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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*

**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
19 Fees and Costs.

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

27 7. "Class Member(s)" or "Settlement Class" means Plaintiff and all current and former
28 hourly non-exempt employees who worked for Defendant in the State of California during the Class

1 Period.

2 8. "Class Period" means the period from December 8, 2018, through the date that a
3 preliminary approval order is entered.

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

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

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

22 12. "Gross Settlement Amount" means the maximum settlement amount of One Million
23 Four Hundred Thirteen Thousand Eight Hundred and Twenty-Two Dollars (\$1,413,822.00)
24 ("Gross Settlement Amount"), which has been and/or will be paid by Defendant in full satisfaction
25 of all claims arising from the Action. The Gross Settlement Amount includes all Individual
26 Settlement Payments to Participating Class Members, the Class Representative Enhancement
27 Payments, Claims Administration Expenses, Class Counsel Fees and Cost, and PAGA penalties in
28 the amount of One Hundred Forty Thousand Dollars (\$140,000) of which 75% or One Hundred

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

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

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

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

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

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

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

1 19. “PAGA Period” means the period from December 9, 2021, through the date that a
2 preliminary approval order is entered.

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 fifteen (15) calendar days
7 for any Class Member who is re-mailed a Notice by the Claims Administrator in accordance with
8 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.

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.

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

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

3 37. Individual Class Settlement Payment Calculations. Defendant will provide the
4 Claims Administrator with the total number of workweeks for each Participating Class Member
5 and PAGA Group Member. The Claims Administrator will divide the Net Settlement Amount by
6 the total number of workweeks for Participating Class Members ("Work Week Rate Amount") and
7 then multiply this amount by each Participating Class Member's total number of workweeks to yield
8 that employee's Individual Class Settlement Payment. Any one day worked during a Workweek
9 will be credited as a full workweek.

10 In the event a Class Member submits a timely Request for Exclusion from the settlement, he/she
11 will not receive his or her individual settlement allocated to Class Members and his/her share of the
12 settlement will be added to the Net Settlement Amount.

13 38. Individual PAGA Settlement Payment Calculations. Each PAGA Group Member
14 will receive an individual share of the \$35,000.00 portion of the PAGA Settlement Amount (or 25%
15 of the PAGA Settlement Amount approved by the Court). The Individual PAGA Settlement
16 Payment shall be calculated by the Claims Administrator, with a formula similar to payments to
17 Participating Class Members. Any one day worked during a Workweek will be credited as a full
18 workweek. No PAGA Group Member will be permitted to exclude themselves from the PAGA
19 claim portion of the Settlement. Individual PAGA Settlement Payments will be distributed by the
20 Claims Administrator by mail to the PAGA Group Members including to those Class Members
21 who submitted a request for exclusion.

22 39. Participating Class Members and PAGA Group Members. Individuals who are both
23 Participating Class Members and PAGA Group Members shall receive both the Individual Class
24 Settlement Payment and the Individual PAGA Settlement Payment. No Class Member or PAGA
25 Group Member will be permitted to exclude themselves from the PAGA claim portion of the
26 Settlement.

27 40. No Credit Toward Benefit Plans. All Individual Class and/or PAGA Settlement
28 Payments to Class Members shall be deemed to be income to such Class Members solely in the

1 year in which such payments actually are received by the Class Members. It is expressly understood
2 and agreed that the receipt of such Individual Class and/or PAGA Settlement Payments will not
3 entitle any Class Member to additional compensation or benefits under any company bonus, paid
4 time off (including vacation and sick leave), or other compensation or benefit plan or agreement in
5 place during the period covered by the Settlement, nor will it entitle any Class Member to any
6 increased retirement, 401(k) benefits or matching benefits, or deferred compensation benefits. It is
7 the intent of this Settlement Agreement that the Individual Class and/or PAGA Settlement Payments
8 provided for in this Agreement are the sole payments to be made by Defendant to the Class
9 Members in connection with this Settlement Agreement, and that the Class Members are not entitled
10 to any new or additional compensation or benefits as a result of having received the Individual Class
11 and/or PAGA Settlement Payments (notwithstanding any contrary language or agreement in any
12 benefit or compensation plan document that might have been in effect during the period covered by
13 this Settlement).

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

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

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

22 44. Confirmation of Contact Information in the Class List. Prior to mailing, the Claims
23 Administrator will perform a search based on the National Change of Address Database for
24 information to update and correct for any known or identifiable address changes. Any Notice
25 returned to the Claims Administrator as non-deliverable on or before the Response Deadline will
26 be sent promptly via regular First-Class U.S. Mail to the forwarding address, and the Claims
27 Administrator will indicate the date of such re-mailing on the Notice. If no forwarding address is
28 provided, the Claims Administrator will promptly attempt to determine the correct address using a

1 skip-trace, or other search using the name, address and/or Social Security number of the Class
2 Member involved, and will then perform a single re-mailing. Those Class Members who receive a
3 re-mailed Notice will have between the later of (i) an additional fifteen (15) calendar days or (ii)
4 the Response Deadline to fax or postmark a Request for Exclusion, submit an objection to the
5 Settlement or dispute workweeks.

6 45. Notice. All Class Members will be mailed the Notice. The Notice will be also
7 translated and provided in Spanish. The Notice will provide: (1) information regarding the nature
8 of the Action, (2) a summary of the Settlement's principal terms, (3) the Settlement Class definition,
9 (4) each Class Member's number of workweeks worked during the Class Period, (5) each Class
10 Member's estimated Individual Class Settlement Payment; (6) each PAGA Group Member's
11 estimated Individual PAGA Settlement Payment; (7) the dates which comprise the Class Period,
12 (8) instructions on how to submit valid Requests for Exclusion, objections or dispute workweeks,
13 (9) the deadlines by which the Class Member must fax or postmark Request for Exclusions, submit
14 objections to the Settlement or dispute workweeks, and (10) the claims to be released, as set forth
15 in this Settlement Agreement, (11) the Court's updated social distancing rules in effect, (12) where
16 Class Members may obtain additional information, including any changes to the date and location
17 of court hearings, the Order Granting Final Approval of Class Action Settlement and Entering
18 Judgment following the Final Approval Hearing (i.e., the Court's website or posted on the
19 Settlement Administrator's website). The Claims Administrator shall also post a copy of the Notice
20 attached as Exhibit A, or any updated Notice as required by the Court, and the Motion for
21 Preliminary Approval and Final Approval hearing dates, locations, and times and the final judgment
22 on its website.

23 46. 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
28 agree that they will not solicit or encourage Class Members to opt-out or object to this Settlement

1 Agreement. If the Court approves the compromise of the PAGA claim, all PAGA Group Members
2 are bound by the Court's resolution of that claim. Class Members who are also PAGA Group
3 Members submitting a request for exclusion will nevertheless receive their pro-rata share of the
4 25% of the PAGA Settlement Amount (i.e., their Individual PAGA Settlement Payments) allocated
5 for PAGA penalties to PAGA Group Members. In the event that 10% or more Class Members opt
6 out of the settlement, Defendant has the right (but not the obligation) to void the settlement.

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

16 48. Objection Procedures. To object to the Settlement Agreement, a Class Member who
17 has not opted-out of the settlement may mail a valid Notice of Objection to the Claims
18 Administrator by the Response Deadline. The Claims Administrator will notify counsel for the
19 Parties forthwith via email. Class Counsel will lodge the objection with the Court. The Notice of
20 Objection must be signed by the Class Member and contain all information required by this
21 Settlement Agreement. The postmark date of the mailing will be deemed the exclusive means for
22 determining that the Notice of Objection is timely. Class Members who wish to object will have a
23 right to appear at the Final Approval Hearing, with or without counsel at his/her own expense, in
24 order to have their objections heard by the Court, regardless of whether they submitted a Notice of
25 Objection. At no time will any of the Parties or their counsel seek to solicit or otherwise encourage
26 Class Members to submit written objections to the Settlement Agreement or appeal from the Final
27 Approval Order and Judgment.

28 49. Certification Reports Regarding Individual Settlement Payment Calculations. The

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

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

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

1 52. Increase in Workweeks. In the event that the total number of weeks worked in the
2 Class Period is 5% greater (Escalator Threshold”) than 41,583 weeks worked, then the Gross
3 Settlement Amount shall be increased proportionately for each additional week worked over the
4 Escalator Threshold.

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

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

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

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

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

28 58. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR

PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

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

60. Release of Claims by Class Members. Upon the date the Court enters an order

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

14 61. Release by PAGA Group Members. Upon the date the Court enters an order granting
15 final approval of the Settlement, all Aggrieved Employees (regardless of whether they are
16 Participating Class Members or Non-Participating Class Members) are deemed to have fully, finally
17 and forever released, settled, compromised, relinquished, waived, and discharged on behalf of
18 themselves and their respective former and present representatives, agents, attorneys, heirs,
19 administrators, successors and assigns, the Released Parties, any and all of the Released PAGA
20 Claims.

21 62. Release by Plaintiff. Upon the date the Court enters an order granting final approval
22 of the settlement and Defendant fully funds the Gross Settlement Amount, in addition to the claims
23 being released by all Class Members, Plaintiff will provide the following additional general release
24 (“General Release”): Plaintiff, on his own behalf and on behalf of his heirs, spouses, executors,
25 administrators, attorneys, agents and assigns, fully and finally releases the Released Parties from
26 all claims, demands, rights, liabilities and causes of action of every nature and description
27 whatsoever, known or unknown, asserted or that might have been asserted, whether in tort, contract,
28 or for violation of any state or federal statute, rule or regulation arising out of, relating to, or in

1 connection with any act or omission by or on the part of any of the Released Parties committed or
2 omitted prior to the execution of this Agreement. This General Release includes any unknown
3 claims Plaintiff does not know or suspect to exist in his favor at the time of this General Release,
4 which, if known by him, might have affected his settlement with, and release of, the Released
5 Parties or might have affected his decision not to object to this Settlement or this Release.
6 Furthermore, for purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the
7 provisions, rights, and benefits, if any, of Section 1542 of the California Civil Code, which reads:

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

13 The significance of this release and waiver of Civil Code Section 1542 has been explained
14 to Plaintiff by Class Counsel. Release by Plaintiff expressly excludes any claims for workers
15 compensation against Defendant.

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

23 64. Preliminary Approval Hearing. The Parties will work together to obtain a hearing
24 before the Court to request the Preliminary Approval of the Settlement Agreement, and the entry
25 of a Preliminary Approval Order for: (i) conditional certification of the Settlement Class for
26 settlement purposes only, (ii) preliminary approval of the proposed Settlement Agreement, and (iii)
27 setting a date for a Final Approval/Settlement Fairness Hearing. The Preliminary Approval Order
28 will provide for the Notice to be sent to all Class Members as specified in this Settlement

1 Agreement. In conjunction with the Preliminary Approval motion, the Parties will submit this
2 Settlement Agreement, which sets forth the terms of this Settlement and will include the proposed
3 Notice.

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

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

23 67. Exhibits Incorporated by Reference. The terms of this Settlement Agreement include
24 the terms set forth in any attached Exhibits, which are incorporated by this reference as though fully
25 set forth in this Settlement Agreement. Any Exhibits to this Agreement are an integral part of the
26 Settlement.

27 68. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute
28 the entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral

1 agreements may be deemed binding on the Parties. The Parties expressly recognize California Civil
2 Code Section 1625 and California Code of Civil Procedure Section 1856(a), which provide that a
3 written agreement is to be construed according to its terms and may not be varied or contradicted
4 by extrinsic evidence, and the Parties agree that no such extrinsic oral or written representations or
5 terms will modify, vary or contradict the terms of this Agreement.

6 69. Amendment or Modification. This Settlement Agreement may be amended or
7 modified only by a written instrument signed by counsel for all Parties or their successors-in-
8 interest.

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

21 71. Binding on Successors and Assigns. This Settlement Agreement will be binding
22 upon, and inure to the benefit of, the successors or assigns of the Parties to this Settlement
23 Agreement, as previously defined.

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

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

8 74. Invalidity of Any Provision. Before declaring any provision of this Settlement
9 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent
10 possible consistent with applicable precedents so as to define all provisions of this Settlement
11 Agreement valid and enforceable.

12 75. Captions. The captions and section numbers in this Agreement are inserted for the
13 reader's convenience, and in no way define, limit, construe or describe the scope or intent of the
14 provisions of this Agreement.

15 76. Waiver. No waiver of any condition or covenant contained in this Agreement or
16 failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or
17 constitute a further waiver by such party of the same or any other condition, covenant, right or
18 remedy.

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

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

1 79. Representation By Counsel. The Parties acknowledge that they have been
2 represented by counsel throughout all negotiations that preceded the execution of this Settlement
3 Agreement, and that this Settlement Agreement has been executed with the consent and advice of
4 counsel.

5 80. All Terms Subject to Final Court Approval. All amounts and procedures described
6 in this Settlement Agreement will be subject to final Court approval.

7 81. Cooperation and Execution of Necessary Documents. All Parties will cooperate in
8 good faith and execute all documents to the extent reasonably necessary to effectuate the terms of
9 this Settlement Agreement.

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

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

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

27 85. Disputes. Any dispute between the Parties concerning the interpretation or
28 implementation of this Settlement Agreement will be resolved by the Court. Prior to any such resort

1 to the Court, counsel for the Parties will confer in good faith to resolve the dispute.

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

5 DATED: 07/02/20
6 _____


Ramon Lopez (Feb 7, 2024 16:27 PST)

7 Ramon Lopez
8 Plaintiff and Class Representative

9 DATED: February 7, 2024

BARKHORDARIAN LAW FIRM, PLC

10
11 
12 Gregory P. Wong
John F. Litwin

13 Attorneys for Plaintiff RAMON LOPEZ

14 DATED: _____

15
16 NEXGEN AIR CONDITIONING AND HEATING,
LLC

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

20 DATED: _____

VENABLE LLP

21
22 _____
23 Rudy G. Klapper
Jeffrey A. Brand

24 Attorneys for Defendant NEXGEN AIR
25 CONDITIONING AND HEATING, LLC
26
27
28

1 to the Court, counsel for the Parties will confer in good faith to resolve the dispute.

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

5 DATED: _____
6

7 _____
Ramon Lopez
8 Plaintiff and Class Representative

9 DATED: _____

BARKHORDARIAN LAW FIRM, PLC

11 _____
Gregory P. Wong
12 John F. Litwin

13 DATED: 2/7/2024
14 _____

Attorneys for Plaintiff RAMON LOPEZ

15 *Bill Kean*
16 _____

NEXGEN AIR CONDITIONING AND HEATING,
17 LLC

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

20 DATED: 2/6/2024
21 _____

VENABLE LLP

22 *Rudy Klapper*
23 _____

Rudy G. Klapper
24 Jeffrey A. Brand

25 Attorneys for Defendant NEXGEN AIR
26 CONDITIONING AND HEATING, LLC
27
28

Exhibit A

[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 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 **[INSERT PRELIMINARY APPROVAL DATE]** (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 **[INSERT PRELIMINARY APPROVAL DATE]** (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 aggrieved employees 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 – \$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 WILL 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 Aggrieved employee, You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees 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 5. 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. XX 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 Aggrieved Employees 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 Aggrieved Employees: If You opt out of the Class Settlement, and You are an Aggrieved Employee, 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 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 Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.

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, email 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 Settlement Administrator's decision is final. 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 Aggrieved Employees. 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 Aggrieved Employee 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 a Request for Exclusion letter by **XXXX** to the Settlement Administrator as follows.

<u>Settlement Administrator:</u> XX INSERT INSERT INSERT	
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If your Request for Exclusion is postmarked 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 by the **[INSERT RESPONSE DEADLINE <<forty-five (45) days>>]** and mailed to the Settlement Administrator at the address 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 Aggrieved Employee. 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 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 to the Settlement Administrator at the address specified above; and (3) should provide each specific reason in support of the objection. Class Members need not include legal arguments for their written objections to be considered.

11. 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. 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.

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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