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26 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
27 **IN AND FOR THE COUNTY OF SAN DIEGO**

28 JAMAL GAMBLE, an individual, on behalf of
himself, and on behalf of all persons similarly
situated,

Plaintiff,

v.

AIRX UTILITY SURVEYORS, INC., a
California Corporation; and DOES 1-100,
Inclusive,

Defendants.

Case No. 37-2022-00042178-CU-OE-CTL

[Complaint Filed: October 20, 2022]

**STIPULATION OF SETTLEMENT OF
CLASS AND PAGA ACTION CLAIMS
AND RELEASE OF CLAIMS**

1 This Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims is
2 entered into by and between Plaintiff Jamal Gamble (hereinafter “Plaintiff”), an individual, on behalf
3 of himself, and on behalf of all persons similarly situated, and in his representative capacity on behalf
4 of the State of California and the Aggrieved Employees, and Defendant AirX Utility Surveyors, Inc.,
5 a California corporation (“Defendant”):

6 **I. DEFINITIONS**

- 7 A. “Action” means the putative class action lawsuit designated *Jamal Gamble v. AirX*
8 *Utility Surveyors, Inc.*, San Diego County Superior Court, Case No. 37-2022-
9 00042178-CU-OE-CTL, filed October 20, 2022.
- 10 B. “Agreement” or “Settlement Agreement” means this Stipulation of Settlement of
11 Class and PAGA Action Claims and Release of Claims.
- 12 C. “Aggrieved Employees” means all current and former hourly-paid or non-exempt
13 employees who were employed by Defendant and performed work in California during
14 the PAGA Period.
- 15 D. “Aggrieved Employee Payment” means the twenty-five percent (25%) of the PAGA
16 Payment (\$2,500.00) that will be distributed to the Aggrieved Employees as described
17 in this Agreement.
- 18 E. “Class” or the “Class Members” means all current and former hourly-paid or non-
19 exempt employees who were employed by Defendant and performed work in
20 California during the Class Period
- 21 F. “Class Counsel” means Jean-Claude Lapuyade, Esq. of JCL Law Firm, APC, Shani
22 O. Zakay, Esq. of Zakay Law Group, APLC, and Lawyers for Justice, PC.
- 23 G. “Class Counsel Award” means the award of fees and expenses that the Court
24 authorizes to be paid to Class Counsel for the services they have rendered to Plaintiff,
25 the Class Members, and the Aggrieved Employees in the Action, consisting of
26 attorneys’ fees currently not to exceed one-third of the Gross Settlement Amount
27 currently estimated to be \$100,000.00 out of \$300,000.00, plus costs of up to
28 \$25,000.00. Attorneys’ fees will be divided between Class Counsel in the following

1 percentages (32.5% to JCL Law Firm, APC, 32.5% to Zakay Law Group, APLC,
2 and 35% to Lawyers for Justice, PC.)

3 H. "Class Data" means information regarding Class Members that Defendant will in
4 good faith compile from its records and provide to the Settlement Administrator. It
5 shall be formatted as a Microsoft Excel spreadsheet and shall include: each Class
6 Member's full name; last known address; Social Security Number; start dates and end
7 dates of employment.

8 I. "Class Period" means the period beginning October 20, 2018, through January 15,
9 2024.

10 J. "Class Representative" means plaintiff Jamal Gamble.

11 K. "Court" means the Superior Court for the State of California, County of San Diego
12 currently presiding over the Action.

13 L. "Defendant" means AirX Utility Surveyors, Inc.

14 M. "Effective Date" means the first date upon which all of the following events have
15 occurred:

- 16 1. this Agreement has been executed by all Parties and by Class Counsel and
17 Defense Counsel;
- 18 2. the Court has preliminarily approved the Settlement;
- 19 3. notice has been properly given to Class Members, providing them an
20 opportunity to opt out of the Class and Settlement as described in this
21 Agreement;
- 22 4. the Court has held a Final Fairness and Approval Hearing and entered the
23 Final Order and Judgment approving the Settlement; and,
- 24 5. the later of: (a) the date sixty (60) days after the entry of the Final Order and
25 Judgment, if no motions for reconsideration and no appeals or other efforts to
26 obtain review have been filed; or (b) in the event that a motion for
27 reconsideration, an appeal or other effort to obtain review of the Final Order
28 and Judgment, the date sixty (60) days after such reconsideration, appeal or

1 review has been finally concluded. In this regard, it is the intention of the
2 Parties that the Effective Date of Settlement shall not be a date before the
3 Court's order approving the Settlement has become completely final, and
4 there is no timely recourse by any person who seeks to object to or otherwise
5 contest the Settlement.

6 N. "Funding Date" means the date by which Defendant has paid the entire Gross
7 Settlement Amount to the Settlement Administrator in accord with the terms of this
8 Agreement. Defendants will pay the Gross Settlement Amount to the Settlement
9 Administrator sixty-five (65) days after the final approval order or March 15, 2025,
10 whichever occurs later.

11 O. "Gross Settlement Amount" means Three Hundred Thousand Dollars and Zero Cents
12 (\$300,000.00) that Defendant must pay into the QSF in connection with this
13 Settlement, inclusive of the sum of Settlement Administration Costs, Class Counsel
14 Award, Service Award, and the PAGA Payment. The Gross Settlement Amount is
15 all-in with no reversion and *exclusive* of the employer's share of payroll tax, if any,
16 triggered by any payment under this Settlement.

17 P. "Individual Settlement Payments" means the amount payable from the Net Settlement
18 Amount to each Settlement Class Member and excludes any amounts distributed to
19 Aggrieved Employees pursuant to PAGA.

20 Q. "LWDA" means the Labor and Workforce Development Agency.

21 R. "LWDA Payment" means the seventy-five percent (75%) of the PAGA Payment
22 (\$7,500.00) payable to the to the LWDA.

23 S. "Net Settlement Amount" or "NSA" means the Gross Settlement Amount, less Class
24 Counsel Award, Service Award, PAGA Payment, and Settlement Administration
25 Costs.

26 T. "Notice Packet" means the Class Notice to be provided to the Class Members by the
27 Settlement Administrator in the form set forth as **Exhibit A** to this Agreement (other
28 than formatting changes to facilitate printing by the Settlement Administrator).

- 1 U. "Operative Complaint" means the First Amended Complaint filed by Plaintiff on
- 2 April 16, 2024, in the San Diego Superior Court.
- 3 V. "PAGA" means the California Labor Code Private Attorneys General Act of 2004,
- 4 Labor Code § 2698 *et seq.*
- 5 W. "PAGA Payment Ratio" means the respective Pay Periods during the PAGA Period
- 6 for each Aggrieved Employee divided by the total Pay Periods for all Aggrieved
- 7 Employees during the PAGA Period.
- 8 X. "PAGA Pay Periods," for purposes of calculating the distribution of the Aggrieved
- 9 Employee Payment, as defined herein, means the number of pay periods of
- 10 employment during the PAGA Period that each Aggrieved Employee worked in
- 11 California.
- 12 Y. "PAGA Period" means the period beginning February 14, 2023, through January 15,
- 13 2024.
- 14 Z. "PAGA Payment" means Ten Thousand Dollars and Zero Cents (\$10,000.00) to be
- 15 allocated from the Gross Settlement Amount for settlement of PAGA Claims asserted
- 16 in the Action.
- 17 AA. "Parties" means Plaintiff and Defendant, collectively, and "Party" shall mean either
- 18 Plaintiff or Defendant, individually.
- 19 BB. "Payment Ratio" means the respective Workweeks for each Class Member divided
- 20 by the total Workweeks for all Class Members.
- 21 CC. "Plaintiff" means Jamal Gamble.
- 22 DD. "QSF" means the Qualified Settlement Fund established, designated, and maintained
- 23 by the Settlement Administrator to fund the Gross Settlement Amount.
- 24 EE. "Released Class Claims" means all class claims alleged, or reasonably could have
- 25 been alleged based on the facts alleged, in the Operative Complaint which occurred
- 26 during the Class Period, and expressly excluding all other claims, including claims for
- 27 vested benefits, wrongful termination, unemployment insurance, disability, social
- 28 security, workers' compensation, and class claims outside of the Class Period.

- 1 FF. “Released PAGA Claims” means the release from the Aggrieved Employees of all
2 PAGA claims based on the facts alleged in the Operative Complaint which occurred
3 during the PAGA Period, and expressly excluding all other claims, including claims
4 for vested benefits, wrongful termination, unemployment insurance, disability, social
5 security, workers’ compensation, and PAGA claims outside of the PAGA Period.
- 6 GG. “Released Parties” means Defendant and its officers, directors, members, managers,
7 agents, representatives, attorneys, insurers, partners, investors, shareholders,
8 administrators, predecessors, successors, assigns, and joint venturers.
- 9 HH. “Response Deadline” means the date forty-five (45) calendar days after the Settlement
10 Administrator mails Notice Packets to Class Members and the last date on which
11 Class Members may submit requests for exclusion or objections to the Settlement.
12 Neither side shall encourage any Class Member to opt out.
- 13 II. “Service Award” means an award in the amount of \$10,000 or in an amount that the
14 Court authorizes to be paid to the Class Representative, in addition to his Individual
15 Settlement Payment and his individual Aggrieved Employee Payment, in recognition
16 of his efforts and risks in assisting with the prosecution of the Action.
- 17 JJ. “Settlement” means the disposition of the Action pursuant to this Agreement.
- 18 KK. “Settlement Administration Costs” shall mean the amount paid to the Settlement
19 Administrator from the Gross Settlement Amount for administering the Settlement
20 pursuant to this Agreement currently estimated not to exceed \$8,500.00.
- 21 LL. “Settlement Administrator” means Apex Class Action LLC, located at 18 Technology
22 Drive, Suite 164, Irvine, CA 92618; Tel: (800) 355-0700. The Settlement
23 Administrator establishes, designates, and maintains, as a QSF under Internal
24 Revenue Code section 468B and Treasury Regulation section 1.468B-1, into which
25 the amount of the Gross Settlement Amount is deposited for the purpose of resolving
26 the claims of Settlement Class Members. The Settlement Administrator shall maintain
27 the funds until distribution in an account(s) segregated from the assets of Defendants
28 and any person related to Defendants. *All accrued interest shall be paid and*

1 *distributed to the Settlement Class Members as part of their respective Individual*
2 *Settlement Payment.*

3 MM. “Settlement Class Members” or “Settlement Class” means all Class Members who
4 have not submitted a timely and valid request for exclusion as provided in this
5 Agreement.

6 NN. “Workweeks,” for purposes of calculating the distribution of the Net Settlement
7 Amount, means the number of weeks of employment during the Class Period that
8 each Class Member was employed by Defendants in California.

9 **II. RECITALS**

10 A. On October 20, 2022, Plaintiff filed a Class Action complaint in the San Diego
11 Superior Court, Case No. 37-2022-00042178-CU-OE-CTL (the “Action”), alleging
12 claims for:

- 13 1. Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- 14 2. Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period
15 Premiums);
- 16 3. Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- 17 4. Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid
18 Minimum Wages);
- 19 5. Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely
20 Paid);
- 21 6. Violation of California Labor Code § 204 (Wages Not Timely Paid During
22 Employment);
- 23 7. Violation of California Labor Code § 226(a) (Non-Compliant Wage
24 Statements);
- 25 8. Violation of California Labor Code § 1174(d) (Failure To Keep Requisite
26 Payroll Records);
- 27 9. Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed
28 Business Expenses); and

1 10. Violation of California Business & Professions Code §§ 17200, *et seq.*

2 B. On March 22, 2024, Plaintiff filed a Notice of Violations with the Labor and
3 Workforce Development Agency (LWDA) and served the same on Defendant.

4 C. On April 2, 2024, the Parties filed a Stipulation and Proposed Order for Leave to File
5 First Amended Complaint to incorporate a 10th cause of action and factual allegations
6 for alleged violations of PAGA. The First Amended Complaint was filed on April 16,
7 2024.

8 D. The Class Representative believes he has claims based on alleged violations of the
9 California Labor Code, and the Industrial Welfare Commission Wage Orders, and
10 that class certification is appropriate because the prerequisites for class certification
11 can be satisfied in the Action, and this action is manageable as a PAGA representative
12 action.

13 E. Defendant denies any liability or wrongdoing of any kind associated with the claims
14 alleged in the Action, disputes any wages, damages and penalties claimed by the Class
15 Representative, alleged in the Operative Complaint, and/or alleged in the Class
16 Representative's PAGA notice to the LWDA are owed, and further contends that, for
17 any purpose other than settlement, the Action is not appropriate for class or
18 representative action treatment. Defendant contends, among other things, that at all
19 times it complied with the California Labor Code and the Industrial Welfare
20 Commission Wage Orders.

21 F. The Class Representative is represented by Class Counsel. Class Counsel investigated
22 the facts relevant to the Action, including conducting an independent investigation as
23 to the allegations, reviewing documents and information exchanged through informal
24 discovery, and reviewing documents and information provided by Defendant
25 pursuant to informal requests for information to prepare for mediation. Defendant
26 produced for the purpose of settlement negotiations certain employment data
27 concerning the Class, which Class Counsel reviewed and analyzed with the assistance
28 of an expert. Based on their own independent investigation and evaluation, Class

1 Counsel are of the opinion that the Settlement with Defendant is fair, reasonable, and
2 adequate, and is in the best interest of the Class considering all known facts and
3 circumstances, including the risks of significant delay, defenses asserted by
4 Defendant, uncertainties regarding class certification, and numerous potential
5 appellate issues. Although it denies any liability, Defendant agrees to this Settlement
6 solely to avoid the inconveniences and cost of further litigation. The Parties and their
7 counsel have agreed to settle the claims on the terms set forth in this Agreement.

8 G. On October 30, 2023, the Parties participated in mediation presided over by Gig
9 Kyriacou, Esq., an experienced mediator of wage and hour class and PAGA actions.
10 The mediation concluded without a settlement. However, following the mediation,
11 each side, represented by its respective counsel, continued settlement negotiations,
12 with the assistance of Mediator Kyriacou, until they agreed to settle the Action based
13 on Mediator Kyriacou's settlement proposal, which was memorialized in the form of
14 a Memorandum of Understanding("MOU").

15 H. This Agreement replaces and supersedes the Memorandum of Understanding and any
16 other agreements, understandings, or representations between the Parties. This
17 Agreement represents a compromise and settlement of highly disputed claims.
18 Nothing in this Agreement is intended or will be construed as an admission by
19 Defendant that the claims in the Action of Plaintiff or the Class Members have merit
20 or that Defendant bears any liability to Plaintiff or the Class on those claims or any
21 other claims, or as an admission by Plaintiff that Defendant's defenses in the Action
22 have merit.

23 I. The Parties believe that the Settlement is fair, reasonable, and adequate. The
24 Settlement was arrived at through arm's-length negotiations, considering all relevant
25 factors. The Parties recognize the uncertainty, risk, expense, and delay attendant to
26 continuing the Action through trial and any appeal. Accordingly, the Parties desire to
27 settle, compromise and discharge all disputes and claims arising from or relating to
28 the Action fully, finally, and forever.

1 J. The Parties agree to certification of the Class for purposes of this Settlement only. If
2 for any reason the settlement does not become effective, Defendant reserves the right
3 to contest certification of any class for any reason and reserve all available defenses
4 to the claims in the Action. The Settlement, this Agreement, and the Parties'
5 willingness to settle the Action will have no bearing on and will not be admissible in
6 connection with any litigation.

7 Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

8 **III. TERMS OF AGREEMENT**

9 A. Settlement Consideration and Settlement Payments by Defendant.

10 1. Settlement Consideration. In full and complete settlement of the Action, and
11 in exchange for the releases set forth below, Defendant will pay the sum of
12 the Individual Settlement Payments, the Service Award, the Class Counsel
13 Award, PAGA Payment, and the Settlement Administration Costs, as
14 specified in this Agreement, equal to the Gross Settlement Amount of Three
15 Hundred Thousand Dollars and Zero Cents (\$300,000.00). The Parties agree
16 that this is a non-reversionary Settlement and that no portion of the Gross
17 Settlement Amount shall revert to Defendant. Other than the Defendant's
18 share of employer payroll taxes and as provided in Section III.A.4 below,
19 Defendant shall not be required to pay more than the Gross Settlement
20 Amount.

21 2. Class Size. At the time of mediation, Defendant estimated that there are
22 approximately 302 Class Members who worked approximately 17,500
23 Workweeks during the Class Period. The Parties acknowledge and agree that
24 this data (and other information provided by Defendant for purposes of
25 mediation) was relied on to extrapolate and reach an arms-length negotiation
26 of Plaintiff's claims in the Action through the Class Period. Should the number
27 of workweeks increase by more than 10% of what was represented at the
28 mediation during the Class Period, the Gross Settlement Amount will increase

1 proportionally for the number of workweeks over 110% of 17,500 (i.e. the
2 number of workweeks in excess of 19,250 workweeks). For example, if the
3 total workweeks in the Class Period are 115% of 17,500, the Gross Settlement
4 Amount shall increase by 5%. Defendant will provide a declaration under
5 penalty of perjury confirming the number of applicable Class Members and
6 workweeks they worked during the applicable Class Period one week prior to
7 Plaintiff's deadline to file his motion for preliminary approval of the
8 settlement.

9 3. Settlement Payment. Defendant shall deposit the Gross Settlement Amount
10 into the QSF, through the Settlement Administrator on or before the Funding
11 Date. Any interest accrued will be added to the NSA and distributed to the
12 Settlement Class Members except that if final approval is reversed on appeal,
13 then Defendants is entitled to prompt return of the principal and all interest
14 accrued.

15 4. Defendant's Share of Payroll Taxes. Defendant's share of employer side
16 payroll taxes is in addition to the Gross Settlement Amount and shall be paid
17 together with the Gross Settlement Amount on the Funding Date.

18 B. Release by Settlement Class Members. As of the Funding Date, in exchange for the
19 consideration set forth in this Agreement, Plaintiff and the Settlement Class Members
20 release the Released Parties from the Released Class Claims for the Class Period.

21 C. Release by the Aggrieved Employees. As of the Funding Date, in exchange for the
22 consideration set forth in this Agreement, the Plaintiff, the LWDA and the State of
23 California release the Released Parties from the Released PAGA Claims for the PAGA
24 Period. As a result of this release, the Aggrieved Employees shall be precluded from
25 bringing claims against Defendant for the Released PAGA Claims.

26 D. Conditions Precedent: This Settlement will become final and effective only upon the
27 occurrence of all of the following events:

28 1. The Court enters an order granting preliminary approval of the Settlement;

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- 2. The Court enters an order granting final approval of the Settlement and a Final Judgment;
- 3. If an objector appears at the final approval hearing, the time for appeal of the Final Judgment and Order Granting Final Approval of Class Action Settlement expires; or, if an appeal is timely filed, there is a final resolution of any appeal from the Judgment and Order Granting Final Approval of Class Action Settlement; and
- 4. Defendant fully funds the Gross Settlement Amount.

E. Nullification of Settlement Agreement. If the Court does not preliminarily or finally approve this Settlement Agreement, fails to become effective, or is reversed, withdrawn, or modified by the Court, or in any way prevents or prohibits Defendant from obtaining a complete resolution of the Released Class Claims and Released PAGA Claims, or if Defendant fails to fully fund the Gross Settlement Amount:

- 1. This Settlement Agreement shall be void *ab initio* and of no force or effect, and shall not be admissible in any judicial, administrative, or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural;
- 2. The conditional class certification (obtained for any purpose) shall be void *ab initio* and of no force or effect, and shall not be admissible in any judicial, administrative, or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural; and
- 3. None of the Parties to this Settlement will be deemed to have waived any claims, objections, defenses, or arguments in the Action, including with respect to the issue of class certification.

F. In the event that Defendant fails to fund the Gross Settlement Amount, Defendant shall bear the sole responsibility for any cost to issue or reissue any curative notice to the Settlement Class Members and all Settlement Administration Costs incurred to the date of nullification.

1 G. Certification of the Class. The Parties stipulate to conditional class certification of the
2 Class for the Class Period for purposes of settlement only. In the event that this
3 Settlement is not approved by the Court, fails to become effective, or is reversed,
4 withdrawn or modified by the Court, or in any way prevents or prohibits Defendant
5 from obtaining a complete resolution of the Released Class Claims and Released
6 PAGA Claims, the conditional class certification (obtained for any purpose) shall be
7 void *ab initio* and of no force or effect, and shall not be admissible in any judicial,
8 administrative or arbitral proceeding for any purpose or with respect to any issue,
9 substantive or procedural.

10 H. Tax Liability. The Parties make no representations as to the tax treatment or legal
11 effect of the payments called for, and Class Members and/or Aggrieved Employees are
12 not relying on any statement or representation by the Parties in this regard. Class
13 Members and/or Aggrieved Employees understand and agree that they will be
14 responsible for the payment of any taxes and penalties assessed on the Individual
15 Settlement Payments and/or Aggrieved Employees' individual shares of the Aggrieved
16 Employee Payment described and will be solely responsible for any penalties or other
17 obligations resulting from their personal tax reporting of Individual Settlement
18 Payments and/or Aggrieved Employees' individual shares of the Aggrieved Employee
19 Payment.

20 I. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section,
21 the "acknowledging party" and each Party to this Agreement other than the
22 acknowledging party, an "other party") acknowledges and agrees that: (1) no provision
23 of this Agreement, and no written communication or disclosure between or among the
24 Parties or their attorneys and other advisers, is or was intended to be, nor shall any
25 such communication or disclosure constitute or be construed or be relied upon as, tax
26 advice within the meaning of United States Treasury Department circular 230 (31 CFR
27 part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his,
28 her or its own, independent legal and tax counsel for advice (including tax advice) in

1 connection with this Agreement, (b) has not entered into this Agreement based upon
2 the recommendation of any other Party or any attorney or advisor to any other Party,
3 and (c) is not entitled to rely upon any communication or disclosure by any attorney
4 or adviser to any other party to avoid any tax penalty that may be imposed on the
5 acknowledging party, and (3) no attorney or adviser to any other Party has imposed
6 any limitation that protects the confidentiality of any such attorney's or adviser's tax
7 strategies (regardless of whether such limitation is legally binding) upon disclosure by
8 the acknowledging party of the tax treatment or tax structure of any transaction,
9 including any transaction contemplated by this Agreement.

10 J. Preliminary Approval Motion. Class Counsel shall draft and file the motion for
11 preliminary approval within a reasonable time of execution of this Agreement, or
12 within the statutory timeframe as determined by the Court's setting of the preliminary
13 approval hearing, which shall include this Settlement Agreement. Plaintiff will provide
14 Defendant with a draft of the Motion at least 3 business days prior to the filing of the
15 Motion to give Defendant an opportunity to propose changes or additions to the
16 Motion.

17 K. Settlement Administrator. The Settlement Administrator shall be responsible for:
18 establishing and administering the QSF; calculating, processing and mailing payments
19 to the Class Representative, Class Counsel, LWDA and Class Members; printing and
20 mailing the Notice Packets to the Class Members as directed by the Court; receiving
21 and reporting the objections and requests for exclusion; calculating, deducting and
22 remitting all legally required taxes from Individual Settlement Payments and
23 distributing tax forms for the Wage Portion, the Penalties Portion and the Interest
24 Portion of the Individual Settlement Payments and/or Aggrieved Employees'
25 individual shares of the Aggrieved Employee Payment; processing and mailing tax
26 payments to the appropriate state and federal taxing authorities; providing
27 declaration(s) as necessary in support of preliminary and/or final approval of this
28 Settlement; and other tasks as the Parties mutually agree or the Court orders the

1 Settlement Administrator to perform. The Settlement Administrator shall keep the
2 Parties timely apprised of the performance of all Settlement Administrator
3 responsibilities by among other things, sending a weekly status report to the Parties'
4 counsel stating the date of the mailing, the of number of opt outs from the Settlement
5 it receives (including the numbers of valid and deficient), and number of objections
6 received.

7 L. Notice Procedure.

8 1. Class Data. No later than ten (10) days after the Preliminary Approval Date,
9 Defendant shall provide the Settlement Administrator with the Class Data for
10 purposes of preparing and mailing Notice Packets to the Class Members.

11 2. Notice Packets.

12 a) The Notice Packet shall contain the Notice of Class Action Settlement
13 in a form substantially similar to the form attached as **Exhibit A**,
14 including Spanish translation. The Notice of Class Action Settlement
15 shall inform Class Members and Aggrieved Employees that they need
16 not do anything in order to receive an Individual Settlement Payment
17 and/or Aggrieved Employees' individual shares of the Aggrieved
18 Employee Payment and to keep the Settlement Administrator apprised
19 of their current mailing address, to which the Individual Settlement
20 Payments and/or Aggrieved Employees' individual shares of the
21 Aggrieved Employee Payment will be mailed following the Funding
22 Date. The Notice of Class Action Settlement shall set forth the release
23 to be given by all members of the Class who do not request to be
24 excluded from the Settlement Class and/or Aggrieved Employees in
25 exchange for an Individual Settlement Payment and/or Aggrieved
26 Employees' individual shares of the Aggrieved Employee Payment,
27 the number of Workweeks worked by each Class Member during the
28 Class Period, and number of PAGA Periods worked by each

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Aggrieved Employee during the PAGA Period, if any, and the estimated amount of their Individual Settlement Payment if they do not request to be excluded from the Settlement and each Aggrieved Employees' share of the Aggrieved Employee Payment, if any. The Settlement Administrator shall use the Class Data to determine Class Members' Workweeks and PAGA Pay Periods. The Notice will also advise the Aggrieved Employees that they will release the Released PAGA Claims and will receive their share of the Aggrieved Employee Payment regardless of whether they request to be excluded from the Settlement.

b) The Notice Packet's mailing envelope shall include the following language: "IMPORTANT LEGAL DOCUMENT- YOU MAY BE ENTITLED TO PARTICIPATE IN A CLASS ACTION SETTLEMENT; A PROMPT REPLY TO CORRECT YOUR ADDRESS IS REQUIRED AS EXPLAINED IN THE ENCLOSED NOTICE."

3. Notice by First Class U.S. Mail. Upon receipt of the Class Data, the Settlement Administrator will perform a search based on the National Change of Address Database to update and correct any known or identifiable address changes. No later than twenty-one (21) calendar days after preliminary approval of the Settlement, the Settlement Administrator shall mail copies of the Notice Packet to all Class Members via regular First-Class U.S. Mail and electronic mail. The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Class Member. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Class Member.

4. Undeliverable Notices. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be

1 re-mailed to any forwarding address provided within seven (7) days of
2 receiving the returned notice. If no forwarding address is provided, the
3 Settlement Administrator shall promptly attempt to determine a correct
4 address by lawful use of skip-tracing, or other search using the name, address
5 and/or Social Security number of the Class Member involved, and shall then
6 perform a re-mailing, if another mailing address is identified by the Settlement
7 Administrator. In addition, if any Notice Packets, which are addressed to Class
8 Members who are currently employed by Defendant, are returned to the
9 Settlement Administrator as non-delivered and no forwarding address is
10 provided, the Settlement Administrator shall notify Defendant. Defendant will
11 request that the currently employed Class Member provide a corrected address
12 and transmit to the Settlement Administrator any corrected address provided
13 by the Class Member. Class Members who received a re-mailed Notice
14 Packet shall have their Response Deadline extended fifteen (15) days from the
15 original Response Deadline.

16 5. Disputes Regarding Individual Settlement Payments. Class Members will
17 have the opportunity, should they disagree with Defendant's records regarding
18 the start and end dates of employment, to provide documentation and/or an
19 explanation to show contrary dates. If there is a dispute, the Settlement
20 Administrator will consult with the Parties to determine whether an
21 adjustment is warranted. The Settlement Administrator shall determine the
22 eligibility for, and the amounts of, any Individual Settlement Payments under
23 the terms of this Agreement. The Settlement Administrator's determination
24 of the eligibility for and amount of any Individual Settlement Payment shall
25 be binding upon the Class Member and the Parties.

26 6. Disputes Regarding Administration of Settlement. Any disputes not resolved
27 by the Settlement Administrator concerning the administration of the
28 Settlement will be resolved by the Court under the laws of the State of

1 California. Before any such involvement of the Court, counsel for the Parties
2 will confer in good faith to resolve the disputes without the necessity of
3 involving the Court.

4 7. Exclusions. The Notice of Class Action Settlement contained in the Notice
5 Packet shall state that Class Members who wish to exclude themselves from
6 the Settlement must submit a written request for exclusion to the Settlement
7 Administrator by the Response Deadline. The written request for exclusion
8 must state that the Class Member wishes to exclude himself or herself from
9 the Settlement and (1) must contain the name, address, and the last four digits
10 of the Social Security number of the person requesting exclusion; (2) must be
11 signed by the Class Member; (3) must be postmarked or fax stamped by the
12 Response Deadline and returned to the Settlement Administrator at the
13 specified address or fax telephone number; and (4) contain a typewritten or
14 handwritten notice stating in substance that he or she wishes to be excluded
15 from the settlement of the class action lawsuit entitled *Jamal Gamble v. AirX*
16 *Utility Surveyors, Inc.*, currently pending in Superior Court of San Diego,
17 Case No. 37-2022-00042178-CU-OE-CTL. The request for exclusion will not
18 be valid if it is not timely submitted, if it is not signed by the Class Member,
19 or if it does not contain the name and address and last four digits of the Social
20 Security number of the Class Member. The date of the postmark on the
21 mailing envelope or fax stamp on the request for exclusion shall be the
22 exclusive means used to determine whether the request for exclusion was
23 timely submitted. Any Class Member who submits a timely request for
24 exclusion shall be excluded from the Settlement Class will not be entitled to
25 an Individual Settlement Payment and will not be otherwise bound by the
26 terms of the Settlement or have any right to object, appeal or comment
27 thereon. However, any Class Member that submits a timely request for
28 exclusion that is also a member of the Aggrieved Employees will still receive

1 his/her pro rata share of the PAGA Payment, as specified below, and in
2 consideration, will be bound by the Release by the Aggrieved Employees as
3 set forth herein. Settlement Class Members who fail to submit a valid and
4 timely request for exclusion on or before the Response Deadline shall be
5 bound by all terms of the Settlement and any final judgment entered in this
6 Action if the Settlement is approved by the Court. No later than twenty-one
7 (21) calendar days after the Response Deadline, the Settlement Administrator
8 shall provide counsel for the Parties with a final list of the Class Members
9 who have timely submitted timely requests for exclusion. At no time shall any
10 of the Parties or their counsel seek to solicit or otherwise encourage members
11 of the Class to submit requests for exclusion from the Settlement

12 8. Objections. The Notice of Class Action Settlement contained in the Notice
13 Packet shall state that Class Members who wish to object to the Settlement
14 may submit to the Settlement Administrator a written statement of objection
15 (“Notice of Objection”) by the Response Deadline. The postmark date of
16 mailing shall be deemed the exclusive means for determining that a Notice of
17 Objection was served timely. The Notice of Objection, if in writing, must be
18 signed by the Settlement Class Member and state: (1) the case name and
19 number; (2) the name of the Settlement Class Member; (3) the address of the
20 Settlement Class Member; (4) the last four digits of the Settlement Class
21 Member’s Social Security number; (5) the basis for the objection; and (6) if
22 the Settlement Class Member intends to appear at the Final
23 Approval/Settlement Fairness Hearing. Settlement Class Members who fail
24 to make objections in writing in the manner specified above may still make
25 their objections orally at the Final Approval/Settlement Fairness Hearing with
26 the Court’s permission. Settlement Class Members will have a right to appear
27 at the Final Approval/Settlement Fairness Hearing to have their objections
28 heard by the Court regardless of whether they submitted a written objection.

1 At no time shall any of the Parties or their counsel seek to solicit or otherwise
2 encourage Class Members to file or serve written objections to the Settlement
3 or appeal from the Order and Final Judgment. Class Members who submit a
4 written request for exclusion may not object to the Settlement. Class Members
5 may not object to the PAGA Payment.

6 M. Allocation of the Gross Settlement Amount.

7 1. Calculation of Individual Settlement Payments. Individual Settlement
8 Payments shall be paid from the Net Settlement Amount and shall be paid
9 pursuant to the formula set forth herein. Using the Class Data, the Settlement
10 Administrator shall add up the total number of Workweeks for all Class
11 Members. The respective Workweeks for each Class Member will be divided
12 by the total Workweeks for all Class Members, resulting in the Payment Ratio
13 for each Class Member. Each Class Member's Payment Ratio will then be
14 multiplied by the Net Settlement Amount to calculate each Class Member's
15 estimated Individual Settlement Payments. Each Individual Settlement
16 Payment will be reduced by any legally mandated employee tax withholdings
17 (e.g., employee payroll taxes, etc.). Individual Settlement Payments for Class
18 Members who submit valid and timely requests for exclusion will be
19 redistributed to Settlement Class Members who do not submit valid and timely
20 requests for exclusion on a pro rata basis based on their respective Payment
21 Ratios.

22 2. Calculation of Individual Payments to the Aggrieved Employees. Using the
23 Class Data, the Settlement Administrator shall add up the total number of
24 PAGA Pay Periods for all Aggrieved Employees during the PAGA Period.
25 The respective PAGA Pay Periods for each Aggrieved Employees will be
26 divided by the total PAGA Pay Periods for all Aggrieved Employees, resulting
27 in the "PAGA Payment Ratio" for each Aggrieved Employee. Each
28 Aggrieved Employee's PAGA Payment Ratio will then be multiplied by the

1 Aggrieved Employee Payment to calculate each Aggrieved Employee's
2 estimated share of the Aggrieved Employee Payment.

3 3. Allocation of Individual Settlement Payments. For tax purposes, Individual
4 Settlement Payments shall be allocated and treated as 20% wages ("Wage
5 Portion") and 80% penalties, pre-judgment interest, and reimbursement of
6 expenses ("Penalties, Interest, and Reimbursement Portion.") The Wage
7 Portion of the Individual Settlement Payments shall be reported on IRS Form
8 W-2 and the Penalties, Interest, and Reimbursement Portion of the Individual
9 Settlement Payments shall be reported on IRS Form 1099 issued by the
10 Settlement Agreement.

11 4. Allocation of Aggrieved Employee Payments. For tax purposes, Aggrieved
12 Employee Settlement Payments shall be allocated and treated as 100%
13 penalties and shall be reported on IRS Form 1099.

14 5. No Credit Toward Benefit Plans. The Individual Settlement Payments and
15 individual shares of the PAGA Payment made to Settlement Class Members
16 and/or Aggrieved Employees under this Settlement Agreement, as well as any
17 other payments made pursuant to this Settlement Agreement, will not be
18 utilized to calculate any additional benefits under any benefit plans to which
19 any Class Members may be eligible, including, but not limited to profit-
20 sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans,
21 sick leave plans, PTO plans, and any other benefit plan. Rather, it is the
22 Parties' intention that this Settlement Agreement will not affect any rights,
23 contributions, or amounts to which any Class Members may be entitled under
24 any benefit plans.

25 6. All monies received by Settlement Class Members under the Settlement which
26 are attributable to wages shall constitute income to such Settlement Class
27 Members solely in the year in which such monies are received by the Settlement
28 Class Members. It is the intent of the Parties that Individual Settlement

1 Payments and individual shares of the PAGA Payment provided for in this
2 Settlement agreement are the sole payments to be made by Defendant to
3 Settlement Class Members and/or Aggrieved Employees in connection with this
4 Settlement Agreement, with the exception of Plaintiff, and that the Settlement
5 Class Members and/or Aggrieved Employees are not entitled to any new or
6 additional compensation or benefits as a result of having received the Individual
7 Settlement Payments and/or their shares of the Aggrieved Employee Payment.

8 7. Mailing. Individual Settlement Payments and Aggrieved Employee Payments
9 shall be mailed by regular First-Class U.S. Mail to Settlement Class Members'
10 and/or Aggrieved Employees' last known mailing address no later than fifteen
11 (15) days after the Funding Date.

12 8. Expiration. Any checks issued to Settlement Class Members and Aggrieved
13 Employees shall remain valid and negotiable for one hundred and eighty (180)
14 days from the date of their issuance. If a Settlement Class Member and/or
15 Aggrieved Employee does not cash his or her settlement check within ninety
16 (90) days, the Settlement Administrator will send a letter to such persons,
17 advising that the check will expire after the 180th day, and invite that
18 Settlement Class Member and/or Aggrieved Employee to request reissuance
19 in the event the check was destroyed, lost, or misplaced. In the event an
20 Individual Settlement Payment and/or Aggrieved Employees' individual
21 share of the PAGA Payment check has not been cashed within one hundred
22 and eighty (180) days, all funds represented by such uncashed checks, plus
23 any interest accrued thereon, shall be transmitted to the Community Law
24 Project, a non-profit organization, in accordance with CCP 384.

25 9. Service Award. In addition to the Individual Settlement Payment as a
26 Settlement Class Member and his individual share of the Aggrieved Employee
27 Payment, Plaintiff will apply to the Court for an award of not more than
28 \$10,000.00, as the Service Award. Defendant will not oppose a Service

1 Award of not more than \$10,000.00 for Plaintiff. The Settlement
2 Administrator shall pay the Service Award, either in the amount stated herein
3 if approved by the Court or some other amount as approved by the Court, to
4 Plaintiff from the Gross Settlement Amount no later than fifteen (15) calendar
5 days after the Funding Date. Any portion of the requested Service Award that
6 is not awarded to the Class Representative shall be part of the Net Settlement
7 Amount and shall be distributed to Settlement Class Members as provided in
8 this Agreement. The Settlement Administrator shall issue an IRS Form 1099
9 — MISC to Plaintiff for his Service Award. Plaintiff shall be solely and
10 legally responsible to pay any and all applicable taxes on his Service Award
11 and shall hold harmless the Released Parties from any claim or liability for
12 taxes, penalties, or interest arising as a result of the Service Award. Approval
13 of this Settlement shall not be conditioned on Court approval of the requested
14 amount of the Service Award. If the Court reduces or does not approve the
15 requested Service Award, Plaintiff shall not have the right to revoke the
16 Settlement, and it will remain binding.

17 10. Class Counsel Award. Defendant understands, and will not oppose, a motion
18 for Class Counsel Award not to exceed one-third of the Gross Settlement
19 Amount currently estimated to be One Hundred Thousand Dollars and Zero
20 Cents (\$100,000.00) *and* reimbursable litigation expenses supported by
21 declaration up to and not to exceed Twenty-Five Thousand Dollars and Zero
22 Cents (\$25,000.00). Any awarded Class Counsel Award shall be paid from
23 the Gross Settlement Amount. Any portion of the requested Class Counsel
24 Award that is not awarded to Class Counsel shall be part of the Net Settlement
25 Amount and shall be distributed to Settlement Class Members as provided in
26 this Agreement. The Settlement Administrator shall allocate and pay the
27 Attorneys' Fees to Class Counsel from the Gross Settlement Amount no later
28 than fifteen (15) calendar days after the Funding Date. Class Counsel shall be

1 solely and legally responsible to pay all applicable taxes on the payment made
2 pursuant to this paragraph. The Settlement Administrator shall issue an IRS
3 Form 1099 — MISC to Class Counsel for the payments made pursuant to this
4 paragraph. If the Court reduces or does not approve the requested Class
5 Counsel Award, Plaintiff and Class Counsel shall not have the right to revoke
6 the Settlement, or to appeal such order, and the Settlement will remain
7 binding.

8 11. PAGA Payment. Ten Thousand Dollars and Zero Cents (\$10,000.00) shall be
9 allocated from the Gross Settlement Amount for settlement of claims for civil
10 penalties under the Private Attorneys General Act of 2004 (“PAGA
11 Payment”). The Settlement Administrator shall pay seventy-five percent
12 (75%) of the PAGA Payment (\$7,500) to the California Labor and Workforce
13 Development Agency no later than fifteen (15) calendar days after the
14 Effective Date (hereinafter “LWDA Payment”). Twenty-five percent (25%)
15 of the PAGA Payment (\$2,500) will be distributed to the Aggrieved
16 Employees as described in this Agreement (hereinafter “Aggrieved Employee
17 Payment”). For purposes of distributing the PAGA Payment to the Aggrieved
18 Employees, each Aggrieved Employee shall receive their pro-rata share of the
19 Aggrieved Employee Payment using the PAGA Payment Ratio as defined
20 above.

21 12. Settlement Administration Costs. The Settlement Administrator shall be paid
22 for the costs of administration of the Settlement from the Gross Settlement
23 Amount. The estimate of the Settlement Administration Costs is \$8,500.00.
24 The Settlement Administrator shall be paid the Settlement Administration
25 Costs no later than fifteen (15) calendar days after the Effective Date.

26 N. Final Approval Motion. Class Counsel and Plaintiff shall use best efforts to file with
27 the Court a Motion for Order Granting Final Approval and Entering Judgment, within
28 twenty-eight (28) days following the expiration of the Response Deadline, which

1 motion shall request final approval of the Settlement and a determination of the
2 amounts payable for the Service Award, the Class Counsel Award, the PAGA
3 Payment, and the Settlement Administration Costs. Plaintiff will provide Defendant
4 with a draft of the Motion at least three (3) business days prior to the filing of the
5 Motion to give Defendant an opportunity to propose changes or additions to the
6 Motion.

7 1. Declaration by Settlement Administrator. No later than seven (7) days after
8 the Response Deadline, the Settlement Administrator shall submit a
9 declaration in support of Plaintiff's motion for final approval of this
10 Settlement detailing the number of Notice Packets mailed and re-mailed to
11 Class Members, the number of undeliverable Notice Packets, the number of
12 timely requests for exclusion, the full names of any Class Members who opt
13 out of the Settlement, the number of objections received, the amount of the
14 average, lowest, and highest Individual Settlement Payments, the amount of
15 the average, lowest, and highest Aggrieved Employee Payments, the
16 Settlement Administration Costs, and any other information as the Parties
17 mutually agree or the Court orders the Settlement Administrator to provide.

18 2. Final Approval Order and Judgment. Class Counsel shall present an Order
19 Granting Final Approval of Class Action Settlement to the Court for its
20 approval, and Judgment thereon, at the time Class Counsel files the Motion
21 for Final Approval.

22 N. Review of Motions for Preliminary and Final Approval. Class Counsel will provide
23 an opportunity for Counsel for Defendants to review the Motions for Preliminary and
24 Final Approval, including the Order Granting Final Approval of Class Action
25 Settlement, and Judgment at least three (3) business days in advance of filing with the
26 Court. The Parties and their counsel will cooperate with each other and use their best
27 efforts to affect the Court's approval of the Motions for Preliminary and Final
28 Approval of the Settlement, and entry of Judgment.

- 1 O. Cooperation. The Parties and their counsel will cooperate with each other and use
2 their best efforts to implement the Settlement.
- 3 P. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action,
4 except such proceedings necessary to implement and complete the Settlement, pending
5 the Final Approval/Settlement Fairness Hearing to be conducted by the Court.
- 6 Q. Amendment or Modification. This Agreement may be amended or modified only by
7 a written instrument signed by counsel for all Parties or their successors-in-interest.
- 8 R. Entire Agreement. This Agreement and any attached Exhibit constitute the entire
9 Agreement among these Parties, and no oral or written representations, warranties or
10 inducements have been made to any Party concerning this Agreement or its Exhibit
11 other than the representations, warranties and covenants contained and memorialized
12 in this Agreement and its Exhibit.
- 13 S. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and
14 represent they are expressly authorized by the Parties whom they represent to negotiate
15 this Agreement and to take all appropriate Action required or permitted to be taken by
16 such Parties pursuant to this Agreement to effectuate its terms, and to execute any other
17 documents required to effectuate the terms of this Agreement. The persons signing
18 this Agreement on behalf of Defendant represents and warrants that he/she is
19 authorized to sign this Agreement on behalf of Defendant. Plaintiff represents and
20 warrants that he is authorized to sign this Agreement and that he has not assigned any
21 claim, or part of a claim, covered by this Settlement to a third-party.
- 22 T. No Public Comment: The Parties and their counsel agree that they will not issue any
23 press releases, initiate any contact with the press, respond to any press inquiry, or have
24 any communication with the press about the fact, amount, or terms of the Settlement
25 Agreement. Class Counsel further agrees not to use the Settlement Agreement or any
26 of its terms for any marketing or promotional purposes. Nothing herein will restrict
27 Class Counsel from including publicly available information regarding this settlement
28 in future judicial submissions regarding Class Counsel's qualifications and experience.

1 Further, Class Counsel will not include, reference, or use the Settlement Agreement
2 for any marketing or promotional purposes, either before or after the Motion for
3 Preliminary Approval is filed.

4 U. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure
5 to the benefit of, the successors or assigns of the Parties, as previously defined.

6 V. California Law Governs. All terms of this Agreement and the Exhibit and any disputes
7 shall be governed by and interpreted according to the laws of the State of California.

8 W. Counterparts. This Agreement may be executed in one or more counterparts. All
9 executed counterparts and each of them shall be deemed to be one and the same
10 instrument provided that counsel for the Parties to this Agreement shall exchange
11 among themselves copies or originals of the signed counterparts.

12 X. This Settlement Is Fair, Adequate, and Reasonable. The Parties believe this Settlement
13 is a fair, adequate, and reasonable settlement of this Action and have arrived at this
14 Settlement after extensive arms-length negotiations, taking into account all relevant
15 factors, present and potential.

16 Y. Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction with
17 respect to the interpretation, implementation, and enforcement of the terms of this
18 Agreement and all orders and judgments entered in connection therewith, and the
19 Parties and their counsel submit to the jurisdiction of the Court for purposes of
20 interpreting, implementing and enforcing the settlement and all orders and judgments
21 entered in connection with this Agreement.

22 Z. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid,
23 the Court shall first attempt to construe the provisions valid to the fullest extent
24 possible consistent with applicable precedents so as to define all provisions of this
25 Agreement valid and enforceable.

26 AA. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class
27 certification for purposes of this settlement only.

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BB. No Admissions by the Parties. Plaintiff has claimed and continues to claim that the Released Class Claims and Released PAGA Claims have merit and give rise to liability on the part of Defendant. Defendant claims that the Released Class Claims and Released PAGA Claims have no merit and do not give rise to liability. This Agreement is a compromise of disputed claims. Nothing contained in this Agreement and no documents referred to and no action taken to carry out this Agreement may be construed or used as an admission by or against the Defendant or Plaintiff or Class Counsel as to the merits or lack thereof of the claims asserted. Other than as may be specifically set forth herein, each Party shall be responsible for and shall bear its/his own attorney's fees and costs.

IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:

DATED: 06/06/2024



Jamal Gamble (Jun 6, 2024 10:06 PDT)

JAMAL GAMBLE

IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANT:

DATED: 06/20/2024



AIRX UTILITY SURVEYORS, INC.

Jennifer Harris

Printed Name

CEO / President

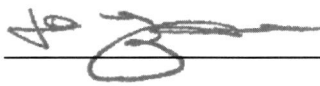
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DATED: June 10, 2024

JCL LAW FIRM, A.P.C.

By:  _____

Attorneys for Plaintiff and the Settlement Class Members

DATED: June 10, 2024

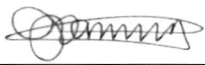
ZAKAY LAW GROUP, APLC

By:  _____

Attorneys for Plaintiff and the Settlement Class Members

DATED: June 25, 2024

LAWYERS FOR JUSTICE, PC

By:  _____

Attorneys for Plaintiff and the Settlement Class Members

DATED: _____

SNELL & WILMER, LLP

By: _____

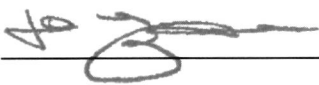
Brent Douglas, Esq.
Attorney for Defendant

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DATED: June 10, 2024

JCL LAW FIRM, A.P.C.

By:  _____

Attorneys for Plaintiff and the Settlement Class Members

DATED: June 10, 2024

ZAKAY LAW GROUP, APLC

By:  _____

Attorneys for Plaintiff and the Settlement Class Members

DATED: _____

LAWYERS FOR JUSTICE, PC

By: _____

Attorneys for Plaintiff and the Settlement Class Members

DATED: June 21, 2024

SNELL & WILMER, LLP

By:  _____

Brent Douglas, Esq.
Attorney for Defendant

EXHIBIT A

**NOTICE OF PENDENCY OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT
AND FINAL HEARING DATE**

(Jamal Gamble v. AirX Utility Surveyors, Inc., San Diego County Superior Court Case No. 37-2022-00042178-CU-OE-CTL)

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT ACT. PLEASE
READ THIS NOTICE CAREFULLY.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	To receive a cash payment from the Settlement, you do not have to do anything. Your estimated Individual Settlement Payment is: \$<< ___ >>. See the explanation below. After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, please notify the Settlement Administrator as explained below. In exchange for the settlement payment, you will release claims against the Defendant as detailed below.
Exclude Yourself	If you wish to exclude yourself from the Settlement, you must send a written request for exclusion to the Settlement Administrator as provided below. If you request exclusion, you will receive no money from the Settlement. Instructions are set forth below.
Object	You may write to the Court about why you believe the settlement should not be approved. Directions are provided below.

1. Why did I get this Notice?

A proposed class action settlement (the “Settlement”) of this lawsuit pending in the Superior Court for the State of California, County of San Diego (the “Court”) has been reached between Plaintiff Jamal Gamble (“Plaintiff”) and Defendant AirX Utility Surveyors, Inc. The Court has granted preliminary approval of the Settlement. **You may be entitled to receive money from this Settlement.**

You have received this Class Notice because you have been identified as a member of the Class, which is defined as:

All current and former hourly-paid or non-exempt employees who were employed by Defendant and performed work in California at any time during the period from October 20, 2018, to January 15, 2024 (“Class Period”).

This Class Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Notice carefully as your rights may be affected by the Settlement.

2. What is this class action lawsuit about?

On October 20, 2022, Plaintiff filed a Class Action Complaint against Defendant in the Superior Court of the State of California, County of San Diego. Plaintiff asserted claims against Defendant for: (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period

Premiums); (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages); (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid); (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment); (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements); (8) Violation of California Labor Code § 1174(d) (Failure To Keep Requisite Payroll Records); (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses); and (10) Violation of California Business & Professions Code § 17200, *et seq.*, (the “Action”). On March 22, 2024, Plaintiff filed a Notice of Violations with the Labor and Workforce Development Agency (LWDA) and served the same on Defendant. On April 16, 2024, Plaintiff filed an amended complaint adding a cause of action and factual allegations for alleged violations of PAGA (the “Operative Complaint”).

Defendant expressly denies any liability or wrongdoing of any kind associated with the claims alleged in the Action, disputes any wages, damages and penalties claimed by the Class Representative are owed, and further contends that, for any purpose other than settlement, the Action is not appropriate for class or representative action treatment. Defendant contends, among other things, that at all times it complied with the California Labor Code and the Industrial Welfare Commission Wage Orders.

On October 30, 2023, the Parties participated in mediation presided over by Gig Kyriacou, Esq., an experienced mediator of wage and hour class and PAGA actions. The mediation concluded without a settlement. However, following the mediation, each side, represented by its respective counsel, continued settlement negotiations, with the assistance of Mediator Kyriacou, until they agreed to settle the Action. The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved the Plaintiff to serve as the Class Representative, and the law firms of JCL Law Firm, APC, Zakay Law Group, APLC, and Lawyers for Justice, PC to serve as Class Counsel.

3. What are the terms of the Settlement?

Gross Settlement Amount. Defendant has agreed to pay an “all in” amount of Three Hundred Thousand Dollars and Zero Cents (\$300,000.00) (the “Gross Settlement Amount”) to fund the settlement. The Gross Settlement Amount includes the payment of all Individual Settlement Payments, Settlement Administration Costs, Class Counsel Award, Service Award, and the PAGA Payment.

After the Judgment becomes Final, Defendant will pay the Gross Settlement Amount by depositing the money with the Settlement Administrator. “Final” means the date the Judgment is no longer subject to appeal, or if an appeal is filed, the date the appeal process is completed, and the Judgment is affirmed.

Amounts to be Paid from the Gross Settlement Amount. The Settlement provides for certain payments to be made from the Gross Settlement Amount, which will be subject to final Court approval, and which will be deducted from the Gross Settlement Amount before settlement payments are made to Class Members, as follows:

- Settlement Administration Costs. Payment to the Settlement Administrator, estimated not to exceed \$8,500.00 for expenses, including expenses of sending this Notice, processing opt outs, and distributing settlement payments.
- Class Counsel Award. Payment to Class Counsel of an award of attorneys’ fees of no more than 1/3 of the Gross Settlement Amount (currently \$100,000.00) and actually incurred litigation expenses of not more than \$25,000 for all expenses incurred as documented in Class Counsel’s billing records, both subject to Court approval. Class Counsel have been prosecuting the Action on behalf of Plaintiff and the Class on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses.

- Service Award. A Service Award of up to Ten Thousand Dollars and Zero Cents (\$10,00.00) to Plaintiff, or such lesser amount as may be approved by the Court, to compensate his for services on behalf of the Class in initiating and prosecuting the Action, and for the risks he undertook.
- PAGA Payment. A payment of \$10,000.00 relating to Plaintiff's claim under the Private Attorneys General Act ("PAGA"), \$7,500.00 of which will be paid to the State of California's Labor and Workforce Development Agency ("LWDA") and the remaining \$2,500.00 will be distributed to Aggrieved Employees as part of the PAGA Payment.
- Calculation of Payments to Settlement Class Members. After all the above payments of the court-approved Class Counsel Award, the Service Award, the PAGA Payment, and the Settlement Administration Costs are deducted from the Gross Settlement Amount, the remaining portion, called the "Net Settlement Amount," shall be distributed to class members who do **not** request exclusion ("Settlement Class Members"). The Individual Settlement Payment for each Settlement Class Member will be calculated by dividing the Net Settlement Amount by the total number of workweeks for all Settlement Class Members that occurred during the Class Period and multiplying the result by each individual Settlement Class Member's workweeks that occurred during the Class Period. A "workweek" is defined as a normal seven-day week of work during the Class Period in which, according to Defendant's records, a member of the class worked at least one-day during any such workweek.
- Calculation of Aggrieved Employees Payments to Aggrieved Employees. The PAGA Payment shall be distributed to Aggrieved Employees irrespective of whether they exclude themselves or opt-out. The PAGA Payment will be divided by the total number of pay periods worked by all Aggrieved Employees during the PAGA Period, and then taking that number and multiplying it by the number of pay periods worked by each respective Aggrieved Employee during the PAGA Period. "Aggrieved Employee" means all current and former hourly-paid or non-exempt employees who were employed by Defendant and performed work in California at any time during the period from February 14, 2023, to January 15, 2024 ("PAGA Period")

If the Settlement is approved by the Court, you will automatically be mailed a check for your Individual Settlement Payment to the same address as this Class Notice. You do not have to do anything to receive a payment. If your address has changed, you must contact the Settlement Administrator to inform them of your correct address to ensure you receive your payment.

Tax Matters. Twenty percent (20%) of each Individual Settlement Payment is allocated to wages. Taxes are withheld from this amount, and each Settlement Class Member will be issued an Internal Revenue Service Form W-2 for such payment. Eighty percent (80%) of each Individual Settlement Payment is allocated to penalties, pre-judgment interest, and reimbursement of expenses ("Penalties, Interest, and Reimbursement Portion"). Each Settlement Class Member will be issued an Internal Revenue Service Form 1099 for the Penalties, Interest, and Reimbursement Portion of the Individual Settlement Payments. In addition, no taxes will be withheld from the PAGA Payment paid to Aggrieved Employees, and each Aggrieved Employee will be issued an Internal Revenue Service Form 1099 for such payment. Neither Class Counsel nor Defendant's counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability. You may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

No Credit Toward Benefit Plans. The Individual Settlement Payments and Aggrieved Employee Payments made to Settlement Class Members and/or Aggrieved Employees under this Settlement Agreement, as well as any other payments made pursuant to this Settlement Agreement, will not be utilized to calculate any additional benefits under any benefit plans to which any Class Members may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any Class Members may be entitled under any benefit plans.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order granting final approval of the Settlement and entering judgment.

4. What Do I Release Under the Settlement?

Released Claims. Upon entry of final judgment and funding in full of the Gross Settlement Amount by Defendant, Plaintiff and the Settlement Class Members shall release all Released Class Claims that occurred during the Class Period as to the Released Parties. Released Class Claims means all class claims alleged, or reasonably could have been alleged based on the facts alleged, in the Operative Complaint which occurred during the Class Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period.

As of the Effective Date and upon funding of the Gross Settlement Amount by Defendant, all Aggrieved Employees shall release all Released PAGA Claims, irrespective of whether they opted-out of the class settlement and will be bound by this PAGA Release (the "PAGA Release"). "Released PAGA Claims" means all PAGA claims based on the facts alleged in the Operative Complaint which occurred during the PAGA Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and PAGA claims outside of the PAGA Period

This means that, if you do not timely and formally exclude yourself from the settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant about the legal issues resolved by this Settlement. It also means that all of the Court's orders in this Action will apply to you and legally bind you.

5. How much will my payment be?

Defendant's records reflect that you have << ____ >> Workweeks worked during the Class Period October 20, 2018, through January 15, 2024).

Based on this information, your estimated Individual Settlement Payment is << _____ >>.

Defendant's records reflect that you have << ____ >> pay periods worked during the PAGA Period (February 14, 2023, through January 15, 2024).

Based on this information, your estimated Aggrieved Employee Payment is << _____ >>.

If you wish to challenge the information set forth above, then you must submit a written, signed dispute challenging the information along with supporting documents, to the Settlement Administrator at the address provided in this Notice no later than _____ [forty-five (45) days after the Notice or fifteen (15) days after the re-mailed Notice].

6. How can I get a payment?

To get money from the settlement, you do not have to do anything. A check for your settlement payment will be mailed automatically to the same address as this Notice. If your address is incorrect or has changed, you must notify the Settlement Administrator. The Settlement Administrator is: Apex Class Action LLC.

The Court will hold a hearing on _____ to decide whether to finally approve the Settlement. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed within a few

months after this hearing. If there are objections or appeals, resolving them can take time, perhaps more than a year. Please be patient. After entry of the Judgment, the Settlement Administrator will provide notice of the final judgment to the Class Members by posting a copy of the Judgment on the administrator's website at <https://apexclassaction.com/>

7. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or "opt out." **If you opt out, you will receive NO money from the Settlement, and you will not be bound by its terms, except as provided as follows.** Irrespective of whether you exclude yourself from the Settlement or "opt out," you will be bound by the PAGA Release, you will be deemed to have released the Released PAGA Claims, and you will receive a share of the PAGA Payment.

To opt out, you must submit to the Settlement Administrator, by First Class Mail, a written, signed and dated request for exclusion postmarked no later than _____. The address for the Settlement Administrator is 18 Technology Drive, Suite 164, Irvine, CA 92618; Tel: (800) 355-0700. The request for exclusion must state in substance that the Class Member has read the Class Notice and that he or she wishes to be excluded from the settlement of the class action lawsuit entitled *Jamal Gamble v. AirX Utility Surveyors, Inc.*, San Diego County Superior Court, Case No. 37-2022-00042178-CU-OE-CTL. The request for exclusion must contain your name, address, signature and the last four digits of your Social Security Number for verification purposes. The request for exclusion must be signed by you. No other person may opt out for a member of the Class.

Written requests for exclusion that are postmarked after _____, or are incomplete or unsigned will be rejected, and those Class Members will remain bound by the Settlement and the release described above.

8. How do I tell the Court that I would like to challenge the Settlement?

Any Class Member who has not opted out and believes that the Settlement should not be finally approved by the Court for any reason, may object to the proposed Settlement. Objections may be in writing and state the Class Member's name, current address, telephone number, and describe why you believe the Settlement is unfair and whether you intend to appear at the final approval hearing. All written objections or other correspondence must also state the name and number of the case, which is *Jamal Gamble v. AirX Utility Surveyors, Inc.*, San Diego County Superior Court, Case No. 37-2022-00042178-CU-OE-CTL. You may also object without submitting a written objection by appearing at the final approval hearing scheduled as described in Section 9 below.

To object to the Settlement, you cannot opt out. If the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class Members who do not object. Any Class Member who does not object in the manner provided in this Class Notice shall have waived any objection to the Settlement, whether by appeal or otherwise.

Written objections must be delivered or mailed to the Settlement Administrator no later than _____. The address for the Settlement Administrator is 20371 Irvine Avenue, Newport Beach, CA 92660; Tel: (800) 355-0700.

The addresses for the Parties' counsel are as follows:

Class Counsel:

Jean-Claude Lapuyade, Esq.
JCL Law Firm, APC
5440 Morehouse Drive, Suite 3600

Class Counsel:

Shani O. Zakay, Esq.
Zakay Law Group, APLC
5440 Morehouse Drive, Suite 3600

Class Counsel:

Edwin Aiwazian, Esq.
Lawyers for Justice, PC
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San Diego, CA 92121
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E-Mail: jlapuyade@jcl-lawfirm.com

San Diego, CA 92121
Tel: (619) 255-9047
Email: shani@zakaylaw.com

Glendale, California 91203
Tel: (818) 265-1020
Fax: (818) 265-1021
Email: edwin@calljustice.com

Counsel for Defendant:

Brent Douglas, Esq.
Snell & Wilmer LLP
12230 El Camino Real, Suite 300
San Diego, CA 92130
T: 858-910-4771
bmdouglas@swlaw.com

9. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at **9:10 AM on March 14, 2024**, at the San Diego County Superior Court, Department C-62, located at 330 West Broadway, San Diego, CA 92101 before the Honorable Judy S. Bae. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement. If there are objections, the Court will consider them. The Court will listen to people who have made a timely written request to speak at the hearing or who appear at the hearing to object. This hearing may be rescheduled by the Court without further notice to you. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

10. How do I get more information about the Settlement?

You may call the Settlement Administrator at 1-800-355-0700 or write to *Jamal Gamble v. AirX Utility Surveyors, Inc., San Diego County Superior Court, Case No. 37-2022-00042178-CU-OE-CTL*, Settlement Administrator, 18 Technology Drive, Suite 164, Irvine, CA 92618 c/o _____.

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Final Judgment or other Settlement documents by writing to JCL Law firm, APC, 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121 or by visiting the administrator's website at <https://apexclassaction.com/>

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- You must inform the Settlement Administrator of any change of address to ensure receipt of your settlement payment.
- Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall pay all funds from such uncashed checks to the Community Law Project, a non-profit organization, in accordance with CCP 384. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.