

ORANGE COUNTY SUPERIOR COURT
Itzep, et al., vs. Axonics Modulation Technologies, Inc.
Case No. 30-2020-01140962-CU-OE-CXC

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

To: ALL NON-EXEMPT EMPLOYEES CURRENTLY OR FORMERLY EMPLOYED BY AXONICS, INC. (FORMERLY AXONICS MODULATION TECHNOLOGIES, INC.) IN CALIFORNIA IN A NON-EXEMPT POSITION AT ANY TIME FROM JUNE 14, 2017, THROUGH SEPTEMBER 14, 2021.

PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS

WHY DID I GET THIS NOTICE?

You have received this Notice because the records of Axonics, Inc., formerly known as Axonics Modulations Technologies, Inc. (“Axonics” or “Defendant”), reflect that you are or may be a class member in a pending class action entitled *Itzep et al., v. Axonics Modulation Technologies, Inc.*, Orange County Superior Court case number 30-2020-01140962-CU-OE-CXC (the “Action”), and you may be entitled to money from the settlement of that Action.

This Notice is court approved and informs you of the terms of the agreement of the Parties to settle the claims as set forth and embodied in a Revised Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement” or “Settlement Agreement”). This Notice explains what steps you may take to participate in, object to, or exclude yourself from the Settlement.

SUMMARY OF YOUR OPTIONS UNDER THE SETTLEMENT

DO NOTHING AND RECEIVE A SETTLEMENT AWARD	<p>You may do nothing in response to this notice.</p> <p>If you do nothing, you <u>will participate in the Settlement and receive a share of the Settlement money</u>, and you will release certain claims as described below.</p>
EXCLUDE YOURSELF FROM THE SETTLEMENT AND RECEIVE NO SETTLEMENT MONEY ASIDE FROM A PORTION OF THE PAGA AWARD, IF APPLICABLE	<p>Submit a Request for Exclusion.</p> <p>If you submit a timely and valid Opt-Out Request, you will <u>not</u> receive a share of the Settlement money, <u>not</u> participate in the Settlement, and will <u>not</u> release the class action claims described below. The only exception is that if you are a “PAGA Employee” (defined in below) you will still release the Private Attorneys General Act (“PAGA”) claims and receive a portion of the PAGA Payment as there is no right to opt out of the PAGA release. To submit an Opt-Out Request, submit the Opt-Out Request Form included with this notice.</p>
OBJECT	<p>Submit a written objection to the Court via the Settlement Administrator.</p> <p>If you disagree with the proposed Settlement, you may submit an objection. If the Court agrees with your objection, the parties can choose whether to withdraw the Settlement or change its terms. If the Court rejects your objection, you will still be bound by the Settlement, will receive a settlement payment and you will release the claims described in Section IV below.</p>

WHAT IS THIS ACTION ABOUT?

The Action was filed on May 26, 2020, on behalf of Plaintiff, Suleni Itzep (“Plaintiff Itzep” or “Plaintiff”), and other similarly situated current and former employees of Defendant. Prior to filing this Action, Plaintiff Itzep also submitted a letter to the Labor Workforce Development Agency (“LWDA”) on March 13, 2020 to exhaust her administrative remedies to bring a PAGA claim. The Action, as amended, pleads class allegation claims against Defendant for: (1) failure to pay all wages, including minimum wages and 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) failure to provide meal periods (including without limitation for alleged failure to provide compliant meal periods and/or pay meal period premiums at the appropriate rate); (3) failure to provide rest periods (including without limitation for alleged failure to provide compliant rest periods and/or rest period premiums at the appropriate rate); (4) failure to timely pay all wages due at separation; (5) failure to provide accurate wage statements (under both direct and derivative theories of liability); (6) failure to reimburse employees for necessary business expenditures (including without limitation, for alleged failure to reimburse various business expenses such as for use of personal cell phones, vehicles, etc.); (7) unfair business practices; (8) civil penalties under the Labor Code Private Attorneys General Act of 2004 (“PAGA”); and (9) failure to properly calculate, accrue and pay sick pay. Plaintiff seeks to recover various damages and costs and penalties, including unpaid wages, restitution interest, penalties, and attorneys’ fees and costs. Plaintiff Roberta Moser was also added into the Action as an additional Plaintiff (“Plaintiff Moser”) with Plaintiff Itzep (collectively “Named Plaintiffs” or “Plaintiffs”). A copy of the complaint is on file with the Court.

Defendant Axonics 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. 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. Axonics, therefore, has agreed to settle in the manner and upon the terms set forth in this Settlement to put to rest the Plaintiff’s claims as set forth in the Action. Absent the Settlement, Axonics would vigorously contest the lawsuit. By agreeing to this Settlement, Axonics is not admitting any liability or wrongdoing.

After engaging in significant formal and informal discovery, the parties participated in an all-day mediation before an experienced, neutral mediator, Anthony Pantoni, which ultimately resulted in the Parties agreeing to the Settlement Agreement. The Settlement received preliminarily approval by the trial court in the Action (“Court”) on July 29, 2022. Named Plaintiffs and Class Counsel support the Settlement.

Neither the Court nor any other fact finder has decided whether the claims brought by the Named Plaintiffs (or Defendant’s defenses) are meritorious. By approving the Settlement and issuing this Notice, the Court is not suggesting which side would win or lose this case if it went to trial. Rather, the Court has determined only that there is sufficient evidence to suggest that the proposed Settlement might be fair, adequate, and reasonable, and any final determination of those issues will be made at the final hearing. Defendant reserves the right, if for any reason the Settlement fails, to contest any factual or legal allegations in the Action and whether this Action should proceed as a class action.

WHAT IS A CLASS ACTION?

In a class action lawsuit, one or more persons sue on behalf of other people who may have similar claims. Suleni Itzep and Roberta Moser are the Class Representatives or Named Plaintiffs in the Action, and have asserted claims on behalf of themselves and the class. A class action allows one court to resolve all of the issues in a lawsuit for all the class members who choose not to exclude themselves from the class.

A class member is bound by the determination or judgment entered in the case, whether the class wins or loses, and may not file his or her own lawsuit on the same claims that were decided in the class action.

WHO IS INCLUDED IN THE SETTLEMENT CLASS?

The settlement class includes all non-exempt employees currently or formerly employed that were directly employed by Defendant in the State of California in a non-exempt position between June 14, 2017 through September 14, 2021 (referred to as the “Class Period”), other than those who opt-out (as discussed below). This group individually and collectively will be referred to as “Participating Class Members.”

WHAT ARE THE TERMS OF THE CLASS SETTLEMENT?

Axonics will pay a fixed “Gross Settlement Amount” (also referred to as the “GSA”) in the amount of Two Hundred Twenty-Five Thousand Dollars and Zero Cents (\$225,000.00) in exchange for: the release by Participating Class Members of Settled Claims and Settled PAGA Claims (defined below) against it and Released Parties (defined below); final judgment on the Action; and the other terms set forth in the Settlement. Subject to Court approval, and assuming the Court approves all the maximum amounts set forth in the Settlement, the Parties estimate that the Gross Settlement Amount will be allocated as follows:

- **Individual Settlement Payments to Participating Class Members:** Participating Class Members will receive an Individual Settlement Payment if the Court grants final approval of the Parties’ Settlement Agreement. Individual Settlement Payments will be paid from the “Net Distribution Fund” or “NDF”. The Net Distribution Fund or NDF is the Gross Settlement Amount less the amounts awarded to Class Counsel, the enhancement payment to the Named Plaintiffs, the PAGA Payment to resolve claims under the PAGA, and the costs awarded for settlement administration owed pursuant to the Settlement and further detailed below. Individual Settlement Payments will be calculated as follows:
 - The NDF will be divided by the total number of pay periods worked by Participating Class Members as employees of Defendant during the Class Period (“Class Pay Period Value”) as reflected in Defendant’s records. All Participating Class Members shall be paid an amount equal to their Total Class Pay Periods (*i.e.*, their personal number of pay periods worked as a non-exempt employee of Defendant during the Class Period) multiplied by the Class Pay Period Value. Total Class Pay Periods and Class Pay Period Value shall be determined by the Settlement Administrator (Phoenix Settlement Administrators) based on data to be provided by Defendant, as may be modified by the resolution of any challenges.
 - Assuming you do not opt out and the Court grants final approval of all the maximum amounts set forth in the Settlement Agreement and specified below, the Settlement Administrator estimates:
 - **Your estimated Individual Settlement Payment will be approximately \$_____.**
 - **Your estimated payment is based on the number of pay periods you worked in a non-exempt position for Defendant in California during the Class Period (i.e., June 14, 2017 - September 14, 2021), which Defendant’s records show to be_____.**

Participating Class Members who do not request to be excluded from the Settlement will be forever barred from pursuing the Settled Claims (defined below) against Defendant or any other Released Parties (defined below).

You have the right to challenge the number of pay periods allocated to you. If you dispute the number of pay periods please contact the Settlement Administrator with any and all evidence supporting your dispute. You will have until October 11, 2022 to submit your dispute.

- Enhancement Payment: Named Plaintiffs will each request an award not to exceed Five Thousand Dollars and Zero Cents (\$5,000) (for a total of \$10,000) in recognition of their work in this Action on behalf of the Class and a general release of all claims. In the event that the Court awards less than the full amount requested for Plaintiffs' Enhancement Payments, the un-awarded amount will be made available for distribution as part of the Net Distribution Fund and distributed to Participating Class Members.
- Attorney's Fees and Costs Payment: Class Counsel (listed below) will seek a total amount of money not to exceed 35% of the GSA or Seventy-Eight Thousand Seven Hundred Fifty Dollars and Zero Cents (\$78,750.00) to be paid in accordance with the Settlement for any and all attorney's fees and Fifteen Thousand Dollars and Zero Cents (\$15,000.00) in costs and expenses relating to the Action. In the event that the Court awards less than the full amount requested for Attorneys' Fees and/or Costs, the un-awarded amount will be made available for distribution as part of the Net Distribution Fund and distributed to Participating Class Members.
- Settlement Administration: The cost of settlement administration will not exceed Five Thousand Dollars (\$5,000.00), which pays for tasks such as mailing this Notice, mailing checks and tax forms, addressing Class Member questions/challenges, reporting to the parties and the Court, and tracking submitted opt outs and objections. In the event that the Court awards less than the full amount requested for Administration Fees and Costs, the un-awarded amount will be made available for distribution as part of the Net Distribution Fund.
- PAGA Award and Payment: The "PAGA Period" is from March 13, 2019 through September 14, 2021. Pursuant to California Labor Code Section 2698 *et seq.*, known as the Private Attorney General Act or "PAGA", the Parties designate Twenty-Two Thousand Five Hundred Dollars and Zero Cents (\$22,500.00) of the GSA to resolve any PAGA claims (i.e., the "PAGA Award"), including payment for Named Plaintiffs' claims on their own behalf and on behalf of all persons who are employed or have been employed by Defendant in California in a non-exempt position during the PAGA Period (i.e., the "PAGA Employees"). PAGA Employees cannot opt out of the PAGA portion of this Settlement. In the event that the Court awards less than the full amount requested for the PAGA Award, the un-awarded amount will be made available for distribution as part of the Net Distribution Fund (defined above) and distributed to Participating Class Members. The PAGA Award will be distributed as follows:
 - Defendant shall pay seventy five percent (75%) of that amount, or Sixteen Thousand Eight Hundred Seventy-Five Dollars and Zero Cents (\$16,875.00), to the LWDA and the remainder (\$5,625.00) to PAGA Employees.
 - "PAGA Pay Periods Worked" means the number of pay periods credited to a PAGA Employee during the PAGA Period. "PAGA Pay Period Value" means the Five Thousand Six Hundred Twenty-Five Dollars and Zero Cents (\$5,625.00) allocated for payments to PAGA Employees divided by the total number of PAGA Pay Periods Worked by all PAGA Employees as non-exempt employees of Defendant during the PAGA Period. Individual PAGA payments from the \$5,625.00 to be paid to PAGA Employees will be calculated by multiplying the PAGA Pay Period Value by each individual PAGA Employee's Total PAGA Pay Periods (*i.e.*, the number of pay periods the PAGA Employee personally worked as a non-exempt employee of Defendant during the PAGA Period). Because PAGA Employees cannot opt out of the Settlement and release of the Settled PAGA Claims (defined below), all PAGA Employees will 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.

WHAT AM I RELEASING UNDER THE SETTLEMENT?
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Unless you timely opt out of the Settlement (as discussed below), you on behalf of yourself and your respective heirs, executors, administrators, personal representatives, successors and assigns irrevocably and unconditionally

forever and fully release (and covenant not to sue or otherwise pursue claims, whether known or unknown, against) any and all Released Parties from any and all Settled Claims (defined below).

“Released Parties” means Defendant and its past, present or future parents, subsidiaries, affiliates, officers, directors, employees, partners, shareholders, attorney’s, agents, and any other successors, assigns, or legal representatives.

“Settled Claims” means any and all claims alleged in the Complaint (including any amendments) or which could have been alleged in the Complaint based on the allegations, facts, matters, transactions or occurrences alleged therein, and shall specifically include without limiting the generality thereof all causes of action listed in the Complaint (including any amendments). The release of the foregoing claims, extends to all theories of relief regardless of whether the claim is, was or could have been alleged as separate claims, causes of action, lawsuits or based on other theories of relief, whether under California law, state law or common law (including, without limitation, as violations of the California Labor Code, the Wage Orders, applicable regulations, and California’s Business and Professions Code Section 17200). “Settled Claims” includes all types of relief available for the above-referenced claims, including, without limitation, any claims for damages, restitution, losses, penalties, fines, liens, attorneys’ fees, costs, expenses, debts, interest, injunctive relief, declaratory relief, or liquidated damages. The Final Judgment shall expressly provide that it covers and bars as a matter of law each and every Class Member other than those who have opted out from asserting any Settled Claims in the future. The release of the Settled Claims shall run from the start of the Class Period (i.e., June 14, 2017) through September 14, 2021.

All PAGA Employees (defined above) will also release all Settled PAGA Claims regardless of whether they opt out of the Settlement for purposes of the non-PAGA claims. “Settled PAGA Claims” means all PAGA claims alleged in the Action or which could have been alleged in the Action based on the allegations, facts, matters, transactions or occurrences alleged therein, and shall specifically include without limiting the generality thereof all causes of action listed in Plaintiff’s March 13, 2020 PAGA notice letter to the LWDA, and the Complaint (including any amendments). The foregoing claims extends to all theories of relief regardless of whether the claim is, was or could have been alleged as separate claims, causes of action, lawsuits or based on other theories of relief, including under PAGA, the California Labor Code, the Wage Orders, applicable regulations. “Settled PAGA Claims” includes all types of relief available for the above-referenced claims, including, without limitation, any claims for penalties, fines, liens, attorneys’ fees, costs, expenses, debts, interest, injunctive relief, declaratory relief, or liquidated damages. The Final Judgment shall expressly provide that it covers and bars Plaintiffs, the LWDA, the State of California, and any other representative, proxy, or agent thereof, including but not limited to any and all PAGA Employees from prosecuting “Settled PAGA Claims” that arose during the PAGA Time Period. The release of the Settled PAGA Claims shall run from the start of the PAGA Period (i.e., March 13, 2019) through September 14, 2021.

WHAT DO I NEED TO DO TO RECEIVE AN INDIVIDUAL SETTLEMENT ALLOCATION?

To receive your Individual Settlement Allocation, you do not need to do anything. You must, however, notify the Settlement Administrator of any change in your name or mailing address. It is your responsibility to keep the Settlement Administrator informed of any such change, as your Individual Settlement Allocation will be mailed to the address on file.

Once you receive your Individual Settlement Allocation, you shall have One Hundred and Fifty (150) calendar days after mailing by the Settlement Administrator to cash your Settlement check. If you do not cash your check within that period, your check 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 be voided and delivered to California State Controller’s Unclaimed Property Fund or as otherwise directed by the Court. You will still be bound by the Settlement and releases of claims described above and in the Settlement even if you do not timely deposit or cash your settlement check prior to the void date.

All Individual Settlement Payments will be paid in a net amount after applicable employee state and federal tax withholdings, including payroll taxes, if any, have been deducted by the Settlement Administrator. Thirty-four percent (34%) will be allocated to wages and W-2s shall be issued and thirty-three percent (33%) of the amount distributed to each Participating Class Member will be considered penalties and thirty-three percent (33%) shall be allocated to interest and any other non-wage related amount, if any, and will be reported as such to each Participating Class Member on an IRS Form 1099. The PAGA Payments to PAGA Employees will be designated as payments for alleged penalties and other non-wage amounts and may be included by the Settlement Administrator as part of the total check amount for any employees who are both Participating Class Members and PAGA Employees. Neither Defendant, nor any Released Party offers tax advice regarding this Settlement. You may consider contacting an accountant and/or tax attorney to determine the appropriate amount of taxes that should be paid on your Individual Settlement Allocation. Payments awarded to you will not form the basis for additional contributions to or benefits under any benefit plans, policies or bonus programs that may exist and/or be offered to you through, by or in conjunction with Axonics or any other Released Party.

WHAT IF I DON'T WANT TO PARTICIPATE IN THIS SETTLEMENT?

You have the right to request exclusion from the Settlement other than the release of PAGA claims. To do so, you must fill out and submit the Opt-Out Request Form included in this packet to the Settlement Administrator at the following address: PO Box 7208, Orange, CA 92863.

To be valid, the Opt-Out Request must include the Class Member's full name, address, Social Security Number or employee number, date, signature, and state that he or she "opts out" of the Settlement.

To be timely, the Opt-Out Request must be postmarked and mailed to the Settlement Administrator at the address below on or before October 11, 2022 (the "Response Deadline"). Requests for postmarked after this date may be disregarded.

Itzep v. Axonics Modulation Technologies, Inc. Class Action
c/o Phoenix Settlement Administrators
PO Box 7208
Orange, CA 92863
Telephone: (800) 523-5773

Any Class Members who submit a timely and valid Opt-Out Request will NOT receive any money from the Settlement of the class action claims and will not be bound by the release of the Settled Claims (defined above). Any Class Member who submits a timely and valid Opt-Out Request will also not have any right to object, appeal or comment on the Settlement. The only exception is that if you are also a "PAGA Employee" you will still release the Settled PAGA Claims (defined above) and receive a portion of the PAGA Award as there is no right to opt out of the PAGA release.

Class Members who do **not** submit a timely and valid Opt-Out Request on or before the Response Deadline will be deemed "Participating Class Members." As described above, each Participating Class member will receive an Individual Settlement Payment and will be bound by all terms of the Settlement and the final approval order entered in this Action.

WHAT IF I WANT TO OBJECT TO THIS SETTLEMENT?

Any Participating Class Member (that is, Class Member who has not asked to be excluded from the Settlement) may object to the Settlement. If you object to the Settlement, you may, but you are not required to, appear at the hearing where the Court will make a final decision whether or not to approve the Settlement (“Final Approval Hearing”). The Final Approval Hearing is scheduled to take place on January 13, 2023, at 1:30 p.m. in Department CX101 of the Orange County Superior Court, located at the address below. The hearing may be continued (moved to another date) without further notice to you. Class Members are advised to confirm the hearing date with Class Counsel if they intend to appear at the Final Approval Hearing.

If you wish to object in writing, you may submit a written objection to the Settlement Administrator at the following address: PO Box 7208, Orange, CA 92863. To be valid, the written objection must be signed by the Class Member and state: (1) the full name of the Class Member; (2) address of the Class Member; (3) Social Security Number or employee ID number of the Class Member; (4) the basis for the objection; and (5) if the Class Member intends to appear at the Final Approval Hearing. A Class Member who wishes to object must submit his or her objection to the Settlement Administrator no later than October 11, 2022. The Parties shall be permitted to file responses to the objection in addition to any motion for final approval documents. You may also object in person by appearing at the Final Approval Hearing

The Court has decided that the law firms listed below under “CLASS COUNSEL” are qualified to represent the Participating Class Members and PAGA Members. However, you have the right to retain your own attorney, at your own expense, to submit an objection or appear on your behalf at the Final Approval Hearing.

<p>CLASS COUNSEL</p> <p>DOUGLAS HAN SHUNT TATAVOS-GHARAJEH PHILLIP SONG JUSTICE LAW CORPORATION 751 N. Fair Oaks Avenue, Suite 101 Pasadena, CA 91103 Telephone: (818) 230-7502 Facsimile: (818)230-7259</p>	<p>DEFENDANT’S COUNSEL</p> <p>JOSHUA LEVINE KRYSTAL WEAVER LITTLER MENDELSON, P.C. 501 W. Broadway #900 San Diego, CA 92101</p> <hr/> <p>THE COURT</p> <p>CIVIL COMPLEX CENTER 751 West Santa Ana Blvd. Santa Ana, CA 92701</p>
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Submitting an objection will *not* exclude you from the Settlement. If the Court grants final approval of the Settlement, you will still receive an Individual Settlement Allocation and will release and be barred from pursuing the Settled Claims and Settled PAGA Claims. Do not submit both an objection and Opt-Out Request.

WHAT HAPPENS IF I DO NOT EXCLUDE MYSELF FROM THIS SETTLEMENT?

The Settlement, if finally approved by the Court, will bind all Participating Class Members (defined above) and PAGA Employees whether or not they receive or timely cash their Individual Settlement Allocations. Final approval of the Settlement will bar any Class Member who does not request to be excluded from the Settlement from hereafter initiating a lawsuit or proceeding regarding any Settled Claims and PAGA Employees and the LWDA from pursuing released Settled PAGA Claims. The Settlement Agreement on file with the Court contains additional details about the scope of the releases and additional details regarding the Settlement.

FURTHER INFORMATION

The foregoing is only a summary of the Settlement. The Settlement, pleadings and all other records of this litigation may be examined and copied any time during regular office hours in the Clerk's Office of the Orange County Superior Court listed above as "THE COURT." In addition, you may obtain these records on the Orange County Superior Court's website at www.occourts.org. Specifically, once you reach this website, click on the "Online Service" tab on the top. Next, click on the "Case Access" tab on the top left corner of the new webpage. Once you reach the new webpage, click on "Access Now" next to Civil Case & Document Access. Finally, you will need to accept the terms of the Information Disclaimer, enter the case number 30-2020-01140962-CU-OE-CXC, and confirm you are not a robot.

If you have any questions about the Settlement, you can contact Class Counsel, whose contact information is listed above in "CLASS COUNSEL" or the Settlement Administrator at:

Phoenix Settlement Administrators
PO Box 7208
Orange, CA 92863
Telephone: (800) 523-5773

You may seek the advice and guidance of your own attorney at your own expense.

Any deadline to submit an Opt-Out Request, object or dispute the pay periods will be extended by 10 days if you were re-mailed the notice. Whether the Notice has been re-mailed or not will be indicated on the envelope.

PLEASE DO NOT TELEPHONE OR CONTACT THE COURT OR DEFENDANT'S COUNSEL FOR INFORMATION REGARDING THIS SETTLEMENT.

IF YOU HAVE ANY QUESTIONS ABOUT THE SETTLEMENT OR ANYTHING IN THIS NOTICE YOU CAN CONTACT THE CLAIMS ADMINISTRATOR AT (800) 523-5773, PO BOX 7208, ORANGE, CA 92863 . YOU MAY ALSO CONTACT CLASS COUNSEL WHOSE INFORMATION IS LISTED ABOVE. ALTERNATIVELY, YOU CAN SEEK ADVICE FROM YOUR OWN COUNSEL AT YOUR OWN EXPENSE.