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**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]

**DECLARATION OF JUSTIN F.
MARQUEZ IN SUPPORT OF
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 Pablo
Sergio Nevarez in Support of Plaintiff's
Motion for Preliminary Approval of Class
Action Settlement; and [Proposed] Order
Granting Plaintiff's Motion for Preliminary
Approval of Class Action Settlement]

PRELIMINARY APPROVAL HEARING

Date: June 16, 2022

Time: 1:30 p.m.

Dept: 1

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I, Justin F. Marquez, declare as follows:

1. I am admitted, in good standing, to practice as an attorney in the State of California, the Ninth Circuit Court of Appeals, and the United States District Courts for the Central, Southern, Eastern, and Northern Districts of California. I am a Senior Partner at Wilshire Law Firm, PLC, counsel of record for Plaintiff Pablo Sergio Nevarez (“Plaintiff”). I have personal knowledge of the facts set forth in this declaration and could and would competently testify to them under oath if called as a witness. This Declaration is submitted in support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement.

CASE BACKGROUND

2. This is a wage and hour class and Private Attorneys General Act (“PAGA”) (Cal. Lab. Code §§ 2699, *et seq.*) representative action. Plaintiff and putative class members worked in California as hourly-paid, non-exempt employees for Defendant during the class period. Defendant specializes in heating, ventilation, and air conditioning service and repair throughout California.

3. Plaintiff alleges that Defendant's payroll, timekeeping, and wage and hour practices resulted in Labor Code violations. Plaintiff alleges that Defendant failed to pay for all hours worked by not recording the actual start and end times of shifts for each workday. Plaintiff further alleges that Defendant failed to include all remuneration in the employees' overtime rate and meal period premiums. Plaintiff further alleges that Defendant failed to provide employees with legally compliant meal and rest periods. Plaintiff further alleges that Defendant failed to reimburse employees for all necessary business-related expenditures. Based on these allegations, Plaintiff asserts claims against Defendant for failure to pay minimum and straight time wages, failure to pay overtime wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to timely pay all final wages at termination, failure to provide accurate itemized wage statements, failure to indemnify employees for expenditures, unfair business practices, and civil penalties under PAGA.

4. On January 14, 2021, Plaintiff filed a putative wage-and-hour class action complaint

1 against Defendant for: (1) failure to pay minimum and straight time wages (Cal. Lab. Code §§ 204,
2 1194, 1194.2, and 1197); (2) failure to pay overtime wages (Cal. Lab. Code §§ 1194 and 1198);
3 (3) failure to provide meal periods (Cal. Lab. Code §§ 226.7 and 512); (4) failure to authorize and
4 permit rest periods (Cal. Lab. Code §§ 226.7); (5) failure to timely pay final wages at termination
5 (Cal. Lab. Code §§ 201-203); (6) failure to provide accurate itemized wage statements (Cal. Lab.
6 Code § 226); (7) failure to indemnify employees for expenditures (Cal. Lab. Code § 2802); and (8)
7 unfair business practices (Cal. Bus. & Prof. Code §§ 17200, *et seq.*). For settlement purposes only,
8 the Parties stipulate to Plaintiff being afforded leave to file a First Amended Class and
9 Representative Action Complaint, which will add a cause of action for civil penalties under PAGA

10 DISCOVERY AND INVESTIGATION

11 5. Following the filing of the Complaint, the Parties exchanged documents and
12 information before mediating this action. Defendant produced timekeeping and pay records for
13 the class members. Defendant also provided documents of their wage and hour policies and
14 practices during the class period, and information regarding the total number of current and former
15 employees in its informal discovery responses.

16 6. After reviewing documents regarding Defendant's wage and hour policies and
17 practices, analyzing Defendant's timekeeping and payroll records, Class Counsel was able to
18 evaluate the probability of class certification, success on the merits, and Defendant's maximum
19 monetary exposure for all claims. Class Counsel also investigated the applicable law regarding
20 the claims and defenses asserted in the Litigation. Class Counsel reviewed these records and
21 utilized an expert to prepare a damages analysis prior to mediation

22 SETTLEMENT NEGOTIATIONS

23 7. On November 18, 2021, the Parties participated in private mediation with
24 experienced class action mediator, Hon. Peter D. Lichtman (Ret.). The mediation was conducted
25 via Zoom. The settlement negotiations were at arm's length and, although conducted in a
26 professional manner, were adversarial. The Parties went into the mediation willing to explore the
27 potential for a settlement of the dispute, but each side was also prepared to litigate their position
28 through trial and appeal if a settlement had not been reached.

1 8. After extensive negotiations and discussions regarding the strengths and
2 weaknesses of Plaintiff's claims and Defendant's defenses, the Parties were able to reach a
3 resolution, the material terms of which are encompassed within the Settlement Agreement.
4 Attached as **Exhibit 1** is a true and correct copy of the Joint Stipulation Re: Class Settlement
5 ("Settlement" or "Settlement Agreement").

6 9. The Settlement includes \$7,500.00 allocated to Plaintiff's claims under PAGA, with
7 75% of which (\$5,625.00) being paid to the Labor and Workforce Development Agency
8 ("LWDA") and 25% (\$1,875.00) being paid to the Participating PAGA Members. (Settlement,
9 § XVII.) Class Counsel submitted the proposed Settlement to the LWDA before filing the Motion
10 for Preliminary Approval.

11 10. The Settlement provides that Defendant will not oppose a fee application of up to
12 33 1/3% (\$175,000.00) of the Gross Settlement Amount, plus out-of-pocket costs not to exceed
13 \$20,000.00. (Settlement, § XIV.)

14 11. I requested several bids from experienced class action settlement administrators to
15 handle the responsibilities of the Settlement Administrator under this Settlement. The Parties
16 accepted the bid of Phoenix Settlement Administrators. Phoenix Settlement Administrators has
17 multiple years of experience in the field of Class Action Administration, particularly in the wage-
18 and-hour arena. In its bid, Phoenix Settlement Administrators agreed to cap its costs at \$9,750.00
19 if there are 660 class members. The bid also provides that class notice will be provided in English
20 and Spanish. A true and correct copy of the bid is attached hereto as **Exhibit 2**.

21 12. Plaintiff does not have any interest, financial or otherwise, in the proposed *cy pres*
22 recipient, JVS SoCal ("JVS"), or the third-party administrator, Phoenix Settlement Administrators.

23 13. No one at Wilshire Law Firm, PLC (meaning the law firm itself and anyone
24 employed at the law firm) has any interest, financial or otherwise, in the proposed *cy pres* recipient,
25 JVS, or the third-party administrator, Phoenix Settlement Administrators.

26 14. Wilshire Law Firm, PLC has no fee-splitting agreement with any other counsel in
27 this case.

28 ///

1 THE PROPOSED SETTLEMENT IS FAIR AND REASONABLE

2 15. Class Counsel has conducted a thorough investigation into the facts of this case.
3 Based on the foregoing discovery and their own independent investigation and evaluation, Class
4 Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best
5 interests of the Settlement Class Members in light of all known facts and circumstances, the risk
6 of significant delay, the defenses that could be asserted by Defendant both to certification and on
7 the merits, trial risk, and appellate risk.

8 16. Based on an analysis of the facts and legal contentions in this case, documents and
9 information from Defendant, I evaluated Defendant's maximum exposure. I took into account the
10 risk of not having the claims certified and the risk of not prevailing at trial, even if the claims are
11 certified. After using the data Defendant provided, including class member timekeeping and
12 payroll records, as well as class member demographics (i.e., the number of class members,
13 workweeks, and average total compensation of the class), with the assistance of a statistics expert,
14 I created a damages model to evaluate the realistic range of potential recovery for the class. The
15 damages model is based on the following benchmarks:

16 Total Class Members: 638
17 Terminated Class Members during 3-year statute: 274
18 Total Workweeks: 40,923
19 PAGA Pay Periods: 8,186
20 Avg. Hourly Rate: \$22.60

21 17. Based on Plaintiff's discovery and investigation, Class Counsel reached the
22 conclusion that Defendant failed to pay class members for all hours worked, including overtime
23 wages, failed to have a legally compliant written policy authorizing and permitting rest periods,
24 and failed to indemnify employees for necessary business-related expenditures. Defendant denied
25 these claims.

26 18. Plaintiff alleges that Defendant failed to pay for all hours worked, including
27 minimum, straight time, and overtime wages. My expert analyzed Defendant's timekeeping and
28 payroll records and found many instances where he concluded that Defendant failed to pay

employees for all hours worked, particularly the time employees spent travelling to and from job sites, and performing work-related duties pre-shift, during meal periods, and post-shift. A more conservative estimate was appropriate given the difficulty of proving an off-the-clock work violation on a class-wide basis. Assuming that Defendant failed to pay employees for one hour of off-the-clock work per workweek, with 65% of that work being paid at the overtime rate, potential liability for this claim is \$1,524,477.00. Additionally, my expert investigated the issue regarding Defendant's alleged failure include non-discretionary remuneration in the employees' overtime rate and meal period premiums and found that Defendant's exposure for this theory of liability to be at \$25,389.00. Because individualized issues can be a significant obstacle to certifying and proving off-the-clock claims, I discounted this figure by 80% to account for the difficulty of prevailing on a motion for class certification and a trial on the merits, yielding a realistic damage estimate of **\$309,973.20**.¹

19. With respect to the meal period claim, Plaintiff alleges that Defendant required him and similarly situated class members to work in lieu of taking meal periods. My expert analyzed Defendant's timekeeping records and opined that approximately 23.8% of all meal breaks had violations of short, missed, or no meal periods. Potential liability for the meal period claim, which includes shifts 5-6 hours long, shifts over six hours long, shifts over ten hours long, and shifts over 12 hours long, is \$1,093,840.00, including interest; however, I discounted this figure by 90% to account for the difficulty of certifying and proving meal period claims, as well as Defendant's contention that the claim lacks merit, yielding a realistic damage estimate of **\$109,384.00**.

20. With respect to the rest period claim, Plaintiff alleges that Defendant required him and similarly situated class members to work in lieu of taking rest periods, and Defendant lacked legally compliant policies and practices authorizing and permitting employees to take rest periods for a large portion of the class period. Assuming a 50% violation rate for the class period based

¹ This discount for risk at certification and trial is reasonable because the Judicial Council of California found that only 21.4% of all class actions were certified either as part of a settlement *or* as part of a contested certification motion. *See* Findings of the Study of California Class Action Litigation, 2000-2006, available at [http:// www.courts.ca.gov/documents/class-action-lit-study.pdf](http://www.courts.ca.gov/documents/class-action-lit-study.pdf).

1 on Plaintiff's and other class members' experience working for Defendant, Defendant's potential
2 liability for the rest period claim is \$2,386,744.00; however, I discounted this figure by 90% to
3 account for the difficulty of certifying and proving rest period claims, particularly because rest
4 periods do not have to be recorded, and to account for the possibility of class members voluntarily
5 choosing to forego a rest period, yielding a realistic damage estimate of **\$238,674.40**.

6 21. With respect to the claim for unreimbursed business expenses, Plaintiff alleges that
7 Defendant required him and similarly situated class members to purchase specific work attire and
8 work-related tools and equipment (e.g., hammer drills, impact drivers, reciprocating saws, etc.).
9 My expert estimated the potential liability for this claim to be worth \$326,793.00; however, I
10 discounted this figure by 90% to account for the difficulty of certifying and proving this claim, as
11 well as Defendant's contention that the claim lacks merit, yielding a realistic damage estimate of
12 **\$32,679.30**.

13 22. In sum, I estimated that Plaintiff's maximum recovery for the unpaid wages based
14 on the failure to pay for all hours worked (minimum, straight time, and overtime wages) and the
15 meal and rest period violations, as well as Defendant's failure to indemnify its employees for
16 necessary business expenses, is \$9,268,466.00, but, **after factoring in the risk and uncertainty**
17 **of prevailing at certification and trial, I estimate that Plaintiff's realistic estimated recovery**
18 **for the non-penalty claims is \$690,710.90**.

19 23. With respect to Plaintiff's derivative claims for statutory and civil penalties,
20 Plaintiff estimated that Defendant's realistic potential liability is **\$360,000.00**. While Defendant's
21 maximum potential liability for waiting time penalties is \$1,548,855.00 based on approximately
22 274 terminated class members during the 3-year statute, \$799,350.00 for inaccurate wage
23 statements based on approximately 385 class members who worked 8,186 pay periods within the
24 1-year statute, and \$818,600.00 for PAGA violations based on the Court assessing a \$100 penalty
25 for initial violations for all 8,186 pay periods within the 1-year statute, I believe that it would be
26 unrealistic to expect the Court to award the full \$3,166,805.00 in penalties given Defendant's
27 defenses, the contested nature of Plaintiff's claims, and the discretionary nature of penalties.
28 Considering that the underlying claims are estimated to be \$690,710.90, such a disproportionate

award would also raise due process concerns. Weighing these factors, and applying a discount to account for the risk and uncertainty of prevailing at trial, I arrived at \$360,000.00 for statutory and civil penalties.

24. Using these estimated figures, Plaintiff predicted that the realistic maximum recovery for all claims, including penalties, would be \$1,050,710.90. This means that the \$525,000.00 settlement figure represents 50% of the realistic maximum recovery ($\$525,000 / \$1,050,710.90 = 50\%$). Considering the risk and uncertainty of prevailing at class certification and at trial, this is an excellent result for the Class.² Indeed, because of the proposed Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment.

25. While Plaintiff is confident in the merits of his claims, a legitimate controversy exists as to each cause of action. Plaintiff also recognizes that proving the amount of wages due to each Class Member would be an expensive, time-consuming, and uncertain proposition.

26. This Settlement avoids the risks and the accompanying expense of further litigation. Although the Parties had engaged in a significant amount of investigation, informal discovery and class-wide data analysis, the Parties had not yet completed formal written discovery. Plaintiff intended to depose corporate officers and managers of Defendant. Moreover, preparation for class certification and a trial remained for the Parties as well as the prospect of appeals in the wake of a disputed class certification ruling for Plaintiff and/or adverse summary judgment ruling. Had the Court certified any claims, Defendant could move to decertify the claims. As a result, the Parties would incur considerably more attorneys' fees and costs through trial.

27. The Net Settlement Amount available for Class Member settlement payments is

² See, e.g., *Wise v. Ulta Salon, Cosmetics & Fragrance, Inc.* 2019 WL 3943859 at *8 (E.D. Cal. Aug. 21, 2019) (granting preliminary approval where the proposed allocation to settle class claims was between 9.53 percent of plaintiffs' maximum recovery); *Bravo v. Gale Triangle, Inc.*, 2017 WL 708766 at * 10 (C.D. Cal. Feb 16, 2017) (finding that "a settlement for fourteen percent recovery of Plaintiffs' maximum recovery is reasonable"); *In re Omnivision Techs., Inc.*, 559 F.Supp.2d 1036, 1042 (N.D. Cal. 2008) (approving settlement amount that "is just over 9% of the maximum potential recovery asserted by either party.").

1 estimated to be \$302,750, for a class of 638 persons.³ **As a result, each Settlement Class Member**
2 **is eligible to receive an average net benefit of approximately \$474.53.**

3 28. The proposed Settlement of \$525,000.00 therefore represents a substantial recovery
4 when compared to Plaintiff's reasonably forecasted recovery. When considering the risks of
5 litigation, the uncertainties involved in achieving class certification, the burdens of proof necessary
6 to establish liability, the probability of appeal of a favorable judgment, it is clear that the settlement
7 amount of \$525,000.00 is within the "ballpark" of reasonableness, and preliminary settlement
8 approval is appropriate.

9 ENHANCEMENT AWARD FOR PLAINTIFF IS REASONABLE

10 29. Class Counsel represent that Plaintiff devoted a great deal of time and work assisting
11 counsel in the case, communicated with counsel very frequently for litigation and to prepare for
12 mediation, and was frequently in contact with Class Counsel during the mediation. Plaintiff's
13 requested enhancement award is reasonable particularly in light of the substantial benefits Plaintiff
14 generated for all class members.

15 30. Throughout this Litigation, Plaintiff, who is a former employee of Defendant, has
16 cooperated immensely with my office and has taken many actions to protect the interests of the
17 class. Plaintiff provided valuable information regarding unpaid overtime, meal period, and rest
18 period claims. Plaintiff also informed my office of developments and information relevant to this
19 action, participated in decisions concerning this action, made himself available to answer questions
20 during the mediation, and provided my office with the names and contact information of potential
21 witnesses in this action. Before we filed this case, Plaintiff provided my office with documents
22 regarding the claims alleged in this action. The information and documentation provided by
23 Plaintiff was instrumental in establishing the alleged wage and hour violations alleged in this
24 action, and the recovery provided for in the Settlement Agreement would have been impossible to
25

26 ³ The Net Settlement Amount is: \$525,000.00 minus \$175,000.00 for Class Counsel's
27 attorneys' fees, minus \$20,000.00 for Class Counsel's litigation expenses, minus \$9,750.00 in
28 administration costs, minus \$5,625.00 for the PAGA portion sent to the LWDA, minus \$1,875.00
for payments to the Participating PAGA Members, and minus \$10,000.00 for the class
representative service award.

1 obtain without Plaintiff's participation.

2 31. At the same time, Plaintiff faced many risks in adding himself as the class
3 representative in this matter. Plaintiff faced actual risks with his future employment, as putting
4 himself on public record in an employment lawsuit could also very well affect his likelihood for
5 future employment. Furthermore, as part of this Settlement, Plaintiff is executing a general release
6 of all claims against Defendant.

7 32. In turn, class members will now have the opportunity to participate in a settlement,
8 reimbursing them for alleged wage violations they may have never known about on their own or
9 been willing to pursue on their own. If these class members would have each tried to pursue their
10 legal remedies on their own, that would have resulted in each having to expend a significant amount
11 of their own monetary resources and time, which were obviated by Plaintiff putting himself on the
12 line on behalf of these other class members.

13 33. In the final analysis, this class action would not have been possible without the aid
14 of Plaintiff, who put his own time and effort into this Litigation, sacrificed the value of his own
15 individual claims, and placed himself at risk for the sake of the class members. The requested
16 enhancement award for Plaintiff for his service as the class representative and for his general
17 release of all individual claims is a relatively small amount of money when the time and effort put
18 into the Litigation are considered and in comparison to enhancements granted in other class actions.
19 The requested incentive award is therefore reasonable to compensate Plaintiff for his active
20 participation in this lawsuit. Indeed, in *Karl Adams, III, et al. v. MarketStar Corporation*, et al.,
21 No. 2:14-cv-02509-TLN-DB, a wage and hour class action alleging that class members were
22 misclassified as exempt outside salespersons, I was co-lead Class Counsel and helped negotiate a
23 \$2.5 million class action settlement for 339 class members, and the court approved a \$25,000.00
24 class representative incentive award for each named plaintiff.

25 THE REQUEST FOR ATTORNEYS' FEES AND COSTS IS REASONABLE

26 34. The Settlement provides for attorney's fees payable to Class Counsel in an amount
27 up to one-third (33 1/3%) of the Settlement Amount, for a maximum fees award of \$175,000.00,
28 plus actual costs and expenses not to exceed \$20,000.00. The proposed award of attorneys' fees

1 to Class Counsel in this case can be justified under either method – lodestar or percentage recovery.
2 Class Counsel, however, intend to base the proposed award of fees, costs and expenses on the
3 percentage method as many of the entries in the time records will have to be redacted to preserve
4 attorney-client and attorney work product privileges.

5 35. I am informed and believe that the fee and costs provision is reasonable. The fee
6 percentage requested is less than that charged by my office for most employment cases. My office
7 invested significant time and resources into the case, with payment deferred to the end of the case,
8 and then, of course, contingent on the outcome.

9 36. It is further estimated that my office will need to expend at least another 50 to 100
10 hours to monitor the process leading up to the final approval and payments made to the class. My
11 office also bears the risk of taking whatever actions are necessary if Defendant fails to pay.

12 37. The risk to my office has been very significant, particularly if we would not be
13 successful in pursuing this class action. In that case, we would have been left with no compensation
14 for all the time taken in litigating this case. Indeed, I have taken on a number of class action cases
15 that have resulted in thousands of attorney hours being expended and ultimately having
16 certification denied or the defendant company going bankrupt. The contingent risk in these types
17 of cases is very real and they do occur regularly. Furthermore, we were precluded from focusing
18 on, or taking on, other cases which could have resulted in a larger, and less risky, monetary gain.

19 38. Because most individuals cannot afford to pay for representation in litigation on an
20 hourly basis, Wilshire Law Firm, PLC represents virtually all of its employment law clients on a
21 contingency fee basis. Pursuant to this arrangement, we are not compensated for our time unless
22 we prevail at trial or successfully settle our clients' cases. Because Wilshire Law Firm, PLC is
23 taking the risk that we will not be reimbursed for our time unless our client settles or wins his or
24 her case, we cannot afford to represent an individual employee on a contingency basis if, at the
25 end of our representation, all we are to receive is our regular hourly rate for services. It is essential
26 that we recover more than our regular hourly rate when we win if we are to remain in practice so
27 as to be able to continue representing other individuals in civil rights employment disputes.

28 39. As of the drafting of Plaintiff's Motion for Preliminary Approval of Class Action

Settlement, my office has incurred around \$14,667.30 in expenses litigating this action, and we anticipate accruing additional costs up to Final Approval of the Settlement. These expenses were reasonably necessary to the Litigation and were actually incurred by my office. They should be reimbursed in full, up to the maximum amount allowed in the Settlement Agreement.

MY EXPERIENCE AND QUALIFICATIONS

40. Wilshire Law Firm, PLC was selected by Best Lawyers and U.S. News & World Report as one of the nation's Best Law Firms in 2022 and is comprised of over 55 attorneys and over 300 employees. Wilshire Law Firm, PLC is actively and continuously practicing in employment litigation, representing employees in both individual and class actions in both state and federal courts throughout California.

41. Wilshire Law Firm, PLC is qualified to handle this Litigation because its attorneys are experienced in litigating Labor Code violations in both individual, class action, and representative action cases. Wilshire Law Firm, PLC has handled, and is currently handling, numerous wage and hour class action lawsuits, as well as class actions involving consumer rights and data privacy litigation.

42. I graduated from the University of California, Los Angeles's College Honors Program in 2004 with Bachelor of Arts degrees in History and Japanese, *magna cum laude* and *Phi Beta Kappa*. As an undergraduate, I also received a scholarship to study abroad for one year at Tokyo University in Tokyo, Japan. I received my Juris Doctor from Notre Dame Law School in 2008.

43. My practice is focused on advocating for the rights of consumers and employees in class action litigation and appellate litigation. I am currently the primary attorney in charge of litigating several class action cases in state and federal courts across the United States.

44. I have received numerous awards for my legal work. From 2017 to 2020, Super Lawyers selected me as a "Southern California Rising Star," and in 2022, I was selected as a "Southern California Super Lawyer." In 2016 and 2017, the National Trial Lawyers selected me as a "Top 40 Under 40" attorney. I am also rated 10.0 ("Superb") by Avvo.com.

45. I am on the California Employment Lawyers Association ("CELA")'s Wage and

Hour Committee and Mentor Committee, and I was selected to speak at CELA's 2019 Advanced Wage & Hour Seminar on the topic of manageability of class actions. Since 2013, I have actively mentored young attorneys through CELA's mentorship program.

46. I am also an active member of the Consumer Attorneys of California ("CAOC"). In 2020, I was selected for a position on CAOC's Board of Directors. I am also a member of CAOC's Diversity Committee, and I help assist the CAOC in defeating bills that harm employees. Indeed, I recently helped assist Jacqueline Serna, Esq., Legislative Counsel for CAOC, in defeating AB 443, which proposed legislation that sought to limit the enforceability of California Labor Code § 226.

47. As the attorney responsible for day-to-day management of this matter at the Wilshire Law Firm, PLC, I have over eleven years of experience with litigating wage and hour class actions. Over the last eleven years, I have managed and assisted with the litigation and settlement of several wage and hour class actions. In those class actions, I performed similar tasks as those performed in the course of prosecuting this action. My litigation experience includes:

- a. I served as lead or co-lead in negotiating class action settlements worth over \$10 million in gross recovery to class members for each year during 2020 and 2021.
- b. To my knowledge, I am the only attorney to appear on each of the following *Top Verdict* lists for 2018 in California: Top 20 Civil Rights Violation Verdicts, Top 20 Labor & Employment Settlements, and Top 50 Class Action Settlements.
- c. As lead counsel, on April 29, 2021, I prevailed against CVS Pharmacy, Inc. by winning class certification on behalf of hundreds of thousands of consumers for misleading advertising claims in *Joseph Mier v. CVS Pharmacy, Inc.*, U.S. Dist. Ct. C.D. Cal. no. SA CV 20-1979-DOC-(ADSx).
- d. As lead counsel, I prevailed against Bank of America by: winning class certification on behalf of thousands of employees for California Labor Code violations; defeating appellate review of the court's order certifying the class; defeating summary judgment; and defeating a motion to dismiss. (*Frausto v. Bank of America, N.A.* (N.D. Cal. 2019) 334 F.R.D. 192, 2020 WL 1290302 (9th Cir. Feb. 27, 2020), 2019

1 WL 5626640 (N.D. Cal. Oct. 31, 2019), 2018 W.L. 3659251 (N.D. Cal. Aug. 2,
2 2018).). The decision certifying the class in *Frausto* is also discussed in *Class*
3 *Certification Under Fed. R. Civ. P. 23 in Action by Information Technology or Call*
4 *Center Employees for Violation of State Law Wage and Hour Rules*, 35 A.L.R. Fed.
5 3d Art. 8.

6 e. I was the primary author of the class certification and expert briefs in *ABM*
7 *Industries Overtime Cases* (2017) 19 Cal.App.5th 277, a wage and hour class action
8 for over 40,000 class members for off-the-clock, meal period, split shift, and
9 reimbursement claims. *ABM Industries Overtime Cases* is the first published
10 California appellate authority to hold that an employer’s “auto-deduct policy for
11 meal breaks in light of the recordkeeping requirements for California employers is
12 also an issue amenable to classwide resolution.” (*Id.* at p. 310.)⁴ Notably, the Court
13 of Appeal also held that expert analysis of timekeeping records can also support the
14 predominance requirement for class certification. (*Id.* at p. 310-11.) In 2021, the
15 case settled for \$140 million, making it one of the largest ever wage and hour class
16 action settlements for hourly-paid employees in California.

17 f. I briefed, argued, and won *Yocupicio v. PAE Group, LLC* (9th Cir. 2015) 795 F.3d
18 1057. The Ninth Circuit ruled in my client’s favor and held that non-class claims
19 under California’s Private Attorney Generals Act (“PAGA”) cannot be used to
20 calculate the amount in controversy under the Class Action Fairness Act (“CAFA”).
21 This case is cited in several leading treatises such as *Wright & Miller’s Federal*
22 *Practice & Procedure*, and *Newberg on Class Actions*. In October 2016, the U.S.
23 Supreme Court denied review of a case that primarily concerned *Yocupicio*. That
24 effort was led by Theodore J. Boutrous, who brought the cert petition, with amicus
25 support from a brief authored by Andrew J. Pincus.⁵ Considering that leading

26 ⁴ As a California district court observed before the *ABM Industries Overtime* decision,
27 “[t]he case law regarding certification of auto-deduct classes is mixed.” (*Wilson v. TE*
28 *Connectivity Networks, Inc.* (N.D. Cal. Feb. 9, 2017) No. 14-CV-04872-EDL, 2017 WL
1758048, *7.)

⁵ <http://www.chamberlitigation.com/cases/abm-industries-inc-v-castro>.

Supreme Court practitioners from the class action defense bar were very motivated in undermining *Yocupicio* case, but failed, this demonstrates the national importance of the *Yocupicio* decision.

- g. On December 13, 2018, the United States District Court granted final approval of the \$2,500,000 class action settlement in *Mark Brulee, et al. v. DAL Global Services, LLC* (C.D. Cal. Dec. 13, 2018) No. CV 17-6433 JVS(JCGx), 2018 WL 6616659 in which I served as lead counsel. In doing so, the Court found: “Class Counsel’s declarations show that the attorneys are experienced and successful litigators.” (*Id.* at p. *10.)
- h. *Gasio v. Target Corp.* (C.D. Cal. Sep. 12, 2014) 2014 U.S. Dist. LEXIS 129852, a reported decision permitting class-wide discovery even though the employer has a lawful policy because “[t]he fact that a company has a policy of not violating the law does not mean that the employees follow it, which is the issue here.” The court also ordered defendant to pay for the cost of *Belaire-West* notice.
- i. In 2013, I represented a whistleblower that reported that his former employer was defrauding the State of California with the help of bribes to public employees. The case, a false claims (*qui tam*) action, resulted in the arrest and criminal prosecution of State of California employees by the California Attorney General’s Office.
- j. In 2013, I was part of a team of attorneys that obtained conditional certification for over 2,000,000 class members in a federal labor law case for misclassification of independent contractors that did crowdsourced work on the Internet, *Otey v. CrowdFlower, Inc.*, N.D. Cal. Case No. 12-cv-05524-JST (MEJ), resulting in the following pro-plaintiff reported decisions:

1) 2013 U.S. Dist. LEXIS 151846 (N.D. Cal. Oct. 22, 2013) (holding that an unaccepted Rule 68 offer doesn’t moot plaintiff’s claims, and granting plaintiff’s motion to strike defendant’s affirmative defenses based on *Twombly/Iqbal*).

2) 2013 U.S. Dist. LEXIS 122007 (N.D. Cal. Aug. 27, 2013) (order

granting conditional collective certification).

3) 2013 U.S. Dist. LEXIS 95687 (N.D. Cal. July 8, 2013) (affirming the magistrate judge’s discovery ruling which held that “evidence of other sources of income is irrelevant to the question of whether a plaintiff is an employee within the meaning of the FLSA”).

4) 2013 U.S. Dist. LEXIS 91771 (N.D. Cal. June 20, 2013) (granting broad discovery because “an FLSA plaintiff is entitled to discovery from locations where he never worked if he can provide some evidence to indicate company-wide violations”).

j. From 2012 to 2013, I was part of a team of attorneys that obtained class certification for over 60,000 class members for off-the-clock claims, *Linares v. Securitas Security Services USA, Inc.*, Los Angeles Superior Court No. BC416555. We also successfully opposed subsequent appeals to the California Court of Appeal and California Supreme Court.

48. Benjamin H. Haber is a fifth-year Associate Attorney at Wilshire Law Firm, PLC. He was admitted to practice law in the State of California and the Central, Southern, Eastern, and Northern Districts of California. He graduated from the University of California, Los Angeles, with a Bachelor of Arts in Political Science, and received his Juris Doctor from the University of California, Hastings College of the Law in 2016. During law school, he was a member of the executive board for the Hastings Law Journal and a student mediator at the San Francisco Superior Court, Small Claims Division. Since graduating law school, he has focused his legal work primarily on wage and hour class action litigation. His current contingent billing rate for this case is \$650 per hour, which is consistent with his level of experience in the wage and hour arena.

49. Arrash T. Fattahi is a second-year Associate Attorney at Wilshire Law Firm, PLC. He was admitted to practice law in the State of California and the Central and Southern Districts of California in January 2021. Arrash graduated from the University of California, Los Angeles, with a Bachelor of Arts in Political Science, *summa cum laude*. He received his Juris Doctor from The George Washington University Law School. During law school, he was a member of the

1 student editorial board for the *Federal Circuit Bar Journal*. Since January 2021, his practice has
2 mainly been focused on wage and hour class action litigation. His current contingent billing rate
3 for this case is \$450 per hour.

4 50. My current contingent billing rate of \$850 per hour is consistent with my practice
5 area, lead appellate experience in the Ninth Circuit Court of Appeals, numerous awards received,
6 legal market and accepted hourly rates:

7 a. In the December 8, 2008 article “Billable Hours Aren’t the Only Game in Town
8 Anymore,” *NATIONAL LAW JOURNAL*, the following hourly billing rates were
9 reported by Sheppard, Mullin, Richter & Hampton, a leading firm in the defense of
10 wage-and-hour class actions that I opposed when litigating wage-and-hour class
11 actions: Partners: \$475-\$795; Associates: 1st Year - \$275, 2nd Year - \$310, 3rd
12 Year - \$335, 4th Year - \$365, 5th Year - \$390, 6th Year - \$415, 7th Year - \$435,
13 8th Year - \$455. I am a 12th year attorney and Senior Partner, with most of my
14 experience in class action litigation as a primary practice area. Having successfully
15 briefed and argued a published appeal in the Ninth Circuit Court of Appeals
16 involving CAFA and PAGA, having experience certifying large class actions
17 (including *ABM Industries Overtime Cases*, which was decided on appeal), and
18 having received numerous awards for my legal work, my hourly rate should be
19 adjusted upward.

20 b. On September 9, 2021, the Hon. Peter Wilson of the Orange County Superior Court
21 approved my \$800 hourly rate when he granted final approval of the class action
22 settlement in *Ricardo Campos Hernandez v. Adams Iron Co., Inc.*, No. 30-2019-
23 01066522-CU-OE-CXC.

24 c. On August 6, 2021, the Hon. Stanley Blumenfeld, Jr. of the United States District
25 Court granted final approval of the \$1,600,000 class action settlement in *Carlos*
26 *Moreno v. Pretium Packaging, Inc.* (C.D. Cal. Aug. 6, 2021) No. 8:19-cv-02500-
27 SB-DFM, 2021 WL 3673845 in which I served as lead counsel. In doing so, the
28 Court approved my then \$750 hourly rate after finding it was “reasonable, given the

1 qualifications of the attorneys who worked on this matter.” (*Id.* at p. *3.)

2 d. On January 19, 2021, the Hon. Elihu M. Berle of the Los Angeles County Superior
3 Court approved my \$750 hourly rate when he granted final approval of the class
4 action settlement in *Faye Zhang v. Richemont North America, Inc.*, Case No.
5 19STCV32396.

6 e. On May 6, 2022, the Hon. Jay A. Garcia-Gregory of the United States District Court,
7 District of Puerto Rico, approved my \$850 hourly rate when he granted final
8 approval of the class action settlement in *Serrano v. Inmediata Corp.*, No. 3:19-cv-
9 01811-JAG, Dkt. 57 (U.S. Dist. Ct. P.R. May 6, 2022).

10 I declare under penalty of perjury under the laws of the State of California and the United
11 States that the foregoing is true and correct.

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

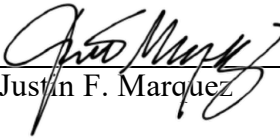
13 
14 Justin F. Marquez

Exhibit 1

Justin F. Marquez (SBN 262417)
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Arrash T. Fattahi (SBN 333676)
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Attorneys for Defendant

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.

Defendant.

Case No.: 21CV375216

CLASS ACTION

[Assigned to: Hon. Sunil R. Kulkarni, Dept. 1]

**JOINT STIPULATION RE: CLASS
SETTLEMENT**

Complaint filed: January 14, 2021
Trial date: Not set

This Joint Stipulation Re: Class Settlement is made by and between the Named Plaintiff, PABLO SERGIO NEVAREZ (“Plaintiff”), on his own behalf and on behalf of all members of the Settlement Class, as defined below, and Defendant ON-TIME AIR CONDITIONING & HEATING, LLC (“Defendant,” and together with Plaintiff, the “Parties”), in the lawsuit entitled *Pablo Sergio Nevarez v. On-Time Air Conditioning & Heating, LLC*, filed in Santa Clara County Superior Court, Case No. 21CV375216. This Joint Stipulation Re: Class Settlement resolves all claims that were asserted or could have been asserted against Defendant pertaining to the claims in the Litigation.

I. DEFINITIONS

A. Administrative Costs. All administrative costs of settlement, including cost of notice to the Settlement Class, claims administration, and any fees and costs incurred or charged by the Settlement Administrator in connection with the execution of its duties under this Joint Stipulation Re: Class Settlement.

B. Settlement Agreement. The terms “Settlement Agreement” or “Agreement” are used synonymously herein to mean this Joint Stipulation Re: Class Settlement.

C. Class Counsel. The term “Class Counsel” as used herein means: WILSHIRE LAW FIRM, PLC and all the lawyers of the firm acting on behalf of Named Plaintiff and the Settlement Class. The term Class Counsel is used synonymously herein with the term Plaintiff’s Counsel.

D. Court. The term “Court” as used herein means the Superior Court of the State of California for the County of Santa Clara.

E. Final. The term “Final” means: (1) the date of final affirmation of the Final Approval Order from any appeal, the expiration of the time for, or the denial of, a petition to review the Final Approval Order, or if review is granted, the date of final affirmation of the Final Approval Order following review pursuant to that grant; or (2) the date of final dismissal of any appeal from the Final Approval Order or the final dismissal of any proceeding to review the Final Approval Order, provided that the Final Approval Order is affirmed and/or not reversed in any part; or (3) if no appeal is filed, the expiration date of the time for the filing or noticing of any appeal from the Court’s Final Approval Order, as determined under Rule 8.104(a)(3) of the California Rules of Court.

1 **F. Date of Final Approval.** The terms “Date of Final Approval” or “Final Approval
2 Order” as used herein mean the final formal judgment entered by the Court at the Final Fairness and
3 Approval Hearing in accordance with the terms herein, approving this Agreement.

4 **G. Defendant.** The term “Defendant” as used herein means ON-TIME AIR
5 CONDITIONING & HEATING, LLC.

6 **H. Employer Taxes.** Employer-funded taxes and contributions imposed on the wage
7 portions of the Settlement Payment under the Federal Insurance Contributions Act, the Federal
8 Unemployment Tax Act, and any similar state taxes and contributions required of employers, such
9 as for unemployment insurance.

10 **I. Litigation.** The term “Litigation” as used herein means the above-captioned action
11 entitled Nevarez v. On-Time Air Conditioning & Heating, LLC, filed in Santa Clara County Superior
12 Court, Case No. 21CV375216.

13 **J. Named Plaintiff.** The term “Named Plaintiff” as used herein means Pablo Sergio
14 Nevarez.

15 **K. Net Settlement Fund.** The term “Net Settlement Amount” or “Net Settlement Fund”
16 as used herein means the Settlement Amount minus any award of attorneys’ fees and Litigation costs,
17 Administrative Costs, enhancement to the Named Plaintiff, and penalties recoverable pursuant to
18 California’s Private Attorneys General Act (“PAGA”) (the “PAGA Settlement”), and as provided in
19 Sections IX, XIV, XV, XVI, and XVII, respectively.

20 **L. Participating Class Members.** The term “Participating Class Members” as used
21 herein means all Class Members who do not submit a valid and timely request to exclude themselves
22 from this Settlement.

23 **M. Participating PAGA Members.** The term “Participating PAGA Members” means
24 all Class Members, as that term is defined in Section I.R below, who worked for Defendant from
25 January 14, 2020 through October 16, 2021.

26 **N. Net Settlement Payments.** The term “Net Settlement Payment(s)” shall include
27 payments made to the Settlement Class as part of the Settlement, including wages, penalties and
28 interest.

1 **O. Settlement.** The term “Settlement” as used herein means this Agreement to resolve
2 the Litigation.

3 **P. Settlement Administrator.** The term “Settlement Administrator” as used herein
4 means Phoenix Settlement Administrators, which will be responsible for the administration of the
5 Settlement Amount, as defined below, and all related matters.

6 **Q. Settlement Amount.** The term “Settlement Amount” as used herein means the sum
7 of Five Hundred and Twenty-Five Thousand Dollars and Zero Cents (\$525,000.00). This is the gross
8 amount Defendant can be required to pay under this Settlement Agreement. The Settlement Amount
9 includes: (1) the Net Settlement Payments to be paid to Participating Class Members; (2) Court-
10 approved attorneys’ fees and Litigation costs pursuant to Section XIV; (3) the enhancement to
11 Named Plaintiff, as approved by the Court; (4) the Administrative Costs, as approved by the Court;
12 (5) the PAGA Settlement to the California Labor & Workforce Development Agency (“LWDA”)
13 and to Participating PAGA Members, as approved by the Court; (6) any statutory penalties; and (7)
14 interest.

15 **R. Settlement Class.** For settlement purposes only, the Parties agree to the certification
16 of a class pursuant to California *Code of Civil Procedure* § 382 defined as:

17 All persons who worked for Defendant in California as an hourly-paid or
18 non-exempt employee during the Settlement Period (together, collectively
19 referred to as the "Class Members").

20 **S. Settlement Period.** The term “Settlement Period” as used herein means the
21 period from January 14, 2017 through October 16, 2021.

22 **II. BACKGROUND**

23 **A.** In the Litigation, the Named Plaintiff alleges, *inter alia*, on behalf of himself and all
24 others similarly situated, that Defendant violated California state wage and hour laws, the California
25 *Business and Professions Code* Section 17200, *et seq.*, and the PAGA, as a result of Defendant’s
26 California wage and hour policies and practices. Specifically, Named Plaintiff alleges that Defendant
27 failed to pay its employees at or above the applicable minimum wage rates, failed to provide regular,
28 overtime, and double time pay, failed to provide meal breaks (including first and second meal

breaks), failed to authorize and permit legally compliant rest breaks each day based on the hours worked by each employee, and failed to provide reimbursements for all necessary business-related expenses incurred by the class members. Named Plaintiff further alleged that the aforementioned resulted in the employees receiving inaccurate wage statements, and the underpayment of wages to employees upon termination and/or resignation.

Class Counsel conducted informal discovery concerning the claims set forth in the Litigation, such as class member timekeeping and payroll records, Defendant's policies and procedures concerning the payment of wages, the provision of meal and rest breaks, issuance of wage statements, and providing all wages at separation, as well as information regarding the number of putative class members and the mix of current versus former employees, the wage rates in effect, and the amount of meal and rest period premium wages paid to class members.

B. Named Plaintiff and Class Counsel have engaged in good faith, arms-length negotiations with Defendant concerning possible settlement of the claims asserted in the Litigation. The Parties participated in a full day of mediation before Hon. Peter D. Lichtman, a well-respected wage and hour class action mediator, that resulted in a tentative settlement of the Litigation, subject to the approval of the Court, and finalization of a formal Joint Stipulation Re: Class Settlement. The Parties have engaged in extensive negotiations about the terms and conditions of the Settlement at the mediation and subsequent thereto. The Parties have now formalized the Settlement Agreement for submission to the Court for Preliminary and Final Approval.

C. Class Counsel has conducted an investigation of the law and facts relating to the claims asserted in the Litigation and has concluded, taking into account the sharply contested issues involved, the defenses asserted by Defendant, the expense and time necessary to pursue the Litigation through trial and any appeals, the risks and costs of further prosecution of the Litigation, the risk of an adverse outcome, the uncertainties of complex litigation, and the substantial benefits to be received by the Named Plaintiff and the members of the Settlement Class pursuant to this Agreement, that a settlement with Defendant on the terms and conditions set forth herein is fair, reasonable, adequate, and in the best interests of the Settlement Class. Named Plaintiff, on his own behalf and on behalf of the Settlement Class, has agreed to settle the Litigation with Defendant on the terms set

1 forth herein.

2 **D.** Defendant denies each of the allegations and claims asserted against it in the
3 Litigation. However, Defendant nevertheless desires to settle the Litigation for the purpose of
4 avoiding the burden, expense and uncertainty of continuing litigation and for the purpose of putting
5 to rest the controversies engendered by the Litigation. Defendant has concluded that, because of the
6 substantial expense of defending against the Litigation, the length of time necessary to resolve the
7 issues presented herein, the inconvenience involved, and the concomitant disruption to its business
8 operations, it is in Defendant's best interests to accept the terms of this Agreement.

9 **E.** This Agreement is intended to and does effectuate the full, final and complete
10 settlement of all allegations and claims that were asserted, or could have been asserted, in the
11 Litigation by Named Plaintiff and members of the Settlement Class as set forth in Section II(A).

12 **III. JURISDICTION**

13 The Court has jurisdiction over the Parties and the subject matter of this Litigation. The
14 Litigation includes claims that, while Defendant denies them in their entirety, would, if proven,
15 authorize the Court to grant relief pursuant to the applicable statutes. After the Court has granted
16 Final Approval of the Settlement and after the Court has ordered the entry of Judgment, pursuant to
17 California *Code of Civil Procedure* Section 664.6, the Court shall retain jurisdiction of this action
18 solely for the purpose of interpreting, implementing, and enforcing this Settlement consistent with
19 the terms set forth herein.

20 **IV. STIPULATION OF CLASS CERTIFICATION**

21 The Parties stipulate to the certification of this Settlement Class for purposes of Settlement
22 only. This Stipulation is contingent upon the Preliminary and Final Approval and certification of the
23 Settlement Class only for purposes of Settlement. Should the Settlement not become final, for
24 whatever reason, the fact that the Parties were willing to stipulate provisionally to class certification
25 as part of the Settlement shall have no bearing on, and shall not be admissible in connection with,
26 the issue of whether a class should be certified in a non-settlement context in the Litigation.
27 Defendant expressly reserves the right to oppose class certification and/or proactively move to deny
28 certification should this Settlement be modified or reversed on appeal or otherwise not become final.

1 **V. STIPULATION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT**

2 The Parties stipulate to Plaintiff being afforded leave to file a First Amended Class and
3 Representative Action Complaint (attached hereto as **Exhibit “C”**) for purposes of Settlement only.
4 The First Amended Class and Representative Action Complaint will include an additional cause of
5 action for civil penalties pursuant to the PAGA. This Stipulation is contingent upon the Preliminary
6 and Final Approval and certification of the Settlement Class only for purposes of Settlement. Should
7 the Settlement not become final, for whatever reason, the Parties shall return to their original
8 positions prior to the filing of the First Amended Class and Representative Action Complaint.
9 Defendant does not waive, and expressly reserves the right to challenge Named Plaintiff’s First
10 Amended Class and Representative Action Complaint, including but not limited to challenging the
11 Named Plaintiff’s right to file the First Amended Class and Representative Action Complaint in the
12 first instance, should this Settlement be modified or reversed on appeal or otherwise not become
13 final. Evidence of this limited stipulation for settlement purposes only will not be deemed admissible
14 for any other purpose in this or any other proceeding. Defendant’s position is that, for any purpose
15 other than settling this Litigation, this matter would not be appropriate for class or collective action
16 treatment and that evidence of this limited stipulation for settlement purposes only will not be
17 deemed admissible for any purpose in this or any other proceeding. Defendant’s position is that if
18 this matter were to be litigated, class and conditional certification would be inappropriate, inter alia,
19 because individual issues predominate as to each of the claims alleged in the Litigation.

20 **VI. MOTION FOR PRELIMINARY APPROVAL**

21 Named Plaintiff will bring a motion before the Court for an order preliminarily approving the
22 Settlement including the Notice of Class Action and Proposed Settlement, and Workweek Dispute
23 Form, which are attached hereto as **Exhibits “A” and “B,”** respectively, and including certification
24 of the Settlement Class for settlement purposes only and amending the Complaint.

25 The date that the Court grants Preliminary Approval of this Agreement will be the
26 “Preliminary Approval Date.” Class Counsel will prepare the Motion for Preliminary Approval and
27 will provide Defendant’s counsel the opportunity to review it and provide input at least one week
28 before it is filed. On the same date on which it is filed with the Court, Class Counsel shall

1 concurrently submit the Motion for Preliminary Approval to the LWDA in compliance with Labor
2 Code § 2698, *et seq.*, the PAGA.

3 **VII. STATEMENT OF NO ADMISSION**

4 **A.** Defendant denies liability to Named Plaintiff and to the Settlement Class upon any
5 claim or cause of action. This Agreement does not constitute, and is not intended to constitute, an
6 admission by Defendant as to the merits, validity, or accuracy of any of the allegations or claims
7 made against them in the Litigation.

8 **B.** Nothing in this Agreement, nor any action taken in implementation thereof, nor any
9 statements, discussions or communications, nor any materials prepared, exchanged, issued or used
10 during the course of the negotiations leading to this Agreement or the Settlement, is intended by the
11 Parties to constitute, nor will any of the foregoing constitute, be introduced, be used or be admissible
12 in any way in this case or any other judicial, arbitral, administrative, investigative or other forum or
13 proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance,
14 regulation, rule or executive order, or any obligation or duty at law or in equity. The Parties
15 themselves agree not to introduce, use, or admit this Agreement, directly or indirectly, in this case or
16 any other judicial, arbitral, administrative, investigative, or other forum or proceeding, as purported
17 evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or
18 executive order, or any obligation or duty at law or in equity, or for any other purpose.
19 Notwithstanding the foregoing, this Agreement may be used and filed in any proceeding before the
20 Court that has as its purpose the interpretation, implementation, or enforcement of this Agreement
21 or any orders or judgments of the Court entered in connection with implementation of the Settlement.

22 **C.** None of the documents produced or created by Named Plaintiff or the Settlement
23 Class in connection with the claims procedures or claims settlement procedures constitute, and they
24 are not intended to constitute, an admission by Defendant of any violation of any federal, state, or
25 local law, statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law or
26 in equity.

27 **D.** The Parties agree that class certification pursuant to California *Code of Civil*
28 *Procedure* Section 382 under the terms of this Agreement is for settlement purposes only. Nothing

in this Agreement will be construed as an admission or acknowledgement of any kind that any class should be certified or given collective treatment in the Litigation or in any other action or proceeding. Further, neither this Agreement nor the Court's actions with regard to this Agreement will be admissible in any court or other tribunal regarding the propriety of class certification or collective treatment. In the event that this Agreement is not approved by the Court or any appellate court, is terminated, or otherwise fails to be enforceable, Named Plaintiff will not be deemed to have waived, limited, or affected in any way any claims, rights, or remedies in the Litigation, and Defendant will not be deemed to have waived, limited, or affected in any way any of their objections or defenses in the Litigation.

VIII. WAIVER, RELEASE AND CONFIDENTIALITY

A. Release as to All Settlement Class Members.

Upon the date the Court's Final Approval Order becomes "Final" (as that term is defined in Section I(E) above), Named Plaintiff and all members of the Settlement Class, except those that make a valid and timely request to be excluded from the Settlement Class and Settlement, waive, release, discharge, and promise never to assert in any forum any and all claims that were alleged in the Litigation or which could have been alleged in the Litigation based on the facts asserted in the Litigation arising during the Settlement Period against Defendant, and its divisions, affiliates, predecessors, successors, shareholders, members, managers, officers, directors, employees, agents, trustees, representatives, administrators, fiduciaries, assigns, subrogees, executors, partners, parents, subsidiaries, joint employers, insurers, and related corporations, including but not limited to the following claims: (1) all claims alleged in the operative complaint, under any legal theory of liability, for the failure to pay all wages of any kind, including any minimum or straight time wages, owed pursuant to California Labor Code §§ 204, 510, 1194, 1194.2, and 1197, the California Industrial Welfare Commission ("IWC") Wage Orders, or any comparable federal statute under any theory of liability; (2) all claims alleged in the operative complaint, under any legal theory of liability, for the failure to pay overtime or double time wages owed pursuant to California Labor Code §§ 204, 510, 1194, and 1198, the IWC Wage Orders, or any comparable federal statute under any theory of liability; (3) all claims alleged in the operative complaint, under any legal theory of liability, for the

1 failure to provide meal periods pursuant to California Labor Code §§ 226.7 and 512, and the IWC
2 Wage Orders; (4) all claims alleged in the operative complaint, under any legal theory of liability,
3 for the failure to provide rest periods pursuant to California Labor Code § 226.7, and the IWC Wage
4 Orders; (5) all claims alleged in the operative complaint, under any legal theory of liability, for the
5 failure to properly calculate any premiums owed and/or paid pursuant to California Labor Code §
6 226.7(b); (6) all claims alleged in the operative complaint, under any legal theory of liability, for any
7 penalties of any kind arising from an alleged failure to pay final wages or other amounts allegedly
8 owed to Class Members pursuant to California Labor Code §§ 201-203; (7) all claims alleged in the
9 operative complaint, under any legal theory of liability, for any penalties of any kind arising from
10 an alleged wage statement violation pursuant to California Labor Code §§ 226 and 1174.5; (8) all
11 claims alleged in the operative complaint, under any legal theory of liability, for failure to indemnify
12 employees for expenditures pursuant to California Labor Code § 2802; (9) all claims alleged in the
13 operative complaint, under any legal theory of liability, for violation of Business & Professions Code
14 §§ 17200, *et seq.*; (10) all claims alleged in the operative complaint and Plaintiff's PAGA letter,
15 under any legal theory of liability, for penalties pursuant to the PAGA (Labor Code §§ 2698, *et seq.*);
16 and (11) all claims alleged in the operative complaint, under any legal theory of liability, for any
17 penalties or any another amounts that could be potentially owed to Class Members during the
18 Settlement Period, including penalties owed pursuant to California Labor Code §§ 210, 226.3, 558,
19 and 1197.1.

20 **B. General Release by Named Plaintiff Only.**

21 In addition to the release made in Section VIII(A), Named Plaintiff makes the additional
22 following general release of all claims, known or unknown. Named Plaintiff releases Defendant,
23 and each of its respective subsidiaries, affiliates, predecessors or successors in interest, officers,
24 directors, shareholders, employees, attorneys, agents, assigns, insurers, and re-insurers of any of
25 them, from all claims, demands, rights, liabilities and causes of action of every nature and description
26 whatsoever, known or unknown, asserted or that might have been asserted, whether in tort, contract,
27 or for violation of any state or federal statute, rule or regulation arising out of, relating to, or in
28 connection with Named Plaintiff's employment with Defendant as well as any and all acts or

omissions by or on the part of Defendant. (The release set forth in this Paragraph B shall be referred to hereinafter as the “General Release.”)

With respect to the General Release, Named Plaintiff stipulates and agrees that, upon the Date of Final Approval, Named Plaintiff shall be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which provides:

"SECTION 1542. [CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE.] A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR 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."

Accordingly, if the facts relating in any manner to this Settlement are found hereafter to be other than or different from the facts now believed to be true, the release of claims contained herein shall be effective as to all unknown claims.

IX. SETTLEMENT ADMINISTRATOR

Named Plaintiff and Defendant, through their respective counsel, have selected Phoenix Settlement Administrators as the Settlement Administrator to administer the Settlement, which includes, but is not limited to, distributing and responding to inquiries about Notice of Class Action and Proposed Settlement and Workweek Dispute Form, determining the validity of any disputes and opt-outs, calculating all amounts to be paid from the Net Settlement Amount, and maintaining a website with information about the Settlement. The Settlement Administrator shall update the website to include any changes of the location or date of the Final Approval Hearing and the final judgment. Charges and expenses of the Settlement Administrator, estimated to be no more than \$10,000.00, will be paid from the Settlement Amount. Any charges and expenses of the Settlement Administrator greater than the allocated \$10,000.00 will come from the Settlement Amount. If the actual Settlement Administrator fees are less than the Parties' estimation, the difference between the

1 actual and estimated Settlement Administrator fees will revert to the participating Settlement Class
2 Members. The Parties agree that this Agreement may be provided to the Settlement Administrator
3 to effectuate its implementation of the settlement procedures herein.

4 **X. NOTICE, OBJECTIONS AND EXCLUSION RIGHTS**

5 **A. Notice.**

6 Named Plaintiff and Defendant, through their respective attorneys, have jointly prepared a
7 Notice of Class Action and Proposed Settlement (the “Notice”) and a Workweek Dispute Form,
8 which in substance will be provided to the members of the Settlement Class as follows:

9 **B. Class Data.**

10 As soon as practicable following Preliminary Approval of the Settlement, but no later than
11 thirty (30) calendar days after the Court’s Preliminary Approval Order, Defendant will provide to
12 the Settlement Administrator the following information about each Settlement Class Member (“Class
13 List”): (1) name; (2) last known home address; (3) number of workweeks as a class member during
14 the Settlement Period or the dates of employment for each Settlement Class Member; and (4) Social
15 Security number. Defendant further agrees to consult with the Settlement Administrator prior to the
16 production date to ensure that the format will be acceptable to the Settlement Administrator.
17 Plaintiff’s Counsel shall also receive a redacted Class List that shall only disclose an identification
18 number attributed to each class member and the number of workweeks each class member worked
19 during the Settlement Period.

20 **C. Notice Mailing.**

21 The Settlement Administrator shall run all the addresses provided through the United States
22 Postal Service NCOA database (which provides updated addresses for any individual who has moved
23 in the previous four years who has notified the U.S. Postal Service of a forwarding address) to obtain
24 current address information, and shall mail the Notice and Workweek Dispute Form to the members
25 of the Settlement Class via first-class regular U.S. Mail using the most current mailing address
26 information available, within ten (10) calendar days of the receipt of the Class List from Defendant.
27 The Notice shall provide the members of the Settlement Class forty-five (45) days’ notice of all
28 applicable dates and deadlines.

1 The Notice will also include information regarding the nature of the Litigation; a summary
2 of the terms of the Settlement; the definition of the Settlement Class; a statement that the Court has
3 preliminarily approved the Settlement; the nature and scope of the claims being released; the
4 procedure and time period for objecting to the Settlement, the date and location of the Final Approval
5 Hearing; information regarding the opt-out procedure; Defendant's calculation of the number of
6 Eligible Workweeks that each Settlement Class Member has worked as an employee in California at
7 any time during the Settlement Period, and the estimated potential recovery for the proposed
8 Settlement Class Member. The Notice shall enclose the Workweek Dispute Form for Settlement
9 Class Members.

10 For each Settlement Class Member, the Workweek Dispute Form will identify the number of
11 Eligible Workweeks that he or she was employed and inform the employee of his or her right to
12 dispute this number by completing and returning the form within forty-five (45) days of the postmark
13 date of the Workweek Dispute Form. A Settlement Class Member's receipt of his or her share of the
14 Net Settlement Payments is not conditional on the submission of the Workweek Dispute Form.
15 Absent the receipt of a Workweek Dispute Form, the number of workweeks identified in the
16 Workweek Dispute Form shall be deemed accurate. The settlement of any disputes concerning the
17 number of Eligible Workweeks is discussed in Section XI, below.

18 **D. Returned Notices.**

19 If a Notice is returned from the initial notice mailing, the Settlement Administrator will
20 perform a skip trace in an attempt to locate a more current address. If the Settlement Administrator
21 is successful in locating a new address, it will re-mail the Notice to the Settlement Class Member.
22 Further, any Notices returned with a forwarding address to the Settlement Administrator, as non-
23 deliverable before the deadline date, shall be sent to the forwarding address affixed thereto. The
24 Settlement Administrator will be responsible for taking reasonable steps to trace the mailing address
25 of any Settlement Class Member for whom a Class Notice is returned by U.S. Postal Service as
26 undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered
27 mail; performing address searches for all mail returned without a forwarding address; and promptly
28 re-mailing to Settlement Class Members for whom new addresses are found. If the Settlement

Administrator is unable to locate a better address, the Notice shall be re-mailed to the original address. If the Notice is re-mailed, the Settlement Administrator will note for its own records the date and address of each re-mailing. Settlement Class Members who receive a re-mailed Notice will have fifteen (15) additional days to submit an Opt-Out Form or objection to the settlement (i.e., 60 calendar days from first mailing) irrespective of when the first mailing was returned as undeliverable as long as the return mailing is received within the initial forty-five (45) day Response Deadline.

E. Deficiency Notice.

Should any member of the Settlement Class timely submit a Workweek Dispute Form with a deficiency, the Settlement Administrator shall, within five (5) calendar days of receipt by the Settlement Administrator of each timely submitted Workweek Dispute Form, send a deficiency notice. The deficiency notice will provide the member of the Settlement Class no more than fourteen (14) days from the mailing of the deficiency notice to postmark a written response to cure all deficiencies. The failure of a member of Settlement Class to timely submit a Workweek Dispute or timely respond to a notice of deficiency shall invalidate the dispute unless all Parties' counsel agree to allow the dispute.

F. Settlement Administrator's Declaration.

No later than twenty-five (25) days before the Final Approval Hearing, the Settlement Administrator shall provide counsel for Defendant and Class Counsel with a declaration attesting to the completion of the Notice process, including the number of attempts to obtain valid mailing addresses for and re-sending of any returned Notices, as well as the number of valid Workweek Dispute Forms, opt-outs and deficiencies that the Settlement Administrator received.

G. Objections.

1. Timing. The objection must be submitted to the Settlement Administrator by mail, postmarked by the Response Deadline.

2. Format. Any Objections must state: (a) the case name (e.g., *Pablo Sergio Nevarez v. On-Time Air Conditioning & Heating, LLC*) and case number (21CV375216); (b) the objecting person's or his or her attorney's full name, address, and telephone number; (c) the words "Notice of Objection" or "Formal Objection;" (d) describe, in clear and concise terms, the legal and factual

arguments supporting the objection; (e) list identifying witness(es) the objector may call to testify at the Final Approval Hearing; (f) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval Hearing; and (g) state whether the objection applies only to the objector, to a specific subset of the Settlement Class, or to the entire Settlement Class.

3. Notice of Intent to Appear. Settlement Class Members who timely submit valid objections to the Settlement may (though are not required to) appear at the Final Approval Hearing, either in person or through the objector's own counsel.

4. Effect of Objection. If a Settlement Class Member objects to the Settlement, the Settlement Class Member will remain a member of the Settlement Class and if the Court approves this Agreement, the Settlement Class Member will be bound by the terms of the Settlement and Final Approval Order in the same way and to the same extent as a Settlement Class Member who does not object. The date of mailing of the Notice to the objecting Settlement Class Member shall be conclusively determined according to the records of the Settlement Administrator. The Court retains final authority with respect to the consideration and admissibility of any Settlement Class Member objections. Any Settlement Class Member who submits an objection may also participate in the settlement.

H. Opportunity to be Excluded and Defendant's Opt-Out Threshold.

In order for any Settlement Class Member to validly exclude himself or herself from the Settlement Class and the Settlement (i.e., to validly opt out), a written request for exclusion ("Request to be Excluded") must be signed by the Settlement Class Member or his or her authorized representative and must be sent to the Settlement Administrator, postmarked by no later than forty-five (45) days after the date the Settlement Administrator initially mails the Notice to the Settlement Class Members. The Notice shall contain instructions on how to opt out.

1. Effect of Opt-Out. The date of the initial mailing of the Notice, and the date the signed Request to be Excluded was postmarked, shall be conclusively determined according to the records of the Settlement Administrator. Any Settlement Class Member who timely and validly submits a Request to be Excluded from the Settlement Class and the Settlement will not be entitled to any portion of the Net Settlement Payments, will not be bound by the terms and conditions of the

Settlement, and will not have any right to object, appeal, or comment thereon.

2. Failure to Opt-Out. Any member of the Settlement Class who does not timely file and mail a Request to be Excluded from the Settlement Class will be deemed included in the Settlement Class in accordance with this Settlement.

3. Tolerance of Opt-Outs. In the event that ten percent (10%) or more of the Class Members exercise their right to exclude themselves and opt out of the Settlement and Settlement Agreement, Defendant retains the exclusive right, but not the obligation, to withdraw from and terminate the Settlement and the Settlement Agreement and return all Parties back to their same position before the Settlement was reached and the Settlement Agreement was entered into. In the event that Defendant exercises such rights under this paragraph, Named Plaintiff and Defendant shall resume the Litigation through and until there is a final settlement of the Litigation. If timely provided with Opt-Out information by the Settlement Administrator, Defendant shall notify Class Counsel and the Court of such a decision to withdraw and terminate the Settlement no later than five (5) days prior to the date of the Final Approval Hearing. In the event of Defendant's withdrawal, no party may use the fact that the Parties agreed to the Settlement for any reason, and Defendant shall pay all administration expenses incurred through the date of its termination of the Settlement.

I. Cooperation.

The Parties and their respective counsel agree not to encourage members of the Settlement Class to refrain from participating in the Settlement, to opt out of the Settlement, or to object to the Settlement, directly or indirectly, through any means. However, if a Settlement Class Member contacts Class Counsel, Class Counsel may discuss the terms of the Settlement and the Settlement Class Member's options.

XI. DISPUTES PROCEDURE

If a member of the Settlement Class disputes the number of Eligible Workweeks set forth in the Workweek Dispute Form, such person must follow the directions in the Workweek Dispute Form and in the Notice, including preparing a statement setting forth the number of Eligible Workweeks that such person believes in good faith is correct, and stating that the member of the Settlement Class authorizes the Settlement Administrator to review the Settlement Class Member's personnel file and

1 leave management records to determine such information, and attaching any relevant documentation
2 in support thereof. Documentary evidence and paystubs are helpful to substantiate such person's
3 dispute claim, but it is not required. The member of the Settlement Class must mail the signed and
4 completed statement no later than forty-five (45) days after the date of the mailing of the Workweek
5 Dispute Form, or the number of Eligible Workweeks set forth in the Notice and Workweek Dispute
6 Form will govern the Net Settlement Payment to the member of the Settlement Class.

7 Upon timely receipt of any such challenge, the Settlement Administrator, in consultation with
8 Class Counsel and counsel for Defendant, will review the pertinent payroll records showing the dates
9 the Settlement Class Member was employed and the pertinent leave(s) taken, and which records
10 Defendant agrees to make available to the Settlement Administrator and Class Counsel.

11 After consulting with Class Counsel and counsel for Defendant, the Settlement Administrator
12 shall compute the number of Eligible Workweeks to be used in computing the Settlement Class
13 Member's pro rata share of the Net Settlement Amount. In the event there is a disparity between the
14 dates a Settlement Class Member claims he or she worked during the Settlement Period and the dates
15 indicated by Defendant's records, Defendant's records will control unless inconsistent with paycheck
16 stub(s) (or bona fide copies thereof) provided by the Settlement Class Member, in which case the
17 paycheck stub(s) will control.

18 **XII. COMPUTATION AND DISTRIBUTION OF PAYMENTS**

19 **A. Distribution Formula.**

20 Subject to the Court finally approving the Settlement, the Settlement Administrator shall
21 distribute funds pursuant to the terms of this Agreement and the Court's Final Approval Order and
22 Judgment. The maximum amount Defendant can be required to pay under this Settlement for any
23 purpose is the Settlement Amount. The Settlement Administrator shall keep Defendant's Counsel
24 and Class Counsel apprised of all distributions from the Settlement Amount. The Settlement
25 Administrator shall respond to questions from Defendant's Counsel and Class Counsel. No person
26 shall have any claim against Defendant, Defendant's Counsel, Plaintiff, Class Counsel, or the
27 Settlement Administrator based on the distributions and payments made in accordance with this
28 Agreement.

No later than twenty-five (25) days before the Final Approval Hearing, the Settlement Administrator will calculate the total number of workweeks for all Class Members who were employed by Defendant during the Settlement Class Period ("Total Workweeks"). The value of each Workweek shall be determined by the Settlement Administrator by dividing the Net Settlement Fund (not including the amount the Court approves in PAGA penalties) by the total number of Workweeks available to the Class Members who do not opt out in accordance with Section X(H) above during the Settlement Class Period ("Workweek Point Value"). The Settlement Administrator will also provide the amount owed by Defendant for the applicable payroll taxes.

An "Individual Settlement Payment" for each Class Member will then be determined by multiplying a Class Member's workweeks worked during the Class Period ("Eligible Workweeks") by the Workweek Point Value.

Members of the Settlement Class not opting out will receive a lump sum payment as good and valuable consideration for the waiver and release of claims set forth in Section VIII(A), above, in an amount determined by the Settlement Administrator in accordance with the provisions of this Agreement.

As to distribution of PAGA penalties, the Settlement Administrator will calculate the total number of workweeks for all Participating PAGA Members who were employed by Defendant during the PAGA Period ("Total PAGA Workweeks"). The value of each PAGA Workweek shall be determined by the Settlement Administrator by dividing 25% of the total amount the Court approves in PAGA penalties by the total number of PAGA Workweeks available to Participating PAGA Members ("PAGA Workweek Point Value"). For purposes of tax allocation and reporting, each payment to Participating PAGA Members shall be treated as 100% penalties.

B. Funding of Settlement.

Within fourteen (14) calendar days following the date on which the Court grants Final Approval of the Settlement and a determination of the pro-rata share of the settlement amount to which each member of the Settlement Class is entitled, Defendant will deposit the Settlement Amount and the Employer Taxes into an interest-bearing trust account for the benefit of the participating Settlement Class Members and Class Counsel, through the Settlement Administrator.

At no time prior to Final Approval of the Settlement shall Defendant be required to escrow any portion of the Settlement Amount.

C. Time for Distribution and *Cy Pres*.

1. Distribution.

The Settlement Administrator shall cause the Settlement Amount (inclusive of the Net Settlement Amount, the Court approved attorney's fees and Litigation costs, Court approved enhancement to Named Plaintiff, and PAGA Settlement) and the Employer Taxes to be mailed within twenty-one (21) calendar days following the Date of Final Approval. At no time will Defendant be required to escrow any portion of the Settlement Amount.

2. Uncashed Checks.

If a check is returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace search and, if another address is identified, shall mail the check to the newly identified address. Any settlement checks remaining uncashed after one hundred and eighty (180) days shall be deemed unpaid residue pursuant Code of Civil Procedure Section 384(a). Unpaid residue (uncashed or returned checks) will be paid to JVS SoCal, 6505 Wilshire Blvd., Suite 200, Los Angeles, CA 90048.

XIII. NO CONTRIBUTIONS TO EMPLOYEE BENEFIT PLAN

The amounts paid under this Agreement do not represent a modification of any previously credited hours of service under any employee benefit plan, policy, or bonus program sponsored by Defendant. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under, benefit plans (self-insured or not) sponsored by Defendant, policies or bonus programs. Any payments made under the terms of this Settlement shall not be applied retroactively, currently or on a going forward basis as salary, earnings, wages, or any other form of compensation for the purposes of Defendant's benefit plan, policy or bonus program. Defendant retains the right to modify the language of their benefit plans, policies and bonus programs to effect this intent and to make clear that any amounts paid pursuant to this Settlement are not for "hours worked," "hours paid," "hours of service," or any similar measuring term as defined by

applicable plans, policies and bonus programs for purpose of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not required by this Settlement.

XIV. CLASS COUNSEL ATTORNEYS' FEES AND LITIGATION COSTS

Defendant shall not oppose an application by Class Counsel for, and Class Counsel shall not seek or receive an amount in excess of \$175,000.00, which represents one-third of the Settlement Amount for all past and future attorneys' fees necessary to prosecute, settle and administer the Litigation and this Settlement. Additionally, Defendant shall not oppose an application by Class Counsel for, and Class Counsel shall not seek or receive an amount in excess of \$20,000.00, which represents all past and future Litigation costs and expenses necessary to prosecute, settle and administer the Litigation and this Settlement. Any attorneys' fees and Litigation costs awarded to Class Counsel by the Court as part of the Settlement Amount shall be deducted from the Settlement Amount for the purpose of determining the Net Settlement Amount. The "future" aspect of these amounts include, without limitation, all time and expenses expended by Class Counsel in defending the Settlement and securing preliminary and Final Approval (including any appeals therein). There will be no additional charge of any kind to the members of the Settlement Class or any request for additional consideration from Defendant for such work. This amount shall include all attorneys' fees, Litigation costs, and expenses for which Named Plaintiff and Class Counsel could claim under any legal theory whatsoever. The Settlement Administrator shall disburse payment from the Settlement Amount for the amount of attorneys' fees and Litigation costs approved by the Court to Class Counsel at the same time as the disbursement of the Settlement Amount to the Settlement Class Members as set forth in Section XII.C.1. Should the Court approve a lesser percentage or amount of fees and/or Litigation costs than the amount that Class Counsel ultimately seeks, then any such unapproved portion or portions shall revert into the Net Settlement Amount to be distributed between the participating Settlement Class Members on a pro-rata basis.

XV. ENHANCEMENT TO NAMED PLAINTIFF

Defendant shall not oppose an application by Named Plaintiff, and Named Plaintiff shall not seek or receive an amount in excess of \$10,000.00 for his participation in and assistance with the Litigation (*i.e.*, Named Plaintiff's class representative enhancement / service award). Any

enhancement awarded to Named Plaintiff by the Court as part of the Settlement Amount shall be deducted from the Settlement Amount for the purpose of determining the Net Settlement Amount, and shall be reported on IRS Form 1099. If the Court approves an enhancement of less than \$10,000.00 to Named Plaintiff, then the unapproved portion or portions shall revert into the Net Settlement Amount to be distributed between the participating Settlement Class Members on a pro-rata basis.

XVI. TAXATION AND ALLOCATION

The Parties agree that all employment taxes and other legally required withholdings will be withheld from payments to the members of the Settlement Class and Named Plaintiff based on the Parties' stipulated allocation of the Net Settlement Amount as provided for in this Section.

In Defendant's sole discretion, and to which Named Plaintiff and Class Counsel do not object, the amount of federal income tax withholding will be based upon a flat withholding rate for supplemental wage payments in accordance with Treas. Reg. § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also be made pursuant to applicable state and/or local withholding codes or regulations.

For withholding tax characterization purposes and payment of taxes, the Net Settlement Amount shall be deemed and is allocated by the Parties as follows ("Net Settlement Allocation"):

- (1) 20% as wages;
- (2) 40% as penalties; and
- (3) 40% as interest.

IRS Forms W-2 and/or Forms 1099 will be distributed at times and in the manner required by the Internal Revenue Code of 1986 (the "Code") and consistent with this Agreement, by the Settlement Administrator. If the Code, the regulations promulgated thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes set forth in this Section may be modified in a manner to bring Defendant into compliance with any such changes.

Finally, any and all Employer Taxes which Defendant normally would be responsible for paying based on the Net Settlement Payments made to the individual Class Members will be paid by Defendant in addition to and not as a deduction from the Settlement Amount based on the stipulated

Net Settlement Allocation.

XVII. PRIVATE ATTORNEYS GENERAL ACT ALLOCATION

In order to implement the terms of this Settlement and to settle claims alleged under the PAGA, California *Labor Code* section 2698, *et seq.*, the Parties agree to allocate \$7,500.00 from the Settlement Amount as penalties authorized by the PAGA. Seventy-five percent (75%) of this amount will be paid to the LWDA and twenty-five percent (25%) of this amount will be distributed to the Participating PAGA Members, through the Settlement Administrator and at no additional cost to Defendant. Within twenty-one (21) calendar days following the Date of Final Approval, the Settlement Administrator shall disburse the PAGA Settlement to the LWDA and will provide notice to the LWDA of the fact that the Settlement has been approved by the Court along with a copy of the Settlement Agreement and the Court Order confirming the approval of the Settlement through the appropriate LWDA/California Department of Industrial Relations (“DIR”) website.

XVIII. COURT APPROVAL

This Agreement and the Settlement is contingent upon Final Approval by the Court and the entry of judgment. Named Plaintiff and Defendant agree to take all steps as may be reasonably necessary to secure both Preliminary Approval and Final Approval of the Settlement, to the extent not inconsistent with the terms of this Agreement, and will not take any action adverse to each other in obtaining court approval, and, if necessary, appellate approval, of the Settlement in all respects. Named Plaintiff and Defendant expressly agree that they will not file any objection to the terms of the Settlement or assist or encourage any person or entity to file any such objection.

In the event it becomes impossible to secure approval of the Settlement, the Parties shall be restored to their respective positions in the Litigation, ante mediation, except as otherwise provided in Section XIX, below.

XIX. MISCELLANEOUS PROVISIONS

A. Stay of Litigation.

Named Plaintiff and Defendant agree to the stay of all discovery in the Litigation and all actions not related to the Settlement, pending Final Approval of the Settlement by the Court.

B. Interpretation of the Agreement.

This Agreement constitutes the entire agreement between Named Plaintiff and Defendant. Except as expressly provided herein, this Agreement has not been executed in reliance upon any other written or oral representations or terms, and no such extrinsic oral or written representations or terms shall modify, vary or contradict its terms. In entering into this Agreement, the Parties agree that this Agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and enforced under the laws of the State of California, both in its procedural and substantive aspects, without regard to its conflict of laws provisions. Any claim arising out of or relating to the Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior Court of the State of California for the County of Santa Clara, and Named Plaintiff and Defendant hereby consent to the personal jurisdiction of the Court over them solely in connection therewith.

Named Plaintiff, on his own behalf and on behalf of the Settlement Class, and Defendant participated in the negotiation and drafting of this Agreement and had available to them the advice and assistance of independent counsel. As such, neither Named Plaintiff nor Defendant may claim that any ambiguity in this Agreement should be construed against the other.

The terms and conditions of this Agreement constitute the exclusive and final understanding and expression of all agreements between Named Plaintiff and Defendant with respect to the Settlement of the Litigation.

C. Further Cooperation.

Named Plaintiff and Defendant and their respective attorneys shall proceed diligently to prepare and execute all documents, to seek the necessary approvals from the Court, and to do all things reasonably necessary or convenient to consummate the Agreement as expeditiously as possible.

D. Confidentiality.

After the expiration of any appeals period, Named Plaintiff, the Settlement Administrator, and Class Counsel shall maintain the confidentiality of all documents, deposition transcripts, declarations and other information obtained in the lawsuit, unless necessary for appeal or such

documents are ordered to be disclosed by the Court or by a subpoena.

E. Counterparts.

The Agreement may be executed in one or more actual or non-original counterparts, all of which will be considered one and the same instrument and all of which will be considered duplicate originals.

F. Authority.

Each individual signing below warrants that he or she has the authority to execute this Agreement on behalf of the party for whom or which that individual signs.

G. Modification.

This Agreement may not be changed, altered, or modified, except in a writing signed by the Parties, and approved by the Court. Notwithstanding the forgoing, the Parties agree that any dates contained in this Agreement may be modified by agreement of the Parties in writing without Court approval if the Parties agree and cause exists for such modification. This Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties.

In addition to the above, this Agreement may be modified based on the final size of the Settlement Class. Defendant's best estimate for the number of workweeks at issue for the Class Members during the Settlement Period is 37,956. If the number of workweeks for this time period is determined to be more than 10% higher than this estimate (i.e., 41,752 or more workweeks), the Settlement Amount shall be increased by the average gross payout to the Class Members based on the 37,956 workweeks. For example, if there are 11% more workweeks than the initial figure of 37,956 workweeks during the Settlement Period, then Defendant will increase the Settlement Amount by 11%. The Settlement Amount will not be reduced due to Defendant's estimate.

I. Deadlines Falling on Weekends or Holidays.

To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday, or legal holiday, that deadline shall be continued until the following business day.

J. Severability.

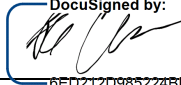
In the event that any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or

unenforceability shall in no way effect any other provision if Defendant's Counsel and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

APPROVED AS TO FORM AND CONTENT:

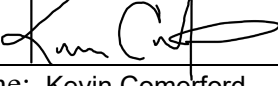
Date: 5/24/2022, 2022

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

By: 
 PABLO SERGIO NEVAREZ, *Plaintiff*

Date: May 24th, 2022

ON-TIME AIR CONDITIONING & HEATING, LLC

By: 
 Name: Kevin Comerford
 Position: President
 For ON-TIME AIR CONDITIONING & HEATING, LLC, *Defendant*

APPROVED AS TO FORM:

Date: May 24, 2022

WILSHIRE LAW FIRM

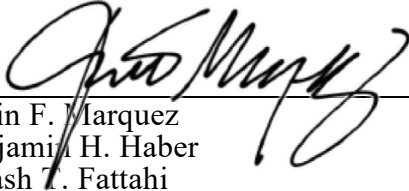
By: 
 Justin F. Marquez
 Benjamin H. Haber
 Arrash T. Fattahi
 Attorneys for Plaintiff

Exhibit A

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA
Pablo Sergio Nevarez v. On-Time Air Conditioning & Heating, LLC
Case No. 21CV375216

Indicate Name/Address Changes, if any:

<<Name>>

<<Address>>

<<City>>, <<State>> <<Zip Code>>

XX - XX -

YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT.

**ON-TIME AIR CONDITIONING & HEATING, LLC WILL NOT RETALIATE AGAINST
YOU FOR PARTICIPATING IN THIS SETTLEMENT.**

THIS NOTICE AFFECTS YOUR RIGHTS. PLEASE READ IT CAREFULLY.

A California court authorized this notice. This is not a solicitation from a lawyer.

YOU ARE HEREBY NOTIFIED that a proposed settlement (“the Settlement”) of the above-captioned class action (“the Action”) filed in the Santa Clara County Superior Court has been reached by On-Time Air Conditioning & Heating, LLC (“Defendant”) and Pablo Sergio Nevarez (“Plaintiff”), an individual, on behalf of himself and all others similarly situated and has been granted Preliminary Approval by the Court supervising the Action. The Santa Clara County Superior Court has ordered that this Class Notice be sent to you because you may be a Settlement Class Member. The purpose of this Class Notice is to inform you of the Settlement of this class action and your legal rights under the Settlement as follows:

- The Parties have agreed to settle a lawsuit brought on behalf of all persons who worked for Defendant in California as an hourly-paid or non-exempt employee during the period from January 14, 2017 through October 16, 2021 (the “Settlement Period”) (hereafter, “Settlement Class”).
- The proposed Settlement resolves all alleged claims regarding the following wage and hour policies and/or practices of Defendant: minimum wage, straight time wage, overtime and/or double time wage, failure to pay for all hours worked, meal and rest breaks and any premiums thereon, wage statement violations, waiting time penalties, failure to indemnify for expenditures, and other penalties of any kind arising from an alleged failure to pay wages. Finally, the settlement resolves claims for unfair competition and penalties under California’s Private Attorneys General Act (“PAGA”) arising out of the alleged wage and hour policies and practices of Defendant. The settlement avoids costs and risks to you from continuing the lawsuit, pays money to employees, and releases Defendant from liability for these claims.
- The Court has made no ruling and will make no ruling on the merits of the Action and its allegations and claims.
- **Your legal rights may be affected. Read this notice carefully.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Get a Payment	If you are a member of the Settlement Class, you will automatically receive a payment if you do not exclude yourself. If you accept a payment and do not exclude yourself you will give up certain rights as set forth on page 4 below. After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, please notify the Settlement Administrator as explained below.
Exclude Yourself	Get no payment. Send a letter to the Settlement Administrator as provided below. This is the only option that allows you to bring your own claim against Defendant about the legal claims in this case. The Settlement will bind all Settlement Class Members who do not request exclusion.
Object	Write to the Court about why you do not like the settlement. Directions are provided below.

WHY DID YOU RECEIVE THIS NOTICE?

This notice explains a proposed settlement of a lawsuit and informs you of your legal rights under that proposed settlement. You are receiving this notice because you may be a member of a class on whose behalf this lawsuit has been brought.

WHAT IS THIS LAWSUIT ABOUT?

Plaintiff filed this lawsuit in Santa Clara County Superior Court on behalf of the Settlement Class. The lawsuit alleges that members of the Settlement Class were not paid all minimum, straight time, and overtime wages, were not paid for or properly provided meal and rest breaks, were not paid all wages due at termination and/or resignation, were not issued accurate wage statements, were not provided reimbursements for all necessary business-related expenses, and were subjected to unfair competition. The lawsuit seeks recovery of wages, restitution, statutory and civil penalties, interest, and attorneys' fees and costs.

Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in the lawsuit. Defendant contends, among other things, that they complied at all times with the California Labor Code, the California Business and Professions Code, and all other applicable law. Defendant further denies that the lawsuit is appropriate for class treatment for any purpose other than settling this lawsuit. **SUMMARY OF THE SETTLEMENT**

A. Why is there a Settlement?

The Court did **not** decide in favor of the Plaintiff or Defendant. Plaintiff thinks he would have prevailed on his claims at a trial. Defendant does not think that Plaintiff would have won anything from a trial. But there was no trial. Instead, both sides agreed to a settlement. That way, they avoid the costs, risks, and uncertainty of a trial, and the class members will get compensation. Plaintiff and Plaintiff's attorneys believe the settlement is fair, reasonable, adequate, and in the best interests of all class members.

B. Who is in the Class?

The Settlement Class consists of all persons who worked for Defendant in California as an hourly-paid or non-exempt employee during the Settlement Period.

C. What does the Settlement provide?

1. Settlement Amount.

Defendant will pay a total of Five Hundred and Twenty-Five Thousand Dollars and Zero Cents (\$525,000.00) (the “Settlement Amount”) to settle the lawsuit.

The following sums will be paid from the Settlement Amount: all Net Settlement Payments (inclusive of all employment taxes and all other legally required withholdings that would otherwise be due from the individual class members) to the Settlement Class, Attorneys’ Fees (not to exceed 33 ⅓ % of the Settlement Amount, or \$175,000.00), Litigation Expenses not to exceed \$20,000.00, Settlement Administrative Costs estimated in an amount not to exceed \$10,000.00, the PAGA Settlement Payment in the amount of \$7,500.00, and an enhancement payment to the Named Plaintiff not to exceed \$10,000.00.

The funds used for the Settlement Amount shall be paid to the Settlement Administrator. The Settlement Administrator shall disburse the Court-approved enhancement to the Named Plaintiff, Court-approved Attorneys’ Fees and Litigation Expenses, Settlement Administration Costs, and the PAGA Settlement Payment at the same time and manner as the Net Settlement Payments to the Settlement Class Members.

2. Net Settlement Amount.

“Net Settlement Amount” means the Settlement Amount minus the Attorneys’ Fees, Litigation Expenses, Settlement Administrative Costs, the portion of the PAGA Settlement payment payable to the Labor & Workforce Development Agency (“LWDA”), and the enhancement payment to the Named Plaintiff.

3. Your Individual Payment Amount.

The Claims Administrator will calculate the total number of workweeks for all Class Members who were employed by Defendant Defendant during the Settlement Period (“Total Workweeks”). The value of each Workweek shall be determined by the Claims Administrator by dividing the Net Settlement Amount by the total number of Workweeks available to the Class Members who do not “opt out” (as defined on pages 5-6 below) during the Settlement Period (“Workweek Point Value”).

An “Individual Settlement Payment” for each Class Member will then be determined by multiplying a Class Member's workweeks (“Eligible Workweeks”) by the Workweek Point Value. The Individual Settlement Payment will be reduced by any required legal deductions, for each participating Class Member.

4. Tax Matters.

Any and all Employer Taxes which Defendant normally would be responsible for paying on the Net Settlement Payments made to individual Class Members will be paid by Defendant separate and apart from the Settlement Amount.

The Settlement Administrator will distribute IRS Forms W-2 and 1099 (and the equivalent California forms) to Settlement Class Members reflecting the payments each Settlement Class Member receives under the Settlement. For tax purposes, Net Settlement Payments will be allocated as follows: 20% as wages, 40% as penalties, and 40% as interest. Forms W-2 and/or Forms 1099 will be distributed at times and in the manner required by the Internal Revenue Code and the California Franchise Tax Board.

Interest and penalties paid under this Settlement shall not be subject to federal, state and local payroll withholding taxes. The Settlement Administrator shall issue an IRS form 1099 for payments of interest and penalties. The usual and customary deductions will be taken out of the amounts attributable to unpaid wages. Settlement Class Members should consult with their tax advisors concerning the tax consequences of the payment they receive under the Settlement.

D. What are you giving up to get a payment and stay in the Class?

Upon the date the Court's Final Approval Order becomes "Final" (as that term is defined in Section I(E) in the Settlement Agreement), Named Plaintiff and all members of the Settlement Class, except those that make a valid and timely request to be excluded from the Settlement Class and Settlement, waive, release, discharge, and promise never to assert in any forum any and all wage-related claims that were alleged in the Action or which could have been alleged in the Action based on the facts asserted in the Action arising during the Settlement Period against Defendant, and its divisions, affiliates, predecessors, successors, shareholders, members, managers, officers, directors, employees, agents, trustees, representatives, administrators, fiduciaries, assigns, subrogees, executors, partners, parents, subsidiaries, joint employers, insurers, and related corporations, including but not limited to the following claims: 1) all claims alleged in the operative complaint, under any legal theory of liability, for the failure to pay all wages of any kind, including any minimum or straight time wages, owed pursuant to California Labor Code §§ 204, 510, 1194, 1194.2, and 1197, the California Industrial Welfare Commission ("IWC") Wage Orders, or any comparable federal statute under any theory of liability; 2) all claims alleged in the operative complaint, under any legal theory of liability, for the failure to pay overtime or double time wages owed pursuant to California Labor Code §§ 204, 510, 1194, and 1198, the IWC Wage Orders, or any comparable federal statute under any theory of liability; 3) all claims alleged in the operative complaint, under any legal theory of liability, for the failure to provide meal periods pursuant to California Labor Code §§ 226.7 and 512, and the IWC Wage Orders; 4) all claims alleged in the operative complaint, under any legal theory of liability, for the failure to provide rest periods pursuant to California Labor Code § 226.7, and the IWC Wage Orders; 5) all claims alleged in the operative complaint, under any legal theory of liability, for the failure to properly calculate any premiums owed and/or paid pursuant to California Labor Code § 226.7(b); 6) all claims alleged in the operative complaint, under any legal theory of liability, for any penalties of any kind arising from an alleged failure to pay final wages or other amounts allegedly owed to Class Members pursuant to California Labor Code §§ 201-203; 7) all claims alleged in the operative complaint, under any legal theory of liability, for any penalties of any kind arising from an alleged wage statement violation pursuant to California Labor Code §§ 226 and 1174.5; 8) all claims alleged in the operative complaint, under any legal theory of liability, for failure to indemnify employees for expenditures pursuant to California Labor Code § 2802; 9) all claims alleged in the operative complaint, under any legal theory of liability, for violation of Business & Professions Code §§ 17200, *et seq.*; 10) all claims alleged in the operative complaint and Plaintiff's PAGA letter, under any legal theory of liability, for penalties pursuant to the PAGA (Labor Code §§ 2698, *et seq.*); and 11) all claims alleged in the operative complaint, under any legal theory of liability, for any penalties or any other amounts that could be potentially owed to Class Members during the Settlement Period, including penalties owed pursuant to California Labor Code §§ 210, 226.3, 558, and 1197.1.

THE FINAL APPROVAL HEARING

The Court will conduct a Final Approval Hearing regarding the proposed settlement (the “Final Approval Hearing”) on [REDACTED], 2022, at 191 N. 1st Street, San Jose, CA 95113, in Department 1 of the Santa Clara County Superior Court. The Court will determine: (i) whether the settlement should be given the Court’s final approval as fair, reasonable, adequate and in the best interests of the Settlement Class Members; (ii) whether the Settlement Class Members should be bound by the terms of the settlement; (iii) the amount of the attorneys’ fees and costs to Plaintiff’s counsel; and (iv) the amount that should be awarded to the Plaintiff as an enhancement payment. At the Final Approval Hearing, the Court will hear all objections, as well as arguments for and against the proposed Settlement. You are permitted to provide an objection at the Final Approval Hearing, in the first instance, even if you did not provide a written objection beforehand. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself.

The Final Approval Hearing may be continued without further notice to the Class. You may contact Plaintiff’s counsel, listed in this Notice, to inquire into the date and time of the Final Approval Hearing.

Condition of Settlement. This Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class.

WHAT ARE YOUR OPTIONS?

- **OPTION 1 – GET A PAYMENT**

IF YOU ARE A MEMBER OF THE SETTLEMENT CLASS AND WISH TO RECEIVE YOUR SHARE OF THE SETTLEMENT, THEN YOU DO NOT HAVE TO DO ANYTHING AND YOU WILL AUTOMATICALLY RECEIVE A SETTLEMENT PAYMENT. YOU ARE NEVER REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE.

The average potential recovery for each proposed Settlement Class Member is \$ [REDACTED].

The estimated amount of your Settlement Payment is set forth on the Workweek Dispute Form which accompanies this Notice.

The amount of the Settlement Payment paid to each Settlement Class Member is based upon the number of workweeks you worked between January 14, 2017 through October 16, 2021. The number of workweeks applicable to your claim is also set forth on the accompanying Workweek Dispute Form. If you believe that the number of workweeks stated is incorrect, you may dispute the number of workweeks by following the instructions on the Workweek Dispute Form. If you believe that the number of workweeks stated is correct, you do not have to do anything.

The Settlement Payment you will receive will be a full and final settlement of your released claims described in Section D above.

- **OPTION 2 – EXCLUDE YOURSELF FROM THE SETTLEMENT**

You have a right to exclude yourself (“opt out”) from the Settlement Class, but if you choose to do so, you will not receive any benefits from the proposed settlement. You will **not** be bound by a judgment in this case and you will have the right to file your own lawsuit against Defendant, subject to time limits called

Statute of Limitations and other potential defenses that Defendant may assert, and to pursue your own claims in a separate suit.

You can opt out of the Settlement Class by completing the form on **Page 8** of this Notice and mailing it by First Class U.S. Mail or equivalent to the Settlement Administrator at the following address: Phoenix Settlement Administrators, [insert address]. To be valid, your request for exclusion must be postmarked no later than [45 days after mailing].

- **OPTION 3 – OBJECT TO THE SETTLEMENT**

If you wish to remain a Settlement Class Member, but you object to the proposed settlement (or any of its terms) and wish the Court to consider your objection at the Final Approval Hearing, you may object to the proposed settlement in writing. Regardless of whether you provided a written objection beforehand, you may also appear at the Final Approval Hearing to object, either in person or through an attorney at your own expense.

Any written objection may be mailed to the Settlement Administrator at [Address] by [45 days after mailing].

The contact information for Plaintiff’s counsel and Defendant’s counsel is provided below solely for your informational purposes. Written objections should only be sent to the Settlement Administrator at the address provided above, not to Plaintiff’s counsel or Defendant’s counsel.

PLAINTIFF’S/CLASS COUNSEL

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

**DEFENDANT ON-TIME AIR CONDITIONING
& HEATING, LLC’S COUNSEL**

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

CHANGE OF ADDRESS

If you move after receiving this Notice, if it was misaddressed, or if for any reason you want your Settlement Award or future correspondence concerning this Action to be sent to a different address, you must supply your preferred address to the Settlement Administrator at:

Phoenix Settlement Administrators
[Insert address]

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you may review the detailed “Joint Stipulation Re: Class Settlement” which is available for viewing online, along with other court records regarding this case, on the following website:

URL: [Insert website provided by Settlement Administrator]

The pleadings and other records in the lawsuit are also available on the website.

Alternatively, you may also obtain a copy of the Settlement Agreement and related documents online through the Santa Clara County Superior Court's website, by going to the following webpage: <https://portal.scscourt.org/search> and entering "21CV375216" for the case number.

ANY INQUIRIES REGARDING THIS ACTION SHOULD BE MADE TO PLAINTIFF'S COUNSEL LISTED ABOVE OR TO THE SETTLEMENT ADMINISTRATOR, Phoenix Settlement Administrators, [insert contact information]. Please refer to the *Pablo Sergio Nevarez v. On-Time Air Conditioning & Heating, LLC* Class Action Settlement.

PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS

**[COMPLETE THIS FORM *ONLY IF YOU CHOOSE TO*
NOT PARTICIPATE IN THIS SETTLEMENT AND
CHOOSE *NOT* TO RECEIVE A SETTLEMENT SHARE]**

OPT-OUT FORM

Pablo Sergio Nevarez v. On-Time Air Conditioning & Heating, LLC
SANTA CLARA COUNTY SUPERIOR COURT CASE NUMBER 21CV375216

INSTRUCTIONS: TO OPT-OUT OF THE SETTLEMENT, YOU MUST COMPLETE, SIGN AND MAIL THIS FORM BY FIRST CLASS U.S. MAIL OR EQUIVALENT, POSTAGE PAID, POSTMARKED ON OR BEFORE **[+45 DAYS FROM MAILING]**, ADDRESSED TO:

Phoenix Settlement Administrators

[Insert address]

Please fill in all of the following information (type or print):

NAME (First, Middle, Last): _____
STREET ADDRESS: _____
CITY, STATE, ZIP CODE: _____
TELEPHONE NUMBERS: Home: _____ Work: _____

**IT IS STRONGLY RECOMMENDED THAT YOU RETAIN PROOF OF MAILING
THIS FORM POSTMARKED ON OR BEFORE **[DATE]**.**

I **[insert your name]** wish to be excluded from the Settlement Class in the case of *Pablo Sergio Nevarez v. On-Time Air Conditioning & Heating, LLC*, Santa Clara County Superior Court Case Number 21CV375216 (the "Action").

I understand I will not receive money from the proposed class action settlement.

I further verify that the following is true: My name, address and other contact information are accurately set forth above. I received and had the opportunity to read the Notice of Proposed Class Action Settlement that were sent to me along with this Opt-Out Form. I understand that by signing this side of the form, I voluntarily choose to exclude myself from the proposed settlement of this Action. **I understand that by excluding myself, I may not accept any money allocated for me in the proposed settlement and may not object to the settlement.** On the other hand, I also understand that if I wish to assert any claims related to those set forth in this lawsuit in my individual capacity, I shall have to do so separately. I understand that any such claims are subject to strict time limits, known as statutes of limitations, which restrict the time within which I may file any such action. I understand that I should consult with an attorney at my own expense if I wish to obtain advice regarding my rights with respect to this settlement or my choice to opt out of the settlement. None of the Parties to the Lawsuit have encouraged me to opt out, and I choose to opt out of my own free will.

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

Signed: _____

Date: _____

Print Name: _____

Last four digits of Social Security Number _____

Exhibit B

CLASS WORKWEEK DISPUTE FORM

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

Pablo Sergio Nevarez v. On-Time Air Conditioning & Heating, LLC
Case No. 21CV375216

Indicate Name/Address Changes, if any:

<<Name>>

<<Address>>

<<City>>, <<State>> <<Zip Code>>

XX - XX -

INSTRUCTIONS

IF YOU WERE EMPLOYED BY ON-TIME AIR CONDITIONING & HEATING, LLC (“DEFENDANT”) IN CALIFORNIA AS AN HOURLY-PAID OR NON-EXEMPT EMPLOYEE BETWEEN JANUARY 14, 2017 AND OCTOBER 16, 2021 AND YOU HAVE NOT OPTED OUT OF THE SETTLEMENT, THEN YOU ARE A SETTLEMENT CLASS MEMBER.

The amount of your estimated Settlement Payment is based upon the Eligible Workweeks you worked for Defendant in California from January 14, 2017 to October 16, 2021 (“Class Settlement Period”).

“Eligible Workweeks” are defined as any week in which you worked at least one (1) day during the calendar week. The number of Eligible Workweeks applicable to your claim is set forth in Section I below. If you believe that the number of workweeks stated is incorrect, you may dispute the number of workweeks by submitting this completed Workweek Dispute Form with any supporting documents on or before [redacted] [45 days after initial mailing]. Documentary evidence may be helpful to substantiate your dispute claim, but it is not required. **If you believe that the number of workweeks stated below is correct, you do not have to do anything.**

If you have moved or may move in the future, you must immediately send your new address to the Settlement Administrator at [insert address]; otherwise, your individual settlement payment may not reach you. It is your responsibility to keep a current address on file with the Settlement Administrator to ensure receipt of your settlement payment.

I. YOUR COMPENSABLE WORKWEEKS

You worked as an hourly-paid or non-exempt employee for Defendant in California, which qualifies you as a Settlement Class Member, and your total number of Eligible Workweeks in this position are: <<NUMBER OF WORKWEEKS>>.

This number is not intended to reflect all workweeks you may have worked in total for Defendants. It only reflects the Eligible Workweeks during the Class Settlement Period.

II. YOUR ESTIMATED SETTLEMENT PAYMENT

Based upon the number of workweeks stated above, your estimated pre-tax Settlement Payment is <<INSERT>>.

Page 1 of 2

QUESTIONS? CALL _____ TOLL FREE [NUMBER]
Please do not call the Court directly

III. CHALLENGE TO WORKWEEKS

If you wish to dispute the Eligible Workweeks data listed, you must postmark your dispute and provide all supporting information and/or documentation, if any, to the Settlement Administrator by **<<NOTICE PERIOD DEADLINE>>**.

If you wish to dispute the data listed in Section I, complete the below form :

☐ I wish to dispute the number of Eligible Workweeks listed in Section I. I believe the correct number of my workweeks is _____. I understand that, by submitting this dispute, I hereby authorize the Settlement Administrator to make a determination as to the validity of my dispute based upon Defendant's records as well as the records and information that I submit to the Settlement Administrator.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the information I provided in this Workweek Dispute Form is true and correct.

Dated: _____

Signature: _____

Print or Type Name: _____

MAIL TO:

**PABLO SERGIO NEVAREZ v. ON-TIME AIR CONDITIONING & HEATING, LLC
CLASS ACTION SETTLEMENT**

c/o

**[Insert]
address**

IF YOU ARE CONTESTING THE NUMBER OF YOUR ELIGIBLE WORKWEEKS, YOU MUST SIGN, POSTMARK, AND RETURN THIS FORM TO THE SETTLEMENT ADMINISTRATOR ON OR BEFORE «OPT-OUT DEADLINE».

Exhibit C

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

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

1. Failure to Pay Minimum and Straight Time Wages (Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197);
2. Failure to Pay Overtime Wages (Cal. Lab. Code §§ 1194 and 1198);
3. Failure to Provide Meal Periods (Cal. Lab. Code §§ 226.7, 512);
4. Failure to Authorize and Permit Rest Periods (Cal. Lab. Code §§ 226.7);
5. Failure to Timely Pay Final Wages at Termination (Cal. Lab. Code §§ 201-203);
6. Failure to Provide Accurate Itemized Wage Statements (Cal. Lab. Code § 226);
7. Failure to Indemnify Employees for Expenditures (Cal. Lab. Code § 2802);
8. Unfair Business Practices (Cal. Bus. & Prof. Code §§ 17200, *et seq.*); and
9. Civil Penalties Under PAGA (Cal. Lab. Code § 2699, *et seq.*)

DEMAND FOR JURY TRIAL

Plaintiff Pablo Sergio Nevarez (“Plaintiff”), based upon facts that either have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery, alleges as follows:

INTRODUCTION & PRELIMINARY STATEMENT

1. Plaintiff brings this action against On-Time Air Conditioning & Heating, LLC, and Does 1 through 10 (hereinafter collectively referred to as “Defendants”) for California Labor Code violations and unfair business practices stemming from Defendants’ failure to pay for all hours worked (minimum, straight time, and overtime wages), failure to provide meal periods, failure to authorize and permit rest periods, failure to timely pay final wages, failure to furnish accurate wage statements, and failure to indemnify employees for expenditures.

2. Plaintiff brings the First through Eighth Causes of Action individually and as a class action on behalf of Plaintiff and certain current and former employees of Defendants (hereinafter collectively referred to as the “Class” or “Class Members,” and defined more fully below). The Class consists of Plaintiff and all other persons who have been employed by Defendants in California as an hourly-paid or non-exempt employee during the statute of limitations period applicable to the claims pleaded here.

3. Plaintiff brings the Ninth Cause of Action as a representative action under the California Private Attorneys General Act (“PAGA”) to recover civil penalties that are owed to Plaintiff, the State of California, and past and present non-exempt employees employed by Defendants in the State of California during the statute of limitations period for his PAGA claim (hereinafter referred to as the “Aggrieved Employees”).

4. Defendants own/owned and operate/operated an industry, business, and establishment within the State of California, including Santa Clara County. As such, and based upon all the facts and circumstances incident to Defendants’ business in California, Defendants are subject to the California Labor Code, Wage Orders issued by the Industrial Welfare Commission (“IWC”), and the California Business & Professions Code.

5. Despite these requirements, throughout the statutory period Defendants maintained a systematic, company-wide policy and practice of:

- (a) Failing to pay employees for all hours worked, including all minimum wages, straight time wages, and overtime wages in compliance with the California Labor Code and IWC Wage Orders;
- (b) Failing to provide employees with timely and duty-free meal periods in compliance with the California Labor Code and IWC Wage Orders, failing to maintain accurate records of all meal periods taken or missed, and failing to pay an additional hour's pay for each workday a meal period violation occurred;
- (c) Failing to authorize and permit employees to take timely and duty-free rest periods in compliance with the California Labor Code and IWC Wage Orders, and failing to pay an additional hour's pay for each workday a rest period violation occurred;
- (d) Willfully failing to pay employees all minimum wages, straight time wages, overtime wages, meal period premium wages, and rest period premium wages due within the time period specified by California law when employment terminates;
- (e) Failing to provide employees with accurate, itemized wage statements containing all the information required by the California Labor Code and IWC Wage Orders; and
- (f) Failing to indemnify employees for expenditures incurred in direct discharge of duties of employment.

6. On information and belief, Defendants, and each of them were on actual and constructive notice of the improprieties alleged herein and intentionally refused to rectify their unlawful policies. Defendants' violations, as alleged above, during all relevant times herein were willful and deliberate.

7. At all relevant times, Defendants were and are legally responsible for all of the unlawful conduct, policies, practices, acts and omissions as described in each and all of the foregoing paragraphs as the employer of Plaintiff, the Class, and the Aggrieved Employees.

Further, Defendants are responsible for each of the unlawful acts or omissions complained of herein under the doctrine of “respondent superior.”

THE PARTIES

A. Plaintiff

8. Plaintiff worked for Defendants Santa Clara County, California, as an hourly-paid, non-exempt employee from approximately August 2016 to approximately August 2020.

9. Plaintiff reserves the right to seek leave to amend this complaint to add new Plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v. American Savings and Loan Association* (1971) 5 Cal.3d 864, 872, and other applicable law.

B. Defendants

10. Plaintiff is informed and believes, and based upon that information and belief allege, that Defendants are, and at all times herein mentioned, were:

- (a) Business entities conducting business in numerous counties throughout the State of California, including in Santa Clara County; and,
- (b) The former employers of Plaintiff, and the current and/or former employer of the putative Class because Defendants suffered and permitted Plaintiff, the Class, and the Aggrieved Employees to work, and/or controlled their wages, hours, or working conditions.

11. Plaintiff does not know the true names or capacities of the persons or entities sued herein as Does 1-10, inclusive, and therefore sue said Defendants by such fictitious names. Each of the Doe Defendants was in some manner legally responsible for the damages suffered by Plaintiff, the Class, and the Aggrieved Employees as alleged herein. Plaintiff will amend this complaint to set forth the true names and capacities of these Defendants when they have been ascertained, together with appropriate charging allegations, as may be necessary.

12. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and each of them, were residents of, doing business in, availed themselves of the jurisdiction of, and/or injured a significant number of the Plaintiff, the Class, and the Aggrieved Employees in the State of California.

13. Plaintiff is informed and believes and thereon alleges that at all relevant times each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and the other employees described in the class definitions below, and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges that, at all relevant times, each Defendant was the principal, agent, partner, joint venturer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of the other Defendants, and was engaged with some or all of the other Defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other Defendants so as to be liable for their conduct with respect to the matters alleged below. Plaintiff is informed and believe and thereon allege that each Defendant acted pursuant to and within the scope of the relationships alleged above, that each Defendant knew or should have known about, and authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other Defendants.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

14. Throughout Plaintiff's employment, Defendants failed to pay for all hours worked (including minimum wage, straight time, and overtime wages), failed to provide Plaintiff with meal periods, failed to authorize and permit Plaintiff to take rest periods, failed to pay timely pay all final wages to Plaintiff when Defendants terminated Plaintiff's employment, failed to furnish accurate wage statements to Plaintiff, and failed to indemnify Plaintiff for expenditures.

15. Throughout the statutory period, Defendants maintained a policy and practice of not paying Plaintiff, the Class, and the Aggrieved Employees for all hours worked, including minimum wages, straight time wages, and overtime wages. Before 2018, Defendants regularly used a system of time rounding in a manner that results, over a period of time, in a failure to compensate Plaintiff, the Class, and the Aggrieved Employees properly for all the time they actually worked, even though the realities of Defendants' operations are such that it is possible, practical, and feasible to count and pay for every minute of work performed. Due to Defendants' time rounding, Plaintiff, the Class, and the Aggrieved Employees are frequently paid for less than all their work time. Defendants also required Plaintiff, the Class, and the Aggrieved Employees

1 to work “off-the-clock”, uncompensated, by, for example, requiring Plaintiff, the Class, and the
2 Aggrieved Employees to clock out and continue to work. Some of this unpaid work should have
3 been paid at the overtime rate. In failing to pay for all hours worked, Defendants also failed to
4 maintain accurate records of the hours Plaintiff, the Class, and the Aggrieved Employees worked.

5 16. Throughout the statutory period, Defendants maintained a policy and practice of
6 not paying Plaintiff, the Class, and the Aggrieved Employees the correct amount of overtime pay.
7 Although Plaintiff, the Class, and the Aggrieved Employees earned non-discretionary bonuses
8 when they worked more than 8 hours in a workday or more than 40 hours in a workweek,
9 Defendants did not include these non-discretionary bonuses when calculating the correct regular
10 rate of pay for overtime purposes.

11 17. Throughout the statutory period, Defendants wrongfully failed to provide Plaintiff,
12 the Class, and the Aggrieved Employees with legally compliant meal periods. Defendants
13 regularly, but not always, required Plaintiff, the Class, and the Aggrieved Employees to work in
14 excess of five consecutive hours a day without providing a 30-minute, uninterrupted, and duty-
15 free meal period for every five hours of work, or without compensating Plaintiff, the Class, and
16 the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of
17 work or tenth hour of work. Instead, Defendants continued to assert control over Plaintiff, the
18 Class, and the Aggrieved Employees by requiring, pressuring, or encouraging them to perform
19 work tasks which could not be completed without working in lieu of taking mandatory meal
20 periods, or by denying Plaintiff, the Class, and the Aggrieved Employees permission to take a
21 meal period. Defendants also never informed Plaintiff of the right to, nor permitted Plaintiff to
22 take, a second meal period when Plaintiff worked at least 10 hours of work in a workday.
23 Accordingly, Defendants’ policy and practice was not to provide meal periods to Plaintiff, the
24 Class, and the Aggrieved Employees in compliance with California law.

25 18. Throughout the statutory period, Defendants have wrongfully failed to authorize
26 and permit Plaintiff, the Class, and the Aggrieved Employees to take legally compliant rest
27 periods. Defendants regularly, but not always, required Plaintiff, the Class, and the Aggrieved
28 Employees to work in excess of four consecutive hours a day without Defendants authorizing and

1 permitting them to take a 10-minute, uninterrupted, duty-free rest period for every four hours of
2 work (or major fraction of four hours), or without compensating Plaintiff, the Class, and the
3 Aggrieved Employees for rest periods that were not authorized or permitted. Instead, Defendants
4 continued to assert control over Plaintiff, the Class, and the Aggrieved Employees by requiring,
5 pressuring, or encouraging them to perform work tasks which could not be completed without
6 working in lieu of taking mandatory rest periods, or by denying Plaintiff, the Class, and the
7 Aggrieved Employees permission to take a rest period. Accordingly, Defendants' policy and
8 practice was to not authorize and permit Plaintiff, the Class, and the Aggrieved Employees to
9 take rest periods in compliance with California law.

10 19. Throughout the statutory period, Defendants willfully failed and refused to timely
11 pay Plaintiff, the Class, and the Aggrieved Employees at the conclusion of their employment all
12 final wages due at their termination of employment. In addition, Plaintiff's final paychecks did
13 not include payment for all minimum wages, straight time wages, overtime wages, meal period
14 premium wages, and rest period premium wages owed to Plaintiff by Defendants at the
15 conclusion of Plaintiff's employment. On information and belief, Defendants' failure to timely
16 pay Plaintiff's final wages when their employment terminated was not a single, isolated incident,
17 but was instead consistent with Defendants' policy and practice that applied to Plaintiff, the
18 Class, and the Aggrieved Employees.

19 20. Throughout the statutory period, Defendants failed to furnish Plaintiff, the Class,
20 and the Aggrieved Employees with accurate, itemized wage statements showing all applicable
21 hourly rates, and all gross and net wages earned (including correct hours worked, correct wages
22 for meal periods that were not provided in accordance with California law, and correct wages for
23 rest periods that were not authorized and permitted to take in accordance with California law).
24 As a result of these violations of California Labor Code § 226(a), the Plaintiff, the Class, and the
25 Aggrieved Employees suffered injury because, among other things:

- 26 (a) the violations led them to believe that they were not entitled to be paid
27 minimum wages, straight time wages, overtime wages, meal period
28 premium wages, and rest period premium wages, even though they were

entitled;

- (b) the violations led them to believe that they had been paid the minimum, straight time, overtime, meal period premium, and rest period premium wages, even though they had not been;
- (c) the violations led them to believe they were not entitled to be paid minimum, straight time, overtime, meal period premium, and rest period premium wages at the correct California rate even though they were;
- (d) the violations led them to believe they had been paid minimum, straight time, overtime, meal period premium, and rest period premium wages at the correct California rate even though they had not been;
- (e) the violations hindered them from determining the amounts of minimum, straight time, overtime, meal period premium, and rest period premium wages owed to them;
- (f) in connection with their employment before and during this action, and in connection with prosecuting this action, the violations caused them to have to perform mathematical computations to determine the amounts of wages owed to them, computations they would not have to make if the wage statements contained the required accurate information;
- (g) by understating the wages truly due them, the violations caused them to lose entitlement and/or accrual of the full amount of Social Security, disability, unemployment, and other governmental benefits;
- (h) the wage statements inaccurately understated the wages, hours, and wage rates to which Plaintiff, the Class, and the Aggrieved Employees were entitled, and Plaintiff, the Class, and the Aggrieved Employees were paid less than the wages and wage rates to which they were entitled.

Thus, Plaintiff, the Class, and the Aggrieved Employees are owed the amounts provided for in California Labor Code § 226(e).

21. Throughout the statutory period, Defendants have wrongfully required Plaintiff,

1 the Class, and the Aggrieved Employees to pay expenses that they incurred in direct discharge of
2 their duties for Defendants. Plaintiff, the Class, and the Aggrieved Employees regularly paid
3 out-of-pocket for necessary expenses, including, without limitation, tools and/or devices.
4 Plaintiff, the Class, and the Aggrieved Employees incurred substantial expenses as a direct result
5 of performing their job duties for Defendants, but Defendants failed to indemnify Plaintiff, the
6 Class, and the Aggrieved Employees for these employment-related expenses.

7 **CLASS ACTION ALLEGATIONS**

8 22. Plaintiff brings certain claims individually, as well as on behalf of each and all
9 other persons similarly situated, and thus, seeks class certification under California Code of Civil
10 Procedure § 382.

11 23. All claims alleged herein arise under California law for which Plaintiff seeks relief
12 authorized by California law.

13 24. The proposed Class consists of and is defined as:

14 All persons who worked for any Defendant in California as an hourly-paid or
15 non-exempt employee at any time during the period beginning four years before
16 the filing of the initial complaint in this action and ending when notice to the
Class is sent.

17 25. At all material times, Plaintiff was a member of the Class.

18 26. Plaintiff undertakes this concerted activity to improve the wages and working
19 conditions of all Class Members.

20 27. There is a well-defined community of interest in the litigation and the Class is
21 readily ascertainable:

22 (a) Numerosity: The members of the Class (and each subclass, if any) are so
23 numerous that joinder of all members would be unfeasible and impractical.
24 The membership of the entire Class is unknown to Plaintiff at this time;
25 however, the Class is estimated to be greater than 50 individuals and the
26 identity of such membership is readily ascertainable by inspection of
27 Defendants' records.

28 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect

the interests of each Class Member with whom there is a shared, well-defined community of interest, and Plaintiff's claims (or defenses, if any) are typical of all Class Members' claims as demonstrated herein.

(c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each Class Member with whom there is a shared, well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff has no conflicts with or interests antagonistic to any Class Member. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

(d) Superiority: A Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

- 1) The interests of the members of the Class in individually controlling the prosecution or defense of separate actions;
- 2) The extent and nature of any litigation concerning the controversy already commenced by or against members of the Class;
- 3) The desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
- 4) The difficulties likely to be encountered in the management of a class action.

(e) Public Policy Considerations: The public policy of the State of California is to resolve the California Labor Code claims of many employees through a class action. Indeed, current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are

also fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights at the same time as their privacy is protected.

28. There are common questions of law and fact as to the Class (and each subclass, if any) that predominate over questions affecting only individual members, including without limitation, whether, as alleged herein, Defendants have:

- (a) Failed to pay Class Members for all hours worked, including minimum, straight time, and overtime wages;
- (b) Failed to pay Class Members the correct amount of overtime pay when they earned shift premiums;
- (c) Failed to provide meal periods and pay meal period premium wages to Class Members;
- (d) Failed to authorize and permit rest periods and pay rest period premium wages to Class Members;
- (e) Failed to provide Class Members with timely final wages;
- (f) Failed to provide Class Members with accurate wage statements;
- (g) Failed to indemnify Class Members for expenditures; and
- (h) Violated California Business & Professions Code §§ 17200 *et. seq.* as a result of their illegal conduct as described above.

29. This Court should permit this action to be maintained as a class action pursuant to California Code of Civil Procedure § 382 because:

- (a) The questions of law and fact common to the Class predominate over any question affecting only individual members;
- (b) A class action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the Class;

- (c) The members of the Class are so numerous that it is impractical to bring all members of the class before the Court;
- (d) Plaintiff, and the other members of the Class, will not be able to obtain effective and economic legal redress unless the action is maintained as a class action;
- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the statutory violations, and in obtaining adequate compensation for the damages and injuries for which Defendants are responsible in an amount sufficient to adequately compensate the members of the Class for the injuries sustained;
- (f) Without class certification, the prosecution of separate actions by individual members of the class would create a risk of:
- 1) Inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for Defendants; and/or
 - 2) Adjudications with respect to the individual members which would, as a practical matter, be dispositive of the interests of other members not parties to the adjudications, or would substantially impair or impede their ability to protect their interests, including but not limited to the potential for exhausting the funds available from those parties who are, or may be, responsible Defendants; and,
- (g) Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making final injunctive relief appropriate with respect to the class as a whole.

30. Plaintiff contemplates the eventual issuance of notice to the proposed members of the Class that would set forth the subject and nature of the instant action. The Defendants' own business records may be utilized for assistance in the preparation and issuance of the contemplated notices. To the extent that any further notices may be required, Plaintiff

contemplates the use of additional techniques and forms commonly used in class actions, such as published notice, e-mail notice, website notice, first-class mail, or combinations thereof, or by other methods suitable to the Class and deemed necessary and/or appropriate by the Court.

FIRST CAUSE OF ACTION

(Against all Defendants for Failure to Pay Minimum and Straight Time Wages for All Hours Worked)

31. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 21 in this Complaint.

32. “Hours worked” is the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

33. At all relevant times herein mentioned, Defendants knowingly failed to pay to Plaintiff and the Class compensation for all hours they worked. By their failure to pay compensation for each hour worked as alleged above, Defendants willfully violated the provisions of California Labor Code § 1194, and any additional applicable Wage Orders, which require such compensation to non-exempt employees.

34. Accordingly, Plaintiff and the Class are entitled to recover minimum and straight time wages for all non-overtime hours worked for Defendants.

35. By and through the conduct described above, Plaintiff and the Class have been deprived of their rights to be paid wages earned by virtue of their employment with Defendants.

36. By virtue of the Defendants’ unlawful failure to pay additional compensation to Plaintiff and the Class for their non-overtime hours worked without pay, Plaintiff and the Class suffered, and will continue to suffer, damages in amounts which are presently unknown to Plaintiff and the Class and which will be ascertained according to proof at trial.

37. By failing to keep adequate time records required by California Labor Code § 1174(d), Defendants have made it difficult to calculate the full extent of minimum wage compensation due Plaintiff and the Class.

38. Pursuant to California Labor Code § 1194.2, Plaintiff and the Class are entitled to

1 recover liquidated damages (double damages) for Defendants' failure to pay minimum wages.

2 39. California Labor Code § 204 requires employers to provide employees with all
3 wages due and payable twice a month. Throughout the statute of limitations period applicable to
4 this cause of action, Plaintiff and the Class were entitled to be paid twice a month at rates
5 required by law, including minimum and straight time wages. However, during all such times,
6 Defendants systematically failed and refused to pay Plaintiff and the Class all such wages due
7 and failed to pay those wages twice a month.

8 40. Plaintiff and the Class are also entitled to seek recovery of all unpaid minimum
9 and straight time wages, interest, and reasonable attorneys' fees and costs pursuant to California
10 Labor Code §§ 218.5, 218.6, and 1194(a).

11 **SECOND CAUSE OF ACTION**

12 **(Against all Defendants for Failure to Pay Overtime Wages)**

13 41. Plaintiff incorporates by reference and re-alleges as if fully stated herein
14 paragraphs 1 through 21 in this Complaint.

15 42. California Labor Code § 510 provides that employees in California shall not be
16 employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless
17 they receive additional compensation beyond their regular wages in amounts specified by law.

18 43. California Labor Code §§ 1194 and 1198 provide that employees in California
19 shall not be employed more than eight hours in any workday unless they receive additional
20 compensation beyond their regular wages in amounts specified by law. Additionally, California
21 Labor Code § 1198 states that the employment of an employee for longer hours than those fixed
22 by the Industrial Welfare Commission is unlawful.

23 44. At all times relevant hereto, Plaintiff and the Class have worked more than eight
24 hours in a workday, as employees of Defendants.

25 45. At all times relevant hereto, Defendants failed to pay Plaintiff and the Class
26 overtime compensation for the hours they have worked in excess of the maximum hours
27 permissible by law as required by California Labor Code §§ 510 and 1198.

28 46. By virtue of Defendants' unlawful failure to pay additional premium rate

1 compensation to the Plaintiff and the Class for their overtime hours worked, Plaintiff and the
2 Class have suffered, and will continue to suffer, damages in amounts which are presently
3 unknown to them but which exceed the jurisdictional minimum of this Court and which will be
4 ascertained according to proof at trial.

5 47. By failing to keep adequate time records required by Labor Code § 1174(d),
6 Defendants have made it difficult to calculate the full extent of overtime compensation due to
7 Plaintiff and the Class.

8 48. Plaintiff and the Class also request recovery of overtime compensation according
9 to proof, interest, attorneys' fees and costs pursuant to California Labor Code § 1194(a), as well
10 as the assessment of any statutory penalties against Defendants, in a sum as provided by the
11 California Labor Code and/or other statutes.

12 49. California Labor Code § 204 requires employers to provide employees with all
13 wages due and payable twice a month. The Wage Orders also provide that every employer shall
14 pay to each employee, on the established payday for the period involved, overtime wages for all
15 overtime hours worked in the payroll period. Defendants failed to provide Plaintiff and the Class
16 with all compensation due, in violation of California Labor Code § 204.

17 **THIRD CAUSE OF ACTION**

18 **(Against all Defendants for Failure to Provide Meal Periods)**

19 50. Plaintiff incorporates by reference and re-alleges as if fully stated herein
20 paragraphs 1 through 21 in this Complaint.

21 51. Under California law, Defendants have an affirmative obligation to relieve the
22 Plaintiff and the Class of all duty in order to take their first daily meal periods no later than the
23 start of Plaintiff and the Class' sixth hour of work in a workday, and to take their second meal
24 periods no later than the start of the eleventh hour of work in the workday. California Labor
25 Code § 512, and Section 11 of the applicable Wage Orders require that an employer provide
26 unpaid meal periods of at least 30 minutes for each five-hour period worked. It is a violation of
27 California Labor Code § 226.7 for an employer to require any employee to work during any meal
28 period mandated under any Wage Order.

1 52. Despite these legal requirements, Defendants regularly failed to provide Plaintiff
2 and the Class with both meal periods as required by California law. By their failure to permit
3 and authorize Plaintiff and the Class to take all meal periods as alleged above (or due to the fact
4 that Defendants made it impossible or impracticable to take these uninterrupted meal periods),
5 Defendants willfully violated the provisions of California Labor Code § 226.7 and the applicable
6 Wage Orders.

7 53. Under California law, Plaintiff and the Class are entitled to be paid one hour of
8 additional wages for each workday he or she was not provided with all required meal period(s),
9 plus interest thereon.

10 **FOURTH CAUSE OF ACTION**

11 **(Against All Defendants for Failure to Authorize and Permit Rest Periods)**

12 54. Plaintiff incorporates by reference and re-alleges as if fully stated herein
13 paragraphs 1 through 21 in this Complaint.

14 55. Defendants are required by California law to authorize and permit breaks of 10
15 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than
16 two hours). California Labor Code § 512, the applicable Wage Orders require that the employer
17 permit and authorize all employees to take paid rest periods of 10 minutes each for each 4-hour
18 period worked. Thus, for example, if an employee's work time is 6 hours and ten minutes, the
19 employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is
20 itself a violation of California's rest break laws. It is a violation of California Labor Code §
21 226.7 for an employer to require any employee to work during any rest period mandated under
22 any Wage Order.

23 56. Despite these legal requirements, Defendants failed to authorize Plaintiff and the
24 Class to take rest breaks, regardless of whether employees worked more than 4 hours in a
25 workday. By their failure to permit and authorize Plaintiff and the Class to take rest periods as
26 alleged above (or due to the fact that Defendants made it impossible or impracticable to take
27 these uninterrupted rest periods), Defendants willfully violated the provisions of California Labor
28 Code § 226.7 and the applicable Wage Orders.

57. Under California law, Plaintiff and the Class are entitled to be paid one hour of premium wages rate for each workday he or she was not provided with all required rest break(s), plus interest thereon.

FIFTH CAUSE OF ACTION

(Against all Defendants for Failure to Pay Wages of Discharged Employees – Waiting Time Penalties)

58. Plaintiff incorporates by reference and re-allege as if fully stated herein paragraphs 1 through 21 in this Complaint.

59. At all times herein set forth, California Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

60. Within the applicable statute of limitations, the employment of many other members of the Class ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendants failed, and continue to fail to pay terminated Class Members, without abatement, all wages required to be paid by California Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

61. Defendants' failure to pay those Class members who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code §§ 201 and 202.

62. California Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

63. The Class is entitled to recover from Defendants their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to California Labor Code § 203.

64. Pursuant to California Labor Code §§ 218.5, 218.6 and 1194, the Class is also entitled to an award of reasonable attorneys' fees, interest, expenses, and costs incurred in this action.

SIXTH CAUSE OF ACTION

(Against all Defendants for Failure to Provide and Maintain Accurate and Compliant Wage Records)

65. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 21 in this Complaint.

66. At all material times set forth herein, California Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

67. Defendants have intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify the gross wages earned by Plaintiff and the Class, the failure to list the true "total hours worked by the employee," and the failure to list the true net wages earned.

68. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiff and the Class have suffered injury and damage to their statutorily protected rights.

69. Specifically, Plaintiff and the members of the Class have been injured by Defendants' intentional violation of California Labor Code § 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate, itemized wage statements under California Labor Code § 226(a).

70. Calculation of the true wage entitlement for Plaintiff and the Class is difficult and time consuming. As a result of this unlawful burden, Plaintiff and the Class were also injured as a result of having to bring this action to attempt to obtain correct wage information following Defendants' refusal to comply with many of the mandates of California's Labor Code and related laws and regulations.

71. Plaintiff and the Class are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with California Labor Code § 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

72. Plaintiff and the Class are also entitled to injunctive relief, as well as an award of attorney's fees and costs to ensure compliance with this section, pursuant to California Labor Code § 226(h).

SEVENTH CAUSE OF ACTION

(Against all Defendants for Failure to Indemnify Employees for Expenditures)

73. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 21 of this Complaint.

74. As set forth above, Plaintiff and the Class were required to incur substantial necessary expenditures and losses in direct consequence of the discharge of their duties or of their obedience to directions of Defendants.

75. Defendants violated California Labor Code § 2802, by failing to pay and indemnify Plaintiff and the Class for necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of their obedience to directions of Defendants.

76. As a result, Plaintiff and the Class were damaged at least in the amounts of the expenses they paid, or which were deducted by Defendants from their wages.

77. Plaintiff and the Class are entitled to reasonable attorney's fees, expenses, and

costs of suit pursuant to California Labor Code § 2802(c) and interest pursuant to California Labor Code § 2802(b).

EIGHTH CAUSE OF ACTION

(Against all Defendants for Violation of California Business & Professions Code §§ 17200, et seq.)

78. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 21 in this Complaint.

79. Defendants, and each of them, are “persons” as defined under California Business & Professions Code § 17201.

80. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair, unlawful, and harmful to Plaintiff, other Class members, and to the general public. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

81. Defendants’ activities, as alleged herein, are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code §§ 17200, *et seq.*

82. A violation of California Business & Professions Code §§ 17200, *et seq.* may be predicated on the violation of any state or federal law. All of the acts described herein as violations of, among other things, the California Labor Code, are unlawful and in violation of public policy; and in addition are immoral, unethical, oppressive, fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business practices in violation of California Business & Professions Code §§ 17200, *et seq.*

Failure to Pay Minimum and Straight Time Wages

83. Defendants’ failure to pay minimum wages, straight time wages, and other benefits in violation of the California Labor Code constitutes unlawful and/or unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

Failure to Pay Overtime Wages

84. Defendants’ failure to pay overtime compensation and other benefits in violation

of California Labor Code §§ 510, 1194, and 1198 constitutes unlawful and/or unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

Failure to Provide Meal Periods

85. Defendants' failure to provide meal periods in accordance with California Labor Code §§ 226.7 and 512, and the IWC Wage Orders, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

Failure to Authorize and Permit Rest Periods

86. Defendants' failure to authorize and permit rest periods in accordance with California Labor Code § 226.7 and the IWC Wage Orders, as alleged above, constitutes unlawful and/or unfair activity prohibited by Business and Professions Code §§ 17200, *et seq.*

Failure to Indemnify Business Expenses

87. Defendants' failure to reimburse expenses incurred in accordance with California Labor Code § 2802, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

88. By and through their unfair, unlawful and/or fraudulent business practices described herein, the Defendants, have obtained valuable property, money and services from Plaintiff, and all persons similarly situated, and have deprived Plaintiff, and all persons similarly situated, of valuable rights and benefits guaranteed by law, all to their detriment.

89. Plaintiff and the Class Members suffered monetary injury as a direct result of Defendants' wrongful conduct.

90. Plaintiff, individually, and on behalf of members of the putative Class, is entitled to, and does, seek such relief as may be necessary to disgorge money and/or property which the Defendants have wrongfully acquired, or of which Plaintiff and the Class have been deprived, by means of the above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and the Class are not obligated to establish individual knowledge of the wrongful practices of Defendants in order to recover restitution.

91. Plaintiff, individually, and on behalf of members of the putative class, is further entitled to and does seek a declaration that the above described business practices are unfair,

1 unlawful and/or fraudulent, and injunctive relief restraining the Defendants, and each of them,
2 from engaging in any of the above-described unfair, unlawful and/or fraudulent business
3 practices in the future.

4 92. Plaintiff, individually, and on behalf of members of the putative class, has no
5 plain, speedy, and/or adequate remedy at law to redress the injuries which the Class Members
6 suffered as a consequence of the Defendants' unfair, unlawful and/or fraudulent business
7 practices. As a result of the unfair, unlawful and/or fraudulent business practices described
8 above, Plaintiff, individually, and on behalf of members of the putative Class, has suffered and
9 will continue to suffer irreparable harm unless the Defendants, and each of them, are restrained
10 from continuing to engage in said unfair, unlawful and/or fraudulent business practices.

11 93. Plaintiff also alleges that if Defendants are not enjoined from the conduct set forth
12 herein above, they will continue to avoid paying the appropriate taxes, insurance and other
13 withholdings.

14 94. Pursuant to California Business & Professions Code §§ 17200, *et seq.*, Plaintiff
15 and putative Class Members is entitled to restitution of the wages withheld and retained by
16 Defendants during a period that commences four years prior to the filing of this complaint; a
17 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
18 Class Members; an award of attorneys' fees pursuant to California Code of Civil Procedure §
19 1021.5 and other applicable laws; and an award of costs.

20 **NINTH CAUSE OF ACTION**

21 **(Against all Defendants for Civil Penalties Under the Private Attorneys General Act of** 22 **2004, Cal. Lab. Code § 2698 et seq.)**

23 95. Plaintiff incorporates by reference and re-alleges as if fully stated herein
24 paragraphs 1 through 21 in this Complaint.

25 96. At all times herein mentioned, Defendants were subject to the Labor Code of the
26 State of California and the applicable Industrial Welfare Commission Orders.

27 97. California Labor Code § 2699(a) specifically provides for a private right of action
28 to recover penalties for violations of the Labor Code: "Notwithstanding any other provision of

law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.”

98. Plaintiff has exhausted his administrative remedies pursuant to California Labor Code § 2699.3. He gave written notice by online filing to the Labor and Workforce Development Agency and by certified mail to Defendants of the specific provisions of the Labor Code that Defendants have violated against Plaintiff and current and former aggrieved employees, including the facts and theories to support the violations. Plaintiff also paid the filing fee.

99. The Labor and Workforce Development Agency has not indicated that it intends to investigate Defendants’ Labor Code violations discussed in the notice. Accordingly, Plaintiff may commence a civil action to recover penalties under Labor Code § 2699 pursuant to § 2699.3 for the violations of the Labor Code described in this Complaint. These penalties include, but are not limited to, penalties under California Labor Code §§ 210, 226.3, 1174.5, 1197.1, and 2699.

100. Based on the conduct described in this Complaint, Plaintiff is entitled to an award of civil penalties on behalf of himself, the State of California, and similarly Aggrieved Employees of Defendants. The exact amount of the applicable penalties, in all, is in an amount to be shown according to proof at trial. These penalties are in addition to all other remedies permitted by law.

101. In addition, Plaintiff seeks an award of reasonable attorney’s fees and costs pursuant to California Labor Code § 2699(g)(1), which states, “Any employee who prevails in any action shall be entitled to an award of reasonable attorney’s fees and costs.”

PRAYER FOR RELIEF

Plaintiff, individually, and on behalf of all others similarly situated only with respect to the class claims, prays for relief and judgment against Defendants, jointly and severally, as

1 follows:

2 Class Certification

- 3 1. That this action be certified as a class action with respect to the First, Second,
4 Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action;
5 2. That Plaintiff be appointed as the representative of the Class; and
6 3. That counsel for Plaintiff be appointed as Class Counsel.

7 As to the First Cause of Action

- 8 4. That the Court declare, adjudge, and decree that Defendants violated California
9 Labor Code §§ 204 and 1194 and applicable IWC Wage Orders by willfully failing to pay all
10 minimum and straight time wages due;
11 5. For unpaid wages as may be appropriate;
12 6. For pre-judgment interest on any unpaid compensation commencing from the date
13 such amounts were due;
14 7. For liquidated damages;
15 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
16 California Labor Code § 1194(a); and,
17 9. For such other and further relief as the Court may deem equitable and appropriate.

18 As to the Second Cause of Action

- 19 10. That the Court declare, adjudge, and decree that Defendants violated California
20 Labor Code §§ 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all
21 overtime wages due;
22 11. For unpaid wages at overtime wage rates as may be appropriate;
23 12. For pre-judgment interest on any unpaid overtime compensation commencing
24 from the date such amounts were due;
25 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
26 California Labor Code § 1194(a); and,
27 14. For such other and further relief as the Court may deem equitable and appropriate.

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As to the Third Cause of Action

15. That the Court declare, adjudge, and decree that Defendants violated California Labor Code §§ 226.7 and 512, and the IWC Wage Orders;

16. For unpaid meal period premium wages as may be appropriate;

17. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;

18. For reasonable attorneys' fees under California Code of Civil Procedure § 1021.5, and for costs of suit incurred herein; and

19. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fourth Cause of Action

20. That the Court declare, adjudge, and decree that Defendants violated California Labor Code §§ 226.7 and 512, and the IWC Wage Orders;

21. For unpaid rest period premium wages as may be appropriate;

22. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;

23. For reasonable attorneys' fees under California Code of Civil Procedure § 1021.5, and for costs of suit incurred herein; and

24. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fifth Cause of Action

25. That the Court declare, adjudge and decree that Defendants violated California Labor Code §§ 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment;

26. For statutory wage penalties pursuant to California Labor Code § 203 for former employees who have left Defendants' employ;

27. For pre-judgment interest on any unpaid wages from the date such amounts were due;

28. For reasonable attorneys' fees and for costs of suit incurred herein; and

29. For such other and further relief as the Court may deem equitable and appropriate.

As to the Sixth Cause of Action

30. That the Court declare, adjudge, and decree that Defendants violated the record keeping provisions of California Labor Code § 226(a) and applicable IWC Wage Orders, and willfully failed to provide accurate itemized wage statements thereto;

31. For all actual damages, according to proof;

32. For statutory penalties pursuant to California Labor Code § 226(e);

33. For injunctive relief to ensure compliance with this section, pursuant to California Labor Code § 226(h);

34. For reasonable attorneys' fees and for costs of suit incurred herein; and

35. For such other and further relief as the Court may deem equitable and appropriate.

As to the Seventh Cause of Action

36. That the Court declare, adjudge, and decree that Defendants violated California Labor Code § 2802 by willfully failing to indemnify employees for expenditures;

37. For unpaid wages or reimbursed business expenses as may be appropriate;

38. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;

39. For liquidated damages;

40. For reasonable attorneys' fees and for costs of suit incurred herein; and,

41. For such other and further relief as the Court may deem equitable and appropriate.

As to the Eighth Cause of Action

42. That the Court declare, adjudge, and decree that Defendants violated California Business & Professions Code §§ 17200, *et seq.* by failing to pay for all hours worked (minimum, straight time, and overtime wages), failing to provide meal periods, failing to authorize and permit rest periods, and failing to reimburse business expenses;

43. For restitution of unpaid wages to Plaintiff and all Class Members and prejudgment interest from the day such amounts were due and payable;

44. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by

Defendants as a result of violations of California Business & Professions Code §§ 17200 *et seq.*;

45. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure § 1021.5;

46. For injunctive relief to ensure compliance with this section, pursuant to California Business & Professions Code §§ 17200, *et seq.*; and,

47. For such other and further relief as the Court may deem equitable and appropriate.

As to the Ninth Cause of Action

48. That the Court declare, adjudge and decree that Defendants violated the California Labor Code by failing to pay wages for all hours worked (including minimum, straight time, and overtime wages), failing to provide meal periods and pay the correct amount of meal period premium wages, failing to authorize and permit rest periods and pay the correct amount of rest period premium wages, failing to pay all final wages to terminated employees, failing to furnish accurate wage statements, and failing to indemnify employees for expenditures;

49. For all actual, consequential and incidental losses and damages, according to proof;

50. For all civil penalties pursuant to California Labor Code §§ 2699, *et seq.*, and all other applicable Labor Code provisions;

51. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code § 2699; and,

52. For such other and further relief as the Court may deem equitable and appropriate.

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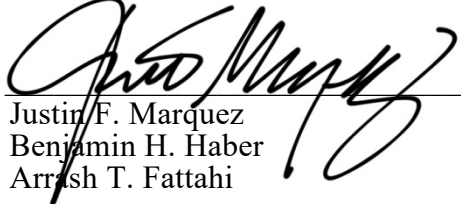
As to all Causes of Action

53. For any additional relief that the Court deems just and proper.

Respectfully submitted,

Dated: May 24, 2022

WILSHIRE LAW FIRM

By: 

Justin F. Marquez
Benjamin H. Haber
Arrash T. Fattahi

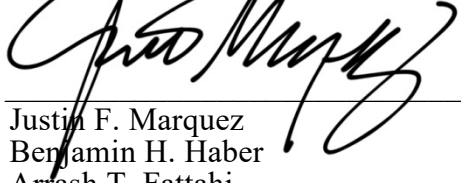
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury as to all causes of action triable by jury.

Dated: May 24, 2022

WILSHIRE LAW FIRM

By: 

Justin F. Marquez
Benjamin H. Haber
Arrash T. Fattahi

Attorneys for Plaintiff

Exhibit 2



CASE ASSUMPTIONS

Class Members	660
Opt Out Rate	1%
Opt Outs Received	7
Total Class Claimants	653
Subtotal Admin Only	\$9,750.00

WILL NOT EXCEED \$9,750.00

For 660 Class Members

November 22, 2021

Case: Nevarez v. On-Time Air Conditioning Opt-Out wLanguage

Phoenix Contact: Jodey Lawrence
 Contact Number: 949.566.1455
 Email: Jodey@phoenixclassaction.com

Requesting Attorney: Justin Marquez
 Firm: Wilshire Law Firm, PLC
 Contact Number: (213) 381-9988, Ext. 345
 Email: justin@wilshirelawfirm.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly.
 Estimate is based on 660 Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of \$150 per hour will be charged for any additional analysis or programming.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item Estimate
Programming Manager	\$125.00	2	\$250.00
Programming Database & Setup	\$125.00	2	\$250.00
Toll Free Call Setup	\$153.05	1	\$153.05
Call Center & Long Distance	\$2.50	66	\$165.00
NCOA (USPS)	\$0.35	660	\$231.00
Total			\$1,049.05

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Translation / Website

Project Action	Rate	Hours/Units	Line Item Estimate
Notice Packet Formatting	\$125.00	2	\$250.00
Data Merge & Duplication Scrub	\$0.15	660	\$99.00
Notice Packet & Opt-Out Form	\$1.25	660	\$825.00
Estimated Postage (up to 2 oz.)*	\$0.70	660	\$462.00
Language Translation	\$1,000.00	1	\$1,000.00
Website	\$200.00	1	\$200.00
Total			\$2,836.00

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Associate	\$50.00	2	\$100.00
Skip Tracing Undeliverables	\$2.00	132	\$264.00
Remail Notice Packets	\$2.00	132	\$264.00
Estimated Postage	\$0.70	132	\$92.40
Programming Undeliverables	\$50.00	2	\$100.00
Total			\$820.40

Database Programming / Processing Opt-Outs, Deficiencies or Disputes			
Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Claims Database	\$125.00	2	\$250.00
Non Opt-Out Processing	\$150.00	1	\$150.00
Case Associate	\$50.00	3	\$150.00
Opt-Outs/Deficiency/Dispute Letters	\$8.50	17	\$140.25
Case Manager	\$85.00	3	\$255.00
Total			\$945.25

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks			
Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Calculations	\$125.00	2	\$250.00
Disbursement Review	\$125.00	2	\$250.00
Programming Manager	\$95.00	2	\$190.00
QSF Bank Account & EIN	\$75.00	3	\$225.00
Check Run Setup & Printing	\$125.00	2	\$250.00
Mail Class Checks, W2 and 1099 *	\$1.00	653	\$653.40
Estimated Postage Checks, W2 and 1099	\$0.56	653	\$365.90
Total			\$2,184.30

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Supervisor	\$100.00	2	\$200.00
Remail Undeliverable Checks (Postage Included)	\$1.50	20	\$30.00
Case Associate	\$60.00	3	\$180.00
Reconcile Uncashed Checks	\$85.00	2	\$170.00
Conclusion Reports	\$100.00	2	\$200.00
Case Manager Conclusion	\$85.00	2	\$170.00
Final Reporting & Declarations	\$115.00	1	\$115.00
IRS & QSF Annual Tax Reporting * (State Tax Reporting Included)	\$850.00	1	\$850.00
Total			\$1,915.00
* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.			
Estimate Total:			\$9,750.00



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA 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 Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

PROOF OF SERVICE

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

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

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 **DECLARATION OF JUSTIN F. MARQUEZ IN SUPPORT OF 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: (310) 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