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8 Attorneys for Plaintiff ERIC KINGERY  
on behalf of himself and all others similarly situated  
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF ORANGE**

12 ERIC KINGERY individually and on behalf  
13 of all others similarly situated,

14 Plaintiff,

15 v.

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

18 Defendants.  
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20  
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22

Case No.: 30-2024-01402619-CU-OECXC

CLASS ACTION

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

**PLAINTIFF'S NOTICE OF MOTION AND  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION AND  
PAGA SETTLEMENT**

Date: January 22, 2026  
Time: 2:00 p.m.  
Dept: CX102

Reservation #: 74637845

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

23  
24 **TO ALL PARTIES HEREIN AND THEIR ATTORNEYS OF RECORD:**

25 **PLEASE TAKE NOTICE** that on January 22, 2026 at 2:00 p.m., or as soon thereafter as  
26 counsel may be heard, in Department CX102 of the above-captioned court, located at 751 West  
27  
28

1 Santa Ana Blvd., Santa Ana, California 92701, the Honorable Layne H. Melzer presiding, Plaintiff  
2 Eric Kingery will, and hereby does, move this Court to:

3 1. Granting preliminary approval of the Settlement reached between Plaintiff and  
4 Defendant Acera Health, LLC (“Defendant”) (together with Plaintiff, “the Parties”), the terms of  
5 which are set forth in the Class Action and PAGA Settlement Agreement (the “Settlement  
6 Agreement” or the “Settlement”), attached as Exhibit 1 to the supporting Declaration of James R.  
7 Hawkins (“Hawkins Declaration”);

8 2. Finding the Parties’ proposed “Notice of Class Action and PAGA Settlement and Hearing  
9 Date for Final Court Approval” (“Class Notice”) attached as Exhibit A to the supporting  
10 Hawkins Declaration is the best means practicable of providing notice under the  
11 circumstances and when completed according to the terms of the Settlement shall constitute  
12 due and sufficient notice of this action, the Settlement, and the Final Approval Hearing to  
13 all persons affected by and/or authorized to participate in the Settlement in full compliance  
14 with California Rule of Court 3.769, California Code of Civil Procedure section 382, and  
15 the requirements of due process;

16 3. Approving the form and content of the proposed Class Notice and establishing a  
17 schedule for the dissemination of the Class Notice to Settlement Class Members as well as the  
18 deadlines for Settlement Class Members to object to the Settlement;

19 4. Conditionally certifying the proposed Settlement Class;

20 5. Appointing Eric Kingery as the representative for the Settlement Class;

21 6. Appointing James Hawkins, Christina Lucio, and Samantha Jones of James  
22 Hawkins APLC as Class Counsel;

23 7. Approving Apex Class Action LLC as the Settlement Administrator in this matter;

24 8. Granting the Preliminary Approval Order substantially in the form of the proposed  
25 order submitted herewith.

26 9. Scheduling a hearing on final approval of the Settlement at which Settlement Class  
27 Members may be heard, to determine all necessary matters concerning the Settlement Agreement,  
28 including whether the Settlement is fair, adequate, and reasonable; whether this Court should grant

1 final approval; whether to grant Class Counsel’s applications for awards of fees and costs; and  
2 whether to grant Class Counsel’s application for a Class Representative Service Payment.


3 This motion is brought pursuant to California Rule of Court 3.769 and California Code of  
4 Civil Procedure section 382, and is based on this Notice of Motion and Motion; the Memorandum  
5 of Points and Authorities in support of the Motion; the Declaration of James R. Hawkins in Support  
6 of Motion for Preliminary Approval; the Declaration of Plaintiff Eric Kingery in Support of Motion  
7 for Preliminary Approval; all documents currently on file in this action; the arguments of counsel;  
8 and such other and further evidence as the Court may choose to entertain.

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Respectfully submitted,

Dated: August 18, 2025

**JAMES HAWKINS APLC**

By:   
James R. Hawkins, Esq.  
Christina M. Lucio, Esq.  
Samantha A. Jones, Esq.

Attorneys for Plaintiff  
ERIC KINGERY on behalf of himself  
and all others similarly situated

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INCLUSIVE.

17 Defendants.

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

CLASS ACTION

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

**DECLARATION OF JAMES R.  
HAWKINS IN SUPPORT OF  
PLAINTIFF'S MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION AND PAGA SETTLEMENT**

Date: May 6, 2026  
Time: 2:00 p.m.  
Dept: CX102

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

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**DECLARATION OF JAMES R. HAWKINS**

I, James Hawkins, declare as follows:

1. I am an individual over the age of 18. I am a partner at the law firm of James Hawkins, APLC. I am one of the attorneys of record for Plaintiff Eric Kingery (“Plaintiff”) who filed this action on behalf of himself and the Class Members as defined herein. I submit this supplemental declaration in support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement, which Plaintiff filed concurrently herewith, along with the supporting Memorandum of Points and Authorities. I have personal knowledge of the facts set forth below, and if called to testify regarding them, I could and would do so competently.

2. On January 22, 2026, the Court continued the hearing on Plaintiff’s motion for preliminary approval of class action settlement, and ordered the parties to address the Court’s concerns and questions as indicated in its tentative ruling. Thereafter, the Parties met and conferred to address the Court’s concerns, and have made certain court-ordered edits to the Settlement Agreement and Class Notice, and otherwise attempted to respond to the Court’s concerns below.

3. A true and correct copy of the Amended Class Action and PAGA Settlement Agreement (“Settlement Agreement”) is attached hereto as **Exhibit 1**. A true and correct copy of the Amended Class Action and PAGA Settlement Agreement with revisions in redline is attached hereto as **Exhibit 2** for the Court’s ease of review.

4. A true and correct copy of the Amended Notice of Class Action and PAGA Settlement and Hearing Date for Final Court Approval (“Class Notice”) is attached hereto as **Exhibit 3**. A true and correct copy of the Amended Class Notice with revisions in redline is attached hereto as **Exhibit 4** for the Court’s ease of review.

5. A true and correct copy of the PAGA notice Plaintiff served to the LWDA and Defendants, prior to filing his PAGA action is attached hereto as **Exhibit 5**.

6. On March 30, 2026, the proposed Amended Settlement Agreement and Class Notice, along with Plaintiff’s Motion for Preliminary Approval, were submitted to the Labor

1 Workforce and Development Agency. A true and correct copy of the submission confirmation is  
2 attached hereto as **Exhibit 6**.

3 7. In accordance with the Court’s order, the Parties have attempted to provide an  
4 explanation of the revisions made, and answers to questions raised by the Court, as follows:  
5

6 **Selection of the Settlement Administrator**

7 8. Regarding the Court’s concerns about “how the settlement administrator’s services  
8 were obtained and why the settlement administrator’s bid is fair to the class”—in addition to the  
9 bid sought from Apex Class Action LLC (“Apex”), the parties also obtained bids from ILYM Group  
10 Inc. and CPT Group, and determined that the bid from Apex was the lowest. True and correct copies  
11 of each bid received are attached hereto as **Exhibits 7-9**. Additionally, concurrently filed with this  
12 declaration is the declaration of Sean Hartranft of Apex attesting to Apex’s qualifications and  
13 experience, including the procedures currently in place to protect the security of class data, and the  
14 existence of sufficient insurance in the event of a data breach or mishandling of the settlement funds.

15 **Inclusion of Defendant Mark Cirlin**

16 9. Mark Cirlin is the owner of Acera Health. In response to the Court’s concerns, the  
17 Parties met and conferred about his explicit inclusion in the settlement agreement as a party and  
18 determined it was not necessary as he is included as a released party by the terms of the agreement.  
19 As such, in order to ensure consistency with the complaint and notice to the Class, his name has  
20 been removed from the amended agreement except as to his inclusion as a released party pursuant  
21 to sections 1.40 and 5.1.1. His name has also been added to the notice as an explicitly named  
22 released party to ensure consistency. (Class Notice III.9)

23 **Revisions to the Settlement Agreement and Corresponding Revisions to the Class Notice**

24 10. The word “until” in the Class Period definition has been revised to say “through” to  
25 eliminate ambiguity and ensure consistency in the agreement. (Settlement ¶ 1.12). No such  
26 correction to the notice was necessary as the class definition in the notice already include the word  
27 “through” rather than “until.” (Class Notice p. 1).  
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1 18. Pursuant to the Court’s order, the sentences on page 1 of the notice, “Your legal  
2 rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to  
3 have carefully read and understood it,” are now bolded in the notice (Class notice p. 1).

4 19. As requested by the Court , the summary on pages 1-2 of the Class notice have been  
5 combined to eliminate any confusion and reflect that Class members have 4 options, regarding the  
6 settlement—extraneous language has been removed. (Class notice pp. 1–2, Summary).

7 20. Pursuant to the Court’s order, the following language has been removed from the  
8 Class notice:

9  
10 Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you  
11 because they believe that: (1) Defendant has agreed to pay a fair, reasonable and  
12 adequate amount considering the strength of the claims and the risks and  
13 uncertainties of continued litigation; and (2) the Settlement is in the best interests  
14 of the Class Members and Aggrieved Employees.

(Class Notice § II).

15 21. Pursuant to the Court’s order, the following language has been removed from the  
16 Class notice: “Participating Class Members cannot object to the PAGA portion of the Settlement.”  
17 (Class Notice § VII).

18 22. The language in section VII of the Class Notice, regarding the ability to submit  
19 written objections, and the ability to make personally appear and object at the hearing has been  
20 revised to clarify that those things are not dependent upon one another. (Class Notice § VII). This  
21 section has also been revised to specify that “objections may be submitted by fax, email, or mail.”  
22 (*Id.*) Furthermore, section VIII clarifies that “[a]ny Class Member who does not request exclusion  
23 may also, if the Member so wishes, enter an appearance through counsel.” (Class Notice § VIII).

24 23. The website URL and case number as reflected in section IX have been corrected.  
25 (Class Notice § IX).

26 24. The first page of the Class Notice has been revised to include the following  
27 language: “[a]ny judgment entered by the Court, whether favorable or not, will be binding all Class  
28 Members who do not request exclusion.” (Class Notice pp. 1).



# **EXHIBIT 1**

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

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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

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

6                    3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of  
7                    \$8,000.00 to be paid from the Gross Settlement Amount, with 75% (\$6,000.00)  
8                    allocated to the LWDA PAGA Payment and 25% (\$2,000.00) allocated to the  
9                    Individual PAGA Payments.

10                   3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a)  
11                   dividing the amount of the Aggrieved Employees' 25% share of PAGA  
12                   Penalties \$2,000.00 by the total number of PAGA Period Pay Periods  
13                   worked by all Aggrieved Employees during the PAGA Period and (b)  
14                   multiplying the result by each Aggrieved Employee's PAGA Period Pay  
15                   Periods. Aggrieved Employees assume full responsibility and liability for  
16                   any taxes owed on their Individual PAGA Payment. 100% of the PAGA  
17                   penalties will be allocated as non-wages. These penalties will not subject to  
18                   wage withholdings and will be reported on IRS 1099 Forms..

19                   3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the  
20                   Administrator will allocate the remainder to the Net Settlement Amount. The  
21                   Administrator will report the Individual PAGA Payments on IRS 1099-  
22                   MISC Forms.

#### 23                   4.                   **SETTLEMENT FUNDING AND PAYMENTS**

24                   4.1.                   Class Workweeks and Aggrieved Employee Pay Periods. Defendant's records evidence 161  
25                   Class Members who collectively worked a total of 4,577 Workweeks and 124 Aggrieved  
26                   Employees who worked a total of 1,763 PAGA Pay Periods.

27                   4.2.                   Class Data. Not later than 30 days after the Court grants Preliminary Approval of the  
28                   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](mailto:james@jameshawkinsaplc.com)  
25 Christina M. Lucio  
26 [christina@jameshawkinsaplc.com](mailto: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](mailto:Mtheriault@grsm.com)  
Daniela Theriault  
Email: [Dtheriault@grsm.com](mailto:Dtheriault@grsm.com)  
Debra Ellwood Meppen  
Email: [DMeppen@grsm.com](mailto:DMeppen@grsm.com)  
Gordon Rees Scully Mansuskani  
633 West Fifth Street, 52<sup>nd</sup> 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.

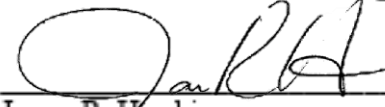
**Plaintiff & Class Representative:**

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: <sup>DocuSigned by:</sup>  
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**

## **EXHIBIT 2**

1 DEBRA ELLWOOD MEPPEN (SBN: 183885)  
[dmeppen@grsm.com](mailto:dmeppen@grsm.com)

2 MATTHEW THERIAULT (SBN: 244037)  
[mtheriault@grsm.com](mailto:mtheriault@grsm.com)

3 DANIELA T. THERIAULT (SBN: 299019)  
[dtheriault@grsm.com](mailto:dtheriault@grsm.com)

4  
5 GORDON REES SCULLY MANSUKHANI, LLP  
6 633 West Fifth Street, 52<sup>nd</sup> floor  
7 Los Angeles, CA 90071  
8 Telephone: (213) 576-5000  
9 Facsimile: (213) 680-4470

10 Attorneys for Defendant  
11 ACERA HEALTH, LLC

12 James R. Hawkins (SBN 192925)  
13 [james@jameshawkinsapl.com](mailto:james@jameshawkinsapl.com)  
14 Christina M. Lucio (SBN 253677)  
15 [christina@jameshawkinsapl.com](mailto:christina@jameshawkinsapl.com)  
16 JAMES HAWKINS APLC  
17 9880 Research Drive, Suite 200  
18 Irvine, California 92618  
19 Telephone: (949) 387-7200  
20 Facsimile: (949) 387-6676

21 Attorneys for Plaintiff ERIC KINGERY  
22 on behalf of himself and all others similarly situated

23  
24 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
25  
26 **COUNTY OF ORANGE**

27 ERIC KINGERY individually and on behalf  
28 of all others similarly situated,  
  
29 Plaintiff,  
  
30 v.  
  
31 ACERA HEALTH, LLC; a Delaware Limited  
32 Liability Company; and DOES 1 through 20,  
33 INCLUSIVE.  
  
34 Defendants.

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

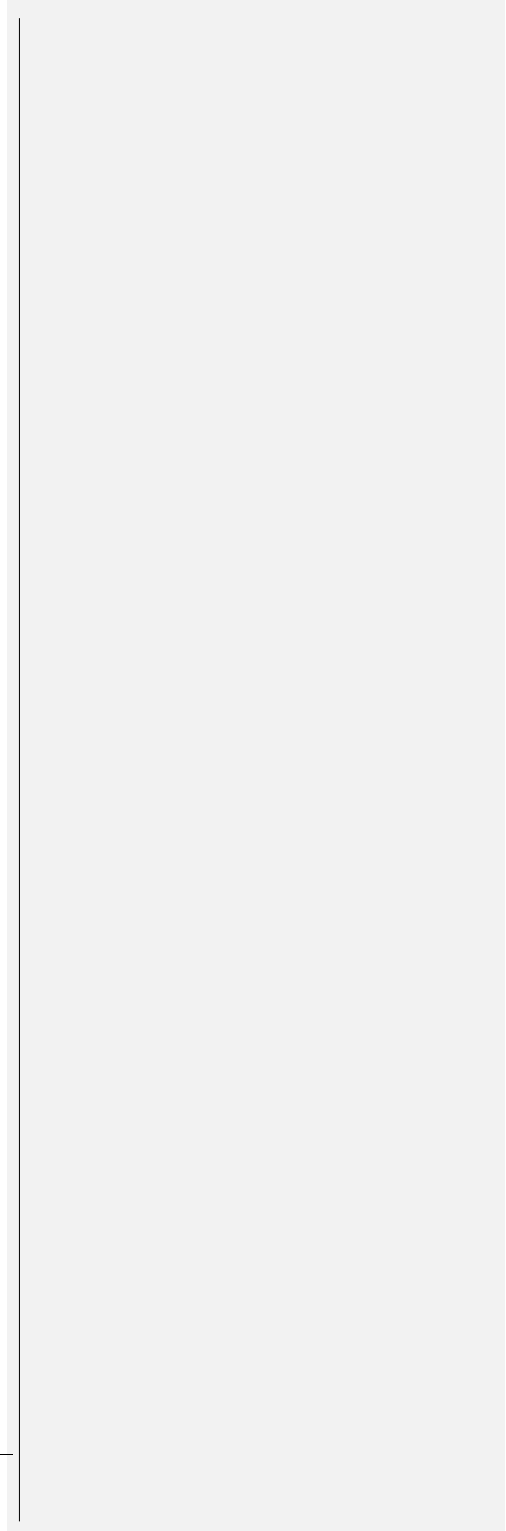
**CLASS ACTION**

[Assigned For All Purposes To: Hon. ~~Leon F. Hurwitz~~ [Layne H. Melzer](#)]

**AMENDED CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE**

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

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**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 Defendants Acera Health, LLC, ~~and Mark Cirlin (collectively “Defendant” and/or “Defendants.”)~~ The Agreement refers to Plaintiff and Defendants 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 Defendants 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 Defendants in California as hourly, non-exempt employees at any time during the PAGA Period.
- 1.5. “Class” means all individuals who worked for Defendants 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 1.8. “Class Data” means Class Member identifying information in Defendant’s<sup>2</sup> possession  
2 including the Class Member’s name, last-known mailing address, Social Security number,  
3 and number of Class Period Workweeks and PAGA Pay Periods.
- 4 1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either a  
5 Participating Class Member or Non-Participating Class Member (including a Non-  
6 Participating Class Member who qualifies as an Aggrieved Employee).
- 7 1.10. “Class Member Address Search” means the Administrator’s investigation and search for  
8 current Class Member mailing addresses using all reasonably available sources, methods  
9 and means including, but not limited to, the National Change of Address (“NCOA”)  
10 database, skip traces, and direct contact by the Administrator with Class Members.
- 11 1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION  
12 SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed  
13 to Class Members in English with a Spanish translation, if applicable, in the form, without  
14 material variation unless otherwise agreed by the Parties, attached as Exhibit A and  
15 incorporated by reference into this Agreement. The Parties, through counsel, may agree to  
16 modifications to the Class Notice required to correct errors or effectuate changes required  
17 by the Court without the need to amend this Agreement, and the revised Class Notice shall  
18 be incorporated herein in place of the original Exhibit A.
- 19 1.12. “Class Period” means the period from ~~from~~ January 1, 2022, ~~through~~ until December 31,  
20 2024.
- 21 1.13. “Class Representative” means the named Plaintiff in the Actions seeking Court approval to  
22 serve as a Class Representative.
- 23 1.14. “Class Representative Service Payment” means the payment to the Class Representative for  
24 initiating the Actions and providing services in support of the Actions.
- 25 1.15. “Court” means the Superior Court of California, County of Orange.
- 26 1.16. “Defendants” means named Defendant Acera Health, LLC ~~and Mark Cirlin~~.
- 27 1.17. “Defense Counsel” means Gordon, Rees, Scully, Mansukhani, LLP (GRSM) and CDF  
28 Labor Law LLP.

1 1.18. "Effective Date" means: (a) the date the Court enters the Final Judgment and order finally  
2 approving the Settlement, if no objections, motions for reconsideration and no appeals or  
3 other efforts to obtain review have been filed, or (b) in the event that a motion for  
4 reconsideration, an appeal or other effort to obtain review of the Final Judgment and order  
5 finally approving the Settlement, the date sixty (60) days after such reconsideration, appeal  
6 or review has been finally concluded and is no longer subject to review, whether by appeal,  
7 petition for rehearing, petition for review or otherwise and the Settlement has not been  
8 materially modified.

9 1.19. "Final Approval" means the Court's order granting final approval of the Settlement.

10 1.20. "Final Approval Hearing" means the Court's hearing on the motion for final approval of the  
11 Settlement.

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

18 1.22. "Individual Class Payment" means the Participating Class Member's pro rata share of the  
19 Net Settlement Amount calculated according to the number of Workweeks worked during  
20 the Class Period.

21 1.23. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the  
22 PAGA Penalties calculated according to the number of PAGA Pay Periods worked during  
23 the PAGA Period.

24 1.24. "Judgment" means the judgment entered by the Court based upon the Final Approval.

25 1.25. "LWDA" means the California Labor and Workforce Development Agency, the agency  
26 entitled, under Labor Code § 2699(i).

27 1.26. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under  
28 Labor Code § 2699(i).

- 1 1.27. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments  
2 in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA  
3 Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class  
4 Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The  
5 remainder is to be paid to Participating Class Members as Individual Class Payments.
- 6 1.28. “Non-Participating Class Member” means any Class Member who opts out of the Class  
7 portion of the Settlement by sending the Administrator a valid and timely Request for  
8 Exclusion.
- 9 1.29. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked  
10 for Defendants for at least two days during the PAGA Period.
- 11 1.30. “PAGA Period” means the period from May 28, 2023, through December 31, 2024.
- 12 1.31. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).
- 13 1.32. “PAGA Notice” means Plaintiff’s PAGA letter to Defendants and the LWDA providing  
14 notice pursuant to Labor Code § 2699.3(a).
- 15 1.33. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross  
16 Settlement Amount, allocated 25% to the Aggrieved Employees (\$2000.00) and the 75% to  
17 LWDA (\$6000.00) in settlement of PAGA claims.
- 18 1.34. “Participating Class Member” means a Class Member who does not submit a valid and  
19 timely Request for Exclusion from the Class portion of the Settlement.
- 20 1.35. “Plaintiff” means Eric Kingery, the named plaintiff in the Actions.
- 21 1.36. “Preliminary Approval” means the Court’s order granting preliminary approval of the Class  
22 portion of the Settlement.
- 23 1.37. “Preliminary Approval Order” means the proposed order granting preliminary approval of  
24 the Class portion of the Settlement.
- 25 1.38. “Released Class Claims” means the claims being released as described in Paragraph 5.2  
26 below.
- 27 1.39. “Released PAGA Claims” means the claims being released as described in Paragraph 5.3  
28 below.

1 1.40. "Released Parties" means: Defendants and each of its former, and current owners, parents,  
2 and subsidiaries, and all of their current and former officers, Mark Cirlin, directors, lenders,  
3 members, managers, employees, consultants, partners, shareholders, joint venturers, agents,  
4 predecessors, successors, assigns, accountants, insurers, reinsurers, and/or legal  
5 representatives.

6 1.41. "Request for Exclusion" means a Class Member's submission of a written request to be  
7 excluded from the Class Settlement signed by the Class Member.

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

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15 1.43. "Settlement" means the disposition of the Actions effected by this Agreement and the  
16 Judgment.

17 1.44. "Workweek" means any week during which a Class Member worked for Defendants for at  
18 least one day, during the Class Period.

19 **2. RECITALS**

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

1           alleged.

2           2.2. Pursuant to Labor Code § 2699.3(a), Plaintiff gave timely written notice to Defendants and  
3           the LWDA by sending the PAGA Notice.

4           2.3. On June 9, 2025, the Parties participated in an all-day mediation presided over by  
5           experienced, neutral mediator Gig Kyriacou, which led to this Agreement to settle the  
6           Actions.

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

21          2.5. The Court has not granted class certification.

22          2.6. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any  
23          other pending matter or action asserting claims that will be extinguished or affected by the  
24          Settlement, other than Plaintiff's/ Class Counsel's PAGA action in the same Court (case  
25          number 30-2024-01416779-CU-OECXC.) Class Counsel amended (or will amend)  
26          Plaintiff's class complaint to incorporate the PAGA action filed under case number 30-  
27          2024-01402619-CU-OECXC.

1 **3. MONETARY TERMS**

2 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, Defendants  
3 promise to pay **One-Hundred Forty-Two Thousand Dollars and Zero Cents**  
4 **(\$142,000.00) and no more as the Gross Settlement Amount** and to separately pay any  
5 and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments.  
6 Defendants have no obligation to pay the Gross Settlement Amount (or any payroll taxes)  
7 prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will  
8 disburse the entire Gross Settlement Amount without asking or requiring Participating Class  
9 Members or Aggrieved Employees to submit any claim as a condition of payment. None of  
10 the Gross Settlement Amount will revert to Defendants.

11 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the  
12 following payments from the Gross Settlement Amount, in the amounts specified by the  
13 Court in the Final Approval:

14 3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of  
15 not more than \$2,500.00 in addition to any Individual Class Payment and any  
16 Individual PAGA Payment the Class Representative is entitled to receive as a  
17 Participating Class Member. Defendants will not oppose Plaintiff's request for a  
18 Class Representative Service Payment that does not exceed this amount. If the Court  
19 approves a Class Representative Service Payment less than the amount requested,  
20 the Administrator will retain the remainder in the Net Settlement Amount. The  
21 Administrator will pay the Class Representative Service Payment using IRS Form  
22 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on  
23 the Class Representative Service Payment.

24 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than in the amount  
25 of 1/3 (33.33%) of the Gross Settlement Amount, which is currently \$47,328.60,  
26 ("Class Counsel's Fees") and a Class Counsel Litigation Expenses Payment of not  
27 more than \$27,000.00. Defendants will not oppose requests for these payments  
28 provided that they do not exceed these amounts. Plaintiff and/or Class Counsel will

1 file a motion for Class Counsel Fees Payment and Class Litigation Expenses  
2 Payment no later than 16 court days prior to the Final Approval Hearing. If the Court  
3 approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses  
4 Payment less than the amounts requested, the Administrator will allocate the  
5 remainder to the Net Settlement Amount. Released Parties shall have no liability to  
6 Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion  
7 any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment.  
8 The Administrator will pay the Class Counsel Fees Payment and Class Counsel  
9 Litigation Expenses Payment using one or more IRS 1099 Forms. Class Counsel  
10 assumes full responsibility and liability for taxes owed on the Class Counsel Fees  
11 Payment and the Class Counsel Litigation Expenses Payment and holds Defendants  
12 harmless, and indemnifies Defendants, from any dispute or controversy regarding  
13 any division or sharing of any of these Payments.

14 3.2.3. To the Administrator: An Administration Expenses Payment not to exceed  
15 \$5,500.00 except for a showing of good cause and as approved by the Court. To the  
16 extent the Administration expenses are less or the Court approves payment less than  
17 \$5,500.00, the Administrator will retain the remainder in the Net Settlement  
18 Amount.

19 3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by  
20 (a) dividing the Net Settlement Amount by the total number of Workweeks worked  
21 by all Participating Class Members during the Class Period and (b) multiplying the  
22 result by each Participating Class Member's Workweeks.

23 3.2.4.1. Tax Allocation of Individual Class Payments. 20% of each Participating  
24 Class Member's Individual Class Payment will be allocated to settlement of  
25 wage claims (the "Wage Portion"). The Wage Portions are subject to tax  
26 withholding and will be reported on an IRS W-2 Form. The 80% of each  
27 Participating Class Member's Individual Class Payment will be allocated to  
28 settlement of claims for interest and penalties (the "Non-Wage Portion").

1 The Non-Wage Portions are not subject to wage withholdings and will be  
2 reported on IRS 1099 Forms. Participating Class Members assume full  
3 responsibility and liability for any employee taxes owed on their Individual  
4 Class Payment.

5 3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual  
6 Class Payments. Non-Participating Class Members will not receive any  
7 Individual Class Payments. The Workweeks of Non-Participating Class  
8 Members are not included in the calculation of payments to Participating  
9 Class Members and therefor have no effect on the calculation of Individual  
10 Class Payments paid from the Net Settlement Amount.

11 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of  
12 \$8,000.00 to be paid from the Gross Settlement Amount, with 75% (\$6,000.00)  
13 allocated to the LWDA PAGA Payment and 25% (\$2,000.00) allocated to the  
14 Individual PAGA Payments.

15 3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a)  
16 dividing the amount of the Aggrieved Employees' 25% share of PAGA  
17 Penalties \$2,000.00 by the total number of PAGA Period Pay Periods  
18 worked by all Aggrieved Employees during the PAGA Period and (b)  
19 multiplying the result by each Aggrieved Employee's PAGA Period Pay  
20 Periods. Aggrieved Employees assume full responsibility and liability for  
21 any taxes owed on their Individual PAGA Payment. 100% of the PAGA  
22 penalties will be allocated as non-wages. These penalties will not subject to  
23 wage withholdings and will be reported on IRS 1099 Forms.

24 3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the  
25 Administrator will allocate the remainder to the Net Settlement Amount. The  
26 Administrator will report the Individual PAGA Payments on IRS 1099-  
27 MISC Forms.

1 **4. SETTLEMENT FUNDING AND PAYMENTS**

2 4.1. Class Workweeks and Aggrieved Employee Pay Periods. Defendants's records evidence  
3 161 Class Members who collectively worked a total of 4,577 Workweeks and 124  
4 Aggrieved Employees who worked a total of 1,763 PAGA Pay Periods.

5 4.2. Class Data. Not later than 30 days after the Court grants Preliminary Approval of the  
6 Settlement, Defendants will deliver the Class Data to the Administrator, in the form of a  
7 Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator  
8 must maintain the Class Data in confidence, use the Class Data only for purposes of this  
9 Settlement and for no other purpose, and restrict access to the Class Data to Administrator  
10 employees who need access to the Class Data to effect and perform under this Agreement.  
11 Defendants have a continuing duty to immediately notify Class Counsel if it discovers that  
12 the Class Data omitted class member identifying information and to provide corrected or  
13 updated Class Data as soon as reasonably feasible. Without any extension of the deadline  
14 by which Defendants must send the Class Data to the Administrator, the Parties and their  
15 counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve  
16 any issues related to missing or omitted Class Data.

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

27 **4.4.** Payments from the Settlement Amount shall be made to Settlement Class Members after  
28 Defendants fully funds the Settlement Amount and only if the Effective Date is triggered.

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1 In the event that the Effective Date is not triggered, any payments made by Defendants to  
2 this account and any accrued interest thereon shall be returned to Defendants by the  
3 settlement administrator within five (5) business days. Payments shall be made to the  
4 designated third-party Administrator and be credited to amounts owed separately by each  
5 party. The amounts paid shall become non-refundable upon final approval of the settlement  
6 by the court. ~~The hearing date for Plaintiff's Motion for Final Approval shall be set after the  
7 final payment is made, or July 10, 2025, whichever is sooner.~~

8 4.5. The Effective Date shall be: (a) the date the Court enters the Final Judgment and order finally  
9 approving the Settlement, if no objections, motions for reconsideration and no appeals or  
10 other efforts to obtain review have been filed, or (b) in the event that a motion for  
11 reconsideration, an appeal or other effort to obtain review of the Final Judgment and order  
12 finally approving the Settlement, the date sixty (60) days after such reconsideration, appeal  
13 or review has been finally concluded and is no longer subject to review, whether by appeal,  
14 petition for rehearing, petition for review or otherwise and the Settlement has not been  
15 materially modified. A "material modification" shall not include any change to the Class  
16 Counsel Award, Class Representative Service Award, or amount awarded for Settlement  
17 Administration Costs.

18 4.4.4.6. Payments from the Gross Settlement Amount. Within 14 days after Defendants funds the  
19 entire Gross Settlement Amount and the Effective Date is triggered, the Administrator will  
20 mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA  
21 PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment,  
22 the Class Counsel Litigation Expenses Payment, and the Class Representative Service  
23 Payment.

24 4.4.4.6.1. The Administrator will issue checks for the Individual Class Payments  
25 and/or Individual PAGA Payments and send them to the Class Members via First  
26 Class U.S. Mail, postage prepaid. The face of each check shall prominently state  
27 the date (not less than 180 days after the date of mailing) when the check will be  
28 voided. The Administrator will cancel all checks not cashed by the void date. The

1 Administrator will send checks for Individual Settlement Payments to all  
2 Participating Class Members (including those for whom Class Notice was returned  
3 undelivered). The Administrator will send checks for Individual PAGA Payments  
4 to all Aggrieved Employees including Non-Participating Class Members who  
5 qualify as Aggrieved Employees (including those for whom Class Notice was  
6 returned undelivered). The Administrator may send Participating Class Members a  
7 single check combining the Individual Class Payment and the Individual PAGA  
8 Payment. Before mailing any checks, the Settlement Administrator must update the  
9 recipients' mailing addresses using the NCOA database.

10 4.4.2.4.6.2. The Administrator must conduct a Class Member Address Search for all  
11 other Class Members whose checks are returned undelivered without a United States  
12 Postal Service ("USPS") forwarding address. Within 7 days of receiving a returned  
13 check the Administrator must re-mail checks to the USPS forwarding address  
14 provided or to an address ascertained through the Class Member Address Search.  
15 The Administrator need not take further steps to deliver checks to Class Members  
16 whose re-mailed checks are returned as undelivered. The Administrator shall  
17 promptly send a replacement check to any Class Member whose original check was  
18 lost or misplaced, requested by the Class Member prior to the void date.

19 4.4.3.4.6.3. For any Class Member whose Individual Class Payment check or Individual  
20 PAGA Payment check is uncashed and cancelled after the void date, the  
21 Administrator shall transmit the funds represented by such checks to the California  
22 Controller's Unclaimed Property Fund in the name of the Class Member thereby  
23 leaving no "unpaid residue" subject to the requirements of California Code of Civil  
24 Procedure § 384(b).

25 4.4.4.4.6.4. The payment of Individual Class Payments and Individual PAGA Payments  
26 shall not obligate Defendants to confer any additional benefits or make any  
27 additional payments to Class Members (such as 401(k) contributions or bonuses)  
28 beyond those specified in this Agreement.

1 **5. RELEASES OF CLAIMS**

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

5 5.1. Plaintiff's Release.

6 5.1.1. Scope of Plaintiff's Release. Plaintiff and his respective former and present spouses,  
7 shall fully release Defendants, and Defendants's present and former companies,  
8 parents, subsidiaries, affiliates, officers, shareholders, equity partners, partners,  
9 owners, directors, trustees, current or former employees, vendors, contractors,  
10 consultants, board of directors, and agents, as well as any of its representatives, Mark  
11 Cirlin, attorneys, insurers, and/or any of the predecessors, successors and assigns of  
12 Defendants, representatives, agents, attorneys, heirs, administrators, successors, and  
13 assigns generally, release and discharge Released Parties from all claims,  
14 transactions, or occurrences, including, but not limited to: (a) all claims that were, or  
15 reasonably could have been, alleged, based on the facts contained, in the Actions and  
16 (b) all PAGA claims that were, or reasonably could have been, alleged based on facts  
17 contained in the Actions, Plaintiff's PAGA Notice, or ascertained during the Actions  
18 and released under 5.2, below. ("Plaintiff's Release.") Plaintiff's Release does not  
19 extend to any claims or actions to enforce this Agreement, or to any claims for vested  
20 benefits, unemployment benefits, disability benefits, social security benefits,  
21 workers' compensation benefits that arose at any time, or based on occurrences  
22 outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or  
23 law different from, or in addition to, the facts or law that Plaintiff now knows or  
24 believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and  
25 remain effective in all respects, notwithstanding such different or additional facts or  
26 Plaintiff's discovery of them.

27 5.1.2. Plaintiff's Waiver of Rights Under California Civil Code § 1542. For purposes of  
28 Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights,

1 and benefits, if any, of Section 1542 of the California Civil Code, which reads:

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

7 5.2. Release by Participating Class Members: All Participating Class Members, on behalf of  
8 themselves and their respective former and present representatives, agents, attorneys, heirs,  
9 administrators, successors, and assigns, release Released Parties from (i) all claims that were  
10 alleged, or reasonably could have been alleged, based on the facts alleged in the Actions  
11 including, e.g., (1) any and all claims involving any alleged failure to pay minimum wage;  
12 (2) any alleged failure to pay overtime wages; (3) any alleged failure to provide compliant  
13 meal periods, or compensation in lieu thereof; (4) any alleged failure to provide compliant  
14 rest breaks, or compensation in lieu thereof; (5) any alleged failure to indemnify/reimburse  
15 necessary business expenses; (6) any alleged failure to pay wages due upon separation; (7)  
16 any alleged failure to provide compliant accurate itemized wage statements; and (8) any  
17 alleged unlawful, unfair, or fraudulent business actions or practices under Business and  
18 Professions Code §§ 17200, et seq. arising out of the Labor Code and Industrial Welfare  
19 Commission (“IWC”) Wage Order violations referenced in the Actions. This release does  
20 not include claims for vested benefits, wrongful termination, violation of the Fair  
21 Employment and Housing Act, unemployment insurance, disability, social security,  
22 workers’ compensation, or claims based on facts occurring outside the Class Period.

23 5.3. Release by Aggrieved Employees: All Aggrieved Employees are deemed to release, on  
24 behalf of themselves and their respective former and present representatives, agents,  
25 attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims  
26 for PAGA penalties that were alleged, or reasonably could have been alleged, based on the  
27 facts stated in the Actions and the PAGA Notice including, e.g., (1) any and all claims  
28 involving any alleged failure to pay minimum wage; (2) any alleged failure to pay overtime  
wages; (3) any alleged failure to provide compliant meal periods, or compensation in lieu  
thereof; (4) any alleged failure to provide compliant rest breaks, or compensation in lieu

1           thereof; (5) any alleged failure to indemnify/reimburse necessary business expenses; (6) any  
2           alleged failure to pay wages due upon separation; (7) any alleged failure to provide  
3           compliant accurate itemized wage statements.

4   **6.   MOTION FOR PRELIMINARY APPROVAL**

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

8           6.1.   Because funds from uncashed checks will be transmitted to the California Controller’s  
9           Office, Unclaimed Property Fund, Defendants and Defense counsel have no obligation to  
10          provide declarations disclosing any facts relevant to any actual or potential conflicts with a  
11          “*cy pres* recipient”.

12          6.2.   Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for  
13          expeditiously finalizing and filing the Motion for Preliminary Approval after the full  
14          execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary  
15          Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary  
16          Approval. Class Counsel is responsible for delivering the Court’s Preliminary Approval to  
17          the Administrator.

18          6.3.   Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for  
19          Preliminary Approval and/or the supporting declarations and documents, Class Counsel and  
20          Defense Counsel will expeditiously work together on behalf of the Parties by meeting in  
21          person or by telephone, and in good faith, to resolve the disagreement. If the Court does not  
22          grant Preliminary Approval or conditions Preliminary Approval on any material change to  
23          this Agreement, Class Counsel and Defense Counsel will expeditiously work together on  
24          behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the  
25          Agreement and otherwise satisfy the Court’s concerns.

26   **7.   SETTLEMENT ADMINISTRATION**

27          7.1.   Selection of Administrator. The Parties have jointly selected Apex Class Action LLC  
28          (“Apex”), to serve as the Administrator and verified that, as a condition of appointment,

1 Apex, agrees to be bound by this Agreement and to perform, as a fiduciary, all duties  
2 specified in this Agreement in exchange for payment of Administration Expenses. The  
3 Parties and their Counsel represent that they have no interest or relationship, financial or  
4 otherwise, with the Administrator other than a professional relationship arising out of prior  
5 experiences administering settlements.

6 7.2. Employer Identification Number. The Administrator shall have and use its own Employer  
7 Identification Number for purposes of calculating payroll tax withholdings and providing  
8 reports state and federal tax authorities.

9 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets  
10 the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation §  
11 468B-1.

12 7.4. Notice to Class Members.

13 7.4.1. No later than three (3) business days after receipt of the Class Data, the Administrator  
14 shall notify Class Counsel that the list has been received and state the number of  
15 Class Members, Aggrieved Employees, Workweeks, and Pay Periods in the Class  
16 Data.

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

26 7.4.3. Not later than 3 business days after the Administrator’s receipt of any Class Notice  
27 returned by the USPS as undelivered, the Administrator shall re-mail the Class  
28 Notice using any forwarding address provided by the USPS. If the USPS does not

1 provide a forwarding address, the Administrator shall conduct a Class Member  
2 Address Search, and re-mail the Class Notice to the most current address obtained.  
3 The Administrator has no obligation to make further attempts to locate or send Class  
4 Notice to Class Members whose Class Notice is returned by the USPS a second time.

5 7.4.4. The deadlines for Class Members' written objections, challenges to Workweeks  
6 and/or pay periods, and Requests for Exclusion will be extended an additional 14  
7 days beyond the 60 days otherwise provided in the Class Notice for all Class  
8 Members whose notices are re-mailed. The Administrator will inform the Class  
9 Member of the extended deadline with the re-mailed Class Notice.

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

19 7.5. Requests for Exclusion (Opt-Outs).

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

1 7.5.2. The Administrator may not reject a Request for Exclusion as invalid because it fails  
2 to contain all the information specified in the Class Notice. The Administrator shall  
3 accept any Request for Exclusion as valid if the Administrator can reasonably  
4 ascertain the identity of the person as a Class Member and the Class Member's desire  
5 to be excluded. ~~The Administrator's determination shall be final and not appealable~~  
6 ~~or otherwise susceptible to challenge.~~ If the Administrator has reason to question  
7 the authenticity of a Request for Exclusion, the Administrator may demand  
8 additional proof of the Class Member's identity. The Administrator's determination  
9 of authenticity shall be final as to the Parties, but a Class Member whose Request for  
10 Exclusion is rejected by the Administrator may present a challenge to that  
11 determination to the Court. The Court's determination on the validity and  
12 authenticity of requests for exclusion shall be final.

13 7.5.3. Every Class Member who does not submit a timely and valid Request for Exclusion  
14 is deemed to be a Participating Class Member under this Agreement, entitled to all  
15 benefits and bound by all terms and conditions of the Settlement, including the  
16 Participating Class Members' Releases under Paragraphs 5.2 and 5.3 of this  
17 Agreement, regardless whether the Participating Class Member actually receives the  
18 Class Notice or objects to the Settlement.

19 7.5.4. Every Class Member who submits a valid and timely Request for Exclusion is a  
20 Non-Participating Class Member and shall not receive an Individual Class Payment  
21 or have the right to object to the class action components of the Settlement. Because  
22 future PAGA claims are subject to claim preclusion upon entry of the Judgment,  
23 Non-Participating Class Members who are Aggrieved Employees are deemed to  
24 release the claims identified in Paragraph 5.3 of this Agreement and are eligible for  
25 an Individual PAGA Payment.

26 7.6. Challenges to Calculation of Workweeks. Each Class Member shall have 60 days after the  
27 Administrator mails the Class Notice (plus an additional 14 days for Class Members whose  
28 Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay

1           Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may  
2 challenge the allocation by communicating with the Administrator via fax, email or mail.  
3           The Administrator must encourage the challenging Class Member to submit supporting  
4 documentation. In the absence of any contrary documentation, the Administrator is entitled  
5 to presume that the Workweeks contained in the Class Notice are correct so long as they are  
6 consistent with the Class Data. The Administrator's determination of each Class Member's  
7 allocation of Workweeks and/or PAGA Pay Periods shall be final as to the Parties (although  
8 Defendants shall retain the right to correct erroneous Class Data if subsequently discovered),  
9 but a Class Member whose Workweek and/or Pay Period challenge is rejected by the  
10 Administrator may present the same evidence supporting the Workweek and/or Pay Period  
11 challenge to the Court for review. The Administrator shall promptly provide copies of all  
12 challenges to calculation of Workweeks and/or PAGA Pay Periods to Defense Counsel and  
13 Class Counsel and the Administrator's determination the challenges.

14       7.7. Objections to Settlement.

15           7.7.1. Only Participating Class Members may object to the class action components of the  
16 Settlement and/or this Agreement, including contesting the fairness of the  
17 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class  
18 Counsel Litigation Expenses Payment and/or Class Representative Service  
19 Payment.

20           7.7.2. Participating Class Members may send written objections to the Administrator, by  
21 fax, email, or mail. In the alternative, Participating Class Members may appear in  
22 Court (or hire an attorney to appear in Court) to present verbal objections at the Final  
23 Approval Hearing. A Participating Class Member who elects to send a written  
24 objection to the Administrator must do so not later than 60 days after the  
25 Administrator's mailing of the Class Notice (plus an additional 14 days for Class  
26 Members whose Class Notice was re-mailed).

27           7.7.3. Non-Participating Class Members have no right to object to any of the class action  
28 components of the Settlement.

1 7.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be  
2 performed or observed by the Administrator contained in this Agreement or otherwise.

3 7.8.1. Website, Email Address and Toll-Free Number. The Administrator will establish  
4 and maintain and use an internet website to post information of interest to Class  
5 Members including the date, time and location for the Final Approval Hearing and  
6 copies of the Settlement Agreement, Motion for Preliminary Approval, the  
7 Preliminary Approval Order, the Class Notice, the motion for final approval, the  
8 Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses  
9 Payment and Class Representative Service Payment, the Final approval Order and  
10 the Judgment. The Administrator will also maintain and monitor an email address  
11 and a toll-free telephone number to receive Class Member calls, faxes and emails.

12 7.8.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will  
13 promptly review on a rolling basis Requests for Exclusion to ascertain their validity.  
14 Not later than 5 days after the expiration of the deadline for submitting Requests for  
15 Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel  
16 containing (a) the names and other identifying information of Class Members who  
17 have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the  
18 names and other identifying information of Class Members who have submitted  
19 invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from  
20 Settlement submitted (whether valid or invalid).

21 7.8.3. Weekly Reports. The Administrator must, on a weekly basis, provide written reports  
22 to Class Counsel and Defense Counsel that, among other things, tally the number of:  
23 Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for  
24 Exclusion (whether valid or invalid) received, objections received, and challenges to  
25 Workweeks and/or PAGA Pay Periods received and/or resolved (“Weekly Report”).  
26 The Weekly Reports must include provide the Administrator’s assessment of the  
27 validity of Requests for Exclusion and attach copies of all Requests for Exclusion  
28 and objections received. In addition to the Weekly Reports, the Administrator shall

1 report to the Parties when it has completed the initial distribution of the Individual  
2 Class Payments and Individual PAGA Payments to all individuals with valid  
3 addresses.

4 7.8.4. Workweek and/or Pay Period Challenges. The Administrator has the authority to  
5 address and make decisions consistent with the terms of this Agreement on all Class  
6 Member challenges over the calculation of Workweeks and/or PAGA Pay Periods.  
7 The Administrator's determination of each Class Member's allocation of  
8 Workweeks and/or PAGA Pay Periods shall be final as to the Parties (although  
9 Defendants shall retain the right to correct erroneous Class Data if subsequently  
10 discovered), but a Class Member whose Workweek and/or Pay Period challenge is  
11 rejected by the Administrator may present the same evidence supporting the  
12 Workweek and/or Pay Period challenge to the Court for review.

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

24 7.8.6. Final Report by Settlement Administrator. Within 10 days after the Administrator  
25 disburses all funds in the Gross Settlement Amount, the Administrator will provide  
26 Class Counsel and Defense Counsel with a final report detailing its disbursements  
27 by employee identification number only of all payments made under this Agreement.  
28 At least 7 days before any deadline set by the Court, the Administrator will prepare,

1 and submit to Class Counsel and Defense Counsel, a signed declaration suitable for  
2 filing in Court attesting to its disbursement of all payments required under this  
3 Agreement. Class Counsel is responsible for filing the Administrator's declaration  
4 in Court.

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

6 Based on its records, Defendants estimates that, as of the date of this Settlement Agreement, (1) there are  
7 161 Class Members with 4,577 Total Workweeks during the Class period and (2) there were 124 Aggrieved  
8 Employees who worked 1,763 Pay Periods during the PAGA Period.

9 8.1 Increase in Workweeks. If the number of workweeks is ten percent (10%) higher (increase of  
10 more than 457.7 workweeks or in excess of 5,034 workweeks) then Defendants; will increase the  
11 Settlement Payments on a pro-rata increase in the Gross Settlement Amount equal to the percentage  
12 increase in workweeks above 5,034.

13 **DEFENDANTS'S RIGHT TO WITHDRAW**

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

22  
23 **9. MOTION FOR FINAL APPROVAL**

24 Not later than sixteen (16) court days before the calendared Final Approval Hearing, Plaintiff will file in  
25 Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA  
26 settlement under Labor Code § 2699(I), a Proposed Final Approval Order and a proposed Judgment  
27 (collectively "Motion for Final Approval"). Plaintiff shall provide drafts of these documents to Defense  
28 Counsel prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will

1 expeditiously meet and confer, and in good faith, to resolve any disagreements concerning the Motion for  
2 Final Approval.

3 9.1. Response to Objections. Each Party retains the right to respond to any objection raised by a  
4 Participating Class Member, including the right to file responsive documents in Court no  
5 later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or  
6 accepted by the Court.

7 9.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval  
8 on any material change to the Settlement (including, but not limited to, the scope of release  
9 to be granted by Class Members), the Parties will expeditiously work together in good faith  
10 to address the Court's concerns by revising the Agreement as necessary to obtain Final  
11 Approval. The Court's decision to award less than the amounts requested for the Class  
12 Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation  
13 Expenses Payment and/or Administration Expenses Payment shall not constitute a material  
14 modification to the Agreement within the meaning of this paragraph.

15 9.3. Continuing Jurisdiction of the Court. The Parties agree that, pursuant to California Code of  
16 Civil Procedure section 664.6 and California Rules of Court, rule 3.769(h), after entry of  
17 Judgment, the Court will retain jurisdiction over the Parties, Actions, and the Settlement  
18 solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing  
19 settlement administration matters, and (iii) addressing such post-Judgment matters as are  
20 permitted by law.

21 9.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and  
22 conditions of this Agreement, specifically including the Class Counsel Fees Payment and  
23 Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties,  
24 their respective counsel, and all Participating Class Members who did not object to the  
25 Settlement as provided in this Agreement, waive all rights to appeal from the Judgment,  
26 including all rights to post-judgment and appellate proceedings, the right to file motions to  
27 vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of  
28 appeal does not include any waiver of the right to oppose such motions, writs or appeals. If

1 an objector appeals the Judgment, the Parties' obligations to perform under this Agreement  
2 will be suspended until such time as the appeal is finally resolved and the Judgment becomes  
3 final.

4 9.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the  
5 reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a  
6 material modification of this Agreement (including, but not limited to, the scope of release  
7 to be granted by Class Members), this Agreement shall be null and void. The Parties shall  
8 nevertheless expeditiously work together in good faith to address the appellate court's  
9 concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any  
10 additional Administration Expenses reasonably incurred after remittitur. An appellate  
11 decision to vacate, reverse, or modify the Court's award of the Class Representative Service  
12 Payment or any payments to Class Counsel shall not constitute a material modification of  
13 the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount  
14 remains unchanged.

15 **10. AMENDED JUDGMENT**

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

18 **11. ADDITIONAL PROVISIONS**

19 11.1. No Admission of Liability, Class Certification or Representative Manageability for Other  
20 Purposes. This Agreement represents a compromise and settlement of highly disputed  
21 claims. Nothing in this Agreement is intended or should be construed as an admission by  
22 Defendants that any of the allegations in the Actions have merit or that Defendants have any  
23 liability for any claims asserted; nor should it be intended or construed as an admission by  
24 Plaintiff that Defendants's defenses in the Actions have merit. The Parties agree that class  
25 certification and representative treatment is for purposes of this Settlement only. If, for any  
26 reason the Court does not grant Preliminary Approval, Final Approval or enter Judgment,  
27 Defendants reserves the right to contest certification of any class for any reasons, and  
28 Defendants reserves all available defenses to the claims in the Actions, and Plaintiff reserves

1 the right to move for class certification on any grounds available and to contest Defendant's  
2 defenses. The Settlement, this Agreement and Parties' willingness to settle the Actions will  
3 have no bearing on, and will not be admissible in connection with, any litigation (except for  
4 proceedings to enforce or effectuate the Settlement and this Agreement).

5 11.2. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendants and  
6 Defense Counsel separately agree that, until the Motion for Preliminary Approval of  
7 Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or  
8 cause or permit another person to disclose, disseminate or publicize, any of the terms of the  
9 Agreement directly or indirectly, specifically or generally, to any person, corporation,  
10 association, government agency, or other entity except: (1) to the Parties' attorneys,  
11 accountants, or spouses, all of whom will be instructed to keep this Agreement confidential;  
12 (2) to counsel in a related matter; (3) to the extent necessary to report income to appropriate  
13 taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an  
14 inquiry or subpoena issued by a state or federal government agency. Each Party agrees to  
15 immediately notify each other Party of any judicial or agency order, inquiry, or subpoena  
16 seeking such information. Plaintiff, Class Counsel, Defendants and Defense Counsel  
17 separately agree not to, directly or indirectly, initiate any conversation or other  
18 communication, before the filing of the Motion for Preliminary Approval, with any third  
19 party regarding this Agreement or the matters giving rise to this Agreement except to  
20 respond only that "the matter was resolved," or words to that effect. This paragraph does not  
21 restrict Class Counsel's communications with Class Members in accordance with Class  
22 Counsel's ethical obligations owed to Class Members.

23 11.3. No Solicitation. The Parties separately agree that they and their respective counsel and  
24 employees will not solicit any Class Member to opt out of or object to the Settlement, or  
25 appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class  
26 Counsel's ability to communicate with Class Members in accordance with Class Counsel's  
27 ethical obligations owed to Class Members.

28 11.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement

1 together with its attached exhibits shall constitute the entire agreement between the Parties  
2 relating to the Settlement, superseding any and all oral representations, warranties,  
3 covenants, or inducements made to or by any Party.

4 11.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and  
5 represent that they are authorized by Plaintiff and Defendants, respectively, to take all  
6 appropriate action required or permitted to be taken by such Parties pursuant to this  
7 Agreement to effectuate its terms, and to execute any other documents reasonably required  
8 to effectuate the terms of this Agreement including any amendments to this Agreement.

9 11.6. Cooperation. The Parties and their counsel will cooperate with each other and use their best  
10 efforts, in good faith, to implement the Settlement by, among other things, modifying the  
11 Settlement Agreement, submitting supplemental evidence and supplementing points and  
12 authorities as requested by the Court. In the event the Parties are unable to agree upon the  
13 form or content of any document necessary to implement the Settlement, or on any  
14 modification of the Agreement that may become necessary to implement the Settlement, the  
15 Parties will seek the assistance of a mediator and/or the Court for resolution.

16 11.7. No Prior Assignments. The Parties separately represent and warrant that they have not  
17 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or  
18 encumber to any person or entity and portion of any liability, claim, demand, action, cause  
19 of action, or right released and discharged by the Party in this Settlement.

20 11.8. No Tax Advice. Neither Plaintiff, Class Counsel, Defendants, nor Defense Counsel are  
21 providing any advice regarding taxes or taxability, nor shall anything in this Settlement be  
22 relied upon as such within the meaning of United States Treasury Department Circular 230  
23 (31 CFR Part 10, as amended) or otherwise.

24 11.9. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified,  
25 changed, or waived only by an express written instrument signed by all Parties or their  
26 representatives, and approved by the Court.

27 11.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the  
28 benefit of, the successors of each of the Parties.

1 11.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be  
2 governed by and interpreted according to the internal laws of the state of California, without  
3 regard to conflict of law principles.

4 11.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this  
5 Agreement. This Agreement will not be construed against any Party on the basis that the  
6 Party was the drafter or participated in the drafting.

7 11.13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered  
8 during the Actions and in this Agreement relating to the confidentiality of information shall  
9 survive the execution of this Agreement.

10 11.14. Use and Return of Class Data. Information provided to Class Counsel pursuant to Evidence  
11 Code § 1152, and all copies and summaries of the Class Data provided to Class Counsel by  
12 Defendants in connection with the mediation, other settlement negotiations, or in connection  
13 with the Settlement, may be used only with respect to this Settlement, and no other purpose,  
14 and may not be used in any way that violates any existing contractual agreement, statute, or  
15 rule of court. Not later than 90 days after the date when the Court discharges the  
16 Administrator's obligation to provide a declaration confirming the final pay out of all  
17 Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data  
18 received from Defendants unless, prior to the Court's discharge of the Administrator's  
19 obligation, Defendants makes a written request to Class Counsel for the return, rather than  
20 the destructions, of Class Data.

21 11.15. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted  
22 for convenience of reference only and does not constitute a part of this Agreement.

23 11.16. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be  
24 to calendar days. In the event any date or deadline set forth in this Agreement falls on a  
25 weekend or federal legal holiday, such date or deadline shall be on the first business day  
26 thereafter.

27 11.17. Notice. All notices, demands or other communications between the Parties in connection  
28 with this Agreement will be in writing and deemed to have been duly given as of the third

1 business day after mailing by United States mail, or the day sent by email or messenger,  
2 addressed as follows:

3 To Plaintiff:

4 **JAMES HAWKINS APLC**

5 James R. Hawkins  
6 [james@jameshawkinsaplc.com](mailto:james@jameshawkinsaplc.com)  
7 Christina M. Lucio  
8 [christina@jameshawkinsaplc.com](mailto:christina@jameshawkinsaplc.com)  
9 9880 Research Drive, Suite 200  
10 Irvine, California 92618  
11 Telephone: (949) 387-7200  
12 Facsimile: (949) 387-6676

13 To Defendant:

14 **GRSM**

15 Matthew Theriault  
16 Email: [Mtheriault@grsm.com](mailto:Mtheriault@grsm.com)  
17 Daniela Theriault  
18 Email: [Dtheriault@grsm.com](mailto:Dtheriault@grsm.com)  
19 Debra [Ellwood](mailto:Ellwood@grsm.com) Meppen  
20 Email: [DMeppen@grsm.com](mailto:DMeppen@grsm.com)  
21 Gordon Rees Scully Mansuskani  
22 633 West Fifth Street, 52<sup>nd</sup> Floor  
23 Los Angeles, CA 90071

24 11.18. Execution in Counterparts. This Agreement may be executed in one or more counterparts  
25 by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement  
26 shall be accepted as an original. All executed counterparts and each of them will be deemed  
27 to be one and the same instrument if counsel for the Parties will exchange between  
28 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: \_\_\_\_\_  
By: Eric Kingery

**Plaintiff's Counsel:**

Dated: JAMES HAWKINS APLC \_\_\_\_\_  
By: James R. Hawkins  
Christina M. Lucio  
Attorneys for Plaintiff Eric Kingery

**Defendants:**

~~Dated:~~ ~~Defendant Mark Cirlin~~  
By: Mark Cirlin

Dated: On Behalf of Defendant: \_\_\_\_\_  
By: Mark Cirlin, on behalf of Acera Health, LLC

**Defendants' Counsel:** Gordon Rees Scully Mansukhani, LLP

Dated: \_\_\_\_\_  
By: Daniela Theriault  
Matthew Theriault  
Debra Meppen  
Attorneys for Defendants

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**EXHIBIT A**

## **EXHIBIT 3**

**NOTICE OF CLASS ACTION AND PAGA SETTLEMENT AND  
HEARING DATE FOR FINAL COURT APPROVAL**

Kingery v. Acera Health, LLC, Case No. 30-2024-01402619-CU-OE-CXC  
[Related: Case No. 30-2024-01416779-CU-OE-CXC]

***The Superior Court for the State of California authorized this Notice. Read it carefully!  
It is not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

**You may be eligible to receive money** from an employee class and representative action lawsuit (“Action”) against Acera Health, LLC (“Defendant”) for alleged violations of the California Labor Code. The Action was filed by a former employee of Defendant, Eric Kingery (“Plaintiff”), and seeks payment of (1) alleged unpaid wages, penalties, liquidated damages, attorneys’ fees and costs, and interest for a class of all persons who are or were employed by Defendant as hourly paid, non-exempt employees in the State of California during the Class Period (January 1, 2022, through December 31, 2024) (“Class Members”) and (2) penalties under the California Private Attorneys General Act (“PAGA”) for all persons who are or were employed by Defendant as hourly paid, non-exempt employees who worked at Defendant’s facilities in the State of California during the PAGA Period (May 28, 2023, through December 31, 2024) (“Aggrieved Employees”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendant to fund Individual Class Settlement Payments based on the number of Workweeks worked during the Class Period; and (2) a PAGA Settlement requiring Defendant to fund Individual PAGA Payments to PAGA Employees based on the number of Pay Periods worked during the PAGA Period.

Based on Defendant’s records, and the Parties’ current assumptions, **your estimated payment is \$ [REDACTED]**. The actual amount you may receive likely will be different and will depend on a number of factors.




The above estimate is based on Defendant’s records showing that **you worked [REDACTED] Workweeks during the Class Period and [REDACTED] Pay Periods during the PAGA Period**. If no amount is stated for your Pay Periods during the PAGA Period, then according to Defendant’s records you are not eligible for an Individual PAGA Payment under the Settlement because you did not work during the PAGA Period. If you believe that you worked more Workweeks and/or Pay Periods than indicated, you can submit a challenge to the administrator by the deadline date. See Section IV of this Notice.

The Court has preliminarily approved the proposed Settlement and this Notice. The Court has not yet decided whether to grant final approval. **Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it.** At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff’s attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendant. Any judgment entered by the Court, whether favorable or not, will be binding all Class Members who do not request exclusion.

**SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT**

If you worked for Defendant during the Class Period and/or the PAGA Period, you have four basic options under the Settlement. **Defendant will not retaliate against you for any actions you take with respect to the proposed Settlement.**

<b>You Don’t Have to Do Anything to Participate in the Settlement.</b>	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and Individual PAGA Payment (if any). In exchange, you will give up your right to assert the claims against Defendant that are covered by this Settlement (Released Claims).
<b>You Can Opt-out of the Class Settlement but not the PAGA Settlement.</b>  <b>The Opt-out Deadline is [REDACTED].</b>	If you don’t want to participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See <b>Section VI</b> of this Notice. If you are also an Aggrieved Employee, you cannot opt out of the PAGA portion of the Settlement. You will receive your Individual PAGA Payment and give up your right to assert any PAGA claims against Defendant that are covered by this Settlement.

<p><b>Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement.</b></p> <p><b>Written Objections Must be Submitted by</b>  </p>	<p>All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed Settlement, including how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See <b>Section VII</b> of this Notice.</p>
<p><b>You Can Challenge the Calculation of Your Workweeks/Pay Periods</b></p> <p><b>Written Challenges Must be Submitted by</b>  </p>	<p>The amount of your Individual Class Payment and Individual PAGA Payment, if any, depends on how many Workweeks you worked at least one day during the Class Period and how many Pay Periods your worked at least one day during the PAGA Period. The number of Class Period Workweeks and PAGA Period Pay Periods you worked according to Defendant’s records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by . See <b>Section IV</b> of this Notice.</p>

**I. WHAT IS THE ACTION ABOUT?**

Plaintiff is a former hourly paid, non-exempt employee who worked in apartment buildings for Defendant. He brought this action alleging that Defendant (1) failed to pay minimum wages; (2) failed to pay overtime owed; (3) failure to pay on-call time wages; (4) failed to provide lawful meal periods; (5) failed to authorize and permit rest periods; (6) failed to timely pay wages owed upon separation from employment; (7) failed to reimburse necessary expenses; (8) failed to comply with itemized wage statement provisions; (9) failed to keep accurate records; (10) failed to properly pay sick leave; and (11) failed to pay vested vacation / PTO wages upon termination. Plaintiff also seeks penalties for unfair competition and pursuant to the Private Attorneys General Act of 2004, Labor Code § 2698 *et seq* (“PAGA”). Plaintiff is represented by James Hawkins and Christina M. Lucio of James Hawkins APLC (“Class Counsel”). Defendant strongly deny violating any laws or failing to pay any wages and contends they complied with all applicable laws.

**II. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?**

The Court has made no determination whether Defendant or Plaintiff are correct on the merits. In the meantime, Plaintiff and Defendant hired a mediator, Gig Kyriacou, in an effort to resolve the Action by negotiating to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. On June 9, 2025, the parties participated in an all-day mediation with Mr. Kyriacou, which led to this Agreement to settle the Action. By signing a written settlement agreement ("Settlement") and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Settlement, Plaintiff and Defendant have negotiated a proposed Settlement that is subject to the Court's Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendant does not admit any violations or concede the merit of any claims.

The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

**III. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?**

1. Defendant Will Pay \$142,000.00 as the Gross Settlement Amount (GSA). Defendant has agreed to deposit the GSA into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payments, Class Counsel's attorney's fees and expenses, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, the Judgment will be final 60 calendar days after the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.

2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:

- A. Up to \$ \$47,328.60 (33.33% of the Gross Settlement) to Class Counsel for attorneys’ fees and up to \$27,000.00 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.

- B. Up to \$2,500.00 to Plaintiff Eric Kingery as Class Representative Service Payment for filing the Action, working with Class Counsel and representing the Class. The Class Representative Service Payment will be the only money Plaintiff will receive other than Plaintiff's Individual Class and/or PAGA Payments.
- C. Up to \$ \$5,500.00 to the Administrator for services administering the Settlement.
- D. \$8,000.00 for settlement of claims for civil penalties under PAGA ("PAGA Penalties"), 75% of which shall be paid to the LWDA, and 25% paid to the Aggrieved Employees.

3. Net Settlement Amount and PAGA Penalties Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the GSA (the "Net Settlement Amount" or "NSA") by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks. The portion of the PAGA Penalties allocated to the Aggrieved Employees shall be paid based on their PAGA Period Pay Periods.

4. Taxes Owed on Payments to Class Members. For the Individual Class Payments, Plaintiff and Defendant are asking the Court to approve an allocation of 80% statutory penalties and interest, and 20% as wages for tax purposes. The Individual PAGA Payments shall be considered 100% statutory penalties for tax purposes. The Administrator will report Individual Class Payments on IRS 1099 and W-2 Forms, and the Individual PAGA Payments on IRS 1099 Forms.

Although Plaintiff and Defendant have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name.

If the monies represented by your check is sent to the Controller's Unclaimed Property Fund, you should consult the rules of the Fund for instructions on how to retrieve your money.

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than [REDACTED], that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion to the Administrator by the [REDACTED] Response Deadline. The Request for Exclusion must include the Class Member's name, present address, email address or telephone number, and a simple statement electing to be excluded from the Class Settlement. The Request for Exclusion must be signed by the Class Member. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Defendant.

If you are an Aggrieved Employee, you cannot opt-out of the PAGA portion of this Settlement. All Aggrieved Employees will receive a portion of the PAGA Penalties based on their PAGA Period Pay Periods even if they opt out of the Class Settlement.

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Defendant have agreed that, in either case, the Settlement will be void: Defendant will not pay any money and Class Members will not release any claims against Defendant.

8. Administrator. The Court has appointed a neutral company, Apex Class Action, LLC (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also decide Class Member Challenges regarding Workweeks and/or Pay Periods, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator's contact information is contained in Section IX of this Notice.

9. Participating Class Members' Release and Aggrieved Employees' Release. After the Judgment is final and Defendant has fully funded the Gross Settlement, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant or related entities for wages based on the Class Period facts, as alleged in the Action and resolved by this Settlement.

"Released Parties" shall mean: "Defendant, and Defendant's present and former companies, parents, subsidiaries, affiliates, officers, shareholders, equity partners, partners, owners, directors, trustees, current or former employees, vendors, contractors,

consultants, board of directors, and agents, as well as any of its representatives, Mark Cirlin, attorneys, insurers, and/or any of the predecessors, successors and assigns of Defendant, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally.”

Upon Final Approval, the Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the facts alleged in the Actions including, e.g., (1) any and all claims involving any alleged failure to pay minimum wage; (2) any alleged failure to pay overtime wages; (3) any alleged failure to provide compliant meal periods, or compensation in lieu thereof; (4) any alleged failure to provide compliant rest breaks, or compensation in lieu thereof; (5) any alleged failure to indemnify/reimburse necessary business expenses; (6) any alleged failure to pay wages due upon separation; (7) any alleged failure to provide compliant accurate itemized wage statements; and (8) any alleged unlawful, unfair, or fraudulent business actions or practices under Business and Professions Code §§ 17200, et seq. arising out of the Labor Code and Industrial Welfare Commission (“IWC”) Wage Order violations referenced in the Actions. (“Released Class Claims”).

This release does not include claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.

Upon Final Approval, all Aggrieved Employees will be bound by the following release:

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

Aggrieved Employees cannot opt-out of the PAGA portion of this Settlement. An opt-out does not affect the release of PAGA Claims under this Settlement.

#### **IV. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?**

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount (the remaining Amount after deducting from the GSA the PAGA Penalties, Attorneys’ Fees and Costs, the Class Representative Service Payment, and the Administrator’s Fees) by the total number of Class Period Workweeks worked by all Class Members and (b) multiplying the result by the number of Class Period Workweeks worked by each individual Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing the 25% portion of the PAGA Penalties to be paid to Aggrieved Employees by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.
3. Workweeks/Pay Period Challenges. The number of Workweeks you worked during the Class Period and Pay Periods you worked during the PAGA Period, as recorded in Defendant’s records, are stated in the first page of this Notice. You have until [REDACTED] to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section IX of this Notice has the Administrator’s contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Defendant’s calculation of Workweeks and/or Pay Periods based on Defendant’s records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweeks/Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members and Aggrieved Employees) and Defendant’s Counsel. The Administrator’s decision may be submitted to the Court for review. The subsequent determination by the Court is final.

## V. HOW WILL I GET PAID?

1. Participating Class Members and All Aggrieved Employees. The Administrator will send, by U.S. mail, a single check to every Participating Class Member and Aggrieved Employee (i.e., every Class Member who doesn't opt-out and all Aggrieved Employees). The single check will combine the Individual Class Payment and/or the Individual PAGA Payment.
2. Non-Participating Class Members. Non-participating Class Members (i.e. Class Members who opt out of the settlement) will not be eligible for any payment under the Class Settlement. If a Non-Participating Class Member is also an Aggrieved Employee, the Administrator will send, by U.S. mail, a single Individual PAGA Payment check.

**Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section IX of this Notice has the Administrator's contact information.**

## VI. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

You will be treated as a Participating Class Member, participating fully in the Settlement, unless you notify the Administrator in writing, not later than [REDACTED], that you wish to opt-out. The easiest way to notify the Administrator is to send the Administrator, by fax, email, or mail, a signed written Request for Exclusion by the [REDACTED] Response Deadline. The Request for Exclusion must be a letter from a Class Member or their representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number, and a simple statement that you do not want to participate in the Settlement. The Request for Exclusion must be signed by the Class Member.

The Administrator will exclude you based on any writing communicating your request to be excluded. Be sure to personally sign your request, identify the Action as *Kingery v. Acera Health, LLC, Case No. 30-2024-01402619-CU-OECXC*, and include your identifying information (full name, address, email address or telephone number) for verification purposes.

You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by [REDACTED], or it will be invalid.** Section IX of the Notice has the Administrator's contact information. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Defendant.

## VII. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Class Settlement. A Participating Class Member who disagrees with any aspect of the Settlement Agreement, or feels that the proposed Class Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiffs are too high or too low may choose to submit a written objection to the Administrator. **The deadline for sending written objections to the Administrator is [REDACTED].** Objections may be submitted by fax, email, or mail. Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Include any documents which you believe support your position. Make sure you identify the Action as *Kingery v. Acera Health, LLC, Case No. 30-2024-01402619-CU-OECXC*, and include your full name, current address, email address or telephone number, and sign the objection. Section IX of this Notice has the Administrator's contact information.

You may submit a written objection. You may also choose instead to attend and object at the Final Approval Hearing (or personally retain a lawyer to attend and object on your behalf at your own cost). You are not required to attend the hearing, however, to have the Court consider your written objection, nor are you required to submit a written objection in order to appear and object at the hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section VIII of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

## VIII. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on [REDACTED], at [REDACTED] in Department CX102 of the Orange County Superior Court, located at the Civil Complex Center on 751 W. Santa Ana Blvd., Santa Ana, CA 92701. Any Class Member who does not request exclusion may also, if the Member so wishes, enter an appearance through counsel. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comments from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually. Check the Court's website for the most current information.

It is possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website, [REDACTED], beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

#### **IX. HOW CAN I GET MORE INFORMATION?**

The Agreement sets forth everything Defendant and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to Apex Class Action, LLC's website at [REDACTED]. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to <https://courtindex.occourts.org/disclaimer.jsp> and entering the Case Number for the Action, **Case No. 30-2024-01402619-CU-OE-CXC**. You can also make an appointment to personally review court documents in the Clerk's Office at the Civil Complex Center in Santa Ana, CA, by calling (657) 622-6878.

#### **DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.**

##### Class Counsel:

James R. Hawkins  
Christina M. Lucio  
**JAMES HAWKINS APLC**  
9880 Research Drive, Suite 200  
Irvine, California 92618  
Telephone: (949) 387-7200  
Facsimile: (949) 387-6676  
[james@jameshawkinsapl.com](mailto:james@jameshawkinsapl.com)  
[christina@jameshawkinsapl.com](mailto:christina@jameshawkinsapl.com)

##### Settlement Administrator:

**APEX CLASS ACTION, LLC**  
Email Address: [claims@apexclassaction.com](mailto:claims@apexclassaction.com)  
Mailing Address: 18 Technology Drive, Suite 164, Irvine, CA 92618  
Telephone: 800-355-0700  
Fax Number: 949-878-3536

#### **X. WHAT IF I LOSE MY SETTLEMENT CHECK?**

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the California Controller's Office Unclaimed Property Fund for instructions on how to retrieve the funds.

#### **XI. WHAT IF I CHANGE MY ADDRESS?**

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

**Must Be Postmarked  
No Later Than  
[Response Deadline]**

**OBJECTION FORM**

*Kingery v. Acera Health, LLC, et al.*  
Superior Court of California, County of Orange  
Case No. 30-2024-01402619-CU-OECXC  
[Related Case No. 30-2024-01416779-CU-OECXC]

**COMPLETE AND RETURN THIS FORM ONLY IF YOU WANT TO OBJECT TO THE SETTLEMENT IN THIS CASE.**

**DO NOT RETURN THIS FORM IF YOU WANT TO REQUEST EXCLUSION FROM THE SETTLEMENT.**

**IF YOU DO NOT HAVE ANY OBJECTIONS TO THE SETTLEMENT, DO NOT SUBMIT THIS FORM.**

To object, you must complete, sign, and mail this Objection Form by First Class U.S. Mail or equivalent, postage prepaid, postmarked on or before [Response Deadline], as addressed as follows:

**MAIL TO:**  
*Kingery v. Acera Health, LLC, et al. Settlement*  
c/o [Settlement Administrator]  
[Address]

I want to OBJECT to the Settlement in this case. My objections to the Settlement are (use additional pages if needed):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

**Must Be Postmarked  
No Later Than  
[Response Deadline]**

**OPT-OUT FORM**

***Kingery v. Acera Health, LLC, et al.***  
Superior Court of California, County of Orange  
Case No. 30-2024-01402619-CU-OECXC  
[Related Case No. 30-2024-01416779-CU-OECXC]

***COMPLETE THIS FORM IF YOU DO NOT WANT TO RECEIVE A SETTLEMENT PAYMENT  
AND BE BOUND BY THE SETTLEMENT***

**Instructions**

You have the right to opt-out (i.e., request exclusion) if you do not want to be part of the Class of the proposed Settlement. **If you fill out this Opt-Out Form, you: (1) will not receive any money under the settlement of your claims as a Class Member; and (2) will not be bound by the terms of this Settlement (other than terms relating to the release of claims under PAGA).**

To opt-out, you must complete, sign, and mail this Opt-Out by First Class U.S. Mail or equivalent, postage prepaid, postmarked on or before **[Response Deadline]**, addressed as follows:

**MAIL TO:**  
***Kingery v. Acera Health, LLC, et al. Settlement***  
c/o **[Settlement Administrator]**  
**[Address]**

By signing this Opt-Out Form, I acknowledge that I have read the Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval (“Class Notice”) in this case and the information in the Class Notice pertaining to my right to opt out of or object to certain portions of the proposed Settlement. I also acknowledge that I understand that **I will not receive any money** under the Settlement for my claims as a Class Member, and that I will not be bound by the terms of the Settlement, except for those terms that relate to claims for civil penalties under PAGA.

Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Date: \_\_\_\_\_

Signature \_\_\_\_\_

**Must Be Postmarked  
No Later Than  
[Response Deadline]**

**WORKWEEK DISPUTE FORM**

***Kingery v. Acera Health, LLC, et al.***  
Superior Court of California, County of Orange  
Case No. 30-2024-01402619-CU-OECXC  
[Related Case No. 30-2024-01416779-CU-OECXC]

Your individual payment is calculated based on the number of workweeks that you worked for Acera Health, LLC in California at any time from January 1, 2022, through December 31, 2024. You can find your total number of workweeks and other details in the Court Approved Notice of Class Action Settlement. If you think that your total number of workweeks is wrong, please provide the information below.

**If you want to dispute your Workweeks, return this form to the Settlement Administrator on or before [redacted].**

Please provide the following information:

During the period from January 1, 2022, through December 31, 2024., how many weeks do you believe you worked at least one shift for Acera Health, LLC in California? \_\_\_\_\_.

To support the number of workweeks you believe you worked, please include all documentation including any wage statements showing that you worked during this period.

Full Name: \_\_\_\_\_

Last 4 of SSN or Tax Identification Number: \_\_\_\_\_

Street Address Line 1: \_\_\_\_\_

Street Address Line 2: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Signature of Class Member: \_\_\_\_\_ Date: \_\_\_\_\_

E-mail Address (optional) \_\_\_\_\_

## **EXHIBIT 4**

NOTICE OF CLASS ACTION AND PAGA SETTLEMENT AND  
HEARING DATE FOR FINAL COURT APPROVAL

Kingery v. Acera Health, LLC, Case No. 30-2024-01402619-CU-OE-CXC

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

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*The Superior Court for the State of California authorized this Notice. Read it carefully!  
It is not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.*

You may be eligible to receive money from an employee class and representative action lawsuit (“Action”) against Acera Health, LLC (“Defendant”) for alleged violations of the California Labor Code. The Action was filed by a former employee of Defendant, Eric Kingery (“Plaintiff”), and seeks payment of (1) alleged unpaid wages, penalties, liquidated damages, attorneys’ fees and costs, and interest for a class of all persons who are or were employed by Defendant as hourly paid, non-exempt employees in the State of California during the Class Period (January 1, 2022, through December 31, 2024) (“Class Members”) and (2) penalties under the California Private Attorneys General Act (“PAGA”) for all persons who are or were employed by Defendant as hourly paid, non-exempt employees who worked at Defendant’s facilities in the State of California during the PAGA Period (May 28, 2023, through December 31, 2024) (“Aggrieved Employees”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendant to fund Individual Class Settlement Payments based on the number of Workweeks worked during the Class Period; and (2) a PAGA Settlement requiring Defendant to fund Individual PAGA Payments to PAGA Employees based on the number of Pay Periods worked during the PAGA Period.

Based on Defendant’s records, and the Parties’ current assumptions, your estimated payment is \$ [REDACTED]. The actual amount you may receive likely will be different and will depend on a number of factors.

The above estimate is based on Defendant’s records showing that you worked [REDACTED] Workweeks during the Class Period and [REDACTED] Pay Periods during the PAGA Period. If no amount is stated for your Pay Periods during the PAGA Period, then according to Defendant’s records you are not eligible for an Individual PAGA Payment under the Settlement because you did not work during the PAGA Period. If you believe that you worked more Workweeks and/or Pay Periods than indicated, you can submit a challenge to the administrator by the deadline date. See Section IV of this Notice.

The Court has preliminarily approved the proposed Settlement and this Notice. The Court has not yet decided whether to grant final approval. **Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it.** At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff’s attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendant. Any judgment entered by the Court, whether favorable or not, will be binding all Class Members who do not request exclusion.

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~~If you worked for Defendant during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:~~

- ~~(1) **Do Nothing.** You don’t have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert claims against Defendant for the claims released in the Settlement.~~
- ~~(2) **Opt Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt out) by submitting a written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period claims against Defendant, and if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. Aggrieved Employees cannot opt out of the PAGA portion of this Settlement and will receive Individual PAGA Payments based on the number of Pay Periods worked during the PAGA Period.~~

~~Defendant will not retaliate against you for any actions you take with respect to the proposed Settlement.~~

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SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

If you worked for Defendant during the Class Period and/or the PAGA Period, you have four basic options under the Settlement. Defendant will not retaliate against you for any actions you take with respect to the proposed Settlement.

<b>You Don't Have to Do Anything to Participate in the Settlement.</b>	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and Individual PAGA Payment (if any). In exchange, you will give up your right to assert the claims against Defendant that are covered by this Settlement (Released Claims).
<b>You Can Opt-out of the Class Settlement but not the PAGA Settlement.</b>  <b>The Opt-out Deadline is</b> [REDACTED].	If you don't want to participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See <b>Section VI</b> of this Notice. If you are also an Aggrieved Employee, you cannot opt out of the PAGA portion of the Settlement. You will receive your Individual PAGA Payment and give up your right to assert any PAGA claims against Defendant that are covered by this Settlement.
<b>Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement.</b>  <b>Written Objections Must be Submitted by</b> [REDACTED]	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement, including how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See <b>Section VII</b> of this Notice.
<b>You Can Challenge the Calculation of Your Workweeks/Pay Periods</b>  <b>Written Challenges Must be Submitted by</b> [REDACTED]	The amount of your Individual Class Payment and Individual PAGA Payment, if any, depends on how many Workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period. The number of Class Period Workweeks and PAGA Period Pay Periods you worked according to Defendant's records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by [REDACTED]. See <b>Section IV</b> of this Notice.

**I. WHAT IS THE ACTION ABOUT?**

Plaintiff is a former hourly paid, non-exempt employee who worked in apartment buildings for Defendant. He brought this action alleging that Defendant (1) failed to pay minimum wages; (2) failed to pay overtime owed; (3) failure to pay on-call time wages; (4) failed to provide lawful meal periods; (5) failed to authorize and permit rest periods; (6) failed to timely pay wages owed upon separation from employment; (7) failed to reimburse necessary expenses; (8) failed to comply with itemized wage statement provisions; (9) failed to keep accurate records; (10) failed to properly pay sick leave; and (11) failed to pay vested vacation / PTO wages upon termination. Plaintiff also seeks penalties for unfair competition and pursuant to the Private Attorneys General Act of 2004, Labor Code § 2698 *et seq* ("PAGA"). Plaintiff is represented by James Hawkins and Christina M. Lucio of James Hawkins APLC ("Class Counsel"). Defendant strongly deny violating any laws or failing to pay any wages and contends they complied with all applicable laws.

**II. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?**

The Court has made no determination whether Defendant or Plaintiff are correct on the merits. In the meantime, Plaintiff and Defendant hired a mediator, Gig Kyriacou, in an effort to resolve the Action by negotiating to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. On June 9, 2025, the parties participated in an all-day mediation with Mr. Kyriacou, which led to this Agreement to settle the Action. By signing a written settlement agreement ("Settlement") and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Settlement, Plaintiff and Defendant have negotiated a proposed Settlement that is subject to the Court's Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendant does not admit any violations or concede the merit of any claims.

~~Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendant has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) the Settlement is in the best interests of the Class Members and Aggrieved Employees.~~ The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

### III. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Defendant Will Pay \$142,000.00 as the Gross Settlement Amount (GSA). Defendant has agreed to deposit the GSA into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payments, Class Counsel's attorney's fees and expenses, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, the Judgment will be final 60 calendar days after the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.

2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:

- A. Up to \$ 47,328.60 (33.33% of the Gross Settlement) to Class Counsel for attorneys' fees and up to \$27,000.00 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
- B. Up to \$2,500.00 to Plaintiff Eric Kingery as Class Representative Service Payment for filing the Action, working with Class Counsel and representing the Class. The Class Representative Service Payment will be the only money Plaintiff will receive other than Plaintiff's Individual Class and/or PAGA Payments.
- C. Up to \$ 5,500.00 to the Administrator for services administering the Settlement.
- D. \$8,000.00 for settlement of claims for civil penalties under PAGA ("PAGA Penalties"), 75% of which shall be paid to the LWDA, and 25% paid to the Aggrieved Employees.

3. Net Settlement Amount and PAGA Penalties Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the GSA (the "Net Settlement Amount" or "NSA") by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks. The portion of the PAGA Penalties allocated to the Aggrieved Employees shall be paid based on their PAGA Period Pay Periods.

4. Taxes Owed on Payments to Class Members. For the Individual Class Payments, Plaintiff and Defendant are asking the Court to approve an allocation of 80% statutory penalties and interest, and 20% as wages for tax purposes. The Individual PAGA Payments shall be considered 100% statutory penalties for tax purposes. The Administrator will report Individual Class Payments on IRS 1099 and W-2 Forms, and the Individual PAGA Payments on IRS 1099 Forms.

Although Plaintiff and Defendant have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name.

If the monies represented by your check is sent to the Controller's Unclaimed Property Fund, you should consult the rules of the Fund for instructions on how to retrieve your money.

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than [REDACTED], that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion to the Administrator by the [REDACTED] Response Deadline. The Request for Exclusion must include the Class Member's name, present address, email address or telephone number, and a simple statement electing to be excluded from the Class Settlement. The Request for Exclusion

must be signed by the Class Member. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Defendant.

If you are an Aggrieved Employee, you cannot opt-out of the PAGA portion of this Settlement. All Aggrieved Employees will receive a portion of the PAGA Penalties based on their PAGA Period Pay Periods even if they opt out of the Class Settlement.

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Defendant have agreed that, in either case, the Settlement will be void: Defendant will not pay any money and Class Members will not release any claims against Defendant.

8. Administrator. The Court has appointed a neutral company, Apex Class Action, LLC (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Administrator will also decide Class Member Challenges regarding Workweeks and/or Pay Periods, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section IX of this Notice.

9. Participating Class Members’ Release and Aggrieved Employees’ Release. After the Judgment is final and Defendant has fully funded the Gross Settlement, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant or related entities for wages based on the Class Period facts, as alleged in the Action and resolved by this Settlement.

9. “Released Parties” shall mean: “Defendant, and Defendant’s present and former companies, parents, subsidiaries, affiliates, officers, shareholders, equity partners, partners, owners, directors, trustees, current or former employees, vendors, contractors, consultants, board of directors, and agents, as well as any of its representatives, Mark Cirlin, attorneys, insurers, and/or any of the predecessors, successors and assigns of Defendant, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally.”

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Upon Final Approval, the Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the facts alleged in the Actions including, e.g., (1) any and all claims involving any alleged failure to pay minimum wage; (2) any alleged failure to pay overtime wages; (3) any alleged failure to provide compliant meal periods, or compensation in lieu thereof; (4) any alleged failure to provide compliant rest breaks, or compensation in lieu thereof; (5) any alleged failure to indemnify/reimburse necessary business expenses; (6) any alleged failure to pay wages due upon separation; (7) any alleged failure to provide compliant accurate itemized wage statements; and (8) any alleged unlawful, unfair, or fraudulent business actions or practices under Business and Professions Code §§ 17200, et seq. arising out of the Labor Code and Industrial Welfare Commission (“IWC”) Wage Order violations referenced in the Actions. (“Released Class Claims”).

This release does not include claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.

Upon Final Approval, all Aggrieved Employees will be bound by the following release:

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

Aggrieved Employees cannot opt-out of the PAGA portion of this Settlement. An opt-out does not affect the release of PAGA Claims under this Settlement.

#### IV. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. **Individual Class Payments.** The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount (the remaining Amount after deducting from the GSA the PAGA Penalties, Attorneys' Fees and Costs, the Class Representative Service Payment, and the Administrator's Fees) by the total number of Class Period Workweeks worked by all Class Members and (b) multiplying the result by the number of Class Period Workweeks worked by each individual Class Member.
2. **Individual PAGA Payments.** The Administrator will calculate Individual PAGA Payments by (a) dividing the 25% portion of the PAGA Penalties to be paid to Aggrieved Employees by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.
3. **Workweeks/Pay Period Challenges.** The number of Workweeks you worked during the Class Period and Pay Periods you worked during the PAGA Period, as recorded in Defendant's records, are stated in the first page of this Notice. You have until [REDACTED] to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section IX of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Defendant's calculation of Workweeks and/or Pay Periods based on Defendant's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweeks/Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members and Aggrieved Employees) and Defendant's Counsel. The Administrator's decision may be submitted to the Court for review. The subsequent determination by the Court is final. You can't appeal or otherwise challenge its final decision.

#### V. HOW WILL I GET PAID?

1. **Participating Class Members and All Aggrieved Employees.** The Administrator will send, by U.S. mail, a single check to every Participating Class Member and Aggrieved Employee (i.e., every Class Member who doesn't opt-out and all Aggrieved Employees). The single check will combine the Individual Class Payment and/or the Individual PAGA Payment.
2. **Non-Participating Class Members.** Non-participating Class Members (i.e. Class Members who opt out of the settlement) will not be eligible for any payment under the Class Settlement. If a Non-Participating Class Member is also an Aggrieved Employee, the Administrator will send, by U.S. mail, a single Individual PAGA Payment check.

**Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section IX of this Notice has the Administrator's contact information.**

#### VI. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

You will be treated as a Participating Class Member, participating fully in the Settlement, unless you notify the Administrator in writing, not later than [REDACTED], that you wish to opt-out. The easiest way to notify the Administrator is to send the Administrator, by fax, email, or mail, a signed written Request for Exclusion by the [REDACTED] Response Deadline. The Request for Exclusion must be a letter from a Class Member or their representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number, and a simple statement that you do not want to participate in the Settlement. The Request for Exclusion must be signed by the Class Member.

The Administrator will exclude you based on any writing communicating your request to be excluded. Be sure to personally sign your request, identify the Action as *Kingery v. Acera Health, LLC, Case No. 30-2024-01402619-CU-OECXC*, and include your identifying information (full name, address, email address or telephone number) for verification purposes.

You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by [REDACTED], or it will be invalid.** Section IX of the Notice has the Administrator's

contact information. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Defendant.

**VII. HOW DO I OBJECT TO THE SETTLEMENT?**

Only Participating Class Members have the right to object to the Class Settlement. A Participating Class Member who disagrees with any aspect of the Settlement Agreement, or feels that the proposed Class Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiffs are too high or too low may choose to submit a written objection to the Administrator. **The deadline for sending written objections to the Administrator is [REDACTED]. Objections may be submitted by fax, email, or mail.** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Include any documents which you believe support your position. Make sure you identify the Action as *Kingery v. Acera Health, LLC, Case No. 30-2024-01402619-CU-OECXC*, and include your full name, current address, email address or telephone number, and sign the objection. Section IX of this Notice has the Administrator’s contact information.

~~Participating Class Members cannot object to the PAGA portion of the Settlement.~~

~~If you~~ You may submit a written objection. You may also choose instead to attend and object at the Final Approval Hearing (or personally retain a lawyer to attend and object on your behalf at your own cost) ~~the Final Approval Hearing~~. You are not required to attend the hearing, however, to have the Court consider your written objection, nor are you required to submit a written objection in order to appear and object at the hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section VIII of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

**VIII. CAN I ATTEND THE FINAL APPROVAL HEARING?**

You can, but don’t have to, attend the Final Approval Hearing on [REDACTED], at [REDACTED] in Department CX102 of the Orange County Superior Court, located at the Civil Complex Center on 751 W. Santa Ana Blvd., Santa Ana, CA 92701. Any Class Member who does not request exclusion may also, if the Member so wishes, enter an appearance through counsel. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comments from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually. Check the Court’s website for the most current information.

It is possible the Court will reschedule the Final Approval Hearing. You should check the Administrator’s website, [REDACTED], beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

**IX. HOW CAN I GET MORE INFORMATION?**

The Agreement sets forth everything Defendant and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to Apex Class Action, LLC’s website at [REDACTED]. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to <https://courtindex.occourts.org/disclaimer.jsp> <https://www.lacourt.org/easesummary/ui/index.aspx?easetype=civil> and entering the Case Number for the Action, Case No. 30-2024-01402619-CU-OE-CXC24STCV04598. You can also make an appointment to personally review court documents in the Clerk’s Office at the Civil Complex Center in Santa Ana, CA, Spring Street Courthouse by calling (657) 622-6878.

**DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.**

Class Counsel:

James R. Hawkins  
Christina M. Lucio  
**JAMES HAWKINS APLC**  
9880 Research Drive, Suite 200  
Irvine, California 92618  
Telephone: (949) 387-7200  
Facsimile: (949) 387-6676  
james@jameshawkinsaplc.com  
christina@jameshawkinsaplc.com

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Settlement Administrator:

**APEX CLASS ACTION, LLC**  
Email Address: [claims@apexclassaction.com](mailto:claims@apexclassaction.com)  
Mailing Address: 18 Technology Drive, Suite 164, Irvine, CA 92618  
Telephone: 800-355-0700  
Fax Number: 949-878-3536

**X. WHAT IF I LOSE MY SETTLEMENT CHECK?**

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the California Controller's Office Unclaimed Property Fund for instructions on how to retrieve the funds.

**XI. WHAT IF I CHANGE MY ADDRESS?**

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

## **EXHIBIT 5**

**JAMES *JH* HAWKINS**  
A PROFESSIONAL LAW CORPORATION

9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618  
TELEPHONE (949) 387-7200; FACSIMILE (949) 387-6676

May 28, 2024

**Via Online Filing (LWDA)**

California Labor and Workforce Development Agency  
Attn: PAGA Administrator  
1515 Clay Street, Ste 801  
Oakland, CA 94612  
<http://www.dir.ca.gov/Private-Attorneys-General-Act>

**Via Certified Mail (Employers)**

Acera Health, LLC  
1014 S. Westlake Blvd. Ste. #14-279  
Westlake Village, CA 91361  
Receipt No. 9589 0710 5270 0748 0705 77

Agent for Service of Process for  
Acera Health, LLC  
Joseph Choi  
3151 Airway Avenue Suite P3  
Costa Mesa, CA 92626  
Receipt No.: 9589 0710 5270 0748 0705 84

**RE: NOTICE PURSUANT TO LABOR CODE SECTIONS 2698 *et seq.***

To Whom It May Concern:

PLEASE TAKE NOTICE that Plaintiff Eric Kingery, individually and on behalf of all others similarly situated, gives NOTICE of his intent to commence a civil action pursuant to California Labor Code Section 2698, *et seq.* against his former employers, Defendants Acera Health, LLC, a limited liability company in Delaware, and DOES 1-50 (collectively “Acera Health” or “Defendants”). Plaintiff hereby gives written notice electronically to the Labor and Workforce Development Agency, and by certified mail to Defendants via their agent(s) for service of process.

Plaintiff was employed by Defendants as an hourly, non-exempt employee. Plaintiff worked for Defendants until approximately July of 2023. During the relevant time, he performed functions as a behavioral health technician.

The group of aggrieved employees that Plaintiff seeks to represent is a group of non-

NOTICE PURSUANT TO LABOR CODE SECTIONS 2698 *et seq.*

May 28, 2024

exempt employees working directly or indirectly for Defendant in the State of California during the relevant time period (“Aggrieved Employees”). This notice is timely as it is provided within one year of the violations. Each of the violations set forth below and in the attached complaint is asserted on behalf of Plaintiff and the Aggrieved Employees.

**Plaintiff has attached his Complaint, and incorporates the allegations in the Complaint as though fully set forth herewith, setting out the specific provisions of the Labor Code that Plaintiff alleges have been violated, including the facts and relevant theories alleged against Defendant in the Complaint.**

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5<sup>th</sup> 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Plaintiff has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees working for Defendant at their locations in the State regardless of their classification, job title, locations, or whether they were hired directly or through a labor contractor or staffing agency.

Plaintiff claims that Defendant implemented legally non-compliant policies and practices which led to Defendants’ 1) failure to pay minimum wages; 2) failure to pay overtime owed; 3) failure to pay on-call time pay; 4) failure to provide lawful meal periods; 5) failure to authorize and permit rest periods; 6) failure to timely pay wages owed upon separation from employment; 7) failure to furnish accurate itemized wage statements; 8) failure to pay earned vacation wages; 9) failure to reimburse necessary expenses; and 10) violation of the Unfair Competition Law.

In addition to the violations set forth in the Complaint, Plaintiff also contends that Defendants failed to keep accurate records as required by 4-2001 and 5-2002, Labor Code 1174, and 1198. IWC Wage Orders 4-2001 and 5-2001 require in pertinent part: every employer shall keep accurate information with respect to each employee including the following: (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals, and total daily hours worked shall also be recorded...(5) Total hours worked in the payroll period and applicable rates of pay...” Labor Code section 1174 also requires Defendants to maintain and preserve, in a centralized location, among other items, records showing the names and addresses of all employees employed and payroll records showing the hours worked daily by, and the wages paid to, its employees. On information and belief and based thereon, Defendants have knowingly and intentionally failed to comply with Labor Code section 1174, including by implementing the policies and procedures and committing the violations alleged in the complaint, including without limitation failing to keep records of meal periods and all wages earned at the proper rates. Defendants’ failure to comply with Labor Code section 1174 is unlawful pursuant to Labor Code section 1175.

All Labor Code provisions in the Complaint alleged to have been violated pertain to all entities and individuals named in the Complaint, even if not expressly specified.

NOTICE PURSUANT TO LABOR CODE SECTIONS 2698 *et seq.*  
May 28, 2024

Please advise by certified mail within sixty-five (65) days of the post mark on this letter if the LWDA intends to investigate these claims. Thank you, and please contact me if you have any questions or require additional information.

Very Truly Yours,

*/s/ Christina M. Lucio*

Christina M. Lucio, Esq.

Enclosed: Complaint

## **EXHIBIT 6**

Thank you. If you provided an email address with your submission, a confirmation regarding your submission will be emailed to you. Otherwise, you can search for the case to verify that your submission was properly received.

[Click Here](#) to Search Case

## Irma Ceja

---

**From:** DIR PAGA Unit <no-reply@formassembly.com>  
**Sent:** Monday, March 30, 2026 3:56 PM  
**To:** Irma Ceja  
**Subject:** Thank you for your Other Response or Document Submission

03/30/2026 03:55:12 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Other Response or Document Submission If you have questions or concerns regarding this submission or your case, please send an email to [pagainfo@dir.ca.gov](mailto:pagainfo@dir.ca.gov).

DIR PAGA Unit on behalf of  
Labor and Workforce Development Agency

Website: [http://labor.ca.gov/Private\\_Attorneys\\_General\\_Act.htm](http://labor.ca.gov/Private_Attorneys_General_Act.htm)



## Private Attorneys General Act (PAGA) – Filing

### Other Document

PAGA Number (LWDA-CM-): \*

Please enter only the numbers after "LWDA-CM-" in the following format, "XXXXXXXXXX-XX".  
[Search for PAGA Case number](#)

#### Your Information (Person Who is Filing)

Your First Name \*

Your Last Name \*

Your Email Address \*

Your Street Name, Number and Suite/Apt \*

Your Mobile Phone Number

Your City \*

Your Work Phone Number

Your State \*

Your Zip/Postal Code \*

#### Documents

Other Document \*

 08.18.25 Mtn ...relim App.pdf

Other Attachment (if any)

 08.18.25 MPA...relim App.pdf

Other Attachment (if any)

 Kingery v. Ace...lrf Signed.pdf

[Remove](#)

[Add Another Attachment](#)

Should you have questions regarding this online form, please contact [PAGAInfo@dir.ca.gov](mailto:PAGAInfo@dir.ca.gov)

**IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.**

**I understand that, if I file, I must comply with the redaction rules consistent with this notice.**

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Previous Page

Submit

## **EXHIBIT 7**

# APEX

**CLASS ACTION ADMINISTRATION**

**Quotation Request:**

Samantha A. Jones  
 James Hawkins ALPC  
 Samantha.Jones@jameshawkinsapl.com  
 949.387.7200

**Case Name:**

Acera Health LLC  
 Date: Friday, June 20, 2025  
 RFP Number: 45242004

**Prepared By:**

Nick Day  
 Apex Class Action LLC  
 nickday@apexclassaction.com  
 949.563.6650

Settlement Specifications	
Estimated Class Size:	<b>161</b>
Certified Language Translation:	<b>No</b>
Static Settlement Website:	<b>Yes</b>
Percentage of Undeliverable Mail:	<b>20%</b>

Professional Services	Fee Calculation	Rate(s)	Quantity	Estimated Cost
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Data Analytics and Standardization				
Import and Standardize Data*	Per Hour	\$125.00	1	\$125.00
Data Analyst	Per Hour	\$150.00	1	\$150.00
*Data provided must be in a workable format. Apex can standardize provided data at an additional cost of \$150/hr.				
			Sub Total:	\$275.00

Mailing of Class Notice				
Form Set Up	Per Hour	\$120.00	1	\$120.00
Print & Mail Class Notice	Per Piece	\$1.50	161	\$241.50
USPS First Class Postage	Per Piece	\$0.73	161	\$117.53
Remail Undeliverable Mail (Skip-Trace)	Per Piece	\$2.00	32	\$64.40
Receive and Process Undeliverable Mail	Per Hour	\$75.00	1	\$75.00
Process Class Member Correspondence via mail, e-mail & fax	Per Piece	\$75.00	1	\$75.00
NCOA Address Update (USPS)	Static Rate	\$750.00	1	\$750.00
			Sub Total:	\$1,443.43

Project Management				
Project Management	Per Hour	\$150.00	2	\$300.00
Project Coordinator	Per Hour	\$90.00	1	\$90.00
Data Analyst and Reporting	Per Hour	\$140.00	1	\$140.00
			Sub Total:	\$530.00



**APEX**  
CLASS ACTION ADMINISTRATION

Professional Services	Fee Calculation	Rate(s)	Quantity	Estimated Cost
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Toll-Free Contact Center, Website & Reporting				
Bilingual Toll-Free Contact Center	Static Rate	\$75.00	1	\$75.00
Settlement Website: Static Apex URL	Static Rate	\$500.00	1	\$500.00
Settlement Status Reports	Static Rate	\$750.00	1	Waived
			Sub Total:	\$575.00

Distribution & Settlement Fund Management				
Settlement Calculations (Preliminary and Final)	Per Hour	\$120.00	2	\$240.00
Account Management and Reconciliation	Per Hour	\$140.00	1	\$140.00
Print & Mail Distribution Settlement Check (W-2/1099)	Per Piece	\$1.50	161	\$241.50
USPS First Class Postage	Per Piece	\$0.73	161	\$117.53
Remail Distribution to Updated Address (Skip Trace)	Per Piece	\$2.00	16	\$32.20
Individual Income Tax Preparation & Reporting	Per Hour	\$100.00	4	\$400.00
QSF Income Tax Reporting (per calendar year)	Per Year	\$650.00	1	\$650.00
Unclaimed Funds: State Controller's Unclaimed Property Fund	Static Rate	\$500.34	1	\$500.34
			Sub Total:	\$2,321.57

Post Distribution Reconciliation				
Bank Account Reconciliation	Per Hour	\$135.00	1	\$135.00
Project Management Reconciliation	Per Hour	\$100.00	1	\$100.00
Declarations	Per Hour	\$120.00	1	\$120.00
			Sub Total:	\$355.00

**WILL NOT EXCEED: \$5,500.00**

Thank you for your business!

## Terms & Conditions

The following Terms and Conditions govern the provision of all services to be provided by Apex Class Action and its affiliates ("Apex") to the Client. These terms and conditions are binding and shall apply to all services provided by Apex in relation to any related services or products.

1. **Services:** Apex commits to providing the Client with the administrative services detailed in the attached Proposal (the "Services").

2. **Payment Terms:** As compensation for the legal services to be provided, the Client agrees to pay Apex all fees detailed in the Proposal. The fees quoted in the Proposal (and any subsequent proposals for additional services) are estimates based on the information provided to Apex by the Client. Apex makes no representation that the estimated fees in the Proposal or any subsequent proposals for additional services shall equal the actual fees charged by Apex to the Client, which fees (including individual line items) may be greater or less than estimated. If additional services are requested on an hourly basis and are not specifically detailed in the Proposal, Apex will prepare estimates for such services subject to approval by the Client. In the performance of such additional services, Apex will charge standard hourly fees which shall apply.

3. **Incurred Expenses:** In relation to the provision of services outlined in this agreement, the Client agrees to reimburse Apex for all reasonable out-of-pocket expenses incurred. Such expenses may include, but are not limited to, costs associated with postage, media production or publication, banking fees, brokerage fees, messenger and delivery service expenses, travel expenses, filing fees, office supplies, meals, staff overtime expenses, and other related costs and expenses. If not otherwise specified in writing, fees for print notice and certain expenses, such as media publication and postage, must be paid immediately upon invoicing and, in certain cases, at least ten (10) days prior to the date on which such expenses will be incurred.

4. **Invoicing:** Apex shall present invoices for its fees and expenses on a monthly basis, except as provided in Section 3. The Client agrees to pay each invoice within 30 days of receipt. In case of non-payment within 90 days of the billing date, an additional service charge of 1.5% per month may apply. Apex reserves the right to increase its prices, charges, and rates annually, subject to reasonable adjustments. If any price increases exceed 10%, Apex shall give thirty (30) days' notice to the Client. In the event of any unpaid invoices beyond 120 days of the due date, Apex reserves the right to withhold services and reports until payment is received, subject to notice to the Client. It is important to note that Apex's failure to provide services and reports in such instances shall not constitute a default under this agreement.

5. **Case Duration:** The duration of these Terms and Conditions, except for the data storage obligations stated in Section 13, shall be in effect until 30 days following the completion of the Services as described in the Proposal. The parties may extend these Terms and Conditions in writing for a mutually agreed-upon period beyond this initial 30-day period.

6. **Termination of Services:** Either party may terminate the Services by providing thirty (30) days written notice to the other party. Alternatively, termination may occur immediately upon written notice for Cause, as defined below. Cause means (i) Apex's gross negligence or willful misconduct that causes serious and material harm to the Client; (ii) the Client's failure to pay Apex invoices for more than one hundred twenty (120) days from the date of the invoice; or (iii) the accrual of invoices or unpaid services where Apex reasonably believes it will not be paid. Termination of the Services shall not relieve the Client of its obligation to pay Apex for services rendered prior to the termination.

7. **Independent Contractor:** As an independent contractor, Apex will provide services under the terms of this agreement. It is agreed that neither Apex nor any of its employees will be considered an employee of the Client. Consequently, Apex and its employees will not be eligible for any benefits provided by the Client to its employees. The Client will not make any tax deductions from the payments due to Apex for state or federal tax purposes. Apex will be solely responsible for paying all taxes and other payments due on payments received from the Client under this agreement.

8. **Apex warrants that the Services outlined in the Proposal will be performed in accordance with the standards generally adhered to by professionals providing similar services. It is acknowledged that the Services may entail the likelihood of some human and machine errors, omissions, delays, and losses that may result in damage. However, Apex shall not be held liable for such errors, omissions, delays, or losses unless they are caused by its gross negligence or willful misconduct. In the event of any breach of this warranty by Apex, the Client's sole remedy will be limited to Apex's reworking, at its expense, any inaccurate output provided that such inaccuracies occurred solely as a result of Apex's gross negligence or willful misconduct under this agreement.**

9. **Limitation of Liability:** The Client acknowledges that Apex shall not be held liable for any consequential, special, or incidental damages incurred by the Client in relation to the performance of Services, whether the claim is based on breach of warranty, contract, tort (including negligence), strict liability, or any other grounds. Under no circumstances shall Apex's liability to the Client, for any Losses (including court costs and reasonable attorney's fees), arising out of or in connection with these Terms and Conditions, exceed the total amount charged or chargeable to the Client for the specific service(s) that caused the Losses.

10. **Indemnification:** The Client agrees to indemnify and hold harmless Apex from any losses, suits, actions, judgments, fines, costs, liabilities, or claims arising from any action or proceeding relating to the Services provided by Apex, regardless of whether or not it results in liability (collectively referred to as "Indemnified Claims"). However, this indemnification provision shall not apply to the extent that such Indemnified Claims are caused by Apex's willful misconduct, gross negligence, or breach of these Terms and Conditions. This provision shall survive termination of the Services.

11. **Confidentiality:** Apex will uphold strict confidentiality between Apex and the Client and applies to all non-public records, documents, systems, procedures, processes, software, and other information received by either party in connection with the performance of services under these terms. Both Apex and the Client agree to keep confidential all such non-public information, including any material marked or identified as confidential or proprietary. Any such confidential information shall not be disclosed, provided, disseminated, or otherwise made available to any third party, except as required to fulfill the parties' obligations under these terms. The parties acknowledge that in the event of any request to disclose any confidential information in connection with a legal or administrative proceeding, or otherwise to comply with a legal requirement, prompt notice of such request must be given to the other party to enable that party to seek an appropriate protective order or other remedy or to waive compliance with the relevant provisions of these terms. If the Client seeks a protective order or another remedy, Apex, at the Client's expense, will cooperate with and assist the Client in such efforts. If the Client fails to obtain a protective order or waives compliance with the relevant provisions of these terms, Apex will disclose only that portion of the confidential information that it determines it is required to disclose. This confidentiality provision shall survive termination of the services provided. Both parties acknowledge and agree that any breach of this terms may cause irreparable harm to the non-breaching party and that injunctive relief may be necessary to prevent any actual or threatened breach. The terms set forth between the parties supersede all prior negotiations, understandings, and agreements between the parties concerning confidentiality. These terms may only be amended in writing and signed by both parties.

12. **Ownership of the programs, system data, and materials provided by Apex to the Client during the course of providing services herein shall solely belong to Apex. It is acknowledged that fees and expenses paid by the Client do not confer any rights in such property. It is also understood that the said property is made available to the Client solely for the purpose of using it during and in connection with the services provided by Apex.**

13. **Upon the completion of the administration and unless retention instructions are ordered by the court, Apex will notify the client that it will destroy and/or return all confidential information and property within 90 days upon the client's written request. Alternatively, the material may be stored for one year at a monthly fee of \$1.50 per storage box for paper documents and \$0.01 per image for electronic copies over a period of three years, which compensates Apex for its electronic and hard-copy storage costs. Apex will not be liable for any damages, liability, or expenses incurred in connection with any delay in delivery of, or damage to disks, magnetic tapes, or any input data provided by the client or its representatives unless Apex has agreed in writing to assume such responsibility.**

14. **COMPLETE AGREEMENT.** These Terms and Conditions, along with the attached Proposal, represent the complete agreement and understanding between the parties and override any prior agreements (whether written or oral) between Apex and the Client regarding the subject matter. Any modification to these Terms and Conditions may only be made in writing and must be signed by both Apex and the Client. The headings in this document are included for convenience only and do not alter or restrict any provisions in these Terms and Conditions. They may not be used in the interpretation of these Terms and Conditions.

15. **This provision outlines the requirements for providing notice or other communication under this agreement. All such communications must be in writing and can be delivered either by personal delivery or through U.S. Mail with prepaid postage or overnight courier. Once delivered personally or sent through the mail, the notice will be considered given after five (5) days from the deposit date in the U.S. Mail. Alternatively, if sent through an overnight courier, the notice will be considered given one business day after delivery to the such courier. It's important to note that the notice must be provided to a responsible officer or principal of the Client or Apex, depending on the case.**

16. **Force Majeure:** In the event of any failure or delay in performance due to circumstances beyond Apex's control, including but not limited to strikes, lockouts, fires, floods, acts of God or public enemy, riots, civil disorders, insurrections, war or war conditions, or interference by civil or military authorities, Apex shall not be held liable for any resulting loss or damage. The time for performance under this agreement shall be extended for a period equal to the duration of the disabling cause and a reasonable time thereafter. This provision shall constitute a force majeure clause and shall be construed accordingly.

17. **The applicable state and federal laws shall govern the interpretation and enforcement of these Terms and Conditions. No choice of law or conflict of laws provisions shall affect this governing law provision.**

18. **Severability:** This applies to all clauses and covenants contained within these Terms and Conditions. In the event that any clause or covenant is deemed invalid, illegal, or unenforceable, the remaining provisions shall remain valid and enforceable to the fullest extent permissible by law. The validity, legality, and enforceability of the remaining provisions shall in no way be affected or impaired by the invalidity, illegality, or unenforceability of any provision deemed so.

19. **Nonwaiver:** This applies to these Terms and Conditions. This means that any failure by one party to enforce a provision of these terms on one or more occasions shall not be construed as a waiver of that provision. In other words, any failure to enforce a provision does not give up the right to enforce it in the future. All provisions of these Terms and Conditions remain in full force and effect, regardless of any prior failure to enforce them.

## **EXHIBIT 8**

**Case Name: Acera Health LLC**  
**Thursday, June 19, 2025**

**Requesting Attorney:**  
Samantha A. Jones, Esq.  
James Hawkins Law  
Samantha.Jones@jameshawkinsaplc.com  
949.387.7200

**ILYM Group Contact:**  
Lisa Mullins  
ILYM Group, Inc.  
Lisa@ilymgroup.com  
714.878.8836

**Estimate For Administrative Solutions: Class & PAGA**

KEY ASSUMPTIONS	
Total Number of Class Members	161
Estimated Percentage of Remails	15%
Certified Spanish Translation	No
ILYM Group Static Website	No
Case Duration (Years)	1

**Summary of ILYM Group, Inc.'s Fees & Expenses**

Case Startup: \$650.00  
Project Management: \$820.00  
Notification & Mailing: \$567.15  
Distribution (Includes EIN, Bank Acct \* /QSF Setup): \$2,947.85  
Case Conclusion: \$1,015.00

**Estimated ILYM Fees & Expenses: \$6,000.00**

# ILYM | GROUP, Inc.

CLASS ACTION ADMINISTRATION

## Case Name: Acera Health LLC

Thursday, June 19, 2025

Requesting Attorney's Name: Samantha A. Jones, Esq.

Activity	Rate Type	Unit Cost	Volume	Amount
<b>CASE STARTUP</b>				
Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	2	\$300.00
Programming of Class Database	Hourly	\$175.00	2	\$350.00
<b>Subtotal</b>				<b>\$650.00</b>

*\*ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.*

<b>PROJECT MANAGEMENT</b>				
Project Manager (Case notification and maintenance)	Hourly	\$120.00	4	\$480.00
Staff Hours for Processing Returned Mail	Hourly	\$70.00	1	\$70.00
Staff Hours for Processing Opt-Outs, Disputes & Objection(s)	Hourly	\$70.00	1	\$70.00
Report Processing	Hourly	\$70.00	1	\$70.00
NCOA	Flat Rate	\$55.00	1	\$55.00
Toll-Free Customer Service Representative	Flat Fee	\$75.00	1	\$75.00
Weekly Reports	Flat Rate	\$750.00	1	Waived
<b>Subtotal</b>				<b>\$820.00</b>

<b>NOTIFICATION &amp; MAILING</b>				
Fulfillment of Notice, English & Spanish	Per Piece	\$1.50	161	\$241.50
USPS First Class Postage	Per Piece	\$0.80	161	\$128.80
Re-Mails (Forward/Skip trace Undeliverables)	Per Piece	\$2.00	24	\$48.30
Storage, Photocopies, Deliveries	Flat Fee	\$148.55	1	\$148.55
<b>Subtotal</b>				<b>\$567.15</b>

# ILYM | GROUP, Inc.

CLASS ACTION ADMINISTRATION

## Case Name: Acera Health LLC

Thursday, June 19, 2025

Requesting Attorney's Name: Samantha A. Jones, Esq.

Activity	Rate Type	Unit Cost	Volume	Amount
<b>DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)</b>				
Distribution Setup & Management	Hourly	\$150.00	2	\$300.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	2	\$250.00
Check, Stub & Release - Print & Mail (W2/1099)	Per Check	\$1.00	161	\$161.00
USPS First Class Postage	Per Piece	\$0.70	161	\$112.70
Re-Mails (Forward/Skip trace Undeliverables up to 10%)	Per Piece	\$1.50	16	\$24.15
Preparation of Taxes	Hourly	\$120.00	5	\$600.00
Annual Filing of Tax Return	Per Year	\$1,500.00	1	\$1,500.00

*\*Additional Bank fees may apply*

**Subtotal**                      **\$2,947.85**

<b>CASE CONCLUSION</b>				
Data Manager Final Reporting	Hourly	\$100.00	1	\$100.00
Project Manager Final Reporting	Hourly	\$120.00	2	\$240.00
Process Unclaimed Funds	Flat Fee	\$550.00	1	\$550.00
Declaration	Hourly	\$125.00	1	\$125.00

**Subtotal**                      **\$1,015.00**

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**Estimated ILYM Fees & Expenses:                      \$6,000.00**

# ILYM Group's Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

**Services:** Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

**Mailing and Data Conversion:** ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

**Charges for Services:** Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

**Indemnification:** Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

**Payment of Charges:** ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

**Confidentiality:** ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

**Data Rights:** ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

**Document Retention:** Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

**Limitation of damages:** ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

**Termination:** The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

**Notice:** Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

**Force Majeure:** To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

**Waiver of Rights:** No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

**Jurisdiction:** The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

**Entire Agreement:** These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

## **EXHIBIT 9**

## CASE NAME: ACERA HEALTH LLC

**Requesting Attorney:** Samantha A. Jones

**Date:** June 19, 2025

**Plaintiff or Defense:** Plaintiff

**Prepared By:** Dominique Fite

**Firm Name:** James Hawkins APLC

50 Corporate Park, Irvine CA 92606

**Telephone:** (949) 387-7200

dfite@cptgroup.com

**Email:** Samantha.Jones@jameshawkinsaplc.com

**Direct Number:** (619) 613-1653

**Main Number:** (800) 542-0900

### PROJECT ASSUMPTIONS & ADMINISTRATIVE COSTS

<b>Class Size:</b> 161	<b>Undeliverable Mail Rate:</b> 8%
<b>Opt-Out Filing Rate:</b> 1.5%	<b>Payment Option:</b> Check
<b>No. of Checks Issued:</b> 159	<b>Unclaimed Funds:</b> SCO
<b>Language Translation Services:</b> No	<b>Postage Total:</b> \$264.40
<b>Settlement Website:</b> No	<b>Grand Total:</b> \$10,354.71
<b>Notice Procedures:</b> Mail	<b>CPT'S DISCOUNTED FEE: \$8,500.00</b>

The services and numbers reflected herein are estimates based on the information provided by counsel at the time of this Bid. If the actual services and numbers are different, our cost estimate will change accordingly. Client expressly acknowledges and agrees that estimated fees and costs may fluctuate and agrees to pay for any such increases to such estimates as if set forth herein.

The attached Terms and Conditions are included as part of and incorporated by reference to our cost proposal. By accepting our cost proposal for this matter, you are thereby agreeing to the Terms and Conditions.

## CASE SETUP

After receiving the data, CPT will scrub all records to eliminate duplicates and anomalies; this process is designed to achieve a higher success percentage in delivering the Class Notice. Each Class Member will receive a unique mailing ID that will be utilized for all administrative purposes.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Manager: Case Intake & Review	\$95.00	1	\$95.00
Programming: Data Base Setup	\$150.00	1	\$150.00
<b>Sub Total:</b>			<b>\$245.00</b>

## DIRECT MAIL NOTIFICATION

CPT will perform an address update via NCOA and, if necessary, conduct an additional skip trace in order to ensure that mail is delivered to the most current address possible. A detailed notice and a one-page opt-out form will be mailed.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Manager: Format Documents	\$95.00	2	\$190.00
National Change of Address Search (NCOA)	\$135.00	1	\$135.00
XML Lex ID Skip Trace	\$0.85	16	\$13.60
Print & Mail Notice Packets	\$1.00	161	\$161.00
First-Class Postage (up to 1 oz.)*	\$0.74	161	\$119.14
<b>Sub Total:</b>			<b>\$618.74</b>

\*Postage costs are subject to change at anytime. The final rate will be determined at the time of mailing.

## PROCESS RETURNED UNDELIVERABLE MAIL

According to CPT's historical data, 8% of the notices are returned as undeliverable. Upon notification from USPS, CPT performs a skip trace to locate a current address. Typically, 70% of the undeliverable notice packets are eligible for remail with an updated address.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Clerical Staff	\$60.00	1	\$60.00
Update Undeliverable Mail Database	\$0.50	13	\$6.50
Skip Trace for Best Address	\$1.00	12	\$12.00
Print & Remail Notice Packets	\$1.00	9	\$9.00
First-Class Postage (up to 1 oz.)	\$0.74	9	\$6.66
<b>Sub Total:</b>			<b>\$94.16</b>

## OPT-OUT PROCESSING

CPT will thoroughly examine the submissions to identify and remove any duplicates, fraudulent responses, or otherwise invalid submissions. CPT will process and verify opt-outs, objections, and other responses submitted by class members. Deficient responses will be sent a follow-up notice, offering the class member a chance to cure.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: De-duplication/Scrubbing	\$150.00	1	\$150.00
Project Manager: Validate Opt-Outs	\$95.00	1	\$95.00
Clerical Staff	\$60.00	1	\$60.00
Opt-Out Processing	\$2.50	2	\$6.04
Print & Mail Deficiency/Dispute Notices	\$1.50	1	\$1.50
First-Class Postage (up to 1 oz.)	\$0.74	1	\$0.74
Review & Process Deficiency Responses	\$10.00	1	\$10.00
<b>Sub Total:</b>			<b>\$323.28</b>

## CLASS MEMBER SUPPORT

CPT will establish a toll-free telephone number equipped with interactive voice response (IVR) capabilities and live customer support representatives. Live support will be available during regular business hours, Monday to Friday, 9:00 AM to 5:30 PM, Pacific Time (PT). The dedicated case phone number shall be operational for a maximum of 120 days following the disbursement.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Toll-Free Number Establish/Setup	\$150.00	2	\$300.00
Live Call Center Support Reps.	\$3.00	33	\$99.00
<b>Sub Total:</b>			<b>\$399.00</b>

## SSN VERIFICATION

Authenticate Social Security Number for validity using IRS verification processes and/or IRS backup withholdings processes.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: SSN Selection	\$150.00	1	\$150.00
Department Manager: Analysis & Reporting	\$95.00	3	\$285.00
IRS SSN Verification	\$0.10	159	\$15.86
<b>Sub Total:</b>			<b>\$450.86</b>

## DISTRIBUTION SERVICES

CPT will establish a 26 CFR § 1.468B-1 compliant Qualified Settlement Fund (QSF). Upon Final Approval, CPT will perform the required settlement payment calculations, and once approved by the parties, CPT will issue a (MICR) check to all eligible claimants. CPT will also issue an IRS Form 1099 and/or IRS Form W2 when applicable. CPT utilizes the bank's Payee Positive Pay to prevent check fraud and performs monthly account reconciliations for the QSF bank account. Undeliverable checks are skip-traced to obtain a current address and are remailed accordingly. Requests for check reissues will be processed throughout the check cashing period. CPT's administration of the QSF will continue for a maximum duration of one year following the initial distribution of funds.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: Calculation Totals	\$150.00	3	\$450.00
Project Supervisor: Review of Distribution	\$150.00	3	\$450.00
Project Manager: Correspondence w/Parties	\$95.00	2	\$190.00
Programming: Setup & Printing of Checks	\$150.00	3	\$450.00
Obtain EIN, Setup QSF/Bank Account	\$150.00	3	\$450.00
Print & Mail Notice, Checks & W2/1099	\$2.50	159	\$396.46
First-Class Postage (up to 1 oz.)	\$0.74	159	\$117.35
Project Supervisor: Account Reconciliation	\$150.00	12	\$1,800.00
Update Undeliverable Checks Database	\$0.50	8	\$3.96
Skip Trace for Best Address	\$1.00	8	\$7.93
Remail Undeliverable Checks	\$2.50	7	\$17.50
First-Class Postage (up to 1 oz.)	\$0.74	7	\$5.18
Re-Issue Checks as Required	\$5.00	7	\$35.00
First-Class Postage (up to 1 oz.)	\$0.74	7	\$5.18
<b>Sub Total:</b>			<b>\$4,378.57</b>

# TAX REPORTING & SETTLEMENT CONCLUSION

CPT prepares annual tax reporting on behalf of the QSF and Federal and State taxes in accordance with current state and federal regulations. All parties will be furnished with weekly and final reports. A declaration attesting to due process will be provided to all parties.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Supervisor: Reconcile Uncashed Chk	\$150.00	1	\$150.00
Programming: Weekly & Final Reports	\$150.00	2	\$300.00
Project Supervisor: Final Declaration	\$150.00	2	\$300.00
Project Manager: Account Files Sent to Atty	\$95.00	2	\$190.00
CA Tax Preparation*	\$600.00	1	\$600.00
Annual Tax Reporting to IRS*	\$1,000.00	1	\$1,000.00
QSF Annual Tax Reporting	\$500.00	1	\$500.00
<b>Sub Total:</b>			<b>\$3,040.00</b>

\*CPT will file Federal and California taxes in accordance with current state and federal regulations. Additional charges will apply if the Settlement/Order/parties require(s) multiple state tax filings.

# SCO ESCHEATMENT PROCESSING

Escheatment Processing to the State Controller Unclaimed Property Division / Uncashed Check Rate 21%

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
UPEnterprise Reporting Services	\$0.15	33	\$4.95
Project Manager: Reporting & Remittance	\$95.00	2	\$190.00
Project Supervisor: Review of Report	\$150.00	1	\$150.00
Certified Mail Report to SCO	\$10.15	1	\$10.15
Add'l Account Recons	\$150.00	3	\$450.00
<b>Sub Total:</b>			<b>\$805.10</b>

**Total Administration Costs: \$10,354.71**

**Courtesy Discount: -\$1,854.71**

**CPT'S DISCOUNTED FLAT FEE: \$8,500.00**

# TERMS AND CONDITIONS

These Terms and Conditions ("**Terms and Conditions**") are made a part of, and incorporated by reference into, any Bid presented by CPT Group, Inc. ("**CPT**") to Client. Each of Client and CPT is a "**Party**" to this Agreement, and collectively, the "**Parties**".

## 1. Definitions.

- a) "**Affiliate**" means a party that partially (at least 50%) or fully controls, is partially or fully controlled by, or is under partial (at least 50%) or full common control with another party.
  - b) "**Agreement**" means these Terms and Conditions and the Bid.
  - c) "**Applicable Laws**" means all applicable local, state and federal laws, ordinances, rules and regulations.
  - d) "**Approved Bank**" means any financial institution that is insured by the Federal Deposit Insurance Corporation.
  - e) "**Bid**" means a proposal, statement of work, order form, and/or schedule for Services (including any and all addendums, exhibits, or amendments thereto) provided by CPT to Client.
  - f) "**Case**" means the case referred to in the attached Bid and/or the particular judicial matter identified by the name of plaintiff(s) and defendant(s) on the caption of the applicable Court Order.
  - g) "**Class**" means Members and putative Members collectively.
  - h) "**Client**" means the party or parties engaging CPT for Services as set forth in the Bid, namely Plaintiff Counsel and/or Defense Counsel.
  - i) "**Confidential Information**" means any non-public information of CPT or Client disclosed by either Party to the other Party, either directly or indirectly, in writing, orally or by inspection of tangible objects, or to which the other Party may have access, which a reasonable person would consider confidential and/or which is marked "confidential" or "proprietary" or some similar designation by the disclosing Party. Confidential Information shall also include the terms of this Agreement, except where this Agreement specifically provides for disclosure of certain items. Confidential Information shall not, however, include the existence of the Agreement or any information which the recipient can establish: (i) was or has become generally known or available or is part of the public domain without direct or indirect fault, action, or omission of the recipient; (ii) was known by the recipient prior to the time of disclosure, according to the recipient's prior written documentation; (iii) was received by the recipient from a source other than the discloser, rightfully having possession of and the right to disclose such information; or (iv) was independently developed by the recipient, where such independent development has been documented by the recipient.
  - j) "**Court Order**" means a legal command or direction issued by a court, judicial office, or applicable administrative body requiring one or more Parties To The Case to carry out a legal obligation pursuant to the Case.
  - k) "**Defendant**" means the named Party and/or Parties in the Case against whom action is brought.
  - l) "**Defense Counsel**" means the attorney(s) of record for the Defendant(s) in the Case.
  - m) "**Intellectual Property Right**" means any patent, copyright, trade or service mark, trade dress, trade name, database right, goodwill, logo, trade secret right, or any other intellectual property right or proprietary information right, in each case whether registered or unregistered, and whether arising in any jurisdiction, including without limitation all rights of registrations, applications, and renewals thereof and causes of action for infringement or misappropriation related to any of the foregoing.
  - n) "**Member**" means an individual who is eligible under the Case or Class to receive a communication about their pending legal rights under the matter and/or designated amount of the Settlement, including the named Plaintiff(s) in the Case and all other putative persons or other parties in the representative action so designated or addressed therein.
  - o) "**Member Content**" means all Member written document communications relating to the Case, including claim forms, opt-out forms, and/or objections, which may contain Member Data.
  - p) "**Member Data**" means proprietary or personal data regarding Members under this Agreement.
  - q) "**Parties To The Case**" shall mean collectively Defendant(s) and Plaintiff(s) as defined in the Settlement Agreement or Court Order.
  - r) "**Plaintiff**" means the named party and/or parties in the Case who are bringing the action.
  - s) "**Plaintiff Counsel**" means the attorney(s) of record for Plaintiff(s) in the Case, and/or upon certification by the Court the attorney(s) of record designated to represent the Class.
  - t) "**Products**" means any and all CPT Services and work product resulting from Services.
  - u) "**Qualified Settlement Fund**" or "**QSF**" means a bank account established pursuant to U.S. Department of Treasury Regulations §1468B-1.
  - v) "**Service**" means any service rendered by CPT specifically to Client, including, but not limited to: (i) notifications to Members; (ii) setting up a QSF with an Approved Bank; (iii) management of disbursement of funds from the QSF to applicable parties pursuant to the Settlement Agreement; (iv) provision of customer support relating to the Case; (v) management of Case claim forms and correspondence; and/or (vi) any administrative or consulting service.
  - w) "**Settlement Agreement**" means the contract between Parties To The Case to resolve the same, which specifies amounts to be disbursed from the Qualified Settlement Fund to attorneys, CPT, and individual Members.
  - x) "**Settlement Amount**" means the total dollar amount agreed to between Parties To The Case to resolve the Case to mutual satisfaction.
  - y) "**Software**" means any and all of CPT's software applications, including, without limitation, all updates, revisions, bug-fixes, upgrades, and enhancements thereto.
  - z) "**Transmission Methods**" means the secure authorized manner to send Member Data and/or Wire Information as specified on a schedule or exhibit hereto.
  - aa) "**Term**" means the period commencing on the date set forth on the Bid and continuing until the date of final judgment (if a settlement) or upon completion of all Services as set forth in the Bid.
  - bb) "**Wire Information**" means instructions for (i) Defense Counsel to transfer funds from Defendant to the Qualified Settlement Fund or (ii) CPT to transfer funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement.
2. Client Obligations. Client will ensure that it has obtained all necessary consents and approvals for CPT to access and use Member Data for the purposes permitted under this Agreement and shall only transmit Member Data and/or Wire Information to CPT via the Transmission Methods. Client shall use and maintain appropriate administrative, technical, and physical safeguards designed to protect Member Data provided under this Agreement. Client further warrants that any Member Data, Wire Information, or other content, data, materials or information it transmits shall be free of viruses, worms, Trojan horses, or other harmful or disabling codes which could adversely affect Member Data and/or CPT. If Client is in breach of this section, CPT may suspend Services, in addition to any other rights and remedies CPT may have at law or in equity.
3. CPT Obligations. CPT will (i) maintain appropriate safeguards designed to protect Member Data, including regular back-ups, security and incident response protocols, and (ii) not access or disclose Member Data except (A) as compelled by law, (B) to prevent or address service or technical issues, (C) in accordance with this Agreement or the provisions of the Settlement Agreement, or (D) if otherwise permitted by Parties To The Case, Members, Plaintiff Counsel or Defense Counsel as applicable.
4. Security. Client and CPT shall each use reasonable administrative, technical, and physical safeguards that are reasonably designed to: (a) protect the security and confidentiality of any Member Data in its possession or control under this Agreement; (b) protect against any anticipated threats or hazards to the security or integrity of such Member Data; (c) protect against unauthorized access to or use of such Member Data that could result in substantial harm or inconvenience to any individual; and (d) protect against unauthorized access to or use of such Member Data in connection with its disposal.
- a) Incident Notification. In the event a Party discovers that Member Data relating to the Case is the subject of (i) any unauthorized acquisition, loss, access or use and/or (ii) an actual or suspected breach concerning such Party's systems (items (i) and/or (ii) a "**Security Incident**"), or a Party has a reasonable belief that a Security Incident has occurred or is at risk of occurring, such Party will promptly but no later than forty-eight (48) hours of its discovery of such circumstances, inform the other Parties in the event of such Security Incident, and shall utilize best efforts to assist the other Parties to mitigate the effects of such Security Incident.
  - b) b) Response Procedures. In the event of a Security Incident, the breached party shall (i) cooperate with any reasonable investigation concerning the Security Incident by the other Parties, regulators and/or law enforcement; and (ii) cooperate with the other Parties to comply with Applicable Laws concerning such Security Incident, including any notification to affected individuals. The Parties acknowledge that the breached party in any Security Incident shall be the Party responsible for

any and all remedies and costs under Applicable Laws concerning such Security Incident, unless such breach occurred due to another Party's actions hereunder, in which instance such party shall be comparatively responsible for all remedies and costs. In no event will any Party serve notice or otherwise publicize a Security Incident without the prior written consent of the other Parties. The Parties shall reasonably cooperate and coordinate with each other to respond to the Security Incident, including with regard to the content of notification to affected individuals.

6. **Qualified Settlement Fund Account.** When the Case has a Settlement Amount CPT shall be authorized to establish one or more QSF bank accounts at an Approved Bank if and as applicable to the Services as set forth in the Bid. The amounts held at the Approved Bank under this Agreement are at the sole risk of Defendant. Without limiting the generality of the foregoing, CPT shall have no responsibility or liability for any diminution of the funds that may result from the deposit thereof at the Approved Bank, including deposit losses, credit losses, or other claims made against the Approved Bank. It is acknowledged and agreed that CPT has acted reasonably and prudently in depositing funds at an Approved Bank, and CPT is not required to conduct diligence or make any further inquiries regarding such Approved Bank.
7. **Fees and Payment.** Pricing for Services is as stated on the Bid, and Client agrees to pay CPT in the amounts set forth on the Bid. Client will be invoiced per the schedule set forth in the Bid, and payment of fees will be due within 30 days after the date of the invoice, except where the Bid or terms of the Settlement Agreement or Court Order expressly prescribes other payment dates. All fees set forth in a Bid are in U.S. dollars, must be paid in U.S. dollars, and are exclusive of taxes and applicable transaction processing fees. Late payments hereunder will incur a late charge of 1.5% per month (or the highest rate allowable by law, whichever is lower) on the outstanding balance from the date due until the date of actual payment, which such late charge(s) may be charged against the QSF account if incurred in connection with Services provided pursuant to administration of a settlement. In addition, Services are subject to suspension for failure to timely remit payment therefor. If travel is required to effect Services, Client shall reimburse CPT for pre-approved, reasonable expenses arising from and/or relating to such travel, including, but not limited to, airfare, lodging, meals, and ground transportation. . In connection with CPT's administration of a QSF, unless otherwise stated in the Settlement Agreement or Court Order concerning disbursement of unclaimed funds in the QSF account, CPT reserves the right, after one (1) year of issuance of disbursements to Members, to classify any remaining balance in such QSF account as additional administrative fees payable to CPT until such time as the QSF account balance becomes zero (\$0.00), and thereafter close such account.
8. **Term and Termination.**
  - a) **Term.** The Term is set forth in the Bid. The Agreement may be renewed by mutual written agreement of the parties.
  - b) **Termination for Cause.** Either Party may immediately terminate this Agreement if the other Party materially breaches its obligations hereunder, and, where capable of remedy, such breach has not been materially cured within forty-five (45) days of the breaching Party's receipt of written notice describing the breach in reasonable detail.
  - c) **Bankruptcy Events.** A Party may immediately terminate this Agreement if the other Party: (i) has a receiver appointed over it or over any part of its undertakings or assets; (ii) passes a resolution for winding up (other than for a bona fide scheme of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect and such order is not discharged or stayed within ninety (90) days; or (iii) makes a general assignment for the benefit of its creditors.
  - d) **Effect of Termination.** Immediately following termination of this Agreement, upon written request, Member Data may be retrieved via the secure FTP site in the same format in which the Member Data was originally inputted into the Software, at no additional charge. Alternatively, Member Data can be returned in a mutually agreed format at a scope and price to be agreed upon. CPT will maintain a copy of Member Data and Member Content for no more than four (4) years following the date of the final check cashing deadline for Members under the Settlement Agreement, after which time any Member Data and Member Content not retrieved will be destroyed.
  - e) **Final Payment.** If Client terminates this Agreement due to Section "Termination", Client shall pay CPT all fees owed through the termination date. If CPT terminates the Agreement in accordance with Section "Termination," Client shall pay CPT all fees invoiced through the termination date, plus all fees remaining to be invoiced during the Term, less any costs CPT would have incurred had the Agreement not been terminated.
9. **Confidentiality.** Each Party agrees: (i) not to disclose any Confidential Information to any third parties except as mandated by law and except to those subcontractors of CPT providing Products hereunder who agree to be bound by confidentiality obligations no less stringent than those set forth in this Agreement; (ii) not to use any Confidential Information for any purposes except carrying out such Party's rights and responsibilities under this Agreement; and (iii) to keep the Confidential Information confidential using the same degree of care such Party uses to protect its own confidential information; provided, however, that such Party shall use at least reasonable care. These obligations shall survive termination of this Agreement.
  - a) **Compelled Disclosure.** If receiving Party is compelled to disclose any Confidential Information by judicial or administrative process or by other requirements of law, such Party shall (i) promptly notify the other Party, (ii) reasonably cooperate with the other Party in such Party's efforts to prevent or limit such compelled disclosure and/or obtain confidential treatment of the items requested to be disclosed, and (iii) shall disclose only that portion of such information which each Party is advised by its counsel in writing is legally required to be disclosed.
  - b) **Remedies.** If either Party breaches any of its obligations with respect to confidentiality or the unauthorized use of Confidential Information hereunder, the other Party shall be entitled to seek equitable relief to protect its interest therein, including but not limited to, injunctive relief, as well as money damages.
10. **Intellectual Property.** CPT retains all right, title and interest (including, without limitation, all Intellectual Property Rights) in and to the Products. CPT does not claim any ownership rights to Member Data.
11. **Indemnification.** Client agrees to indemnify, defend, and hold harmless CPT, its Affiliates, and the respective officer, directors, consultants, employees, and agents of each (collectively, "Covered CPT Parties") from and against any and all third party claims and causes of action, as well as related losses, liabilities, judgments, awards, settlements, damages, expenses and costs (including reasonable attorney's fees and related court costs and expenses) (collectively, "Damages") incurred or suffered by CPT which directly relate to or directly arise out of (i) Client's breach of this Agreement; (ii) CPT's performance of Services hereunder; (iii) the processing and/or handling of any payment by CPT; (iv) any content, instructions, information or Member Data provided by Client to CPT in connection with the Services provided by CPT hereunder. The foregoing provisions of this section shall not apply to the extent the Damages relate to or arise out of CPT's willful misconduct. To obtain indemnification, indemnitee shall: (i) give written notice of any claim promptly to indemnitor; (ii) give indemnitor, at indemnitor's option, sole control of the defense and settlement of such claim, provided that indemnitor may not, without the prior consent of indemnitee (not to be unreasonably withheld), settle any claim unless it unconditionally releases indemnitee of all liability; (iii) provide to indemnitor all available information and assistance; and (iv) not take any action that might compromise or settle such claim.
12. **Warranties.** Each Party represents and warrants to the other Party that, as of the date hereof: (i) it has full power and authority to execute and deliver the Agreement; (ii) the Agreement has been duly authorized and executed by an appropriate employee of such Party; (iii) the Agreement is a legally valid and binding obligation of such Party; and (iv) its execution, delivery and/or performance of the Agreement does not conflict with any agreement, understanding or document to which it is a party. CPT WARRANTS THAT ANY AND ALL SERVICES PROVIDED BY IT HEREUNDER SHALL BE PERFORMED IN A PROFESSIONAL MANNER CONSISTENT WITH PREVAILING INDUSTRY STANDARDS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CPT DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE
13. **Liability.**
  - a) **Liability Cap.** EXCEPT FOR A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, WILL BE LIMITED TO THE TOTAL FEES PAID OR PAYABLE BY CLIENT AND/OR THE PARTIES TO THE CASE TO CPT HEREUNDER. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT EXPAND SUCH LIMIT. THE PARTIES ACKNOWLEDGE THAT THE FEES AGREED UPON BETWEEN CLIENT AND CPT ARE BASED IN PART ON THESE LIMITATIONS, AND THAT THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ANY ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATION SHALL NOT APPLY TO A PARTY'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT.
  - b) **Exclusion of Consequential Damages.** NEITHER PARTY WILL BE LIABLE FOR LOST PROFITS, LOST REVENUE, LOST BUSINESS OPPORTUNITIES, LOSS OF DATA, INTERRUPTION OF BUSINESS, OR ANY OTHER INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
14. **Communications.** CPT may list Client's name and logo alongside CPT's other clients on the CPT website and in marketing materials, unless and until Client revokes such permission. CPT may also list the Case name and/or number, and

certain Qualified Settlement Fund information, on the CPT website and in marketing materials, unless stated otherwise in the Settlement Agreement.

15. Miscellaneous Provisions.

- a) Governing Law; Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of California and the federal laws of the United States of America, without regard to conflict of law principles. CPT and Client agree that any suit, action or proceeding arising out of, or with respect to, this Agreement or any judgment entered by any court in respect thereof shall be brought exclusively in the state or federal courts of the State of California located in the County of Orange, and each of CPT and Client hereby irrevocably accepts the exclusive personal jurisdiction and venue of those courts for the purpose of any suit, action or proceeding.
- b) Force Majeure. Neither Party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including without limitation acts of war, acts of God, earthquake, flood, weather conditions, embargo, riot, epidemic, acts of terrorism, acts or omissions of vendors or suppliers, equipment failures, sabotage, labor shortage or dispute, governmental act, failure of the Internet or other acts beyond such Party's reasonable control, provided that the delayed Party: (i) gives the other Party prompt notice of such cause; and (ii) uses reasonable commercial efforts to correct promptly such failure or delay in performance.
- c) Counterparts. This Agreement may be executed in any number of counterparts and electronically, each of which shall be an original but all of which together shall constitute one and the same instrument.
- d) Entire Agreement. This Agreement contains the entire understanding of the parties in respect of its subject matter and supersedes all prior agreements and understandings (oral or written) between the Parties with respect to such subject matter. The schedules and exhibits hereto constitute a part hereof as though set forth in full herein.
- e) Modifications. Any modification, amendment, or addendum to this Agreement must be in writing and signed by the Parties.
- f) Assignment. Neither Party may assign this Agreement or any of its rights, obligations, or benefits hereunder, by operation of law or otherwise, without the other Party's prior written consent; provided, however, either Party, without the consent of the other Party, may assign this Agreement to an Affiliate or to a successor (whether direct or indirect, by operation of law, and/or by way of purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of such Party, where the responsibilities or obligations of the other Party are not increased by such assignment and the rights and remedies available to the other Party are not adversely affected by such assignment. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and permitted assigns.
- g) No Third-Party Beneficiaries. The representations, warranties, and other terms contained herein are for the sole benefit of the Parties hereto and their respective successors and permitted assigns and shall not be construed as conferring any rights on any other persons.
- h) Statistical Data. Without limiting the confidentiality rights and Intellectual Property Rights protections set forth in this Agreement, CPT has the perpetual right to use aggregated, anonymized, and statistical data ("**Statistical Data**") derived from the operation of the Software, and nothing herein shall be construed as prohibiting CPT from utilizing the Statistical Data for business and/or operating purposes, provided that CPT does not share with any third-party Statistical Data which reveals the identity of Client, Client's Class Members, or Client's Confidential Information.
- i) Export Controls. Client understands that the use of CPT's Products is subject to U.S. export controls and trade and economic sanctions laws and agrees to comply with all such Applicable Laws, including the Export Administration Regulations maintained by the U.S. Department of Commerce and the trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control.
- j) Severability. If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, such provision shall be changed by the court or by the arbitrator and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Agreement shall remain in full force and effect.
- k) Notices. Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by electronic delivery, or mailed by registered or certified mail, return receipt requested and postage prepaid to the address for the other Party as set forth on the Bid or at such other address as may hereafter be furnished in writing by either Party hereto to the other Party. Such notice will be deemed to have been given as of the date it is delivered, if by personal delivery; the next business day, if deposited with an overnight courier; upon receipt of confirmation of electronic delivery (if followed up by such registered or certified mail); and five days after being so mailed.
- l) Independent Contractors. Client and CPT are independent contractors, and nothing in this Agreement shall create any partnership, joint venture, agency, franchise, sales representative or employment relationship between Client and CPT. Each Party understands that it does not have authority to make or accept any offers or make any representations on behalf of the other. Neither Party may make any statement that would contradict anything in this section.
- m) Subcontractors. CPT may use subcontractors to perform Client-specific Services; provided however, that CPT shall be responsible for its subcontractors' performance of Services under this Agreement.
- n) Headings. The headings of the sections of this Agreement are for convenience only, do not form a part hereof, and in no way limit, define, describe, modify, interpret, or construe its meaning, scope or intent.
- o) Waiver. No failure or delay on the part of either Party in exercising any right, power or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise or the exercise of any other right, power, or remedy.
- p) Acceptance. If, when requested in writing by Client, CPT then provides any Service to Client, whether or not such Services were specified in the original Bid, these Terms and Conditions shall apply to the provision of such Services and be deemed accepted and approved by Client concerning such Services.
- q) Survival. Sections of the Agreement intended by their nature and content to survive termination of the Agreement shall so survive.

**EXHIBIT 10**

**Must Be Postmarked  
No Later Than  
[Response Deadline]**

**OBJECTION FORM**

*Kingery v. Acera Health, LLC, et al.*  
Superior Court of California, County of Orange  
Case No. 30-2024-01402619-CU-OECXC  
[Related Case No. 30-2024-01416779-CU-OECXC]

**COMPLETE AND RETURN THIS FORM ONLY IF YOU WANT TO OBJECT TO THE SETTLEMENT IN THIS CASE.**

**DO NOT RETURN THIS FORM IF YOU WANT TO REQUEST EXCLUSION FROM THE SETTLEMENT.**

**IF YOU DO NOT HAVE ANY OBJECTIONS TO THE SETTLEMENT, DO NOT SUBMIT THIS FORM.**

To object, you must complete, sign, and mail this Objection Form by First Class U.S. Mail or equivalent, postage prepaid, postmarked on or before [Response Deadline], as addressed as follows:

**MAIL TO:**  
*Kingery v. Acera Health, LLC, et al. Settlement*  
c/o [Settlement Administrator]  
[Address]

I want to OBJECT to the Settlement in this case. My objections to the Settlement are (use additional pages if needed):

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Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

**Must Be Postmarked  
No Later Than  
[Response Deadline]**

**OPT-OUT FORM**

***Kingery v. Acera Health, LLC, et al.***  
Superior Court of California, County of Orange  
Case No. 30-2024-01402619-CU-OECXC  
[Related Case No. 30-2024-01416779-CU-OECXC]

***COMPLETE THIS FORM IF YOU DO NOT WANT TO RECEIVE A SETTLEMENT PAYMENT  
AND BE BOUND BY THE SETTLEMENT***

**Instructions**

You have the right to opt-out (i.e., request exclusion) if you do not want to be part of the Class of the proposed Settlement. **If you fill out this Opt-Out Form, you: (1) will not receive any money under the settlement of your claims as a Class Member; and (2) will not be bound by the terms of this Settlement (other than terms relating to the release of claims under PAGA).**

To opt-out, you must complete, sign, and mail this Opt-Out by First Class U.S. Mail or equivalent, postage prepaid, postmarked on or before **[Response Deadline]**, addressed as follows:

**MAIL TO:**  
***Kingery v. Acera Health, LLC, et al. Settlement***  
c/o **[Settlement Administrator]**  
**[Address]**

By signing this Opt-Out Form, I acknowledge that I have read the Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval (“Class Notice”) in this case and the information in the Class Notice pertaining to my right to opt out of or object to certain portions of the proposed Settlement. I also acknowledge that I understand that **I will not receive any money** under the Settlement for my claims as a Class Member, and that I will not be bound by the terms of the Settlement, except for those terms that relate to claims for civil penalties under PAGA.

Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Date: \_\_\_\_\_

Signature \_\_\_\_\_

**Must Be Postmarked  
No Later Than  
[Response Deadline]**

**WORKWEEK DISPUTE FORM**

***Kingery v. Acera Health, LLC, et al.***  
Superior Court of California, County of Orange  
Case No. 30-2024-01402619-CU-OECXC  
[Related Case No. 30-2024-01416779-CU-OECXC]

Your individual payment is calculated based on the number of workweeks that you worked for Acera Health, LLC in California at any time from January 1, 2022, through December 31, 2024. You can find your total number of workweeks and other details in the Court Approved Notice of Class Action Settlement. If you think that your total number of workweeks is wrong, please provide the information below.

**If you want to dispute your Workweeks, return this form to the Settlement Administrator on or before [redacted].**

Please provide the following information:

During the period from January 1, 2022, through December 31, 2024., how many weeks do you believe you worked at least one shift for Acera Health, LLC in California? \_\_\_\_\_.

To support the number of workweeks you believe you worked, please include all documentation including any wage statements showing that you worked during this period.

Full Name: \_\_\_\_\_

Last 4 of SSN or Tax Identification Number: \_\_\_\_\_

Street Address Line 1: \_\_\_\_\_

Street Address Line 2: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Signature of Class Member: \_\_\_\_\_ Date: \_\_\_\_\_

E-mail Address (optional) \_\_\_\_\_

**EXHIBIT 11**

1 James R. Hawkins (SBN 192925)  
—james@jameshawkinsaplc.com  
2 Christina M. Lucio (SBN 253677)  
—christina@jameshawkinsaplc.com  
3 Samantha A. Jones (SBN 358358)  
—samantha.jones@jameshawkinsaplc.com  
4 JAMES HAWKINS APLC  
9880 Research Drive, Suite 200  
5 Irvine, California 92618  
Telephone: (949) 387-7200  
6 Facsimile: (949) 387-6676

7 Attorneys for Plaintiff ERIC KINGERY  
on behalf of himself and all others similarly situated  
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF ORANGE

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

12 Plaintiff,

13 v.

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

16 Defendants.  
17

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

18 CLASS AND PAGA ACTION

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

19 **REVISED [PROPOSED] ORDER**  
20 **GRANTING PRELIMINARY APPROVAL**  
21 **OF CLASS ACTION AND PAGA**  
22 **SETTLEMENT**

Date: ~~January-May 22~~ 26, 2026  
Time: 2:00 p.m.  
Dept: CX102

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

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**PROPOSED ORDER**

On ~~January 22~~ May 6, 2026, the Court conducted a hearing on Plaintiff's Motion For Preliminary Approval of Class Action and PAGA Settlement (the "Motion"). The Court, having read and considered the papers filed in support of Plaintiff's Motion For Preliminary Approval of Class Action and PAGA Settlement, the proposed Court Approved Notice of Class Action and PAGA Settlement and Hearing Date for Final Court Approval ("Class Notice"), and other documents, having considered the arguments of counsel, and good cause appearing therefore, **IT IS HEREBY ORDERED** that the Motion is **GRANTED**, subject to the following finding and orders:

1. This Order incorporates by reference the Class Action and PAGA Settlement Agreement (the "Settlement Agreement" or the "Settlement"), which is attached as Exhibit 1 to the Declaration of James R. Hawkins in Support of Plaintiffs' Motion For Preliminary Approval of Class Action and PAGA Settlement filed on August 18, 2025, and unless indicated otherwise, all capitalized terms used herein will have the same meaning as set forth in the Settlement Agreement.

~~2. The Class Action and PAGA Settlement Agreement (the "Settlement Agreement") between Plaintiff Eric Kingery ("Plaintiff") and Defendant Acera Health, LLC ("Defendant") is preliminarily approved as the terms of the Settlement Agreement fall within the range of approval as fair, adequate and reasonable. Based on a review of the papers submitted by Plaintiff, the Court finds that the Settlement is the result of arm's length negotiations conducted after Plaintiff and his~~

1 ~~counsel adequately investigated the claims and become familiar with the strengths and weaknesses~~  
2 ~~of the claims. The assistance of an experienced mediator in the Settlement process supports the~~  
3 ~~Court's conclusion that the Settlement is non collusive and reasonable. The Settlement is~~  
4 ~~presumptively valid, subject only to any objections that may be raised at the Final Fairness Hearing~~  
5 ~~and Final Approval by this Court.~~

6 3.2. The Settlement Class shall be conditionally certified for settlement purposes only  
7 and shall consist of all individuals who worked for Defendant in California as hourly, nonexempt  
8 employees at any time from January 1, 2022, until through December 31, 2024.

9  
10 ~~4. The class action settlement set forth in the Settlement Agreement, entered into~~  
11 ~~among the Parties and their counsel, is preliminarily approved as it appears to be proper, to fall~~  
12 ~~within the range of reasonableness, to be the product of arm's length and informed negotiations, to~~  
13 ~~treat all Class Members fairly, and to be presumptively valid, subject only to any objections that~~  
14 ~~may be raised at or before the final approval hearing.~~

15 ~~5. The Court further finds that Plaintiff conducted extensive investigation and~~  
16 ~~research, and that he was able to reasonably evaluate his position and the strengths and weaknesses~~  
17 ~~of his claims and his ability to certify them. Plaintiff has provided the Court with enough~~  
18 ~~information about the nature and magnitude of the claims being settled, as well as the impediments~~  
19 ~~to recovery, to make an independent assessment of the reasonableness of the terms to which the~~  
20 ~~Parties have agreed.~~

21 3. The Aggrieved Employees shall consist of all individuals who worked for  
22 Defendant in California as hourly, non-exempt employees at any time from May 28, 2023, through  
23 December 31, 2024.

24 6.4. The Court also finds that settlement now will avoid additional and potentially  
25 substantial litigation costs, as well as delay and risks if the Parties were to continue to litigate the  
26 Action.

1 5. The Court preliminarily approves the Settlement Agreement, including all the terms  
2 and conditions set forth therein and the Gross Settlement Amount and allocation of payments. The  
3 following allocations of the Gross Settlement Amount are preliminarily approved:

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

8 b. Class Counsel Fees Payment: to Class Counsel, a Class Counsel Fees Payment of  
9 not more than in the amount of 1/3 (33.33%) of the Gross Settlement Amount,  
10 (\$47,328.60), and a Class Counsel Litigation Expenses Payment of not more than  
11 \$27,000.00.

12 c. Administration Expenses Payment: to the administrator, an administration  
13 expenses payment not to exceed \$5,500.00.

14 d. Class Representative Service Payment: to the named Plaintiff in this action, a Class  
15 Representative Service Payment of not more than \$2,500.00.

16 7.c. Net Settlement Amount: To each participating class member, an Individual  
17 Class Payment calculated by (a) dividing the Net Settlement Amount (Currently  
18 estimated to be \$51,671.40) by the total number of Workweeks worked by all  
19 Participating Class Members during the Class Period and (b) multiplying the result  
20 by each Participating Class Member's Workweeks.

21 8.6. The rights of any potential dissenters to the proposed Settlement are adequately  
22 protected in that they may exclude themselves from the Settlement and proceed with any alleged  
23 claims they may have against Defendant, or they may object to the Settlement and appear before  
24 this Court. However, to do so they must follow the procedures outlined in the Settlement  
25 Agreement and Class Notice.

26 9.7. The Court approves, as to form and content, the proposed Class Notice, attached as  
27 **Exhibit A** to the Settlement.  
28

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1           ~~10.8.~~ The Parties' proposed notice plan is constitutionally sound and hereby approved as  
2 the best notice practicable. The proposed Class Notice, attached as Exhibit A to the Settlement  
3 Agreement, is sufficient to inform Class Members of the terms of the Settlement Agreement, their  
4 rights to receive monetary payments under the Settlement Agreement and the date and location of  
5 the final approval hearing. In addition, the Class Notice fairly, plainly, accurately, and reasonably  
6 informs Class Members of: (1) the nature of the action, the definition of the Class, the identity of  
7 Class Counsel, and essential terms of the Settlement; (2) Plaintiff's and Class Counsel's  
8 applications for the Plaintiff's service payment, and Class Counsel's request for attorneys' fees  
9 and litigation expenses; (3) a formula used to determine the Class Member's estimated payment;  
10 (4) Class Members' rights to appear through counsel if they desire; (5) how to object to the  
11 Settlement if a Class Member wishes to do so; and (6) how to obtain additional information  
12 regarding the action and the Settlement. (California Rule of Court 3.766.) The Court finds that  
13 the notice requirements of California Rule of Court 3.769, subd. (f) are satisfied, and that the Class  
14 Notice adequately advises Class Members of their rights under the Settlement. Counsel for the  
15 Parties are authorized to correct any typographical errors in the Class Notice and make  
16 clarifications, to the extent the same are found or needed, so long as such corrections do not  
17 materially alter the substance of the Class Notice and other notice documents.

18           ~~11.9.~~ The Court preliminarily approves the settlement of claims under the California  
19 Labor Code's Private Attorneys General Act of 2004 (Lab. Code § 2699 et seq.) ("PAGA")  
20 according to the terms and conditions in the Settlement Agreement. The Court also finds that  
21 notice of the Settlement Agreement was provided to the California Labor and Workforce  
22 Development Agency ("LWDA").

23           ~~12.10.~~ The Court appoints Eric Kingery as the representative for the Settlement Class  
24 conditionally certified by this Order.

25           ~~13.11.~~ The Court appoints James Hawkins, Christina Lucio, and Samantha Jones of James  
26 Hawkins APLC as Class Counsel. The Court finds that counsel have demonstrable experience  
27  
28

1 litigating, certifying, and settling class actions, and will serve as adequate counsel for the Class  
2 conditionally certified by this Order.

3 ~~14.12.~~ The Court approves and appoints Apex Class Action LLC as the Settlement  
4 Administrator in this matter. The Settlement Administrator is ordered to carry out the Settlement  
5 according to the terms of the Settlement Agreement and in conformity with this Order, including  
6 disseminating the Class Notice according to the notice plan described in the Settlement Agreement.

7 ~~15.13.~~ The Parties are ordered to carry out the Settlement according to the terms of the  
8 Settlement Agreement.

9 ~~16.14.~~ A final approval hearing will be held on \_\_\_\_\_, ~~October 21,~~  
10 ~~2026,~~ to determine whether the Settlement Agreement should be granted final approval as fair,  
11 reasonable, and adequate as to the Settlement Class Members. The Court reserves the right to  
12 continue the date of the final approval hearing without further notice to the Class Members.

13 ~~Pursuant to both California Code of Civil Procedure section 664.6 and California Rules of Court,~~  
14 ~~rule 3.769(h), t~~he Court retains jurisdiction to consider all further applications arising out of or  
15 in connection with the Settlement Agreement.

16 ~~17.15.~~ The Motion for Final Approval of the Settlement Agreement, including requests to  
17 approve the Plaintiffs Class Representative Service Payment and Class Counsel's request for  
18 attorneys' fees and litigation expenses, shall be filed and served no later than 16 court days before  
19 the final approval hearing.

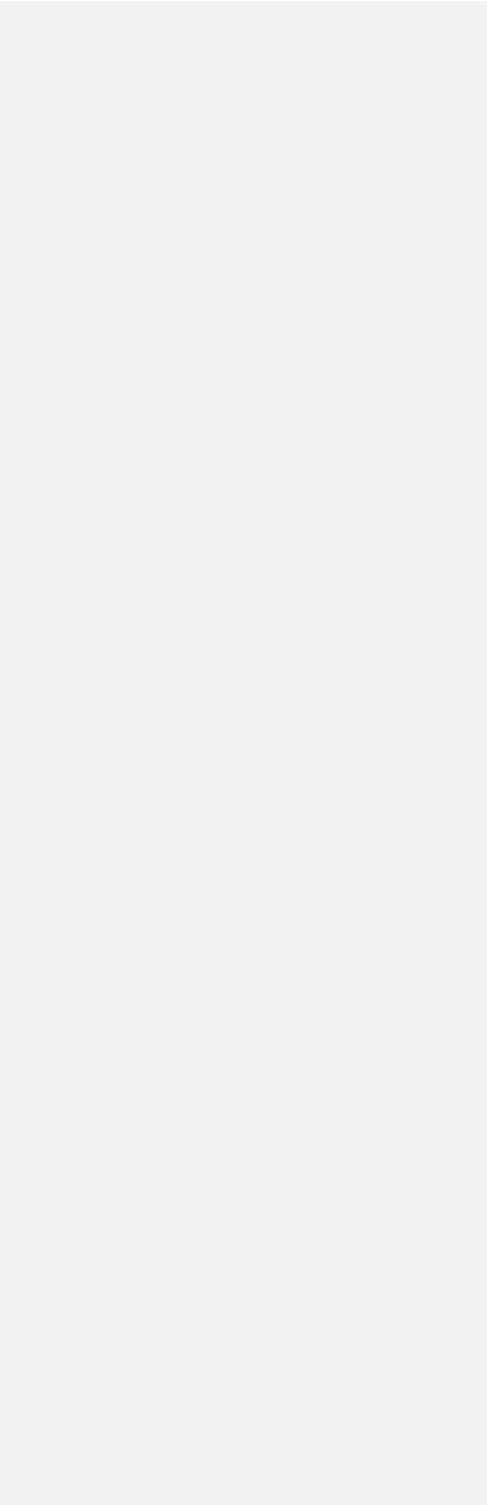
20 ~~18.16.~~ In the event the Settlement is not fully and finally approved, or otherwise does not  
21 become effective in accordance with the terms of the Settlement Agreement, this Order shall be  
22 rendered null and void and shall be vacated, and the Parties shall revert to their respective positions  
23 as of before entering into the Settlement Agreement. If the Settlement does not become final for  
24 any reason, the fact that the Parties were willing to stipulate to settlement and the circumstances,  
25 proceedings and documents related to the proposed settlement and shall have no bearing on, and  
26 will not be admissible in connection with litigation, whether through issue preclusion or estoppel  
27 or otherwise.  
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**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
HON. LAYNE H. MELZER  
Orange County Superior Court Judge



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8 Attorneys for Plaintiff ERIC KINGERY  
on behalf of himself and all others similarly situated  
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **COUNTY OF ORANGE**

12 ERIC KINGERY individually and on behalf  
13 of all others similarly situated,

14 Plaintiff,

15 v.

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

18 Defendants.  
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Case No.: 30-2024-01402619-CU-OECXC

CLASS ACTION

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

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION AND PAGA SETTLEMENT**

Date: January 22, 2026  
Time: 2:00 p.m.  
Dept: CX102

Reservation #: 74637845

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

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1 **I. INTRODUCTION**

2 Plaintiff Eric Kingery ("Plaintiff") seeks preliminary approval of a Class Action and PAGA  
3 Settlement Agreement ("Settlement") on behalf of a proposed Settlement Class during the Class  
4 Period from January 1, 2022, until December 31, 2024. This Settlement will provide certain,  
5 significant relief to the Settlement Class and should be granted preliminary approval. The  
6 Settlement is strongly supported by experienced counsel, who carefully considered the strength of  
7 the claims and Defendant's potential defenses, as well as the expense, complexity, risks, and likely  
8 duration of continued litigation.

9 After engaging in substantial independent investigation, a full-day mediation session before  
10 experienced class action mediator Gig Kyriacou, and hard-fought negotiations, the Parties agreed  
11 to a non-reversionary Gross Settlement Amount of \$142,000, exclusive of employer-side payroll  
12 taxes. Subject to Court-approval, and after deductions for the PAGA Payment, Class  
13 Representative's Service Payment, the Class Counsel Attorneys' Fees and Litigation Expenses, and  
14 the Settlement Administration Expenses, the Net Settlement Amount to be distributed to  
15 Participating Class Members in Individual Class Payments is estimated to be \$51,671.40.

16 Through this motion, Plaintiff respectfully requests that the Court enter an order: (1)  
17 provisionally certifying the Class under Code of Civil Procedure section 382 and California Rule  
18 of Court 3.769(c) for settlement purposes; (2) preliminarily approving the Settlement; (3) approving  
19 as to form the Notice of Class Action and PAGA Settlement and Hearing Date for Final Court  
20 Approval ("Class Notice") and ordering that the Class Notice be distributed to all Class Members;  
21 (4) appointing Eric Kingery as the Class Representative; (5) appointing Apex Class Action LLC as  
22 the Settlement Administrator; (6) appointing James R. Hawkins, Christina M. Lucio, and Samantah  
23 A. Jones of James Hawkins APLC as Class Counsel; and (7) setting this matter for a hearing on the  
24 issues of final approval of the proposed Settlement, approval of the Class Representative's Service  
25 Payment, approval of Class Counsel's attorneys' fees and litigation expenses, and approval of the  
26 Settlement Administration expenses.

1 **II. SUMMARY OF THE LITIGATION**

2 **A. Procedural History**

3 On May 28, 2024, Plaintiff commenced this Action by filing a Complaint alleging causes  
4 of action against Defendant for (1) failure to pay minimum wages, (2) failure to pay overtime wages  
5 owed, (3) failure to provide lawful meal periods, (4) failure to authorize and permit rest periods, (5)  
6 failure to timely pay wages owed upon separation from employment, (6) failure to reimburse  
7 necessary business expenses, (7) failure to provide accurate itemized wage statements, (8)  
8 failure to pay on-call time wages, (9) failure to pay earned vacation wages, and (10) violation of  
9 the unfair competition law. (Declaration of James R. Hawkins ("Hawkins Decl."), ¶ 4.)

10 On May 28, 2024, pursuant to Labor Code section 2699.3, subd. (a), Plaintiff also gave  
11 written notice to Defendant and the LWDA by sending the PAGA Notice. (Hawkins Decl. ¶ 5.)

12 Sixty five days having passed since Plaintiff provided written notice to Defendant and the  
13 LWDA, on August 2, 2024, Plaintiff filed a separate Action for Civil Penalties Pursuant to Private  
14 Attorneys' General Act, Labor Code section 2698 et seq. (Hawkins Decl. ¶ 5.)

15 **B. Investigation and Mediation**

16 During the litigation of this Action, the Parties engaged in extensive investigation,  
17 discovery, and research regarding the claims and defenses at issue. Class Counsel conducted  
18 substantial investigation of the facts and law, including numerous conferences between counsel for  
19 the Parties, witness interviews, substantial document production and review, and review of policies,  
20 time and pay records to calculate damages. Counsel for the Parties researched the law as applied to  
21 the facts regarding Plaintiff's claims and potential defenses thereto, and the damages and penalties  
22 claimed. (Hawkins Decl. ¶ 13.)

23 The Parties met and conferred and determined that they should explore mediation before  
24 incurring the time and expense of formal discovery. In preparation for mediation, Plaintiff's  
25 counsel reviewed the claims and drafted informal discovery request to serve on Defendant,  
26 including requests for production of policy documents, timekeeping data, and wage statements for  
27 the Class and the Aggrieved Employees. Pursuant to meet and confer efforts preceding mediation,  
28 Defendant produced class and PAGA group size information, and a sampling of time and wage

1 records. Defendant also produced relevant company policies, including waivers, and training  
2 materials related to relevant company policies which were provided to putative class members.  
3 Pursuant to meet and confer efforts preceding mediation, Defendant produced class and PAGA  
4 group size information, and a sampling of time and wage records. Defendant also produced relevant  
5 company policies, including waivers, which were provided to putative class members. (Hawkins  
6 Decl. ¶ 14.)

7 Counsel also reviewed the documents produced by Plaintiff in evaluating the strength of the  
8 claims, researched settlements in similar cases, and engaged in research and investigation to  
9 evaluate Defendant's defenses. (Hawkins Decl. ¶ 15.) From the evidence and with the assistance  
10 of an expert, Plaintiff's counsel created a comprehensive damages and exposure analysis which  
11 informed the mediation and negotiations. (*Id.*)

12 1. On June 9, 2025, the Parties participated in an all-day mediation presided over by  
13 experienced, wage and hour mediator Gig Kyriacou. which ultimately led to this Agreement to  
14 settle the Action. The Parties exchanged valuable information regarding their respective claims  
15 and defenses and learned a great deal about each other's positions; however, they were not able to  
16 resolve the action at the mediation. The Parties continued arms-length negotiations with the  
17 assistance of Mediator Kyriacou and eventually reached the resolution set forth in this Agreement  
18 via a mediator's proposal. (Hawkins Decl. ¶ 6.) At all times, the negotiations leading to the  
19 mediator's evaluation and proposals, and eventually to the long-form Settlement Agreement, have  
20 been adversarial, non-collusive, conducted at arm's length, and supported by a knowledgeable,  
21 neutral mediator. (*Id.*)

22 The Settlement agreement was finalized and fully executed on July 11, 2025. Upon  
23 execution of the Settlement Agreement, the parties agreed that the litigation shall be stayed, except  
24 to effectuate the terms of the Agreement, with an extension under Code of Civil Procedure §  
25 583.330 for the entire settlement process period. In light of Defendant's financial condition<sup>1</sup> at the  
26

27 \_\_\_\_\_  
28 <sup>1</sup> In December of 2024, Defendant Acera Health LLC shut down all operations. It indicated at the time of mediation,  
Defendant indicated that its financial resources were limited, and produced records to this effect. Defendant asserted  
that a portion had been set aside from its other creditor's to resolve this action and but this portion was likewise

1 Time of settlement, the parties agreed that the whole amount of the Gross Settlement Fund should  
2 be set aside with a neutral third party administrator, pending Court approval of the Class and PAGA  
3 settlement. The Parties Jointly agreed to use Apex Class Action LLC (“Apex”). On July 20, 2025,  
4 pursuant to the agreement, Defendant confirmed the timely transfer of those funds to Apex.  
5 (Hawkins Decl. ¶ 7.)

6 Pursuant to the Settlement agreement, on July 30, 2025, Plaintiff filed a First Amended  
7 Complaint (“FAC”) in his Class Action to incorporate his PAGA claims, thereby consolidating the  
8 Class and PAGA Actions. The FAC is the Operative Complaint in this action. (Hawkins Decl. ¶ 8.)  
9 At all times, Defendant has denied the allegations in the Operative Complaint, denied any failure  
10 to comply with the laws identified in the Operative Complaint, and denied any and all liability for  
11 the causes of action alleged. (Hawkins Decl. ¶ 9.)  
12

### 13 **III. SUMMARY OF THE PROPOSED SETTLEMENT**

#### 14 **A. Class Definition**

15 The proposed Class is defined as all individuals who worked for Defendants in California  
16 as hourly, nonexempt employees at any time from January 1, 2022, until December 31, 2024.  
17 (Settlement Agreement, ¶¶ 1.5, 1.12.)  
18

#### 19 **B. Individual Class Payments and Individual PAGA Payments**

20 Each Participating Class Member will receive an Individual Class Payment, disbursed from  
21 the Net Settlement Amount. The amount of the payment will be calculated on a pro-rata basis by  
22 (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all  
23 Participating Class Members during the Class Period and (b) multiplying the result by each  
24 Participating Class Member's Workweeks. (Settlement Agreement, ¶ 3.2.4.) Individual Class  
25 Payments shall be allocated as 20% wages (the "Wage Portion") subject to tax withholding and  
26 reported on an IRS W-2 Form, and 80% interest and penalties (the "Non-Wage Portion") not subject  
27 to wage withholdings and reported on IRS 1099 Forms. (Settlement Agreement, ¶ 3.2.4.1.)

28 \_\_\_\_\_  
limited. In the interest of preserving recovery for the Class, Class counsel ensured that the settlement agreement  
require those funds be held separately by a neutral administrator pending approval from the Court

1 A total of \$8,000 will be allocated as the PAGA Penalties. The LWDA will receive seventy-  
2 five percent (75%) of this amount (\$6,000) as its statutory share of the penalties. Each Aggrieved  
3 Employee will receive an Individual PAGA Payment calculated by (a) dividing the amount of the  
4 Aggrieved Employees' 25% share of PAGA Penalties (\$2,000) by the total number of PAGA Period  
5 Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the  
6 result by each Aggrieved Employee's PAGA Period Pay Periods. (Settlement Agreement, ¶ 3.2.5.1.)

### 7 C. Notice Procedures

8 The proposed Class Notice provides information regarding the nature of the Action, a  
9 summary of the Settlement's terms, the Class and Class Period definitions, the Class Member's  
10 Workweeks worked during the Class Period, the estimated Individual Class Payment and formula  
11 for calculating the payment, instructions to submit Requests for Exclusion or Objections and the  
12 deadlines, and Released Class claims and Released PAGA claims. (Settlement Agreement, Exhibit  
13 A.)

14 Within fourteen (14) days after receiving the Class Data, the Administrator will mail the  
15 Class Notice to the Settlement Class Members via First-Class USPS. (Settlement at 7.4.2). If any  
16 Class Notice is returned to the Settlement Administrator as undeliverable, the Settlement  
17 Administrator shall attempt to ascertain the current address of the Settlement Class Member by  
18 running a skip-trace using that Settlement Class Member's social security number. (*Id.* at 7.4.3).  
19 If an address is ascertained, the Settlement Administrator shall re-mail the Class Notice within  
20 three business days. (*Id.*). The Response Deadline for Settlement Class Members is sixty (60)  
21 days after the Settlement Administrator mails the Class Notice to Settlement Class Members. (*Id.*  
22 at 1.42.) It shall be the last date on which Settlement Class Members may: (a) fax, email or  
23 postmark any Opt Out Request; (b) fax, email or postmark any written objection to the Settlement,  
24 and (c) postmark any challenge to calculation of workweeks. (*Id.* at 7.5-7.7).

25 Participating Class Members and PAGA Members may dispute the accuracy of their  
26 credited Eligible Workweeks and Eligible Pay Periods on their Class Notice. Participating Class  
27 Members and PAGA Members may do this by submitting evidence to the Settlement  
28 Administrator in writing no later than the Response Deadline. (*Id.* at 7.6).

1 Settlement Class Members who want to opt out must timely submit a signed request to be  
2 excluded from the class portion of the Settlement to the Settlement Administrator. (*Id.* at 7.5.1.)  
3 The request must be post-marked on or before the Response Deadline and contain the required  
4 information (*Id.*).

5 Participating Class Members may object to the Settlement in person at the Final Approval  
6 Hearing and/or in writing. Participating Class Members, except for the Class Representative, will  
7 have until the Response Deadline to file a written objection to the Court. (*Id.* at 7.7.1-7.7.2).

#### 8 **D. Processing of Payments**

9 Within 14 days after Defendant funds the Gross Settlement Amount and the effective date  
10 is triggered, the Administrator will mail checks for all Individual Class Payments, all Individual  
11 PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class  
12 Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class  
13 Representative Service Award. (Settlement Agreement, ¶ 4.4.)

14 For any Class Member whose Individual Class Payment check or Individual PAGA  
15 Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the  
16 funds represented by such checks to the California Controller's Unclaimed Property Fund in the  
17 name of the Class Member. (Settlement Agreement, ¶ 4.4.3.)

#### 18 **E. Releases of Claims**

19 Effective upon entry of final judgment and contingent upon Defendant's full funding of the  
20 entire Gross Settlement Amount and all employer-side payroll taxes owed on the Wage Portion of  
21 the Individual Class Payments, all Participating Class Members will release Released Parties from  
22 all Released Class Claims that were alleged, or reasonably could have been alleged, based on the  
23 facts stated in the Operative Complaint in the Action during the Class Period. This includes, without  
24 limitation, claims relating to (1) failure to pay minimum wages, (2) failure to pay overtime owed,  
25 (3) failure to provide lawful meal periods, (4) failure to authorize and permit rest periods, (5) failure  
26 to timely pay wages owed upon separation from employment, (6) failure to reimburse necessary  
27 expenses, (7) knowing and intentional failure to comply with itemized wage statement provisions,  
28

1 (8) violation of the unfair competition law, and (9) failure to maintain required records. (Settlement  
2 Agreement, ¶ 5.2.)

3 Similarly, all Aggrieved Employees are deemed to release the Released Parties from all  
4 claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the  
5 PAGA Period facts stated in the Operative Complaint and/or the PAGA Notice for the same  
6 categories of violations. (Settlement Agreement, ¶ 5.3.)

7 In addition to the above releases, the Class Representative will enter into a general release  
8 with a Civil Code 1542 waiver. (*Id.* at 5.1).

#### 9 **IV. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT**

##### 10 **A. Class Action Settlements Are Subject to Court Review and Approval Under the** 11 **California Rules of Court.**

12 The law favors settlements. *Bush v. Superior Court* (1992) 10 Cal. App. 4th 1374, 1382.  
13 This is particularly true in class actions. However, a class action may not be dismissed,  
14 compromised or settled without Court approval. See Cal. R. Ct. 3.769(a). The procedures for  
15 approval of a class action are (1) preliminary approval of the settlement by the Court; (2) notice to  
16 Class Members as directed by the Court; and (3) a final approval hearing to inquire into the fairness  
17 of the settlement. See Cal. R. Ct. 3.769(c), (e)-(f).

18 The decision to approve a proposed settlement lies within the Court's discretion. See *Kullar*  
19 *v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008); *Wershba v. Apple Computer, Inc.*,  
20 91 Cal. App. 4th 224, 234-25 (2001). Nevertheless, in considering a settlement for approval, a court  
21 is not to turn the approval hearing "into a trial or rehearsal for trial on the merits...[or] to reach any  
22 ultimate conclusions on the contested issues of fact and law which underlie the merits of the  
23 dispute." *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982). The Court's  
24 duty is to determine whether the settlement is fair, adequate, and reasonable. See *Dunk v. Ford*  
25 *Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996) (citing *Officers for Justice*, 688 F.2d. at 625).

26 The Court should consider factors including:

27 [T]he strength of plaintiff's case, the risk, expense, complexity and likely duration of further  
28 litigation, the risk of maintaining class action status through trial, the amount offered in

1 settlement, the extent of discovery completed and the stage of the proceedings, the  
2 experience and views of counsel...and the reaction of the class members to the proposed  
3 settlement.

4 *Dunk* at 1801. Furthermore, the Court must give "[due] regard to what is otherwise a private  
5 consensual agreement between the parties." *Wershba*, 91 Cal. App. 4th at 245. The inquiry must be  
6 limited "to the extent necessary to reach a reasoned judgment that the agreement is not the product  
7 of fraud or overreaching by, or collusion between, the negotiating parties." *Id.* (citation and internal  
8 quotation marks omitted).

9 A "presumption of fairness exists where: (1) the settlement is reached through arm's-length  
10 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act  
11 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is  
12 small." *Dunk*, 48 Cal. App. 4th at 1802 (citing Herbert B. Newberg & Alba Conte, *Newberg on*  
13 *Class Actions* ("Newberg") § 11.41). As shown below, the settlement falls well within the range of  
14 approval because there are no grounds to doubt its fairness.

15 **B. The Settlement is Fair, Reasonable, and Adequate**

16 **1. The Settlement is the Result of Arm's-length Negotiations**

17 The Settlement was the product of extensive arm's length bargaining by the Parties and a  
18 full day of mediation conducted by experienced wage and hour mediator Gig Kyriacou. (Hawkins  
19 Decl. ¶ 6.) At all times, the negotiations leading to the mediator's evaluation and proposals, and  
20 eventually to the long-form Settlement Agreement, have been adversarial, non-collusive, conducted  
21 at arm's length, and supported by a knowledgeable, neutral mediator. (Hawkins Decl. ¶¶ 6.) The  
22 negotiations were informed by the extensive review and investigation conducted. The information  
23 exchanged between the Parties allowed them to assess the merits of the claims and defenses and  
24 reach a compromise. (Hawkins Decl. ¶ 15-16, 20.) Plaintiff and Class Counsel have considered the  
25 uncertainty and risk of further litigation and the potential outcome. Informed by this process,  
26 Plaintiff and Class Counsel believe the Settlement is fair, adequate, and reasonable, and it is in the  
27 best interests of the Class Members. (Hawkins Decl. ¶ 34.)  
28

1                   **2.       The Extent of Discovery and the Stage of the Proceedings Support**

2 **Settlement**

3           The Parties thoroughly investigated and evaluated the factual strengths and weaknesses of  
4 their respective claims and defenses before reaching the Settlement. (Hawkins Decl. ¶ 12-20.) The  
5 Settlement was reached after extensive investigation and research, substantial exchanges of  
6 documents, and a thorough evaluation of class-wide data produced to Class Counsel. (Hawkins  
7 Decl. ¶ 13-15.) As such, this litigation has reached the stage where "the Parties certainly have a  
8 clear view of the strengths and weaknesses of their cases" sufficient to support the settlement. In re  
9 Warner Commc'ns Sec. Litig., 618 F. Supp. 735, 745 (S.D.N.Y. 1985).

10                   **3.       The Settlement is a Reasonable Compromise of Claims**

11           The Settlement compares favorably to other class settlements in terms of potential recovery.  
12 *In re MyFord Touch Consumer Litig.*, No. 13-CV-03072-EMC, 2019 WL 1411510 at \*10 (N.D.  
13 Cal. Mar. 28, 2019) (citing cases where settlement ranges from 5% to 10% of potential recovery).  
14 In this case, Plaintiff alleged that Defendant's policies, practices, and procedures led to failures to  
15 pay minimum wages, failures to pay overtime wages owed, failures to provide lawful meal periods,  
16 failures to authorize and permit rest periods, failures to indemnify necessary business expenses,  
17 failures to timely pay final wages at termination, failures to pay on-call time wages, failures to  
18 provide accurate itemized wage statements and pay earned vacation wages, violations of the unfair  
19 competition law, and civil penalties pursuant to private attorneys' general act. (Hawkins Decl. ¶ 21.)

20           The Hawkins Declaration contains detailed damages calculations in paragraphs 22-34. The  
21 negotiated settlement of \$142,000 represents approximately 33% of the realistic liability as  
22 calculated by counsel. (Hawkins Decl. ¶ 34.)

23           While Plaintiff believes in the strength of his allegations and that the claims are appropriate  
24 for class certification, certification was far from certain given Defendant's defenses and the state of  
25 the law regarding certification. (Hawkins Decl. at ¶¶ 17-20). The risk that Defendant could defeat  
26 certification, defeat the representative claims, and/or prevail on their defenses, or that any damages  
27 award could be rendered unrecoverable by Defendant's Poor financial condition, warranted a  
28 compromise. (*Id.*). After arms-length negotiations between experienced and informed counsel and

1 with the assistance of a mediator, the Parties agreed to the Gross Settlement Amount of \$142,000  
2 which is approximately 33% of the realistic liability. (*Id.* ¶¶ 6, 20-36). As the *Glass* court held:

3 In light of the above-referenced uncertainty in the law, the risk, expense, complexity,  
4 and likely duration of further litigation likewise favors the settlement. Regardless of  
5 how this Court might have rules on the merits of the legal issues, the losing party  
6 likely would have appealed, and the parties would have faced the expense and  
7 uncertainty of litigation an appeal. “The expense and possible duration of the  
8 litigation should be considered in evaluating the reasonableness of [a] settlement.”  
9 *See In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458. (9<sup>th</sup> Cir.  
10 2000).

11 *Glass v. UBS Fin. Servs., Inc.*, No. C-06-4068 MMC, 2007 WL 221862, at \*9 (N.D. Cal. Jan. 26,  
12 2007). “Generally, unless the settlement is clearly inadequate, its acceptable and approval are  
13 preferable to lengthy and expensive litigation with uncertain results,” *Ching v. Siemens Indus., Inc.*,  
14 No. 11-CV-04838-MEJ, 2014 WL 2926210, at \*9 (N.D. Cal. June 27, 2014) (quotation omitted).  
15 This factor weighs in favor of approval.

### 16 **C. Gross Settlement Amount and Net Settlement Amount**

17 Defendant has agreed to pay the Gross Settlement Amount of \$142,000 to resolve the  
18 Action, and to separately pay all employer-side payroll taxes owed on the wage portion of the  
19 Individual Class Payments. (Settlement Agreement, ¶ 3.1.) The Gross Settlement Amount will be  
20 used to pay the Individual Class Payments, Individual PAGA Payments, LWDA PAGA Payment,  
21 Class Counsel Attorneys' Fees, Class Counsel Litigation Expenses, Class Representative Service  
22 Payment and the Settlement Administrator Costs. (Settlement Agreement, ¶ 3.2.)

23 The Net Settlement Amount is the amount to be paid to Participating Class Members as  
24 Individual Class Payments after subtracting the following payments from the Gross Settlement  
25 Amount, subject to Court approval: (1) a Class Representative Service Payment of up to \$2,500 to  
26 Plaintiff Kingery (Settlement Agreement, ¶ 3.2.1); (2) Administration Expenses Payment not to  
27 exceed \$5,500 (Settlement Agreement, ¶ 3.2.3); (3) Class Counsel Fees Payment of not more than  
28 33 1/3% of the Gross Settlement Fund, or \$47,328.60 (Settlement Agreement, ¶ 3.2.2); (4) Class  
Counsel Litigation Expenses Payment of up to \$27,000 (Settlement Agreement, ¶ 3.2.2); and (5)  
PAGA Penalties in the amount of \$8,000, of which 75% (\$6,000) will be paid to the LWDA and

1 25% (\$2,000) will be distributed to Aggrieved Employees that worked during the PAGA Period.  
2 (Settlement Agreement, ¶ 3.2.5.) The Net Settlement Amount is estimated to be \$51,671.40.

3 Assuming Court approval of all requested allocations, the average Class Member Individual  
4 Settlement Payment assuming equal distribution is approximately \$320.94. The per workweek  
5 value from the Net Settlement Amount is approximately \$11.29 per workweek and \$31.02 per  
6 workweek using the Gross Settlement Amount. A Class Member who worked the entire Class  
7 Period would be entitled to an Individual Settlement Payment of approximately 1,761.14. (Hawkins  
8 Decl. ¶ 10.)

#### 9 4. The Risks Inherent in Continued Litigation Are Great

10 To assess a class action settlement, the Court should consider "[t]he strength of plaintiff's  
11 case, the risk, expense, complexity, and likely duration of further litigation, [and] the risk of  
12 maintaining class action status." See *Dunk* at 1801. This factor weighs in favor of approval.

13 "The expense and possible duration of the litigation should be considered in evaluating the  
14 reasonableness of [a] settlement." See *In re Mego Financial Corp. Securities Litigation*, 213 F.3d  
15 454, 458. (9th Cir. 2000). Here, Defendant asserted strong defenses to Plaintiff's claims that create  
16 a possibility that the claims might not be certified or might fail on the merits. (Hawkins Decl. ¶¶  
17 17–18, 35.) Counsel recognized the expense and length of proceedings necessary to continue the  
18 litigation through trial and any appeals. This case also has the potential to impose significant  
19 litigation costs on all the parties, as Defendant is expected to continue challenging Plaintiff's  
20 allegations and to increase the pace of their investigation and opposition. Although it is difficult to  
21 foresee the ultimate result of a trial, Class Counsel anticipate an expensive, complex and time-  
22 consuming process. Class Counsel foresee the possibility of a lengthy and costly appeal regardless  
23 of the outcome of trial given the unsettled legal landscape governing this case. (Hawkins Decl. ¶  
24 35.)

25 There was also the very real possibility that, given the company's poor financial condition,  
26 even if Plaintiff prevailed on certification and proving the merits at trial, given the size of the  
27  
28

1 company and the economic climate, Defendant would be unable to pay a sizeable judgment after  
2 incurring the expenses of prolonged litigation and trial. (Hawkins Decl. ¶ 35.)

3 **5. The Fairness of the Distribution to Class Members Also Supports**  
4 **Approval.**

5 The Settlement treats all Class Members equally, providing no preferential treatment for the  
6 named Plaintiff or any segment of the Class. The Parties have allocated Individual Class Payments  
7 to the Class Members according to the number of Workweeks that each Participating Class Member  
8 worked during the Class Period versus all of the Workweeks worked by all Participating Class  
9 Members during the Class Period. (Settlement Agreement, ¶ 3.2.4.)

10 **6. Class Counsel Are Experienced in Similar Litigation**

11 The view of the attorneys actively conducting the litigation "is entitled to significant weight"  
12 in deciding whether to approve the settlement. *Fisher Bros. v. Cambridge-Lee Indus, Inc.*, 630 F.  
13 Supp. 482, 488 (E.D. Pa. 1985); *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal.  
14 1980), *aff'd*, 661 F. 2d. 939 (9th Cir. 1981); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 616-17 (N.D.  
15 Cal. 1979). Class Counsel are experienced in wage-and-hour class actions and have litigated, and  
16 currently are litigating, similar class action matters. (Hawkins Decl. ¶¶ 46-55.) Counsel negotiated  
17 this Settlement at arm's length and believe this is a fair and reasonable settlement in light of the  
18 complexities of the case, the state of the law, Defendant's financial condition, and uncertainties of  
19 class certification and litigation. Given the risk inherent in litigation and the defenses asserted, this  
20 settlement is fair, adequate, and reasonable and in the best interests of the Class Members, and  
21 should be preliminarily approved. (Hawkins Decl. ¶ 34, 61.)

22 **V. CONDITIONAL CERTIFICATION OF THE CLASS IS APPROPRIATE**

23 California Rule of Court 3.769(d) provides that the Court may make an order approving  
24 certification of a provisional class at preliminary approval. Trial courts should use a "lesser standard  
25 of scrutiny" for determining the propriety of certifying a settlement class, as opposed to a litigation  
26 class. *Dunk*, 48 Cal. App. 4th at 1807. Because no trial is anticipated in a settlement, case  
27 management issues need not be confronted, and the trial court's fairness review of the settlement  
28

1 protects the interests of the class members. Here, for the purposes of this settlement, the Parties ask  
2 this Court to provisionally certify the Class.

3 **A. Numerosity and Ascertainability**

4 Numerosity is met if a proposed class is so large that joinder of all members would be  
5 impracticable. See Cal. Code Civ. Proc. § 382. A proposed class is ascertainable if the class  
6 members can be objectively identified and given notice of the litigation without unreasonable time  
7 or expense. See *Medraza v. Honda of N. Hollywood*, 166 Cal. App. 4th 89, 101 (2008). The class  
8 size of approximately 152 Class Members is sufficiently numerous to warrant conditional class  
9 certification, and the proposed Class is ascertainable as all of the Class Members worked for  
10 Defendant and can be identified through employee files and payroll records. (Hawkins Decl. ¶¶ 22,  
11 40, 42.)

12 **B. Well-Defined Community of Interest**

13 **1. Commonality**

14 To justify certification, the class proponent must show that questions of law or fact common  
15 to the class predominate over the questions affecting the individual members. See *Arenas v. El*  
16 *Torito Rests, Inc.*, 183 Cal. App. 4th 723, 732 (2010) (citing *Washington Mut. Bank v. Superior*  
17 *Court*, 24 Cal. 4th 906, 913 (2001)). Class Certification, as requested by the parties for the purposes  
18 of the Settlement only, should be granted because Plaintiff alleges that the proposed Class Members'  
19 claims all stem from the same alleged conduct, e.g., that Defendant's alleged policies, practices and  
20 procedures resulted in Defendant's failure to pay minimum wages, failure to pay overtime  
21 compensation, failure to provide meal periods, failure to authorize and permit rest breaks, failure  
22 to indemnify necessary business expenses, failure to timely pay final wages at termination, failure  
23 to pay on-call time wages, failure to provide accurate itemized wage statements and pay earned  
24 vacation wages, and unfair business practices. Under these circumstances, the commonality  
25 requirement for certification for settlement purposes is satisfied. (Hawkins Decl. ¶ 38.)

26 **2. Typicality**

27 The typicality requirement is met, as the proposed Class Representative and the Class  
28 Members have claimed that Defendant violated California law by the above-specified conduct.

1 Under these specific circumstances, the typicality requirement for class certification for settlement  
2 purposes is satisfied because the Class Representative and the proposed Class Members all claim  
3 that Defendant committed similar violations based upon similar conduct, policies and practice and  
4 they seek the same remedies. Plaintiff contends, and Defendant does not dispute for settlement  
5 purposes, that their claims are typical of the claims of the Class Members because they arise from  
6 the same factual basis and are based upon the same legal theories as those applicable to the Class  
7 Members. (Hawkins Decl. ¶ 39.)

### 8 **3. Adequacy of Representation**

9 The adequacy requirement is also satisfied. Per the Settlement, the Class Representative will  
10 receive a reasonable payment for his time and effort assisting counsel with factual issues  
11 surrounding the case. Other than this specific payment, all Class Members will receive a  
12 proportionate share of the Net Settlement Amount calculated by dividing the Net Settlement  
13 Amount by the total number workweeks worked by all participating Class Members during the  
14 Class Period and multiplying the result by each Participating Class Member's Workweeks. As a  
15 result, there is no conflict of interest between the Class Representative and the Class Members.  
16 Additionally, the Class Representative and Class Counsel have prosecuted this action vigorously  
17 on behalf of the Class Members. Class Counsel is well-versed in handling complex wage and hour  
18 class action litigations such as this one. Class Counsel has kept in regular touch with Plaintiff, and  
19 believes this settlement is fair to both Plaintiff and Class Members. Class Counsel is unaware of  
20 any interests of the Class Representative which are adverse or antagonistic to the interests of the  
21 Class. (Hawkins Decl. ¶ 40.)

## 22 **VI. THE COURT SHOULD APPOINT APEX CLASS ACTION ADMINISTRATION AS** 23 **THE ADMINISTRATOR**

24 The parties propose that the Court appoint Apex Class Action LLC as the Settlement  
25 Administrator. (Settlement Agreement, ¶ 1.2.) The Settlement Agreement provides that the  
26 Administration Expenses Payment will not exceed \$5,500.00. (Settlement Agreement, ¶ 3.2.3.)

### 27 **A. The Notice to be Provided to Class Members Is Sufficient**

28

1 California statutory and case law vests the Court with broad discretion in fashioning an  
2 appropriate notice program. What constitutes adequate notice will depend on the circumstances of  
3 each case, and such efforts and their costs must be proportional to the magnitude of the claims. The  
4 notice plans here satisfy all due process requirements.

5 **B. The Content of The Notice Provided to Class Members Is Sufficient**

6 The Class Notice identifies the Parties, describes the action and class, summarizes the  
7 proceedings and terms of the Settlement in an informative and coherent manner, and is accurate,  
8 objective, and understandable to Class Members. (See Settlement Agreement, Exhibit A.) It clearly  
9 states the Settlement is not an admission of liability by Defendant, the Court has not ruled on the  
10 merits, and the final settlement approval decision has yet to be made. (*Id.*) The Class Notice meets  
11 the applicable legal standards since it apprises the Class Members of the terms of the proposed  
12 settlement and of the options open to objecting class members. (*Wershba v. Apple Computers, Inc.*  
13 (2001) 91 Cal.App.4th 224, 251 [citation omitted]; see Cal. R. Ct., Rule 3.766, subd. (d).)

14 **C. The Manner of Supplying Notice to Class Members Is Sufficient**

15 There is no statutory or due process requirement that all class members actually receive  
16 notice of the settlement. Rather, "[t]he notice given should have a reasonable chance of reaching a  
17 substantial percentage of the class members...." *Cartt v. Super. Ct.*, 50 Cal.App.3d 960, 973 (1975).  
18 This is satisfied by mailing the Class Notice by First-Class USPS to all Class Members based on  
19 Defendant's business records. (Settlement Agreement, ¶ 7.4.2)

20 **VII. CONCLUSION**

21 Plaintiff requests that the Court preliminarily approve the Settlement and enter an order: (1)  
22 provisionally certifying the Class under Code of Civil Procedure section 382 and California Rule  
23 of Court 3.769(c) for settlement purposes; (2) preliminarily approving the Settlement; (3) approving  
24 as to form the Class Notice and ordering that the Class Notice be distributed to all Class Members;  
25 (4) appointing Plaintiff Kingery as the Class Representative; (5) appointing Apex Class Action LLC  
26 as the Settlement Administrator; (6) appointing James R. Hawkins, Christina M. Lucio, and  
27 Samantha A. Jones of James Hawkins APLC as Class Counsel; and (7) setting this matter for a  
28 hearing on the issues of final approval of the proposed Settlement, approval of the Class


1 Representative's Service Payment, approval of Class Counsel's attorneys' fees and litigation  
2 expenses, and approval of the Settlement Administration Expenses.

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Respectfully submitted,

Dated: August 18, 2025

**JAMES HAWKINS APLC**

By:   
James R. Hawkins, Esq.  
Christina M. Lucio, Esq.  
Samantha A. Jones, Esq.

Attorneys for Plaintiff  
ERIC KINGERY on behalf of himself  
and all others similarly situated