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8 FERNANDO GUTIERREZ; DAVID CASTILLO;

9 MARCO GONZALEZ, individually and on behalf

10 of others similarly situated

ELECTRONICALLY

FILED

Superior Court of California,
County of San Francisco

02/24/2023

Clerk of the Court

BY: JUDITH NUNEZ

Deputy Clerk

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **FOR THE COUNTY OF SAN FRANCISCO**

13 FERNANDO GUTIERREZ; DAVID
14 CASTILLO; MARCO GONZALEZ,
15 individually and on behalf of others similarly
16 situated,

17 Plaintiffs,

18 vs.

19 SAARMAN CONSTRUCTION, LTD.;
20 SAARMAN, LLC; and DOES 1 through
21 100, inclusive.

22 Defendants.

Case No. CGC-18-568258

**DECLARATION OF MICHAEL H. KIM IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: April 7, 2023

Time: 10:00 a.m.

Dept.: 613

Judge: The Hon. Andrew Y.S. Cheng

Action Filed: July 20, 2018

23 I, Michael H. Kim, declare as follows:

24 1. I am an attorney licensed and admitted to practice before all courts of the State of
25 California. My firm currently represents Plaintiffs in the above-referenced consolidated class action. I
26 make this declaration in support of Plaintiffs' Motion for Preliminary Approval of Class Action
27 Settlement. I have personal knowledge of the facts herein, and if called as a witness I could and would
28 competently testify to them under oath.

2. On July 20, 2018, Plaintiffs filed the instant wage and hour class action against Saarman
Construction, Ltd., and Saarman, LLC for: (1) Failure to Pay Wages including State minimum and
prevailing wages; (2) Failure to Pay Overtime Wages; (3) Failure to Furnish Accurate Wage Statements;

Case No. CGC-18-568258

**DECLARATION OF MICHAEL H. KIM IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

1 (4) Failure to Indemnify for Work Expenses; and (5) Unfair Competition in Violation of Business &
2 Professions Code Section 17200. The class action lawsuit has been brought on behalf of all hourly
3 construction workers, laborers, and carpenters who worked for Defendants in California during the
4 period of four years prior to the filing of this action through the present. Saarman, LLC was subsequently
5 dismissed from the action without prejudice, and the pending class action is currently proceeding only as
6 to Saarman Construction, Ltd. (“Defendant” or “Saarman Construction”).

7 3. Saarman Construction, Ltd. is a licensed construction contractor that provides
8 reconstruction, restoration, and seismic retrofitting services for existing and occupied properties in
9 California and Hawaii. According Saarman Construction, Ltd., “[f]rom north of the delta to south of San
10 Jose, we work on a broad array of construction projects throughout Northern California and Hawaii.
11 Specializing in occupied space we provide general contracting services to homeowners associations,
12 apartments, commercial and hospitality buildings as well as single-family homes.”

13 4. On July 1, 2020, Plaintiffs filed a First Amended Complaint to add a Sixth Cause of
14 Action for Failure to Pay Earned Wages Upon Termination or Discharge.

15 5. This wage and hour lawsuit concerns three main issues. The first issue concerns
16 Defendant’s failure to pay the proper prevailing wages to its carpenters at a public works project known
17 as Francis of Assisi, a/k/a the Mercy Housing Project, located at 145 Guerrero Street, San Francisco, CA,
18 94103. The second issue concerns Defendant’s Alternative Workweek Schedule (“AWS”) whereby
19 Plaintiffs and Class Members worked 8.5 hours Monday through Thursday and 6 hours on Friday every
20 workweek without the payment of overtime wages for all hours worked in excess of 8 hours in a
21 workday. The third issue concerns Defendant’s failure to reimburse Plaintiffs and Class Members for
22 their travel time to and from their jobsites when they drove their vehicles to bring their personal work
23 tools.

24 **Plaintiffs’ Claims**

25 6. Francis of Assisi, also known as the Mercy Housing Project, was a public works project
26 located at 145 Guerrero Street, San Francisco, 94103. As a public works project, it was subject to
27 California prevailing wage laws. Saarman Construction was contracted to perform renovation work

1 relating to inside and outside walls, cabinetry, windows, and roofs at this project from September of 2016
2 through September of 2018.

3 7. On this project, Saarman Construction employed carpenters and laborers (including their
4 superintendents and foremen). These workers primarily performed job duties that are assigned to
5 certified carpenters: waterproofing around window installations, waterproofing around sliding door
6 installations, creating holes in the roof to anchor and mount solar panels and then waterproofing the holes
7 and bolts, hanging sheetrock for inside walls (attaching sheetrock to interior metal frames using screws),
8 hanging DenseGlass (a type of fiberglass exterior gypsum sheathing used for exterior walls) for outside
9 walls, building interior walls with metal studs, and building metal framing made of metal studs to divide
10 the rooms inside.

11 8. Based on their actual job duties and the nature of the work done at the Mercy Housing
12 Project, their work hours should have been paid at the carpenter's prevailing wage rates. However,
13 Saarman Construction implemented a payroll policy or practice of reclassifying 3 or more hours of their
14 daily work hours each day as laborer's work. More specifically, on each shift each day, Saarman
15 Construction reclassified a portion of their daily hours worked as Laborer Group 3 so that those
16 reclassified hours are paid at the lower laborer's prevailing wage rate. According to Saarman
17 Construction, a total of 8006.5 hours of their time (excluding any hours attributable to those workers who
18 have settled and signed releases with Defendant) were reclassified as "Laborer Group 3" which allowed
19 them to pay these hours at the lower "Laborer Group 3" prevailing wage rate.

20 9. Moreover, on all the other job sites other than the Mercy Housing Project, defendant
21 Saarman Construction allegedly implemented an alterative workweek schedule whereby its employees,
22 including Plaintiffs, would work 8.5 hours from Monday through Thursday and 6 hours on Friday
23 without the payment of overtime wages for their work in excess of 8 hours in a workday. Plaintiffs
24 contend that under the AWS laws, Defendant was required to have an AWS election at each job site
25 where Defendant had this alternative workweek schedule. Plaintiffs' argument is primarily based on their
26 interpretation of the term "work unit" in the Wage Order's Election Procedures where it provides:
27 "[e]ach proposal for an alternative workweek schedule shall be in the form of a written agreement

1 proposed by the employer who has control over wages, hours, and working conditions of the affected
2 employees, and adopted in a secret ballot election, held before the performance of work, by at least a
3 two-thirds (2/3) vote of the affected employees in the work unit.” Plaintiffs contend that the term “work
4 unit” must be interpreted as “work site.”

5 10. However, Saarman Construction contends that the Alternative Workweek Schedule was
6 adopted at an election that was held on 12/18/2012. According to Saarman, the final vote tally showed
7 that 170 out of 186 employees voted in favor of the AWS. In the course of discovery, Saarman has
8 produced the Alternative Workweek Proposal and Disclosure (both in English and Spanish) that was
9 allegedly given to all the qualifying employees, the Alternative Workweek Schedule Informational
10 Packet Sign-Off sheets which contain employee signatures to acknowledge their receipt of the
11 informational packet, the AWS voting results, the Notice of Implementation of Alternative Workweek
12 Schedule, and a cover letter dated January 2, 2013 to the Division of Labor Statistics and Research
13 enclosing the AWS election results.

14 11. Based on this 12/18/2012 AWS election, Saarman Construction implemented this
15 alternative workweek schedule at all other job sites subsequent to the election whereby its workers
16 worked 8.5 hours from Monday through Thursday and 6 hours on Fridays without the payment of
17 overtime wages. Saarman contends that it was not required to hold a separate AWS election at every
18 other job site subsequent to the 12/18/2012 election.

19 12. Additionally, Saarman Construction’s employees brought and use their own personal tools
20 at their job sites. According to Plaintiffs, they were required to bring and use their own personal tools at
21 Saarman Construction’s work sites. While Defendant did provide large tools and equipment, they were
22 required to bring their own smaller personal tools such as tape measures, utility knives, nail pullers,
23 squares, drills, work belts, saws, sanders, jigsaws, multitools, and levels, which were not provided by
24 Defendant and were essential and necessary to perform their work at Defendant’s projects.

25 13. In addition, they had to drive their own vehicles to and from these work sites, bringing
26 and transporting their personal tools with them. Despite this fact, they were not reimbursed for their
27 miles or any travel expenses.

1 14. Defendant denies any wrongdoing and denies liability and contends that it has valid
2 defenses to all of Plaintiffs' claims. More specifically, Defendant contends that there is a valid
3 Alternative Workweek Schedule for all workers after 12/18/2012, that the statute and wage order
4 concerning AWS does require a separate AWS election for each work site, that no statutory interpretation
5 would require a contractor to hold a separate AWS election for each and every job site, that California
6 law expressly permits payment of different wage rates to the same worker on any prevailing wage
7 project, according to the character of the work actually performed, that accurate time records were
8 maintained to track the different characters of the work performed by its employees at the Mercy
9 Housing Project, and that California law allows an employer to require workers to furnish "hand tools
10 and equipment" if such tools and equipment are "customarily required by the trade or craft." IWC Wage
11 Order 16, section 8(B). Defendant maintains that the employer is not obligated to reimburse employees
12 for use of these personal tools.

13 **Discovery and Mediation**

14 15. The Parties engaged extensively in both formal and informal discovery prior to resolving
15 this Action, conducted a thorough investigation into the facts of this Action, including written discovery,
16 extensive records production, and extensive meet and confer over Defendant's responses. The
17 information obtained by Plaintiffs included: (1) over 6000 pages of payroll records, time records,
18 personnel files, Public Works Certified Payroll Reporting Form, U.S. Department of Labor Payroll
19 relating to the Mercy Housing Project, (2) plaintiff's payroll and time records and personnel files; (3)
20 Saarman Construction's Alternative Workweek Proposal and Disclosure, AWS Informational Packet
21 Sign-Off, AWS Informational Meeting Sign-In, AWS Voting Results, Labor Code section 511(e) Notice
22 to the Division of Labor Statistics and Research, Notice of Implementation of AWS, compensation
23 agreements for nearly all non-exempt employees in the Class and specific pay plan scales in effect during
24 the Class Period; (4) project locations; (5) AWS data, including the number of workers who worked on
25 AWS projects, the total number of shifts worked on AWS, the total number of shifts longer than 8.0
26 hours on AWS projects, and the estimated average hourly wages for workers working on AWS, (6)
27 payroll and time data relating to the Mercy Housing Project, including the number of shifts worked

1 including hours, and the total hours classified as “Laborer Group 3.”

2 16. With this information, the Parties participated in 3 separate ADR sessions, which included
3 1 mediation and 2 mandatory settlement conferences. On May 26, 2022, the Parties participated in a
4 mediation presided over by the Honorable George Hernandez (Ret.) Dickstein, Esq., a respected
5 mediator of wage and hour class actions. The Parties vigorously debated their positions, the likelihood of
6 class certification, and the legal bases for their claims and defenses. Thereafter, on June 27, 2022, the
7 Parties attended a mandatory settlement conference with the Honorable Anne-Christine Massullo.
8 Again, the Parties vigorously debated their positions, the likelihood of class certification, and the legal
9 bases for their claims and defenses. On September 30, 2022, the Parties participated in a second
10 mandatory settlement conference with Judge Massullo, which ultimately resulted in this class action
11 settlement. This settlement is now being presented to this Court for preliminary approval. The Parties
12 agreed to settle the Action to resolve all claims alleged against Defendant in Plaintiffs’ operative
13 complaint to the fullest extent permitted by law without any admission of liability or wrongdoing by
14 Defendants.

15 17. The settlement was only reached after Judge Massullo engaged in extensive discussions
16 with the Parties regarding the merits of their claims and defenses, their legal analyses, a fair settlement
17 value for the case given the strengths and weaknesses of Plaintiffs’ claims.

18 **Proposed Settlement**

19 18. “Class,” “Class Member(s)” or “Settlement Class” means all hourly employees who
20 worked shifts over 8.0 hours under an Alternative Workweek Schedule in their employment by
21 Defendant in California during the period of July 20, 2014, through the present, but who were not paid an
22 overtime premium rate for time in excess of 8.0 hours for those shifts, but excluding all employees who
23 executed individual settlement agreements with Defendant prior to January 1, 2023.

24 19. There is also a subclass for the small group of employees who worked at the Mercy
25 Housing Project. “Mercy Housing Project Subclass” shall mean all hourly employees who worked for
26 Defendant at the a public works project known as Francis of Assisi, a/k/a the Mercy Housing Project
27 from January 20, 2014, through the present, and who were paid an hourly rate classified as “Laborer

1 Group 3” while working on that project, but excluding all employees who executed individual settlement
2 agreements with Defendant prior to January 1, 2023. There are approximately 484 Class Members
3 (updated as of the date of this declaration) and 18 Mercy Housing Project Subclass Members.

4 20. If the Court approves this settlement, Defendant will pay a non-reversionary Gross
5 Settlement Amount of One Hundred Fifty Thousand Dollars (\$150,000). Significantly, no Class Member
6 will be required to file a claim form in order to receive payment from the settlement.. All Class Members
7 will automatically receive an Individual Settlement Payment unless they affirmatively opt-out.

8 21. Under the Settlement, the Gross Settlement Amount consists of the following
9 disbursements: (1) the Net Settlement Amount to the participating Class Members and Subclass
10 Members; (2) Class Counsel’s attorney fees and costs; (3) the Settlement Administrator’s costs; (4) the
11 Representative Plaintiffs’ Service/ Enhancement Awards. Gross Settlement Amount does not include the
12 employer’s share of payroll taxes, which will be paid separately by Defendant outside of the Gross
13 Settlement Amount. The monetary terms of the Settlement are summarized as below:

14	▪ Gross Settlement Amount	\$150,000
15	▪ Minus Court-approved attorneys’ fees (26 2/3%)	\$40,000
16	▪ Minus Court-approved costs (maximum)	\$10,000
17	▪ Minus Court-approved Service Awards	\$15,000
18	▪ <u>Minus Settlement Administrator’s costs (max)</u>	<u>\$11,000</u>
19	○ Net Settlement Amount	\$74,000

20 22. Attached hereto as **Exhibit 1** is a true and correct copy of the fully executed Stipulation
21 for Class Action Settlement (“Settlement Agreement”).

22 23. Attached hereto as **Exhibit 2** is a true and correct copy of the Notice of Class Action
23 Settlement, which is attached as Exhibit A to the Settlement Agreement.

24 24. Attached hereto as **Exhibit 3** is a true and correct copy of the Request for Exclusion Form,
25 which is attached as Exhibit B to the Settlement Agreement.

26 25. Thus, the Net Settlement Amount is estimated at \$74,000. This Net Settlement Amount is
27 further allocated between the Class and the Mercy Housing Project Subclass as follows: 75% of the NSA
28 to the Class and 25% of the NSA to the Subclass.

1 26. Each participating Class Members' share of the Net Settlement Amount will be calculated
2 by using the following formulae. The portion of the Net Settlement Amount allocated to the Class shall
3 be divided by the total number of shifts over 8.0 hours that all Class Members worked during the Class
4 Period under the Alternative Workweek Schedule, but were not paid an overtime premium rate for time
5 in excess of 8.0 hours. This will result in the "Shift Value." Each Class Member's Individual Settlement
6 Payment will be calculated by multiplying the Shift Value by the number of shifts over 8.0 hours that the
7 Class Member worked during the Class Period under the Alternative Workweek Schedule, but were not
8 paid an overtime premium rate for time in excess of 8.0 hours.

9 27. The portion of the Net Settlement amount allocated to the Mercy Housing Project
10 Subclass shall be divided by the total number of hours worked by all Mercy Housing Project Subclass
11 Members on the Mercy Housing Project that were allocated to "Laborer Group 3," resulting in the "Hour
12 Value." Each Mercy Housing Project Subclass Member's Individual Settlement Payment will be
13 calculated by multiplying the number of hours the individual worked that were allocated to "Laborer
14 Group 3" by the "Hour Value."

15 28. Plaintiffs and Class members who do not submit a valid and timely Request for Exclusion,
16 will release all claims, rights, demands, liabilities, statutory causes of action, and theories of liability of
17 every nature and description, whether known or unknown, that were alleged in the Action, or could have
18 been alleged based on any facts, transactions, events, policies, occurrences, acts, disclosures, statements,
19 omissions or failure to act pled in the Action against any of the Released Parties, including, but not
20 limited to, failure to pay wages including, but not limited to, overtime wages and minimum wages,
21 failure to pay wages semi-monthly at designated times, failure to pay wages upon termination and failure
22 to provide accurate itemized wage statements, penalties, damages, interest, costs or attorneys' fees, and
23 violations of any other state or federal law, whether for economic damages, non-economic damages,
24 liquidated damages, restitution, tort, contract, equitable relief, injunctive or declaratory relief, to the
25 extent necessary to effect a full and complete release of the Released Class Claims, including, but not
26 limited to, all claims under any common laws, contract, the Fair Labor Standards Act ("FLSA"), Cal.
27 Code of Regulations, Title 8, Sections 11000, *et seq.*, Wage Order 9 or any other applicable Wage Order,

1 California Labor Code Sections 200-204, 208, 210, 218.5, 218.6, 223, 224, 225.5, 226, 510, 558, 1194-
2 1197.1, 1771-1774, 2802 and any related provisions, the California Code of Civ. Proc. Section 1021.5,
3 and/or the California Business & Professions Code Sections 17200, *et seq.* This waiver and release will
4 be final and binding on the Effective Date, and will have every preclusive effect permitted by law.

5 29. The Parties have selected CPT to serve as the Administrator. The Parties have agreed on
6 the form of notice to be mailed to the Class and the method of notice to the class (a) the Notice of Class
7 Action Settlement and Estimated Individual Settlement Payment [Exhibit A to the Settlement
8 Agreement] and (b) the Request for Exclusion Form [Exhibit B to the Settlement Agreement]
9 (collectively "Class Notice Packet"). This Notice Packet, if approved by the Court, shall be sent by the
10 Administrator to the Settlement Class Members, by first class mail to those addresses provided by
11 Defendants. Each Settlement Class Member will have sixty (60) days from the date the Notice Packet is
12 initially mailed to postmark, fax or email any Requests for Exclusion or Objections to the Settlement.

13 30. To participate in the settlement, a Class Member need not take any action. All members
14 of the settlement class shall receive a settlement check unless he or she opts-out of the settlement. Any
15 Class Member wishing to opt-out from the Settlement Agreement must sign and postmark a written
16 "Request for Exclusion" to the Settlement Administrator within the Response Deadline. The postmark,
17 fax, or email date will be the exclusive means to determine whether a Request for Exclusion has been
18 timely submitted.

19 31. The Class Members will have an opportunity to dispute their number of "shifts" and/or
20 "hours" credited to them in their Notice, provided they file a dispute with the Settlement Administrator in
21 writing postmarked, faxed, or emailed no later than 30 days after the mailing of the Notices of Class
22 Action Settlement. To the extent that Class Members dispute the number of "shifts" and/or "hours",
23 Class Members may produce evidence to the Settlement Administrator showing that such information is
24 inaccurate. The Settlement Administrator will advise the Parties of such dispute. Defendant's records will
25 be presumed correct, but the Settlement Administrator will evaluate the evidence submitted by the Class
26 Member and will make the final decision as to the merits of the dispute within seven (7) days of receipt
27 of the dispute.

1 32. To object to the Settlement Agreement (“Objection”), a Class Member can either submit a
2 written Objection to the Settlement Agreement or appear at the Final Approval hearing in person or by
3 and through counsel, to state and argue his/her objection to the Settlement. If a written Objection is
4 submitted, the Objection must be mailed, faxed, or emailed to the Settlement Administrator on or before
5 the Response Deadline. invalid. Alternatively, Class Members may appear at the Final Approval Hearing
6 to argue and present their Objections to the Court.

7 **Fairness and Reasonableness of The Settlement**

8 33. The proposed settlement here is the product of arm's-length negotiations between the
9 Parties after extensive discovery and analysis. The Parties have investigated the applicable laws, as
10 applied to the facts discovered, regarding the alleged claims of the Class and potential defenses thereto,
11 as well as the damages claimed by thereon. Armed with this extensive body of information and analysis,
12 the Parties engaged in full, complete, and ultimately successful settlement discussions. At all times, the
13 negotiations leading to the Settlement have been adversarial, non-collusive and at arm's length, which
14 were mediated through a settlement judge at multiple mandatory settlement conferences.

15 34. To determine whether the settlement is fair, the trial court considers all relevant factors,
16 including, but not limited to, “the strength of plaintiffs’ case, the risk, expense, complexity and likely
17 duration of further litigation, the risk of maintaining class action status through trial, the amount offered
18 in settlement, the extent of discovery completed and the stage of the proceedings, the experience and
19 views of counsel . . . and the reaction of the class members to the proposed settlement.” *Dunk v. Ford*
20 *Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. The Court’s primary function is to ensure that the
21 settlement is not the product of fraud, overreaching, or collusion, and that the settlement, taken as a
22 whole, is fair, reasonable, and adequate to all concerned.

23 35. Plaintiffs maintain that their claims are meritorious, and Plaintiffs are prepared to litigate
24 their claims through class certification and ultimately through trial. However, Plaintiffs are cognizant of
25 substantial risks and uncertainty in successfully proceeding with the litigation given the multiple defenses
26 to Plaintiffs’ claims that Defendant has presented, both on the merits and to class certification.

27 36. The Parties have been litigating this matter for over 4 years and engaged in significant
28

1 formal discovery, document production, legal and data analysis. If the litigation is to continue, more
 2 discovery will need to be conducted, including taking multiple depositions and continuing with written
 3 and document discovery, in addition to preparing to file for class certification. Even if Plaintiffs' class
 4 certification motion were granted, the Parties would incur significantly more attorneys' fees and costs
 5 through possible decertification motion, trial, and possible appeal. This settlement avoids those risks and
 6 avoids incurring further expense.

7 37. As Plaintiffs have not yet filed for class certification, there is certainly a risk of not having
 8 a certified class at the time of trial. This settlement avoids this risk. Plaintiffs recognize the challenges
 9 they face in certifying a class action and establishing liability on the underlying wage and hour claims.

10 38. To allow this Court to make an informed assessment of the proposed Settlement pursuant
 11 to *Kullar v. Foot Locker Retail, Inc.* (2008) 18 Cal.App.4th 116, Plaintiffs' Counsel provides the
 12 following assessment of the claims and settlement:

13 39. Failure to Pay Prevailing Wages: Plaintiffs contend that Defendant failed to pay
 14 prevailing wages at the Mercy Housing Project when their hours were classified as "Laborer Group 3"
 15 and were paid at the lower Laborer's Prevailing Wage Rate. To calculate Defendants' liability exposure
 16 for this claim, Plaintiffs obtained the following data: there are 18 members in the Mercy Housing Project
 17 Subclass, and the total number of hours that were paid as "Laborer Group 3" was 8007 hours. Assuming
 18 that these hours should have been paid at the higher Carpenter's Prevailing Wage Rate, Plaintiff calculate
 19 that the total exposure is approximately \$176,989.83.

	Total Hours Classified as "Laborer Group 3" (Excluding Employees Who Signed Releases)	Carpenter's Prevailing Wage Rate (Total Hourly Rate)	Laborer Group 3's Prevailing Wage Rate (Total Hourly Rate)	What Should Have Been Paid at the Carpenter's Prevailing Wage Rate (Total Hourly Rate)	What Was Actually Paid at the Laborer Group 3's Prevailing Wage Rate (Total Hourly Rate)	Unpaid Prevailing Wages (Excluding Employees Who Signed Releases)
07/01/2016 - 06/30/2017	3129	\$ 72.79	\$ 51.24	\$ 227,759.91	\$ 160,329.96	\$ 67,429.95
07/01/2017 - 06/30/2018	4878	\$ 75.30	\$ 52.84	\$ 367,313.40	\$ 257,753.52	\$ 109,559.88

07/01/2018 - 06/30/2019	0	\$ 77.97	\$ 54.49	\$ -	\$ -	\$ -
						\$ 176,989.83

40. However, there is a significant risk that this claim may not be susceptible to class certification and may ultimately fail on its merits in light of Defendant’s contention that California law expressly permits payment of different wage rates to the same worker on any prevailing wage project, according to the character of the work actually performed. Defendant contends that accurate time records were maintained to track the different characters of the work performed by its employees at the Mercy Housing Project. Defendant cited to the Department of Industrial Relations Publics Works Manual, which contain a section titled “Different Classifications for the Same Worker,” wherein it is stated that:

The minimum prevailing wage for hours worked in the execution of a contract for pubic [sic] works is based upon the specified prevailing rates “for work of a similar character” (LC §§ 1771 and 1774.) Therefore, it is possible that one worker may perform more than one type of work during the course of a project.

...

Consistent with the language of Labor Code 1771, a contractor is generally not required to pay its workers at a rate higher than that specified in a particular wage determination for the type of work performed.

41. This conclusion would require individualized inquiries into how each worker at the Mercy Housing Project spent time in terms of their actual duties and may further support Defendant’s merit-based defense.

42. Accordingly, based on the significant risk that Plaintiffs would be unable to establish liability for allegedly unpaid prevailing wages, Plaintiffs discounted the maximum potential exposure by 50% for risk of non-certification, and by an additional 50% to account for a risk of being unsuccessful on the merits and/or a substantial reduction in damages, to arrive at an estimated exposure of approximately **\$44,247**.

43. Failure to Pay Overtime Wages: Plaintiffs’ claim for unpaid overtime wages is based on Defendant’s alternative workweek schedule. Plaintiffs contend that notwithstanding the 12/18/2012 AWS election, Defendant was required to hold a separate AWS election at every other job site

1 subsequent to the 12/18/2012 election. Defendant did not have a separate AWS election at work sites
2 other than the one held on 12/18/2012, and hence Defendant was required to pay overtime wages when
3 its employees worked more than 8 hours per day.

4 44. To calculate Defendants' liability exposure for this claim, Plaintiffs obtained the
5 following data: there are 484 members in the Class, the total number of shifts worked by all class
6 members in excess of 8.0 hours under the AWS was 99,239 shifts, and the estimated average hourly rate
7 for workers on AWS projects was \$28.01. Based on the foregoing, Plaintiffs estimated Defendant's
8 maximum potential exposure as \$694,921.

9 45. On the other hand, Defendant has presented a strong argument that (1) scores of
10 employers in the construction industry have (like Saarman) conducted workforce-wide AWS elections
11 and applied them to future projects; and (2) the DLSE has never taken any action to prevent it.
12 Furthermore, Defendant argues that Wage Order 16 on AWS election procedures does not clearly support
13 Plaintiffs' position that the term "work unit" must be interpreted to mean "work site" and that no court or
14 legal authority has interpreted Wage Orde 16 in the manner Plaintiffs have argued. This argument would
15 defeat Plaintiffs' claim for unpaid overtime wages entirely.

16 46. Accordingly, Plaintiffs discounted the maximum potential exposure by 50% for risk of
17 non-certification, and by an additional 80% to account for a risk of being unsuccessful on the merits
18 and/or a substantial reduction in damages, to arrive at an estimated exposure of approximately **\$69,492**.

19 47. Failure to Reimburse for Commute Mileage/ Travel: Plaintiffs' claim for failure to
20 indemnify work expenditures is based on Defendant's failure to reimburse Plaintiffs and Class Members
21 for commute mileage under Labor Code § 2802, which requires an employer to indemnify an employee
22 "for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge
23 of his or her duties." To calculate Defendant's liability exposure for this claim, Plaintiffs relied on the
24 following data provided by Defendant: there is a total of 804 project sites during the Class Period and
25 232,357 work shifts at those sites. Taking Defendant's main office in San Francisco as the starting point
26 of their morning commute to the job site, and relying on the standard mileage rates from the Internal
27 Revenue Service, Plaintiffs estimated the total unreimbursed commute mileage to be \$3,590,466.

1 48. However, Defendant has argued that California law allows an employer to require workers
2 to furnish “hand tools and equipment” if such tools and equipment are “customarily required by the trade
3 or craft.” IWC Wage Order 16, section 8(B). Wage Order 16, section 8(B) states: “[w]hen the employer
4 requires the use of tools or equipment or they are necessary for the performance of a job, such tools and
5 equipment shall be provided and maintained by the employer, except that an employee whose wages are
6 at least two (2) times the minimum wage may provide and maintain hand tools and equipment
7 customarily required by the particular trade or craft in conformity with Labor Code Section 2802.”
8 Defendant argued that because Class Members and Plaintiffs were paid at a rate not less than two times
9 the minimum wage, they could provide and maintain their own hand tools and equipment customarily
10 required by their trade, and that they were not being “required” to bring their own tools and are not
11 entitled to any separate commute mileage reimbursement or travel payment. Additionally, any inquiry
12 into Class Members’ entitlement to commute mileage reimbursement would require individualized
13 questions into what trade they were in, what duties they performed, what tools they carried, whether they
14 were free from control of the employer during their commute time, and whether they drove their own
15 vehicles or were given a ride.

16 49. Accordingly, Plaintiffs discounted the maximum potential exposure by 80% for risk of
17 non-certification, and by an additional 80% to account for a risk of being unsuccessful on the merits
18 and/or a substantial reduction in damages, to arrive at an estimated exposure of approximately **\$143,618**.

19 50. Failure to Furnish Accurate Wage Statements: Plaintiffs contend that Defendant issued
20 defective wage statements because (1) Defendant did not pay all prevailing wages at the Carpenter’s
21 Prevailing Wage Rate at the Mercy Housing Project; and (2) Defendant did not account for and pay
22 overtime wages to those employees who worked more than 8 hours under the AWS. As a result,
23 Plaintiffs contend that they are entitled to penalties under Labor Code section 226(e) as follows:

24
25 An employee suffering injury as a result of a knowing and intentional
26 failure by an employer to comply with subdivision (a) is entitled to recover
27 the greater of all actual damages or fifty dollars (\$50) for the initial pay
28 period in which a violation occurs and one hundred dollars (\$100) per
employee for each violation in a subsequent pay period, not exceeding an
aggregate penalty of four thousand dollars (\$4,000), and is entitled to an
award of costs and reasonable attorney s fees.

1 51. As a penalty, this waiting time penalty claim under Labor Code § 226 is governed by the
2 one-year statute of limitations of Code of Civil Procedure § 340, which means that the relevant recovery
3 period is July 20, 2017 through the present. The maximum waiting penalty recoverable per employee is
4 \$4000, assuming the employee has worked more than 40 pay periods in which there was at least one
5 wage and hour violation. Plaintiffs and Class Members were paid biweekly or every 2 weeks. According
6 to Defendant’s data, Defendant’s workforce working on its AWS projects decreased to 130-142
7 employees by 2017 and remained at this level through 2022. Assuming the maximum recovery of \$4000
8 per employee, an estimated liability exposure is \$568,000 (\$4000 x 142 employees).

9 52. However, in order to obtain penalties under Labor Code section 226, Plaintiffs must prove
10 that Defendant’s failure to furnish accurate wage statements was “knowing and intentional.” However,
11 Defendant has presented a “good faith dispute” defense that would preclude the finding of “knowing and
12 intentional” failure. In particular, Defendant argues that it relied on its reasonable interpretation of Wage
13 Order 16 to apply the 12/18/2012 AWS to other projects, and relied on the Department of Industrial
14 Relations Publics Works Manual to pay different wage rates to the same worker on any prevailing wage
15 project, according to the character of the work actually performed. Given Defendants’ good faith defense
16 to Plaintiffs’ underlying claims, and individual inquiries that may be required to determine liability as
17 discussed above, Plaintiffs discounted this amount by 80% for risk of non-certification and by an
18 additional 80% for risk of being unsuccessful on the merits or not recovering the full amount sought, to
19 arrive at an estimated exposure of **\$22,720** on this claim.

20 53. Waiting Time Penalties: Plaintiffs contend that Defendants failed to compensate Class
21 Members all wages due and owing at the end of each Class Member’s employment if his/her
22 employment ended during the Class Period. These earned and unpaid wages include Class Members’
23 prevailing wages at the Mercy Housing Project and their overtime wages who worked more than 8 hours
24 under the AWS. To calculate Defendant’s liability exposure for this claim, Plaintiffs utilized the
25 following data from Defendant: there are 484 members in the Class, and the estimated average hourly
26 rate was \$28.01. As of the date of this Motion, there are 84 current employees and 400 former
27 employees. Applying this number to generate waiting time penalties for the maximum period of 30 days,

1 Defendant's liability exposure is \$2,688,960.

2 54. On the other hand, Defendants assert that they have several good faith defenses to waiting
3 time penalties that would preclude a finding of willfulness under Section 203, which is sufficient to
4 defeat a claim for and preclude waiting time penalties. See 8 Cal. Reg. Code § 13520 (A "good faith
5 dispute" that any wages are due occurs when an employer presents a defense, based in law or fact which,
6 if successful, would preclude any recover on the part of the employee. The fact that a defense is
7 ultimately unsuccessful will not preclude a finding that a good faith dispute did exist. Defenses presented
8 which, under all the circumstances, are unsupported by any evidence, are unreasonable, or are presented
9 in bad faith, will preclude a finding of a "good faith dispute."); *In re Trombley* (1948) 31 Cal.2d 801,
10 808.

11 55. Defendant has presented a strong "good faith dispute" defense to both the unpaid
12 prevailing wages and the unpaid overtime wages. Additionally, determining liability may require highly
13 individualized inquiries. Accordingly, Plaintiffs discounted this amount by 80% for risk of non-
14 certification and by an additional 80% for risk of being unsuccessful on the merits or not recovering the
15 full amount sought, to arrive at an estimate exposure of **\$107,558** on this claim.

16 56. Summary of *Kullar* Analysis: Using these estimated recovery figures for each of the
17 claims described above, Plaintiffs predict that the optimal recovery for the Class would be
18 approximately **\$387,635**, so that the Gross Settlement Amount of \$150,000 would represent
19 approximately **39%** of the recovery if Plaintiffs successfully certify the claims and win all of them on
20 their merits. This is well within the realm of being fair, reasonable, and adequate. (*See, e.g. Glass v. UBS*
21 *Financial Servs.*, 2007 U.S. Dist. LEXIS 8476, *28-29 (C.D. Cal. 2007) (approving settlement which
22 represented 25 to 35% of potential damages); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459
23 (approving settlement which represented "roughly one-sixth of the potential recovery); *Linney v. Cellular*
24 *Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 ("The fact that a proposed settlement may only
25 amount to a fraction of the potential recovery does not, in and of itself, mean the proposed settlement is
26 grossly inadequate or should be disapproved).)

27 57. The proposed Settlement Agreement has no "obvious deficiencies" and is well within the

1 range of possible approval. The settlement provides significant monetary relief to Class Members,
2 reflecting 75% of the estimated recovery that the Class could reasonably expect in light of the significant
3 litigation risks and disputed wage claims.

4 58. Moreover, the Parties have engaged in a thorough investigation before the proposed
5 settlement was reached to allow the Parties to fully evaluate the claims and defenses. Based on the
6 investigation and analysis conducted, Plaintiffs submit that the proposed settlement is reasonable. Absent
7 settlement, Plaintiffs are at the stage of proceedings where they would be preparing to file a motion for
8 class certification.

9 **Experience and Views of Class Counsel**

10 59. My firm has litigated numerous complex business matters, including employment cases.
11 We have settled multiple cases for seven-figures and several more for six-figure amounts. We have
12 obtained seven-figure judgments in complex litigation matters. The firm practices in the area of
13 employment litigation and wage and hour class action litigation.

14 60. Over the past nine years, my firm has engaged in all aspects of class action litigation,
15 including having interviewed potential class action representatives to determine the potential merits of
16 their allegations, conducted pre-litigation investigation, including interview, research and analysis,
17 drafted class action complaints, drafted class action discovery and responses thereto, conducted and
18 defended depositions, drafted, opposed and orally argued numerous class action law and motion
19 pleadings (including oppositions to removal, oppositions to demurrer, oppositions to motions to strike,
20 motions to compel, oppositions to motions to compel, class certification motions, oppositions to motions
21 to decertify, and preliminary and final approval motions), conducted class member interviews, legal
22 research, settlement negotiations and meetings with defense counsel, statistical analysis of potential
23 damages, and attended numerous mediation sessions for purposes of negotiating class action settlements.

24 61. I have argued and won contested class certification motions.

25 62. My firm presently has approximately 30 wage and hour class actions pending in various
26 stages of the litigation, from pre-litigation investigation to final-approval pending.

27 63. My firm is well qualified because of our experience, knowledge, and resources to act as

1 counsel and represent Plaintiff and the putative class in this action. A substantial percentage of our
2 practice is devoted to litigating wage, hour, and working-conditions violations, and the bulk of these
3 cases are class actions.

4 64. I have substantial experience in prosecuting employment matters, particularly wage and
5 hour class actions. My firm has focused a substantial percentage of our practice on cases involving the
6 California Labor Code and Fair Employment and Housing Act. In addition to the present case, I have
7 been appointed as class counsel in other wage-and-hour class action lawsuits pending or resolved in
8 various counties throughout California. By way of example, I have been approved as class counsel in
9 *Hugo Orozco v. California Terra Garden, Inc.*, San Mateo County Superior Court Case No. CIV553629;
10 *Candido Aglubat v. Formfactor, Inc.*, Alameda County Superior Court Case No. RG13692639; *Tomas*
11 *Funez v. GMG Janitorial Services, Inc.*, San Francisco Superior Court Case No. CGC-13-532261;
12 *Martinez v. Providian Holdings, Inc.*, Los Angeles County Superior Court Case No. BC461298; *Lopez-*
13 *Gallardo v. L&R Auto Park*, Los Angeles County Superior Court Case No. BC394399; *Karla Martinez v.*
14 *G&M Oil, Inc.*, Orange County Superior Court Case No. 30-2009-00238965; *Kay v. Asian*
15 *Rehabilitation Services, Inc.*, Los Angeles County Superior Court Case No. BC442795; *Bendana v.*
16 *Custom Air Trucking, Inc.*, Los Angeles County Superior Court Case No. BC456055; *Salvador Juarez v.*
17 *Unified, Ltd*, Los Angeles County Superior Court Case No. BC463121; *Deyanira Noriega v. Event, Inc.*,
18 Alameda County Superior Court Case No. RG15783377; *Arturo Garcia v Randazzo Enterprises, Inc.*,
19 Monterey County Superior Court Case No. 16CV000298; *Summit Plastering Wage and Hour Cases*,
20 JCCP No. 4815; *Alejandro Guzman v. Pick-N-Pull Auto Dismantlers*, Alameda County Superior Court,
21 Case RG16816283; *Gerardo Castellanos v. Service by Medallion*, Santa Clara County Superior Court,
22 Case No. 1-15-CV-288369; *Juan Saravia v. Green Growth Industries, Inc.*, Alameda County Superior
23 Court, Case No. RG15774455; *Maria Lopez v. Hersha Hospitality Management, L.P.*, Contra Costa
24 County Superior Court, Case No. C17-00929; *Ernesto Hernandez v. Alco General Contractors*,
25 Sacramento County Superior Court, Case No. 34-2014-00172517; *Qingyun Li v. Volar, LLC*, San
26 Francisco County Superior Court, Case No. CGC-17-558187; *Miguel Cuevas v. Instone-Marble &*
27 *Granite, LLC*, Alameda County Superior Court, Case No. RG15755060; *Javier Blanco v. Dole Fresh*

1 *Vegetables, Inc.*, Santa Cruz County Superior Court, Case No. 17CV00500; *Claudia Santillan v. JSBM,*
2 *Inc.*, Stanislaus County Superior Court, Case No. 2016536; *Norma Serrano v. Bay Bread, LLC*, San
3 Mateo County Superior Court, Case No. CIV526280; *Lilia Rodriguez v. Personnel Staffing Group, LLC*,
4 Alameda County Superior Court, Case No. RG17846171; *De Trinh v. Golden Staten Overnight Delivery*
5 *Service, Inc.*, Orange County Superior Court, Case No. 30-2017-00961719-CU-WT-CXC.

6 65. The settlement amount was a negotiated compromise, factoring in the risks related to
7 certification, liability and damages. Taking into account all of the circumstances of the action and the
8 significant factual and legal defenses raised by Defendant against certification, liability and damages,
9 Class Counsel believe that the settlement is fair and reasonable. Each Class Member's individual share
10 of the settlement amount is tailored to the number of shifts and hours worked by each Class Member
11 during the class period so the distribution is weighted in favor of those Class Members who were
12 potentially most affected by the alleged violations. Moreover, because the class consists of several
13 employees, it was unlikely that the potential monetary claims of individual Class Members would have
14 proved viable without the class-action mechanism. Class Counsel believe that this is a fair and reasonable
15 settlement in light of the complexities of the case and uncertainties of class certification and further
16 litigation.

17 **Request for Attorney's Fees and Costs**

18 66. The settlement calls for the payment of up to 26 2/3% of the Gross Settlement Amount for
19 attorney's fees, or \$40,000.00. This request is fair, reasonable, and adequate to compensate Class
20 Counsel for the substantial work they have put into this case and, moreover, the risk they assumed by
21 taking it in the first place. The attorney's fees award is intended to reimburse Class Counsel for all
22 uncompensated work that they have already done and for all the work they will continue to do in carrying
23 out and overseeing the notification to class members, communicating with class members regarding their
24 claims, and assisting in the administration of the settlement if it is preliminarily approved.

25 67. If the amount of attorney's fees awarded by the Court is less than the requested amount,
26 the difference shall serve to increase the Net Settlement Amount to be paid to Settlement Class Members.

27 68. My firm took this case on a contingent-fee basis against a business represented by a

1 reputable defense firm. Plaintiffs signed a contingency-fee agreement stating that Class Counsel could
2 receive a fee of up to 39% of the overall recovery. When we take contingent cases, we must pay careful
3 attention to the economics involved or one bad case can destroy years of work. Accordingly, when we
4 take contingency cases, we anticipate that we shall, if successful, receive a fee that exceeds our normal
5 hourly rate; otherwise, the risk is often too great to bear. Even when we work long hours, the number of
6 hours in a day is limited. Because of this, when we take on one particular matter, we are unable to take
7 on other matters. When Class Counsel became involved in this case, we realized the time commitment
8 that it would entail and we were forced to turn down matters that we otherwise should have been able to
9 handle. In sum, this case claimed a significant portion of Class Counsel's time and attention throughout
10 its pendency.

11 69. In this case, my firm has incurred substantial attorney's fees conducting pre-filing
12 investigation, analyzing the claims, conducting legal research, reviewing records and reviewing
13 discovery responses, negotiating the class settlement, preparing the long-form settlement agreement,
14 preparing this motion for preliminary approval, and otherwise litigating the case.

15 70. The requested fee is reasonable for the services provided to class members and for the
16 benefits they are to receive. Indeed, even with a modest multiplier under the lodestar theory, see *Bihun v.*
17 *AT&T Information System* (1993) 13 Cal.App.4th 976, 997, Class Counsel's fees would still be justified.
18 Class Counsel will more fully brief the Court on its lodestar when Plaintiffs submit their motion for final
19 approval.

20 **The Service Award Requested by Plaintiff Is Reasonable**

21 71. As part of the Settlement, Plaintiffs will seek an Enhancement Award of \$5,000 for each
22 named Plaintiff in addition to their share of the Net Settlement Amount. Plaintiffs have taken the
23 extraordinary step of challenging their former employer's actions by bringing this case. Plaintiff's actions
24 have resulted in a recovery for the Settlement Class, and the service award they seek is reasonable.
25 Plaintiffs fully participated in this action throughout the pendency of the litigation. They were kept well
26 informed of the nature and extent of settlement discussions and approved the same. As such, the service
27 award sought is reasonable and because absent the actions taken by Plaintiffs, the Class Members would

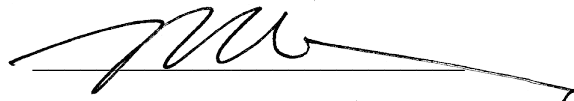
1 not have recovered any monetary benefit in this action.

2 **Class Notice Should Be Approved.**

3 72. The proposed notice to the Class conforms to the Rules of Court and this Court's
4 guidelines. The proposed plan to distribute the notice to Class Members by U.S. Mail is reasonable as it
5 provides individual notice to all members who can be identified through reasonable effort. The Parties
6 have agreed to use CPT Group, an experienced settlement administrator, who will perform a National
7 Change of Address search and in-depth skip tracing search in order to obtain the best possible addresses
8 for Class Members.

9 73. The Notice is to be mailed in two versions, in English and Spanish. The Notice contains
10 comprehensive information regarding the case, the terms of settlement, estimated payment for each Class
11 Member and the method of calculation, the final approval hearing, and instructions as to how to opt-out
12 or object to the settlement. Class Members will have 60 days to opt-out or object and 30 days to dispute
13 their shifts and/or hours. Class Members who do not opt out will be bound to the terms of the settlement
14 and will release all claims against Defendants that were pled or could have been pled based on the facts
15 alleged in the Action. Further, each Plaintiff has agreed to a general release of all claims against
16 Defendants, including a waiver of *Civil Code* section 1542. Plaintiffs submit that the content of the
17 Notice is sufficient to fairly apprise Class Members regarding the terms of the settlement and option and
18 instruction as to how to opt-out, object, or dispute shift or hours, and satisfies the requirement under Rule
19 3.766 of California Rules of Court

20 I declare under penalty of perjury under the laws of the State of California that the foregoing is
21 true and correct. Executed on February 24, 2023 at Burlingame, California.

22
23 

24 Michael H. Kim

Exhibit 1

1 Michael H. Kim, Esq. (State Bar No. 200792)
2 **MICHAEL H. KIM, P.C.**
3 1633 Bayshore Hwy, Suite 333
4 Burlingame California 94010
5 Tel: (650) 697-8899
6 Fax: (650) 697-8896
7 Email: mkim@mhklawyers.com

8 Attorneys for Plaintiffs
9 FERNANDO GUTIERREZ, DAVID
10 CASTILLO, MARCO GONZALEZ,
11 individually and on behalf of others similarly
12 situated

13 Patrick Stokes, Esq. (State Bar No. 251558)
14 **Hinshaw, Marsh, Still & Hinshaw, LLP**
15 12901 Saratoga Ave, Saratoga CA 95070
16 Direct: 408-861-6546
17 Mobile: 408-857-5423
18 Fax: 408-257-6645
19 Email: pstokes@hinshaw-law.com

20 Attorneys for Defendant
21 SAARMAN CONSTRUCTION, LTD

22 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
23 **FOR THE COUNTY OF SAN FRANCISCO**

24 FERNANDO GUTIERREZ;
25 DAVID CASTILLO; MARCO
26 GONZALEZ; individually and on
27 behalf of others similarly situated,

28 Plaintiff,

vs.

SAARMAN CONSTRUCTION,
LTD.; SAARMAN, LLC; and
DOES 1 through 100, inclusive,

Defendants.

Case No.: CGC-18-568258

[Assigned to Hon. Andrew Y.S. Cheng, Dept.
613]

JOINT STIPULATION RE CLASS
ACTION SETTLEMENT AND RELEASE

Complaint Filed: July 20, 2018

1 pursuant to California Labor Code Sections 201, 202, and 203. On July 1 2020, Plaintiffs
2 filed the First Amended Complaint, adding a Sixth Cause of Action for Failure to Pay
3 Earned Wages Upon Termination or Discharge.

4 On October 2, 2020, the Court entered an order granting the Parties’ Stipulation to
5 dismiss Defendant Saarman, LLC without prejudice.

6 On May 26, 2022, the Parties mediated this matter with the Honorable George
7 Hernandez (Ret.) of ADR Services, Inc. The mediation was unsuccessful.

8 On or about June 27, 2022, the Parties attended a Mandatory Settlement
9 Conference with the Honorable Anne-Christine Massullo. The Parties did not reach a
10 settlement at the MSC. However, the Parties continued to engage in settlement
11 discussions by and through Judge Massullo.

12 On or about September 30, 2022, the Parties attended a follow-up Mandatory
13 Settlement Conference with Judge Massullo. The conference resulted in a class-wide
14 settlement, the terms and conditions of which are now memorialized in this Stipulation.

15 **DEFINITIONS**

16 The following definitions are applicable to this Settlement Agreement. Definitions
17 contained elsewhere in this Settlement Agreement will also be effective.

18 1. “Action” means *Fernando Gutierrez et al. v. Saarman Construction, Ltd.*,
19 Case No. CGC-18-568258, Superior Court of California for the County of San Francisco.

20 2. “Class Counsel” means Michael H. Kim, P.C.

21 3. “Class,” “Class Member(s)” or “Settlement Class” means all hourly
22 employees who worked shifts over 8.0 hours under an Alternative Workweek Schedule in
23 their employment by Defendant in California during the period of July 20, 2014, through
24 the present, but who were not paid an overtime premium rate for time in excess of 8.0
25 hours for those shifts, but excluding all employees who executed individual settlement
26 agreements with Defendant prior to January 1, 2023.

27 4. “Mercy Housing Project Subclass” shall mean all hourly employees who
28 worked for Defendant at the a public works project known as Francis of Assisi, a/k/a the

1 Mercy Housing Project from January 20, 2014, through the present, and who were paid
2 an hourly rate classified as “Laborer Group 3” while working on that project, but
3 excluding all employees who executed individual settlement agreements with Defendant
4 prior to January 1, 2023.

5 5. “Court” means the Superior Court of California for the County of San
6 Francisco.

7 6. “Defendant” means Saarman Construction, Ltd.

8 7. “Released Parties” means Saarman Construction, Ltd. and all of its present
9 and former parents and joint ventures, and all of their shareholders, members, managers,
10 officers, officials, directors, employees, agents, servants, registered representatives,
11 attorneys, insurers, successors, and assigns, and any other persons acting by, through,
12 under, or in concert with any of them.

13 8. “Effective Date” means the latest of the following dates: (i) the date upon
14 which the Court grants final approval of the Settlement if no Settlement Class members
15 file objections to the Settlement; or (ii) if a Class Member files an objection to the
16 Settlement, sixty (60) days after the date upon which the Court grants final approval of
17 the Settlement if no appeal is initiated by an objector; or (iii) if a timely appeal is initiated
18 by an objector, the Effective Date shall be the date of final resolution of that appeal
19 (including any requests for rehearing and/or petitions for certiorari), resulting in final
20 judicial approval of the Settlement.

21 9. “Employer’s Share of Payroll Taxes” means Defendant’s portion of payroll
22 taxes, including, but not limited FICA and FUTA, on the portion of the Individual
23 Settlement Payments that constitutes wages. Defendant’s share of payroll taxes shall not
24 be included in the Gross Settlement Amount and shall be paid separately by Defendant.
25 The Settlement Administrator shall handle the calculation of the taxes owed, payment of
26 such amounts to the appropriate agencies and reporting

27 10. “Gross Settlement Amount” is the amount of One Hundred and Fifty
28 Thousand Dollars (\$150,000.00), which is the amount to be paid by Defendant pursuant

1 to this Settlement Agreement. The Gross Settlement Amount is non-reversionary and
2 includes: (a) all Individual Settlement Payments to Participating Class Members; (b) the
3 Class Representative Enhancement Payments to Plaintiffs; (c) Attorneys' Fees and Costs
4 to Class Counsel, and (d) Settlement Administration Costs to the Settlement
5 Administrator. The Gross Settlement Amount does not include the Employer's Share of
6 Payroll Taxes.

7 11. "Individual Settlement Payment" means a Participating Class Member's
8 share of the Net Settlement Amount. IRS forms 1099 and W-2 will be distributed at times
9 and in the manner required by the Internal Revenue Code of 1986, as amended (the
10 "Code") and consistent with this Agreement with respect to payments made to the
11 Participating Class Members.

12 12. "Net Settlement Amount" means the Gross Settlement Amount less
13 deductions for the Class Representative Enhancement Payments, Attorneys' Fees and
14 Costs, and Settlement Administration Costs. The Net Settlement Amount does not
15 include the Employer's Share of Payroll Taxes.

16 13. "Notice of Class Action Settlement" means the Notice of Class Action
17 Settlement and Request for Exclusion Form, together attached as Exhibit A and Exhibit B
18 respectively, to be mailed to all members of the Settlement Class upon Preliminary
19 Approval.

20 14. "Participating Class Members" means all Class Members who do not submit
21 valid Requests for Exclusion.

22 15. "Preliminary Approval" means the Court order granting preliminary
23 approval of the Settlement Agreement.

24 16. "Released Claims" means all claims released by Plaintiffs and Class
25 Members, as defined below.

26 17. "Released Claims Period" or "Class Period" means the period from July 20,
27 2014 through the date of preliminary approval.

28

1 specifically denies, that it violated any federal, state, or local law; violated any
2 regulations or guidelines promulgated pursuant to any statute or any other applicable
3 laws, regulations or legal requirements; breached any contract; violated or breached any
4 duty; engaged in any misrepresentation or deception; or engaged in any other unlawful
5 conduct with respect to the Class Members. Neither this Settlement, nor any of its terms
6 or provisions, nor any of the negotiations connected with it, will be construed as an
7 admission or concession by Defendant of any such violations or failures to comply with
8 any applicable law. Except as necessary in a proceeding to enforce the terms of this
9 Settlement, this Settlement and its terms and provisions will not be offered or received as
10 evidence in any action or proceeding to establish any liability or admission on the part of
11 Defendant or to establish the existence of any condition constituting a violation of, or a
12 non-compliance with, federal, state, local or other applicable law.

13 23. No Admission of Liability. For settlement purposes only, the Parties agree
14 to resolution of the Settlement Class in accordance with the terms of this Settlement
15 Agreement. If, for any reason, the Settlement is not fully and finally approved and/or the
16 Effective Date does not occur, the stipulation will be void *ab initio*, and Defendant will
17 not be deemed to have waived or limited any objections or defenses to any matter. The
18 Parties further agree that nothing in this Settlement Agreement will be construed as an
19 admission or acknowledgement in this or any other proceeding that Defendant is liable to
20 Plaintiffs or any Class Member other than in accordance with the terms of this
21 Settlement.

22 24. Released by Class Members: Providing there is final approval of this
23 Settlement, then as of the Effective Date, each Settlement Class Member, individually
24 and on behalf of their respective successors, assigns, agents, attorneys, executors, heirs
25 and personal representatives, shall fully and finally release and discharge, and shall be
26 deemed to have fully and finally released and discharged, the Released Parties, and each
27 of them from the Released Class Claims. The Released Class Claims with respect to the
28 Settlement Class Members include all claims, rights, demands, liabilities, statutory causes

1 of action, and theories of liability of every nature and description, whether known or
2 unknown, that were alleged in the Action, or could have been alleged based on any facts,
3 transactions, events, policies, occurrences, acts, disclosures, statements, omissions or
4 failure to act pled in the Action against any of the Released Parties, including, but not
5 limited to, failure to pay wages including, but not limited to, overtime wages and
6 minimum wages, failure to pay wages semi-monthly at designated times, failure to pay
7 wages upon termination and failure to provide accurate itemized wage statements,
8 penalties, damages, interest, costs or attorneys' fees, and violations of any other state or
9 federal law, whether for economic damages, non-economic damages, liquidated damages,
10 restitution, tort, contract, equitable relief, injunctive or declaratory relief, to the extent
11 necessary to effect a full and complete release of the Released Class Claims, including,
12 but not limited to, all claims under any common laws, contract, the Fair Labor Standards
13 Act ("FLSA"), Cal. Code of Regulations, Title 8, Sections 11000, *et seq.*, Wage Order 9
14 or any other applicable Wage Order, California Labor Code Sections 200-204, 208, 210,
15 218.5, 218.6, 223, 224, 225.5, 226, 510, 558, 1194-1197.1, 1771-1774, 2802 and any
16 related provisions, the California Code of Civ. Proc. Section 1021.5, and/or the California
17 Business & Professions Code Sections 17200, *et seq.* This release shall extend to all such
18 claims accrued during the Class Period. Notwithstanding the foregoing, Released Class
19 Claims do not include any individual claim under Section 216(b) of the FLSA, 29 U.S.C.
20 § 216(b), as to a Settlement Class Member who does not opt-in to the Settlement by
21 cashing, depositing, or endorsing his or her Individual Settlement Payment check, to the
22 extent that opting-in is required to release such FLSA claims. This waiver and release
23 will be final and binding on the Effective Date, and will have every preclusive effect
24 permitted by law. Class Members will not file, and will not request any other party or
25 entity to file on their behalf, any claim, complaint, charge or request for damages or any
26 other relief released above, including with any local, state, or federal governmental or
27 quasi-governmental agency or any state, administrative, or federal court, or any licensing
28 or accreditation organization, against the Released Parties.

1 25. Release by Plaintiffs. Upon final approval of the Settlement, Plaintiffs for
2 themselves, their successors, assigns, agents, executors, heirs and personal
3 representatives, and spouses, and any and all of them, voluntarily waives and releases any
4 and all claims, obligations, demands, actions, rights, causes of action, and liabilities
5 against any of the Released Parties of whatever kind and nature, character, and
6 description, whether in law or equity, whether sounding in tort, contract, federal, state
7 and/or local law, statute, ordinance, regulation, constitution, common law, or other source
8 of law or contract, whether known or unknown, and whether anticipated or unanticipated,
9 including all claims arising from or relating to any and all acts, events and omissions
10 occurring prior to the date of final approval of this Agreement including, but not limited
11 to, all claims which relate in any way to his employment with or the termination of his
12 employment with the Released Parties and/or his provision of services to the Released
13 Parties at any of Defendants' locations during the Class Period. Plaintiffs further release
14 all unknown claims against any of the Released Parties, covered by California Civil Code
15 Section 1542, which states: **“A general release does not extend to claims that the
16 creditor or releasing party does not know or suspect to exist in his or her favor at the
17 time of executing the release and that, if known by him or her, would have
18 materially affected his or her settlement with the debtor or released party.”**
19 Notwithstanding the provisions of section 1542, and for the purpose of implementing a
20 full and complete release and discharge of all of his Released Claims, Plaintiffs expressly
21 acknowledge that this Settlement is intended to include in its effect, without limitation,
22 all Released Claims which Plaintiffs do not know or suspect to exist in their favor at the
23 time of execution hereof, and that the Settlement contemplates the extinguishment of all
24 such Released Claims

25 26. Net Settlement Amount Allocation: The Net Settlement Amount shall be
26 allocated between the Class and the Mercy Housing Project Subclass as follows: 75% of
27 the Net Settlement Amount shall be allocated to the Class and 25% of the Net Settlement
28 Amount shall be allocated to the Mercy Housing Project Subclass.

1 27. Individual Settlement Payment Calculations. Individual Settlement

2 Payments will be calculated and apportioned from the Net Settlement Amount as follows.

- 3 a. Class: The portion of the Net Settlement Amount allocated to the Class shall
4 be divided by the total number of shifts over 8.0 hours that all Class
5 Members worked during the Class Period under the Alternative Workweek
6 Schedule, but were not paid an overtime premium rate for time in excess of
7 8.0 hours. This will result in the “Shift Value.” Each Class Member’s
8 Individual Settlement Payment will be calculated by multiplying the Shift
9 Value by the number of shifts over 8.0 hours that the Class Member worked
10 during the Class Period under the Alternative Workweek Schedule, but were
11 not paid an overtime premium rate for time in excess of 8.0 hours.
- 12 b. Mercy Housing Project Subclass: The portion of the Net Settlement amount
13 allocated to the Mercy Housing Project Subclass shall be divided by the total
14 number of hours worked by all Mercy Housing Project Subclass Members
15 on the Mercy Housing Project that were allocated to “Laborer Group 3,”
16 resulting in the “Hour Value.” Each Mercy Housing Project Subclass
17 Member’s Individual Settlement Payment will be calculated by multiplying
18 the number of hours the individual worked that were allocated to “Laborer
19 Group 3” by the “Hour Value.”
- 20 c. For purposes of making these calculations, the Settlement Administrator will
21 use data produced by Defendant, which Defendant will provide to the
22 Settlement Administrator within twenty-one (21) days of Preliminary
23 Approval.
- 24 d. The Parties agree that the formula described herein is reasonable and that the
25 payments are designed to provide a fair settlement to each Settlement Class
26 Member and Mercy Housing Project Subclass Member in light of the
27 uncertainties regarding the compensation alleged to be owed and the
28 calculation of such amounts.

1 28. Allocation of Individual Settlement Payments. Fifty percent (50%) of the
2 amount of each Individual Settlement Payment to each Settlement Class Member shall be
3 allocated to their respective alleged unpaid wage claims and shall be paid net of all
4 applicable employment taxes, including any federal, state, and/or local in issue tax
5 withholding requirements and the employee share of FICA taxes. Fifty percent (50%) of
6 the amount of each Individual Settlement Payment to each individual Settlement Class
7 Member shall be allocated to alleged penalties and shall not be subject to withholding.

8 29. Attorneys' Fees and Costs. Class Counsel will seek an award of Attorneys'
9 Fees of not more than 26 2/3% of the Gross Settlement Fund, or Forty Thousand Dollars
10 (\$40,000.00) in attorneys' fees, and attorneys' reasonable litigation costs (including any
11 expert costs) of not more than Ten Thousand Dollars (\$10,000.00), and Defendant agrees
12 not to oppose such application. These amounts include, without limitation, all time
13 expended by Plaintiffs' Counsel in litigating this action, negotiating this settlement,
14 conducting pre-litigation investigations and discovery, preparing the Settlement
15 Agreement and securing Preliminary and Final Approval (including any appeals therein),
16 and there will be no additional charge of any kind to either the Settlement Class Members
17 or Defendant for such work. All Attorneys' Fees and Costs will be paid from the Gross
18 Settlement Amount. If the Court reduces the requested attorneys' fees, costs and
19 expenses, any such reduction will be added to the Net Settlement Amount available to
20 Participating Class Members.

21 30. Class Representative Enhancement Payment. Plaintiffs will apply to the
22 Court for a Class Representative Enhancement Payment of not more than Five Thousand
23 Dollars and Zero Cents (\$5,000.00) each, for a total of Fifteen Thousand Dollars and
24 Zero Cents (\$15,000.00), without deductions, for their effort and work in prosecuting the
25 Action on behalf of Class Members, and Defendant agrees not to oppose such
26 application. The Class Representative Enhancement Payment, which will be paid from
27 the Gross Settlement Amount, will be in addition to Plaintiffs' right to an Individual
28 Settlement Payment. Plaintiffs will be solely and legally responsible to pay any and all

1 applicable taxes on the payments made pursuant to this paragraph and will hold
2 Defendant harmless from any claim or liability for taxes, penalties, or interest arising as a
3 result of the payments. Plaintiffs will not have the right to revoke this Settlement in the
4 event that the Court does not approve the amount sought by Plaintiffs as a Class
5 Representative Enhancement Payment. If the Court reduces the requested Class
6 Representative Enhancement Payment, any such reduction will be added to the Net
7 Settlement Amount.

8 31. Settlement Administration Costs. The Settlement Administrator will be paid
9 for the reasonable costs of administration of the Settlement and calculation, distribution,
10 and reporting of payments, up to a maximum of \$11,000. These costs, which will be paid
11 from the Gross Settlement Amount, will include, *inter alia*, the required tax reporting on
12 the Individual Settlement Payments, the issuing of IRS Forms, preparing, distributing,
13 and tracking Notices of Class Action Settlement, confirming/auditing claims for
14 payments for compliance with the Settlement, calculating and distributing all payments to
15 be made pursuant to the Settlement, and providing reports and declarations.

16 32. Preliminary Approval Hearing. Plaintiffs will obtain a hearing before the
17 Court to request the Preliminary Approval of the Settlement Agreement, and the entry of
18 a Preliminary Approval Order for: (i) preliminary approval of the proposed Settlement
19 Agreement, and (ii) setting a date for a Final Approval/Settlement Fairness Hearing. In
20 conjunction with the Preliminary Approval hearing, Plaintiffs will submit this Settlement
21 Agreement, which sets forth the terms of this Settlement, and will include the proposed
22 Notice of Class Action Settlement and Request for Exclusion.

23 33. Delivery of the Class List. “Class List” means a complete list of all Class
24 Members that Defendant will diligently and in good faith request and compile from
25 Defendant’s records. The Class List will include the following information from
26 Defendant’s records:

- 27 ▪ Name, address, phone number, for each class/subclass member;
- 28 ▪ Whether the employee is a member of the class, subclass, or both;

- 1 ▪ Number of shifts for share of settlement for the class;
- 2 ▪ Number of hours for share of settlement for the subclass;
- 3 ▪ Total number of shifts for calculation of Shift Value;
- 4 ▪ Total number of hours for calculation of Hour Value;

5 Within twenty-one (21) days of Preliminary Approval, Defendant will provide the
6 Class List to the Settlement Administrator; Plaintiffs' counsel will not receive a copy of
7 the list.

8 34. Notices of Class Action Settlement. Within seven (7) days of receipt of the
9 Class List, the Settlement Administrator will mail a Notice of Class Action Settlement to
10 all Class Members via regular First-Class U.S. Mail, using the most current, known
11 mailing addresses identified in the Class List. The Notice of Class Action Settlement will
12 be in the form attached as Exhibit A, or as provided by Court order, and will include, but
13 not be limited to, information regarding the nature of the Action; a summary of the
14 substance of the Settlement, including Defendant's denial of liability; the definition of the
15 Settlement Class; the procedure and time period for objecting to the Settlement and
16 participating in the Final Approval hearing; how settlement payments will be calculated;
17 a statement that the Court has preliminarily approved the Settlement; a statement that
18 Class Members will release the settled claims unless they opt out, a Request for
19 Exclusion Form is attached hereto as Exhibit B; information regarding the opt-out
20 procedures; and the estimated payment based on Workweeks as contained in the Notice
21 of Class Action Settlement.

22 35. Adjustment of Gross Settlement Amount. If the total number of Class
23 Members increases by ten percent (10%) or more from the Parties' estimate of 486 total
24 Class Members, as determined before the notice of class settlement is distributed to the
25 Class Members, the Gross Settlement Amount shall increase by the same percentage. For
26 example, if the total number of Class Members increases by ten percent (10%), the Gross
27 Settlement Amount shall automatically increase by ten percent (10%).
28

1 36. Confirmation of Contact Information. Prior to mailing, the Settlement
2 Administrator will perform a search based on the National Change of Address Database
3 for information to update and correct for any known or identifiable address changes. Any
4 Notices of Class Action Settlement returned to the Settlement Administrator as non-
5 deliverable on or before the Response Deadline will be sent promptly via regular First-
6 Class U.S. Mail to the forwarding address affixed thereto, and the Settlement
7 Administrator will indicate the date of such re-mailing on the Notice of Class Action
8 Settlement. If no forwarding address is provided, the Settlement Administrator will
9 promptly attempt to determine the correct address using a skip tracing search or any other
10 commercial locate-and-search tool, and will then perform a single re-mailing. With
11 regard to any Class Member whose Notice of Class Action Settlement is returned as non-
12 deliverable, and for whom the Settlement Administrator is unable to determine a reliable
13 address using reasonable and customary methods, their Individual Settlement Payment
14 will be provided by the Settlement Administrator as part of the funds that will be sent to
15 the Controller of the State of California pursuant to the Unclaimed Property Law,
16 California Civil Code § 1500 et seq. as described in Paragraph 50 below.

17 37. Disputed Information on Notices of Class Action Settlement. Class
18 Members will have an opportunity to dispute their number of shifts and/or hours as stated
19 in the Class Notice, provided they file a dispute with the Settlement Administrator in
20 writing postmarked, faxed, or emailed no later than 30 days after the mailing of the
21 Notices of Class Action Settlement. To the extent that Class Members dispute the
22 number of shifts and/or hours, Class Members may produce evidence to the Settlement
23 Administrator showing that such information is inaccurate. The Settlement Administrator
24 will advise the Parties of such dispute. Defendant's records will be presumed correct, but
25 the Settlement Administrator will evaluate the evidence submitted by the Class Member
26 and will make the preliminary decision as to the merits of the dispute and will provide a
27 written decision to the Parties within seven (7) days of receipt of the dispute. The Court
28 shall have final decision-making authority as to the result of each objection.

1 38. Requests for Exclusion. Any Class Member who does not affirmatively opt
2 out of the Settlement Agreement by submitting a timely and valid Request for Exclusion
3 will be bound by the Settlement Agreement's terms, including those pertaining to the
4 Released Claims, as well as any Judgment that may be entered by the Court if it grants
5 final approval of the Settlement. Any Class Member wishing to opt-out from the
6 Settlement Agreement must sign and postmark a written "Request for Exclusion" to the
7 Settlement Administrator within the Response Deadline. The Request for Exclusion
8 must: (i) set forth the name, address, telephone number and the last four digits of the
9 Social Security Number of the Class Member requesting exclusion; (ii) be signed by the
10 Class Member; (iii) be returned to the Settlement Administrator; (iv) clearly state that the
11 Class Member does not wish to be included in the Settlement; and (v) be postmarked,
12 faxed, or emailed on or before the Response Deadline. The postmark, fax, or email date
13 will be the exclusive means to determine whether a Request for Exclusion has been
14 timely submitted. The Parties and their attorneys and the Plaintiffs will not solicit or
15 encourage any Class Member, directly or indirectly, to opt out of the Settlement
16 Agreement.

17 39. Defective Submissions. If a Class Member's Request for Exclusion is
18 defective as to the requirements listed herein, that Class Member will be given an
19 opportunity to cure the defect(s). The Settlement Administrator will attempt to contact
20 the Class Member by telephone and mail the Class Member a cure letter within
21 three (3) business days of receiving the defective submission to advise the Class Member
22 that his or her submission is defective and that the defect must be cured to render the
23 Request for Exclusion valid. The Class Member will have until (i) the Response
24 Deadline or (ii) fifteen (15) calendar days from the date of the cure letter, whichever date
25 is later, to postmark, fax, or email a revised Request for Exclusion. If the revised Request
26 for Exclusion is not postmarked, faxed, or emailed within that period, it will be deemed
27 untimely.

28

1 40. Objection Procedures. To object to the Settlement Agreement (“Objection”),
2 a Class Member can either submit a written Objection to the Settlement Agreement or
3 appear at the Final Approval hearing in person or by and through counsel, to state and
4 argue his/her objection to the Settlement. If a written Objection is submitted, the
5 Objection must be mailed, faxed, or emailed to the Settlement Administrator on or before
6 the Response Deadline. The Objection must include: (a) the objector’s full name,
7 signature, address, and telephone number, and (b) a written statement of all grounds for
8 the Objection. Alternatively, Class Members may appear, in person or through counsel of
9 their choice, at the Final Approval Hearing to argue and present their Objections to the
10 Court. The Parties or their counsel shall not solicit or otherwise encourage Class
11 Members to submit Objections to the Settlement Agreement or appeal from the Order and
12 Judgment.

13 41. Reports Regarding Settlement Administration. The Settlement
14 Administrator will provide Defendant’s counsel and Class Counsel a weekly report that
15 certifies the number of Class Members who have submitted valid Requests for Exclusion,
16 Objections, and disputes regarding dates they performed work and/or Workweek
17 calculations. Additionally, the Settlement Administrator will provide to counsel for both
18 Parties any updated reports regarding the administration of the Settlement Agreement as
19 needed or requested and will immediately forward to the Parties any objections mailed to
20 the Claims Administrator.

21 42. Rights of Termination. Except as set forth above, if the Court or, in the event
22 of an appeal, any appellate court refuses to approve, or modifies, any material aspect of
23 this Agreement or the proposed Preliminary Approval Order or Final Approval Order and
24 Judgment, including but not limited to any judicial findings included therein, Plaintiffs or
25 Defendant may terminate this Agreement and the Settlement as set forth below. The
26 Parties acknowledge and agree that any modification to the terms of this Agreement
27 relating to the scope of the release, or to Defendant’s financial obligations, shall be
28

1 deemed a material modification constituting grounds for cancellation or termination of
2 the Agreement and the Settlement.

3 Within fifteen (15) days of the Settlement Administrator receiving notice from any
4 Party of such termination or failure, (i) the Settlement Administrator shall return the
5 balance of the settlement fund, including any interest, to Defendant, and (ii) the
6 Settlement Administrator shall provide the Parties with a report of all Administration
7 Costs incurred. The Party terminating the Agreement will be responsible for paying any
8 Administration Costs. If the Parties mutually terminate the Agreement, Plaintiffs and
9 Defendant each will be responsible for paying fifty percent (50%) of any Administration
10 Costs.

11 43. Limited Right to Cancel. If ten percent (10%) or more of the Class
12 Members submit valid and timely Requests for Exclusion, Defendant shall have the
13 absolute right, in its sole discretion, and notwithstanding any other provisions of the
14 Settlement Agreement, to withdraw from, and cancel, without penalty whatsoever, the
15 Settlement Agreement in its entirety. If Defendant exercises the right to cancel, it shall
16 pay the costs incurred by the Settlement Administrator up to that date. If this right is
17 exercised by Defendant, the Settlement Agreement will be null and void for all purposes
18 and may not be used or introduced in further litigation. The right can be exercised only
19 by a writing stating clearly that Defendant is canceling, and withdrawing from, the
20 Settlement Agreement, which is sent by Defendant's counsel to Class Counsel by mail or
21 email no later than five (5) business days after the Response Deadline. If the right
22 provided in this paragraph is not so exercised, it shall be waived and cannot later be
23 exercised.

24 44. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration
25 of the deadlines to postmark, fax, or email Requests for Exclusion or Objections to the
26 Settlement Agreement, and with the Court's permission, a Final Approval/Settlement
27 Fairness Hearing will be conducted to determine the Final Approval of the Settlement
28 Agreement along with the amounts properly payable for: (i) Individual Settlement

1 Payments; (ii) the Class Representative Enhancement Payment; (iii) Attorneys' Fees and
2 Costs; and (iv) all Settlement Administration Costs. Class Counsel will be responsible
3 for drafting all documents necessary to obtain final approval, and will provide
4 Defendant's counsel reasonable opportunity to review and provide comments regarding
5 such documents before they are filed. Class Counsel will also be responsible for drafting
6 the request for attorneys' fees and costs.

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

9 46. Invalidity of Any Provision. Before declaring any provision of this
10 Settlement Agreement invalid, the Court will first attempt to construe the provision as
11 valid to the fullest extent possible consistent with applicable precedents so as to define all
12 provisions of this Settlement Agreement as valid and enforceable.

13 47. Judgment and Continued Jurisdiction. Contemporaneous with Plaintiffs
14 filing the motion for final approval of the settlement, the Parties will present an agreed
15 form of the Proposed Judgment to the Court for its consideration. The Court, in its
16 discretion, may enter a Judgment approved by it. After entry of the Judgment, the Court
17 will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation
18 and enforcement of the terms of the Settlement, (ii) Settlement administration matters,
19 and (iii) such post-Judgment matters as may be appropriate under court rules or as set
20 forth in this Settlement Agreement pursuant to California Code of Civil Procedure section
21 664.6. In the event that a motion to enforce this Agreement is required to be filed due to
22 a party's failure to comply with the terms herein, the prevailing party shall be awarded
23 reasonable attorneys' fees and costs, which shall be in addition to any amounts to be paid
24 under this settlement.

25 48. Funding of the Gross Settlement Amount. Within ten (10) days after the
26 Effective Date, Defendant will deposit the Gross Settlement Amount into a settlement
27 fund to be established by the Settlement Administrator by check, Automated Clearing
28 House (ACH) transfer, or wire transfer.

1 49. Distribution and Timing of Individual Settlement Payments. Within seven
2 (7) days of funding of the Gross Settlement Amount from Defendant, the Settlement
3 Administrator shall provide Class Counsel and Defendant's counsel the administration
4 spreadsheet, with identifying information redacted save for that of Plaintiff, regarding the
5 final calculations for purposes of distributing the Gross Settlement Amount. The Parties
6 must submit any requested changes to the spreadsheet, or confirm that they do not have
7 any requested changes. Within fourteen (14) days of funding of the Gross Settlement
8 Amount, the Settlement Administrator will issue payments to: (i) Participating Class
9 Members; (ii) Plaintiffs for the Class Representative Enhancement payment; and (iii)
10 Class Counsel for attorneys' fees and costs. The Parties and the Settlement Administrator
11 shall cooperate in finalizing the final calculations as contained in the spreadsheet prior to
12 the distribution of funds from the Gross Settlement Amount to comply with the time
13 specifications alleged herein. The Settlement Administrator will also issue a payment to
14 itself for Court-approved services performed in connection with the Settlement.

15 50. Unclaimed Funds. All checks for their Individual Settlement Payments will
16 be mailed within fourteen (14) days of funding or deposit of the Gross Settlement
17 Amount, except that checks will not be sent to Class Members whose Notice of Class
18 Action Settlement and Estimated Distribution Form are returned as non-deliverable and
19 for whom the Settlement Administrator is unable to determine a reliable address using
20 reasonable and customary methods. Rather, the Individual Settlement Payments
21 corresponding to Class Members who cannot be located, if any, will be held by the
22 administrator and submitted to the Controller of the State of California to be held
23 pursuant to the Unclaimed Property Law, California Civil Code § 1500 et seq. at the end
24 of the check cashing deadline of 180 days. Checks will remain negotiable for 180 days.
25 If any Class Member does not cash his or her check within 180 days, the check will be
26 void. This limitation shall be printed on the face of each check. The voidance of checks
27 shall have no effect on the Class Members' release of claims, obligations, representations,
28 or warranties as provided herein, which shall remain in full effect.

1 The value of any uncashed checks by the 180-day deadline will be tendered by the
2 Settlement Administrator via proper escheatment procedures to the Controller of the State
3 of California to be held pursuant to the Unclaimed Property Law, California Civil Code §
4 1500 et seq. in the name of and for the benefit of such Participating Class Members.
5 Settlement Class Members who may be entitled to an Individual Settlement Payment but
6 who were not located before the Notice of Class Action Settlement and/or the initial
7 Distribution of Individual Settlement Payments, may request their payment from the
8 Controller of the State of California pursuant to the Unclaimed Property Law, California
9 Civil Code § 1500 et seq.

10 51. Certification of Completion. Upon completion of administration of the
11 Settlement, after the 180-day period to negotiate Individual Settlement Payment checks,
12 the Settlement Administrator will promptly provide a written declaration under oath to
13 certify such completion to the Court and counsel for all Parties and to specify that
14 monies, if any, have been provided by the Settlement Administrator via proper
15 escheatment procedures to the Controller of the State of California pursuant to the
16 Unclaimed Property Law, California Civil Code § 1500 et seq., in the name of and for the
17 benefit of such Participating Class Members.

18 52. No Credit Towards Benefit Plans. The Individual Settlement Payments
19 made to Participating Class Members under this Settlement, as well as any other
20 payments made pursuant to this Settlement, will not be utilized to calculate any additional
21 benefits under any benefit plans for which any Class Members may be eligible, including,
22 but not limited to: (i) profit-sharing plans, (ii) bonus plans, (iii) 401(k) plans, (iv) stock
23 purchase plans, (v) vacation plans, (vi) sick leave plans, (vii) PTO plans, and (viii) any
24 other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will
25 not affect any rights, contributions, or amounts to which any Class Members may be
26 entitled under any benefit plans.

27 53. Tax Treatment of Individual Settlement Payments. Individual Settlement
28 Payments will be allocated as follows: 50% as penalties for which IRS Forms 1099-

1 MISC will be issued and 50% as wages for which IRS Forms W-2 will be issued. The
2 Settlement Administrator will issue IRS 1099 and W-2 forms. In the event the Court is
3 not willing to approve the Settlement with the tax allocation proposed by the Parties, this
4 shall not be a basis for any Party to cancel or withdraw from the Settlement; rather, the
5 parties will work in good faith to propose another tax allocation that might be acceptable
6 to the Court.

7 54. Administration of Taxes by the Settlement Administrator. The Settlement
8 Administrator will be responsible for issuing to Plaintiffs, Participating Class Members,
9 and Class Counsel any IRS Forms 1099 and W-2 and other tax forms as may be required
10 by law for all amounts paid pursuant to this Settlement. The Settlement Administrator
11 will also be responsible for forwarding the Class Member's share of all payroll taxes and
12 penalties to the appropriate government authorities.

13 55. Tax Liability. Plaintiffs understand and agree that Plaintiffs and
14 Participating Class Members will be solely responsible for the payment of any and all
15 taxes and penalties assessed on the payments as described herein. Parties and their
16 counsel make no representation as to the tax treatment or legal effect of the payments
17 called for hereunder, and Plaintiffs and Participating Class Members are not relying on
18 any statement, representation, or calculation by Parties, their counsel, or by the
19 Settlement Administrator in this regard.

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

24 57. Nullification of Settlement Agreement. In the event that: (i) the Court does
25 not finally approve the Settlement as provided herein; or (ii) the Settlement does not
26 become final for any other reason, then this Settlement Agreement, and any documents
27 generated to bring it into effect, will be null and void. Any order or judgment entered by
28 the Court in furtherance of this Settlement Agreement will likewise be treated as void

1 from the beginning. In the event that the Settlement is terminated or cancelled or fails to
2 become effective, the Parties shall be deemed to have reverted *nunc pro tunc* to their
3 respective status as of the date and time immediately before the execution of this
4 Agreement and they shall proceed in all respects as if this Agreement had not been
5 executed, and without prejudice in any way from the negotiation, fact, or terms of this
6 Settlement.

7 58. Exhibits Incorporated by Reference. The terms of this Settlement
8 Agreement include the terms set forth in any attached Exhibits, which are incorporated by
9 reference as though fully set forth herein. Any Exhibits to this Settlement Agreement are
10 an integral part of the Settlement.

11 59. Entire Agreement. This Settlement Agreement and any attached Exhibits
12 constitute the entirety of the Parties' settlement terms. No other prior or
13 contemporaneous written or oral agreements may be deemed binding on the Parties.

14 60. Amendment or Modification. This Settlement Agreement may be amended
15 or modified only by a written instrument signed by all Parties or their successors-in-
16 interest.

17 61. Binding on Successors and Assigns. This Settlement Agreement will be
18 binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto,
19 as previously defined.

20 62. California Law Governs. All terms of this Settlement Agreement and
21 Exhibits hereto will be governed by and interpreted according to the laws of the State of
22 California.

23 63. Execution and Counterparts. This Settlement Agreement is subject only to
24 the execution of all Parties. However, the Settlement may be executed in one or more
25 counterparts. All executed counterparts and each of them, including facsimile and PDF
26 or other scanned copies of the signature page, will be deemed to be one and the same
27 instrument for all purposes in effecting and enforcing this Settlement Agreement.
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1 Electronic signatures via DocuSign shall be deemed effective as if they were signed in
2 person.

3 64. Waiver of Certain Appeals. The Parties agree to waive appeals; except,
4 however, that either party may appeal any court order that materially alters the Settlement
5 Agreement's terms.

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

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

16 67. Representation By Counsel. The Parties acknowledge that they have been
17 represented by counsel throughout all negotiations that preceded the execution of this
18 Settlement, and that this Settlement has been executed with the consent and advice of
19 counsel. Further, Plaintiffs and Class Counsel warrant and represent that there are no
20 liens on the Settlement Agreement.

21 68. Cooperation and Execution of Necessary Documents. All Parties agree to
22 cooperate in the administration of the settlement and to make all reasonable efforts to
23 control and minimize the costs and expenses incurred in administration of the Settlement,
24 and will cooperate in good faith and execute all documents to the extent reasonably
25 necessary to effectuate the terms of this Settlement Agreement. If the Parties are unable
26 to reach agreement on the form or content of any document needed to implement the
27 Settlement, or on any supplemental provisions that may become necessary to effectuate
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1 the terms of this Settlement, the Parties may seek the assistance of the Court to resolve
2 such disagreement.

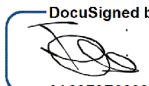
3 69. Authorization to Enter into Settlement Agreement. Counsel for all Parties
4 warrant and represent they are expressly authorized by the Parties whom they represent to
5 negotiate this Settlement Agreement and to take all appropriate action required or
6 permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate
7 its terms and to execute any other documents required to effectuate the terms of this
8 Settlement Agreement.

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

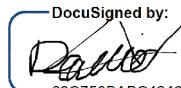
14 **SIGNATURES**
15 **READ CAREFULLY BEFORE SIGNING**

16 **PLAINTIFFS**

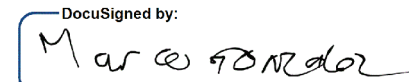
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18 Dated: 2/17/2023

19 By  9A68F2E683304EC...
20 **FERNANDO GUTIERREZ**

21
22 Dated: 2/17/2023

23 By  69C750BABC42460...
24 **DAVID CASTILLO**

25 Dated: 2/17/2023

26 By  3BBA32CB08964DA...
27 **MARCO GONZALEZ**

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SAARMAN CONSTRUCTION, LTD.

Dated: _____

By _____

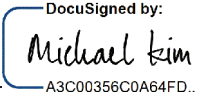
Name:

Its:

APPROVED AS TO FORM

MICHAEL H. KIM, P.C.

Dated: 2/17/2023

By  _____
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Michael H. Kim
Attorneys for Plaintiffs

Hinshaw, Marsh, Still & Hinshaw, LLP

Dated: _____

By _____

Patrick Stokes
Attorneys for Defendant

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SAARMAN CONSTRUCTION, LTD.

Dated: February 17, 2023

By 
Name: David Saarman
Its: Vice President

APPROVED AS TO FORM

MICHAEL H. KIM, P.C.

Dated: _____

By _____
Michael H. Kim
Attorneys for Plaintiffs

Hinshaw, Marsh, Still & Hinshaw, LLP

Dated: February 17, 2023


By 
Patrick Stokes
Attorneys for Defendant

Exhibit A

**IN THE SUPERIOR COURT OF THE STATE CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO**

FERNANDO GUTIERREZ; DAVID CASTILLO;
MARCO GONZALEZ; individually and on behalf of
others similarly situated,

Plaintiffs,

vs.

SAARMAN CONSTRUCTION, LTD.; SAARMAN,
LLC; and DOES 1 through 100, inclusive,

Defendants.

Case No.: CGC-18-568258

**NOTICE OF CLASS ACTION AND
PROPOSED SETTLEMENT**

TO: All hourly employees who worked shifts over 8.0 hours under an Alternative Workweek Schedule in their employment by Saarman Construction, Ltd. in California during the period of July 20, 2014, through the present, but who were not paid an overtime premium rate for time in excess of 8.0 hours for those shifts, but excluding all employees who executed individual settlement agreements with Defendant prior to January 1, 2023.

TO: All hourly employees who worked for Saarman Construction, Ltd. at the a public works project known as Francis of Assisi, a/k/a the Mercy Housing Project from January 20, 2014, through the present, and who were paid an hourly rate classified as “Laborer Group 3” while working on that project, but excluding all employees who executed individual settlement agreements with Defendant prior to January 1, 2023.

**IF YOU ARE A MEMBER OF THIS CLASS OR SUBCLASS OF PERSONS, YOU SHOULD READ THIS
NOTICE CAREFULLY BECAUSE IT WILL AFFECT YOUR LEGAL RIGHTS AND OBLIGATIONS**

A settlement (“Settlement”) has been proposed in the lawsuit referenced above, pending in the Superior Court for the County of San Francisco (“Court”) titled *Fernando Gutierrez, David Castillo, and Marco Gonzalez v. Saarman Construction, Ltd.*, Case No. CGC-18-568258 (the “Action”). If the Court gives final approval to the Settlement, defendant Saarman Construction, Ltd. (hereinafter “Defendant”) will provide each Class Member a payment calculated, in part, based on the number of shifts over 8.0 hours or the number of hours worked, depending on the class or subclass, by each Class Member as set forth in this Notice.

This Notice details your rights and options under this Settlement. If you have any questions, please contact the Settlement Administrator, c/o CPT Group, Inc. **CPT ADDRESS** or Class Counsel, whose contact information is provided below.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

GET A PAYMENT	If the settlement is approved and you do nothing, you will be mailed a settlement payment. The payment will	Although there is no formal deadline to update
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	<p>be mailed to the address where this notice was sent unless you tell the Settlement Administrator to send it to a different address. Instructions for updating your address are set forth in Section 9 below.</p>	<p>your address, you should update it promptly if you move. The parties cannot predict the exact dates when important correspondence or settlement payments will be mailed.</p>
DISPUTE THE NUMBER OF SHIFTS OR HOURS WORKED	<p>If you believe that the number of shifts or hours with which you have been credited is incorrect, you must submit your challenge to the Settlement Administrator. Detailed instructions for this option are set forth in Section 12 below.</p>	<p>Deadline for Disputing the Number of Shifts or Hours Credited to You: [30 days from mailing of notice]</p>
EXCLUDE YOURSELF	<p>If you wish to exclude yourself from the Settlement, you must submit to the Settlement Administrator a valid Request for Exclusion. If you exclude yourself from the Settlement, you will not receive a payment under the Settlement. Excluding yourself is the only option that allows you to bring or maintain your own lawsuit against Defendant regarding the allegations in the Action. Detailed instructions for this option are set forth in Section 19 below.</p>	<p>Deadline for Excluding from the Settlement: [60 days from mailing of notice]</p>
OBJECT	<p>If you wish to object to the Settlement, you can either submit your written objections (i.e., why you do not believe the Settlement is fair or adequate) to the Settlement Administrator or appear at the Final Approval Hearing. Objecting to the Settlement does not exclude you from the Settlement. Detailed instructions for this option are set forth in Section 20 below.</p> <p>You will receive your settlement payment if you object but the Settlement is approved by the Court.</p>	<p>Deadline for Submitting Written Objections to the Settlement: [60 days from mailing of notice]</p>
GO TO THE “FAIRNESS HEARING”	<p>The Court will hold a “Fairness Hearing” (also known as the “Final Approval Hearing”) to consider the Settlement, the request for attorneys’ fees and costs by the attorneys representing the Class in the Action, and the Representative Plaintiffs’ request for service awards for bringing and maintaining the lawsuit.</p> <p>You may, but are not required to, speak at the Fairness Hearing about any objection to the Settlement. If you wish to appear at the Fairness Hearing to object to the Settlement, you may do so either in person or through your own attorney hired at your expense.</p>	<p>Hearing Date: [TBD]</p>

WHAT THIS NOTICE CONTAINS

BACKGROUND INFORMATION.....X

- 1. Why did I receive this notice?
- 2. What is this lawsuit about?
- 3. Why is this a class action?
- 4. Why is there a settlement?
- 5. How do I know if I am part of the Settlement?
- 6. I'm still not sure if I am included.

THE PROPOSED SETTLEMENT.....X

- 7. What relief does the Settlement provide to the Class Members?

PAYMENT TO THE CLASS.....X

- 8. How can I get a payment?
- 9. How do I update my address/ contact information?
- 10. When will I get a payment?
- 11. How much will I be paid?
- 12. What if I think I worked more Workweeks than it says in this notice??
- 13. If I receive a settlement payment will I have to pay taxes on it?
- 14. No retaliation or discrimination

THE LAWYERS IN THIS ACTION AND THE CLASS REPRESENTATIVES.....X

- 15. Do I have a lawyer in this Action?
- 16. How will the lawyers be paid?
- 17. Will the Representative Plaintiffs receive any compensation for their efforts in bringing and maintaining this Action?

RELEASE OF ALL CLAIMS.....X

- 18. What am I giving up to obtain relief under the Settlement?

HOW TO EXCLUDE YOURSELF FROM THE SETTLEMENT.....X

- 19. How do I exclude myself from the Settlement?

HOW TO OBJECT TO THE SETTLEMENT.....X

- 20. How do I tell the Court that I do not like the Settlement?
- 21. What is the difference between excluding myself from the Settlement and objecting to the Settlement?

FAIRNESS HEARING.....X

- 22. What is the Fairness Hearing?
- 23. When and where is the Fairness Hearing?
- 24. May I speak at the Fairness Hearing?

ADDITIONAL INFORMATION.....X

- 25. How do I get more information?

26. What if my address or other information has changed?

BACKGROUND INFORMATION

1. Why did I receive this notice?

You received this Notice because a settlement has been reached in the Action. According to Defendant's records you are a member of the Settlement Class and may be eligible for the relief detailed below.

This Notice explains the nature of the Action, the general terms of the proposed Settlement, and your legal rights and options. To obtain more information about the Settlement, including information about how you can obtain a copy of the Settlement Agreement, see Section 25 below.

2. What is this lawsuit about?

In the Action, Plaintiffs allege, with respect to non-exempt employees who were employed by Saarman Construction, Ltd. in California between July 20, 2014 and [the date of preliminary approval], that Saarman Construction, Ltd. failed to pay the state minimum wage, failed to pay overtime wages, failed to provide accurate itemized wage statements, failed to indemnify them for their work expenses, failed to pay all earned wages at the end of their employment and engage in unfair business practices.

Defendant denies Plaintiffs' allegations in their entirety. Defendant contends that it complied with California law, paid all wages, and furnished accurate itemized earnings statements, that it indemnified all employees for their work expenses, if any, that no wages were owed at the end of their employment, and that its business practices were in compliance with the California Labor Code. Defendant contends that its affirmative defenses to the Action may otherwise prevent or limit Plaintiffs' class claims.

The issuance of this Notice is not an expression of the Court's opinion on the merits or the lack of merits of Plaintiffs' claims in the Action.

For information about how to learn more about what has happened in the Action to date, please see Section 25 below.

3. Why is this a class action?

In a class action lawsuit, one or more people called "Representative Plaintiffs" (in this Action, Fernando Gutierrez, David Castillo, and Marco Gonzalez are the Representative Plaintiffs) sue on behalf of other persons who allegedly have similar claims. The company sued in this Action, Saarman Construction, Ltd., is called Defendant.

4. Why is there a settlement?

The Representative Plaintiffs, Fernando Gutierrez, David Castillo, and Marco Gonzalez, have filed claims against Defendant. Defendant denies that it has done anything wrong or illegal and admit no liability. **The Court has not decided that the Plaintiffs or the Defendant should win in this Action. Instead, both sides agreed to a settlement.**

5. How do I know if I am part of the Settlement?

The Court has preliminary approved that anyone who fits the following description is a Class Member for purposes of the proposed Settlement: "All hourly employees who worked shifts over 8.0 hours under an Alternative Workweek Schedule in their employment by Saarman Construction, Ltd. in California during the period of July 20, 2014, through the present, but who were not paid an overtime premium rate for time in excess of 8.0 hours for those shifts, but excluding all employees who executed individual settlement agreements with Defendant prior to January 1, 2023."

Additionally, the Court has preliminary approved that anyone who fits the following description is a member of the Mercy Housing Project Subclass for purposes of this Settlement: “All hourly employees who worked for Saarman Construction, Ltd. at the a public works project known as Francis of Assisi, a/k/a the Mercy Housing Project from January 20, 2014, through the present, and who were paid an hourly rate classified as “Laborer Group 3” while working on that project, but excluding all employees who executed individual settlement agreements with Defendant prior to January 1, 2023.”

6. I’m still not sure if I am included.

If you are still not sure whether you are included, you can contact the Settlement Administrator and/or Class Counsel for help. The contact information for the Settlement Administrator is [ADDRESS, FAX, AND EMAIL]. The contact information for Class Counsel is provided in Section 15.

THE PROPOSED SETTLEMENT

7. What relief does the Settlement provide to the Class Members?

Defendant has agreed to fund this settlement in an amount totaling One Hundred and Fifty Thousand Dollars (\$150,000.00) (“Gross Settlement Amount”). This Settlement Amount will be used to pay the claims of the Class Members, and the following amounts requested by Plaintiffs and subject to Court approval: the costs of providing notice to the Class and administering the Settlement (estimated to be not more than \$11,000.00) to pay any award of attorneys’ fees (up to \$40,000.00) and costs (estimated to be not more than \$10,000.00) to Class Counsel; any enhancement payment, also known as a service award, awarded to the Representative Plaintiffs (up to \$5,000.00 for each Representative Plaintiff). The estimated Net Settlement Amount to be used to pay the claims of Class Members is \$74,000.00.

Your estimated Individual Settlement Payment was calculated using Defendant’s payroll records. Individual Settlement Payments were calculated and apportioned as follows:

- (a) First, the “Net Settlement Amount” shall be calculated by subtracting the Class Representative Enhancement Payments, Attorneys’ Fees and Costs, and Settlement Administration Costs from the Gross Settlement Amount.
- (b) Second, the Net Settlement Amount will be allocated between the Class and the Mercy Housing Project Subclass as follows: 75% of the Net Settlement Amount shall be allocated to the Class and 25% of the Net Settlement Amount shall be allocated to the Mercy Housing Project Subclass.
- (c) Third, the portion of the Net Settlement Amount allocated to the Class shall be divided by the total number of shifts over 8.0 hours that all Class Members worked during the Class Period under the Alternative Workweek Schedule, but were not paid an overtime premium rate for time in excess of 8.0 hours. This will result in the “Shift Value.” Each Class Member’s Individual Settlement Payment will be calculated by multiplying the Shift Value by the number of shifts over 8.0 hours that the Class Member worked during the Class Period under the Alternative Workweek Schedule, but were not paid an overtime premium rate for time in excess of 8.0 hours.
- (d) Fourth, the portion of the Net Settlement amount allocated to the Mercy Housing Project Subclass shall be divided by the total number of hours worked by all Mercy Housing Project Subclass Members on the Mercy Housing Project that were allocated to “Laborer Group 3,” resulting in the “Hour Value.” Each Mercy Housing Project Subclass Member’s Individual Settlement Payment will be calculated by multiplying the number of hours the individual worked that were allocated to “Laborer Group 3” by the “Hour Value.”

PAYMENT TO THE CLASS

8. How can I get a payment?

If the Settlement is approved, you will be mailed a settlement payment at the same address at which you received this notice unless you either update your address using the process described below or opt out of the settlement using the process described below. Your settlement check will be negotiable for 180 days after it is issued. If you do not cash your check during this 180-day period, the amount representing your check will be sent to the State Controller's Office under California's Unclaimed Property Law the name of and for the benefit of such Participating Class Members who did not cash their checks.

If you do not receive a notice in the mail, that is because the Settlement Administrator could not find a valid mailing address for you, and you may not be mailed a settlement payment. Instead, your check will be held by the Settlement Administrator for 180 days. In order to claim your check, you must contact the Settlement Administrator. If you do not claim and cash your check during this 180-day period, your check will be sent to the State Controller's Office under California's Unclaimed Property Law in the name of and for the benefit of such Participating Class Member who did not claim their check.

9. How do I update my address/ contact information?

If your address or other contact information has changed, it is important that you inform the Settlement Administrator of your new address. You may contact the Settlement Administrator in one of three ways to notify them of your updated address: (1) mail to CPT Group, Inc. [CPT ADDRESS], (2) e-mail to _____, or (3) facsimile to _____. Alternatively, you may change your address at the Settlement website at _____.

10. When will I get a payment?

As described in Sections 22 and 23, the Court will hold a fairness hearing on [DATE FOR FAIRNESS HEARING] to decide whether to approve the Settlement. If the Court approves the Settlement, after that, there may be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. You can check the status of the Action by contacting the Settlement Administrator or Class Counsel. *Please be patient.*

11. How much will I be paid?

Your estimated settlement payment is \$_____.

According to Defendant's payroll records, you are a Settlement Class Member who worked shifts in excess of 8 hours under an Alternative Workweek Schedule while employed by Defendant during the Class Period and/or who worked at Francis of Assisi, a/k/a the Mercy Housing Project and were paid an hourly rate classified as "Laborer Group 3" while working on that project. The Class Period is defined as the period between July 20, 2014 and [the date of preliminary approval].

Based on information currently available, we estimate your share of the Settlement will be approximately \$_____. This is only an estimate. The amount you ultimately receive as part of the Settlement may increase or decrease in accordance with the terms of the Settlement and the Court's orders.

Your estimated payment was calculated as follows.

First, the estimate assumes that the Net Settlement Amount used to pay the Class Members will be \$75,000. The assumption here is that the Court will approve disbursements totaling \$75,000 for the Class Representative Enhancement Payments, Attorneys' Fees and Costs, and Settlement Administration Costs from the Gross Settlement Amount.

Second, 75% of the Net Settlement Amount, or \$56,250, was allocated to the Class, and 25% of the Net Settlement Amount, or \$18,750, was allocated to the Mercy Housing Project Subclass.

Third, the estimate assumes, based on Defendant's records, that you worked [REDACTED] shifts over 8 hours under an Alternative Workweek Schedule during this Class Period, but were not paid an overtime premium rate for time in excess of 8 hours. The estimate also assumes that you worked [REDACTED] hours at the Mercy Housing Project that were allocated to "Laborer Group 3."

Fourth, the estimate assumes, based on Defendant's records, that the total number of shifts over 8 hours worked by all Class Members during the Class Period, but were not paid an overtime premium rate for time in excess of 8 hours, is [REDACTED] shifts, and that the total number of hours at the Mercy Housing Project that were allocated to Laborer Group 3 is [REDACTED] hours.

Using those assumptions, the portion of the Net Settlement Amount allocated to the Class was divided by the total number of shifts over 8.0 hours that all Class Members worked during the Class Period under the Alternative Workweek Schedule, but were not paid an overtime premium rate for time in excess of 8.0 hours. This resulted in the "Shift Value." Your Individual Settlement Payment was calculated by multiplying the Shift Value by the number of shifts over 8.0 hours that you worked during the Class Period under the Alternative Workweek Schedule, but were not paid an overtime premium rate for time in excess of 8.0 hours.

The portion of the Net Settlement Amount allocated to the Mercy Housing Project Subclass was divided by the total number of hours worked by all Mercy Housing Project Subclass Members on the Mercy Housing Project that were allocated to "Laborer Group 3," resulting in the "Hour Value." Your Individual Settlement Payment was calculated by multiplying the number of hours you worked that were allocated to "Laborer Group 3" by the "Hour Value."

12. What if I think I worked more Workweeks than it says in this notice?

As explained above, your final settlement payment will depend, in part, on the number of shifts under the Alternative Workweek Schedule or the number of your worked hours that were allocated to "Laborer Group 3" at Mercy Housing Project between July 20, 2014 and [the date of preliminary approval]. If you believe that you worked more shifts or hours than what is indicated in this notice, you should submit your dispute in writing along with copies of any supporting records to the Settlement Administrator. You should retain originals for your own records. The Settlement Administrator will then decide the dispute between your calculation and that of Defendant. The Settlement Administrator will give significant weight to Defendant's records, but will evaluate the records submitted by you and will make the final decision as to the merits of the dispute. You can submit your dispute in writing and documentation by mail to the Settlement Administrator at: Settlement Administrator, c/o CPT Group, Inc. [CPT ADDRESS]. Alternatively, you may submit your written dispute via facsimile to [REDACTED], or you can submit your written dispute to the Settlement Administrator via e-mail to the following e-mail address: [REDACTED]. You must submit your written dispute by no later than **[Workweek Dispute Deadline]**.

The Settlement Administrator will decide whether your calculation of Workweeks or that of Defendant is accurate. The Settlement Administrator's decisions are final. The Settlement Administrator will give notice of its determination to the disputing Settlement Class Member by no later than seven (7) days of receipt of the dispute. If you still believe that the calculated number of Workweeks is too low, you may still decide to opt out of this Settlement or to object to the Settlement as a whole on or before **[Response Deadline]**.

13. If I receive a settlement payment will I have to pay taxes on it?

For tax purposes, fifty percent (50%) of the amount of each Individual Settlement Payment to each Settlement Class Member shall be allocated to their respective alleged unpaid wage claims and shall be paid net of all applicable employment taxes, including any federal, state, and/or local in issue tax withholding requirements and

the employee share of FICA taxes. Fifty percent (50%) of the amount of each Individual Settlement Payment to each individual Settlement Class Member shall be allocated to alleged penalties and shall not be subject to withholding.

14. No retaliation or discrimination.

Defendant respects your right to participate in this lawsuit and will take no adverse or retaliatory action against you should you accept payment under the Settlement. Defendant's total payment under this Settlement will not be impacted by your decision to participate in the settlement.

THE LAWYERS IN THIS ACTION AND THE REPRESENTATIVE PLAINTIFF

15. Do I have a lawyer in this Action?

The Court has preliminarily approved the law firm of Michael H. Kim P.C. ("Class Counsel") to represent the interests of all Class Members. You will not be separately charged by these lawyers. If you have a question about the settlement, you may contact Class Counsel by writing to them at the following address:

Michael H. Kim, Esq.
MICHAEL H. KIM, P.C.
1633 Bayshore Highway, Suite 333
Burlingame, California 94010
Telephone: (650) 697-8899
Fax: (650) 697-8896
Email: mkim@mhklawyers.com

If you want you be represented by your own lawyer, you may hire one at your own expense.

16. How will the lawyers be paid?

Class Counsel will ask the Court to award up to \$40,000 for attorney's fees and up to \$10,000 for litigation costs. Any amount the Court awards will be paid from the Gross Settlement Amount. To the extent the award is not approved in full, any remaining balance of the fees and costs that are not awarded to Class Counsel will be added to the Net Settlement Amount and will be paid to the Participating Class Members. Defendant has agreed not to oppose the request.

17. Will the Representative Plaintiffs receive any compensation for her efforts in bringing and maintaining this Action?

The Representative Plaintiffs will each request a service award of up to \$5,000 for their services as class representatives and their efforts in bringing and maintaining the Action. The Court will make the final decision as to the amount to be paid to each of the Representative Plaintiffs. Any amount the Court awards will be paid from the Gross Settlement Amount. To the extent the award is not approved in full, any remaining balance of the money that is not awarded to the Representative Plaintiffs will be added to the Net Settlement Amount and will be paid to the Participating Class Members. Defendant has agreed not to oppose the request.

RELEASE OF ALL CLAIMS

18. What am I giving up to obtain relief under the Settlement?

If the Court approves the proposed Settlement, you will be releasing your claims against Defendant unless you exclude yourself from the Settlement. Specifically, you will release any and all claims asserted in the Complaint against the Released Parties, or that could have been asserted against the Released Parties based

upon the facts alleged in the Action and which arose from your employment with Defendant in California during the relevant Class Period, between July 20, 2014 and [the date of preliminary approval].

The Complaint and the Settlement Agreement, titled “Joint Stipulation re Class Action Settlement and Release,” which contains the full terms of the release, are available online at [redacted]. You may view these documents by going to the website. Alternatively, you may contact Class Counsel or access the Court’s Case Query on the Court’s website at <https://www.sfsuperiorcourt.org/online-services>

HOW TO EXCLUDE YOURSELF FROM THE SETTLEMENT

19. How do I exclude myself from the Settlement?

You may exclude yourself from the Class and the Settlement. If you want to be excluded, you must send a written request to exclude yourself from the Settlement. In the written request to be excluded, you should provide (1) your name, home address, telephone number, and/or the last four digits of your social security number or employee identification number to verify your identification; and (2) any statement to the effect that you wish to be excluded from this Settlement. The request for exclusion must be sent to the Settlement Administrator (i.e., postmarked or delivery date stamped) by no later than [redacted]. This request for exclusion can be sent to the Settlement Administrator in one of three ways: (1) mail to CPT Group, Inc. [CPT ADDRESS], (2) e-mail to _____, or (3) facsimile to _____.

If you timely request exclusion from the Settlement, you will be excluded from the Class, you will not be bound by this Settlement and any subsequent judgment entered in the Action. This means that you are free to bring your own individual claim against Defendant for any of the wage and hour violations alleged in the Action.

HOW TO OBJECT TO THE SETTLEMENT

20. How do I tell the Court that I do not like the Settlement?

At the date, time and location stated in Section 23 below, the Court will hold a Fairness Hearing to determine if the Settlement is fair, reasonable, and adequate, and also to consider Class Counsel’s request for an award of attorneys’ fees and costs, and the service awards to the Representative Plaintiffs.

If you wish to object to the fairness, reasonableness, or adequacy of the Settlement Agreement or the proposed Settlement, you may do so in one of two ways:

(1) You may submit a written objection to the Settlement Administrator. This written objection can be sent to the Settlement Administrator in one of three ways: (1) mail to CPT Group, Inc. [CPT ADDRESS], (2) e-mail to _____, or (3) facsimile to _____.

(2) Alternatively, you may appear in person or through an attorney and present your objection to the Court at the Fairness Hearing.

If you decide to submit a written objection, you should include (1) your name, home address, telephone number, and/or the last four digits of your social security number or employee identification number to verify your identification; and (2) any evidence and legal argument in support of your objection. The objection must be submitted to the Settlement Administrator via U.S. Mail or other delivery service with proof of submission date (such as a U.S. Postal Service postmark or other electronic transmission date and time stamp) by no later than [redacted]. All timely submitted objections will be submitted to the Court for consideration. You may, but need not, submit your written objection through counsel of your choice. If you make your written objection through counsel, you will be responsible for your attorneys’ fees and costs.

You may also object without submitting a written objection by appearing at the final approval hearing, including by appearing through counsel. If you wish to appear at the Fairness Hearing to object to the Settlement, you may do so either in person or through your own counsel hired at your expense.

21. What is the difference between excluding myself from the Settlement and objecting to the Settlement?

Objecting is telling the Court that you don't like something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you don't want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the Settlement no longer affects you.

Here are the key differences between objecting and opting out. If you object and the settlement is approved, you are entitled to a settlement payment and will be bound by the Release. If you opt out and the settlement is approved, you are not entitled to a settlement payment and will not be bound by the Release.

FAIRNESS HEARING

22. What is the Fairness Hearing?

The Court has preliminarily approved the Settlement, meaning only that it concluded that there is sufficient evidence to suggest that the Agreement falls within the range of possible approval as fair, reasonable, and adequate, and that the final determination of these issues will be made at the Fairness Hearing. The purpose of the Fairness Hearing will be for the Court to determine whether the Settlement should be approved as fair, reasonable, and adequate, and in the best interests of the Settlement Class; to consider the request for attorneys' fees and costs for Class Counsel; and to consider the request for service awards for the Representative Plaintiffs.

23. When and where is the Fairness Hearing?

The Fairness Hearing will be held on [REDACTED], at [REDACTED]. At the Fairness Hearing, the Court will be available to hear any objections and arguments concerning the proposed Settlement. The Fairness Hearing will take place in Department 613 of the California Superior Court, for the County of San Francisco, located at 400 McAllister Street, San Francisco, CA 94102. The hearing may be postponed to a different date, time or location without further notice.

24. May I speak at the hearing?

Yes. At the hearing, the Court will hear any objections and arguments concerning the fairness of the Settlement. You may attend, but you do not have to.

ADDITIONAL INFORMATION

25. How do I get more information?

PLEASE DO NOT CONTACT THE COURT, THE JUDGE, THE CLERK, OR ANY OF THE COURT'S STAFF.

To see copies of the Settlement Agreement, the Court's Preliminary Approval and Final Approval Orders, the Motions for Preliminary Approval and for Final Approval, and the operative complaint filed in the Action, please visit the Settlement website at [REDACTED]. Alternatively, you may call, email, or fax the Settlement Administrator or Class Counsel for any questions or information about this Settlement.

Alternatively, you may access the Court's electronic file on the Court's website at <https://www.sfsuperiorcourt.org/online-services>

26. What if my address or other information has changed?

It is your responsibility to inform the Settlement Administrator of your updated information. Instructions for updating your address/ contact information are provided in Section 9.

DO NOT CONTACT THE COURT, THE JUDGE, THE CLERK, OR ANY OF THE COURT'S STAFF REGARDING THIS SETTLEMENT OR THE LAWSUIT. IF YOU HAVE ANY QUESTIONS, PLEASE DIRECT ALL QUESTIONS TO EITHER THE SETTLEMENT ADMINISTRATOR OR THE CLASS COUNSEL.

Exhibit B

REQUEST FOR EXCLUSION FORM

Fernando Gutierrez, David Castillo, and Marco Gonzalez v. Saarman Construction, Ltd.

In the Superior Court of the State of California

For the County of San Francisco, Case No. CGC-18-568258

SUBMIT THIS FORM ONLY IF YOU WISH TO BE EXCLUDED FROM PARTICIPATING IN THE CLASS ACTION SETTLEMENT

IF YOU WISH TO RECEIVE MONEY FROM THIS SETTLEMENT, DO NOT SUBMIT THIS FORM

By signing and returning this form, I certify that I have read the Notice of Class Action and Proposed Settlement and that I wish to be excluded from participating in the Settlement. I understand that this means that I will not receive any money or other benefits under the settlement, and I will not be subject to the settlement and release in the Settlement of the Class Action.

Name (Please Print): _____

(First)

(Middle)

(Last)

Address: _____

(Street)

(City)

(State)

(Zip)

Last 4 Digits of Social Security Number: _____ Telephone No.: _____

Dated: _____

Signature: _____

THIS FORM MUST BE E-MAILED, POST-MARKED, OR FAX STAMPED NO LATER THAN [60 DAYS AFTER THE DATE OF THE INITIAL MAILING], AND MUST BE EMAILED, MAILED OR FAXED TO THE SETTLEMENT ADMINISTRATOR AT:

Settlement Administrator
c/o CPT Group

Exhibit 2

**IN THE SUPERIOR COURT OF THE STATE CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO**

FERNANDO GUTIERREZ; DAVID CASTILLO;
MARCO GONZALEZ; individually and on behalf of
others similarly situated,

Plaintiffs,

vs.

SAARMAN CONSTRUCTION, LTD.; SAARMAN,
LLC; and DOES 1 through 100, inclusive,

Defendants.

Case No.: CGC-18-568258

**NOTICE OF CLASS ACTION AND
PROPOSED SETTLEMENT**

TO: All hourly employees who worked shifts over 8.0 hours under an Alternative Workweek Schedule in their employment by Saarman Construction, Ltd. in California during the period of July 20, 2014, through the present, but who were not paid an overtime premium rate for time in excess of 8.0 hours for those shifts, but excluding all employees who executed individual settlement agreements with Defendant prior to January 1, 2023.

TO: All hourly employees who worked for Saarman Construction, Ltd. at the a public works project known as Francis of Assisi, a/k/a the Mercy Housing Project from January 20, 2014, through the present, and who were paid an hourly rate classified as “Laborer Group 3” while working on that project, but excluding all employees who executed individual settlement agreements with Defendant prior to January 1, 2023.

**IF YOU ARE A MEMBER OF THIS CLASS OR SUBCLASS OF PERSONS, YOU SHOULD READ THIS
NOTICE CAREFULLY BECAUSE IT WILL AFFECT YOUR LEGAL RIGHTS AND OBLIGATIONS**

A settlement (“Settlement”) has been proposed in the lawsuit referenced above, pending in the Superior Court for the County of San Francisco (“Court”) titled *Fernando Gutierrez, David Castillo, and Marco Gonzalez v. Saarman Construction, Ltd.*, Case No. CGC-18-568258 (the “Action”). If the Court gives final approval to the Settlement, defendant Saarman Construction, Ltd. (hereinafter “Defendant”) will provide each Class Member a payment calculated, in part, based on the number of shifts over 8.0 hours or the number of hours worked, depending on the class or subclass, by each Class Member as set forth in this Notice.

This Notice details your rights and options under this Settlement. If you have any questions, please contact the Settlement Administrator, c/o CPT Group, Inc. **CPT ADDRESS** or Class Counsel, whose contact information is provided below.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

GET A PAYMENT	If the settlement is approved and you do nothing, you will be mailed a settlement payment. The payment will	Although there is no formal deadline to update
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	<p>be mailed to the address where this notice was sent unless you tell the Settlement Administrator to send it to a different address. Instructions for updating your address are set forth in Section 9 below.</p>	<p>your address, you should update it promptly if you move. The parties cannot predict the exact dates when important correspondence or settlement payments will be mailed.</p>
DISPUTE THE NUMBER OF SHIFTS OR HOURS WORKED	<p>If you believe that the number of shifts or hours with which you have been credited is incorrect, you must submit your challenge to the Settlement Administrator. Detailed instructions for this option are set forth in Section 12 below.</p>	<p>Deadline for Disputing the Number of Shifts or Hours Credited to You: [30 days from mailing of notice]</p>
EXCLUDE YOURSELF	<p>If you wish to exclude yourself from the Settlement, you must submit to the Settlement Administrator a valid Request for Exclusion. If you exclude yourself from the Settlement, you will not receive a payment under the Settlement. Excluding yourself is the only option that allows you to bring or maintain your own lawsuit against Defendant regarding the allegations in the Action. Detailed instructions for this option are set forth in Section 19 below.</p>	<p>Deadline for Excluding from the Settlement: [60 days from mailing of notice]</p>
OBJECT	<p>If you wish to object to the Settlement, you can either submit your written objections (i.e., why you do not believe the Settlement is fair or adequate) to the Settlement Administrator or appear at the Final Approval Hearing. Objecting to the Settlement does not exclude you from the Settlement. Detailed instructions for this option are set forth in Section 20 below.</p> <p>You will receive your settlement payment if you object but the Settlement is approved by the Court.</p>	<p>Deadline for Submitting Written Objections to the Settlement: [60 days from mailing of notice]</p>
GO TO THE “FAIRNESS HEARING”	<p>The Court will hold a “Fairness Hearing” (also known as the “Final Approval Hearing”) to consider the Settlement, the request for attorneys’ fees and costs by the attorneys representing the Class in the Action, and the Representative Plaintiffs’ request for service awards for bringing and maintaining the lawsuit.</p> <p>You may, but are not required to, speak at the Fairness Hearing about any objection to the Settlement. If you wish to appear at the Fairness Hearing to object to the Settlement, you may do so either in person or through your own attorney hired at your expense.</p>	<p>Hearing Date: [TBD]</p>

WHAT THIS NOTICE CONTAINS

BACKGROUND INFORMATION.....X

- 1. Why did I receive this notice?
- 2. What is this lawsuit about?
- 3. Why is this a class action?
- 4. Why is there a settlement?
- 5. How do I know if I am part of the Settlement?
- 6. I'm still not sure if I am included.

THE PROPOSED SETTLEMENT.....X

- 7. What relief does the Settlement provide to the Class Members?

PAYMENT TO THE CLASS.....X

- 8. How can I get a payment?
- 9. How do I update my address/ contact information?
- 10. When will I get a payment?
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THE LAWYERS IN THIS ACTION AND THE CLASS REPRESENTATIVES.....X

- 15. Do I have a lawyer in this Action?
- 16. How will the lawyers be paid?
- 17. Will the Representative Plaintiffs receive any compensation for their efforts in bringing and maintaining this Action?

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- 18. What am I giving up to obtain relief under the Settlement?

HOW TO EXCLUDE YOURSELF FROM THE SETTLEMENT.....X

- 19. How do I exclude myself from the Settlement?

HOW TO OBJECT TO THE SETTLEMENT.....X

- 20. How do I tell the Court that I do not like the Settlement?
- 21. What is the difference between excluding myself from the Settlement and objecting to the Settlement?

FAIRNESS HEARING.....X

- 22. What is the Fairness Hearing?
- 23. When and where is the Fairness Hearing?
- 24. May I speak at the Fairness Hearing?

ADDITIONAL INFORMATION.....X

- 25. How do I get more information?

26. What if my address or other information has changed?

BACKGROUND INFORMATION

1. Why did I receive this notice?

You received this Notice because a settlement has been reached in the Action. According to Defendant's records you are a member of the Settlement Class and may be eligible for the relief detailed below.

This Notice explains the nature of the Action, the general terms of the proposed Settlement, and your legal rights and options. To obtain more information about the Settlement, including information about how you can obtain a copy of the Settlement Agreement, see Section 25 below.

2. What is this lawsuit about?

In the Action, Plaintiffs allege, with respect to non-exempt employees who were employed by Saarman Construction, Ltd. in California between July 20, 2014 and [the date of preliminary approval], that Saarman Construction, Ltd. failed to pay the state minimum wage, failed to pay overtime wages, failed to provide accurate itemized wage statements, failed to indemnify them for their work expenses, failed to pay all earned wages at the end of their employment and engage in unfair business practices.

Defendant denies Plaintiffs' allegations in their entirety. Defendant contends that it complied with California law, paid all wages, and furnished accurate itemized earnings statements, that it indemnified all employees for their work expenses, if any, that no wages were owed at the end of their employment, and that its business practices were in compliance with the California Labor Code. Defendant contends that its affirmative defenses to the Action may otherwise prevent or limit Plaintiffs' class claims.

The issuance of this Notice is not an expression of the Court's opinion on the merits or the lack of merits of Plaintiffs' claims in the Action.

For information about how to learn more about what has happened in the Action to date, please see Section 25 below.

3. Why is this a class action?

In a class action lawsuit, one or more people called "Representative Plaintiffs" (in this Action, Fernando Gutierrez, David Castillo, and Marco Gonzalez are the Representative Plaintiffs) sue on behalf of other persons who allegedly have similar claims. The company sued in this Action, Saarman Construction, Ltd., is called Defendant.

4. Why is there a settlement?

The Representative Plaintiffs, Fernando Gutierrez, David Castillo, and Marco Gonzalez, have filed claims against Defendant. Defendant denies that it has done anything wrong or illegal and admit no liability. **The Court has not decided that the Plaintiffs or the Defendant should win in this Action. Instead, both sides agreed to a settlement.**

5. How do I know if I am part of the Settlement?

The Court has preliminary approved that anyone who fits the following description is a Class Member for purposes of the proposed Settlement: "All hourly employees who worked shifts over 8.0 hours under an Alternative Workweek Schedule in their employment by Saarman Construction, Ltd. in California during the period of July 20, 2014, through the present, but who were not paid an overtime premium rate for time in excess of 8.0 hours for those shifts, but excluding all employees who executed individual settlement agreements with Defendant prior to January 1, 2023."

Additionally, the Court has preliminary approved that anyone who fits the following description is a member of the Mercy Housing Project Subclass for purposes of this Settlement: “All hourly employees who worked for Saarman Construction, Ltd. at the a public works project known as Francis of Assisi, a/k/a the Mercy Housing Project from January 20, 2014, through the present, and who were paid an hourly rate classified as “Laborer Group 3” while working on that project, but excluding all employees who executed individual settlement agreements with Defendant prior to January 1, 2023.”

6. I’m still not sure if I am included.

If you are still not sure whether you are included, you can contact the Settlement Administrator and/or Class Counsel for help. The contact information for the Settlement Administrator is [ADDRESS, FAX, AND EMAIL]. The contact information for Class Counsel is provided in Section 15.

THE PROPOSED SETTLEMENT

7. What relief does the Settlement provide to the Class Members?

Defendant has agreed to fund this settlement in an amount totaling One Hundred and Fifty Thousand Dollars (\$150,000.00) (“Gross Settlement Amount”). This Settlement Amount will be used to pay the claims of the Class Members, and the following amounts requested by Plaintiffs and subject to Court approval: the costs of providing notice to the Class and administering the Settlement (estimated to be not more than \$11,000.00) to pay any award of attorneys’ fees (up to \$40,000.00) and costs (estimated to be not more than \$10,000.00) to Class Counsel; any enhancement payment, also known as a service award, awarded to the Representative Plaintiffs (up to \$5,000.00 for each Representative Plaintiff). The estimated Net Settlement Amount to be used to pay the claims of Class Members is \$74,000.00.

Your estimated Individual Settlement Payment was calculated using Defendant’s payroll records. Individual Settlement Payments were calculated and apportioned as follows:

- (a) First, the “Net Settlement Amount” shall be calculated by subtracting the Class Representative Enhancement Payments, Attorneys’ Fees and Costs, and Settlement Administration Costs from the Gross Settlement Amount.
- (b) Second, the Net Settlement Amount will be allocated between the Class and the Mercy Housing Project Subclass as follows: 75% of the Net Settlement Amount shall be allocated to the Class and 25% of the Net Settlement Amount shall be allocated to the Mercy Housing Project Subclass.
- (c) Third, the portion of the Net Settlement Amount allocated to the Class shall be divided by the total number of shifts over 8.0 hours that all Class Members worked during the Class Period under the Alternative Workweek Schedule, but were not paid an overtime premium rate for time in excess of 8.0 hours. This will result in the “Shift Value.” Each Class Member’s Individual Settlement Payment will be calculated by multiplying the Shift Value by the number of shifts over 8.0 hours that the Class Member worked during the Class Period under the Alternative Workweek Schedule, but were not paid an overtime premium rate for time in excess of 8.0 hours.
- (d) Fourth, the portion of the Net Settlement amount allocated to the Mercy Housing Project Subclass shall be divided by the total number of hours worked by all Mercy Housing Project Subclass Members on the Mercy Housing Project that were allocated to “Laborer Group 3,” resulting in the “Hour Value.” Each Mercy Housing Project Subclass Member’s Individual Settlement Payment will be calculated by multiplying the number of hours the individual worked that were allocated to “Laborer Group 3” by the “Hour Value.”

PAYMENT TO THE CLASS

8. How can I get a payment?

If the Settlement is approved, you will be mailed a settlement payment at the same address at which you received this notice unless you either update your address using the process described below or opt out of the settlement using the process described below. Your settlement check will be negotiable for 180 days after it is issued. If you do not cash your check during this 180-day period, the amount representing your check will be sent to the State Controller's Office under California's Unclaimed Property Law the name of and for the benefit of such Participating Class Members who did not cash their checks.

If you do not receive a notice in the mail, that is because the Settlement Administrator could not find a valid mailing address for you, and you may not be mailed a settlement payment. Instead, your check will be held by the Settlement Administrator for 180 days. In order to claim your check, you must contact the Settlement Administrator. If you do not claim and cash your check during this 180-day period, your check will be sent to the State Controller's Office under California's Unclaimed Property Law in the name of and for the benefit of such Participating Class Member who did not claim their check.

9. How do I update my address/ contact information?

If your address or other contact information has changed, it is important that you inform the Settlement Administrator of your new address. You may contact the Settlement Administrator in one of three ways to notify them of your updated address: (1) mail to CPT Group, Inc. [CPT ADDRESS], (2) e-mail to _____, or (3) facsimile to _____. Alternatively, you may change your address at the Settlement website at _____.

10. When will I get a payment?

As described in Sections 22 and 23, the Court will hold a fairness hearing on [DATE FOR FAIRNESS HEARING] to decide whether to approve the Settlement. If the Court approves the Settlement, after that, there may be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. You can check the status of the Action by contacting the Settlement Administrator or Class Counsel. *Please be patient.*

11. How much will I be paid?

Your estimated settlement payment is \$_____.

According to Defendant's payroll records, you are a Settlement Class Member who worked shifts in excess of 8 hours under an Alternative Workweek Schedule while employed by Defendant during the Class Period and/or who worked at Francis of Assisi, a/k/a the Mercy Housing Project and were paid an hourly rate classified as "Laborer Group 3" while working on that project. The Class Period is defined as the period between July 20, 2014 and [the date of preliminary approval].

Based on information currently available, we estimate your share of the Settlement will be approximately \$_____. This is only an estimate. The amount you ultimately receive as part of the Settlement may increase or decrease in accordance with the terms of the Settlement and the Court's orders.

Your estimated payment was calculated as follows.

First, the estimate assumes that the Net Settlement Amount used to pay the Class Members will be \$75,000. The assumption here is that the Court will approve disbursements totaling \$75,000 for the Class Representative Enhancement Payments, Attorneys' Fees and Costs, and Settlement Administration Costs from the Gross Settlement Amount.

Second, 75% of the Net Settlement Amount, or \$56,250, was allocated to the Class, and 25% of the Net Settlement Amount, or \$18,750, was allocated to the Mercy Housing Project Subclass.

Third, the estimate assumes, based on Defendant's records, that you worked [REDACTED] shifts over 8 hours under an Alternative Workweek Schedule during this Class Period, but were not paid an overtime premium rate for time in excess of 8 hours. The estimate also assumes that you worked [REDACTED] hours at the Mercy Housing Project that were allocated to "Laborer Group 3."

Fourth, the estimate assumes, based on Defendant's records, that the total number of shifts over 8 hours worked by all Class Members during the Class Period, but were not paid an overtime premium rate for time in excess of 8 hours, is [REDACTED] shifts, and that the total number of hours at the Mercy Housing Project that were allocated to Laborer Group 3 is [REDACTED] hours.

Using those assumptions, the portion of the Net Settlement Amount allocated to the Class was divided by the total number of shifts over 8.0 hours that all Class Members worked during the Class Period under the Alternative Workweek Schedule, but were not paid an overtime premium rate for time in excess of 8.0 hours. This resulted in the "Shift Value." Your Individual Settlement Payment was calculated by multiplying the Shift Value by the number of shifts over 8.0 hours that you worked during the Class Period under the Alternative Workweek Schedule, but were not paid an overtime premium rate for time in excess of 8.0 hours.

The portion of the Net Settlement Amount allocated to the Mercy Housing Project Subclass was divided by the total number of hours worked by all Mercy Housing Project Subclass Members on the Mercy Housing Project that were allocated to "Laborer Group 3," resulting in the "Hour Value." Your Individual Settlement Payment was calculated by multiplying the number of hours you worked that were allocated to "Laborer Group 3" by the "Hour Value."

12. What if I think I worked more Workweeks than it says in this notice?

As explained above, your final settlement payment will depend, in part, on the number of shifts under the Alternative Workweek Schedule or the number of your worked hours that were allocated to "Laborer Group 3" at Mercy Housing Project between July 20, 2014 and [the date of preliminary approval]. If you believe that you worked more shifts or hours than what is indicated in this notice, you should submit your dispute in writing along with copies of any supporting records to the Settlement Administrator. You should retain originals for your own records. The Settlement Administrator will then decide the dispute between your calculation and that of Defendant. The Settlement Administrator will give significant weight to Defendant's records, but will evaluate the records submitted by you and will make the final decision as to the merits of the dispute. You can submit your dispute in writing and documentation by mail to the Settlement Administrator at: Settlement Administrator, c/o CPT Group, Inc. [CPT ADDRESS]. Alternatively, you may submit your written dispute via facsimile to [REDACTED], or you can submit your written dispute to the Settlement Administrator via e-mail to the following e-mail address: [REDACTED]. You must submit your written dispute by no later than [Workweek Dispute Deadline].

The Settlement Administrator will decide whether your calculation of Workweeks or that of Defendant is accurate. The Settlement Administrator's decisions are final. The Settlement Administrator will give notice of its determination to the disputing Settlement Class Member by no later than seven (7) days of receipt of the dispute. If you still believe that the calculated number of Workweeks is too low, you may still decide to opt out of this Settlement or to object to the Settlement as a whole on or before [Response Deadline].

13. If I receive a settlement payment will I have to pay taxes on it?

For tax purposes, fifty percent (50%) of the amount of each Individual Settlement Payment to each Settlement Class Member shall be allocated to their respective alleged unpaid wage claims and shall be paid net of all applicable employment taxes, including any federal, state, and/or local in issue tax withholding requirements and

the employee share of FICA taxes. Fifty percent (50%) of the amount of each Individual Settlement Payment to each individual Settlement Class Member shall be allocated to alleged penalties and shall not be subject to withholding.

14. No retaliation or discrimination.

Defendant respects your right to participate in this lawsuit and will take no adverse or retaliatory action against you should you accept payment under the Settlement. Defendant's total payment under this Settlement will not be impacted by your decision to participate in the settlement.

THE LAWYERS IN THIS ACTION AND THE REPRESENTATIVE PLAINTIFF

15. Do I have a lawyer in this Action?

The Court has preliminarily approved the law firm of Michael H. Kim P.C. ("Class Counsel") to represent the interests of all Class Members. You will not be separately charged by these lawyers. If you have a question about the settlement, you may contact Class Counsel by writing to them at the following address:

Michael H. Kim, Esq.
MICHAEL H. KIM, P.C.
1633 Bayshore Highway, Suite 333
Burlingame, California 94010
Telephone: (650) 697-8899
Fax: (650) 697-8896
Email: mkim@mhklawyers.com

If you want you be represented by your own lawyer, you may hire one at your own expense.

16. How will the lawyers be paid?

Class Counsel will ask the Court to award up to \$40,000 for attorney's fees and up to \$10,000 for litigation costs. Any amount the Court awards will be paid from the Gross Settlement Amount. To the extent the award is not approved in full, any remaining balance of the fees and costs that are not awarded to Class Counsel will be added to the Net Settlement Amount and will be paid to the Participating Class Members. Defendant has agreed not to oppose the request.

17. Will the Representative Plaintiffs receive any compensation for her efforts in bringing and maintaining this Action?

The Representative Plaintiffs will each request a service award of up to \$5,000 for their services as class representatives and their efforts in bringing and maintaining the Action. The Court will make the final decision as to the amount to be paid to each of the Representative Plaintiffs. Any amount the Court awards will be paid from the Gross Settlement Amount. To the extent the award is not approved in full, any remaining balance of the money that is not awarded to the Representative Plaintiffs will be added to the Net Settlement Amount and will be paid to the Participating Class Members. Defendant has agreed not to oppose the request.

RELEASE OF ALL CLAIMS

18. What am I giving up to obtain relief under the Settlement?

If the Court approves the proposed Settlement, you will be releasing your claims against Defendant unless you exclude yourself from the Settlement. Specifically, you will release any and all claims asserted in the Complaint against the Released Parties, or that could have been asserted against the Released Parties based

upon the facts alleged in the Action and which arose from your employment with Defendant in California during the relevant Class Period, between July 20, 2014 and [the date of preliminary approval].

The Complaint and the Settlement Agreement, titled “Joint Stipulation re Class Action Settlement and Release,” which contains the full terms of the release, are available online at [REDACTED]. You may view these documents by going to the website. Alternatively, you may contact Class Counsel or access the Court’s Case Query on the Court’s website at <https://www.sfsuperiorcourt.org/online-services>

HOW TO EXCLUDE YOURSELF FROM THE SETTLEMENT

19. How do I exclude myself from the Settlement?

You may exclude yourself from the Class and the Settlement. If you want to be excluded, you must send a written request to exclude yourself from the Settlement. In the written request to be excluded, you should provide (1) your name, home address, telephone number, and/or the last four digits of your social security number or employee identification number to verify your identification; and (2) any statement to the effect that you wish to be excluded from this Settlement. The request for exclusion must be sent to the Settlement Administrator (i.e., postmarked or delivery date stamped) by no later than [REDACTED]. This request for exclusion can be sent to the Settlement Administrator in one of three ways: (1) mail to CPT Group, Inc. [CPT ADDRESS], (2) e-mail to _____, or (3) facsimile to _____.

If you timely request exclusion from the Settlement, you will be excluded from the Class, you will not be bound by this Settlement and any subsequent judgment entered in the Action. This means that you are free to bring your own individual claim against Defendant for any of the wage and hour violations alleged in the Action.

HOW TO OBJECT TO THE SETTLEMENT

20. How do I tell the Court that I do not like the Settlement?

At the date, time and location stated in Section 23 below, the Court will hold a Fairness Hearing to determine if the Settlement is fair, reasonable, and adequate, and also to consider Class Counsel’s request for an award of attorneys’ fees and costs, and the service awards to the Representative Plaintiffs.

If you wish to object to the fairness, reasonableness, or adequacy of the Settlement Agreement or the proposed Settlement, you may do so in one of two ways:

(1) You may submit a written objection to the Settlement Administrator. This written objection can be sent to the Settlement Administrator in one of three ways: (1) mail to CPT Group, Inc. [CPT ADDRESS], (2) e-mail to _____, or (3) facsimile to _____.

(2) Alternatively, you may appear in person or through an attorney and present your objection to the Court at the Fairness Hearing.

If you decide to submit a written objection, you should include (1) your name, home address, telephone number, and/or the last four digits of your social security number or employee identification number to verify your identification; and (2) any evidence and legal argument in support of your objection. The objection must be submitted to the Settlement Administrator via U.S. Mail or other delivery service with proof of submission date (such as a U.S. Postal Service postmark or other electronic transmission date and time stamp) by no later than [REDACTED]. All timely submitted objections will be submitted to the Court for consideration. You may, but need not, submit your written objection through counsel of your choice. If you make your written objection through counsel, you will be responsible for your attorneys’ fees and costs.

You may also object without submitting a written objection by appearing at the final approval hearing, including by appearing through counsel. If you wish to appear at the Fairness Hearing to object to the Settlement, you may do so either in person or through your own counsel hired at your expense.

21. What is the difference between excluding myself from the Settlement and objecting to the Settlement?

Objecting is telling the Court that you don't like something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you don't want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the Settlement no longer affects you.

Here are the key differences between objecting and opting out. If you object and the settlement is approved, you are entitled to a settlement payment and will be bound by the Release. If you opt out and the settlement is approved, you are not entitled to a settlement payment and will not be bound by the Release.

FAIRNESS HEARING

22. What is the Fairness Hearing?

The Court has preliminarily approved the Settlement, meaning only that it concluded that there is sufficient evidence to suggest that the Agreement falls within the range of possible approval as fair, reasonable, and adequate, and that the final determination of these issues will be made at the Fairness Hearing. The purpose of the Fairness Hearing will be for the Court to determine whether the Settlement should be approved as fair, reasonable, and adequate, and in the best interests of the Settlement Class; to consider the request for attorneys' fees and costs for Class Counsel; and to consider the request for service awards for the Representative Plaintiffs.

23. When and where is the Fairness Hearing?

The Fairness Hearing will be held on [REDACTED], at [REDACTED]. At the Fairness Hearing, the Court will be available to hear any objections and arguments concerning the proposed Settlement. The Fairness Hearing will take place in Department 613 of the California Superior Court, for the County of San Francisco, located at 400 McAllister Street, San Francisco, CA 94102. The hearing may be postponed to a different date, time or location without further notice.

24. May I speak at the hearing?

Yes. At the hearing, the Court will hear any objections and arguments concerning the fairness of the Settlement. You may attend, but you do not have to.

ADDITIONAL INFORMATION

25. How do I get more information?

PLEASE DO NOT CONTACT THE COURT, THE JUDGE, THE CLERK, OR ANY OF THE COURT'S STAFF.

To see copies of the Settlement Agreement, the Court's Preliminary Approval and Final Approval Orders, the Motions for Preliminary Approval and for Final Approval, and the operative complaint filed in the Action, please visit the Settlement website at [REDACTED]. Alternatively, you may call, email, or fax the Settlement Administrator or Class Counsel for any questions or information about this Settlement.

Alternatively, you may access the Court's electronic file on the Court's website at <https://www.sfsuperiorcourt.org/online-services>

26. What if my address or other information has changed?

It is your responsibility to inform the Settlement Administrator of your updated information. Instructions for updating your address/ contact information are provided in Section 9.

DO NOT CONTACT THE COURT, THE JUDGE, THE CLERK, OR ANY OF THE COURT'S STAFF REGARDING THIS SETTLEMENT OR THE LAWSUIT. IF YOU HAVE ANY QUESTIONS, PLEASE DIRECT ALL QUESTIONS TO EITHER THE SETTLEMENT ADMINISTRATOR OR THE CLASS COUNSEL.

Exhibit 3

REQUEST FOR EXCLUSION FORM

Fernando Gutierrez, David Castillo, and Marco Gonzalez v. Saarman Construction, Ltd.

In the Superior Court of the State of California

For the County of San Francisco, Case No. CGC-18-568258

SUBMIT THIS FORM ONLY IF YOU WISH TO BE EXCLUDED FROM PARTICIPATING IN THE CLASS ACTION SETTLEMENT

IF YOU WISH TO RECEIVE MONEY FROM THIS SETTLEMENT, DO NOT SUBMIT THIS FORM

By signing and returning this form, I certify that I have read the Notice of Class Action and Proposed Settlement and that I wish to be excluded from participating in the Settlement. I understand that this means that I will not receive any money or other benefits under the settlement, and I will not be subject to the settlement and release in the Settlement of the Class Action.

Name (Please Print): _____

(First)

(Middle)

(Last)

Address: _____

(Street)

(City)

(State)

(Zip)

Last 4 Digits of Social Security Number: _____ Telephone No.: _____

Dated: _____

Signature: _____

THIS FORM MUST BE E-MAILED, POST-MARKED, OR FAX STAMPED NO LATER THAN [60 DAYS AFTER THE DATE OF THE INITIAL MAILING], AND MUST BE EMAILED, MAILED OR FAXED TO THE SETTLEMENT ADMINISTRATOR AT:

Settlement Administrator
c/o CPT Group

