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on behalf of himself and all others similarly situated

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

17 **COUNTY OF ORANGE**

18 ERIC KINGERY individually and on behalf
19 of all others similarly situated,

20 Plaintiff,

21 v.

22 ACERA HEALTH, LLC; a Delaware Limited
23 Liability Company; and DOES 1 through 20,
INCLUSIVE.

24 Defendants.

Case No.: 30-2024-01402619-CU-OE-CXC
[Related: Case No. 30-2024-01416779-CU-OE-CXC]

CLASS ACTION

[Assigned For All Purposes To: Hon. Layne H. Melzer]

AMENDED CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

Complaint filed: May 28, 2024
Trial date: Not set

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiff Eric Kingery (“Plaintiff”) and Defendant Acera Health, LLC. The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS

- 1.1. “Actions” mean the Plaintiff’s class action lawsuit alleging wage and hour violations against Defendant initiated on May 28, 2024, Case No. 30-2024-01402619-CU-OECXC (“Class Action”), and Plaintiff’s PAGA lawsuit based on the same wage and hour violations and initiated on or about August 2, 2024, Case No. 30-2024-01416779-CU-OECXC (“PAGA Action”), both of which are pending in Superior Court of the State of California, County of Orange.
- 1.2. “Administrator” means Apex Class Action LLC, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Aggrieved Employee” means an individual who worked for Defendant in California as hourly, non-exempt employees at any time during the PAGA Period.
- 1.5. “Class” means all individuals who worked for Defendant in California as hourly, non-exempt employees at any time during the Class Period.
- 1.6. “Class Counsel” means James Hawkins APLC.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Actions.
- 1.8. “Class Data” means Class Member identifying information in Defendant’s possession including the Class Member’s name, last-known mailing address, Social Security number,

1 and number of Class Period Workweeks and PAGA Pay Periods.

2 1.9. "Class Member" or "Settlement Class Member" means a member of the Class, as either a
3 Participating Class Member or Non-Participating Class Member (including a Non-
4 Participating Class Member who qualifies as an Aggrieved Employee).

5 1.10. "Class Member Address Search" means the Administrator's investigation and search for
6 current Class Member mailing addresses using all reasonably available sources, methods
7 and means including, but not limited to, the National Change of Address ("NCOA")
8 database, skip traces, and direct contact by the Administrator with Class Members.

9 1.11. "Class Notice" means the COURT APPROVED NOTICE OF CLASS ACTION
10 SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed
11 to Class Members in English with a Spanish translation, if applicable, in the form, without
12 material variation unless otherwise agreed by the Parties, attached as Exhibit A and
13 incorporated by reference into this Agreement. The Parties, through counsel, may agree to
14 modifications to the Class Notice required to correct errors or effectuate changes required
15 by the Court without the need to amend this Agreement, and the revised Class Notice shall
16 be incorporated herein in place of the original Exhibit A.

17 1.12. "Class Period" means the period from January 1, 2022, through December 31, 2024.

18 1.13. "Class Representative" means the named Plaintiff in the Actions seeking Court approval to
19 serve as a Class Representative.

20 1.14. "Class Representative Service Payment" means the payment to the Class Representative for
21 initiating the Actions and providing services in support of the Actions.

22 1.15. "Court" means the Superior Court of California, County of Orange.

23 1.16. "Defendant" means named Defendant Acera Health, LLC.

24 1.17. "Defense Counsel" means Gordon, Rees, Scully, Mansukhani, LLP (GRSM) and CDF
25 Labor Law LLP.

26 1.18. "Effective Date" means: (a) the date the Court enters the Final Judgment and order finally
27 approving the Settlement, if no objections, motions for reconsideration and no appeals or
28 other efforts to obtain review have been filed, or (b) in the event that a motion for

1 reconsideration, an appeal or other effort to obtain review of the Final Judgment and order
2 finally approving the Settlement, the date sixty (60) days after such reconsideration, appeal
3 or review has been finally concluded and is no longer subject to review, whether by appeal,
4 petition for rehearing, petition for review or otherwise and the Settlement has not been
5 materially modified.

6 1.19. "Final Approval" means the Court's order granting final approval of the Settlement.

7 1.20. "Final Approval Hearing" means the Court's hearing on the motion for final approval of the
8 Settlement.

9 1.21. "Gross Settlement Amount" means One Hundred and Forty- Two Thousand (\$142,000.00)
10 which is the total amount Defendant agrees to pay under the Class and PAGA portions of
11 the Settlement except as provided in Paragraphs 3.1 and 8 below. The Gross Settlement
12 Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the
13 LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses
14 Payment, Class Representative Service Payment and the Administration Expenses Payment.

15 1.22. "Individual Class Payment" means the Participating Class Member's pro rata share of the
16 Net Settlement Amount calculated according to the number of Workweeks worked during
17 the Class Period.

18 1.23. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the
19 PAGA Penalties calculated according to the number of PAGA Pay Periods worked during
20 the PAGA Period.

21 1.24. "Judgment" means the judgment entered by the Court based upon the Final Approval.

22 1.25. "LWDA" means the California Labor and Workforce Development Agency, the agency
23 entitled, under Labor Code § 2699(i).

24 1.26. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under
25 Labor Code § 2699(i).

26 1.27. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments
27 in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA
28 Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class

1 Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The
2 remainder is to be paid to Participating Class Members as Individual Class Payments.

3 1.28. "Non-Participating Class Member" means any Class Member who opts out of the Class
4 portion of the Settlement by sending the Administrator a valid and timely Request for
5 Exclusion.

6 1.29. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked
7 for Defendant for at least two days during the PAGA Period.

8 1.30. "PAGA Period" means the period from May 28, 2023, through December 31, 2024.

9 1.31. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).

10 1.32. "PAGA Notice" means Plaintiff's PAGA letter to Defendant and the LWDA providing
11 notice pursuant to Labor Code § 2699.3(a).

12 1.33. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross
13 Settlement Amount, allocated 25% to the Aggrieved Employees (\$2000.00) and the 75% to
14 LWDA (\$6000.00) in settlement of PAGA claims.

15 1.34. "Participating Class Member" means a Class Member who does not submit a valid and
16 timely Request for Exclusion from the Class portion of the Settlement.

17 1.35. "Plaintiff" means Eric Kingery, the named plaintiff in the Actions.

18 1.36. "Preliminary Approval" means the Court's order granting preliminary approval of the Class
19 portion of the Settlement.

20 1.37. "Preliminary Approval Order" means the proposed order granting preliminary approval of
21 the Class portion of the Settlement.

22 1.38. "Released Class Claims" means the claims being released as described in Paragraph 5.2
23 below.

24 1.39. "Released PAGA Claims" means the claims being released as described in Paragraph 5.3
25 below.

26 1.40. "Released Parties" means: Defendant and each of its former, and current owners, parents,
27 and subsidiaries, and all of their current and former officers, Mark Cirlin, directors, lenders,
28 members, managers, employees, consultants, partners, shareholders, joint venturers, agents,

1 predecessors, successors, assigns, accountants, insurers, reinsurers, and/or legal
2 representatives.

3 1.41. "Request for Exclusion" means a Class Member's submission of a written request to be
4 excluded from the Class Settlement signed by the Class Member.

5 1.42. "Response Deadline" means 60 days after the Administrator mails Notice to Class Members
6 and Aggrieved Employees and shall be the last date on which Class Members may: (a) fax,
7 email, or mail Requests for Exclusion from the Class portion of the Settlement, (b) fax,
8 email, or mail his or her Objection to the Settlement, or (c) fax, email, or mail his or her
9 Challenge to Calculation of Workweeks. The Response Deadline for Class Members to
10 whom Notice Packets are resent after having been returned undeliverable to the
11 Administrator shall be extended by 14 calendar days beyond the original Response Deadline.

12 1.43. "Settlement" means the disposition of the Actions effected by this Agreement and the
13 Judgment.

14 1.44. "Workweek" means any week during which a Class Member worked for Defendant for at
15 least one day, during the Class Period.

16 **2. RECITALS**

17 2.1. On May 28, 2024, Plaintiff commenced the Class Action by filing a Complaint alleging
18 causes of action against Defendant for failure to pay minimum wages, failure to pay overtime
19 compensation, failure to provide meal periods, failure to authorize and permit rest breaks,
20 failure to indemnify necessary business expenses, failure to timely pay final wages at
21 termination, failure to pay on-call time wages, failure to provide accurate itemized wage
22 statements and pay earned vacation wages, and unfair business practices. On June 12, 2024,
23 Plaintiff filed the PAGA Action alleging claims for penalties pursuant to Labor Code § 2699,
24 *et seq.* Defendant denies the allegations in the Actions, deny any failure to comply with the
25 laws identified in in the Actions and deny any and all liability for the causes of action alleged.

26 2.2. Pursuant to Labor Code § 2699.3(a), Plaintiff gave timely written notice to Defendant and
27 the LWDA by sending the PAGA Notice.

28 2.3. On June 9, 2025, the Parties participated in an all-day mediation presided over by

1 experienced, neutral mediator Gig Kyriacou, which led to this Agreement to settle the
2 Actions.

3 2.4. Prior to mediation, Plaintiff obtained, through informal discovery: (1) a representative
4 randomized sampling of corresponding time and payroll records for the putative class; (2)
5 company handbooks and written policies in effect during the Class and PAGA Periods; (3)
6 Plaintiff's personnel records and employment files; (4) Class data points, including, for both
7 current and formerly-employed Class Members between the start of the Class Period and the
8 date of mediation total numbers of Class Members, average hourly rates, and approximate
9 numbers of workweeks worked, pay periods, and wage statements issued; and (5) PAGA
10 (and wage statement penalty) group data points, including, for both current and formerly-
11 employed Aggrieved Employees between the start of the PAGA Period and the date of
12 mediation, total numbers of Aggrieved Employees, average hourly rates, and approximate
13 numbers of workweeks worked, pay periods, and wage statements issued. Plaintiff's
14 investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot*
15 *Locker Retail, Inc.*, 48 Cal. App. 4th 1794, 1801 (1996) and *Kullar v. Foot Locker Retail,*
16 *Inc.*, 168 Cal. App. 4th 116, 129-130 (2008) ("*Dunk/Kullar*").

17 2.5. The Court has not granted class certification.

18 2.6. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any
19 other pending matter or action asserting claims that will be extinguished or affected by the
20 Settlement, other than Plaintiff's/ Class Counsel's PAGA action in the same Court (case
21 number 30-2024-01416779-CU-OECXC.) Class Counsel amended (or will amend)
22 Plaintiff's class complaint to incorporate the PAGA action filed under case number 30-
23 2024-01402619-CU-OECXC.

24 3. **MONETARY TERMS**

25 3.1. **Gross Settlement Amount.** Except as otherwise provided by Paragraph 8 below, Defendant
26 promise to pay **One-Hundred Forty-Two Thousand Dollars and Zero Cents**
27 **(\$142,000.00) and no more as the Gross Settlement Amount** and to separately pay any
28 and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments.

1 Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior
2 to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse
3 the entire Gross Settlement Amount without asking or requiring Participating Class
4 Members or Aggrieved Employees to submit any claim as a condition of payment. None of
5 the Gross Settlement Amount will revert to Defendant.

6 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the
7 following payments from the Gross Settlement Amount, in the amounts specified by the
8 Court in the Final Approval:

9 3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of
10 not more than \$2,500.00 in addition to any Individual Class Payment and any
11 Individual PAGA Payment the Class Representative is entitled to receive as a
12 Participating Class Member. Defendant will not oppose Plaintiff's request for a
13 Class Representative Service Payment that does not exceed this amount. If the Court
14 approves a Class Representative Service Payment less than the amount requested,
15 the Administrator will retain the remainder in the Net Settlement Amount. The
16 Administrator will pay the Class Representative Service Payment using IRS Form
17 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on
18 the Class Representative Service Payment.

19 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than in the amount
20 of 1/3 (33.33%) of the Gross Settlement Amount, which is currently \$47,328.60,
21 ("Class Counsel's Fees") and a Class Counsel Litigation Expenses Payment of not
22 more than \$27,000.00. Defendant will not oppose requests for these payments
23 provided that they do not exceed these amounts. Plaintiff and/or Class Counsel will
24 file a motion for Class Counsel Fees Payment and Class Litigation Expenses
25 Payment no later than 16 court days prior to the Final Approval Hearing. If the Court
26 approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses
27 Payment less than the amounts requested, the Administrator will allocate the
28 remainder to the Net Settlement Amount. Released Parties shall have no liability to

1 Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion
2 any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment.
3 The Administrator will pay the Class Counsel Fees Payment and Class Counsel
4 Litigation Expenses Payment using one or more IRS 1099 Forms. Class Counsel
5 assumes full responsibility and liability for taxes owed on the Class Counsel Fees
6 Payment and the Class Counsel Litigation Expenses Payment and holds Defendant
7 harmless, and indemnifies Defendant, from any dispute or controversy regarding any
8 division or sharing of any of these Payments.

9 3.2.3. To the Administrator: An Administration Expenses Payment not to exceed
10 \$5,500.00 except for a showing of good cause and as approved by the Court. To the
11 extent the Administration expenses are less or the Court approves payment less than
12 \$5,500.00, the Administrator will retain the remainder in the Net Settlement
13 Amount.

14 3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by
15 (a) dividing the Net Settlement Amount by the total number of Workweeks worked
16 by all Participating Class Members during the Class Period and (b) multiplying the
17 result by each Participating Class Member's Workweeks.

18 3.2.4.1. Tax Allocation of Individual Class Payments. 20% of each Participating
19 Class Member's Individual Class Payment will be allocated to settlement of
20 wage claims (the "Wage Portion"). The Wage Portions are subject to tax
21 withholding and will be reported on an IRS W-2 Form. The 80% of each
22 Participating Class Member's Individual Class Payment will be allocated to
23 settlement of claims for interest and penalties (the "Non-Wage Portion").
24 The Non-Wage Portions are not subject to wage withholdings and will be
25 reported on IRS 1099 Forms. Participating Class Members assume full
26 responsibility and liability for any employee taxes owed on their Individual
27 Class Payment.

28 3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual

Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Workweeks of Non-Participating Class Members are not included in the calculation of payments to Participating Class Members and therefor have no effect on the calculation of Individual Class Payments paid from the Net Settlement Amount.

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$8,000.00 to be paid from the Gross Settlement Amount, with 75% (\$6,000.00) allocated to the LWDA PAGA Payment and 25% (\$2,000.00) allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties \$2,000.00 by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. 100% of the PAGA penalties will be allocated as non-wages. These penalties will not subject to wage withholdings and will be reported on IRS 1099 Forms..

3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099-MISC Forms.

4. SETTLEMENT FUNDING AND PAYMENTS

4.1. Class Workweeks and Aggrieved Employee Pay Periods. Defendant's records evidence 161 Class Members who collectively worked a total of 4,577 Workweeks and 124 Aggrieved Employees who worked a total of 1,763 PAGA Pay Periods.

4.2. Class Data. Not later than 30 days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a

1 Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator
2 must maintain the Class Data in confidence, use the Class Data only for purposes of this
3 Settlement and for no other purpose, and restrict access to the Class Data to Administrator
4 employees who need access to the Class Data to effect and perform under this Agreement.
5 Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the
6 Class Data omitted class member identifying information and to provide corrected or
7 updated Class Data as soon as reasonably feasible. Without any extension of the deadline
8 by which Defendants must send the Class Data to the Administrator, the Parties and their
9 counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve
10 any issues related to missing or omitted Class Data.

11 4.3. **Funding of Gross Settlement Amount.** Defendant shall fully fund the Gross Settlement
12 Amount and also fund the amounts necessary to fully pay Defendant's share of payroll
13 taxes (or within 10 days of the Settlement Administrator advising Defendant of the
14 amount of payroll taxes) by transmitting the funds to the agreed upon Settlement
15 Administrator by July 10, 2025. However, by July 10, 2025, Plaintiff must provide the
16 contact information of the Settlement Administrator, and the Settlement Administrator must
17 request an estimate of payroll taxes to be collected in addition to the Gross Settlement
18 Amount. The payments will be held in an interest-bearing account by the Administrator and
19 any interest earned will become part of the Gross Settlement Amount. In the event that the
20 Settlement is voided because approval is denied, it will be returned to Defendant promptly.

21 4.4. Payments from the Settlement Amount shall be made to Settlement Class Members after
22 Defendant fully funds the Settlement Amount and only if the Effective Date is triggered. In
23 the event that the Effective Date is not triggered, any payments made by Defendant to this
24 account and any accrued interest thereon shall be returned to Defendant by the settlement
25 administrator within five (5) business days. Payments shall be made to the designated third-
26 party Administrator and be credited to amounts owed separately by each party. The amounts
27 paid shall become non-refundable upon final approval of the settlement by the court.

28 4.5. The Effective Date shall be: (a) the date the Court enters the Final Judgment and order finally

1 approving the Settlement, if no objections, motions for reconsideration and no appeals or
2 other efforts to obtain review have been filed, or (b) in the event that a motion for
3 reconsideration, an appeal or other effort to obtain review of the Final Judgment and order
4 finally approving the Settlement, the date sixty (60) days after such reconsideration, appeal
5 or review has been finally concluded and is no longer subject to review, whether by appeal,
6 petition for rehearing, petition for review or otherwise and the Settlement has not been
7 materially modified. A "material modification" shall not include any change to the Class
8 Counsel Award, Class Representative Service Award, or amount awarded for Settlement
9 Administration Costs.

10 4.6. Payments from the Gross Settlement Amount. Within 14 days after Defendant funds the
11 entire Gross Settlement Amount and the Effective Date is triggered, the Administrator will
12 mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA
13 PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment,
14 the Class Counsel Litigation Expenses Payment, and the Class Representative Service
15 Payment.

16 4.6.1. The Administrator will issue checks for the Individual Class Payments and/or
17 Individual PAGA Payments and send them to the Class Members via First Class
18 U.S. Mail, postage prepaid. The face of each check shall prominently state the date
19 (not less than 180 days after the date of mailing) when the check will be voided. The
20 Administrator will cancel all checks not cashed by the void date. The Administrator
21 will send checks for Individual Settlement Payments to all Participating Class
22 Members (including those for whom Class Notice was returned undelivered). The
23 Administrator will send checks for Individual PAGA Payments to all Aggrieved
24 Employees including Non-Participating Class Members who qualify as Aggrieved
25 Employees (including those for whom Class Notice was returned undelivered). The
26 Administrator may send Participating Class Members a single check combining the
27 Individual Class Payment and the Individual PAGA Payment. Before mailing any
28 checks, the Settlement Administrator must update the recipients' mailing addresses

1 using the NCOA database.

2 4.6.2. The Administrator must conduct a Class Member Address Search for all other Class
3 Members whose checks are returned undelivered without a United States Postal
4 Service ("USPS") forwarding address. Within 7 days of receiving a returned check
5 the Administrator must re-mail checks to the USPS forwarding address provided or
6 to an address ascertained through the Class Member Address Search. The
7 Administrator need not take further steps to deliver checks to Class Members whose
8 re-mailed checks are returned as undelivered. The Administrator shall promptly
9 send a replacement check to any Class Member whose original check was lost or
10 misplaced, requested by the Class Member prior to the void date.

11 4.6.3. For any Class Member whose Individual Class Payment check or Individual PAGA
12 Payment check is uncashed and cancelled after the void date, the Administrator shall
13 transmit the funds represented by such checks to the California Controller's
14 Unclaimed Property Fund in the name of the Class Member thereby leaving no
15 "unpaid residue" subject to the requirements of California Code of Civil Procedure
16 § 384(b).

17 4.6.4. The payment of Individual Class Payments and Individual PAGA Payments shall
18 not obligate Defendant to confer any additional benefits or make any additional
19 payments to Class Members (such as 401(k) contributions or bonuses) beyond those
20 specified in this Agreement.

21 **5. RELEASES OF CLAIMS**

22 Effective on the date when Defendant fully funds the entire Gross Settlement Amount and fund all employer
23 payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and
24 Class Counsel will release claims against all Released Parties as follows:

25 5.1. Plaintiff's Release.

26 5.1.1. Scope of Plaintiff's Release. Plaintiff and his respective former and present spouses,
27 shall fully release Defendant, and Defendant's present and former companies,
28 parents, subsidiaries, affiliates, officers, shareholders, equity partners, partners,

1 owners, directors, trustees, current or former employees, vendors, contractors,
2 consultants, board of directors, and agents, as well as any of its representatives, Mark
3 Cirlin, attorneys, insurers, and/or any of the predecessors, successors and assigns of
4 Defendant, representatives, agents, attorneys, heirs, administrators, successors, and
5 assigns generally, release and discharge Released Parties from all claims,
6 transactions, or occurrences, including, but not limited to: (a) all claims that were, or
7 reasonably could have been, alleged, based on the facts contained, in the Actions and
8 (b) all PAGA claims that were, or reasonably could have been, alleged based on facts
9 contained in the Actions, Plaintiff's PAGA Notice, or ascertained during the Actions
10 and released under 5.2, below. ("Plaintiff's Release.") Plaintiff's Release does not
11 extend to any claims or actions to enforce this Agreement, or to any claims for vested
12 benefits, unemployment benefits, disability benefits, social security benefits,
13 workers' compensation benefits that arose at any time, or based on occurrences
14 outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or
15 law different from, or in addition to, the facts or law that Plaintiff now knows or
16 believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and
17 remain effective in all respects, notwithstanding such different or additional facts or
18 Plaintiff's discovery of them.

19 5.1.2. Plaintiff's Waiver of Rights Under California Civil Code § 1542. For purposes of
20 Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights,
21 and benefits, if any, of Section 1542 of the California Civil Code, which reads:

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

25 5.2. Release by Participating Class Members: All Participating Class Members, on behalf of
26 themselves and their respective former and present representatives, agents, attorneys, heirs,
27 administrators, successors, and assigns, release Released Parties from (i) all claims that were
28 alleged, or reasonably could have been alleged, based on the facts alleged in the Actions

1 including, e.g., (1) any and all claims involving any alleged failure to pay minimum wage;
2 (2) any alleged failure to pay overtime wages; (3) any alleged failure to provide compliant
3 meal periods, or compensation in lieu thereof; (4) any alleged failure to provide compliant
4 rest breaks, or compensation in lieu thereof; (5) any alleged failure to indemnify/reimburse
5 necessary business expenses; (6) any alleged failure to pay wages due upon separation; (7)
6 any alleged failure to provide compliant accurate itemized wage statements; and (8) any
7 alleged unlawful, unfair, or fraudulent business actions or practices under Business and
8 Professions Code §§ 17200, et seq. arising out of the Labor Code and Industrial Welfare
9 Commission (“IWC”) Wage Order violations referenced in the Actions. This release does
10 not include claims for vested benefits, wrongful termination, violation of the Fair
11 Employment and Housing Act, unemployment insurance, disability, social security,
12 workers’ compensation, or claims based on facts occurring outside the Class Period.

13 5.3. Release by Aggrieved Employees: All Aggrieved Employees are deemed to release, on
14 behalf of themselves and their respective former and present representatives, agents,
15 attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims
16 for PAGA penalties that were alleged, or reasonably could have been alleged, based on the
17 facts stated in the Actions and the PAGA Notice including, e.g., (1) any and all claims
18 involving any alleged failure to pay minimum wage; (2) any alleged failure to pay overtime
19 wages; (3) any alleged failure to provide compliant meal periods, or compensation in lieu
20 thereof; (4) any alleged failure to provide compliant rest breaks, or compensation in lieu
21 thereof; (5) any alleged failure to indemnify/reimburse necessary business expenses; (6) any
22 alleged failure to pay wages due upon separation; (7) any alleged failure to provide
23 compliant accurate itemized wage statements.

24 **6. MOTION FOR PRELIMINARY APPROVAL**

25 The Parties agree to jointly prepare and file a motion for preliminary approval (“Motion for Preliminary
26 Approval”) that complies with the Court’s current checklist for preliminary approvals, to the extent the Court
27 maintains such a checklist.

28 6.1. Because funds from uncashed checks will be transmitted to the California Controller’s

1 Office, Unclaimed Property Fund, Defendant and Defense counsel have no obligation to
2 provide declarations disclosing any facts relevant to any actual or potential conflicts with a
3 “*cy pres* recipient”.

4 6.2. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for
5 expeditiously finalizing and filing the Motion for Preliminary Approval after the full
6 execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary
7 Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary
8 Approval. Class Counsel is responsible for delivering the Court’s Preliminary Approval to
9 the Administrator.

10 6.3. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for
11 Preliminary Approval and/or the supporting declarations and documents, Class Counsel and
12 Defense Counsel will expeditiously work together on behalf of the Parties by meeting in
13 person or by telephone, and in good faith, to resolve the disagreement. If the Court does not
14 grant Preliminary Approval or conditions Preliminary Approval on any material change to
15 this Agreement, Class Counsel and Defense Counsel will expeditiously work together on
16 behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the
17 Agreement and otherwise satisfy the Court’s concerns.

18 7. SETTLEMENT ADMINISTRATION

19 7.1. Selection of Administrator. The Parties have jointly selected Apex Class Action LLC
20 (“Apex”) to serve as the Administrator and verified that, as a condition of appointment,
21 Apex, agrees to be bound by this Agreement and to perform, as a fiduciary, all duties
22 specified in this Agreement in exchange for payment of Administration Expenses. The
23 Parties and their Counsel represent that they have no interest or relationship, financial or
24 otherwise, with the Administrator other than a professional relationship arising out of prior
25 experiences administering settlements.

26 7.2. Employer Identification Number. The Administrator shall have and use its own Employer
27 Identification Number for purposes of calculating payroll tax withholdings and providing
28 reports state and federal tax authorities.

1 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets
2 the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation §
3 468B-1.

4 7.4. Notice to Class Members.

5 7.4.1. No later than three (3) business days after receipt of the Class Data, the Administrator
6 shall notify Class Counsel that the list has been received and state the number of
7 Class Members, Aggrieved Employees, Workweeks, and Pay Periods in the Class
8 Data.

9 7.4.2. Using best efforts to perform as soon as possible, and in no event later than 14 days
10 after receiving the Class Data, the Administrator will send to all Class Members
11 identified in the Class Data, via first-class USPS mail, the Class Notice substantially
12 in the form attached to this Agreement as Exhibit A. The first page of the Class
13 Notice shall prominently estimate the dollar amounts of each Individual Class
14 Payment and/or Individual PAGA Payment payable to the Class Member and/or
15 Aggrieved Employee, and the number of Workweeks and PAGA Pay Periods (if
16 applicable) used to calculate these amounts. Before mailing Class Notices, the
17 Administrator shall update Class Member addresses using the NCOA database.

18 7.4.3. Not later than 3 business days after the Administrator's receipt of any Class Notice
19 returned by the USPS as undelivered, the Administrator shall re-mail the Class
20 Notice using any forwarding address provided by the USPS. If the USPS does not
21 provide a forwarding address, the Administrator shall conduct a Class Member
22 Address Search, and re-mail the Class Notice to the most current address obtained.
23 The Administrator has no obligation to make further attempts to locate or send Class
24 Notice to Class Members whose Class Notice is returned by the USPS a second time.

25 7.4.4. The deadlines for Class Members' written objections, challenges to Workweeks
26 and/or pay periods, and Requests for Exclusion will be extended an additional 14
27 days beyond the 60 days otherwise provided in the Class Notice for all Class
28 Members whose notices are re-mailed. The Administrator will inform the Class

1 Member of the extended deadline with the re-mailed Class Notice.

2 7.4.5. If the Administrator, Defendant or Class Counsel is contacted by or otherwise
3 discovers any persons who believe they should have been included in the Class Data
4 and should have received Class Notice, the Parties will expeditiously meet and
5 confer in person or by telephone, and in good faith in an effort to agree on whether
6 to include them as Class Members. If the Parties agree, such persons will be Class
7 Members entitled to the same rights as other Class Members, and the Administrator
8 will send, via email or overnight delivery, a Class Notice requiring them to exercise
9 options under this Agreement not later than 14 days after receipt of Class Notice, or
10 the deadline dates in the Class Notice, which ever are later.

11 7.5. Requests for Exclusion (Opt-Outs).

12 7.5.1. Class Members who wish to exclude themselves (opt-out of) the Class portion of the
13 Settlement must send the Administrator, by fax, email, or mail, a signed written
14 Request for Exclusion not later than 60 days after the Administrator mails the Class
15 Notice (plus an additional 14 days for Class Members whose Class Notice is re-
16 mailed). A Request for Exclusion is a letter from a Class Member or his/her
17 representative that reasonably communicates the Class Member's election to be
18 excluded from the Class portion of the Settlement and includes the Class Member's
19 name, address and email address or telephone number. To be valid, a Request for
20 Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

21 7.5.2. The Administrator may not reject a Request for Exclusion as invalid because it fails
22 to contain all the information specified in the Class Notice. The Administrator shall
23 accept any Request for Exclusion as valid if the Administrator can reasonably
24 ascertain the identity of the person as a Class Member and the Class Member's desire
25 to be excluded. If the Administrator has reason to question the authenticity of a
26 Request for Exclusion, the Administrator may demand additional proof of the Class
27 Member's identity. The Administrator's determination of authenticity shall be final
28 as to the Parties, but a Class Member whose Request for Exclusion is rejected by the

1 Administrator may present a challenge to that determination to the Court. The
2 Court's determination on the validity and authenticity of requests for exclusion shall
3 be final.

4 7.5.3. Every Class Member who does not submit a timely and valid Request for Exclusion
5 is deemed to be a Participating Class Member under this Agreement, entitled to all
6 benefits and bound by all terms and conditions of the Settlement, including the
7 Participating Class Members' Releases under Paragraphs 5.2 and 5.3 of this
8 Agreement, regardless whether the Participating Class Member actually receives the
9 Class Notice or objects to the Settlement.

10 7.5.4. Every Class Member who submits a valid and timely Request for Exclusion is a
11 Non-Participating Class Member and shall not receive an Individual Class Payment
12 or have the right to object to the class action components of the Settlement. Because
13 future PAGA claims are subject to claim preclusion upon entry of the Judgment,
14 Non-Participating Class Members who are Aggrieved Employees are deemed to
15 release the claims identified in Paragraph 5.3 of this Agreement and are eligible for
16 an Individual PAGA Payment.

17 7.6. Challenges to Calculation of Workweeks. Each Class Member shall have 60 days after the
18 Administrator mails the Class Notice (plus an additional 14 days for Class Members whose
19 Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay
20 Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may
21 challenge the allocation by communicating with the Administrator via fax, email or mail.
22 The Administrator must encourage the challenging Class Member to submit supporting
23 documentation. In the absence of any contrary documentation, the Administrator is entitled
24 to presume that the Workweeks contained in the Class Notice are correct so long as they are
25 consistent with the Class Data. The Administrator's determination of each Class Member's
26 allocation of Workweeks and/or PAGA Pay Periods shall be final as to the Parties (although
27 Defendant shall retain the right to correct erroneous Class Data if subsequently discovered),
28 but a Class Member whose Workweek and/or Pay Period challenge is rejected by the

1 Administrator may present the same evidence supporting the Workweek and/or Pay Period
2 challenge to the Court for review. The Administrator shall promptly provide copies of all
3 challenges to calculation of Workweeks and/or PAGA Pay Periods to Defense Counsel and
4 Class Counsel and the Administrator's determination the challenges.

5 7.7. Objections to Settlement

6 7.7.1. Only Participating Class Members may object to the class action components of the
7 Settlement and/or this Agreement, including contesting the fairness of the
8 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class
9 Counsel Litigation Expenses Payment and/or Class Representative Service
10 Payment.

11 7.7.2. Participating Class Members may send written objections to the Administrator, by
12 fax, email, or mail. In the alternative, Participating Class Members may appear in
13 Court (or hire an attorney to appear in Court) to present verbal objections at the Final
14 Approval Hearing. A Participating Class Member who elects to send a written
15 objection to the Administrator must do so not later than 60 days after the
16 Administrator's mailing of the Class Notice (plus an additional 14 days for Class
17 Members whose Class Notice was re-mailed).

18 7.7.3. Non-Participating Class Members have no right to object to any of the class action
19 components of the Settlement.

20 7.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be
21 performed or observed by the Administrator contained in this Agreement or otherwise.

22 7.8.1. Website, Email Address and Toll-Free Number. The Administrator will establish
23 and maintain and use an internet website to post information of interest to Class
24 Members including the date, time and location for the Final Approval Hearing and
25 copies of the Settlement Agreement, Motion for Preliminary Approval, the
26 Preliminary Approval Order, the Class Notice, the motion for final approval, the
27 Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses
28 Payment and Class Representative Service Payment, the Final approval Order and

1 the Judgment. The Administrator will also maintain and monitor an email address
2 and a toll-free telephone number to receive Class Member calls, faxes and emails.

3 7.8.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will
4 promptly review on a rolling basis Requests for Exclusion to ascertain their validity.
5 Not later than 5 days after the expiration of the deadline for submitting Requests for
6 Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel
7 containing (a) the names and other identifying information of Class Members who
8 have timely submitted valid Requests for Exclusion ("Exclusion List"); (b) the
9 names and other identifying information of Class Members who have submitted
10 invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from
11 Settlement submitted (whether valid or invalid).

12 7.8.3. Weekly Reports. The Administrator must, on a weekly basis, provide written reports
13 to Class Counsel and Defense Counsel that, among other things, tally the number of
14 Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for
15 Exclusion (whether valid or invalid) received, objections received, and challenges to
16 Workweeks and/or PAGA Pay Periods received and/or resolved ("Weekly Report").
17 The Weekly Reports must include provide the Administrator's assessment of the
18 validity of Requests for Exclusion and attach copies of all Requests for Exclusion
19 and objections received. In addition to the Weekly Reports, the Administrator shall
20 report to the Parties when it has completed the initial distribution of the Individual
21 Class Payments and Individual PAGA Payments to all individuals with valid
22 addresses.

23 7.8.4. Workweek and/or Pay Period Challenges. The Administrator has the authority to
24 address and make decisions consistent with the terms of this Agreement on all Class
25 Member challenges over the calculation of Workweeks and/or PAGA Pay Periods.
26 The Administrator's determination of each Class Member's allocation of
27 Workweeks and/or PAGA Pay Periods shall be final as to the Parties (although
28 Defendant shall retain the right to correct erroneous Class Data if subsequently

1 discovered), but a Class Member whose Workweek and/or Pay Period challenge is
2 rejected by the Administrator may present the same evidence supporting the
3 Workweek and/or Pay Period challenge to the Court for review.

4 7.8.5. Administrator's Declaration. Not later than 14 days before the date by which
5 Plaintiff is required to file the Motion for Final Approval of the Settlement, the
6 Administrator will provide to Class Counsel and Defense Counsel, a signed
7 declaration suitable for filing in Court attesting to its due diligence and compliance
8 with all of its obligations under this Agreement, including, but not limited to, its
9 mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of
10 Class Notices, attempts to locate Class Members, the total number of Requests for
11 Exclusion from Settlement it received (both valid or invalid), the number of written
12 objections and attach the Exclusion List. The Administrator will supplement its
13 declaration as needed or requested by the Parties and/or the Court. Class Counsel is
14 responsible for filing the Administrator's declaration(s) in Court.

15 7.8.6. Final Report by Settlement Administrator. Within 10 days after the Administrator
16 disburses all funds in the Gross Settlement Amount, the Administrator will provide
17 Class Counsel and Defense Counsel with a final report detailing its disbursements
18 by employee identification number only of all payments made under this Agreement.
19 At least 7 days before any deadline set by the Court, the Administrator will prepare,
20 and submit to Class Counsel and Defense Counsel, a signed declaration suitable for
21 filing in Court attesting to its disbursement of all payments required under this
22 Agreement. Class Counsel is responsible for filing the Administrator's declaration
23 in Court.

24 **8. CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE**

25 Based on its records, Defendant estimates that, as of the date of this Settlement Agreement, (1) there are 161
26 Class Members with 4,577 Total Workweeks during the Class period and (2) there were 124 Aggrieved
27 Employees who worked 1,763 Pay Periods during the PAGA Period.

28 8.1 Increase in Workweeks. If the number of workweeks is ten percent (10%) higher (increase of

1 more than 457.7 workweeks or in excess of 5,034 workweeks) then Defendant will increase the
2 Settlement Payments on a pro-rata increase in the Gross Settlement Amount equal to the percentage
3 increase in workweeks above 5,034.

4 DEFENDANT'S RIGHT TO WITHDRAW

5 If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10% of the total of all
6 Class Members, Defendant may, but is not obligated to, withdraw from the Settlement. The Parties agree
7 that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and
8 that neither Party will have any further obligation to perform under this Agreement; provided, however,
9 Defendant will remain responsible for paying all Settlement administration expenses incurred to that point.
10 Defendant must notify Class Counsel and the Court of its election to withdraw not later than seven (7) days
11 after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.
12

13 **9. MOTION FOR FINAL APPROVAL**

14 Not later than sixteen (16) court days before the calendared Final Approval Hearing, Plaintiff will file in
15 Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA
16 settlement under Labor Code § 2699(f), a Proposed Final Approval Order and a proposed Judgment
17 (collectively "Motion for Final Approval"). Plaintiff shall provide drafts of these documents to Defense
18 Counsel prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will
19 expeditiously meet and confer, and in good faith, to resolve any disagreements concerning the Motion for
20 Final Approval.

21 9.1. Response to Objections. Each Party retains the right to respond to any objection raised by a
22 Participating Class Member, including the right to file responsive documents in Court no
23 later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or
24 accepted by the Court.

25 9.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval
26 on any material change to the Settlement (including, but not limited to, the scope of release
27 to be granted by Class Members), the Parties will expeditiously work together in good faith
28 to address the Court's concerns by revising the Agreement as necessary to obtain Final

1 Approval. The Court's decision to award less than the amounts requested for the Class
2 Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation
3 Expenses Payment and/or Administration Expenses Payment shall not constitute a material
4 modification to the Agreement within the meaning of this paragraph.

5 9.3. Continuing Jurisdiction of the Court. The Parties agree that, pursuant to California Code of
6 Civil Procedure section 664.6 and California Rules of Court, rule 3.769(h), after entry of
7 Judgment, the Court will retain jurisdiction over the Parties, Actions, and the Settlement
8 solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing
9 settlement administration matters, and (iii) addressing such post-Judgment matters as are
10 permitted by law.

11 9.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
12 conditions of this Agreement, specifically including the Class Counsel Fees Payment and
13 Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties,
14 their respective counsel, and all Participating Class Members who did not object to the
15 Settlement as provided in this Agreement, waive all rights to appeal from the Judgment,
16 including all rights to post-judgment and appellate proceedings, the right to file motions to
17 vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of
18 appeal does not include any waiver of the right to oppose such motions, writs or appeals. If
19 an objector appeals the Judgment, the Parties' obligations to perform under this Agreement
20 will be suspended until such time as the appeal is finally resolved and the Judgment becomes
21 final.

22 9.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the
23 reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a
24 material modification of this Agreement (including, but not limited to, the scope of release
25 to be granted by Class Members), this Agreement shall be null and void. The Parties shall
26 nevertheless expeditiously work together in good faith to address the appellate court's
27 concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any
28 additional Administration Expenses reasonably incurred after remittitur. An appellate

1 decision to vacate, reverse, or modify the Court's award of the Class Representative Service
2 Payment or any payments to Class Counsel shall not constitute a material modification of
3 the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount
4 remains unchanged.

5 **10. AMENDED JUDGMENT**

6 If any amended judgment is required under Code of Civil Procedure § 384, the Parties will work together in
7 good faith to jointly submit and a proposed amended judgment.

8 **11. ADDITIONAL PROVISIONS**

9 11.1. No Admission of Liability, Class Certification or Representative Manageability for Other
10 Purposes. This Agreement represents a compromise and settlement of highly disputed
11 claims. Nothing in this Agreement is intended or should be construed as an admission by
12 Defendant that any of the allegations in the Actions have merit or that Defendant have any
13 liability for any claims asserted; nor should it be intended or construed as an admission by
14 Plaintiff that Defendant's defenses in the Actions have merit. The Parties agree that class
15 certification and representative treatment is for purposes of this Settlement only. If, for any
16 reason the Court does not grant Preliminary Approval, Final Approval or enter Judgment,
17 Defendant reserves the right to contest certification of any class for any reasons, and
18 Defendant reserves all available defenses to the claims in the Actions, and Plaintiff reserves
19 the right to move for class certification on any grounds available and to contest Defendant's
20 defenses. The Settlement, this Agreement and Parties' willingness to settle the Actions will
21 have no bearing on, and will not be admissible in connection with, any litigation (except for
22 proceedings to enforce or effectuate the Settlement and this Agreement).

23 11.2. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant and
24 Defense Counsel separately agree that, until the Motion for Preliminary Approval of
25 Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or
26 cause or permit another person to disclose, disseminate or publicize, any of the terms of the
27 Agreement directly or indirectly, specifically or generally, to any person, corporation,
28 association, government agency, or other entity except: (1) to the Parties' attorneys,

1 accountants, or spouses, all of whom will be instructed to keep this Agreement confidential;
2 (2) to counsel in a related matter; (3) to the extent necessary to report income to appropriate
3 taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an
4 inquiry or subpoena issued by a state or federal government agency. Each Party agrees to
5 immediately notify each other Party of any judicial or agency order, inquiry, or subpoena
6 seeking such information. Plaintiff, Class Counsel, Defendant and Defense Counsel
7 separately agree not to, directly or indirectly, initiate any conversation or other
8 communication, before the filing of the Motion for Preliminary Approval, with any third
9 party regarding this Agreement or the matters giving rise to this Agreement except to
10 respond only that "the matter was resolved," or words to that effect. This paragraph does not
11 restrict Class Counsel's communications with Class Members in accordance with Class
12 Counsel's ethical obligations owed to Class Members.

13 11.3. No Solicitation. The Parties separately agree that they and their respective counsel and
14 employees will not solicit any Class Member to opt out of or object to the Settlement, or
15 appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class
16 Counsel's ability to communicate with Class Members in accordance with Class Counsel's
17 ethical obligations owed to Class Members.

18 11.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement
19 together with its attached exhibits shall constitute the entire agreement between the Parties
20 relating to the Settlement, superseding any and all oral representations, warranties,
21 covenants, or inducements made to or by any Party.

22 11.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and
23 represent that they are authorized by Plaintiff and Defendant, respectively, to take all
24 appropriate action required or permitted to be taken by such Parties pursuant to this
25 Agreement to effectuate its terms, and to execute any other documents reasonably required
26 to effectuate the terms of this Agreement including any amendments to this Agreement.

27 11.6. Cooperation. The Parties and their counsel will cooperate with each other and use their best
28 efforts, in good faith, to implement the Settlement by, among other things, modifying the

1 Settlement Agreement, submitting supplemental evidence and supplementing points and
2 authorities as requested by the Court. In the event the Parties are unable to agree upon the
3 form or content of any document necessary to implement the Settlement, or on any
4 modification of the Agreement that may become necessary to implement the Settlement, the
5 Parties will seek the assistance of a mediator and/or the Court for resolution.

6 11.7. No Prior Assignments. The Parties separately represent and warrant that they have not
7 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
8 encumber to any person or entity and portion of any liability, claim, demand, action, cause
9 of action, or right released and discharged by the Party in this Settlement.

10 11.8. No Tax Advice. Neither Plaintiff, Class Counsel, Defendant, nor Defense Counsel are
11 providing any advice regarding taxes or taxability, nor shall anything in this Settlement be
12 relied upon as such within the meaning of United States Treasury Department Circular 230
13 (31 CFR Part 10, as amended) or otherwise.

14 11.9. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified,
15 changed, or waived only by an express written instrument signed by all Parties or their
16 representatives, and approved by the Court.

17 11.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the
18 benefit of, the successors of each of the Parties.

19 11.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be
20 governed by and interpreted according to the internal laws of the state of California, without
21 regard to conflict of law principles.

22 11.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this
23 Agreement. This Agreement will not be construed against any Party on the basis that the
24 Party was the drafter or participated in the drafting.

25 11.13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered
26 during the Actions and in this Agreement relating to the confidentiality of information shall
27 survive the execution of this Agreement.

28 11.14. Use and Return of Class Data. Information provided to Class Counsel pursuant to Evidence

1 Code § 1152, and all copies and summaries of the Class Data provided to Class Counsel by
2 Defendant in connection with the mediation, other settlement negotiations, or in connection
3 with the Settlement, may be used only with respect to this Settlement, and no other purpose,
4 and may not be used in any way that violates any existing contractual agreement, statute, or
5 rule of court. Not later than 90 days after the date when the Court discharges the
6 Administrator's obligation to provide a declaration confirming the final pay out of all
7 Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data
8 received from Defendant unless, prior to the Court's discharge of the Administrator's
9 obligation, Defendant makes a written request to Class Counsel for the return, rather than
10 the destructions, of Class Data.

11 11.15. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted
12 for convenience of reference only and does not constitute a part of this Agreement.

13 11.16. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be
14 to calendar days. In the event any date or deadline set forth in this Agreement falls on a
15 weekend or federal legal holiday, such date or deadline shall be on the first business day
16 thereafter.

17 11.17. Notice. All notices, demands or other communications between the Parties in connection
18 with this Agreement will be in writing and deemed to have been duly given as of the third
19 business day after mailing by United States mail, or the day sent by email or messenger,
20 addressed as follows:

21 To Plaintiff:

22 **JAMES HAWKINS APLC**

23 James R. Hawkins
24 james@jameshawkinsaplc.com
25 Christina M. Lucio
26 christina@jameshawkinsaplc.com
27 9880 Research Drive, Suite 200
28 Irvine, California 92618
Telephone: (949) 387-7200
Facsimile: (949) 387-6676

To Defendant:

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GRSM


Matthew Theriault
Email: Mtheriault@grsm.com
Daniela Theriault
Email: Dtheriault@grsm.com
Debra Ellwood Meppen
Email: DMeppen@grsm.com
Gordon Rees Scully Mansuskani
633 West Fifth Street, 52nd Floor
Los Angeles, CA 90071

11.18. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

11.19. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to Code of Civil Procedure § 583.330 to extend the date to bring a case to trial under Code of Civil Procedure § 583.310 for the entire period of this settlement process.

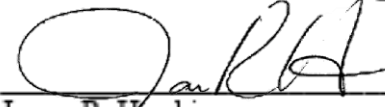
Plaintiff & Class Representative:

Dated: 03/30/2026

By: 
Eric Kingery

Plaintiff's Counsel:

Dated: 03/30/2026

JAMES HAWKINS APLC
By: 
James R. Hawkins
Christina M. Lucio

Attorneys for Plaintiff Eric Kingery

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Defendant:

Dated: March 27, 2026

On Behalf of Defendant: _____


By: ^{DocuSigned by:}
Mark Cirlin
Mark Cirlin, on behalf of Acera Health, LLC

Defendant's Counsel:

Gordon Rees Scully Mansukhani, LLP

Dated:

3/27/26

By: 

Daniela Theriault
Matthew Theriault
Debra Meppen
Attorneys for Defendant

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EXHIBIT A