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24 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
25 **FOR THE COUNTY OF SANTA CLARA**

26 PABLO SERGIO NEVAREZ, individually, and  
27 on behalf of all others similarly situated,

28 *Plaintiff,*

v.

ON-TIME AIR CONDITIONING & HEATING,  
LLC, a California limited liability corporation;  
and DOES 1 through 10, inclusive.

*Defendant.*

Case No.: 21CV375216

**CLASS ACTION**

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

**JOINT STIPULATION RE: CLASS  
SETTLEMENT**

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

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

9 **I. DEFINITIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22           **II. BACKGROUND**

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

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

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

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

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

1   forth herein.

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

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

12  **III.    JURISDICTION**

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

20  **IV.    STIPULATION OF CLASS CERTIFICATION**

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

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

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

20 **VI. MOTION FOR PRELIMINARY APPROVAL**

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

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

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

3 **VII. STATEMENT OF NO ADMISSION**

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

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

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

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



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

10 **VIII. WAIVER, RELEASE AND CONFIDENTIALITY**

11 **A. Release as to All Settlement Class Members.**

12 Upon the date the Court’s Final Approval Order becomes “Final” (as that term is defined in  
13 Section I(E) above), Named Plaintiff and all members of the Settlement Class, except those that make  
14 a valid and timely request to be excluded from the Settlement Class and Settlement, waive, release,  
15 discharge, and promise never to assert in any forum any and all claims that were alleged in the  
16 Litigation or which could have been alleged in the Litigation based on the facts asserted in the  
17 Litigation arising during the Settlement Period against Defendant, and its divisions, affiliates,  
18 predecessors, successors, shareholders, members, managers, officers, directors, employees, agents,  
19 trustees, representatives, administrators, fiduciaries, assigns, subrogees, executors, partners, parents,  
20 subsidiaries, joint employers, insurers, and related corporations, including but not limited to the  
21 following claims: (1) all claims alleged in the operative complaint, under any legal theory of liability,  
22 for the failure to pay all wages of any kind, including any minimum or straight time wages, owed  
23 pursuant to California Labor Code §§ 204, 510, 1194, 1194.2, and 1197, the California Industrial  
24 Welfare Commission (“IWC”) Wage Orders, or any comparable federal statute under any theory of  
25 liability; (2) all claims alleged in the operative complaint, under any legal theory of liability, for the  
26 failure to pay overtime or double time wages owed pursuant to California Labor Code §§ 204, 510,  
27 1194, and 1198, the IWC Wage Orders, or any comparable federal statute under any theory of  
28 liability; (3) all claims alleged in the operative complaint, under any legal theory of liability, for the

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

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

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

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

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

7 **"SECTION 1542. [CERTAIN CLAIMS NOT AFFECTED BY**  
8 **GENERAL RELEASE.] A GENERAL RELEASE DOES NOT**  
9 **EXTEND TO CLAIMS THAT THE CREDITOR OR**  
10 **RELEASING PARTY DOES NOT KNOW OR SUSPECT TO**  
11 **EXIST IN HIS OR HER FAVOR AT THE TIME OF**  
12 **EXECUTING THE RELEASE AND THAT, IF KNOWN BY**  
13 **HIM OR HER WOULD HAVE MATERIALLY AFFECTED**  
14 **HIS OR HER SETTLEMENT WITH THE DEBTOR OR**  
15 **RELEASED PARTY."**

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

16 **IX. SETTLEMENT ADMINISTRATOR**

17 Named Plaintiff and Defendant, through their respective counsel, have selected Phoenix  
18 Settlement Administrators as the Settlement Administrator to administer the Settlement, which  
19 includes, but is not limited to, distributing and responding to inquiries about Notice of Class Action  
20 and Proposed Settlement and Workweek Dispute Form, determining the validity of any disputes and  
21 opt-outs, calculating all amounts to be paid from the Net Settlement Amount, and maintaining a  
22 website with information about the Settlement. The Settlement Administrator shall update the  
23 website to include any changes of the location or date of the Final Approval Hearing and the final  
24 judgment. Charges and expenses of the Settlement Administrator, estimated to be no more than  
25 \$10,000.00, will be paid from the Settlement Amount. Any charges and expenses of the Settlement  
26 Administrator greater than the allocated \$10,000.00 will come from the Settlement Amount. If the  
27 actual Settlement Administrator fees are less than the Parties’ estimation, the difference between the  
28

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

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

5 **A. Notice.**

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

9 **B. Class Data.**

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

20 **C. Notice Mailing.**

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

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

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

18 **D. Returned Notices.**

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

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

7 **E. Deficiency Notice.**

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

16 **F. Settlement Administrator's Declaration.**

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

22 **G. Objections.**

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

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

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

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

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

17 **H. Opportunity to be Excluded and Defendant’s Opt-Out Threshold.**

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

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

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

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

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

17           **I. Cooperation.**

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

23           **XI. DISPUTES PROCEDURE**

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



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

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

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

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

### 19 **A. Distribution Formula.**

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

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

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

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

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

23 **B. Funding of Settlement.**

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

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

3 **C. Time for Distribution and *Cy Pres*.**

4 **1. Distribution.**

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

10 **2. Uncashed Checks.**

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

17 **XIII. NO CONTRIBUTIONS TO EMPLOYEE BENEFIT PLAN**

18 The amounts paid under this Agreement do not represent a modification of any previously  
19 credited hours of service under any employee benefit plan, policy, or bonus program sponsored by  
20 Defendant. Such amounts will not form the basis for additional contributions to, benefits under, or  
21 any other monetary entitlement under, benefit plans (self-insured or not) sponsored by Defendant,  
22 policies or bonus programs. Any payments made under the terms of this Settlement shall not be  
23 applied retroactively, currently or on a going forward basis as salary, earnings, wages, or any other  
24 form of compensation for the purposes of Defendant’s benefit plan, policy or bonus program.  
25 Defendant retains the right to modify the language of their benefit plans, policies and bonus programs  
26 to effect this intent and to make clear that any amounts paid pursuant to this Settlement are not for  
27 “hours worked,” “hours paid,” “hours of service,” or any similar measuring term as defined by  
28

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

3 **XIV. CLASS COUNSEL ATTORNEYS' FEES AND LITIGATION COSTS**

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

25 **XV. ENHANCEMENT TO NAMED PLAINTIFF**

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

1 enhancement awarded to Named Plaintiff by the Court as part of the Settlement Amount shall be  
2 deducted from the Settlement Amount for the purpose of determining the Net Settlement Amount,  
3 and shall be reported on IRS Form 1099. If the Court approves an enhancement of less than  
4 \$10,000.00 to Named Plaintiff, then the unapproved portion or portions shall revert into the Net  
5 Settlement Amount to be distributed between the participating Settlement Class Members on a pro-  
6 rata basis.

7 **XVI. TAXATION AND ALLOCATION**

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

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

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

- 18 (1) 20% as wages;
- 19 (2) 40% as penalties; and
- 20 (3) 40% as interest.

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

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

1 Net Settlement Allocation.

2 **XVII. PRIVATE ATTORNEYS GENERAL ACT ALLOCATION**

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

13 **XVIII. COURT APPROVAL**

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

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

24 **XIX. MISCELLANEOUS PROVISIONS**

25 **A. Stay of Litigation.**

26 Named Plaintiff and Defendant agree to the stay of all discovery in the Litigation and all  
27 actions not related to the Settlement, pending Final Approval of the Settlement by the Court.  
28

1           **B. Interpretation of the Agreement.**

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

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

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

20           **C. Further Cooperation.**

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

25           **D. Confidentiality.**

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

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

2 **E. Counterparts.**

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

6 **F. Authority.**

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

9 **G. Modification.**

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

15 In addition to the above, this Agreement may be modified based on the final size of the  
16 Settlement Class. Defendant's best estimate for the number of workweeks at issue for the Class  
17 Members during the Settlement Period is 37,956. If the number of workweeks for this time period  
18 is determined to be more than 10% higher than this estimate (i.e., 41,752 or more workweeks), the  
19 Settlement Amount shall be increased by the average gross payout to the Class Members based on  
20 the 37,956 workweeks. For example, if there are 11% more workweeks than the initial figure of  
21 37,956 workweeks during the Settlement Period, then Defendant will increase the Settlement  
22 Amount by 11%. The Settlement Amount will not be reduced due to Defendant's estimate.

23 **I. Deadlines Falling on Weekends or Holidays.**

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

26 **J. Severability.**

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



1 unenforceability shall in no way effect any other provision if Defendant’s Counsel and Class  
2 Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed as if  
3 such invalid, illegal, or unenforceable provision had never been included in this Agreement.  
4

5 APPROVED AS TO FORM AND CONTENT:

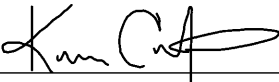
6 Date: 5/24/2022, 2022

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

7  
8 By:  DocuSigned by:  
9 PABLO SERGIO NEVAREZ, Plaintiff  
10

11  
12 Date: May 24th, 2022

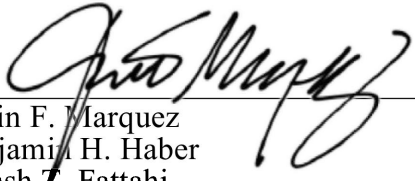
ON-TIME AIR CONDITIONING & HEATING, LLC

13  
14 By:   
15 Name: Kevin Comerford  
16 Position: President  
17 For ON-TIME AIR CONDITIONING & HEATING, LLC, Defendant

18 APPROVED AS TO FORM:

19 Date: May 24, 2022

WILSHIRE LAW FIRM

20  
21 By:   
22 Justin F. Marquez  
23 Benjamin H. Haber  
24 Arrash T. Fattahi  
25 Attorneys for Plaintiff  
26  
27  
28

WILSHIRE LAW FIRM, PLC  
3055 Wilshire Blvd, 12th Floor  
Los Angeles, CA 90010-1137