

James R. Hawkins (SBN 192925)
james@jameshawkinsaplc.com
Christina M. Lucio (SBN 253677)
christina@jameshawkinsaplc.com
Samantha A. Jones (SBN 358358)
samantha.jones@jameshawkinsaplc.com

JAMES HAWKINS APLC
9880 Research Drive, Suite 200
Irvine, California 92618
Telephone: (949) 387-7200
Facsimile: (949) 387-6676

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

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

Plaintiff,

v.

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

Defendants.

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

CLASS & PAGA ACTION

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

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION
AND PAGA SETTLEMENT AND
REQUEST FOR ATTORNEYS' FEES
AND COSTS**

Date: October 22, 2026

Time: 2:00 p.m.

Dept: CX102

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I. INTRODUCTION	3
II. BACKGROUND AND PROCEDURAL HISTORY	4
III. TERMS OF THE SETTLEMENT	5
A. Settlement Class and PAGA Group	5
B. Gross Settlement Amount and Payments	6
C. Release of Claims	7
D. Notice and Administration	8
IV. ARGUMENT	8
A. Standards for Final Approval	8
B. The Settlement Merits Final Approval	9
1. The Settlement Was Reached Through Arm’s-Length, Informed Negotiations	9
2. The Class Response Supports Final Approval	10
3. The Settlement Is a Reasonable Compromise of Disputed Claims.....	10
4. The Settlement Avoids Risk, Expense, Delay, and Collectability Issues	11
V. SETTLEMENT ADMINISTRATION COSTS	12
VI. PLAINTIFF’S CLASS REPRESENTATIVE SERVICE PAYMENT	12
VII. ATTORNEYS’ FEES AND COSTS.....	14
A. Requested Fees	14
B. Unique Circumstances Support the Requested Fee	14
C. Percentage-of-Recovery Method.....	16
D. Lodestar Cross-Check	16
E. Work Performed, Risk, Contingency, and Results	17
F. Litigation Costs.....	18
VIII. PAGA SETTLEMENT	18
X. CONCLUSION	19

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

CASES

Page(s)

7-Eleven Owners for Fair Franchising v. Southland Corp.
(2000) 85 Cal.App.4th 113511

Ching v. Siemens Indus., Inc.
(N.D. Cal. June 27, 2014) 2014 WL 292621012

Class Plaintiffs v. City of Seattle
(9th Cir. 1992) 955 F.2d 1268, cert. denied, 506 U.S. 9538

Dunk v. Ford Motor Co.
(1996) 48 Cal.App.4th 17949

Hernandez v. Restoration Hardware, Inc.
(2018) 4 Cal.5th 26015

Laffitte v. Robert Half Int’l, Inc.
(2016) 1 Cal.5th 48015

Potter v. Pacific Coast Lumber Co.
(1951) 37 Cal.2d 592.....8

Van Bronkhorst v. Safeco Corp.
(9th Cir. 1976) 529 F.2d 943..... 8

Wershba v. Apple Computer, Inc.
(2001) 91 Cal.App.4th 2249, 11, 15

STATUTES

Labor Code § 269917

RULES

California Rules of Court, rule 3.7699

OTHER AUTHORITIES

4 Newberg on Class Actions (4th ed. 2002) § 11.418, 9

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Eric Kingery seeks final approval of a non-reversionary class action and PAGA
4 settlement resolving wage-and-hour claims against out-of-business Defendant Acera Health, LLC.
5 The Amended Settlement Agreement (“Settlement Agreement”), which, is attached as **Exhibit 1** to
6 the Declaration of James Hawkins filed concurrently herewith. The Settlement Class consists of
7 “all individuals who worked for Defendant in California as hourly, non-exempt employees at any
8 time during the Class Period,” which runs from “January 1, 2022, through December 31, 2024.”
9 The Aggrieved Employees are individuals who worked for Defendant in California as hourly, non-
10 exempt employees during the PAGA Period of May 28, 2023, through December 31, 2024.
11

12 The settlement provides a non-reversionary Gross Settlement Amount of \$142,000.00.
13 None of the Gross Settlement Amount will revert to Defendant. The Net Settlement Amount is
14 currently estimated to be \$54,731.77, subject to final Court-approved deductions. The settlement
15 allocates \$8,000.00 to PAGA penalties, with \$6,000.00 allocated to the LWDA and \$2,000.00
16 allocated to Individual PAGA Payments. Class Counsel may request fees of up to \$47,328.60,
17 litigation expenses of up to \$27,000.00, administration expenses not to exceed \$5,500.00, and a
18 Class Representative Service Payment of up to \$2,500.00.
19

20 The Court granted preliminary approval on May 7, 2026, after reviewing supplemental
21 materials and finding they adequately addressed the Court’s previously identified issues. The Court
22 found the settlement fell within the range of what is considered fair and reasonable, subject to final
23 determination at the Final Approval hearing. The Court’s written preliminary approval order was
24 entered on May 26, 2026.
25

26 The current record supports final approval. Plaintiff respectfully requests that the Court
27 grant final approval, approve the PAGA settlement, approve the requested attorneys’ fees and costs,
28

1 approve the requested Class Representative Service Payment, approve settlement administration
2 costs, and enter judgment.

3 **II. BACKGROUND AND PROCEDURAL HISTORY**

4 Plaintiff filed this class action against Defendant Acera Health, LLC on May 28, 2024.
5 (Declaration of James Hawkins In support of Preliminary Approval, filed August 18, 2025,
6 [Hawkins Preliminary Approval Decl.], ¶ 4). Plaintiff filed a separate PAGA action against
7 Defendant on August 2, 2024, in Case No. 30-2024-01416779. (*Id.* ¶ 5). This Court subsequently
8 took notice that the PAGA action is a related case.
9

10 On July 30, 2025, pursuant to the parties' stipulation and the Court's order, Plaintiff filed
11 the operative First Amended Complaint to consolidate the claims alleged in the PAGA action with
12 the class claims alleged in this action. (Hawkins Preliminary Approval Decl. ¶ 8). The First
13 Amended Complaint is the operative complaint in this action, and alleges 11 causes of action for
14 various Labor Code wage-and-hour violations and unfair business practices, and a claim for PAGA
15 penalties. (*Id.*)
16

17 Before mediation, Class Counsel investigated the facts and law, exchanged information
18 with Defendant, interviewed witnesses, reviewed documents, and reviewed policies, time records,
19 and pay records to calculate damages. (Declaration of James Hawkins in Support of Final Approval,
20 [Hawkins Final Approval Decl.], ¶ 47; Hawkins Preliminary Approval Decl. ¶¶ 6–16.). Defendant
21 produced class and PAGA group size information, a sampling of time and wage records, relevant
22 company policies, waivers, and training materials related to relevant company policies provided to
23 putative class members. (Hawkins Preliminary Approval Decl. ¶ 14). Plaintiff's counsel also
24 reviewed documents produced by Plaintiff, researched settlements in similar cases, and investigated
25 Defendant's defenses. (*Id.* ¶ 15).
26
27

28 The parties participated in an all-day mediation on June 9, 2025, before experienced wage-

1 and-hour mediator Gig Kyriacou. (*Id.* ¶ 6). Although the case did not resolve that day, the parties
2 continued arm's-length negotiations with Mediator Kyriacou's assistance and ultimately reached
3 settlement through a mediator's proposal. (*Id.*). The settlement agreement was finalized and fully
4 executed on July 11, 2025. (*Id.* ¶ 7).

5
6 In December 2024, Defendant Acera Health LLC shut down all operations. Defendant
7 verified by producing records of the business closure and that its financial resources were limited.
8 (Hawkins Final Approval Decl. ¶ 63). Because of Defendant's financial condition, the parties
9 agreed the whole Gross Settlement Fund should be set aside with a neutral third-party administrator
10 pending Court approval. (Hawkins Preliminary Approval Decl. ¶ 7). On July 20, 2025, Defendant
11 confirmed the timely transfer of those funds to Apex. (*Id.*)

12
13 On August 18, 2025, Plaintiff filed the motion for preliminary approval of the class action
14 and PAGA settlement. On November 20, 2025, the Court continued the first hearing on the motion
15 and directed Class Counsel to address various issues. On March 30, 2026, Class Counsel submitted
16 supplemental materials, including an Amended Settlement Agreement, amended notice, redlined
17 versions, and materials addressing the Court's concerns. (See generally Supplemental Declaration
18 of James Hawkins in Support of Preliminary Approval, filed on March 30, 2026 [Hawkins Supp.
19 Preliminary Approval Decl.]) The Court granted preliminary approval on May 7, 2026. (Hawkins
20 Final Approval Decl. ¶ 7).

21 22 **III. TERMS OF THE SETTLEMENT**

23 **A. Settlement Class and PAGA Group**

24 The Court conditionally certified, for settlement purposes only, a Settlement Class
25 consisting of all individuals who worked for Defendant in California as hourly, nonexempt
26 employees at any time from January 1, 2022, through December 31, 2024. The Court also identified
27 Aggrieved Employees as all individuals who worked for Defendant in California as hourly, non-
28

1 exempt employees at any time from May 28, 2023, through December 31, 2024. Defendant's
2 records showed 162¹ Class Members who collectively worked 3,519 Workweeks and 116
3 Aggrieved Employees who worked 1,416 PAGA Pay Periods.

4
5 **B. Gross Settlement Amount and Payments**

6 Defendant agreed to pay a Gross Settlement Amount of \$142,000.00 and separately pay
7 employer payroll taxes owed on the wage portions of Individual Class Payments. The Administrator
8 will disburse the entire Gross Settlement Amount without requiring Participating Class Members
9 or Aggrieved Employees to submit claims. No portion of the Gross Settlement Amount will revert
10 to Defendant. Subject to Court approval, the Gross Settlement Amount will be allocated as follows:

- 11 ▪ Class Counsel fees of up to \$47,328.60.
- 12 ▪ Class Counsel litigation expenses of up to \$27,000.00 (actual requested
13 costs are \$23,939.63).
- 14 ▪ Settlement administration expenses not to exceed \$5,500.00, except on a
15 showing of good cause and as approved by the Court.
- 16 ▪ A Class Representative Service Payment to Plaintiff of up to \$2,500.00.
- 17 ▪ PAGA penalties of \$8,000.00, with \$6,000.00 allocated to the LWDA and
18 \$2,000.00 allocated to Individual PAGA Payments.
- 19 ▪ The remaining Net Settlement Amount will be paid to Participating Class
20 Members as Individual Class Payments.

21 As with most if not all wage-and-hour settlements, individual Class Payments will be
22 calculated by dividing the Net Settlement Amount by the total number of Workweeks worked by
23 all Participating Class Members during the Class Period and multiplying the result by each
24 Participating Class Member's Workweeks. Twenty percent of each Individual Class Payment will
25 be allocated to wages, and eighty percent will be allocated to interest and penalties. Based on the
26

27
28 ¹ On July 27, 2026, an individual reached out to Apex requesting inclusion in the Class. After reviewing the request with Defense Counsel, they agreed to include the Class Member and allocated 166 Workweeks and 42 PAGA Pay Periods. (Administrator Decl. ¶ 16.)

1 requested deductions, the highest Individual Settlement Payment to a Participating Class Member
2 is currently estimated to be approximately \$2,465.53, the average Individual Settlement Payment
3 is currently estimated to be approximately \$335.78, and the lowest Individual Settlement Payment
4 is currently estimated to be approximately \$14.85. (Declaration of Beth Paris In Support of Motion
5 for Final Approval of Class Action and PAGA Settlement [“Administrator Declaration”], ¶ 21.)
6 Individual PAGA Payments will be calculated by dividing the Aggrieved Employees’ \$2,000.00
7 share of PAGA penalties by the total number of PAGA Period Pay Periods worked by all Aggrieved
8 Employees and multiplying the result by each Aggrieved Employee’s PAGA Period Pay Periods.
9 Based on the PAGA allocation requested, the *highest* Individual PAGA Payment to an Aggrieved
10 Employee is approximately \$76.82, the *average* Individual PAGA Payment is approximately
11 \$17.09, and the *lowest* Individual PAGA Payment is approximately \$1.37. (Administrator
12 Declaration, ¶ 23.)
13
14

15 **C. Release of Claims**

16 Participating Class Members will release Released Parties from all claims that were alleged,
17 or reasonably could have been alleged, based on the facts alleged in the Actions, including claims
18 for alleged failure to pay minimum wages, overtime wages, meal periods, rest breaks, expense
19 reimbursement, wages due upon separation, accurate itemized wage statements, and unfair business
20 practices. In accordance with the law, the class release does not include claims for vested benefits,
21 wrongful termination, violation of the Fair Employment and Housing Act, unemployment
22 insurance, disability, social security, workers’ compensation, or claims based on facts occurring
23 outside the Class Period.
24
25

26 Aggrieved Employees are deemed to release Released Parties from all claims for PAGA
27 penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the
28 Actions and the PAGA Notice.

1 **D. Notice and Administration**

2 The Court approved Apex Class Action LLC as the Settlement Administrator. The
3 Settlement Agreement required the Administrator to mail the Class Notice by first-class USPS mail
4 no later than 14 days after receiving Class Data. Before mailing Class Notices, the Administrator
5 was required to update Class Member addresses using the NCOA database. For returned notices,
6 the Administrator was required to re-mail using any forwarding address provided by USPS or, if
7 none was provided, conduct a Class Member Address Search and re-mail to the most current
8 address obtained.
9

10 As set forth in the Declaration of Beth Paris, the Settlement Administrator, Apex received
11 the class data on May 11, 2025. (Administrator Decl. ¶ 4.) After obtaining the finalized notice from
12 Class Counsel and clarifying discrepancies in the data with Defendant, on June 12, 2026, Apex
13 mailed the Court-Approved class notice to 162 Class Members. (Administrator Decl. ¶¶ 6–9.)
14

15 After receiving 18 returned Class Notices as undeliverable, Apex conducted a skip trace on
16 the 18 returned Class Notices for the purpose of re-mailing the Class Notice. (*Id.* ¶ 10–11.) This
17 skip trace effort resulted in the collection of 14 updated addresses, to which Apex promptly re-
18 mailed the Class Notices via U.S. First-Class Mail. (*Id.*) As of the filing of this motion, only four
19 (4) or 2.45% of the Class Notices have been considered undeliverable, **resulting in successful**
20 **notice to nearly 98% of the class.** (*Id.*)
21

22 **IV. ARGUMENT**

23 **A. Standards for Final Approval**

24 The law favors settlement, particularly in class actions where substantial resources can be
25 conserved by avoiding the time, cost, and rigors of formal litigation. 4 Newberg on Class Actions
26 (4th ed. 2002), § 11.41; *Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276, cert.
27 denied, 506 U.S. 953; *Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976) 529 F.2d 943,950; *Potter v.*
28

1 *Pacific Coast Lumber Co.* (1951) 37 Cal.2d 592, 602–03.) Nevertheless, to make certain the rights
2 of absent parties are not unjustly compromised, the settlement of a class action requires court
3 approval. (Cal. Rule of Court 3.769; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801;
4 *Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 245.) The purpose of that judicial review
5 is to protect against fraud or collusion, and to ensure fairness to absent class members. (*Dunk*, 48
6 Cal.App.4th at 1800-01; Newberg, at §§ 11.22, et seq.)

8 On a motion for final approval, the trial court determines whether, in light of the total
9 circumstances and class response, the settlement is fair, reasonable, and adequate. (*Dunk*, 48
10 Cal.App.4th at 1801-02; *Wershba*, 91 Cal.App.4th at 244-45.) Relevant factors include the strength
11 of plaintiff's case, likelihood of potential recovery, risk, expense and likely duration of further
12 litigation, amount offered in settlement, extent of discovery and stage of proceedings, counsel's
13 experience and opinion, and class reaction. (*Dunk*, 48 Cal.App.4th at 1801; *Wershba*, 91
14 Cal.App.4th at 245.) A presumption of fairness applies when the settlement is reached through
15 arm's-length bargaining, investigation and discovery are sufficient, counsel is experienced in
16 similar litigation, and the percentage of objectors is small. (*Dunk*, 48 Cal.App.4th at 1802; *Wershba*,
17 91 Cal.App.4th at 245.)

20 **B. The Settlement Merits Final Approval**

21 The settlement merits final approval because it resulted from informed, arm's-length
22 negotiations, provides meaningful non-reversionary monetary relief, avoids significant litigation
23 and collectability risks, and was preliminarily approved after the Court reviewed supplemental
24 materials addressing its concerns.

26 1. The Settlement Was Reached Through Arm's-Length, Informed Negotiations

27 The parties participated in an all-day mediation on June 9, 2025, before mediator Gig
28 Kyriacou. The parties were unable to resolve the action at mediation, but continued arm's-length

1 negotiations with the mediator's assistance and eventually reached resolution through a mediator's
2 proposal. The negotiations leading to the mediator's evaluation and proposals and the long-form
3 Settlement Agreement were adversarial, non-collusive, conducted at arm's length, and supported
4 by a knowledgeable neutral mediator.

5
6 Before settlement, Class Counsel investigated the facts and law, exchanged information
7 with Defendant, interviewed witnesses, reviewed documents, and reviewed policies, time records,
8 and pay records to calculate damages. Defendant produced class and PAGA group size information,
9 a sampling of time and wage records, relevant company policies, waivers, and training materials.
10 Plaintiff's counsel created a comprehensive damages and exposure analysis with expert assistance.

11
12 This record supports the conclusion that Plaintiff and Class Counsel had sufficient
13 information to evaluate the strengths, weaknesses, risks, and value of the claims before agreeing to
14 the settlement.

15 2. The Class Response Supports Final Approval

16 The Class response deadline to opt out, object, or submit disputes was August 11, 2026.
17 **Zero Class Members opted-out**, resulting in a participation rate of 100%. (Administrator Decl.,
18 ¶¶ 12–13.) As of the filing of this motion, zero Class Members submitted objections. (Administrator
19 Decl., ¶ 14.) One Class Member submitted a workweek dispute which was resolved by the
20 administrator, who determined the workweek count was correct. (Administrator Decl., ¶ 15.) This
21 extremely favorable response supports final approval.

22 3. The Settlement Is a Reasonable Compromise of Disputed Claims

23
24 The negotiated settlement of \$142,000 represents approximately 33% of the realistic
25 liability as calculated by counsel. The settlement provides at least \$54,731.77 in estimated Net
26 Settlement Amount cash payments to Participating Class Members. The settlement also provides
27 \$2,000.00 in PAGA civil penalties to PAGA Members and \$6,000.00 to the LWDA.
28

1 The settlement is reasonable in light of the disputed issues and risks. Defendant asserted
2 that it maintained legally compliant policies, trained employees to complete reports while on the
3 clock, properly paid all wages due, and required employees to record all hours worked. Defendant
4 also disputed the factual basis for Plaintiff's off-the-clock, meal period, rest period, waiting time,
5 reimbursement, wage statement, and PAGA theories. Plaintiff faced risk that some or all claims
6 would not be certified for class treatment, that Defendant would prevail on the merits, or that
7 damages would be significantly less than estimated.

8
9 Moreover, Defendant, due to having shut down all operations in December 2024, possessed
10 limited financial resources at the time of mediation, as was demonstrated by the records it produced
11 to Class Counsel. Class Counsel considered the risk that even a successful judgment after contested
12 litigation could be difficult or impossible to collect. To preserve recovery for the Class, the parties
13 agreed the Gross Settlement Fund would be set aside with a neutral third-party administrator
14 pending Court approval.

15
16 "The fact that a proposed settlement may amount to only a fraction of the potential recovery
17 does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be
18 disapproved." (*7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th
19 1135, 1150.) "Compromise is inherent and necessary in the settlement process .. even if the relief
20 afforded by the proposed settlement is substantially narrower than it would be if the suits were to
21 be successfully litigated, this is no bar to a class settlement because the public interest may indeed
22 be served by a voluntary settlement in which each side gives ground in the interest of avoiding
23 litigation." (*Wershba*, 91 Cal.App.4th at 246, 250.)

24
25
26 4. The Settlement Avoids Risk, Expense, Delay, and Collectability Issues

27 Class Counsel anticipated that continued litigation would involve intensive discovery,
28 investigation, law and motion practice regarding manageability, class certification, possible

1 summary judgment issues, trial, and potential appeals. Class Counsel also considered the
2 uncertainty of *any* recovery given Defendant's poor financial condition. The settlement provides
3 monetary relief now while avoiding years of continued litigation and uncertainty.

4 "Generally, unless the settlement is clearly inadequate, its acceptance and approval are
5 preferable to lengthy and expensive litigation with uncertain results." (*Ching v. Siemens Indus, Inc.*,
6 (N.D. Cal. June 27, 2014) 2014 WL 2926210, at *4 (quotation omitted).) Here, the settlement is
7 not clearly inadequate. It reflects a negotiated compromise reached after investigation, mediation,
8 and assessment of risks, including a material collectability risk.

11 **V. SETTLEMENT ADMINISTRATION COSTS**

12 The Settlement Agreement provides that Apex Class Action LLC will receive an
13 Administration Expenses Payment not to exceed \$5,500.00, except on a showing of good cause and
14 as approved by the Court. Before preliminary approval, the parties obtained bids from Apex Class
15 Action LLC, ILYM Group Inc., and CPT Group, and determined that Apex's bid was the lowest.
16 (Hawkins Supp. Preliminary Approval Decl. ¶ 8.) The Court approved and appointed Apex Class
17 Action LLC as the Settlement Administrator.

18 Plaintiff respectfully requests that the Court approve settlement administration costs in the
19 amount of \$5,500.00.

22 **VI. PLAINTIFF'S CLASS REPRESENTATIVE SERVICE PAYMENT**

23 Plaintiff requests approval of a \$2,500.00 Class Representative Service Payment.
24 (Declaration of Eric Kingery [Kingery Decl.] ¶ 18.) The Settlement Agreement authorizes a Class
25 Representative Service Payment to Plaintiff of not more than \$2,500.00, in addition to any
26 Individual Class Payment and Individual PAGA Payment he is entitled to receive. The Court
27 preliminarily approved a Class Representative Service Payment of not more than \$2,500.00.
28

1 Plaintiff agreed to serve as named Plaintiff and Class Representative because he believed
2 the claims were important and wanted to help obtain relief for other employees affected by the same
3 or similar practices. (Kingery Decl. ¶ 4.) Before the case was filed, Plaintiff provided information
4 to counsel regarding his employment with Acera Health, job duties, work schedule, pay, and wage-
5 and-hour issues. (*Id.* at ¶ 5.) Plaintiff assisted counsel by tracking down witnesses and providing
6 documents and information relating to his employment, pay, work schedules, and communications
7 with Acera Health. (*Id.* at ¶ 6.) Plaintiff communicated with counsel throughout the litigation by
8 telephone, email, and/or text regarding case developments, claims, mediation, settlement
9 negotiations, settlement terms, and the Court approval process. (*Id.* at ¶ 7.) Plaintiff assisted counsel
10 in preparing for mediation by reviewing the facts of his employment, answering questions, and
11 making himself available to provide information needed during mediation and settlement
12 negotiations. (*Id.* at ¶ 8.)

15 Plaintiff understood that his name would appear in public court filings and could be found
16 by current or future employers. (*Id.* at ¶ 11.) Plaintiff understood that some employers may view
17 participation in an employment class action negatively, which could potentially affect future job
18 opportunities. (*Id.*) Plaintiff also understood he incurred the risk of being liable for Defendant's
19 fees and costs if he did not succeed on his claims. (*Id.* at ¶ 12.) Other than the requested service
20 payment, Plaintiff understands he will receive his individual settlement payment under the same
21 formula used for other Class Members, based on his workweeks and/or PAGA pay periods. (*Id.* at
22 ¶ 15.)

25 The requested \$2,500.00 payment is modest relative to the Gross Settlement Amount and
26 is supported by Plaintiff's efforts, risks, and responsibilities. Plaintiff respectfully requests approval
27 of the Class Representative Service Payment.

1 **VII. ATTORNEYS' FEES AND COSTS**

2 **A. Requested Fees**

3 Class Counsel requests attorneys' fees of \$47,328.60, which represents one-third of the
4 \$142,000 Gross Settlement Amount. (Hawkins Final Approval Decl ¶ 35) The Settlement
5 Agreement permits Class Counsel to request fees of up to \$47,328.60. Defendant agreed not to
6 oppose a fee request that does not exceed that amount.

7 **B. Unique Circumstances Support the Requested Fee**

8 The Court advised that it is unlikely to approve attorneys' fees above 30% of the Gross
9 Settlement Amount absent unique circumstances and directed Class Counsel to address whether
10 such circumstances exist. Unique circumstances support the requested 33.33% fee here, as further
11 explained in the Declaration of James Hawkins in Support of Final Approval. (Hawkins Final
12 Approval Decl. ¶¶ 43–44.)

13
14 At the time the settlement was reached, Defendant Acera Health LLC had ceased operations
15 and had significantly limited financial resources. Defendant's financial condition created a
16 substantial and genuine risk that any judgment obtained through further litigation could be wholly
17 or largely uncollectable. (*Id.*) Class Counsel therefore faced a materially different settlement
18 environment than in a typical wage-and-hour class action. The issue was not simply whether
19 Plaintiff could prove liability or damages, but whether Class Counsel could identify, secure, and
20 preserve any meaningful recovery before Defendant's remaining resources became unavailable.

21
22 Class Counsel did not accept Defendant's financial condition as a reason to abandon the
23 case or accept a nominal resolution. Instead, Class Counsel continued to press the litigation,
24 required Defendant to provide financial documentation concerning the status of its business and
25 available resources, and used that information to evaluate whether a meaningful recovery could
26 realistically be obtained for the Class. After determining that limited funds remained available,
27 Class Counsel continued negotiations and secured a non-reversionary settlement that preserved
28

1 monetary relief for the Class despite Defendant's defunct status and significant collectability
2 concerns. (*Id.*)

3 Class Counsel also took the additional step of requiring the settlement funds to be held
4 separately by a neutral third-party administrator before seeking preliminary approval. (*Id.*) This
5 pre-funded structure directly protected the Class's ability to receive payment and reduced the risk
6 that the settlement would become illusory before final approval. Under these circumstances, the
7 Settlement was not merely a compromise of disputed claims. It was the recovery and preservation
8 of funds for the Class that otherwise would have been at serious risk of becoming uncollectable.
9

10 The requested fee is also modest in absolute value. Class Counsel seeks \$47,328.60, and
11 the lodestar cross-check demonstrates that the requested fee represents a negative multiplier of the
12 time actually invested. (*Id.* ¶¶ 45–58.) Class Counsel performed substantial work to investigate the
13 claims, analyze time and payroll data, assess damages with expert assistance, mediate the matter,
14 negotiate and document the settlement, obtain preliminary approval, respond to the Court's
15 concerns, oversee the notice process, and prepare the final approval papers. Given the small size of
16 the fund and the amount of work required to obtain and preserve the recovery, the requested
17 percentage appropriately reflects the effort expended and the result achieved.
18

19 Finally, Class Counsel obtained a \$142,000 non-reversionary settlement, representing
20 approximately 33% of the realistic maximum liability calculated by Class Counsel and Class
21 Counsel's expert. (*Id.* ¶ 43.) Achieving a recovery equal to approximately one-third of the realistic
22 maximum liability is a strong result, particularly where Defendant had ceased operations, had
23 limited financial resources, and presented a substantial collectability risk. In light of Class
24 Counsel's persistence, the strategic steps taken to secure and preserve available settlement funds,
25 the pre-funded non-reversionary structure, the modest absolute fee request, and the negative
26 lodestar multiplier, the requested fee of 33.33% of the Gross Settlement Amount is fair, reasonable,
27
28

1 and supported by the unique circumstances of this case.

2 **C. Percentage-of-Recovery Method**

3 In approving fee applications, courts typically apply either a percentage-of-recovery method
4 or the lodestar method. (*Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 489; *Wershba v.*
5 *Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254, disapproved on other grounds, *Hernandez*
6 *v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.)

8 “The recognized advantages of the percentage method-including relative ease of
9 calculation, alignment of incentives between counsel and the class, a better approximation of
10 market conditions in a contingency case, and the encouragement it provides counsel to seek an
11 early settlement and avoid unnecessarily prolonging the litigation-convince us the percentage
12 method is a valuable tool that should not be denied our trial courts.” (*Laffitte*, 1 Cal.5th at 503.)

14 Here, the requested fee is a percentage of a common fund that will deliver direct monetary
15 payments to Participating Class Members without a claims process. The Administrator will
16 disburse the entire Gross Settlement Amount without asking or requiring Participating Class
17 Members or Aggrieved Employees to submit any claim as a condition of payment.

19 **D. Lodestar Cross-Check**

20 To ensure the fairness of an attorney’s fee award, courts frequently conduct a lodestar cross
21 check of counsel’s fees. “A lodestar cross-check thus provides a mechanism for bringing an
22 objective measure of the work performed into the calculation of a reasonable attorney fee.” (*Laffitte*,
23 1 Cal.5th at 504.) Here, Class Counsel’s collective lodestar is \$95,947.50 through the filing of this
24 motion, and Class Counsel’s work performed and time expended are detailed in the Declaration of
25 James R. Hawkins filed herewith. (Hawkins Final Approval Decl. ¶ 45–58.) Additionally, Class
26 Counsel will incur additional time following final approval to, inter alia, respond to class member
27 inquiries, work with the Settlement Administrator on the distribution of settlement funds, and on
28

1 the compliance hearing.

2 The above lodestar is based on an eminently reasonable number of hours worked to litigate
3 this matter to a successful conclusion, and the requested attorney hourly rates are reasonable and
4 comport with hourly rates charged by other attorneys with similar experience in this practice area
5 in California. (*Id.* ¶ 57.) On a lodestar basis, the requested fees of \$47,328.60 results in a negative
6 multiplier of 0.49. (*Id.* ¶ 58.) Despite the challenges created by Defendant's perilous financial
7 condition, Counsel continued to devote time and resources to the case to ensure real recovery was
8 available for the class, at counsel's own expense.
9

10 **E. Work Performed, Risk, Contingency, and Results**

11 Class Counsel investigated the factual and legal basis of the action; analyzed documents
12 from Plaintiff, including time, payroll, and policy documents; interviewed witnesses, including
13 class members and former supervisors; investigated Defendant's organization and structure;
14 prepared the complaint; drafted the LWDA letter; prepared and reviewed informal document and
15 data discovery requests for mediation; engaged in meet-and-confer efforts; reviewed and analyzed
16 documents and time and payroll data; prepared damages analysis; prepared for and attended
17 mediation; negotiated and finalized the MOU and long-form settlement agreement; solicited
18 settlement administrator proposals; drafted the preliminary approval motion and supporting papers;
19 drafted supplemental briefing; prepared the amended settlement agreement and class notice;
20 monitored the notice and administration process; and drafted final approval papers. (Hawkins Final
21 Approval Decl. ¶¶ 47–55.)
22

23 Class Counsel prosecuted this case entirely on a contingent basis, received no payment
24 during the litigation, advanced litigation costs, and undertook the risk of receiving no compensation
25 or reimbursement if the case was unsuccessful or any recovery proved uncollectable. (*Id.* ¶ 61–67.)
26 Class Counsel states that the contingent nature of the representation was particularly significant
27
28

1 because Defendant's financial condition created a real risk that a delayed judgment would not result
2 in actual recovery for the Class. (*Id.*)

3 For these reasons, the requested fee is fair and reasonable.
4

5 **F. Litigation Costs**

6 Class Counsel seeks reimbursement of litigation costs in the amount of at \$23,939.63.
7 (Hawkins Final Approval Decl. ¶¶ 74–77.) These litigation costs in this matter represent actual out-
8 of-pocket expenses incurred in prosecuting the action and are below the \$27,000.00 maximum
9 disclosed in the class notice. The Settlement Agreement permits Class Counsel to request litigation
10 expenses of up to \$27,000.00. Attached as **Exhibit 5** to the Declaration of James Hawkins, filed
11 concurrently with this motion is a true and correct copy of Class Counsel's itemized costs incurred
12 in this matter. (*Id.*, Ex. 5.)
13

14 **VIII. PAGA SETTLEMENT**

15 The settlement allocates \$8,000.00 to PAGA penalties. Seventy-five percent, or \$6,000.00,
16 is allocated to the LWDA. (See Labor Code § 2699.) Twenty-five percent, or \$2,000.00, is
17 allocated to Individual PAGA Payments. Individual PAGA Payments will be calculated based on
18 each Aggrieved Employee's PAGA Period Pay Periods. One hundred percent of the PAGA
19 penalties will be allocated as non-wages and reported on IRS 1099 Forms.
20

21 Class Counsel submitted the proposed Amended Settlement Agreement and Class Notice,
22 along with Plaintiff's supplemental briefing in support of Plaintiff's Motion for Preliminary
23 Approval, to the LWDA on March 30, 2026. The Court's preliminary approval order found that
24 notice of the Settlement Agreement was provided to the LWDA. On September 9, 2026, a copy of
25 this motion, along with the proposed Settlement Agreement, was submitted to the Labor Workforce
26 and Development Agency. A true and correct copy of the submission confirmation is attached as
27 **Exhibit 6**, to the Declaration of James Hawkins, filed concurrently herewith Plaintiff respectfully
28

1 requests approval of the PAGA settlement as fair, reasonable, and adequate in light of the disputed
2 claims, Defendant's defenses, and Defendant's financial condition.

3
4 **X. CONCLUSION**

5 For the foregoing reasons, Plaintiff respectfully requests that the Court grant final approval
6 of the class action and PAGA settlement; approve the PAGA allocation; approve settlement
7 administration costs in the amount of \$5,500.00; approve a Class Representative Service Payment
8 of \$2,500.00 to Plaintiff Eric Kingery; approve attorneys' fees of \$47,328.60 and litigation costs of
9 \$23,939.63; enter judgment; and set a non-appearance compliance/final accounting hearing as
10 appropriate.
11

12 Dated: September 9, 2026

JAMES HAWKINS APLC

13
14 By: 

James R. Hawkins
Christina M. Lucio

15
16 Attorneys for Plaintiff Eric Kingery
17 on behalf of himself and all others similarly
18 situated
19
20
21
22
23
24
25
26
27
28