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8 **Attorneys for Plaintiff**
9 **Ramon Lopez, on behalf of**
10 **himself and all others similarly situated**

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

RAMON LOPEZ, on behalf of himself and
all others similarly situated,

Plaintiff,

vs.

NEXGEN AIR CONDITIONING AND
HEATING, LLC, a California Limited
Liability Corporation; and DOES 1 through
100, inclusive,

Defendants

CASE NO.: 30-2022-01295800-CU-OE-CXC

*Assigned for all purposes to Hon. Lon F. Hurwitz,
Dept. CX103*

**DECLARATION OF JOHN F. LITWIN IN
SUPPORT OF PLAINTIFF'S CONTINUED
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

Cont. Hearing Date: October 18, 2024
Time: 1:30 p.m.
Department: CX103

Complaint Filed: December 8, 2022
Trial Date: Not Set

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I am an attorney employed by the Barkhordarian Law Firm, PLC, counsel for Plaintiff Ramon Lopez (“Plaintiff” or “Plaintiff Lopez”) in the above-captioned matter. I am the attorney responsible for the representation of Plaintiff in the above-captioned action. I have personal knowledge of the facts set forth below, and, if called as a witness, I could and would competently testify thereto.

2. In order to fully address the Court's concerns regarding the initial Stipulation of Class Action Settlement in this case, the parties further amended the Settlement Stipulation and Class Action Notice. Attached to this declaration as "**Exhibit 1**" please find a true and correct copy of the Second Amended Joint Stipulation for Class Action and PAGA Settlement and Notice of Class Action Settlement. In order to facilitate the Court's further review, please find the changes to the previous amended settlement stipulation tracked in redline attached as "Exhibit A" to the Declaration of Jeffrey A Brand, attached hereto as "**Exhibit 2.**" Attached as "**Exhibit 3**" please find attached a true and correct copy of the proposed Notice of Class Action Settlement with the changes since the last hearing tracked in redline.

4. As to Issue No. 2 pertaining to high, low, and average Class and PAGA payments: At final approval Plaintiff will provide a declaration from the Settlement Administrator identifying maximum, minimum, and average Class and PAGA settlement payments. Based on the minimum net settlement amount of \$757,548.00, the estimated 849 class members, the average settlement payment is estimated to be approximately \$892.28. Given the 293 weeks in

1 the class period, the estimated minimum payment is projected to be approximately \$18.22, and
2 the estimated maximum payment to be \$5,337.16.

3 5. Given the presently-estimated 684 PAGA group members, and the anticipated 68
4 pay period PAGA Period from December 9, 2021 through March 8, 2024, and the presently-
5 estimated 684 PAGA Group Members and 14,217 PAGA pay periods, the average PAGA
6 payment is estimated to be \$51.17. The minimum payment is estimated to be \$2.46. The highest
7 payment is estimated to be \$167.40.

8 6. AS to Issue no. 3 pertaining to Plaintiff Lopez' general release: Please see **Exhibit**
9 **2, ¶¶ 5-6.**

10 7. As to Issue No. 7 pertaining to providing a means for class members to dispute
11 their workweek count: the parties have added additional language to ¶ 48 of the agreement to
12 bring the section in line with the paragraphs relating to the mechanism to object to or exclude
13 oneself from the agreement. (See **Exhibit 1 ¶ 48, Exhibit A to Exhibit 2**). The parties have also
14 added analogous language to the proposed notice further clarifying the means by which Class and
15 PAGA Group members may dispute their workweek count.

16 8. As to Issue No. 8 pertaining to any fee-splitting arrangement: I affirm and aver that
17 there is no fee-splitting arrangement in this matter.

18 9. As to Issue No. 9 pertaining to invoices and details of costs: I affirm that at final
19 approval Plaintiff's Counsel will provide detailed fees summaries and costs invoices.

20 10. As to Issue No. 12 pertaining to other pending matters against Defendant: Each
21 party has conducted a search and affirm that they are aware of no other cases involving
22 Defendant, and believe there are none.

23 11. As to Issue Nos. 17 and 18 pertaining to the methods for submissions of opt-outs,
24 objections, and workweek disputes: The settlement stipulation and notice have been amended for
25 consistency. The documents are now clear that all opt-outs, objections, and workweek disputes
26 may be submitted via mail or fax, and that untimely opt-outs or workweek disputes will be
27 rejected. (See **Exhibit 3, ¶ 9**).

28 12. Finally, as to Issue No. 22: The separately-filed second amended

1 proposed order has been amended to reflect the correct ROA.

2
3 I declare under penalty of perjury under the laws of the State of California that the
4 foregoing is true and correct. Executed this on October 3, 2024, at Pleasant Hill, California.

5
6 */s/ John F. Litwin*

7 _____
8 John F. Litwin, Attorney for
9 Plaintiff Ramon Lopez
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EXHIBIT 1

JOHN F. LITWIN (SBN: 301611)
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Attorneys for Defendant
NEXGEN AIR CONDITIONING AND HEATING, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE CIVIL COMPLEX CENTER

RAMON LOPEZ, on behalf of himself and
all others similarly situated,

Plaintiff,

vs.

NEXGEN AIR CONDITIONING AND
HEATING, LLC, a California Limited
Liability Corporation; and DOES 1 through
100, inclusive,

Defendant.

CASE NO.: 30-2022-01295800-CU-OE-CXC

*Assigned for all purposes to Hon. Lon F. Hurwitz,
Dept. CX103*

**SECOND AMENDED JOINT STIPULATION
FOR CLASS ACTION AND PAGA
SETTLEMENT**

Complaint filed: December 8, 2022
FAC Filed: March 3, 2023
Trial Date: *Not yet set*

1 **TO THE HONORABLE COURT:**

2 This Joint Stipulation for Class Action Settlement (“Settlement Agreement”) is made and
3 entered into by and between Plaintiff RAMON LOPEZ (“Plaintiff”) individually and on behalf of
4 all others similarly situated, and Defendant NEXGEN AIR CONDITIONING AND HEATING,
5 LLC (“Defendant”) (collectively, Defendant and Plaintiff will be referred to as the “Parties”), and
6 is subject to the terms and conditions below, and to the Court’s approval. The Parties expressly
7 acknowledge that this Settlement Agreement is entered into solely for the purpose of compromising
8 significantly disputed claims and that nothing in this Settlement Agreement is an admission of
9 liability or wrongdoing by Defendant. If for any reason the Settlement Agreement is not approved,
10 it will be of no force or effect, and the Parties will be returned to their respective positions
11 immediately prior to and as if they had never executed this Settlement Agreement as more fully set
12 forth below.

13 **DEFINITIONS**

14 The following definitions are applicable to this Settlement Agreement. Definitions contained
15 elsewhere in this Settlement Agreement will also be effective:

16 1. The “Action” means *Ramon Lopez v. NexGen Air Conditioning and Heating, LLC,*
17 *et al.*, Orange County Superior Court Case No. 30-2022-01295800-CU-OE-CXC. Plaintiff’s First
18 Amended Complaint alleges the following causes of action: (1) failure to pay minimum wages; (2)
19 failure to pay overtime wages; (3) failure to provide accurate itemized wage statements; (4) failure
20 to provide meal periods; (5) failure to provide rest breaks; (6) waiting time penalties; (7) failure to
21 maintain records; (8) failure to reimburse business expenses; (9) unfair business practices; and (10)
22 violation of Labor Code Sections 2698-2699. (“Operative Complaint”)

23 2. “Claims Administrator” means CPT Group, Inc. The Parties each represent that they
24 do not have any financial interest in the Claims Administrator or otherwise have a relationship with
25 the Claims Administrator that could create a conflict of interest.

26 3. “Claims Administration Expenses” means the costs payable to the Claims
27 Administrator for administering this Settlement, including, but not limited to, printing, translating
28 into Spanish, conducting a National Change of Address (“NCOA”) search, distributing (including

1 with appropriate postage), and tracking documents for this Settlement in English and Spanish, any
2 searches to locate any Class Members, tax reporting, distributing the Individual Settlement
3 Payments, Class Representatives Enhancement Payment, Class Counsel Fees and Costs, and
4 providing necessary certification of completion of notice, reports and declarations, establishing and
5 administering a qualified settlement fund account and other responsibilities set forth in this
6 Settlement Agreement and as requested by the Parties. The Claims Administration Expenses are
7 currently estimated to be not more than \$20,000.00.

8 4. "Class Counsel" means Gregory P. Wong, Esq., Heather K. Cox, and John F. Litwin
9 of the Barkhordarian Law Firm, PLC.

10 5. "Class Counsel Fees and Costs" means attorneys' fees, costs, and expenses approved
11 by the Court for Class Counsel's litigation and resolution of the Action and all costs incurred and
12 to be incurred by Class Counsel in the Action, including, but not limited to, costs associated with
13 documenting the Settlement, providing any notices required as part of the Settlement or Court
14 Order, securing the Court's approval of the Settlement, and administering the Settlement. Class
15 Counsel will request attorneys' fees not to exceed Four Hundred Seventy-One Thousand Two
16 Hundred Seventy-Four dollars (\$471,274.00) representing one-third (1/3) of the Gross Settlement
17 Amount and Defendant agrees not to oppose a reasonable Attorneys' Expenses in an amount not to
18 exceed \$15,000.00. Defendant agrees not to oppose Class Counsel's request for Class Counsel Fees
19 and Costs. There is no fee-splitting agreement. Class Counsel shall submit all invoices in
20 connection with its requests for cost reimbursement at Final Approval.

21 6. "Class List" means a complete list of all Class Members that Defendant will
22 diligently and in good faith compile from their records, and provide on a confidential basis to the
23 Claims Administrator within twenty-one (21) calendar days after the Court's entry of an order
24 granting preliminary approval of this Settlement. The Class List will be formatted in Microsoft
25 Office Excel and Defendant will use their best efforts to include each Class Member's full name;
26 most recent mailing address; dates of employment or number of workweeks worked during the
27 Class Period; and Social Security number.

28 7. "Class Member(s)" or "Settlement Class" means Plaintiff and all current and former

1 hourly non-exempt employees who worked for Defendant in the State of California during the Class
2 Period.

3 8. "Class Period" means the period from December 8, 2018, through the March 8,
4 2024.

5 9. "Class Representative Enhancement Payment" means the amount to be paid from
6 the Gross Settlement Amount to the named Plaintiff in exchange for executing a general release
7 and in recognition of his efforts in prosecuting the Action on behalf of Class Members. Plaintiff
8 will request and Defendant will not oppose Plaintiff's application to the Court for a payment of Ten
9 Thousand Dollars (\$10,000) for his willingness to serve as Class Representative and time spent
10 assisting Class Counsel in that capacity.

11 10. "Court" means the Orange County Superior Court, or any other court taking
12 jurisdiction of the Action.

13 11. "Effective Date" means the date when the Final Approval Order becomes final. For
14 purposes of this Paragraph, the Final Approval Order "becomes final" upon the last to occur of the
15 following: (a) if there are no objections to the Settlement, the date the Court enters an order granting
16 final approval of the Settlement; (b) if there are objections to the Settlement, and if an appeal,
17 review, or writ is not sought from the Final Approval Order, the day after the time period to appeal
18 the Settlement has expired, i.e., 60 days from the date the Court enters an order granting final
19 approval of the Settlement; or (c) if there are objections to the Settlement, and an appeal, review,
20 or writ is timely sought from the Final Approval Order, the day after the Final Approval Order is
21 affirmed or the appeal, review, or writ is dismissed or denied, and the Final Approval Order is no
22 longer subject to further judicial review.

23 12. "Gross Settlement Amount" means the maximum settlement amount of One Million
24 Four Hundred Thirteen Thousand Eight Hundred and Twenty-Two Dollars (\$1,413,822.00)
25 ("Gross Settlement Amount"), which has been and/or will be paid by Defendant in full satisfaction
26 of all claims arising from the Action. The Gross Settlement Amount includes all Individual
27 Settlement Payments to Participating Class Members, the Class Representative Enhancement
28 Payments, Claims Administration Expenses, Class Counsel Fees and Cost, and PAGA penalties in

1 the amount of One Hundred Forty Thousand Dollars (\$140,000) of which 75% or One Hundred
2 Five Thousand Dollars (\$105,000) will be paid to the Labor Workforce Development Agency
3 (“LWDA”) and 25% or Thirty Five Thousand Dollars (\$35,000) to the PAGA Group Members.
4 Defendant will pay the employer's share of payroll taxes, as applicable, in addition to the Gross
5 Settlement Amount.

6 13. “Individual Settlement Payment” means each Participating Class Member’s
7 respective share of the Net Settlement Amount. Individual Settlement Payments will be determined
8 by the calculations provided in this Agreement.

9 14. “Net Settlement Amount” means the maximum amount available for distribution to
10 the Class Members, after deduction of Class Counsel Fees and Costs, Class Representative
11 Enhancement Payment, Claims Administration Expenses, and \$140,000.00 as PAGA penalties
12 from the Gross Settlement Amount.

13 15. “Notice of Objection” means a Class Member’s valid and timely written objection
14 to the Settlement Agreement. For the objection to be valid, it must include: (i) the objector’s full
15 name, signature, address, and telephone number; and (ii) a written statement of all grounds for the
16 objection accompanied by any legal support for such objection. Further, an objector may appear at
17 the Final Approval hearing, either in person or through counsel, at his or her expense, regardless of
18 whether the objector submitted a Notice of Objection. The Parties will be permitted to respond in
19 writing to such objections at least seven calendar days prior to the Final Approval hearing or within
20 the time period set by the Court. Objections are only valid as to the Net Settlement Amount. All
21 PAGA Group Members (defined below) will receive a pro rata portion of the PAGA Settlement
22 Amount (defined below) and will be bound by the Released PAGA Claims (defined below).

23 16. “Notice” means the Notice of Class Action Settlement, substantially in the form
24 attached as Exhibit A.

25 17. “PAGA” means the California Private Attorneys General Act of 2004, which is
26 codified in California Labor Code §2698, et seq.

27 18. “PAGA Group Member(s)” means Plaintiff and all current and former hourly non-
28 exempt employees of Defendant who worked within California at any time during the PAGA

1 Period.

2 19. "PAGA Period" means the period from December 9, 2021, through March 8, 2024.

3 20. "PAGA Settlement Amount" means the portion of the Gross Settlement Amount
4 allocated to the resolution of Class Members' claims arising under PAGA. The Parties have agreed
5 that the PAGA Settlement Amount is One Hundred Forty Thousand Dollars (\$140,000), subject to
6 Court approval. Of the PAGA Settlement Amount, 75% or One Hundred Five Thousand Dollars
7 (\$105,000) will be paid to the LWDA and the remaining 25% or Thirty-Five Thousand Dollars
8 (\$35,000) will be distributed to PAGA Group Members regardless of whether they are a
9 Participating Class Member or not.

10 21. "Individual PAGA Payment" means each PAGA Group Member's respective share
11 of the PAGA Settlement Amount. Individual PAGA Payments will be determined by the
12 calculations provided in this Agreement.

13 22. "Participating Class Members" means all Class Members who do not submit valid
14 Requests for Exclusion.

15 23. "Preliminary Approval" means the Court order granting preliminary approval of the
16 Settlement Agreement.

17 24. "PAGA Notice" means the letter Plaintiff sent to the LWDA on December 9, 2022
18 to inform the agency of Defendant's alleged Labor Code Violations.

19 25. "Released PAGA Claims" means any and all claims for civil penalties under PAGA
20 based on the labor code and IWC Wage Order violations alleged in each and every Notice sent by
21 Plaintiff to the LWDA; those being California Labor Code sections 201, 202, 203, 204, 226, 226.3,
22 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198 and 2802, the applicable industrial wage
23 orders, Unfair Business Practices (Business & Professions Code Section 17200 *et seq.*) as well as
24 all facts, theories, or claims for civil penalties that would be considered administratively exhausted
25 under applicable law by the PAGA Notice Plaintiff sent to the LWDA. PAGA Group Members,
26 regardless of whether they submit timely and valid Requests for Exclusion from the Settlement
27 Class, will release all claims under PAGA that could have been premised on the claims, causes of
28 action or legal theories described in the Operative Complaint during the PAGA Period, or, in the

1 alternative, all facts, theories, or claims for civil penalties that would be considered administratively
2 exhausted under applicable law by the PAGA Notice(s) Plaintiff sent to the LWDA. The State of
3 California and the LWDA will also release all claims under PAGA that could have been premised
4 on the claims, causes of action or legal theories described in the Operative Complaint, or, in the
5 alternative, as well as all facts, theories, or claims for civil penalties that would be considered
6 administratively exhausted under applicable law by the PAGA Notice(s) Plaintiff sent to the
7 LWDA.

8 26. “Released Claims” means any and all claims based on the facts alleged in the
9 Operative Complaint (“Complaint”), including claims under the PAGA as identified in Plaintiff’s
10 PAGA Notice and Labor Code sections 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 558, 1174,
11 1194, 1197, 1197.1, 1198 and 2802, and Unfair Business Practices (Business & Professions Code
12 Section 17200 *et seq.*). No other claims are released other than those claims specifically plead in
13 the operative Complaint and the PAGA Notice (except as otherwise specifically described in this
14 Agreement). These Released Claims will cover all Class Members who do not opt out. The Parties
15 agree that the judgment, and the Released Class Claims provided herein, shall have res judicata
16 effect.

17 27. “Defendant” means Defendant NexGen Air Conditioning and Heating, LLC, a
18 California Limited Liability Corporation.

19 28. “Released Parties” means Defendant and any of its parents, subsidiaries, affiliates,
20 including but not limited to Wrench Group, LLC, and all the foregoing’s owners, officers, directors,
21 employees, partners, shareholders and agents, and any other successors, assigns, or legal
22 representatives.

23 29. “Request for Exclusion” means a timely letter submitted by a Class Member
24 indicating a request to be excluded from the Settlement. The Request for Exclusion must: (a) set
25 forth the name, address, telephone number and last four digits of the Social Security Number of the
26 Class Member requesting exclusion; (b) be signed by the Class Member; (c) be returned by mail or
27 fax to the Claims Administrator at the specified address or fax number indicated in the Notice; (d)
28 clearly state that the Class Member does not wish to be included in the Settlement; and (e) be faxed

1 or postmarked on or before the Response Deadline.

2 30. "Response Deadline" means the deadline by which Class Members must fax or
3 postmark to the Claims Administrator a valid Request for Exclusion, submit objections to the
4 Settlement or dispute workweeks. The Response Deadline will be forty-five (45) calendar days
5 from the initial mailing of the Notice by the Claims Administrator. The Response Deadline for
6 Request for Exclusion, objection or dispute workweeks will be extended forty-five (45) calendar
7 days for any Class Member who is re-mailed a Notice by the Claims Administrator in accordance
8 with the notice procedure described in Paragraph 45 of this Settlement Agreement. The Response
9 Deadline may also be extended by express agreement between Class Counsel and Defendant's
10 counsel. The Court shall have final say over the validity of opt out requests.

11 **TERMS OF AGREEMENT**

12 Plaintiff, on behalf of himself and the Settlement Class, and Defendant agree as follows:

13 31. Impact of Any Court Determination Not to Enter Final Approval Order. In the event
14 that the Court does not enter a Final Approval Order and this Settlement Agreement does not
15 become effective, the following will occur: (a) on the date final approval is denied, the status of the
16 Action will be deemed to return to its status at the time immediately prior to and as if the Parties
17 had never executed this Settlement Agreement; and (b) the Parties will each pay fifty percent (50%)
18 of any costs incurred by the Claims Administrator.

19 32. Settlement Funding. Within fourteen (14) calendar days of the Final Approval Order
20 becoming final, as explained in Paragraph 11, Defendant will transmit the entire Gross Settlement
21 Amount along with the employer's share of the payroll taxes (which shall be paid in addition to the
22 Gross Settlement Amount) to the Claims Administrator.

23 33. Class Counsel Fees and Costs. Defendant agrees not to oppose or impede any
24 application or motion by Class Counsel for Class Counsel Fees in the amount of up to Four Hundred
25 Seventy-One Thousand Two Hundred Seventy-Four dollars (\$471,274.00) representing one-third
26 (1/3) of the Gross Settlement Amount. Defendant also agrees not to oppose or impede any
27 application by Class Counsel for the reimbursement of the actual costs and expenses associated
28 with Class Counsel's litigation and settlement of the Action not to exceed Fifteen Thousand Dollars

1 (\$15,000.00). In consideration of their awarded attorneys' fees and costs and expenses, Plaintiff
2 and Class Counsel waive any and all claims to any further attorneys' fees and expenses in
3 connection with the Action.

4 34. Class Representative Enhancement Payment. In exchange for named Plaintiff
5 executing a general release, and in recognition of his effort in prosecuting the Action, Defendant
6 agrees not to oppose or impede any application or motion for a Class Representative Enhancement
7 Payment of up to Ten Thousand Dollars (\$10,000) to Plaintiff. The Class Representative
8 Enhancement Payment, which will be paid from the Gross Settlement Amount, will be in addition
9 to Plaintiff's Individual Settlement Payment paid pursuant to the Settlement. The Claims
10 Administrator will pay the Class Representative Enhancement Payment using IRS Form 1099.
11 Plaintiff will be solely and legally responsible to pay any and all applicable taxes, penalties and
12 interest on the payment made pursuant to this paragraph and will hold Defendant harmless from
13 any claim or liability for taxes, penalties, or interest arising as a result of the payment. At Final
14 Approval, Class Counsel and Plaintiff will submit a detailed declaration in support of the requested
15 Class Representative Enhancement Payment.

16 35. Claims Administration Expenses. The Claims Administrator will be paid for the
17 reasonable fees and costs of administration of the Settlement, which are estimated not to exceed
18 Twenty Thousand Dollars and Zero Cents (\$20,000.00). These will include, inter alia, fees and
19 costs payable to the Claims Administrator for printing, translating into Spanish (or other first-
20 languages of Class Members, if necessary), distributing (including with appropriate postage), and
21 tracking documents for this Settlement in English and Spanish, any searches to locate any Class
22 Members, calculating estimated Individual Settlement Payments, calculating estimated Individual
23 PAGA Payments, tax reporting, distributing the Individual Settlement Payments, distributing
24 Individual PAGA Payments, Class Representative Enhancement Payment, Class Counsel Fees and
25 Costs, payment to LWDA for PAGA penalties, and providing necessary certification of completion
26 of notice, reports and declarations, establishing and administering a Qualified Settlement Fund
27 account, required tax reporting on the Individual Settlement Payments, the issuing of 1099 and W-
28 2 IRS forms, calculating the employers' share of payroll taxes on the wage portion of the Individual

1 Settlement Payments and coordinating related reporting, and other responsibilities as requested by
2 the Parties. The Claims Administration Expenses will be paid from the Gross Settlement Amount.

3 36. Net Settlement Amount. The Net Settlement Amount will be used to satisfy
4 Individual Settlement Payments to Participating Class Members from the Settlement Class.

5 Individual Class Settlement Payment Calculations. Based on a review of its records through
6 mediation (January 17, 2024), Defendant estimates there are 849 class members who collectively
7 worked a total of 41,583 workweeks, and 578 PAGA Group Members who worked a total of 14,217
8 pay periods during the PAGA Period. Defendant will provide the Claims Administrator with the
9 total number of workweeks for each Participating Class Member and PAGA Group Member. The
10 Claims Administrator will divide the Net Settlement Amount by the total number of workweeks for
11 Participating Class Members ("Work Week Rate Amount") and then multiply this amount by each
12 Participating Class Member's total number of workweeks to yield that employee's Individual Class
13 Settlement Payment. Any one day worked during a Workweek will be credited as a full workweek.
14 Based on the minimum net settlement amount of \$757,548.00, the estimated 849 class members,
15 the average settlement payment is estimated to be approximately \$892.28. Given the 293 weeks in
16 the class period, the estimated minimum payment is projected to be approximately \$18.22, and the
17 estimated maximum payment to be \$5,337.16. In the event a Class Member submits a timely
18 Request for Exclusion from the settlement, he/she will not receive his or her individual settlement
19 allocated to Class Members and his/her share of the settlement will be added to the Net Settlement
20 Amount.

21 37. Individual PAGA Settlement Payment Calculations. Each PAGA Group Member
22 will receive an individual share of the \$35,000.00 portion of the PAGA Settlement Amount (or 25%
23 of the PAGA Settlement Amount approved by the Court). The Individual PAGA Settlement
24 Payment shall be calculated by the Claims Administrator, with a formula similar to payments to
25 Participating Class Members. Any one day worked during a Workweek will be credited as a full
26 workweek. No PAGA Group Member will be permitted to exclude themselves from the PAGA
27 claim portion of the Settlement. Individual PAGA Settlement Payments will be distributed by the
28 Claims Administrator by mail to the PAGA Group Members including to those Class Members

1 who submitted a request for exclusion. Given the presently-estimated 578 PAGA group members,
2 14,217 pay periods as of the time of mediation, and the anticipated 68 pay period PAGA Period
3 from December 9, 2021 through March 8, 2024, the average PAGA payment is estimated to be
4 \$42.78. The minimum payment is estimated to be \$2.46. The highest payment is estimated to be
5 \$167.40.

6 38. Participating Class Members and PAGA Group Members. Individuals who are both
7 Participating Class Members and PAGA Group Members shall receive both the Individual Class
8 Settlement Payment and the Individual PAGA Settlement Payment. No Class Member or PAGA
9 Group Member will be permitted to exclude themselves from the PAGA claim portion of the
10 Settlement.

11 39. No Credit Toward Benefit Plans. All Individual Class and/or PAGA Settlement
12 Payments to Class Members shall be deemed to be income to such Class Members solely in the
13 year in which such payments actually are received by the Class Members. It is expressly understood
14 and agreed that the receipt of such Individual Class and/or PAGA Settlement Payments will not
15 entitle any Class Member to additional compensation or benefits under any company bonus, paid
16 time off (including vacation and sick leave), or other compensation or benefit plan or agreement in
17 place during the period covered by the Settlement, nor will it entitle any Class Member to any
18 increased retirement, 401(k) benefits or matching benefits, or deferred compensation benefits. It is
19 the intent of this Settlement Agreement that the Individual Class and/or PAGA Settlement Payments
20 provided for in this Agreement are the sole payments to be made by Defendant to the Class
21 Members in connection with this Settlement Agreement, and that the Class Members are not entitled
22 to any new or additional compensation or benefits as a result of having received the Individual Class
23 and/or PAGA Settlement Payments (notwithstanding any contrary language or agreement in any
24 benefit or compensation plan document that might have been in effect during the period covered by
25 this Settlement).

26 40. Claims Administration Process. The Parties agree to cooperate in the administration
27 of the settlement and to make all reasonable efforts to control and minimize the costs and expenses
28 incurred in administration of the Settlement.

1 41. Delivery of the Class List. Within twenty-one (21) calendar days of Preliminary
2 Approval, Defendant will provide the Class List to the Claims Administrator.

3 42. Notice by First-Class U.S. Mail. Within ten (10) calendar days after receiving the
4 Class List from Defendant, the Claims Administrator will mail the Notice to all Class Members via
5 regular First-Class U.S. Mail.

6 43. Confirmation of Contact Information in the Class List. Prior to mailing, the Claims
7 Administrator will perform a search based on the National Change of Address Database for
8 information to update and correct for any known or identifiable address changes. Any Notice
9 returned to the Claims Administrator as non-deliverable on or before the Response Deadline will
10 be sent promptly via regular First-Class U.S. Mail to the forwarding address, and the Claims
11 Administrator will indicate the date of such re-mailing on the Notice. If no forwarding address is
12 provided, the Claims Administrator will promptly attempt to determine the correct address using a
13 skip-trace, or other search using the name, address and/or Social Security number of the Class
14 Member involved, and will then perform a single re-mailing. Those Class Members who receive a
15 re-mailed Notice will have forty-five (45) calendar days to fax or postmark a Request for
16 Exclusion, submit an objection to the Settlement or dispute workweeks.

17 44. Notice. All Class Members will be mailed the Notice. The Notice will be also
18 translated and provided in Spanish. The Notice will provide: (1) information regarding the nature
19 of the Action, (2) a summary of the Settlement's principal terms, (3) the Settlement Class definition,
20 (4) each Class Member's number of workweeks worked during the Class Period, (5) each Class
21 Member's estimated Individual Class Settlement Payment; (6) each PAGA Group Member's
22 estimated Individual PAGA Settlement Payment; (7) the dates which comprise the Class Period,
23 (8) instructions on how to submit valid Requests for Exclusion, objections or dispute workweeks,
24 (9) the deadlines by which the Class Member must fax or postmark Request for Exclusions, submit
25 objections to the Settlement or dispute workweeks, and (10) the claims to be released, as set forth
26 in this Settlement Agreement, (11) the Court's updated social distancing rules in effect, (12) where
27 Class Members may obtain additional information, including any changes to the date and location
28 of court hearings, the Order Granting Final Approval of Class Action Settlement and Entering

1 Judgment following the Final Approval Hearing (i.e., the Court's website or posted on the
2 Settlement Administrator's website). The Claims Administrator shall also post a copy of the Notice
3 attached as Exhibit A, or any updated Notice as required by the Court, and the Motion for
4 Preliminary Approval and Final Approval hearing dates, locations, and times and the final judgment
5 on its website. The Settlement Administrator will post copies of the preliminary approval and final
6 approval motions, Orders for preliminary and final approval, and the Settlement Agreement on its
7 website. Upon the entry of a Final Judgment, the Settlement Administrator will post the Final
8 Judgment on its website, where it shall remain viewable for not less than 60 days.

9 45. Request for Exclusion Procedures. Any Class Member wishing to opt out from the
10 class action portion of the Settlement Agreement must sign and fax or postmark a written Request
11 for Exclusion to the Claims Administrator within the Response Deadline. The date of the fax or
12 postmark on the return mailing envelope will be the exclusive means to determine whether a
13 Request for Exclusion has been timely submitted. The Parties to this Agreement and their counsel
14 agree that they will not solicit or encourage Class Members to opt-out or object to this Settlement
15 Agreement. If the Court approves the compromise of the PAGA claim, all PAGA Group Members
16 are bound by the Court's resolution of that claim. Class Members who are also PAGA Group
17 Members submitting a request for exclusion will nevertheless receive their pro-rata share of the
18 25% of the PAGA Settlement Amount (i.e., their Individual PAGA Settlement Payments) allocated
19 for PAGA penalties to PAGA Group Members. In the event that 10% or more Class Members opt
20 out of the settlement, Defendant has the right (but not the obligation) to void the settlement. The
21 Settlement Administrator will submit all requests for exclusions, objections, and workweek
22 calculation disputes to Class Counsel and Defense Counsel. Class Counsel will provide all requests
23 for exclusions, objections, and workweek calculation disputes at the time of filing of the Final
24 Approval Motion to the Court. The Court will have final say over the validity of all requests for
25 exclusions, objections, and workweek calculation disputes.

26 46. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class
27 Member who does not affirmatively opt out of the Settlement Agreement by submitting a timely
28 and valid Request for Exclusion will be bound by all of its terms, including those pertaining to the

1 Released Claims (other than as it applies to the PAGA claims with respect to the PAGA Group
2 Members), as well as any Judgment that may be entered by the Court if it grants final approval to
3 the Settlement. If the Court approves the compromise of the PAGA claim, Class Members who are
4 also PAGA Group Members submitting a request for exclusion, if any, will nevertheless be bound
5 by the Court's resolution of that claim and receive their pro-rata share of the 25% of the PAGA
6 Payment allocated to the PAGA Group Members.

7 47. Objection Procedures. To object to the Settlement Agreement, a Class Member may
8 submit a Request for Exclusion and may mail a valid Notice of Objection to the Claims
9 Administrator by the Response Deadline. The Claims Administrator will notify counsel for the
10 Parties forthwith via email. Class Counsel will lodge the objection with the Court. The Notice of
11 Objection must be signed by the Class Member and contain all information required by this
12 Settlement Agreement. The postmark date of the mailing will be deemed the exclusive means for
13 determining that the Notice of Objection is timely. Class Members who wish to object will have a
14 right to appear at the Final Approval Hearing, with or without counsel at his/her own expense, in
15 order to have their objections heard by the Court, regardless of whether they submitted a Notice of
16 Objection. At no time will any of the Parties or their counsel seek to solicit or otherwise encourage
17 Class Members to submit written objections to the Settlement Agreement or appeal from the Final
18 Approval Order and Judgment.

19 48. To challenge the number of Workweeks/Pay Periods listed on the Class Notice, a
20 Class Member may submit a written letter to the Class Administrator via fax or mail by the
21 Response Deadline. If a Class Member timely disputes the number of Workweeks listed on the
22 Class Notice, the Parties' counsel will make a good faith effort to resolve the dispute cooperatively.
23 If counsel for the Parties cannot agree, the dispute shall be submitted to the Settlement
24 Administrator, who shall examine the records and either verify the calculation or provide a
25 corrected calculation. If a Class Member disputes the number of Workweeks, it will be the Class
26 Member's responsibility to supply information confirming the error in the calculation or
27 Defendant's records. In any event, the Settlement Administrator will make every effort to resolve
28 any such disputes prior to final approval of this Settlement Agreement. Plaintiffs shall file with the

1 Court all disputes submitted by the Class Members, and all evidence provided by class members in
2 connection with any dispute, and the findings of the Settlement Administrator. The Court shall
3 have final authority to resolve any dispute by a Class Member.

4 49. Certification Reports Regarding Individual Settlement Payment Calculations. The
5 Claims Administrator will provide Defendant's counsel and Class Counsel a weekly report which
6 certifies: (i) the number of Class Members who have submitted a valid Request for Exclusion; (ii)
7 the number of Class Members who have submitted a valid Notice of Objection; and (iii) the number
8 of any deficient Requests for Exclusion or objections. Additionally, the Claims Administrator will
9 provide to counsel for both Parties any updated reports regarding the administration of the
10 Settlement Agreement as needed or requested. If requested by Plaintiff's counsel or the Court, the
11 Claims Administrator shall also provide a declaration attesting to the services to be provided
12 pursuant to this Settlement Agreement and/or the results of the mailing of the Notice.

13 50. Timing of Distribution of Payments. Within five (5) business days of Defendant
14 depositing the payment as set forth above, the Claims Administrator will issue payments to (1)
15 Participating Class Members and PAGA Group Members; (2) Plaintiff; (3) Class Counsel; and (4)
16 payment to LWDA. The Claims Administrator will also issue a payment to itself for Court-
17 approved services performed in connection with the settlement.

18 51. Uncashed or Undeliverable Settlement Checks. Individual Settlement Payments and
19 Individual PAGA Payments paid to participating Class Members will be valid for 180 days.
20 Participating Class Members will have one hundred eighty (180) calendar days from the date of
21 issuance of the check to cash their check. For any Class Member whose Individual Settlement
22 Payment and/or Individual PAGA Payment is uncashed and cancelled after the void date, the
23 Claims Administrator will send the amount represented by the check to the California State
24 Controller's Office Unclaimed Property Fund, with the identity of the Participating Class Member
25 to whom the funds belong, to be held for the participating Class Member per California Unclaimed
26 Property Law, in the interest of justice. The money paid to the California State Controller's Office
27 Unclaimed Property Fund will remain the Participating Class Member's property. This will allow
28 Participating Class Members who did not cash their checks to collect their Individual Settlement

1 Amounts at any time in the future. Therefore, there will be no unpaid residue or unclaimed or
2 abandoned class member funds, and California Code of Civil Procedure section 384 shall not apply.
3 The funds will be held by the State until claimed by the employee and the uncashed check never
4 ceases to be the employee's property.

5 52. Increase in Workweeks. In the event that the total number of weeks worked in the
6 Class Period (defined as December 8, 2018, though March 8, 2024) is 5% or more greater (Escalator
7 Threshold") than the 41,583 weeks worked estimated at the time of mediation (i.e. 43,662 or more),
8 then the Gross Settlement Amount shall be increased proportionately for each additional week
9 worked over the Escalator Threshold.

10 53. Certification of Completion. Upon completion of administration of the Settlement,
11 the Claims Administrator will provide a written declaration under oath to certify such completion
12 to the Court and counsel for all Parties.

13 54. Treatment of Individual Settlement Payments. All Individual Settlement Payments
14 will be allocated as follows: one-third of each Individual Settlement Payment will be considered
15 wages; one-third shall be allocated to penalties; and one-third shall be allocated to interest. The
16 portion allocated to wages in each Individual Settlement Payment will be reported on an IRS Form
17 W-2 and the portion allocated to interest and penalties will be reported on an IRS Form-1099 by
18 the Claims Administrator.

19 55. Treatment of Individual PAGA Payments. 100% of each PAGA Group Members'
20 pro-rata share of the \$35,000 allocated for PAGA penalties shall be allocated as penalties and
21 reported on an IRS Form-1099 by the Claims Administrator.

22 56. Administration of Taxes by the Claims Administrator. The Claims Administrator
23 will be responsible for issuing to Plaintiff, Participating Class Members, PAGA Group Members,
24 Class Counsel, and Defendant any W-2, 1099, or other tax forms as may be required by law for all
25 amounts paid pursuant to this Settlement Agreement. The Claims Administrator will also be
26 responsible for forwarding all payroll taxes and other legally required withholdings, and related
27 reporting, to the appropriate government authorities.

28 57. Defendant's Responsibility for Employer Taxes: For any portion of the Class

1 Members' Individual Settlement Payments that are designated as "wages" for purposes of tax
2 reporting, the employer's taxes, employer contributions of all federal, state, and local taxes
3 (including, but not limited to, FICA, FUTA, and SDI), will be paid in addition to the Gross
4 Settlement Amount, via and with the Claims Administrator's assistance.

5 58. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
6 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY
7 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER
8 PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
9 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
10 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS
11 INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE
12 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE
13 MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR
14 PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
15 EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX
16 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
17 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
18 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO
19 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
20 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
21 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
22 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
23 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF
24 ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF
25 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
26 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
27 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
28 AGREEMENT.

1 59. No Prior Assignments. The Parties and their counsel represent, covenant, and
2 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to
3 assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand,
4 action, cause of action or right released and discharged in this Settlement Agreement.

5 60. Release of Claims by Class Members. Upon the date the Court enters an order
6 granting final approval of the Settlement and Defendant fully funds the Gross Settlement Amount,
7 all Class Members who do not timely submit a valid Request for Exclusion do and will be deemed
8 to have fully, finally and forever released, settled, compromised, relinquished, waived, and
9 discharged any and all of the Released Parties of and from any and all Released Claims accruing
10 during the Class Period. In addition, on the date the Court enters an order granting final approval
11 of the Settlement and Defendant fully funds the Gross Settlement Amount, all Class Members who
12 do not timely submit a valid Request for Exclusion and all successors in interest will be barred from
13 prosecuting or participating in any and all Released Claims against the Released Parties.
14 Furthermore, upon the date the Court enters an order granting final approval of the Settlement and
15 Defendant fully funds the Gross Settlement Amount, the State of California and PAGA Group
16 Members (regardless of whether PAGA Group Members opt out of the Class Settlement) release
17 the Released Parties from the Released PAGA Claims regardless of whether they submitted timely
18 and/or valid Requests for Exclusion.

19 61. Release by PAGA Group Members. Upon the date the Court enters an order granting
20 final approval of the Settlement, all Aggrieved Employees (regardless of whether they are
21 Participating Class Members or Non-Participating Class Members) are deemed to have fully, finally
22 and forever released, settled, compromised, relinquished, waived, and discharged on behalf of
23 themselves and their respective former and present representatives, agents, attorneys, heirs,
24 administrators, successors and assigns, the Released Parties, any and all claims for civil penalties
25 under PAGA based on the labor code and IWC Wage Order violations alleged in each and every
26 Notice sent by Plaintiff to the LWDA; those being California Labor Code sections 201, 202, 203,
27 204, 226, 226.3, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198 and 2802, and the applicable
28 industrial wage orders, Unfair Business Practices (Business & Professions Code Section 17200 et

1 seq.) as well as all facts, theories, or claims for civil penalties that would be considered
2 administratively exhausted under applicable law by the PAGA Notices Plaintiff sent to the LWDA.

3 62. The Releases in Paragraphs 60 and 61 do not include any claims for workers
4 compensation, unemployment, or disability benefits of any nature, nor do they include any claims,
5 actions, or causes of action which may be possessed by Settlement Class Members under state or
6 federal anti-discrimination statutes, including, without limitation, the Cal. Fair Employment and
7 Housing Act, the Cal. Government Code § 12940, et seq.; the Unruh Civil Rights Act, the Cal. Civil
8 Code § 51, et seq.; the California Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C.
9 § 2000, et seq.; the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101, et seq.; the
10 Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq.; the Fair
11 Credit Reporting Act, the Investigative Consumer Reporting Agencies Act (ICRAA), and/or the
12 Consumer Credit Reporting Agencies Act (CCRAA)

13 63. Release by Plaintiff. Upon the date the Court enters an order granting final approval
14 of the settlement and Defendant fully funds the Gross Settlement Amount, Plaintiff, on his own
15 behalf and on behalf of his heirs, spouses, executors, administrators, attorneys, agents and assigns,
16 fully and finally releases the Released Parties from all claims, demands, rights, liabilities and causes
17 of action, transactions, or occurrences that occurred during the Class Period, including, but not
18 limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts
19 contained in the First Amended Complaint and (b) all PAGA claims that were, or reasonably could
20 have been, alleged based on facts contained in the First Amended Complaint, Plaintiff's PAGA
21 Notice, or ascertained during the Action and released by Plaintiff's waiver of Civil Code Section
22 1542 ("General Release"). Plaintiff acknowledges that Plaintiff may discover facts or law different
23 from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees,
24 nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding
25 such different or additional facts or Plaintiff's discovery of them.

26 Furthermore, for purposes of Plaintiff's Release, Plaintiff expressly waives and
27 relinquishes the provisions, rights, and benefits, if any, of Section 1542 of the California Civil Code,
28 which reads:

1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR
2 OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
3 FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY
4 HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
5 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

6 The significance of this release and waiver of Civil Code Section 1542 has been explained
7 to Plaintiff by Class Counsel. Plaintiff's Release does not extend to any claims that cannot be
8 released as a matter of law, including, but not limited to, claims for vested benefits, unemployment
9 benefits, disability benefits, social security benefits, workers' compensation benefits that arose at
10 any time, or based on occurrences outside the Class Period.

11 64. Nullification of Settlement Agreement. In the event that: (i) the Court does not
12 finally approve the Settlement as provided in this Settlement Agreement; or (ii) the Settlement does
13 not become final for any other reason, then this Settlement Agreement and any documents generated
14 to bring it into effect will be null and void. Any order or judgment entered by the Court in
15 furtherance of this Settlement Agreement will likewise be treated as void from the beginning. In
16 such case, the Settlement shall not be used or be admissible in any subsequent proceedings, in this
17 Action, this Court, or any other Court or forum.

18 65. Preliminary Approval Hearing. The Parties will work together to obtain a hearing
19 before the Court to request the Preliminary Approval of the Settlement Agreement, and the entry
20 of a Preliminary Approval Order for: (i) conditional certification of the Settlement Class for
21 settlement purposes only, (ii) preliminary approval of the proposed Settlement Agreement, and (iii)
22 setting a date for a Final Approval/Settlement Fairness Hearing. The Preliminary Approval Order
23 will provide for the Notice to be sent to all Class Members as specified in this Settlement
24 Agreement. In conjunction with the Preliminary Approval motion, the Parties will submit this
25 Settlement Agreement, which sets forth the terms of this Settlement and will include the proposed
26 Notice.

27 66. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of the
28 deadlines to fax or postmark Request for Exclusion or submit objections to the Settlement

1 Agreement, and with the Court's permission, a Final Approval/Settlement Fairness Hearing will be
2 conducted to determine the Final Approval of the Settlement Agreement along with the amounts
3 properly payable for (i) Individual Settlement Payments; (ii) the Class Counsel Fees and Costs; (iii)
4 the Class Representative Enhancement Payment; (iv) payment to LWDA for PAGA penalties; and
5 (v) all Claims Administration Expenses. Class Counsel will be responsible for drafting all
6 documents necessary to obtain final approval. Class Counsel will also be responsible for drafting
7 the attorneys' fees and costs application to be heard at the Final Approval/Settlement Fairness
8 Hearing.

9 67. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by the
10 Court or after the Final Approval/Settlement Fairness Hearing, the Parties will present a proposed
11 Judgment to the Court for its approval. Pursuant to California Rules of Court, Rule 3.771(b), the
12 Claims Administrator shall post on its website a copy of the Judgment for a period of at least sixty
13 (60) days from the date the Court signs the Judgment. After entry of the Judgment, the Court will
14 have continuing jurisdiction pursuant to California Rules of Court 3.769(h) and Code of Civil
15 Procedure Section 664.6 solely for purposes of addressing: (i) the interpretation and enforcement
16 of the terms of the Settlement Agreement, (ii) settlement administration matters, and (iii) such post-
17 Judgment matters as may be appropriate under court rules or as set forth in this Settlement
18 Agreement.

19 68. Exhibits Incorporated by Reference. The terms of this Settlement Agreement include
20 the terms set forth in any attached Exhibits, which are incorporated by this reference as though fully
21 set forth in this Settlement Agreement. Any Exhibits to this Agreement are an integral part of the
22 Settlement.

23 69. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute
24 the entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral
25 agreements may be deemed binding on the Parties. The Parties expressly recognize California Civil
26 Code Section 1625 and California Code of Civil Procedure Section 1856(a), which provide that a
27 written agreement is to be construed according to its terms and may not be varied or contradicted
28 by extrinsic evidence, and the Parties agree that no such extrinsic oral or written representations or

1 terms will modify, vary or contradict the terms of this Agreement.

2 70. Amendment or Modification. This Settlement Agreement may be amended or
3 modified only by a written instrument signed by counsel for all Parties or their successors-in-
4 interest.

5 71. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant
6 and represent they are expressly authorized by the Parties whom they represent to negotiate this
7 Settlement Agreement and to take all appropriate action required or permitted to be taken by such
8 Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other
9 documents required to effectuate the terms of this Settlement Agreement. The Parties and their
10 counsel will cooperate with each other and use their best efforts to effect the implementation of the
11 Settlement. If the Parties are unable to reach agreement on the form or content of any document
12 needed to implement the Settlement Agreement, or on any supplemental provisions that may
13 become necessary to effectuate the terms of this Settlement Agreement, the Parties may seek the
14 assistance of the Court to resolve such disagreement. The Parties, Class Counsel, and Defense
15 Counsel represent that they are not aware of any other pending matter or action asserting claims
16 that will be extinguished or affected by the Settlement Agreement.

17 72. Binding on Successors and Assigns. This Settlement Agreement will be binding
18 upon, and inure to the benefit of, the successors or assigns of the Parties to this Settlement
19 Agreement, as previously defined.

20 73. Execution and Counterparts. This Settlement Agreement is subject only to the
21 execution of all Parties. However, the Settlement Agreement may be executed in one or more
22 counterparts. All executed counterparts and each of them, including facsimile and scanned copies
23 of the signature page, will be deemed to be one and the same instrument provided that counsel for
24 the Parties will exchange among themselves original signed counterparts.

25 74. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe
26 this Settlement Agreement is a fair, adequate and reasonable settlement of the Action and have
27 arrived at this Settlement Agreement after arm's-length negotiations and in the context of
28 adversarial litigation, taking into account all relevant factors, present and potential. The Parties

1 further acknowledge that they are each represented by competent counsel and that they have had an
2 opportunity to consult with their counsel regarding the fairness and reasonableness of this
3 Settlement Agreement.

4 75. Invalidity of Any Provision. Before declaring any provision of this Settlement
5 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent
6 possible consistent with applicable precedents so as to define all provisions of this Settlement
7 Agreement valid and enforceable.

8 76. Captions. The captions and section numbers in this Agreement are inserted for the
9 reader's convenience, and in no way define, limit, construe or describe the scope or intent of the
10 provisions of this Agreement.

11 77. Waiver. No waiver of any condition or covenant contained in this Agreement or
12 failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or
13 constitute a further waiver by such party of the same or any other condition, covenant, right or
14 remedy.

15 78. Enforcement Actions. In the event that one or more of the Parties institute any legal
16 action or other proceeding against any other Party to enforce the provisions of this Settlement
17 Agreement or to declare rights and/or obligations under this Settlement Agreement, the successful
18 Party will be entitled to recover from the unsuccessful Party reasonable attorneys' fees and costs,
19 including expert witness fees incurred in connection with any enforcement actions.

20 79. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms
21 and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be
22 construed more strictly against one party than another merely by virtue of the fact that it may have
23 been prepared by counsel for one of the Parties, it being recognized that, because of the arms-length
24 negotiations between the Parties, all Parties have contributed to the preparation of this Agreement.

25 80. Representation By Counsel. The Parties acknowledge that they have been
26 represented by counsel throughout all negotiations that preceded the execution of this Settlement
27 Agreement, and that this Settlement Agreement has been executed with the consent and advice of
28 counsel.

1 81. All Terms Subject to Final Court Approval. All amounts and procedures described
2 in this Settlement Agreement will be subject to final Court approval.

3 82. Cooperation and Execution of Necessary Documents. All Parties will cooperate in
4 good faith and execute all documents to the extent reasonably necessary to effectuate the terms of
5 this Settlement Agreement.

6 83. Binding Agreement. The Parties warrant that they understand and have full authority
7 to enter into this Agreement, and further intend that this Agreement will be fully enforceable and
8 binding on all Parties, and agree that it will be admissible and subject to disclosure in any
9 proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that
10 otherwise might apply under federal or state law.

11 84. No Admission of Liability. Nothing contained in this Settlement Agreement shall be
12 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part
13 of Defendant. Each of the Parties has entered into this Settlement Agreement with the intention to
14 avoid further disputes and litigation, and the attendant inconvenience and expense, and to fully and
15 forever buy their respective peace. This Settlement Agreement shall be inadmissible in evidence in
16 any action or proceeding, by any party, except an action or proceeding by one of the Parties to
17 approve, interpret, or enforce the Settlement Agreement's terms.

18 85. Communications. Before the date on which the Parties file their motion for
19 preliminary approval of the Settlement, Plaintiff and their Class Counsel will not initiate any contact
20 with Class Members other than Plaintiff about the Settlement, except that, if contacted by a Class
21 Member, they may respond that a settlement has been reached and that the details will be
22 communicated in a forthcoming Court-approved notice.

23 86. Disputes. Any dispute between the Parties concerning the interpretation or
24 implementation of this Settlement Agreement will be resolved by the Court. Prior to any such resort
25 to the Court, counsel for the Parties will confer in good faith to resolve the dispute.

26 87. Applicable Law. All terms and conditions of this Stipulation and its exhibits will be
27 governed by and interpreted according to the laws of the State of California, without giving effect
28 to any conflict of law or choice of law principles.

1
2
3 DATED: Oct 4, 2024



Ramon Lopez (Oct 4, 2024 09:40 PDT)

Ramon Lopez
Plaintiff and Class Representative

4
5
6 DATED: Oct 4, 2024

BARKHORDARIAN LAW FIRM, PLC



Gregory P. Wong
John F. Litwin

7
8
9
10 DATED: 10/4/2024

Attorneys for Plaintiff RAMON LOPEZ



NEXGEN AIR CONDITIONING AND HEATING,
LLC

14 By: Bill Kean on behalf of Defendant NexGen Air
15 Conditioning and Heating, LLC
16 Its: President of HVAC Operations

17 DATED: 10/4/2024

VENABLE LLP

/s/ Jeffrey A. Brand

Rudy G. Klapper
Jeffrey A. Brand

21 Attorneys for Defendant NEXGEN AIR
22 CONDITIONING AND HEATING, LLC
23
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Second_Amended_Stipulation_of_Class_Action_Settlement_(1).docx

Final Audit Report

2024-10-04

Created:	2024-10-04
By:	Ariel Lozano (ariel@barklawfirm.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAA4Fdq1ijT639B74sCldmIRKOjjTSPCmMZ

"Second_Amended_Stipulation_of_Class_Action_Settlement_(1).docx" History

-  Document digitally presigned by DocuSign\, Inc. (enterprisesupport@docusign.com)
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-  Document created by Ariel Lozano (ariel@barklawfirm.com)
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-  Document emailed to Ramon Lopez (ramonbarto@gmail.com) for signature
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-  Agreement completed.
2024-10-04 - 4:41:28 PM GMT

EXHIBIT 1A

[CLASS MEMBER NAME and ADDRESS]

**[CLASS MEMBER NAME], PLEASE READ THIS NOTICE CAREFULLY.
IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHTS.**

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

**NOTICE OF PROPOSED CLASS ACTION AND PRIVATE ATTORNEYS
GENERAL ACT SETTLEMENT**

Ramon Lopez. vs. NexGen Air Conditioning and Heating, LLC, et al.
Orange County Superior Court Case No. 30-2022-01295800-CU-OE-CXC

If you are or were employed as an hourly non-exempt employee by NexGen Air Conditioning and Heating, LLC at any time between December 8, 2018 and July 19, 2024 (the “Settlement Class”), a proposed class action settlement may affect your rights and you may be entitled to money under the proposed Settlement.

You are **not** being sued. A court authorized this notice. This is **not** a solicitation from a lawyer.

**PLEASE READ THIS NOTICE CAREFULLY. IT CONTAINS IMPORTANT INFORMATION
ABOUT YOUR RIGHTS.**

1. Why Did I Get This Notice?

The Court has granted preliminary approval of the Settlement of the class action brought on behalf of all current and former hourly non-exempt employees who worked for NexGen Air Conditioning and Heating, LLC in the State of California at any time between December 8, 2018 and July 19, 2024 (the “Settlement Class”).

You are receiving this Notice because Defendant’s records show that you are in the proposed Settlement Class. This notice informs you about settlement of this pending lawsuit, that you may be a member of the Settlement Class, and that you have certain rights to object to the settlement.

2. What Is This Lawsuit About?

This Action was filed on December 8, 2022. Former employee Ramon Lopez (“Plaintiff”) alleged that NexGen Air Conditioning and Heating, LLC (“Defendant” and collectively with Plaintiff referred to herein as the “Parties”), failed to pay minimum and overtime wages, failed to pay timely wages, failed to provide accurate itemized wage statements, failed to provide timely, duty-free meal periods and/or pay meal period premiums for missed meal periods, failed to provide compliant rest periods and/or pay rest period premiums, failed to maintain adequate records, failed to reimburse business expenses, and unfairly competed with respect to him and other similarly situated employees. Plaintiff also sought penalties under the Private Attorneys’ General Act of 2004 (“PAGA”) on behalf of all allegedly PAGA Group Members as well as restitution under Cal. Bus. & Prof. Code section 17200.

Plaintiff filed this Action in the Superior Court of The State of California, County of Orange Case No. 30-2022-01295800-CU-OE-CXC (the “Action”).

Defendant denies Plaintiff's claims and allegations and asserts that it has complied with all of its legal obligations under the California Labor Code, PAGA, Cal. Bus. & Prof. Code section 17200, and other applicable laws.

This description of the case is general and does not cover all the issues of this case. The Court has made no decision regarding the merits of Plaintiff's allegations or Defendant's defenses. The Settlement is not an admission of any wrongdoing.

3. Why Did This Case Settle?

The Parties in this action disagree as to the probable outcome of the action with respect to liability and damages if it were not settled. Although Plaintiff believes his claims and that of the Settlement Class have merit, Plaintiff recognizes that litigating is a risky proposition, and that Plaintiff and the Settlement Class may not have prevailed on all or some of their claims. Likewise, while Defendant is confident that it has strong defenses to Plaintiff and the Settlement Class's claims, it recognizes the risks, distractions, and costs involved with litigation. The Parties engaged in settlement negotiations with the assistance of a well-respected neutral third-party mediator, and, recognizing the risks and costs inherent in litigation, thereafter reached the proposed settlement of all the claims asserted in the lawsuit.

On [INSERT PRELIMINARY APPROVAL DATE], the Court granted preliminary approval of the proposed settlement, upon finding this proposed settlement is the result of good faith, arm's-length negotiations between the parties through their respective attorneys. The Court has expressed no opinion on the merits of Plaintiff's claims or Defendant's defenses.

4. What Are the Terms Of The Proposed Settlement And How Much Will I Receive?

Without admitting any fault or liability and in exchange for a release of all claims, Defendant has agreed to pay a total of \$1,413,822.00 to create a non-reversionary settlement fund ("Gross Settlement Amount"). The Gross Settlement Amount shall be available to pay each Settlement Class member who has not previously opted out; provided that a portion of the Gross Settlement Amount will be distributed to the PAGA Group (defined below) regardless of whether a Settlement Class Member opts out. Under the proposed settlement, the following amounts will be deducted from the Gross Settlement Amount before any payments are made to employees, subject to final approval by the Court:

- Attorneys' Fees – up to \$471,274.00
- Attorneys' Costs of Suit – up to \$15,000.00
- PAGA Payment – \$140,000.00 (\$105,000.00 of the \$140,000.00 Payment to the Labor & Workforce Development Agency; and \$35,000.00 of the \$140,000.00 in PAGA Penalties will be distributed separately to all PAGA Group Employees, as further explained below).
- Settlement Administration Expenses – up to \$20,000
- Service Award to Class Representative – up to \$10,000

After these deductions, an estimated \$757,548.00 will be available for payment to the Settlement Class receiving this notice as the "Net Settlement Amount."

Based on Defendant's records, and the Parties' current assumptions, **your Individual Class Payment is estimated to be \$ [REDACTED] (less withholding) and your Individual PAGA Payment is estimated to be \$ [REDACTED]**. The actual amount you may receive likely will be different and will depend on a number

of factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendant’s records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.)

The above estimates are based on Defendant’s records showing that **you worked [REDACTED] workweeks** during the Class Period and **you worked [REDACTED] pay periods** during the PAGA Period. If you believe that you worked more workweeks/pay periods during either period, you can submit a challenge by the deadline date. See Section 7 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Final approval and a determination of attorneys’ fees, attorneys costs, PAGA penalties, settlement administration expenses, and a service award to the class representative are subject to a fairness hearing that will occur on **[INSERT FINAL APPROVAL HEARING DATE]** in Department CX103 of the Orange County Superior Court – Civil Complex Center, 751 W. Santa Ana Blvd., Santa Ana, California 92701 on **[REDACTED]**, 2024, at **XX** Pacific Time.

5. What Are Your Options?

As a member of the Settlement Class, you have several options available to you:

PARTICIPATE IN THE SETTLEMENT AND RECEIVE A SETTLEMENT PAYMENT	<u>YOU DO NOT NEED TO DO ANYTHING TO PARTICIPATE IN THE SETTLEMENT AND RECEIVE A SETTLEMENT PAYMENT.</u> By doing nothing, you <u>WILL</u> receive a share of the Settlement proceeds if the proposed Settlement is finally approved, and you will be covered by the release summarized in section 6 below and will therefore give up any rights you may otherwise have to individually assert the wage and hour claims against Defendant that are covered by this Settlement (Released Claims). It is important that if your address has changed, you give your current mailing address to the Settlement Administrator to ensure you receive your share of the Settlement proceeds if the proposed Settlement is finally approved.
ASK TO BE EXCLUDED (SUBMIT A VALID REQUEST FOR EXCLUSION/ OPT-OUT) FROM THE CLASS ACTION SETTLEMENT	If you do not want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Settlement Administrator a written Request for Exclusion. This process is detailed in Section 9 below. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 10 of this Notice. If You are an PAGA Group Member, You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all PAGA Group Members and the PAGA Group Members must give up their rights to pursue Released Claims (defined below).

PARTICIPATING CLASS MEMBERS CAN OBJECT	All Class Members (“Participating Class Members”) who do not opt-out, may object to any aspect of the settlement (except for the PAGA portion of the Settlement). You may object by: submitting a written objection to the Class Administrator by [REDACTED], 2024, or by appearing (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform) at the Court’s Final Approval Hearing, which is scheduled for _____, 2024 at ____ a.m.
DISPUTE YOUR SETTLEMENT AWARD	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period, and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number of Class Period Workweeks and number of PAGA Period Pay Periods you worked according to the Companies’ records is stated in Section 4. If you disagree with either of these numbers, you must submit a written challenge with supporting information to the Settlement Administrator, XX not later than [REDACTED], 2024. The Court shall make the final decision based on the information presented by you and Defendant.

6. What Rights Am I Giving Up?

As part of the settlement, Plaintiff, the Class Members, and PAGA Group Members will fully release and discharge NexGen Air Conditioning and Heating, LLC and any of its parents, subsidiaries, affiliates, including but not limited to Wrench Group, LLC, and all the foregoing’s owners, officers, directors, employees, partners, shareholders and agents, and any other successors, assigns, or legal representatives (the “Released Parties”) pursuant to the below releases:

Release by Class Members: If You do not opt out of the class action settlement, You will release the Released Parties of any and all claims based on the facts alleged in the Operative Complaint (“Complaint”), including claims under the PAGA as identified in Plaintiff’s PAGA Notice, Unfair Business Practices (Business & Professions Code Section 17200 *et seq.*), and Labor Code sections 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198 and 2802. (the “Release”)

Release by PAGA Group Members: If You opt out of the Class Settlement, and You are a PAGA Group Member, You will Release the Released Parties of any and all claims for civil penalties under PAGA based on the labor code and IWC Wage Order violations alleged in each and every Notice sent by Plaintiff to the LWDA; those being California Labor Code sections 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198 and 2802, and the applicable industrial wage orders, Unfair Business Practices (Business & Professions Code Section 17200 *et seq.*) as well as all facts, theories, or claims for civil penalties that would be considered administratively exhausted under applicable law by the PAGA Notices Plaintiff sent to the LWDA.

These releases do not include any claims for workers compensation, unemployment, or disability benefits of any nature, nor do they include any claims, actions, or causes of action which may be possessed by Settlement Class and/or PAGA Group Members under state or federal anti-discrimination statutes, including, without limitation, the Cal. Fair Employment and Housing Act, the Cal. Government Code § 12940, et seq.; the Unruh Civil Rights Act, the Cal. Civil Code § 51, et seq.; the California Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000, et seq.; the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101, et seq.; the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq.; the Fair Credit Reporting Act, the Investigative Consumer Reporting Agencies Act (ICRAA), and/or the Consumer Credit Reporting Agencies Act (CCRAA).

7. How Will the Settlement Administrator Calculate My Payment?

Individual Class Payments. The Settlement Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.

Individual PAGA Payments. The Settlement Administrator will calculate Individual PAGA Payments by (a) dividing \$35,000 by the total number of PAGA Pay Periods worked by all PAGA Group Members and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual PAGA Group Member.

Workweek/Pay Period Challenges. The number of workweeks you worked during the Class Period and the number of pay periods you worked during the PAGA Period, as recorded in the Companies' records, are stated in Section 5. You have until _____ to challenge the number of workweeks and/or pay periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail or fax. Section 9 of this Notice has the Settlement Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Defendant's calculation of workweeks and/or pay periods based on the Defendant's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Settlement Administrator will resolve workweek and/or pay period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Defendant's Counsel. The Court will make the final decision regarding your challenge. You can't appeal or otherwise challenge its final decision.

8. How Will I Get Paid?

Participating Class Members. The Settlement Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as PAGA Group Members. The single check will combine the Individual Class Payment and the Individual PAGA Payment.

Non-Participating Class Members. The Settlement Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every PAGA Group Member who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator’s contact information.

9. What If I Do Not Wish To Be Part Of The Proposed Settlement?

Anyone not wishing to participate in the class action portion of the proposed settlement may exclude himself or herself (“opt out”) by completing, signing and submitting a Request for Exclusion letter by **XXXX** to the Settlement Administrator by fax or mail as follows.

Settlement Administrator: XX INSERT INSERT INSERT	
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If your Request for Exclusion is postmarked or fax date-stamped after **XXX**, it will be rejected, and you will be a Settlement Class member and be bound by the settlement terms.

To be valid, any Request for Exclusion must state something similar to the effect that the Settlement Class member wishes to be excluded from the class settlement and contain the following additional information: (1) the name, employee identification number and/or last four digits of the employee’s social security number for identification purposes; (2) a statement that the Settlement Class member wishes to be excluded from the class settlement such as “I wish to be excluded from the Settlement in *Ramon Lopez v. NexGen Air Conditioning and Heating, LLC, et al.* pending in Orange County Superior Court. I understand that in asking to be excluded from the Settlement class, I will not receive any money as part of the settlement approved by the Court”; and (3) be postmarked or fax date-stamped by **[INSERT RESPONSE DEADLINE <<forty-five (45) days>>]** and faxed or mailed to the Settlement Administrator at the address or fax number specified above.

Anyone who submits a timely and valid Request for Exclusion shall not be deemed a Settlement Class member and will not receive payment as part of this proposed settlement, except for his or her pro rata share of the PAGA penalties, if they are an PAGA Group Member. Such persons will keep any rights they may otherwise have to sue Defendant separately about the claims made in this lawsuit, other than those brought under PAGA for civil penalties.

10. What If I Have an Objection?

Any objection to the class action portion of the proposed Settlement must be in writing and be faxed or mailed to the Settlement Administrator (identified above) by **[REDACTED]**. To be valid, any objection must: (1) contain the objecting Settlement Class member’s full name; (2) be postmarked or faxed-date stamped to the Settlement Administrator at the address or fax number specified above by **[INSERT RESPONSE DEADLINE]**; and (3) should provide each specific reason in support of the objection. You may also object by appearing (or hiring an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform) at the Court’s Final Approval Hearing, which is scheduled for _____, 2024 at ____ a.m., whether or not you submitted a timely written objection. Class Members need not include legal arguments for their written objections to be considered.

11. What If I Wish to Dispute the Amount of Workweeks Attributed to Me In Section 4?

Anyone wishing to challenge the number of workweeks and/or pay periods credited to them may do so by submitting letter by XXXX to the Settlement Administrator by fax or mail as follows.

Settlement Administrator: XX INSERT INSERT INSERT	
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If your Workweek Dispute is fax date-stamped or postmarked after XXX, it will be rejected, and you will be a Settlement Class member and be bound by the workweek number calculated by the settlement administrator.

12. What Happens Next In The Case?

The proposed settlement has only been preliminarily approved. The Court will hold a hearing in Dept. CX103 of the Orange County Superior Court – Civil Complex Center, 751 W. Santa Ana Blvd., Santa Ana, CA 92701 on [REDACTED], 2024, at XX Pacific Time, to consider any objections and determine whether the settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve the settlement of the PAGA representative claim and also Class Counsel’s request for attorneys’ fees and costs, the costs of settlement administration, and the proposed service award. The hearing may be continued without further notice to you. It is not necessary for you to appear at this hearing. If a Class Member would like to arrange to appear by telephone or video conference, please contact Class Counsel and they will make efforts to facilitate that.

13. How Can I Receive More Information?

This Notice is a summary of the basic terms of the proposed settlement. For the precise terms and conditions of the proposed settlement, you may review the detailed “Stipulation of Settlement” on file with the Clerk of the Court as well as the pleadings and other records in this litigation at the Office of the Clerk of the Orange County Superior Court, 700 Civic Center Drive West, Santa Ana, CA 92701.

You may also visit the settlement administrator’s website at: [INSERT WEBSITE]. Copies of the First Amended Complaint, Settlement Agreement, and Order of Preliminary Approval will be posted on this website. If the Court ultimately grants final approval of the Settlement Agreement, the Order of Final Approval and Final Judgment will also be posted.

For further information, you may also call or email Class Counsel or defense counsel (listed below) or the Settlement Administrator (listed above). You may also ask Class Counsel to send you a copy of the Stipulation and Settlement Agreement. The pleadings and other records in this litigation may also be examined at the Office of the Clerk of the Orange County Superior Court, 700 Civic Center Drive West, Santa Ana, CA 92701. Additional information is also available through the Court’s online system at <https://www.occourts.org/>.

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

Class Counsel:

Name of Attorney: John F. Litwin
Email Address: john@barklawfirm.com
Name of Firm: BARKHORDARIAN LAW FIRM, PLC
Mailing Address: 6047 Bristol Parkway, Second Floor, Culver City, CA 90230
Telephone: 323-450-2777

Counsel for Defendant:

Name of Attorney: Rudy G. Klapper and Jeffrey A. Brand
Email Address: RGKlapper@venable.com and JABrand@venable.com
Name of Firm: Venable LLP
Mailing Address: 2049 Century Park East, Suite 2300, Los Angeles, CA 90067
Telephone: (310)-229-0388 and (310)-229-9698

EXHIBIT 2

VENABLE LLP
 Max N. Wellman (SBN 291814)
mwellman@venable.com
 Ryan M. Andrews (SBN 274106)
rmandrews@venable.com
 Jeffrey A. Brand (SBN 324327)
jabrand@venable.com
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 Los Angeles, CA 90067
 Telephone: 310.229.9900
 Facsimile: 310.229.9901

Attorneys for Defendant
 NEXGEN AIR CONDITIONING AND
 HEATING, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 IN AND FOR THE COUNTY OF ORANGE

RAMON LOPEZ, individually, and on behalf
 of all Others Similarly Situated,

Plaintiff,

v.

NEXGEN AIR CONDITIONING AND
 HEATING, LLC, a California Limited
 Liability Corporation; and DOES 1-10,
 inclusive,,

Defendant.

Case No. 30-2022-01295800-CU-OE-CXC

Assigned to: Lon F. Hurwitz
 Dept. CX 103

**DECLARATION OF JEFFREY A.
 BRAND IN SUPPORT OF
 PLAINTIFF'S MOTION FOR
 PRELIMINARY APPROVAL OF
 CLASS ACTION SETTLEMENT**

Action Filed: 12/08/22
 Trial Date: None

I, Jeffrey A. Brand declare:

1. I am an attorney at law licensed to practice before all the courts of the State of California. I am an attorney at the law firm of Venable LLP (“Venable”), attorneys of record for Defendant NexGen Air Conditioning and Heating, LLC (“Defendant”). The facts set forth herein are known to me of my own personal and firsthand knowledge and if called upon as a witness I could and would testify competently thereto under oath.

2. Following the Parties July 19, 2024 hearing on Plaintiff's motion for preliminary approval of class action settlement, and in response to the issues raised in the Court's tentative ruling, I provide this declaration to address the Court's concerns about the escalator threshold and the scope of Plaintiff Ramon Lopez' general release.

Class Size and Escalator Threshold:

3. Following the preliminary approval hearing, Defendant conducted an analysis of employee workweeks between December 8, 2018 and July 19, 2024 (“Proposed Class Period”) to determine if the escalator threshold of 43,663 workweeks was met, and the potential impact on the gross settlement amount. Based on our analysis, we calculated that class members during the Proposed Class Period worked a total of 47,435 workweeks, 3,772 workweeks over the escalator threshold.

4. Defendant proceeded to inform Plaintiff's counsel of the significant increase in workweeks worked during the Proposed Class Period, and engaged in meet and confer discussions about amending the stipulation of class action settlement such that the class and PAGA periods would end on the last workweek prior to the escalator threshold being met, which was March 8, 2024. Plaintiff agreed to this proposal, and the Parties memorialized this change to the Class and PAGA periods in the Second Amended Stipulation of Class Action Settlement attached as **Exhibit 1** to John F. Litwin's Supplemental Declaration in support of Plaintiff's Motion for Preliminary Approval. Applying this new class period, December 8, 2018 to March 8, 2024, Defendant estimates there are 860 class members, and 684 PAGA Group Members.

Plaintiff Ramon Lopez' General Release:

5. In the Court's tentative ruling, the Court raised concerns about the language of Plaintiff Lopez' general release of claims. Specifically, the Court highlighted the language "claims . . . known or unknown . . . whether in tort, contract or for violation of any state or federal statute . . ." saying that this language would apply to claims wholly unrelated to claims asserted in Plaintiff's First Amended Complaint and his LWDA Notice.

6. After reviewing the Court's tentative, the Parties have redrafted Plaintiff Lopez' general release and 1542 waiver, drawing inspiration from the Los Angeles County Superior Court's Model Form Class and Representative Settlement Agreement. Specifically, the proposed changes, which are made clear in the redline comparison of the First and Second Amended Stipulations of Class Action Settlement, attached as **Exhibit A**, focus Plaintiff's release on the facts that were or reasonably could have been alleged in Plaintiff's First Amended Complaint and LWDA Notice. Additionally, the Parties have provided greater detail on the claims not released by Plaintiff's waiver of Civil Code Section 1542, including any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period.

Executed the 30th day of September, 2024, at Los Angeles, California.

/s/ Jeffrey A. Brand

Jeffrey A. Brand

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 2049 Century Park East, Suite 2300, Los Angeles, CA 90067.

On **October 4, 2024** I served a copy ☒ / original ☐ of the foregoing document(s) described as **DEFENDANT NEXGEN AIR CONDITIONING AND HEATING, LLC'S ANSWER TO UNVERIFIED FIRST AMENDED COMPLAINT** on the interested parties in this action addressed as follows:

Gregory P. Wong, Esq.
Heather K. Cox, Esq.
Barkhordarian Law Firm, PLC
6047 Bristol Parkway, Second Fl.
Culver City, CA
Telephone: (323) 450-2777
Email: greg@backlawfirm.com
heather@barklawfirm.com

*Attorneys for Plaintiff Ramon Lopez and all
Others Similarly Situated*

☒ **BY EMAIL** (CCP § 1010.6; CRC Rule 2.251(g)): I transmitted the above-stated document(s) and an unsigned copy of this declaration from my computer (electronic notification address semenchin@venable.com located at Venable LLP, 2049 Century Park East, Suite 2300, Los Angeles, California 90067 to the interested parties in this action whose names and e-mail addresses are listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. Service by e-mail or electronic transmission was agreed upon **based on a court order or an agreement of the parties to accept service.**

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

Executed on **October 4, 2024** at Los Angeles, California.

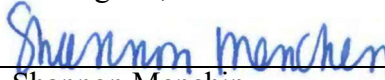

Shannon Menchin

EXHIBIT 2A

JOHN F. LITWIN (SBN: 301611)
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6047 Bristol Parkway, Second Floor
Culver City, CA 90230
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Email: Greg@barklawfirm.com
Email: heather@barklawfirm.com

**Attorneys for Plaintiff Ramon Lopez, on behalf of
himself and all others similarly situated**

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Rudolph G. Klapper (SBN 300721)
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Jeffrey A. Brand (SBN 324327)
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2049 Century Park East, Suite 2300
Los Angeles, CA 90067
Telephone: 310.229.9900
Facsimile: 310.229.9901

Attorneys for Defendant
NEXGEN AIR CONDITIONING AND HEATING, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE CIVIL COMPLEX CENTER

RAMON LOPEZ, on behalf of himself and
all others similarly situated,

Plaintiff,

vs.

NEXGEN AIR CONDITIONING AND
HEATING, LLC, a California Limited
Liability Corporation; and DOES 1 through
100, inclusive,

Defendant.

CASE NO.: 30-2022-01295800-CU-OE-CXC

*Assigned for all purposes to Hon. Lon F. Hurwitz,
Dept. CX103*

**~~FIRST~~SECOND AMENDED JOINT
STIPULATION FOR CLASS ACTION AND
PAGA SETTLEMENT**

Complaint filed: December 8, 2022
FAC Filed: March 3, 2023
Trial Date: *Not yet set*

Litera Comparison of First Amended Stipulation of Class Action Settlement (2) and Second
Amended Stipulation of Class Action Settlement (1) 10/04/2024

1 **TO THE HONORABLE COURT:**

2 This Joint Stipulation for Class Action Settlement (“Settlement Agreement”) is made and
3 entered into by and between Plaintiff RAMON LOPEZ (“Plaintiff”) individually and on behalf of
4 all others similarly situated, and Defendant NEXGEN AIR CONDITIONING AND HEATING,
5 LLC (“Defendant”) (collectively, Defendant and Plaintiff will be referred to as the “Parties”), and
6 is subject to the terms and conditions below, and to the Court’s approval. The Parties expressly
7 acknowledge that this Settlement Agreement is entered into solely for the purpose of
8 compromising significantly disputed claims and that nothing in this Settlement Agreement is an
9 admission of liability or wrongdoing by Defendant. If for any reason the Settlement Agreement is
10 not approved, it will be of no force or effect, and the Parties will be returned to their respective
11 positions immediately prior to and as if they had never executed this Settlement Agreement as
12 more fully set forth below.

13 **DEFINITIONS**

14 The following definitions are applicable to this Settlement Agreement. Definitions contained
15 elsewhere in this Settlement Agreement will also be effective:

16 1. The “Action” means *Ramon Lopez v. NexGen Air Conditioning and Heating, LLC,*
17 *et al.*, Orange County Superior Court Case No. 30-2022-01295800-CU-OE-CXC. Plaintiff’s First
18 Amended Complaint alleges the following causes of action: (1) failure to pay minimum wages;
19 (2) failure to pay overtime wages; (3) failure to provide accurate itemized wage statements; (4)
20 failure to provide meal periods; (5) failure to provide rest breaks; (6) waiting time penalties; (7)
21 failure to maintain records; (8) failure to reimburse business expenses; (9) unfair business
22 practices; and (10) violation of Labor Code Sections 2698-2699. (“Operative Complaint”)

23 2. “Claims Administrator” means CPT Group, Inc. The Parties each represent that
24 they do not have any financial interest in the Claims Administrator or otherwise have a
25 relationship with the Claims Administrator that could create a conflict of interest.

26 3. “Claims Administration Expenses” means the costs payable to the Claims
27 Administrator for administering this Settlement, including, but not limited to, printing, translating
28 into Spanish, conducting a National Change of Address (“NCOA”) search, distributing (including
Amended Stipulation of Class Action Settlement (1) 10/04/2024

1 with appropriate postage), and tracking documents for this Settlement in English and Spanish, any
2 searches to locate any Class Members, tax reporting, distributing the Individual Settlement
3 Payments, Class Representatives Enhancement Payment, Class Counsel Fees and Costs, and
4 providing necessary certification of completion of notice, reports and declarations, establishing
5 and administering a qualified settlement fund account and other responsibilities set forth in this
6 Settlement Agreement and as requested by the Parties. The Claims Administration Expenses are
7 currently estimated to be not more than \$20,000.00.

8 4. "Class Counsel" means Gregory P. Wong, Esq., Heather K. Cox, and John F.
9 Litwin of the Barkhordarian Law Firm, PLC.

10 5. "Class Counsel Fees and Costs" means attorneys' fees, costs, and expenses
11 approved by the Court for Class Counsel's litigation and resolution of the Action and all costs
12 incurred and to be incurred by Class Counsel in the Action, including, but not limited to, costs
13 associated with documenting the Settlement, providing any notices required as part of the
14 Settlement or Court Order, securing the Court's approval of the Settlement, and administering the
15 Settlement. Class Counsel will request attorneys' fees not to exceed Four Hundred Seventy-One
16 Thousand Two Hundred Seventy-Four dollars (\$471,274.00) representing one-third (1/3) of the
17 Gross Settlement Amount and Defendant agrees not to oppose a reasonable Attorneys' Expenses
18 in an amount not to exceed \$15,000.00. Defendant agrees not to oppose Class Counsel's request
19 for Class Counsel Fees and Costs. There is no fee-splitting agreement. Class Counsel shall
20 submit all invoices in connection with its requests for cost reimbursement at Final Approval.

21 6. "Class List" means a complete list of all Class Members that Defendant will
22 diligently and in good faith compile from their records, and provide on a confidential basis to the
23 Claims Administrator within twenty-one (21) calendar days after the Court's entry of an order
24 granting preliminary approval of this Settlement. The Class List will be formatted in Microsoft
25 Office Excel and Defendant will use their best efforts to include each Class Member's full name;
26 most recent mailing address; dates of employment or number of workweeks worked during the

27 Class Period; and Social Security number.
28 Litera Comparison of First Amended Stipulation of Class Action Settlement (2) and Second
Amended Stipulation of Class Action Settlement (1) 10/04/2024

1 7. “Class Member(s)” or “Settlement Class” means Plaintiff and all current and
2 former hourly non-exempt employees who worked for Defendant in the State of California during
3 the Class Period.

4 8. “Class Period” means the period from December 8, 2018, through the ~~July~~
5 ~~19~~March 8, 2024.

6 9. “Class Representative Enhancement Payment” means the amount to be paid from
7 the Gross Settlement Amount to the named Plaintiff in exchange for executing a general release
8 and in recognition of his efforts in prosecuting the Action on behalf of Class Members. Plaintiff
9 will request and Defendant will not oppose Plaintiff’s application to the Court for a payment of
10 Ten Thousand Dollars (\$10,000) for his willingness to serve as Class Representative and time
11 spent assisting Class Counsel in that capacity.

12 10. “Court” means the Orange County Superior Court, or any other court taking
13 jurisdiction of the Action.

14 11. “Effective Date” means the date when the Final Approval Order becomes final.
15 For purposes of this Paragraph, the Final Approval Order “becomes final” upon the last to occur
16 of the following: (a) if there are no objections to the Settlement, the date the Court enters an order
17 granting final approval of the Settlement; (b) if there are objections to the Settlement, and if an
18 appeal, review, or writ is not sought from the Final Approval Order, the day after the time period
19 to appeal the Settlement has expired, i.e., 60 days from the date the Court enters an order granting
20 final approval of the Settlement; or (c) if there are objections to the Settlement, and an appeal,
21 review, or writ is timely sought from the Final Approval Order, the day after the Final Approval
22 Order is affirmed or the appeal, review, or writ is dismissed or denied, and the Final Approval
23 Order is no longer subject to further judicial review.

24 12. “Gross Settlement Amount” means the maximum settlement amount of One
25 Million Four Hundred Thirteen Thousand Eight Hundred and Twenty-Two Dollars
26 (\$1,413,822.00) (“Gross Settlement Amount”), which has been and/or will be paid by Defendant
27 in full satisfaction of all claims arising from the Action. The Gross Settlement Amount includes
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all Individual Settlement Payments to Participating Class Members, the Class Representative Enhancement Payments, Claims Administration Expenses, Class Counsel Fees and Cost, and PAGA penalties in the amount of One Hundred Forty Thousand Dollars (\$140,000) of which 75% or One Hundred Five Thousand Dollars (\$105,000) will be paid to the Labor Workforce Development Agency ("LWDA") and 25% or Thirty Five Thousand Dollars (\$35,000) to the PAGA Group Members. Defendant will pay the employer's share of payroll taxes, as applicable, in addition to the Gross Settlement Amount.

13. "Individual Settlement Payment" means each Participating Class Member's respective share of the Net Settlement Amount. Individual Settlement Payments will be determined by the calculations provided in this Agreement.

14. "Net Settlement Amount" means the maximum amount available for distribution to the Class Members, after deduction of Class Counsel Fees and Costs, Class Representative Enhancement Payment, Claims Administration Expenses, and \$140,000.00 as PAGA penalties from the Gross Settlement Amount.

15. "Notice of Objection" means a Class Member's valid and timely written objection to the Settlement Agreement. For the objection to be valid, it must include: (i) the objector's full name, signature, address, and telephone number; and (ii) a written statement of all grounds for the objection accompanied by any legal support for such objection. Further, an objector may appear at the Final Approval hearing, either in person or through counsel, at his or her expense, regardless of whether the objector submitted a Notice of Objection. The Parties will be permitted to respond in writing to such objections at least seven calendar days prior to the Final Approval hearing or within the time period set by the Court. Objections are only valid as to the Net Settlement Amount. All PAGA Group Members (defined below) will receive a pro rata portion of the PAGA Settlement Amount (defined below) and will be bound by the Released PAGA Claims (defined below).

16. "Notice" means the Notice of Class Action Settlement, substantially in the form attached as Exhibit A.

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1 17. “PAGA” means the California Private Attorneys General Act of 2004, which is
2 codified in California Labor Code §2698, et seq.

3 18. “PAGA Group Member(s)” means Plaintiff and all current and former hourly
4 non-exempt employees of Defendant who worked within California at any time during the PAGA
5 Period.

6 19. “PAGA Period” means the period from December 9, 2021, through ~~July 19~~March
7 8, 2024.

8 20. “PAGA Settlement Amount” means the portion of the Gross Settlement Amount
9 allocated to the resolution of Class Members’ claims arising under PAGA. The Parties have
10 agreed that the PAGA Settlement Amount is One Hundred Forty Thousand Dollars (\$140,000),
11 subject to Court approval. Of the PAGA Settlement Amount, 75% or One Hundred Five
12 Thousand Dollars (\$105,000) will be paid to the LWDA and the remaining 25% or Thirty-Five
13 Thousand Dollars (\$35,000) will be distributed to PAGA Group Members regardless of whether
14 they are a Participating Class Member or not.

15 21. "Individual PAGA Payment” means each PAGA Group Member’s respective share
16 of the PAGA Settlement Amount. Individual PAGA Payments will be determined by the
17 calculations provided in this Agreement.

18 22. “Participating Class Members” means all Class Members who do not submit valid
19 Requests for Exclusion.

20 23. “Preliminary Approval” means the Court order granting preliminary approval of
21 the Settlement Agreement.

22 24. “PAGA Notice” means the letter Plaintiff sent to the LWDA on December 9, 2022
23 to inform the agency of Defendant’s alleged Labor Code Violations.

24 25. “Released PAGA Claims” means any and all claims for civil penalties under
25 PAGA based on the labor code and IWC Wage Order violations alleged in each and every Notice
26 sent by Plaintiff to the LWDA; those being California Labor Code sections 201, 202, 203, 204,
27 226, 226.3, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198 and 2802, the applicable
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1 industrial wage orders, Unfair Business Practices (Business & Professions Code Section 17200 *et*
2 *seq.*) as well as all facts, theories, or claims for civil penalties that would be considered
3 administratively exhausted under applicable law by the PAGA Notice Plaintiff sent to the LWDA.
4 PAGA Group Members, regardless of whether they submit timely and valid Requests for
5 Exclusion from the Settlement Class, will release all claims under PAGA that could have been
6 premised on the claims, causes of action or legal theories described in the Operative Complaint
7 during the PAGA Period, or, in the alternative, all facts, theories, or claims for civil penalties that
8 would be considered administratively exhausted under applicable law by the PAGA Notice(s)
9 Plaintiff sent to the LWDA. The State of California and the LWDA will also release all claims
10 under PAGA that could have been premised on the claims, causes of action or legal theories
11 described in the Operative Complaint, or, in the alternative, as well as all facts, theories, or claims
12 for civil penalties that would be considered administratively exhausted under applicable law by
13 the PAGA Notice(s) Plaintiff sent to the LWDA.

14 26. “Released Claims” means any and all claims based on the facts alleged in the
15 Operative Complaint (“Complaint”), including claims under the PAGA as identified in Plaintiff’s
16 PAGA Notice and Labor Code sections 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 558,
17 1174, 1194, 1197, 1197.1, 1198 and 2802, and Unfair Business Practices (Business & Professions
18 Code Section 17200 *et seq.*). No other claims are released other than those claims specifically
19 plead in the operative Complaint and the PAGA Notice (except as otherwise specifically
20 described in this Agreement). These Released Claims will cover all Class Members who do not
21 opt out. The Parties agree that the judgment, and the Released Class Claims provided herein, shall
22 have res judicata effect.

23 27. “Defendant” means Defendant NexGen Air Conditioning and Heating, LLC, a
24 California Limited Liability Corporation.

25 28. “Released Parties” means Defendant and any of its parents, subsidiaries, affiliates,
26 including but not limited to Wrench Group, LLC, and all the foregoing’s owners, officers,
27 directors, employees, partners, shareholders and agents, and any other successors, assigns, or legal
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representatives.

29. "Request for Exclusion" means a timely letter submitted by a Class Member indicating a request to be excluded from the Settlement. The Request for Exclusion must: (a) set forth the name, address, telephone number and last four digits of the Social Security Number of the Class Member requesting exclusion; (b) be signed by the Class Member; (c) be returned by mail or fax to the Claims Administrator at the specified address or fax number indicated in the Notice; (d) clearly state that the Class Member does not wish to be included in the Settlement; and (e) be faxed or postmarked on or before the Response Deadline.

30. "Response Deadline" means the deadline by which Class Members must fax or postmark to the Claims Administrator a valid Request for Exclusion, submit objections to the Settlement or dispute workweeks. The Response Deadline will be forty-five (45) calendar days from the initial mailing of the Notice by the Claims Administrator. The Response Deadline for Request for Exclusion, objection or dispute workweeks will be extended forty-five (45) calendar days for any Class Member who is re-mailed a Notice by the Claims Administrator in accordance with the notice procedure described in Paragraph 45 of this Settlement Agreement. The Response Deadline may also be extended by express agreement between Class Counsel and Defendant's counsel. The Court shall have final say over the validity of opt out requests.

TERMS OF AGREEMENT

Plaintiff, on behalf of himself and the Settlement Class, and Defendant agree as follows:

31. Impact of Any Court Determination Not to Enter Final Approval Order. In the event that the Court does not enter a Final Approval Order and this Settlement Agreement does not become effective, the following will occur: (a) on the date final approval is denied, the status of the Action will be deemed to return to its status at the time immediately prior to and as if the Parties had never executed this Settlement Agreement; and (b) the Parties will each pay fifty percent (50%) of any costs incurred by the Claims Administrator.

32. Settlement Funding. Within fourteen (14) calendar days of the Final Approval Order becoming final, as explained in Paragraph 11, Defendant will transmit the entire Gross Litiga Comparison of First Amended Stipulation of Class Action Settlement (2) and Second Amended Stipulation of Class Action Settlement (1) 10/04/2024

1 Settlement Amount along with the employer's share of the payroll taxes (which shall be paid in
2 addition to the Gross Settlement Amount) to the Claims Administrator.

3 33. Class Counsel Fees and Costs. Defendant agrees not to oppose or impede any
4 application or motion by Class Counsel for Class Counsel Fees in the amount of up to Four
5 Hundred Seventy-One Thousand Two Hundred Seventy-Four dollars (\$471,274.00) representing
6 one-third (1/3) of the Gross Settlement Amount. Defendant also agrees not to oppose or impede
7 any application by Class Counsel for the reimbursement of the actual costs and expenses
8 associated with Class Counsel's litigation and settlement of the Action not to exceed Fifteen
9 Thousand Dollars (\$15,000.00). In consideration of their awarded attorneys' fees and costs and
10 expenses, Plaintiff and Class Counsel waive any and all claims to any further attorneys' fees and
11 expenses in connection with the Action.

12 34. Class Representative Enhancement Payment. In exchange for named Plaintiff
13 executing a general release, and in recognition of his effort in prosecuting the Action, Defendant
14 agrees not to oppose or impede any application or motion for a Class Representative
15 Enhancement Payment of up to Ten Thousand Dollars (\$10,000) to Plaintiff. The Class
16 Representative Enhancement Payment, which will be paid from the Gross Settlement Amount,
17 will be in addition to Plaintiff's Individual Settlement Payment paid pursuant to the Settlement.
18 The Claims Administrator will pay the Class Representative Enhancement Payment using IRS
19 Form 1099. Plaintiff will be solely and legally responsible to pay any and all applicable taxes,
20 penalties and interest on the payment made pursuant to this paragraph and will hold Defendant
21 harmless from any claim or liability for taxes, penalties, or interest arising as a result of the
22 payment. At Final Approval, Class Counsel and Plaintiff will submit a detailed declaration in
23 support of the requested Class Representative Enhancement Payment.

24 35. Claims Administration Expenses. The Claims Administrator will be paid for the
25 reasonable fees and costs of administration of the Settlement, which are estimated not to exceed
26 Twenty Thousand Dollars and Zero Cents (\$20,000.00). These will include, inter alia, fees and
27 costs payable to the Claims Administrator for printing, translating into Spanish (or other
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1 first-languages of Class Members, if necessary), distributing (including with appropriate postage),
2 and tracking documents for this Settlement in English and Spanish, any searches to locate any
3 Class Members, calculating estimated Individual Settlement Payments, calculating estimated
4 Individual PAGA Payments, tax reporting, distributing the Individual Settlement Payments,
5 distributing Individual PAGA Payments, Class Representative Enhancement Payment, Class
6 Counsel Fees and Costs, payment to LWDA for PAGA penalties, and providing necessary
7 certification of completion of notice, reports and declarations, establishing and administering a
8 Qualified Settlement Fund account, required tax reporting on the Individual Settlement Payments,
9 the issuing of 1099 and W-2 IRS forms, calculating the employers' share of payroll taxes on the
10 wage portion of the Individual Settlement Payments and coordinating related reporting, and other
11 responsibilities as requested by the Parties. The Claims Administration Expenses will be paid
12 from the Gross Settlement Amount.

13 36. Net Settlement Amount. The Net Settlement Amount will be used to satisfy
14 Individual Settlement Payments to Participating Class Members from the Settlement Class.

15 Individual Class Settlement Payment Calculations. Based on a review of its records
16 through mediation (January 17, 2024), Defendant estimates there are 849 class members who
17 collectively worked a total of 41,583 workweeks, and 578 PAGA Group Members who worked a
18 total of 14,217 pay periods during the PAGA Period. Defendant will provide the Claims
19 Administrator with the total number of workweeks for each Participating Class Member and
20 PAGA Group Member. The Claims Administrator will divide the Net Settlement Amount by the
21 total number of workweeks for Participating Class Members ("Work Week Rate Amount") and
22 then multiply this amount by each Participating Class Member's total number of workweeks to
23 yield that employee's Individual Class Settlement Payment. Any one day worked during a
24 Workweek will be credited as a full workweek. Based on the minimum net settlement amount of
25 \$757,548.00, the estimated 849 class members, the average settlement payment is estimated to be
26 approximately \$892.28. Given the 293 weeks in the class period, the estimated minimum
27 payment is projected to be approximately \$18.22, and the estimated maximum payment to be
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1 \$5,337.16. In the event a Class Member submits a timely Request for Exclusion from the
2 settlement, he/she will not receive his or her individual settlement allocated to Class Members
3 and his/her share of the settlement will be added to the Net Settlement Amount.

4 37. Individual PAGA Settlement Payment Calculations. Each PAGA Group Member
5 will receive an individual share of the \$35,000.00 portion of the PAGA Settlement Amount (or
6 25% of the PAGA Settlement Amount approved by the Court). The Individual PAGA Settlement
7 Payment shall be calculated by the Claims Administrator, with a formula similar to payments to
8 Participating Class Members. Any one day worked during a Workweek will be credited as a full
9 workweek. No PAGA Group Member will be permitted to exclude themselves from the PAGA
10 claim portion of the Settlement. Individual PAGA Settlement Payments will be distributed by the
11 Claims Administrator by mail to the PAGA Group Members including to those Class Members
12 who submitted a request for exclusion. Given the presently-estimated 578 PAGA group
13 members, 14,217 pay periods as of the time of mediation, and the anticipated 68 pay period
14 PAGA Period from December 9, 2021 through ~~July 19~~March 8, 2024, the average PAGA
15 payment is estimated to be \$42.78. The minimum payment is estimated to be \$2.46. The highest
16 payment is estimated to be \$167.40.

17 38. Participating Class Members and PAGA Group Members. Individuals who are
18 both Participating Class Members and PAGA Group Members shall receive both the Individual
19 Class Settlement Payment and the Individual PAGA Settlement Payment. No Class Member or
20 PAGA Group Member will be permitted to exclude themselves from the PAGA claim portion of
21 the Settlement.

22 39. No Credit Toward Benefit Plans. All Individual Class and/or PAGA Settlement
23 Payments to Class Members shall be deemed to be income to such Class Members solely in the
24 year in which such payments actually are received by the Class Members. It is expressly
25 understood and agreed that the receipt of such Individual Class and/or PAGA Settlement
26 Payments will not entitle any Class Member to additional compensation or benefits under any
27 company bonus, paid time off (including vacation and sick leave), or other compensation or
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benefit plan or agreement in place during the period covered by the Settlement, nor will it entitle any Class Member to any increased retirement, 401(k) benefits or matching benefits, or deferred compensation benefits. It is the intent of this Settlement Agreement that the Individual Class and/or PAGA Settlement Payments provided for in this Agreement are the sole payments to be made by Defendant to the Class Members in connection with this Settlement Agreement, and that the Class Members are not entitled to any new or additional compensation or benefits as a result of having received the Individual Class and/or PAGA 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).

40. Claims Administration Process. The Parties agree to cooperate in the administration of the settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in administration of the Settlement.

41. Delivery of the Class List. Within twenty-one (21) calendar days of Preliminary Approval, Defendant will provide the Class List to the Claims Administrator.

42. Notice by First-Class U.S. Mail. Within ten (10) calendar days after receiving the Class List from Defendant, the Claims Administrator will mail the Notice to all Class Members via regular First-Class U.S. Mail.

43. Confirmation of Contact Information in the Class List. Prior to mailing, the Claims Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. Any Notice returned to the Claims Administrator as non-deliverable on or before the Response Deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address, and the Claims Administrator will indicate the date of such re-mailing on the Notice. If no forwarding address is provided, the Claims Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address and/or Social Security number of the Class Member involved, and will then perform a single re-mailing. Those Class Members who receive a re-mailed Notice will have forty-five (45) calendar days to fax or postmark a Request for Liters Comparison of First Amended Stipulation of Class Action Settlement (2) and Second Amended Stipulation of Class Action Settlement (1) 10/04/2024

1 Exclusion, submit an objection to the Settlement or dispute workweeks.

2 44. Notice. All Class Members will be mailed the Notice. The Notice will be also
3 translated and provided in Spanish. The Notice will provide: (1) information regarding the nature
4 of the Action, (2) a summary of the Settlement's principal terms, (3) the Settlement Class
5 definition, (4) each Class Member's number of workweeks worked during the Class Period, (5)
6 each Class Member's estimated Individual Class Settlement Payment; (6) each PAGA Group
7 Member's estimated Individual PAGA Settlement Payment; (7) the dates which comprise the
8 Class Period, (8) instructions on how to submit valid Requests for Exclusion, objections or
9 dispute workweeks, (9) the deadlines by which the Class Member must fax or postmark Request
10 for Exclusions, submit objections to the Settlement or dispute workweeks, and (10) the claims to
11 be released, as set forth in this Settlement Agreement, (11) the Court's updated social distancing
12 rules in effect, (12) where Class Members may obtain additional information, including any
13 changes to the date and location of court hearings, the Order Granting Final Approval of Class
14 Action Settlement and Entering Judgment following the Final Approval Hearing (i.e., the Court's
15 website or posted on the Settlement Administrator's website). The Claims Administrator shall
16 also post a copy of the Notice attached as Exhibit A, or any updated Notice as required by the
17 Court, and the Motion for Preliminary Approval and Final Approval hearing dates, locations, and
18 times and the final judgment on its website. The Settlement Administrator will post copies of the
19 preliminary approval and final approval motions, Orders for preliminary and final approval, and
20 the Settlement Agreement on its website. Upon the entry of a Final Judgment, the Settlement
21 Administrator will post the Final Judgment on its website, where it shall remain viewable for not
22 less than 60 days.

23 45. Request for Exclusion Procedures. Any Class Member wishing to opt out from the
24 class action portion of the Settlement Agreement must sign and fax or postmark a written Request
25 for Exclusion to the Claims Administrator within the Response Deadline. The date of the fax or
26 postmark on the return mailing envelope will be the exclusive means to determine whether a
27 Request for Exclusion has been timely submitted. The Parties to this Agreement and their counsel
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1 agree that they will not solicit or encourage Class Members to opt-out or object to this Settlement
2 Agreement. If the Court approves the compromise of the PAGA claim, all PAGA Group
3 Members are bound by the Court's resolution of that claim. Class Members who are also PAGA
4 Group Members submitting a request for exclusion will nevertheless receive their pro-rata share
5 of the 25% of the PAGA Settlement Amount (i.e., their Individual PAGA Settlement Payments)
6 allocated for PAGA penalties to PAGA Group Members. In the event that 10% or more Class
7 Members opt out of the settlement, Defendant has the right (but not the obligation) to void the
8 settlement. The Settlement Administrator will submit all requests for exclusions, objections, and
9 workweek calculation disputes to Class Counsel and Defense Counsel. Class Counsel will
10 provide all requests for exclusions, objections, and workweek calculation disputes at the time of
11 filing of the Final Approval Motion to the Court. The Court will have final say over the validity
12 of all requests for exclusions, objections, and workweek calculation disputes.

13 46. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class
14 Member who does not affirmatively opt out of the Settlement Agreement by submitting a timely
15 and valid Request for Exclusion will be bound by all of its terms, including those pertaining to the
16 Released Claims (other than as it applies to the PAGA claims with respect to the PAGA Group
17 Members), as well as any Judgment that may be entered by the Court if it grants final approval to
18 the Settlement. If the Court approves the compromise of the PAGA claim, Class Members who
19 are also PAGA Group Members submitting a request for exclusion, if any, will nevertheless be
20 bound by the Court's resolution of that claim and receive their pro-rata share of the 25% of the
21 PAGA Payment allocated to the PAGA Group Members.

22 47. Objection Procedures. To object to the Settlement Agreement, a Class Member
23 may submit a Request for Exclusion and may mail a valid Notice of Objection to the Claims
24 Administrator by the Response Deadline. The Claims Administrator will notify counsel for the
25 Parties forthwith via email. Class Counsel will lodge the objection with the Court. The Notice of
26 Objection must be signed by the Class Member and contain all information required by this
27 Settlement Agreement. The postmark date of the mailing will be deemed the exclusive means for
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1 determining that the Notice of Objection is timely. Class Members who wish to object will have a
2 right to appear at the Final Approval Hearing, with or without counsel at his/her own expense, in
3 order to have their objections heard by the Court, regardless of whether they submitted a Notice of
4 Objection. At no time will any of the Parties or their counsel seek to solicit or otherwise
5 encourage Class Members to submit written objections to the Settlement Agreement or appeal
6 from the Final Approval Order and Judgment.

7 48. To challenge the number of Workweeks/Pay Periods listed on the Class Notice, a
8 Class Member may submit a written letter to the Class Administrator via fax or mail by the
9 Response Deadline. If a Class Member timely disputes the number of Workweeks listed on the
10 Class Notice, the Parties' counsel will make a good faith effort to resolve the dispute
11 cooperatively. If counsel for the Parties cannot agree, the dispute shall be submitted to the
12 Settlement Administrator, who shall examine the records and either verify the calculation or
13 provide a corrected calculation. If a Class Member disputes the number of Workweeks, it will be
14 the Class Member's responsibility to supply information confirming the error in the calculation or
15 Defendant's records. In any event, the Settlement Administrator will make every effort to resolve
16 any such disputes prior to final approval of this Settlement Agreement. Plaintiffs shall file with
17 the Court all disputes submitted by the Class Members, and all evidence provided by class
18 members in connection with any dispute, and the findings of the Settlement Administrator. The
19 Court shall have final authority to resolve any dispute by a Class Member.

20 49. Certification Reports Regarding Individual Settlement Payment Calculations. The
21 Claims Administrator will provide Defendant's counsel and Class Counsel a weekly report which
22 certifies: (i) the number of Class Members who have submitted a valid Request for Exclusion; (ii)
23 the number of Class Members who have submitted a valid Notice of Objection; and (iii) the
24 number of any deficient Requests for Exclusion or objections. Additionally, the Claims
25 Administrator will provide to counsel for both Parties any updated reports regarding the
26 administration of the Settlement Agreement as needed or requested. If requested by Plaintiff's
27 counsel or the Court, the Claims Administrator shall also provide a declaration attesting to the
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1 services to be provided pursuant to this Settlement Agreement and/or the results of the mailing of
2 the Notice.

3 50. Timing of Distribution of Payments. Within five (5) business days of Defendant
4 depositing the payment as set forth above, the Claims Administrator will issue payments to (1)
5 Participating Class Members and PAGA Group Members; (2) Plaintiff; (3) Class Counsel; and (4)
6 payment to LWDA. The Claims Administrator will also issue a payment to itself for
7 Court-approved services performed in connection with the settlement.

8 51. Uncashed or Undeliverable Settlement Checks. Individual Settlement Payments
9 and Individual PAGA Payments paid to participating Class Members will be valid for 180 days.
10 Participating Class Members will have one hundred eighty (180) calendar days from the date of
11 issuance of the check to cash their check. For any Class Member whose Individual Settlement
12 Payment and/or Individual PAGA Payment is uncashed and cancelled after the void date, the
13 Claims Administrator will send the amount represented by the check to the California State
14 Controller's Office Unclaimed Property Fund, with the identity of the Participating Class Member
15 to whom the funds belong, to be held for the participating Class Member per California
16 Unclaimed Property Law, in the interest of justice. The money paid to the California State
17 Controller's Office Unclaimed Property Fund will remain the Participating Class Member's
18 property. This will allow Participating Class Members who did not cash their checks to collect
19 their Individual Settlement Amounts at any time in the future. Therefore, there will be no unpaid
20 residue or unclaimed or abandoned class member funds, and California Code of Civil Procedure
21 section 384 shall not apply. The funds will be held by the State until claimed by the employee and
22 the uncashed check never ceases to be the employee's property.

23 52. Increase in Workweeks. In the event that the total number of weeks worked in the
24 Class Period (defined as December 8, 2018, though ~~July 19~~March 8, 2024) is 5% or more greater
25 (Escalator Threshold") than the 41,583 weeks worked estimated at the time of mediation (i.e.
26 43,662 or more), then the Gross Settlement Amount shall be increased proportionately for each
27 additional week worked over the Escalator Threshold.
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1 53. Certification of Completion. Upon completion of administration of the Settlement,
2 the Claims Administrator will provide a written declaration under oath to certify such completion
3 to the Court and counsel for all Parties.

4 54. Treatment of Individual Settlement Payments. All Individual Settlement Payments
5 will be allocated as follows: one-third of each Individual Settlement Payment will be considered
6 wages; one-third shall be allocated to penalties; and one-third shall be allocated to interest. The
7 portion allocated to wages in each Individual Settlement Payment will be reported on an IRS
8 Form W-2 and the portion allocated to interest and penalties will be reported on an IRS
9 Form-1099 by the Claims Administrator.

10 55. Treatment of Individual PAGA Payments. 100% of each PAGA Group Members'
11 pro-rata share of the \$35,000 allocated for PAGA penalties shall be allocated as penalties and
12 reported on an IRS Form-1099 by the Claims Administrator.

13 56. Administration of Taxes by the Claims Administrator. The Claims Administrator
14 will be responsible for issuing to Plaintiff, Participating Class Members, PAGA Group Members,
15 Class Counsel, and Defendant any W-2, 1099, or other tax forms as may be required by law for all
16 amounts paid pursuant to this Settlement Agreement. The Claims Administrator will also be
17 responsible for forwarding all payroll taxes and other legally required withholdings, and related
18 reporting, to the appropriate government authorities.

19 57. Defendant's Responsibility for Employer Taxes: For any portion of the Class
20 Members' Individual Settlement Payments that are designated as "wages" for purposes of tax
21 reporting, the employer's taxes, employer contributions of all federal, state, and local taxes
22 (including, but not limited to, FICA, FUTA, and SDI), will be paid in addition to the Gross
23 Settlement Amount, via and with the Claims Administrator's assistance.

24 58. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
25 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY
26 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER
27 PARTY"). ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
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1 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
2 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS
3 INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE
4 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN
5 THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31
6 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
7 EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX
8 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
9 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
10 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO
11 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
12 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
13 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
14 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
15 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
16 OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF
17 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
18 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
19 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
20 AGREEMENT.

21 59. No Prior Assignments. The Parties and their counsel represent, covenant, and
22 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to
23 assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand,
24 action, cause of action or right released and discharged in this Settlement Agreement.

25 60. Release of Claims by Class Members. Upon the date the Court enters an order
26 granting final approval of the Settlement and Defendant fully funds the Gross Settlement Amount,
27 all Class Members who do not timely submit a valid Request for Exclusion do and will be
28 Litera Comparison of First Amended Stipulation of Class Action Settlement (2) and Second
Amended Stipulation of Class Action Settlement (1) 10/04/2024

1 deemed to have fully, finally and forever released, settled, compromised, relinquished, waived,
2 and discharged any and all of the Released Parties of and from any and all Released Claims
3 accruing during the Class Period. In addition, on the date the Court enters an order granting final
4 approval of the Settlement and Defendant fully funds the Gross Settlement Amount, all Class
5 Members who do not timely submit a valid Request for Exclusion and all successors in interest
6 will be barred from prosecuting or participating in any and all Released Claims against the
7 Released Parties. Furthermore, upon the date the Court enters an order granting final approval of
8 the Settlement and Defendant fully funds the Gross Settlement Amount, the State of California
9 and PAGA Group Members (regardless of whether PAGA Group Members opt out of the Class
10 Settlement) release the Released Parties from the Released PAGA Claims regardless of whether
11 they submitted timely and/or valid Requests for Exclusion.

12 61. Release by PAGA Group Members. Upon the date the Court enters an order
13 granting final approval of the Settlement, all Aggrieved Employees (regardless of whether they
14 are Participating Class Members or Non-Participating Class Members) are deemed to have fully,
15 finally and forever released, settled, compromised, relinquished, waived, and discharged on behalf
16 of themselves and their respective former and present representatives, agents, attorneys, heirs,
17 administrators, successors and assigns, the Released Parties, any and all claims for civil penalties
18 under PAGA based on the labor code and IWC Wage Order violations alleged in each and every
19 Notice sent by Plaintiff to the LWDA; those being California Labor Code sections 201, 202, 203,
20 204, 226, 226.3, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198 and 2802, and the
21 applicable industrial wage orders, Unfair Business Practices (Business & Professions Code
22 Section 17200 et seq.) as well as all facts, theories, or claims for civil penalties that would be
23 considered administratively exhausted under applicable law by the PAGA Notices Plaintiff sent to
24 the LWDA.

25 62. The Releases in Paragraphs 60 and 61 do not include any claims for workers
26 compensation, unemployment, or disability benefits of any nature, nor do they include any claims,
27 actions, or causes of action which may be possessed by Settlement Class Members under state or
28 federal law.
Litra Comparison of First Amended Stipulation of Class Action Settlement (2) and Second
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1 federal anti-discrimination statutes, including, without limitation, the Cal. Fair Employment and
2 Housing Act, the Cal. Government Code § 12940, et seq.; the Unruh Civil Rights Act, the Cal.
3 Civil Code § 51, et seq.; the California Constitution; Title VII of the Civil Rights Act of 1964, 42
4 U.S.C. § 2000, et seq.; the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101, et
5 seq.; the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et
6 seq.; the Fair Credit Reporting Act, the Investigative Consumer Reporting Agencies Act
7 (ICRAA), and/or the Consumer Credit Reporting Agencies Act (CCRAA)

8 63. Release by Plaintiff. Upon the date the Court enters an order granting final
9 approval of the settlement and Defendant fully funds the Gross Settlement Amount, ~~in addition to~~
10 ~~the claims being released by all Class Members, Plaintiff will provide the following additional~~
11 ~~general release (“General Release”):~~ Plaintiff, on his own behalf and on behalf of his heirs,
12 spouses, executors, administrators, attorneys, agents and assigns, fully and finally releases the
13 Released Parties from all claims, demands, rights, liabilities and causes of action ~~of every nature~~
14 ~~and description whatsoever, known or unknown, asserted or that might have been asserted,~~
15 ~~whether in tort, contract, or for violation of any state or federal statute, rule or regulation arising~~
16 ~~out of, relating to, or in connection with any act or omission by or on the part of any of the~~
17 ~~Released Parties committed or omitted prior to the execution of this Agreement. This General~~
18 ~~Release includes any unknown claims Plaintiff does not know or suspect to exist in his favor at~~
19 ~~the time of this General Release, which, if known by him, might have affected his settlement~~
20 ~~with, and release of, the Released Parties or might have affected his decision not to object to this~~
21 ~~Settlement or this Release.~~, transactions, or occurrences that occurred during the Class Period,
22 including, but not limited to: (a) all claims that were, or reasonably could have been, alleged,
23 based on the facts contained in the First Amended Complaint and (b) all PAGA claims that were,
24 or reasonably could have been, alleged based on facts contained in the First Amended Complaint,
25 Plaintiff’s PAGA Notice, or ascertained during the Action and released by Plaintiff’s waiver of
26 Civil Code Section 1542 (“General Release”). Plaintiff acknowledges that Plaintiff may discover
27 facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes
28 Literal Comparison of First Amended Stipulation of Class Action Settlement (2) and Second
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1 to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all
2 respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

3 ~~63.~~ Furthermore, for purposes of Plaintiff's Release, Plaintiff expressly waives
4 and relinquishes the provisions, rights, and benefits, if any, of Section 1542 of the California Civil
5 Code, which reads:

6 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR
7 OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR
8 HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF
9 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR
10 HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

11 The significance of this release and waiver of Civil Code Section 1542 has been explained
12 to Plaintiff by Class Counsel. Plaintiff's Release ~~by Plaintiff expressly excludes~~ does not extend to
13 any claims that cannot be released as a matter of law, including, but not limited to, claims for
14 vested benefits, unemployment benefits, disability benefits, social security benefits, workers'
15 compensation ~~against Defendant~~ benefits that arose at any time, or based on occurrences outside
16 the Class Period.

17 64. Nullification of Settlement Agreement. In the event that: (i) the Court does not
18 finally approve the Settlement as provided in this Settlement Agreement; or (ii) the Settlement
19 does not become final for any other reason, then this Settlement Agreement and any documents
20 generated to bring it into effect will be null and void. Any order or judgment entered by the Court
21 in furtherance of this Settlement Agreement will likewise be treated as void from the beginning.
22 In such case, the Settlement shall not be used or be admissible in any subsequent proceedings, in
23 this Action, this Court, or any other Court or forum.

24 65. Preliminary Approval Hearing. The Parties will work together to obtain a hearing
25 before the Court to request the Preliminary Approval of the Settlement Agreement, and the entry
26 of a Preliminary Approval Order for: (i) conditional certification of the Settlement Class for
27 settlement purposes only, (ii) preliminary approval of the proposed Settlement Agreement, and
28 Litara Comparison of First Amended Stipulation of Class Action Settlement (2) and Second
Amended Stipulation of Class Action Settlement (1) 10/04/2024

1 (iii) setting a date for a Final Approval/Settlement Fairness Hearing. The Preliminary Approval
2 Order will provide for the Notice to be sent to all Class Members as specified in this Settlement
3 Agreement. In conjunction with the Preliminary Approval motion, the Parties will submit this
4 Settlement Agreement, which sets forth the terms of this Settlement and will include the proposed
5 Notice.

6 66. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of the
7 deadlines to fax or postmark Request for Exclusion or submit objections to the Settlement
8 Agreement, and with the Court's permission, a Final Approval/Settlement Fairness Hearing will
9 be conducted to determine the Final Approval of the Settlement Agreement along with the
10 amounts properly payable for (i) Individual Settlement Payments; (ii) the Class Counsel Fees and
11 Costs; (iii) the Class Representative Enhancement Payment; (iv) payment to LWDA for PAGA
12 penalties; and (v) all Claims Administration Expenses. Class Counsel will be responsible for
13 drafting all documents necessary to obtain final approval. Class Counsel will also be responsible
14 for drafting the attorneys' fees and costs application to be heard at the Final Approval/Settlement
15 Fairness Hearing.

16 67. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by
17 the Court or after the Final Approval/Settlement Fairness Hearing, the Parties will present a
18 proposed Judgment to the Court for its approval. Pursuant to California Rules of Court, Rule
19 3.771(b), the Claims Administrator shall post on its website a copy of the Judgment for a period
20 of at least sixty (60) days from the date the Court signs the Judgment. After entry of the
21 Judgment, the Court will have continuing jurisdiction pursuant to California Rules of Court
22 3.769(h) and Code of Civil Procedure Section 664.6 solely for purposes of addressing: (i) the
23 interpretation and enforcement of the terms of the Settlement Agreement, (ii) settlement
24 administration matters, and (iii) such post-Judgment matters as may be appropriate under court
25 rules or as set forth in this Settlement Agreement.

26 68. Exhibits Incorporated by Reference. The terms of this Settlement Agreement
27 include the terms set forth in any attached Exhibits, which are incorporated by this reference as
28 Litera Comparison of First Amended Stipulation of Class Action Settlement (2) and Second
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1 though fully set forth in this Settlement Agreement. Any Exhibits to this Agreement are an
2 integral part of the Settlement.

3 69. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute
4 the entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral
5 agreements may be deemed binding on the Parties. The Parties expressly recognize California
6 Civil Code Section 1625 and California Code of Civil Procedure Section 1856(a), which provide
7 that a written agreement is to be construed according to its terms and may not be varied or
8 contradicted by extrinsic evidence, and the Parties agree that no such extrinsic oral or written
9 representations or terms will modify, vary or contradict the terms of this Agreement.

10 70. Amendment or Modification. This Settlement Agreement may be amended or
11 modified only by a written instrument signed by counsel for all Parties or their
12 successors-in-interest.

13 71. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant
14 and represent they are expressly authorized by the Parties whom they represent to negotiate this
15 Settlement Agreement and to take all appropriate action required or permitted to be taken by such
16 Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other
17 documents required to effectuate the terms of this Settlement Agreement. The Parties and their
18 counsel will cooperate with each other and use their best efforts to effect the implementation of
19 the Settlement. If the Parties are unable to reach agreement on the form or content of any
20 document needed to implement the Settlement Agreement, or on any supplemental provisions that
21 may become necessary to effectuate the terms of this Settlement Agreement, the Parties may seek
22 the assistance of the Court to resolve such disagreement. The Parties, Class Counsel, and Defense
23 Counsel represent that they are not aware of any other pending matter or action asserting claims
24 that will be extinguished or affected by the Settlement Agreement.

25 72. Binding on Successors and Assigns. This Settlement Agreement will be binding
26 upon, and inure to the benefit of, the successors or assigns of the Parties to this Settlement
27 Agreement, as previously defined.
28 Litara Comparison of First Amended Stipulation of Class Action Settlement (2) and Second
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1 73. Execution and Counterparts. This Settlement Agreement is subject only to the
2 execution of all Parties. However, the Settlement Agreement may be executed in one or more
3 counterparts. All executed counterparts and each of them, including facsimile and scanned copies
4 of the signature page, will be deemed to be one and the same instrument provided that counsel for
5 the Parties will exchange among themselves original signed counterparts.

6 74. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe
7 this Settlement Agreement is a fair, adequate and reasonable settlement of the Action and have
8 arrived at this Settlement Agreement after arm's-length negotiations and in the context of
9 adversarial litigation, taking into account all relevant factors, present and potential. The Parties
10 further acknowledge that they are each represented by competent counsel and that they have had
11 an opportunity to consult with their counsel regarding the fairness and reasonableness of this
12 Settlement Agreement.

13 75. Invalidity of Any Provision. Before declaring any provision of this Settlement
14 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest
15 extent possible consistent with applicable precedents so as to define all provisions of this
16 Settlement Agreement valid and enforceable.

17 76. Captions. The captions and section numbers in this Agreement are inserted for the
18 reader's convenience, and in no way define, limit, construe or describe the scope or intent of the
19 provisions of this Agreement.

20 77. Waiver. No waiver of any condition or covenant contained in this Agreement or
21 failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or
22 constitute a further waiver by such party of the same or any other condition, covenant, right or
23 remedy.

24 78. Enforcement Actions. In the event that one or more of the Parties institute any
25 legal action or other proceeding against any other Party to enforce the provisions of this
26 Settlement Agreement or to declare rights and/or obligations under this Settlement Agreement,
27 the successful Party will be entitled to recover from the unsuccessful Party reasonable attorneys'
28 Litara Comparison of First Amended Stipulation of Class Action Settlement (2) and Second
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1 fees and costs, including expert witness fees incurred in connection with any enforcement actions.

2 79. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms
3 and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be
4 construed more strictly against one party than another merely by virtue of the fact that it may have
5 been prepared by counsel for one of the Parties, it being recognized that, because of the
6 arms-length negotiations between the Parties, all Parties have contributed to the preparation of
7 this Agreement.

8 80. Representation By Counsel. The Parties acknowledge that they have been
9 represented by counsel throughout all negotiations that preceded the execution of this Settlement
10 Agreement, and that this Settlement Agreement has been executed with the consent and advice of
11 counsel.

12 81. All Terms Subject to Final Court Approval. All amounts and procedures described
13 in this Settlement Agreement will be subject to final Court approval.

14 82. Cooperation and Execution of Necessary Documents. All Parties will cooperate in
15 good faith and execute all documents to the extent reasonably necessary to effectuate the terms of
16 this Settlement Agreement.

17 83. Binding Agreement. The Parties warrant that they understand and have full
18 authority to enter into this Agreement, and further intend that this Agreement will be fully
19 enforceable and binding on all Parties, and agree that it will be admissible and subject to
20 disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality
21 provisions that otherwise might apply under federal or state law.

22 84. No Admission of Liability. Nothing contained in this Settlement Agreement shall
23 be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the
24 part of Defendant. Each of the Parties has entered into this Settlement Agreement with the
25 intention to avoid further disputes and litigation, and the attendant inconvenience and expense,
26 and to fully and forever buy their respective peace. This Settlement Agreement shall be
27 inadmissible in evidence in any action or proceeding, by any party, except an action or proceeding
28 ~~Litara Comparison of First Amended Stipulation of Class Action Settlement (2) and Second~~
Amended Stipulation of Class Action Settlement (1) 10/04/2024

1 by one of the Parties to approve, interpret, or enforce the Settlement Agreement's terms.

2 85. Communications. Before the date on which the Parties file their motion for
3 preliminary approval of the Settlement, Plaintiff and their Class Counsel will not initiate any
4 contact with Class Members other than Plaintiff about the Settlement, except that, if contacted by
5 a Class Member, they may respond that a settlement has been reached and that the details will be
6 communicated in a forthcoming Court-approved notice.

7 86. Disputes. Any dispute between the Parties concerning the interpretation or
8 implementation of this Settlement Agreement will be resolved by the Court. Prior to any such
9 resort to the Court, counsel for the Parties will confer in good faith to resolve the dispute.

10 87. Applicable Law. All terms and conditions of this Stipulation and its exhibits will
11 be governed by and interpreted according to the laws of the State of California, without giving
12 effect to any conflict of law or choice of law principles.

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14
15 DATED: _____

16 _____
17 Ramon Lopez
18 Plaintiff and Class Representative
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28 Litera Comparison of First Amended Stipulation of Class Action Settlement (2) and Second
Amended Stipulation of Class Action Settlement (1) 10/04/2024

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DATED: _____ Respectfully Submitted,

BARKHORDARIAN LAW FIRM, PLC
Gregory P. Wong
John F. Litwin
Attorneys for Plaintiff RAMON LOPEZ

Gregory P.
Wong
Heather K.
Cox
Attorneys for
Plaintiff
RAMON
LOPEZ
DATED: _____

NEXGEN AIR CONDITIONING AND HEATING,
LLC

By: Bill Kean on behalf of Defendant NexGen Air
Conditioning and Heating, LLC
Its: President of HVAC Operations

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DATED: VENABLE LLP

Respectfully
Submitted,

BARKHORDARI
AN LAW FIRM,
PLC

Rudy G. Klapper
Jeffrey A. Brand

Attorneys for Defendant NEXGEN AIR
CONDITIONING AND HEATING, LLC

Gregory P.
Wong
Heather K.
Cox
Attorneys for
Plaintiff
RAMON
LOPEZ

Summary report: Litera Compare for Word 11.9.1.1 Document comparison done on 10/4/2024 8:48:38 AM	
Style name: Venable	
Intelligent Table Comparison: Active	
Original filename: First Amended Stipulation of Class Action Settlement (2).docx	
Modified filename: Second Amended Stipulation of Class Action Settlement (1).docx	
Changes:	
Add	12
Delete	10
Move From	0
Move To	0
Table Insert	0
Table Delete	0
Table moves to	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	22

EXHIBIT 3

[CLASS MEMBER NAME and ADDRESS]

**[CLASS MEMBER NAME], PLEASE READ THIS NOTICE CAREFULLY.
IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHTS.**

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

**NOTICE OF PROPOSED CLASS ACTION AND PRIVATE ATTORNEYS
GENERAL ACT SETTLEMENT**

Ramon Lopez. vs. NexGen Air Conditioning and Heating, LLC, et al.
Orange County Superior Court Case No. 30-2022-01295800-CU-OE-CXC

If you are or were employed as an hourly non-exempt employee by NexGen Air Conditioning and Heating, LLC at any time between December 8, 2018 and July 19, 2024 (the “Settlement Class”), a proposed class action settlement may affect your rights and you may be entitled to money under the proposed Settlement.

You are **not** being sued. A court authorized this notice. This is **not** a solicitation from a lawyer.

**PLEASE READ THIS NOTICE CAREFULLY. IT CONTAINS IMPORTANT INFORMATION
ABOUT YOUR RIGHTS.**

1. Why Did I Get This Notice?

The Court has granted preliminary approval of the Settlement of the class action brought on behalf of all current and former hourly non-exempt employees who worked for NexGen Air Conditioning and Heating, LLC in the State of California at any time between December 8, 2018 and July 19, 2024 (the “Settlement Class”).

You are receiving this Notice because Defendant’s records show that you are in the proposed Settlement Class. This notice informs you about settlement of this pending lawsuit, that you may be a member of the Settlement Class, and that you have certain rights to object to the settlement.

2. What Is This Lawsuit About?

This Action was filed on December 8, 2022. Former employee Ramon Lopez (“Plaintiff”) alleged that NexGen Air Conditioning and Heating, LLC (“Defendant” and collectively with Plaintiff referred to herein as the “Parties”), failed to pay minimum and overtime wages, failed to pay timely wages, failed to provide accurate itemized wage statements, failed to provide timely, duty-free meal periods and/or pay meal period premiums for missed meal periods, failed to provide compliant rest periods and/or pay rest period premiums, failed to maintain adequate records, failed to reimburse business expenses, and unfairly competed with respect to him and other similarly situated employees. Plaintiff also sought penalties under the Private Attorneys’ General Act of 2004 (“PAGA”) on behalf of all allegedly PAGA Group Members as well as restitution under Cal. Bus. & Prof. Code section 17200.

Plaintiff filed this Action in the Superior Court of The State of California, County of Orange Case No. 30-2022-01295800-CU-OE-CXC (the “Action”).

Defendant denies Plaintiff's claims and allegations and asserts that it has complied with all of its legal obligations under the California Labor Code, PAGA, Cal. Bus. & Prof. Code section 17200, and other applicable laws.

This description of the case is general and does not cover all the issues of this case. The Court has made no decision regarding the merits of Plaintiff's allegations or Defendant's defenses. The Settlement is not an admission of any wrongdoing.

3. Why Did This Case Settle?

The Parties in this action disagree as to the probable outcome of the action with respect to liability and damages if it were not settled. Although Plaintiff believes his claims and that of the Settlement Class have merit, Plaintiff recognizes that litigating is a risky proposition, and that Plaintiff and the Settlement Class may not have prevailed on all or some of their claims. Likewise, while Defendant is confident that it has strong defenses to Plaintiff and the Settlement Class's claims, it recognizes the risks, distractions, and costs involved with litigation. The Parties engaged in settlement negotiations with the assistance of a well-respected neutral third-party mediator, and, recognizing the risks and costs inherent in litigation, thereafter reached the proposed settlement of all the claims asserted in the lawsuit.

On [INSERT PRELIMINARY APPROVAL DATE], the Court granted preliminary approval of the proposed settlement, upon finding this proposed settlement is the result of good faith, arm's-length negotiations between the parties through their respective attorneys. The Court has expressed no opinion on the merits of Plaintiff's claims or Defendant's defenses.

4. What Are the Terms Of The Proposed Settlement And How Much Will I Receive?

Without admitting any fault or liability and in exchange for a release of all claims, Defendant has agreed to pay a total of \$1,413,822.00 to create a non-reversionary settlement fund ("Gross Settlement Amount"). The Gross Settlement Amount shall be available to pay each Settlement Class member who has not previously opted out; provided that a portion of the Gross Settlement Amount will be distributed to the PAGA Group (defined below) regardless of whether a Settlement Class Member opts out. Under the proposed settlement, the following amounts will be deducted from the Gross Settlement Amount before any payments are made to employees, subject to final approval by the Court:

- Attorneys' Fees – up to \$471,274.00
- Attorneys' Costs of Suit – up to \$15,000.00
- PAGA Payment – \$140,000.00 (\$105,000.00 of the \$140,000.00 Payment to the Labor & Workforce Development Agency; and \$35,000.00 of the \$140,000.00 in PAGA Penalties will be distributed separately to all PAGA Group Employees, as further explained below).
- Settlement Administration Expenses – up to \$20,000
- Service Award to Class Representative – up to \$10,000

After these deductions, an estimated \$757,548.00 will be available for payment to the Settlement Class receiving this notice as the "Net Settlement Amount."

Based on Defendant's records, and the Parties' current assumptions, **your Individual Class Payment is estimated to be \$ [REDACTED] (less withholding) and your Individual PAGA Payment is estimated to be \$ [REDACTED]**. The actual amount you may receive likely will be different and will depend on a number

of factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendant’s records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.)

The above estimates are based on Defendant’s records showing that **you worked [REDACTED] workweeks** during the Class Period and **you worked [REDACTED] pay periods** during the PAGA Period. If you believe that you worked more workweeks/pay periods during either period, you can submit a challenge by the deadline date. See Section 7 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Final approval and a determination of attorneys’ fees, attorneys costs, PAGA penalties, settlement administration expenses, and a service award to the class representative are subject to a fairness hearing that will occur on **[INSERT FINAL APPROVAL HEARING DATE]** in Department CX103 of the Orange County Superior Court – Civil Complex Center, 751 W. Santa Ana Blvd., Santa Ana, California 92701 on **[REDACTED]**, 2024, at **XX** Pacific Time.

5. What Are Your Options?

As a member of the Settlement Class, you have several options available to you:

PARTICIPATE IN THE SETTLEMENT AND RECEIVE A SETTLEMENT PAYMENT	<u>YOU DO NOT NEED TO DO ANYTHING TO PARTICIPATE IN THE SETTLEMENT AND RECEIVE A SETTLEMENT PAYMENT.</u> By doing nothing, you <u>WILL</u> receive a share of the Settlement proceeds if the proposed Settlement is finally approved, and you will be covered by the release summarized in section 6 below and will therefore give up any rights you may otherwise have to individually assert the wage and hour claims against Defendant that are covered by this Settlement (Released Claims). It is important that if your address has changed, you give your current mailing address to the Settlement Administrator to ensure you receive your share of the Settlement proceeds if the proposed Settlement is finally approved.
ASK TO BE EXCLUDED (SUBMIT A VALID REQUEST FOR EXCLUSION/ OPT-OUT) FROM THE CLASS ACTION SETTLEMENT	If you do not want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Settlement Administrator a written Request for Exclusion. This process is detailed in Section 9 below. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 10 of this Notice. If You are an PAGA Group Member, You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all PAGA Group Members and the PAGA Group Members must give up their rights to pursue Released Claims (defined below).

PARTICIPATING CLASS MEMBERS CAN OBJECT	All Class Members (“Participating Class Members”) who do not opt-out, may object to any aspect of the settlement (except for the PAGA portion of the Settlement). You may object by: submitting a written objection to the Class Administrator by [REDACTED], 2024, or by appearing (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform) at the Court’s Final Approval Hearing, which is scheduled for _____, 2024 at ____ a.m.
DISPUTE YOUR SETTLEMENT AWARD	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period, and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number of Class Period Workweeks and number of PAGA Period Pay Periods you worked according to the Companies’ records is stated in Section 45. If you disagree with either of these numbers, you must submit a written challenge with supporting information to the Settlement Administrator, XX not later than [REDACTED], 2024. The Court shall make the final decision based on the information presented by you and Defendant.

6. What Rights Am I Giving Up?

As part of the settlement, Plaintiff, the Class Members, and PAGA Group Members will fully release and discharge NexGen Air Conditioning and Heating, LLC and any of its parents, subsidiaries, affiliates, including but not limited to Wrench Group, LLC, and all the foregoing’s owners, officers, directors, employees, partners, shareholders and agents, and any other successors, assigns, or legal representatives (the “Released Parties”) pursuant to the below releases:

Release by Class Members: If You do not opt out of the class action settlement, You will release the Released Parties of any and all claims based on the facts alleged in the Operative Complaint (“Complaint”), including claims under the PAGA as identified in Plaintiff’s PAGA Notice, Unfair Business Practices (Business & Professions Code Section 17200 *et seq.*), and Labor Code sections 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198 and 2802. (the “Release”)

Release by PAGA Group Members: If You opt out of the Class Settlement, and You are a PAGA Group Member, You will Release the Released Parties of any and all claims for civil penalties under PAGA based on the labor code and IWC Wage Order violations alleged in each and every Notice sent by Plaintiff to the LWDA; those being California Labor Code sections 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198 and 2802, and the applicable industrial wage orders, Unfair Business Practices (Business & Professions Code Section 17200 *et seq.*) as well as all facts, theories, or claims for civil penalties that would be considered administratively exhausted under applicable law by the PAGA Notices Plaintiff sent to the LWDA.

These releases do not include any claims for workers compensation, unemployment, or disability benefits of any nature, nor do they include any claims, actions, or causes of action which may be possessed by Settlement Class and/or PAGA Group Members under state or federal anti-discrimination statutes, including, without limitation, the Cal. Fair Employment and Housing Act, the Cal. Government Code § 12940, et seq.; the Unruh Civil Rights Act, the Cal. Civil Code § 51, et seq.; the California Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000, et seq.; the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101, et seq.; the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq.; the Fair Credit Reporting Act, the Investigative Consumer Reporting Agencies Act (ICRAA), and/or the Consumer Credit Reporting Agencies Act (CCRAA).

7. How Will the Settlement Administrator Calculate My Payment?

Individual Class Payments. The Settlement Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.

Individual PAGA Payments. The Settlement Administrator will calculate Individual PAGA Payments by (a) dividing \$35,000 by the total number of PAGA Pay Periods worked by all PAGA Group Members and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual PAGA Group Member.

Workweek/Pay Period Challenges. The number of workweeks you worked during the Class Period and the number of pay periods you worked during the PAGA Period, as recorded in the Companies' records, are stated in Section 5. You have until _____ to challenge the number of workweeks and/or pay periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail or fax. Section 9 of this Notice has the Settlement Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Defendant's calculation of workweeks and/or pay periods based on the Defendant's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Settlement Administrator will resolve workweek and/or pay period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Defendant's Counsel. The Court will make the final decision regarding your challenge. You can't appeal or otherwise challenge its final decision.

8. How Will I Get Paid?

Participating Class Members. The Settlement Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as PAGA Group Members. The single check will combine the Individual Class Payment and the Individual PAGA Payment.

Non-Participating Class Members. The Settlement Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every PAGA Group Member who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

9. What If I Do Not Wish To Be Part Of The Proposed Settlement?

Anyone not wishing to participate in the class action portion of the proposed settlement may exclude himself or herself ("opt out") by completing, signing and mailing-submitting a Request for Exclusion letter by **XXXX** to the Settlement Administrator by fax or mail as follows.

Settlement Administrator: XX INSERT INSERT INSERT	
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If your Request for Exclusion is postmarked or fax date-stamped after **XXX**, it will be rejected, and you will be a Settlement Class member and be bound by the settlement terms.

To be valid, any Request for Exclusion must state something similar to the effect that the Settlement Class member wishes to be excluded from the class settlement and contain the following additional information: (1) the name, employee identification number and/or last four digits of the employee's social security number for identification purposes; (2) a statement that the Settlement Class member wishes to be excluded from the class settlement such as "I wish to be excluded from the Settlement in *Ramon Lopez v. NexGen Air Conditioning and Heating, LLC, et al.* pending in Orange County Superior Court. I understand that in asking to be excluded from the Settlement class, I will not receive any money as part of the settlement approved by the Court"; and (3) be postmarked or fax date-stamped by ~~the~~ **[INSERT RESPONSE DEADLINE <<forty-five (45) days>>]** and faxed or mailed to the Settlement Administrator at the address or fax number specified above.

Anyone who submits a timely and valid Request for Exclusion shall not be deemed a Settlement Class member and will not receive payment as part of this proposed settlement, except for his or her pro rata share of the PAGA penalties, if they are an PAGA Group Member. Such persons will keep any rights they may otherwise have to sue Defendant separately about the claims made in this lawsuit, other than those brought under PAGA for civil penalties.

10. What If I Have an Objection?

Any objection to the class action portion of the proposed Settlement must be in writing and be faxed or mailed to the Settlement Administrator (identified above) by **[REDACTED]**. To be valid, any objection must: (1) contain the objecting Settlement Class member's full name; (2) be postmarked by the **[INSERT RESPONSE DEADLINE]** and mailed-postmarked or faxed-date stamped to the Settlement Administrator at the address or fax number specified above by **[INSERT RESPONSE DEADLINE]**; and (3) should provide each specific reason in support of the objection. You may also object by appearing (or hiring an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform) at the Court's Final Approval Hearing, which is scheduled for _____, 2024 at ____ a.m., whether or not you submitted a timely written objection. Class Members need not include legal arguments for their written objections to be considered.

11. What If I Wish to Dispute the Amount of Workweeks Attributed to Me In Section 4?

Anyone wishing to challenge the number of workweeks and/or pay periods credited to them may do so by submitting letter by XXXX to the Settlement Administrator by fax or mail as follows.

Settlement Administrator: XX INSERT INSERT INSERT	
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If your Workweek Dispute is fax date-stamped or postmarked after XXX, it will be rejected, and you will be a Settlement Class member and be bound by the workweek number calculated by the settlement administrator.

11.12. What Happens Next In The Case?

The proposed settlement has only been preliminarily approved. The Court will hold a hearing in Dept. CX103 of the Orange County Superior Court – Civil Complex Center, 751 W. Santa Ana Blvd., Santa Ana, CA 92701 on [REDACTED], 2024, at XX Pacific Time, to consider any objections and determine whether the settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve the settlement of the PAGA representative claim and also Class Counsel’s request for attorneys’ fees and costs, the costs of settlement administration, and the proposed service award. The hearing may be continued without further notice to you. It is not necessary for you to appear at this hearing. If a Class Member would like to arrange to appear by telephone or video conference, please contact Class Counsel and they will make efforts to facilitate that.

12.13. How Can I Receive More Information?

This Notice is a summary of the basic terms of the proposed settlement. For the precise terms and conditions of the proposed settlement, you may review the detailed “Stipulation of Settlement” on file with the Clerk of the Court as well as the pleadings and other records in this litigation at the Office of the Clerk of the Orange County Superior Court, 700 Civic Center Drive West, Santa Ana, CA 92701.

You may also visit the settlement administrator’s website at: [INSERT WEBSITE]. Copies of the First Amended Complaint, Settlement Agreement, and Order of Preliminary Approval will be posted on this website. If the Court ultimately grants final approval of the Settlement Agreement, the Order of Final Approval and Final Judgment will also be posted.

For further information, you may also call or email Class Counsel or defense counsel (listed below) or the Settlement Administrator (listed above). You may also ask Class Counsel to send you a copy of the Stipulation and Settlement Agreement. The pleadings and other records in this litigation may also be examined at the Office of the Clerk of the Orange County Superior Court, 700 Civic Center Drive West, Santa Ana, CA 92701. Additional information is also available through the Court’s online system at <https://www.occourts.org/>.

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

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