or another employee who has
9 the authority to investigate, discover, or correct the violation or noncompliance, which information
10 Claimant had reasonable cause to believe disclosed a violation of state or federal statute, or a
11 violation of or noncompliance with a local, state, or federal rule or regulation.

12 86. Claimant engaged in protected activity by disclosing information to a person with
13 authority over the employee or another employee who has the authority to investigate, discover,
14 or correct the violation or noncompliance, which information Claimant had reasonable cause to
15 believe disclosed a violation of state or federal statute, or a violation of or noncompliance with a
16 local, state, or federal rule or regulation, including Title VII of the Civil Rights Act (including the
17 Pregnancy Discrimination Act), the Americans with Disabilities Act, the Family and Medical
18 Leave Act, FEHA, the California Family Rights Act, the California Equal Pay Act, California
19 Labor Code §§ 98.6, 232, 232.5, and 1197.5, and common law, as alleged herein.

20 87. Claimant engaged in protected activity because Biotronik believed that he disclosed
21 or may disclose information to a person with authority over the employee or another employee
22 who has the authority to investigate, discover, or correct the violation or noncompliance, which
23 information Claimant had reasonable cause to believe disclosed a violation of state or federal
24 statute, or a violation of or noncompliance with a local, state, or federal rule or regulation,
25 including Title VII of the Civil Rights Act (including the Pregnancy Discrimination Act), the
26 Americans with Disabilities Act, the Family and Medical Leave Act, FEHA, the California Family
27 Rights Act, the California Equal Pay Act, California Labor Code §§ 98.6, 232, 232.5, and 1197.5,
28 and common law.

88. Claimant engaged in protected activity by 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.

89. As a result, Respondents subjected Claimant to adverse employment actions, including threatening to and actually reducing his compensation, denying him a promotion, terminating his employment, rescinding his severance offer, reclassifying his termination as for-cause, denying him support and resources, subjecting him to increased scrutiny, and subjecting him to other adverse actions.

90. A reasonable employee would find Respondents' retaliatory acts materially adverse and such acts would dissuade a reasonable person from engaging in legally protected activity.

91. As a direct, foreseeable, and proximate result of Respondents' unlawful conduct, Claimant has suffered and/or will suffer harm, including but not limited to lost earnings, lost benefits, lost future employment opportunities, and other economic damages, as well as humiliation, embarrassment, emotional and physical distress, and mental anguish, all to Claimant's damage in an amount to be proven at the time of arbitration hearing.

92. Respondents committed the acts herein despicably, maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Claimant, from an improper and evil motive amounting to malice, and in conscious disregard of the rights and safety of Claimant and others, thus entitling Claimant to recover punitive damages from Respondents in an amount according to proof at arbitration hearing.

93. Claimant is therefore entitled to all legal and equitable remedies available for violations of California Labor Code § 1102.5(a)-(c), including lost compensation (including salary, bonuses, and restricted stock units), back pay, front pay, compensatory damages, punitive damages, attorneys' fees, costs, and any other appropriate relief.

FOURTH CAUSE OF ACTION

Violations of Cal. Lab. Code § 232(a)-(c)

(Against all Respondents)

94. Claimant re-alleges and incorporates by reference each and every allegation

1 contained in the previous paragraphs of this Demand as though fully set forth herein.

2 95. Respondents required, as condition of Claimant's employment, that Claimant
3 refrain from disclosing his wages.

4 96. Respondents required Claimant to sign the Employment Agreement that purports
5 to deny Claimant the right to disclose the amount of his or her wages.

6 97. As a result, Respondents engaged in adverse employment actions against Claimant
7 including threatening to and actually reducing his compensation, denying him a promotion,
8 terminating his employment, rescinding his severance offer, reclassifying his termination as for-
9 cause, denying him support and resources, subjecting him to increased scrutiny, and subjecting
10 him to other adverse actions.

11 98. A reasonable employee would find Respondents' retaliatory acts materially adverse
12 and such acts would dissuade a reasonable person from engaging in protected activity.

13 99. As a direct, foreseeable, and proximate result of Respondents' unlawful actions,
14 Claimant has suffered and continues to suffer substantial losses in earnings and other employment
15 benefits and has incurred other economic losses.

16 100. As a direct, foreseeable, and proximate result of Respondents' unlawful actions,
17 Claimant has suffered emotional distress, humiliation, shame, anxiety, and embarrassment, all to
18 Claimant's damage in an amount to be proven at the time of arbitration hearing.

19 101. Claimant is therefore entitled to all legal and equitable remedies, including backpay
20 and liquidated damages.

21 102. Respondents committed the acts herein despicably, maliciously, fraudulently, and
22 oppressively, with the wrongful intention of injuring Claimant, from an improper and evil motive
23 amounting to malice, and in conscious disregard of the rights and safety of Claimant and others.
24 Claimant is thus entitled to recover punitive damages from Respondents in an amount according
25 to proof at arbitration hearing.

26 103. Claimant is entitled to attorneys' fees under California Code of Civil Procedure
27 § 1021.5. Claimant is also entitled to costs.

28

1 **FIFTH CAUSE OF ACTION**

2 **Violations of Cal. Lab. Code § 232.5(a)-(c)**

3 **(Against all Respondents)**

4 104. Claimant re-alleges and incorporates by reference each and every allegation
5 contained in the previous paragraphs of this Demand as though fully set forth herein.

6 105. Respondents required, as condition of Claimant's employment, that Claimant
7 refrain from disclosing Biotronik's working conditions.

8 106. Respondents required Claimant to sign the Employment Agreement that purports
9 to deny Claimant the right to disclose Biotronik's working conditions.

10 107. As a result, Respondents engaged in adverse employment actions against Claimant,
11 including threatening to and actually reducing his compensation, denying him a promotion,
12 terminating his employment, rescinding his severance offer, reclassifying his termination as for-
13 cause, denying him support and resources, subjecting him to increased scrutiny, and subjecting
14 him to other adverse actions.

15 108. A reasonable employee would find Respondents' retaliatory acts materially
16 adverse, and such acts would dissuade a reasonable person from engaging in protected activity.

17 109. As a direct, foreseeable, and proximate result of Respondents' unlawful actions,
18 Claimant has suffered and continues to suffer substantial losses in earnings and other employment
19 benefits and has incurred other economic losses.

20 110. As a direct, foreseeable, and proximate result of Respondents' unlawful actions,
21 Claimant has suffered emotional distress, humiliation, shame, anxiety, and embarrassment, all to
22 Claimant's damage in an amount to be proven at the time of arbitration hearing.

23 111. Claimant is therefore entitled to all legal and equitable remedies, including backpay
24 and liquidated damages.

25 112. Respondents committed the acts herein despicably, maliciously, fraudulently, and
26 oppressively, with the wrongful intention of injuring Claimant, from an improper and evil motive
27 amounting to malice, and in conscious disregard of the rights and safety of Claimant and others.
28 Claimant is thus entitled to recover punitive damages from Respondents in an amount according

1 to proof at arbitration hearing.

2 113. Claimant is entitled to attorneys' fees under California Code of Civil Procedure
3 § 1021.5. Claimant is also entitled to costs.

4 **SIXTH CAUSE OF ACTION**

5 **RETALIATION**

6 **(California Whistleblower Protection Act, Cal. Lab. Code § 98.6(a))**

7 **(Against all Respondents)**

8 114. Claimant incorporates by reference all allegations in this Demand as if fully set
9 forth herein.

10 115. Claimant engaged in protected activity that included, but is not limited to,
11 disclosing his own wages, and discussing the wages of others and inquiring about another
12 employee's wages through his communications concerning the Leave Policy; disclosing
13 information, or because Biotronik believed that he disclosed or may disclose information, to a
14 person with authority over the employee or another employee who has the authority to investigate,
15 discover, or correct the violation or noncompliance, which information Claimant had reasonable
16 cause to believe disclosed a violation of state or federal statute, or a violation of or noncompliance
17 with a local, state, or federal rule or regulation; refusing to participate in an activity that would
18 result in a violation of state or federal statute, or a violation of or noncompliance with a local, state,
19 or federal rule or regulation; engaging in conduct delineated in California Labor Code § 1102.5;
20 filing a bona fide complaint of claim or instituting or causing to be instituted any proceeding under
21 or relating to his rights that are under the jurisdiction of the Labor Commissioner; and exercising
22 rights afforded to him, including under Labor Code §§ 232, 232.5, 1102.5, and 1197.5 as alleged
23 herein. Claimant engaged in any conduct delineated in California Labor Code § 1102.5.

24 116. Claimant filed a bona fide complaint or claim or instituted or caused to be instituted
25 any proceeding under or relating to their rights that are under the jurisdiction of the Labor
26 Commissioner.

27 117. Claimant exercised rights afforded him under the Labor Code, including Sections
28 232, 232.5, 1102.5, and 1197.5.

118. As a result, Respondents engaged in adverse employment actions against Claimant, including threatening to and actually reducing his compensation, denying him a promotion, terminating his employment, rescinding his severance offer, reclassifying his termination as for-cause, denying him support and resources, subjecting him to increased scrutiny, and subjecting him to other adverse actions.

119. A reasonable employee would find Respondents' retaliatory acts materially adverse, and such acts would dissuade a reasonable person from engaging in protected activity.

120. As a direct, foreseeable, and proximate result of Respondents' unlawful actions, Claimant has suffered and/or will suffer harm, including but not limited to lost earnings, lost benefits, lost future employment opportunities, and other economic damages.

121. As a direct, foreseeable, and proximate result of Respondents' unlawful actions, Claimant has suffered emotional distress, humiliation, shame, anxiety, and embarrassment, emotional and physical distress, and mental anguish, all to Claimant's damage in an amount to be proven at the time of arbitration hearing.

122. Respondents committed the acts herein despicably, maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Claimant, from an improper and evil motive amounting to malice, and in conscious disregard of the rights and safety of Claimant and others, thus entitling Claimant to recover punitive damages from Respondents in an amount according to proof at arbitration hearing.

123. Claimant is therefore entitled to all legal and equitable remedies, including backpay and attorneys' fees and costs.

SEVENTH CAUSE OF ACTION

Wrongful Termination in Violation of Public Policy

(Against all Respondents)

124. Claimant re-alleges and incorporates by reference each and every allegation contained in the previous paragraphs of this Demand as though fully set forth herein.

125. Respondents wrongfully terminated Claimant because he discussed and disclosed his own wages, the wages of others and inquired about another employee's wages through his

1 communications concerning the Leave Policy; disclosed information, or because Biotronik
2 believed that he disclosed or may disclose information, to a person with authority over the
3 employee or another employee who has the authority to investigate, discover, or correct the
4 violation or noncompliance, which information Claimant had reasonable cause to believe disclosed
5 a violation of state or federal statute, or a violation of or noncompliance with a local, state, or
6 federal rule or regulation; refused to participate in an activity that would result in a violation of
7 state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or
8 regulation; engaging in conduct delineated in the California Labor Code § 1102.5; exercised rights
9 afforded to him, including under the California Labor Code §§ 232, 232.5, 1102.5, 1197.5;
10 disclosed and opposed other practices forbidden by the California Equal Pay Act, the California
11 Labor Code §§ 1102.5(a)-(c), 98.6(a), 232(a)-(c), 232.5(a)-(c); opposed a gag-order that violated
12 the California Labor Code §§ 98.6, 232, 232.5, 1102.5(a), and 1197.5; and exercised his rights
13 under the California Labor Code §§ 98.6, 232, 232.5, 1102.5, and 1197.5.

14 126. His termination violates the fundamental public policy contained in the California
15 Labor Code §§ 232.5, 232, and 1197.5 that an employee should be free to disclose their own wages
16 and working conditions and to inquire about the wages of others.

17 127. His termination violates the fundamental public policy contained in the California
18 Labor Code §§ 232.5, 232, and 1197.5 that an employee must be free to disclose their own wages
19 and working conditions and to inquire about the wages of others.

20 128. His termination violates the fundamental public policy contained in the California
21 Labor Code §§ 1102.5, 98.6, 232.5, and 232 that employers may not restrict employees' ability to
22 complain of unlawful conduct.

23 129. His termination violates the fundamental public policy contained in the California
24 Labor Code §§ 1102.5, 98.6, 232.5, and 232 that employers may not retaliate against employees
25 for complaining of disclosing information that the employee has reasonable cause to believe
26 disclosed a violation of the law, or because the employer believes the employee may make such a
27 disclosure.

28 130. His termination violates the fundamental public policy contained in the California

1 Labor Code §§ 1102.5, 98.6, 232.5, and 232 that employers may not retaliate against employees
2 for opposing unlawful conduct or conduct reasonably believed to be unlawful. His termination
3 violates the fundamental public policy against discrimination contained in the California
4 Constitution, FEHA, Title VII, the California Family Rights Act, and the federal Family and
5 Medical Leave Act.

6 131. His termination violates the fundamental public policy against retaliation for
7 opposition to discrimination and retaliation contained in FEHA, Title VII, the California Family
8 Rights Act, and the federal Family and Medical Leave Act.

9 132. As a direct, foreseeable, and proximate result of Respondents' unlawful actions,
10 Claimant has suffered and/or will suffer harm, including but not limited to, lost earnings, lost
11 benefits, lost future employment opportunities, and other economic damages.

12 133. As a direct, foreseeable, and proximate result of Respondents' unlawful actions,
13 Claimant has suffered emotional distress, humiliation, shame, anxiety, and embarrassment, all to
14 Claimant's damage in an amount to be proven at the time of arbitration hearing.

15 134. Claimant is therefore entitled to all legal and equitable remedies, including backpay
16 and liquidated damages.

17 135. Respondents committed the acts herein despicably, maliciously, fraudulently, and
18 oppressively, with the wrongful intention of injuring Claimant, from an improper and evil motive
19 amounting to malice, and in conscious disregard of the rights and safety of Claimant and others.
20 Claimant is thus entitled to recover punitive damages from Respondents in an amount according
21 to proof at arbitration hearing.

22 136. Claimant is entitled to attorneys' fees under the California Code of Civil Procedure
23 § 1021.5. Claimant is also entitled to costs.

24 **EIGHTH CAUSE OF ACTION**

25 **California Private Attorneys General Act**

26 **(Cal. Lab. Code § 2698 *et seq.*)**

27 **(Against all Respondents)**

28 137. Claimant re-alleges and incorporates by reference each and every allegation

1 contained in the previous paragraphs of this Demand as though fully set forth herein.

2 138. The California Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et*
3 *seq.*, gives any employee aggrieved by an employer’s violation of the Labor Code the right to file
4 an action to recover civil penalties for Labor Code violations.

5 139. Under present precedent, Claimant’s “representative” PAGA claims must be filed
6 in court and his “individual” PAGA claims must be arbitrated. Accordingly, Claimant files here
7 only his “individual” PAGA claims.

8 140. Claimant is an aggrieved employee. Biotronik has violated California Labor Code
9 §§ 232(a)-(c), 232.5(a)-(c), 432.5, 1197.5(k)(1)&(k)(2), 98.6(a), 1102.5(a)-(c), and 2802 with
10 respect to Claimant for the reasons set forth in Claimant’s LWDA Letter, Exhibit A, hereto.

11 a. Biotronik prohibited Claimant and other employees from disclosing the amount
12 of their own compensation by requiring them to sign the Employment
13 Agreement that contained language requiring them to refrain from discussing
14 working conditions and the amount of their wages or disclosing their wages, in
15 violation of California Labor Code §§ 232(a)-(c), 232.5(a)-(c), 432.5, and
16 1197.5(k)(1).

17 b. In addition to the foregoing Employment Agreement, Biotronik violated
18 California Labor Code §§ 232(a), 232.5(a), 1197.5(k)(1)&(k)(2), and 1102.5(a)
19 on multiple occasions by prohibiting Claimant, and requiring that he refrain,
20 from disclosing his own wages, including the amount of his wages, and
21 disclosing working conditions, and by making, adopting, or enforcing a rule,
22 regulation, or policy preventing him from disclosing information to persons
23 with authority over him and to employees with authority to investigate,
24 discover, or correct the violation or noncompliance.

25 c. Biotronik violated California Labor Code §§ 232(c), 232.5(c),
26 1197.5(k)(1)&(k)(2), 98.6(a)-(b), and 1102.5(b)&(c) by threatening to and
27 actually cutting Claimant’s compensation, denying him a promotion
28 threatening to and actually terminating his employment, and taking other

1 adverse actions against him, in retaliation for his protected conduct or
2 anticipated protected conduct, or his association with others who engaged in
3 protected conduct. This protected conduct included but was not limited to:
4 discussing and disclosing wages, including his own wages, and working
5 conditions; disclosing information, or because the Company believed that he
6 disclosed or may have been going to disclose information, to a person with
7 authority over him or another employee who has the authority to investigate,
8 discover, or correct the violation or noncompliance, when he had reasonable
9 cause to believe that the information disclosed a violation of state or federal
10 statute, or a violation of or noncompliance with a local, state, or federal rule or
11 regulation; refusing to participate in an activity that would result in a violation
12 of state or federal statute, or a violation of or noncompliance with a local, state,
13 or federal rule or regulation; engaging in conduct delineated in California Labor
14 Code § 1102.5; filing a bona fide complaint or claim or instituting or causing to
15 be instituted any proceeding under or relating to his rights that are under the
16 jurisdiction of the Labor Commissioner; making a written or oral complaint that
17 they are owed unpaid wages; and exercising rights afforded to him, including
18 under Labor Code §§ 232, 232.5, 1102.5, and 1197.5.

19 d. Biotronik violated Labor Code §§ 232(c), 232.5(c), 1102.5(b)&(c), and
20 1197.5(k)(1)&(2) by withdrawing Claimant's severance offer in retaliation for
21 protected conduct set forth herein.

22 e. Biotronik violated Labor Code § 2802 by failing to reimburse Claimant timely
23 for business-related expenses upon the termination of his employment and for
24 several weeks thereafter.

25 141. The above-referenced violations are willful and intentional, and affect not only
26 Claimant but also other employees.

27 142. Claimant, as a private attorney general, seeks to recover the maximum civil
28 penalties for all violations, including under Labor Code § 2699(a)&(f).

143. In addition, Claimant seeks costs and attorneys' fees under Labor Code § 2699.

//

PRAYER FOR RELIEF

WHEREFORE Claimant prays for relief as follows:

- A. For back pay, front pay, lost benefits, and other damages for lost compensation (both cash and equity) and job benefits in an amount subject to proof;
- B. For nominal, liquidated, and compensatory damages to Claimant in an amount subject to proof;
- C. For punitive damages to Claimant in an amount commensurate with Respondents' ability to pay and to deter future misconduct;
- D. For arbitration costs and expenses;
- E. For reasonable attorneys' fees;
- F. For all pre-judgment interest and post-judgment interest available under law;
- G. For any other appropriate equitable relief;
- H. For civil penalties; and
- I. For additional and further relief as the Arbitrator may deem just and proper.

Date: March 18, 2024

SANFORD HEISLER SHARP, LLP



By:

Danielle Fuschetti (SBN 294064)
Myounghee Choung (SBN 349839)
Attorneys for Claimant

EXHIBIT A



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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.

January 10, 2024

Page 7 of 7

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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