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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, on behalf of himself and
on behalf of all persons similarly situated,

PLAINTIFFS,

vs.

SPENCER CONSTRUCTION LLC, a Limited
Liability Company; and DOES 1-50, Inclusive,

DEFENDANTS.

Case No. ECU001860

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: October 31, 2022
Time: 8:30 a.m.

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

1 This matter having come before the Honorable Judge Jeffrey B. Jones of the Superior Court of
2 the State of California, in and for the County of Imperial, at 8:30 a.m. on October 31, 2022, with Jean-
3 Claude Lapuyade, Esq., of the JCL LAW FIRM, APC, Shani O. Zakay, Esq. of the ZAKAY LAW
4 GROUP, APLC, and Nicholas De Blouw, Esq., of BLUMENTHAL NORDREHAUG BHOWMIK DE
5 BLOUW LLP as counsel for plaintiff MICHAEL HONEA ("Plaintiff"), and Tim L. Johnson of
6 OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C. appearing for defendant SPENCER
7 CONSTRUCTIONS, LLC (hereinafter "Defendant"). The Court, having carefully considered the
8 briefs, argument of counsel and all the matters presented to the Court, and good cause appearing, hereby
9 GRANTS Plaintiff's Motion for Preliminary Approval of Class and PAGA Action Settlement.

10 **IT IS HEREBY ORDERED:**

11 1. The Court preliminarily approves the Stipulation of Settlement of Class and PAGA
12 Action Claims and Release of Claims ("Settlement Agreement" or "Agreement"), a true and correct
13 copy of which is attached hereto as **Exhibit "1"**. This is based on the Court's determination that the
14 Settlement Agreement is within the range of possible final approval, pursuant to the provisions of
15 Section 382 of the California Code of Civil Procedure and California Rules of Court, rule 3.769.

16 2. This Order incorporates by reference the definitions in the Agreement, and all terms
17 defined therein shall have the same meaning in this Order as set forth in the Agreement.

18 3. Subject to the terms of the Settlement Agreement, the Gross Settlement Amount that
19 Defendant shall pay is One Hundred Fifty Thousand Dollars (\$150,000.00). It appears to the Court on
20 a preliminary basis that the settlement amount and terms are fair, adequate, and reasonable as to all
21 Class Members when balanced against the probable outcome of further litigation relating to
22 certification, liability, and damages issues. It further appears that investigation and research have been
23 conducted such that counsel for the Parties are able to reasonably evaluate their respective positions. It
24 further appears to the Court that settlement at this time will avoid substantial additional costs by all
25 Parties, as well as avoid the delay and risks that would be presented by the further prosecution of the
26 litigation. It further appears that the Settlement has been reached as the result of intensive, serious, and
27 non-collusive arms-length negotiations.

4. The Court preliminarily finds that the Settlement appears to be within the range of reasonableness of a settlement that could ultimately be given final approval by this Court. The Court has reviewed the monetary recovery that is being granted as part of the Settlement and preliminarily finds that the monetary settlement awards made available to the Class Members are fair, adequate, and reasonable when balanced against the probable outcome of further litigation relating to certification, liability, and damages issues.

5. Plaintiff seeks Class Counsel Award not to exceed one-third of the Gross Settlement Amount, currently estimated to be Fifty Thousand Dollars (\$50,000.00), plus costs and expenses not to exceed Twenty Thousand Dollars (\$20,000), and proposed Class Representative Service Award to the Class Representative, Michael Honea, in an amount not to exceed Ten Thousand Dollars (\$10,000). While these awards appear to be within the range of reasonableness, the Court will not approve the Class Counsel Award or the Class Representative Service Award until the Final Approval Hearing.

6. The Court recognizes that Plaintiff and Defendant stipulate and agree to certification of a class for settlement purposes only. This stipulation will not be deemed admissible in this, or any other proceeding should this Settlement not become final. For settlement purposes only, the Court conditionally certifies the following Class:

“All non-exempt employees who are or previously were employed by Defendant and performed work in California during the Class Period [April 15, 2017, to February 7, 2022].”

7. The Court concludes that, for settlement purposes only, the Class meets the requirements for certification under section 382 of the California Code of Civil Procedure in that: (a) the Class is ascertainable and so numerous that joinder of all members of the Class Members is impracticable; (b) common questions of law and fact predominate, and there is a well-defined community of interest amongst the Class Members with respect to the subject matter of the litigation; (c) the claims of the Class Representative are typical of the claims of the Class Members; (d) the Class Representative will fairly and adequately protect the interests of the Class Members; (e) a class action is superior to other available methods for the efficient adjudication of this controversy; and (f) Class Counsel are qualified

1 to act as counsel for the Class Representative in his individual capacity and as the representative of the
2 Class Members.

3 8. The Court provisionally appoints plaintiff MICHAEL HONEA as the representative of
4 the Class.

5 9. The Court provisionally appoints Jean-Claude Lapuyade, Esq., of the JCL Law Firm,
6 APC, Shani Zakay, Esq., of the Zakay Law Group, APLC, and Nicholas J. De Blouw, Esq., of
7 Blumenthal, Nordrehaug, Bhowmik & De Blouw, LLP as Class Counsel for the Class Members.

8 10. The Court hereby approves, as to form and content, the Proposed Notice of Class Action
9 Settlement (“Notice Packet”) attached to the Agreement as Exhibit “A”. The Court finds that the Notice
10 Packet appears to fully and accurately inform the Class Members and Aggrieved Employees of all
11 material elements of the proposed Settlement, including the right of any Class Member to be excluded
12 from the Class by submitting a written request for exclusion, and of each Class Member’s right and
13 opportunity to object to the Settlement. The Court further finds that the distribution of the notices
14 substantially in the manner and form set forth in the Agreement and this Order meets the requirements
15 of due process, is the most reasonable notice under the circumstances, and shall constitute due and
16 sufficient notice to all persons entitled thereto. The Court orders the mailing of the notices by first class
17 mail, pursuant to the terms set forth in the Agreement.

18 11. The Court hereby appoints ILYM Group, Inc. as Settlement Administrator. Within ten
19 (10) business days after the Preliminary Approval Date, Defendant shall provide to the Settlement
20 Administrator the Class Data, including information regarding Class Members that Defendant will in
21 good faith compile from its records, including each Class Member’s full name; last known address;
22 Social Security Number; and start dates and end dates of employment. Within fourteen (14) calendar
23 days after receiving the Class Data from Defendant, the Settlement Administrator shall mail and email
24 the Notice Packets to all Class Members via first class U.S. Mail and electronic mail using its best
25 judgment to determine the current mailing address for each Class Member.

26 12. The Court hereby preliminarily approves the proposed procedure for exclusion from the
27 Settlement. Any Class Member may individually choose to opt out of and be excluded from the
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1 Settlement as provided in the Notice Packet by following the instructions for requesting exclusion from
2 the Settlement of the Released Class Claims that are set forth in the Notice Packet. All requests for
3 exclusion must be postmarked or received by the Response Deadline which is forty-five (45) days after
4 the date the Notice Packet is mailed to the Class Members or, in the case of a re-mailed Notice Packet,
5 not more than fifteen (15) days from the original Response Deadline. Any such person who chooses to
6 opt out of and be excluded from the Settlement will not be entitled to an Individual Settlement Payment
7 under the Settlement and will not be bound by the Settlement, or have any right to object, appeal or
8 comment thereon. Class Members who have not requested exclusion shall be bound by all
9 determinations of the Court, the Agreement, and Judgment. A request for exclusion may only opt out
10 that particular individual, and any attempt to affect an opt-out of a group, class, or subclass of
11 individuals is not permitted and will be deemed invalid.

12 13. Any Class Member who has not opted out may appear at the final approval hearing and
13 may object or express the Class Member's views regarding the Settlement and may present evidence
14 and file briefs or other papers that may be proper and relevant to the issues to be heard and determined
15 by the Court as provided in the Notice. Class Members will have forty-five (45) days from the date the
16 Settlement Administrator mails the Notice Packet to postmark their written objections to the Settlement
17 Administrator.

18 14. A final approval hearing shall be held before this Court on _____ at
19 _____ AM in Department 7 of the Imperial County Superior Court to determine all necessary matters
20 concerning the Settlement, including: whether the proposed settlement of the Action on the terms and
21 conditions provided for in the Agreement is fair, adequate and reasonable and should be finally
22 approved by the Court; whether an Order Granting Final Approval should be entered herein; whether
23 the plan of allocation contained in the Agreement should be approved as fair, adequate and reasonable
24 to the Class; and to finally approve the Class Counsel Award, Class Representative Award, and the
25 Claims Administration Expenses. All papers in support of the motion for final approval and the motion
26 for Attorneys' Fees, Costs, and Service Award shall be filed with the Court and served on all counsel
27 no later than twenty-eight (28) days following the expiration of the Response Deadline.

15. Neither the Settlement nor any exhibit, document, or instrument delivered thereunder shall be construed as a concession or admission by Defendant in any way, and shall not be used as evidence of, or used against Defendant as an admission or indication in any way, including with respect to any claim of any liability, wrongdoing, fault, or omission by Defendant or with respect to the truth of any allegation asserted by any person. Whether or not the Settlement is finally approved, neither the Settlement, nor any exhibit, document, statement, proceeding or conduct related to the Settlement, nor any reports or accounts thereof, shall in any event be construed as, offered or admitted in evidence as received as or deemed to be evidence for any purpose adverse to the Defendant, including, but not limited to, evidence of a presumption, concession, indication or admission by Defendant of any liability, fault, wrongdoing, omission, concession or damage.

16. In the event the Settlement does not become effective in accordance with the terms of the Agreement, or the Settlement is not finally approved, or is terminated, canceled, or fails to become effective for any reason, this Order shall be rendered null and void and shall be vacated, and the Parties shall revert to their respective positions as of before entering into the Agreement. In such an event, the Court's orders regarding the Settlement, including this Preliminary Approval Order, shall not be used or referred to in litigation for any purpose. Nothing in this paragraph is intended to alter the terms of the Settlement Agreement with respect to the effect of the Settlement Agreement if it is not approved.

17. Pending final determination of whether the Settlement should be approved, Class Representative and all Class Members are barred and enjoined from filing, commencing, prosecuting, intervening in, instigating or in any way participating in the commencement or prosecution of any lawsuit, action or administrative, regulatory, arbitration or other proceeding, in any forum, asserting any claims that are, or relate in any way to, the Released Class Claims, unless and until they submit a timely request for exclusion pursuant to the Agreement.

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18. The Court reserves the right to adjourn or continue the date of the final approval hearing and all dates provided for in the Agreement without further notice to Class Members and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

Dated: _____

JUDGE OF THE SUPERIOR COURT