

Justin F. Marquez (SBN 262417)
justin@wilshirelawfirm.com
Benjamin H. Haber (SBN 315664)
benjamin@wilshirelawfirm.com
Arrash T. Fattahi (SBN 333676)
afattahi@wilshirelawfirm.com
WILSHIRE LAW FIRM
3055 Wilshire Blvd., 12th Floor
Los Angeles, California 90010
Telephone (213) 381-9988
Facsimile: (213) 381-9989

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

PABLO SERGIO NEVAREZ, individually, and
on behalf of all others similarly situated,

Plaintiff,

v.

ON-TIME AIR CONDITIONING & HEATING,
LLC, a California limited liability corporation;
and DOES 1 through 10, inclusive,

Defendants.

Case No. 21CV375216

CLASS ACTION

*[Assigned for all purposes to: Hon. Sunil R.
Kulkarni, Dept. 1]*

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

*[Filed concurrently with: Plaintiff's Notice of
Motion and Motion for Preliminary Approval
of Class Action Settlement, Memorandum of
Points and Authorities; Declaration of Justin F.
Marquez in Support of Plaintiff's Motion for
Preliminary Approval of Class Action
Settlement; and Declaration of Pablo Sergio
Nevarez in Support of Plaintiff's Motion for
Preliminary Approval of Class Action
Settlement.]*

PRELIMINARY APPROVAL HEARING

Date: June 16, 2022
Time: 1:30 p.m.
Dept: 1

1 The Court has before it Plaintiff Pablo Sergio Nevarez’s (“Plaintiff”) Motion for
2 Preliminary Approval of Class Action Settlement. Having reviewed the Motion for Preliminary
3 Approval of Class Action Settlement, the Declaration of Justin F. Marquez, the Declaration of
4 Pablo Sergio Nevarez, the Joint Stipulation Re: Class Settlement (which is referred herein as
5 the “Settlement” or “Settlement Agreement”), and good cause appearing, the Court hereby finds
6 and orders as follows:

7 1. The Court finds on a preliminary basis that the Settlement Agreement appears to
8 be fair, adequate, and reasonable and therefore meets the requirements for preliminary approval.
9 The Court grants preliminary approval of the Settlement and the Settlement Class based upon
10 the terms set forth in the Settlement Agreement between Plaintiff Defendant On-Time Air
11 Conditioning & Heating, LLC (“Defendant”), attached to the Declaration of Justin F. Marquez
12 in Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement as Exhibit
13 1.

14 2. The Settlement falls within the range of reasonableness of a settlement which
15 could ultimately be given final approval by this Court. The Court notes that Defendant has
16 agreed to create a common fund of \$525,000.00 to cover: (a) settlement payments to the class
17 members who do not validly opt out; (b) a \$7,500.00 payment for the settlement of claims for
18 penalties under the Private Attorneys General Act (“PAGA”), with 75% of which (\$5,625.00)
19 being paid to the State of California, Labor & Workforce Development Agency (“LWDA”) and
20 25% (\$1,875.00) being paid to the Participating PAGA Members; (c) the Class Representative
21 service payment of up to \$10,000.00 for Plaintiff; (d) Class Counsel’s attorneys’ fees, not to
22 exceed 33 1/3% of the Gross Settlement Amount (\$175,000.00), and up to \$20,000.00 in costs
23 for actual litigation expenses incurred by Class Counsel; and (e) Settlement Administration
24 Costs of up to \$9,750.00.

25 3. The Court preliminarily finds that the terms of the Settlement appear to be within
26 the range of possible approval, pursuant to California Code of Civil Procedure § 382 and
27 applicable law. The Court finds on a preliminary basis that: (1) the settlement amount is fair
28 and reasonable to the class members when balanced against the probable outcome of further

1 litigation relating to class certification, liability and damages issues, and potential appeals; (2)
2 significant informal discovery, investigation, research, and litigation have been conducted such
3 that counsel for the Parties at this time are able to reasonably evaluate their respective positions;
4 (3) settlement at this time will avoid substantial costs, delay, and risks that would be presented
5 by the further prosecution of the litigation; and (4) the proposed settlement has been reached as
6 the result of intensive, serious, and non-collusive negotiations between the Parties with the
7 assistance of a well-respected class action mediator. Accordingly, the Court preliminarily finds
8 that the Settlement Agreement was entered into in good faith.

9 4. A Final Fairness Hearing on the question of whether the proposed settlement,
10 attorneys' fees and costs to Class Counsel, payment to the LWDA for its share of the settlement
11 of claims for penalties under PAGA, and the class representative's enhancement award should
12 be finally approved as fair, reasonable and adequate as to the members of the class is hereby set
13 in accordance with the Implementation Schedule set forth below.

14 5. The Court provisionally certifies for settlement purposes only the following class
15 (the "Settlement Class"): "All persons who worked for Defendant in California as an hourly-
16 paid or non-exempt employee during the Settlement Period."

17 6. For settlement purposes only, Plaintiff is granted leave to file a First Amended
18 Class and Representative Action Complaint, adding a cause of action for civil penalties under
19 PAGA.

20 7. The Settlement Period means the period from January 14, 2017 through October
21 16, 2021.

22 8. The Court finds, for settlement purposes only, that the Settlement Class meets the
23 requirements for certification under California Code of Civil Procedure § 382 in that: (1) the
24 members of the Settlement Class are so numerous that joinder is impractical; (2) there are
25 questions of law and fact that are common, or of general interest, to the Settlement Class, which
26 predominate over individual issues; (3) Plaintiff's claims are typical of the claims of the
27 Settlement Class; (4) Plaintiff and Class Counsel will fairly and adequately protect the interests
28 of the Settlement Class; and (5) a class action is superior to other available methods for the fair

and efficient adjudication of the controversy.

9. The Court appoints as Class Representative, for settlement purposes only, Plaintiff Pablo Sergio Nevarez. The Court further preliminarily approves Plaintiff's ability to request an incentive award up to \$10,000.00.

10. The Court appoints, for settlement purposes only, Wilshire Law Firm, PLC as Class Counsel. The Court further preliminarily approves Class Counsel's ability to request attorneys' fees of up to one-third of the Total Settlement Amount (\$175,000.00), and costs not to exceed \$20,000.00.

11. The Court appoints Phoenix Settlement Administrators as the Settlement Administrator with reasonable administration costs estimated not to exceed \$9,750.00.

12. The Court approves, as to form and content: (1) the Notice of Proposed Class Action Settlement, attached as Exhibit A to the Settlement Agreement; and (2) the Workweek Dispute Form, attached as Exhibit B to the Settlement Agreement (collectively, the "Notice Packet"). The Court finds, on a preliminary basis, that the plan for distribution of the Notice Packets to Settlement Class Members satisfies due process, provides the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.

13. The Parties are ordered to carry out the Settlement according to the terms of the Settlement Agreement.

14. Any member of the Settlement Class who does not timely and validly request exclusion from the Settlement may object to the Settlement Agreement.

15. The Court orders the following Implementation Schedule:

Defendant to provide Class List to the Settlement Administrator, as defined in the Settlement Agreement	July 14, 2022
Settlement Administrator to mail the Notice Packets	On or before August 4, 2022

Response Deadline (Opt-out or Dispute Workweeks)	September 19, 2022
Deadline to Provide Written Objections, if any	September 19, 2022
Deadline to file Motion for Final Approval, Request for Attorneys' Fees and Costs, and Service Award to Plaintiff	16 court days before hearing on Motion for Final Approval, Request for Attorneys' Fees and Costs, and Service Award to Plaintiff
Final Approval Hearing	November __, 2022 at ____ a.m./p.m., or first available date thereafter, in Department 1

16. The Court further ORDERS that, pending further order of this Court, all proceedings in this lawsuit, except those contemplated herein and in the settlement, are stayed.

IT IS SO ORDERED.

DATE:

Hon. Sunil R. Kulkarni
Santa Clara County Superior Court

Nevarez v. On-Time Air Conditioning & Heating, LLC, et al.
21CV375216

I, Ashley Narinyans, state that I am employed in the aforesaid County, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 3055 Wilshire Blvd., 12th Floor, Los Angeles, California 90010. My electronic service address is anarinyans@wilshirelawfirm.com.

On May 24, 2022, I served the foregoing **[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**, on the interested parties by placing a true copy thereof, enclosed in a sealed envelope by following one of the methods of service as follows:

Karina B. Sterman (SBN 193182)
ksterman@greenbergglusker.com
 James W. Hill (SBN 293971)
jhill@greenbergglusker.com
 Maricela Lopez-Krulak
mlopezkrulak@greenbergglusker.com
**GREENBERG GLUSKER FIELDS
 CLAMAN & MACHTINGER LLP**
 2049 Century Park East, Suite 2600
 Los Angeles, California 90067
 Telephone: (310) 553-3610
 Facsimile: (31) 553-0687

Attorneys for Defendant

- (X) **BY UPLOAD:** I hereby certify that the documents were uploaded by my office to the State of California Labor and Workforce Development Agency Online Filing Site.
- (X) **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known email address or e-mail of record in this action.

I declare under the penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed on **May 24, 2022**, at Los Angeles, California.

Ashley Narinyans
Type or Print Name


Signature