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Attorneys for Plaintiff MICHAEL HONEA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF IMPERIAL

MICHAEL HONEA, an individual, on behalf
of himself and on behalf of all persons
similarly situated,

Plaintiff,

v.

SPENCER CONSTRUCTION LLC, a
Limited Liability Company; and DOES 1
through 50, inclusive,

Defendants.

Case No. ECU001860

**[PROPOSED] ORDER GRANTING FINAL
APPROVAL**

Date: June 29, 2023
Time: 8:30 a.m.

Judge: Hon. Jeffrey B. Jones
Dept.: 7

1 Plaintiff's motion for an order finally approving the Stipulation of Settlement of Class and
2 PAGA Action Claims and Release of Claims ("Agreement") and Motion for Class Counsel Award
3 and Class Representative Service Award duly came on for hearing on June 29, 2023, before the
4 above-entitled Court. Zakay Law Group, APLC, the JCL Law Firm, APC, and Blumenthal,
5 Nordrehaug, Bhowmik & De Blouw, LLP appeared on behalf of Plaintiff MICHAEL HONEA
6 ("Plaintiff"). Ogletree, Deakins, Nash, Smoak & Stewart, P.C. appeared on behalf of Defendant
7 SPENCER CONSTRUCTION LLC, a Limited Liability Company (hereinafter "Defendant").

8 **I.**

9 **FINDINGS**

10 Based on the oral and written argument and evidence presented in connection with the
11 motion, the Court makes the following findings:

12 1. All capitalized terms used herein shall have the same meaning as defined in
13 the Agreement.

14 2. This Court has jurisdiction over the subject matter of this litigation pending
15 in the California Superior Court for the County of San Imperial ("Court"), Case No. ECU001860,
16 entitled *Honea v. Spencer Construction LLC* and over all Parties to this litigation, including the
17 Class.

18 **Preliminary Approval of the Settlement**

19 3. On October 31, 2022, the Court granted preliminary approval of a class-wide
20 settlement. At this same time the court approved certification of a provisional settlement class for
21 settlement purposes only. The Court confirms this Order and finally approves the settlement and
22 the certification of the Class.

23 **Notice to the Class**

24 4. In compliance with the Preliminary Approval Order, the Notice Packet was
25 mailed by first class mail to the Class Members at their last known addresses on February 28, 2023.
26 Mailing of the Notice Packet to their last known addresses was the best notice practicable under the
27 circumstances and was reasonably calculated to communicate actual notice of the litigation and the
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1 proposed settlement to the members of the Class Members. The Court finds that the Notice Packet
2 provided fully satisfies the requirements of California Rules of Court, rule 3.769.

3 5. The Response Deadline for opting out or objecting was April 14, 2023. There
4 was an adequate interval between notice and deadline to permit Class Members to choose what to
5 do and act on their decision. No Class Members objected. No Class Members requested exclusion.

6 **Fairness Of The Settlement**

7 6. The Agreement provides for a Gross Settlement Amount of \$150,000.00.
8 The Agreement is entitled to a presumption of fairness. (*Dunk v. Ford Motor Co.* (1996) 48
9 Cal.App.4th 1794, 1801.)

10 a. The settlement was reached through arms-length bargaining between
11 the Parties. There is no evidence of any collusion between the Parties in reaching the proposed
12 settlement.

13 b. The Parties' investigation and discovery have been sufficient to allow
14 the Court and counsel to act intelligently.

15 c. Counsel for all parties are experienced in similar employment class
16 action litigation and have previously settled similar class claims on behalf of employees claiming
17 compensation. All counsel recommended approval of the Settlement.

18 d. No objections were received. No requests for exclusion were
19 received.

20 e. The participation rate is high. All Class Members will be
21 participating in the Settlement and will be sent settlement payments.

22 7. The consideration to be given to the Class Members under the terms of the
23 Agreement is fair, reasonable, and adequate considering the strengths and weaknesses of the claims
24 asserted in this Action and is fair, reasonable, and adequate compensation for the release of the
25 Released Class Claims and Released PAGA Claims, given the uncertainties and risks of the
26 litigation and the delays which would ensue from continued prosecution of the Action.

27 8. The Agreement is finally approved as fair, adequate, and reasonable and in
28 the best interests of the Settlement Class Members.

1 **PAGA Payment**

2 9. The Agreement provides for a payment of PAGA Settlement in the amount
3 of \$5,000.00. The Court has reviewed the PAGA Settlement and finds and determines that the
4 PAGA Settlement and the allocation of \$3,750 to LWDA and \$1,250 of the PAGA Settlement to
5 Aggrieved Employees is fair and reasonable and complies with the requirements set forth in *Moniz*
6 *v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56.

7 **Class Counsel Award**

8 10. The Agreement provides for a Class Counsel Award in the amount of up to
9 Fifty-Nine Thousand, Seven Hundred Forty-One Dollars and Fifty-Four Cents (\$59,741.54).
10 Subject to Court approval, the Class Counsel Award consists of attorneys' fees equal to one-third
11 (1/3) of the Gross Settlement Amount, or Fifty Thousand Dollars and Zero Cents (\$50,000.00) and
12 reimbursement of costs and expenses in the amount of Nine Thousand, Seven Hundred Forty-One
13 Dollars and Fifty-Four Cents (\$9,741.54).

14 11. A Class Counsel Award of Fifty-Nine Thousand, Seven Hundred Forty-One
15 Dollars and Fifty-Four Cents (\$59,741.54) comprised of attorneys' fees in the amount of Fifty
16 Thousand Dollars and Zero Cents (\$50,000.00) and reimbursement of costs and expenses in the
17 amount of Nine Thousand, Seven Hundred Forty-One Dollars and Fifty-Four Cents (\$9,741.54) is
18 reasonable in light of the contingent nature of Class Counsel's fee, the hours worked by Class
19 Counsel, and the results achieved by Class Counsel. The requested attorneys' fee award represents
20 1/3 of the common fund, which is reasonable, and is supported by Class Counsel's lodestar.

21 **Class Representative Service Award**

22 12. The Agreement provides for a Class Representative Service Award of up to
23 Ten Thousand Dollars and Zero Cents (\$10,000.00) for Plaintiff, Michael Honea, subject to the
24 Court's approval. The Court finds that the amount of Ten Thousand Dollars and Zero Cents
25 (\$10,000.00) is reasonable in light of the risks and burdens undertaken by the Plaintiff in this class
26 action litigation.

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1 **Claims Administration Expenses**

2 13. The Agreement provides for Claims Administration Expenses to be paid in
3 an amount not to exceed \$8,000.00. The Declaration of the Settlement Administrator provides that
4 the actual claims administration expenses were \$8,000.00. The amount of this payment is
5 reasonable in light of the work performed by the Settlement Administrator.

6 **II.**

7 **ORDERS**

8 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:

9 1. The Class is certified for the purposes of settlement only. The Settlement
10 Class is hereby defined to include:

11 All non-exempt employees who are or previously were employed by Defendant and
12 performed work in California during the period between April 15, 2017 to February
13 7, 2022.

14 2. There are 121 members of the Class. Every person in the Class who did not
15 opt out is a Settlement Class Member. After providing Notice to the Class, there are zero opt-outs
16 to the Settlement.

17 3. The Agreement is hereby approved as fair, reasonable, adequate, and in the
18 best interest of the Class. The Parties are ordered to effectuate the Settlement in accordance with
19 this Order and the terms of the Agreement.

20 4. Defendant shall fund the Gross Settlement Amount on the Funding Date. In
21 exchange the Class Members shall release the “Released Parties” from the “Released Class Claims”
22 and the “Aggrieved Employees” shall release the “Released Parties” from the “Released PAGA
23 Claims.”

24 a. The “Released Parties” means Defendant and each of its past, present,
25 and/or future, direct, and/or indirect, officers, directors, members, managers, non-exempt
26 employees, agents, representatives, attorneys, insurers, partners, investors, shareholders,
27 administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors,
28 assigns, and joint ventures.

1 b. The “Released Class Claims” are defined as all class claims alleged
2 in the operative complaint which occurred during the Class Period, and expressly excluding all other
3 claims, including claims for vested benefits (other than vacation and/or paid time off to the extent
4 those are alleged in the operative complaint), wrongful termination, unemployment insurance,
5 disability, social security, workers' compensation, and class claims outside of the Class Period.

6 c. The “Aggrieved Employees” are defined as all non-exempt
7 employees who are or previously were employed by Defendant and performed work in California
8 during the PAGA Period. The PAGA Period is defined as the period between November 20, 2019
9 to February 7, 2022.

10 d. The “Released PAGA Claims” are defined as all PAGA claims
11 alleged in the operative complaint and Plaintiff’s PAGA notice to the LWDA which occurred during
12 the PAGA Period, and expressly excluding all other claims, including claims for vested benefits
13 (other than vacation and/or paid time off to the extent those are alleged in the operative complaint
14 and Plaintiff’s PAGA notice to the LWDA), wrongful termination, unemployment insurance,
15 disability, social security, workers' compensation, and PAGA claims outside of the PAGA Period

16 5. Class Counsel are awarded attorneys’ fees in the amount of \$59,741.54
17 comprised of attorneys’ fees in the amount of Fifty Thousand Dollars and Zero Cents (\$50,000.00)
18 and reimbursement of costs and expenses in the amount of Nine Thousand, Seven Hundred Forty-
19 One Dollars and Fifty-Four Cents (\$9,741.54). Class Counsel shall not seek or obtain any other
20 compensation or reimbursement from Defendants, Plaintiff, or members of the Class.

21 6. The payment of the Class Representative Service Award to the Plaintiff in
22 the amount of \$10,000.00 is approved.

23 7. The payment of \$8,000.00 to the Settlement Administrator for Claims
24 Administration Expenses is approved.

25 8. The PAGA Settlement of \$5,000.00 is hereby approved as fair, reasonable,
26 adequate and adequately protects the interests of the public and the LWDA. Further, the Court finds
27 that Plaintiff and Class Counsel negotiated the PAGA Settlement at arms-length, absent of any fraud
28 or collusion.

1 9. Final Judgment is hereby entered in this action. The Final Judgment shall
2 bind each Participating Class Member.

3 10. Final Judgment shall also bind Plaintiffs, acting on behalf of the State of
4 California and all Aggrieved Employees, pursuant to the California Private Attorneys' General Act
5 ("PAGA").

6 11. The Court further finds and determines that Class Counsel satisfied California
7 Labor Code § 2699(l)(2) by giving the LWDA notice of the proposed Settlement of claims arising
8 under the Private Attorney General Act ("PAGA") on September 30, 2022, and again on June 5,
9 2023.

10 12. The Court orders Class Counsel to comply with California Labor Code §
11 2699(l)(3) by providing the LWDA a copy of this order within ten (10) calendar days of the Court's
12 entry of this Order.

13 13. The Agreement is not an admission by Defendant, nor is this Final Approval
14 Order and Judgment, a finding of the validity of any claims in the Action or of any wrongdoing by
15 Defendant. Neither this Final Approval Order, the Settlement, nor any document referred to herein,
16 nor any action taken to carry out the Settlement is, may be construed as, or may be used as an
17 admission by or against Defendant of any fault, wrongdoing, or liability whatsoever. The entering
18 into or carrying out of the Agreement, and any negotiations or proceedings related thereto, shall not
19 in any event be construed as, or deemed to be evidence of, an admission or concession with regard
20 to the denials or defenses by Defendant and shall not be offered in evidence in any action or
21 proceeding against Defendant in any court, administrative agency or other tribunal for any purpose
22 as an admission whatsoever other than to enforce the provisions of this Final Approval Order and
23 Judgment, the Settlement, or any related agreement or release. Notwithstanding these restrictions,
24 any of the Parties may file in the Action or in any other proceeding this Final Approval Order and
25 Judgment, the Agreement, or any other papers and records on file in the Action as evidence of the
26 Settlement to support a defense of res judicata, collateral estoppel, release, or other theory of claim
27 or issue preclusion or similar defense as to the claims being released by the Settlement.

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1 14. Notice of entry of this Final Approval Order and Judgment shall be given to
2 Class Counsel on behalf of Plaintiff and all Class Members. It shall not be necessary to send notice
3 of entry of this Final Approval Order and Judgment to individual Class Members and the Final
4 Approval Order and Judgment shall be posted on Settlement Administrator's website as indicated
5 in the Notice Packet.

6 15. After entry of Final Judgment, the Court shall retain jurisdiction to construe,
7 interpret, implement, and enforce the Settlement, to hear and resolve any contested challenge to a
8 claim for settlement benefits, and to supervise and adjudicate any dispute arising from or in
9 connection with the distribution of settlement benefits.

10 16. If the Settlement does not become final and effective in accordance with the
11 terms of the Settlement, resulting in the return and/or retention of the Gross Settlement Amount to
12 Defendant consistent with the terms of the Settlement, then this Final Approval Order and Judgment,
13 and all orders entered in connection herewith shall be rendered null and void and shall be vacated.

14 **IT IS SO ORDERED.**

15 DATED: _____, 2023
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19 Hon. Jeffrey B. Jones
20 JUDGE OF THE SUPERIOR COURT
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