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

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF ORANGE**

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

15 Plaintiffs,

16 v.

17 NEXGEN AIR CONDITIONING AND  
18 HEATING, LLC, a California Limited  
19 Liability Corporation; and DOES 1 through  
20 100, inclusive;

21 Defendant.

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

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

**PLAINTIFF'S SUPPLEMENTAL  
BRIEFING IN SUPPORT OF MOTION  
FOR PRELIMINARY APPROVAL  
PURSUANT TO THE COURT'S ORDER  
ENTERED APRIL 26, 2024**

Date: July 19, 2024

Time: 1:30 p.m.

Location: Dept. CX103

Action Filed: December 8, 2022

1 Plaintiff Ramon Lopez hereby submits this supplemental briefing in support of Plaintiff's  
2 Motion for Preliminary Approval of the Joint Stipulation and Class Action Settlement Agreement  
3 and Release pursuant to the Court's Order on April 26, 2024. In response to the Court's Order,  
4 and during the hearing on the same date, the Court addressed several concerns regarding the  
5 Settlement Stipulation, Proposed Class Notice, and [Proposed] Order. The parties met and  
6 conferred, and revised the Settlement Stipulation, Proposed Notice, and [Proposed] Order  
7 consistent with the April 26, 2024 Order. The fully-executed First Amended Settlement  
8 Stipulation is attached hereto as "**Exhibit 1**," (including, attached as **Exhibit A**, a "clean" version  
9 of the First Amended Proposed Notice). A "clean" version of the [Proposed] Order is attached  
10 hereto as **Exhibit 2** (which has also been separately filed concurrently with this supplemental  
11 briefing). For the convenience of the Court, a "redline" version of the First Amended Settlement  
12 Stipulation, with all changes to the original Settlement Stipulation tracked, is attached hereto as  
13 "**Exhibit 3**." A "redline" copy of the Proposed Notice is attached as "**Exhibit 4**." A "redline"  
14 copy of the [Proposed] Order is attached hereto as "**Exhibit 5**."

15 **I. ISSUES ADDRESSED REGARDING THE SETTLEMENT STIPULATION**

16 1. Regarding the Court's concern that the Class Period was a moving target, the  
17 parties revised the agreement to reflect a fixed Class Period of December 8, 2018 through July 19,  
18 2024. (*See* Exhibits 1 and 3, ¶ 8).

19 2. As requested by the Court, the parties revised the agreement to include the  
20 estimated minimum, maximum, and average settlement payments. (*Id.* at ¶ 37).

21 3. Regarding the Court's concern that Plaintiff's release included claims that could  
22 not be waived as a matter of law, the agreement was revised to indicate that the General Release  
23 does not release those claims that cannot be released as a matter of law. (*Id.* at ¶ 63).

24 4. At the Court's request, the deadline to submit opt-out requests and objections was  
25 extended to 45 days after any remailing of the Class Notice, and clarified that the Court shall have  
26 final say over the validity of any opt-out request. (*Id.* at ¶ 30).

1           5.       The agreement was amended to provide a procedure by which Class Members may  
2 dispute workweeks, and specified that the Court shall have final say regarding all workweek  
3 disputes. (*Id.* at ¶ 48).

4           6.       The agreement has been amended to clarify that there is no fee-splitting agreement  
5 in this matter (*Id.* at ¶ 5) and that Class Counsel will provide billing statements or summary of  
6 fees, as well as costs invoice, at Final Approval. (*Id.* at ¶ 34).

7           7.       The agreement has been amended to clarify that at Final Approval, Class Counsel  
8 and Plaintiff will submit a detailed declaration in support of the requested Class Representative  
9 Enhancement Payment. (*Id.* at ¶ 34).

10          8.       The agreement has been amended to require the administrator to will post copies  
11 of the preliminary approval and final approval motions, Orders for preliminary and final approval,  
12 final judgment and the Settlement Agreement on its website, and that the Final Judgment will  
13 remain viewable for at least 60 days. (*Id.* at ¶ 44).

14          9.       The agreement has been amended to state that the Court shall have continuing  
15 jurisdiction pursuant to CCP § 664.6 and CRC 3.769(h). (*Id.* at ¶ 67).

16          10.       Regarding the fourth issue raised by the court pertaining to the Proposed Notice,  
17 the language of the released claims in the agreement has been update to be consistent with the  
18 Proposed Notice by adding the last paragraph of Section 6 of the Proposed Notice to the  
19 agreement. (*Id.* at ¶¶ 60-62).

## 20       **II. ISSUES ADDRESSED REGARDING THE PROPOSED CLASS NOTICE**

21          11.       Regarding the first and second issues raised by the Court pertaining to the  
22 Proposed Notice, the Parties have revised the proposed Class Notice to address the Court's  
23 concerns to make it apparent that the settlement resolves both the Class claims and the PAGA  
24 claim. A true and correct copy of the revised notice is attached hereto as Exhibit A to **Exhibit 1**.  
25 A copy in Redlines demonstrating the revisions to the Class Notice is attached hereto as **Exhibit**  
26 **4**.

27          12.       Re: Issue No. 3.: the Proposed Notice and Agreement were generally revised  
28 throughout to consistently refer to the PAGA Group Members/Aggrieved Employees as simply

1 “PAGA Group Members” for ease of understanding by lay Class Members/PAGA Group  
2 Members. (See e.g., Exhibits 1(A) and 2, § 7, et al.).

3 13. Re: Issue No. 4: See paragraph 10, above.

4 14. Re: Issue No. 5: In the interest of consistency and ease of understanding by  
5 laypersons, the ability to submit workweek disputes by email was removed in order to be  
6 consistent with the procedures to submit opt-outs and/or objections and the language in the  
7 settlement agreement. (*Id.* at § 7; *See also* Exhibits 1 and 3, ¶¶ 45-48).

8 15. Re: Issue No. 6: Section 9 was updated to reflect that opt-outs can be faxed or  
9 mailed. (Exhibits 1(A) and 4, § 9).

10 16. Re: Issue No. 7: The Proposed Notice was amended to specify that even if no  
11 written objection was submitted to the settlement administrator, verbal objections could still be  
12 made by the Class Member or an attorney hired at their own expense. (*Id.* at § 10).

13 17. Re: Issue No. 8: Consistent with the changes to the settlement agreement, the Class  
14 Notice has been amended to specify that the Settlement Agreement, Preliminary Approval Order,  
15 and Final judgment will be posted on the administrator’s website. (*Id.* at § 12).

16 **III. ISSUES ADDRESSED REGARDING THE [PROPOSED] ORDER**

17 18. Re: Issue No. 1: The Proposed Order has been amended consistent with the above  
18 changes.

19 19. Re: Issue No. 2: The Title of the Proposed Order has been updated to reflect that it  
20 is a First Amended Proposed Order of both a Class and PAGA Settlement.

21 20. Re Issue No. 3: The Caption has been updated consistent with the continued  
22 hearing date.

23 21. Re Issue No. 4: The First Amended Settlement Agreement is identified as being  
24 Exhibit 1 to this supplemental briefing, Register of Actions No. 53.

25 22. Re: Issue No. 5: Paragraphs 9, 15, and 17 have been updated to refer to the “Final  
26 Approval Hearing” instead of the “Settlement Fairness Hearing.”

27 23. Re: Issue No.: 6: the Proposed Order has been updated in paragraph 12 to propose  
28 A Final Approval Hearing Date of January 17, 2025, at 1:30 p.m.

1           24.       Re Issue No. 7: Paragraph 21 has been added to the First Amended Proposed  
2 Order to specify that, in order to provide notice to Class/PAGA Group members, the  
3 administrator will post the amended Settlement Stipulation, Order of Preliminary Approval, and  
4 Final Judgment to its website for not less than 60 days.

5           25.       Re: Issue No. 8: Paragraph 22 has been added to specify the Court's continuing  
6 jurisdiction.

7           26.       Concurrently with the filing of these documents with the Court, Plaintiff submitted  
8 the amended documents and supplemental briefing to the LWDA.

9  
10       DATED: July 2, 2024

Respectfully Submitted,  
BARKHORDARIAN LAW FIRM, PLC

11                   */s/ John F. Litwin*

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13                   John F. Litwin  
14                   Attorneys for Plaintiff  
15                   RAMON LOPEZ  
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# **EXHIBIT 1**

**JOHN F. LITWIN (SBN: 301611)**  
**BARKHORDARIAN LAW FIRM, PLC**

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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*

**FIRST 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 July 19, 2024.

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 July 19, 2024.

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

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

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

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

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

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

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

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

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

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

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

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

1 and Class Counsel waive any and all claims to any further attorneys' fees and expenses in  
2 connection with the Action.

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

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

1 the Parties. The Claims Administration Expenses will be paid from the Gross Settlement Amount.

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

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

20 37. Individual PAGA Settlement Payment Calculations. Each PAGA Group Member  
21 will receive an individual share of the \$35,000.00 portion of the PAGA Settlement Amount (or 25%  
22 of the PAGA Settlement Amount approved by the Court). The Individual PAGA Settlement  
23 Payment shall be calculated by the Claims Administrator, with a formula similar to payments to  
24 Participating Class Members. Any one day worked during a Workweek will be credited as a full  
25 workweek. No PAGA Group Member will be permitted to exclude themselves from the PAGA  
26 claim portion of the Settlement. Individual PAGA Settlement Payments will be distributed by the  
27 Claims Administrator by mail to the PAGA Group Members including to those Class Members  
28 who submitted a request for exclusion. Given the presently-estimated 578 PAGA group members,

1 14,217 pay periods as of the time of mediation, and the anticipated 68 pay period PAGA Period  
2 from December 9, 2021 through July 19, 2024, the average PAGA payment is estimated to be  
3 \$42.78. The minimum payment is estimated to be \$2.46. The highest payment is estimated to be  
4 \$167.40.

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

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

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

28 41. Delivery of the Class List. Within twenty-one (21) calendar days of Preliminary

1 Approval, Defendant will provide the Class List to the Claims Administrator.

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

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

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

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

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

25         46. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class  
26 Member who does not affirmatively opt out of the Settlement Agreement by submitting a timely  
27 and valid Request for Exclusion will be bound by all of its terms, including those pertaining to the  
28 Released Claims (other than as it applies to the PAGA claims with respect to the PAGA Group

Members), as well as any Judgment that may be entered by the Court if it grants final approval to the Settlement. If the Court approves the compromise of the PAGA claim, Class Members who are also PAGA Group Members submitting a request for exclusion, if any, will nevertheless be bound by the Court's resolution of that claim and receive their pro-rata share of the 25% of the PAGA Payment allocated to the PAGA Group Members.

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

48. If a Class Member timely disputes the number of Workweeks listed on the Class Notice, the Parties' counsel will make a good faith effort to resolve the dispute cooperatively. If counsel for the Parties cannot agree, the dispute shall be submitted to the Settlement Administrator, who shall examine the records and either verify the calculation or provide a corrected calculation. If a Class Member disputes the number of Workweeks, it will be the Class Member's responsibility to supply information confirming the error in the calculation or Defendant's records. In any event, the Settlement Administrator will make every effort to resolve any such disputes prior to final approval of this Settlement Agreement. Plaintiffs shall file with the Court all disputes submitted by the Class Members, and all evidence provided by class members in connection with any dispute, and the findings of the Settlement Administrator. The Court shall have final authority to resolve any dispute by a Class Member.

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

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

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

1 ceases to be the employee's property.

2 52. Increase in Workweeks. In the event that the total number of weeks worked in the  
3 Class Period (defined as December 8, 2018, through July 19, 2024) is 5% or more greater (Escalator  
4 Threshold") than the 41,583 weeks worked estimated at the time of mediation (i.e. 43,662 or more),  
5 then the Gross Settlement Amount shall be increased proportionately for each additional week  
6 worked over the Escalator Threshold.

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

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

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

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

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

1 Settlement Amount, via and with the Claims Administrator's assistance.

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

26       59.     No Prior Assignments. The Parties and their counsel represent, covenant, and  
27 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to  
28 assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand,

1 action, cause of action or right released and discharged in this Settlement Agreement.

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

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

28 62. The Releases in Paragraphs 60 and 61 do not include any claims for workers

1 compensation, unemployment, or disability benefits of any nature, nor do they include any claims,  
2 actions, or causes of action which may be possessed by Settlement Class Members under state or  
3 federal anti-discrimination statutes, including, without limitation, the Cal. Fair Employment and  
4 Housing Act, the Cal. Government Code § 12940, et seq.; the Unruh Civil Rights Act, the Cal. Civil  
5 Code § 51, et seq.; the California Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C.  
6 § 2000, et seq.; the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101, et seq.; the  
7 Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq.; the Fair  
8 Credit Reporting Act, the Investigative Consumer Reporting Agencies Act (ICRAA), and/or the  
9 Consumer Credit Reporting Agencies Act (CCRAA)

10 63. Release by Plaintiff. Upon the date the Court enters an order granting final approval  
11 of the settlement and Defendant fully funds the Gross Settlement Amount, in addition to the claims  
12 being released by all Class Members, Plaintiff will provide the following additional general release  
13 (“General Release”): Plaintiff, on his own behalf and on behalf of his heirs, spouses, executors,  
14 administrators, attorneys, agents and assigns, fully and finally releases the Released Parties from  
15 all claims, demands, rights, liabilities and causes of action of every nature and description  
16 whatsoever, known or unknown, asserted or that might have been asserted, whether in tort, contract,  
17 or for violation of any state or federal statute, rule or regulation arising out of, relating to, or in  
18 connection with any act or omission by or on the part of any of the Released Parties committed or  
19 omitted prior to the execution of this Agreement. This General Release includes any unknown  
20 claims Plaintiff does not know or suspect to exist in his favor at the time of this General Release,  
21 which, if known by him, might have affected his settlement with, and release of, the Released  
22 Parties or might have affected his decision not to object to this Settlement or this Release.  
23 Furthermore, for purposes of Plaintiff’s Release, Plaintiff expressly waives and relinquishes the  
24 provisions, rights, and benefits, if any, of Section 1542 of the California Civil Code, which reads:

25 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR  
26 OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER  
27 FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY  
28 HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER

1 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

2 The significance of this release and waiver of Civil Code Section 1542 has been explained  
3 to Plaintiff by Class Counsel. Release by Plaintiff expressly excludes any claims that cannot be  
4 released as a matter of law, including, but not limited to, claims for workers compensation against  
5 Defendant.

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

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

22 66. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of the  
23 deadlines to fax or postmark Request for Exclusion or submit objections to the Settlement  
24 Agreement, and with the Court's permission, a Final Approval/Settlement Fairness Hearing will be  
25 conducted to determine the Final Approval of the Settlement Agreement along with the amounts  
26 properly payable for (i) Individual Settlement Payments; (ii) the Class Counsel Fees and Costs; (iii)  
27 the Class Representative Enhancement Payment; (iv) payment to LWDA for PAGA penalties; and  
28 (v) all Claims Administration Expenses. Class Counsel will be responsible for drafting all

documents necessary to obtain final approval. Class Counsel will also be responsible for drafting the attorneys' fees and costs application to be heard at the Final Approval/Settlement Fairness Hearing.

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

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

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

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

71. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant

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

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

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

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

27 75. Invalidity of Any Provision. Before declaring any provision of this Settlement  
28 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent

possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

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

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

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

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

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

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

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

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

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

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

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

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

24           DATED: 07/01/24  
25           \_\_\_\_\_

  
Ramon Lopez (Jul 1, 2024 14:12 PDT)

Ramon Lopez  
Plaintiff and Class Representative

1 DATED: 07/01/24  
2 \_\_\_\_\_

BARKHORDARIAN LAW FIRM, PLC

3 *John Litwin*  
4 \_\_\_\_\_

Gregory P. Wong  
John F. Litwin

5  
6 DATED: 7/1/2024  
7 \_\_\_\_\_

Attorneys for Plaintiff RAMON LOPEZ

8   
9 \_\_\_\_\_

NEXGEN AIR CONDITIONING AND HEATING,  
LLC

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

13 DATED: 7/1/2024  
14 \_\_\_\_\_

VENABLE LLP

15 *Rudy G. Klapper*  
16 \_\_\_\_\_

Rudy G. Klapper  
Jeffrey A. Brand

17 Attorneys for Defendant NEXGEN AIR  
18 CONDITIONING AND HEATING, LLC  
19  
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28

# First Amended Stipulation of Class Action Settlement (63635389)

Final Audit Report

2024-07-01

|                 |                                              |
|-----------------|----------------------------------------------|
| Created:        | 2024-06-29                                   |
| By:             | Ariel Lozano (ariel@barklawfirm.com)         |
| Status:         | Signed                                       |
| Transaction ID: | CBJCHBCAABAADmN6bhcfF7w79uVfBtj4druDcO_vEUn1 |

## "First Amended Stipulation of Class Action Settlement (63635389)" History

-  Document created by Ariel Lozano (ariel@barklawfirm.com)  
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-  Document emailed to Ramon Lopez (ramonbarto@gmail.com) for signature  
2024-06-29 - 0:13:15 AM GMT
-  Email viewed by Ramon Lopez (ramonbarto@gmail.com)  
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-  Document e-signed by John Litwin (john@barklawfirm.com)  
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-  Agreement completed.  
2024-07-01 - 9:14:03 PM GMT

# **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 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:

|                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>PARTICIPATE IN THE SETTLEMENT AND RECEIVE A SETTLEMENT PAYMENT</b>                                      | <p><b><u>YOU DO NOT NEED TO DO ANYTHING TO PARTICIPATE IN THE SETTLEMENT AND RECEIVE A SETTLEMENT PAYMENT.</u></b> By doing nothing, you <b><u>WILL</u></b> 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).</p> <p>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.</p>      |
| <b>ASK TO BE EXCLUDED (SUBMIT A VALID REQUEST FOR EXCLUSION/ OPT-OUT) FROM THE CLASS ACTION SETTLEMENT</b> | <p>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.</p> <p>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).</p> |

|                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|-----------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>PARTICIPATING CLASS MEMBERS CAN OBJECT</b> | 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.                                                                                                                                                                |
| <b>DISPUTE YOUR SETTLEMENT AWARD</b>          | 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. 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 a Request for Exclusion letter by **XXXX** to the Settlement Administrator by fax or mail as follows.

|                                                                                           |  |
|-------------------------------------------------------------------------------------------|--|
| Settlement Administrator:<br><b>XX</b><br><b>INSERT</b><br><b>INSERT</b><br><b>INSERT</b> |  |
|-------------------------------------------------------------------------------------------|--|

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 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 mailed to the Settlement Administrator (identified above) by **\_\_\_\_\_**. 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. 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. 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.

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**

**Exhibit JOHN F. LITWIN (SBN: 301611)**  
**BARKHORDARIAN LAW FIRM, PLC**

6047 Bristol Parkway, Second Floor  
Culver City, CA 90230

Telephone: (323) 450-2777

Facsimile: (310) 215-3416

Email: john@barklawfirm.com

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

**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*

**[PROPOSED] FIRST AMENDED ORDER  
GRANTING PLAINTIFF'S MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION AND PRIVATE ATTORNEYS  
GENERAL ACT ("PAGA")  
SETTLEMENT**

Date: July 19, 2024

Time: 1:30 p.m.

Location: Dept. CX103

Action Filed: December 8, 2022

1 Plaintiff Ramon Lopez’ (hereinafter “Plaintiff”) motion for an Order Preliminarily Approving  
2 the Parties’ Class Action and PAGA Settlement was heard by the Court on July 19, 2024. The Court  
3 has considered the First Amended Joint Stipulation for Class Action and PAGA Settlement attached  
4 as Exhibit 1 to the Supplemental Briefing In Support of Plaintiff’s Motion For Preliminary Approval  
5 and Class Action Settlement, Register of Actions Number 53 (hereinafter the “Stipulation”) and all  
6 other papers filed in this action.

7 **NOW THEREFORE, IT IS HEREBY ORDERED:**

8 1. All defined terms contained herein shall have the same meanings as set forth in the  
9 Stipulation.

10 2. The Class Representative and Defendant, through their counsel of record in the action  
11 entitled *Ramon Lopez v. Nexgen Air Conditioning and Heating, LLC, et al.* (the “Litigation”), have  
12 reached an agreement to settle all claims in the Litigation on behalf of the Class as a whole.

13 3. The Court hereby conditionally certifies the following Class for settlement purposes  
14 only: “All current and former hourly-paid or non-exempt employees who worked for Defendant in  
15 the State of California during the Class Period.”

16 4. For purposes of the proposed Class settlement, the “Class Period” shall be defined as:  
17 “December 8, 2018 through July 19, 2024.”

18 5. The Court also preliminarily approves the following proposed definition of the PAGA  
19 Group Members for purposes of the proposed PAGA settlement: “Plaintiff and all current and former  
20 hourly non-exempt employees of Defendant who worked within California at any time during the  
21 PAGA Period.”

22 6. For purposes of the proposed PAGA settlement, the “PAGA Period” shall be defined  
23 as: “The period from December 9, 2021, through July 19, 2024.”

24 7. Should for whatever reason the Stipulation and Judgment not become Final, the fact  
25 that the parties were willing to stipulate to certification of a class as part of the Stipulation shall have  
26 no bearing on or be admissible in connection with the issue of whether a class should be certified in  
27 a non-settlement context.

28 8. The Court appoints and designates: (a) Plaintiff Ramon Lopez as the Class

1 Representative and (b) Barkhordarian Law Firm PLC, as Class Counsel for the Class. Class Counsel  
2 is authorized to act on behalf of the Class with respect to all acts or consents required by, or which  
3 may be given, pursuant to the Stipulation, and such other acts reasonably necessary to finalize the  
4 Stipulation and its terms. Any Class Member may enter an appearance through his or her own counsel  
5 at such Class Member's own expense. Any Class Member who does not enter an appearance or  
6 appear on his or her own behalf will be represented by Class Counsel.

7 9. The Court hereby approves the terms and conditions provided for in the Stipulation.

8 10. The Court hereby preliminarily approves the Stipulation and the Gross Settlement  
9 Sum in the amount of \$1,413,822.00, which is to be distributed as follows: Out of the Gross  
10 Settlement Sum: (a) \$10,000.00 is to be paid to the Class Representative for his services to the Class;  
11 (b) a total of up to \$471,274.00 shall be paid to Class Counsel for attorneys' fees and up to \$15,000.00  
12 shall be paid to Class Counsel as reimbursement of actual costs incurred; and (c) the Claims  
13 Administrator shall be paid for its fees and costs relating to the claims administration process which  
14 is expected to not exceed \$20,000.00; and (d) \$140,000.00 for settlement of the claim for penalties  
15 pursuant to the Private Attorneys' General Act ("PAGA"), with 75% (\$105,000.00) of that amount  
16 being remitted to the Labor Workforce Development Agency and the remainder (25% or \$35,000.00)  
17 distributed to the PAGA Group Members. The Court further hereby preliminarily approves the  
18 formulas provided in the Stipulation regarding Individual Settlement Amounts.

19 11. The Court finds that on a preliminary basis the Stipulation appears to be within the  
20 range of reasonableness of a settlement, including the Class Representative service award, Class  
21 Counsel fees and costs, the claims administration fees and the allocation of individual settlement  
22 payments, that could ultimately be given final approval by this Court. It appears to the Court on a  
23 preliminary basis that the settlement is fair, adequate, and reasonable as to all potential Class  
24 Members when balanced against the probable outcome of further litigation relating to liability and  
25 damages issues. It also appears that extensive and costly investigation, research, and court  
26 proceedings have been conducted so that counsel for the Settling Parties are able to reasonably  
27 evaluate their respective positions. It appears to the Court that settlement at this time will avoid  
28 substantial additional costs by all Settling Parties, as well as avoid the delay and risks that would be

1 presented by the further prosecution of the Litigation. It also appears that settlement has been reached  
2 as a result of intensive, serious, and non-collusive, arms-length negotiations.

3 12. A hearing (the “Final Approval Hearing”) shall be held before this Court on January  
4 17, 2025 at 1:30 p.m. in Department CX103 of the above listed Superior Court of the State of  
5 California, County of Orange County, Civil Complex Center located at 751 W. Santa Ana Blvd.,  
6 Santa Ana, CA 92701 to determine all necessary matters concerning the Stipulation, including  
7 whether the proposed settlement of the action on the terms and conditions provided for in the  
8 Stipulation is fair, adequate, and reasonable and should be finally approved by the Court and whether  
9 a Judgment, as provided in the Stipulation, should be entered herein. At this same time, a hearing on  
10 Class Counsel’s motion for attorneys’ fees and reimbursement of litigation costs and the Class  
11 Representative’s service award shall also be held.

12 13. The Court hereby approves, as to form and content, the Notice of Proposed Class  
13 Action Settlement to be sent to Class Members, which is attached as an exhibit to the Stipulation.  
14 The Court finds that distribution of the Class Notice to Class Members substantially in the manner  
15 and form set forth in the Stipulation and this Order meet the requirements of due process and shall  
16 constitute due and sufficient notice to all parties entitled thereto.

17 14. The Court appoints and designates CPT Group, Inc. as the Claims Administrator. The  
18 Court hereby directs the Claims Administrator to provide the approved Notice of Proposed Class  
19 Action Settlement to Class Members using the procedures set forth in the Stipulation.

20 15. Any Class Member may choose to opt out of and be excluded from the settlement as  
21 provided in the Stipulation and Class Notice and by following the instructions for requesting  
22 exclusion. Any person who timely and properly opts out of the settlement will not be bound by the  
23 Stipulation or have any right to object, appeal, or comment thereon. Any Request for Exclusion must  
24 be signed by each such Class Member opting out and must otherwise comply with the requirements  
25 delineated in the Stipulation and the Class Notice. Class Members who have not requested exclusion  
26 by submitting a valid and timely Request for Exclusion, by the Response Deadline (Defined  
27 in Paragraph 30 of the Stipulation), shall be bound by all determinations of the Court, the Stipulation,  
28 and Judgment.

1           16. Any Class Member may object to the Stipulation or express his or her views regarding  
2 the Stipulation and may present evidence and file briefs or other papers that may be proper and  
3 relevant to the issues to be heard and determined by the Court as provided in the Class Notice. No  
4 Class Member, however, shall be heard or entitled to object, and no papers or briefs submitted by any  
5 such person shall be received or considered by the Court, unless: (1) On or before the Response  
6 Deadline the Class Member or Person or his or her counsel properly filed their objections with the  
7 Court and served their objections on Class Counsel and Defense Counsel as provided in the  
8 Stipulation and Class Notice; or (2) the objecting Class Member appears at the Final Approval  
9 hearing, either in person or through counsel. Any Class Member who does not make his or her  
10 objection in the manner provided for in the Stipulation and Class Notice, including by the Response  
11 Deadline, shall be deemed to have waived such objection and shall forever be foreclosed from making  
12 any objection to the Stipulation.

13           17. Defendant must exercise any right it may have to terminate the Stipulation by no later  
14 than thirty (30) calendar days after the Response Deadline.

15           18. The Motion for Final Approval shall be filed by Class Representative no later than  
16 sixteen (16) court days before the Final Approval Hearing.

17           19. In the event that the Effective Date occurs, all Settlement Class Members and Class  
18 Representative will be deemed to have forever released and discharged the Released Claims  
19 applicable to them.

20           20. The Court reserves the right to adjourn or continue the date of the Final Approval  
21 Hearing and all dates provided for in the Stipulation without further notice to the Class and retains  
22 jurisdiction to consider all further applications arising out of or connected with the Stipulation.

23           21. The Settlement Administrator shall post Copies of the First Amended Complaint,  
24 Settlement Agreement, and Order of Preliminary Approval to their website. If the Court ultimately  
25 grants final approval of the Settlement Agreement, the Order of Final Approval and Final Judgment  
26 will also be posted. All documents shall remain posted for not less than sixty (60) days.

27           22. After entry of the Judgment, the Court will have continuing jurisdiction pursuant to  
28 California Rules of Court 3.769(h) and Code of Civil Procedure Section 664.6 solely for purposes of

1 addressing: (i) the interpretation and enforcement of the terms of the Settlement Agreement, (ii)  
2 settlement administration matters, and (iii) such post-Judgment matters as may be appropriate under  
3 court rules or as set forth in this Settlement Agreement.

4 **IT IS SO ORDERED.**

5  
6  
7 DATED:

8 \_\_\_\_\_  
9 The Honorable Lon F. Hurwitz  
10 Judge of the Superior Court  
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# **EXHIBIT 3**

**GREGORY P. WONG (SBN: 204502)**  
**JOHN F. LITWIN (SBN: 301611)**  
**BARKHORDARIAN LAW FIRM, PLC**  
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himself and all others similarly situated**

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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*

**FIRST 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  
19 Fees 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 July 19,  
4 2024~~date that a preliminary approval order is entered.~~

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 July 19, 2024~~the~~  
3 ~~date that a preliminary approval order is entered.~~

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

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

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

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

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

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

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

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

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

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

24 29. “Request for Exclusion” means a timely letter submitted by a Class Member  
25 indicating a request to be excluded from the Settlement. The Request for Exclusion must: (a) set  
26 forth the name, address, telephone number and last four digits of the Social Security Number of the  
27 Class Member requesting exclusion; (b) be signed by the Class Member; (c) be returned by mail or  
28 fax to the Claims Administrator at the specified address or fax number indicated in the Notice; (d)

1 clearly state that the Class Member does not wish to be included in the Settlement; and (e) be faxed  
2 or postmarked on or before the Response Deadline.

3 30. "Response Deadline" means the deadline by which Class Members must fax or  
4 postmark to the Claims Administrator a valid Request for Exclusion, submit objections to the  
5 Settlement or dispute workweeks. The Response Deadline will be forty-five (45) calendar days  
6 from the initial mailing of the Notice by the Claims Administrator. The Response Deadline for  
7 Request for Exclusion, objection or dispute workweeks will be extended ~~fifteen~~forty-five (~~15~~45)  
8 calendar days for any Class Member who is re-mailed a Notice by the Claims Administrator in  
9 accordance with the notice procedure described in Paragraph 45 of this Settlement Agreement. The  
10 Response Deadline may also be extended by express agreement between Class Counsel and  
11 Defendant's counsel. The Court shall have final say over the validity of opt out requests.

## 12 TERMS OF AGREEMENT

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

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

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

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

1 with Class Counsel's litigation and settlement of the Action not to exceed Fifteen Thousand Dollars  
2 (\$15,000.00). In consideration of their awarded attorneys' fees and costs and expenses, Plaintiff  
3 and Class Counsel waive any and all claims to any further attorneys' fees and expenses in  
4 connection with the Action.

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

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

2 IRS forms, calculating the employers' share of payroll taxes on the wage portion of the Individual Settlement Payments and coordinating related reporting, and other responsibilities as requested by the Parties. The Claims Administration Expenses will be paid from the Gross Settlement Amount.

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

~~37.~~ Individual Class Settlement Payment Calculations. Based on a review of its records through mediation (January 17, 2024), Defendant estimates there are 849 class members who collectively worked a total of 41,583 workweeks, and 578 PAGA Group Members who worked a total of 14,217 pay periods during the PAGA Period. Defendant will provide the Claims Administrator with the total number of workweeks for each Participating Class Member and PAGA Group Member. The Claims Administrator will divide the Net Settlement Amount by the total number of workweeks for Participating Class Members ("Work Week Rate Amount") and then multiply this amount by each Participating Class Member's total number of workweeks to yield that employee's Individual Class Settlement Payment. Any one day worked during a Workweek will be credited as a full workweek. Based on the minimum net settlement amount of \$757,548.00, the estimated 849~~410~~ class members, the average settlement payment is estimated to be approximately \$1,84792.6828. Given the 293 weeks in the class period, the estimated minimum payment is projected to be approximately \$18.22, and the estimated maximum payment to be \$5,337.16.

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

~~38.~~37. Individual PAGA Settlement Payment Calculations. Each PAGA Group Member will receive an individual share of the \$35,000.00 portion of the PAGA Settlement Amount (or 25% of the PAGA Settlement Amount approved by the Court). The Individual PAGA Settlement Payment shall be calculated by the Claims Administrator, with a formula similar to payments to Participating Class Members. Any one day worked during a Workweek will be credited as a full workweek. No PAGA Group Member will be permitted to exclude themselves from the PAGA claim portion of the Settlement. Individual PAGA Settlement Payments will be distributed by the

1 Claims Administrator by mail to the PAGA Group Members including to those Class Members  
2 who submitted a request for exclusion. Given the presently-estimated 818578 PAGA group  
3 members, 134,918217 pay periods as of the time of mediation, and the anticipated 68 pay period  
4 PAGA Period from December 9, 2021 through the anticipated date of preliminary approval of July  
5 19, 2024, the average PAGA payment is estimated to be \$42.78. The minimum payment is  
6 estimated to be \$2.46. The highest payment is estimated to be \$167.40.

7 39.38. Participating Class Members and PAGA Group Members. Individuals who are both  
8 Participating Class Members and PAGA Group Members shall receive both the Individual Class  
9 Settlement Payment and the Individual PAGA Settlement Payment. No Class Member or PAGA  
10 Group Member will be permitted to exclude themselves from the PAGA claim portion of the  
11 Settlement.

12 40.39. No Credit Toward Benefit Plans. All Individual Class and/or PAGA Settlement  
13 Payments to Class Members shall be deemed to be income to such Class Members solely in the  
14 year in which such payments actually are received by the Class Members. It is expressly understood  
15 and agreed that the receipt of such Individual Class and/or PAGA Settlement Payments will not  
16 entitle any Class Member to additional compensation or benefits under any company bonus, paid  
17 time off (including vacation and sick leave), or other compensation or benefit plan or agreement in  
18 place during the period covered by the Settlement, nor will it entitle any Class Member to any  
19 increased retirement, 401(k) benefits or matching benefits, or deferred compensation benefits. It is  
20 the intent of this Settlement Agreement that the Individual Class and/or PAGA Settlement Payments  
21 provided for in this Agreement are the sole payments to be made by Defendant to the Class  
22 Members in connection with this Settlement Agreement, and that the Class Members are not entitled  
23 to any new or additional compensation or benefits as a result of having received the Individual Class  
24 and/or PAGA Settlement Payments (notwithstanding any contrary language or agreement in any  
25 benefit or compensation plan document that might have been in effect during the period covered by  
26 this Settlement).

27 41.40. Claims Administration Process. The Parties agree to cooperate in the administration  
28 of the settlement and to make all reasonable efforts to control and minimize the costs and expenses

1 incurred in administration of the Settlement.

2 42.41. Delivery of the Class List. Within twenty-one (21) calendar days of Preliminary  
3 Approval, Defendant will provide the Class List to the Claims Administrator.

4 43.42. Notice by First-Class U.S. Mail. Within ten (10) calendar days after receiving the  
5 Class List from Defendant, the Claims Administrator will mail the Notice to all Class Members via  
6 regular First-Class U.S. Mail.

7 44.43. Confirmation of Contact Information in the Class List. Prior to mailing, the Claims  
8 Administrator will perform a search based on the National Change of Address Database for  
9 information to update and correct for any known or identifiable address changes. Any Notice  
10 returned to the Claims Administrator as non-deliverable on or before the Response Deadline will  
11 be sent promptly via regular First-Class U.S. Mail to the forwarding address, and the Claims  
12 Administrator will indicate the date of such re-mailing on the Notice. If no forwarding address is  
13 provided, the Claims Administrator will promptly attempt to determine the correct address using a  
14 skip-trace, or other search using the name, address and/or Social Security number of the Class  
15 Member involved, and will then perform a single re-mailing. Those Class Members who receive a  
16 re-mailed Notice will have forty-five (45)~~between the later of (i) an additional fifteen (15)~~ calendar  
17 days or ~~(ii) the Response Deadline~~ to fax or postmark a Request for Exclusion, submit an objection  
18 to the Settlement or dispute workweeks.

19 45.44. Notice. All Class Members will be mailed the Notice. The Notice will be also  
20 translated and provided in Spanish. The Notice will provide: (1) information regarding the nature  
21 of the Action, (2) a summary of the Settlement's principal terms, (3) the Settlement Class definition,  
22 (4) each Class Member's number of workweeks worked during the Class Period, (5) each Class  
23 Member's estimated Individual Class Settlement Payment; (6) each PAGA Group Member's  
24 estimated Individual PAGA Settlement Payment; (7) the dates which comprise the Class Period,  
25 (8) instructions on how to submit valid Requests for Exclusion, objections or dispute workweeks,  
26 (9) the deadlines by which the Class Member must fax or postmark Request for Exclusions, submit  
27 objections to the Settlement or dispute workweeks, and (10) the claims to be released, as set forth  
28 in this Settlement Agreement, (11) the Court's updated social distancing rules in effect, (12) where

1 Class Members may obtain additional information, including any changes to the date and location  
2 of court hearings, the Order Granting Final Approval of Class Action Settlement and Entering  
3 Judgment following the Final Approval Hearing (i.e., the Court's website or posted on the  
4 Settlement Administrator's website). The Claims Administrator shall also post a copy of the Notice  
5 attached as Exhibit A, or any updated Notice as required by the Court, and the Motion for  
6 Preliminary Approval and Final Approval hearing dates, locations, and times and the final judgment  
7 on its website. The Settlement Administrator will post copies of the preliminary approval and final  
8 approval motions, Orders for preliminary and final approval, and the Settlement Agreement on its  
9 website. Upon the entry of a Final Judgement, the Settlement Administrator will post the Final  
10 Judgment on its website, where it shall remain viewable for not less than 60 days.

11 ~~46.45.~~ Request for Exclusion Procedures. Any Class Member wishing to opt out from the  
12 class action portion of the Settlement Agreement must sign and fax or postmark a written Request  
13 for Exclusion to the Claims Administrator within the Response Deadline. The date of the fax or  
14 postmark on the return mailing envelope will be the exclusive means to determine whether a  
15 Request for Exclusion has been timely submitted. The Parties to this Agreement and their counsel  
16 agree that they will not solicit or encourage Class Members to opt-out or object to this Settlement  
17 Agreement. If the Court approves the compromise of the PAGA claim, all PAGA Group Members  
18 are bound by the Court's resolution of that claim. Class Members who are also PAGA Group  
19 Members submitting a request for exclusion will nevertheless receive their pro-rata share of the  
20 25% of the PAGA Settlement Amount (i.e., their Individual PAGA Settlement Payments) allocated  
21 for PAGA penalties to PAGA Group Members. In the event that 10% or more Class Members opt  
22 out of the settlement, Defendant has the right (but not the obligation) to void the settlement. The  
23 Settlement Administrator will submit all requests for exclusions, objections, and workweek  
24 calculation disputes to Class Counsel and Defense Counsel. Class Counsel will provide all requests  
25 for exclusions, objections, and workweek calculation disputes at the time of filing of the Final  
26 Approval Motion to the Court. The Court will have final say over the validity of all requests for  
27 exclusions, objections, and workweek calculation disputes.

28 ~~47.46.~~ Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class

1 Member who does not affirmatively opt out of the Settlement Agreement by submitting a timely  
2 and valid Request for Exclusion will be bound by all of its terms, including those pertaining to the  
3 Released Claims (other than as it applies to the PAGA claims with respect to the PAGA Group  
4 Members), as well as any Judgment that may be entered by the Court if it grants final approval to  
5 the Settlement. If the Court approves the compromise of the PAGA claim, Class Members who are  
6 also PAGA Group Members submitting a request for exclusion, if any, will nevertheless be bound  
7 by the Court's resolution of that claim and receive their pro-rata share of the 25% of the PAGA  
8 Payment allocated to the PAGA Group Members.

9 48.47. Objection Procedures. To object to the Settlement Agreement, a Class Member may  
10 submit a Request for Exclusion and may mail a valid Notice of Objection to the Claims  
11 Administrator by the Response Deadline. The Claims Administrator will notify counsel for the  
12 Parties forthwith via email. Class Counsel will lodge the objection with the Court. The Notice of  
13 Objection must be signed by the Class Member and contain all information required by this  
14 Settlement Agreement. The postmark date of the mailing will be deemed the exclusive means for  
15 determining that the Notice of Objection is timely. Class Members who wish to object will have a  
16 right to appear at the Final Approval Hearing, with or without counsel at his/her own expense, in  
17 order to have their objections heard by the Court, regardless of whether they submitted a Notice of  
18 Objection. At no time will any of the Parties or their counsel seek to solicit or otherwise encourage  
19 Class Members to submit written objections to the Settlement Agreement or appeal from the Final  
20 Approval Order and Judgment.

21 48. If a Class Member timely disputes the number of Workw-Weeks listed on the Class  
22 Notice, the Parties' counsel will make a good faith effort to resolve the dispute cooperatively. If  
23 counsel for the Parties cannot agree, the dispute shall be submitted to the Settlement Administrator,  
24 who shall examine the records and either verify the calculation or provide a corrected calculation.  
25 If a Class Member disputes the number of Work-Wweeks, it will be the Class Member's  
26 responsibility to supply information confirming the error in the calculation or Defendant's records.  
27 In any event, the Settlement Administrator will make every effort to resolve any such disputes prior  
28 to final approval of this Settlement Agreement. Plaintiffs shall file with the Court all disputes

1 submitted by the Class Members, and all evidence provided by class members in connection with  
2 any dispute, and the findings of the Settlement Administrator. The Court shall have final authority  
3 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  
22 ~~Settlement~~Settlement Payment and/or Individual PAGA Payment is uncashed and cancelled after  
23 the void date, the Claims Administrator will send the amount represented by the check to the  
24 California State Controller's Office Unclaimed Property Fund, with the identity of the Participating  
25 Class Member to whom the funds belong, to be held for the participating Class Member per  
26 California Unclaimed Property Law, in the interest of justice. The money paid to the California  
27 State Controller's Office Unclaimed Property Fund will remain the Participating Class Member's  
28 property. This will allow Participating Class Members who did not cash their checks to collect their

1 Individual Settlement Amounts at any time in the future. Therefore, there will be no unpaid residue  
2 or unclaimed or abandoned class member funds, and California Code of Civil Procedure section  
3 384 shall not apply. The funds will be held by the State until claimed by the employee and the  
4 uncashed check never 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 July 19, 2024 the date the Court signs the Order  
7 granting preliminary approval of this action) is 5% or more greater (Escalator Threshold") than the  
8 41,583 weeks worked estimated at the time of mediation (i.e. 43,662 or more), then the Gross  
9 Settlement Amount shall be increased proportionately for each additional week worked over the  
10 Escalator Threshold.

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

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

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

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

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

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

1 AGREEMENT.

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

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

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

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 Notices Plaintiff sent to the  
4 LWDAany and all of the Released PAGA Claims.

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

15 62-63. Release by Plaintiff. Upon the date the Court enters an order granting final approval  
16 of the settlement and Defendant fully funds the Gross Settlement Amount, in addition to the claims  
17 being released by all Class Members, Plaintiff will provide the following additional general release  
18 (“General Release”): Plaintiff, on his own behalf and on behalf of his heirs, spouses, executors,  
19 administrators, attorneys, agents and assigns, fully and finally releases the Released Parties from  
20 all claims, demands, rights, liabilities and causes of action of every nature and description  
21 whatsoever, known or unknown, asserted or that might have been asserted, whether in tort, contract,  
22 or for violation of any state or federal statute, rule or regulation arising out of, relating to, or in  
23 connection with any act or omission by or on the part of any of the Released Parties committed or  
24 omitted prior to the execution of this Agreement. This General Release includes any unknown  
25 claims Plaintiff does not know or suspect to exist in his favor at the time of this General Release,  
26 which, if known by him, might have affected his settlement with, and release of, the Released  
27 Parties or might have affected his decision not to object to this Settlement or this Release.  
28 Furthermore, for purposes of Plaintiff’s Release, Plaintiff expressly waives and relinquishes the

1 provisions, rights, and benefits, if any, of Section 1542 of the California Civil Code, which reads:

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

7 The significance of this release and waiver of Civil Code Section 1542 has been explained  
8 to Plaintiff by Class Counsel. Release by Plaintiff expressly excludes any claims that cannot be  
9 released as a matter of law, including, but not limited to, claims for workers compensation against  
10 Defendant. ~~However, this general release shall have no effect and shall not release any claims that~~  
11 ~~cannot be released as a matter of law, including but not limited to claims under the exclusive~~  
12 ~~jurisdiction of the Workers' Compensation Appeals Board.~~

13 63-64. Nullification of Settlement Agreement. In the event that: (i) the Court does not  
14 finally approve the Settlement as provided in this Settlement Agreement; or (ii) the Settlement does  
15 not become final for any other reason, then this Settlement Agreement and any documents generated  
16 to bring it into effect will be null and void. Any order or judgment entered by the Court in  
17 furtherance of this Settlement Agreement will likewise be treated as void from the beginning. In  
18 such case, the Settlement shall not be used or be admissible in any subsequent proceedings, in this  
19 Action, this Court, or any other Court or forum.

20 64-65. Preliminary Approval Hearing. The Parties will work together to obtain a hearing  
21 before the Court to request the Preliminary Approval of the Settlement Agreement, and the entry  
22 of a Preliminary Approval Order for: (i) conditional certification of the Settlement Class for  
23 settlement purposes only, (ii) preliminary approval of the proposed Settlement Agreement, and (iii)  
24 setting a date for a Final Approval/Settlement Fairness Hearing. The Preliminary Approval Order  
25 will provide for the Notice to be sent to all Class Members as specified in this Settlement  
26 Agreement. In conjunction with the Preliminary Approval motion, the Parties will submit this  
27 Settlement Agreement, which sets forth the terms of this Settlement and will include the proposed  
28 Notice.

1        65-66. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of the  
2 deadlines to fax or postmark Request for Exclusion or submit objections to the Settlement  
3 Agreement, and with the Court's permission, a Final Approval/Settlement Fairness Hearing will be  
4 conducted to determine the Final Approval of the Settlement Agreement along with the amounts  
5 properly payable for (i) Individual Settlement Payments; (ii) the Class Counsel Fees and Costs; (iii)  
6 the Class Representative Enhancement Payment; (iv) payment to LWDA for PAGA penalties; and  
7 (v) all Claims Administration Expenses. Class Counsel will be responsible for drafting all  
8 documents necessary to obtain final approval. Class Counsel will also be responsible for drafting  
9 the attorneys' fees and costs application to be heard at the Final Approval/Settlement Fairness  
10 Hearing.

11        66-67. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by the  
12 Court or after the Final Approval/Settlement Fairness Hearing, the Parties will present a proposed  
13 Judgment to the Court for its approval. Pursuant to California Rules of Court, Rule 3.771(b), the  
14 Claims Administrator shall post on its website a copy of the Judgment for a period of at least sixty  
15 (60)thirty days from the date the Court signs the Judgment. After entry of the Judgment, the Court  
16 will have continuing jurisdiction pursuant to California Rules of Court 3.769(h) and Code of Civil  
17 Procedure Section 664.6 solely for purposes of addressing: (i) the interpretation and enforcement  
18 of the terms of the Settlement Agreement, (ii) settlement administration matters, and (iii) such post-  
19 Judgment matters as may be appropriate under court rules or as set forth in this Settlement  
20 Agreement.

21        67-68. Exhibits Incorporated by Reference. The terms of this Settlement Agreement include  
22 the terms set forth in any attached Exhibits, which are incorporated by this reference as though fully  
23 set forth in this Settlement Agreement. Any Exhibits to this Agreement are an integral part of the  
24 Settlement.

25        68-69. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute  
26 the entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral  
27 agreements may be deemed binding on the Parties. The Parties expressly recognize California Civil  
28 Code Section 1625 and California Code of Civil Procedure Section 1856(a), which provide that a

1 written agreement is to be construed according to its terms and may not be varied or contradicted  
2 by extrinsic evidence, and the Parties agree that no such extrinsic oral or written representations or  
3 terms will modify, vary or contradict the terms of this Agreement.

4 ~~69.70.~~ Amendment or Modification. This Settlement Agreement may be amended or  
5 modified only by a written instrument signed by counsel for all Parties or their successors-in-  
6 interest.

7 ~~70.71.~~ Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant  
8 and represent they are expressly authorized by the Parties whom they represent to negotiate this  
9 Settlement Agreement and to take all appropriate action required or permitted to be taken by such  
10 Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other  
11 documents required to effectuate the terms of this Settlement Agreement. The Parties and their  
12 counsel will cooperate with each other and use their best efforts to effect the implementation of the  
13 Settlement. If the Parties are unable to reach agreement on the form or content of any document  
14 needed to implement the Settlement Agreement, or on any supplemental provisions that may  
15 become necessary to effectuate the terms of this Settlement Agreement, the Parties may seek the  
16 assistance of the Court to resolve such disagreement. The Parties, Class Counsel, and Defense  
17 Counsel represent that they are not aware of any other pending matter or action asserting claims  
18 that will be extinguished or affected by the Settlement Agreement.

19 ~~71.72.~~ Binding on Successors and Assigns. This Settlement Agreement will be binding  
20 upon, and inure to the benefit of, the successors or assigns of the Parties to this Settlement  
21 Agreement, as previously defined.

22 ~~72.73.~~ Execution and Counterparts. This Settlement Agreement is subject only to the  
23 execution of all Parties. However, the Settlement Agreement may be executed in one or more  
24 counterparts. All executed counterparts and each of them, including facsimile and scanned copies  
25 of the signature page, will be deemed to be one and the same instrument provided that counsel for  
26 the Parties will exchange among themselves original signed counterparts.

27 ~~73.74.~~ Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe  
28 this Settlement Agreement is a fair, adequate and reasonable settlement of the Action and have

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

6 ~~74.75.~~ Invalidity of Any Provision. Before declaring any provision of this Settlement  
7 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent  
8 possible consistent with applicable precedents so as to define all provisions of this Settlement  
9 Agreement valid and enforceable.

10 ~~75.76.~~ Captions. The captions and section numbers in this Agreement are inserted for the  
11 reader's convenience, and in no way define, limit, construe or describe the scope or intent of the  
12 provisions of this Agreement.

13 ~~76.77.~~ Waiver. No waiver of any condition or covenant contained in this Agreement or  
14 failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or  
15 constitute a further waiver by such party of the same or any other condition, covenant, right or  
16 remedy.

17 ~~77.78.~~ Enforcement Actions. In the event that one or more of the Parties institute any legal  
18 action or other proceeding against any other Party to enforce the provisions of this Settlement  
19 Agreement or to declare rights and/or obligations under this Settlement Agreement, the successful  
20 Party will be entitled to recover from the unsuccessful Party reasonable attorneys' fees and costs,  
21 including expert witness fees incurred in connection with any enforcement actions.

22 ~~78.79.~~ Mutual Preparation. The Parties have had a full opportunity to negotiate the terms  
23 and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be  
24 construed more strictly against one party than another merely by virtue of the fact that it may have  
25 been prepared by counsel for one of the Parties, it being recognized that, because of the arms-length  
26 negotiations between the Parties, all Parties have contributed to the preparation of this Agreement.

27 ~~79.80.~~ Representation By Counsel. The Parties acknowledge that they have been  
28 represented by counsel throughout all negotiations that preceded the execution of this Settlement

1 Agreement, and that this Settlement Agreement has been executed with the consent and advice of  
2 counsel.

3 ~~80-81.~~ All Terms Subject to Final Court Approval. All amounts and procedures described  
4 in this Settlement Agreement will be subject to final Court approval.

5 ~~81-82.~~ Cooperation and Execution of Necessary Documents. All Parties will cooperate in  
6 good faith and execute all documents to the extent reasonably necessary to effectuate the terms of  
7 this Settlement Agreement.

8 ~~82-83.~~ Binding Agreement. The Parties warrant that they understand and have full authority  
9 to enter into this Agreement, and further intend that this Agreement will be fully enforceable and  
10 binding on all Parties, and agree that it will be admissible and subject to disclosure in any  
11 proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that  
12 otherwise might apply under federal or state law.

13 ~~83-84.~~ No Admission of Liability. Nothing contained in this Settlement Agreement shall be  
14 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part  
15 of Defendant. Each of the Parties has entered into this Settlement Agreement with the intention to  
16 avoid further disputes and litigation, and the attendant inconvenience and expense, and to fully and  
17 forever buy their respective peace. This Settlement Agreement shall be inadmissible in evidence in  
18 any action or proceeding, by any party, except an action or proceeding by one of the Parties to  
19 approve, interpret, or enforce the Settlement Agreement's terms.

20 ~~84-85.~~ Communications. Before the date on which the Parties file their motion for  
21 preliminary approval of the Settlement, Plaintiff and their Class Counsel will not initiate any contact  
22 with Class Members other than Plaintiff about the Settlement, except that, if contacted by a Class  
23 Member, they may respond that a settlement has been reached and that the details will be  
24 communicated in a forthcoming Court-approved notice.

25 ~~85-86.~~ Disputes. Any dispute between the Parties concerning the interpretation or  
26 implementation of this Settlement Agreement will be resolved by the Court. Prior to any such resort  
27 to the Court, counsel for the Parties will confer in good faith to resolve the dispute.

28 ~~86-87.~~ Applicable Law. All terms and conditions of this Stipulation and its exhibits will be

1 governed by and interpreted according to the laws of the State of California, without giving effect  
2 to any conflict of law or choice of law principles.

3  
4 DATED: \_\_\_\_\_

5 \_\_\_\_\_  
6 Ramon Lopez  
7 Plaintiff and Class Representative

8  
9 DATED: \_\_\_\_\_

10 BARKHORDARIAN LAW FIRM, PLC

11 \_\_\_\_\_  
12 Gregory P. Wong  
13 John F. Litwin

14 DATED: \_\_\_\_\_

15 Attorneys for Plaintiff RAMON LOPEZ

16 \_\_\_\_\_  
17 NEXGEN AIR CONDITIONING AND HEATING,  
18 LLC

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

22 DATED: \_\_\_\_\_

23 VENABLE LLP

24 \_\_\_\_\_  
25 Rudy G. Klapper  
26 Jeffrey A. Brand

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

# **EXHIBIT 4**

[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 [INSERT PRELIMINARY APPROVAL DATE] 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 [INSERT PRELIMINARY APPROVAL DATE] 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 ~~aggrieved employee~~ 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:

|                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>PARTICIPATE IN THE SETTLEMENT AND RECEIVE A SETTLEMENT PAYMENT</b>                                      | <p><b><u>YOU DO NOT NEED TO DO ANYTHING TO PARTICIPATE IN THE SETTLEMENT AND RECEIVE A SETTLEMENT PAYMENT.</u></b> By doing nothing, you <b><u>WILL</u></b> 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).</p> <p>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.</p>                                                                                                                  |
| <b>ASK TO BE EXCLUDED (SUBMIT A VALID REQUEST FOR EXCLUSION/ OPT-OUT) FROM THE CLASS ACTION SETTLEMENT</b> | <p>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.</p> <p>If You are an <del>Aggrieved employee</del><b>PAGA Group Member</b>, You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all <del>Aggrieved Employee</del><b>PAGA Group Members</b> and the <del>Aggrieved Employee</del><b>PAGA Group Members</b> must give up their rights to pursue Released Claims (defined below).</p> |

|                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|-----------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>PARTICIPATING CLASS MEMBERS CAN OBJECT</b> | 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.                                                                                                                                                                                     |
| <b>DISPUTE YOUR SETTLEMENT AWARD</b>          | 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. <del>XX</del> <u>The Court</u> 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 Employee~~ 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 ~~Aggrieved Employee~~ PAGA Group Members: If You opt out of the Class Settlement, and You are ~~an Aggrieved Employee~~ 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 Aggrieved Employee PAGA Group Members and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee 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, ~~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~~ 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 Aggrieved Employee 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 Aggrieved Employee 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 a Request for Exclusion letter by **XXXX** to the Settlement Administrator by fax or mail as follows.

|                                                                                           |  |
|-------------------------------------------------------------------------------------------|--|
| Settlement Administrator:<br><b>XX</b><br><b>INSERT</b><br><b>INSERT</b><br><b>INSERT</b> |  |
|-------------------------------------------------------------------------------------------|--|

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 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 ~~Aggrieved Employee~~**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 mailed to the Settlement Administrator (identified above) by **XXXX**. 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. 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. 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.

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: ~~Gregory P. Wong and~~ John F. Litwin  
Email Address: ~~greg@barklawfirm.com and~~ 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](mailto:RGKlapper@venable.com) and [JABrand@venable.com](mailto: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 5**

1 **ExhibitGREGORY P. WONG (SBN: 204502)**

2 **JOHN F. LITWIN (SBN: 301611)**

3 **BARKHORDARIAN LAW FIRM, PLC**

4 6047 Bristol Parkway, Second Floor

5 Culver City, CA 90230

6 Telephone: (323) 450-2777

7 Facsimile: (310) 215-3416

8 Email: john@barklawfirm.com

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

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF ORANGE**

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

16 Plaintiff,

17 vs.

18 NEXGEN AIR CONDITIONING AND  
19 HEATING, LLC, a California Limited  
20 Liability Corporation; and DOES 1 through  
21 100, inclusive,

22 Defendants.

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

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

**[PROPOSED] FIRST AMENDED ORDER  
GRANTING PLAINTIFF'S MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION AND PRIVATE ATTORNEYS  
GENERAL ACT ("PAGA")  
SETTLEMENT**

Date: March 22 July 19, 2024

Time: 1:30 p.m.

Location: Dept. CX103

Action Filed: December 8, 2022

1 Plaintiff Ramon Lopez’ (hereinafter “Plaintiff”) motion for ~~Preliminary Approval of~~ an Order  
2 Preliminarily Approv~~ing the Parties’ of~~ Class Action and PAGA Settlement was heard by the eCourt  
3 on ~~March 22~~July 19, 2024. The Court has considered the First Amended Joint Stipulation for Class  
4 Action and PAGA Settlement attached as Exhibit 1 to the Supplemental Briefing In Support of  
5 Plaintiff’s Motion For Preliminary Approval and Class Action Settlement, Register of Actions  
6 Number 53 (hereinafter the “Stipulation”) and all other papers filed in this action.

7 **NOW THEREFORE, IT IS HEREBY ORDERED:**

8 1. All defined terms contained herein shall have the same meanings as set forth in the  
9 Stipulation.

10 2. The Class Representative and Defendant, through their counsel of record in the action  
11 entitled *Ramon Lopez v. Nexgen Air Conditioning and Heating, LLC, et al.* (the “Litigation”), have  
12 reached an agreement to settle all claims in the Litigation on behalf of the Class as a whole.

13 3. The Court hereby conditionally certifies the following Class for settlement purposes  
14 only: “All current and former hourly-paid or non-exempt employees who worked for Defendant in  
15 the State of California during the Class Period.”

16 4. For purposes of the proposed Class settlement, the “Class Period” shall be defined as:  
17 “December 8, 2018 through ~~the date that a preliminary approval order is entered~~July 19, 2024.”

18 5. The Court also preliminarily approves the following proposed definition of the PAGA  
19 Group Members for purposes of the proposed PAGA settlement: “Plaintiff and all current and former  
20 hourly non-exempt employees of Defendant who worked within California at any time during the  
21 PAGA Period.”

22 6. For purposes of the proposed PAGA settlement, the “PAGA Period” shall be defined  
23 as: “The period from December 9, 2021, through ~~the date that a preliminary approval order is~~  
24 enteredJuly 19, 2024.”

25 7. Should for whatever reason the Stipulation and Judgment not become Final, the fact  
26 that the parties were willing to stipulate to certification of a class as part of the Stipulation shall have  
27 no bearing on or be admissible in connection with the issue of whether a class should be certified in  
28 a non-settlement context.

1           8.       The Court appoints and designates: (a) Plaintiff Ramon Lopez as the Class  
2 Representative and (b) Barkhordarian Law Firm PLC, as Class Counsel for the Class. Class Counsel  
3 is authorized to act on behalf of the Class with respect to all acts or consents required by, or which  
4 may be given, pursuant to the Stipulation, and such other acts reasonably necessary to finalize the  
5 Stipulation and its terms. Any Class Member may enter an appearance through his or her own counsel  
6 at such Class Member's own expense. Any Class Member who does not enter an appearance or  
7 appear on his or her own behalf will be represented by Class Counsel.

8           69.       The Court hereby approves the terms and conditions provided for in the Stipulation.

9           710.       The Court hereby preliminarily approves the Stipulation and the Gross Settlement  
10 Sum in the amount of \$1,413,822.00, which is to be distributed as follows: Out of the Gross  
11 Settlement Sum: (a) \$10,000.00 is to be paid to the Class Representative for his services to the Class;  
12 (b) a total of up to \$471,274.00 shall be paid to Class Counsel for attorneys' fees and up to \$15,000.00  
13 shall be paid to Class Counsel as reimbursement of actual costs incurred; and (c) the Claims  
14 Administrator shall be paid for its fees and costs relating to the claims administration process which  
15 is expected to not exceed \$20,000.00; and (d) \$140,000.00 for settlement of the claim for penalties  
16 pursuant to the Private Attorneys' General Act ("PAGA"), with 75% (\$105,000.00) of that amount  
17 being remitted to the Labor Workforce Development Agency and the remainder (25% or \$35,000.00)  
18 distributed to the PAGA Group Members. The Court further hereby preliminarily approves the  
19 formulas provided in the Stipulation regarding Individual Settlement Amounts.

20           811.       The Court finds that on a preliminary basis the Stipulation appears to be within the  
21 range of reasonableness of a settlement, including the Class Representative service award, Class  
22 Counsel fees and costs, the claims administration fees and the allocation of individual settlement  
23 payments, that could ultimately be given final approval by this Court. It appears to the Court on a  
24 preliminary basis that the settlement is fair, adequate, and reasonable as to all potential Class  
25 Members when balanced against the probable outcome of further litigation relating to liability and  
26 damages issues. It also appears that extensive and costly investigation, research, and court  
27 proceedings have been conducted so that counsel for the Settling Parties are able to reasonably  
28 evaluate their respective positions. It appears to the Court that settlement at this time will avoid

1 substantial additional costs by all Settling Parties, as well as avoid the delay and risks that would be  
2 presented by the further prosecution of the Litigation. It also appears that settlement has been reached  
3 as a result of intensive, serious, and non-collusive, arms-length negotiations.

4 129. A hearing (the “~~Settlement Fairness~~Final Approval Hearing”) shall be held before this  
5 Court on January 17, 2025 ~~\_\_\_\_\_~~ [INSERT PROPOSED DATE] at ~~\_\_\_\_\_~~ 1:30 p.m.  
6 ~~on: \_\_\_\_\_~~ at: \_\_\_\_\_ in Department CX103 of the above listed Superior Court  
7 of the State of California, County of Orange County, Civil Complex Center located at 751 W. Santa  
8 Ana Blvd., Santa Ana, CA 92701 to determine all necessary matters concerning the Stipulation,  
9 including whether the proposed settlement of the action on the terms and conditions provided for in  
10 the Stipulation is fair, adequate, and reasonable and should be finally approved by the Court and  
11 whether a Judgment, as provided in the Stipulation, should be entered herein. At this same time, a  
12 hearing on Class Counsel’s motion for attorneys’ fees and reimbursement of litigation costs and the  
13 Class Representative’s service award shall also be held.

14 103. The Court hereby approves, as to form and content, the Notice of Proposed Class  
15 Action Settlement to be sent to Class Members, which is attached as an exhibit to the Stipulation.  
16 The Court finds that distribution of the Class Notice to Class Members substantially in the manner  
17 and form set forth in the Stipulation and this Order meet the requirements of due process and shall  
18 constitute due and sufficient notice to all parties entitled thereto.

19 144. The Court appoints and designates CPT Group, Inc. as the Claims Administrator. The  
20 Court hereby directs the Claims Administrator to provide the approved Notice of Proposed Class  
21 Action Settlement to Class Members using the procedures set forth in the Stipulation.

22 152. Any Class Member may choose to opt out of and be excluded from the settlement as  
23 provided in the Stipulation and Class Notice and by following the instructions for requesting  
24 exclusion. Any person who timely and properly opts out of the settlement will not be bound by the  
25 Stipulation or have any right to object, appeal, or comment thereon. Any Request for Exclusion must  
26 be signed by each such Class Member opting out and must otherwise comply with the requirements  
27 delineated in the Stipulation and the Class Notice. Class Members who have not requested exclusion  
28 by submitting a valid and timely Request for Exclusion, by the Response Deadline Deadline (Defined

1 in Paragraph 30 of the Stipulation), shall be bound by all determinations of the Court, the Stipulation,  
2 and Judgment.

3 163. Any Class Member may object to the Stipulation or express his or her views regarding  
4 the Stipulation and may present evidence and file briefs or other papers that may be proper and  
5 relevant to the issues to be heard and determined by the Court as provided in the Class Notice. No  
6 Class Member, however, shall be heard or entitled to object, and no papers or briefs submitted by any  
7 such person shall be received or considered by the Court, unless: (1) On or before the Response  
8 Deadline the Class Member or Person or his or her counsel properly filed their objections with the  
9 Court and served their objections on Class Counsel and Defense Counsel as provided in the  
10 Stipulation and Class Notice; or (2) the objecting Class Member appears at the Final Approval  
11 hearing, either in person or through counsel. Any Class Member who does not make his or her  
12 objection in the manner provided for in the Stipulation and Class Notice, including by the Response  
13 Deadline, shall be deemed to have waived such objection and shall forever be foreclosed from making  
14 any objection to the Stipulation.

15 147. Defendant must exercise any right it may have to terminate the Stipulation by no later  
16 than thirty (30) calendar days after the Response Deadline.

17 185. The Motion for Final Approval shall be filed by Class Representative no later than  
18 sixteen (16) court days before the ~~Settlement Fairness~~ Final Approval Hearing.

19 169. In the event that the Effective Date occurs, all Settlement Class Members and Class  
20 Representative will be deemed to have forever released and discharged the Released Claims  
21 applicable to them.

22 2047. The Court reserves the right to adjourn or continue the date of the ~~Settlement~~  
23 ~~Fairness~~ Final Approval Hearing and all dates provided for in the Stipulation without further notice  
24 to the Class and retains jurisdiction to consider all further applications arising out of or connected  
25 with the Stipulation.

26 21. The Settlement Administrator shall post Copies of the First Amended Complaint,  
27 Settlement Agreement, and Order of Preliminary Approval to their website. If the Court ultimately  
28 grants final approval of the Settlement Agreement, the Order of Final Approval and Final Judgment

1 will also be posted. All documents shall remain posted for not less than sixty (60) days.  
2 228. After entry of the Judgment, the Court will have continuing jurisdiction pursuant to  
3 California Rules of Court 3.769(h) and Code of Civil Procedure Section 664.6 solely for purposes of  
4 addressing: (i) the interpretation and enforcement of the terms of the Settlement Agreement, (ii)  
5 settlement administration matters, and (iii) such post-Judgment matters as may be appropriate under  
6 court rules or as set forth in this Settlement Agreement.

7 19. IT IS FURTHER ORDERED:  
8  
9  
10  
11

12 **IT IS SO ORDERED.**  
13  
14  
15

16 DATED:

\_\_\_\_\_  
17 The Honorable Lon F. Hurwitz  
18 Judge of the Superior Court  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 PROOF OF SERVICE  
2 (CCP §§ 1013(A) AND 2015.5)

3 State of California,

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

4 County of Los Angeles

5 I am employed in the County of Los Angeles, State of California. I am over the age of  
6 18 and am not a party to the within action; my business address is 6047 Bristol Parkway, Culver  
City, CA 90230.

On July 2, 2024, I served the foregoing document described as:

7 **PLAINTIFF'S SUPPLEMENTAL BRIEFING IN SUPPORT OF MOTION FOR**  
8 **PRELIMINARY APPROVAL PURSUANT TO THE COURT'S ORDER ENTERED**  
9 **APRIL 26, 2024**

on the interested parties in this action, as follows:

10 Ryan M. Andrews  
11 Rudy G. Klapper  
12 Jeffrey A. Brand  
13 Venable LLP  
14 2049 Century Park East, Suite 2300  
15 Los Angeles, CA 90067  
16 Emails: rmandrews@venable.com; rgklapper@venable.com; jabrand@venable.com

Counsel for Defendant

16 ☒ **(BY E-MAIL)** – Based on a Court order or an agreement by the parties to accept service  
17 by e-mail or electronic transmission. I caused the documents described above to be sent  
18 by e-mail to the persons at the e-mail addresses listed above. I did not receive, within a  
reasonable amount of time after transmission, any electronic message or other indication  
that the transmission was unsuccessful.

19 ☒ **(STATE)** – I declare under penalty of perjury under the laws of the State of California  
that the above is true and correct.

20 */s/ Sylvia Esparza*

21 Sylvia Esparza