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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

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

Plaintiff,

v.

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

Defendants.

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

ASSIGNED FOR ALL PURPOSES TO THE
HON. GLENDA SANDERS, DEPT. CX-101

**REVISED JOINT STIPULATION OF CLASS
ACTION AND PAGA SETTLEMENT AND
RELEASE**

Complaint Filed: May 26, 2020
Trial Date: None Set

1 This Class Action Settlement Agreement, Release and Stipulation is entered into between
2 AXONICS, INC. (formerly Axonics Modulation Technologies, Inc.) ("Axonics" or "Defendant") and
3 Plaintiffs SULENI ITZEP and ROBERTA MOSER ("Named Plaintiffs" or "Plaintiffs") in the Action
4 (as defined below).

5 DEFINITIONS

6 1. Action. The "Action" means the class and PAGA action entitled, *Itzep v.*
7 *Axonics Modulation Technologies, Inc.*, Orange County Superior Court Case No. 30-2020-01140962-
8 CU-OE-CXC.

9 2. Agreement or Settlement Agreement or Settlement. "Agreement" or
10 "Settlement Agreement" or "Settlement" shall refer to the instant Class Action Settlement Agreement,
11 Release and Stipulation.

12 3. Class Counsel. "Class Counsel" means Douglas Han, Shunt Tatavos-Gharajeh,
13 and Phillip Song of the Justice Law Corp. and/or any successor(s) thereof identified to all Parties and
14 the Court prior to the Final Approval Order.

15 4. Class Members, the Class, and Participating Class Members. "Class Members"
16 means all non-exempt employees employed by Defendant in the State of California in a non-exempt
17 position during the Class Period. The "Settlement Class" or "Participating Class Members" means all
18 Class Members other than those who opt-out (see Paragraphs 22 and 59.c.).

19 5. Class Notice. "Class Notice" means the document mutually agreed upon by the
20 Parties and approved by the Court to be sent to the Class following preliminary approval that includes
21 the scope of release language for Settled Claims, notifies Class Members of the Settlement, explains
22 the Settlement and Class Members' options, including how Class Members may opt out or object to
23 the Settlement, and explains the facts and methods based on which the Class Member's estimated
24 Individual Settlement Payments are calculated, substantially in the form attached hereto as "**Exhibit**
25 **A**".

26 6. Class Period. "Class Period" means the period of time beginning on June 14,
27 2017 through September 14, 2021.

1 7. Complaint. “Complaint” means the lawsuit entitled, *Suleni Itzep v. Axonics*
2 *Modulation Technologies, Inc.*, Case No. 30-2020-01140962-CU-OE-CXC, filed with the Orange
3 County Superior Court on May 26, 2020, including any amendments such as those required by
4 paragraph 45.

5 8. The Court. The “Court” refers to the Orange County Superior Court.

6 9. Day. “Day” refers to a calendar day(s) unless otherwise stated. If any
7 designated date or deadline falls on a weekend or holiday, the designated date or deadline will occur
8 on the next business day.

9 10. Defendant. “Defendant” means Axonics, Inc., formerly known as Axonics
10 Modulation Technologies, Inc.

11 11. Effective Date. “Effective Date” means the date by which this Settlement
12 Agreement is finally approved as provided herein and the Court’s Final Approval Order becomes
13 binding. For purposes of this Settlement Agreement, the Final Approval Order becomes binding upon
14 the later of: (1) five days after the last day by which a notice of appeal to the California Court of
15 Appeal of the Final Approval Order and/or of an order rejecting any motion to intervene may be timely
16 filed, and none is filed (*i.e.*, 65 days after the notice of an order granting final approval of the
17 Settlement is served, provided there have been no appeals or other challenges filed within that time);
18 (2) if such an appeal is filed, and the appeal is finally resolved and results in affirmation of the Final
19 Approval Order, the day after the last date for filing a request for further review of the California Court
20 of Appeals’ decision passes and no further review is requested; (3) if further review of the California
21 Court of Appeal’s decision is requested, the day after the request for review is denied with prejudice
22 and/or no further review of the decision can be requested, or (4) if review is accepted, the day after
23 the California Supreme Court affirms the Final Approval Order. The Effective Date cannot occur, and
24 Defendant will not be obligated to fund this Settlement, until and unless there is no possibility of an
25 appeal or further appeal that could potentially prevent this Settlement Agreement from becoming final
26 and binding.

12. Exclusion Period. The “Exclusion Period” means the time period commencing on the date the Class Notice is mailed to Class Members via First Class U.S. Mail and ending sixty (60) days later on the deadline to submit an Opt-Out Request or Objection.

13. Final Judgment or Final Approval Order. “Final Judgment” or “Final Approval Order” means the order and judgment entered and filed by the Court that: (1) finally approves this Agreement according to its terms and disposes all claims raised in this Action and set forth in the releases described below and bars through collateral estoppel and/or res judicata Plaintiffs and Participating Class Members from reasserting Settled Claims against Released Parties; (2) disposes all PAGA issues and claims raised in this Action, bars through collateral estoppel and/or res judicata Plaintiffs, PAGA Employees and the State of California from reasserting PAGA Claims against Released Parties; and (3) awards and orders the payment of all required amounts pursuant to the terms of this Agreement (approved Class Counsel’s attorneys’ fees and costs, Individual Settlement Payments to Class Members and PAGA Payments to PAGA Employees, etc.). The Final Approval and Final Judgment will constitute a binding and final resolution of any and all claims by the Named Plaintiffs and all Participating Class Members as to all Settled Claims and all PAGA Employees as to all Settled PAGA Claims as set forth in this Agreement.

14. Final Settlement Approval Hearing or Final Approval Hearing. “Final Settlement Approval Hearing” or “Final Approval Hearing” means the hearing at which the Court shall consider the motion for final approval of this Settlement and determine whether to fully and finally approve the fairness and reasonableness of this Settlement Agreement and enter the Final Judgment and Final Approval Order.

15. Funding Deadline. The “Funding Deadline” is the date by which Axonics must fund the Settlement pursuant to the terms of this Agreement, which is 15 calendar days following the Effective Date (defined above).

16. Funding Payments. “Funding Payments” means the payment(s) remitted to the Settlement Administrator (“SA”) by or on behalf of Defendant following the Effective Date in full and complete discharge of the entire monetary obligation of Defendant in an amount equal to the Gross Settlement Amount (defined below), which, as set forth herein, shall satisfy all funding obligations of

1 Defendant with respect to this Settlement, to include funding of outstanding and awarded Individual
2 Settlement Payments, PAGA Payments, attorneys' fees and costs awarded to Class Counsel, the
3 Named Plaintiffs' enhancement payments as awarded by the Court, outstanding payments to the
4 Settlement Administrator as approved by the Court for settlement administration costs, and the
5 payment to the Labor Workforce Development Agency (or "LWDA") for its 75% portion of the PAGA
6 Payment.

7 17. Gross Settlement Amount or GSA. "Gross Settlement Amount" or "GSA"
8 means a fixed, maximum total payment of Two Hundred Twenty-Five Thousand Dollars and Zero
9 Cents (\$225,000), payable by Defendant under this Agreement, which shall satisfy all outstanding and
10 awarded Individual Settlement Payments, PAGA Payments, attorneys' fees and costs awarded to Class
11 Counsel, the Named Plaintiffs' enhancement payments as awarded by the Court, outstanding payments
12 to the Settlement Administrator as approved by the Court for settlement administration costs, and the
13 payment to the LWDA. Aside from employer-side taxes due on the wage component of the Individual
14 Settlement Payments, the GSA shall constitute the entire consideration provided by Axonics pursuant
15 to this Settlement Agreement and Axonics and the Released Parties shall not be required to pay any
16 amount above the GSA in connection with this Settlement.

17 18. Last Known Address. "Last Known Address" means the most recently
18 recorded mailing address for a Class Member and/or PAGA Member contained in Defendant's
19 records.

20 19. Named Plaintiffs. "Named Plaintiffs" or "Plaintiffs" individually and
21 collectively means Suleni Itzep and Roberta Moser.

22 20. Net Distribution Fund "NDF". "Net Distribution Fund" or "NDF" means the
23 Gross Settlement Amount less the amounts deducted pursuant to Paragraphs 54a through 54e of this
24 Agreement, including deductions of the amounts awarded to Class Counsel, the enhancement payment
25 to the Named Plaintiffs, the PAGA Payment to resolve claims under the PAGA, and the costs awarded
26 for settlement administration owed pursuant to this Agreement.

27 21. Objection. "Objection" means a written request, which a Class Member may
28 submit no later than the last day of the Exclusion Period and in the form specified in Paragraph 61 in

1 order to object to the Settlement, or a personal appearance, or other appearance permitted by the Court,
2 at the final approval hearing to object.

3 22. Opt-Out Request. “Opt-Out Request” must (1) contain the name, address, and
4 telephone number of the person requesting exclusion; (2) be signed by the Class Member; (3) be
5 postmarked within the Exclusion Period [60 days after mailing date] and returned to the Settlement
6 Administrator at the specified address or fax number. (See Paragraph 60.d and **Exhibit “B”**) The
7 Opt-Request must also state in substance: “I wish to exclude myself from the Settlement in the action
8 titled *Suleni Itzep, et al. v. Axonics Modulation Technologies, Inc.*, pending in the Orange County
9 Superior Court, Case No. 30-2020-01140962-CU-OE-CXC. I understand that by requesting to be
10 excluded, I will receive no money from the Settlement.” An “Opt-Out Request Form” that will be
11 mailed with the Class Notice is attached to this Settlement as **Exhibit “B”**.

12 23. Order of Final Approval or Order Granting Final Approval of Settlement.
13 “Order of Final Approval” or “Order Granting Final Approval of Settlement” or “Final Approval”
14 means the order issued in conjunction with the entry of the Final Judgment to be submitted by the
15 Named Plaintiffs together with the Motion for Final Approval of the Settlement for entry and filing
16 by the Court as specified in this Settlement.

17 24. PAGA Period. “PAGA Period” means the period of time beginning on March
18 13, 2019 and ending on September 14, 2021.

19 25. PAGA Employees. “PAGA Employees” means all persons who are employed
20 or have been employed by Defendant in the state of California as non-exempt employees during the
21 PAGA Period. PAGA Employees cannot opt out of the PAGA portion of this Settlement. However,
22 they may opt out of the Settlement of the class action claims provided they follow the requirements
23 for exclusion set forth in a Court-approved Class Notice.

24 26. PAGA Payment and PAGA Allocation. Of the Gross Settlement Amount,
25 \$22,500 shall be paid for the PAGA claims (i.e., the “PAGA Payment”). “PAGA Allocation” means
26 the amounts distributed among PAGA Employees and is the amount remaining from the \$22,500 after
27 subtracting the \$16,875 allocated to the LWDA) divided by the total number of PAGA Pay Periods
28 credited to all PAGA Employees (“PAGA Pay Period Value”). Each PAGA Employee’s PAGA

1 Payment is equal to the PAGA Pay Period Value multiplied by his or her individual Total PAGA Pay
2 Periods worked according to Defendant's records.

3 27. PAGA Pay Periods Worked. "PAGA Pay Periods Worked" means the number
4 of pay periods credited to a PAGA Employee during his/her employment with Defendant during the
5 PAGA Period (for the Settled PAGA Claims), as determined by Defendant's records.

6 28. "Parties." Parties means Named Plaintiffs, individually on behalf of themselves
7 and on behalf of all Class Members, PAGA Employees and interests of the Labor Workforce
8 Development Agency ("LWDA"), and Defendant.

9 29. Preliminary Approval Order. "Preliminary Approval Order" is the order
10 entered and filed by the Court that preliminarily approves the terms and conditions of this Agreement,
11 including approval of the Parties' Agreement that specifies the content of notice and manner in which
12 notice will be provided to the Class and responded to by the Class, substantially in the form attached
13 hereto as "**Exhibit C**".

14 30. Released Parties. "Released Parties" means Defendant and its past, present or
15 future parents, subsidiaries, affiliates, officers, directors, employees, partners, shareholders, attorneys,
16 agents, and any other successors, assigns, or legal representatives.

17 31. Response Deadline. The "Response Deadline" is the last date by which Class
18 Members may submit a timely Opt Out Request or written Objection, which is 60 days following the
19 original date that the Settlement Administrator mails the Class Notice to Class Members.

20 32. Settlement Administrator or SA. "Settlement Administrator" or "SA" means
21 Phoenix Settlement Administrators or such other neutral administrator as chosen by the Parties and
22 approved by the Court (see Paragraph 58a).

23 33. Settled Claims. "Settled Claims" means any and all claims alleged in the
24 Complaint or which could have been alleged in the Complaint based on the allegations, facts, matters,
25 transactions or occurrences alleged therein, and shall specifically include without limiting the
26 generality thereof all causes of action listed in the Complaint. The release of the foregoing claims,
27 extends to all theories of relief regardless of whether the claim is, was or could have been alleged as
28 separate claims, causes of action, lawsuits or based on other theories of relief, whether under California

1 law, state law or common law (including, without limitation, as violations of the California Labor
2 Code, the Wage Orders, applicable regulations, and California's Business and Professions Code
3 Section 17200). "Settled Claims" includes all types of relief available for the above-referenced claims,
4 including, without limitation, any claims for damages, restitution, losses, penalties, fines, liens,
5 attorneys' fees, costs, expenses, debts, interest, injunctive relief, declaratory relief, or liquidated
6 damages. The Final Judgment shall expressly provide that it covers and bars as a matter of law each
7 and every Class Member other than those who have opted out from asserting any Settled Claims in
8 the future. The release of the Settled Claims shall run from the start of the Class Period (i.e., June 14,
9 2017) through (a) November 14, 2021 or (b) the date that the Court grants preliminary approval of this
10 Settlement Agreement, whichever date comes sooner.

11 34. Settled PAGA Claims. "Settled PAGA Claims" means all PAGA claims
12 alleged in the Action or which could have been alleged in the Action based on the allegations, facts,
13 matters, transactions or occurrences alleged therein, and shall specifically include without limiting the
14 generality thereof all causes of action listed in Plaintiff's March 13, 2020 PAGA notice letter to the
15 LWDA and Complaint. The foregoing claims, extends to all theories of relief regardless of whether
16 the claim is, was or could have been alleged as separate claims, causes of action, lawsuits or based on
17 other theories of relief, including under PAGA, the California Labor Code, the Wage Orders,
18 applicable regulations. "Settled PAGA Claims" includes all types of relief available for the above-
19 referenced claims, including, without limitation, any claims for penalties, fines, liens, attorneys' fees,
20 costs, expenses, debts, interest, injunctive relief, declaratory relief, or liquidated damages. The Final
21 Judgment shall expressly provide that it covers and bars Plaintiffs, the LWDA, the State of California,
22 and any other representative, proxy, or agent thereof, including but not limited to any and all PAGA
23 Employees from prosecuting "Settled PAGA Claims" that arose during the PAGA Period. The release
24 of the Settled PAGA Claims shall run from the start of the PAGA Period (i.e., March 13, 2019) through
25 either (a) November 14, 2021 or (b) the date that the Court grants preliminary approval of this
26 Settlement Agreement, whichever date comes sooner.

1 35. Participating Class Member(s). “Participating Class Member” means all Class
2 Members other than those who have timely and validly submitted Opt-Out Requests and thereby
3 excluded themselves from releasing Settled Claims from the Settlement.

4 36. Individual Settlement Payment(s). “Individual Settlement Payment” means a
5 payment pursuant to a Class Member’s pro rata allocation of the NDF as specified in Paragraph 54.

6 37. Settlement Proceeds Distribution Deadline. “Settlement Proceeds Distribution
7 Deadline” means a date that is ten (10) days after the Funding Deadline (defined above).

8 38. Updated Address. “Updated Address” means a mailing address that was
9 updated by a reasonable address verification measure of the SA or by an updated mailing address
10 provided by the United States Postal Service for a Class Member or PAGA Employee.

11 39. Class Pay Period Value. “Class Pay Period Value” for the Settled Claims means
12 the amount yielded from dividing the Net Distribution Fund by the total number of pay periods worked
13 by Class Members as employees of Defendant during the Class Period. Each Participating Class
14 Member’s Individual Settlement Payment is equal to the individual’s Total Class Pay Periods worked
15 during the Class Period (rounded up to the nearest pay period) multiplied by the Class Pay Period
16 Value. Therefore, the amount of each Participating Class Member’s Individual Settlement Payment is
17 tied to the number of Pay Periods that each Participating Class Member worked for Defendant in the
18 State of California during the Class Period in comparison to the Total Class Pay Periods Worked by
19 all Class Members in the State of California during the Class Period. Similarly, for the Settled PAGA
20 Claims, the value of each PAGA Pay Period shall be determined by the Settlement Administrator by
21 dividing the 25% of the PAGA Award allocated for PAGA Employees by the Total PAGA Pay Periods
22 for all PAGA Employees (“PAGA Pay Period Value”).

23 40. Class Pay Periods Worked. “Class Pay Periods Worked” means the number of
24 pay periods worked as an employee of Defendant by a Class Member during the Class Period, as
25 determined or estimated by Defendant’s records and as only subject to revision pursuant to this
26 Agreement.

RECITALS

41. Named Plaintiff Suleni Itzep submitted her LWDA letter on March 13, 2020, in case number LWDA-CM-778201, alleging various facts and theories on which she wished to seek civil penalties.

42. On or about May 26, 2020, after exhausting the notice period, Named Plaintiff Itzep filed a complaint for civil penalties under California Labor Code section 2698 *et seq.* alleging claims for including but not limited to: (1) failure to pay wages, including regular, overtime and double time wages (including without limitation, for alleged off-the-clock work and as a result of an alleged failure to incorporate all bonus/incentive payments into employees' regular rate calculations), (2) meal period violations (including without limitation for alleged failure to provide compliant meal periods and/or pay meal period premiums at the appropriate rate), (3) rest break violations (including without limitation for alleged failure to provide compliant rest periods and/or rest period premiums at the appropriate rate), (4) failure to pay minimum wage; (5) failure to timely pay all final wages due at separation; (6) failure to provide accurate wage statements (under both direct and derivative theories of liability); and (7) failure to reimburse business expenses (including without limitation, for alleged failure to reimburse various business expenses such as for use of personal cell phones, vehicles, etc.); and (8) failure to properly calculate, accrue and pay sick pay.

43. Defendant filed an Answer to the Complaint and denied and continues to deny all allegations and claims asserted by Named Plaintiffs. Specifically, Defendant denies that it engaged in any misconduct in connection with its wage-and-hour practices and denies that it has any liability or engaged in wrongdoing of any kind associated with the claims alleged in the Action, including any Settled Claims or Settled PAGA Claims. Defendant further contends that it has complied at all times with both federal and state wage-and-hour laws, and all other laws regulating the employer-employee relationship that relate to the employment of Named Plaintiffs and the Class and PAGA Employees. However, further defense of this litigation would be protracted and expensive. Substantial amounts of time, energy and resources of Axonics have been and, unless this Settlement is made, will continue to be devoted to the defense of the Claims asserted by Plaintiffs. Defendant, therefore, has agreed to

1 settle in the manner and upon the terms set forth in this Settlement to put to rest the Claims as set forth
2 in the Action.

3 44. Defendant and Class Counsel, on behalf of Named Plaintiffs and the Class
4 Members and allegedly aggrieved PAGA employees, attended a full-day mediation with experienced
5 employment law mediator Anthony Pantoni on June 14, 2021. After lengthy negotiations, the Parties
6 ultimately agreed to a mediator's proposal by Mr. Pantoni setting forth the key terms of a settlement
7 that are described in greater detail in this Agreement. The Parties agree that the terms and conditions
8 of this Agreement are the result of lengthy, intensive arms-length negotiations between the Parties
9 supervised and facilitated by Mr. Pantoni. The Parties further agree that the Agreement is entered into
10 in good faith as to each Class Member and PAGA Member and that the Settlement is fair, reasonable
11 and adequate as to each Class Member and PAGA Member.

12 45. Pursuant to the terms of this Agreement, Named Plaintiff Itzep and Named
13 Plaintiff Roberta Moser ("Named Plaintiff Moser") will file a First Amended Complaint ("First
14 Amended Complaint" or "Amended Complaint") in Orange County Superior Court asserting nine
15 causes of action against Defendant, including: (1) failure to pay wages, including regular, overtime
16 and double time wages, (2) meal period violations, (3) rest break violations, (4) failure to pay minimum
17 wage; (5) failure to timely pay final wages; (6) failure to provide accurate wage statements; (7) failure
18 to reimburse business expenses; (8) violation of California's Private Attorney General Act of 2004
19 ("PAGA"); and (9) violation of the California Business and Professions Code ("UCL"). The Parties,
20 for settlement purposes only, conditionally stipulate to the filing of the Amended Complaint which
21 alleges all of the PAGA claims asserted in the original Complaint and amends the pleading to assert
22 separate putative class action claims based on the same underlying allegations in Named Plaintiff
23 Itzep's Complaint and March 13, 2020 letter to the LWDA, as well adds Named Plaintiff Moser and
24 the additional theories of liability discussed and investigated by the Parties prior to and during the
25 mediation on June 14, 2021.

26 46. Class Counsel is of the opinion that this Settlement is fair, reasonable, and
27 adequate, and in the best interest of the Class and PAGA Employees and other relevant interests in
28 light of all known facts and circumstances, including the benefits conferred by the Settlement, the risk

1 of significant delay, the uncertainty and risk of the outcome of further litigation, the burdens of proof
2 necessary to establish liability, defenses asserted to the merits, including but not limited to the
3 affirmative defenses asserted as to Participating Class Members, the risks of proceeding on any class
4 claims and PAGA claims, including class certification, the difficulties in establishing damages and
5 penalties, and the numerous potential appellate issues. While Defendant specifically denies any
6 liability or wrongdoing in the Action, Defendant has agreed to enter into this Settlement to avoid the
7 cost and business disruption associated with defending the Action. Defendant has claimed and
8 continues to claim that the Settled Claims and Settled PAGA Claims have no merit and do not give
9 rise to liability. This Agreement is a compromise of disputed claims. This Agreement, made and
10 entered into by and between the Named Plaintiffs (on behalf of themselves and on behalf of the
11 Participating Class Members and PAGA Employees and interests of the LWDA) and Defendant, each
12 with the assistance of its respective counsel or attorneys of record, is intended to fully, finally, and
13 forever settle, compromise and discharge the Settled Claims and Settled PAGA Claims against the
14 Released Parties, subject to the terms and conditions set forth herein.

15 47. Because the Action is pled as a class action, this Settlement must receive
16 preliminary and final approval by the Court. Because the PAGA case is pled as a PAGA action, this
17 Settlement is subject to approval by the Court. Accordingly, the Parties enter into this Agreement
18 subject to the terms and conditions set forth herein and agree to work together in good faith to seek
19 approval from the Court.

20 **TERMS AND CONDITIONS OF SETTLEMENT**

21 NOW THEREFORE, in consideration of the recitals listed above and the promises and
22 warranties set forth below, and intending to be legally bound and acknowledging the sufficiency of
23 the consideration and undertakings set forth herein, the Named Plaintiffs, individually on behalf of
24 themselves and on behalf of the Class Members and PAGA Employees and LWDA interests, on the
25 one hand, and Defendant, on the other hand, agree that the Action shall be, and is finally and fully
26 compromised and settled on the following terms and conditions.

27 48. **Non-Admission of Liability.** The Parties enter into this Agreement to resolve
28 the dispute that has arisen between them and to avoid the burden, expense and risk of continued

1 litigation. In entering into this Agreement, Defendant does not admit, and specifically denies, that it
2 has: violated any federal, state, or local law; violated any regulations or guidelines promulgated
3 pursuant to any statute or any other applicable laws, regulations or legal requirements; breached any
4 contract; violated or breached any duty; engaged in any misrepresentation or deception; or engaged in
5 any other unlawful conduct with respect to its employees or any other person or entity. Neither this
6 Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it or
7 proceedings, payouts or other events associated with it, shall be construed as an admission or
8 concession by Defendant of any such violation(s) or failure(s) to comply with any applicable law by
9 Defendant or any Released Parties. Except as necessary in a proceeding to approve, interpret or
10 enforce the terms of this Agreement, this Agreement and its terms and provisions shall not be offered
11 or received as evidence in any action or proceeding to establish any liability or admission on the part
12 of the Released Parties or to establish the existence of any condition constituting a violation of, or
13 noncompliance with, federal, state, local or other applicable law. In addition, as set forth in Paragraph
14 73, the Parties intend this Settlement to be contingent upon the preliminary and Final Approval of this
15 Agreement; and in the event Final Approval of this Agreement is not obtained, the Parties do not
16 waive, and instead expressly reserve, their respective rights to prosecute and defend this Action as if
17 this Agreement never existed in the event the Settlement is not fully and finally approved as set forth
18 herein. In the event that this Agreement is not approved by the Court, fails to become effective, or is
19 reversed, withdrawn or modified by the Court or any other court with jurisdiction over the Action, the
20 Agreement shall become null and void *ab initio* and shall have no bearing on, and shall not be
21 admissible in connection with, further proceedings in this Action, and the Parties will be returned to
22 their respective positions prior to entering this Agreement, except that the Court may award less than
23 the maximum amounts listed for proposed Attorneys' Fees and Costs, Administration Fees and Costs,
24 Plaintiffs' Enhancement Payment and/or the propose PAGA Award without impacting the validity
25 and enforceability of this Agreement.

26 49. Amendment of Complaint. Solely for purposes of settling this matter, Named
27 Plaintiffs will file an Amended Complaint with the approving Court, which shall be the operative
28 Complaint in this Action. The Complaint as amended will include Suleni Itzep and Roberta Moser

1 listed as the named Plaintiffs, and allege all of the PAGA claims asserted in the original Complaint
2 and amend the pleading to assert separate putative class action claims based on the same underlying
3 allegations in Named Plaintiff Itzep's original Complaint and March 13, 2020 letter to the LWDA, as
4 well as the additional theories of liability discussed and investigated by the Parties prior to and during
5 the mediation on June 14, 2021. Solely for purposes of implementing the Settlement, the Parties
6 stipulate that the amendments of the claims shall relate back to the filing of the original and shall cover
7 the Class Period and PAGA Period; the Parties agree the proposed Preliminary Approval Order and
8 Final Judgment shall request that should the Settlement not be fully and finally approved, the
9 amendments will be withdrawn, the original complaint shall be deemed the operative complaint, any
10 preliminary certification of a class for settlement purposes shall be deemed void and the Parties shall
11 revert to their positions prior to entering the Settlement in all respects. Subject to Court approval,
12 Defendant's current answer shall be deemed as the operative answer to the Complaint on behalf of
13 Defendant without the need to file an amended answer.

14 50. Stipulation for Class Certification. The Parties agree to stipulate to the
15 certification of a class action, appointment of class counsel, and appointment of Named Plaintiffs Itzep
16 and Moser as the class representatives for purposes of settlement only. The Parties agree that if the
17 Settlement does not receive final approval or does not become final and binding for any reason,
18 including an appeal, the Parties will be placed back in the position they were in prior to entering into
19 this Settlement in all respects and the issue of certification will need to be litigated before the Court.

20 51. Release of Settled Claims. As of the Effective Date, Named Plaintiffs and all
21 Participating Class Members hereby do and shall be deemed to have fully, finally, and forever released,
22 settled, compromised, relinquished and discharged any and all Settled Claims against any and all
23 Released Parties. The Settlement includes a release of all Settled Claims from the start of the Class
24 Period (June 14, 2017) through September 14, 2021, by Participating Class Members employed by
25 Defendant in a non-exempt position at any time during the Class Period. This Agreement bars, without
26 limitation, any Fair Labor Standard Act ("FLSA") claims predicated on the same underlying alleged
27 wage and hour violations pursuant to *Rangel v. PLS Check Cashers of California, Inc.*, 899 F.3d 1106
28 (9th Cir. 2018) (holding that the plaintiff's wage-and-hour action brought under the FLSA was properly

1 dismissed on res judicata grounds because the plaintiff was subject to a state class-action settlement
2 that released all claims arising from the same alleged injuries to the same rights that were at issue in
3 the FLSA claims).

4 a. The Parties agree for settlement purposes only that, because the Class
5 Members are so numerous, it is impossible or impracticable to have each Participating Class Member
6 execute this Agreement. Accordingly, the Class Notice will advise all Class Members of the binding
7 nature of the Agreement and such notice shall have the same force and effect as if the Agreement were
8 executed by each Participating Class Member.

9 b. Named Plaintiffs and Class Counsel represent, covenant, and warrant
10 that they have not directly or indirectly assigned, transferred, encumbered or purported to assign,
11 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause
12 of action, or rights herein released and discharged, except as set forth herein.

13 c. The Parties agree that this is a settlement of disputed claims not
14 involving undisputed wages, and that Labor Code Section 206.5 is therefore inapplicable.

15 52. Release of Settled PAGA Claims. As of the Effective Date, Named Plaintiffs,
16 the LWDA, the State of California, and any other representative, proxy, or agent thereof, including
17 but not limited to any and all PAGA Employees, release and are barred from prosecuting "Settled
18 PAGA Claims" that arose from the start of the PAGA Period against any and all of the Released
19 Parties. Subject to Court approval, the Agreement includes a settlement of all Settled PAGA Claims
20 by PAGA Employees employed by Defendant at any time during the PAGA Period to the fullest extent
21 permitted under the PAGA, including settlement contemplated in Labor Code section 2699(1)(2).

22 53. Individual General Releases of All Claims by Named Plaintiffs. In addition to
23 the releases made by the Participating Class Members and PAGA Employees set forth in this
24 Agreement, Named Plaintiffs release, as individuals and in addition to the Settled Claims and Settled
25 PAGA Claims described above, all claims, whether known or unknown, under federal law or state law
26 against the Released Parties. The Parties understand and agree that Plaintiffs are not, by way of this
27 release, releasing any claims which cannot be released as a matter of law. Notwithstanding the
28 foregoing, Named Plaintiffs understand that this release includes unknown claims and that Named

1 Plaintiffs are, as a result, waiving all rights and benefits afforded by Section 1542 of the California
2 Civil Code, which provides:

3
4 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
5 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO**
6 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**
7 **RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE**
8 **MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE**
9 **DEBTOR OR RELEASED PARTY.**

10 Other than this Action and the related LWDA PAGA notice letter provided to Axonics, Plaintiffs represent
11 that they do not have any pending lawsuits, administrative complaints or charges against Defendant or the
12 Released Parties in any local, state, or federal court or administrative agency. Plaintiffs further
13 acknowledge that all claims raised therein, if any, shall be fully and finally extinguished by virtue of this
14 Settlement Agreement and the Court's Final Approval Order. Plaintiffs also represent that Plaintiffs will
15 not bring any action in the future in which Plaintiffs seek to recover any damages from Defendant or the
16 Released Parties relating to or arising from Plaintiffs' employment with or separation from Defendant,
17 other than an action to enforce Plaintiffs' rights under this Settlement Agreement.

18 54. Settlement Payments and Calculation of Claims. Subject to the Final Approval
19 of the Settlement and the conditions specified in this Agreement, and in consideration of the mutual
20 covenants and promises set forth herein, Defendant agrees to pay the GSA totaling Two Hundred
21 Twenty-Five Thousand Dollars and Zero Cents (\$225,000.00). The GSA shall fully and completely
22 satisfy Defendant's obligations for any and all payments, fees and costs related to this Settlement
23 including, but not limited to, any payments to be made to the Named Plaintiffs, Participating Class
24 Members, PAGA Employees, the LWDA, Class Counsel's attorneys' fees and out-of-pocket litigation
25 expenses and costs, and settlement administration costs. Other than employer-side payroll taxes, in
26 no event shall Defendant be required to pay any amounts above the GSA with respect to the Released
27 Claims or Released PAGA Claims or as a result of this Settlement Agreement for any reason. The
28 Parties agree, subject to Court approval, that the GSA shall be apportioned as follows:

a. Attorneys' Fees. Class Counsel will apply to the Court for, and
Defendant will not oppose, an award of attorneys' fees of no more than thirty-five percent (35%) of

1 the GSA or Seventy-Eight Thousand Seven Hundred Fifty Dollars and Zero Cents (\$78,750.00). The
2 Court-approved Attorneys' Fees shall come entirely from and be deducted from the GSA and paid out
3 as set forth herein. In the event that the Court awards less than the full amount requested for
4 Attorneys' Fees, the un-awarded amount will be made available for distribution as part of the Net
5 Distribution Fund (defined above) and distributed to Participating Class Members. This Settlement is
6 not contingent upon the Court awarding Class Counsel any particular amount in attorneys' fees.

7 b. Attorneys' Costs. Named Plaintiffs and Class Counsel shall request
8 approval of payment of up to, but not to exceed, Fifteen Thousand Dollars and Zero Cents (\$15,000.00)
9 in attorneys' costs, including any litigation costs, which will be deducted entirely from the GSA and
10 paid out as set forth herein. Defendant will not oppose such application. Attorneys' fees as specified
11 in the preceding Paragraph and costs as specified in this Paragraph shall cover all claimed and
12 unclaimed attorneys' fees, attorneys' costs and other amounts payable or awardable against Defendant
13 for attorneys' fees and costs related to the Action and in carrying out the Agreement and includes any
14 and all work, effort or involvement by Class Counsel to carry out the terms of the Agreement and as
15 may be potentially or actually necessary or advisable to defend the Agreement and/or Settlement
16 through appeal, or collateral attack or in any other forum or proceeding. These specified Attorneys'
17 Fees and Costs shall be the sole payment for attorneys' fees and costs and, otherwise, the Parties and
18 Class Members and their counsel shall bear their own fees and costs in connection with the Action. In
19 the event that the Court awards less than the full amount requested for Attorneys' Costs, the un-
20 awarded amount will be made available for distribution as part of the Net Distribution Fund (defined
21 above) and distributed to Participating Class Members. This Settlement is not contingent upon the
22 Court awarding Class Counsel any particular amount in Attorneys' Costs.

23 c. Administration Fees and Costs. Class Counsel will also apply to the
24 Court for approval of SA costs in an amount estimated to be up to Five Thousand Dollars (\$5,000.00),
25 which will be deducted entirely from the GSA. Defendant will not oppose such application. Class
26 Counsel will specify the amount sought for such costs, up to the foregoing maximum, in Named
27 Plaintiffs' motions for Preliminary and Final Approval of the Settlement. In the event that the Court
28 awards less than the full amount requested for Administration Fees and Costs, the un-awarded amount

1 will be made available for distribution as part of the Net Distribution Fund (defined above) and
2 distributed to Participating Class Members. This Settlement is not contingent upon the Court awarding
3 Class Counsel any particular amount in Administration Fees and Costs.

4 d. Named Plaintiff's Enhancement and General Release Payment. Class
5 Counsel will apply to the Court for approval of an enhancement payments in an amount not to exceed
6 Five Thousand Dollars and Zero Cents (\$5,000.00) each (for a total of \$10,000) to be paid to Named
7 Plaintiffs, from which fifty percent (50%) shall be deemed consideration for a general release and from
8 which fifty percent (50%) shall be for assuming the risks associated with this litigation (including for
9 assuming the risks in the case). Defendant will not oppose such applications. The enhancement
10 payments are included in, and shall be deducted entirely from, the GSA. In the event that the Court
11 awards less than the full amount requested for Plaintiffs' Enhancement Payments, the un-awarded
12 amount will be made available for distribution as part of the Net Distribution Fund (defined above)
13 and distributed to Participating Class Members. This Settlement is not contingent upon the Court
14 awarding Plaintiffs any particular amount in Enhancement Payments.

15 e. PAGA Award and Payments. Pursuant to California Labor Code
16 Section 2698, *et seq.*, the Parties designate Twenty-Two Thousand Five Hundred Dollars and Zero
17 Cents (\$22,500.00) of the GSA to resolve any PAGA claims (including payment for Named Plaintiffs'
18 claims on their own behalf and on behalf of all PAGA Employees for penalties under the PAGA and
19 payment to the LWDA). In the event that the Court awards less than the full amount requested for
20 The PAGA Award, the un-awarded amount will be made available for distribution as part of the Net
21 Distribution Fund (defined above) and distributed to Participating Class Members. This Settlement is
22 not contingent upon the Court awarding any particular amount for the PAGA Award.

23 i. Defendant shall pay seventy five percent (75%) of that amount,
24 or Sixteen Thousand Eight Hundred Seventy-Five Dollars and Zero Cents (\$16,875.00), to the LWDA
25 and the remainder (\$5,625.00) to PAGA Employees. In the event the LWDA refuses to accept the
26 above amount in full for all civil penalties to PAGA Employees in connection with the civil penalty
27 claims alleged in this Action, or in the event the LWDA or anyone on its behalf otherwise challenges
28

1 the above allocation or the Settlement, the Parties shall work in good faith to revise the allocation so
2 that it is accepted.

3 ii. The remaining Five Thousand Six Hundred Twenty-Five
4 Dollars and Zero Cents (\$5,625.00) shall be paid to PAGA Employees by multiplying the PAGA Pay
5 Period Value by each individual PAGA Employee's Total PAGA Pay Periods.

6 f. Net Distribution Fund. The NDF will be the amount remaining after
7 deducting the Court-approved Attorneys' Fees and Costs, Plaintiffs' Enhancement Payments,
8 Settlement Administration Fees and Costs, and the 75% portion of the PAGA Award to be paid to the
9 LWDA.

10 g. Sample for Mediation. Defendant provided an approximately 25%
11 sample and Defendant represented for mediation that there are approximately 144 Class Members
12 (employees) who collectively worked approximately 3,152 Pay Periods from June 14, 2017 to May
13 28, 2021. Defendant also explained that the vast majority of Axonics' current and former non-exempt
14 employees in California were hired on or after March 2019. Defendant will, if required by the Court,
15 provide a declaration verifying the number of Class Members and Pay Periods worked during the
16 Class Period.

17 h. Individual Settlement Payments to Participating Class Members. Only
18 the following individuals will receive Individual Settlement Payments under the Settlement
19 Agreement: (1) the Named Plaintiffs and (2) Participating Class Members. Individual Settlement
20 Payments will be calculated as follows:

21 i. The NDF will be divided by the total number of pay periods
22 worked by Participating Class Members as employees of Defendant during the Class Period ("Class
23 Pay Period Value") as reflected in Defendant's records. All Participating Class Members shall be paid
24 an amount equal to their Total Class Pay Periods multiplied by the Class Pay Period Value. Total
25 Class Pay Periods and Class Pay Period Value shall be determined by the SA based on data to be
26 provided by Defendant, as may be modified by the resolution of any challenges.

27 ii. The Parties agree that under no circumstances shall Defendant
28 be obligated to pay any amount under this Agreement to any Class Member other than Participating

1 Class Members and PAGA Employees. In addition, the Parties agree that in no event shall Defendant
2 be obligated to pay more than the GSA, except for the separate payment of employer-side taxes, as
3 provided above. (All amounts allocated to employee-side withholdings for amounts attributed to
4 alleged unpaid wages in the Individual Settlement Payments shall be paid from the NDF as further
5 detailed below.)

6 iii. The Parties acknowledge and agree that the formula used to
7 calculate Pay Periods worked, Individual Settlement Payments, PAGA Pay Periods worked, and
8 PAGA Payments does not imply that all of the elements of damages covered by the release are not
9 being taken into account. The above formulas were devised as practical and logistical tools to simplify
10 the payment process as a result of good faith negotiation and a reasonable assessment of the claims at
11 issue, taking into account the inherent uncertainty of litigation and valuation of pending claims.

12 55. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
13 Participating Class Members and PAGA Payments made to PAGA Employees under this Agreement
14 shall not be utilized to calculate any additional benefits under any benefit plans to which any
15 Participating Class Members or Class Members or PAGA Employees may be eligible, including, but
16 not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans,
17 sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this
18 Agreement will not affect any rights, contributions, or amounts to which any Participating Class
19 Members, Class Members and PAGA Employees may be entitled under any benefit plans.

20 56. Taxation of Settlement Proceeds. All Individual Settlement Payments shall be
21 paid in a net amount after applicable employee state and federal tax withholdings, including payroll
22 taxes, if any, have been deducted.

23 a. The Parties agree that thirty-four percent (34%) will be allocated to
24 wages and W-2s shall be issued, thirty-three percent (33%) of the amount distributed to each
25 Participating Class Member will be considered penalties and thirty-three percent (33%) shall be
26 allocated to interest and any other non-wage related amount, if any, and will be reported as such to
27 each Participating Class Member on an IRS Form 1099. The PAGA Payments to PAGA Employees
28 will be designated as payments for alleged penalties and other non-wage amounts.

1 b. The SA shall calculate, withhold from the Individual Settlement
2 Payments, and remit to applicable governmental agencies sufficient amounts, if any, as may be owed
3 by Participating Class Members for applicable employee taxes. The SA will issue appropriate tax
4 forms, if required, to each such Participating Class Member consistent with the foregoing breakdown.
5 The SA shall also calculate and obtain from Defendant and remit to applicable governmental agencies
6 sufficient amounts, if any, as may be owed by employers for the wage portion of the Individual
7 Settlement Payments and handle any other tax reporting requirements related to this Settlement.

8 c. All Parties represent that they have not received, and shall not rely on,
9 advice or representations from other parties or their agents, including Class Members and PAGA
10 Employees, regarding the tax treatment of payments under federal, state, or local law. In this regard,
11 Defendant makes no representations regarding the taxability of the Individual Settlement Payments
12 and PAGA Payments.

13 d. Class Counsel will be issued an IRS Form 1099 for any Court-approved
14 Attorneys' Fees and Costs. Except for the Attorneys' Fees and Costs specifically provided for in this
15 Agreement and approved by the Court, each Party shall bear his, her or its own attorneys' fees, costs,
16 and expenses incurred in the prosecution, defense, or settlement of the Action. Class Counsel agrees
17 that any allocation of fees between or among each of the Class Counsel or among the Class Counsel
18 and any other attorney that may be representing Named Plaintiff or the Class, if any, shall be the sole
19 responsibility of Class Counsel. Each Party to this Agreement (for purposes of this section, the
20 "acknowledging party" and each Party to this Agreement other than the acknowledging party, an
21 "other party") acknowledges and agrees that no provision of this Agreement, and no written or oral
22 communication or disclosure or other representation by Defendant and/or Released Parties is or was
23 intended to be, nor shall be construed or be relied upon as, tax advice, and Named Plaintiffs, Class
24 Members and PAGA Employees shall not rely on Defendant and/or Released Parties for any tax advice
25 with respect to the Settlement of this Action.

26 e. The Named Plaintiffs will be issued IRS Form 1099s for any
27 Enhancement Payments approved by the Court pursuant to this Settlement Agreement. The
28

Enhancement Payments payable to the Named Plaintiffs shall be in addition to the Individual Settlement Payments and PAGA Payments that they, as applicable, will receive.

57. Provisional Approval of Settlement. Named Plaintiffs shall file a motion in the Action and take all other action to request that the Court enter the Preliminary Approval Order based on an agreed-upon Settlement schedule, subject to Court approval:

a. Seeking class certification on the terms set forth in this Agreement solely for purposes of class settlement;

b. Preliminarily approving the proposed Settlement and this Agreement, including the payments to the Participating Class Members, Class Counsel, the Named Plaintiffs, PAGA Employees, the SA, and the LWDA;

c. Preliminarily approving the appointment of the Named Plaintiffs as representative of the Class for settlement purposes, if not otherwise accomplished by class certification;

d. Preliminarily approving the appointment of counsel for Named Plaintiffs as Class Counsel;

e. Appointing and approving a SA as chosen by the Parties and approved by the Court, to administer the notice, opt-out requests, objections and Individual Settlement Payment and PAGA Payment procedures required by this Agreement;

f. Approving the form of the Class Notice mutually agreed by the Parties;

g. Scheduling the Final Settlement Approval Hearing for consideration of Final Approval of this Agreement;

h. Requiring that any Class Members who object to the Settlement Agreement submit any objection to the SA postmarked by the end of the Exclusion Period or appear in person or by other Court approved means at the Final Approval Hearing, and that the Parties be given an opportunity to file written responses to any objection(s) with the Court;

i. Approving the procedure for Class Members to submit Opt-Out Requests, and setting a date after which no Class Members shall be allowed to submit Opt-Out Requests; and

j. Approving the procedure for Class Members to object to the Settlement.

k. Defendant shall not oppose Class Counsel's motions for Preliminary Approval and Final Approval of the Settlement so long as the motions and supporting papers are consistent with the terms of this Agreement. Class Counsel shall provide Defendant with an opportunity of at least 5 days to review, and provide comments on the motions for preliminary and Final Approval of the Settlement before the motion and supporting papers are filed with the Court. The Parties will meet and confer and agree upon the wording of the settlement packages to be sent to Class Members, as well as the proposed orders for Preliminary and Final Approval before filing. Failure of the Court to grant the Preliminary Approval Order will be grounds for the Parties to terminate the Settlement and the terms of the Agreement, except that the Parties must work in good faith to comply with any changes to the Settlement proposed by the Court to the extent the changes are acceptable by both Parties, and the Court may award less than the amounts listed in Paragraph subparts 54a through 54e (Settlement Payments and Calculation of Claims) without impacting the validity and enforceability of this Agreement.

58. Notice Procedure.

a. Settlement Administrator. The Parties will select Phoenix Class Action Administration Solutions or a mutually agreeable third-party SA to distribute the Class Notice and the Individual Settlement Payments and PAGA Payments and handle the tax reporting and field questions with a hotline. The SA (along with any of its agents) shall represent and warrant that it will: (a) provide reasonable and appropriate administrative, physical and technical safeguards for any personally identifiable information ("PII"), which it receives from Defendant; (b) not disclose the PII to Class Counsel, Named Plaintiffs, any party or third parties, including agents or subcontractors, without Defendant's counsel's express written consent; (c) not disclose or otherwise use the PII other than to carry out its duties as set forth herein; (d) promptly provide Defendant with notice if PII is subject to unauthorized access, use, disclosure, modification, or destruction; and (e) continue to protect the PII upon termination of its services.

b. Class Member Data. Within thirty (30) days after filing of the Preliminary Approval Order, Defendant shall provide to the SA a list of Class Members and PAGA

1 Employees that identifies for each Class Member/PAGA Member, his/her Social Security Number,
2 last-known address, and the pay period numbers and other Class Member data to confirm qualifying
3 Pay Periods worked and PAGA Pay Periods worked or will forward the start and end date(s) of
4 employment for the SA to calculate the Pay Periods worked and PAGA Pay Periods worked.
5 Defendant agrees to consult with the SA as required to provide the list in a format reasonably
6 acceptable for the duties of the SA. The SA will keep the list confidential, use it only for the purposes
7 described herein, take adequate safeguards to protect confidential or private information and continued
8 safeguarding of the information upon completion of the Settlement Administration process.

9 59. Class Notice. The SA will send to each Class Member and PAGA Employee,
10 by First-Class U.S. Mail the Class Notice, which includes information on how Class Members may
11 opt-out of or object to the Settlement. The Named Plaintiffs will seek approval of language in the
12 Class Notice in the motion for preliminary approval and will seek permission for the Parties in
13 conjunction with the SA to be able to correct immaterial errors on these forms or other mailed materials
14 without approval from the Court, provided the changes do not alter the preliminary approval by the
15 Court.

16 a. Settlement Administrator Duties. Prior to mailing the Class Notice, the
17 SA will update the addresses for the Class Members and PAGA Employees using the National Change
18 of Address database and other available resources deemed suitable by the SA. To the extent this
19 process yields a different address from the one supplied by Defendant ("Updated Address"), that
20 Updated Address shall replace the address supplied by Defendant ("Last Known Address") and be
21 treated as the new Last Known Address for purposes of this Agreement and for subsequent mailings
22 in particular. The Settlement Administrator shall be permitted to provide notices and communicate
23 to the Class Members and PAGA Employees in a format and statement to be provided to the Court,
24 which Named Plaintiffs will submit in conjunction with the motion for preliminary approval and/or
25 motion for Final Approval.

26 b. Class Notice Procedure. Within seven (7) days after receipt of the above
27 information from Defendant, the SA shall send the Class Notice to each Class Member's and PAGA
28 Member's Last Known Address or Updated Address (if applicable) via First-Class U.S. mail.

1 c. Exclusion Period. Class Members will have sixty (60) days from the
2 postmark of the initial mailing of the Class Notice by the SA to submit by U.S. mail their Opt-Out
3 Requests, with proof of date of submission to be the postmark date of the completed Opt-Out Request.
4 Class Members will also have sixty (60) days to object to the Settlement by submitting a written
5 objection (see **Exhibit B**) with the SA that sets forth the basis of the objection pursuant to Paragraph
6 61, which the SA shall submit to the Parties within 10 days after the end of the Exclusion Period, and
7 Class Counsel shall submit to the Court. Opt-Out Requests do not apply to the Settled PAGA Claims
8 and will not exclude PAGA Employees from the release of Settled PAGA Claims. All PAGA
9 Employees will receive their pro-rated portion of the PAGA Employee portion of the PAGA Award
10 as detailed above regardless of whether she/he opts out of the Settlement for purposes of the non-
11 PAGA claims.

12 d. SA Follow-up efforts.

13 i. The SA shall re-mail by First-Class U.S. mail the Class Notice
14 returned by the Post Office with a forwarding address, and shall re-mail by First-Class U.S. mail the
15 Class Notice to any Class Member/PAGA Member who personally provides an updated address to the
16 SA.

17 ii. In the event that the first mailing of the Class Notice to any Class
18 Member/PAGA Employee is returned without a forwarding address, the SA will immediately perform
19 skip trace(s) if necessary using social security numbers provided by Defendant and National Change
20 of Address searches, as needed, to verify the accuracy of the addresses provided and will conduct a
21 second round of mailings of the Class Notice by First-Class, U.S. mail within five (5) days for those
22 forms returned to sender provided they are received prior to the 60-day deadline to opt out or submit
23 a written objection to the Settlement.

24 iii. If the SA re-mails the Class Notice, it shall note for its own
25 records the date and the address of each re-mailing. Those Class Members who receive a re-mailed
26 Class Notice, whether by skip-trace or forwarded mail, will have an additional ten (10) days to
27 postmark an Exclusion Form, or file and serve an objection to the Settlement or dispute the information
28 provided in their Class Notice provided that the written objection or dispute is received no later than

1 70 days following the date the SA originally mailed the Class Notice to all Class Members. The
2 Settlement Administrator shall mark on the envelope whether the Class Notice is a re-mailed notice.

3 e. Documenting Communications. The SA shall date stamp documents it
4 receives, including Opt-Out Requests, Objections and any correspondences and documents from Class
5 Members/PAGA Employees.

6 f. Settlement Administrator Declaration. At least ten (10) days prior to
7 the filing of the motion for final approval, the SA shall prepare, subject to Class Counsel's, Class
8 Members/PAGA Employee's and Defendant's counsel's input and approval, a declaration setting forth
9 the due diligence and proof of mailing of the Class Notices, the results of the SA's mailings, including
10 tracing and re-mailing efforts, and the Class Members'/PAGA Member's responses to those mailings
11 and provide additional information deemed necessary to approve the Settlement.

12 g. SA Written Reports. Each week during the Exclusion Period, the SA
13 shall provide the Parties with a report listing the number of Class Members that submitted Opt-Out
14 Requests and Objections. Within seven (7) days of the Response Deadline (i.e., the close of the
15 Exclusion Period), the SA will provide a final report listing the number of Class Members who
16 submitted Opt-Out Requests or Objections.

17 h. SA Calculations of Individual Settlement Payments. Within seven (7)
18 days after resolving all challenges made by Participating Class Members, and following the Final
19 Approval Order, the SA shall provide to the Parties a report showing its calculation of all Individual
20 Settlement Payments to be made to Participating Class Members and PAGA Employees including
21 only a unique ID number for each individual receiving a payment with no personal identifying
22 information (i.e., no names, addresses, social security numbers, phone numbers, etc.). These
23 calculations will be provided to give Class Counsel and Defendant's counsel the opportunity to notify
24 the SA if either counsel does not believe the calculation is consistent with the Agreement. After receipt
25 of comments from counsel, the SA shall finalize its calculation of Individual Settlement Payments and
26 PAGA Payments, at least five (5) days prior to the distribution of such payments, and shall provide
27 Class Counsel and Defendant's Counsel with a final report listing the amount of all payments to be
28 made to each Participating Class Member from the NDF and listing the amount of all payments to be

made to each PAGA Employee from the amount allocated for PAGA Payments including only a unique ID number for each individual receiving a payment with no personal identifying information (i.e., no names, addresses, social security numbers, phone numbers, etc.). The SA will also provide information that is requested and approved by both Parties regarding its duties and other aspects of the Settlement and that is necessary to carry out the terms of the Settlement, with the exception that the SA will not provide personal identifying information (i.e., names, addresses, social security numbers, phone numbers, etc.) on Class Members or PAGA Employees except to Defendant's counsel, unless specifically provided for in this Agreement or as otherwise required by Court order.

60. Requirements for Recovery of Individual Settlement Payments.

a. Class Members. No claim form is necessary to participate in the Settlement. Unless a Class Member submits a valid and timely Opt-Out Request (as described in Paragraphs 22 and 60d and **Exhibit B**), a Class Member who takes no action will be a Participating Class Member, bound by the Judgment, and will receive a payment from the NDF. All Class Members except for those who timely and validly opt-out of the Settlement shall be bound by the release of Settled Claims in this Agreement. All PAGA Employees will release the Settled PAGA Claims covered by this Agreement and receive their pro-rated portion of the PAGA Employee portion of the PAGA Award as detailed above regardless of whether they opt out of the Settlement for purposes of the non-PAGA claims.

b. Late Submissions. The SA shall not accept as valid any Opt-Out Request postmarked after the end of the Exclusion Period, absent agreement from the Parties or order of the Court. It shall be presumed that, if an Opt-Out Request is not postmarked on or before the last day of the Exclusion Period (i.e., the Response Deadline), the Class Member did not return the Opt-Out Request in a timely manner.

c. Challenges. Class Members will have the right to challenge the number of Pay Periods worked allocated to them. The following challenge procedure will be established for the Participating Class Member to dispute information on which his/her payment amount is based: Challenges to the number of Pay Periods Worked shall be sent directly to the SA at the address indicated on the Class Notice. A Class Member challenging the number of Pay Periods Worked

1 identified may also submit documentary evidence in order to prove the number of Pay Periods Worked
2 during the Class Period as an employee of Defendant. Defendant shall have the right to respond to
3 the challenge by any Participating Class Member. No challenge to the number of Pay Periods worked
4 will be accepted unless sent by U.S. mail within sixty (60) days from the initial mailing of the Class
5 Notice by the SA, with proof of date of submission to be the postmark date unless ordered by the
6 Court. Additional time may be provided to a Participating Class Member only upon a showing of
7 good cause and within an amount of time determined by the SA that will not delay the distribution of
8 Individual Settlement Payments to other Participating Class Members/PAGA Employees and in no
9 event beyond the date of filing of the motion for final approval. The SA will inform Class Counsel
10 and Defendant's counsel in writing of any timely filed challenges and will determine all such disputes
11 after consulting with the Parties regarding the number of Pay Periods worked. Challenges will be
12 resolved without hearing by the SA, who will make a decision based on Defendant's records and any
13 documents or other information presented by the Participating Class Member making the challenge,
14 Class Counsel or Defendant. Subject to Court approval, the SA's determination is final and binding
15 without a right of appeal. The SA will inform the Parties of its final dispositions of all such challenges.

16 d. Opt-Out Procedure. Unless a Class Member timely opts out of the
17 Settlement described in this Agreement (see **Exhibit B**), he/she shall be bound by the terms and
18 conditions of this Agreement, and shall also be bound by the Final Judgment. A Class Member will
19 not be entitled to opt-out of the Settlement established by this Agreement unless he or she submits to
20 the SA a request or notice of opting out via U.S. mail postmarked on or before the expiration of the
21 Exclusion Period. The request must be in writing on an Opt-Out Request Form and include the Class
22 Member's full name, address, social security number or employee number, date, signature, and state
23 that he or she "opts out" of the Settlement (see **Exhibit B**). As specified above, Opt-Out Requests do
24 not apply to the Settled PAGA Claims and will not exclude PAGA Employees from the release of
25 Settled PAGA Claims.

26 i. Upon receipt of any Opt-Out Request within the Exclusion
27 Period, the SA shall review the request to verify the information contained therein, and confirm that
28 the request complies with the requirements of this Agreement.

1 ii. Any Class Member who fails to submit via U.S. mail a timely,
2 complete and valid Opt-Out Request shall be barred from opting out of this Agreement or the
3 Settlement. The SA shall not have the authority to extend the deadline for Class Members to file a
4 request to opt out of the Settlement absent agreement by both Parties or an order of the Court.

5 iii. Class Members shall be permitted to rescind in writing their
6 request to opt-out by submitting a written rescission statement to the SA no later than the Response
7 Deadline.

8 iv. Defendant alone has the option to withdraw from the Settlement
9 if the number of Class Members who opt out exceeds ten percent (10%). Defendant shall provide
10 written notice of such withdrawal to Class Counsel. In the event that Defendant elects to so withdraw,
11 the withdrawal shall have the same effect as a termination of this Agreement and the Agreement shall
12 become null and void and the Parties will return to the same position they were in prior to having
13 executed this Agreement. In the event that Defendant exercises this option, it will be solely responsible
14 for any Settlement Administrator's costs associated with settlement administration duties up to and
15 following Defendant's notice of election to withdraw.

16 61. Objections to Settlement. Any Participating Class Member may object to the
17 Settlement. Any such objection may be submitted to the SA in writing on or before the Response
18 Deadline (i.e., the close of the Exclusion Period) or may appear at the Final Approval Hearing to
19 object. If any Participating Class Member wishes to object in writing, any such written Objection
20 shall include: (1) the full name of the Participating Class Member; (2) address of the Participating
21 Class Member; (3) social security number or employee ID number of the Participating Class Member;
22 (4) the basis for the objection; and (5) if the Participating Class Member intends to appear at the Final
23 Approval Hearing. The Parties shall be permitted to file responses to the Objection in addition to any
24 motion for final approval documents. Participating Class Members may also appear at the Final
25 Approval Hearing to object. At no time shall any of the Parties or their counsel seek to solicit or
26 otherwise encourage Participating Class Members to object to the Settlement or appeal from the Order
27 granting final approval and/or Final Judgment. Class Counsel shall not represent any Participating
28 Class Members with respect to any such objections.

1 62. Final Fairness Hearing, Final Approval and Final Judgment.

2 a. Entry of Final Judgment. At the Final Approval Hearing, Named
3 Plaintiff will request, and Defendant will concur in said request, that the Court enter a Final Judgment.

4 b. Motion. Named Plaintiff will draft and file a motion for final approval
5 and for approval of any attorneys' fees and costs and enhancement payment in conformity with any
6 requirements from the Court and will take other action to request the entry of Final Judgment in
7 accordance with this Agreement. The motion for final approval and corresponding paperwork will be
8 subject to input and proposed changes and additions from Defendant's counsel and will be provided
9 to Defendant's counsel for review at least five (5) days prior to filing. Defendant will concur in or not
10 object to said request that the Court enter Final Judgment in accordance with the terms of this
11 Settlement Agreement. In conjunction with the motion for final approval, Class Counsel shall file a
12 declaration from the SA confirming that the Class Notice and related forms were mailed to all Class
13 Members as required by this Agreement, as well as any additional information Class Counsel, with
14 the input of Defendant, deems appropriate to provide to the Court.

15 c. Objections. Before and/or at the Final Fairness Hearing, Named
16 Plaintiffs and Defendant, through their counsel of record, may address any written objections from
17 Participating Class Members or any concerns from Class Members who attend the hearing as well as
18 any concerns of the Court.

19 d. Order. Named Plaintiffs will also draft and submit a proposed Order of
20 Final Approval and Final Judgment in the form that is consistent with this Agreement and subject to
21 prior review, revision and approval by Defendant (**See Exhibit D**). The Parties shall take all
22 reasonable efforts to secure entry of the Order of Final Approval and Final Judgment. If the Court
23 rejects the Agreement, fails to enter the Order of Final Approval, or fails to enter the Final Judgment,
24 even after good faith efforts by the Parties to meet and confer and remedy where agreement can be
25 reached any perceived deficiencies in the Settlement, this Agreement shall be void *ab initio*, and
26 Defendant shall have no obligation to make any payments under the Agreement and the Parties will
27 evenly split any payments to the SA for services performed up to that time. The Named Plaintiffs will
28

1 submit a proposed Order of Final Approval subject to the review and approval of Defendant that will
2 contain provisions:

3 i. Wherein the Court enters Final Judgment, finding that this
4 Agreement and Settlement is fair, just, equitable, reasonable, adequate and in the best interests of the
5 Class and was reached as a result of intensive, serious, and non-collusive arms-length negotiations and
6 was achieved with the aid of an experienced mediator and in good faith as to each Class Member;

7 ii. Affirms that each side will bear its own costs and fees (including
8 attorneys' fees), except as provided by the Agreement, and that Defendant shall not be required to pay
9 any amounts other than as set forth in the Agreement and the Order of Final Approval, and in no event
10 any amount above the GSA, except for employer-side taxes;

11 iii. That confirms the certification of the Class for purposes of
12 Settlement;

13 iv. That confirms that Plaintiff's counsel provided all required
14 notices to the LWDA of the settlement of the PAGA claims in the Action;

15 v. That confirms that nothing in the Final Approval Order, the
16 Settlement Agreement, nor any related document, nor any action taken to carry out the Settlement
17 Agreement is, may be construed as, or may be used as an admission by or against Axonics or any of
18 the other Released Parties of any fault, wrongdoing or liability whatsoever;

19 vi. That finds that the Settlement Administration process as carried
20 out afforded adequate protections to Class Members, provided the best notice practicable, and satisfied
21 the requirements of law and due process;

22 vii. That rejects any Objections to the Settlement;

23 viii. That approves the settlement of PAGA Claims consistent with
24 the Settlement;

25 ix. That confirms the full, binding and complete release of all
26 claims released in accordance with this Settlement Agreement as set forth herein, including the Settled
27 Claims, the Settled PAGA Claims, and the general release of all claims the Named Plaintiffs;
28

1 x. That retains Court jurisdiction after entry of judgment to oversee
2 administration and enforcement of the terms of the Agreement; and

3 xi. That requires the Parties and SA to carry out the provisions of
4 this Agreement.

5 63. Post-Final Approval Requirements and Procedures. Following entry of the
6 Court's Order Granting Final Approval of Settlement and Final Judgment and Effective Date (as
7 defined above), the Parties will act to assure the timely execution and fulfillment of all its provisions,
8 including, but not limited to, the following:

9 a. Should an appeal be taken from the Final Approval of the Settlement,
10 all Parties will support the Order of Final Approval and Final Judgment on appeal;

11 b. The Parties will assist the SA as needed or requested in the process of
12 identifying and locating Participating Class Members entitled to Individual Settlement Payments from
13 the NDF and PAGA Employees entitled to PAGA Payments and assuring delivery of such payments;

14 c. Class Counsel will assist the SA as needed or requested in completing
15 the distribution of any uncashed checks as directed by the Court; and

16 d. Class Counsel and the SA will certify to the Court completion of all
17 payments required to be made by this Settlement Agreement.

18 64. Payment of Settlement. Defendant will deposit the Funding Payment into an
19 account established by the SA within fifteen (15) days of the Effective Date. In the event an appeal,
20 writ, motion challenging the judgment, motion to intervene, or other collateral attack is made, the
21 funds shall not be distributed until the Effective Date is reached and the challenge or other collateral
22 attack is resolved in a manner that upholds the terms of this Settlement Agreement in its entirety. The
23 remittance of the Funding Payment to the SA shall constitute full and complete discharge of the entire
24 monetary obligation of Defendant under this Agreement. No Released Party shall have any further
25 monetary obligation or liability to Class Counsel or any other counsel, the State of California
26 (including the LWDA), Named Plaintiffs, or Participating Class Members under this Agreement after
27 receipt by the SA of the Funding Payment pursuant to the terms and conditions of this Agreement.
28

1 a. All employee taxes imposed on the gross income of the settlement fund
2 established by the SA and any tax-related expenses arising from any income tax returns or other
3 reporting documents that may be required by the Internal Revenue Service or any state or local taxing
4 body will be paid from the Funding Payment by the SA.

5 b. The distribution of Individual Settlement Payments to Participating
6 Class Members shall occur no later than the Settlement Proceeds Distribution Deadline. The SA shall
7 be deemed to have timely distributed Individual Settlement Payments if it places said payment in the
8 mail (First-Class U.S.). If the SA receives notice from Participating Class Members that they have
9 not received such Individual Settlement Payments due to changes of address or other circumstances,
10 the SA shall be deemed to have timely distributed those Individual Settlement Payments if (after
11 satisfying itself that the amounts have not been received or negotiated) it re-mails the payments to the
12 updated addresses or provides for delivery by other reasonable methods requested by such
13 Participating Class Members, provided that any and all requests for re-mailing shall be actually
14 received and acknowledged by the SA before the 150-day deadline referenced in Paragraphs 65 and
15 66 or will be deemed ineffective, and have no effect and the original mailed amount shall be deemed
16 timely distribution of the Individual Settlement Payment. If any checks are returned to the SA without
17 a forwarding address, the SA shall conduct a skip-trace and re-mail the checks if an updated address
18 is identified. The SA shall mail all Individual Settlement Payments by the Settlement Proceeds
19 Distribution Deadline. To comply with California Rule of Court 3.771, settlement checks shall include
20 the following language on the check: "A Court has approved settlement of the class action and PAGA
21 representative actions and entered judgment for claims asserted in *Itzep v. Axonics Modulation*
22 *Technologies, Inc.*, Orange County Superior Court Case No. 30-202001140962-CU-OE-CXC." No
23 person shall have any claim against the SA, Defendant or Released Parties, Class Counsel, Defendant's
24 counsel, or any other agent designated by Named Plaintiffs or Defendant based upon the distribution
25 of Individual Settlement Payments made substantially in accordance with this Agreement or further
26 orders of the Court.

27 c. The distribution of attorneys' fees, costs, and the Named Plaintiffs'
28 enhancement/general release awards shall occur after the Effective Date and Funding Deadline

(defined above) and no later than the Settlement Proceeds Distribution Deadline. Under no circumstances shall the foregoing payments be made prior to the distribution of Individual Settlement Payments to Participating Class Members.

d. Upon Defendant's transfer of the Funding Payment and employer-side taxes to the SA, Defendant and the Released Parties shall have fully and completely fulfilled their obligations to fund this Settlement and shall have no further financial responsibility or obligation to make any further payments of any kind to Class Counsel, other plaintiffs' counsel, the SA, or to any vendors or third parties employed by the Named Plaintiff or Class Counsel in connection with the Action.

e. Defendant shall not be obligated to make any payments contemplated by this Agreement unless and until the Court enters the Final Approval Order and Final Judgment, and after the Effective Date of the Agreement (as defined above), and no amounts will be owed or payable until the appeal deadline has run and/or all appeals if taken or other collateral attacks have lapsed or have been favorably resolved in favor of the Settlement and no further challenge to the Settlement is possible.

65. Participating Class Members who are sent Individual Settlement Payments shall have one hundred fifty (150) days after mailing by the SA to cash their settlement checks.

66. If such Participating Class Members do not cash their checks within that period, those checks will become void and a stop payment will be placed on the uncashed checks. Settlement checks that are not cashed within one hundred and fifty (150) days of mailing shall, subject to Court approval, will be distributed by the SA to the State Controller Unclaimed Property Fund, or as otherwise directed by California Code of Civil Procedure Section 384 ("Section 384") and as ordered by the Court. The Parties agree that if the remaining funds are not able to be distributed to the State Controller Unclaimed Property Fund and if a *cy pres* fund is required, subject to Court instruction, that the SA shall forward the entire amount of any amounts remaining from uncashed checks, plus any interest that has accrued thereon, to Big Brothers Big Sisters of Orange County & the Inland Empire, a non-profit 501(c)(3) organization that is dedicated to providing great mentors to children facing adversity to help them reach their full potential and decrease the number of disconnected, at-risk youth

1 in Orange, Riverside and San Bernardino Counties. See <https://www.ocbiggs.org> (providing additional
2 details about the organization); Cal. Code Civ. Proc. § 384 (specifying that nonprofit organizations
3 dedicated to “child advocacy” qualify as acceptable organizations for distributing unpaid residue or
4 unclaimed or abandoned class member funds). In such event, those Participating Class Members will
5 be deemed to have waived irrevocably any right in or claim to an Individual Settlement Payment
6 subject to their rights, if any, to recover the Individual Settlement Payments from the Unclaimed
7 Property Fund if ordered or otherwise will be extinguished. Participating Class Members who fail to
8 negotiate their check(s) in a timely fashion shall, like all Participating Class Members who did not
9 validly opt out of the Settlement, remain subject to the terms of the Settlement and the Final Judgment,
10 including the release of claims set forth in this Agreement.

11 67. The SA shall keep Class Counsel and Defendant’s counsel apprised of all
12 distributions from the GSA. Upon completion of administration of the Settlement, the SA shall
13 provide written certification of such completion to the Court, Class Counsel and Defendant’s Counsel.

14 68. Binding Effect of Agreement on Participating Class Members and PAGA
15 Employees. Subject to final Court approval, all Participating Class Members and PAGA Employees
16 shall be bound by this Agreement, and Final Judgment shall be entered in the Action pursuant to the
17 terms specified herein. As set forth more fully in Paragraph 73, if the Court does not enter an Order
18 of Final Approval and Final Judgment granting Final Approval of the Settlement pursuant to the terms
19 of this Agreement, which becomes final and Effective, the Settlement shall become null and void, and
20 its terms and all documents setting out its terms shall be inadmissible in further litigation of this Action
21 or any other case.

22 69. Non-Interference with Opt-Out Procedure. The Parties and their counsel agree
23 that they shall not seek to solicit or otherwise encourage Class Members to submit Opt-Out Requests
24 or objections to the Settlement or to appeal from the Final Judgment.

25 70. Waiver of Appeal. Subject to preliminary and Final Approval of this
26 Settlement, all Class Members, except those Class Members who make timely and valid objections
27 pursuant to the terms of this Agreement, waive the right to appeal.
28

1 71. LWDA Notice. Pursuant to California Labor Code section 2699(l), Class
2 Counsel will provide a copy of this Settlement Agreement to the LWDA concurrently with Class
3 Counsel's filing of the motion for preliminary approval. Class Counsel will also file a declaration in
4 support of Plaintiff's motion for preliminary approval confirming that Class Counsel has submitted
5 the Settlement Agreement to the LWDA in compliance with California Labor Code section 2699(l).
6 The Parties intend to and believe that the notice pursuant to the procedures described in this Paragraph
7 complies with the requirements of the PAGA, and the Parties will request that the Court adjudicate
8 the validity of the notice in the motion for final approval of the Settlement.

9 72. Preliminary Timeline for Completion of Settlement. The preliminary schedule
10 for notice, approval, and payment procedures carrying out this Settlement is set forth in the subsections
11 below. This schedule may be modified depending on whether and when the Court grants necessary
12 approvals and orders notice to the Class and PAGA Employees, and sets further hearings. In the event
13 of such modification, the Parties shall cooperate in order to complete the Settlement procedures as
14 expeditiously as reasonably practicable.

- 15 a. Preliminary Approval Hearing as permitted by the Court;
- 16 b. Defendant to provide information described in Paragraph 58b (name,
17 address, dates of employment, etc. of Class Members and PAGA Employees) no later than thirty (30)
18 days after filing of the Preliminary Approval Order;
- 19 c. The SA to mail the Class Notice by U.S. First Class mail to Class
20 Members and PAGA Employees by approximately fourteen (14) days after receipt from Defendant of
21 the information described in the preceding subparagraph;
- 22 d. The SA to conduct trace/search efforts and send a follow up mailing, no
23 later than ten (10) days after initial mailing, to individuals whose Class Notice was returned as
24 undeliverable or whose listed address is found to be inaccurate or outdated;
- 25 e. Opt-Out Requests and Objections to the Settlement must be postmarked
26 no later than sixty (60) days after the date of initial mailing of the Class Notice;
- 27 f. The SA will provide to the Parties, and to the Court as directed by the
28 Parties, information regarding Opt-Out Requests and written objections or statements of intention to

1 object to the Settlement received from Class Members within seven (7) days of the close of the
2 Exclusion Period (i.e., the Response Deadline);

3 g. Class Counsel will file a timely motion for final approval of the
4 Settlement and a separate application for award of attorneys' fees and costs and an enhancement
5 payment to the Named Plaintiffs by the date set by the Court, or if no date is set, at least sixteen (16)
6 court days prior to the scheduled Final Approval Hearing date;

7 h. The Parties will request a Final Approval Hearing before the Court
8 within a reasonable time after the close of the Exclusion Period, or as soon thereafter as the Court will
9 hear the Motion for Final Approval. Defendant shall remit the Funding Payment to the SA by the
10 Funding Deadline (i.e., 15 days after the Effective Date).

11 i. Individual Settlement Payments to Participating Class Members,
12 including the Named Plaintiffs, and payments to Class Counsel for litigation costs and expenses and
13 awarded attorneys' fees, the approved payment to the SA, and the approved enhancement payment to
14 Named Plaintiffs, and payment to the LWDA shall be made by the Settlement Proceeds Distribution
15 Deadline by mailing of checks by First Class U.S. mail or by wire (as to Class Counsel's payments
16 only).

17 73. Automatic Voiding of Agreement if Settlement Not Finalized. As specified
18 above, if for any reason the Effective Date does not occur, the Settlement shall be null and void and
19 the orders, judgment, and dismissal to be entered pursuant to this Agreement shall be vacated; and the
20 Parties will be returned to the status quo prior to entering this Agreement with respect to the Action,
21 as if the Parties had never entered into this Agreement. In addition, in such event, the Agreement and
22 all negotiations, court orders and proceedings relating thereto shall be without prejudice to the rights
23 of any and all Parties hereto, and evidence relating to the Agreement and all negotiations shall not be
24 admissible or discoverable in the Action or otherwise in any other proceeding.

25 74. No Injunctive Relief. The Parties agree that the Settlement does not include
26 injunctive relief against Defendant or the Released Parties.
27
28

1 75. Confidentiality and Non-Disparagement.

2 a. Parties and their counsel will keep the Settlement confidential, through
3 the Court's order granting the Parties' Motion for Preliminary Approval, but the Parties will be able
4 to disclose to the Court, when and as necessary before preliminary approval, that they have reached
5 an agreement in principle, subject to completion of a final Agreement and Court approval.

6 b. Following the Court's order granting the Parties' Motion for
7 Preliminary Approval, the Parties and their counsel agree to not publicize this Settlement, including,
8 but not limited to, issuing press releases, posting summaries online, or otherwise speaking to the press
9 regarding the terms of this Settlement, except that Class Counsel may post on its firm website *only* the
10 following with respect to this Action and Settlement: "The Firm settled a class action with a California
11 company for \$225,000." If Named Plaintiffs or Class Counsel are contacted by members of the press
12 or other third parties, they will respond only that the lawsuit exists and has been resolved. This shall
13 not restrict Class Counsel from responding to inquires posed by Class Members. Further, Class
14 Counsel may include the case name, number, and settlement information in declarations setting out
15 their qualifications as class counsel.

16 c. Named Plaintiffs and Class Counsel agree to maintain the
17 confidentiality of any documents produced, formally or informally, during the course of the Action.
18 Named Plaintiffs and Class Counsel agree to return to Defendant's counsel or destroy, at their option,
19 any information designated as Confidential during the course of the Action, including but not limited
20 to any information and/or documents provided to Class Counsel for purposes of mediation.

21 d. Defendant shall direct all inquiries by the Class to the SA, which shall
22 provide general information about the lawsuit, including responding to questions about the lawsuit, by
23 providing neutral information about the Settlement consistent with the Agreement.

24 e. Defendant agrees it will adopt a neutral reporting policy regarding any
25 future employment inquiries related to Named Plaintiff. Thus, in the event that any potential or future
26 employers should inquire regarding Defendant's employment of Named Plaintiffs, they will be
27 informed only of Named Plaintiffs' dates of employment with Defendant, job title(s) during their
28 employment with Defendant, and starting and final rates of pay.

1 f. As permitted by law, Plaintiff agrees that he shall make no negative
2 statements about the Axonics, Axonics' performance, its employees, officers, or owners, or conduct
3 to any third person or entity, unless compelled to do so by law or required for purposes of the
4 Settlement. In the event that Plaintiff is required to make any such negative statements pursuant to
5 lawful process or as otherwise may be required by law, Plaintiff agrees to advise Defendant and its
6 counsel as soon as reasonably possible in advance of such statements to allow Defendant a reasonable
7 opportunity to seek appropriate relief. If prompted by anyone to discuss any dispute they had with
8 Defendant, Plaintiffs may state simply that "the matter has been resolved."

9 76. Invalidation of Agreement for Failure to Satisfy Conditions. The Court may
10 allocate less to the Named Plaintiffs, Class Counsel, Named Plaintiffs, the SA, and/or the LWDA than
11 indicated in this Agreement without impacting the validity and enforceability of the Agreement.
12 Without limiting the generality of the foregoing, if this Agreement is terminated for failure to satisfy
13 any material terms or material conditions of this Agreement:

14 a. Defendant shall not be obligated to create or maintain any type of
15 settlement fund, and shall not be obligated to make any Individual Settlement Payment to any Class
16 Member, PAGA Employee and/or any payment to Class Counsel or to the Named Plaintiffs.

17 b. The Agreement and all negotiations, Court orders and proceedings
18 relating thereto shall be without prejudice to the rights of the Named Plaintiffs, PAGA Employees,
19 Class Members, and Defendant, each of whom shall be restored to their respective positions existing
20 prior to the execution of this Agreement, and evidence relating to the Agreement and all negotiations
21 shall not be discoverable or admissible in the Action or any other litigation;

22 c. Defendant will not have waived, and instead expressly reserves, its right
23 to challenge the continuing propriety of class certification for any purpose; and

24 d. To the extent one exists, the Preliminary Approval Order shall be
25 vacated in its entirety and neither this Agreement, the Preliminary Approval Order, nor any other
26 document in any way relating to any of the foregoing, shall be relied upon, referred to or used in any
27 way for any purpose in connection with any further proceedings in this Action or any related action,
28 including class certification proceedings.

1 77. Notices. All notices, requests, demands and other communications required or
2 permitted to be given pursuant to this Agreement shall be in writing, and shall be delivered by First-
3 Class U.S. mail to the attorneys listed in the caption above and the SA, with additional copies to be
4 sent via electronic mail.

5 78. Modification in Writing. This Agreement may be altered, amended, modified
6 or waived, in whole or in part, only in a writing signed by counsel for the Parties and approved by the
7 Court, and supersedes any memorandum of understandings or prior agreement(s). This Agreement
8 may not be amended, altered, modified or waived, in whole or in part, orally. Any waiver of any
9 provision of this Agreement shall not constitute a waiver of any other provision of this Agreement
10 unless expressly so indicated.

11 79. Ongoing Cooperation. Named Plaintiffs and Defendant, and each of their
12 respective counsel, shall cooperate in good faith to execute all documents and perform all acts
13 necessary and proper to effectuate and implement the terms of this Agreement, including but not
14 limited to drafting and submitting the motions for Preliminary and Final Approval, and defending the
15 Agreement and Final Judgment against objections and appeals. Plaintiff shall, as necessary, properly
16 and completely take all steps, including but not limited to submitting any required documents to the
17 LWDA and take any other actions necessary to resolve the Released PAGA Claims pursuant to this
18 Agreement. The Parties to this Agreement shall use their best efforts, including all efforts
19 contemplated by this Agreement and any other efforts that may become necessary by order of the
20 Court or otherwise, to effectuate this Agreement and the terms set forth herein.

21 80. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
22 they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer,
23 or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action
24 or rights herein released and discharged except as set forth herein.

25 81. Binding on Successors. This Agreement shall be binding and shall inure to the
26 benefit of the Parties and their respective successors, assigns, executors, administrators, heirs and legal
27 representatives, including the Released Parties.
28

1 82. Entire Agreement. This Agreement constitutes the full, complete and entire
2 understanding, agreement and arrangement between Named Plaintiffs and the Class Members/PAGA
3 Employees on the one hand, and Defendant and Released Parties on the other hand, with respect to
4 the Settlement of the Action and the Settled Claims against the Released Parties, including Defendant.
5 This Agreement supersedes any and all prior oral or written understandings, agreements and
6 arrangements between the Parties with respect to the Settlement of the Action and the Settled Claims
7 against the Released Parties. Except those set forth and included expressly in this Agreement, there
8 are no other agreements, covenants, promises, representations or arrangements between the Parties
9 with respect to the Settlement of the Action and the Settled Claims/Settled PAGA Claims against the
10 Released Parties.

11 83. Execution in Counterparts. This Agreement may be signed in one or more
12 counterparts. A scanned or faxed copy of a signature shall be treated as an original signature for all
13 purposes. All executed copies of this Agreement, and photocopies thereof (including facsimile, PDF,
14 or email copies of the signature pages), shall have the same force and effect and shall be as legally
15 binding and enforceable as the original. Parties shall execute by hand with “wet” signatures.

16 84. Captions. The captions and section numbers in this Agreement are inserted for
17 the reader’s convenience, and in no way define, limit, construe, or describe the scope or intent of the
18 provisions of this Agreement.

19 85. Governing Law. This Agreement shall be interpreted, construed, enforced, and
20 administered in accordance with the laws of the State of California, without regard to conflict of law
21 rules.

22 86. Reservation of Jurisdiction. Notwithstanding the entry and filing of Final
23 Judgment, the Court shall retain jurisdiction under Section 664.6 of the Code of Civil Procedure and
24 California Rule of Court 3.769 for purposes of interpreting and enforcing the terms of this Agreement.

25 87. Mutual Preparation. The Parties have had a full opportunity to negotiate the
26 terms and conditions of this Agreement. Accordingly, this Agreement shall not be construed more
27 strictly against one Party than another merely by virtue of the fact that it may have been prepared by
28

1 counsel for one of the Parties, it being recognized that, because of the arms-length negotiations
2 between the Parties, all Parties have contributed to the preparation of this Agreement.

3 88. Warranties and Representations. With respect to themselves, each of the Parties
4 to this Agreement and/or their agents or counsel represent, covenant and warrant that (a) they have
5 full power and authority to enter into and consummate all transactions contemplated by this Agreement
6 and have duly authorized the execution, delivery and performance of this Agreement, and (b) the
7 person executing this Agreement has the full right, power and authority to enter into this Agreement
8 on behalf of the Party for whom he/she has executed this Agreement, and the full right, power and
9 authority to execute any and all necessary instruments in connection herewith, and to fully bind such
10 Party to the terms and obligations of this Agreement, except that the Parties understand that the Named
11 Plaintiffs and Class Counsel only have the power to bind Class Members to the extent this Agreement
12 is approved by the Court.

13 89. Representation by Counsel. The Parties acknowledge that they have been
14 represented by counsel throughout all negotiations that preceded the execution of this Agreement, and
15 that this Agreement has been executed with the consent and advice of counsel. Further, the Named
16 Plaintiffs and Class Counsel warrant and represent that there are no liens on the Agreement, and that
17 after entry by the Court of the Final Judgment, Defendant, through the SA, may distribute funds to
18 Participating Class Members, PAGA Employees, Class Counsel, and the Named Plaintiffs as provided
19 by this Agreement.
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1 90. Authorization by Named Plaintiffs. Named Plaintiffs authorize Class Counsel
2 to sign this Agreement and further agree not to request to be excluded from the Class and not to object
3 to any terms of this Agreement. Any such Opt-Out Request or Objection shall therefore be void and
4 of no force or effect.

5 **IT IS SO AGREED:**

6 Dated: 05/19/2022, 2022

7
8 
9 _____
SULENI ITZEP
Named Plaintiff


10 Dated: 05/18/2022, 2022

11 
12 _____
ROBERTA MOSER
Named Plaintiff

13
14 **APPROVED AS TO FORM ONLY:**

15
16 Dated: May 18, 2022

JUSTICE LAW CORPORATION

17 BY: 
18 _____
DOUGLAS HAN
19 Attorneys for SULENI ITZEP and ROBERTA
20 MOSER, on behalf of themselves and all others
21 similarly situated and aggrieved employees, and
22 on behalf of the general public.

23 **IT IS SO AGREED:**

24 Dated: _____, 2022

AXONICS, INC

25 By: _____

26 Title: _____
27
28

1 90. Authorization by Named Plaintiffs. Named Plaintiffs authorize Class Counsel
2 to sign this Agreement and further agree not to request to be excluded from the Class and not to object
3 to any terms of this Agreement. Any such Opt-Out Request or Objection shall therefore be void and
4 of no force or effect.

5 **IT IS SO AGREED:**

6
7 Dated: _____, 2022

8 _____
9 SULENI ITZEP
Named Plaintiff

10 Dated: _____, 2022

11 _____
12 ROBERTA MOSER
13 Named Plaintiff

14 **APPROVED AS TO FORM ONLY:**

15
16 Dated: _____, 2022

JUSTICE LAW CORPORATION

17
18 BY: _____

DOUGLAS HAN

19 Attorneys for SULENI ITZEP and ROBERTA
20 MOSER, on behalf of themselves and all others
21 similarly situated and aggrieved employees, and
on behalf of the general public.

22 **IT IS SO AGREED:**

23
24 Dated: _____, 2022

AXONICS, INC.

25 By: _____

26
27 Title: _____

28
43.