

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

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|------------------------------------|---|-----------------------------------------|
| JEREMY HANNAH AND KIP GREEN |) | CASE NO. 2:15-cv-933 |
| |) | |
| on behalf of themselves |) | JUDGE MICHAEL H. WATSON |
| and all others similarly situated, |) | |
| |) | |
| Plaintiffs, |) | <u>JOINT MOTION FOR APPROVAL</u> |
| |) | <u>OF SETTLEMENT AND</u> |
| vs. |) | <u>STIPULATION OF DISMISSAL</u> |
| |) | <u>WITH PREJUDICE</u> |
| |) | |
| H.A.D., INC. |) | |
| |) | |
| Defendant. |) | |

I. INTRODUCTION

Representative Plaintiffs and Defendant respectfully move this Court to approve the proposed FLSA opt-in Settlement reached by the Parties and memorialized in the Joint Stipulation of Settlement and Release (“Settlement” or “Agreement”) attached as Exhibit A.

The proposed settlement will resolve bona fide disputes involving overtime compensation claims under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201-219, as well as Ohio and Pennsylvania wage-and-hour statutes. Plaintiffs asserted that Defendant H.A.D., Inc. unlawfully failed to pay overtime compensation to Plaintiffs and other non-exempt employees who were paid on a “day-rate” basis. *See* Plaintiffs’ Amended Class and Collective Action Complaint (ECF # 9) at ¶¶ 18-22. Defendant denied those claims, and protracted and costly litigation threatened to ensue.

In an effort to avoid the costs and uncertainties of protracted litigation, the parties entered in a Stipulation and Proposed Order for Conditional Certification, Notice, Due Diligence Exchange, and Mediation (ECF #22) (filed June 25, 2015). The Stipulation provided for conditional certification of the case as a collective action under the FLSA, 29 U.S.C. § 216(b),

informal exchange of documents and information between the parties enabling them to conduct due diligence regarding the claims and issues, and mediation with a professional mediator. The mediation was held on January 18, 2016 with Mediator Jerome F. Weiss.

The proposed settlement constitutes a global resolution of the dispute in which substantial settlement payments will be made available to all affected Class Members. The individual payments are proportionate to the Class Members' overtime damages and represent approximately 90% of the estimated value of their claims.

If approved by the Court, the Settlement will provide for the issuance of notice to all Eligible Settlement Participants within fourteen (14) days. Eligible Settlement Participants will have thirty (30) days to join the Settlement by executing and returning Consent Forms. Because the proposed Settlement is an FLSA *opt-in* settlement, as opposed to a Rule 23 *opt-out* settlement that would bind absent class members, no fairness hearing is required or requested by the Parties.¹

The Parties respectfully submit that the proposed Settlement is fair and reasonable, and satisfies the criteria for approval under § 216(b) of the FLSA. The Settlement was achieved during arms-length negotiations among the Parties, conducted by experienced counsel with the assistance of Mediator Weiss. If approved by the Court, the Settlement will make substantial settlement payments available to the Class Members who elect to participate in the Settlement.

The settlement documents submitted for approval or entry by the Court consist of the following:

¹ See *Moore v. Ackerman Inv. Co.*, C 07-3058-MWB, 2009 WL 2848858 (N.D. Iowa Sept. 1, 2009) ("Section 216(b) does not expressly require a 'fairness' hearing on a proposed settlement, as Rule 23 of the Federal Rules of Civil Procedure does for class actions pursuant to that rule, and Rule 23 requirements are not directly applicable to a collective action pursuant to § 216(b)."); *McLean v. HSM Elec. Prot. Services, Inc.*, 607CV1680ORL28DAB, 2008 WL 4642270 (M.D. Fla. Oct. 8, 2008) (same); *Barnes v. Benzerenterprises, Inc.*, 607CV1754-ORL-22DAB, 2008 WL 4059839, (M.D. Fla. Aug. 27, 2008) ("the Court determines that there is no need for a fairness hearing").

- Exhibit A: Joint Stipulation of Settlement and Release
- Exhibit B: Notice of Settlement of Lawsuit, with attached Consent and Release Form entitled Consent to Opt-Into Lawsuit, Release, and Dismiss Claims
- Exhibit C: General Settlement and Release Agreements
- Exhibit D: Order of Dismissal and Approving Settlement
- Exhibit E: Declarations of Plaintiffs' Counsel Anthony J. Lazzaro, Hans A. Nilges and Thomas A. Downie

The following sections explain the nature of the Action, the negotiations, the principal terms of the Settlement, and the propriety of approving the Settlement and its proposed distributions of settlement proceeds.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The Action

On March 14, 2015, Representative Plaintiff Jeremy Hannah filed this Action as a collective action under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201-219, and alleged that Defendant failed to pay employees overtime compensation for the hours they worked over forty (40) each workweek, in violation of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 207 (the "Action"). On March 28, 2015, Representative Plaintiffs Jeremy Hannah and Kip Green filed an Amended Class and Collective Action Complaint. On May 4, 2015, Defendant filed an answer to the Amended Complaint disputing the material allegations both as to fact and law and denying any liability to Representative Plaintiffs or any other employees, and asserting several affirmative defenses.

B. Negotiation of The Settlement

Between September 2015 and January 2016 the Parties engaged in an informal yet comprehensive exchange of information regarding Plaintiffs' claims and Defendant's defenses to

such claims. This included the calculations of Plaintiffs', the Existing Opt-In Party Plaintiffs', and the Eligible Settlement Participants' overtime damages.

On January 18, 2016, the Parties attended a mediation with Jerry Weiss of Mediation Inc. in Cleveland, Ohio and reached an agreement to settle the Action on the terms set forth in this Settlement Agreement. The parties reached the proposed settlement in this matter after extensive good faith bargaining.

C. The Settlement Terms

If approved by the Court, the Settlement will cover Representative Plaintiffs and the 27 Existing Opt-In Party Plaintiffs identified in Appendix 1 of the Settlement, and all of the Eligible Settlement Participants identified in Appendix 2 of the Settlement who elect to participate in the Settlement by signing and returning Consent Forms ("Settlement Class" or "Class Members").

The Total Eligible Settlement Amount is One Million Two Hundred Fifty Thousand Dollars (\$1,250,000.00), which sum will cover: (a) all of the Individual Payments to the Settlement Class; (b) Representative Plaintiffs' Class Representative Payments; and (c) Plaintiffs' Counsel's attorneys' fees and expenses.

\$803,415.42 of the Total Eligible Settlement Amount will be divided into Individual Payments to the Settlement Class. The Individual Payments will be calculated proportionally on each Eligible Settlement Participant's overtime damages Calculation Period, as calculated by Plaintiffs' Counsel and approved by Defendant. The Individual Payments are provided in Appendices 1 and 2 of the Settlement. Any Individual Payments to Non-Participants will be retained by Defendant.

Twenty Five Thousand Dollars (\$25,000.00) of the Total Eligible Settlement Amount will be paid to Representative Plaintiffs as a Class Representative Payments (\$5,000.00 to the Estate of Jeremy Hannah and \$20,000.00 to Kip Green), in addition to their Individual Payments, in

exchange for signing a general mutual release of all claims. In addition, \$421,584.58 of the Total Eligible Settlement Amount will be paid to Plaintiffs' Counsel for attorneys' fees and expenses (\$416,666.64 in fees and \$4,917.94 in expenses) incurred in the Action.

In exchange, the Action will be dismissed, and the Settlement Class will release Defendant from federal and state wage-and-hour claims, rights, demands, liabilities and causes of action asserted in Plaintiff's Complaint, including but not limited to claims for unpaid wages, unpaid overtime compensation, liquidated damages, interest, attorneys' fees, and expenses, pursuant to the Fair Labor Standards Act, and any applicable state wage statute where Plaintiffs may have worked for Defendant, including but not limited to the Ohio Minimum Fair Wage Standards Act and applicable Pennsylvania statutes for the Released Period.

To inform Eligible Settlement Participants of the Settlement, the Parties have submitted, as Exhibit B, the proposed Notice of Settlement of Lawsuit, with an attached Consent Form entitled Consent to Opt-Into Lawsuit, Release, and Dismiss Claims. The Notice will be mailed and emailed, if an email address is available, to the Eligible Settlement Participants at their last known home addresses and email addresses according to records maintained by Defendant, and any updated addresses obtained by Plaintiffs' Counsel. The Eligible Settlement Participants who sign and return Consent Forms will participate in the Settlement and their claims will be released.

III. THE PROPRIETY OF APPROVAL

The proposed Settlement is subject to approval by the Court pursuant to § 216(b) of the FLSA. As shown in the attached Declarations of Anthony J. Lazzaro, Hans A. Nilges and Thomas A. Downie, and as explained below, Court approval is warranted on all scores.

A. The Seven-Factor Standard Is Satisfied

The court presiding over an FLSA action may approve a proposed settlement of the action under the FLSA § 16(b) "after scrutinizing the settlement for fairness." *Landsberg v. Acton*

Enterprises, Inc., 2008 WL 2468868 at *1 n.1 (S.D. Ohio June 16, 2008) (quoting *Lynn’s Food Stores, Inc. v. United States*, 679 F.2d 1350, 1353-55 (11th Cir. 1982) (the court should determine whether the settlement is “a fair and reasonable resolution of a bona fide dispute”) (citing *Schulte, Inc. v. Gangi*, 328 U.S. 108, 66 S. Ct. 925, 928 n.8 (1946))).

As a district court in the Sixth Circuit has observed, “[t]he need for the court to ensure that any settlement of [an FLSA] action treats the plaintiffs fairly is similar to the need for a court to determine that any class-action settlement is ‘fair, reasonable, and adequate.’” *Crawford v. Lexington-Fayette Urban County Government*, 2008 WL 4724499, at *3 (E.D. Ky. Oct. 23, 2008). The Sixth Circuit uses seven factors to evaluate class action settlements, and the *Crawford* court applied those factors in assessing the fairness of an FLSA settlement:

(1) the risk of fraud or collusion; (2) the complexity, expense and likely duration of the litigation; (3) the amount of discovery engaged in by the parties; (4) the likelihood of success on the merits; (5) the opinions of class counsel and class representatives; (6) the reaction of absent class members; and (7) the public interest.

UAW v. General Motors Corp., 497 F.3d 615, 626 (6th Cir. 2007) (citing *Granada Invs., Inc. v. DWG Corp.*, 962 F.2d 1203, 1205 (6th Cir.1992); *Williams v. Vukovich*, 720 F.2d 909, 922-23 (6th Cir.1983)), *quoted in Crawford*, 2008 WL 4724499 at *3. As shown below and in the Lazzaro, Nilges and Downie Declarations (*see* Exhibit E), the standard supports approval of the Settlement.

1) No Indicia of Fraud or Collusion Exists

The Parties’ counsel each have extensive experience litigating FLSA claims, including claims for unpaid hours worked. A Settlement Agreement was achieved only after arms-length and good faith negotiations between the Parties. As such, there is no indicia of fraud or collusion.

2) The Complexity, Expense and Likely Duration of Continued Litigation Favor Approval

The policy favoring the settlement of collective actions and other complex cases applies with particular force here. Employment cases in general, and wage-and-hour cases in particular,

are expensive and time-consuming. Moreover, the Parties continue to disagree over the merits of Plaintiffs' claims. Plaintiffs alleged that they were not compensated for any overtime hours they worked and that each category of compensation Plaintiffs and the Class received should have been included in their regular rate of pay for purposes of calculating their overtime compensation, including bonus pay, day rate pay, fluid drill pay, per diem pay, safety bonus, and stand by pay for days in which work was performed.

Defendant maintained that the compensation Plaintiffs and the Class received compensated them for 60 hours per week including 20 overtime hours. Thus, Defendants maintained that if Plaintiffs prevailed on the merits, they would only be entitled to overtime compensation for the hours they worked over 60 each week. Additionally, Defendant maintained that certain categories of compensation that Plaintiffs received, including the per diem pay, should not have been included in their regular rate of pay for purposes of calculating their overtime compensation.

In addition, the Parties disagreed whether the two-year limitations period for non-willful violations or three-year limitations period for willful violations applied.

If forced to litigate this case further, the Parties would certainly engage in complex, costly, and protracted wrangling. The Settlement, on the other hand, provides substantial relief to Representative Plaintiffs and the Class Members promptly and efficiently, and amplifies the benefits of that relief through the economies of class resolution.

3) Investigation Was Sufficient to Allow the Parties to Act Intelligently

The Parties engaged in substantial investigation prior to negotiating the Settlement. Prior to filing the Action, Plaintiffs' Counsel performed a significant amount of research and factual investigation of the claims to set forth a factually specific and accurate complaint for the Court and Defendant. After filing the Action, relevant information was exchanged, including a complete analysis of each Class Member's alleged overtime damages. In addition, Plaintiffs' Counsel

engaged in a further independent investigation of the facts, obtained investigation notes from Representative Plaintiffs and numerous other employees who are members of the proposed Settlement Class, and gathered a number of declarations from employees in the proposed Settlement Class. Thus, the legal issues in the case were thoroughly researched by counsel for the Parties, and all aspects of the dispute are well-understood by both sides.

4) The Risks of Litigation Favor Approval

Counsel for both sides believe in the merits of their clients' positions, but nonetheless recognize that the litigation of claims is uncertain in terms of duration, cost, and result. Moreover, in the present case, Defendant raises affirmative defenses to Plaintiffs' claims, and the outcome of those defenses is uncertain as well. Continued litigation would be risky for all.

5) Uncertainty of Recovery Supports Approval

Plaintiffs' range of possible recovery is also open to dispute. Even if Plaintiffs succeeded on the merits of their claims, the amount of recovery is uncertain and something upon which the Parties continue to disagree.

6) Experienced Counsels' Views Favor Approval

The Parties' counsel are experienced in wage-and-hour collective and class actions, have acted in good faith, and have represented their clients' best interests in reaching the Settlement. Counsel support the Settlement as fair and reasonable, and in the best interest of the Class Members as a whole, as described in the Lazzaro, Nilges and Downie Declarations (*see* Exhibit 3).

B. The Settlement Distributions Are Fair, Reasonable and Adequate

As a part of the scrutiny it applies to an FLSA collective action settlement, "a court must ensure that the distribution of the settlement proceeds is equitable." *Crawford v. Lexington-Fayette Urban County Government*, 2008 WL 4724499 (E.D. Ky. Oct. 23, 2008) (citing *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 855 (1999)). All components of the proposed distribution are

proper and reasonable, and the settlement as a whole is fair, reasonable and adequate for Representative Plaintiffs and the Class Members.

1) The Individual Payments Are Reasonable and Adequate

All Individual Payments will be calculated proportionally on each Class Member's overtime damages during the Calculation Period. The Calculation Period for Plaintiffs and the Class shall mean the three-year period between May 21, 2012 and May 22, 2015.

If approved by the Court, the Proposed Settlement will provide substantial payments to the Class Members for unpaid overtime compensation. During the three-year limitations period, Plaintiffs, the Existing Opt-In Party Plaintiffs, and all of the Eligible Settlement Participants were allegedly denied approximately \$896,889.64 in overtime wages. This figure assumes: a) that Plaintiffs and the Class were not compensated for any overtime hours they worked, b) that each category of compensation Plaintiffs and the Class received should have been included in their regular rate of pay for purposes of calculating their overtime compensation, including bonus pay, day rate pay, fluid drill pay, per diem pay, safety bonus, and stand by pay for days in which work was performed, and c) that each category of compensation Plaintiffs and the Class received compensated them straight time for their overtime hours such that they were entitled to an additional one-half times their regular rate of pay for each overtime hour they worked.

Each Class Member who participates in the Settlement will receive approximately 90% of their alleged overtime damages during the three-year limitations period. Within seven (7) days after the consent period is completed, a Schedule of Individual Payments to the Class Members will be filed with the Court. Accordingly, the settlement proceeds are fair, reasonable and adequate.

**2) Representative Plaintiff's Service Award
Is Proper and Reasonable**

Service awards to a representative plaintiff recognizing the value of his or her services on behalf of other participants are proper. As stated in *In re Dunn & Bradstreet Credit Services Customer Litigation*, 130 F.R.D. 366 (S.D. Ohio 1990):

Numerous courts have not hesitated to grant incentive awards to representative plaintiffs who have been able to effect substantial relief for classes they represent.

130 F.R.D. at 373 (citing *Wolfson v. Riley*, 94 F.R.D. 243 (N.D. Ohio 1981); *Bogosian v. Gulf Oil Corp.*, 621 F. Supp. 27, 32 (E.D. Pa. 1985); *In re Minolta Camera Products Antitrust Litigation*, 666 F. Supp. 750, 752 (D. Md. 1987)).

In this Circuit, service awards to representative plaintiffs are “typically justified when named plaintiffs expend more time and effort beyond that of other class members in assisting class counsel with litigation, such as by actively reviewing the case and advising counsel in prosecution of case.” *In re Southern Ohio Correctional Facility*, 175 F.R.D. 270, 273, 276 (S.D. Ohio 1997).

The courts recognize that “differentiation among class representatives based upon the role each played may be proper in given circumstances.” *Dun & Bradstreet*, 130 F.R.D. at 374 (citing *In re Jackson Lockdown/MCO Cases*, 107 F.R.D. 703, 710 (E.D. Mich. 1985)). *See also Enterprise Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 250 (S.D. Ohio 1991) (among the factors warranting incentive awards are the “time and effort spent” by the individuals in question and “whether these actions resulted in a substantial benefit to Class Members”).

In the present case, the Lazzaro and Nilges Declarations (*see* Exhibit E) establish that the proposed Service Awards are proper and reasonable. Representative Plaintiff Jeremy Hannah’s

services, prior his death, were extensive and effective. In addition to filing the collective action, he provided extensive factual information to Plaintiffs' Counsel.

Representative Plaintiff Kip Green's services were extensive and effective as well. In addition to filing the collective action with Jeremy Hannah, he provided extensive factual information to Plaintiffs' Counsel, faithfully attended meetings with Plaintiffs' Counsel, and attended the mediation conference. Moreover, he subjected himself to the responsibilities of serving as a named plaintiff in a lawsuit against his former employer.

3) The Attorneys Fees and Expenses to Plaintiffs' Counsel Are Proper and Reasonable

The FLSA provides that a Court "shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and the costs of the action." 29 U.S.C. § 216(b).

In *Fegley v. Higgins*, 19 F.3d 1126, 1134 (6th Cir. 1994), *cert. denied*, 513 U.S. 875 (1994), the Sixth Circuit held that the FLSA's mandatory attorneys' fee provision "insure[s] effective access to the judicial process by providing attorney fees for prevailing plaintiffs with wage and hour grievances," and thus "encourage[s] the vindication of congressionally identified policies and rights." *Fegley*, 19 F.3d at 1134 (quoting *United Slate, Tile & Composition Roofers, Damp and Waterproof Workers Ass'n, Local 307 v. G & M Roofing and Sheet Metal Co.*, 732 F.2d 495, 502 (6th Cir.1984)).

Fegley was followed in *Bessey v. Packerland Plainwell, Inc.* 2007 WL 3173972 (W.D. Mich. 2007), in which the district court approved a one-third attorneys' fee in an FLSA settlement very much like the one presented here. Fulfilling *Fegley's* emphasis on "encourage[ing] the vindication of congressionally identified policies and rights," the *Bessey* court found "the percentage of fund method is the proper method in this case for compensating plaintiffs' counsel.

The fact that the damages which could have been claimed by each class member were relatively modest provides a strong reason for adopting the percentage of recovery method, for it rewards counsel for taking on a case which might not otherwise be economically feasible.” *Bessey*, 2007 WL 3173972, at *4 (citing *Rawlings v. Prudential Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the district court “must make sure that [class] counsel is fairly compensated for the amount of work done as well as for the results achieved” and “the percentage of the fund method more accurately reflects the results achieved”). *Accord, In re Revco Securities Litigation*, Fed. Sec. L. Rptr. ¶ 96,956, at 94,069 (N.D. Ohio 1993) (“[t]he percentage of the fund approach... provides a fair and equitable means of determining attorney’s fees” because “the size of a common fund is an objective yardstick by which the benefit conferred upon the class can be measured”).

In determining the reasonableness of the one-third fee, the *Bessey* court considered the comparative data about Rule 23 class settlements summarized in *Shaw v. Toshiba America Information Systems, Inc.*, 91 F. Supp. 2d 942 (E.D. Tex. 2000), *discussed in Bessey*, 2007 WL 3173972, at *4:

The most complete analysis of fee awards in class actions conducted to date was conducted by the National Economic Research Associates, an economics consulting firm. The data is reported at Frederick C. Dunbar, Todd S. Foster, Vinita M. Juneja, Denise N. Martin, Recent Trends III: What Explains Settlements in Shareholder Class Actions? (NERA, June 1995) (hereinafter “NERA Study”). This data indicates that regardless of size, attorneys’ fees average approximately 32% of the settlement.

Shaw, 91 F. Supp. 2d at 988 (citing NERA Study at 7 & Exh. 12) (emphasis added).

The NERA Study relied upon in *Shaw* and *Bessey* showed the average fee to class counsel was approximately one-third of the settlement, while the average result achieved for class members was only 7% to 11% of claimed damages. Measured against that standard, the settlement in the present case is exemplary. As discussed above, each Class Member who participates in the Settlement will receive approximately 90% of their alleged overtime damages during the three-

year limitations period. Therefore, the attorneys' fees requested are reasonable in light of the exceptional benefit achieved for Plaintiffs and the Class.

The attorneys' fees requested by Plaintiffs' Counsel should not be altered because counsel efficiently resolved this case early on rather than prolonging the litigation and increasing their potential fees. As the Manual for Complex Litigation recognizes, "one purpose of the percentage method is to encourage early settlements by not penalizing efficient counsel, thus ensuring competent counsel continue to be willing to undertake risky, complex, and novel litigation." Manual for Complex Litigation (4th) § 14.121.

Had this case not settled, Plaintiffs' Counsel would have vigorously litigated the case without any promise of success and compensation. At every step of the litigation, Defendant could have succeeded. Therefore, the Class Members were at great risk for non-payment. This risk of non-payment strongly supports the amount requested here and warrants approval.

Expenses are estimated to be approximately \$4,917.94. All expenses were incurred during the course of the litigation of this Action or will be incurred during the administration of the Settlement.

IV. CONCLUSION

For the reasons addressed above, the Parties respectfully request that this Court approve the Settlement by entering the proposed Order of Dismissal and Approving Settlement attached as Exhibit D.

Respectfully submitted,

/s/ Hans A. Nilges

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**JOINT STIPULATION
OF SETTLEMENT AND RELEASE**

Subject to approval by the United States District Court for the Southern District of Ohio, Eastern Division, Hon. Michael H. Watson, U.S. District Judge, presiding (“District Court”), Plaintiffs Jeremy Hannah and Kip Green, individually and on behalf of the Settlement Class, and Defendant H.A.D., Inc. (“H.A.D.”), agree to the terms of this Joint Stipulation of Settlement and Release.

DEFINITIONS

1. “Action” shall mean the civil action in the United States District Court for the Southern District of Ohio, Eastern Division entitled *Jeremy Hannah, et al. v. H.A.D., Inc.*, Case No. 2:15-cv-933.

2. “Representative Plaintiffs” or “Plaintiffs” shall mean Jeremy Hannah and Kip Green.

3. “Defendant” or “H.A.D.” shall mean H.A.D., Inc., and all of its former, current and respective officers, directors, employees, agents, attorneys, insurers, parents, predecessors, successors, subsidiaries, and related and affiliated entities.

4. “Settlement Class” or “Class Members” shall consist of Representative Plaintiffs Jeremy Hannah and Kip Green, the “Existing Opt-In Party Plaintiffs,” and all of the “Eligible Settlement Participants” who execute and return Consent and Release Forms.

5. “Existing Opt-In Party Plaintiffs” consist of the 25 employees identified in Appendix 1 who have already joined the case, and who are current and former non-exempt employees of Defendant who were paid on what Defendant referred to as a day-rate basis and allegedly were not paid overtime compensation for the hours they worked over forty (40) in one or more workweeks between May 21, 2012 and May 22, 2015.

6. “Eligible Settlement Participants” consist of the 104 employees identified in Appendix 2 who have not already joined the case, and who are current and former non-exempt employees of Defendant who were paid on what Defendant referred to as a day-rate basis and allegedly were not paid overtime compensation for the hours they worked over forty (40) in one or more workweeks between May 21, 2012 and May 22, 2015.

7. “Parties” shall mean the Representative Plaintiffs and Defendant, and “Party” shall mean any one of the Parties.

8. “Plaintiffs’ Counsel” are Anthony J. Lazzaro and Chastity L. Christy of The Lazzaro Law Firm, LLC, Hans A. Nilges and Shannon M. Draher of Nilges Draher, LLC, and Thomas A. Downie. “Defendant’s Counsel” are Michele L. Jakubs and Drew C. Piersall of Zashin & Rich Co., LPA.

9. “Settlement” or “Agreement” shall mean this Joint Stipulation of Settlement and Release.

RECITALS

10. On March 14, 2015, Plaintiff Jeremy Hannah commenced the Action on behalf of himself and all others similarly situated to him with respect to the claims he asserted. On March 28, 2015, Plaintiffs Jeremy Hannah and Kip Green filed an Amended Class and Collective Action Complaint.

11. In the Action, Plaintiffs alleged that Defendant failed to pay employees, who were paid on a day-rate basis, compensation for the hours they worked over forty (40) in one or more workweeks between May 21, 2012 and May 22, 2015, in violation of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 207.

12. Defendant answered the amended complaint and denied any liability or wrongdoing of any kind.

13. Plaintiff believes that the Action is meritorious based on alleged violations of the FLSA, and that the Action is appropriate for collective treatment. Defendant denies these allegations.

14. Between September 2015 and January 2016 the Parties engaged in informal yet comprehensive discovery regarding Plaintiffs’ claims and Defendant’s defenses to such claims.

15. On January 18, 2016, the Parties attended a mediation with Jerry Weiss of Mediation Inc. in Cleveland, Ohio and reached an agreement to settle the Action on the terms set forth in this Settlement Agreement.

16. It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge all Released Claims for the Release Period.

17. Plaintiffs’ Counsel represents that they have conducted a thorough investigation into the facts of this Action, and have diligently pursued an investigation of Plaintiffs’ claims against Defendant, including researching the applicable law and the potential defenses. Based on their own independent investigation and evaluation, Plaintiffs’ Counsel is of the opinion that the Settlement is fair, adequate and reasonable and is in the best interest of the Class Members in light of all known facts and circumstances, including the risk of significant delay and Defendant’s defenses. Defendant agrees that the Settlement is fair, adequate and reasonable.

18. This Settlement represents a compromise of disputed claims. Nothing in this Settlement is intended or will be construed as an admission by Defendant that Plaintiff’s claims in the Action have merit or that Defendant has any liability to Plaintiff on those claims.

SETTLEMENT PAYMENTS

19. **Total Eligible Settlement Amount:** The Total Eligible Settlement Amount is One Million Two Hundred Fifty Thousand Dollars (\$1,250,000.00), which sum will cover: (a) all of the Individual Payments to the Settlement Class; (b) Representative Plaintiffs' Class Representative Payments; and (c) Plaintiffs' Counsel's attorneys' fees and expenses.

20. **Settlement Payments to Class Members:** Eight Hundred Three Thousand Four Hundred Fifteen Dollars and Forty Two Cents (\$803,415.42) of the Total Eligible Settlement Amount will be divided into Individual Payments to the Settlement Class.

21. **Calculation of Individual Payments:** The Individual Payments, after deduction of the Class Representative Payments and Plaintiffs' Counsel's attorneys' fees and expenses from the Total Eligible Settlement Amount, were calculated by Plaintiffs' Counsel and approved by Defendant, and are based proportionally on each Representative Plaintiff's, each Existing Opt-In Party Plaintiff's, and each Eligible Settlement Participant's alleged overtime damages during the Calculation Period. In addition, any Class Members allegedly owed less than \$100.00 will receive a \$100.00 minimum payment. The Individual Payments are provided in Appendices 1 and 2.

22. **Calculation Period:** The Calculation Period for Plaintiff and the Class shall mean the three-year period between May 21, 2012 and May 22, 2015.

23. **Retention of Individual Payments to Non-Participants:** Any Individual Payments to Non-Participants will be retained by Defendant.

24. **Treatment of Individual Payments:** One half of each Class Member's Individual Payment will be treated as payment for wages, and the other half as payment for statutory damages. Defendant will issue to each Class Member an IRS Form W-2 for all amounts paid as wages under this Settlement, and will issue an IRS Form 1099-Misc. for all amounts paid as statutory damages under this Settlement. Defendant will determine the proper tax withholding amounts on the W-2 payments in accordance with each Class Member's previously elected wage withholding instructions, and Defendant is responsible for payment of the employer's share of payroll taxes required by law. The Class Members agree to pay all taxes, if any, which may be deemed owing on any 1099-Misc. payments under this Agreement.

25. **Class Representative Payments:** Twenty Five Thousand Dollars (\$25,000.00) of the Total Eligible Settlement Amount will be paid to Representative Plaintiffs as Class Representative Payments (\$5,000.00 to the Estate of Jeremy Hannah and \$20,000.00 to Kip Green), in addition to their Individual Payments, in exchange for signing a general mutual release of all claims (proposed and attached as Exhibit C to the Parties' Joint Motion For Approval of Settlement), including all pending claims, against Defendant. Defendant will issue to Representative Plaintiffs Forms 1099 with respect to the Class Representative Payments.

26. **Plaintiffs' Counsel's Attorneys' Fees and Expenses:** Four Hundred Twenty One Thousand Five Hundred Eighty Four Dollars and Fifty Eight Cents (\$421,584.58) of the

Total Eligible Settlement Amount will be paid to Plaintiffs' Counsel for attorneys' fees and expenses (\$416,666.64 in fees and \$4,917.94 in expenses) incurred in the Action. Of this amount, \$141,347.85 will be paid to The Lazzaro Law Firm, LLC, \$141,347.85 will be paid to Nilges Draher, LLC, and \$138,888.88 will be paid to Thomas A. Downie. Defendant will issue to Plaintiffs' Counsel Forms 1099-Misc. with respect to the attorneys' fees and expenses.

RELEASE OF CLAIMS

27. **Released Claims:** The Settlement Class will release Defendant from all federal and state wage-and-hour claims, rights, demands, liabilities and causes of action asserted in Plaintiff's Complaint, including but not limited to claims for unpaid wages, unpaid overtime compensation, liquidated damages, interest, attorneys' fees, and expenses, pursuant to the Fair Labor Standards Act and any applicable state wage statute where Plaintiffs may have worked for Defendant, including but not limited to the Ohio Minimum Fair Wage Standards Act, and applicable Pennsylvania statutes for the Released Period.

28. **Released Period:** The Released Period for Plaintiff and the Class shall mean the period between May 21, 2012 and the date the District Court enters final approval.

29. **Release of Attorneys' Fees and Expenses:** The payment of attorneys' fees and expenses to Plaintiffs' Counsel includes all of the attorneys' fees and expenses incurred to date and to be incurred in documenting the Settlement, securing Court approval of the Settlement, and obtaining a dismissal of the Action. In consideration for these attorneys' fees and expenses, Plaintiffs' Counsel waives any and all claims to any further attorneys' fees and expenses in connection with the Action.

APPROVAL AND DISMISSAL OF THE ACTION

30. **Cooperation:** The Parties will agree to cooperate and take all steps necessary and appropriate to obtain approval of the Settlement by the District Court, to effectuate its terms, and to dismiss the action with prejudice.

31. **Fair, Adequate and Reasonable Settlement:** The Parties will agree that the Settlement is fair, adequate, and reasonable, and will so represent to the District Court.

32. **Joint Motion for Approval of Settlement:** On or before February 8, 2015, the Parties will jointly move the District Court for entry of an order, proposed and attached as Exhibit D to the Parties' Joint Motion For Approval of Settlement, granting final approval of the Settlement, approving the form, content, and method of distribution of the notice to Eligible Settlement Participants, approving the amounts payable to Class Members and Plaintiffs' Counsel, and entering judgment dismissing the Action with prejudice.

33. **Dismissal With Prejudice of the Action:** Upon entry of the District Court's final approval order, the Action shall be dismissed with prejudice and final judgment shall be entered, at Defendant's costs.

SETTLEMENT ADMINISTRATION

34. **Contact Information for Class Members:** Within five (5) days after the District Court grants final approval of the Settlement, Defendant will provide to Plaintiffs' Counsel a spreadsheet containing the names, last known addresses, last known email addresses, and last known phone numbers, to the extent that Defendant has this information, of the Existing Opt-In Party Plaintiffs and Eligible Settlement Participants, according to records maintained by Defendant.

35. **Distribution of Notice and Consent and Release Forms:** Plaintiffs' Counsel will distribute the Notice and Consent and Release Forms to the Eligible Settlement Participants via First-Class Mail and email, if available, within fourteen (14) days after the District Court grants final approval of the Settlement. Plaintiffs' Counsel will perform address updating through the National Change of Address Database before the notice is mailed. If any notices are returned as undeliverable, Plaintiffs' Counsel will advise Defendant's Counsel, and the parties will make reasonable efforts to locate the Class Members and re-send the Notices.

36. **Consent Period and Return of Consent and Release Forms:** In order to receive a payment under this Settlement, the Eligible Settlement Participants must properly sign and return the Consent and Release Form attached as Exhibit B to the Parties' Joint Motion for Approval of Settlement. The Eligible Settlement Participants may return Consent and Release Forms to Plaintiffs' Counsel within thirty (30) days after the mailing of the notice. The Consent and Release Forms must be signed electronically (eSigned) via PDF, postmarked, faxed or emailed to Plaintiffs' Counsel within the thirty (30) day period to be timely.

37. **Filing of Consent and Release Forms:** Upon receipt of the executed Consent and Release Forms from Eligible Settlement Participants, Plaintiffs' Counsel will file them with the Court. Within seven (7) days after the consent period is completed, all of the Eligible Opt-In Party Plaintiffs' Consent and Release Forms must be filed with the District Court.

38. **Filing of Schedule of Individual Payments:** A Schedule of Individual Payments to the Class Members, calculated pursuant to paragraph 21, shall be filed with the Court within seven (7) days after the consent period is completed.

39. **Distribution of Individual Payments to Class Members:** Defendant will issue the Individual Payment checks payable to the Class Members in two equal installments and mail them via First-Class Mail on April 1, 2016 and July 1, 2016. The April 1, 2016 installment will be for the 1099 payments, and the July 1, 2016 installment will be for the W-2 payments. If any Individual Payment checks are returned as undeliverable to Defendant, Defendant will mail the checks to Plaintiffs' Counsel who will make reasonable efforts to locate the Plaintiffs and redeliver the checks. Any checks that become lost or void during the (6) month period after each distribution will be reissued to any Class Member upon request and without charge to the Class Member.

40. **Distribution of Payments to Representative Plaintiff and Plaintiffs' Counsel:** Defendant will issue the checks payable to Representative Plaintiffs for their Individual Payments and Class Representative Payments, and a checks payable to each Plaintiffs' Counsel for the attorneys' and expenses, in two equal installments, and mail them directly to Plaintiffs' Counsel via First-Class Mail on April 1, 2016 and July 1, 2016.

41. **Unclaimed Payments:** All Individual Payments shall remain negotiable for an 8-month period after the date of each distribution. To the extent there are any Individual Payments to any Class Members that are unclaimed or not distributed, such as undeliverable or uncashed settlement checks, Defendant will advise Plaintiffs' Counsel of such amounts. Any amounts not cashed after eight (8) months of distribution of the settlement checks shall be retained by Defendant.

42. **Late Consent and Release Forms:** In the event Eligible Settlement Participants eSign, postmark, fax or email their Consent and Release forms after the 30-day consent period, Plaintiffs' Counsel will notify Defendant's counsel within three (3) business days. Defendant will decide, in its sole discretion and within three (3) business days of receiving notice from Plaintiffs' Counsel, whether to allow the late Eligible Settlement Participants to become Opt-In Party Plaintiffs and participate in the Settlement. If Defendant decides to allow the late Eligible Settlement Participants to become Opt-In Party Plaintiffs and participate in the Settlement, Plaintiffs' Counsel shall immediately file their Consent and Release forms with the Court, causing them to be bound by the Settlement and their claims to thereby be dismissed with prejudice. Defendant will mail the appropriate Settlement Payments directly to them on the April 1, 2016 and July 1, 2016 distribution dates or within fourteen (14) days after their Consent and Release forms are filed with the Court, whichever is later.

PARTIES' AUTHORITY

43. The respective signatories to the Settlement represent that they are fully authorized to enter into this Settlement and bind the respective Parties to its terms and conditions.

MUTUAL FULL COOPERATION

44. The Parties and their respective counsel agree to cooperate fully with each other to accomplish the terms of this Settlement, including but not limited to, execution of such documents and such other actions as may reasonably be necessary to implement the terms of this Settlement. The Parties shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate the terms of this Settlement.

NO PRIOR ASSIGNMENTS

45. The Parties and Plaintiffs' Counsel represent, covenant and warrant that they have not directly or indirectly, assigned, transferred, encumbered or purported to assign, transfer or

encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or right released and discharged in this Settlement.

NO ADMISSION OF LIABILITY

46. Nothing contained in this Settlement shall constitute or be construed or deemed as an admission of liability, culpability, negligence or wrongdoing on the part of Defendant, and Defendant denies any such liability. Each Party has entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses.

NO ADMISSION OF CLASS LIABILITY

47. The Parties agree that this Agreement does not constitute, shall not be construed to be, and shall not be cited in or be admissible in any proceeding as evidence of a determination or admission that any group of similarly-situated employees exists to maintain a collective action under the FLSA or a class action under Rule 23 of the Federal Rules of Civil Procedure.

CONSTRUCTION

48. The Parties agree that the terms and conditions of this Settlement are the result of lengthy, intensive arms-length negotiations between the Parties and that this Settlement shall not be construed in favor of or against any Party by reason of the extent to which any Party participated in the drafting of this Settlement.

MODIFICATION

49. This Agreement may not be changed, altered or modified, except in writing, signed by counsel for the Parties, and approved by the Court. This Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by counsel for the Parties. Notwithstanding the foregoing sentences, without further Order of the Court, the Parties may agree in writing to extensions of time to carry out any of the provisions of this Agreement.

INTEGRATION CLAUSE

50. This Settlement contains the entire agreement between the Parties, and all prior or contemporaneous agreements, understandings, representations and statements, whether oral or written and whether by a Party or such Party's legal counsel, relating to the resolution of the Action, are merged in this Settlement. No rights under this Settlement may be waived except in writing signed by the Parties.

BINDING ON ASSIGNS

51. This Settlement shall be binding upon and inure to the benefit of the Parties and their respective heirs, trustees, executors, administrators, successors and assigns.

COUNTERPARTS

52. This Settlement may be executed in counterparts, and may be signed electronically via PDF. When each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement, which shall be binding upon and effective as to all Parties. Electronic and facsimile transmissions of this Settlement shall be deemed originals.

BREACH

53. If either Party breaches any of the terms and conditions of this Settlement, the non-breaching Party shall be entitled to reasonable attorneys' fees and expenses incurred to enforce the terms and conditions contained herein.

JURISDICTION

54. The parties will request that the Court expressly retain jurisdiction to enforce the terms of the Settlement, including the notice administration, addition of Opt-In Party Plaintiffs and distribution process.

CLASS SIGNATORIES

55. Representative Plaintiffs execute this Settlement on behalf of themselves and in their representative capacity on behalf the Settlement Class. It is agreed that it is burdensome to have all of the Class Members execute this Agreement. This Agreement shall have the same force and effect as if each Class Member executed this Agreement.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the date indicated below:

Dated: _____

THE ESTATE OF JEREMY HANNAH

By: _____

Its: _____

Representative Plaintiff, Individually
and on Behalf of the Class Members

Dated: _____

KIP GREEN

Representative Plaintiff, Individually
and on Behalf of the Class Members

Dated: _____

H.A.D., INC.

By: _____

Its: _____

Dated: _____

ANTHONY J. LAZZARO
THE LAZZARO LAW FIRM, LLC

By: _____

Attorney for Plaintiffs and the Class Members

Dated: _____

HANS A. NILGES
NILGES DRAHER, LLC

By: _____

Attorney for Plaintiffs and the Class Members

Dated: _____

THOMAS A. DOWNIE

By: _____

Attorney for Plaintiffs and the Class Members

Dated: _____

MICHELE L. JAKUBS
ZASHIN & RICH CO., LPA

By: _____

Attorney for Defendant

Individual Payments to Representative Plaintiffs and Existing Opt-In Party Plaintiffs
Appendix 1

Representative Plaintiffs

| Last Name | First Name | Individual Payment |
|------------------|-------------------|---------------------------|
| GREEN | KIP | \$3,722.43 |
| HANNAH | JEREMY | \$14,451.82 |

Existing Opt-In Party Plaintiffs

| Last Name | First Name | Individual Payment |
|------------------|-------------------|---------------------------|
| BARNES | JOSHUA | \$10,549.86 |
| BELCHER | BRENDAN | \$894.33 |
| BLANKENSHIP II | JERRY | \$8,389.65 |
| BRUMMAGE | CHRISTOPHER | \$16,460.03 |
| BUTLER | AARON | \$7,576.93 |
| CRAIG | JEFFREY | \$12,596.33 |
| FRAME JR | ADEN | \$4,465.79 |
| HANNAHS | PAUL | \$18,553.39 |
| JENKINS | DAVID | \$26,041.82 |
| JOHNSTON JR | JOSEPH | \$20,514.23 |
| LARRICK | RUSSELL | \$5,270.33 |
| LITTLE | WILLIAM | \$3,030.22 |
| LOTUT JR | LYUBOMIR | \$645.84 |
| ROBINSON | DAVID | \$13,265.99 |
| ROSE | ERIC | \$4,282.07 |
| ROSE | ADAM | \$3,181.32 |
| SAGE | JACOB | \$9,833.94 |
| SAMPSON | BRANDON | \$16,157.69 |
| SPAUR | AARON | \$5,078.55 |
| STARCHER | JASON | \$5,373.63 |
| VAUGHAN | JAMISON | \$21,604.65 |
| WHITTEN | SCOTT | \$10,440.37 |
| WILSON | JOSEPH | \$8,768.95 |
| WORKMAN | JEFFREY | \$1,983.24 |
| WORKMAN JR | PAUL | \$5,070.44 |

**Eligible Opt-In Party Plaintiffs
Appendix 2**

| Last Name | First Name | Individual Payment |
|------------------|-------------------|---------------------------|
| ABBEY | DARIUS | \$1,451.69 |
| ALBAUGH JR | RICHARD | \$23,646.97 |
| ALLISON | JOHN | \$6,463.41 |
| ALLISON | JEREMY | \$4,929.88 |
| ANGLE | CORY | \$11,990.68 |
| ANGLE JR. | MICHAEL | \$3,899.43 |
| ARTHUR JR | CURTIS | \$330.10 |
| BAILEY | ALEXANDER | \$5,837.42 |
| BEATMAN | MATHEW | \$15,660.78 |
| BEATMAN | KRISTOPHER | \$5,982.32 |
| BILLINGS | JOSHUA | \$3,805.19 |
| BLANCHARD | JOSHUA | \$11,289.45 |
| BLASENHAUER | JOSHUA | \$4,704.47 |
| BLASENHAUER JR | ROBERT | \$13,965.34 |
| BRATTON | JEREMY | \$100.00 |
| BROWN | RAY | \$1,318.45 |
| BUCK | ANDRE | \$4,572.08 |
| BURGESS | BRANDON | \$9,702.97 |
| BUSH | NATHAN | \$6,486.67 |
| CARPENTER | ALLEN | \$5,480.63 |
| CARPENTER | MICHAEL | \$1,413.61 |
| CARTER | JOHN | \$13,502.94 |
| CONNER | DUSTIN | \$1,767.63 |
| COTTRILL | KENNY | \$22,848.47 |
| DICKSON | ANTHONY | \$22,631.58 |
| DOHERTY JR | JEFFERY | \$1,469.77 |
| DUKE | JAMES | \$100.00 |
| ELMORE | JAMES | \$1,771.90 |
| EVERETT | ERIC | \$1,108.91 |
| FAST | PERRY | \$100.00 |
| FINCHAM | DAVID | \$11,308.50 |
| FINDLEY | JOHN | \$619.60 |
| FLASHER | HARRISON | \$514.08 |
| GANTZ | DYLAN | \$2,411.48 |
| GILLISPIE | WILLIAM | \$5,882.22 |
| GOANS | STEVEN | \$4,769.01 |
| GREATHOUSE JR | CHARLES | \$326.62 |
| GREEN | NATHAN | \$183.41 |
| HANNAHS | SCOTT | \$12,668.30 |
| HAWKINS | KADEN | \$4,601.58 |
| HERRON | DANIEL | \$9,653.38 |
| HILLIARD | ROBERT | \$507.27 |
| HODGES | JOSHUA | \$18,749.17 |
| HOOVER | TYLER | \$20,563.93 |

**Eligible Opt-In Party Plaintiffs
Appendix 2**

| Last Name | First Name | Individual Payment |
|------------------|-------------------|---------------------------|
| HOOVER | KYLE | \$385.32 |
| HOOVER | GEORGE | \$266.96 |
| HUFFMAN | DUSTIN | \$3,200.02 |
| HULL | JASON | \$175.52 |
| HUPP SR | MACK | \$324.74 |
| HUPP SR | KENNETH | \$304.64 |
| HURSEY | ANTHONY | \$2,582.38 |
| JACKSON | LEE | \$11,596.56 |
| JACKSON | SEBASTIAN | \$1,279.41 |
| KARL | LOGAN | \$1,999.99 |
| KIGHTLINGER | TIMOTHY | \$9,084.63 |
| LAUBACH | DUSTIN | \$625.65 |
| LITTLE | JASON | \$100.00 |
| MAPLE | RYAN | \$4,156.06 |
| MARKS | ERIC | \$18,058.38 |
| MARSH | ADAM | \$100.00 |
| MARTIN | JOSHUA | \$20,145.12 |
| MARTIN | EVERETT | \$4,050.13 |
| MARTIN | RYAN | \$100.00 |
| MCCLAIN | BRIAN | \$4,030.89 |
| MCCUMBERS | HAROLD | \$2,275.09 |
| MCENDREE | ROBERT | \$100.00 |
| MILLER | PATRICK | \$13,255.57 |
| MILLER | BRIAN | \$673.32 |
| MILLER | DAMIAN | \$413.45 |
| MIZER | ANTONIO | \$1,712.94 |
| MLADEK | NATHAN | \$1,678.70 |
| O'BRIEN | JESSE | \$100.00 |
| PARKER | JEREMY | \$5,599.06 |
| PATTERSON | TYLER | \$3,383.72 |
| POTTS | JASON | \$2,091.86 |
| POULIN | JAROD | \$2,842.42 |
| PRIEST | MATTHEW | \$1,115.46 |
| PRUITT | DOUGLAS | \$100.00 |
| PUTMAN | TODD | \$308.71 |
| RAYBURN | JOHN | \$8,936.71 |
| REED | LINDEN | \$2,963.02 |
| RHODES | WILLIAM | \$2,176.33 |
| RILEY | JERRY | \$1,357.67 |
| RISLEY JR. | ERIC | \$9,348.16 |
| ROMERO | WILLIAM | \$8,844.09 |
| SAUNDERLIN | ELI | \$1,976.67 |
| SCARBERRYJR. | DONALD | \$14,117.44 |
| SCHWARTZ | JARED | \$2,935.33 |

**Eligible Opt-In Party Plaintiffs
Appendix 2**

| Last Name | First Name | Individual Payment |
|------------------|-------------------|---------------------------|
| SIDDLE | JOHN | \$100.00 |
| SMITH JR | WILLIAM | \$13,519.46 |
| STEIN | ANDY | \$3,868.35 |
| STINE | BART | \$100.00 |
| SWENSON | GALEN | \$2,050.38 |
| TILLEY | JASON | \$3,614.01 |
| VANSICKLE | ROBERT | \$3,143.80 |
| WEAVER | BRAD | \$112.14 |
| WEIGAND | SPENSER | \$13,230.31 |
| WHITMAN | KYLE | \$100.00 |
| WHYTSELL | MATTHEW | \$22,147.29 |
| WILEY | CHRISTOPHER | \$1,585.48 |
| WINTROW | BRANDON | \$6,251.65 |
| WRIGHT | GARY | \$100.00 |
| YOUNG | JAMES | \$2,103.51 |
| YOUNG | CHARLES | \$1,221.79 |

February __, 2016

NOTICE OF SETTLEMENT OF LAWSUIT

(with attached form to obtain a settlement payment)

TO: All current and former non-exempt employees of H.A.D., Inc. who were paid on what H.A.D., Inc. referred to as a day-rate basis and allegedly were not paid overtime compensation for hours worked over forty (40) in one or more workweeks between May 21, 2012 and May 22, 2015

FROM: Judge Michael H. Watson, U.S. District Court for the Southern District of Ohio

This Notice informs you of the settlement of a wage-and-hour lawsuit brought by Jeremy Hannah and Kip Green on behalf of all other similarly-situated non-exempt employees of H.A.D., Inc. ("H.A.D.").

1. INTRODUCTION AND SUMMARY

The Settlement announced by this Notice makes overtime compensation available to all current and former non-exempt employees of H.A.D., Inc. who were paid on what H.A.D. referred to as a day-rate basis and allegedly were not paid overtime compensation for hours worked over forty (40) in one or more workweeks between May 21, 2012 and May 22, 2015. The Settlement is supported by Kip Green, who serves as Representative Plaintiff in a federal lawsuit against H.A.D., and was negotiated by Plaintiffs' Counsel who represents Kip Green in that case.

TO PARTICIPATE IN THE SETTLEMENT, YOU MUST RETURN THE ATTACHED FORM

2. THE LAWSUIT

On March 14, 2015, a lawsuit seeking payment for overtime compensation was filed against H.A.D., Inc. by Jeremy Hannah, and later Kip Green, who worked for H.A.D. as non-exempt employees and were paid on a day-rate basis. The lawsuit alleges that H.A.D. failed to pay its non-exempt employees who were paid on a day-rate basis overtime compensation for the hours they worked over forty (40) each workweek. The lawsuit asserts claims under the federal Fair Labor Standards Act and Ohio and Pennsylvania state wage-and-hour laws, seeking overtime compensation for all non-exempt employees paid on a day-rate basis. H.A.D. has denied all liability and violations of state and federal wage and hour laws.

3. THE SETTLEMENT

To avoid the time, cost, fees and uncertainty of further litigation, the Settlement was reached between the Representative Plaintiffs and H.A.D. and has been approved by the U.S. District Court as fair, reasonable, and adequate. The terms of the Settlement are summarized below.

A. Settlement Payments to H.A.D. Day-Rate Employees and Released Claims

The Total Eligible Settlement Payment is \$1,250,000.00. \$803,415.42 of the Total Eligible Settlement Payment will be divided into Individual Payments for all of the employees who are eligible to join the Settlement. The Individual Payments have been calculated proportionally on each employee's alleged overtime damages during the Calculation Period, which is May 21, 2012 to May 22, 2015. After deductions, each employee who participates in the Settlement will receive approximately 90% of their alleged overtime damages during this period.

The deductions include Class Representative payments to Kip Green and Jeremy Hannah, in the amounts of \$20,000.00 and \$5,000.00, respectfully, based on their involvement in the matter and assistance to Plaintiffs' Counsel, and \$421,584.58 to Plaintiffs' Counsel for attorneys' fees and expenses incurred in the Action. In exchange, the lawsuit will be dismissed, and participating employees will release H.A.D. from any and all

Exhibit B

federal and state wage-and-hour claims that were asserted in the lawsuit. H.A.D. will retain the overtime payments of any employees who do not join the settlement.

B. Advantages of the Settlement and Plaintiffs' Counsels' Recommendation

Plaintiffs' Counsel recommend the Settlement. It offers substantial settlement payments to non-exempt employees paid on a day-rate basis, without the delay, uncertainty, and risk of continuing with the lawsuit.

During the Calculation Period, Plaintiffs' Counsel estimates that employees were allegedly denied approximately \$900,000 in overtime wages. Thus, Employees who return the attached form will receive approximately 90% of their alleged overtime damages during the Calculation Period.

4. HOW TO RECEIVE YOUR SETTLEMENT PAYMENT

To participate in the settlement, you must complete and return the attached Settlement Form entitled "Consent to Opt-Into Lawsuit, Release and Dismiss Claims" no later than March __, 2016. You can return the Settlement Form by: (a) signing it electronically (eSigning) via PDF; (b) mailing it to Plaintiffs' counsel in the self-addressed and postage-prepaid envelope included with this Notice; (c) faxing the form to Plaintiffs' counsel at 216-696-7005; (d) scanning the form and emailing it to Plaintiffs' counsel at consent@lazzarolawfirm.com. If your address has changed or changes before you receive your settlement payment, you must provide your name and current mailing address to Plaintiffs' Counsel.

H.A.D. will mail checks to employees in two equal installments on April 1, 2016 and July 1, 2016. The April 1, 2016 payment will be reported via a 1099 and employees will be required to pay taxes on this amount. The second check will be a payroll check, for which employees will receive a W-2 payment, less federal and state tax withholdings and deductions required by law.

FORMS MUST BE FAXED, EMAILED OR POSTMARKED BY MARCH __, 2016

5. FURTHER INFORMATION

Further information about the settlement may be obtained from Plaintiffs' Counsel whose contact information is below.

Anthony J. Lazzaro
Chastity L. Christy
The Lazzaro Law Firm, LLC
920 Rockefeller Building
614 W. Superior Avenue
Cleveland, Ohio 44113
Phone: 216-696-5000
Facsimile: 216-696-7005
anthony@lazzarolawfirm.com
chastity@lazzarolawfirm.com

Hans A. Nilges
Shannon M. Draher
Nilges Draher, LLC
4580 Stephen Circle, N.W.
Suite 201
Canton, Ohio 44718
Phone: 330-470-4428
Facsimile: 330-754-1430
hans@ohlaborlaw.com
sdraher@ohlaborlaw.com

Thomas A. Downie
46 Chagrin Falls Plaza #104
Chagrin Falls, Ohio 44022
Phone: 440-973-9000
Facsimile: 440-210-4610
tom@chagrinlaw.com

PLEASE DO NOT CONTACT THE COURT

THIS NOTICE HAS BEEN AUTHORIZED BY THE HONORABLE JUDGE MICHAEL H. WATSON OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO. THE COURT HAS TAKEN NO POSITION IN THIS CASE REGARDING THE MERITS OF PLAINTIFFS' CLAIMS OR OF H.A.D.'S DEFENSES

CONSENT TO OPT INTO LAWSUIT, RELEASE AND DISMISS CLAIMS

By signing and returning this form, I consent to opt into the lawsuit, *Jeremy Hannah, et al. v. H.A.D., Inc.*, Case No. 2:15-cv-933 (the "Lawsuit") pending in the U.S. District Court for the Southern District of Ohio.

I understand that I will receive an Individual Payment for overtime compensation in the amount of ____. Half of this payment will be mailed to me on April 1, 2016 and the other half on July 1, 2016. The first half will be reported via a 1099 and I will be required to pay taxes on this amount. The second check will be a payroll check, for which I will receive a W-2, less federal and state tax withholdings and deductions required by law.

I agree to be represented by The Lazzaro Law Firm, LLC, Nilges Draher, LLC, and Thomas A. Downie and to be bound by the settlement. I consent to the dismissal of the Lawsuit and my claims by and through Representative Plaintiffs. I designate Representative Plaintiffs and The Lazzaro Law Firm, LLC, Nilges Draher, LLC, and Thomas A. Downie to execute all appropriate documents to effectuate my payment and the settlement of the Lawsuit.

I hereby release H.A.D. from all federal and state wage-and-hour claims, rights, demands, liabilities and causes of action asserted in Plaintiffs' Complaint, including but not limited to claims for unpaid wages, unpaid overtime compensation, liquidated damages, interest, attorneys' fees, and expenses, pursuant to the Fair Labor Standards Act and any applicable state wage statute where Plaintiffs may have worked for Defendant, including but not limited to the Ohio Minimum Fair Wage Standards Act, and applicable Pennsylvania statutes for the Released Period. The Released Period is the period between May 21, 2012 and the date the District Court enters final approval.

I have carefully read and fully understand all items in this agreement and am voluntarily signing it. I understand that if I have any questions, I know I have the right to discuss this agreement with The Lazzaro Law Firm, LLC, Nilges Draher, LLC, and Thomas A. Downie. I also understand that any issues relating to this agreement will be addressed under the laws of the State of Ohio.

PLEASE READ AND CONSIDER THIS AGREEMENT CAREFULLY BEFORE EXECUTING THIS AGREEMENT. THIS AGREEMENT INCLUDES A RELEASE OF ALL WAGE AND HOUR CLAIMS.

{First Name Last Name}
{Address}
{City, State Zip}

Signature: _____ Date: _____

Please make any address corrections:

Please provide your phone number and email address:

Street Address: _____ Phone: _____

City, State, Zip: _____ Email: _____

eSign via PDF or return to:

The Lazzaro Law Firm, LLC / 920 Rockefeller Building / 614 W. Superior Avenue / Cleveland, Ohio 44113
Fax: 216-696-7005
Email: consent@lazzarolawfirm.com

Must be eSigned, postmarked, faxed, or emailed by March __, 2016

GENERAL SETTLEMENT AND RELEASE AGREEMENT

THIS AGREEMENT (the “Release Agreement”) is made by and between H.A.D., Inc., together with its former, current and respective officers, commissioners, employees, agents, affiliates, representatives, attorneys, insurers, successors, and assigns (“Defendant”) and Kip Green (“Green”).

WHEREAS, Green filed an action in the United States District Court for the Northern District of Ohio, entitled *Kip Green, et al. v. H.A.D. Inc.*, Case No. 15-cv-00498-SL, which was brought as a putative wage and hour collective action against Defendant (the “Green Action”);

WHEREAS, Hannah filed an action in the United States District Court for the Southern District of Ohio, entitled *Jeremy Hannah, et al. v. H.A.D., Inc.*, Case No. 15-cv-00933, which was brought as a wage and hour collective action against Defendant (the “Hannah Action”);

WHEREAS, the Hannah Action was amended to include the Green Action in United States District Court for the Southern District of Ohio, (the “Civil Action”);

WHEREAS, Defendant denied and continues to deny the allegations raised in the Civil Action; and

WHEREAS, Defendant and Green mutually desire to resolve any and all disputes relating to the subject matter of the Civil Action as well as all other potential claims or disputes related to his employment with Defendant.

NOW, THEREFORE, IT IS HEREBY AGREED, by and between Defendant and Green, (referred to together as the “Parties”) as follows:

1. Mutual Release of Claims. Except as provided below, Green hereby promises not to sue, and fully waives, discharges, and releases any and all claims, charges, demands, causes of actions, or suits at law or in equity, relating to or arising out of his employment with Defendant, of whatever nature, known or unknown, that he may have had against Defendant, its parent, subsidiary and affiliated companies, and in the case of all such entities, their respective past and present officers, directors, employees, agents, attorneys, insurers, predecessors, shareholders, partners, successors, assigns, heirs, executors and administrators (collectively referred to as the “Defendant Released Parties”), as a result of any actions or omissions, known or unknown, occurring through the date execute this Release Agreement, and not for any future claims, subject to the provisions set forth below.

Specifically included in this waiver and release are (1) all claims that Green may have or claim to have arising out of or resulting from his employment with Defendant and all contractual or quasi contractual rights or claims arising from his employment; (2) any and all claims for unpaid wages or unpaid overtime compensation, including claims pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201, et seq., the Ohio Minimum Fair Wage Standards Act, O.R.C. §§ 4111.01, et seq., Pennsylvania wage-and-hour statutes, and/or any other federal, state, or local statute, common law, or regulation, including, but not limited to the Employee Retirement

Income Security Act of 1974, 29 U.S.C. §§ 1001, et seq. (“ERISA”); (3) all claims, including administrative charges, court claims, or otherwise, for violation of any rights under any federal, state, or local statute, regulation or ordinance, including, but not limited to, wrongful discharge claims and claims of discrimination of every kind, including claims of age discrimination under the Age Discrimination in Employment Act (ADEA) or any other statute, and claims under all other federal, state, and local statutes, rules, regulations, ordinances, orders or common law principles; and (4) all claims that were asserted or could have been asserted in the Civil Action, including all collective or class claims and all claims relating to or arising out of the same transaction, series of connected transactions, occurrences or nucleus of operative facts that form the basis of the claims that were or could have been asserted in the Civil Action, and any claims challenging the practices that gave rise to the claims asserted in the Civil Action. Green understands that this release includes all claims that relate to his employment with Defendant, including all claims for monetary damages, compensatory damages, punitive damages, front pay, back pay, liquidated damages, penalties, and all forms of injunctive, declaratory or equitable relief, and costs and attorneys’ fees, whether arising under any federal, state, local or common laws or regulations.

This Agreement does not include, and Green does not waive, any rights or claims which: (1) may arise after the signing of this Agreement and (2) any and all rights that cannot be released by law, including but not limited to the right to file a charge or participate in an investigation with certain administrative agencies. Green agrees, however, to waive any monetary or other personal relief based on such a charge.

Defendant hereby fully waives, discharges, and releases any and all claims relating to or arising out of Green’s employment with Defendant that Defendant may have against Green, his heirs, executors and administrators as a result of actions or omissions occurring through the date Defendant executes this Release Agreement.

2. Green represents that he will not file or join in any action, charge, claim, complaint, lawsuit, or proceeding of any kind against the Defendant Released Parties with respect to any claim that is released in this Agreement, including any matter arising out of or in connection with his employment with the Defendant Released Parties. Green represents that he has not filed any complaints, claims, or actions against any of the Defendant Released Parties with any state, federal, or local agency or court, other than the Green Action and the Civil Action. Green acknowledges and agrees that he has been properly paid for all hours worked for which a claim has not been made in the Green Action or Civil Action and that he has not suffered any on-the-job injury for which he has not already filed a claim.

Should Green file or join in any action, claim, complaint, lawsuit, or proceeding of any kind against any of the Defendant Released Parties, based on any claim that he has released, or should such an action, claim, complaint, lawsuit, or proceeding be filed on his behalf, Green agrees to withdraw, dismiss, or cause to be withdrawn or dismissed, with prejudice, any such action, claim, complaint, lawsuit, or proceeding of any kind that is pending in any federal, state, or local agency or court. If Green breaks this promise and files or joins in any action, claim, complaint, lawsuit, or proceeding based on any claim that he has released, then, he will pay for

all costs that any Defendant Released Party incurs in defending against the claim, including reasonable attorney fees, unless such a remedy is prohibited by law.

3. Green agrees that the circumstances surrounding his relationship with H.A.D., Inc. are unique, that irreconcilable differences have arisen between Green and H.A.D., Inc., and that, as a result, Green will never be qualified to hold any position at H.A.D., Inc. For that reason, Green agrees never to seek re-employment with H.A.D., Inc., or with any entity affiliated with H.A.D., Inc. If Green breaks this promise, then H.A.D., Inc. (or its affiliated company) may deny Green employment based on this Agreement. However, should H.A.D., Inc. acquire any entity or facility that employs Green, Green will have the same rights as any other employee.

4. In consideration for signing this Release Agreement and the fulfillment of the promises herein, Green understands that within the time period provided in the Joint Stipulation of Settlement and Release, Defendant will pay to Green the gross sum of Twenty Thousand Dollars (\$20,000.00). This payment shall constitute the sole and exclusive consideration for and settlement in full accord and satisfaction of any and all claims of any nature whatsoever by Green against Defendant Released Parties. Green agrees that the entire consideration provided to him is as described in this Release Agreement and that he will not seek any further compensation for any other claimed damages, costs, or attorneys' fees in connection with the matters encompassed in this Release Agreement. An IRS form 1099 shall be issued to Green reflecting this payment. Green expressly acknowledges and that he is, and shall be, responsible for all federal, state, and local tax liabilities that may result from the payments described in this paragraph 3, and Green hereby warrants that that Defendant Released Parties shall bear no responsibility for any such tax liabilities and agrees to indemnify and hold Defendant Released Parties harmless from any claims, demands, deficiencies, levies, assessments, executions, judgments or recoveries by any governmental entity against Defendant Released Parties for any amounts claimed due on account of this Release Agreement or pursuant to claims made under any federal or state tax laws related to the settlement payment to each. Green shall also be fully bound by the release in the Joint Stipulation of Settlement and Release and shall be eligible for an Individual Payment as set forth in that agreement.

5. This Release Agreement together with the Joint Stipulation of Settlement and Release constitutes the entire agreement between the Parties regarding the subject matter therein. The Parties agree that neither this Release Agreement nor the Joint Stipulation of Settlement and Release are binding upon either Party, and no payment is due under paragraph 3, until and unless the Court in the Hannah Action approves the Parties' Joint Motion for Approval of Settlement and Stipulation of Dismissal with Prejudice and dismisses the Hannah Action with prejudice. No amendment, modification, change, or alteration of this Release Agreement shall be valid or binding unless signed by Green and Defendant. The Joint Stipulation of Settlement and Release cannot be amended, changed, altered, or modified except in accordance with paragraph 49 of the Joint Stipulation of Settlement and Release.

6. Green acknowledges that no representation, promise or inducement has been made other than as set forth in this Release Agreement and the Joint Stipulation of Settlement and Release, and that he enters into this Release Agreement without reliance upon any other representation, promise, or inducement not set forth herein or in the Joint Stipulation of

Settlement and Release. Green also acknowledges that he has had the opportunity to consult with an attorney of his choosing concerning this Release Agreement and that he has read and understands this Release Agreement, is fully aware of its legal effect, and has entered into it knowingly and voluntarily.

7. Green acknowledges and agrees that the payments offered under the terms of this Release Agreement and the Joint Stipulation of Settlement and Release represent valuable consideration.

8. Each paragraph and clause of this Release Agreement shall be deemed severable from all other provisions, and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the remaining provisions. In addition, to the extent permitted by applicable law, any invalid or unenforceable provision shall be enforced to the maximum extent permitted by applicable law.

9. The language of all parts of this Release Agreement shall in all cases be construed as a whole, according with its fair meaning, and not strictly for or against any of the parties. This Release Agreement may be executed by the parties in separate counterparts, with the same effect as if the parties had signed the same document. All such counterparts shall be deemed an original, shall be construed together, and shall constitute one and the same document. A facsimile or scanned signature shall be deemed an original signature.

10. This Release Agreement shall be binding upon the Parties and their respective heirs, representatives, successors, transferees and assigns.

11. This Release Agreement shall be interpreted in all respects by the internal laws of the State of Ohio without reference to conflicts of laws principles.

12. The settlement reflected in the Joint Stipulation of Settlement and Release and this Release Agreement shall not in any way be construed as an admission by the Defendant Released Parties of any liability or acts of wrongdoing, which liability and responsibility for damages are specifically denied.

I HEREBY ACKNOWLEDGE THAT I HAVE CAREFULLY READ THIS RELEASE AGREEMENT AND KNOW AND UNDERSTAND THE CONTENTS AND THAT I EXECUTE THIS RELEASE KNOWINGLY AND VOLUNTARILY:

Dated: _____

KIP GREEN

H.A.D., INC. HEREBY ACKNOWLEDGES THAT IT HAS CAREFULLY READ THIS RELEASE AGREEMENT AND KNOWS AND UNDERSTANDS THE CONTENTS AND THAT IT EXECUTE THIS RELEASE KNOWINGLY AND VOLUNTARILY THROUGH THE UNDERSIGNED REPRESENTATIVE.

Dated: _____

H.A.D., INC.

By: _____

Its: _____

GENERAL SETTLEMENT AND RELEASE AGREEMENT

THIS AGREEMENT (the “Release Agreement”) is made by and between H.A.D., Inc., together with its former, current and respective officers, commissioners, employees, agents, affiliates, representatives, attorneys, insurers, successors, and assigns (“Defendant”) and the Estate of Jeremy Hannah (“Hannah”).

WHEREAS, Green filed an action in the United States District Court for the Northern District of Ohio, entitled *Kip Green, et al. v. H.A.D. Inc.*, Case No. 15-cv-00498-SL, which was brought as a putative wage and hour collective action against Defendant (the “Green Action”);

WHEREAS, Hannah filed an action in the United States District Court for the Southern District of Ohio, entitled *Jeremy Hannah, et al. v. H.A.D., Inc.*, Case No. 15-cv-00933, which was brought as a wage and hour collective action against Defendant (the “Hannah Action”);

WHEREAS, the Hannah Action was amended to include the Green Action in United States District Court for the Southern District of Ohio, (the “Civil Action”);

WHEREAS, Defendant denied and continues to deny the allegations raised in the Civil Action; and

Whereas, Defendant and Hannah mutually desire to resolve any and all disputes relating to the subject matter of the Civil Action as well as all other potential claims or disputes related to his employment with Defendant.

NOW, THEREFORE, IT IS HEREBY AGREED, by and between Defendant and Hannah, (referred to together as the “Parties”) as follows:

1. Mutual Release of Claims. Except as provided below, Hannah hereby promises not to sue, and fully waives, discharges, and releases any and all claims, charges, demands, causes of actions, or suits at law or in equity, relating to or arising out of his employment with Defendant, of whatever nature, known or unknown, that he may have had against Defendant, its parent, subsidiary and affiliated companies, and in the case of all such entities, their respective past and present officers, directors, employees, agents, attorneys, insurers, predecessors, shareholders, partners, successors, assigns, heirs, executors and administrators (collectively referred to as the “Defendant Released Parties”), as a result of any actions or omissions, known or unknown, occurring through the date execute this Release Agreement, and not for any future claims, subject to the provisions set forth below.

Specifically included in this waiver and release are (1) all claims that Hannah may have or claim to have arising out of or resulting from his employment with Defendant and all contractual or quasi contractual rights or claims arising from his employment; (2) any and all claims for unpaid wages or unpaid overtime compensation, including claims pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201, et seq., the Ohio Minimum Fair Wage Standards Act, O.R.C. §§ 4111.01, et seq., and/or any other federal, state, or local statute, common law, or regulation, including, but not limited to the Employee Retirement Income Security Act of 1974,

29 U.S.C. §§ 1001, et seq. (“ERISA”); (3) all claims, including administrative charges, court claims, or otherwise, for violation of any rights under any federal, state, or local statute, regulation or ordinance, including, but not limited to, wrongful discharge claims and claims of discrimination of every kind, including claims of age discrimination under the Age Discrimination in Employment Act (ADEA) or any other statute, and claims under all other federal, state, and local statutes, rules, regulations, ordinances, orders or common law principles; and (4) all claims that were asserted or could have been asserted in the Civil Action, including all collective or class claims and all claims relating to or arising out of the same transaction, series of connected transactions, occurrences or nucleus of operative facts that form the basis of the claims that were or could have been asserted in the Civil Action, and any claims challenging the practices that gave rise to the claims asserted in the Civil Action. Hannah understands that this release includes all claims that relate to his employment with Defendant, including all claims for monetary damages, compensatory damages, punitive damages, front pay, back pay, liquidated damages, penalties, and all forms of injunctive, declaratory or equitable relief, and costs and attorneys’ fees, whether arising under any federal, state, local or common laws or regulations.

This Agreement does not include, and Hannah does not waive, any rights or claims which: (1) may arise after the signing of this Agreement and (2) any and all rights that cannot be released by law, including but not limited to the right to file a charge or participate in an investigation with certain administrative agencies. Hannah agrees, however, to waive any monetary or other personal relief based on such a charge.

Defendant hereby fully waives, discharges, and releases any and all claims relating to or arising out of Hannah’s employment with Defendant that Defendant may have against Hannah, his heirs, executors and administrators as a result of actions or omissions occurring through the date Defendant executes this Release Agreement.

2. Hannah represents that he will not file or join in any action, charge, claim, complaint, lawsuit, or proceeding of any kind against the Defendant Released Parties with respect to any claim that is released in this Agreement, including any matter arising out of or in connection with his employment with the Defendant Released Parties. Hannah represents that he has not filed any complaints, claims, or actions against any of the Defendant Released Parties with any state, federal, or local agency or court, other than the Hannah Action and the Civil Action. Hannah acknowledges and agrees that he has been properly paid for all hours worked for which a claim has not been made in the Hannah Action or Civil Action and that he has not suffered any on-the-job injury for which he has not already filed a claim.

Should Hannah file or join in any action, claim, complaint, lawsuit, or proceeding of any kind against any of the Defendant Released Parties, based on any claim that he has released, or should such an action, claim, complaint, lawsuit, or proceeding be filed on his behalf, Hannah agrees to withdraw, dismiss, or cause to be withdrawn or dismissed, with prejudice, any such action, claim, complaint, lawsuit, or proceeding of any kind that is pending in any federal, state, or local agency or court. If Hannah breaks this promise and files or joins in any action, claim, complaint, lawsuit, or proceeding based on any claim that he has released, then, he will pay for all costs that any Defendant Released Party incurs in defending against the claim, including reasonable attorney fees, unless such a remedy is prohibited by law.

3. In consideration for signing this Release Agreement and the fulfillment of the promises herein, Hannah understands that within the time period provided in the Joint Stipulation of Settlement and Release, Defendant will pay to Hannah's estate, the gross sum of Five Thousand Dollars (\$5,000.00). This payment shall constitute the sole and exclusive consideration for and settlement in full accord and satisfaction of any and all claims of any nature whatsoever by Hannah against Defendant Released Parties. Hannah agrees that the entire consideration provided to him is as described in this Release Agreement and that he will seek any further compensation for any other claimed damages, costs, or attorneys' fees in connection with the matters encompassed in this Release Agreement. An IRS form 1099 shall be issued to Hannah reflecting this payment. Hannah expressly acknowledges and that he is, and shall be, responsible for all federal, state, and local tax liabilities that may result from the payments described in this paragraph 3, and Hannah hereby warrants that that Defendant Released Parties shall bear no responsibility for any such tax liabilities and agrees to indemnify and hold Defendant Released Parties harmless from any claims, demands, deficiencies, levies, assessments, executions, judgments or recoveries by any governmental entity against Defendant Released Parties for any amounts claimed due on account of this Release Agreement or pursuant to claims made under any federal or state tax laws related to the settlement payment to each. Hannah shall also be fully bound by the release in the Joint Stipulation of Settlement and Release and shall be eligible for an Individual Payment as set forth in that agreement.

4. This Release Agreement together with the Joint Stipulation of Settlement and Release constitutes the entire agreement between the Parties regarding the subject matter therein. The Parties agree that neither this Release Agreement nor the Joint Stipulation of Settlement and Release are binding upon either Party, and no payment is due under paragraph 3, until and unless the Court in the Hannah Action approves the Parties' Joint Motion for Approval of Settlement and Stipulation of Dismissal with Prejudice and dismisses the Hannah Action with prejudice. No amendment, modification, change, or alteration of this Release Agreement shall be valid or binding unless signed by Hannah and Defendant. The Joint Stipulation of Settlement and Release cannot be amended, changed, altered, or modified except in accordance with paragraph 49 of the Joint Stipulation of Settlement and Release.

5. Hannah acknowledges that no representation, promise or inducement has been made other than as set forth in this Release Agreement and the Joint Stipulation of Settlement and Release, and that he enters into this Release Agreement without reliance upon any other representation, promise, or inducement not set forth herein or in the Joint Stipulation of Settlement and Release. Hannah also acknowledges that he has had the opportunity to consult with an attorney of his choosing concerning this Release Agreement and that he has read and understands this Release Agreement, is fully aware of its legal effect, and has entered into it knowingly and voluntarily.

6. Hannah acknowledges and agrees that the payments offered under the terms of this Release Agreement and the Joint Stipulation of Settlement and Release represent valuable consideration.

7. Each paragraph and clause of this Release Agreement shall be deemed severable from all other provisions, and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the remaining provisions. In addition, to the extent permitted by applicable law, any invalid or unenforceable provision shall be enforced to the maximum extent permitted by applicable law.

8. The language of all parts of this Release Agreement shall in all cases be construed as a whole, according with its fair meaning, and not strictly for or against any of the parties. This Release Agreement may be executed by the parties in separate counterparts, with the same effect as if the parties had signed the same document. All such counterparts shall be deemed an original, shall be construed together, and shall constitute one and the same document. A facsimile or scanned signature shall be deemed an original signature.

9. This Release Agreement shall be binding upon the Parties and their respective heirs, representatives, successors, transferees and assigns.

10. This Release Agreement shall be interpreted in all respects by the internal laws of the State of Ohio without reference to conflicts of laws principles.

11. The settlement reflected in the Joint Stipulation of Settlement and Release and this Release Agreement shall not in any way be construed as an admission by the Defendant Released Parties of any liability or acts of wrongdoing, which liability and responsibility for damages are specifically denied.

I HEREBY ACKNOWLEDGE THAT I HAVE CAREFULLY READ THIS RELEASE AGREEMENT AND KNOW AND UNDERSTAND THE CONTENTS AND THAT I EXECUTE THIS RELEASE KNOWINGLY AND VOLUNTARILY:

Dated: _____

THE ESTATE OF JEREMY HANNAH

By: _____

Its: _____

H.A.D., INC. HEREBY ACKNOWLEDGES THAT IT HAS CAREFULLY READ THIS RELEASE AGREEMENT AND KNOWS AND UNDERSTANDS THE CONTENTS AND THAT IT EXECUTE THIS RELEASE KNOWINGLY AND VOLUNTARILY THROUGH THE UNDERSIGNED REPRESENTATIVE.

Dated: _____

H.A.D., INC.

By: _____

Its: _____

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

| | | |
|------------------------------------|---|--------------------------------------|
| JEREMY HANNAH AND KIP GREEN |) | CASE NO. 2:15-cv-933 |
| |) | |
| on behalf of themselves |) | JUDGE MICHAEL H. WATSON |
| and all others similarly situated, |) | |
| |) | |
| Plaintiffs, |) | <u>ORDER OF DISMISSAL AND</u> |
| |) | <u>APPROVING SETTLEMENT</u> |
| |) | |
| vs. |) | |
| |) | |
| H.A.D., INC. |) | |
| |) | |
| Defendant. |) | |

This matter is before the Court on the Parties’ Joint Motion for Approval of Settlement and Stipulation of Dismissal With Prejudice (“Joint Motion”) pursuant to § 16(b) of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b). The Joint Motion asks the Court to approve, as fair and reasonable, the proposed Settlement reached by the Parties and memorialized in the Joint Stipulation of Settlement and Release (“Settlement” or “Agreement”) attached to the Joint Motion as Exhibit A.

Having reviewed the Joint Motion, the Agreement and its Exhibits, the Declarations of Anthony J. Lazzaro and Hans A. Nilges, and the pleadings and papers on file in this Action, and for good cause established therein, the Court enters this Stipulated Order of Dismissal and Approving Settlement, the Agreement and its Exhibits, the proposed Notice, the proposed Consent to Opt Into Lawsuit, Release and Dismiss Claims Form (“Consent Form”), the proposed allocation and calculation of Individual Payments, the proposed Service Award to the Representative Plaintiff, and the proposed attorneys’ fees and expense reimbursements to Plaintiffs’ Counsel, as follows:

1. The captioned Action asserts wage-and-hour claims under the FLSA, 29 U.S.C. §§ 201-219, on behalf of non-exempt employees of Defendant H.A.D., Inc.

2. On March 14, 2015, Representative Plaintiff Jeremy Hannah filed this Action as a collective action under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201-219, and alleged that Defendant failed to pay employees overtime compensation for the hours they worked over forty (40) each workweek, in violation of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 207 (the “Action”). On March 28, 2015, Representative Plaintiffs Jeremy Hannah and Kip Green filed an Amended Class and Collective Action Complaint. On May 4, 2015, Defendant filed an answer to the Amended Complaint disputing the material allegations both as to fact and law and denying any liability to Representative Plaintiffs or any other employees, and asserting several affirmative defenses.

3. Between September 2015 and January 2016 the Parties engaged in an informal yet comprehensive exchange of information regarding Plaintiffs’ claims and Defendant’s defenses to such claims. This included the calculations of Plaintiffs’, the Existing Opt-In Party Plaintiffs’, and the Eligible Settlement Participants’ alleged overtime damages.

4. On January 18, 2016, the Parties attended a mediation with Jerry Weiss of Mediation Inc. in Cleveland, Ohio and reached an agreement to settle the Action on the terms set forth in the Agreement attached to the Parties’ Joint Motion as Exhibit A. The proposed Settlement eliminates the time, cost, and uncertainty of further litigation.

5. The Settlement will cover Representative Plaintiffs and the 25 Existing Opt-In Party Plaintiffs identified in Appendix 1 of the Settlement, and all of the Eligible Settlement Participants identified in Appendix 2 of the Settlement who elect to participate in the Settlement by signing and returning Consent Forms (“Settlement Class” or “Class Members”)

6. To receive an Individual Payment, the Eligible Settlement Participants must sign and return the Consent Form attached as Exhibit B to the Parties' Joint Motion for Approval of Settlement. The Eligible Settlement Participants may return Consent Forms to Plaintiffs' Counsel within thirty (30) days after the mailing of the notice. The Consent Forms must be signed electronically (eSigned) via PDF, postmarked, faxed or emailed to Plaintiffs' Counsel within the thirty (30) day period to be timely.

7. The Settlement Agreement provides that, in consideration of the Total Eligible Settlement Payment, the claims of the Representative Plaintiffs, Existing Opt-In Party Plaintiffs, and Eligible Settlement Participants who elect to participate in the Settlement by signing and returning Consent Forms are to be dismissed with prejudice.

8. The Court finds that the proposed Settlement is fair and reasonable and satisfies the standard for approval under § 16(b) of the FLSA, 29 U.S.C. § 216(b). The Court finds that the Settlement resulted from arms-length negotiations between experienced counsel after substantial investigation. Plaintiffs' Counsel has informed the Court that they believe the Settlement is fair, reasonable, and adequate and in the best interests of the Representative Plaintiffs, Existing Opt-In Party Plaintiffs, and Eligible Settlement Participants. The Court has considered all relevant factors, including the risk, complexity, expense, and likely duration of the litigation; the extent of investigation; the amount offered in the Settlement; and the experience and views of counsel for the Parties.

9. The Court approves the Agreement and its Exhibits, including the proposed Notice and the proposed Consent Form, and orders that the Settlement be implemented according to the terms and conditions of the Agreement and as directed herein. The Court grants final approval of the Settlement as to the Representative Plaintiffs, Existing Opt-In Plaintiffs, and all

Eligible Settlement Participants who elect to participate in the Settlement by signing and returning a Consent Form.

10. The Court finds that the proposed allocation and calculation of the Individual Payments to Class Members are fair and reasonable. The Court approves the method of calculation and proposed distribution of the Individual Payments. The Parties have submitted with the Joint Stipulation of Settlement and Release two Appendices providing the names of the Existing Opt-In Party Plaintiffs and the Eligible Settlement Participants, and the Individual Payments for the Class Members. The Court approves the amounts and orders that such payments be distributed in the manner, and subject to the terms and conditions, set forth in the Agreement.

11. The Court approves the Class Representative Payments to the Representative Plaintiffs in recognition of their service in the Action, and orders that such payment be made in the manner, and subject to the terms and conditions, set forth in the Agreement.

12. The Court approves the payment of attorneys' fees and expense reimbursements to Plaintiffs' Counsel as provided in the Agreement, and orders that such payments be distributed in the manner, and subject to the terms and conditions, set forth in the Settlement Agreement.

13. The Court dismisses the claims of the Representative Plaintiffs, Existing Opt-In Party Plaintiffs, and Eligible Settlement Participants who sign and return Consent Forms with prejudice, and enters final judgment dismissing them from the Action. The Court finds there is no just reason for delay and directs the Clerk of the Court to enter this Stipulated Order of Dismissal and Approving Settlement immediately.

14. The Court retains jurisdiction over the Action to enforce the terms of the Settlement, including the notice administration, addition of Class Members and distribution process.

SO ORDERED:

Date: _____

Michael H. Watson
United States District Judge

SO STIPULATED:

/s/ Hans A. Nilges

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Shannon M. Draher (0074304)
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/s/ Anthony J. Lazzaro

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/s/ Thomas A. Downie

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mlj@zrlaw.com
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Attorneys for Defendant

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

| | | |
|------------------------------------|---|-----------------------------------|
| JEREMY HANNAH AND KIP GREEN |) | CASE NO. 2:15-cv-933 |
| |) | |
| on behalf of themselves |) | JUDGE MICHAEL H. WATSON |
| and all others similarly situated, |) | |
| |) | |
| Plaintiffs, |) | <u>DECLARATION OF</u> |
| |) | <u>PLAINTIFFS' COUNSEL</u> |
| vs. |) | <u>ANTHONY J. LAZZARO</u> |
| |) | |
| H.A.D., INC. |) | |
| |) | |
| Defendant. |) | |

I, Anthony J. Lazzaro, pursuant to 28 U.S.C. § 1746, hereby declare, under penalty of perjury, that the following is true and correct to the best of my personal knowledge, information, and belief:

1. I am one of the attorneys for Representative Plaintiffs Jeremy Hannah and Kip Green, the Existing Opt-In Party Plaintiffs, and the Eligible Settlement Participants who elect to participate in the Settlement (“Settlement Class” or “Class Members”).

Professional Experience

2. I founded The Lazzaro Law Firm, LLC in December 2006 to focus my practice on the representation of groups of employees in wage and hour collective and class actions. Since then, my firm has recovered over \$25 million in settlement payments on behalf of employees.

3. I have litigated over 75 certified wage and hour collective and class actions, including actions against 1-800-Flowers, Inc., Aarons, Inc., Aldi, Inc., Forever 21, Nestlé, Papa John's USA, Inc., and other major corporations.

4. Since 2007, I have filed over 20% of all of the Fair Labor Standards Act cases brought in the U.S. District Court for the Northern District of Ohio, including overtime and minimum wage claims involving employee misclassification, regular rate miscalculation, off-the-clock work, preparatory and concluding work, donning and doffing work, on-duty meal periods, improper rounding practices, short rest periods, waiting time, travel time, and improper tip pooling.

5. In addition to my practice, I served as an adjunct professor of law at Cleveland-Marshall College of Law where I taught an administrative law course on the Fair Labor Standards Act between 2008 and 2013. I have also been retained as an expert witness and as a mediator in a number of wage and hour cases.

Hannah, et al. v. H.A.D., Inc.
Factual and Procedural Background

6. On March 14, 2015, Representative Plaintiff Jeremy Hannah filed this Action as a collective action under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201-219, and alleged that Defendant failed to pay employees overtime compensation for the hours they worked over forty (40) each workweek, in violation of the FLSA. On March 28, 2015, Representative Plaintiffs Jeremy Hannah and Kip Green filed an Amended Class and Collective Action Complaint.

7. I have vigorously represented Plaintiff and the Class Members in this action, have conducted a significant investigation of the claims at issue, and have obtained a thorough familiarity with the factual and legal issues presented in this case.

8. The Parties engaged in substantial investigation prior to negotiating the Settlement. Prior to filing the Action, Plaintiffs’ Counsel performed a significant amount of research and factual investigation of the claims to set forth a factually specific and accurate

complaint for the Court and Defendant. After filing the Action, relevant information was exchanged, including a complete analysis of each Class Member's overtime demands. In addition, Plaintiffs' Counsel engaged in a further independent investigation of the facts, obtained investigation notes from Representative Plaintiffs and numerous other employees who are members of the proposed Settlement Class, and gathered a number of declarations from employees in the proposed Settlement Class. Thus, the legal issues in the case were thoroughly researched by counsel for the Parties, and all aspects of the dispute are well-understood by both sides.

9. On January 18, 2016, the Parties attended a mediation with Jerry Weiss of Mediation Inc. in Cleveland, Ohio and reached an agreement to settle the Action on the terms set forth in this Settlement Agreement. The parties reached the proposed settlement in this matter after extensive good faith bargaining.

The Settlement is Fair and Reasonable

10. From my experience litigating this case, and with my experience litigating numerous other wage and hour actions, I believe that the proposed Settlement is in the best interests of Plaintiff and the Class Members.

11. I also believe that the proposed Settlement is a fair, adequate and reasonable compromise of disputed claims. The Parties continue to disagree over the merits of Plaintiffs' claims. Plaintiffs alleged that they were not compensated for any overtime hours they worked and that each category of compensation Plaintiffs and the Class received should have been included in their regular rate of pay for purposes of calculating their overtime compensation, including bonus pay, day rate pay, fluid drill pay, per diem pay, safety bonus, and stand by pay for days in which work was performed.

12. Defendant maintained that the compensation Plaintiffs and the Class received compensated them for 60 hours per week including 20 overtime hours. Thus, Defendants maintained that if Plaintiffs prevailed on the merits, they would only be entitled to overtime compensation for the hours they worked over 60 each week. Additionally, Defendant maintained that certain categories of compensation that Plaintiffs received, including the per diem pay, should not have been included in their regular rate of pay for purposes of calculating their overtime compensation.

13. In addition, the Parties disagreed whether the two-year limitations period for non-willful violations or three-year limitations period for willful violations applied.

14. If approved by the Court, the Proposed Settlement will provide substantial payments to the Class Members for unpaid overtime compensation. During the three-year limitations period, Plaintiffs, the Existing Opt-In Party Plaintiffs, and all of the Eligible Settlement Participants were denied approximately \$896,889.64 in overtime wages. This figure assumes: a) that Plaintiffs and the Class were not compensated for any overtime hours they worked, b) that each category of compensation Plaintiffs and the Class received should have been included in their regular rate of pay for purposes of calculating their overtime compensation, including bonus pay, day rate pay, fluid drill pay, per diem pay, safety bonus, and stand by pay for days in which work was performed, and c) that each category of compensation Plaintiffs and the Class received compensated them straight time for their overtime hours such that they were entitled to an additional one-half times their regular rate of pay for each overtime hour they worked.

15. The Settlement will cover Representative Plaintiffs and the 25 Existing Opt-In Party Plaintiffs identified in Appendix 1 of the Settlement, and all of the Eligible Settlement

Participants identified in Appendix 2 of the Settlement who elect to participate in the Settlement by signing and returning Consent Forms.

16. \$803,415.42 of the Total Eligible Settlement Amount will be divided into Individual Payments to the Settlement Class. The Individual Payments will be calculated proportionally on each Class Member's overtime damages Calculation Period, as calculated by Plaintiffs' Counsel and approved by Defendant. The Individual Payments are provided in Appendices 1 and 2 of the Settlement. Each Class Member who participates in the Settlement will receive approximately 90% of their overtime damages during the three-year limitations period.

17. This Settlement provides immediate and substantial relief without the attendant risks and delay of continued litigation and appeals.

18. Twenty Five Thousand Dollars (\$25,000.00) of the Total Eligible Settlement Amount will be paid to Representative Plaintiffs as a Class Representative Payments (\$5,000.00 to Jeremy Hannah and \$20,000.00 to Kip Green), in addition to their Individual Payments, in exchange for signing a general mutual release of all claims. Representative Plaintiff Jeremy Hannah's services, prior his death, were extensive and effective. In addition to filing the collective action, he provided extensive factual information to Plaintiffs' Counsel.

19. Representative Plaintiff Kip Green's services were extensive and effective as well. In addition to filing the collective action with Jeremy Hannah, he provided extensive factual information to Plaintiffs' Counsel, faithfully attended meetings with Plaintiffs' Counsel, and attended the mediation conference. Moreover, he subjected himself to the responsibilities of serving as a named plaintiff in a lawsuit against his former employer.

20. The Settlement Agreement provides for attorneys' fees to Plaintiffs' Counsel in

the amount of one-third of the Total Eligible Settlement Payment (\$416,666.64), and expenses in the amount of \$4,917.94. This fee award is reasonable in light of the exceptional benefit that was achieved for the Plaintiffs and the Class Members, as discussed above and in the Parties' Motion for Approval. Finally, had this case not settled, Plaintiffs' Counsel would have vigorously litigated the case without any promise of success and compensation. All expenses were incurred during the course of the litigation of this Action or will be incurred during the administration of the Settlement.

21. Plaintiffs' Counsel's one-third fee request has been approved in similar FLSA collective actions in Ohio. *See, e.g., Douglas, et al. v. J&K Subway, Inc.*, Northern District of Ohio Case No. 4:14-cv-2621; *Smith v. CMHA*, Northern District of Ohio Case No. 1:14-cv-1409; *Armbruster v. City of Cleveland*, Northern District of Ohio Case No. 1:13-cv-2626; *Williams v. Beckett Air, Inc.*, Northern District of Ohio Case No. 1:12-cv-2796; *Welch v. Incept Corporation*, Northern District of Ohio Case No. 5:12-cv-1775; *Malaj v. Gohlke*, Northern District of Ohio Case No. 1:11-cv-1578; *Campbell v. Judson Services*, Northern District of Ohio, Case No. 1:11-cv-906; *Murphy v. 1-800-Flowers*, Northern District of Ohio, Case No. 1:10-cv-1822; *Miller v. National Enterprise Systems*, Northern District of Ohio, Case No. 1:10-cv-1664; *Osolin v. Turocy & Watson LLP, et al*, Northern District of Ohio, Case No. 1:09-cv-2935; *Kelly v. National Enterprise Systems*, Northern District of Ohio, Case No. 1:09-cv-2268; *McNelley v. Aldi*, Northern District of Ohio, Case No. 1:09-cv-1868; *Rotuna v. West Customer Management Group*, Northern District of Ohio, Case No. 4:09-cv-1608; *Jackson v. Papa John's*, Northern District of Ohio, Case No. 1:08-cv-2791; *Dillworth v. Case Farms*, Northern District of Ohio, Case No. 5:08-cv-1694; *Fincham v. Nestlé Prepared Foods Company*, Northern District of Ohio,

Case No. 1:08-cv-73; and *McGhee v. Allied Waste Industries*, Northern District of Ohio, Case
No. 1:07-cv-1110.



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614 W. Superior Avenue
Cleveland, Ohio 44113
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Facsimile: 216-696-7005
anthony@lazzarolawfirm.com
Attorney for Plaintiffs

Signed in Cuyahoga County, Ohio,
this 8th day of February, 2016.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

| | | |
|------------------------------------|---|-----------------------------------|
| JEREMY HANNAH AND KIP GREEN |) | CASE NO. 2:15-cv-933 |
| |) | |
| on behalf of themselves |) | JUDGE MICHAEL H. WATSON |
| and all others similarly situated, |) | |
| |) | <u>DECLARATION OF</u> |
| Plaintiffs, |) | <u>PLAINTIFFS' COUNSEL</u> |
| |) | <u>HANS A. NILGES</u> |
| vs. |) | |
| |) | |
| H.A.D., INC. |) | |
| |) | |
| Defendant. |) | |

I, Hans A. Nilges, pursuant to 28 U.S.C. § 1746, hereby declare, under penalty of perjury, that the following is true and correct to the best of my personal knowledge, information, and belief:

1. I am one of the attorneys for Representative Plaintiffs Jeremy Hannah and Kip Green, the Existing Opt-In Party Plaintiffs, and the Eligible Settlement Participants who elect to participate in the Settlement (“Settlement Class” or “Class Members”).

Professional Experience

2. I co-founded Nilges Draher, LLC in February 2014 to focus my practice on the representation of groups of employees in wage and hour collective and class actions. Since then, my firm has recovered millions of dollars in settlement payments on behalf of employees.

3. My firm has litigated almost 40 wage and hour cases, many of which were certified as collective actions.

Hannah, et al. v. H.A.D., Inc.
Factual and Procedural Background

4. On March 14, 2015, Representative Plaintiff Jeremy Hannah filed this Action as a

collective action under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201-219, and alleged that Defendant failed to pay employees overtime compensation for the hours they worked over forty (40) each workweek, in violation of the FLSA. On March 28, 2015, Representative Plaintiffs Jeremy Hannah and Kip Green filed an Amended Class and Collective Action Complaint.

5. I have vigorously represented Plaintiff and the Class Members in this action, have conducted a significant investigation of the claims at issue, and have obtained a thorough familiarity with the factual and legal issues presented in this case.

6. The Parties engaged in substantial investigation prior to negotiating the Settlement. Prior to filing the Action, Plaintiffs’ Counsel performed a significant amount of research and factual investigation of the claims to set forth a factually specific and accurate complaint for the Court and Defendant. After filing the Action, relevant information was exchanged, including a complete analysis of each Class Member’s overtime demands. In addition, Plaintiffs’ Counsel engaged in a further independent investigation of the facts, obtained investigation notes from Representative Plaintiffs and numerous other employees who are members of the proposed Settlement Class, and gathered a number of declarations from employees in the proposed Settlement Class. Thus, the legal issues in the case were thoroughly researched by counsel for the Parties, and all aspects of the dispute are well-understood by both sides.

7. On January 18, 2016, the Parties attended a mediation with Jerry Weiss of Mediation Inc. in Cleveland, Ohio and reached an agreement to settle the Action on the terms set forth in this Settlement Agreement. The parties reached the proposed settlement in this matter after extensive good faith bargaining.

The Settlement is Fair and Reasonable

8. From my experience litigating this case, and with my experience litigating numerous other wage and hour actions, I believe that the proposed Settlement is in the best interests of Plaintiff and the Class Members.

9. I also believe that the proposed Settlement is a fair, adequate and reasonable compromise of disputed claims. The Parties continue to disagree over the merits of Plaintiffs' claims. Plaintiffs alleged that they were not compensated for any overtime hours they worked and that each category of compensation Plaintiffs and the Class received should have been included in their regular rate of pay for purposes of calculating their overtime compensation, including bonus pay, day rate pay, fluid drill pay, per diem pay, safety bonus, and stand by pay for days in which work was performed.

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11. In addition, the Parties disagreed whether the two-year limitations period for non-willful violations or three-year limitations period for willful violations applied.

12. If approved by the Court, the Proposed Settlement will provide substantial payments to the Class Members for unpaid overtime compensation. During the three-year limitations period, Plaintiffs, the Existing Opt-In Party Plaintiffs, and all of the Eligible

Settlement Participants were denied approximately \$896,889.64 in overtime wages. This figure assumes: a) that Plaintiffs and the Class were not compensated for any overtime hours they worked, b) that each category of compensation Plaintiffs and the Class received should have been included in their regular rate of pay for purposes of calculating their overtime compensation, including bonus pay, day rate pay, fluid drill pay, per diem pay, safety bonus, and stand by pay for days in which work was performed, and c) that each category of compensation Plaintiffs and the Class received compensated them straight time for their overtime hours such that they were entitled to an additional one-half times their regular rate of pay for each overtime hour they worked.

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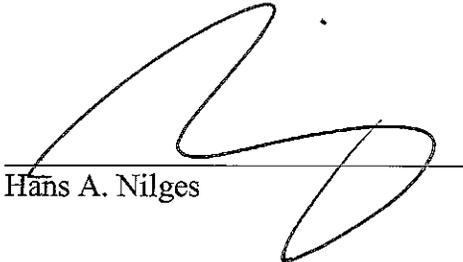
17. Representative Plaintiff Kip Green's services were extensive and effective as well. In addition to filing the collective action with Jeremy Hannah, he provided extensive factual information to Plaintiffs' Counsel, faithfully attended meetings with Plaintiffs' Counsel, and attended the mediation conference. Moreover, he subjected himself to the responsibilities of serving as a named plaintiff in a lawsuit against his former employer.

18. The Settlement Agreement provides for attorneys' fees to Plaintiffs' Counsel in the amount of one-third of the Total Eligible Settlement Payment (\$416,666.64), and expenses in the amount of \$4,917.94. This fee award is reasonable in light of the exceptional benefit that was achieved for the Plaintiffs and the Class Members, as discussed above and in the Parties' Motion for Approval. Finally, had this case not settled, Plaintiffs' Counsel would have vigorously litigated the case without any promise of success and compensation. All expenses were incurred during the course of the litigation of this Action or will be incurred during the administration of the Settlement.

19. Plaintiffs' Counsel's one-third fee request has been approved in similar FLSA collective actions in Ohio. *See, e.g., Douglas, et al. v. J&K Subway, Inc.*, Northern District of Ohio Case No. 4:14-cv-2621; *Smith v. CMHA*, Northern District of Ohio Case No. 1:14-cv-1409; *Armbruster v. City of Cleveland*, Northern District of Ohio Case No. 1:13-cv-2626; *Williams v.*

Beckett Air, Inc., Northern District of Ohio Case No. 1:12-cv-2796; *Welch v. Incept Corporation*, Northern District of Ohio Case No. 5:12-cv-1775; *Malaj v. Gohlke*, Northern District of Ohio Case No. 1:11-cv-1578; *Campbell v. Judson Services*, Northern District of Ohio, Case No. 1:11-cv-906; *Murphy v. 1-800-Flowers*, Northern District of Ohio, Case No. 1:10-cv-1822; *Miller v. National Enterprise Systems*, Northern District of Ohio, Case No. 1:10-cv-1664; *Osolin v. Turocy & Watson LLP, et al*, Northern District of Ohio, Case No. 1:09-cv-2935; *Kelly v. National Enterprise Systems*, Northern District of Ohio, Case No. 1:09-cv-2268; *McNelley v. Aldi*, Northern District of Ohio, Case No. 1:09-cv-1868; *Rotuna v. West Customer Management Group*, Northern District of Ohio, Case No. 4:09-cv-1608; *Jackson v. Papa John's*, Northern District of Ohio, Case No. 1:08-cv-2791; *Dillworth v. Case Farms*, Northern District of Ohio, Case No. 5:08-cv-1694; *Fincham v. Nestlé Prepared Foods Company*, Northern District of Ohio, Case No. 1:08-cv-73; and *McGhee v. Allied Waste Industries*, Northern District of Ohio, Case No. 1:07-cv-1110.

Signed in Stark County, Ohio,
this 8th day of February , 2016.


Hans A. Nilges

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

| | | |
|------------------------------------|---|-----------------------------------|
| JEREMY HANNAH AND KIP GREEN |) | CASE NO. 2:15-cv-933 |
| |) | |
| on behalf of themselves |) | JUDGE MICHAEL H. WATSON |
| and all others similarly situated, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| vs. |) | <u>DECLARATION OF</u> |
| |) | <u>PLAINTIFFS' COUNSEL</u> |
| H.A.D., INC. |) | <u>THOMAS A. DOWNIE</u> |
| |) | |
| Defendant. |) | |

I, Thomas A. Downie, pursuant to 28 U.S.C. § 1746, hereby declare, under penalty of perjury, that the following is true and correct to the best of my personal knowledge, information, and belief:

Education and Experience

1. I am an attorney licensed and authorized to practice in Ohio and other jurisdictions throughout the United States.

2. In 1978 I earned my law degree, *cum laude*, from the Cleveland-Marshall College of Law, where I served as Editor-in-Chief of the Cleveland State Law Review.

3. My 35-plus years of practice have been devoted almost exclusively to litigation, divided approximately equally between defense and plaintiff representation. As a defense lawyer, I represented business clients in commercial contract disputes, regulatory compliance proceedings, intellectual property cases, and trade secrets and unfair competition litigation. As plaintiff's counsel, I have represented individuals injured by defective products, consumer fraud, miscalculated pension benefits, and environmental "toxic torts," as well as a number of clients

with catastrophic injuries resulting from employer intentional torts.

4. For the last twenty-five years, my practice has consisted primarily of class actions and FLSA collective actions. Representative cases include *Petty v. Russell Cellular, Inc.*, 2:13-cv-1110, Opinion and Order filed January 22, 2016 (S.D. Ohio) (Graham, J.) (approving settlement of nationwide FLSA collective action); *Pearson v. CSK Auto, Inc. d/b/a O'Reilly Auto Parts*, 1:12-cv-02905 (N.D. Ohio 2014) (company-wide FLSA collective action); *Steele v. Super-Lube, Inc.*, 1:13-cv-01814 (N.D. Ohio 2013) (company-wide FLSA collective action); *Warren v. Race*, Case No. 1:09-CV-2670 (N.D. Ohio Sept. 3, 2010) (nationwide FLSA collective action); *McNelley v. Aldi, Inc.*, Case No. 1:09-cv-1868 (N.D. Ohio Nov. 17, 2009) (nationwide FLSA collective action); *West v. AK Steel Corp.*, 484 F.3d 395 (6th Cir. 2007), *cert. denied*, 129 S. Ct. 895 (2009) (nationwide ERISA class action); *Rybarczyk v. TRW Inc.*, 235 F.3d 975 (6th Cir. 2001) (nationwide ERISA class action); *White v. Aztec Catalyst Co.*, Case No. 93-111025, Lorain County, Ohio Court of Common Pleas (class action involving environmental disaster); *Lowe v. Sun Refining & Marketing Co.*, Case No. 88-0630, Lucas County, Ohio Court of Common Pleas (class action involving environmental disaster).

Proposed Settlement in *Jeremy Hannah and Kip Green v. H.A.D., Inc.*

5. I am knowledgeable about the factual, legal, and procedural issues presented in this action, and I believe my co-counsel and I were amply qualified to represent the interests of the Representative Plaintiffs and other Class Members.

6. The declarations of my co-counsel, Hans A. Nilges and Anthony J. Lazzaro, accurately explain the course of the litigation, the negotiation of the proposed Settlement, and the Settlement's terms.

7. The proposed Settlement will resolve bona fide disputes involving overtime compensation claims under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201-219, as well as Ohio and Pennsylvania wage-and-hour statutes.

8. In an effort to avoid the costs and uncertainties of protracted litigation, the parties entered in a Stipulation and Proposed Order for Conditional Certification, Notice, Due Diligence Exchange, and Mediation (ECF #22) (filed June 25, 2015). The Stipulation provided for conditional certification of the case as a collective action under the FLSA, 29 U.S.C. § 216(b), informal exchange of documents and information between the parties enabling them to conduct due diligence regarding the claims and issues, and mediation with a professional mediator. The mediation was held on January 18, 2016 with Mediator Jerome F. Weiss.

9. The proposed Settlement constitutes a global resolution of the dispute in which substantial settlement payments will be made available to all affected Class Members. The individual payments are proportionate to the Class Members’ overtime damages and represent approximately 90% of the estimated value of their claims.

10. The settlement amount resulted from hard bargaining between experienced counsel, assisted by Mediator Weiss. I believe the Settlement as a whole is fair and reasonable, as are the proposed individual settlement payments to the Representative Plaintiffs and other Class Members, the proposed service awards to the Representative Plaintiffs, and the proposed attorneys’ fees to Plaintiffs’ Counsel.


Thomas A. Downie

January 29, 2016