Kane Moon (SBN 249834)
Lilit Ter-Astvatsatryan (SBN 320389)
Holly Williams (SBN 352269)
MOON LAW GROUP, PC
725 S. Figueroa St., 31st Floor
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125
E-mail: kmoon@moonlawgroup.com
E-mail: lilit@moonlawgroup.com
E-mail: hwilliams@moonlawgroup.com

Attorneys for Plaintiffs TIMOTHY L. DARGAN and JILL KAPPLER

[Attorneys for Defendant on Following Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

TIMOTHY L. DARGAN, individually, et. al. and on behalf of all others similarly situated, Plaintiff, vs. HEAT AND CONTROL, INC., a California corporation; and DOES 1 through 10, inclusive, Defendants.	Case No.: 22CV011089 CLASS AND REPRESENTATIVE ACTION Assigned for all purposes to the Honorable Michael Markman, Department 23 **STIPULATION OF CLASS ACTION AND PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT** Action Filed: May 10, 2022 FAC Filed: July 13, 2022 Trail Date: Not Set

RONALD F. GARRITY, BAR NO. 110488
rgarrity@sgijlaw.com
KENDALL M. BURTON, BAR NO. 228720
kburton@sgijlaw.com
SIMPSON, GARRITY, INNES & JACUZZI
Professional Corporation
601 Gateway Boulevard, Suite 950
South San Francisco, California 94080
Telephone: (650) 615-4860
Fax: (650) 615-4861

Attorneys for Defendant HEAT & CONTROL, INC.

STIPULATION OF CLASS ACTION AND PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT

This STIPULATION OF CLASS ACTION AND PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT ("Joint Stipulation of Settlement" or "Settlement") is made and entered into by and between Plaintiffs TIMOTHY L. DARGAN ("Dargan") and JILL KAPPLER ("Kappler") (together "Plaintiffs" or "Class Representatives"), on behalf of themselves and the Settlement Class (defined below), and Defendant HEAT AND CONTROL, INC. ("Defendant"). Plaintiffs and Defendant are collectively referred to herein as "the Parties."

THE PARTIES STIPULATE AND AGREE as follows:

1. On or about May 10, 2022, Plaintiffs filed a putative class action entitled *Timothy L. Dargan, et al., v. Heat and Control, Inc., et al,* Alameda County Superior Court Case No.: 22CV011089, alleging claims for (1) failure to pay minimum wages, (2) failure to pay overtime compensation, (3) failure to provide meal periods, (4) failure to authorize and permit rest breaks, (5) failure to indemnify necessary business expenses, (6) failure to timely pay final wages at termination, (7) failure to provide accurate itemized wage statements, and (8) unfair competition (the "Action").

2. On or about May 8, 2022, Dargan served his Notice of Labor Code Violation and California Labor Code Private Attorneys General Act ("PAGA") Penalties to the Labor & Workforce Development Agency ("LWDA") and Defendant.

3. On or about July 13, 2022, Plaintiffs filed their First Amended Complaint in the Action to add an additional cause of action seeking civil penalties pursuant to the PAGA.

4. On or about August 26, 2022, Defendant demurred to Plaintiffs' First Amended Complaint, which was overruled by the Court.

5. On May 31, 2023, the Parties attended private mediation with Tripper Ortman, Esq. and reached a settlement in principle.

6. Thereafter, Plaintiffs filed a motion for preliminary approval of the settlement, which the Court denied on October 24, 2023, indicating that the Parties had not engaged in sufficient discovery and/or investigation prior to reaching a settlement agreement and suggesting that an additional plaintiff be added to the lawsuit to serve as a representative for those members of the proposed class who are not

represented by a union and/or are not covered by a collective bargaining agreement.

7. Following denial of the motion for preliminary approval of the settlement agreement, the Parties met and conferred on several occasions regarding discovery issues and engaged in formal discovery.

8. On May 30, 2024, the Parties participated in a second mediation session with Tripper Ortman Esq., and reached a settlement.

9. On July 25, 2024, Plaintiffs filed their Second Amended complaint adding a new class representative who is not a represented by a Union and/or covered by a collective bargaining agreement.

10. In this Action, Plaintiffs seeks to represent themselves and all persons who worked for Defendant in California as hourly, nonexempt employees at any time between May 10, 2018, and July 1, 2024 ("Class Period"). Plaintiffs further seek to represent themselves and all persons who worked for Defendant in California as hourly, nonexempt employees at any time between May 10, 2021, and July 1, 2024. ("PAGA Period").

11. For purposes of this Settlement, the "Settlement Class" or "Settlement Class Members" consist of: Plaintiffs and all persons who worked for Defendant in California as hourly, nonexempt employees at any time during the Class Period. The Settlement Class Members consist of two sub-classes, defined as follows:

a. Union Sub-Class: All Settlement Class Members who were represented by a Union and/or covered by a collective bargaining agreement during their employment with Defendant at any time during the Class Period.

b. Non-Union Sub-Class: All Settlement Class Members who were not represented by a Union and/or covered by a collective bargaining agreement during their employment with Defendant at any time during the Class Period.

12. For purposes of this Settlement, "Class Counsel" means MOON LAW GROUP, PC.

13. For purposes of this Settlement, "Covered Workweeks" means the number of workweeks a Settlement Class Member worked for Defendant in California during the Class Period.

14. For purposes of the Settlement, "Defendant's Counsel" means SIMPSON, GARRITY, INNES & JACUZZI, P.C.

15. Solely for purposes of settling this case, the Parties and their respective counsel conditionally stipulate and agree that the requisites for establishing class certification with respect to the Settlement Class have been met and are met. More specifically, the Parties conditionally stipulate and agree that:

a. The Settlement Class is ascertainable and so numerous as to make it impracticable to join all Settlement Class Members.

b. There are common questions of law and fact including, but not limited to, the following:

i. Whether Defendant provided legally compliant meal periods to the Settlement Class, or paid meal period premiums in lieu thereof;

ii. Whether Defendant provided legally compliant paid rest periods to the Settlement Class, or paid rest period premiums in lieu thereof;

iii. Whether Defendant paid proper overtime compensation to the Settlement Class;

iv. Whether Defendant timely paid final compensation upon separation of employment to Settlement Class Members who are former employees;

v. Whether Defendant timely paid wages to Settlement Class Members throughout Settlement Class Members' employment;

vi. Whether Defendant provided accurate itemized wage statements to the Settlement Class;

vii. Whether Defendant engaged in unlawful or unfair business practices affecting the Settlement Class in violation of California Business and Professions Code §§ 17200-17208;

viii. Whether Defendant reimbursed Settlement Class Members for all reasonably incurred business expenses;

c. Plaintiffs' claims are typical of the claims of the Settlement Class Members.

d. Plaintiffs and Class Counsel will fairly and adequately protect the interests of the Settlement Class.

e. The prosecution of separate actions by individual members of the Settlement Class would create the risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct.

f. With respect to the Settlement Class, questions of law and fact common to the members of the Settlement Class predominate over any questions affecting any individual member in such Settlement Class, and that a class action is superior to other available means for the fair and efficient adjudication of the controversy.

16. Defendant denies any liability or wrongdoing of any kind whatsoever associated with the claims alleged in the Second Amended Complaint, and Defendant further denies that, for any purpose other than settling this lawsuit, the Action is appropriate for class or representative treatment. With respect to Plaintiffs' claims, Defendant contends, among other things, that Plaintiffs and the Settlement Class Members have been provided legally compliant meal periods, have been provided legally compliant paid rest periods, have been paid proper minimum, regular rate and overtime wages, have been timely paid final wages upon separation of employment, have been timely paid throughout employment, have been reimbursed for business expenses, and have been provided with accurate itemized wage statements. Defendant contends, among other things, that it has complied at all times with the California Labor Code and the applicable Wage Orders of the Industrial Welfare Commission, and all other applicable laws. Furthermore, with respect to all claims, Defendant contends that it has not engaged in unlawful or unfair business practices and has not violated California Business and Professions Code section 17200 et. seq.

17. It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge all disputes, causes of action, or claims asserted in or that could have been asserted based on the facts alleged in the Second Amended Complaint. In order to achieve a full and complete release of Defendant, Plaintiffs, on behalf of themselves and each participating Settlement Class Member, acknowledges that this Settlement is intended to include in its effect a full release of all claims and/or causes of action asserted in or that could have been in asserted based on the facts alleged in the Second Amended Complaint under any federal, state or local law, Industrial Welfare Commission Wage Order, or administrative order, whether known or unknown, including but not limited to the failure to pay minimum wages, the failure to pay overtime compensation, the failure to provide timely, uninterrupted meal periods (or meal period premiums in lieu thereof), the failure to provide timely, uninterrupted paid rest periods (or rest period premiums in lieu thereof), the failure to indemnify necessary business expenses, the failure to provide accurate itemized statements, the failure to timely pay wages throughout employment, the failure to timely

pay all wages upon separation of employment, the failure to pay waiting-time penalties, and any other claims whatsoever that were alleged in the Second Amended Complaint or which arise out of such facts, including without limitation all related claims for restitution and other equitable relief under Business and Professions Code § 17200 *et seq*., liquidated damages, punitive damages, attorneys' fees, costs, interest, and penalties, and arising from their work for Defendant in California during the Class Period ("Class Released Claims"); and, for all Settlement Class Members (regardless whether they opt out of the settlement of the class claims) who worked for Defendant in California at any time during the PAGA Period, all claims and/or causes of action for civil penalties (and associated attorneys' fees, costs, and interest) under the PAGA that are based on the aforementioned claims for Labor Code violations alleged in the Notice of Labor Code Violation and PAGA Penalties sent to the LWDA on May 8, 2022, and amended on July 22, 2024, arising during their work for Defendant in California during the PAGA Period ("PAGA Released Claims"). The Class Released Claims and the PAGA Released Claims will become effective upon the Effective Date (as defined in section 23b) of this Settlement Agreement and the settlement being fully funded by Defendant.

18. It is the intention of the Parties that the Class Released Claims and PAGA Released Claims in this Settlement includes in its effect all present and former parent companies, subsidiaries, related or affiliated companies, shareholders, officers, directors, employees, agents, attorneys, insurers, and successors and assigns of Defendant, and any individual or entity which could be jointly liable with Defendant and its respective present and former parent companies, subsidiaries, related or affiliated companies, shareholders, officers, directors, employees, agents, attorneys, insurers, and successors and assigns ("Released Parties").

19. Class Counsel has conducted a thorough investigation into the facts of the Second Amended Complaint, including an extensive review of relevant documents and data, and has diligently pursued an investigation of the claims of the Settlement Class against Defendant. Based on its own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement with Defendant for the consideration and on the terms set forth in this Joint Stipulation of Settlement is fair, reasonable, and adequate and is in the best interest of the Settlement Class in light of all known facts and circumstances, including the risk of significant delay, the risk the Settlement Class will not be certified by

the Court, the strength of the defenses asserted by Defendant, and numerous potential appellate issues. Defendant and its counsel also agree that the Settlement is fair and in the best interest of the Settlement Class, including those Settlement Class Members who worked for Defendant in California during the PAGA Period.

20. The Parties agree to cooperate and take all steps necessary and appropriate to obtain preliminary and final approval of this Settlement.

21. This Settlement provides for a non-reversionary process requiring Defendant to issue payments to Settlement Class Members according to a specified formula as specified in Paragraph 23(d). The maximum total payment under the Settlement, including all attorneys' fees and costs, the Service Payments (defined below) to the named Plaintiffs, and any other payments provided by this Settlement, is \$790,000.00 ("Gross Settlement Amount" or "GSA"). The Gross Settlement Amount includes a total payment of \$50,000.00 to settle the PAGA claim ("PAGA Amount"), with 75% of the payment (i.e., \$37,500.00) made to the LWDA and 25% of the payment (i.e., \$12,500.00) made to Settlement Class Members who worked for Defendant in California during the PAGA Period ("PAGA Payment").

22. In addition to the Gross Settlement Amount, Defendant agrees to pay its share of employer's payroll taxes required by law. It is understood and agreed that the employer's share of payroll taxes required by law shall not be paid out of the Gross Settlement Amount. It is further understood and agreed that Defendant's maximum total liability under this Settlement shall not exceed the sum of the Gross Settlement Amount and the employer's share of payroll taxes required by law.

TERMS OF SETTLEMENT

23. NOW THEREFORE, in consideration of the mutual covenants, promises, and agreements set forth herein, the Parties agree, subject to the Court's approval, as follows:

a. It is agreed by and among the Parties that the Second Amended Complaint, and any claims, damages, or causes of action arising out of the disputes which are the subject of the Second Amended Complaint, be settled and compromised as between the Settlement Class, including Settlement Class Members who worked for Defendant in California at any time during the PAGA Period, and Defendant, subject to the terms and conditions set forth in this Settlement and the approval of the Court.

b. Effective Date: The terms of settlement embodied in this Settlement shall become effective when all of the following events have occurred: (i) this Joint Stipulation of Settlement has been executed by all Parties and their respective counsel; (ii) the Court has given preliminary approval to the Settlement; (iii) the notice has been given to the Settlement Class, providing them with an opportunity to dispute information contained in the Notice of Proposed Class Action Settlement ("Notice Packet") to opt out of the Settlement, or to object to the Settlement; (iii) the Court has held a final approval hearing and entered a final order and judgment certifying the Settlement Class and approving this Settlement. If any objections were raised to the Settlement, then the Settlement will become final when any appeal, writ, or other appellate proceeding opposing the Settlement has been resolved finally and conclusively with no right to pursue further remedies or relief. In this regard, it is the intention of the Parties that the Settlement shall not become effective until the Court's order approving the Settlement is completely final, and there is no further recourse by an appellant or objector who seeks to contest the Settlement.

c. Net Settlement Amount: Subject to the Court's approval, attorneys' fees (of up to 33.33% of the GSA, i.e., $263,307.00), costs (not to exceed $30,000.00), a class representative service enhancement payment of $7,500.00 to Dargan and $5,000.00 to Kappler ("Service Payments"), the amount payable to the LWDA (i.e., $37,500.00) from the PAGA Amount, and settlement administration costs (not to exceed $8,250.00) ("Settlement Administration Payment") will be deducted from the GSA to calculate the Net Settlement Amount ("Net Settlement Amount" or "NSA") to be distributed to participating Settlement Class Members (i.e. those who do not request exclusion) and those Settlement Class Members who worked for Defendant in California during the PAGA Period. The Settlement Payments, including individual payments from the PAGA Payment, to the Settlement Class Members will be calculated by the Settlement Administrator (defined below) and paid out of the Net Settlement Amount as set forth below.

d. Settlement Payments: Settlement Payments will be paid out of the NSA as follows. First, the Settlement Administrator will distribute the PAGA Payment to all Settlement Class Members (regardless of whether they opt out of the settlement of the class claims) who worked for Defendant in California at any time during the PAGA Period. The PAGA Payment will be distributed to all such Settlement Class Members proportionally based on the number of pay periods each worked for Defendant in California during the PAGA Period. The remainder of the NSA ("NSA Remainder")(i.e., the amount left after the PAGA Payment) will be paid to all participating Settlement Class Members as follows: 32% of the NSA Remainder will be allocated to participating Union Sub-Class members proportionally and based on the number of Covered Workweeks worked by each Union Sub-Class member during the Class Period. Specifically, each Union Sub-Class Member's pro-rata share of the NSA Remainder will be determined by comparing the individual Union Sub-Class Member's Covered Workweeks during the Class Period to the total Covered Workweeks worked by all participating Union Sub-Class Members during the Class Period. At the time of the second mediation, Defendant estimates that there are a total of 81 Union Sub-Class members during the Class Period. The rest of the NSA Remainder (i.e.,68% will be divided between the participating Non-Union Sub-Class members proportionally and based on the number of Covered Workweeks worked by each participating Non-Union Sub-Class member during the Class Period. Specifically, each Non-Union Sub-Class Member's pro-rata share of the rest of the NSA Remainder will be determined by comparing the individual Non-Union Sub-Class Member's Covered Workweeks during the Class Period to the total Covered Workweeks worked by all participating Non-Union Sub-Class Members during the Class Period. At the time of the second mediation, Defendant estimates that there are a total of 171 Non-Union Sub-Class Members. Settlement Payments in the appropriate amounts will be distributed by the Settlement Administrator by First-Class U.S. mail to then Union Sub-Class and Non-Union Sub-Class members. Un-cashed, unclaimed or abandoned checks will be distributed in accordance with paragraph 30, as set forth below.

e. Escalation Clause: The GSA is based on Defendant's estimate that there are approximately 39,200 Covered Workweeks at issue during the Class Period, as of the date of the second mediation (May 30, 2024). If the number of Covered Workweeks is ten percent (10%) greater than 39,200 by July 1, 2024, then Plaintiffs shall have the right to request a pro-rata increase in the GSA equal to the percentage increase in workweeks above 39,200 (i.e., if the total workweeks increases by 12%, then a 2% increase to the GSA). Covered Workweeks may be based on either: (1) weeks during which at least one day was worked; or (2) hire dates and, where applicable, last dates worked or separation dates, re-hire dates, dates of any periods of leave, and dates of any transition between nonexempt and exempt status.

f. Tax Allocation of Settlement Payments: The Parties have agreed that all payments from the PAGA Payment will be allocated as 100% penalties, while all payments from the NSA

Remainder will be allocated as follows: (1) wages: 20%; (2) interest: 40%; and (3) penalties, including waiting-time penalties: 40%. Appropriate federal, state, and local withholding taxes will be taken out of the wage allocations, and each participating Settlement Class Member will receive an IRS Form W-2 with respect to this portion of the Settlement Payment. The employer's share of payroll taxes and other required withholdings will be paid separately by Defendant as set forth above, including but not limited to Defendant's respective FICA and FUTA contributions. IRS Form 1099s will be issued to each Settlement Class Member reflecting the payments for penalties and interest. Settlement Class Members are responsible for paying appropriate taxes due on the Settlement Payments they receive.

g. Settlement Payments Do Not Trigger Additional Benefits: All Settlement Payments to individual Settlement Class Members shall be deemed to be paid to such Settlement Class Member solely in the year in which such payments actually are received by the Settlement Class Member. It is expressly understood and agreed that the receipt of such Settlement Payments will not entitle any Settlement Class Member to additional compensation or benefits under any bonus, contest, or other compensation or benefit plan or agreement in place during the period covered by the Settlement, nor will it entitle any Settlement Class Member to any increased retirement, 401(k) benefits or matching benefits or deferred compensation benefits. It is the intent that the Settlement Payments provided for in this Settlement are the sole payments to be made by Defendant to the Settlement Class Members, and that the Settlement Class Members are not entitled to any new or additional compensation or benefits as a result of having received the Settlement Payments (notwithstanding any contrary language or agreement in any benefit or compensation plan document that might have been in effect during the period covered by this Settlement).

h. Attorneys' Fees and Costs: Subject to approval by the Court, Defendant will not object to Class Counsel's application for attorneys' fees of up to 33.33% of the GSA, currently estimated at $263,307.00 and reasonable litigation costs, to be paid by the Settlement Administrator within fourteen (14) calendar days of the Effective Date of the Settlement.

i. Service Payment for Class Representatives: Subject to Court approval, Defendant will not object to Class Counsel's application for a Service Payment of $7,500.00 to Dargan and $5,000.00 to Kappler for their service as a Class Representative in exchange for a general release of all claims. It is understood that the Service Payment is in addition to the individual Settlement Payment to which Plaintiffs are entitled along with the other Settlement Class Members. The Settlement Administrator will issue an IRS Form 1099 for the Service Payments to the Class Representatives. The Class Representatives will be individually responsible for correctly characterizing this compensation on their personal income tax returns for tax purposes and for paying any taxes on the amounts received. Should the Court approve a Service Payment to the Class Representatives in an amount less than that set forth above, the difference between the lesser amount approved by the Court and the Service Payment amount set forth above shall be added to the Net Settlement Amount. The Settlement Administrator will pay the court-approved Service Payment to Class Representatives within fourteen (14) calendar days of the Effective Date of the Settlement.

j. Settlement Administrator: The Settlement Administrator will be Phoenix Class Action Administration Solutions ("Phoenix") or such other settlement administrator as may be mutually agreeable to the Parties and approved by the Court. Settlement administration costs are estimated not to exceed $8,250.00, and the Settlement Administrator shall be authorized to pay itself the Court-approved Settlement Administration Payment after it has mailed Settlement Payments to the Settlement Class. The Settlement Administrator will establish a Qualified Settlement Fund ("QSF") within the meaning of Treasury Regulation § 1.46B-1, 26 C.F.R. § 1.468B-1 *et seq.* for the benefit of Settlement Class Members, Plaintiffs, and Class Counsel.

k. PAGA Amount: As noted above, $50,000.00 of the GSA has been allocated as PAGA civil penalties, subject to Court approval. Seventy-five percent (75%) of this amount, or $37,500.00, will be paid to the LWDA within fourteen (14) calendar days of the Effective Date of the Settlement, and the remaining 25%, or $12,500.00, will be paid to certain Settlement Class Members as the PAGA Payment as described above.

l. Funding of Settlement Account: Defendant will fund the settlement account within ten (10) calendar days of the Effective Date of the Settlement. Settlement Administrator shall provide Defendant with the total amount of employer payroll taxes owed on the Settlement Payments and wiring instructions within five (5) calendar days of the Effective Date of the Settlement. The Parties agree that the QSF is intended to be a "Qualified Settlement Fund" under Section 468B of the Code and Treasury

Regulations § 1.4168B-1, 26 C.F.R. § 1.468B-1 *et seq.* and will be administered by the Settlement Administrator as such. The Parties and Settlement Administrator shall treat the QSF as coming into existence as a Qualified Settlement Fund on the earliest date permitted as set forth in 26 C.F.R. § 1.468B-1, and such election statement shall be attached to the appropriate returns as required by law.

m. Mailing of Settlement Payments: The Settlement Administrator shall cause the Settlement Payments to be mailed to the Settlement Class Members within fourteen (14) calendar days of the Effective Date of the Settlement.

n. Parties' Approval of Settlement Payments: Before making any of the payments described above, the Settlement Administrator will circulate its Settlement Payment calculations for individual Settlement Class Members and obtain approval from counsel for the Parties of the payments to be distributed.

o. Notice of Settlement Payment: For each Settlement Class Member, there will be pre-printed information on the Notice Packet mailed to the Settlement Class Member, based on Defendant's records, stating the Settlement Class Member's Covered Workweeks during the Class Period. Settlement Class Members will also receive their number of pay periods worked during the PAGA Period and their designation as a member of either the Union Sub-Class or Non-Union Subclass. The pre-printed information based on Defendant's records shall be presumed to be correct. Settlement Class Members may dispute the pre-printed information as to his or her Covered Workweeks during the Class Period. Settlement Class Members also may dispute the number of pay periods allocated to him or her during the PAGA Period and/or their Sub-Class designation. Settlement Class Members have sixty (60) calendar days from the original date of mailing the Notice Packet (the "Response Deadline") to dispute the information as to his or her Covered Workweeks. All Settlement Class Members have sixty (60) calendar days from the original date of mailing the Notice Packet (the "Response Deadline") to dispute the information as to his or her PAGA pay periods or Sub-Class designation. Unless a disputing Settlement Class Member submits documentary evidence in support of his or her dispute, the records of Defendant will be determinative.

p. Resolution of Disputes: If a Settlement Class Member disputes the accuracy of Defendant's records, and the Parties' counsel cannot resolve the dispute informally, the matter will be referred to the Settlement Administrator. The Settlement Administrator will review Defendant's records and any information or documents submitted by the Settlement Class Member and issue a non-appealable decision regarding the dispute. The Settlement Class Member must submit information or documents supporting his or her position to the Settlement Administrator prior to the expiration of the Response Deadline. Information or documents submitted after the Response Deadline will not be considered by the Settlement Administrator, unless otherwise agreed to by the Parties.

q. Right Of Settlement Class Member To Request Exclusion From The Settlement of the Class Claims: Any Settlement Class Member who wishes to opt-out of the Settlement of the class claims must complete and mail a Request for Exclusion Form to the Settlement Administrator prior to the expiration of the Response Deadline. Any Request for Exclusion must be in the form attached hereto as Exhibit "B," and as approved by the Court, postmarked on or before the Response Deadline. Settlement Class Members cannot opt out of the settlement of the PAGA claim. Any Settlement Class Member who timely and validly requests exclusion from the Settlement with respect to the class claims in compliance with these requirements (i) shall not participate in the class portion of this Settlement (e.g., will not receive a Settlement Payment based on their Covered Workweeks during the Class Period and will not release the Class Released Claims); (ii) shall only be entitled to receive a Settlement Payment under this Settlement if they worked for Defendant in California during the PAGA Period (if applicable); and (iii) shall not be bound by this Settlement or the Court's Order and Final Judgment (except for terms related to the PAGA portion of the Settlement). At no time will the Parties or their counsel seek to solicit or otherwise encourage any Settlement Class Member to object to the Settlement or opt-out of the Settlement Class or encourage any Settlement Class Member to appeal from the final judgement.

r. Right of Settlement Class Members To Object To The Settlement: Any Settlement Class Member who does not request exclusion from the Settlement may object to the Settlement. To object, the Settlement Class Member must submit a written objection and (if applicable) a notice of intention to appear at the final approval hearing to the Settlement Administrator, on or before the Response Deadline. The Settlement Administrator shall forward all objections received to counsel for the Parties, who shall file a single packet of all objections with the Court. Absent good cause found by the Court, Settlement Class Members who fail to timely submit written objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement. Class Counsel and Defendant's Counsel may, at least five (5) calendar days before the final approval hearing, file responses to any written objections.

SETTLEMENT ADMINISTRATION

24. Subject to the Court's approval, the Parties have agreed to the appointment of Phoenix to perform the customary duties of Settlement Administrator; provided, however, the Parties shall have the right to select or substitute a different Settlement Administrator by mutual agreement, subject to Court approval. The Settlement Administrator will mail the Notice Packet to the Class Members, in English and Spanish. There will be a sixty (60) day period from the date the Settlement Administrator mails the Notice Packet for Settlement Class Members to dispute the information contained in the Notice of Settlement Payment, to submit an objection, or to request exclusion (opt-out) from the Settlement.

25. The Settlement Administrator will calculate the estimated amounts due to each Settlement Class Member in accordance with this Settlement, based on the data provided to it by Defendant. The Settlement Administrator shall report, in summary or narrative form, its calculations of the estimated amounts due to each Settlement Class Member to the Parties' counsel for approval before mailing Notice Packets. The Settlement Administrator and the Parties shall work together to resolve any Covered Workweeks or PAGA pay period calculation discrepancies.

26. In accordance with the terms of this Settlement, and upon receipt of funds from Defendant, the Settlement Administrator will issue and send out the Settlement Payment checks to the Settlement Class Members. Tax treatment of the Settlement Payments will be as set forth herein, and in accordance with state and federal tax laws. All disputes relating to the Settlement Administrator's performance of its duties shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Settlement until all payments and obligations contemplated by this Settlement have been fully carried out.

ATTORNEYS' FEES AND COSTS

27. Subject to approval by the Court, Defendant will not object to Class Counsel's application for attorneys' fees of 33.33% of the GSA, and reasonable litigation costs not to exceed $30,000.00. The amounts set forth above will cover all work performed and all fees and costs incurred to date, and all work

to be performed and all fees and costs to be incurred in connection with the approval by the Court of this Settlement and administration of the Settlement. Should Class Counsel request a lesser amount and/or the Court approves lesser amount(s) of attorneys' fees and/or attorneys' costs, the difference between the lesser amount(s) and the maximum amount set forth above shall be added to the Net Settlement Amount. The attorneys' fees and costs approved by the Court shall be paid to Class Counsel within fourteen (14) calendar days following the Effective Date of the Settlement.

NOTICE TO THE CLASS & NOTICE OF SETTLMENT PAYMENT

28. The Notice Packet is approximately the form attached hereto as Exhibit "A," and as approved by the Court, shall be sent by the Settlement Administrator to the Settlement Class Members by first class mail. A Request for Exclusion in approximately the form attached hereto as Exhibit "B," and as approved by the Court, shall also be sent by the Settlement Administrator to the Settlement Class Members by first class mail. Any returned envelopes from this mailing with forwarding addresses will be utilized by the Settlement Administrator to forward the Notice Packet and Request for Exclusion to the Settlement Class. For any returned envelopes without a forwarding address, the Settlement Administrator will perform a "skip trace" to locate a new address for the Settlement Class Member, and re-mail the Notice Packet and Request for Exclusion to the address, if any, located through the skip trace. If the Notice Packet and Request for Exclusion is returned a second time, or if no new address is found after performing a skip trace, the Settlement Administrator need not mail the Notice Packet and Request for Exclusion a further time. If a Notice Packet and Request for Exclusion is re-mailed, the Settlement Administrator will note for its own records the date and address of each re-mailing. Those Settlement Class Members who receive a re-mailed Notice Packet and Request for Exclusion, whether by skip-trace or forwarded mail, will have their Response Deadline to postmark an Exclusion Form, or mail an objection to the Settlement, extended by ten (10) calendar days from the original Response Deadline. The Settlement Administrator shall mark on the envelope whether the Notice Packet and Request for Exclusion has been re-mailed. Upon completion of these steps by the Settlement Administrator, Defendant and the Settlement Administrator shall be deemed to have satisfied their obligations to provide the Notice Packet and Request for Exclusion to the affected Settlement Class Member. The affected Settlement Class Member shall remain a member of the Settlement Class and shall be bound by all the terms of the Settlement and the

Court's Order and Final Judgment.

a. Within fourteen (14) calendar days from the date of preliminary approval of this Settlement by the Court, Defendant shall provide to the Settlement Administrator a class database containing the following information for each Settlement Class Member: (1) name; (2) last known address; (3) last known telephone number; (4) social security number; (5) dates of employment; (6) whether they are a member of the Union Sub-Class or the Non-Union Sub-Class; (7) Covered Workweeks during the Class Period; and (8) pay periods worked during the PAGA Period. This database shall be based on Defendant's business records and shall be provided in a format acceptable to the Settlement Administrator. Defendant agrees to consult with the Settlement Administrator prior to the production date to ensure that the format will be acceptable to the Settlement Administrator. The Settlement Administrator will run a check of the Settlement Class Members' addresses against those on file with the U.S. Postal Service's National Change of Address List; this check will be performed only once per Settlement Class Member by the Settlement Administrator. Absent mutual written agreement of counsel for the Parties or Court order, the Settlement Administrator will keep this database confidential and use it only for the purposes described herein, and will return this database to Defendant upon final approval of the Settlement.

b. Within seven (7) calendar days after the class database is provided to the Settlement Administrator, the Settlement Administrator will mail the Notice Packets and Requests for Exclusion, in English and Spanish, by first class United States mail.

c. Class Counsel shall provide to the Court, at least five (5) calendar days prior to the final approval hearing, a declaration by the Settlement Administrator of due diligence and proof of mailing with regard to the mailing of the Notice Packets and Requests for Exclusion.

ADMINSTRATION OF SETTLEMENT PAYMENTS

29. As noted above, the Settlement Administrator shall cause the Settlement Payments to be mailed to the Settlement Class Members within fourteen (14) calendar days of the Effective Date of the Settlement. Settlement Payment checks shall remain valid and negotiable for one hundred eighty (180) calendar days from the date of their issuance. Settlement checks will automatically be cancelled by the Settlement Administrator if they are not cashed by the Settlement Class Member within that time, and the Settlement Class Member's claims will remain released by the Settlement. Settlement checks which have

expired will not be reissued.

30. Funds from un-cashed, unclaimed or abandoned checks, based on the 180-day void date described above, shall be transmitted to the Court approved *cy pres* recipient. The Parties will propose Legal Aid at Work.

31. Upon completion of its calculation of Settlement Payments, the Settlement Administrator shall provide Class Counsel and Defendant's Counsel with a report listing the amount of all payments to be made to each Settlement Class Member within ten (10) calendar days of the Effective Date of the Settlement. Upon completion of the settlement disbursement, the Settlement Administrator shall provide a disbursement declaration to the Parties, which the Parties shall file with the Court.

RELEASE BY THE CLASS

32. Upon the Effective Date of the Settlement and the Settlement being fully funded by Defendant, and except as to such rights or claims as may be created by this Settlement, the Class Representatives and each Settlement Class Member who has not submitted a valid and timely request for exclusion, shall each fully release and discharge the Released Parties from the Class Released Claims, as those terms are defined above. In addition, all Settlement Class Members (regardless of whether they opt out of the settlement of the class claims) who worked for Defendant in California at any time during the PAGA Period, shall release the Released Parties from the PAGA Released Claims, as those terms are defined above.

CLASS REPRESENTATIVES' INDIVIDUAL GENERAL RELEASE OF CLAIMS

33. The Class Representatives agree that the consideration set forth in this Settlement, including the Service Payment set forth above, represents full settlement of all claims that were or could have been raised against the Released Parties arising from his employment with Defendant.

30. In exchange for the promises contained in this Agreement, to the maximum extent waivable under applicable law, Class Representatives may not sue or bring any claim against any of the Released Parties for any reason whatsoever. Specifically, Class Representatives, to the maximum extent waivable under applicable law, on behalf of themselves and their heirs, personal representatives, successors, spouses, registered domestic partners, children, and assigns hereby releases and forever discharges Released Parties from any and all claims, liens, demands or liabilities whatsoever, whether known or

unknown or suspected to exist by Class Representatives, which they ever had or may now have against Released Parties, or any of them, arising at any time up to the date of preliminary approval of this Agreement. The claims that Class Representatives, and their heirs, personal representatives, successors, spouses, registered domestic partners, and children, waive above include, but are not limited to, claims under contract law, common and statutory law regarding employee benefits, tort law, defamation law, wrongful discharge law, privacy rights, whistleblower protections, constitutional protections, the California Fair Employment and Housing Act and any similar state law (which may include claims for age, race, color, ancestry, national origin, disability, medical condition, marital status, sexual orientation, gender, gender identity, gender expression, religious creed, genetic information, military and veteran status, reproductive health decision-making, pregnancy, sex discrimination and harassment), the Federal Civil Rights Act of 1964 and 1991, as amended, the Age Discrimination in Employment Act ("ADEA"), the Older Workers' Benefit Protection Act, the Americans With Disabilities Act ("ADA"), the Employee Retirement Income and Securities Act ("ERISA"), the Family and Medical Leave Act ("FMLA"), the California Family Rights Act ("CFRA"), the Equal Pay Act, the National Labor Relations Act ("NLRA"), the Labor Management Relations Act ("LMRA"), the Fair Labor Standards Act ("FLSA"), any and all protections pursuant to any Industrial Welfare Commission Order, and any and all claims pursuant to the California Labor Code, including but not limited to all claims for reimbursement of business expenses under Labor Code section 2802 and, all claims for civil penalties under the Private Attorneys General Act of 2004, with the sole exclusion of any claims for unemployment insurance with the State of California, any claims against Defendant's workers' compensation insurance carrier and any claims that cannot be waived under applicable law.

34. The Class Representatives specifically acknowledge that they are aware of and familiar with the provisions of California Civil Code § 1542, which provides as follows:

> 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.

35. The Class Representatives, being aware of this section, hereby expressly waive and relinquish all rights and benefits they may have under this section as well as any other statutes or common law principles of a similar effect. The Class Representatives may hereafter discover facts in addition to or different from those which they now know or believe to be true, but they stipulate and agree that, upon the Effective Date and the Settlement being fully funded, the Class Representatives shall and hereby do fully, finally and forever settle and release any and all claims against Defendant, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity and without regard to the subsequent discovery or existence of such different or additional facts.

DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL

36. The Parties shall submit this Joint Stipulation of Settlement to the Court in support of Plaintiffs' unopposed motion for preliminary approval for determination by the Court as to its fairness, adequacy, and reasonableness. Upon execution of this Joint Stipulation of Settlement, the Parties shall apply to the Court for the entry of an order:

a. Scheduling a final approval and fairness hearing on the question of whether the proposed Settlement, including payment of attorneys' fees and costs, and the Class Representatives' Service Payments, should be finally approved as fair, reasonable, and adequate as to the Settlement Class;

b. Certifying the Settlement Class for purposes of this Settlement;

c. Approving as to form and content the proposed Notice Packet

d. Approving as to form and content the proposed Request for Exclusion form;

e. Directing the mailing of the Notice Packets and Request for Exclusion; and

f. Preliminarily approving the Settlement subject only to the objections of Settlement Class Members and final review by the Court.

DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL

37. Following final approval by the Court of the Settlement provided for in this Joint Stipulation of Settlement, Class Counsel will submit a proposed judgment and final order:

a. Approving the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;

b. Approving Class Counsel's application for an award of attorneys' fees and costs and administration costs to the Settlement Administrator;

c. Approving the Service Payments to the Class Representatives;

d. Approving the payment of $37,500.00 to the LWDA from the PAGA Amount; and

e. Entering a final judgment in the action.

NULLIFICATION AND TERMINATION

38. This Settlement will be null and void if any of the following occur: (a) the Court should for any reason fail to certify a class for settlement purposes; or (b) the Court should for any reason fail to preliminarily or finally approve of this Settlement in the form agreed to by the Parties, other than adjustments made to the attorneys' fees and costs or granting of Service Payment; (c) the Court should for any reason fail to enter the final judgment; (d) the final judgment is reversed, modified, or declared or rendered void; or (e) the Settlement does not become final for any other reason.

39. If 10% or more of the Settlement Class Members validly and timely request exclusion from this Settlement, then Defendant in its sole discretion may terminate, nullify, and void this Settlement. The Settlement Administrator shall provide Defendant's Counsel with the information necessary to effectuate this provision on a regular basis, but no less frequently than on a monthly basis. To terminate this Settlement under this paragraph, Defendant's Counsel must give Class Counsel and the Settlement Administrator written notice no later than ten (10) business days after the Response Deadline.

40. In the event this Settlement is nullified or terminated as provided above: (i) this Settlement shall be considered null and void, (ii) neither this Settlement nor any of the related negotiations or proceedings shall have any force or effect and no Party shall be bound by any of its terms, and (iii) all Parties to this Settlement shall stand in the same position, without prejudice, as if the Settlement had been neither entered into nor filed with the Court. Plaintiffs are prohibited from opting out of this Settlement.

PARTIES' AUTHORITY

41. The signatories hereto hereby represent that they are fully authorized to enter into this Settlement and bind the Parties hereto to the terms and conditions thereof.

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MUTUAL FULL COOPERATION

42. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement including, but not limited to, execution of such documents and taking such other action as reasonably may be necessary to implement the terms of this Settlement. The Parties to this Settlement shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement and the terms set forth herein. As soon as practicable after execution of this Settlement, Class Counsel shall, with the assistance and cooperation of Defendant and its counsel, take all necessary steps to secure the Court's preliminary and final approval of this Settlement.

CIRCULAR 230 DISCLAIMER

43. Each Party to this Agreement (for purposes of this section, the "Acknowledging Party" and each Party to this Agreement other than the Acknowledging Party, an "Other Party") acknowledges and agrees that:

a. No provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisors, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of U.S. Treasury Dept. Circular 230 (31 C.F.R. Part 10, as amended);

b. The Acknowledging Party (a) has relied exclusively upon his or its own independent legal and tax counsel for advice (including tax advice) in connection with this Agreement; (b) has not entered into this Agreement based upon the recommendation of any Other Party or any attorney or advisor to any Other Party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or advisor to any Other Party to avoid any tax penalty that may be imposed on the Acknowledging Party; and,

c. No attorney or advisor to any Other Party has imposed any limitation that protects the confidentiality of any such attorney's or advisor's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the Acknowledging Party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

NO PRIOR ASSIGNMENTS

44. The Parties and their respective counsel represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein.

NO ADMISSION OF LIABILITY

45. Nothing contained herein, nor the consummation of this Settlement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant. Defendant denies all the claims and contentions alleged by Plaintiffs in this case. Defendant has entered into this Settlement solely with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses.

ENFORCEMENT ACTIONS

46. The Alameda County Superior Court shall maintain jurisdiction over this Settlement pursuant to Cal. Code Civ. Proc. § 664.6. In the event that one or more of the Parties to this Settlement institutes any legal action or other proceeding against any other party or parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful party or parties shall be entitled to recover from the unsuccessful party or parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

CONSTRUCTION

47. The Parties hereto agree that the terms and conditions of this Settlement are the result of lengthy, intensive arm's-length negotiations between the Parties, and this Settlement shall not be construed in favor of or against any party by reason of the extent to which any party or his or its counsel participated in the drafting of this Settlement.

CAPTIONS AND INTERPRETATIONS

48. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision

hereof. Each term of this Settlement is contractual and not merely a recital.

MODIFICATION

49. This Settlement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, or by counsel for the Parties, and approved by the Court. This Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto and/or their counsel.

INTEGRATION CLAUSE

50. This Settlement contains the entire agreement between the Parties relating to the Settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

BINDING ON ASSIGNS

51. This Settlement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

CLASS COUNSEL SIGNATORIES

52. It is agreed that because the members of the Settlement Class are so numerous, it is impossible or impractical to have each member of the Settlement Class execute this Settlement. The Notice Packet, Exhibit "A" hereto, will advise all Settlement Class Members of the binding nature of the release, and the release shall have the same force and effect as if this Settlement were executed by each member of the Settlement Class.

COUNTERPARTS

53. This Settlement may be executed in counterparts and by electronic or facsimile signatures, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement, which shall be binding upon and effective as to all Parties.

PUBLIC COMMENT

54. The Class Representatives and Class Counsel agree they will not make any disparaging comments about Defendant relating to this Settlement of this Action or disclose the negotiations of the

Settlement. The Class Representatives and Class Counsel shall only disclose matters of public record. The Class Representatives and Class Counsel agree they will keep this Settlement confidential until the filing of Plaintiffs' preliminary approval motion. Thereafter, the Parties agree to make no comments to the media or otherwise publicize the terms of the Settlement, other than in court filings. Class Counsel will take all steps necessary to make the Class Representatives aware of the restrictions against any public disclosure of the Settlement.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Class Action Settlement between Plaintiffs and Defendant as set forth below:

IT IS SO STIPULATED.

[*Signature Page Follows*]

Plaintiffs & Class Representatives

DATED: 10/18/2024

DocuSigned by:
F0F7DD14C5BB42A...
TIMOTHY L. DARGAN

DATED:

JILL KAPPLER

Plaintiffs' Counsel

DATED: 10/18/2024

MOON LAW GROUP, PC

By
KANE MOON
Attorneys for Plaintiffs TIMOTHY L. DARGAN and JILL KAPPLER

Defendant

DATED: 10-23-2024

HEAT AND CONTROL, INC.

By
NAME: George R Lotti Jr
TITLE: Chief Financial Officer

Defendant's Counsel

DATED: 10/23/2024

SIMPSON, GARRITY, INNES, & JACUZZI

By Kendall Burton

Attorneys for Defendant

Plaintiffs & Class Representatives

DATED:

TIMOTHY L. DARGAN

DATED: 10/18/2024

Signed by:

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JILL KAPPLER

Plaintiffs' Counsel

DATED: 10/18/2024

MOON LAW GROUP, PC

By

KANE MOON
Attorneys for Plaintiffs TIMOTHY L. DARGAN and JILL KAPPLER

Defendant

DATED:

HEAT AND CONTROL, INC.

By ____________________________

NAME:
TITLE:

Defendant's Counsel

DATED:

SIMPSON, GARRITY, INNES, & JACUZZI

By ____________________________

Attorneys for Defendant