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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

ANTHONY DEL VILLAR, an individual, on
behalf of himself, the State of California, as a
private attorney general, and on behalf of all
others similarly situated,

Plaintiff,

v.

THA HEATING & AIR, INC., a California
corporation; and DOES 1 TO 50,

Defendants.

Case No.: 37-2024-00001497-CU-OE-CTL

**Settlement Agreement and Release of Class
and PAGA Action**

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Attorneys for Defendant THA Heating & Air, Inc.

SETTLEMENT AGREEMENT AND RELEASE OF CLASS ACTION

This Settlement Agreement and Release of Class Action (“Settlement Agreement”) is made and entered into by: (1) Plaintiff Anthony Del Villar (“Plaintiff”), individually and in his representative capacity on behalf of the Settlement Class, as defined below, and as a private attorney general on behalf of the State of California; and (2) Defendant THA Heating & Air, Inc. (“Defendant”). Plaintiff and Defendant are collectively referred to herein as the “Parties.” This Settlement Agreement is subject to the approval of the Court, pursuant to California Rules of Court, rule 3.769, subdivisions (c), (d), and (e), and is made for the sole purpose of attempting to consummate settlement of the action on a representative and class-wide basis subject to the following terms and conditions. As detailed below, if the Court does not enter an order granting final approval of this Settlement Agreement or the conditions precedent are not met for any reason, this Settlement Agreement is void and of no force or effect whatsoever.

1. DEFINITIONS

As used in this Settlement Agreement, the following terms shall have the meanings specified below. To the extent terms or phrases used in this Settlement Agreement are not specifically defined below, but are defined elsewhere in this Settlement Agreement, they are incorporated by reference into this definition section.

1.1. ACTION

“Action” shall mean the following civil action: *Anthony Del Villar v. THA Heating & Air, Inc.*, case number 37-2024-00001497-CU-OE-CTL, currently pending before the Superior Court of the State of California for the County of San Diego.

1.2. ADMINISTRATIVE EXPENSES

“Administrative Expenses” shall include all costs and expenses associated with and paid to the third-party settlement administrator, which are estimated not to exceed \$15,000.00.

1.3. APPLICABLE WAGE ORDER

“Applicable Wage Order” shall mean the California Industrial Welfare Commission (“IWC”) Wage Order applicable to the facts of this case, including IWC Wage Orders 4-2001 and 16-2001, and any others that may be applicable. (Cal. Code of Regs., tit. 8, § 11160.)

1 **1.4. CLAIMS**

2 “Claims” shall mean the claims asserted in the Action.

3 **1.5. CLASS ATTORNEY FEES AND EXPENSES**

4 “Class Attorney Fees and Expenses” shall mean the portion of the Gross Settlement Amount
5 attributable to attorney fees and litigation expenses. The Parties agree that the fee-portion of the Class
6 Attorney Fees and Expenses shall be up to one-third of the Gross Settlement Amount (i.e., \$60,000.00),
7 as approved by the Court, and the award of costs and expenses shall be up to an additional \$20,000.00,
8 as approved by the Court. If the Escalator Provision described below is triggered so as to increase the
9 Gross Settlement Amount, the Parties agree that the fee portion of the Class Attorney Fees and
10 Expenses will increase proportionally such that the total amount of attorneys’ fees remains one-third
11 of the Gross Settlement Amount *after* the upward adjustment required by the Escalator Provision is
12 implemented.

13 **1.6. CLASS COUNSEL**

14 “Class Counsel” shall mean Jonathan Melmed, Laura Supanich, and Maria Burciaga of Melmed
15 Law Group P.C.

16 **1.7. CLASS MEMBER**

17 “Class Member” shall mean any person who is a prospective member of the Settlement Class,
18 or, if such person is incompetent or deceased, the person’s legal guardian, executor, heir, or successor-
19 in-interest.

20 **1.8. CLASS NOTICE**

21 “Class Notice” shall mean the *Notice of Proposed Class Action Settlement*, as set forth in the
22 form of **Exhibit 1** attached hereto, or as otherwise approved by the Court, which is to be mailed to
23 Class Members along with the Share Form.

24 **1.9. CLASS PARTICIPANTS**

25 “Class Participants” shall mean all Class Members who do not timely request exclusion from
26 the Class Settlement.

1 **1.10. CLASS PERIOD**

2 “Class Period” shall mean the period from January 16, 2020, through the earlier of the
3 following: (1) the date of preliminary approval of the settlement, or (2) the date prior to which the total
4 workweek count for the settlement would exceed 110% of Defendant's pre-mediation representation.

5 **1.11. CLASS REPRESENTATIVE**

6 “Class Representative” shall mean Plaintiff Anthony Del Villar.

7 **1.12. CLASS SETTLEMENT**

8 “Class Settlement” shall mean the settlement embodied in this Settlement Agreement, which is
9 subject to Court approval.

10 **1.13. COMPLAINT**

11 “Complaint” shall mean the currently-operative complaint in the Action.

12 **1.14. COURT**

13 “Court” shall mean the Superior Court of the State of California for the County of San Diego.

14 **1.15. DEFENDANT**

15 “Defendant” shall mean Defendant THA Heating & Air, Inc..

16 **1.16. DEFENSE COUNSEL**

17 “Defense Counsel” shall mean the attorneys representing Defendant.

18 **1.17. EFFECTIVE DATE**

19 “Effective Date” shall be the date when all of the following events have occurred: **(a)** this
20 Settlement Agreement has been executed by all Parties and by Class Counsel and Defense Counsel;
21 **(b)** the Court has given preliminary approval to the Class Settlement; **(c)** notice has been given to the
22 Settlement Class providing them with an opportunity to request exclusion from the Class Settlement;
23 **(d)** the Court has held a Final Approval and Fairness Hearing and entered a final order and judgment
24 certifying the Settlement Class and approving this Settlement Agreement; and **(e)** the later of the
25 following events: **(i)** the expiration of the period for filing any appeal, writ, or other appellate
26 proceeding opposing the Class Settlement has elapsed without any appeal, writ, or other appellate
27 proceeding having been filed; **(ii)** the dismissal of any appeal, writ, or other appellate proceeding
28 opposing the Class Settlement with no right to pursue further remedies or relief; or **(iii)** any appeal,

1 writ, or the issuance of such other final appellate order upholding the Court’s final order with no right
2 to pursue further remedies or relief. In this regard, it is the intention of the Parties that the Class
3 Settlement shall not become effective until the Court’s order approving the Class Settlement is
4 completely final and there is no further recourse by an appellant or objector who seeks to contest the
5 Class Settlement. If no objections are filed, the Effective Date shall be after steps (a) through (d) are
6 completed (i.e., the date that the court has entered a final order and judgment certifying the Settlement
7 Class and approving this Settlement Agreement).

8 **1.18. EMPLOYEE’S TAXES AND REQUIRED WITHHOLDING**

9 “Employee’s Taxes and Required Withholding” shall mean the employee’s share of any and all
10 applicable federal, state, or local payroll taxes, including those collected under authority of the Federal
11 Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and/or the State
12 Unemployment Tax Act (SUTA) on the portion of any Class Participant’s Individual Settlement
13 Amount that constitutes wages. The Employee’s Taxes and Required Withholdings will be withheld
14 from and paid out of the Individual Settlement Amounts paid from the Net Settlement Amount.

15 **1.19. EMPLOYER’S TAXES**

16 “Employer’s Taxes” shall mean and refer to Defendant’s share of payroll taxes (e.g.,
17 Unemployment Insurance, Employment Training Tax, Social Security, and Medicare taxes) that is
18 owed on the portion of any Class Participant’s Individual Settlement Amount that constitutes wages.
19 The Employer’s Taxes shall be separately paid by Defendant and shall not be paid from the Gross
20 Settlement Amount or Net Settlement Amount.

21 **1.20. FINAL APPROVAL AND FAIRNESS HEARING**

22 “Final Approval and Fairness Hearing” shall mean the final hearing held to ascertain the
23 fairness, reasonableness, and adequacy of the Class Settlement.

24 **1.21. GROSS SETTLEMENT AMOUNT**

25 “Gross Settlement Amount” is the agreed upon non-reversionary settlement amount totaling
26 \$180,000.00 to be paid by Defendant in full settlement of the Released Claims asserted in this case,
27 inclusive of the Administrative Expenses, the Employee’s Taxes and Required Withholdings, the Class
28 Attorney Fees and Expenses, the Incentive Award, and PAGA Payment. Except as required under the

1 Escalator Provision, the only amount Defendant shall separately pay beyond the Gross Settlement
2 Amount is its share of the Employer’s Taxes in addition to the Gross Settlement Amount on the portion
3 of each Individual Settlement Amount allocated as wages.

4 **1.22. HEARING ON PRELIMINARY APPROVAL**

5 “Hearing on Preliminary Approval” shall mean the hearing held on the motion for preliminary
6 approval of the Class Settlement.

7 **1.23. INCENTIVE AWARD**

8 “Incentive Award” shall mean any additional monetary payment provided to the Class
9 Representative for his efforts and risks on behalf of the Settlement Class in this Action.

10 **1.24. INDIVIDUAL SETTLEMENT AMOUNT**

11 “Individual Settlement Amount” shall mean the amount which is ultimately distributed to each
12 Class Participant, less any Employee’s Taxes and Required Withholdings. The Individual Settlement
13 Amount does not include any portion of the PAGA Payment.

14 **1.25. NET SETTLEMENT AMOUNT**

15 “Net Settlement Amount” shall mean the Gross Settlement Amount minus: Administrative
16 Expenses; Class Attorney Fees and Expenses; the Gross Settlement Amount allocated toward penalties
17 pursuant to the Labor Code Private Attorney General Act of 2004 (“PAGA”), codified at Labor Code
18 sections 2698 through 2699.6; and Plaintiff’s Incentive Award.

19 **1.26. OPT OUT**

20 “Opt Out” shall refer to the process of submitting a timely and valid request for exclusion from
21 the Class Settlement in accordance with the terms of the Class Notice and no later than the Response
22 Deadline.

23 **1.27. OPT-OUTS**

24 “Opt-Outs” shall mean all persons who timely and validly request exclusion from the Class
25 Settlement in accordance with the terms of the Class Notice and no later than the Response Deadline.

26 **1.28. PAGA PAYMENT**

27 “PAGA Payment” means the penalties pursuant to PAGA that the Parties have agreed is a
28 reasonable sum to be paid in settlement of the PAGA claims included in the Action, which is

1 \$20,000.00. The PAGA Payment is to be approved by the Court pursuant to Labor Code section 2699
2 and is to be distributed as follows: seventy-five percent (75%) (i.e., \$15,000.00) to the LWDA and
3 twenty-five percent (25%) (i.e., \$5,000.00) to the PAGA Settlement Class. Class Counsel shall give
4 timely notice of this Settlement Agreement to the LWDA pursuant to Labor Code section 2699,
5 subdivision (1)(2).

6 **1.29. PAGA PERIOD**

7 “PAGA Period” shall mean the period from January 15, 2023, through the date of preliminary
8 approval of the settlement.

9 **1.30. PAGA SETTLEMENT CLASS**

10 “PAGA Settlement Class” shall mean all individuals who are or were employed by Defendants
11 as non-exempt employees in California during the PAGA Period. Defendant represented in advance of
12 mediation that, as of July 29, 2024, the PAGA Settlement Class consisted of approximately 83
13 employees that worked a total of approximately 2,100 pay periods during the period of January 15,
14 2023 through July 29, 2024.

15 **1.31. PARTIES**

16 “Parties” shall mean Plaintiff and Defendant.

17 **1.32. PLAINTIFF**

18 “Plaintiff” shall mean Plaintiff Anthony Del Villar.

19 **1.33. PRELIMINARY APPROVAL DATE**

20 “Preliminary Approval Date” shall mean the date upon which the Court enters an order
21 preliminarily approving this Settlement Agreement.

22 **1.34. RELEASED CLAIMS**

23 “Released Claims” shall those claims arising out of or related to the allegations set forth in any
24 complaint filed in the Action and/or PAGA notice to the California Labor and Workforce Development
25 Agency, or that could have been raised in any complaint filed in the Action and/or PAGA notice to the
26 California Labor and Workforce Development Agency directly related to the facts and theories alleged
27 therein, that arose during the Class Period and/or PAGA Period, including, but not limited to, claims
28 for: (1) failure to pay minimum wage for all hours worked in violation of Labor Code sections 1194

1 and 1194.2, and the applicable IWC Wage Order(s); (2) failure to pay proper overtime wages in
2 violation of Labor Code sections 510, 1197, and 1198, and the applicable IWC Wage Order(s);
3 (3) failure to provide compliant rest periods and pay missed rest break premiums in violation of Labor
4 Code section 226.7 and the applicable IWC Wage Order(s); (4) failure to provide compliant meal
5 periods and pay missed meal period premiums in violation of Labor Code sections 226.7 and 512, and
6 the applicable IWC Wage Order(s); (5) failure to maintain accurate employment records in violation
7 of Labor Code section 1174; (6) failure to pay timely wages during employment in violation of Labor
8 Code sections 204, 210; (7) failure to pay all wages due and owing at separation in violation of Labor
9 Code sections 201, 202, and 203; (8) failure to provide complete and accurate wage statements in
10 violation of Labor Code sections 226 and 226.3; (9) deceptive, fraudulent, or otherwise unlawful
11 business practices based on the foregoing in violation of California’s Unfair Competition Law (Bus. &
12 Prof. Code, §§ 17200–17210); (10) statutory penalties based on the foregoing pursuant to PAGA (Lab.
13 Code, §§ 2698-2699.6); and (11) all claims for liquidated damages, penalties, interest, attorneys’ fees,
14 and costs based on the foregoing.

15 No other claims are released other than those identified herein. This Settlement Agreement will
16 not release any person, party, or entity from claims, if any, by Class Members for workers
17 compensation, unemployment, or disability benefits of any nature. Nor does it release any claims,
18 actions, or causes of action which may be possessed by Class Members under state or federal
19 discrimination statutes, including, without limitation, the California Fair Employment and Housing Act
20 (Gov. Code, §§ 12900–12996); the Unruh Civil Rights Act (Civ. Code, § 51); the California
21 Constitution; Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000, et seq.); the Americans with
22 Disabilities Act (42 U.S.C. § 12101, et seq.); the Employee Retirement Income Security Act of 1974
23 (29 U.S.C. § 1001 et seq.); and all of their implementing regulations and interpretive guidelines.

24 **1.35. RELEASED PARTIES**

25 “Released Parties” shall mean Defendant and all of Defendant’s past and present owners,
26 officers, employees, subsidiaries, affiliates, shareholders, members, agents, predecessors, successors,
27 and assigns.
28

1 **1.36. RELEASING PARTIES**

2 “Releasing Parties” shall mean every Class Participant and all persons purporting to act on their
3 behalf or purporting to assert a claim under or through them, including, but not limited to, their
4 dependents, heirs, assigns, beneficiaries, devisees, legatees, executors, administrators, agents, trustees,
5 conservators, guardians, personal representatives, and successors-in-interest, whether individual, class,
6 representative, legal, equitable, direct or indirect, or any other type or in any other capacity.

7 **1.37. RESPONSE DEADLINE**

8 “Response Deadline” shall mean the date forty-five (45) days following the date on which the
9 Settlement Administrator first mails Class Notice to the Class Members and the last day on which Class
10 Members may submit a request for exclusion and/or objection to Class Settlement.

11 **1.38. SETTLEMENT ADMINISTRATOR**

12 “Settlement Administrator” shall mean Apex Class Action Administration (or other
13 administrator agreed on by the parties) which the Parties have agreed will be responsible for
14 administration of the Class Settlement and related matters.

15 **1.39. SETTLEMENT CLASS**

16 “Settlement Class” shall mean all individuals who are or were employed by Defendants as non-
17 exempt employees in California during the Class Period. Defendant represented in advance of
18 mediation that, as of July 29, 2024, the Settlement Class consisted of approximately 166 Class
19 Members that worked a total of approximately 5,953 workweeks during the period of January 16, 2020
20 through July 29, 2024.

21 **1.40. SHARE FORM**

22 “Share Form” shall mean the *Class Action Settlement Share Form*, as set forth in the form of
23 **Exhibit 2** attached hereto, or as otherwise approved by the Court, which is to be mailed to Class
24 Members along with the Class Notice.

25 **2. FACTUAL AND PROCEDURAL BACKGROUND**

26 **2.1. PLAINTIFF’S CLAIMS**

27 Plaintiff, individually and in his representative capacity on behalf of the Settlement Class, and
28 as a private attorney general on behalf of the State of California, has alleged the following violations:

1 (1) failure to pay minimum wage for all hours worked in violation of Labor Code sections 1194 and
2 1194.2, and the Applicable Wage Order; (2) failure to pay proper overtime wages in violation of Labor
3 Code sections 510, 1197, and 1198, and the Applicable Wage Order; (3) failure to provide compliant
4 rest periods and pay missed rest break premiums in violation of Labor Code section 226.7 and the
5 Applicable Wage Order; (4) failure to provide compliant meal periods and pay missed meal period
6 premiums in violation of Labor Code sections 226.7 and 512, and the Applicable Wage Order;
7 (5) failure to maintain accurate employment records in violation of Labor Code section 1174;
8 (6) failure to pay timely wages during employment in violation of Labor Code sections 204, 210;
9 (7) failure to pay all wages due and owing at separation in violation of Labor Code sections 201, 202,
10 and 203; (8) failure to provide complete and accurate wage statements in violation of Labor Code
11 sections 226 and 226.3; (9) deceptive, fraudulent, or otherwise unlawful business practices based on
12 the foregoing in violation of California's Unfair Competition Law (Bus. & Prof. Code, §§ 17200–
13 17210); and (10) statutory penalties based on the foregoing pursuant to PAGA (Lab. Code, §§ 2698–
14 2699.6).

15 2.2. DISCOVERY, INVESTIGATION, RESEARCH, AND MEDIATION

16 Class Counsel has conducted significant informal discovery during the prosecution of the
17 Action. This discovery, investigation, and prosecution has included, among other things, (a) over a
18 dozen telephonic conferences with Plaintiff; (b) inspection and analysis of hundreds of pages of
19 documents and other information produced by Plaintiff and Defendant; (c) analysis of employment
20 data from a sample of Class Members; (d) an analysis of the legal positions taken by Defendant;
21 (d) investigation into the viability of class treatment of the claims asserted in the Action; (e) analysis
22 of potential class-wide damages, including information sufficient to understand Defendant's potential
23 defenses to Plaintiff's claims; (f) research of the applicable law with respect to the claims asserted in
24 the Complaint and the potential defenses thereto; and (g) assembling and analyzing of data for
25 calculating damages.

26 Class Counsel and the Class Representative have vigorously prosecuted this case, and
27 Defendant has vigorously contested it. The Parties have engaged in sufficient investigation and
28 discovery to assess the relative merits of the claims of the Class Representative and of the defenses to

1 them. After such discovery, investigation, and prosecution, the Parties attended a full-day mediation
2 with an experienced employment law mediator, which culminated in a settlement in principle, the terms
3 of which are elaborated in this Settlement Agreement.

4 **2.3. ALLEGATIONS OF THE CLASS REPRESENTATIVE AND BENEFITS OF**
5 **CLASS SETTLEMENT**

6 The document and data exchange in this matter, as well as discussions between counsel, have
7 been adequate to give the Class Representative and Class Counsel a sound understanding of the merits
8 of their positions and to evaluate the value of the claims of the Settlement Class. The informal discovery
9 conducted in this Action and the information exchanged by the Parties through pre-mediation
10 discussions are sufficient to reliably assess the merits of the Parties' respective positions and to
11 compromise the issues on a fair and equitable basis.

12 The Class Representative and Class Counsel believe that the claims, causes of action,
13 allegations, and contentions asserted in the Action have merit. However, the Class Representative and
14 Class Counsel recognize and acknowledge the expense and delay of continued lengthy proceedings
15 necessary to prosecute the Action against Defendant through trial and through appeals. Class Counsel
16 has taken into account the uncertain outcome of the litigation, the risk of continued litigation in complex
17 actions such as this, as well as the difficulties and delays inherent in such litigation, and the potential
18 difficulty of obtaining certification of the Settlement Class as well as trying the claims of the class.
19 Class Counsel is mindful of the potential problems of proof under, and possible defenses to, the claims
20 alleged in the Action.

21 The Class Representative and Class Counsel believe that the settlement set forth in this
22 Settlement Agreement confers substantial benefits upon Plaintiff and the Settlement Class and that an
23 independent review of this Settlement Agreement by the Court in the approval process will confirm
24 this conclusion. Based on their own independent investigation and evaluation, Class Counsel has
25 determined that the settlement set forth in this Settlement Agreement is in the best interests of Plaintiff
26 and the Class Members.

1 **2.4. DEFENDANT’S DENIALS OF WRONGDOING AND LIABILITY**

2 Defendant has denied and continues to deny all allegations, claims, and contentions alleged by
3 Plaintiff in the Action. Defendant has expressly denied and continues to deny all charges of wrongdoing
4 or liability against it arising out of any of the conduct, statements, acts, or omissions alleged in the
5 Action. Defendant contends that it complied with California and federal wage and hour laws and has
6 dealt legally and fairly with Plaintiff and the Class Members.

7 Defendant further denies that, for any purpose other than settling this Action, these claims are
8 appropriate for class or representative treatment. Nonetheless, Defendant has concluded that further
9 proceedings in the Action would be protracted and expensive and that it is desirable that the Action be
10 fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement
11 Agreement to dispose of burdensome and protracted litigation, to permit the operation of Defendant’s
12 business without further expensive litigation and the distraction and diversion of their personnel with
13 respect to matters at issue in the Action. Defendant has also taken into account the uncertainty and risks
14 inherent in any litigation, especially in complex cases such as the Action. Defendant has, therefore,
15 determined that it is desirable and beneficial to it that the Action be settled in the manner and upon the
16 terms and conditions set forth in this Settlement Agreement.

17 **2.5. INTENT OF THE CLASS SETTLEMENT**

18 The Class Settlement set forth herein intends to achieve the following: (1) entry of an order
19 approving the Class Settlement; (2) entry of judgment of the Action; (3) discharge of the Released
20 Parties from liability for any and all of the Released Claims; and (4) discharge of Defendant from
21 liability for any and all claims arising out of the Action.

22 **3. CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS**

23 For the purposes of this Settlement Agreement and the Class Settlement of this Action only, the
24 Parties agree to conditional class certification of the Settlement Class. Defense Counsel believes this
25 conditional certification is appropriate because the Released Claims are being compromised without
26 need to establish the elements of those claims on which liability turns. The certification of the
27 Settlement Class shall not constitute, in this or any other proceeding, an admission of any kind by
28 Defendant, including without limitation, that certification of a class for trial purposes is or would be

1 warranted, appropriate or proper; or that Plaintiff could establish any of the requisite elements for class
 2 treatment of any of the claims in the Action.

3 If the Settlement Agreement is not finally approved by the Court, the Effective Date is not
 4 achieved, or the Class Settlement is rejected, terminated, or otherwise rendered null and void as set
 5 forth herein, then certification of the Settlement Class shall be automatically vacated, shall be void *ab*
 6 *initio*, of no force or effect, and shall not constitute evidence or a binding determination that the
 7 requirements for certification of a class for trial purposes in this Action or in any other action which
 8 have been, are or can be, satisfied. Further, if the Agreement does not reach the Effective Date, Plaintiff
 9 agrees that Plaintiff will not argue, claim, reference, or otherwise raise any preliminary approval of the
 10 Settlement Class in connection with any later proceeding before the Court.

11 **4. APPOINTMENT OF CLASS COUNSEL**

12 For purposes of this Settlement Agreement and subject to the Court’s approval, the Parties agree
 13 to the appointment of Class Counsel as counsel for the Settlement Class and the effectuation of the
 14 Class Settlement pursuant to this Settlement Agreement.

15 **5. CONSIDERATION**

16 **5.1. SETTLEMENT AMOUNT**

17 The Parties agree to settle this Action for the Gross Settlement Amount of \$180,000.00. There
 18 shall be no reversion to Defendant. Defendant shall pay the Gross Settlement Amount in full. The Gross
 19 Settlement Amount and other actions and forbearances taken by Defendant shall constitute adequate
 20 consideration for the Class Settlement and will be made in full and final settlement of: the Released
 21 Claims, the Class Attorney Fees and Expenses, Administrative Expenses, the Incentive Award, the
 22 PAGA Payment (and any payments to individual PAGA Class Members resulting from the PAGA
 23 Payment), and any other obligation of Defendant under this Settlement Agreement (other than the
 24 Employer’s Taxes on the portion of the Net Settlement Amount allocated to the payment of wages).

25 After the Court issues an order preliminarily approving this Class Settlement, the Settlement
 26 Administrator will distribute the Class Notice to the Class Members, which shall describe the terms of
 27 the Class Settlement and procedures to Opt Out, object, or participate in the Class Settlement as well
 28 as the Share Form, which shall identify the Class Member, the number of workweeks worked by each

1 Class Member (“Workweeks”), as well as the estimated amount of the Individual Settlement Amount
2 the Class Member can expect to receive once the Class Settlement becomes effective on the Effective
3 Date. Class Members shall be given the opportunity to challenge their Workweeks information.

4 **5.2. INCENTIVE AWARD FOR PLAINTIFF**

5 Plaintiff may petition the Court to approve an Incentive Award in an amount up to \$7,500.00
6 for Plaintiff Anthony Del Villar to acknowledge his efforts on behalf of the Settlement Class in this
7 Action, including assisting in the investigation and consulting with Class Counsel and providing crucial
8 documents to Class Counsel. Defendant shall not oppose any request by Plaintiff for an Incentive
9 Award in such an amount. Any Incentive Award approved by the Court shall be paid to Plaintiff from
10 the Gross Settlement Amount and shall be in addition to any distribution to which he may otherwise
11 be entitled as a Class Participant. Any Incentive Award approved by the Court shall not be considered
12 wages, and the Settlement Administrator shall issue to Plaintiff an IRS Form 1099 reflecting such
13 payment. Plaintiff shall be responsible for the payment of all taxes with respect to any Incentive Award
14 approved by the Court and shall hold Defendant harmless from all liability with regard thereto.

15 **5.3. PAYMENT TO CLASS PARTICIPANTS**

16 Each Class Participant shall be eligible to receive payment of the Individual Settlement
17 Amount, which is a share of the Net Settlement Amount based on the pro rata number of weeks worked
18 by the Class Members during the Class Period as a proportion of all weeks worked by all Class
19 Members. Each Class Participant, including Plaintiff, shall be responsible for the payment of the
20 Employee’s Taxes and Required Withholding with respect to his or her Individual Settlement Amount
21 and shall hold Defendant harmless from any and all liability with regard thereto.

22 **5.4. PAYMENT TO PAGA SETTLEMENT CLASS**

23 Each member of the PAGA Settlement Class shall be entitled to receive a portion of the PAGA
24 Payment. The PAGA Payment shall consist of the penalties pursuant to PAGA that the Parties have
25 agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which
26 is \$20,000.00. The PAGA Payment must be approved by the Court pursuant to Labor Code section
27 2699 and is to be distributed as follows: seventy-five percent (75%) (i.e., \$15,000.00) to the LWDA
28 and twenty-five percent (25%) (i.e., \$5,000.00) to the PAGA Settlement Class. The portion of the

1 PAGA Payment allocated to the PAGA Settlement Class shall be distributed to the PAGA Settlement
2 Class based on the pro rata number of pay periods worked by each particular PAGA Settlement Class
3 member during the PAGA Period as a proportion of all pay periods worked by all members of the
4 PAGA Settlement Class.

5 **5.5. TAX TREATMENT AND PAYMENT**

6 For the purpose of calculating Employee's Taxes and Required Withholding for the Individual
7 Settlement Amounts for Class Participants (including any payments to the Class Representative but
8 exclusive of his Incentive Award), the Parties agree that 20% of each Individual Settlement Amount
9 shall constitute payment in the form of wages (and each Class Participant will be issued an IRS Form
10 W-2 for such payment to him or her), and 80% of each Individual Settlement Amount shall constitute
11 non-wages consisting of restitution, reimbursements, damages, liquidated damages, penalties, and
12 interest (and each Class Participant will be issued an IRS Form 1099 for such payment to him or her).
13 Prior to final distribution, the Settlement Administrator shall calculate the total Employee's Taxes and
14 Required Withholding due as a result of the wage portion of Class Participants' anticipated Individual
15 Settlement Amounts and such actual amount will be deducted from the Net Settlement Amount.
16 Additionally, prior to the funding of the Gross Settlement Amount and final distribution, the Settlement
17 Administrator shall calculate the total Employer's Taxes due on the wage portion of the Class
18 Participants' Individual Settlement Amounts and issue instructions to Defendant to separately fund
19 these tax obligations/withholdings. The Parties understand that Plaintiff and the Class Participants who
20 receive any payment pursuant to this Settlement Agreement shall be solely responsible for all other
21 individual tax obligations.

22 With respect to the PAGA Payment and any payments made to individual members of the
23 PAGA Settlement Class, all such payments shall be treated as payments owing for penalties and interest
24 thereon and shall not be considered wages. The Settlement Administrator shall issue to members of the
25 PAGA Settlement Class an IRS Form 1099 reflecting such payment. Members of the PAGA Settlement
26 Class shall be solely responsible for the payment of all taxes with respect to any PAGA payments made
27 to them.
28

1 **5.6. NO EFFECT ON EMPLOYEE BENEFIT PLANS**

2 Neither the Class Settlement nor any amounts paid under the Class Settlement will modify any
3 previously credited hours, days, or weeks of service under any employee benefit plan, policy or bonus
4 program sponsored by Defendant. Such amounts will not form the basis for additional contributions to,
5 benefits under, or any other monetary entitlement under Defendant’s sponsored benefit plans, policies,
6 or bonus programs. The payments made under the terms of this Settlement Agreement shall not be
7 applied retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other
8 form of compensation for the purposes of any of Defendant’s benefit plan, policy, or bonus program.
9 Defendant retains the right to modify the language of its benefits plans, policies, and bonus programs
10 to reflect this intent and to make clear that any amounts paid pursuant to this Settlement Agreement are
11 not for “weeks worked,” “weeks paid,” “weeks of service,” or any similar measuring term as defined
12 by applicable plans, policies, and bonus programs for purpose of eligibility, vesting, benefit accrual, or
13 any other purpose, and that additional contributions or benefits are not required by this Settlement
14 Agreement. Defendant does not consider the Class Settlement payments “compensation” for purposes
15 of determining eligibility for, or benefit accrual within, any benefit plans, policies, or bonus programs,
16 or any other plan sponsored by Defendant.

17 **5.7. CLASS ATTORNEY FEES AND EXPENSES**

18 As part of the motion for final approval of the Class Settlement, Class Counsel may apply for
19 an award of Class Attorney Fees and Expenses with the fee portion not to exceed one-third of the Gross
20 Settlement Amount (i.e., \$60,000.00) and the award of costs and expenses up to an additional
21 \$20,000.00. Defendant agrees to not object to any such fee, cost, or expense application in those
22 amounts.

23 As a condition of this Class Settlement, Class Counsel has agreed to pursue fees only in the
24 manner reflected by this subsection. Any Class Attorney Fees and Expenses awarded by the Court shall
25 be paid from the Gross Settlement Amount prior to arriving at the Net Settlement Amount and shall
26 not constitute payment to any Class Members. If Class Counsel voluntarily reduces the request for
27 Class Attorney Fees and Expenses or the Court’s award of Class Attorney Fees and Expenses is less
28

1 than set forth above, the Net Settlement Amount shall be recalculated to reflect the actual Class
2 Attorney Fees and Expenses awarded.

3 The Class Attorney Fees and Expenses approved by the Court shall reflect: (a) all work
4 performed and costs and expenses incurred by, or at the direction of, any attorney purporting to
5 represent the Settlement Class through the date of this Settlement Agreement; (b) all work to be
6 performed and costs to be incurred in connection with approval by the Court of the Class Settlement;
7 (c) all work to be performed and costs and expenses, if any, incurred in connection with administering
8 the Class Settlement through the Effective Date and dismissal of the Action with prejudice; and (d) may
9 be based on the “catalyst theory” and/or the “common fund doctrine.”

10 **6. SETTLEMENT ADMINISTRATION**

11 **6.1. COSTS AND EXPENSES**

12 All costs and expenses due to the Settlement Administrator in connection with its administration
13 of the Class Settlement, including, but not limited to, providing the Class Notice, locating Class
14 Members, processing Opt Out requests and objections, distributing the portion of the PAGA Payment
15 payable to the LWDA, distributing the portion of the PAGA Payment payable to the members of the
16 PAGA Settlement Class, and calculating, administering and distributing Individual Settlement
17 Amounts to the Class Participants and related tax forms, shall be paid from the Gross Settlement
18 Amount, and is not expected to exceed \$15,000.00.

19 **6.2. PAYMENT BY DEFENDANT**

20 Defendant shall deposit the Gross Settlement Amount in a lump sum payment plus the
21 employer-side payroll taxes to the Settlement Administrator within fourteen (14) days of the Effective
22 Date. In no event shall Defendant be obligated to pay or deposit with the Settlement Administrator
23 more than \$180,000.00 plus the Employer’s Taxes, except where the Escalator Provision is triggered.

24 **7. NOTICE TO CLASS MEMBERS AND CLAIMS ADMINISTRATION PROCESS**

25 **7.1. THE SETTLEMENT ADMINISTRATOR**

26 The Settlement Administrator will be responsible for: mailing the Class Notice and Share Form
27 (**Exhibit 1** and **Exhibit 2**, respectively) to Class Members; posting notice of entry of final order and
28 judgment certifying the Class Settlement and approving this Settlement Agreement; handling inquiries

1 from Class Members concerning the Class Notice; determining Individual Settlement Amounts;
 2 determining individual payments to members of the PAGA Settlement Class; maintaining the
 3 settlement funds in an appropriate interest-bearing account; preparing, administrating, and distributing
 4 Individual Settlement Amounts to Class Participants; preparing, administrating, and distributing
 5 individual payments to members of the PAGA Settlement Class; distributing the portion of the PAGA
 6 Payment payable to the LWDA; issuing a final report and performing such other duties as the Parties
 7 may direct. Additionally, the Settlement Administrator will handle all tax document preparation and
 8 reporting, including state and federal tax forms, if any.

9 On a weekly basis, the Settlement Administrator will provide reports to Class Counsel and
 10 Defense Counsel with summary information updating them as to the number of validated and timely
 11 objections and Opt Out requests. The Settlement Administrator will serve on Class Counsel and
 12 Defense Counsel via e-mail date-stamped copies of the original Opt Out requests and objections no
 13 later than seven (7) days after their receipt. The Settlement Administrator will provide Class Counsel
 14 with proof of mailing of the Class Notice, without listing individual Class Member names which the
 15 Settlement Administrator will file with the Court at the time Class Counsel files its motion in support
 16 of the Court’s Final Approval and Fairness Hearing.

17 No later than thirty (30) days prior to the Final Approval and Fairness Hearing, the Settlement
 18 Administrator will compile and deliver to Class Counsel and Defense Counsel a report with summary
 19 information regarding: **(a)** the total amount of final Individual Settlement Amounts of each Class
 20 Participant, without any identifying personal information; **(b)** the number of Class Participants to
 21 receive such payments, and **(c)** the final number of Opt-Outs and objections.

22 Administrative Expenses are not anticipated to exceed \$15,000.00. Prior to the calculation and
 23 distribution of the Individual Settlement Amounts, the Settlement Administrator shall calculate the
 24 total Administrative Expenses through the conclusion of their services and such actual amount will be
 25 deducted from the Gross Settlement Amount prior to the final calculation of the Individual Settlement
 26 Amounts.

1 **7.2. NOTICE TO CLASS MEMBERS**

2 Notice shall be provided to Class Members in the following manner: Within fourteen (14) days
3 after the Preliminary Approval Date, Defendant shall provide the Settlement Administrator with a list
4 of Class Members and members of the PAGA Settlement Class containing their respective names,
5 social security numbers, dates of employment, last-known addresses, last-known phone numbers, the
6 number of workweeks worked in the Class Period, and the number of pay periods worked in the PAGA
7 Period(the “Database”). The Database shall be marked “Confidential – Settlement Administrator’s
8 Eyes Only.” Class Counsel shall not receive a copy of this list.

9 Within twenty-eight (28) days following the Preliminary Approval Date, the Settlement
10 Administrator populate the data for each Class Member on their respective Class Notice, and send each
11 Class Member their respective Class Notice via first-class, United States mail. The Class Notice shall
12 also contain an easily-understood statement alerting the Class Members that, unless they elect to Opt
13 Out of the Class Settlement, the Class Member is releasing and waiving all Released Claims against
14 the Released Parties.

15 The Class Notice will inform Class Members of their estimated share of the settlement and the
16 number of workweeks they worked during the Class Period. Class Members may dispute their
17 workweeks if they believe they worked more weeks in the Class Period than Defendant’s records show
18 by submitting information to the Settlement Administrator no later than forty-five (45) days after being
19 mailed the Class Notice and Share Form by the Settlement Administrator, which is the defined
20 Response Deadline. The Settlement Administrator will work with Defendant to resolve the dispute in
21 good faith. If the Class Member and Defendant cannot agree over the workweeks to be credited, the
22 Settlement Administrator shall make the final decision based on the information presented by the Class
23 Member and Defendant.

24 **7.3. OPT OUT PROCEDURE**

25 Class Members who do not timely and validly Opt Out of the Class Settlement will be deemed
26 to participate in the Class Settlement and shall become Class Participants without having to submit a
27 claim form or take any other action. To Opt Out of the Class Settlement, the Class Member must submit
28 a letter or postcard to the Settlement Administrator by the Response Deadline. The Opt Out request

1 must state the Class Member’s name, address, telephone number, and signature. The Opt Out request
2 should state something to the effect of:

3 “I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE
4 *ANTHONY DEL VILLAR V. THA HEATING & AIR, INC.* LAWSUIT. I
5 UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT
6 CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE CLASS SETTLEMENT
7 OF THIS LAWSUIT AND WILL NOT BE RELEASING ANY CLAIMS I MIGHT
8 HAVE.”
9

10 Any Opt Out request that is not postmarked by the Response Deadline will be invalid. If prior
11 to the Response Deadline any Class Notice mailed to a Class Member is returned as having been
12 undelivered by the United States Postal Service, the Settlement Administrator shall perform a skip trace
13 search and seek an address correction for such Class Members, and a second Class Notice will be sent
14 to any new or different address obtained.

15 It will be presumed that, if an envelope containing the Class Notice has not been returned within
16 thirty (30) days of the mailing, the Class Member received the Class Notice. At least twenty-one (21)
17 days prior to the Final Approval and Fairness Hearing, the Settlement Administrator shall provide Class
18 Counsel and Defense Counsel with a Declaration of Due Diligence and Proof of Mailing with regard
19 to the mailing of the Class Notice and its attempts to locate Class Members. The declaration shall
20 specify the number of Class Members to whom the Class Notice was sent and the number of Class
21 Members to whom the Class Notice was not delivered, as well as information relating to the number
22 of Opt-Outs and objectors. Class Counsel shall file this declaration with the Court.

23 If the Settlement Administrator determines that an Opt Out request returned by a Class Member
24 before the Response Deadline is deficient, then the Settlement Administrator shall mail a deficiency
25 letter to that Class Member identifying the problem. If a Class Member submits both a dispute and an
26 Opt Out request, the Settlement Administrator shall make reasonable attempts to clarify as if the Opt
27 Out request were deficient. If the Class Member fails to cure the deficiency, the Opt Out request shall
28

1 be disregarded and the claim will be paid, and the Class Member will become a Class Participant and
2 be bound by the judgment.

3 Class Participants will be bound by the Release of Released Claims set forth in the definition
4 of “Released Claims” provided in this Settlement Agreement.

5 A request to Opt Out of the Class Settlement shall *not* serve to exclude the Class Member from
6 participation in the PAGA Settlement Class. Opt-Outs shall still be entitled to their share of the PAGA
7 Payment. Class Members who are also members of the PAGA Settlement Class shall have no right or
8 ability to opt out of, and shall be bound by, the portion of this Settlement Agreement releasing PAGA
9 claims.

10 **7.4. OBJECTION PROCEDURE**

11 The Class Notice shall inform the Class Members of their right to object to the Class Settlement
12 if they do not Opt Out. Any Class Participants who wish to object to the Class Settlement may submit
13 a written objection to the Settlement Administrator no later than the Response Deadline. Only Class
14 Participants may object to the Settlement. The objection should include the case name and number and
15 must set forth, in clear and concise terms, a statement of the reasons why the objector believes that the
16 Court should find that the proposed Class Settlement is not in the best interest of the Settlement Class
17 and the reasons why the Class Settlement should not be approved, including the legal and factual
18 arguments supporting the objection. If an objector also wishes to appear at the Final Approval and
19 Fairness Hearing, in person or through an attorney, they may do so. The Settlement Administrator will
20 promptly serve copies of any objection or notice of intention to appear on Class Counsel and Defense
21 Counsel. Class Members wishing to make an objection may appear at the Final Approval and Fairness
22 Hearing, either in person or through a lawyer retained at their own expense.

23 **7.5. NOTICE OF FINAL JUDGMENT**

24 Within seven (7) days after the Court has held a Final and Fairness Approval Hearing and
25 entered a final order certifying the Class for settlement purposes only and approving the Class
26 Settlement, the Settlement Administrator will give notice of judgment to Class Members pursuant to
27 rule 3.771(b) of the California Rules of Court, by posting a copy of said order and final judgment on
28 its website at a web address to be included in the Class Notice.

1 **8. CLASS SETTLEMENT FUNDING AND DISTRIBUTION**

2 **8.1. ALLOCATION OF THE GROSS SETTLEMENT AMOUNT**

3 The claims of all Class Members are settled for the Gross Settlement Amount of \$180,000.00,
4 which will be allocated as follows:

- 5 1. The Administrative Expenses, estimated not to exceed \$15,000.00;
- 6 2. Class Counsel's attorney fees not to exceed \$60,000.00;
- 7 3. Class Counsel's litigation costs and expenses not to exceed \$20,000.00;
- 8 4. The Incentive Award, not to exceed \$7,500.00;
- 9 5. PAGA Payment to LWDA of \$15,000.00; and
- 10 6. PAGA Payment to PAGA Settlement Class of \$5,000.00.

11 For purposes of calculating the estimated Individual Settlement Amounts, the Settlement
12 Administrator shall calculate the estimated Net Settlement Amount based on the estimated values
13 provided above prior to sending Notice to the Class Members. Prior to final distribution, the Settlement
14 Administrator shall recalculate the final Net Settlement Amount based on the actual values of the
15 amounts in each category.

16 **8.2. CALCULATION OF THE INDIVIDUAL SETTLEMENT AMOUNTS FOR**
17 **CLASS PARTICIPANTS**

18 Individual Settlement Amounts to be paid to Class Participants shall be paid from the Net
19 Settlement Amount. The portion of the Net Settlement Amount shall be distributed pro rata on a
20 "checks cashed" basis based on the proportional number of weeks worked by each Class Member
21 during the Class Period.

22 Defendant will provide the Settlement Administrator with any information reasonably
23 necessary to confirm the calculation of the number of workweeks for each Class Member, and any
24 other reasonably required information the Settlement Administrator requests to confirm the
25 calculations required under this Settlement Agreement. Defendant shall have no responsibility for
26 deciding the validity of the Individual Settlement Amounts or any other payments made pursuant to
27 this Settlement Agreement, shall have no involvement in or responsibility for the determination or
28 payment of Employee's Taxes and Required Withholding, and shall have no liability for any errors

1 made with respect to such Employee's Taxes and Required Withholding. Although the Settlement
2 Administrator will calculate and pay the standard Employee's Taxes and Required Withholding on the
3 portion of the Individual Settlement Amounts constituting wages on their behalf, Plaintiff and Class
4 Participants represent and understand that they shall be solely responsible for any and all tax obligation
5 associated with their respective Individual Settlement Amounts and Incentive Awards.

6 **8.3. CALCULATION OF THE PAYMENTS FOR INDIVIDUAL MEMBERS OF**
7 **THE PAGA SETTLEMENT CLASS**

8 Each member of the PAGA Settlement Class shall be entitled to receive a portion of the PAGA
9 Payment. The PAGA Payment shall consist of the penalties pursuant to PAGA that the Parties have
10 agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which
11 is \$20,000.00. The PAGA Payment is to be approved by the Court pursuant to Labor Code section
12 2699 and is to be distributed as follows: seventy-five percent (75%) (i.e., \$15,000.00) to the LWDA
13 and twenty-five percent (25%) (i.e., \$5,000.00) to the PAGA Settlement Class.

14 The portion of the PAGA Payment allocated to the PAGA Settlement Class shall be distributed
15 to the PAGA Settlement Class based on the pro rata number of pay periods worked by each particular
16 PAGA Settlement Class member during the PAGA Period as a proportion of all pay periods worked
17 by all PAGA Settlement Class members during the PAGA Period. Each member of the PAGA
18 Settlement Class, including Plaintiff, shall be responsible for the payment of the Employee's Taxes and
19 Required Withholding with respect to their share of the PAGA Payment and shall hold Defendant
20 harmless from any and all liability with regard thereto.

21 Defendant will provide the Settlement Administrator with any information reasonably
22 necessary to confirm the calculation of the number of pay periods worked for each PAGA Settlement
23 Class member, and any other reasonably required information the Settlement Administrator requests
24 to confirm the calculations required under this Settlement Agreement. Defendant shall have no
25 responsibility for deciding the validity of the individual payment amounts allocated to each member of
26 the PAGA Settlement Class or any other payments made pursuant to this Settlement Agreement, shall
27 have no involvement in or responsibility for the determination or payment of Employee's Taxes and
28

1 Required Withholding, and shall have no liability for any errors made with respect to such Employee's
2 Taxes and Required Withholding.

3 The members of the PAGA Settlement Class shall be solely responsible for any and all tax
4 obligation associated with their respective shares of the PAGA Payment.

5 **8.4. TIME FOR PAYMENT OF ATTORNEY FEES AND EXPENSES**

6 The Settlement Administrator shall distribute to Class Counsel any attorney fees and expenses
7 approved by the Court no later than fourteen (14) days after Defendant has paid to the Settlement
8 Administrator the Gross Settlement Amount plus the applicable employer-side payroll taxes.

9 **8.5. TIME FOR PAYMENT OF INCENTIVE AWARD**

10 The Settlement Administrator shall distribute to Plaintiff the Incentive Award approved by the
11 Court no later than fourteen (14) days after Defendant has paid to the Settlement Administrator the
12 Gross Settlement Amount plus the applicable employer-side payroll taxes.

13 **8.6. TIME FOR PAYMENT OF PAGA PAYMENT TO THE LWDA**

14 The Settlement Administrator shall distribute to the LWDA the portion of the PAGA Payment
15 due to it and approved by the Court no later than fourteen (14) days after Defendant has paid to the
16 Settlement Administrator the Gross Settlement Amount plus the applicable employer-side payroll
17 taxes.

18 **8.7. TIME FOR PAYMENT OF TAXES AND REQUIRED WITHHOLDING AND**
19 **INDIVIDUAL SETTLEMENT AMOUNTS**

20 The Settlement Administrator shall make every effort to pay the Employee's Taxes and
21 Required Withholding associated with each Class Participant's Individual Settlement Amount and mail
22 the Individual Settlement Amount to each Class Participant, by first-class United States mail, to the
23 last-known address no later than fourteen (14) days after Defendant has paid to the Settlement
24 Administrator the Gross Settlement Amount plus the applicable employer-side payroll taxes. If the
25 Settlement Administrator is not able to do so within the time period set forth above, it shall so inform
26 Class Counsel and Defense Counsel and provide an approximate date by which the Employee's Taxes
27 and Required Withholding shall be paid and the Individual Settlement Amounts will be mailed. Under
28 no circumstances shall the Settlement Administrator distribute checks to Class Participants until all

1 Individual Settlement Amounts have been considered, calculated, and accounted for, and all of the
2 remaining monetary obligations have been calculated and accounted for.

3 Within two hundred ten (210) days of mailing the Individual Settlement Amounts to Class
4 Participants, the Settlement Administrator shall file with the Court and provide to Class Counsel a
5 declaration of payment. If any Class Participant is deceased, payment shall be made payable to the
6 estate of that Class Member and delivered to the executor or administrator of that estate, unless the
7 Settlement Administrator has received an affidavit or declaration pursuant to California Probate Code
8 section 13101, in which case payment shall be made to the affiant(s) or declarant(s).

9 **8.8. NON-CASHED SETTLEMENT CHECKS**

10 Any funds associated with checks that have not been cashed within one hundred eighty (180)
11 days, will become void and the Individual Settlement Amount associated with the uncashed check will
12 be remitted pursuant to Code of Civil Procedure section 384 to the California State Controller for
13 deposit in the Unclaimed Property Fund in the name of the individual whose check was uncashed. The
14 Parties agree that this disposition results in no “unpaid residue” within the meaning of California Civil
15 Procedure Code section 384, as the entire Net Settlement Amount will be paid out to Class Participants,
16 whether or not they all cash their Individual Settlement Amount checks. Therefore, Defendant shall not
17 be required to pay any interest on said amount. For the purposes of determining whether Defendant has
18 met their financial obligation to pay the Individual Settlement Payment, Defendant will be deemed to
19 have fulfilled its obligation upon the mailing of the check to the Class Member, regardless of whether
20 such Class Member subsequently negotiates the check.

21 **8.9. DISPUTES REGARDING CLASS MEMBER WORKWEEKS DATA OR**
22 **PAYMENT OF INDIVIDUAL SETTLEMENT SHARES**

23 Class Member Workweeks and the corresponding Individual Settlement Amount shall be
24 calculated using the employment and payroll records of Defendant, which presumptively shall be
25 deemed to be full, complete, and accurate for purposes of this Settlement Agreement. To overcome
26 that presumption, any Class Member objecting to the accuracy of the number of Workweeks or amount
27 of the Individual Settlement Amount must submit documentary evidence, such as pay stubs or other
28 written employment records, to the Settlement Administrator. Each Class Member may dispute the

1 number of Workweeks or their estimated Individual Settlement Amount contained on their Class
 2 Notice (“Workweeks Dispute”). Any such Workweeks Dispute must be mailed or faxed to the
 3 Settlement Administrator by the Class Member, postmarked or fax-stamped on or before the Response
 4 Deadline. The Settlement Administrator shall immediately provide copies of all disputes to counsel for
 5 Defendant, shall inform Class Counsel of the dispute without disclosing the identity of the Class
 6 Member making the dispute, and shall immediately attempt to resolve all such disputes directly with
 7 relevant Class Members with the assistance of Defendant and Defense Counsel. If the dispute cannot
 8 be resolved, it shall be submitted to the Settlement Administrator for its final, non-appealable decision.
 9 The Settlement Administrator shall use its best efforts to resolve all such disputes prior to the Effective
 10 Date. If, however, a dispute arises or is not resolved until after the Settlement Amount has been
 11 distributed, the initial calculation shall stand (as Defendant shall be under no obligation to pay any
 12 amounts in excess of the Gross Settlement Amount under this Settlement Agreement).

13 **9. NULLIFICATION OF THIS SETTLEMENT AGREEMENT**

14 **9.1. NON-APPROVAL OF THIS SETTLEMENT AGREEMENT**

15 The Class Settlement and conditional class certification shall be considered null and void, and
 16 neither the Class Settlement, conditional class certification, nor any of the related negotiations or
 17 proceedings, shall be of any force or effect, and all Parties to the Class Settlement shall stand in the
 18 same position, without prejudice, as if the Class Settlement had been neither entered into nor filed with
 19 the Court, if any of the following occur: (a) the Court should for any reason fail to approve this
 20 Settlement Agreement in the form agreed to by the Parties; (b) the Court should for any reason fail to
 21 enter a judgment with prejudice of the Action, or (c) the approval of the Class Settlement and judgment
 22 is reversed, modified, or declared or rendered void. Notwithstanding the foregoing, the Parties may
 23 attempt in good faith to cure any perceived defects in this Settlement Agreement to facilitate approval.

24 **9.2. PARTIES’ RIGHTS TO VOID CLASS SETTLEMENT; ESCALATOR**
 25 **PROVISION**

26 11. If 10% or more members of the Settlement Class timely submit Opt Out requests,
 27 Defendant(s) shall have the right (but not the obligation) to void the settlement described in this
 28 Settlement Agreement. If the number of workweeks worked by the Class Members for the period of

1 January 16, 2020 through July 29, 2024, is greater than 10% above that estimated by Defendant(s) at
2 mediation of 5,953, then the GSA shall be increased proportionately for each additional workweek
3 above the 10% buffer. By way of example, if the workweeks amount is 11% greater, the GSA will
4 increase by 1%. If this provision is triggered so as to increase the GSA, the Parties agree that the
5 portion of the GSA allocated to attorneys' fees will increase proportionally such that the total amount
6 of attorneys' fees remains one-third of the GSA after the upward adjustment required by this provision
7 is implemented.

8 **9.3. INVALIDATION**

9 Invalidation of any material portion of this Settlement Agreement shall invalidate the Class
10 Settlement in its entirety, unless the Parties subsequently agree in writing that the remaining provisions
11 of the Class Settlement are to remain in full force and effect.

12 **9.4. STAY ON APPEAL**

13 If a timely appeal from the approval of the Class Settlement and judgment, the judgment shall
14 be stayed, and Defendant shall not be obligated to fund the Gross Settlement Amount or take any other
15 actions required by this Settlement Agreement until all appeal rights have been exhausted by operation
16 of law.

17 **10. MOTIONS FOR COURT APPROVAL**

18 **10.1. PRELIMINARY APPROVAL**

19 As soon as practicable after execution of this Settlement Agreement, Class Counsel will submit
20 this Settlement Agreement to the Court along with a Motion for Preliminary Approval of the Class
21 Settlement. Each party shall cooperate to present the Class Settlement to the Court for preliminary
22 approval in a timely fashion.

23 **10.2. FINAL APPROVAL**

24 The Final Approval and Fairness Hearing shall be held before the Court. At the Final Approval
25 and Fairness Hearing, Plaintiff shall move the Court for the entry of the final order certifying the
26 Settlement Class for settlement purposes only and approving the Class Settlement as being fair,
27 reasonable, and adequate to the Class Participants within the meaning of California Rules of Court,
28 Rule 3.769, subdivisions (c), (d) and (e), and for the entry of a final judgment of the Action consistent

1 with the terms of the Class Settlement and rule 3.769, subdivision (h), of the California Rules of Court.
2 Class Counsel and Defense Counsel shall submit to the Court such pleadings and/or evidence as may
3 be required for the Court's determination.

4 **11. RELEASES AND WAIVERS**

5 **11.1. RELEASE OF CLAIMS BY THE SETTLEMENT CLASS**

6 Upon the Effective Date, the Releasing Parties shall be deemed to each release the Released
7 Parties, and each of them, of and from any and all Released Claims arising during the Class Period. It
8 is the desire of the Parties and the Releasing Parties to fully, finally, and forever settle, compromise,
9 and discharge the Released Claims. Each of the Releasing Parties, including each Class Participant,
10 will be bound by the release of Released Claims as a result of the Class Settlement and to the terms of
11 the final judgment and the satisfaction of such judgment.

12 Class Participants will be deemed to have acknowledged and agreed that their claims for wages
13 and/or penalties in the Action are disputed, and that their Individual Settlement Amount constitutes
14 payment of all sums allegedly due to them. Class Participants will be deemed to have acknowledged
15 and agreed that California Labor Code section 206.5 is not applicable to the Individual Settlement
16 Amount. That section provides in pertinent part as follows:

17 "An employer shall not require the execution of a release of a claim or right on account
18 of wages due, or to become due, or made as an advance on wages to be earned, unless
19 payment of those wages has been made."

20 **11.2. RELEASE OF CLAIMS BY THE PAGA SETTLEMENT CLASS**

21 Upon the Effective Date, the PAGA Settlement Class, including Plaintiff as a private attorney
22 general on behalf of the State of California, shall be deemed to each release the Released Parties, and
23 each of them, of and from any and all Released Claims insofar as they could be asserted under Labor
24 Code sections 2698 through 2699.6, arising during the PAGA Period. It is the desire of the Parties and
25 the PAGA Settlement Class to fully, finally, and forever settle, compromise, and discharge the Released
26 Claims insofar as they could be asserted under Labor Code sections 2698 through 2699.6. Each of the
27 PAGA Settlement Class, including Plaintiff as a private attorney general on behalf of the State of
28

1 California, will be bound by this release as a result of the Class Settlement and to the terms of the final
2 judgment and the satisfaction of such judgment.

3 **11.3. RELEASE OF CLAIMS BY PLAINTIFF**

4 Plaintiff, on behalf of himself and his dependents, heirs and assigns, beneficiaries, devisees,
5 legatees, executors, administrators, agents, trustees, conservators, guardians, personal representatives,
6 and successors-in-interest, whether individual, class, representative, legal, equitable, direct or indirect,
7 or any other type or in any other capacity, shall and does hereby forever release, discharge and agree
8 to hold harmless the Released Parties from any and all charges, complaints, claims, liabilities,
9 obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights,
10 demands, costs, losses, debts and expenses (including attorney fees and costs), known or unknown, at
11 law or in equity, which he may now have or may have after the signing of this Settlement Agreement,
12 arising out of or in any way connected with his employment with Defendant including, the Released
13 Claims, claims that were asserted or could have been asserted in the Complaint, and any and all
14 transactions, occurrences, or matters between the Parties occurring prior to the date this Settlement
15 Agreement is fully executed. Without limiting the generality of the foregoing, this release shall include,
16 but not be limited to, any and all claims under: **(a)** the Americans with Disabilities Act; **(b)** Title VII
17 of the Civil Rights Act of 1964; **(c)** the Civil Rights Act of 1991; **(d)** 42 U.S.C. § 1981; **(e)** the Age
18 Discrimination in Employment Act; **(f)** the Fair Labor Standards Act; **(g)** the Equal Pay Act; **(h)** the
19 Employee Retirement Income Security Act, as amended; **(i)** the Consolidated Omnibus Budget
20 Reconciliation Act; **(j)** the Rehabilitation Act of 1973; **(k)** the Family and Medical Leave Act; **(l)** the
21 Civil Rights Act of 1966; **(m)** the California Fair Employment and Housing Act; **(n)** the California
22 Constitution; **(o)** the California Labor Code; **(p)** the California Government Code; **(q)** the California
23 Civil Code; and **(r)** any and all other federal, state, and local statutes, ordinances, regulations, rules,
24 and other laws, and any and all claims based on constitutional, statutory, common law, or regulatory
25 grounds as well as any other claims based on theories of wrongful or constructive discharge, breach of
26 contract or implied contract, fraud, misrepresentation, promissory estoppel, or intentional infliction of
27 emotional distress, negligent infliction of emotional distress, or damages under any other federal, state,
28 or local statutes, ordinances, regulations, rules, or laws. This release is for any and all relief, no matter

1 how denominated, including, but not limited to, back pay, front pay, vacation pay, bonuses,
 2 compensatory damages, tortious damages, liquidated damages, punitive damages, damages for pain
 3 and suffering, and attorney fees and costs, and Plaintiff hereby forever releases, discharges and agrees
 4 to hold harmless Defendant and the Released Parties from any and all claims for attorney fees and costs
 5 arising out of the matters released in this Settlement Agreement.

6 Plaintiff specifically acknowledges that he is aware of and familiar with the provisions of
 7 California Civil Code section 1542, which provides as follows:

8 “A general release does not extend to claims that the creditor or releasing party does not
 9 know or suspect to exist in his or her favor at the time of executing the release and that,
 10 if known by him or her, would have materially affected his or her settlement with the
 11 debtor or released party.”
 12

13 Plaintiff, being aware of California Civil Code section 1542, hereby expressly waives and
 14 relinquishes all rights and benefits he may have under section 1542 as well as any other statutes or
 15 common law principles of a similar effect. Plaintiff may hereafter discover facts in addition to or
 16 different from those which he now knows or believes to be true with respect to the subject matter of all
 17 the claims referenced herein, but agrees that, upon the Effective Date, Plaintiff shall and hereby does
 18 fully, finally, and forever settle and release any and all claims against the Released Parties, known or
 19 unknown, suspected or unsuspected, contingent or non-contingent, that were asserted or could have
 20 been asserted upon any theory of law or equity without regard to the subsequent discovery of existence
 21 of such different or additional facts.

22 **11.4. CIRCULAR 230 DISCLAIMER**

23 Each party to this Settlement Agreement (for purposes of this section, the “Acknowledging
 24 Party”; and each party to this Settlement Agreement other than the Acknowledging Party, an “Other
 25 Party”) acknowledges and agrees that (1) no provision of this Settlement Agreement, and no written
 26 communication or disclosure between or among the parties or their attorneys and other advisers, is or
 27 was intended to be, nor shall any such communication or disclosure constitute or be construed or be
 28 relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31

1 C.F.R. Part 10); (2) the Acknowledging Party (a) has relied exclusively upon her or its own
2 independent legal and tax advisers for advice (including tax advice) in connection with this Settlement
3 Agreement, (b) has not entered into this Settlement Agreement based upon the recommendation of any
4 other party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any
5 communication or disclosure by any attorney or advisor to any other party to avoid any tax penalty that
6 may be imposed on the Acknowledging Party; and (3) no attorney or advisor to any other party has
7 imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies
8 (regardless of whether such limitation is legally binding) upon disclosure by the Acknowledging Party
9 of the tax treatment or tax structure of any transaction, including any transaction contemplated by this
10 Settlement Agreement.

11 **12. DUTIES OF THE PARTIES**

12 **12.1. MUTUAL FULL COOPERATION**

13 The Parties agree to cooperate fully with one another to accomplish and implement the terms
14 of this Settlement Agreement. Such cooperation shall include, but not be limited to, execution of such
15 other documents and the taking of such other actions as may reasonably be necessary to fulfill the terms
16 of this Settlement Agreement. The Parties shall use their best efforts, including all efforts contemplated
17 by this Settlement Agreement and any other efforts that may become necessary by court order or
18 otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable
19 after execution of this Settlement Agreement, Class Counsel, with the cooperation of Defendant and
20 Defense Counsel, shall take all necessary and reasonable steps to secure the Court's final approval of
21 this Settlement Agreement.

22 **12.2. DUTY TO SUPPORT AND DEFEND THE CLASS SETTLEMENT**

23 The Parties agree to abide by all of the terms of this Settlement Agreement in good faith and to
24 support the Class Settlement fully and to use their best efforts to defend this Class Settlement from any
25 legal challenge, whether by appeal or collateral attack.

26 **12.3. DUTIES PRIOR TO COURT APPROVAL**

27 Class Counsel shall promptly submit this Settlement Agreement to the Court for preliminary
28 approval and determination by the Court as to its fairness, adequacy, and reasonableness, and to the

1 LWDA as required pursuant to Labor Code sections 2698, *et seq.* Promptly upon execution of this
2 Settlement Agreement, Class Counsel shall apply to the Court for the entry of a preliminary order
3 scheduling a hearing on the question of whether the proposed Class Settlement should be approved as
4 fair, reasonable, and adequate as to the Class Members, approving as to form and content the proposed
5 Class Notice and Share Form attached hereto as **Exhibit 1** and **Exhibit 2**, respectively, and directing
6 the mailing of the Class Notice to Class Members. While Defendant reserves its right to object to facts
7 or assertions made in the moving papers, Defendant shall file a notice of non-opposition to the granting
8 of the motion for preliminary approval or join in the motion, provided that the motion for preliminary
9 approval does not contradict the terms of this Settlement Agreement.

10 **13. MISCELLANEOUS PROVISIONS**

11 **13.1. VOIDING THIS SETTLEMENT AGREEMENT**

12 Pending Court approval and other than as provided herein, if any of the material conditions set
13 forth in this Settlement Agreement are not met and satisfied, this Settlement Agreement may, at the
14 option of either Plaintiff or Defendant, be ineffective, void, and of no further force and effect, and may
15 not be used or be admissible in any subsequent proceeding, either in this Court or in any other court or
16 forum. If either Party decides to void the Settlement Agreement, then the Settlement Agreement and
17 conditional class certification shall be considered void, and neither the Settlement Agreement,
18 conditional class certification, nor any of the related negotiations or proceedings, shall be of any force
19 or effect, and the Parties shall stand in the same position, without prejudice, as if this Settlement
20 Agreement had been neither entered into nor filed with the Court. Should any Party choose to void the
21 Class Settlement under this subsection, such Party shall be responsible for all Settlement Administrator
22 fees and costs actually incurred.

23 **13.2. DIFFERENT FACTS**

24 The Parties acknowledge that, except for matters expressly represented herein, the facts in
25 relation to the dispute and all claims released by the terms of this Settlement Agreement may turn out
26 to be different from the facts now known by each party and/or its counsel, or believed by such Party or
27 counsel to be true, and each Party therefore expressly assumes the risk of the existence of different or
28

1 presently unknown facts, and agrees that this Settlement Agreement shall be in all respects effective
2 and binding despite such difference.

3 **13.3. NO PRIOR ASSIGNMENTS**

4 The Parties represent, covenant, and warrant that they have not directly or indirectly assigned,
5 transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any
6 portion of any liability, claim, demand, action, cause of action, or right herein released and discharged
7 except as set forth herein.

8 **13.4. NON-ADMISSION**

9 Nothing in this Settlement Agreement shall be construed as or deemed to be an admission by
10 any Party of any liability, culpability, negligence, or wrongdoing toward any other Party, or any other
11 person, and the Parties specifically disclaim any liability, culpability, negligence, or wrongdoing
12 toward each other or any other person. Each of the Parties has entered into this Settlement Agreement
13 with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses,
14 and contingencies. Nothing herein shall constitute any admission by Defendant of wrongdoing or
15 liability, or of the truth of any factual allegations in the Action. Nothing herein shall constitute any
16 admission by Defendant regarding the merits of the Claims in this Action, including but not limited to
17 claims for unpaid wages or violations under California or federal law. Nothing herein shall constitute
18 an admission by Defendant that the Action was properly brought as a class or representative action
19 other than for settlement purposes. To the contrary, Defendant has denied and continues to deny each
20 and every material factual allegation and all Claims. To this end, the Class Settlement of the Action,
21 the negotiation and execution of this Settlement Agreement, and all acts performed or documents
22 executed pursuant to or in furtherance of this Settlement Agreement or the Class Settlement are not,
23 shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or
24 liability on the part of Defendant or of the truth of any of the factual allegations in the Complaint in the
25 Action; and are not, shall not be deemed to be, and may not be used as, an admission or evidence of
26 any fault or omission on the part of Defendant in any civil, criminal, or administrative proceeding in
27 any court, administrative agency, or other tribunal.
28

1 **13.5. NON-EVIDENTIARY USE**

2 Neither this Settlement Agreement nor any of its terms, nor any statements or conduct in the
3 negotiation or drafting of it, shall be offered or used as evidence by Plaintiff, any Class Member
4 (including any individual who requested to be excluded from the Settlement Class), Defendant, or its,
5 her, his, or their respective counsel, in the Action, except as is reasonably necessary to effectuate the
6 Settlement Agreement's purpose and terms. This Settlement Agreement may, however, be used by
7 Defendant and the Released Parties to prove or defend against any claim released herein by any Class
8 Member in any judicial, quasi-judicial, administrative, or governmental proceeding.

9 **13.6. MEDIA OR PRESS**

10 Plaintiff and Defendant, and their respective counsel, recognize, accept, and agree that the
11 Parties to this Settlement Agreement desire that the terms of this Settlement Agreement, the fact of the
12 Class Settlement embodied in this Settlement Agreement, the disposition of the Action, the Action, and
13 all matters relating to the litigation of the Action, including discovery proceedings therein, and evidence
14 obtained during the course of the Action, shall not be discussed with or presented to the media or press.

15 **13.7. NON-RETALIATION**

16 Defendant understands and acknowledges that it has a legal obligation to not retaliate against
17 any Class Member who elects to participate in the Class Settlement or elects to Opt Out of the Class
18 Settlement. Defendant will refer any inquiries regarding this Class Settlement to the Settlement
19 Administrator or Class Counsel and will not discourage Class Members who are employees, directly
20 or indirectly, from making claims, opting out, or objecting to the Class Settlement. None of the Parties,
21 or their respective attorneys or agents, shall solicit or encourage any Class Members, directly or
22 indirectly, to Opt Out of the Class Settlement.

23 **13.8. CONSTRUCTION**

24 The Parties agree that the terms and conditions of this Settlement Agreement are the result of
25 lengthy, intensive, arms-length, non-collusive negotiations between the Parties and that this Settlement
26 Agreement is not to be construed in favor of or against any party by reason of the extent to which any
27 party or its counsel participated in the drafting of this Settlement Agreement. If any of the dates in this
28

1 Settlement Agreement fall on a weekend, bank or court holiday, the time to act shall be extended to the
2 next business day.

3 **13.9. GOVERNING LAW**

4 This Settlement Agreement is intended to and shall be governed by the laws of the State of
5 California, without regard to conflict of law principles, in all respects, including execution,
6 interpretation, performance, and enforcement.

7 **13.10. NOTICES**

8 Except for Class Member notices required to be made by the Settlement Administrator, all
9 notices or other communications required or permitted under this Settlement Agreement shall be in
10 writing and shall be sufficiently given if delivered in person to the party or their counsel by U.S.
11 certified mail, postage prepaid, e-mail, facsimile, or overnight delivery addressed to the address of the
12 party appearing in this Settlement Agreement.

13 **13.11. CAPTIONS AND INTERPRETATIONS**

14 Section titles or captions contained herein are inserted as a matter of convenience and for
15 reference only and in no way define, limit, extend, or describe the scope of this Settlement Agreement
16 or any provision thereof.

17 **13.12. MODIFICATION**

18 This Settlement Agreement may not be changed, altered, or modified, except in writing signed
19 by the Parties or the Parties' counsel on their behalf. If preliminary or final approval of this Settlement
20 Agreement has been granted by the Court, then any such amendments or modifications to this
21 Settlement Agreement shall be approved by the Court. This Settlement Agreement may not be
22 discharged except by performance in accordance with its terms or by a writing signed by the Parties.

23 **13.13. INTEGRATION CLAUSE**

24 This Settlement Agreement contains the entire agreement between the Parties relating to the
25 Class Settlement of the Action and the transactions contemplated thereby, and all prior or
26 contemporaneous agreements, understandings, representations, and statements, whether oral or written,
27 and whether by a party or such party's legal counsel, are hereby superseded. No rights under this
28 Settlement Agreement may be waived except in writing as provided above.

1 Dated: _____

Anthony Del Villar
Plaintiff and Class Representative

2
3
4 **DEFENDANT:**

5 Dated: 12/18/2024

THA Heating & Air, Inc.

6
7 *Matthew Metanat*

8 By: Matthew Metanat

9 Title: President

10
11 **APPROVED AS TO FORM BY COUNSEL**

12 **CLASS COUNSEL:**

13
14 Dated: _____

Melmed Law Group P.C.

15
16 _____
Jonathan Melmed
Attorneys for Plaintiff

17
18
19 **DEFENDANT'S COUNSEL:**

20 Dated: _____

Jackson Lewis P.C.

21
22 _____
Sean M. Bothamley
Attorneys for Defendant

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25 4934-4070-1446, v. 1