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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF LOS ANGELES – SPRING STREET**  
10

11 EFRAIN ESPARZA ALVAREZ,  
12 individually and on behalf of others similarly  
13 situated,

14 Plaintiff,

15 vs.

16 2H CONSTRUCTION, INC., a California Corporation; and DOES 1 through 50,  
17 inclusive,

18 Defendants.  
19

Case Nos.: 21STCV05675

*Assigned for All Purposed to the Honorable  
Daniel J. Buckley, Dept. 1*

**JOINT STIPULATION OF CLASS  
ACTION AND PAGA SETTLEMENT**

Complaint Filed: February 11, 2021  
Trial: None Set

1                   **JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT**

2                   This Joint Stipulation of Class Action and PAGA Settlement is entered into by and between  
3 Plaintiff Efrain Esparza Alvarez (“Plaintiff”), individually and on behalf of the Settlement Class  
4 and as a PAGA Representative on behalf of the State of California, on the one hand, and Defendant  
5 2H Construction, Inc. (Defendant) on the other hand in the lawsuit entitled *Alvarez v. 2H*  
6 *Construction, Inc.*, filed in the Los Angeles County Superior Court, Case No. 21STCV05672.  
7 Plaintiff and Defendant shall be, at times, collectively referred to as the “Parties.” This Agreement  
8 is intended by the Parties to fully, finally and forever resolve the claims as set forth herein, based  
9 upon and subject to the terms and conditions of this Agreement.

10                   **DEFINITIONS**

11                   1.       “Agreement” or “Settlement Agreement” means this Joint Stipulation of Class  
12 Action and PAGA Settlement.

13                   2.       “Action” means the court action, entitled “*Alvarez v. 2H Construction, Inc.*, Case  
14 No. 21STCV05672 as well as the claims asserted in Plaintiff’s correspondence of February 11,  
15 2021 to the Labor and Workforce Development Agency seeing penalties against Defendant for  
16 violations under the California Labor Code under the Private Attorneys General Act of 2004  
17 (hereinafter the “LWDA Letter.”)

18                   3.       “Class Counsel” means Protection Law Group, LLP. The term “Class Counsel”  
19 shall be used synonymously with the term “Plaintiff’s Counsel.”

20                   4.       “Class Counsel’s Fees and Costs” means attorneys’ fees for Class Counsel’s  
21 litigation and resolution of this Action and their expenses and costs incurred in connection with  
22 the Action, which shall be paid from the Gross Settlement Amount. Class Counsel will request  
23 attorneys’ fees not to exceed One-Third (1/3) of the Gross Settlement Amount, *i.e.* Eighty-Four  
24 Thousand Six Hundred Sixty Dollars and Zero Cents (\$84,663.00) and the reimbursement costs  
25 and expenses associated with the litigation and settlement of the Action, not to exceed Fifteen  
26 Thousand Dollars (\$15,000.00), subject to the Court’s approval. Defendant has agreed not to  
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1 oppose Class Counsel's request for fees and reimbursement of costs and expenses in the amount  
2 set forth above.

3 5. "Class List" means a complete list of all Class Members that Defendant will  
4 diligently and in good faith compile from their records and provide to the Settlement Administrator  
5 within fourteen (14) calendar days after Preliminary Approval of this Settlement. The Class List  
6 will be formatted in a readable Microsoft Office Excel spreadsheet and will include Class  
7 Member's: (1) full name; (2) last known home address; (3) last known telephone number; (4)  
8 social security number; (5) dates of employment (*i.e.*, hire dates, and, if applicable, re-hire date(s)  
9 and/or separation date(s)); (6) total Workweeks during the Class Period; (7) total Workweeks  
10 during the PAGA Period; and (8) any other information required by the Settlement Administrator  
11 in order to effectuate the terms of the Settlement.

12 6. "Class" or "Class Members" means all persons currently or formerly employed by  
13 Defendant, either directly or through any union, staffing agency, subsidiary, or professional  
14 employer organization, as a non-exempt hourly-paid employee in the state of California at any  
15 time during the Class Period.

16 7. "Class Period" means the period from February 11, 2017 to February 11, 2022.

17 8. "Class Representative" means Plaintiff Efrain Esparza Alvarez in his capacity as  
18 representative of the Class Members.

19 9. "Class Representative Enhancement Payment" means the amount that the Court  
20 authorizes to be paid to Plaintiff in addition to his Individual Settlement Payments, in recognition  
21 of the efforts and risks he has taken in assisting with the prosecution of the Action and in exchange  
22 for a General Release of his claims as provided herein.

23 10. "Court" means the Superior Court of the State of California for the County of Los  
24 Angeles.

25 11. "Defendant" means 2H Construction, Inc.

26 12. "Effective Date" means: the later of: (1) the date of final affirmation of the Court's  
27 signed Order and Judgment granting final approval of this Settlement ("Final Approval") from any  
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1 appeal, the expiration of the time for, or the denial of, a petition to review the Final Approval, or  
2 if review is granted, the date of final affirmation of the Final Approval following review pursuant  
3 to that grant; or (2) the date of final dismissal of any appeal from the Final Approval or the final  
4 dismissal of any proceeding to review the Final Approval, provided that the Final Approval is  
5 affirmed and/or not reversed in any part; or (3) if no class members intervene but objections are  
6 filed, the expiration date of the time for the filing or noticing of any appeal from the Court's Final  
7 Approval of the Settlement, as determined under Rule 8.104(a)(3) of the California Rules of Court  
8 or (4) if no class members intervene and there are no objections, the date the Court enters the Final  
9 Approval Order and Final Judgment.

10 13. "Employer Taxes" means employer-funded taxes and contributions imposed on the  
11 wage portions of the Individual Settlement Payments under the Federal Insurance Contributions  
12 Act, the Federal Unemployment Tax Act, and any similar state and federal taxes and contributions  
13 required of employers, such as for unemployment insurance.

14 14. "Final Approval" means the date of final affirmation of the Court's signed Order  
15 and Judgment granting final approval of this Settlement.

16 15. "General Release" means the broader release of all claims by Plaintiff in the Action,  
17 which is in addition to Plaintiff's release of claims as a Participating Class Member.

18 16. "Gross Settlement Amount" means the sum of Two Hundred Fifty-Three Thousand  
19 Nine Hundred Ninety Dollars (\$253,990.00) which shall be paid by Defendant fourteen (14)  
20 calendar days after the Effective Date of this Settlement. The Gross Settlement Amount is non-  
21 reversionary; no portion of the Gross Settlement Amount will return to Defendant.

22 17. "Individual Settlement Payment" means the amount payable from the Net  
23 Settlement Amount to each Participating Class Member and any payment a PAGA Member is  
24 eligible to receive from the employee portion of the PAGA Payment. Individual Settlement  
25 Payments shall be paid by a Settlement Check made payable to Participating Class Members  
26 and/or PAGA Members.

1           18.     “Net Settlement Amount” means the funds available for payments to the Class,  
2     which shall be amount remaining after the following amounts are deducted from the Gross  
3     Settlement Amount: (1) Class Counsel’s fees, (2) Class Counsel’s costs, (3) Settlement  
4     Administration Costs, (4) Class Representative Enhancement Payments to Plaintiff; and (5) the  
5     PAGA Payment to the LWDA and PAGA Members.

6           19.     “Notice” means the Notice of Class Action Settlement in a form substantially  
7     similar to the form attached hereto as **Exhibit A**, that will be mailed to Class Members’ last known  
8     addresses, and which will provide Class Members with information regarding the Action and  
9     information regarding the settlement of the Action.

10          20.     “PAGA” means the California Labor Code Private Attorneys General Act of 2004  
11     (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”).

12          21.     “PAGA Payment” means the payment to the State of California Labor and  
13     Workforce Development Agency (“LWDA”) for its seventy-five percent (75%) share of the total  
14     amount allocated toward penalties under the PAGA and payments to the PAGA Members of their  
15     (25%) share of the total amount allocated toward penalties under the PAGA, all of which are to be  
16     paid from the Gross Settlement Amount. The Parties have agreed that Twenty Thousand Dollars  
17     (\$20,000.00) of the Gross Settlement Amount will be allocated toward penalties under the PAGA  
18     of which Fifteen Thousand Dollars and Zero Cents (\$15,000.00) will be paid to the LWDA and  
19     Five Thousand Dollars and Zero Cents (\$5,000.00) will be distributed to PAGA Members on a  
20     *pro rata* basis based on Workweeks worked by the PAGA Members within the PAGA Period.  
21     PAGA Members will receive payment from the employee portion of the PAGA Payment  
22     regardless of their decision to participate in the class action if the PAGA Payment is approved by  
23     the Court.

24          22.     “PAGA Period” means the period from February 9, 2020, to February 11, 2022.

25          23.     “PAGA Members” means Class Members who were employed by Defendant  
26     during the PAGA Period.

24. “Parties” means Plaintiff and Defendant, collectively, and “Party” shall mean either Plaintiff or Defendant, individually.

25. “Participating Class Members” means all Class Members who do not submit valid and timely Requests for Exclusion.

26. “Plaintiff” means Efrain Esparza Alvarez.

27. “Preliminary Approval” means the Court order granting preliminary approval of the Settlement Agreement.

28. “Objection” means a Class Member’s valid and timely written objection to the Settlement Agreement. For a written Objection to be valid, it must be submitted by the Response Deadline and include: (a) the objector’s full name, signature, address, telephone number, the approximate dates of employment at Defendant in California, last four digits of the Class Member’s social security number or employee ID number; (b) the case name and number; and (c) a written statement of all grounds for the objection accompanied by legal support, if any, for such objection; (d) copies of any papers, briefs, or other documents upon which the objection is based, if any; and (e) a statement describing whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel at the Class Member’s expense.

29. “Released Class Claims” means all claims, rights, demands, liabilities, and causes of action alleged or that could have been alleged based on the facts asserted in the operative complaint in *Alvarez v. 2H Construction, Inc.*, Los Angeles County Superior Court Case No. 21STCV05672, the First Amended Complaint filed in the same action, and the LWDA Letter during the Class Period including, but not limited to, the following claims: (i) failure to pay all regular wages, minimum wages, overtime wages double time wages due (including, but not limited to, any claims for additional wages owed due to “off the clock” work or any other theory related to “rounding” of hours worked); (ii) failure to provide meal periods or compensation in lieu thereof; (iii) failure to provide rest periods or compensation in lieu thereof; (iv) failure to reimburse necessary business expenses; (v) failure to provide complete, accurate wage statements; (vi) failure to pay wages timely at time of termination or resignation; (vii) failure to provide

1 timely pay wages during employment; (viii) failure to keep time records; (ix) unfair business  
2 practices; (x) failure to maintain required time and payroll records, (xi) failure to pay accrued  
3 vacation, and violations for California Labor Code sections 201, 202, 203, 204 210, 218, 221,  
4 225.5, 226, 226(a), 226.3, 226.7, 227.3, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1,  
5 1198, 2800, 2802 and violation of Business & Professions Code 17200, *et seq.*

6 30. “Released PAGA Claims” means any and all claims for civil penalties under the  
7 California Labor Code Private Attorneys General Act of 2004 alleged or that could have been  
8 alleged based on the facts asserted in the LWDA Letter, in the operative complaint in the action  
9 and the First Amended Complaint in the action, including but not limited to civil penalties arising  
10 from allegation regarding Defendant’s alleged violations of California Labor Code sections 201,  
11 202, 203, 204 210, 218, 221, 225.5, 226, 226(a), 226.3, 226.7, 227.3, 510, 512, 558, 1174, 1174.5,  
12 1194, 1194.2, 1197, 1197.1, 1198, 2698, *et seq.*, 2699, 2699.3, 2800, and 2802. The Released  
13 PAGA Claims also includes a release from the State of California (to the extent Plaintiff is  
14 permitted to provide such a release for the State of California for the PAGA period) of all PAGA  
15 claims alleged in the Action during the PAGA Period.

16 31. “Released Parties” means Defendant 2H Construction, Inc. as well as its present,  
17 former and/or future, officers, directors, employees, members, shareholders, agents, trustees,  
18 representatives, attorneys, insurers, reinsurers, parent companies, subsidiaries, divisions, PEOs,  
19 temporary agencies, affiliates, predecessors, successors, assigns, as well as well as any individual  
20 or entity that could be alleged to be jointly liable with Defendant.

21 32. “Request for Exclusion” means a valid and timely written statement submitted by  
22 a Class Member requesting to be excluded from the Action. To be effective, the Request for  
23 Exclusion must be submitted by the Response Deadline and contain (a) the Class Member’s name,  
24 signature, address, telephone number, dates of employment at Defendant in California, and the last  
25 four digits of the Class Member’s Social Security number and/or the Employee ID number (b) the  
26 case name and number; and (c) a clear statement requesting to be excluded from the settlement of  
27 the class claims similar to the following: “I wish to exclude myself from the class settlement  
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1 reached in the matter of *Alvarez v. 2H Construction, Inc.* I understand that by excluding myself, I  
2 will not receive money from the settlement of my individual claims.” To be effective, the Request  
3 for Exclusion must be post-marked by the Response Deadline and received by the Settlement  
4 Administrator. The Request for Exclusion shall not be effective as to the Released PAGA Claims  
5 as Class Members have no right to exclude themselves (opt-out) of the PAGA component of the  
6 Settlement.

7 33. “Response Deadline” shall be forty-five (45) calendar days after the Settlement  
8 Administrator mails Notice to Class Members and the last date on which Class Members may  
9 submit Requests for Exclusion, written objections to the Settlement, or Workweek Disputes. In the  
10 event the 45th day falls on a Sunday or Federal holiday, the Response Deadline will be extended  
11 to the next day on which the U.S. Postal Service is open. The Response Deadline for Requests for  
12 Exclusion or objections will be extended fifteen (15) calendar days for any Class Member who is  
13 re-mailed a Notice by the Settlement Administrator, unless the 15th day falls on a Sunday or  
14 Federal holiday, in which case the Response Deadline will be extended to the next day on which  
15 the U.S. Postal Service is open. The Response Deadline may also be extended by express  
16 agreement between Class Counsel and Defendant. Under no circumstances, however, will the  
17 Settlement Administrator have the authority to unilaterally extend the deadline for Class Members  
18 to submit a Request for Exclusion or objection to the settlement.

19 34. “Settlement” means the disposition of the Action pursuant to this Agreement.

20 35. “Settlement Administrator” means ILYM Group, Inc. The Parties each represent  
21 that they do not have any financial interest in the Settlement Administrator or otherwise have a  
22 relationship with the Settlement Administrator that could create a conflict of interest.

23 36. “Settlement Administration Costs” mean the costs payable from the Gross  
24 Settlement Amount to the Settlement Administrator for administering this Settlement, including,  
25 but not limited to, printing, distributing, and tracking documents for this Settlement,  
26 calculating/confirming the class member Workweeks from the information contained in the Class  
27 List, calculating each Participating Class Member’s Individual Settlement Payment, tax reporting,  
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distributing the Gross Settlement Amount, providing necessary reports and declarations, and other duties and responsibilities set forth herein to process this Settlement, and as requested by the Parties. Settlement Administration Costs shall not exceed Ten Thousand Dollars (\$10,000).

37. “Workweek” shall mean any calendar week during which a Class Member/PAGA Member was employed with Defendant during the Class Period and/or PAGA Period, based on hire dates, re-hire dates and termination dates.

#### **TERMS OF AGREEMENT**

38. Settlement Consideration: Defendant shall fund the Gross Settlement Amount and all applicable employer-side payroll taxes following Final Approval by the Court and the occurrence of the Effective Date. The following will be paid out of the Gross Settlement Amount: the sum of the Individual Settlement Payments, the Class Representative Enhancement Payments, Class Counsel’s Fees and Costs, the PAGA Payment, and the Settlement Administration Costs, as specified in this Agreement. Except for any employer-side taxes due on the Individual Settlement Payments, or as a result of a potential increase in the number of Workweeks as set forth below in paragraph 39, Defendant shall not be required to pay more than the Gross Settlement Amount. The Gross Settlement Amount is non-reversionary; no portion of the Gross Settlement Amount will revert to Defendant.

39. Potential Increase to the Gross Settlement Amount: Defendant represented there were approximately 4,618 Workweeks within the Class Period through the date of mediation (i.e., December 2, 2021). Should the actual number of Workweeks increase by more than ten percent (10%) (i.e. by more than 462 Workweeks) through the Class Period, Defendant shall, at its option, either (a) increase the Gross Settlement Amount proportionally by the Workweeks in excess of 462 multiplied by the Workweek value (for example, if the number of Workweeks increases by 11% to 5,080 Workweeks, the Gross Settlement Amount will increase by 1%); or (b) cap the Class Period Release as of the date that 10% of the workweeks is exceeded.

40. Funding of the Gross Settlement Amount: Within fourteen (14) calendar days of the Effective Date of the Settlement, Defendant will deposit the Gross Settlement Amount into a

1 Qualified Settlement Fund (“QSF”) to be established by the Settlement Administrator. Within  
2 seven (7) calendar days of the Settlement Administrator notifying Defendant of the amount of  
3 Defendant’s share of Employers Taxes, Defendant shall deposit such Employer’s Taxes into a QSF  
4 to be established by the Settlement Administrator. Defendant shall provide all information  
5 necessary for the Settlement Administrator to calculate necessary payroll taxes including its  
6 official name, 8-digit state unemployment insurance tax ID number, and other information  
7 requested by the Settlement Administrator, no later than seven (7) calendar days of the Effective  
8 Date.

9 41. Distribution of the Gross Settlement Amount: Within fourteen (14) calendar days  
10 of the funding of the Settlement, the Settlement Administrator will issue payments for: (a)  
11 Individual Settlement Payments; (b) the PAGA Payment to the Labor and Workforce Development  
12 Agency; (c) the Class Representative Enhancement Payments; (d) Class Counsel’s Fees and Costs  
13 and (e) Settlement Administration Costs.

14 42. Attorneys’ Fees and Costs: Defendant agrees not to oppose any application or  
15 motion by Class Counsel for attorneys’ fees of not more than Eighty-Four Thousand Six Hundred  
16 Sixty Dollars and Zero Cents (\$84,663.00) plus the reimbursement of costs and expenses  
17 associated with the litigation and settlement of the Action, in an amount not to exceed Fifteen  
18 Thousand Dollars (\$15,000.00), both of which will be paid from the Gross Settlement Amount.  
19 Any portion of the requested fees or costs that is not awarded to the Class Counsel shall be  
20 reallocated to the Net Settlement Amount and distributed to Participating Class Members as  
21 provided in this Agreement.

22 43. Class Representative Enhancement Payment: Defendant agrees not to oppose or  
23 object to any application or motion by Plaintiff for Class Representative Enhancement Payment of  
24 Five Thousand Dollars (\$5,000) for Plaintiff. The Class Representative Enhancement Payment is  
25 in exchange for the General Release of the Plaintiff’s individual claims and for his time, effort and  
26 risk in bringing and prosecuting the Action. Any portion of the requested Class Representative  
27 Enhancement Payment that is not awarded to the Class Representative shall be reallocated to the  
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Net Settlement Amount and distributed to Participating Class Members as provided in this Agreement.

44. Settlement Administration Costs: The Settlement Administrator will be paid for the reasonable costs of administration of the Settlement and distribution of payments from the Gross Settlement Amount as further set forth in this Agreement. Settlement Administration Costs shall not exceed Ten Thousand Dollars (\$10,000.00).

45. PAGA Payment: Twenty Thousand Dollars (\$20,000.00) shall be allocated from the Gross Settlement Amount for settlement of claims for civil penalties under the PAGA. The Settlement Administrator shall pay seventy-five percent (75%) of the PAGA Payment, or Fifteen Thousand Dollars (\$15,000.00), to the California Labor and Workforce Development Agency ("LWDA"). Five Thousand Dollars (\$5,000) will be distributed to PAGA Members on a *pro rata* basis based on the total number of Workweeks worked by each PAGA Member during the PAGA Period. PAGA Members shall receive their portion of the PAGA Payment regardless of their decision to opt-out of the class settlement.

46. Net Settlement Amount for Payment of Class Claims: The Net Settlement Amount will be used to satisfy the class portion of Participating Class Members Individual Settlement Payments in accordance with the terms of this Agreement. The estimated Net Settlement Amount is as follows:

|                                        |    |                   |
|----------------------------------------|----|-------------------|
| Gross Settlement Amount                | \$ | 253,990.00        |
| Enhancement Payments:                  | \$ | 5,000.00          |
| Class Counsel's Fees:                  | \$ | 84,663.00         |
| Class Counsel's Costs:                 | \$ | 15,000.00         |
| PAGA Payment                           | \$ | 20,000.00         |
| Settlement Administration Costs:       | \$ | <u>10,000.00</u>  |
| <b>Estimated Net Settlement Amount</b> | \$ | <b>119,327.00</b> |

1           47.    Individual Settlement Payment Calculations: Individual Settlement Payments will  
2 be paid from the Net Settlement Amount that includes the 25% portion of the PAGA Payment  
3 allocated for PAGA Members and shall be paid pursuant to the formula set forth herein:

4                   a)       Calculation of Class Portion of Individual Settlement Payments:  
5 The Settlement Administrator will calculate the total Workweeks for all Participating Class  
6 Members by adding the number of Workweeks worked by each Participating Class Member during  
7 the Class Period. The respective Workweeks for each Participating Class Member will be divided  
8 by the total Workweeks for all Participating Class Members, resulting in the Payment Ratio for  
9 each Participating Class Member. Each Participating Class Member's Payment Ratio will then be  
10 multiplied by the Net Settlement Amount to calculate each Settlement Class Member's estimated  
11 share of the Net Settlement Amount: Participating Class Member's Workweeks ÷ Workweeks  
12 during Class Period) × Net Settlement Amount.

13                   b)       Calculation of PAGA Portion of Individual Settlement Payments:  
14 The Settlement Administrator will calculate the total Workweeks for all PAGA Members by  
15 adding the number of Workweeks worked by each PAGA Member during the PAGA Period. The  
16 respective Workweeks for each PAGA Member will be divided by the total Workweeks for all  
17 PAGA Members, resulting in the Payment Ratio for each PAGA Member. Each PAGA Member's  
18 Payment Ratio will then be multiplied by the employee portion of the PAGA Payment to calculate  
19 each PAGA Member's estimated share of the PAGA Payment: PAGA Member's Workweeks ÷  
20 Workweeks during PAGA Period) x \$5,000.00 (the employee portion of the PAGA Payment.  
21 PAGA Members shall receive this portion of their Individual Settlement Payment regardless of  
22 whether they opt out of the participation regarding the class claims.

23                   b)       Allocation of Individual Settlement Payments: All Individual Settlement  
24 Payments will be allocated as follows: twenty percent (20%) of each Individual Settlement  
25 Payment will be allocated as wages, forty percent (40%) shall be allocated as interest, and forty  
26 percent (40%) shall be allocated as penalties. The portion of the Individual Settlement Payment  
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1 allocated to wages will be reported by the Settlement Administrator on an IRS Form W-2. The  
2 remaining non-wage payments will be reported on an IRS Form-1099 by the Settlement  
3 Administrator. Individual Settlement Payments shall be paid exclusively from the QSF, pursuant  
4 to the settlement formula set forth herein. Neither Counsel for Plaintiff nor Defendant intend anything  
5 contained in this Agreement to constitute advice regarding taxes or taxability, nor shall anything in this  
6 Agreement be relied upon as such within the meaning of United States Treasury Department Circular 230  
7 (31 C.F.R. Part 10, as amended) or otherwise.

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

16 49. Settlement Administration Process: The Parties agree to cooperate in the  
17 administration of the Settlement and to make all reasonable efforts to control and minimize the  
18 costs and expenses incurred in administration of the Settlement. The Settlement Administrator will  
19 provide the following services:

- 20 a) Establish and maintain a Qualified Settlement Fund.
- 21 b) Calculate the Individual Settlement Payment each Participating Class  
22 Member is eligible to receive and the portion of the PAGA Payment each  
23 PAGA Member shall receive.
- 24 c) Print and mail the Notice.
- 25 d) Conduct additional address searches for mailed Notices that are returned as  
26 undeliverable.
- 27 e) Process Requests for Exclusion, field inquiries from Class Members,
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- f) Print and issue and issue Settlement Payment Checks, prepare IRS W2 and 1099 Tax Forms and any other filings required by any governmental taxing authority.
- g) Provide declarations and/or other information to this Court as requested by the Parties and/or the Court regarding the settlement administration process.
- h) Provide weekly status reports to counsel for the Parties.
- i) Posting a notice of final judgment online at Settlement Administrator's website.
- j) Translate the Notice from English to Spanish

50. Delivery of the Class List: Within fourteen (14) calendar days of Preliminary Approval, Defendant will provide the Class List to the Settlement Administrator.

51. Notice by First-Class U.S. Mail: Within seven (7) calendar days after receiving the Class List from Defendants, the Settlement Administrator will mail the Notice to all Class Members via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class List.

52. Confirmation of Contact Information in the Class List: Prior to mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. Any Notice returned to the Settlement Administrator as non-deliverable on or before the Response Deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator will indicate the date of such re-mailing on the Notice. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address telephone number and/or Social Security number of the Class Member involved and will then perform a single re-mailing. If any notice sent to a Class Member by the Settlement Administrator is returned as undeliverable to a current employee, then Defendant shall make all reasonable efforts to obtain the current address from the Class Member and provide the same within seven (7) calendar days of

notice from the Settlement Administrator. Those Class Members who receive a re-mailed Notice, whether by skip-trace or by request, will have between the later of (a) an additional fifteen (15) calendar days or (b) the Response Deadline to postmark a Request for Exclusion, or an objection to the Settlement.

53. Notice: All Class Members will be mailed a Notice. Each Notice will provide: (a) information regarding the nature of the Action; (b) a summary of the Settlement's principal terms; (c) the Class definition; (d) the total number of Workweeks each respective Class Member worked for Defendant during the Settlement Class Period; (e) each Class Member's estimated Individual Settlement Payment and the formula for calculating Individual Settlement Payments; (f) the dates which comprise the Class Period; (g) the deadlines by which the Class Member must postmark Requests for Exclusion, Objections to the Settlement, or Workweek Disputes; (h) the claims to be released, as set forth herein; and (j) the date for the final approval hearing.

54. Disputed Information on Notice: Class Members will have an opportunity to dispute the information provided in their Notice. To the extent Class Members dispute the number of Workweeks with which they have been credited or the amount of their Individual Settlement Payment, Class Members may produce evidence to the Settlement Administrator showing that such information is inaccurate. Absent evidence rebutting Defendant's records, Defendant's records will be presumed determinative. However, if a Class Member produces evidence to the contrary by the Response Deadline, the Parties will evaluate the evidence submitted by the Class Member and the Parties will make the final decision as to the number of eligible Workweeks that should be applied and/or the Individual Settlement Payment to which the Class Member may be entitled. If the Parties do not agree, the dispute will be submitted to the Court.

55. Defective Submissions: If a Class Member's Request for Exclusion is defective as to the requirements listed herein, that Class Member will be given an opportunity to cure the defect(s). The Settlement Administrator will mail the Class Member a cure letter within three (3) business days of receiving the defective submission to advise the Class Member that his or her submission is defective and that the defect must be cured to render the Request for Exclusion valid.

1 The Class Member will have until the later of (a) the Response Deadline or (b) fifteen (15) calendar  
2 days from the date of the cure letter, whichever date is later, to postmark a revised Request for  
3 Exclusion. If a Class Member responds to a cure letter by filing a defective claim, then the  
4 Settlement Administrator will have no further obligation to give notice of a need to cure. If the  
5 revised Request for Exclusion is not postmarked within that period, it will be deemed untimely.

6 56. Request for Exclusion Procedures: Any Class Member wishing to opt-out from the  
7 Action must sign and postmark a written Request for Exclusion to the Settlement Administrator  
8 by the Response Deadline. The Request for Exclusion must include (a) the Class Member's name,  
9 signature, address, telephone number, dates of employment at Defendant in California, and the last  
10 four digits of the Class Member's Social Security number and/or the Employee ID number and (b)  
11 the case name and number; and (c) a clear statement requesting to be excluded from the settlement  
12 of the class claims similar to the following: "I wish to exclude myself from the class settlement  
13 reached in the matter of *Alvarez v. 2H Construction, Inc.* I understand that by excluding myself, I  
14 will not receive money from the settlement of my individual claims." The date of the postmark on  
15 the return mailing envelope receipt confirmation will be the exclusive means to determine whether  
16 a Request for Exclusion has been timely submitted. To be effective, the Request for Exclusion must  
17 be post-marked by the Response Deadline and received by the Settlement Administrator. All Requests  
18 for Exclusion will be submitted to the Settlement Administrator, who will certify jointly to Class  
19 Counsel and Defendant's Counsel the Requests for Exclusion that were timely submitted. All Class  
20 Members who do not request exclusion from the Action will be bound by all terms of the  
21 Settlement Agreement if the Settlement is granted final approval by the Court and deemed  
22 Effective under this Agreement. The Request for Exclusion shall not be effective as to the release  
23 of claims arising under the Private Attorneys General Act.

24 57. Defendant's Right to Rescind: If Class Members representing more than the  
25 aggregate total of five percent (5%) of the verified Workweeks elect not to participate in the  
26 Settlement, Defendant may, at its election, rescind the Settlement Agreement and all actions taken  
27 in furtherance of it will be thereby null and void. Defendant must give written notice to Class  
28

Counsel of its intent to rescind the Agreement within fourteen (14) calendar days of the Settlement Administrator notifying the Parties of these opt-outs. If Defendant exercises its right to rescind the Agreement, Defendant shall be responsible for all Settlement Administration Costs incurred to the date of rescission. In such a case, the Parties and any funds to be awarded under this Settlement Agreement shall be returned to their respective statuses as of the date and time immediately prior to the execution of this Agreement, and the Parties shall proceed in all respects as if this Settlement Agreement had not been executed, except that any fees already incurred by the Settlement Administrator shall be paid by Defendant.

58. Settlement Terms Bind All Class Members Who Do Not Opt-Out: Upon the complete funding of the Gross Settlement Amount, any Class Member who does not affirmatively opt-out of the Settlement by submitting a timely and valid Request for Exclusion will be bound by all of its terms, including those pertaining to the Released Class Claims, as well as any Judgment that may be entered by the Court if it grants final approval to the Settlement. Class Members who opt-out of the Settlement shall not be bound by such Judgment or release. The names of Class Members who have opted-out of the settlement shall be disclosed to the Counsel for both Plaintiff and Defendants and noted in the proposed Judgment submitted to the Court.

59. Objection Procedures: To object to the Settlement, a Participating Class Member must postmark a valid Objection to the Settlement Administrator on or before the Response Deadline. The Objection must be signed by the Participating Class Member and contain all information required by this Settlement Agreement including (a) the employees full name, signature, address, telephone number, the approximate dates of employment at Defendant in California, the last four digits of their social security number and/or Employee ID number, (b) the case name and number; (c) a written statement of any legal grounds for the Participating Class Members objection (d) copies of any papers, briefs, or other documents upon which the objection is based, if any; and (e) a statement describing whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel at the Class Member's expense.. The postmark date will be deemed the exclusive means for determining that the Notice of Objection is timely. Participating Class

Members who fail to object in the manner specified above will be foreclosed from making a written objection but shall still have a right to appear at the Final Approval Hearing in order to have their objections heard by the Court. At no time will any of the Parties or their counsel seek to solicit or otherwise encourage Participating Class Members to submit written objections to the Settlement or appeal from the Order and Judgment. Class Counsel will not represent any Class Members with respect to any objections to this Settlement.

60. Certification Reports Regarding Individual Settlement Payment Calculations: The Settlement Administrator will provide Defendant's Counsel and Class Counsel a weekly report which certifies: (a) the number of Class Members who have submitted valid Requests for Exclusion; (b) the number of Notices returned and re-mailed and (c) whether any Class Member has submitted a challenge to any information contained in the Notice. Additionally, the Settlement Administrator will provide to counsel for both Parties any updated reports regarding the administration of the Settlement Agreement as needed or requested.

61. Uncashed Settlement Checks: Any checks issued by the Settlement Administrator to Participating Class Members and PAGA Members will be negotiable for at least one hundred eighty (180) calendar days. If a Participating Class Member or PAGA Member does not cash his or her Settlement Check or PAGA payment check within 180 days, the uncashed funds, subject to Court approval, shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code §1500, *et. seq.* for the benefit of those Participating Class Members and PAGA Members who did not cash their checks until such time that they claim their property. The Parties agree that this disposition results in no "unpaid residue" under California Civil Procedure Code § 384, as the entire Net Settlement Amount will be paid out to Participating Class Members and PAGA Members, whether or not they all cash their Settlement Checks or PAGA payment checks. Therefore, Defendant will not be required to pay any interest on such amounts. The Individual Settlement Payments provided to Participating Class Members and to PAGA Members shall prominently state the expiration date or a statement that the Settlement Check will expire in one hundred eighty (180) days, or alternatively, such a

statement may be made in a letter accompanying the Individual Settlement Payment. Expired Individual Settlement Payments will not be reissued, except for good cause and as mutually agreed by the Parties in writing. The parties agree no unclaimed funds will result from the settlement.

62. Administration of Taxes by the Settlement Administrator: The Settlement Administrator will be responsible for issuing to Plaintiff, Participating Class Members, and Class Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid pursuant to this Settlement. The Settlement Administrator will also be responsible for forwarding all payroll taxes and penalties to the appropriate government authorities.

63. Tax Liability: Defendant makes no representation as to the tax treatment or legal effect of the payments called for hereunder, and Plaintiff and Participating Class Members are not relying on any statement, representation, or calculation by Defendant or by the Settlement Administrator in this regard. Plaintiff and Participating Class Members understand and agree that they will be solely responsible for the payment of any taxes and penalties assessed on the payments described herein. Defendant's share of any employer payroll taxes and other required employer withholdings due on the Individual Settlement Payments, including, but not limited to, Defendant's FICA and FUTA contributions, shall be paid separate and apart from the Gross Settlement Amount.

64. Circular 230 Disclaimer: Each Party to this Agreement (for purposes of this section, the "acknowledging party" and each Party to this Agreement other than the acknowledging party, an "other party") acknowledges and agrees that: (1) no provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department circular 230 (31 CFR part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his, her or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Agreement, (b) has not entered into this Agreement based upon the recommendation of any other Party or any attorney or advisor to any other Party, and (c) is not

entitled to rely upon any communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty that may be imposed on the acknowledging party, and (3) no attorney or adviser to any other Party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

65. No Prior Assignments: The Parties and their counsel represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or right herein released and discharged.

66. Release by Participating Class Members: Upon the complete funding of the Gross Settlement Amount and all applicable employer-side payroll taxes by Defendant, Participating Class Members shall fully release and discharge the Released Parties from the Released Class Claims that arose during the Class Period. This release shall be binding on all Participating Class Members.

67. Release by the State of California and LWDA: Upon the complete funding of the Gross Settlement Amount and all applicable employer-side payroll taxes by Defendant the LWDA and the State of California, through Plaintiff as its agent and/or proxy, shall release and discharge the Released Parties from the Released PAGA Claims that arose during the PAGA Period. The Parties intend for this PAGA settlement to have claim preclusion, issue preclusion, or otherwise bar a representative action if an aggrieved employee were to bring a subsequent claim on behalf of the LWDA based on the same factual predicate as this action and covering the same time period.

68. Release of Additional Claims & Rights by Plaintiff: Upon the funding of the Gross Settlement Amount, Plaintiff for himself and his spouse, heirs and assigns, fully and finally releases the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties and expenses of any nature and description whatsoever, known or

unknown, suspected or unsuspected, asserted or that might have been asserted, whether in tort, contract, equity, or otherwise, arising out of Plaintiff's employment with Defendant, payment of wages during that employment and the cessation of that employment and/or violation of any federal, state or local statute, rule, ordinance or regulation. Such claims include but are not limited to any and all Released Class Claims and Released PAGA Claims and termination thereof, California Civil Code, to include §§3287, 3336 and 3294; 12 CCR §11040; 8 CCR § 11060; California Code of Civil Procedure §1021.5; California common law of contract; 29 CFR §778.223; and 29 CFR §778.315; federal common law and, to the extent permitted by law, the Employee Retirement Income Security Act, 29 U.S.C. §§1001, *et seq.* (ERISA) §778.315; and federal common law. In addition, Plaintiff's General Release includes but is not limited to, all claims for lost wages and benefits, emotional distress, retaliation, restitution, penalties, punitive damages, and attorneys' fees and costs (except those provided by this Settlement Agreement) arising under federal, state, or local laws for discrimination, harassment, retaliation, and wrongful termination, such as, by way of example only, (as amended) 42 U.S.C. §1981, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), the Age Discrimination in Employment Act (ADEA), and the California Fair Employment and Housing Act (FEHA); and the law of contract and tort. This release excludes the release of claims not permitted by law. Plaintiff's General Release include all claims, whether known or unknown. Even if Plaintiff discovers facts in addition to or different from those he now knows or believes to be true with respect to the subject matter of Plaintiff's General Release, those claims will remain released and forever barred. Specifically, Plaintiff waives all rights and benefits afforded by California Civil Code Section 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

1 This release specifically excludes claims for unemployment insurance, disability, social  
2 security, and workers compensation (with the exception of claims arising pursuant to California  
3 Labor Code Sections 132(a) and 4553).

4 69. Nullification of Settlement Agreement: In the event that: (a) the Court does not  
5 enter the Preliminary Approval Order and approve the Released Claims specified herein without  
6 requiring material changes to the “Basic Settlement Terms” defined as relating to the monetary  
7 sums to be paid in the Settlement, the parameters of the Released Claims and the covered Class  
8 Period, revisions to the Increase In Workweeks provision contained herein; and revisions to  
9 Defendant’ Option to Nullify the Settlement Agreement provision contained herein); (b) the Court  
10 does not finally approve the Settlement without requiring material changes to the Basic Settlement  
11 Terms as provided herein; (c) the Court strikes or does not approve any material term of this  
12 Settlement Agreement; (d) Defendant exercises its option to nullify the Settlement Agreement based on  
13 an excessive number of opt-outs, as described in the above ;or (e ) the Settlement does not become final  
14 as written and agreed to by the Parties for any other reason, then this Settlement Agreement, and  
15 any documents generated to bring it into effect, will be null and void, all amounts deposited into  
16 the QSF will be returned to Defendant, and the Parties shall be returned to their original respective  
17 positions. Any order or judgment entered by the Court in furtherance of this Settlement Agreement  
18 will likewise be treated as void from the beginning and the Stipulations and Recitals contained herein  
19 shall be of no force or effect and shall not be treated as an admission by the Parties or their counsel. Should  
20 the Court fail to approve this settlement for any reason, the Parties agree that they will return to  
21 and attend mediation with a mutually agreed Mediator in an effort to reach a settlement that may  
22 be approved by the Court.

23 70. Preliminary Approval Hearing: Plaintiff will obtain a hearing before the Court to  
24 request Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary  
25 Approval Order for: (a) conditional certification of the Settlement Class for settlement purposes  
26 only, (b) Preliminary Approval of the proposed Settlement Agreement, and (c) setting a date for a  
27 Final Approval/Settlement Fairness Hearing. The Preliminary Approval Order will provide for the  
28

Notice to be sent to all class Members as specified herein. In conjunction with the Preliminary Approval hearing, Plaintiff will submit this Agreement, which sets forth the terms of the Settlement, and will include the proposed Notice attached as **Exhibit A**. Defendant agrees that they will not oppose Plaintiff's motion for Preliminary Approval. Any failure by the Court to fully and completely approve the Agreement as to the Action will result in this Settlement Agreement and the Memorandum of Understanding entered into by the Parties, and all obligations under this Settlement Agreement and the Memorandum of Understanding being nullified and voided.

71. Final Settlement Approval Hearing and Entry of Judgment: Upon expiration of the deadlines to postmark Requests for Exclusion or Objections to the Settlement Agreement, and with the Court's permission, a Final Approval/Settlement Fairness Hearing will be conducted to determine the Final Approval of the Settlement Agreement along with the amounts properly payable for: (a) Individual Settlement Payments; (b) the Attorneys' Fees and Costs; (c) the Class Representative Enhancement Payments; and (d) the Settlement Administration Costs. Class Counsel will be responsible for drafting all documents necessary to obtain Final Approval and will provide a draft to Defendant's counsel for review before filing. Any failure by the Court to fully and completely approve the Settlement Agreement as to all of the Action, or the entry of any Order by another Court with regard to any of the Action which has the effect of modifying material terms of this Agreement as described above or preventing the full and complete approval of the Settlement Agreement as written and agreed to by the Parties, will result in this Agreement and all obligations under this Agreement being null and void. Defendant agrees it shall not oppose the granting of the Motion for Final Approval, provided Defendant has not exercised its right to rescind pursuant to the terms of this Agreement.

72. Judgment and Continued Jurisdiction: Upon Final Approval of the Settlement by the Court or after the Final Approval/Settlement Fairness Hearing, the Parties will present the Judgment to the Court for its approval. After entry of the Judgment and Effective Date of this Agreement, the Court will have continuing jurisdiction solely for purposes of addressing: (a) the interpretation and enforcement of the terms of the Settlement, (b) Settlement administration

1 matters, and (c) such post-Judgment matters as may be appropriate under court rules or as set forth  
2 in this Settlement.

3 73. Exhibits Incorporated by Reference: The terms of this Settlement include the terms  
4 set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth  
5 herein. Any Exhibits to this Settlement are an integral part of the Settlement.

6 74. Entire Agreement: This Settlement Agreement and any attached Exhibits constitute  
7 the entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral  
8 agreements in relation to settlement terms may be deemed binding on the Parties.

9 75. Amendment or Modification: This Settlement Agreement may be amended or  
10 modified only by a written instrument signed by counsel for all Parties or their successors-in-  
11 interest.

12 76. Authorization to Enter Into Settlement Agreement: Counsel for all Parties warrant  
13 and represent they are expressly authorized by the Parties whom they represent to negotiate this  
14 Settlement Agreement and to take all appropriate action required or permitted to be taken by such  
15 Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other  
16 documents required to effectuate the terms of this Settlement Agreement. The Parties and their  
17 counsel will cooperate with each other and use their best efforts to affect the implementation of  
18 the Settlement. If the Parties are unable to reach agreement on the form or content of any document  
19 needed to implement the Settlement, or on any supplemental provisions that may become  
20 necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court  
21 or Mediator to resolve such disagreement.

22 77. Binding on Successors and Assigns: This Settlement Agreement will be binding  
23 upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously  
24 defined.

25 78. California Law Governs: All terms of this Settlement Agreement and Exhibits  
26 hereto will be governed by and interpreted according to the laws of the State of California.

27 79. Execution and Counterparts: This Settlement Agreement is subject only to the  
28

1 execution of all Parties. However, the Settlement Agreement may be executed in one or more  
2 counterparts. All executed counterparts and each of them, including facsimile and scanned copies  
3 of the signature page, will be deemed to be one and the same instrument provided that counsel for  
4 the Parties will exchange among themselves original signed counterparts.

5 80. Acknowledgement that the Settlement is Fair and Reasonable: The Parties believe  
6 this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have  
7 arrived at this Settlement after arm's-length negotiations and in the context of adversarial  
8 litigation, taking into account all relevant factors, present and potential. The Parties further  
9 acknowledge that they are each represented by competent counsel and that they have had an  
10 opportunity to consult with their counsel regarding the fairness and reasonableness of this  
11 Settlement.

12 81. Invalidity of Any Provision: Before declaring any provision of this Agreement  
13 invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible  
14 consistent with applicable precedents so as to define all provisions of this Agreement valid and  
15 enforceable.

16 82. Waiver of Certain Appeals: The Parties agree to waive appeals and to stipulate to  
17 class certification for purposes of this Settlement only; except, however, that either party may  
18 appeal any court order that materially alters the Settlement Agreement's terms.

19 83. Class Action Certification for Settlement Purposes Only: The Parties agree to  
20 stipulate to class action certification only for purposes of the Settlement. If, for any reason, the  
21 Settlement is not approved, the stipulation to certification will be void. The Parties further agree  
22 that certification for purposes of the Settlement is not an admission that class action certification  
23 is proper under the standards applied to contested certification motions and that this Agreement  
24 will not be admissible in this or any other proceeding as evidence that either: (a) a class action  
25 should be certified or (b) Defendant is liable to Plaintiff or any Class Member, other than according  
26 to the Settlement's terms.

27 84. Non-Admission of Liability: The Parties enter into this Agreement to resolve the  
28

dispute that has arisen between them and to avoid the burden, expense and risk of continued litigation. In entering into this Agreement, Defendant does not admit, and specifically denies, it has violated any federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or any other applicable laws, regulations or legal requirements; breached any contract; violated or breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to their employees. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be construed as an admission or concession by Defendant of any such violations or failures to comply with any applicable law. Except as necessary in a proceeding to enforce the terms of this Agreement, this Agreement and its terms and provisions shall not be offered or received as evidence in any action or proceeding to establish any liability or admission on the part of Defendant or to establish the existence of any condition constituting a violation of, or a non-compliance with, federal, state, local or other applicable law. Except as set forth elsewhere herein, in the event that this Agreement is not approved by the Court, or any appellate court, is terminated, or otherwise fails to be enforceable, Plaintiff will not be deemed to have waived, limited or affected in any way any claims, rights or remedies, or defenses in the Action, and Defendant will not be deemed to have waived, limited, or affected in any way any of its objections or defenses in the Action. The Parties shall be restored to their respective positions in the Action prior to the entry of this Settlement.

85. Captions: The captions and section numbers in this Agreement are inserted for the reader's convenience, and in no way define, limit, construe or describe the scope or intent of the provisions of this Agreement.

86. Waiver: No waiver of any condition or covenant contained in this Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

87. Enforcement Action: In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this

Settlement or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

88. Mutual Preparation: The Parties have had a full opportunity to negotiate the terms and conditions of this Agreement. Accordingly, this Agreement will not be construed more strictly against one Party than another merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

89. Representation By Counsel: The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Agreement, and that this Agreement has been executed with the consent and advice of counsel and reviewed in full. Further, Plaintiff and Class Counsel warrant and represent that there are no liens on the Agreement.

90. All Terms Subject to Final Court Approval: All amounts and procedures described in this Settlement Agreement herein will be subject to final Court approval.

91. Cooperation and Execution of Necessary Documents: The Parties agree to cooperate to promote participation in the Settlement, and in seeking court approval of the Settlement. The Parties and their counsel agree not to take any action to encourage any Class Members to opt out of and/or object to the Settlement. Defendant agrees not to obtain any settlement agreement waivers, or Pick Up Stix agreements from any Class Member prior to the funding of the Gross Settlement Amount concerning claims released via this Agreement, or enter into any arbitration agreement with any Class Member that covers the claims released via this Agreement during the Settlement approval process prior to the funding of the Gross Settlement Amount and that the Parties will work in good faith to reach an agreement approved by the Court.

92. Confidentiality: The Parties and their counsel agree to keep the terms of the Settlement confidential until the filing of Plaintiff's Motion for Preliminary Approval. Plaintiff, Class Counsel, Defendant and its counsel agree that they will not issue any press releases, initiate

any contact with the press, respond to any press inquiry or have any communication with the press about the fact, amount or terms of the Settlement Agreement. Nothing in this Settlement Agreement shall limit Defendant's ability to fulfill disclosure obligations reasonably required by law or in furtherance of business purposes, including the fulfillment of obligations stated in this Settlement Agreement or limit Class Counsel's communications with the Class Members in furtherance of approval of this Settlement.

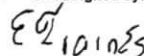
93. Binding Agreement: The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement Agreement will be fully enforceable and binding on all Parties and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any settlement confidentiality provisions that otherwise might apply under federal or state law.

Dated: 3/24/2022

**PLAINTIFF**

DocuSigned by:

By:



297519EECC4D499...  
Efrain Esparza Alvarez

Dated: 3/30/22

**PROTECTION LAW GROUP, LLP**

By:



Heather Davis, Esq.

Carlos Jimenez, Esq.

Attorneys for Plaintiff

Dated: \_\_\_\_\_

**DEFENDANT**

**2H CONSTRUCTION, INC.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

any contact with the press, respond to any press inquiry or have any communication with the press about the fact, amount or terms of the Settlement Agreement. Nothing in this Settlement Agreement shall limit Defendant's ability to fulfill disclosure obligations reasonably required by law or in furtherance of business purposes, including the fulfillment of obligations stated in this Settlement Agreement or limit Class Counsel's communications with the Class Members in furtherance of approval of this Settlement.

93. Binding Agreement: The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement Agreement will be fully enforceable and binding on all Parties and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any settlement confidentiality provisions that otherwise might apply under federal or state law.

Dated: \_\_\_\_\_

**PLAINTIFF**

By: \_\_\_\_\_

Efrain Esparza Alvarez

Dated: \_\_\_\_\_

**PROTECTION LAW GROUP, LLP**

By: \_\_\_\_\_

Heather Davis, Esq.

Carlos Jimenez, Esq.

Attorneys for Plaintiff

Dated: March 29, 2022

**DEFENDANT**

**2H CONSTRUCTION, INC.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Sean Hitchcock

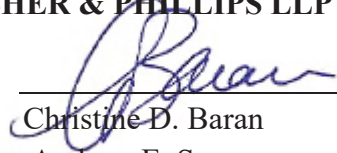
Title: \_\_\_\_\_

President

1 Dated: March 30, 2022

FISHER & PHILLIPS LLP

2  
3 By:



Christine D. Baran

Andrew E. Saxon

Attorneys for Defendant

# **Exhibit “A”**

## **NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

*Alvarez v. 2H Construction, Inc.*

Los Angeles County Superior Court, Case No. 21STCV05672.

**THIS IS A COURT-AUTHORIZED NOTICE. IT IS NOT A SOLICITATION.  
PLEASE READ THIS NOTICE CAREFULLY.  
YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT OR DO NOT ACT.**

|            |                                                                                                                                                                                                                                                                                                                              |
|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>To:</b> | <b>All persons currently or formerly employed by Defendant 2H Construction, Inc., either directly or through any union, staffing agency, subsidiary, or professional employer organization, as a non-exempt hourly-paid employee in the state of California at any time between February 11, 2017 and February 11, 2022.</b> |
|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

### **BASIC INFORMATION**

#### **1. What is this settlement about?**

Plaintiff Efrain Esparza Alvarez (Plaintiff), filed a class action lawsuit against 2H Construction, Inc. (“Defendant”), entitled *Alvarez v. 2H Construction, Inc.* Los Angeles County Superior Court Case No. 21STCV05672, was filed as a class action on March 6, 2019. The lawsuit claims that Defendant violated sections of the California Labor Code and California Business and Professions Code. Specifically, Plaintiff alleges that Defendant failed to provide compliant meal and rest periods or pay meal and rest break premiums, did not properly pay employees overtime or pay minimum wages for all time worked, did not provide accurate wage statements, did not timely pay all wages during employment and all wages owed at termination of employment, failed to reimburse employees for necessary business expenses, failed to keep accurate records, and maintained unfair business practices. The settlement also seeks to recover penalties pursuant to the California Private Attorneys General Act (“PAGA”). Defendant denies all alleged violations and deny that they owe Class Members any remedies. The Court has not made a ruling on the merits of the case.

#### **2. Why is this a class action?**

In a class action, one or more people called Class Representatives (in this case Plaintiff Alvarez), sue on behalf of people who appear to have similar claims. All these people are referred to here as Class Members. One court resolves the issues for all Class Members in one lawsuit, except for those who exclude themselves from the Class. The Los Angeles County Superior Court (the “Court”) is in charge of the Action.

#### **3. Why is there a settlement?**

The Court has not decided in favor of the Plaintiff or Defendant. Instead, both sides agreed to a settlement which is memorialized in the Joint Stipulation of Class Action and PAGA Settlement (“Settlement Agreement” or “Settlement”).

On [DATE] the Court granted preliminary approval of the Settlement, appointed Plaintiff Efrain Esparza Alvarez as the Class Representative, and appointed their attorneys at Protection Law Group as counsel for the Class (“Class Counsel”).

The Class Representative and Class Counsel think the Settlement is best for the Class.

## WHO IS IN THE SETTLEMENT?

### 4. How do I know if I am part of the settlement?

You are part of the Settlement, and a Class Member, if you were employed by Defendant either directly or through any union, staffing agency, subsidiary, or professional employer organization, as a non-exempt hourly-paid employee in the state of California at any time between February 11, 2017 and February 11, 2022.

## THE SETTLEMENT BENEFITS—WHAT YOU GET

### 5. What does the settlement provide?

The Settlement provides that Defendant will pay a maximum of Two Hundred Fifty-Three Thousand Nine Hundred Ninety Dollars (\$253,990.00) (“Gross Settlement Amount”). This includes all costs and attorneys’ fees for Class Counsel as well as all applicable payroll taxes.

The “Net Settlement Amount” is the portion of the Gross Settlement Amount that will be available for distribution to Class Members who do not submit timely and valid requests for exclusion (“Participating Class Members”). The Net Settlement Amount is the Class Settlement Amount less the following amounts (which are subject to Court approval):

- A. **Attorneys’ Fees to Class Counsel** not to exceed one-third (1/3) of the Gross Settlement Amount or Eighty-Four Thousand Six Hundred Sixty Dollars and Zero Cents (\$84,663.00);
- B. **Litigation Costs/Expenses to Class Counsel** not to exceed Fifteen Thousand Dollars (\$15,000);
- C. **Service Payment to the Class Representative** in an amount not to exceed Five Thousand Dollars (\$5,000);
- D. **Settlement Administration Costs** which are currently estimated to be                      (\$            );
- E. **PAGA Payment to the LWDA and PAGA Members** of Twenty Thousand Dollars (\$20,000). Seventy-five percent of this amount (\$15,250) will be paid to the California Labor and Workforce Development Agency pursuant to California Labor Code §2699 et. seq. The remaining twenty-five percent (\$5,000) will be distributed to PAGA Members who worked for Defendant between February 9, 2020, and February 11, 2022, on a pro rata basis for the release of claims arising under PAGA.

The portion of the Net Settlement Amount that you are eligible to claim (“Settlement Payment”) will be determined on a *pro rata* basis, based on the number workweeks you worked in California as an hourly-paid non-exempt employee for Defendant from February 11, 2017, through February 11, 2022 (“Workweeks”). Your estimated Settlement Payment includes both your estimated share of the Net Settlement Amount and, if eligible, your share of the PAGA Payment

Your Settlement Payment will be apportioned as twenty percent (20%) wages, forty percent (40%) interest, and forty percent (40%) penalties. The wage portion of the Settlement Payment will be subject to withholding for the employee and will be reported on a W-2 Form. Employer-side payroll taxes will be paid separately from and in addition to the Gross Settlement Amount. The penalties and interest portions of each Settlement Payment will not be subject to any withholdings and will be reported on an IRS Form 1099.

You worked XXX Workweeks between February 11, 2017, and February 11, 2022. Your estimated Settlement Payment is \$XXX.XX. The amount of your estimated Settlement Payment is subject to change

**depending on the number of timely and valid Requests for Exclusions submitted, payments approved by the Court, and other potential factors.**

Your estimated Settlement Payment was determined based on Defendant's record of your employment between February 11, 2017, and February 11, 2022, and is presumed correct. If you dispute the accuracy as to the number of weeks worked during the period described above you must contact the Settlement Administrator and provide any documentation you have supporting such dispute. Submission of these documents must be postmarked before [45 calendar days from the date of mailing]. All disputes regarding your Workweeks will be resolved and decided by the Parties after you submit evidence to the Settlement Administrator. If the parties do not agree the dispute will be submitted to the Court. The Settlement Administrator's contact information is listed below:

[Settlement Administrator]

[Address]

[Telephone No.]

## **HOW TO GET A PAYMENT FROM THE NET SETTLEMENT AMOUNT**

### **6. How can I get a payment?**

You do not have to do anything to qualify for a payment of your portion of the Settlement.

### **7. What am I giving up if I do not request to be excluded from the Settlement?**

Upon the funding of the Gross Settlement Amount, in exchange for the consideration set forth in the Settlement Agreement Plaintiff and all Class Members who choose to participate in the settlement shall release the "Released Parties" from the "Released Class Claims" for the "Class Period."

The "Released Parties" means Defendant 2H Construction, Inc. present, former and/or future, officers, directors, employees, members, shareholders, agents, trustees, representatives, attorneys, insurers, reinsurers, parent companies, subsidiaries, divisions, PEOs, temporary agencies, affiliates, predecessors, successors, assigns, as well as any individual or entity that could be alleged to be jointly liable with Defendant.

The "Released Class Claims" means all claims, rights, demands, liabilities, and causes of action alleged or that reasonably could have been alleged based on the facts asserted in the operative complaint in *Alvarez v. 2H Construction, Inc.*, Los Angeles County Superior Court Case No. 21STCV05672, the First Amended Complaint filed in the same Action, and the February 9, 2021 Labor and Workforce Development Agency during the Class Period including, but not limited to, the following claims: (i) failure to pay all regular wages, minimum wages, overtime wages double time wages due (including, but not limited to, any claims for additional wages owed due to "off the clock" work or any other theory related to "rounding" of hours worked); (ii) failure to provide meal periods or compensation in lieu thereof; (iii) failure to provide rest periods or compensation in lieu thereof; (iv) failure to reimburse necessary business expenses; (v) failure to provide complete, accurate wage statements; (vi) failure to pay wages timely at time of termination or resignation; (vii) failure to provide timely pay wages during employment; (viii) unfair business practices that could have been premised on the facts pled in the operative complaint; (ix) failure to maintain required time and payroll records, (x) failure to pay accrued vacation, and violations for California Labor Code sections 201, 202, 203, 204 210, 218, 221, 225.5, 226, 226(a), 226.3, 226.7, 227.3, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802 and violation of Business & Professions Code 17200, *et seq.*

The release of these claims pertains to the Class Period from February 11, 2017, through February 11, 2022.

Additionally, upon the funding of the Gross Settlement Amount, the LWDA and State of California shall release the Released Parties from all claims for civil penalties under the California Labor Code Private Attorneys General Act of 2004 that could have been premised on the facts alleged in the PAGA Notice provided to the LWDA, in the operative complaint in Action and the First Amended Complaint in the Action, including but not limited to civil penalties arising from allegation regarding Defendant's violations of California Labor Code sections 201, 202, 203, 204 210, 218, 221, 225.5, 226, 226(a), 226.3, 226.7, 227.3, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2698, *et seq.*, 2699, 2699.3, 2800, and 2802. The request for exclusion does not apply to the release of claims arising under PAGA and shall have preclusive effect on the LWDA for claims for penalties under PAGA based on the same factual predicate that arose between February 9, 2020 and February 11, 2022 (the "PAGA Period").

### **EXCLUDING YOURSELF FROM THE RELEASE**

If you want to keep the right to sue or continue to sue Defendant with respect to the Released Class Claims then you must submit a request for exclusion in conformity with the requirements set forth herein. If you exclude yourself, you will not receive payment from Net Settlement Amount. However, if eligible, you will still receive a payment in an amount equal to your estimated *pro rata* share of the PAGA Payment because the Request for Exclusion does not apply to this claim.

#### **8. How can I not participate in the Settlement?**

To exclude yourself from the release of Released Class Claims you must submit a written request for exclusion. You must include your name, address, telephone number and the last four digits of your social security number and/or Employee ID number. Your request for exclusion must also include a statement that you do not wish to be included in this Action similar to the following: I wish to exclude myself from the settlement reached in the matter of *Alvarez v. 2H Construction, Inc.*, I understand that by excluding myself, I will not receive money from the settlement of my individual claims."

The written for Exclusion must be mailed to the Settlement Administrator at the address listed below, post-marked by [45 calendar days from the date of mailing]. You cannot exclude yourself by phone.

[Settlement Administrator]

[Address]

[Telephone No.]

[Fax No. ]

If you ask to be excluded, you will not receive payment of any portion of the Net Settlement Amount and you cannot object to the Settlement. You will not be legally bound by the release of Released Class Claims.

#### **9. If I don't exclude myself, can I sue Defendant for the same thing later?**

No. Unless you submit a Request for Exclusion, you give up the right to sue Defendant and Released Parties for the Released Class Claims. If you have a pending lawsuit involving Released Class Claims, speak to your lawyer immediately.

#### **10. If I exclude myself, can I get money from this settlement?**

No. (except if you worked for Defendant in California between February 9, 2020 and February 11, 2022, in which case you will still receive for money from the portion of the settlement allocated to resolve claims under the Private Attorneys General Act.). But if you submit a timely and valid request for exclusion, you retain any right that you may have to sue, continue to sue, or be part of a different lawsuit against Released Parties for Released Class Claims.

## **THE LAWYERS REPRESENTING YOU**

### **11. Do I have a lawyer in this case?**

The Court has approved PROTECTION LAW GROUP, LLP as Class Counsel. The firms' contact information is:

#### **PROTECTION LAW GROUP LLP**

Heather Davis, Esq.  
Amir Nayebdadash, Esq.  
Carlos Jimenez, Esq.  
237 California Street  
El Segundo, California 90245  
Telephone: (424) 290-3095

### **12. How will the lawyers be paid?**

Class Counsel will ask the Court to award attorneys' fees of up to \$84,663.00 and reimbursement of litigation cost/expenses of up to \$15,000 from the Gross Settlement Amount. These amounts are subject to Court approval and the Court may award less than these amounts.

## **OBJECTING TO THE SETTLEMENT**

You can object to the Settlement or some part of it.

### **13. How do I tell the Court if I don't like the settlement?**

If you are a Class Member, you can object to the Settlement and you can give reasons for why you think the Court should not approve it. The Court will consider your views. To object, you must mail your objection to the Settlement Administrator no later than [45 calendar days from the date of mailing]. Your objection must include your full name, address, telephone number, the last four digits of your social security number or employee ID number, and the specific reason for your objection. You may also come to the Final Approval Hearing on [DATE] and make an objection at that time, regardless of whether you submitted a written objection.

### **14. What is the difference between objecting and excluding?**

Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement. If you exclude yourself, you have no basis to object because the case no longer affects you. You cannot submit both an objection and Request for Exclusion.

## **THE COURT'S FAIRNESS HEARING**

The Court will hold a hearing to decide whether to grant final approval of the Settlement (“Final Approval Hearing”).

**15. When and where will the Court decide whether to approve the settlement?**

The Court will hold the Final Approval Hearing at [REDACTED] a.m./p.m. on [REDACTED], 2022], at the Los Angeles County Superior Court, 312 North Spring Street, Los Angeles, CA 90012 in Department 1.

At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate, and determine whether to grant final approval of the Settlement. If there are objections, the Court will consider them.

**16. Do I have to come to the hearing?**

No. If you agree to the Settlement you do not have to come to Court to talk about it. However, you may attend. You may also retain your own lawyer at your expense to attend on your behalf.

**17. How will I learn if the settlement was approved**

A notice of final judgment will be posted on the Settlement Administrator website located at [www.\[REDACTED\].com](http://www.[REDACTED].com)

**IF YOU DO NOTHING**

**18. What happens if I do nothing at all?**

If you do nothing, you will receive your share of the Net Settlement Amount, and you will release the Released Class Claims. You will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendant or Released Parties about the Released Class Claims, ever again.

**GETTING MORE INFORMATION**

**19. How do I get more information?**

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement by contacting the Settlement Administrator or Class Counsel.

**WHAT IF MY INFORMATION CHANGES?**

**20. What if my contact information changes?**

It is your responsibility to inform the Settlement Administrator of your updated information to ensure receipt of settlement payments or communications regarding this matter. You can change or update your contact information by contacting the Settlement Administrator.

**DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO  
THE CLERK OF THE COURT OR THE JUDGE**