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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

**DECLARATION OF NATHALIE
HERNANDEZ OF ILYM GROUP, INC., IN
SUPPORT OF MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: June 29, 2023

Time: 8:30 a.m.

Judge: Hon. Jeffrey B. Jones

Dept.: 7

1 I, Nathalie Hernandez, declare as follows:

2 1. I am a resident of the United States of America and am over the age of 18. I am the
3 Operations Manager for ILYM Group, Inc., (herein after referred to as “ILYM Group”), the professional
4 settlement services provider who has been retained by the Parties’ Counsel and subsequently appointed by
5 the Court to serve as the Claims Administrator for the above captioned *Honea v. Spencer Construction, LLC*.
6 matter. I am authorized to make this declaration on behalf of ILYM Group and myself. I have personal
7 knowledge of the facts herein, and, if called upon to testify, I could and would testify competently to such
8 facts.

9 2. ILYM Group has extensive experience in administering Class Action Settlements,
10 including direct mail services, database management, claims processing and settlement fund distribution
11 services for Class Actions ranging in size from 26 to 4.5 million Settlement Class Members.

12 3. ILYM Group was engaged by the Parties’ Counsel and subsequently approved and
13 appointed by the Court to provide notification services and claims administration, pursuant to the terms of
14 the Settlement, in the above referenced Action. Duties performed to-date and to be performed after Final
15 Approval of the Settlement is granted, include: (a) printing and mailing the *Notice of Pendency of Class*
16 *Action Settlement and Final Hearing Date* (referred to as “Notice Packet”); (b) receiving and processing
17 requests for exclusion; (c) resolving Settlement Class Members’ disputes over the number of workweeks
18 Defendants have record of them working during the Class Period, which was pre-printed on their
19 individualized Class Notice; (d) calculating individual settlement award amounts; (e) processing and
20 mailing settlement award checks; (f) handling tax withholdings as required by the Settlement and the law;
21 (g) preparing, issuing and filing tax returns and other applicable tax forms; (h) handling the distribution of
22 any unclaimed funds pursuant to the terms of the Settlement; and (i) performing other tasks as the Parties
23 mutually agree to and/or the Court orders ILYM Group to perform.

24 4. On January 9, 2023, ILYM Group received the Court approved text for the Notice Packet
25 from Counsel for Plaintiff. ILYM Group prepared a draft of the formatted Notice Packet, which was
26 approved by the Parties’ Counsel prior to mailing.

27 5. On February 14, 2023, ILYM Group received the class data file from Counsel for
28 Defendants, which contained the name, social security number, last known mailing address, employment

1 dates, and workweeks for each Settlement Class Member. The data file was uploaded to our database and
2 checked for duplicates and other possible discrepancies. The Class List contained 121 individuals.

3 6. As part of the preparation for mailing, all 121 names and addresses contained in the Class
4 List were then processed against the National Change of Address (“NCOA”) database, maintained by the
5 United States Postal Service (“USPS”), for purposes of updating and confirming the mailing addresses of
6 the Settlement Class Members before mailing of the Notice Packet. The NCOA contains requested change
7 of addresses filed with the USPS. To the extent that an updated address was found in the NCOA database,
8 the updated address was used for the mailing of the Notice Packet. To the extent that no updated address
9 was found in the NCOA database, the original address provided by Counsel for Defendants was used for
10 the mailing of the Notice Packet.

11 7. On February 28, 2023, the Notice Packet was mailed, via U.S First Class Mail, to all 121
12 individuals contained in the Class List. Attached hereto, as **Exhibit A**, is a true and correct copy of the
13 mailed Notice Packet.

14 8. As of the date of this declaration, 8 Notice Packets have been returned to our office as
15 undeliverable. ILYM Group performed a computerized skip trace on the 8 returned Notice Packets that did
16 not have a forwarding address, in an effort to obtain an updated address for purpose of re-mailing the Notice
17 Packet. As a result of this skip trace, 1 updated address was obtained and the Notice Packet was promptly
18 re-mailed to those Settlement Class Member, via U.S First Class Mail.

19 9. As of the date of this declaration, a total of 1 Notice Packet has been re-mailed. Specifically,
20 1 has been re-mailed as a result of ILYM Group’s skip tracing efforts.

21 10. As of the date of this declaration, a total of 7 Notice Packets have been deemed
22 undeliverable. Specifically, 7 have been deemed undeliverable as no updated address was found
23 notwithstanding the skip tracing.

24 11. As of the date of this declaration, ILYM Group has not received any requests for exclusion.
25 The deadline to request exclusion from the Settlement was April 14, 2023.

26 12. As of the date of this declaration, ILYM Group has not received any objections to the
27 Settlement. The deadline to file an objection to the Settlement was April 14, 2023.

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13. As of the date of this declaration, ILYM Group will report a total of 121 Participating Claimants, representing 100% of the 121 Settlement Class Members.

14. Participating Claimants will receive a proportional share of the Net Settlement Fund through individual settlement payments, based on the number of workweeks worked by Class Members during the Class Period. The Net Settlement Fund is the amount remaining after deduction of the Court-approved payments from the Gross Settlement Fund for Class Counsel Fees and Litigation Costs, the Class Representative Enhancement Awards, Claims Administration Fees to ILYM Group, LWDA and the Aggrieved Employees, e.g.,

Gross Settlement Fund	\$ 150,000.00
Class Counsel Fees	\$ 50,000.00
Class Counsel Litigation Costs	\$ 20,000.00
Enhancement Award – Michael Honea	\$ 10,000.00
Administration Fees	\$ 8,000.00
LWDA	\$ 3,750.00
Aggrieved Employees	\$ 1,250.00
Net Settlement Fund (estimated)	\$ 57,000.00

To determine a Participating Claimant's individual settlement award payment, the Net Settlement Fund will be divided by the total number of workweeks worked by all Settlement Class Members during the Class Period, multiplied by the number of workweeks worked by that Participating Claimant. Based on these calculations, the Participating Claimants will receive an estimated average gross payment of \$471.07, with the estimated highest gross payment being \$1,393.91, and the lowest gross payment being \$21.44. Aggrieved employees will receive an estimated average gross payment of \$10.33, the estimated highest gross payment being \$29.37, and the lowest payment being \$0.48.

15. ILYM Group's total fees and costs for services in connection with the administration of this Settlement, which includes fees and costs incurred to-date, as well as anticipated fees and costs for completion of the settlement administration, are \$8,000.00. ILYM Group's work in connection with this matter will continue with the calculation of the settlement award payments, issuance and mailing of the settlement award checks, the necessary tax filing and reporting on such payments, and any other tasks that

1 the Parties mutually agree to and/or the Court orders ILYM Group to perform.

2 I declare under penalty of perjury under the laws of the State of California and the United States
3 that the foregoing is true and correct to the best of my knowledge and that this Declaration was executed
4 this 12th day of May 2023, at Tustin, California.

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9 Nathalie Hernandez
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EXHIBIT “A”

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

(Honea v. Spencer Construction, LLC, County of Imperial Superior Court Case No. ECU001860)

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

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

1. Why did I get this Notice?

A proposed class and PAGA action settlement (the “Settlement”) of this lawsuit pending in the Superior Court for the State of California, County of Imperial (the “Court”) has been reached between Plaintiff Michael Honea (“Plaintiff”) and Defendant Spencer Construction, LLC (hereinafter “Defendant”). The Court has granted preliminary approval of the Settlement. **You may be entitled to receive money from this Settlement.**

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

All non-exempt employees who are or previously were employed by Defendant and performed work in California during the Class Period.

The “Class Period” is the period of time running from April 15, 2017 to February 7, 2022.

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

2. What is this class action lawsuit about?

On April 15, 2021, Plaintiff filed a Complaint against Defendant in the Superior Court of the State of California, County of Imperial. Plaintiff asserted claims that Defendant: (a) Violated California Business and Professions Code § 17200 *et seq.*; (b) Failed to pay minimum wages in violation of California Labor Code §§ 1194, 1197, and 1197.1; (c) Failed to pay overtime wages in violation of California Labor Code §§ 510, *et seq.*; (d) Failed to provide required meal periods in violation of California Labor Code §§ 226.7 & 512, and the applicable IWC Wage Order; (e) Failed to provide required rest periods in violation of California Labor Code §§ 226.7 & 512, and the applicable IWC Wage Order; (f) Failed to reimburse employees for required expenses in violation of Cal. Lab. Code § 2802; (g) Failed to provide accurate and complete itemized wage statements in violation of California Labor Code § 226; (h) Failed to provide wages when due in violation of California Labor Code §§ 201, 202, and 203; (i) Failure to provide personnel files in violation of Cal. Lab. Code section 1198.5; (j) Termination in violation of public policy [Labor Code sections 1102.5 and 6310]; (k) Retaliation in violation of Labor Code section 1102.5, *et seq.*; and (l) Violations of the Private Attorney General Act [Cal. Lab. Code §§2698 *et seq.*]

Defendant denies and disputes all claims asserted in the Action. Specifically, Defendant contended (and continues to contend) that the Action could not properly be maintained as a class or representative action; that Defendant properly paid members of the class all wages and overtime that was due; that Defendant provided members of the class with all legally required meal breaks and rest breaks; that Defendant paid any members of the class all wages due them at the time of their terminations; that Defendant provided accurate, itemized wage statements to members of the class; that Defendant reimbursed expense to members of the class; that Defendant did not violate California Business and Professions Code section 17200 *et seq.*; and that Defendant is not liable for any of the penalties claimed or that could be claimed in the Action.

On February 7, 2022, the Parties participated in an all-day mediation with Louis Marlin, Esq., an experienced mediator of wage and hour class and PAGA actions. The mediation concluded with a settlement, after both sides agreed to a Mediator's proposal. The Court granted preliminary approval of the Settlement on October 31, 2022. At that time, the Court also preliminarily approved the Plaintiff to serve as the Class Representative, and the law firms of JCL Law Firm, APC, Blumenthal, Nordrehaug Bhowmik De Blouw, LLP and Zakay Law Group, APC to serve as Class Counsel.

3. What are the terms of the Settlement?

Gross Settlement Amount. Defendant has agreed to pay an “all in” amount of One Hundred Fifty Thousand Dollars (\$150,000) (the “Gross Settlement Amount”) to fund the settlement. The Gross Settlement Amount includes the payment of all Settlement Shares to Participating Class Members, Class Counsel's attorneys' fees and costs, Settlement Administration Expenses, the LWDA Payment, PAGA Shares, and the Class Representative Service Payments to the Plaintiff.

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

- Settlement Administration Expenses. Payment to the Settlement Administrator, estimated not to exceed \$8,000.00 for expenses, including expenses of sending this Notice, processing opt outs, and distributing settlement payments.
- Attorneys' Fees and Costs. Payment to Class Counsel for Class Counsel Fees Payment of no more than 1/3 of the Gross Settlement Amount (currently \$50,000.00) and a Class Counsel Litigation Expenses Payment of not more than \$20,000.00 for all expenses incurred as documented in Class Counsel's billing records, both subject to Court approval. Class Counsel have been prosecuting the Actions on behalf of Plaintiff and the Class on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses.

- Class Representative Service Payment. Class Representative Service Payment of up to Ten Thousand Dollars (\$10,000.00) to Plaintiff, or such lesser amount as may be approved by the Court, to compensate him for services on behalf of the Class in initiating and prosecuting the Action, and for the risks he undertook.
- PAGA Payment. A payment of \$5,000 relating to Plaintiff's claim under the Private Attorneys General Act ("PAGA"), \$3,750 of which will be paid to the State of California's Labor and Workforce Development Agency ("LWDA") and the remaining \$1,250 will be distributed to PAGA Employees as part of the Net PAGA Amount. You cannot request exclusion from the PAGA Settlement.
- Calculation of Payments to Participating Class Members. After all the above payments of the court-approved Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the Class Representative Service Payments, the LWDA Payment, and the Settlement Administration Expenses are deducted from the Gross Settlement Amount, the remaining portion, called the "Net Settlement Amount," shall be distributed to class members who do **not** request exclusion ("Participating Class Members"). The Settlement Share for each Participating Class Member will be calculated by dividing the Net Settlement Amount by the total number of workweeks for all Participating Class Members that occurred during the Class Period and multiplying the result by each individual Participating Class Member's workweeks that occurred during the Class Period. A "workweek" is defined as a normal seven-day week of work during the Class Period in which, according to Defendant's records, a member of the class worked at least one-day during any such workweek.
- Calculation of PAGA Payments to PAGA Employees. The Net PAGA Amount shall be distributed to PAGA Employees irrespective of whether they exclude themselves or opt-out. The Net PAGA Amount will be divided by the total number of pay periods worked by all PAGA Employees during the PAGA Period, and then taking that number and multiplying it by the number of pay periods worked by each respective PAGA Employee during the PAGA Period. "PAGA Employees" means all non-exempt employees who are or previously were employed by Defendant and performed work in California during the PAGA Period. The PAGA Period means the period of November 20, 2019 to February 7, 2022.

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

Tax Matters. 1/3 of each Settlement Share is allocated to wages. Taxes are withheld from this amount, and each Participating Class Member will be issued an Internal Revenue Service Form W-2 for such payment. 1/3 of each Settlement Share is allocated to interest, 1/3 to penalties and other non-wage payments, and no taxes will be withheld, and each Participating Class Member will be issued an Internal Revenue Service Form 1099 for such payment. In addition, no taxes will be withheld from the PAGA Penalties paid to PAGA Employees, and each PAGA Employee will be issued an Internal Revenue Service Form 1099 for such payment. Neither Class Counsel nor Defendant's counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability. You may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

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

4. What Do I Release Under the Settlement?

Released Claims. Upon entry of final judgment and funding in full of the Gross Settlement Amount by Defendant, Plaintiff and the Participating Class Members shall release all class claims alleged in the operative complaint which occurred during the Class Period, and expressly excluding all other claims, including claims for vested benefits (other than vacation and/or paid time off to the extent those are alleged in the operative complaint),

wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period. The Released PAGA Claims shall be released as follows. As of the Settlement Effective Date and upon funding in full of the Gross Settlement Amount by Defendant, all Aggrieved Employees shall release all Released PAGA Claims, irrespective of whether they opted-out of the class settlement, and will be bound by this PAGA Release (the "PAGA Release"). "Released PAGA Claims" means any all PAGA claims alleged in the operative complaint and Plaintiff's PAGA notice to the LWDA which occurred during the PAGA Period, and expressly excluding all other claims, including claims for vested benefits (other than vacation and/or paid time off to the extent those are alleged in the operative complaint and Plaintiff's notice to the LWDA), wrongful termination, unemployment insurance, disability, social security, workers' compensation, and PAGA claims outside of the PAGA Period.

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

5. How much will my payment be?

Defendant's records reflect that you have «Class_Workweeks» Workweeks worked during the Class Period (April 15, 2017 to February 7, 2022).

Based on this information, your estimated Settlement Share is \$«Class_Estimated_Settlement_Amount».

Defendant's records reflect that you have «PAGA_Pay_Periods» pay periods worked during the PAGA Period (November 20, 2019 to February 7, 2022).

Based on this information, your estimated PAGA Payment Share is \$«PAGA_Estimated_Settlement_Amount».

If you wish to challenge the information set forth above, then you must submit a written, signed dispute challenging the information along with supporting documents, to the Settlement Administrator at the address provided in this Notice no later than April 14, 2023.

6. How can I get a payment?

To get money from the settlement, you do not have to do anything. A check for your settlement payment will be mailed automatically to the same address as this Notice. If your address is incorrect or has changed, you must notify the Settlement Administrator. The Settlement Administrator is: ILYM Group, Inc. (888) 250-6810.

The Court will hold a hearing on June 29, 2023 at 8:30 a.m. to decide whether to finally approve the Settlement. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed within a few months after this hearing. If there are objections or appeals, resolving them can take time, perhaps more than a year. Please be patient. After entry of the Judgment, the Settlement Administrator will provide notice of the final judgment to the Class Members by posting a copy of the Judgment on the administrator's website at www.ilymgroup.com.

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

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

To opt out, you must submit to the Settlement Administrator, by First Class Mail, a written, signed and dated request for exclusion postmarked no later than April 14, 2023. The address for the Settlement Administrator is ILYM Group, Inc. P.O. Box 2031 Tustin, CA 92781. The request for exclusion must state in substance: “I have read the Class Notice and I wish to opt out of the class action and settlement of the case ***Honea, et al., v. Spencer Construction, LLC, Case No. ECU001860***. I understand that by requesting to be excluded from the settlement, I will receive no money from the Settlement described in this Notice.” The request for exclusion must contain your name, address, signature and the last four digits of your Social Security Number for verification purposes. The request for exclusion must be signed by you. No other person may opt out for a member of the Class.

Written requests for exclusion that are postmarked after April 14, 2023, or are incomplete or unsigned will be rejected, and those Class Members will remain bound by the Settlement and the release described above.

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

Any Class Member who has not opted out and believes that the Settlement should not be finally approved by the Court for any reason, may object to the proposed Settlement. Objections may be in writing and state the Class Member’s name, current address, telephone number, the last four digits of the Settlement Class Member’s Social Security Number, and describe why you believe the Settlement is unfair and whether you intend to appear at the final approval hearing. All written objections or other correspondence must also state the name and number of the case, which ***Honea v. Spencer Construction, LLC, Case No. ECU001860***. You may also object without submitting a written objection by appearing at the final approval hearing scheduled as described in Section 9 below.

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

Written objections must be delivered or mailed to the Settlement Administrator no later than April 14, 2023. The address for the Settlement Administrator is ILYM Group, Inc. P.O. Box 2031 Tustin, CA 92781

The addresses for the Parties’ counsel are as follows:

Class Counsel:

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

The Court will hold a Final Approval Hearing at 8:30 AM on June 29, 2023, at the Imperial County Superior Court, Department 7, located at 939 Main Street, El Centro, CA 92243, before Judge Jeffrey B. Jones. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement. If there are objections, the Court will consider them. The Court will listen to people who have made a timely written request to speak at the hearing or who appear at the hearing to object. This hearing may be rescheduled by the Court without further notice to you. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

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

You may call the Settlement Administrator at 888-250-6810 or write to ***Honea v. Spencer Construction, LLC***, Case No. ECU001860, Settlement Administrator, c/o ILYM Group, Inc. P.O. Box 2031 Tustin, CA 92781.

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Final Judgment or other Settlement documents by writing to JCL Law firm, APC, 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121 or by visiting the website listed in this notice.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- You must inform the Settlement Administrator of any change of address to ensure receipt of your settlement payment.
- Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall pay all funds from such uncashed checks to the Children Advocacy Institute. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.