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8 Attorneys for Plaintiff(s),
9 ANDREW BURDICK, and all others similarly situated
10 (Additional attorneys for Plaintiff(s) on following page)

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF LOS ANGELES**
13 **(UNLIMITED JURISDICTION)**
14

15 ANDREW BURDICK, on behalf of himself, and
all others similarly situated, and as an
16 “aggrieved employee” on behalf of other
“aggrieved employees” under the Labor Code
17 Private Attorneys General Act of 2004,

18 *Plaintiff(s),*

19 vs.

20 PEACH STATE ROOFING, INC., a Georgia
21 corporation; MARTIN KELLY, an individual;
22 CHRIS KELLY, and individual; and DOES 1
through 50, inclusive,

23 *Defendant(s).*
24

Case No. 20STCV20397

**SUPPLEMENTAL DECLARATION
OF DAVID SPIVAK IN SUPPORT OF
PLAINTIFF ANDREW BURDICK’S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Hearing Date: April 25, 2023
Hearing Time: 11:00 a.m.
Hearing Dept.: 14, The Honorable
Kenneth R. Freeman

Action filed: May 28, 2020



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ANDREW BURDICK, and all others similarly situated



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1 **DECLARATION OF DAVID G. SPIVAK IN SUPPORT OF MOTION FOR**
2 **PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

3 I, DAVID SPIVAK, declare as follows:

4 1. I am an attorney duly licensed to practice law in the State of California and am an
5 attorney of record for Plaintiff Andrew Burdick (“Plaintiff”) in his lawsuit against Defendants
6 Peach State Roofing, Inc., Martin Kelly, and Chris Kelly (collectively “Defendants”). Plaintiff
and Defendants are collectively referred to as the “Parties.”

7 2. Except as otherwise indicated, I have personal knowledge of all matters set forth
8 herein and, if called as a witness, could and would competently testify thereto under oath.

9 3. The First Amended Joint Stipulation of Class Action Settlement and Release of
10 Claims signed by Plaintiff and Plaintiff’s counsel (the “Amended Settlement”) is attached hereto
11 as **Exhibit 12**. Plaintiff will file a supplemental declaration with the fully executed copy of the
12 Amended Settlement upon receipt of Defendants’ and Defendants’ counsel signatures. The
13 Revised Notice is Attached to the Amended Settlement as Exhibit A, the revised Exclusion
14 Request form is attached to attached as Exhibit B to the Amended Settlement, and the Work
Weeks Dispute form is attached as Exhibit C to the Amended Settlement.

15 4. A redline comparison of the changes made to the initial agreement with all
16 attached Exhibits is attached hereto as **Exhibit 13**.

17 5. Prior to the mediation, in addition to Plaintiff’s records, Defendant produced, and
18 I reviewed and analyzed time and payroll records for approximately 33% of the Class. For
19 settlement purposes, this data sample was statistically reliable.

20 6. A true and correct copy my contingency fee agreement with Plaintiff is attached
21 hereto as **Exhibit 14**. Based on this agreement, which was approved and signed by Plaintiff, my
22 firm will receive 75% of the total fees received and the United Employees Law Group will
23 receive 25%.

24 7. Before agreeing to ILYM Group, Inc., the Parties sought and reviewed bids from
other reputable third-party administrators and ILYM presented the lowest bid. ILYM’s revised
25 bid (to include Spanish translation) remains the lowest bid in the amount of \$6,450.00: (A) CPT
26 Group, Inc. = \$8,500.00; (B) ILYM Group, Inc. = \$6,450.00; and C) Phoenix Class Action
27 Administration Solutions = \$7,000. A true and correct copy of the revised bid from ILYM Group,
28 Inc. is attached hereto as **Exhibit 15**. A true and correct copy of the revised bid from CPT Group,



1 Inc. is attached hereto as **Exhibit 16**. A true and correct copy of the revised bid from Phoenix
2 Class Action Administration Solutions is attached hereto as **Exhibit 17**.

3 8. Pursuant to Lab. Code § 2699(l)(2), Plaintiff Andrew Burdick submitted a copy
4 of the Amended Settlement with the Labor and Workforce Development Agency (“LWDA”) at
5 the same time Plaintiff’s supplemental briefing is being filed with the Court. A true and correct
6 copy of Plaintiff’s submission to the LWDA and a confirmation email is attached as **Exhibit 18**.

7 I declare under the penalty of perjury of the laws of the State of California that the
8 foregoing is true and correct to the best of my knowledge.

9 Executed on Friday, March 24, 2023 at Los Angeles, California.



10 _____
11 DAVID SPIVAK,
12 Declarant
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25 **SPIVAK LAW**
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EXHIBIT 12

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11 Attorneys for Plaintiff,
12 ANDREW BURDICK, and all others similarly situated
13 (Additional attorneys for parties on following page)

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF LOS ANGELES**
16 **(UNLIMITED JURISDICTION)**

17 ANDREW BURDICK, on behalf of himself and
18 all others similarly situated, and as an “aggrieved
19 employee” on behalf of other “aggrieved
20 employees” under the Labor Code Private
21 Attorneys General Act of 2004,

22 *Plaintiff,*

23 vs.

24 PEACH STATE ROOFING, INC., a Georgia
25 corporation; MARTIN KELLY, a natural person;
26 CHRIS KELLY, a natural person; and DOES 1–
27 50, inclusive,

28 *Defendant(s).*

Case No. 20STCV20397

**FIRST AMENDED JOINT
STIPULATION OF CLASS ACTION
SETTLEMENT AND RELEASE OF
CLAIMS**

Action filed: 5/28/2020
Department: SSC-14, The Honorable
Kenneth R. Freeman

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ADDITIONAL ATTORNEY FOR PLAINTIFF

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Attorneys for Defendants PEACH STATE ROOFING, INC., MARTIN KELLY, and CHRIS KELLY

1 This First Amended Joint Stipulation of Class Action Settlement and Release of Claims
2 (“Settlement Agreement” or “Agreement”) is made and entered into by and between Plaintiff
3 Andrew Burdick (“Plaintiff” or “Class Representative”), individually and on behalf of all
4 putative class members, on the one hand, and Defendants Peach State Roofing, Inc. and Martin
5 Kelly (collectively “Defendants”). Plaintiff and Defendants are collectively referred to herein as
6 the “Parties.”
7

8 **I. DEFINITIONS.**

9 The following definitions are applicable to this Settlement Agreement, in addition to other
10 terms defined elsewhere in the Agreement:

11 **A. “Action”** shall mean: (1) the civil action commenced on May 28, 2020, by
12 Plaintiff against Defendants in the Superior Court of California, County of LOS ANGELES,
13 Case No. 20STCV20397, entitled: “Andrew Burdick, on behalf of himself, and all others
14 similarly situated, and as an ‘aggrieved employee’ on behalf of other ‘aggrieved employees’
15 under the Labor Code Private Attorneys General Act of 2004, *Plaintiff(s)*, vs. Peach State
16 Roofing, Inc., a Georgia corporation; Martin Kelly, a natural person; Chris Kelly, a natural
17 person; and DOES 1 through 50, inclusive, *Defendant(s)*.”
18

19 **B. “Aggrieved Employees”** shall mean all persons who Defendants employed on a
20 non-exempt, hourly basis in California during the PAGA Period.
21

22 **C. “Class,” “Class Members,” or “Settlement Class”** shall mean all persons who
23 Defendants employed on a non-exempt, hourly basis in California during the Class Period.

24 **D. “Class Counsel”** shall mean the attorneys representing Plaintiff in the Action:
25 David G. Spivak of THE SPIVAK LAW FIRM and Walter L. Haines of UNITED EMPLOYEES
26 LAW GROUP.
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1 **E. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses**
2 **Payment”** shall mean the amounts awarded to Class Counsel by the Court to compensate them
3 for, respectively, their fees and expenses in connection with the Action, including their pre-filing
4 investigation, their filing of the Action and all related litigation activities, this Settlement, and all
5 post-Settlement compliance procedures.

6 **F. “Class Notice”** shall mean the Notice of Proposed Settlement attached as **Exhibit**
7 **A** and incorporated by reference into this Agreement.

8 **G. “Class Period”** shall mean the period of time from May 28, 2016 through April
9 15, 2021.

10 **H. “Class Representative Payment”** shall mean the special payment made to
11 Plaintiff in his capacity as Class Representative to compensate him for initiating the Action,
12 performing work in support of the Action, and undertaking the risk of liability for attorneys’ fees
13 and expenses in the event he was unsuccessful in the prosecution of the Action.

14 **I. “Court”** shall mean the Superior Court for the County of Los Angeles, 312 North
15 Spring Street, Spring Street Courthouse, Los Angeles, CA 90012.

16 **J. “Defense Counsel”** shall mean the attorneys representing Defendants in the
17 Action: Michael A. Hood of Jackson Lewis P.C.

18 **K. “Effective Date”** is defined as follows: If no objection to this Settlement or to any
19 of the terms and or conditions of the Settlement are filed by Plaintiff, another member of the
20 Settlement class, or any intervenor to this Lawsuit, the Effective Date shall occur on the day that
21 the Court enters an order of final approval of this Settlement; however, if any objection to this
22 Settlement or to any of the terms and or conditions of the Stipulation is filed by a member of the
23 Settlement class, or any intervenor to this Lawsuit, the Effective Date shall occur upon the
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1 expiration of the time for the filing any appeal of the order of final approval of this Settlement.
2 If an appeal is filed or any writ granted, then the Effective Date shall occur after the appeal has
3 been dismissed or the writ dissolved and when there is no further time to appeal the dismissal of
4 the appeal or the dissolution of the writ.

5 **L. “Final Approval Hearing”** shall mean the hearing to be conducted by the Court
6 to determine whether to approve finally and implement the terms of this Agreement.

7 **M. “Gross Settlement Amount”** shall mean the Gross Settlement Amount of
8 Five Hundred and Fifty Thousand Dollars and No Cents (\$550,000.00) payable by Defendants
9 as provided by this Agreement, plus Defendants’ employer-side payroll taxes. Defendants
10 estimated for purposes of mediation that there were approximately 2,737 total qualifying Work
11 Weeks and 90 Class Members for the period of June 15, 2016 to March 24, 2021. These numbers
12 would be expected to increase proportionately for the passage of time between that date and the
13 time of preliminary approval. At least 10 days before the Settlement Administrator send out
14 notice of the Settlement to Class Members, the Settlement Administrator will advise Class
15 Counsel of Defendants’ report of the total number of qualifying Work Weeks and Class Members
16 between May 28, 2016 and April 15, 2021. If the qualifying Work Weeks and/or Class Members
17 exceeds the above referenced qualifying Work Weeks and/or Class Members reported by
18 Defendants by more than 10%, i.e., exceeds 3,011 qualifying Work Weeks and/or 99 Class
19 Members (“Escalator Threshold”), the Maximum Settlement Amount will increase by the
20 difference between the Escalator Threshold and the additional qualifying Work Weeks or Class
21 Members over the Escalator Threshold. No other payment will be owed by Defendants.
22

23 **N. “Judgment”** shall mean the Order of Final Judgment entered by the Court that
24 the Parties anticipate will be entered following a Final Approval Hearing on the Settlement in
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1 this Action.

2 **O. “Net Settlement Amount”** shall mean Five Hundred and Fifty Thousand Dollars
3 and No Cents (\$550,000.00) payable by Defendants pursuant to this Settlement, less:

- 4 **1.** the Class Representative Payment approved by the Court;
- 5 **2.** the Class Counsel Fees Payment (one-third or 33 and 1/3% of Gross
6 Settlement Amount) and the Class Counsel Litigation Expenses Payment (of not more than
7 \$15,000.00) approved by the Court;
- 8 **3.** the Settlement Administrator’s reasonable fees and expenses approved by
9 the Court (not to exceed \$7,000.00);
- 10 **4.** the amount of \$4,000.00 PAGA Penalties paid to the Labor Workforce
11 Development Agency of California and Aggrieved Employees for the PAGA claim;
- 12 **5.** any other fees or expenses (other than attorneys’ fees and expenses)
13 incurred by Plaintiff in implementing the terms and conditions of this Agreement as approved by
14 the Court.

15 **P. “PAGA Penalties”** means the total amount of PAGA civil penalties to be paid from
16 the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$1,000.00) and the
17 75% to LWDA (\$3,000.00) in settlement of PAGA claims.

18 **Q. “PAGA Period”** shall mean the period of time from October 21, 2018 through
19 April 15, 2021.

20 **R. “PAGA Settlement Share”** shall mean each Aggrieved Employee’s pro rata
21 share of 25% of the PAGA Penalties calculated according to the number of Pay Periods worked
22 during the PAGA Period.

23 **S. “Participating Class” or “Participating Class Members”** shall mean all
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1 Settlement Class members who do not submit a valid letter requesting to be excluded from the
2 Settlement, consistent with the terms set forth in this Settlement Agreement.

3 **T. “Preliminary Approval of the Settlement”** shall mean the Court’s preliminary
4 approval of the Settlement without material change.

5 **U. “Settlement”** shall mean the disposition of the Action and all related claims
6 effectuated by this Agreement.

7 **V. “Settlement Administrator”** shall mean ILYM Group, Inc. or another
8 administrator proposed by the Parties and appointed by the Court to administer the Settlement.

9 **W. “Class Settlement Share”** shall mean each Class Member’s allocated share of the
10 Net Settlement Amount as provided by this Agreement.

11 **II. RECITALS**

12 **A.** On or about October 21, 2019, Plaintiff, through his attorneys, sent a letter to the
13 Labor Workforce Development Agency (“LWDA”) alleging the following against Defendants:
14 failure to pay wages, failure to provide meal periods, failure to authorize and permit rest periods,
15 failure to indemnify for business expenses, failure to issue proper wage statements, failure to
16 timely pay wages and related allegations (the “PAGA letter”). Plaintiff asserted these
17 representative claims on behalf of all Class Members who are or were employed during the
18 applicable statutory period.

19 **B.** On May 28, 2020, Plaintiff filed a class action complaint in the Los Angeles
20 Superior Court, alleging the same wage and hour claims as set forth in the earlier PAGA letter
21 and adding a cause of action for unfair competition. On June 15, 2020, Plaintiff filed a first
22 amended class action complaint in the Los Angeles County Superior Court, adding a cause of
23 action under the Labor Code Private Attorneys General Act of 2004 (“PAGA”). The first
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1 amended complaint is the “Operative Complaint.”

2 **C.** On August 24, 2020, Defendants answered Plaintiff’s First Amended Complaint
3 and denied, and continue to deny, all of Plaintiff’s material allegations. Specifically, Defendants
4 deny that Plaintiff and putative class members are entitled to additional wages and overtime pay.
5 Defendants contend they paid the putative class members for all hours worked as required by
6 law, including all vacation and sick days. Defendants deny the Class Members were deprived of
7 meal and rest periods, allege that they had meal and rest break policies and procedures in place
8 to ensure compliance with California law, and alleges that employees were allowed to take their
9 rest and meal periods. Defendants further allege that the unpaid wage, improper wage statement,
10 and rest and meal period claims are not amenable to class treatment because common issues do
11 not predominate. Defendants assert that the waiting time penalties claim will fail as to former
12 Class Members who cannot prevail on the claims described above. Defendants deny that they
13 failed to issue accurate itemized wage statements, or otherwise failed to keep accurate and
14 complete employment records. Defendants deny that they failed to reimburse for business
15 expenses.
16

17 **D.** The Parties thereafter engaged in an informal, voluntary exchange of information
18 in the context of privileged settlement discussions to facilitate an early mediation. Defendants
19 produced Plaintiff’s entire personnel file (including policies and agreements he signed and
20 acknowledged), copies of their relevant company written policies, time-keeping records, and
21 paycheck data and records for the putative class, and more detailed time and payroll data for a
22 random sample of putative class members specifically selected by Plaintiff’s counsel.
23

24 **E.** On April 15, 2021, following much of the foregoing informal discovery and
25 exchange of information, the Parties participated in a mediation session presided over by
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1 Mediator Tripper Ortman, an experienced class action mediator. During the mediation, the
2 Parties had a full day of productive negotiations and reached agreement on a class-wide
3 settlement during the second mediation session. During the mediation sessions, each side,
4 represented by its respective counsel, recognized the risk of an adverse result in the Action and
5 agreed to settle the Action and all other matters covered by this Agreement pursuant to the terms
6 and conditions of this Agreement.

7
8 **F.** Based on their own thorough, independent investigation and evaluation of this
9 case, Class Counsel are of the opinion that the settlement with Defendants for the consideration
10 and on the terms set forth in this Agreement is fair, reasonable, adequate, and in the best interest
11 of the Settlement Class in light of all known facts and circumstances, including the risk of
12 significant costs and delay, the risk of non-certification of the Class, the defenses asserted by
13 Defendant, the risks of adverse determinations on the merits, and numerous potential appellate
14 issues. Although Defendants contend they have no liability in this case, Defendants' counsel
15 shares Class Counsel's belief that the Agreement represents a fair and adequate settlement given
16 the respective risks associated with the case.

17
18 **G.** This Agreement represents a compromise and settlement of highly disputed
19 claims. Nothing in this Agreement is intended or will be construed as an admission by Defendants
20 that Plaintiff's claims in the Action have merit or that they have any liability to Plaintiff or the
21 Class on those claims or to the State, or as an admission by Plaintiff that Defendants' defenses
22 raised in the Action have merit. This Agreement is intended to fully, finally, and forever
23 compromise, release, resolve, discharge, and settle the released claims subject to the terms and
24 conditions set forth in this Agreement.

25
26 Based on the foregoing Recitals, the Parties agree as follows:
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28

1 **III. SETTLEMENT TERMS AND CONDITIONS**

2 **A. Certification for Settlement Purposes.** Solely for the purposes of effectuating
3 this Settlement, and subject to Court approval, the Parties hereby stipulate to the conditional
4 certification of the Settlement Class. The Parties agree that if for any reason the Settlement is not
5 preliminarily and finally approved, the conditional certification of the Settlement Class will be
6 of no force or effect, does not constitute an admission by Defendants that class certification is
7 proper, and will not be deemed admissible in this or any other proceeding, and that the Parties
8 will litigate the issue of class certification.
9

10 **B. Gross Settlement Amount.** Subject to the terms and conditions of this
11 Agreement, the Gross Settlement Amount of Five Hundred Fifty Thousand Dollars and No Cents
12 (\$550,000.00), plus Defendants' employer share of employer-side payroll taxes, is the maximum
13 amount payable by Defendants. In no event will Defendants be required to pay more than the
14 Gross Settlement Amount for distribution to the Plaintiff, Class Counsel, Class Members,
15 LWDA, and Settlement Administrator. However, Defendants estimated for purposes of
16 mediation that there were approximately 2,737 total qualifying Work Weeks and 90 Class
17 Members for the period of June 15, 2016 to March 24, 2021. These numbers would be expected
18 to increase proportionately for the passage of time between that date and the time of preliminary
19 approval. At least 10 days before the Settlement Administrator send out notice of the Settlement
20 to Class Members, the Settlement Administrator will advise Class Counsel of Defendants' report
21 of the total number of qualifying Work Weeks and Class Members between May 28, 2016 and
22 April 15, 2021. If the qualifying Work Weeks and/or Class Members exceeds the above
23 referenced qualifying Work Weeks and/or Class Members reported by Defendants by more than
24 10%, i.e., exceeds 3,011 qualifying Work Weeks and/or 99 Class Members ("Escalator
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Threshold”), the Maximum Settlement Amount will increase by the difference between the Escalator Threshold and the additional qualifying Work Weeks or Class Members over the Escalator Threshold. No other payment will be owed by Defendants.

C. Payments to Plaintiff and Class Counsel and Others. Subject to the terms and conditions of this Agreement, the Settlement Administrator will make the following payments out of the Gross Settlement Amount as follows:

1. To Plaintiff.

(a) Class Representative Payment. In addition to his Class Settlement Share, Plaintiff will apply to the Court for an award of not more than Fifteen Thousand Dollars and No Cents (\$15,000.00) as his Class Representative Payment. Defendants will not oppose a Class Representative Payment of not more than \$15,000.00. Plaintiff will receive no other payment other than his Class Settlement Share and Class Representative Payment, and acknowledges that he is aware of no other facts or circumstances related to his employment with Defendants that could give rise to any additional entitlement to any further payments. The Settlement Administrator will pay the Class Representative Payment approved by the Court out of the Gross Settlement Amount. Payroll taxes, withholdings, and deductions will not be taken from the Class Representative Payment, and instead a Form 1099 will be issued to Plaintiff with respect to that payment. Plaintiff agrees to assume all responsibility and liability for the payment of taxes due on the Class Representative Payment. Any portion of the Class Representative Payment not awarded to Plaintiff will not revert to Defendant, but instead shall be returned to the Net Settlement Amount.

2. To Class Counsel. Class Counsel will apply to the Court for an award of not more than One Hundred Eighty-Three Thousand Three Hundred Thirty-Three Dollars and

No Cents (\$183,333.00) (which is 33 and 1/3% of the Gross Settlement Amount) as their Class Counsel Fees Payment and an amount not more than Fifteen Thousand Dollars and No Cents (\$15,000.00) as their Class Counsel Litigation Expenses Payment, and Defendants will not oppose this request. The Settlement Administrator will pay the amount approved by the Court (but not more than One Hundred Eighty-Three Thousand Three Hundred Thirty-Three Dollars and No Cents (\$183,333.00) in fees and not more than Fifteen Thousand Dollars and No Cents (\$15,000.00) in expenses) out of the Gross Settlement Amount. Withholding and deductions will not be taken from the Class Counsel Fees and Litigation Expenses Payment and one or more Forms 1099 will be issued to Class Counsel with respect to those payments.

3. To the Settlement Administrator. The Settlement Administrator will be paid from the Gross Settlement Amount its reasonable fees and expenses as approved by the Court in an amount currently estimated to not exceed Six Thousand Five Hundred Dollars and No Cents (\$6,500.00).

4. To the LWDA. The Parties will jointly apply to the Court for approval of a settlement of claims under the Private Attorneys General Act (“PAGA”), California Labor Code section 2698, *et seq.*, for Four Thousand Dollars and No Cents (\$4,000.00), of which, payment from the Gross Settlement Amount to the LWDA will be made in the amount of Three Thousand Dollars and No Cents (\$3,000.00), which is 75% of the PAGA settlement. The remaining One Thousand Dollars and No Cents (\$1,000.00), 25% of the PAGA settlement, will be distributed to the Aggrieved Employees pursuant to the formulas described below.

D. Allocation of Net Settlement Amount and Calculation of Class Settlement Shares and PAGA Settlement Shares. Subject to the terms and conditions of this Agreement, the Settlement Administrator will distribute a payment from the Net Settlement Amount to each

1 Participating Class Member. The Class Settlement Share for each Participating Class Member
2 will be calculated as follows, understanding that the formulas below do not constitute an
3 admission by either party, and are intended only to provide a practical means to simplify and
4 administer the claims process:

5
6 **1. Settlement Shares:**

7
8 **(a) Participating Class Members' Class Settlement Shares.** The
9 settlement shares are allocated 33.33% to wages (for which employment taxes will be deducted
10 and W-2s issued) and 66.66% to penalties (for which 1099s will be issued).

11 **(b) Settlement Ratio Calculation.** The Settlement Administrator
12 shall assign to each Class Member a "Settlement Ratio," which shall be a fractional number
13 comprised of (a) that Class Member's Individual Work Weeks as the numerator, and (b) the
14 aggregate total of all Class Members' Individual Work Weeks as the denominator. The
15 Settlement Administrator shall assign to each Class Member the "Class Settlement Share" which
16 shall be calculated by multiplying that Class Member's Settlement Ratio by the amount allocated
17 to Class Members from the Net Settlement Amount.
18

19 **2. PAGA Settlement Shares.** The Settlement Administrator shall assign to
20 each Aggrieved Employee a "PAGA Settlement Ratio," which shall be a fractional number
21 comprised of (a) that Aggrieved Employee's Individual PAGA Pay Period as the numerator, and
22 (b) the aggregate total of all Aggrieved Employees' Individual Pay Periods as the denominator.
23 The Settlement Administrator shall assign to each Aggrieved Employee the "PAGA Settlement
24 Share" which shall be calculated by multiplying that Aggrieved Employee's PAGA Settlement
25 Ratio by the amount allocated to Aggrieved Employees from the PAGA Penalties.
26

27 **3. Class Settlement Share and PAGA Settlement Share Worksheets.**
28

1 Upon calculation of the Class Members' Class Settlement Shares and PAGA Settlement Shares,
2 the Settlement Administrator shall furnish to Class Counsel and Defense counsel a worksheet
3 containing a list unique identifying numbers for each of the Class Members and Aggrieved
4 Employees with their corresponding Individual Work Weeks and Individual PAGA Pay Periods
5 and Class Settlement Shares.

6
7 **E. Taxes and Withholdings.** Each Class Settlement Share is intended, in part, to
8 settle the Class Members' claims for unpaid wages. Each Class Member shall be individually
9 responsible for the employee's share of applicable payroll tax withholdings and deductions.
10 Accordingly, each Class Settlement Share allocated to wages will be reduced by applicable
11 employee-side payroll tax withholdings and deductions, and the Settlement Administrator will
12 issue a Form W-2 to each Participating Class Member. Defendants will be responsible for the
13 normal employer's share of any payroll tax attributable to the wage portion of the Class
14 Settlement Share payments. Defendants' payment of the normal employer's share of payroll
15 taxes attributable to the wage portion of the Class Settlement Share payments will be in addition
16 to the Gross Settlement Amount or Net Settlement Amount.

17
18 **F. Appointment of Settlement Administrator.** The Parties will ask the Court to
19 appoint ILYM Group, Inc., a qualified administrator, to serve as the Settlement Administrator,
20 which, as a condition of appointment, will agree to be bound by this Agreement with respect to
21 the performance of its duties and its compensation. The Settlement Administrator's duties will
22 include preparing, printing, and mailing the Class Notice to all Class Members; and using
23 reasonable measures to contact all Class Members, including conducting a National Change of
24 Address search on all Class Members before mailing the Class Notice to each Class Member's
25 address. The Settlement Administrator's duties will also include re-mailing the Class Notice to
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1 the Class Member's new address for those Class Members whose address has changed; providing
2 the Parties with weekly status reports about the delivery of Class Notice; calculating Class
3 Settlement Shares; issuing and distributing checks to effectuate the payments due under the
4 Settlement; reporting to the Court as required; and otherwise administering the Settlement
5 pursuant to this Agreement. The Settlement Administrator's reasonable fees and expenses,
6 including the cost of printing and mailing the Class Notice, will be paid out of the Gross
7 Settlement Amount, as set forth herein, subject to Court approval. Any portion of the of the
8 Settlement Administrator's fees and expenses that are not used or which are not awarded by the
9 Court will not revert to Defendant, but instead will be part of the Net Settlement Amount for
10 distribution to Participating Class Members. If the Settlement Administrator's fees and expenses
11 exceed Six Thousand Five Hundred Dollars and No Cents (\$6,500.00), such cost will be deducted
12 from the Net Settlement Amount.
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14 **IV. PROCEDURES FOR APPROVING SETTLEMENT**

15 **A. Motion for Preliminary Approval of Settlement by the Court.** Class Counsel
16 will move the Court for an order granting Preliminary Approval of the Settlement (the "Motion
17 for Preliminary Approval"), setting a date for the Final Approval Hearing, and approving the
18 Class Notice (attached as **Exhibit A** to this Agreement), the Exclusion Request form (attached
19 as **Exhibit B** to this Agreement), and the Work Weeks Dispute form (attached as **Exhibit C** to
20 this Agreement). Any disagreement among the Parties concerning the Class Notice or other
21 documents necessary to implement the Settlement will be referred to the Court.
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23 **1.** At the hearing on the Motion for Preliminary Approval, the Parties
24 anticipate that they will appear and support the granting of the motion, and that Class Counsel
25 will submit an Order Granting Preliminary Approval of Settlement, Approval of Notice to Class
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1 and Setting Hearing for Final Approval of Settlement.

2 2. Should the Court decline to approve the Settlement, the Settlement will be
3 null and void and the Parties will have no further obligations under it.

4 **B. Notice to Class Members.** After the Court enters its order granting Preliminary
5 Approval of the Settlement, every Class Member will be provided with a “Class Notice.”

6 1. **List of Class Members.** Within fourteen (14) days after the Court grants
7 Preliminary Approval of the Settlement, Defendants shall provide to the Settlement
8 Administrator:

9 (a) An electronic database of all Class Members, last known mailing
10 address, Social Security number, and Defendants’ employee identification number (“Class
11 Members’ Data”).

12 (b) Corresponding to each Class Member’s name, Defendants shall
13 provide a figure indicating the total number of Work Weeks during the Class Period in which
14 that Class Member was employed by Defendants as a Class Member. That number of Work
15 Weeks shall be referred to as that Class Member’s “Individual Work Weeks.” Defendants shall
16 also provide a figure indicating the total number of Pay Periods during the PAGA Period in which
17 an employee was employed by Defendants as an Aggrieved Employee. That number of Work
18 Weeks shall be referred to as that Aggrieved Employee’s “Individual Pay Periods.”

19 (c) If any of the Class Members’ Data are unavailable to Defendant,
20 Defendants will so inform Class Counsel and the Parties will make their best efforts to reconstruct
21 or otherwise agree upon the Class Members’ Data prior to when it must be submitted to the
22 Settlement Administrator. Class Members’ Data will otherwise remain confidential and will not
23 be disclosed to anyone, except as necessary to applicable taxing authorities, or pursuant to
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1 Defendants' express written authorization or by order of the Court.

2 **2. Mailing of Class Notice.** Within fourteen (14) days after receiving the
3 Class Members' Data, or as soon thereafter as it can do so, the Settlement Administrator will
4 mail the Class Notice to all identified Class Members via first-class U.S. mail using the mailing
5 address information provided by Defendant, unless modified by any updated address information
6 that the Settlement Administrator obtains in the course of administration of the Settlement.
7

8 **3. Returned Class Notice.** If a Class Notice is returned because of an
9 incorrect address, the Settlement Administrator will promptly, and not later than ten (10) days
10 from receipt of the returned Class Notice, search for a more current address for the Class Member
11 and re-mail the Class Notice to the Class Member. The Settlement Administrator will use the
12 Class Members' Data and otherwise work with Defendants' Counsel and Class Counsel to find
13 a more current address. The Settlement Administrator will be responsible for taking reasonable
14 steps, consistent with its agreed-upon job parameters, court orders, and fee, to trace the mailing
15 address of any Class Member for whom a Class Notice is returned as undeliverable by the U.S.
16 Postal Service. These reasonable steps shall include the tracking of all undelivered mail;
17 performing address searches for all mail returned without a forwarding address; and promptly re-
18 mailing to Class Members for whom new addresses are found. If the Class Notice is re-mailed,
19 the Settlement Administrator will note for its own records and notify Class Counsel and
20 Defendants' Counsel of the date and address of each such re-mailing as part of a weekly status
21 report provided to the Parties. The deadlines for Class Members' written objections, challenges
22 to Work Weeks or PAGA Pay Periods, and requests for exclusion will be extended an additional
23 14 days beyond the 60 days otherwise provided in the Notice for all Class Members whose notice
24 is re-mailed. The Settlement Administrator will inform the Class Member of the extended
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1 deadline with the re-mailed Class Notice.

2 **4. Declaration of Settlement Administrator.** Not later than twenty-one
3 (21) court days prior to the Final Approval Hearing, the Settlement Administrator will provide
4 the Parties for filing with the Court a declaration of due diligence setting forth its compliance
5 with its obligations under this Agreement. Prior to the Final Approval Hearing, the Settlement
6 Administrator will supplement its declaration of due diligence if any material changes occur from
7 the date of the filing of its prior declaration.
8

9 **C. Disputed Class Member Class Settlement Shares.** If a Class Member disputes
10 his/her estimated Class Settlement Share or PAGA Settlement Share, the Class Member may
11 produce evidence to the Settlement Administrator for the Class Period and PAGA Period. In
12 order for the dispute to be considered, he/she must follow the directions on the Class Notice. To
13 be valid and timely, all disputes and supporting documents must be postmarked by the date
14 specified in the Class Notice (no less than 60 days from the initial mailing of the Class Notice by
15 the Settlement Administrator). A Class Member may use the Work Weeks/Pay Periods Dispute
16 form (**Exhibit C** to this Settlement), though a Class Member is not obligated to do so to dispute
17 his/her shares.
18

19 **D. Requests for Exclusion from Settlement; and Objections to Settlement.** Class
20 Members may submit requests to be excluded from the effect of the Settlement, or objections to
21 the Settlement, pursuant to the following procedures:
22

23 **1. Request for Exclusion from Settlement.** A Class Member may request
24 to be excluded from the effect of this Agreement, and any payment of amounts under this
25 Agreement, by timely mailing a letter to the Settlement Administrator stating that the Class
26 Member wants to be excluded from this Action. This letter must include the Class Member's
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1 name, address, telephone number, and signature. To be valid and timely, the request to be
2 excluded must be postmarked by the date specified in the Class Notice (no less than 60 days from
3 the initial mailing of the Class Notice by the Settlement Administrator). A Class Member may
4 use the Exclusion Request form (**Exhibit B** to this Settlement), though a Class Member is not
5 obligated to do so to request exclusion from the Settlement. A Class Member who properly
6 submits a valid and timely request to be excluded from the Action shall not receive any payment
7 of any kind in connection with this Agreement or this Action, shall not be bound by or receive
8 any benefit of this Agreement, and shall have no standing to object to the Settlement. A request
9 for exclusion must be mailed to the Settlement Administrator at the address provided on the Class
10 Notice. The Settlement Administrator shall transmit the request for exclusion to counsel for the
11 Parties as follows:
12

13
14 *To Class Counsel:*

15 David G. Spivak, Esq.
16 The Spivak Law Firm
17 8605 Santa Monica Blvd.
18 PMB 42554
19 West Hollywood, CA 90069

To Defense Counsel:

Michael A. Hood, Esq.
Jackson Lewis P.C.
200 Spectrum Center Drive, Suite 500
Irvine, CA, 92618

20 Every Class Member who submits a valid and timely Exclusion Request is a Non-Participating
21 Class Member and shall not receive a Class Settlement Share. The Settlement Administrator will
22 retain amounts equal to their Class Settlement Shares in the Net Settlement Amount for
23 distribution to Participating Class Members on a pro rata basis. Because future PAGA claims are
24 subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who
25 are Aggrieved Employees are deemed to release the claims identified in section V.B of this
26 Agreement and are eligible for a PAGA Settlement Share.

27 **2. Objections to Settlement.** The Class Notice will provide that any Class
28 Member who does not request exclusion from the Action and who wishes to object to the

1 Settlement should submit an objection in writing to the Settlement Administrator not later than
2 60 days after the Settlement Administrator mails the Class Notice. The written objection to the
3 Settlement should set forth the grounds for the objection and the other information required by
4 this paragraph. The objection should be mailed to the Settlement Administrator at the address
5 provided on the Class Notice. The Settlement Administrator shall transmit the objections to
6 counsel for the Parties as follows:

7
8 *To Class Counsel:*

9 David G. Spivak, Esq.
10 The Spivak Law Firm
11 8605 Santa Monica Blvd.
12 PMB 42554
13 West Hollywood, CA 90069

To Defense Counsel:

Michael A. Hood, Esq.
Jackson Lewis P.C.
200 Spectrum Center Drive, Suite 500
Irvine, CA, 92618

14 Counsel will promptly file such objection with the Court.

15 The written objection should state the objecting Class Member's full name, address, and
16 the approximate dates of his or her employment with Defendants. The written objection should
17 state the basis for each specific objection and any legal support in clear and concise terms. The
18 written objection also should state whether the Class Member intends to formally intervene and
19 become a party of record in the action, and upon formally intervening, appear and argue at the
20 Final Approval Hearing.

21 Regardless of whether an objecting Class Member complies with the objection procedure
22 encouraged above, the Court will provide a Class Member with the opportunity to speak at the
23 final approval hearing regardless of whether he or she has filed an appearance or submitted a
24 written opposition beforehand. If the objecting Class Member does not formally intervene in the
25 action and/or the Court rejects the Class Member's objection, the Class Member will still be
26 bound by the terms of this Agreement.
27

1 **E. Report.** Not later than fourteen (14) days after the deadline for submission of
2 requests for exclusion, the Settlement Administrator will provide the Parties with a complete and
3 accurate list of all Class Members who sent timely requests to be excluded from the Action and
4 all Class Members who objected to the settlement.

5 **F. No Solicitation of Objection; Right to Void.** Neither the Parties, nor their
6 respective counsel, will directly or indirectly solicit or otherwise encourage any Class Member
7 to seek exclusion from the Settlement, object to the Settlement, or to appeal from the Judgment.
8 If Class Members accounting for 5.00% or more of the Class submit valid requests to be excluded
9 from the Settlement, then Defendants shall have the unilateral right to void this Settlement.
10 Defendants may do so by giving notice to Class Counsel and the Court of their election to void
11 the Settlement not later than seven (7) days before the Final Approval Hearing. No sums shall be
12 payable by Defendants if this Agreement is voided as provided for herein with one exception:
13 Defendants agree to pay any fees owing to the Settlement Administrator for services rendered in
14 the event Defendants exercise their right to void the Settlement.

15 **G. Additional Briefing and Final Approval.** Plaintiff will file with the Court a
16 motion for final approval of the Settlement and payment of the Settlement Administrator's
17 reasonable fees and expenses and a memorandum in support of their motion; and Plaintiff and
18 Class Counsel will serve on Defendants and file with the Court a motion for awards of the Class
19 Representative Payment, the Class Counsel Fees Payment, and the Class Counsel Litigation
20 Expenses Payment pursuant to this Settlement, and memoranda in support of their motions.

21 Before the Final Approval Hearing, the Parties shall be entitled to file and serve a
22 response to any Class Member's objection to the Settlement and/or reply in support of their
23 motion for final approval of the Settlement, and payment of the Settlement Administrator's
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1 reasonable fees and expenses to the extent that any opposition to the motion is filed; and Plaintiff
2 and Class Counsel may file replies in support of their motions for the Class Representative
3 Payment, the Class Counsel Fees Payment, and the Class Counsel Litigation Expenses Payment.

4 If the Court ultimately does not grant final approval of the Settlement or grants final
5 approval conditioned on any material change to the Settlement, then either Party will have the
6 unilateral right to void the Settlement in its entirety; if that occurs, the Parties will have no further
7 obligations under the Settlement, including any obligation by Defendants to pay the Gross
8 Settlement Amount or any amounts that otherwise would have been payable under this
9 Agreement, except that Defendants and Plaintiff will jointly and equally pay the Settlement
10 Administrator's reasonable fees and expenses incurred as of the date that the Party exercises the
11 right to void the Settlement under this Paragraph. However, an award by the Court of a lesser
12 amount than that sought by Plaintiff and Class Counsel for the Class Representative Payment,
13 the Class Counsel Fees Payment, or the Class Counsel Litigation Expenses Payment, will not
14 constitute a material modification to the Settlement within the meaning of this Paragraph and
15 shall not render the Settlement voidable. Plaintiff and Class Counsel shall retain the right to
16 appeal awards of attorneys' fees and costs less than requested.

17 Upon final approval of the Settlement by the Court at or after the Final Approval Hearing,
18 the Parties will present for the Court's approval and entry a Proposed Final Order and Judgment.
19 The Final Order and Judgment shall permanently bar all Participating Class Members from
20 prosecuting against Defendants any claims within the scope of the Releases contained in this
21 Agreement.

22 After entry of the Judgment, the Court will have continuing jurisdiction over the Action
23 and the Settlement solely for purposes of (i) enforcing this Agreement, (ii) addressing settlement
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1 administration matters, and (iii) addressing such post-Judgment matters as may be appropriate
2 under court rules or applicable law.

3 **H. Waiver of Right to Appeal.** Provided that the Judgment is consistent with the
4 terms and conditions of this Agreement, and that no Class Member timely objects to the
5 Settlement and formally intervenes into the action as required under the California Supreme
6 Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 4th 260, 228 Cal. Rptr. 3d 106
7 (2018) or files a motion pursuant to Civil Procedure Code section 663, Defendants, and their
8 respective counsel hereby waive, except as provided for in this Agreement or prohibited by law,
9 any and all rights to appeal from the Judgment, including all rights to any post-judgment
10 proceeding and appellate proceeding, such as a motion to vacate judgment, a motion for new
11 trial, any extraordinary writ, and any appeal, and the Judgment therefore will become non-
12 appealable at the time it is entered. The waiver of appeal does not include any waiver of the right
13 to oppose any appeal, appellate proceedings, or post-judgment proceedings. If an appeal is taken
14 from the Judgment, the time for consummation of the Settlement (including making any
15 payments under the Settlement) will be suspended until the appeal is fully and finally resolved
16 and the Judgment, consistent with the terms of this Agreement, becomes Final.

17 **I. Vacating, Reversal, or Material Modification of Judgment on Appeal or**
18 **Review.** If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other
19 motion, petition, writ, application, or appeal, the reviewing court vacates, reverses, or modifies
20 the Judgment such that there is a material modification to the Settlement, and that court's decision
21 is not completely reversed and the Judgment is not fully affirmed on review by a higher court,
22 then either Plaintiff or Defendants will have the unilateral right to void the Settlement, which the
23 Party must do by giving written notice to the other Parties, the reviewing court, and the Court,
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1 not later than fourteen (14) days after the reviewing court's decision vacating, reversing, or
2 materially modifying the Judgment becomes final. The Party exercising its right to unilaterally
3 void the Settlement pursuant to this provision agrees to pay any fees owing to the Settlement
4 Administrator for services rendered. An order vacating, reversing or modifying the Court's award
5 of the Class Representative Payment, or the Class Counsel Fees Payment and/or Class Counsel
6 Litigation Expenses Payment will not constitute a vacation, reversal, or material modification of
7 the Judgment within the meaning of this paragraph, and shall not render the Settlement voidable.
8

9 **J. Establishment of Settlement Account.** The Settlement Administrator shall
10 establish a Settlement Account for distributing Class Settlement Shares and Payments identified
11 in this Agreement. Within ten (10) calendar days of the Effective Date, Defendants shall pay the
12 Gross Settlement Amount into the Settlement Account.
13

14 **K. Payment of Class Settlement Shares and PAGA Settlement Shares.** Within
15 ten (10) calendar days of receipt of the Gross Settlement Amount, the Settlement Administrator
16 shall pay Class Settlement Shares, from the Settlement Account, to all Class Members (who do
17 not submit valid requests to be excluded from the Action) and PAGA Settlement Shares to all
18 Aggrieved Employees. The Settlement Administrator shall pay each Class Settlement Share by
19 sending a check in the appropriate amount to the Class Member at the address indicated in the
20 list of Class Member names and addresses provided by Defendants, or as subsequently
21 determined by the Settlement Administrator to be the correct address. The Settlement
22 Administrator will send checks for PAGA Settlement Shares to all Aggrieved Employees
23 including Non-Participating Class Members who qualify as Aggrieved Employees (including
24 those for whom Class Notice was returned undelivered). The Settlement Administrator may send
25 Participating Class Members a single check combining the Class Settlement Shares and PAGA
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1 Settlement Shares. Before mailing any checks, the Settlement Administrator must update the
2 recipients' mailing addresses using the National Change of Address Database.

3 **L. Uncashed Class Settlement Share Checks.** Any check issued by the Settlement
4 Administrator to Class Members who do not timely and validly opt out shall be negotiable for
5 one hundred and eighty (180) calendar days. Those funds represented by checks returned as
6 undeliverable and those checks remaining un-cashed for more than 180 days after issuance
7 (collectively, "Voided Settlement Checks"), plus any interest that has accrued on those funds,
8 will be paid to the California Unclaimed Property Fund.

9
10 **M.** The Settlement Administrator will mail or wire all required payments no later than
11 fourteen (14) calendar days after receipt of the funds representing the Gross Settlement Amount
12 from Defendants. Proof of payment will be filed with the Court.

13 **N. Final Report by Settlement Administrator to Court.** Within ten (10) calendar
14 days after final disbursement of all funds from the Settlement Account, the Settlement
15 Administrator will serve on the Parties for filing with the Court a declaration providing a final
16 summary report on the disbursements of all funds from the Settlement Account.

17
18 **V. RELEASE OF CLAIMS**

19 **A. Plaintiff and Participating Class Members.** The Parties agree that it is their
20 intent that the resolution set forth in this Settlement will release any further attempt, by lawsuit,
21 administrative claim or action, arbitration, demand, or other action of any kind by each and all
22 of the Settlement Class Members (including participation to any extent in any representative or
23 collective action), against Defendants and all of their present and former parent companies,
24 subsidiaries, divisions, concepts, related or affiliated companies and its shareholders, officers,
25 directors, employees, agents, attorneys, insurers, successors and assigns, and any individual or
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1 entity that could be liable for any of the Released Claims, and Defendants' counsel of record in
2 these Action ("Released Parties"), arising during the period May 28, 2016 through April 15,
3 2021. The release is limited to any and all state, federal, or local law, whether statutory or
4 common law claims expressly pleaded in the Operative Complaint, or arising out of facts asserted
5 in the Operative Complaint, including claims for: (i) failure to provide rest breaks; (ii) failure to
6 provide meal periods; (iii) failure to pay all wages earned for hours worked at the correct rates
7 of pay; (iv) failure to indemnify; (v) wage statement penalties; (vi) waiting time penalties; (vii)
8 unfair competition ("Class Released Claims"). This release will not take effect until Defendants
9 have paid the Gross Settlement Amount in full per this Settlement Agreement.
10

11 **B. Release by Non-Participating Class Members Who Are Aggrieved**

12 **Employees:** All Non-Participating Class Members who are Aggrieved Employees are deemed to
13 release, on behalf of themselves and their respective former and present representatives, agents,
14 attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for
15 PAGA penalties that were alleged, or reasonably could have been alleged, for the PAGA Period
16 and based on the facts stated in the PAGA Letter ("PAGA Released Claims"). The Aggrieved
17 Employees will release the PAGA Release Claims even if they submit a valid and timely
18 Exclusion Request.
19

20 **C. Class Counsel.** As of the date the Judgment becomes Final, and except as
21 otherwise provided by this Agreement, Class Counsel and any counsel associated with Class
22 Counsel (The Spivak Law Firm and United Employees Law Group), including without limitation
23 David G. Spivak, Esq. and Walter L. Haines, Esq., waive any claim to costs and attorneys' fees
24 and expenses against Defendants or the Releasees arising from or related to the Action, except
25 those incurred to enforce this Agreement and collect the Judgment, including but not limited to
26 claims based on the California Labor Code, the California Civil Code, the California Code of
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1 Civil Procedure, the Fair Labor and Standards Act, or any other statute or law (the “Class Counsel
2 Released Claims”).

3 **VI. NON-PUBLICITY PROVISION**

4 The Parties and their counsel agree that they will not issue any press releases, initiate any
5 contact with the press, respond to any press inquiry, or have any communication with the press
6 about the fact, amount, or terms of the Settlement. In addition, the Parties and their counsel agree
7 that they will not engage in any advertising or distribute any marketing materials relating to the
8 Settlement of this case in any manner that identifies the Defendants, including but not limited to
9 any postings on any websites maintained by Class Counsel. Neither Plaintiff nor Class Counsel
10 will discuss the terms or the fact of the Settlement with third parties other than (1) their immediate
11 family members, (2) their respective accountants or lawyers as necessary for tax purposes; or (3)
12 other Class Members. Plaintiff and Class Counsel agree not to publish any of the terms or
13 conditions of this Settlement in any manner that identifies the Defendants.
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16 **VII. MISCELLANEOUS TERMS**

17 **A. No Effect on Other Benefits.** The Class Settlement Shares will not result in any
18 additional employee benefit payments (such as pension, ERISA, 401(k), vacation, or bonus) and
19 shall not have any effect on the eligibility for, or calculation of, any employee benefit. Plaintiff
20 and Class Members will be deemed to have waived all such claims, whether known or unknown
21 by them, as part of their release of claims under this Agreement.
22

23 **B. No Admission of Liability.** Defendants deny that they have engaged in any
24 unlawful activity, have failed to comply with the law in any respect, or have any liability to
25 anyone under the claims asserted in the Action. This Agreement is entered into solely for the
26 purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will
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1 be construed as an admission of liability or wrongdoing by Defendants, or an admission by
2 Plaintiff that any of his claims was non-meritorious or any defense asserted by Defendants was
3 meritorious. This Settlement and the fact that Plaintiff and Defendants were willing to settle the
4 Action will have no bearing on, and will not be admissible in connection with, any litigation
5 (other than solely in connection with the Settlement).
6

7 **C.** Whether or not the Judgment becomes Final, neither the Settlement, this
8 Agreement, any document, statement, proceeding or conduct related to the Settlement or the
9 Agreement, nor any reports or accounting of those matters, will be (i) construed as, offered or
10 admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to
11 Defendants or any other Releasees, including, but not limited to, evidence of a presumption,
12 concession, indication or admission by any of the Releasees of any liability, fault, wrongdoing,
13 omission, concession or damage; or (ii) disclosed, referred to or offered in evidence against any
14 of the Releasees, in any further proceeding in the Action, or any other civil, criminal or
15 administrative action or proceeding except for purposes of effectuating the Settlement pursuant
16 to this Agreement.
17

18 **D. Integrated Agreement.** After this Agreement is signed and delivered by all
19 Parties and their counsel, this Agreement and its exhibits will constitute the entire agreement
20 between the Parties relating to the Settlement, and it will then be deemed that no oral
21 representations, warranties, covenants, or inducements have been made to any Party concerning
22 this Agreement or its exhibits other than the representations, warranties, covenants, and
23 inducements expressly stated in this Agreement and its exhibits.
24

25 **E. Attorney Authorization.** Class Counsel and Defense Counsel warrant and
26 represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate
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1 action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate
2 its terms, and to execute any other documents required to effectuate the terms of this Agreement.
3 The Parties and their counsel will cooperate with each other and use their best efforts to effect
4 the implementation of the Settlement. In the event the Parties are unable to reach agreement on
5 the form or content of any document needed to implement the Agreement, or on any supplemental
6 provisions that may become necessary to effectuate the terms of this Agreement, the Parties will
7 seek the assistance of the Court, and in all cases, all such documents, supplemental provisions
8 and assistance of the court will be consistent with this Agreement.
9

10 **F. Modification of Agreement.** This Agreement, and all parts of it, may be
11 amended, modified, changed, or waived only by an express written instrument signed by all
12 Parties or their successors-in-interest.

13 **G. Agreement Binding on Successors.** This Agreement will be binding upon, and
14 inure to the benefit of, the successors of each of the Parties.
15

16 **H. Applicable Law.** All terms and conditions of this Agreement and its exhibits will
17 be governed by and interpreted according to the laws of the State of California, without giving
18 effect to any conflict of law principles or choice of law principles.

19 **I. Cooperation in Drafting.** The Parties have cooperated in the drafting and
20 preparation of this Agreement. This Agreement will not be construed against any Party on the
21 basis that the Party was the drafter or participated in the drafting.
22

23 **J. Fair Settlement.** The Parties and their respective counsel believe and warrant that
24 this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived
25 at this Agreement through arms-length negotiations, considering all relevant factors, current and
26 potential.
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K. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

L. Notice. All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third calendar day after mailing by United States mail, addressed as follows:

To Class Counsel:
David G. Spivak, Esq.
The Spivak Law Firm
8605 Santa Monica Blvd.
PMB 42554
West Hollywood, CA 90069

To Defense Counsel:
Michael A. Hood, Esq.
Jackson Lewis P.C.
200 Spectrum Center Drive, Suite 500
Irvine, CA, 92618

Execution in Counterpart. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile signatures will be presumptive evidence of execution of the original, which shall be produced on reasonable request. Any executed counterpart will be admissible to prove the existence and contents of this Agreement.

Dated: 03 / 24 / 2023

By:


ANDREW BURDICK

Dated:

By:

MARTIN KELLY, President and CEO
of
PEACH STATE ROOFING, INC.

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Dated:

By: _____
MARTIN KELLY

THE SPIVAK LAW FIRM

Dated: 03 / 24 / 2023

By:  _____
DAVID G. SPIVAK, Attorneys for
Plaintiff, ANDREW BURDICK, and all
others similarly situated

UNITED EMPLOYEES LAW GROUP

Dated:

By: _____
WALTER L. HAINES, Attorneys for
Plaintiff, ANDREW BURDICK, and all
others similarly situated

JACKSON LEWIS P.C.

Dated:

By: _____
MICHAEL A. HOOD
Attorneys for Defendant, PEACH
STATE ROOFING, INC., MARTIN
KELLY, and CHRIS KELLY

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Dated:

By: _____
MARTIN KELLY

THE SPIVAK LAW FIRM

Dated:

By: _____
DAVID G. SPIVAK, Attorneys for
Plaintiff, ANDREW BURDICK, and all
others similarly situated

UNITED EMPLOYEES LAW GROUP

Dated: March 24, 2023

By:  _____
WALTER L. HAINES, Attorneys for
Plaintiff, ANDREW BURDICK, and all
others similarly situated

JACKSON LEWIS P.C.

Dated:

By: _____
MICHAEL A. HOOD
Attorneys for Defendant, PEACH
STATE ROOFING, INC., MARTIN
KELLY, and CHRIS KELLY

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EXHIBIT A

1 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
2 **FOR THE COUNTY OF LOS ANGELES**
3 **(UNLIMITED JURISDICTION)**

4 ANDREW BURDICK, on behalf of himself and all others
5 similarly situated, and as an “aggrieved employee” on
6 behalf of other “aggrieved employees” under the Labor
7 Code Private Attorneys General Act of 2004,

8 *Plaintiff,*

9 vs.

10 PEACH STATE ROOFING, INC., a Georgia corporation;
11 MARTIN KELLY, A NATURAL PERSON; CHRIS
12 KELLY, A NATURAL PERSON; and DOES 1–50,
13 inclusive,

14 *Defendant(s).*

Case No. 20STCV20397

Action filed: 5/28/2020

Department: SSC-14, The Honorable Kenneth R.
Freeman

15 **NOTICE OF PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT**

16 **I. WHY DID I GET THIS NOTICE?**

17 The records of Peach State Roofing, Inc. and Martin Kelly (collectively “Defendants”) indicate that you
18 worked for Defendants in California at some time between May 28, 2016 and April 15, 2021 (the “Class Period”)
19 as a non-exempt employee. This Notice explains that for settlement purposes only, the Court has granted preliminary
20 approval of this class action settlement that may affect you. You have legal rights and options that you may exercise
21 at this time.

22 **II. WHAT IS THIS CLASS ACTION LAWSUIT ABOUT?**

23 Plaintiff, who Defendants formerly employed as a non-exempt employee, filed a class action lawsuit on
24 behalf of himself and similar employees claiming that Defendants violated California labor laws by: failing to pay
25 wages, failing to provide meal periods, failing to authorize and permit rest periods, failing to indemnify for business
26 expenses, failing to issue proper wage statements, failing to timely pay wages and related allegations.

27 Defendants deny any wrongdoing, deny Plaintiff’s allegations, and contend they were in full compliance
28 with all California labor laws.

29 The Court has not ruled on whether Plaintiff’s allegations have any merit. However, for the purpose of
30 avoiding the time and expense of further litigation, the ultimate outcome of which is uncertain, and to provide a fair
31 and reasonable resolution of this legal dispute, Plaintiff and Defendants have negotiated a settlement whereby
32 Defendants have agreed to pay Five Hundred Fifty Thousand Dollars and No Cents (\$550,000.00) to resolve all of
33 the class claims listed above. The Settlement is not an admission by Defendants of any liability.

34 Defendants estimated for purposes of mediation that there were approximately 2,737 total qualifying Work
35 Weeks and 90 Class Members for the period of June 15, 2016 to March 24, 2021. These numbers would be expected
36 to increase proportionately for the passage of time between that date and the time of preliminary approval. If the
37 qualifying Work Weeks and/or Class Members exceeds the above referenced qualifying Work Weeks and/or Class
38 Members reported by Defendants by more than 10%, i.e., exceeds 3,011 qualifying Work Weeks and/or 99 Class
39 Members (“Escalator Threshold”), the Maximum Settlement Amount will increase by the difference between the

Escalator Threshold and the additional qualifying Work Weeks or Class Members over the Escalator Threshold. No other payment will be owed by Defendants.

III. WHO IS INCLUDED IN THIS CLASS ACTION?

The proposed Settlement has two main parts: (1) a Class settlement requiring Defendants to pay Class Settlement Shares to Class Members, and (2) a Private Attorneys General Act (“PAGA”) settlement requiring Defendants to pay PAGA Settlement Shares to Aggrieved Employees and penalties to the California Labor and Workforce Development Agency (“LWDA”).

The Class consists of all persons who Defendants employed on a non-exempt, hourly basis in California during the Class Period (collectively “Class Members”). The Class Period is May 28, 2016 to April 15, 2021.

Aggrieved Employees all persons who Defendants employed on a non-exempt, hourly basis in California during the PAGA Period. The PAGA Period is October 21, 2018 to April 15, 2021.

IV. WHAT DOES THE PROPOSED SETTLEMENT OFFER?

A. Defendants will pay \$550,000.00, plus their employer-side payroll taxes, to settle the claims. A Settlement Administrator has been appointed to administer the settlement. The Settlement Administrator will pay from the \$550,000.00: (1) costs of administering the claims up to \$6,500.00; (2) attorneys’ fees up to \$183,333.00 plus documented costs up to \$15,000.00; (3) an enhancement not to exceed \$15,000.00 to Plaintiff for his work on the class claims; and (4) \$4,000.00 as PAGA Penalties (75% of which will be paid to the California Labor & Workforce Development Agency (“LWDA”) and 25% will be paid to the Aggrieved Employees). If the number of Class Members increases by more than 10.00%, the Defendants will pay a pro rata increase in the Gross Settlement Amount, including pro rata increases in the Class Counsel Fees Payment, and the allocation to the Private Attorneys General Act claim.

B. Based on Defendants’ records, your estimated individual share of the Class settlement (“Class Settlement Share”) is \$ _____. This amount was calculated based on the number of Work Weeks you worked for Defendants during the Class Period. The amount of money you receive is based on the size of your share in comparison to the size of all Class Members’ shares combined. The actual amount you may receive likely will be different and will depend on a number of factors. The Settlement Administrator will assign to each Class Member a “Settlement Ratio,” which will be a fractional number comprised of (a) the number of Work Weeks that a Class Member worked for Defendants during the Class Period as the numerator, and (b) the aggregate total number of Work Weeks that all Class Members worked during the Class Period as the denominator. The Settlement Administrator will assign to each Class Member the “Class Settlement Share” which will be calculated by multiplying that class member’s Settlement Ratio by amount allocated to Class Members from the Net Settlement Amount.

C. Based on Defendants’ records, your estimated individual share of the PAGA settlement (“PAGA Settlement Share”) is \$ _____. This amount was calculated based on the number of Pay Periods you worked for Defendants during the period of time from October 21, 2018 through April 15, 2021 (“PAGA Period”). The amount of money you receive is based on the size of your share in comparison to the size of all Aggrieved Employees’ shares combined. The Settlement Administrator will assign to each Aggrieved Employee a “PAGA Settlement Ratio,” which will be a fractional number comprised of (a) the number of Pay Periods that an Aggrieved Employee worked for Defendants during the PAGA Period as the numerator, and (b) the aggregate total number of Pay Periods that all Aggrieved Employees worked during the PAGA Period as the denominator. The Settlement Administrator will assign to each Aggrieved Employee the “PAGA Settlement Share” which will be calculated by multiplying that class member’s PAGA Settlement Ratio by the amount allocated to Aggrieved Employees from the PAGA Penalties. If no amount is stated for your PAGA Settlement Share, then according to Defendants’ records you are not eligible for a PAGA Settlement Share under the Settlement because you didn’t work during the PAGA Period.

D. If you do not exclude yourself from the settlement (according to the procedures explained below),

1 you will release any further attempt, by lawsuit, administrative claim or action, arbitration, demand, or other action
2 of any kind (including participation to any extent in any representative or collective action), against Defendants and
3 all of their present and former parent companies, subsidiaries, divisions, concepts, related or affiliated companies
4 and its shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any
5 individual or entity that could be liable for any of the Released Claims, and Defendants' counsel of record in these
6 Action ("Released Parties"), arising during the period May 28, 2016 through April 15, 2021. The release is limited
7 to any and all state, federal, or local law, whether statutory or common law claims expressly pleaded in the Operative
8 Complaint, or arising out of facts asserted in the Operative Complaint, including claims for: (i) failure to provide
9 rest breaks; (ii) failure to provide meal periods; (iii) failure to pay all wages earned for hours worked at the correct
10 rates of pay; (iv) failure to indemnify; (v) wage statement penalties; (vi) waiting time penalties; (vii) unfair
11 competition ("Class Released Claims"). This release will not take effect until Defendants have paid the Gross
12 Settlement Amount in full per this Settlement Agreement.

13 If you are an Aggrieved Employee, you cannot opt out of the PAGA portion of the Settlement and you will
14 be deemed to release the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could
15 have been alleged, for the PAGA Period and based on the facts stated in the PAGA Letter that Plaintiff sent to the
16 LWDA.

17 **V. WHAT ARE MY OPTIONS?**

18 A. **You may accept your share of the \$550,000.00 settlement.** You will be deemed to have accepted
19 your share of the \$550,000.00 settlement if you do not submit a timely and valid request to be excluded from the
20 settlement as described in this Notice. In accepting your settlement share, you will waive all "Released Claims" as
21 described above.

22 B. **You may accept your share of the \$550,000.00 settlement but dispute the number of your
23 Work Weeks.** If you do not agree with the number of Work Weeks or PAGA Pay Periods on this Class Notice, you
24 should provide the corrected information to the Settlement Administrator. You may use the enclosed Work
25 Weeks/PAGA Pay Periods Dispute form for this purpose but you are not required to do so to dispute the number of
26 your Work Weeks or PAGA Pay Periods. Write down all dates that you worked or the number of Work Weeks you
27 worked during the Class Period and the number of PAGA Pay Periods that you worked during the PAGA Period.
28 Send in any documents to support your Work Weeks and PAGA Pay Periods by mail to the Settlement
Administrator, ILYM Group, Inc., at the following address: _____, or by
calling _____. The Settlement Administrator will read the documents both you and Defendants provide
and make the final determination of the amount of your settlement award. Your supporting documentation must be
postmarked by <<date>> to be valid. Once the dispute is resolved by the Settlement Administrator, and if the
Settlement is finally approved by the Court, you will be sent a check for your Class Settlement Share and PAGA
Settlement Share and you will have released all "Released Claims" as described above.

C. **You may exclude yourself from the class action settlement.** If you exclude yourself from the
class action settlement, you will no longer be a member of the Class so you will not receive any class action
settlement money and you will not be bound by the class settlement Release. You cannot exclude yourself from the
PAGA portion of the settlement. To be excluded from the class action settlement, you must send by mail, postmarked
by <<date>>, a written letter requesting that you be excluded from the class action with your name, address,
telephone number, and signature to the Settlement Administrator, ILYM Group, Inc., at the following address:
_____, or by calling _____.

D. **You may object to the settlement.** If you want to object to the settlement because you find it
unfair, unreasonable, or inadequate, you may do so according to the procedures set forth below in paragraph IX
below. By objecting, you are not excluding yourself from the settlement. To do so, you should follow the procedures
below. If the Court approves the settlement despite your objection, and you do not submit a timely request to be
excluded from the settlement, you will be sent a check for your settlement share and you will be bound by the
Release described above. The Court will consider the merits of all timely objections, whether or not the objector
appears at the final fairness hearing.

1 E. **Timing of Payments of Class Settlement Shares and PAGA Settlement Shares.** The parties do
2 not expect the distribution of Class Settlement Shares and PAGA Settlement Shares to take place for several months,
3 so please be patient and, if you change your address, advise the Settlement Administrator immediately.

4 **VI. WHAT IS MY ESTIMATED SHARE?**

5 Your *estimated* Class Settlement Share is [insert estimated share]. This amount was calculated based on
6 Defendants' records, which show that you worked approximately <<insert class member Work Weeks>> Work
7 Weeks during the Class Period. This amount is an estimate. The actual amount you receive may be more or less than
8 the estimated amount shown, depending on a number of factors including whether other class members request
9 exclusion from the Settlement and how much the Court approves in attorneys' fees, litigation expenses, and other
10 costs.

11 Your *estimated* PAGA Settlement Share is [insert estimated share]. This amount was calculated based on
12 Defendants' records, which show that you worked approximately <<insert class member PAGA Pay Periods>> Pay
13 Periods during the PAGA Period.

14 **VII. WHAT ARE THE PROCEDURES FOR PAYMENT?**

15 A. The Settlement Administrator will calculate your Class Settlement Share and PAGA Settlement
16 Share of the \$550,000.00 settlement and issue you a check for your settlement share.

17 B. The Class Settlement Shares are allocated 33.33% to wages (for which employment taxes will be
18 deducted and W-2s issued) and 66.66% to penalties (for which 1099s will be issued).

19 C. You will have one hundred and eighty (180) calendar days from the date of the check's issuance
20 to cash your settlement check. After the expiration of the 180-day period, any amounts from settlement checks that
21 remain uncashed and otherwise unclaimed, plus any interest that has accrued on those funds, will be paid to the
22 California Unclaimed Property Fund.

23 D. It is important for the parties to have your current address in order to be able to send you other
24 mailings regarding this case. You should contact the Settlement Administrator to report any change of your address
25 after you receive this Notice. Failure to report a change of address may result in you not receiving money from the
26 settlement.

27 **VIII. HEARING ON PROPOSED SETTLEMENT**

28 A final fairness hearing will be held by the Court at <<time>> on <<date>>, in **the Superior Court for
the County of Los Angeles, 312 North Spring Street, Spring Street Courthouse, Los Angeles, CA 90012, Dept.
SSC-14 (The Honorable Kenneth R. Freeman)**, to decide whether or not the proposed settlement is fair, reasonable
and adequate. You do not have to attend the hearing. Class Counsel will answer any questions the Judge may have.
But, you are welcome to come at your own expense.

Effective Monday, April 4, 2022, face masks are strongly recommended inside all Los Angeles County
courthouses in alignment with Los Angeles County Department of Public Health guidance. The Court's remote
appearance technology, LACourtConnect, is available for appearances. To register to appear remotely, visit
<https://my.lacourt.org/laccwelcome>.

IX. PROCEDURES FOR EXCLUSION FROM SETTLEMENT

If you wish to exclude yourself settlement, and any payment of amounts under the Agreement, as described
above, you must mail a letter to the Settlement Administrator stating that you want to be excluded from the
Settlement. You can also use the Exclusion Request form included with this Notice though you are not obligated to
do so. This for or your letter must include your name, address, telephone number, and signature on or before 60 days
from the mailing of this Notice. The Exclusion Request must be mailed to the Settlement Administrator as follows:

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To Settlement Administrator:

Burdick v. Peach State Roofing, Inc.
Settlement Administrator
c/o _____

You may use the enclosed Exclusion Request form for this purpose, though you are not required to request exclusion from the Settlement.

X. PROCEDURES FOR OBJECTING TO SETTLEMENT

If you wish to object to the settlement as described above, you are strongly encouraged to do two things: (1) submit an objection in writing to the Settlement Administrator stating why you object to the settlement on or before 60 days from the mailing of this Notice; and (2) formally intervene into the court action as an aggrieved party by filing separate paperwork with the Court through your own independent legal counsel or as a *pro per*.

The written objection should be mailed to the Settlement Administrator as follows:

To Settlement Administrator

Burdick v. Peach State Roofing, Inc.
Settlement Administrator
c/o _____

The written objection should state your full name, address, and the dates of your employment with Defendants. The written objection should state the basis for each specific objection and any legal support in clear and concise terms. The written objection also should state whether you or your lawyer plan to formally intervene in the action and intend to appear and object at the Final Approval Hearing. Class Counsel will file any objections received with the Court within 5 calendar days of receipt. Objectors will be provided with the opportunity to speak at the final approval hearing regardless of whether they have filed an appearance or submitted a written opposition beforehand.

If you do not timely object to the Settlement and also formally intervene into the court action as set forth above, you may waive your right to appeal and standing to appeal the class settlement judgment that ultimately is entered by the Court over your objections. If you send an objection and/or formally intervene in the action, you may come to Court and be heard, but you do not have to come to Court to talk about it. As long as you mail your written objection on time, the Court will consider it. You may also pay your own lawyer to attend the Final Approval Hearing. The Court will also provide objectors the opportunity to speak at the final approval hearing regardless of whether they have filed an appearance or submitted a written opposition beforehand.

XI. EXAMINATION OF COURT PAPERS AND INQUIRIES

This Notice summarizes the class action settlement. To obtain additional information regarding the settlement you may: (1) call the Settlement Administrator at _____; (2) inspect the complete court file at maintained by the Clerk of the Superior Court for the County of Los Angeles, Los Angeles County Courthouse, 312 North Spring Street, Spring Street Courthouse, Los Angeles, CA 90012, Department SSC-14 (The Honorable Kenneth R. Freeman); (3) or access the court file via the Los Angeles County Superior Court’s web site (information about filed civil cases can be found on the Court’s general website at https://www._____).

1 If you have any questions or comments regarding this Notice, the claims asserted in this class action and/or
2 your rights regarding the settlement, you may contact any of the attorneys for the Class listed below. You will not
3 be charged for speaking with these lawyers. If you want to be represented by your own lawyer, you may hire one at
4 your own expense. The attorneys approved by the Court to represent the class of employees are:

5 David G. Spivak, Esq.
6 The Spivak Law Firm
7 8605 Santa Monica Blvd.
8 PMB 42554
9 West Hollywood, CA 90069
10 Toll Free: (877) 203-9010
11 Fax: (213) 634-2485
12 david@spivaklaw.com

13 The Settlement Agreement and, ultimately, the order giving final approval to the Settlement will be posted on the
14 Settlement Administrator's website at www.settlement.com/

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EXHIBIT B

3 **ELECTION NOT TO PARTICIPATE IN SETTLEMENT FORM**

4 **IF YOU WANT TO BE INCLUDED IN THIS CLASS ACTION SETTLEMENT AND BE ELIGIBLE FOR**
5 **A SHARE OF THE SETTLEMENT PROCEEDS,**
6 **DO NOT FILL OUT THIS FORM.**

7 **IF YOU DO NOT WANT TO BE INCLUDED IN THE SETTLEMENT, YOU MUST COMPLETE AND**
8 **SIGN THIS DOCUMENT AND MAIL IT TO THE ADDRESS BELOW, POSTMARKED NOT LATER**
9 **THAN <<RESPONSE DEADLINE>>:**

10 *Burdick v. Peach State Roofing, Inc.* Class Action Settlement Administrator
11 c/o _____
12 _____
13 _____

14 I declare as follows: I have received notice of the proposed settlement in this action and I wish to be
15 excluded from the class and **not** to participate in the proposed settlement. I understand this means that I will not be
16 bound by the Settlement and also will not share in the settlement proceeds. I understand that I cannot exclude myself
17 from the PAGA portion of the settlement.

18 _____
19 (Typed or Printed Name)

20 _____
21 (Address)

22 _____
23 (City, State, Zip Code)

24 _____
25 (Telephone Number, Including Area Code)

26 _____
27 (Identification Number)

28 I declare under penalty of perjury under the laws of the State of California that the foregoing is true and
correct and was executed on _____.

Dated: _____

(Signature)

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EXHIBIT C

1 **WORK WEEKS/PAGA PAY PERIODS DISPUTE FORM**

2 Superior Court of The State of California
3 For The County of Los Angeles
4 *Andrew Burdick v. Peach State Roofing, Inc.*, Case No. 20STCV20397

5 Indicate Name/Address Changes, if any:

6 <<Name>> _____

7 <<Address>> _____

8 <<City>>, <<State>> <<Zip Code>> _____

9 XX – XX - _ _ _ _

10 TO ALL PERSONS WHO DEFENDANTS EMPLOYED ON A NON-EXEMPT, HOURLY BASIS IN THE
11 STATE OF CALIFORNIA FROM MAY 28, 2016 THROUGH APRIL 15, 2021.

12 The amount of your estimated Class Settlement Share is based upon the number of Individual Work Weeks you
13 worked between May 28, 2016 and April 15, 2021. “Individual Work Weeks” are defined as any work week in
14 which you worked at least one (1) day as an of Peach State Roofing, Inc. and Martin Kelly (collectively
15 “Defendants”) in California during the calendar week. The number of Work Weeks applicable to your claim is set
16 forth below.

17 **YOUR ELIGIBLE WORK WEEKS**

18 Defendants’ records indicate that you worked <<number of Work Weeks>> Work Weeks between May 28, 2016
19 and April 15, 2021.

20 **YOUR ESTIMATED SETTLEMENT AND DISPUTE PROCEDURE**

21 Under the terms of the Class Action Settlement, you are entitled to receive a settlement payment in the approximate
22 estimated amount of <<\$Class Settlement Share Amount>> for the class portion of the settlement minus all
23 applicable payroll and tax deductions, after the Court approves the Settlement and it goes into effect. This process
24 may take six months or more. You will receive a Form W-2 reflecting the payment to you. Your Class Settlement
25 Share reflected on this Notice is only an estimate. The exact amount of the payment could vary, up or down.

26 If you wish to dispute the number of Work Weeks credited to you, or anything else about your employment status,
27 you must complete and return this form by indicating what you believe is incorrect on the blank lines below and
28 return it on or before <<RESPONSE DEADLINE>> to the Settlement Administrator via U.S. Mail with proof of
the submission date (such as a postmark or delivery service date stamp). You must also send any documents or other
information that you contend supports your belief that the information set forth above is incorrect. The Settlement
Administrator will resolve any dispute based upon Defendants’ records and any information you provide. Please be
advised that the information on this Work Weeks Dispute Form is presumed to be correct unless the documents you
submit are company records from Defendants.

29 **UNLESS YOU ARE FILING A DISPUTE REGARDING THE NUMBER OF WEEKS, RECEIPT OF A
30 DIRECT SETTLEMENT PAYMENT, OR YOUR EMPLOYMENT STATUS, YOU DO NOT NEED TO
31 TAKE ANY ACTION**

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
(UNLIMITED JURISDICTION)

ANDREW BURDICK, on behalf of himself and
all others similarly situated, and as an “aggrieved
employee” on behalf of other “aggrieved
employees” under the Labor Code Private
Attorneys General Act of 2004,

Plaintiff,

vs.

PEACH STATE ROOFING, INC., a Georgia
corporation; MARTIN KELLY, A NATURAL
PERSON; CHRIS KELLY, A NATURAL
PERSON; and DOES 1–50, inclusive,

Defendant(s).

Case No. 20STCV20397

**[PROPOSED] ORDER
PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT**

Action filed: 5/28/2020
Department: SSC-14, The Honorable
Kenneth R. Freeman

The Motion of Plaintiff Andrew Burdick (hereafter referred to as “Plaintiff”) for
Preliminary Approval of a Class Action Settlement (the “Motion”) was considered by the Court,
the Honorable The Honorable Kenneth R. Freeman presiding. The Court having considered the
Motion, the Joint Stipulation of Class Action Settlement and Release of Claims (“Settlement”

1 or “Settlement Agreement”), and supporting papers, HEREBY ORDERS THE FOLLOWING:

2 1. The Court grants preliminary approval of the Settlement and the Settlement Class
3 based upon the terms set forth in the Settlement filed as an Exhibit to the Motion for Preliminary
4 Approval. All terms herein shall have the same meaning as defined in the Settlement. The Court
5 has determined there is sufficient evidence to preliminarily determine that (a) the terms of the
6 Settlement appear to be fair, adequate, and reasonable to the Settlement Class and (b) the
7 Settlement falls within the range of reasonableness and appears to be presumptively valid,
8 subject only to any objections that may be raised at the final hearing and final approval by this
9 Court. The Court will make a determination at the hearing on the motion for final approval of
10 class action settlement (the “Final Approval Hearing”) as to whether the Settlement is fair,
11 adequate and reasonable to the Settlement Class.
12

13 2. For purposes of this Preliminary Approval Order, the “Settlement Class” means
14 all persons who Defendants employed on a non-exempt, hourly basis in California (collectively
15 “Class Members”), who worked anytime during the Class Period. The “Class Period” shall mean
16 the period of time from May 28, 2016, through April 15, 2021. Defendants estimated for
17 purposes of mediation that there were approximately 2,737 total qualifying Work Weeks and 90
18 Class Members for the period of June 15, 2016 to March 24, 2021. These numbers would be
19 expected to increase proportionately for the passage of time between that date and the time of
20 preliminary approval. At least 10 days before the Settlement Administrator send out notice of
21 the Settlement to Class Members, the Settlement Administrator will advise Class Counsel of
22 Defendants’ report of the total number of qualifying Work Weeks and Class Members between
23 May 28, 2016 and April 15, 2021. If the qualifying Work Weeks and/or Class Members exceeds
24 the above referenced qualifying Work Weeks and/or Class Members reported by Defendants by
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1 more than 10%, i.e., exceeds 3,011 qualifying Work Weeks and/or 99 Class Members
2 (“Escalator Threshold”), the Maximum Settlement Amount will increase by the difference
3 between the Escalator Threshold and the additional qualifying Work Weeks or Class Members
4 over the Escalator Threshold. No other payment will be owed by Defendants. The “Effective
5 Date” means as follows: If no objection to this Settlement or to any of the terms and or conditions
6 of the Settlement are filed by Plaintiff, another member of the Settlement class, or any intervenor
7 to this Lawsuit, the Effective Date shall occur on the day that the Court enters an order of final
8 approval of this Settlement; however, if any objection to this Settlement or to any of the terms
9 and or conditions of the Stipulation is filed by a member of the Settlement class, or any
10 intervenor to this Lawsuit, the Effective Date shall occur upon the expiration of the time for the
11 filing any appeal of the order of final approval of this Settlement. If an appeal is filed or any
12 writ granted, then the Effective Date shall occur after the appeal has been dismissed or the writ
13 dissolved and when there is no further time to appeal the dismissal of the appeal or the
14 dissolution of the writ. The occurrence of the Effective Date is a prerequisite to any obligation
15 of Defendants to pay any funds into the Settlement Account.
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18 3. This action is provisionally certified pursuant to section 382 of the California
19 Code of Civil Procedure and Rule 3.760, et seq. of the California Rules of Court as a class action
20 for purposes of settlement only with respect to the proposed Settlement Class.
21

22 4. The Court hereby preliminarily finds that the Settlement was the product of
23 serious, informed, non-collusive negotiations conducted at arm’s length by the Parties. In
24 making this preliminary finding, the Court considered the nature of the claims set forth in the
25 pleadings, the amounts and kinds of benefits which shall be paid pursuant to the Settlement, the
26 allocation of Settlement proceeds to the Settlement Class, and the fact that the Settlement
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1 represents a compromise of the Parties' respective positions. The Court further preliminarily
2 finds that the terms of the Settlement have no obvious deficiencies and do not improperly grant
3 preferential treatment to any individual Class Member. Accordingly, the Court preliminarily
4 finds that the Settlement was entered into in good faith.

5
6 5. The Court finds that the dates set forth in the Settlement for mailing and
7 distribution of the Class Notice meet the requirements of due process and provide the best notice
8 practicable under the circumstances, and constitute due and sufficient notice to all persons
9 entitled thereto, and directs the mailing of the Class Notice by first class mail to the Settlement
10 Class as set forth in the Settlement. Accordingly, the Court orders the following implementation
11 schedule for further proceedings:

- 12 a. By _____, Defendants shall provide
13 _____, the appointed Settlement Administrator,
14 with: (a) An electronic database of all Class Members, last known mailing
15 address, Social Security number and Defendants' employee identification
16 number ("Class Members' Data"); and (b) Corresponding to each Class
17 Member's name, Defendants shall provide a figure indicating the total
18 number of Work Weeks during the Class Period in which Defendants
19 employed the Class Member. That number of Work Weeks shall be referred
20 to as that Class Member's "Individual Work Weeks;" (c) If any of the Class
21 Members' Data are unavailable to Defendants, Defendants will so inform
22 Class Counsel and the Parties will make their best efforts to reconstruct or
23 otherwise agree upon the Class Members' Data prior to when it must be
24 submitted to the Settlement Administrator. Class Members' Data will
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1 otherwise remain confidential and will not be disclosed to anyone, except as
2 necessary to applicable taxing authorities, or pursuant to Defendants' express
3 written authorization or by order of the Court.

4 **b. Mailing of Class Notice.** By _____, approximately
5 fourteen (14) days after receiving the Class Members' Data, or as soon
6 thereafter as it can do so, the Settlement Administrator will mail the Class
7 Notice to all identified Class Members via first-class U.S. mail using the
8 mailing address information provided by Defendants, unless modified by any
9 updated address information that the Settlement Administrator obtains in the
10 course of administration of the Settlement.

11 **c. Returned Class Notice.** If a Class Notice is returned because of an incorrect
12 address, the Settlement Administrator will promptly, and not later than ten
13 (10) days from receipt of the returned Class Notice, search for a more current
14 address for the Class Member and re-mail the Class Notice to the Class
15 Member. The Settlement Administrator will use the Class Members' Data
16 and otherwise work with Defendants' Counsel and Class Counsel to find a
17 more current address. The Settlement Administrator will be responsible for
18 taking reasonable steps, consistent with its agreed-upon job parameters, court
19 orders, and fee, to trace the mailing address of any Class Member for whom
20 a Class Notice is returned as undeliverable by the U.S. Postal Service. These
21 reasonable steps shall include the tracking of all undelivered mail;
22 performing address searches for all mail returned without a forwarding
23 address; and promptly re-mailing to Class Members for whom new addresses
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1 are found. If the Class Notice is re-mailed, the Settlement Administrator will
2 note for its own records and notify Class Counsel and Defendants' Counsel
3 of the date and address of each such re-mailing as part of a weekly status
4 report provided to the Parties.

5
6 d. **Declaration of Settlement Administrator.** Not later than twenty-one (21)
7 court days prior to the Final Approval Hearing, the Settlement Administrator
8 will provide the Parties for filing with the Court a declaration of due diligence
9 setting forth its compliance with its obligations under this Agreement. Prior
10 to the Final Approval Hearing, the Settlement Administrator will supplement
11 its declaration of due diligence if any material changes occur from the date
12 of the filing of its prior declaration.

13
14 e. **Requests for Exclusion from Settlement; and Objections to Settlement.**
15 Class Members may submit requests to be excluded from the effect of the
16 Settlement, or objections to the Settlement, pursuant to the following
17 procedures:

18 i. **Request for Exclusion from Settlement.** A Class Member may
19 request to be excluded from the effect of this Agreement, and any
20 payment of amounts under this Agreement, by timely mailing a letter
21 to the Settlement Administrator stating that the Class Member wants
22 to be excluded from this Action. This letter must include the Class
23 Member's name, address, telephone number, and signature. To be
24 valid and timely, the request to be excluded must be postmarked by
25 the date specified in the Class Notice (_____, or 60 days
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1 from the initial mailing of the Class Notice by the Settlement
2 Administrator). A Class Member who properly submits a valid and
3 timely request to be excluded from the Action shall not receive any
4 payment of any kind in connection with this Agreement or this
5 Action, shall not be bound by or receive any benefit of this
6 Agreement, and shall have no standing to object to the Settlement. A
7 request for exclusion must be mailed to the Settlement Administrator
8 at the address provided on the Class Notice. The Settlement
9 Administrator shall transmit the request for exclusion to counsel for
10 the Parties as follows:
11

12
13 *To Class Counsel:*

14 David G. Spivak, Esq.
15 The Spivak Law Firm
16 8605 Santa Monica Blvd.
17 PMB 42554
West Hollywood, CA 90069

To Defense Counsel:

Michael A. Hood
Jackson Lewis P.C.
200 Spectrum Center Drive, Suite 500
Irvine, CA 92618

- 18
19 ii. **Objections to Settlement.** The Class Notice will provide that any
20 Class Member who does not request exclusion from the Action and
21 who wishes to object to the Settlement should submit an objection in
22 writing to the Settlement Administrator by _____, or 60
23 days after the Settlement Administrator mails the Class Notice, a
24 written objection to the Settlement which sets forth the grounds for
25 the objection and the other information required by this paragraph.
26 The objection should be mailed to the Settlement Administrator at the
27
28

1 address provided on the Class Notice. The Settlement Administrator
2 shall transmit the objections to counsel for the Parties as follows:

3
4 *To Class Counsel:*

5 David G. Spivak, Esq.
6 The Spivak Law Firm
7 8605 Santa Monica Blvd.
8 PMB 42554
9 West Hollywood, CA 90069

To Defense Counsel:

Michael A. Hood
Jackson Lewis P.C.
200 Spectrum Center Drive, Suite 500
Irvine, CA 92618

10 The written objection should state the objecting Class Member's full
11 name, address, and the approximate dates of his or her employment
12 with Defendants. The written objection should state the basis for each
13 specific objection and any legal support in clear and concise terms.
14 The written objection also should state whether the Class Member
15 intends to formally intervene and become a party of record in the
16 action, and upon formally intervening, appear and argue at the Final
17 Approval Hearing. However, the objectors will be provided with the
18 opportunity to speak at the final approval hearing regardless of
19 whether they have filed an appearance or submitted a written
20 opposition beforehand.

21
22 If the objecting Class Member does not formally intervene in the
23 action and/or the Court rejects the Class Member's objection, the
24 Class Member may still be bound by the terms of this Agreement.

25 f. **Report.** Not later than fourteen (14) days after the deadline for submission
26 of requests for exclusion, the Settlement Administrator will provide the
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1 Parties with a complete and accurate list of all Class Members who sent
2 timely requests to be excluded from the Action and all Class Members who
3 objected to the settlement.

4 6. The Court approves, as to form and content, the Class Notice in substantially the
5 form attached as Exhibit A to the Settlement, the Exclusion Request form in substantially the
6 form attached as Exhibit B to the Settlement, and the Work Weeks Dispute form in substantially
7 the form attached as Exhibit C to the Settlement.
8

9 7. The Court approves, for settlement purposes only, David Spivak of The Spivak
10 Law Firm and Walter L. Haines of United Employees Law Group as Class Counsel.

11 8. The Court approves, for settlement purposes only, Andrew Burdick as the Class
12 Representative.
13

14 9. The Court approves ILYM Group, Inc. as the Settlement Administrator.

15 10. The Court preliminarily approves Class Counsel's request for attorneys' fees and
16 costs subject to final review by the Court.

17 11. The Court preliminarily approves the estimated Settlement Administrator costs
18 payable to the Settlement Administrator subject to final review by the Court.

19 12. The Court preliminarily approves Plaintiff's Class Representative Payment
20 subject to final review by the Court.
21

22 13. A Final Approval Hearing shall be held on _____ at _____.m. in
23 the Superior Court for the State of California, County of Los Angeles, located at the Los Angeles
24 Courthouse, 312 North Spring Street, Spring Street Courthouse, Los Angeles, CA 90012 to
25 consider the fairness, adequacy and reasonableness of the proposed Settlement preliminarily
26 approved by this Preliminary Approval Order, and to consider the application of Class Counsel
27
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1 for attorneys' fees and costs and the Class Representative Payment to the Class Representative.
2 The notice of motion and all briefs and materials in support of the motion for final approval of
3 class action settlement and motion for attorneys' fees and litigation costs shall be served and
4 filed with this Court on or before _____.

5
6 14. If for any reason the Court does not execute and file a final approval order and
7 judgment, or if the Effective Date, as defined in the Settlement, does not occur for any reason,
8 the proposed Settlement that is the subject of this order, and all evidence and proceedings had
9 in connection therewith, shall be without prejudice to the status quo ante rights of the Parties to
10 the litigation, as more specifically set forth in the Settlement.

11 15. The Court expressly reserves the right to adjourn or continue the Final Approval
12 Hearing from time to time without further notice to members of the Class. The Plaintiff shall
13 give prompt notice of any continuance to Settlement Class Members who object to the
14 Settlement.
15

16 **IT IS SO ORDERED.**

17
18 DATED: _____

THE HONORABLE KENNETH R. FREEMAN
JUDGE OF THE SUPERIOR COURT

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
(UNLIMITED JURISDICTION)

ANDREW BURDICK, on behalf of himself and
all others similarly situated, and as an “aggrieved
employee” on behalf of other “aggrieved
employees” under the Labor Code Private
Attorneys General Act of 2004,

Plaintiff,

vs.

PEACH STATE ROOFING, INC., a Georgia
corporation; MARTIN KELLY, A NATURAL
PERSON; CHRIS KELLY, A NATURAL
PERSON; and DOES 1–50, inclusive,

Defendant(s).

Case No. 20STCV20397

**[PROPOSED] FINAL ORDER AND
JUDGMENT APPROVING CLASS
ACTION SETTLEMENT**

Action filed: 5/28/2020

Department: SSC-14, The Honorable
Kenneth R. Freeman

This matter came on for hearing on _____ at _____.m. in
Department SSC-14 of the above-captioned court on Plaintiff’s Motion for Final Approval of a
Class Action Settlement pursuant to California Rules of Court, Rule 3.769, as set forth in the
Joint Stipulation of Class Action Settlement and Release of Claims (the “Settlement”) filed
herewith which provides for a Gross Settlement Amount (“GSA”) of up to \$550,000.00 in

1 compromise of all disputed claims on behalf of all persons who Defendants employed on a non-
2 exempt, hourly basis in California at any time during the period of May 28, 2016 to April 15,
3 2021 (“Settlement Class Period”). All capitalized terms used herein shall have the same meaning
4 as defined in the Settlement.

5 In accordance with the Court’s prior Order Granting Preliminary Approval of Class
6 Action Settlement, Class Members have been given notice of the terms of the Settlement and the
7 opportunity to submit a claim, request exclusion, comment upon or object to it or to any of its
8 terms. Having received and considered the Settlement, the supporting papers filed by the Parties,
9 and the evidence and argument received by the Court in conjunction with the motions for
10 preliminary and final approval of the Settlement, the Court grants final approval of the Settlement
11 and HEREBY ORDERS, ADJUDGES, DECREES AND MAKES THE FOLLOWING
12 DETERMINATIONS¹:
13

14
15 1. The Court has jurisdiction over the subject matter of the Action and over all
16 Parties to the Action, including all Class Members. Pursuant to this Court’s Order Granting
17 Preliminary Approval of Class Action Settlement of _____, the Class Notice was sent
18 to each Class Member by First Class U.S. mail. The Class Notice informed Class Members of
19 the terms of the Settlement, their right to receive their proportional share of the Settlement, their
20 right to request exclusion, their right to comment upon or object to the Settlement, and their right
21 to appear in person or by counsel at the final approval hearing and be heard regarding final
22 approval of the Settlement. Adequate periods of time were provided by each of these procedures.
23

24
25 _____
26 ¹ A true and correct copy of the Court’s ruling on the Motion for Final Approval of Class Action
27 Settlement entered on _____ is attached hereto as **Exhibit A** and incorporated by
28 reference. A true and correct copy of the Court’s Minute Order dated _____ is
attached hereto as **Exhibit B** and incorporated by reference.

1 No member of the Settlement Class presented written objections to the proposed Settlement as
2 part of this notice process, stated an intention to appear, or actually appeared at the final approval
3 hearing.

4 2. For purposes of this Final Order and Judgment, the Class Members are all persons
5 who Defendants employed on a non-exempt, hourly basis in California during the Class Period.
6 at any time during the period of May 28, 2016 to April 15, 2021 (“Settlement Class Period”).

7 3. The Court finds and determines that the notice procedure afforded adequate
8 protections to Class Members and provides the basis for the Court to make an informed decision
9 regarding final approval of the Settlement based on the responses of Class Members. The Court
10 finds and determines that the notice provided in this case was the best notice practicable, which
11 satisfied the requirements of law and due process as to all persons entitled to such notice.
12

13 2. **Release by Plaintiff and Class Members.** The Settlement will release any further
14 attempt, by lawsuit, administrative claim or action, arbitration, demand, or other action of any
15 kind by each and all of the Settlement Class Members (including participation to any extent in
16 any representative or collective action), against Defendants and all of their present and former
17 parent companies, subsidiaries, divisions, concepts, related or affiliated companies and its
18 shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns,
19 and any individual or entity that could be liable for any of the Released Claims, and Defendants’
20 counsel of record in these Action (“Released Parties”), arising during the period May 28, 2016
21 through April 15, 2021, are limited to any and all claims under state, federal, or local law, whether
22 statutory or common law arising out of the claims expressly pleaded the Actions and all other
23 claims, such as those under the California Labor Code, Wage Orders, regulations, and/or other
24 provisions of law, that could have been pleaded based on the facts pleaded in the Action for: (i)
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1 failure to provide rest breaks; (ii) failure to provide meal periods; (iii) failure to pay all wages
2 earned for hours worked at the correct rates of pay; (iv) failure to indemnify; (v) wage statement
3 penalties; (vi) waiting time penalties; (vii) unfair competition; and (viii) civil penalties under
4 PAGA (“Released Claims”). This release will not take effect until Defendants have paid the
5 Gross Settlement Amount in full per this Settlement Agreement.
6

7 3. The Court further finds and determines that the terms of the Settlement are fair,
8 reasonable and adequate, that the Settlement is ordered finally approved, and that all terms and
9 provisions of the Settlement, including the release of claims contained therein, should be and
10 hereby are ordered to be consummated, and directs the Parties to effectuate the Settlement
11 according to its terms. As of the Effective Date of Settlement, and for the duration of the
12 Settlement Class Period, all Class Members are hereby deemed to have waived and released all
13 Released Claims and are forever barred and enjoined from prosecuting the Released Claims
14 against the Releasees as fully set forth in the Settlement. No objections were received by the
15 Parties or the Court through the date of this Final Order and Judgment. The Court finds _____
16 Class Member(s)—_____—submitted a request for exclusion from the Settlement
17 as determined by the Settlement Administrator and therefore is/are not in the Settlement Class.
18

19 4. The Court finds and determines that (a) the Class Settlement Shares to be paid to
20 Participating Class Members and (b) the LWDA payment as civil penalties under the California
21 Labor Code Private Attorneys General Act of 2004, as amended, California Labor Code sections
22 2699 *et seq.*, as provided for by the Settlement are fair and reasonable. The Court hereby grants
23 final approval to, and orders the payment of, those amounts be made to the Participating Class
24 Members and to the California Labor & Workforce Development Agency (“LWDA”), in
25 accordance with the terms of the Settlement.
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1 5. The Court further grants final approval to and orders that the following payments
2 be made in accordance with the terms of the Settlement:

3 a. Class Counsel fees & costs of \$183,333.00 in attorneys' fees and
4 \$15,000.00 in litigation costs to Class Counsel;

5 b. \$15,000.00 as a Class Representative Payment award payable to Plaintiff
6 Andrew Burdick for his service as a Class Representative;

7 c. \$7,000.00 in costs of the Settlement Administrator payable to ILYM
8 Group, Inc. for its services as the Settlement Administrator; and

9 d. Payment of \$3,000.00 (75% of the (\$4,000.00 PAGA penalty) to the
10 LWDA.
11

12 7. The settlement shall proceed as directed in the Settlement, and no payments
13 pursuant to the Settlement shall be distributed until after the Effective Date of Settlement.
14 Without affecting the finality of this Final Order and Judgment in any way, the Court retains
15 jurisdiction of all matters relating to the interpretation, administration, implementation,
16 effectuation and enforcement of this Final Order and Judgment and the Settlement pursuant to
17 California Rule of Court 3.769(h).
18

19 8. Within 10 calendar days of the Effective Date of Settlement, Defendants shall
20 deposit the Settlement proceeds in an account designated by the Settlement Administrator: (i) the
21 total amount of all Class Settlement Shares to Participating Class Members, (ii) the Court
22 approved Class Counsel fees & costs, (iii) the Court-approved Class Representative Payment,
23 (iv) the Court-approved costs of the Settlement Administrator, and (v) the payment to the LWDA.
24

25 9. Defendants' payment of such sums shall be the sole financial obligation of
26 Defendants under the Settlement, and shall be in full satisfaction of all claims released herein,
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1 including, without limitation, all claims for wages, penalties, interest, attorneys' fees, costs and
2 expenses.

3 10. Pursuant to CCP 384 and the Settlement, Participating Class Members shall have
4 one hundred and eighty (180) days from the date of the check's issuance to cash their Class
5 Settlement Share check. After the expiration of the 180-day period, on Defendants' behalf, the
6 Settlement Administrator shall remit any amounts from Voided Settlement Checks and otherwise
7 unclaimed (the "Residue"), plus interest on the Residue at the legal rate of interest from the date
8 of entry of the initial judgement to the California Unclaimed Property Fund.
9

10 11. The Parties shall file a final accounting report by _____. A non-
11 appearance case review re submission of a final report is scheduled for _____ at
12 _____.m. in Department SSC-14. The Parties shall also prepare and file a stipulation and
13 proposed order and proposed Amended Final Order and Judgment by _____ which
14 includes the amount of distribution of unpaid cash Residue, and unclaimed or abandoned funds
15 to the non-party, the accrued interest on that sum. The stipulation shall be signed by counsel for
16 the class and defense counsel in accord with the proposed Amended Final Order and Judgment.
17 If there are objections by any party or non-party, class counsel shall immediately notify the Court
18 and the matter will be set for further hearing. A non-appearance hearing for the lodging of the
19 stipulation and proposed order and separate amended judgment is scheduled for
20 _____ at _____.m. in Department SSC-14.
21

22 12. Nothing in this Final Order and Judgment shall preclude any action to enforce the
23 Parties' obligations under the Settlement or hereunder, including the requirement that Defendants
24 deposit funds for distribution by the Settlement Administrator to Participating Class Members in
25 accordance with the Settlement.
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1 13. The Court hereby enters final judgment in this case in accordance with the terms
2 of the Settlement, Order Granting Preliminary Approval of Class Action Settlement, and this
3 Final Order and Judgment.

4 14. The Parties are hereby ordered to comply with the terms of the Settlement.

5 15. The Parties shall bear their own costs and attorneys' fees except as otherwise
6 provided by the Settlement and this Final Order and Judgment.

7
8 16. The Settlement is not an admission by Defendants nor is this Final Order and
9 Judgment a finding of the validity of any claims in the Action or of any wrongdoing by
10 Defendants. Furthermore, the Settlement is not a concession by Defendants and shall not be used
11 as an admission of any fault, omission, or wrongdoing by Defendants. Neither this Final Order
12 and Judgment, the Settlement, any document referred to herein, any exhibit to any document
13 referred to herein, any action taken to carry out the Settlement, nor any negotiations or
14 proceedings related to the Settlement are to be construed as, or deemed to be evidence of, or an
15 admission or concession with regard to, the denials or defenses of Defendants, and shall not be
16 offered in evidence in any proceeding against the Parties hereto in any Court, administrative
17 agency, or other tribunal for any purpose whatsoever other than to enforce the provisions of this
18 Final Order and Judgment. This Final Order and Judgment, the Settlement and exhibits thereto,
19 and any other papers and records on file in the Action may be filed in this Court or in any other
20 litigation as evidence of the settlement by Defendants to support a defense of res judicata,
21 collateral estoppel, release, or other theory of claim or issue preclusion or similar defense as to
22 the Released Claims.
23
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17. This document shall constitute a Judgment for purposes of California Rule of Court 3.769(h).

IT IS SO ORDERED, ADJUDGED AND DECREED.

DATED: _____

THE HONORABLE KENNETH R. FREEMAN
JUDGE OF THE SUPERIOR COURT

EXHIBIT 13

1 DAVID G. SPIVAK (SBN 179684)
2 david@spivaklaw.com
3 CAROLINE TAHMASSIAN (SBN 285680)
4 caroline@spivaklaw.com
5 THE SPIVAK LAW FIRM
6 8605 Santa Monica Blvd.
7 PMB 42554
8 West Hollywood, CA 90069
9 Telephone: (213) 725-9094
10 Facsimile: (213) 634-2485

11 Attorneys for Plaintiff,
12 ANDREW BURDICK, and all others similarly situated
13 (Additional attorneys for parties on following page)

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF LOS ANGELES**
16 **(UNLIMITED JURISDICTION)**

17 ANDREW BURDICK, on behalf of himself and
18 all others similarly situated, and as an “aggrieved
19 employee” on behalf of other “aggrieved
20 employees” under the Labor Code Private
21 Attorneys General Act of 2004,

22 *Plaintiff,*

23 vs.

24 PEACH STATE ROOFING, INC., a Georgia
25 corporation; MARTIN KELLY, a natural person;
26 CHRIS KELLY, a natural person; and DOES 1–
27 50, inclusive,

28 *Defendant(s).*

Case No. 20STCV20397

**FIRST AMENDED JOINT
STIPULATION OF CLASS ACTION
SETTLEMENT AND RELEASE OF
CLAIMS**

Action filed: 5/28/2020
Department: SSC-14, The Honorable
Kenneth R. Freeman

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ADDITIONAL ATTORNEY FOR PLAINTIFF

WALTER L. HAINES (SBN 71075)
walter@uelglaw.com
UNITED EMPLOYEES LAW GROUP
4276 Katella Ave, Suite 301
Los Alamitos, CA 90720
Telephone: (562) 256-1047
Facsimile: (562) 256-1006

ATTORNEYS FOR DEFENDANT

MICHAEL A. HOOD (SBN 71258)
michael.hood@jacksonlewis.com
~~JONATHAN D. KENT (SBN 292415)~~
~~jonathan.kent@jacksonlewis.com~~
JACKSON LEWIS P.C.
200 Spectrum Center Drive, Suite 500
Irvine, CA 92618
Telephone: 949-885-1360
Facsimile: Fax: 949-885-1380

Attorneys for Defendants PEACH STATE ROOFING, INC., MARTIN KELLY, and CHRIS KELLY

1 This [First Amended](#) Joint Stipulation of Class Action Settlement and Release of Claims
2 (“Settlement Agreement” or “Agreement”) is made and entered into by and between Plaintiff
3 Andrew Burdick (“Plaintiff” or “Class Representative”), individually and on behalf of all
4 putative class members, on the one hand, and Defendants Peach State Roofing, Inc. and Martin
5 Kelly (collectively “Defendants”). Plaintiff and Defendants are collectively referred to herein as
6 the “Parties.”

7
8 **I. DEFINITIONS.**

9 The following definitions are applicable to this Settlement Agreement, in addition to other
10 terms defined elsewhere in the Agreement:

11 **A. “Action”** shall mean: (1) the civil action commenced on May 28, 2020, by
12 Plaintiff against Defendants in the Superior Court of California, County of LOS ANGELES,
13 Case No. 20STCV20397, entitled: “Andrew Burdick, on behalf of himself, and all others
14 similarly situated, and as an ‘aggrieved employee’ on behalf of other ‘aggrieved employees’
15 under the Labor Code Private Attorneys General Act of 2004, *Plaintiff(s)*, vs. Peach State
16 Roofing, Inc., a Georgia corporation; Martin Kelly, a natural person; Chris Kelly, a natural
17 person; and DOES 1 through 50, inclusive, *Defendant(s)*.”

18
19 **B. “Aggrieved Employees” shall mean all persons who Defendants employed on a**
20 **non-exempt, hourly basis in California during the PAGA Period.**

21
22 **B.C. “Class,” “Class Members,” or “Settlement Class”** shall mean all persons who
23 Defendants employed on a non-exempt, hourly basis in California during the Class Period.

24 **C.D. “Class Counsel”** shall mean the attorneys representing Plaintiff in the Action:
25 David G. Spivak of THE SPIVAK LAW FIRM and Walter L. Haines of UNITED EMPLOYEES
26 LAW GROUP.

1 **D.E.** “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses
2 **Payment**” shall mean the amounts awarded to Class Counsel by the Court to compensate them
3 for, respectively, their fees and expenses in connection with the Action, including their pre-filing
4 investigation, their filing of the Action and all related litigation activities, this Settlement, and all
5 post-Settlement compliance procedures.

6
7 **E.F.** “Class Notice” shall mean the Notice of Proposed Settlement attached as **Exhibit**
8 **A** and incorporated by reference into this Agreement.

9 **F.G.** “Class Period” shall mean the period of time from May 28, 2016 through April
10 15, 2021.

11 **G.H.** “Class Representative Payment” shall mean the special payment made to
12 Plaintiff in his capacity as Class Representative to compensate him for initiating the Action,
13 performing work in support of the Action, and undertaking the risk of liability for attorneys’ fees
14 and expenses in the event he was unsuccessful in the prosecution of the Action.

15
16 **H.I.** “Court” shall mean the Superior Court for the County of Los Angeles, 312 North
17 Spring Street, Spring Street Courthouse, Los Angeles, CA 90012.

18 **I.J.** “Defense Counsel” shall mean the attorneys representing Defendants in the
19 Action: Michael A. Hood of Jackson Lewis P.C.

20 **J.K.** “Effective Date” is defined as follows: If no objection to this Settlement or to any
21 of the terms and or conditions of the Settlement are filed by Plaintiff, another member of the
22 Settlement class, or any intervenor to this Lawsuit, the Effective Date shall occur on the day that
23 the Court enters an order of final approval of this Settlement; however, if any objection to this
24 Settlement or to any of the terms and or conditions of the Stipulation is filed by a member of the
25 Settlement class, or any intervenor to this Lawsuit, the Effective Date shall occur upon the
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1 expiration of the time for the filing any appeal of the order of final approval of this Settlement.
2 If an appeal is filed or any writ granted, then the Effective Date shall occur after the appeal has
3 been dismissed or the writ dissolved and when there is no further time to appeal the dismissal of
4 the appeal or the dissolution of the writ.

5 **K.L. “Final Approval Hearing”** shall mean the hearing to be conducted by the Court
6 to determine whether to approve finally and implement the terms of this Agreement.
7

8 **L.M. “Gross Settlement Amount”** shall mean the Gross Settlement Amount of
9 Five Hundred and Fifty Thousand Dollars and No Cents (\$550,000.00) payable by Defendants
10 as provided by this Agreement, plus Defendants’ employer-side payroll taxes. Defendants
11 estimated for purposes of mediation that there were approximately 2,737 total qualifying Work
12 Weeks and 90 Class Members for the period of June 15, 2016 to March 24, 2021. These numbers
13 would be expected to increase proportionately for the passage of time between that date and the
14 time of preliminary approval. At least 10 days before the Settlement Administrator send out
15 notice of the Settlement to Class Members, the Settlement Administrator will advise Class
16 Counsel of Defendants’ report of the total number of qualifying Work Weeks and Class Members
17 between May 28, 2016 and April 15, 2021. If the qualifying Work Weeks and/or Class Members
18 exceeds the above referenced qualifying Work Weeks and/or Class Members reported by
19 Defendants by more than 10%, i.e., exceeds 3,011 qualifying Work Weeks and/or 99 Class
20 Members (“Escalator Threshold”), the Maximum Settlement Amount will increase by the
21 difference between the Escalator Threshold and the additional qualifying Work Weeks or Class
22 Members over the Escalator Threshold. No other payment will be owed by Defendants.
23
24

25 **M.N. “Judgment”** shall mean the Order of Final Judgment entered by the Court that
26 the Parties anticipate will be entered following a Final Approval Hearing on the Settlement in
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1 this Action.

2 **N.O.** “**Net Settlement Amount**” shall mean Five Hundred and Fifty Thousand Dollars
3 and No Cents (\$550,000.00) payable by Defendants pursuant to this Settlement, less:

- 4 1. the Class Representative Payment approved by the Court;
- 5 2. the Class Counsel Fees Payment (one-third or 33 and 1/3% of Gross
6 Settlement Amount) and the Class Counsel Litigation Expenses Payment (of not more than
7 \$15,000.00) approved by the Court;
- 8 3. the Settlement Administrator’s reasonable fees and expenses approved by
9 the Court (not to exceed \$~~127~~,000.00);
- 10 4. the amount of \$~~34~~,000.00 PAGA Penalties paid to the Labor Workforce
11 Development Agency of California and Aggrieved Employees for the PAGA claim;
- 12 5. any other fees or expenses (other than attorneys’ fees and expenses)
13 incurred by Plaintiff in implementing the terms and conditions of this Agreement as approved by
14 the Court.

15 **P.** “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from
16 the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$1,000.00) and the
17 75% to LWDA (\$3,000.00) in settlement of PAGA claims.

18 **Q.** “PAGA Period” shall mean the period of time from October 21, 2018 through
19 April 15, 2021.

20 **R.** “PAGA Settlement Share” shall mean each Aggrieved Employee’s pro rata
21 share of 25% of the PAGA Penalties calculated according to the number of Pay Periods worked
22 during the PAGA Period.

23 **O.S.** “**Participating Class**” or “**Participating Class Members**” shall mean all
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1 Settlement Class members who do not submit a valid letter requesting to be excluded from the
2 Settlement, consistent with the terms set forth in this Settlement Agreement.

3 **P.T.** “**Preliminary Approval of the Settlement**” shall mean the Court’s preliminary
4 approval of the Settlement without material change.

5 **Q.U.** “**Settlement**” shall mean the disposition of the Action and all related claims
6 effectuated by this Agreement.

7 **R.V.** “**Settlement Administrator**” shall mean ILYM Group, Inc. or another
8 administrator proposed by the Parties and appointed by the Court to administer the Settlement.

9 **S.W.** “**Class Settlement Share**” shall mean each Class Member’s allocated share of the
10 Net Settlement Amount as provided by this Agreement.

11 **II. RECITALS**

12 **A.** On or about October 21, 2019, Plaintiff, through his attorneys, sent a letter to the
13 Labor Workforce Development Agency (“LWDA”) alleging the following against Defendants:
14 failure to pay wages, failure to provide meal periods, failure to authorize and permit rest periods,
15 failure to indemnify for business expenses, failure to issue proper wage statements, failure to
16 timely pay wages and related allegations (the “PAGA letter”). Plaintiff asserted these
17 representative claims on behalf of all Class Members who are or were employed during the
18 applicable statutory period.

19 **B.** On May 28, 2020, Plaintiff filed a class action complaint in the Los Angeles
20 Superior Court, alleging the same wage and hour claims as set forth in the earlier PAGA letter
21 and adding a cause of action for unfair competition. On June 15, 2020, Plaintiff filed a first
22 amended class action complaint in the Los Angeles County Superior Court, adding a cause of
23 action under the Labor Code Private Attorneys General Act of 2004 (“PAGA”). The first
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1 amended complaint is the “Operative Complaint.”

2 **C.** On August 24, 2020, Defendants answered Plaintiff’s First Amended Complaint
3 and denied, and continue to deny, all of Plaintiff’s material allegations. Specifically, Defendants
4 deny that Plaintiff and putative class members are entitled to additional wages and overtime pay.
5 Defendants contend they paid the putative class members for all hours worked as required by
6 law, including all vacation and sick days. Defendants deny the Class Members were deprived of
7 meal and rest periods, allege that they had meal and rest break policies and procedures in place
8 to ensure compliance with California law, and alleges that employees were allowed to take their
9 rest and meal periods. Defendants further allege that the unpaid wage, improper wage statement,
10 and rest and meal period claims are not amenable to class treatment because common issues do
11 not predominate. Defendants assert that the waiting time penalties claim will fail as to former
12 Class Members who cannot prevail on the claims described above. Defendants deny that they
13 failed to issue accurate itemized wage statements, or otherwise failed to keep accurate and
14 complete employment records. Defendants deny that they failed to reimburse for business
15 expenses.
16

17 **D.** The Parties thereafter engaged in an informal, voluntary exchange of information
18 in the context of privileged settlement discussions to facilitate an early mediation. Defendants
19 produced Plaintiff’s entire personnel file (including policies and agreements he signed and
20 acknowledged), copies of their relevant company written policies, time-keeping records, and
21 paycheck data and records for the putative class, and more detailed time and payroll data for a
22 random sample of putative class members specifically selected by Plaintiff’s counsel.
23

24 **E.** On April 15, 2021, following much of the foregoing informal discovery and
25 exchange of information, the Parties participated in a mediation session presided over by
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1 Mediator Tripper Ortman, an experienced class action mediator. During the mediation, the
2 Parties had a full day of productive negotiations and reached agreement on a class-wide
3 settlement during the second mediation session. During the mediation sessions, each side,
4 represented by its respective counsel, recognized the risk of an adverse result in the Action and
5 agreed to settle the Action and all other matters covered by this Agreement pursuant to the terms
6 and conditions of this Agreement.

7
8 **F.** Based on their own thorough, independent investigation and evaluation of this
9 case, Class Counsel are of the opinion that the settlement with Defendants for the consideration
10 and on the terms set forth in this Agreement is fair, reasonable, adequate, and in the best interest
11 of the Settlement Class in light of all known facts and circumstances, including the risk of
12 significant costs and delay, the risk of non-certification of the Class, the defenses asserted by
13 Defendant, the risks of adverse determinations on the merits, and numerous potential appellate
14 issues. Although Defendants contend they have no liability in this case, Defendants' counsel
15 shares Class Counsel's belief that the Agreement represents a fair and adequate settlement given
16 the respective risks associated with the case.

17
18 **G.** This Agreement represents a compromise and settlement of highly disputed
19 claims. Nothing in this Agreement is intended or will be construed as an admission by Defendants
20 that Plaintiff's claims in the Action have merit or that they have any liability to Plaintiff or the
21 Class on those claims or to the State, or as an admission by Plaintiff that Defendants' defenses
22 raised in the Action have merit. This Agreement is intended to fully, finally, and forever
23 compromise, release, resolve, discharge, and settle the released claims subject to the terms and
24 conditions set forth in this Agreement.

25
26 Based on the foregoing Recitals, the Parties agree as follows:
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1 **III. SETTLEMENT TERMS AND CONDITIONS**

2 **A. Certification for Settlement Purposes.** Solely for the purposes of effectuating
3 this Settlement, and subject to Court approval, the Parties hereby stipulate to the conditional
4 certification of the Settlement Class. The Parties agree that if for any reason the Settlement is not
5 preliminarily and finally approved, the conditional certification of the Settlement Class will be
6 of no force or effect, does not constitute an admission by Defendants that class certification is
7 proper, and will not be deemed admissible in this or any other proceeding, and that the Parties
8 will litigate the issue of class certification.
9

10 **B. Gross Settlement Amount.** Subject to the terms and conditions of this
11 Agreement, the Gross Settlement Amount of Five Hundred Fifty Thousand Dollars and No Cents
12 (\$550,000.00), plus Defendants' employer share of employer-side payroll taxes, is the maximum
13 amount payable by Defendants. In no event will Defendants be required to pay more than the
14 Gross Settlement Amount for distribution to the Plaintiff, Class Counsel, Class Members,
15 LWDA, and Settlement Administrator. However, Defendants estimated for purposes of
16 mediation that there were approximately 2,737 total qualifying Work Weeks and 90 Class
17 Members for the period of June 15, 2016 to March 24, 2021. These numbers would be expected
18 to increase proportionately for the passage of time between that date and the time of preliminary
19 approval. At least 10 days before the Settlement Administrator send out notice of the Settlement
20 to Class Members, the Settlement Administrator will advise Class Counsel of Defendants' report
21 of the total number of qualifying Work Weeks and Class Members between May 28, 2016 and
22 April 15, 2021. If the qualifying Work Weeks and/or Class Members exceeds the above
23 referenced qualifying Work Weeks and/or Class Members reported by Defendants by more than
24 10%, i.e., exceeds 3,011 qualifying Work Weeks and/or 99 Class Members ("Escalator
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Threshold”), the Maximum Settlement Amount will increase by the difference between the Escalator Threshold and the additional qualifying Work Weeks or Class Members over the Escalator Threshold. No other payment will be owed by Defendants.

C. Payments to Plaintiff and Class Counsel and Others. Subject to the terms and conditions of this Agreement, the Settlement Administrator will make the following payments out of the Gross Settlement Amount as follows:

1. To Plaintiff.

(a) Class Representative Payment. In addition to his [Class](#) Settlement Share, Plaintiff will apply to the Court for an award of not more than Fifteen Thousand Dollars and No Cents (\$15,000.00) as his Class Representative Payment. Defendants will not oppose a Class Representative Payment of not more than \$15,000.00. Plaintiff will receive no other payment other than his [Class](#) Settlement Share and Class Representative Payment, and acknowledges that he is aware of no other facts or circumstances related to his employment with Defendants that could give rise to any additional entitlement to any further payments. The Settlement Administrator will pay the Class Representative Payment approved by the Court out of the Gross Settlement Amount. Payroll taxes, withholdings, and deductions will not be taken from the Class Representative Payment, and instead a Form 1099 will be issued to Plaintiff with respect to that payment. Plaintiff agrees to assume all responsibility and liability for the payment of taxes due on the Class Representative Payment. Any portion of the Class Representative Payment not awarded to Plaintiff will not revert to Defendant, but instead shall be returned to the Net Settlement Amount.

2. To Class Counsel. Class Counsel will apply to the Court for an award of not more than One Hundred Eighty-Three Thousand Three Hundred Thirty-Three Dollars and

1 No Cents (\$183,333.00) (which is 33 and 1/3% of the Gross Settlement Amount) as their Class
2 Counsel Fees Payment and an amount not more than Fifteen Thousand Dollars and No Cents
3 (\$15,000.00) as their Class Counsel Litigation Expenses Payment, and Defendants will not
4 oppose this request. The Settlement Administrator will pay the amount approved by the Court
5 (but not more than One Hundred Eighty-Three Thousand Three Hundred Thirty-Three Dollars
6 and No Cents (\$183,333.00) in fees and not more than Fifteen Thousand Dollars and No Cents
7 (\$15,000.00) in expenses) out of the Gross Settlement Amount. Withholding and deductions will
8 not be taken from the Class Counsel Fees and Litigation Expenses Payment and one or more
9 Forms 1099 will be issued to Class Counsel with respect to those payments.

11 **3. To the Settlement Administrator.** The Settlement Administrator will be
12 paid from the Gross Settlement Amount its reasonable fees and expenses as approved by the
13 Court in an amount currently estimated to not exceed ~~Twelve~~Six Thousand ~~Five Hundred~~Five Hundred Dollars
14 and No Cents (\$~~12,000~~6,500.00).

16 **4. To the LWDA.** The Parties will jointly apply to the Court for approval of
17 a settlement of claims under the Private Attorneys General Act (“PAGA”), California Labor Code
18 section 2698, *et seq.*, for Four Thousand Dollars and No Cents (\$4,000.00), of which, payment
19 from the Gross Settlement Amount to the LWDA will be made in the amount of Three Thousand
20 Dollars and No Cents (\$3,000.00), which is 75% of the PAGA settlement. The remaining One
21 Thousand Dollars and No Cents (\$1,000.00), 25% of the PAGA settlement, will ~~remain in be~~
22 distributed to the Net Settlement Amount for distribution ~~Aggrieved Employees pursuant to the~~
23 formulas described below.

25 **D. Allocation of Net Settlement Amount and Calculation of Class Settlement**
26 **Shares and PAGA Settlement Shares.** Subject to the terms and conditions of this Agreement,

1 the Settlement Administrator will distribute a payment from the Net Settlement Amount to each
2 Participating Class Member. The Class Settlement Share for each Participating Class Member
3 will be calculated as follows, understanding that the formulas below do not constitute an
4 admission by either party, and are intended only to provide a practical means to simplify and
5 administer the claims process:
6

7 **1. Settlement Shares:**

8
9 (a) **Participating Class Members' Class Settlement Shares.** The
10 settlement shares are allocated 33.33% to wages (for which employment taxes will be deducted
11 and W-2s issued) and 66.66% to penalties (for which 1099s will be issued).

12 (b) **Settlement Ratio Calculation.** The Settlement Administrator
13 shall assign to each Class Member a "Settlement Ratio," which shall be a fractional number
14 comprised of (a) that Class Member's Individual Work Weeks as the numerator, and (b) the
15 aggregate total of all Class Members' Individual Work Weeks as the denominator. The
16 Settlement Administrator shall assign to each Class Member the "Class Settlement Share" which
17 shall be calculated by multiplying that Class Member's Settlement Ratio by the amount allocated
18 to Class Members from the Net Settlement Amount.
19

20 ~~**2. Settlement Share Worksheet.** Upon calculation of the Class Members'~~
21 ~~Settlement Share~~**PAGA Settlement Shares.** The Settlement Administrator shall assign to each
22 Aggrieved Employee a "PAGA Settlement Ratio," which shall be a fractional number comprised
23 of (a) that Aggrieved Employee's Individual PAGA Pay Period as the numerator, and (b) the
24 aggregate total of all Aggrieved Employees' Individual Pay Periods as the denominator. The
25 Settlement Administrator shall assign to each Aggrieved Employee the "PAGA Settlement
26 Share" which shall be calculated by multiplying that Aggrieved Employee's PAGA Settlement
27
28

1 [Ratio by the amount allocated to Aggrieved Employees from the PAGA Penalties.](#)

2 **2.3. Class Settlement Share and PAGA Settlement Share Worksheets.**

3 [Upon calculation of the Class Members' Class Settlement Shares and PAGA Settlement Shares,](#)
4 the Settlement Administrator shall furnish to Class Counsel and Defense counsel a worksheet
5 containing a list unique identifying numbers for each of the Class Members [and Aggrieved](#)
6 [Employees](#) with their corresponding Individual Work Weeks and [Individual PAGA Pay Periods](#)
7 [and Class](#) Settlement Shares.

9 **E. Taxes and Withholdings.** Each [Class](#) Settlement Share is intended, in part, to
10 settle the Class Members' claims for unpaid wages. Each Class Member shall be individually
11 responsible for the employee's share of applicable payroll tax withholdings and deductions.
12 Accordingly, each [Class](#) Settlement Share allocated to wages will be reduced by applicable
13 employee-side payroll tax withholdings and deductions, and the Settlement Administrator will
14 issue a Form W-2 to each Participating Class Member. Defendants will be responsible for the
15 normal employer's share of any payroll tax attributable to the wage portion of the [Class](#)
16 Settlement Share payments. Defendants' payment of the normal employer's share of payroll
17 taxes attributable to the wage portion of the [Class](#) Settlement Share payments will be in addition
18 to the Gross Settlement Amount or Net Settlement Amount.

20 **F. Appointment of Settlement Administrator.** The Parties will ask the Court to
21 appoint ILYM Group, Inc., a qualified administrator, to serve as the Settlement Administrator,
22 which, as a condition of appointment, will agree to be bound by this Agreement with respect to
23 the performance of its duties and its compensation. The Settlement Administrator's duties will
24 include preparing, printing, and mailing the Class Notice to all Class Members; and using
25 reasonable measures to contact all Class Members, including conducting a National Change of
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1 Address search on all Class Members before mailing the Class Notice to each Class Member's
2 address. The Settlement Administrator's duties will also include re-mailing the Class Notice to
3 the Class Member's new address for those Class Members whose address has changed; providing
4 the Parties with weekly status reports about the delivery of Class Notice; calculating Class
5 Settlement Shares; issuing and distributing checks to effectuate the payments due under the
6 Settlement; reporting to the Court as required; and otherwise administering the Settlement
7 pursuant to this Agreement. The Settlement Administrator's reasonable fees and expenses,
8 including the cost of printing and mailing the Class Notice, will be paid out of the Gross
9 Settlement Amount, as set forth herein, subject to Court approval. Any portion of the of the
10 Settlement Administrator's fees and expenses that are not used or which are not awarded by the
11 Court will not revert to Defendant, but instead will be part of the Net Settlement Amount for
12 distribution to Participating Class Members. If the Settlement Administrator's fees and expenses
13 exceed TwelveSix Thousand Five Hundred Dollars and No Cents (\$~~12,000~~6,500.00), such cost
14 will be deducted from the Net Settlement Amount.

17 **IV. PROCEDURES FOR APPROVING SETTLEMENT**

18 **A. Motion for Preliminary Approval of Settlement by the Court.** Class Counsel
19 will move the Court for an order granting Preliminary Approval of the Settlement (the "Motion
20 for Preliminary Approval"), setting a date for the Final Approval Hearing, and approving the
21 Class Notice (attached as **Exhibit A** to this Agreement), the Exclusion Request form (attached
22 as **Exhibit B** to this Agreement), and the Work Weeks Dispute form (attached as **Exhibit C** to
23 this Agreement). Any disagreement among the Parties concerning the Class Notice or other
24 documents necessary to implement the Settlement will be referred to the Court.

26 **1.** At the hearing on the Motion for Preliminary Approval, the Parties

1 anticipate that they will appear and support the granting of the motion, and that Class Counsel
2 will submit an Order Granting Preliminary Approval of Settlement, Approval of Notice to Class
3 and Setting Hearing for Final Approval of Settlement.

4 **2.** Should the Court decline to approve the Settlement, the Settlement will be
5 null and void and the Parties will have no further obligations under it.

6 **B. Notice to Class Members.** After the Court enters its order granting Preliminary
7 Approval of the Settlement, every Class Member will be provided with a “Class Notice.”

8 **1. List of Class Members.** Within fourteen (14) days after the Court grants
9 Preliminary Approval of the Settlement, Defendants shall provide to the Settlement
10 Administrator:

11 **(a)** An electronic database of all Class Members, last known mailing
12 address, Social Security number, and Defendants’ employee identification number (“Class
13 Members’ Data”).

14 **(b)** Corresponding to each Class Member’s name, Defendants shall
15 provide a figure indicating the total number of Work Weeks during the Class Period in which
16 that Class Member was employed by Defendants as a Class Member. That number of Work
17 Weeks shall be referred to as that Class Member’s “Individual Work Weeks.” Defendants shall
18 also provide a figure indicating the total number of Pay Periods during the PAGA Period in which
19 an employee was employed by Defendants as an Aggrieved Employee. That number of Work
20 Weeks shall be referred to as that Aggrieved Employee’s “Individual Pay Periods.”

21 **(c)** If any of the Class Members’ Data are unavailable to Defendant,
22 Defendants will so inform Class Counsel and the Parties will make their best efforts to reconstruct
23 or otherwise agree upon the Class Members’ Data prior to when it must be submitted to the
24

1 Settlement Administrator. Class Members' Data will otherwise remain confidential and will not
2 be disclosed to anyone, except as necessary to applicable taxing authorities, or pursuant to
3 Defendants' express written authorization or by order of the Court.

4 **2. Mailing of Class Notice.** Within fourteen (14) days after receiving the
5 Class Members' Data, or as soon thereafter as it can do so, the Settlement Administrator will
6 mail the Class Notice to all identified Class Members via first-class U.S. mail using the mailing
7 address information provided by Defendant, unless modified by any updated address information
8 that the Settlement Administrator obtains in the course of administration of the Settlement.

9 **3. Returned Class Notice.** If a Class Notice is returned because of an
10 incorrect address, the Settlement Administrator will promptly, and not later than ten (10) days
11 from receipt of the returned Class Notice, search for a more current address for the Class Member
12 and re-mail the Class Notice to the Class Member. The Settlement Administrator will use the
13 Class Members' Data and otherwise work with Defendants' Counsel and Class Counsel to find
14 a more current address. The Settlement Administrator will be responsible for taking reasonable
15 steps, consistent with its agreed-upon job parameters, court orders, and fee, to trace the mailing
16 address of any Class Member for whom a Class Notice is returned as undeliverable by the U.S.
17 Postal Service. These reasonable steps shall include the tracking of all undelivered mail;
18 performing address searches for all mail returned without a forwarding address; and promptly re-
19 mailing to Class Members for whom new addresses are found. If the Class Notice is re-mailed,
20 the Settlement Administrator will note for its own records and notify Class Counsel and
21 Defendants' Counsel of the date and address of each such re-mailing as part of a weekly status
22 report provided to the Parties. [The deadlines for Class Members' written objections, challenges](#)
23 [to Work Weeks or PAGA Pay Periods, and requests for exclusion will be extended an additional](#)
24

1 [14 days beyond the 60 days otherwise provided in the Notice for all Class Members whose notice](#)
2 [is re-mailed. The Settlement Administrator will inform the Class Member of the extended](#)
3 [deadline with the re-mailed Class Notice.](#)

4 **4. Declaration of Settlement Administrator.** Not later than twenty-one
5 (21) court days prior to the Final Approval Hearing, the Settlement Administrator will provide
6 the Parties for filing with the Court a declaration of due diligence setting forth its compliance
7 with its obligations under this Agreement. Prior to the Final Approval Hearing, the Settlement
8 Administrator will supplement its declaration of due diligence if any material changes occur from
9 the date of the filing of its prior declaration.

11 **C. Disputed Class Member [Class](#) Settlement Shares.** If a Class Member disputes
12 his/her estimated [Class Settlement Share or PAGA](#) Settlement Share, the Class Member may
13 produce evidence to the Settlement Administrator for the Class Period- [and PAGA Period](#). In
14 order for the dispute to be considered, he/she must follow the directions on the Class Notice. To
15 be valid and timely, all disputes and supporting documents must be postmarked by the date
16 specified in the Class Notice (no less than 60 days from the initial mailing of the Class Notice by
17 the Settlement Administrator). A Class Member may use the Work Weeks/[Pay Periods](#) Dispute
18 form (**Exhibit C** to this Settlement), though a Class Member is not obligated to do so to ~~request~~
19 ~~exclusion from the Settlement~~[dispute his/her shares.](#)
20

21 **D. Requests for Exclusion from Settlement; and Objections to Settlement.** Class
22 Members may submit requests to be excluded from the effect of the Settlement, or objections to
23 the Settlement, pursuant to the following procedures:

25 **1. Request for Exclusion from Settlement.** A Class Member may request
26 to be excluded from the effect of this Agreement, and any payment of amounts under this
27
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1 Agreement, by timely mailing a letter to the Settlement Administrator stating that the Class
2 Member wants to be excluded from this Action. This letter must include the Class Member's
3 name, address, telephone number, and signature. To be valid and timely, the request to be
4 excluded must be postmarked by the date specified in the Class Notice (no less than 60 days from
5 the initial mailing of the Class Notice by the Settlement Administrator). A Class Member may
6 use the Exclusion Request form (**Exhibit B** to this Settlement), though a Class Member is not
7 obligated to do so to request exclusion from the Settlement. A Class Member who properly
8 submits a valid and timely request to be excluded from the Action shall not receive any payment
9 of any kind in connection with this Agreement or this Action, shall not be bound by or receive
10 any benefit of this Agreement, and shall have no standing to object to the Settlement. A request
11 for exclusion must be mailed to the Settlement Administrator at the address provided on the Class
12 Notice. The Settlement Administrator shall transmit the request for exclusion to counsel for the
13 Parties as follows:

16 *To Class Counsel:*

17 David G. Spivak, Esq.
18 The Spivak Law Firm
19 8605 Santa Monica Blvd.
20 PMB 42554
West Hollywood, CA 90069

To Defense Counsel:

Michael A. Hood, Esq.
Jackson Lewis P.C.
200 Spectrum Center Drive, Suite 500
Irvine, CA, 92618

21
22 Every Class Member who submits a valid and timely Exclusion Request is a Non-Participating
23 Class Member and shall not receive a Class Settlement Share. The Settlement Administrator will
24 retain amounts equal to their Class Settlement Shares in the Net Settlement Amount for
25 distribution to Participating Class Members on a pro rata basis. Because future PAGA claims are
26 subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who
27 are Aggrieved Employees are deemed to release the claims identified in section V.B of this

[Agreement and are eligible for a PAGA Settlement Share.](#)

2. Objections to Settlement. The Class Notice will provide that any Class Member who does not request exclusion from the Action and who wishes to object to the Settlement should submit an objection in writing to the Settlement Administrator not later than 60 days after the Settlement Administrator mails the Class Notice. The written objection to the Settlement should set forth the grounds for the objection and the other information required by this paragraph. The objection should be mailed to the Settlement Administrator at the address provided on the Class Notice. The Settlement Administrator shall transmit the objections to counsel for the Parties as follows:

To Class Counsel:

David G. Spivak, Esq.
The Spivak Law Firm
8605 Santa Monica Blvd.
PMB 42554
West Hollywood, CA 90069

To Defense Counsel:

Michael A. Hood, Esq.
Jackson Lewis P.C.
200 Spectrum Center Drive, Suite 500
Irvine, CA, 92618

Counsel will promptly file such objection with the Court.

The written objection should state the objecting Class Member's full name, address, and the approximate dates of his or her employment with Defendants. The written objection should state the basis for each specific objection and any legal support in clear and concise terms. The written objection also should state whether the Class Member intends to formally intervene and become a party of record in the action, and upon formally intervening, appear and argue at the Final Approval Hearing.

Regardless of whether an objecting Class Member complies with the objection procedure encouraged above, the Court will provide a Class Member with the opportunity to speak at the final approval hearing regardless of whether he or she has filed an appearance or submitted a

1 written opposition beforehand. If the objecting Class Member does not formally intervene in the
2 action and/or the Court rejects the Class Member's objection, the Class Member will still be
3 bound by the terms of this Agreement.

4 **E. Report.** Not later than fourteen (14) days after the deadline for submission of
5 requests for exclusion, the Settlement Administrator will provide the Parties with a complete and
6 accurate list of all Class Members who sent timely requests to be excluded from the Action and
7 all Class Members who objected to the settlement.
8

9 **F. No Solicitation of Objection; Right to Void.** Neither the Parties, nor their
10 respective counsel, will directly or indirectly solicit or otherwise encourage any Class Member
11 to seek exclusion from the Settlement, object to the Settlement, or to appeal from the Judgment.
12 If Class Members accounting for 5.00% or more of the Class submit valid requests to be excluded
13 from the Settlement, then Defendants shall have the unilateral right to void this Settlement.
14 Defendants may do so by giving notice to Class Counsel and the Court of their election to void
15 the Settlement not later than seven (7) days before the Final Approval Hearing. No sums shall be
16 payable by Defendants if this Agreement is voided as provided for herein with one exception:
17 Defendants agree to pay any fees owing to the Settlement Administrator for services rendered in
18 the event Defendants exercise their right to void the Settlement.
19

20 **G. Additional Briefing and Final Approval.** Plaintiff will file with the Court a
21 motion for final approval of the Settlement and payment of the Settlement Administrator's
22 reasonable fees and expenses and a memorandum in support of their motion; and Plaintiff and
23 Class Counsel will serve on Defendants and file with the Court a motion for awards of the Class
24 Representative Payment, the Class Counsel Fees Payment, and the Class Counsel Litigation
25 Expenses Payment pursuant to this Settlement, and memoranda in support of their motions.
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1 Before the Final Approval Hearing, the Parties shall be entitled to file and serve a
2 response to any Class Member's objection to the Settlement and/or reply in support of their
3 motion for final approval of the Settlement, and payment of the Settlement Administrator's
4 reasonable fees and expenses to the extent that any opposition to the motion is filed; and Plaintiff
5 and Class Counsel may file replies in support of their motions for the Class Representative
6 Payment, the Class Counsel Fees Payment, and the Class Counsel Litigation Expenses Payment.

7
8 If the Court ultimately does not grant final approval of the Settlement or grants final
9 approval conditioned on any material change to the Settlement, then either Party will have the
10 unilateral right to void the Settlement in its entirety; if that occurs, the Parties will have no further
11 obligations under the Settlement, including any obligation by Defendants to pay the Gross
12 Settlement Amount or any amounts that otherwise would have been payable under this
13 Agreement, except that Defendants and Plaintiff will jointly and equally pay the Settlement
14 Administrator's reasonable fees and expenses incurred as of the date that the Party exercises the
15 right to void the Settlement under this Paragraph. However, an award by the Court of a lesser
16 amount than that sought by Plaintiff and Class Counsel for the Class Representative Payment,
17 the Class Counsel Fees Payment, or the Class Counsel Litigation Expenses Payment, will not
18 constitute a material modification to the Settlement within the meaning of this Paragraph and
19 shall not render the Settlement voidable. Plaintiff and Class Counsel shall retain the right to
20 appeal awards of attorneys' fees and costs less than requested.
21

22
23 Upon final approval of the Settlement by the Court at or after the Final Approval Hearing,
24 the Parties will present for the Court's approval and entry a Proposed Final Order and Judgment.
25 The Final Order and Judgment shall permanently bar all Participating Class Members from
26 prosecuting against Defendants any claims within the scope of the Releases contained in this
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1 Agreement.

2 After entry of the Judgment, the Court will have continuing jurisdiction over the Action
3 and the Settlement solely for purposes of (i) enforcing this Agreement, (ii) addressing settlement
4 administration matters, and (iii) addressing such post-Judgment matters as may be appropriate
5 under court rules or applicable law.
6

7 **H. Waiver of Right to Appeal.** Provided that the Judgment is consistent with the
8 terms and conditions of this Agreement, and that no Class Member timely objects to the
9 Settlement and formally intervenes into the action as required under the California Supreme
10 Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 4th 260, 228 Cal. Rptr. 3d 106
11 (2018) or files a motion pursuant to Civil Procedure Code section 663, Defendants, and their
12 respective counsel hereby waive, except as provided for in this Agreement or prohibited by law,
13 any and all rights to appeal from the Judgment, including all rights to any post-judgment
14 proceeding and appellate proceeding, such as a motion to vacate judgment, a motion for new
15 trial, any extraordinary writ, and any appeal, and the Judgment therefore will become non-
16 appealable at the time it is entered. The waiver of appeal does not include any waiver of the right
17 to oppose any appeal, appellate proceedings, or post-judgment proceedings. If an appeal is taken
18 from the Judgment, the time for consummation of the Settlement (including making any
19 payments under the Settlement) will be suspended until the appeal is fully and finally resolved
20 and the Judgment, consistent with the terms of this Agreement, becomes Final.
21

22
23 **I. Vacating, Reversal, or Material Modification of Judgment on Appeal or**
24 **Review.** If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other
25 motion, petition, writ, application, or appeal, the reviewing court vacates, reverses, or modifies
26 the Judgment such that there is a material modification to the Settlement, and that court's decision
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1 is not completely reversed and the Judgment is not fully affirmed on review by a higher court,
2 then either Plaintiff or Defendants will have the unilateral right to void the Settlement, which the
3 Party must do by giving written notice to the other Parties, the reviewing court, and the Court,
4 not later than fourteen (14) days after the reviewing court's decision vacating, reversing, or
5 materially modifying the Judgment becomes final. The Party exercising its right to unilaterally
6 void the Settlement pursuant to this provision agrees to pay any fees owing to the Settlement
7 Administrator for services rendered. An order vacating, reversing or modifying the Court's award
8 of the Class Representative Payment, or the Class Counsel Fees Payment and/or Class Counsel
9 Litigation Expenses Payment will not constitute a vacation, reversal, or material modification of
10 the Judgment within the meaning of this paragraph, and shall not render the Settlement voidable.

11
12 **J. Establishment of Settlement Account.** The Settlement Administrator shall
13 establish a Settlement Account for distributing Class Settlement Shares and Payments identified
14 in this Agreement. Within ten (10) calendar days of the Effective Date, Defendants shall pay the
15 Gross Settlement Amount into the Settlement Account.
16

17 **K. Payment of Class Settlement Shares and PAGA Settlement Shares.** Within
18 ten (10) calendar days of receipt of the Gross Settlement Amount, the Settlement Administrator
19 shall pay Class Settlement Shares, from the Settlement Account, to all Class Members (who do
20 not submit valid requests to be excluded from the Action~~);~~ and PAGA Settlement Shares to all
21 Aggrieved Employees. The Settlement Administrator shall pay each Class Settlement Share by
22 sending a check in the appropriate amount to the Class Member at the address indicated in the
23 list of Class Member names and addresses provided by Defendants, or as subsequently
24 determined by the Settlement Administrator to be the correct address. The Settlement
25 Administrator will send checks for PAGA Settlement Shares to all Aggrieved Employees
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1 [including Non-Participating Class Members who qualify as Aggrieved Employees \(including](#)
2 [those for whom Class Notice was returned undelivered\). The Settlement Administrator may send](#)
3 [Participating Class Members a single check combining the Class Settlement Shares and PAGA](#)
4 [Settlement Shares. Before mailing any checks, the Settlement Administrator must update the](#)
5 [recipients' mailing addresses using the National Change of Address Database.](#)

6
7 **L. Uncashed [Class](#) Settlement Share Checks.** Any check issued by the Settlement
8 Administrator to Class Members who do not timely and validly opt out shall be negotiable for
9 one hundred and eighty (180) calendar days. Those funds represented by checks returned as
10 undeliverable and those checks remaining un-cashed for more than 180 days after issuance
11 (collectively, "Voided Settlement Checks"), plus any interest that has accrued on those funds,
12 will be paid to the California Unclaimed Property Fund.

13
14 **M.** The Settlement Administrator will mail or wire all required payments no later than
15 fourteen (14) calendar days after receipt of the funds representing the Gross Settlement Amount
16 from Defendants. Proof of payment will be filed with the Court.

17 **N. Final Report by Settlement Administrator to Court.** Within ten (10) calendar
18 days after final disbursement of all funds from the Settlement Account, the Settlement
19 Administrator will serve on the Parties for filing with the Court a declaration providing a final
20 summary report on the disbursements of all funds from the Settlement Account.

21 **V. RELEASE OF CLAIMS**

22
23 **A. Plaintiff and [Participating](#) Class Members.** The Parties agree that it is their
24 intent that the resolution set forth in this Settlement will release any further attempt, by lawsuit,
25 administrative claim or action, arbitration, demand, or other action of any kind by each and all
26 of the Settlement Class Members (including participation to any extent in any representative or
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1 collective action), against Defendants and all of their present and former parent companies,
2 subsidiaries, divisions, concepts, related or affiliated companies and its shareholders, officers,
3 directors, employees, agents, attorneys, insurers, successors and assigns, and any individual or
4 entity that could be liable for any of the Released Claims, and Defendants' counsel of record in
5 these Action ("Released Parties"), arising during the period May 28, 2016 through April 15,
6 2021,~~are.~~ The release is limited to any and all ~~claims under~~ state, federal, or local law, whether
7 statutory or common law ~~arising out of the~~ claims expressly pleaded ~~the Actions and all other~~
8 ~~claims, such as those under the California Labor Code, Wage Orders, regulations, and/or other~~
9 ~~provisions of law, that could have been pleaded based on the facts pleaded in the Action~~Operative
10 Complaint, or arising out of facts asserted in the Operative Complaint, including claims for: (i)
11 failure to provide rest breaks; (ii) failure to provide meal periods; (iii) failure to pay all wages
12 earned for hours worked at the correct rates of pay; (iv) failure to indemnify; (v) wage statement
13 penalties; (vi) waiting time penalties; (vii) unfair competition;~~and (viii) civil penalties under~~
14 ~~PAGA~~ ("Class Released Claims"). This release will not take effect until Defendants have paid
15 the Gross Settlement Amount in full per this Settlement Agreement.

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18 **B. Release by Non-Participating Class Members Who Are Aggrieved**
19 **Employees:** All Non-Participating Class Members who are Aggrieved Employees are deemed to
20 release, on behalf of themselves and their respective former and present representatives, agents,
21 attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for
22 PAGA penalties that were alleged, or reasonably could have been alleged, for the PAGA Period
23 and based on the facts stated in the PAGA Letter ("PAGA Released Claims"). The Aggrieved
24 Employees will release the PAGA Release Claims even if they submit a valid and timely
25 Exclusion Request.

26
27 **B.C. Class Counsel.** As of the date the Judgment becomes Final, and except as
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1 otherwise provided by this Agreement, Class Counsel and any counsel associated with Class
2 Counsel (The Spivak Law Firm and United Employees Law Group), including without limitation
3 David G. Spivak, Esq. and Walter L. Haines, Esq., waive any claim to costs and attorneys' fees
4 and expenses against Defendants or the Releasees arising from or related to the Action, except
5 those incurred to enforce this Agreement and collect the Judgment, including but not limited to
6 claims based on the California Labor Code, the California Civil Code, the California Code of
7 Civil Procedure, the Fair Labor and Standards Act, or any other statute or law (the "Class Counsel
8 Released Claims").

9
10 **VI. NON-PUBLICITY PROVISION**

11 The Parties and their counsel agree that they will not issue any press releases, initiate any
12 contact with the press, respond to any press inquiry, or have any communication with the press
13 about the fact, amount, or terms of the Settlement. In addition, the Parties and their counsel agree
14 that they will not engage in any advertising or distribute any marketing materials relating to the
15 Settlement of this case in any manner that identifies the Defendants, including but not limited to
16 any postings on any websites maintained by Class Counsel. Neither Plaintiff nor Class Counsel
17 will discuss the terms or the fact of the Settlement with third parties other than (1) their immediate
18 family members, (2) their respective accountants or lawyers as necessary for tax purposes; or (3)
19 other Class Members. Plaintiff and Class Counsel agree not to publish any of the terms or
20 conditions of this Settlement in any manner that identifies the Defendants.
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23 **VII. MISCELLANEOUS TERMS**

24 **A. No Effect on Other Benefits.** The [Class](#) Settlement Shares will not result in any
25 additional employee benefit payments (such as pension, ERISA, 401(k), vacation, or bonus) and
26 shall not have any effect on the eligibility for, or calculation of, any employee benefit. Plaintiff
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1 and Class Members will be deemed to have waived all such claims, whether known or unknown
2 by them, as part of their release of claims under this Agreement.

3 **B. No Admission of Liability.** Defendants deny that they have engaged in any
4 unlawful activity, have failed to comply with the law in any respect, or have any liability to
5 anyone under the claims asserted in the Action. This Agreement is entered into solely for the
6 purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will
7 be construed as an admission of liability or wrongdoing by Defendants, or an admission by
8 Plaintiff that any of his claims was non-meritorious or any defense asserted by Defendants was
9 meritorious. This Settlement and the fact that Plaintiff and Defendants were willing to settle the
10 Action will have no bearing on, and will not be admissible in connection with, any litigation
11 (other than solely in connection with the Settlement).
12

13 **C.** Whether or not the Judgment becomes Final, neither the Settlement, this
14 Agreement, any document, statement, proceeding or conduct related to the Settlement or the
15 Agreement, nor any reports or accounting of those matters, will be (i) construed as, offered or
16 admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to
17 Defendants or any other Releasees, including, but not limited to, evidence of a presumption,
18 concession, indication or admission by any of the Releasees of any liability, fault, wrongdoing,
19 omission, concession or damage; or (ii) disclosed, referred to or offered in evidence against any
20 of the Releasees, in any further proceeding in the Action, or any other civil, criminal or
21 administrative action or proceeding except for purposes of effectuating the Settlement pursuant
22 to this Agreement.
23
24

25 **D. Integrated Agreement.** After this Agreement is signed and delivered by all
26 Parties and their counsel, this Agreement and its exhibits will constitute the entire agreement
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28

1 between the Parties relating to the Settlement, and it will then be deemed that no oral
2 representations, warranties, covenants, or inducements have been made to any Party concerning
3 this Agreement or its exhibits other than the representations, warranties, covenants, and
4 inducements expressly stated in this Agreement and its exhibits.

5 **E. Attorney Authorization.** Class Counsel and Defense Counsel warrant and
6 represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate
7 action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate
8 its terms, and to execute any other documents required to effectuate the terms of this Agreement.
9 The Parties and their counsel will cooperate with each other and use their best efforts to effect
10 the implementation of the Settlement. In the event the Parties are unable to reach agreement on
11 the form or content of any document needed to implement the Agreement, or on any supplemental
12 provisions that may become necessary to effectuate the terms of this Agreement, the Parties will
13 seek the assistance of the Court, and in all cases, all such documents, supplemental provisions
14 and assistance of the court will be consistent with this Agreement.

15 **F. Modification of Agreement.** This Agreement, and all parts of it, may be
16 amended, modified, changed, or waived only by an express written instrument signed by all
17 Parties or their successors-in-interest.

18 **G. Agreement Binding on Successors.** This Agreement will be binding upon, and
19 inure to the benefit of, the successors of each of the Parties.

20 **H. Applicable Law.** All terms and conditions of this Agreement and its exhibits will
21 be governed by and interpreted according to the laws of the State of California, without giving
22 effect to any conflict of law principles or choice of law principles.

23 **I. Cooperation in Drafting.** The Parties have cooperated in the drafting and
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1 preparation of this Agreement. This Agreement will not be construed against any Party on the
2 basis that the Party was the drafter or participated in the drafting.

3 **J. Fair Settlement.** The Parties and their respective counsel believe and warrant that
4 this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived
5 at this Agreement through arms-length negotiations, considering all relevant factors, current and
6 potential.

7
8 **K. Headings.** The descriptive heading of any section or paragraph of this Agreement
9 is inserted for convenience of reference only and does not constitute a part of this Agreement.

10 **L. Notice.** All notices, demands or other communications given under this
11 Agreement will be in writing and deemed to have been duly given as of the third calendar day
12 after mailing by United States mail, addressed as follows:

13 *To Class Counsel:*
14 David G. Spivak, Esq.
15 The Spivak Law Firm
16 8605 Santa Monica Blvd.
17 PMB 42554
18 West Hollywood, CA 90069

To Defense Counsel:
 Michael A. Hood, Esq.
 Jackson Lewis P.C.
 200 Spectrum Center Drive, Suite 500
 Irvine, CA, 92618

19 **Execution in Counterpart.** This Agreement may be executed in one or more
20 counterparts. All executed counterparts and each of them will be deemed to be one and the same
21 instrument provided that counsel for the Parties will exchange between themselves original signed
22 counterparts. Facsimile signatures will be presumptive evidence of execution of the original,
23 which shall be produced on reasonable request. Any executed counterpart will be admissible to
24 prove the existence and contents of this Agreement.

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Dated: By: _____
ANDREW BURDICK

Dated: By: _____
MARTIN KELLY, President and CEO
of
PEACH STATE ROOFING, INC.

Dated: By: _____
MARTIN KELLY

THE SPIVAK LAW FIRM

Dated: By: _____
DAVID G. SPIVAK, Attorneys for
Plaintiff, ANDREW BURDICK, and all
others similarly situated

UNITED EMPLOYEES LAW GROUP

Dated: By: _____
WALTER L. HAINES, Attorneys for
Plaintiff, ANDREW BURDICK, and all
others similarly situated

JACKSON LEWIS P.C.

Dated: By: _____
MICHAEL A. HOOD
~~JONATHAN D. KENT~~
Attorneys for Defendant, PEACH
STATE ROOFING, INC., MARTIN
KELLY, and CHRIS KELLY

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EXHIBIT A

1 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
2 **FOR THE COUNTY OF LOS ANGELES**
3 **(UNLIMITED JURISDICTION)**

4 ANDREW BURDICK, on behalf of himself and all others
5 similarly situated, and as an “aggrieved employee” on
6 behalf of other “aggrieved employees” under the Labor
7 Code Private Attorneys General Act of 2004,

8 *Plaintiff,*

9 vs.

10 PEACH STATE ROOFING, INC., a Georgia corporation;
11 MARTIN KELLY, A NATURAL PERSON; CHRIS
12 KELLY, A NATURAL PERSON; and DOES 1–50,
13 inclusive,

14 *Defendant(s).*

Case No. 20STCV20397

Action filed: 5/28/2020

Department: SSC-14, The Honorable Kenneth R.
Freeman

15 **NOTICE OF PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT**

16 **I. WHY DID I GET THIS NOTICE?**

17 The records of Peach State Roofing, Inc. and Martin Kelly (collectively “Defendants”) indicate that you
18 worked for Defendants in California at some time between May 28, 2016 and April 15, 2021 (the “Class Period”)
19 as a non-exempt employee. This Notice explains that for settlement purposes only, the Court has granted preliminary
20 approval of this class action settlement that may affect you. You have legal rights and options that you may exercise
21 at this time.

22 **II. WHAT IS THIS CLASS ACTION LAWSUIT ABOUT?**

23 Plaintiff, who Defendants formerly employed as a non-exempt employee, filed a class action lawsuit on
24 behalf of himself and similar employees claiming that Defendants violated California labor laws by: ~~failure~~failing
25 to pay wages, ~~failure~~failing to provide meal periods, ~~failure~~failing to authorize and permit rest periods, ~~failure~~failing
26 to indemnify for business expenses, ~~failure~~failing to issue proper wage statements, ~~failure~~failing to timely pay wages
27 and related allegations.

28 Defendants deny any wrongdoing, deny Plaintiff’s allegations, and contend they were in full compliance
with all California labor laws.

 The Court has not ruled on whether Plaintiff’s allegations have any merit. However, for the purpose of
avoiding the time and expense of further litigation, the ultimate outcome of which is uncertain, and to provide a fair
and reasonable resolution of this legal dispute, Plaintiff and Defendants have negotiated a settlement whereby
Defendants have agreed to pay Five Hundred Fifty Thousand Dollars and No Cents (\$550,000.00) to resolve all of
the class claims listed above. The Settlement is not an admission by Defendants of any liability.

 Defendants estimated for purposes of mediation that there were approximately 2,737 total qualifying Work
Weeks and 90 Class Members for the period of June 15, 2016 to March 24, 2021. These numbers would be expected
to increase proportionately for the passage of time between that date and the time of preliminary approval. ~~At least~~
~~10 days before the Settlement Administrator send out notice of the Settlement to Class Members, the Settlement~~
~~Administrator will advise Class Counsel of Defendants’ report of the total number of qualifying Work Weeks and~~

1 Class Members between May 28, 2016 and April 15, 2021. If the qualifying Work Weeks and/or Class Members
2 exceeds the above referenced qualifying Work Weeks and/or Class Members reported by Defendants by more than
3 10%, i.e., exceeds 3,011 qualifying Work Weeks and/or 99 Class Members ("Escalator Threshold"), the Maximum
Settlement Amount will increase by the difference between the Escalator Threshold and the additional qualifying
Work Weeks or Class Members over the Escalator Threshold. No other payment will be owed by Defendants.

4 **III. WHO IS INCLUDED IN THIS CLASS ACTION?**

5 The proposed Settlement has two main parts: (1) a Class settlement requiring Defendants to pay Class
6 Settlement Shares to Class Members, and (2) a Private Attorneys General Act ("PAGA") settlement requiring
7 Defendants to pay PAGA Settlement Shares to Aggrieved Employees and penalties to the California Labor and
8 Workforce Development Agency ("LWDA").

9 The Class consists of all persons who Defendants employed on a non-exempt, hourly basis in California
during the Class Period (collectively "Class Members"). The Class Period is May 28, 2016 to April 15, 2021.

10 Aggrieved Employees all persons who Defendants employed on a non-exempt, hourly basis in California
11 during the PAGA Period. The PAGA Period is October 21, 2018 to April 15, 2021.

12 **IV. WHAT DOES THE PROPOSED SETTLEMENT OFFER?**

13 A. Defendants will pay \$550,000.00, plus their employer-side payroll taxes, to settle the claims. A
14 Settlement Administrator has been appointed to administer the settlement. The Settlement Administrator will pay
15 from the \$550,000.00: (1) costs of administering the claims up to ~~\$12,000~~ \$500.00; (2) attorneys' fees up to
16 \$183,333.00 plus documented costs up to \$15,000.00; (3) an enhancement not to exceed \$15,000.00 to Plaintiff for
17 his work on the class claims; and (4) ~~\$34,000.00~~ as PAGA Penalties (75% of which will be paid to the California
18 Labor & Workforce Development Agency ("LWDA") and 25% will be paid to the Aggrieved Employees). If the
19 number of Class Members increases by more than 10.00%, the Defendants will pay a pro rata increase in the Gross
20 Settlement Amount, including pro rata increases in the Class Counsel Fees Payment, and the allocation to the Private
21 Attorneys General Act claim.

22 ~~B. Your individual share will be~~ B. Based on Defendants' records, your estimated individual
23 share of the Class settlement ("Class Settlement Share") is \$ _____. This amount was calculated based on the
24 number of Work Weeks you worked for Defendants during the Class Period. The amount of money you receive ~~will~~
25 ~~be~~ is based on the size of your share in comparison to the size of all ~~class members'~~ Class Members' shares combined.
26 The ~~Settlement Administrator~~ actual amount you may receive likely will be different and will depend on a number
27 of factors. The Settlement Administrator will assign to each ~~class member~~ Class Member a "Settlement Ratio," which
28 will be a fractional number comprised of (a) the number of Work Weeks that a ~~class member~~ Class Member worked
for Defendants during the Class Period as the numerator, and (b) the aggregate total number of Work Weeks that all
~~class members~~ Class Members worked during the Class Period as the denominator. The Settlement Administrator
will assign to each Class Member the "Class Settlement Share" which will be calculated by multiplying that class
member's Settlement Ratio by amount allocated to Class Members from the Net Settlement Amount.

C. Based on Defendants' records, your estimated individual share of the PAGA
settlement ("PAGA Settlement Share") is \$ _____. This amount was calculated based on the number of Pay Periods
you worked for Defendants during the period of time from October 21, 2018 through April 15, 2021 ("PAGA
Period"). The amount of money you receive is based on the size of your share in comparison to the size of all
Aggrieved Employees' shares combined. The Settlement Administrator will assign to each Aggrieved Employee a
"PAGA Settlement Ratio," which will be a fractional number comprised of (a) the number of Pay Periods that an
Aggrieved Employee worked for Defendants during the PAGA Period as the numerator, and (b) the aggregate total
number of Pay Periods that all Aggrieved Employees worked during the PAGA Period as the denominator. The
Settlement Administrator will assign to each Aggrieved Employee the "PAGA Settlement Share" which will be
calculated by multiplying that class member's PAGA Settlement Ratio by the amount allocated to Aggrieved
Employees from the PAGA Penalties. If no amount is stated for your PAGA Settlement Share, then according to

1 [Defendants' records you are not eligible for a PAGA Settlement Share under the Settlement because you didn't work](#)
2 [during the PAGA Period.](#)

3 D. If you do not exclude yourself from the settlement (according to the procedures explained below),
4 you will release any further attempt, by lawsuit, administrative claim or action, arbitration, demand, or other action
5 of any kind (including participation to any extent in any representative or collective action), against Defendants and
6 all of their present and former parent companies, subsidiaries, divisions, concepts, related or affiliated companies
7 and its shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any
8 individual or entity that could be liable for any of the Released Claims, and Defendants' counsel of record in these
9 Action ("Released Parties"), arising during the period May 28, 2016 through April 15, 2021, ~~are~~. [The release is](#)
10 [limited to any and all ~~claims under~~ state, federal, or local law, whether statutory or common law ~~arising out of the~~](#)
11 [claims expressly pleaded ~~the Actions and all other claims, such as those under the California Labor Code, Wage~~](#)
12 [Orders, regulations, and/or other provisions of law, that could have been pleaded based on the facts pleaded in the](#)
13 [Action/Operative Complaint, or arising out of facts asserted in the Operative Complaint, including claims](#) for: (i)
14 failure to provide rest breaks; (ii) failure to provide meal periods; (iii) failure to pay all wages earned for hours
15 worked at the correct rates of pay; (iv) failure to indemnify; (v) wage statement penalties; (vi) waiting time penalties;
16 (vii) unfair competition; ~~and (viii) civil penalties under PAGA~~ ("Class Released Claims"). This release will not
17 take effect until Defendants have paid the Gross Settlement Amount in full per this Settlement Agreement.

18 [If you are an Aggrieved Employee, you cannot opt out of the PAGA portion of the Settlement and you will](#)
19 [be deemed to release the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could](#)
20 [have been alleged, for the PAGA Period and based on the facts stated in the PAGA Letter that Plaintiff sent to the](#)
21 [LWDA.](#)

22 **V. WHAT ARE MY OPTIONS?**

23 A. **You may accept your share of the \$550,000.00 settlement.** You will be deemed to have accepted
24 your share of the \$550,000.00 settlement if you do not submit a timely and valid request to be excluded from the
25 settlement as described in this Notice. In accepting your settlement share, you will waive all "Released Claims" as
26 described above.

27 B. **You may accept your share of the \$550,000.00 settlement but dispute the number of your**
28 **Work Weeks.** If you do not agree with the number of Work Weeks [or PAGA Pay Periods](#) on this Class Notice, you
should provide the corrected information to the Settlement Administrator. You may use the enclosed Work
Weeks/[PAGA Pay Periods](#) Dispute form for this purpose but you are not required to do so to dispute the number of
your Work Weeks ~~or PAGA Pay Periods~~. Write down all dates that you worked or the number of Work Weeks you
worked during the Class Period ~~and the number of PAGA Pay Periods that you worked during the PAGA Period~~.
Send in any documents to support your Work Weeks [and PAGA Pay Periods](#) by mail to the Settlement
Administrator, ILYM Group, Inc., at the following address: _____, or by
calling _____. The Settlement Administrator will read the documents both you and Defendants provide
and make the final determination of the amount of your settlement award. Your supporting documentation must be
postmarked by <<date>> to be valid. Once the dispute is resolved by the Settlement Administrator, and if the
Settlement is finally approved by the Court, you will be sent a check for your [Class Settlement Share and PAGA](#)
Settlement Share and you will have released all "Released Claims" as described above.

C. **You may exclude yourself from the class action settlement.** If you exclude yourself from the
class action settlement, you will no longer be a member of the Class so you will not receive any class action
settlement money and you will not be bound by the class settlement Release. [You cannot exclude yourself from the](#)
[PAGA portion of the settlement.](#) To be excluded from the class action settlement, you must send by mail, postmarked
by <<date>>, a written letter requesting that you be excluded from the class action with your name, address,
telephone number, and signature to the Settlement Administrator, ILYM Group, Inc., at the following address:
_____, or by calling _____.

D. **You may object to the settlement.** If you want to object to the settlement because you find it
unfair, unreasonable, or inadequate, you may do so according to the procedures set forth below in paragraph IX

1 below. By objecting, you are not excluding yourself from the settlement. To do so, you should follow the procedures
2 below. If the Court approves the settlement despite your objection, and you do not submit a timely request to be
3 excluded from the settlement, you will be sent a check for your settlement share and you will be bound by the
Release described above. The Court will consider the merits of all timely objections, whether or not the objector
appears at the final fairness hearing.

4 E. **Timing of Payments of Class Settlement Shares and PAGA Settlement Shares.** The parties
5 do not expect the distribution of Class Settlement Shares and PAGA Settlement Shares to take place for several
6 months, so please be patient and, if you change your address, advise the Settlement Administrator immediately.

6 **VI. WHAT IS MY ESTIMATED SHARE?**

7 Your *estimated ~~share~~Class Settlement Share* is [insert estimated share]. This amount was calculated based
8 on Defendants' records, which show that you worked approximately <<insert class member Work Weeks>> Work
9 Weeks: during the Class Period. This amount is an estimate. The actual amount you receive may be more or less
10 than the estimated amount shown, depending on a number of factors including whether other class members request
11 exclusion from the Settlement and how much the Court approves in attorneys' fees, litigation expenses, and other
12 costs.

Your estimated PAGA Settlement Share is [insert estimated share]. This amount was calculated based on
Defendants' records, which show that you worked approximately <<insert class member PAGA Pay Periods>> Pay
Periods during the PAGA Period.

13 **VII. WHAT ARE THE PROCEDURES FOR PAYMENT?**

14 A. The Settlement Administrator will calculate your ~~share~~Class Settlement Share and PAGA
Settlement Share of the \$550,000.00 settlement and issue you a check for your settlement share.

15 B. The ~~settlement-shares~~Class Settlement Shares are allocated 33.33% to wages (for which
16 employment taxes will be deducted and W-2s issued) and 66.66% to penalties (for which 1099s will be issued).

17 C. You will have one hundred and eighty (180) calendar days from the date of the check's issuance
18 to cash your settlement check. After the expiration of the 180-day period, any amounts from settlement checks that
remain uncashed and otherwise unclaimed, plus any interest that has accrued on those funds, will be paid to the
California Unclaimed Property Fund.

19 D. It is important for the parties to have your current address in order to be able to send you other
20 mailings regarding this case. You should contact the Settlement Administrator to report any change of your address
after you receive this Notice. Failure to report a change of address may result in you not receiving money from the
settlement.

21 **VIII. HEARING ON PROPOSED SETTLEMENT**

22 A final fairness hearing will be held by the Court at <<time>> on <<date>>, in **the Superior Court for
23 the County of Los Angeles, 312 North Spring Street, Spring Street Courthouse, Los Angeles, CA 90012, Dept.
SSC-14 (The Honorable Kenneth R. Freeman)**, to decide whether or not the proposed settlement is fair, reasonable
24 and adequate. You do not have to attend the hearing. Class Counsel will answer any questions the Judge may have.
But, you are welcome to come at your own expense.

25 Effective Monday, April 4, 2022, face masks are strongly recommended inside all Los Angeles County
26 courthouses in alignment with Los Angeles County Department of Public Health guidance. The Court's remote
27 appearance technology, LACourtConnect, is available for appearances. To register to appear remotely, visit
28 <https://my.lacourt.org/laccwelcome>.

1 **IX. PROCEDURES FOR EXCLUSION FROM SETTLEMENT**

2 If you wish to exclude yourself settlement, and any payment of amounts under the Agreement, as described
3 above, you must mail a letter to the Settlement Administrator stating that you want to be excluded from the
4 Settlement. ~~This~~ You can also use the Exclusion Request form included with this Notice though you are not obligated
to do so. This for or your letter must include your name, address, telephone number, and signature on or before 60
5 days from the mailing of this Notice. The Exclusion Request must be mailed to the Settlement Administrator as
6 follows:

7 *To Settlement Administrator:*

8 *Burdick v. Peach State Roofing, Inc.*
9 Settlement Administrator

10 c/o _____

11 _____

12 You may use the enclosed Exclusion Request form for this purpose, though you are not required to request exclusion
13 from the Settlement.

14 **X. PROCEDURES FOR OBJECTING TO SETTLEMENT**

15 If you wish to object to the settlement as described above, you are strongly encouraged to do two things:
16 (1) submit an objection in writing to the Settlement Administrator stating why you object to the settlement on or
17 before 60 days from the mailing of this Notice; and (2) formally intervene into the court action as an aggrieved party
18 by filing separate paperwork with the Court through your own independent legal counsel or as a *pro per*.

19 The written objection should be mailed to the Settlement Administrator as follows:

20 *To Settlement Administrator*

21 *Burdick v. Peach State Roofing, Inc.*
22 Settlement Administrator

23 c/o _____

24 _____

25 The written objection should state your full name, address, and the dates of your employment with
26 Defendants. The written objection should state the basis for each specific objection and any legal support in clear
27 and concise terms. The written objection also should state whether you or your lawyer plan to formally intervene in
28 the action and intend to appear and object at the Final Approval Hearing. Class Counsel will file any objections
received with the Court within 5 calendar days of receipt. Objectors will be provided with the opportunity to speak
at the final approval hearing regardless of whether they have filed an appearance or submitted a written opposition
beforehand.

**If you do not timely object to the Settlement and also formally intervene into the court action as set
forth above, you may waive your right to appeal and standing to appeal the class settlement judgment that
ultimately is entered by the Court over your objections.** If you send an objection and/or formally intervene in the
action, you may come to Court and be heard, but you do not have to come to Court to talk about it. As long as you
mail your written objection on time, the Court will consider it. You may also pay your own lawyer to attend the
Final Approval Hearing. The Court will also provide objectors the opportunity to speak at the final approval hearing
regardless of whether they have filed an appearance or submitted a written opposition beforehand.

1 **XI. EXAMINATION OF COURT PAPERS AND INQUIRIES**

2 This Notice summarizes the class action settlement. To obtain additional information regarding the
3 settlement you may: (1) call the Settlement Administrator at _____; (2) inspect the complete court
4 file at maintained by the Clerk of the Superior Court for the County of Los Angeles, Los Angeles County Courthouse,
312 North Spring Street, Spring Street Courthouse, Los Angeles, CA 90012, Department SSC-14 (The Honorable
Kenneth R. Freeman); (3) or access the court file via the Los Angeles County Superior Court's web site (information
about filed civil cases can be found on the Court's general website at [https://www._____](https://www._____.)).

5 If you have any questions or comments regarding this Notice, the claims asserted in this class action and/or
6 your rights regarding the settlement, you may contact any of the attorneys for the Class listed below. You will not
7 be charged for speaking with these lawyers. If you want to be represented by your own lawyer, you may hire one at
your own expense. The attorneys approved by the Court to represent the class of employees are:

8 David G. Spivak, Esq.
9 The Spivak Law Firm
8605 Santa Monica Blvd.
PMB 42554
West Hollywood, CA 90069
Toll Free: (877) 203-9010
Fax: (213) 634-2485
11 david@spivaklaw.com

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13 The Settlement Agreement and, ultimately, the order giving final approval to the Settlement will be posted on the
Settlement Administrator's website at www._____.com/

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EXHIBIT B

3 **ELECTION NOT TO PARTICIPATE IN SETTLEMENT FORM**

4 **IF YOU WANT TO BE INCLUDED IN THIS CLASS ACTION SETTLEMENT AND BE ELIGIBLE FOR**
5 **A SHARE OF THE SETTLEMENT PROCEEDS,**
6 **DO NOT FILL OUT THIS FORM.**

7 **IF YOU DO NOT WANT TO BE INCLUDED IN THE SETTLEMENT, YOU MUST COMPLETE AND**
8 **SIGN THIS DOCUMENT AND MAIL IT TO THE ADDRESS BELOW, POSTMARKED NOT LATER**
9 **THAN <<RESPONSE DEADLINE>>:**

10 *Burdick v. Peach State Roofing, Inc.* Class Action Settlement Administrator
11 c/o _____
12 _____
13 _____

14 I declare as follows: I have received notice of the proposed settlement in this action and I wish to be
15 excluded from the class and ***not*** to participate in the proposed settlement. I understand this means that I will not be
16 bound by the Settlement and also will not share in the settlement proceeds. [I understand that I cannot exclude myself](#)
17 [from the PAGA portion of the settlement.](#)

18 _____
19 (Typed or Printed Name)

20 _____
21 (Address)

22 _____
23 (City, State, Zip Code)

24 _____
25 (Telephone Number, Including Area Code)

26 _____
27 (Identification Number)

28 I declare under penalty of perjury under the laws of the State of California that the foregoing is true and
correct and was executed on _____.

Dated: _____

(Signature)

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EXHIBIT C

WORK WEEKS/PAGA PAY PERIODS DISPUTE FORM

Superior Court of The State of California
For The County of Los Angeles
Andrew Burdick v. Peach State Roofing, Inc., Case No. 20STCV20397

Indicate Name/Address Changes, if any:

<<Name>>

<<Address>>

<<City>>, <<State>> <<Zip Code>>

XX - XX - _ _ _ _

TO ALL PERSONS WHO DEFENDANTS EMPLOYED ON A NON-EXEMPT, HOURLY BASIS IN THE STATE OF CALIFORNIA FROM MAY 28, 2016 THROUGH APRIL 15, 2021.

The amount of your estimated Class Settlement Award Share is based upon the number of Eligible May 28, 2016 Individual Work Weeks you worked between May 28, 2016 and April 15, 2021. "Individual May 28, 2016 Work Weeks" are defined as any May 28, 2016 work week in which you worked at least one (1) day as an of Peach State Roofing, Inc. and Martin Kelly (collectively "Defendants") in California during the calendar week. The number of Work Weeks applicable to your claim is set forth below.

YOUR ELIGIBLE WORK WEEKS

Defendants' records indicate that you worked <<number of Work Weeks>> Work Weeks between May 28, 2016 and April 15, 2021.

YOUR ESTIMATED SETTLEMENT ~~AWARD~~ AND DISPUTE PROCEDURE

Under the terms of the Class Action Settlement, you are entitled to receive a settlement payment in the approximate estimated amount of <<\$Class Settlement Share Amount>>> for the class portion of the settlement minus all applicable payroll and tax deductions, after the Court approves the Settlement and it goes into effect. This process may take six months or more. You will receive a Form W-2 reflecting the payment to you. Your Class Settlement Share reflected on this Notice is only an estimate. The exact amount of the payment could vary, up or down.

If you wish to dispute the number of May 28, 2016 Work Weeks credited to you, or anything else about your employment status, you must complete and return this form by indicating what you believe is incorrect on the blank lines below and return it on or before <<RESPONSE DEADLINE>> to the Settlement Administrator via U.S. Mail with proof of the submission date (such as a postmark or delivery service date stamp). You must also send any documents or other information that you contend supports your belief that the information set forth above is incorrect. The Settlement Administrator will resolve any dispute based upon Defendants' records and any information you provide. Please be advised that the information on this Work Weeks Dispute Form is presumed to be correct unless the documents you submit are company records from Defendants.

UNLESS YOU ARE FILING A DISPUTE REGARDING THE NUMBER OF WEEKS, RECEIPT OF A DIRECT SETTLEMENT PAYMENT, OR YOUR EMPLOYMENT STATUS, YOU DO NOT NEED TO TAKE ANY ACTION

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
(UNLIMITED JURISDICTION)

ANDREW BURDICK, on behalf of himself and
all others similarly situated, and as an “aggrieved
employee” on behalf of other “aggrieved
employees” under the Labor Code Private
Attorneys General Act of 2004,

Plaintiff,

vs.

PEACH STATE ROOFING, INC., a Georgia
corporation; MARTIN KELLY, A NATURAL
PERSON; CHRIS KELLY, A NATURAL
PERSON; and DOES 1–50, inclusive,

Defendant(s).

Case No. 20STCV20397

**[PROPOSED] ORDER
PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT**

Action filed: 5/28/2020
Department: SSC-14, The Honorable
Kenneth R. Freeman

The Motion of Plaintiff Andrew Burdick (hereafter referred to as “Plaintiff”) for
Preliminary Approval of a Class Action Settlement (the “Motion”) was considered by the Court,
the Honorable The Honorable Kenneth R. Freeman presiding. The Court having considered the
Motion, the Joint Stipulation of Class Action Settlement and Release of Claims (“Settlement”

1 or “Settlement Agreement”), and supporting papers, HEREBY ORDERS THE FOLLOWING:

2 1. The Court grants preliminary approval of the Settlement and the Settlement Class
3 based upon the terms set forth in the Settlement filed as an Exhibit to the Motion for Preliminary
4 Approval. All terms herein shall have the same meaning as defined in the Settlement. The Court
5 has determined there is sufficient evidence to preliminarily determine that (a) the terms of the
6 Settlement appear to be fair, adequate, and reasonable to the Settlement Class and (b) the
7 Settlement falls within the range of reasonableness and appears to be presumptively valid,
8 subject only to any objections that may be raised at the final hearing and final approval by this
9 Court. The Court will make a determination at the hearing on the motion for final approval of
10 class action settlement (the “Final Approval Hearing”) as to whether the Settlement is fair,
11 adequate and reasonable to the Settlement Class.
12

13 2. For purposes of this Preliminary Approval Order, the “Settlement Class” means
14 all persons who Defendants employed on a non-exempt, hourly basis in California (collectively
15 “Class Members”), who worked anytime during the Class Period. The “Class Period” shall mean
16 the period of time from May 28, 2016, through April 15, 2021. Defendants estimated for
17 purposes of mediation that there were approximately 2,737 total qualifying Work Weeks and 90
18 Class Members for the period of June 15, 2016 to March 24, 2021. These numbers would be
19 expected to increase proportionately for the passage of time between that date and the time of
20 preliminary approval. At least 10 days before the Settlement Administrator send out notice of
21 the Settlement to Class Members, the Settlement Administrator will advise Class Counsel of
22 Defendants’ report of the total number of qualifying Work Weeks and Class Members between
23 May 28, 2016 and April 15, 2021. If the qualifying Work Weeks and/or Class Members exceeds
24 the above referenced qualifying Work Weeks and/or Class Members reported by Defendants by
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1 more than 10%, i.e., exceeds 3,011 qualifying Work Weeks and/or 99 Class Members
2 (“Escalator Threshold”), the Maximum Settlement Amount will increase by the difference
3 between the Escalator Threshold and the additional qualifying Work Weeks or Class Members
4 over the Escalator Threshold. No other payment will be owed by Defendants. The “Effective
5 Date” means as follows: If no objection to this Settlement or to any of the terms and or conditions
6 of the Settlement are filed by Plaintiff, another member of the Settlement class, or any intervenor
7 to this Lawsuit, the Effective Date shall occur on the day that the Court enters an order of final
8 approval of this Settlement; however, if any objection to this Settlement or to any of the terms
9 and or conditions of the Stipulation is filed by a member of the Settlement class, or any
10 intervenor to this Lawsuit, the Effective Date shall occur upon the expiration of the time for the
11 filing any appeal of the order of final approval of this Settlement. If an appeal is filed or any
12 writ granted, then the Effective Date shall occur after the appeal has been dismissed or the writ
13 dissolved and when there is no further time to appeal the dismissal of the appeal or the
14 dissolution of the writ. The occurrence of the Effective Date is a prerequisite to any obligation
15 of Defendants to pay any funds into the Settlement Account.

16
17
18 3. This action is provisionally certified pursuant to section 382 of the California
19 Code of Civil Procedure and Rule 3.760, et seq. of the California Rules of Court as a class action
20 for purposes of settlement only with respect to the proposed Settlement Class.

21
22 4. The Court hereby preliminarily finds that the Settlement was the product of
23 serious, informed, non-collusive negotiations conducted at arm’s length by the Parties. In
24 making this preliminary finding, the Court considered the nature of the claims set forth in the
25 pleadings, the amounts and kinds of benefits which shall be paid pursuant to the Settlement, the
26 allocation of Settlement proceeds to the Settlement Class, and the fact that the Settlement
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1 represents a compromise of the Parties' respective positions. The Court further preliminarily
2 finds that the terms of the Settlement have no obvious deficiencies and do not improperly grant
3 preferential treatment to any individual Class Member. Accordingly, the Court preliminarily
4 finds that the Settlement was entered into in good faith.

5
6 5. The Court finds that the dates set forth in the Settlement for mailing and
7 distribution of the Class Notice meet the requirements of due process and provide the best notice
8 practicable under the circumstances, and constitute due and sufficient notice to all persons
9 entitled thereto, and directs the mailing of the Class Notice by first class mail to the Settlement
10 Class as set forth in the Settlement. Accordingly, the Court orders the following implementation
11 schedule for further proceedings:

- 12 a. By _____, Defendants shall provide
13 _____, the appointed Settlement Administrator,
14 with: (a) An electronic database of all Class Members, last known mailing
15 address, Social Security number and Defendants' employee identification
16 number ("Class Members' Data"); and (b) Corresponding to each Class
17 Member's name, Defendants shall provide a figure indicating the total
18 number of Work Weeks during the Class Period in which Defendants
19 employed the Class Member. That number of Work Weeks shall be referred
20 to as that Class Member's "Individual Work Weeks;" (c) If any of the Class
21 Members' Data are unavailable to Defendants, Defendants will so inform
22 Class Counsel and the Parties will make their best efforts to reconstruct or
23 otherwise agree upon the Class Members' Data prior to when it must be
24 submitted to the Settlement Administrator. Class Members' Data will
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1 otherwise remain confidential and will not be disclosed to anyone, except as
2 necessary to applicable taxing authorities, or pursuant to Defendants' express
3 written authorization or by order of the Court.

4 b. **Mailing of Class Notice.** By _____, approximately
5 fourteen (14) days after receiving the Class Members' Data, or as soon
6 thereafter as it can do so, the Settlement Administrator will mail the Class
7 Notice to all identified Class Members via first-class U.S. mail using the
8 mailing address information provided by Defendants, unless modified by any
9 updated address information that the Settlement Administrator obtains in the
10 course of administration of the Settlement.

11 c. **Returned Class Notice.** If a Class Notice is returned because of an incorrect
12 address, the Settlement Administrator will promptly, and not later than ten
13 (10) days from receipt of the returned Class Notice, search for a more current
14 address for the Class Member and re-mail the Class Notice to the Class
15 Member. The Settlement Administrator will use the Class Members' Data
16 and otherwise work with Defendants' Counsel and Class Counsel to find a
17 more current address. The Settlement Administrator will be responsible for
18 taking reasonable steps, consistent with its agreed-upon job parameters, court
19 orders, and fee, to trace the mailing address of any Class Member for whom
20 a Class Notice is returned as undeliverable by the U.S. Postal Service. These
21 reasonable steps shall include the tracking of all undelivered mail;
22 performing address searches for all mail returned without a forwarding
23 address; and promptly re-mailing to Class Members for whom new addresses
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1 are found. If the Class Notice is re-mailed, the Settlement Administrator will
2 note for its own records and notify Class Counsel and Defendants' Counsel
3 of the date and address of each such re-mailing as part of a weekly status
4 report provided to the Parties.

5
6 d. **Declaration of Settlement Administrator.** Not later than twenty-one (21)
7 court days prior to the Final Approval Hearing, the Settlement Administrator
8 will provide the Parties for filing with the Court a declaration of due diligence
9 setting forth its compliance with its obligations under this Agreement. Prior
10 to the Final Approval Hearing, the Settlement Administrator will supplement
11 its declaration of due diligence if any material changes occur from the date
12 of the filing of its prior declaration.

13
14 e. **Requests for Exclusion from Settlement; and Objections to Settlement.**
15 Class Members may submit requests to be excluded from the effect of the
16 Settlement, or objections to the Settlement, pursuant to the following
17 procedures:

18 i. **Request for Exclusion from Settlement.** A Class Member may
19 request to be excluded from the effect of this Agreement, and any
20 payment of amounts under this Agreement, by timely mailing a letter
21 to the Settlement Administrator stating that the Class Member wants
22 to be excluded from this Action. This letter must include the Class
23 Member's name, address, telephone number, and signature. To be
24 valid and timely, the request to be excluded must be postmarked by
25 the date specified in the Class Notice (_____, or 60 days
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1 from the initial mailing of the Class Notice by the Settlement
2 Administrator). A Class Member who properly submits a valid and
3 timely request to be excluded from the Action shall not receive any
4 payment of any kind in connection with this Agreement or this
5 Action, shall not be bound by or receive any benefit of this
6 Agreement, and shall have no standing to object to the Settlement. A
7 request for exclusion must be mailed to the Settlement Administrator
8 at the address provided on the Class Notice. The Settlement
9 Administrator shall transmit the request for exclusion to counsel for
10 the Parties as follows:
11

12
13 *To Class Counsel:*

14 David G. Spivak, Esq.
15 The Spivak Law Firm
16 8605 Santa Monica Blvd.
17 PMB 42554
West Hollywood, CA 90069

To Defense Counsel:

Michael A. Hood
Jackson Lewis P.C.
200 Spectrum Center Drive, Suite 500
Irvine, CA 92618

- 18
19 ii. **Objections to Settlement.** The Class Notice will provide that any
20 Class Member who does not request exclusion from the Action and
21 who wishes to object to the Settlement should submit an objection in
22 writing to the Settlement Administrator by _____, or 60
23 days after the Settlement Administrator mails the Class Notice, a
24 written objection to the Settlement which sets forth the grounds for
25 the objection and the other information required by this paragraph.
26 The objection should be mailed to the Settlement Administrator at the
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1 address provided on the Class Notice. The Settlement Administrator
2 shall transmit the objections to counsel for the Parties as follows:

3
4 *To Class Counsel:*

5 David G. Spivak, Esq.
6 The Spivak Law Firm
7 8605 Santa Monica Blvd.
8 PMB 42554
9 West Hollywood, CA 90069

To Defense Counsel:

Michael A. Hood
Jackson Lewis P.C.
200 Spectrum Center Drive, Suite 500
Irvine, CA 92618

10 The written objection should state the objecting Class Member's full
11 name, address, and the approximate dates of his or her employment
12 with Defendants. The written objection should state the basis for each
13 specific objection and any legal support in clear and concise terms.
14 The written objection also should state whether the Class Member
15 intends to formally intervene and become a party of record in the
16 action, and upon formally intervening, appear and argue at the Final
17 Approval Hearing. However, the objectors will be provided with the
18 opportunity to speak at the final approval hearing regardless of
19 whether they have filed an appearance or submitted a written
20 opposition beforehand.

21
22 If the objecting Class Member does not formally intervene in the
23 action and/or the Court rejects the Class Member's objection, the
24 Class Member may still be bound by the terms of this Agreement.

25 f. **Report.** Not later than fourteen (14) days after the deadline for submission
26 of requests for exclusion, the Settlement Administrator will provide the
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1 Parties with a complete and accurate list of all Class Members who sent
2 timely requests to be excluded from the Action and all Class Members who
3 objected to the settlement.

4 6. The Court approves, as to form and content, the Class Notice in substantially the
5 form attached as Exhibit A to the Settlement, the Exclusion Request form in substantially the
6 form attached as Exhibit B to the Settlement, and the Work Weeks Dispute form in substantially
7 the form attached as Exhibit C to the Settlement.
8

9 7. The Court approves, for settlement purposes only, David Spivak of The Spivak
10 Law Firm and Walter L. Haines of United Employees Law Group as Class Counsel.

11 8. The Court approves, for settlement purposes only, Andrew Burdick as the Class
12 Representative.
13

14 9. The Court approves ILYM Group, Inc. as the Settlement Administrator.

15 10. The Court preliminarily approves Class Counsel's request for attorneys' fees and
16 costs subject to final review by the Court.

17 11. The Court preliminarily approves the estimated Settlement Administrator costs
18 payable to the Settlement Administrator subject to final review by the Court.

19 12. The Court preliminarily approves Plaintiff's Class Representative Payment
20 subject to final review by the Court.
21

22 13. A Final Approval Hearing shall be held on _____ at _____.m. in
23 the Superior Court for the State of California, County of Los Angeles, located at the Los Angeles
24 Courthouse, 312 North Spring Street, Spring Street Courthouse, Los Angeles, CA 90012 to
25 consider the fairness, adequacy and reasonableness of the proposed Settlement preliminarily
26 approved by this Preliminary Approval Order, and to consider the application of Class Counsel
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1 for attorneys' fees and costs and the Class Representative Payment to the Class Representative.
2 The notice of motion and all briefs and materials in support of the motion for final approval of
3 class action settlement and motion for attorneys' fees and litigation costs shall be served and
4 filed with this Court on or before _____.

5
6 14. If for any reason the Court does not execute and file a final approval order and
7 judgment, or if the Effective Date, as defined in the Settlement, does not occur for any reason,
8 the proposed Settlement that is the subject of this order, and all evidence and proceedings had
9 in connection therewith, shall be without prejudice to the status quo ante rights of the Parties to
10 the litigation, as more specifically set forth in the Settlement.

11 15. The Court expressly reserves the right to adjourn or continue the Final Approval
12 Hearing from time to time without further notice to members of the Class. The Plaintiff shall
13 give prompt notice of any continuance to Settlement Class Members who object to the
14 Settlement.
15

16 **IT IS SO ORDERED.**

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18 DATED: _____

THE HONORABLE KENNETH R. FREEMAN
JUDGE OF THE SUPERIOR COURT

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
(UNLIMITED JURISDICTION)

ANDREW BURDICK, on behalf of himself and
all others similarly situated, and as an “aggrieved
employee” on behalf of other “aggrieved
employees” under the Labor Code Private
Attorneys General Act of 2004,

Plaintiff,

vs.

PEACH STATE ROOFING, INC., a Georgia
corporation; MARTIN KELLY, A NATURAL
PERSON; CHRIS KELLY, A NATURAL
PERSON; and DOES 1–50, inclusive,

Defendant(s).

Case No. 20STCV20397

**[PROPOSED] FINAL ORDER AND
JUDGMENT APPROVING CLASS
ACTION SETTLEMENT**

Action filed: 5/28/2020

Department: SSC-14, The Honorable
Kenneth R. Freeman

This matter came on for hearing on _____ at _____.m. in
Department SSC-14 of the above-captioned court on Plaintiff’s Motion for Final Approval of a
Class Action Settlement pursuant to California Rules of Court, Rule 3.769, as set forth in the
Joint Stipulation of Class Action Settlement and Release of Claims (the “Settlement”) filed
herewith which provides for a Gross Settlement Amount (“GSA”) of up to \$550,000.00 in

1 compromise of all disputed claims on behalf of all persons who Defendants employed on a non-
2 exempt, hourly basis in California at any time during the period of May 28, 2016 to April 15,
3 2021 (“Settlement Class Period”). All capitalized terms used herein shall have the same meaning
4 as defined in the Settlement.

5 In accordance with the Court’s prior Order Granting Preliminary Approval of Class
6 Action Settlement, Class Members have been given notice of the terms of the Settlement and the
7 opportunity to submit a claim, request exclusion, comment upon or object to it or to any of its
8 terms. Having received and considered the Settlement, the supporting papers filed by the Parties,
9 and the evidence and argument received by the Court in conjunction with the motions for
10 preliminary and final approval of the Settlement, the Court grants final approval of the Settlement
11 and HEREBY ORDERS, ADJUDGES, DECREES AND MAKES THE FOLLOWING
12 DETERMINATIONS¹:
13

14
15 1. The Court has jurisdiction over the subject matter of the Action and over all
16 Parties to the Action, including all Class Members. Pursuant to this Court’s Order Granting
17 Preliminary Approval of Class Action Settlement of _____, the Class Notice was sent
18 to each Class Member by First Class U.S. mail. The Class Notice informed Class Members of
19 the terms of the Settlement, their right to receive their proportional share of the Settlement, their
20 right to request exclusion, their right to comment upon or object to the Settlement, and their right
21 to appear in person or by counsel at the final approval hearing and be heard regarding final
22 approval of the Settlement. Adequate periods of time were provided by each of these procedures.
23

24
25 _____
26 ¹ A true and correct copy of the Court’s ruling on the Motion for Final Approval of Class Action
27 Settlement entered on _____ is attached hereto as **Exhibit A** and incorporated by
28 reference. A true and correct copy of the Court’s Minute Order dated _____ is
attached hereto as **Exhibit B** and incorporated by reference.

1 No member of the Settlement Class presented written objections to the proposed Settlement as
2 part of this notice process, stated an intention to appear, or actually appeared at the final approval
3 hearing.

4 2. For purposes of this Final Order and Judgment, the Class Members are all persons
5 who Defendants employed on a non-exempt, hourly basis in California during the Class Period.
6 at any time during the period of May 28, 2016 to April 15, 2021 (“Settlement Class Period”).

7 3. The Court finds and determines that the notice procedure afforded adequate
8 protections to Class Members and provides the basis for the Court to make an informed decision
9 regarding final approval of the Settlement based on the responses of Class Members. The Court
10 finds and determines that the notice provided in this case was the best notice practicable, which
11 satisfied the requirements of law and due process as to all persons entitled to such notice.
12

13 2. **Release by Plaintiff and Class Members.** The Settlement will release any further
14 attempt, by lawsuit, administrative claim or action, arbitration, demand, or other action of any
15 kind by each and all of the Settlement Class Members (including participation to any extent in
16 any representative or collective action), against Defendants and all of their present and former
17 parent companies, subsidiaries, divisions, concepts, related or affiliated companies and its
18 shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns,
19 and any individual or entity that could be liable for any of the Released Claims, and Defendants’
20 counsel of record in these Action (“Released Parties”), arising during the period May 28, 2016
21 through April 15, 2021, are limited to any and all claims under state, federal, or local law, whether
22 statutory or common law arising out of the claims expressly pleaded the Actions and all other
23 claims, such as those under the California Labor Code, Wage Orders, regulations, and/or other
24 provisions of law, that could have been pleaded based on the facts pleaded in the Action for: (i)
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1 failure to provide rest breaks; (ii) failure to provide meal periods; (iii) failure to pay all wages
2 earned for hours worked at the correct rates of pay; (iv) failure to indemnify; (v) wage statement
3 penalties; (vi) waiting time penalties; (vii) unfair competition; and (viii) civil penalties under
4 PAGA (“Released Claims”). This release will not take effect until Defendants have paid the
5 Gross Settlement Amount in full per this Settlement Agreement.
6

7 3. The Court further finds and determines that the terms of the Settlement are fair,
8 reasonable and adequate, that the Settlement is ordered finally approved, and that all terms and
9 provisions of the Settlement, including the release of claims contained therein, should be and
10 hereby are ordered to be consummated, and directs the Parties to effectuate the Settlement
11 according to its terms. As of the Effective Date of Settlement, and for the duration of the
12 Settlement Class Period, all Class Members are hereby deemed to have waived and released all
13 Released Claims and are forever barred and enjoined from prosecuting the Released Claims
14 against the Releasees as fully set forth in the Settlement. No objections were received by the
15 Parties or the Court through the date of this Final Order and Judgment. The Court finds _____
16 Class Member(s)—_____—submitted a request for exclusion from the Settlement
17 as determined by the Settlement Administrator and therefore is/are not in the Settlement Class.
18

19 4. The Court finds and determines that (a) the [Class](#) Settlement Shares to be paid to
20 Participating Class Members and (b) the LWDA payment as civil penalties under the California
21 Labor Code Private Attorneys General Act of 2004, as amended, California Labor Code sections
22 2699 *et seq.*, as provided for by the Settlement are fair and reasonable. The Court hereby grants
23 final approval to, and orders the payment of, those amounts be made to the Participating Class
24 Members and to the California Labor & Workforce Development Agency (“LWDA”), in
25 accordance with the terms of the Settlement.
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1 5. The Court further grants final approval to and orders that the following payments
2 be made in accordance with the terms of the Settlement:

3 a. Class Counsel fees & costs of \$183,333.00 in attorneys' fees and
4 \$15,000.00 in litigation costs to Class Counsel;

5 b. \$15,000.00 as a Class Representative Payment award payable to Plaintiff
6 Andrew Burdick for his service as a Class Representative;

7 c. \$~~127~~427,000.00 in costs of the Settlement Administrator payable to ILYM
8 Group, Inc. for its services as the Settlement Administrator; and
9

10 d. Payment of \$3,000.00 (75% of the (\$4,000.00 PAGA penalty) to the
11 LWDA.

12 7. The settlement shall proceed as directed in the Settlement, and no payments
13 pursuant to the Settlement shall be distributed until after the Effective Date of Settlement.
14 Without affecting the finality of this Final Order and Judgment in any way, the Court retains
15 jurisdiction of all matters relating to the interpretation, administration, implementation,
16 effectuation and enforcement of this Final Order and Judgment and the Settlement pursuant to
17 California Rule of Court 3.769(h).
18

19 8. Within 10 calendar days of the Effective Date of Settlement, Defendants shall
20 deposit the Settlement proceeds in an account designated by the Settlement Administrator: (i) the
21 total amount of all Class Settlement Shares to Participating Class Members, (ii) the Court
22 approved Class Counsel fees & costs, (iii) the Court-approved Class Representative Payment,
23 (iv) the Court-approved costs of the Settlement Administrator, and (v) the payment to the LWDA.
24

25 9. Defendants' payment of such sums shall be the sole financial obligation of
26 Defendants under the Settlement, and shall be in full satisfaction of all claims released herein,
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1 including, without limitation, all claims for wages, penalties, interest, attorneys' fees, costs and
2 expenses.

3 10. Pursuant to CCP 384 and the Settlement, Participating Class Members shall have
4 one hundred and eighty (180) days from the date of the check's issuance to cash their [Class](#)
5 Settlement Share check. After the expiration of the 180-day period, on Defendants' behalf, the
6 Settlement Administrator shall remit any amounts from Voided Settlement Checks and otherwise
7 unclaimed (the "Residue"), plus interest on the Residue at the legal rate of interest from the date
8 of entry of the initial judgement to the California Unclaimed Property Fund.

9
10 11. The Parties shall file a final accounting report by _____. A non-
11 appearance case review re submission of a final report is scheduled for _____ at
12 _____**.m. in Department SSC-14.** The Parties shall also prepare and file a stipulation and
13 proposed order and proposed Amended Final Order and Judgment by _____ which
14 includes the amount of distribution of unpaid cash Residue, and unclaimed or abandoned funds
15 to the non-party, the accrued interest on that sum. The stipulation shall be signed by counsel for
16 the class and defense counsel in accord with the proposed Amended Final Order and Judgment.
17 If there are objections by any party or non-party, class counsel shall immediately notify the Court
18 and the matter will be set for further hearing. A non-appearance hearing for the lodging of the
19 stipulation and proposed order and separate amended judgment is scheduled for
20 _____ at _____**.m. in Department SSC-14.**

21
22 12. Nothing in this Final Order and Judgment shall preclude any action to enforce the
23 Parties' obligations under the Settlement or hereunder, including the requirement that Defendants
24 deposit funds for distribution by the Settlement Administrator to Participating Class Members in
25 accordance with the Settlement.
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1 13. The Court hereby enters final judgment in this case in accordance with the terms
2 of the Settlement, Order Granting Preliminary Approval of Class Action Settlement, and this
3 Final Order and Judgment.

4 14. The Parties are hereby ordered to comply with the terms of the Settlement.

5 15. The Parties shall bear their own costs and attorneys' fees except as otherwise
6 provided by the Settlement and this Final Order and Judgment.
7

8 16. The Settlement is not an admission by Defendants nor is this Final Order and
9 Judgment a finding of the validity of any claims in the Action or of any wrongdoing by
10 Defendants. Furthermore, the Settlement is not a concession by Defendants and shall not be used
11 as an admission of any fault, omission, or wrongdoing by Defendants. Neither this Final Order
12 and Judgment, the Settlement, any document referred to herein, any exhibit to any document
13 referred to herein, any action taken to carry out the Settlement, nor any negotiations or
14 proceedings related to the Settlement are to be construed as, or deemed to be evidence of, or an
15 admission or concession with regard to, the denials or defenses of Defendants, and shall not be
16 offered in evidence in any proceeding against the Parties hereto in any Court, administrative
17 agency, or other tribunal for any purpose whatsoever other than to enforce the provisions of this
18 Final Order and Judgment. This Final Order and Judgment, the Settlement and exhibits thereto,
19 and any other papers and records on file in the Action may be filed in this Court or in any other
20 litigation as evidence of the settlement by Defendants to support a defense of res judicata,
21 collateral estoppel, release, or other theory of claim or issue preclusion or similar defense as to
22 the Released Claims.
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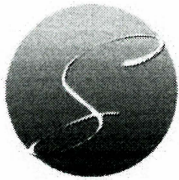
17. This document shall constitute a Judgment for purposes of California Rule of Court 3.769(h).

IT IS SO ORDERED, ADJUDGED AND DECREED.

DATED: _____

THE HONORABLE KENNETH R. FREEMAN
JUDGE OF THE SUPERIOR COURT

EXHIBIT 14



SPIVAK LAW

ATTORNEY CONSULTATION AND FEE CONTRACT FOR CONTINGENCY CASES

THIS FEE CONTRACT FOR CONTINGENCY CASES ("Contract") is made on March 6, 2020, in Encino, between **Andrew Burdick** hereinafter referred to as "Client," and The Spivak Law Firm of Los Angeles County, CA and United Employees Law Group, PC of Orange County, CA hereinafter referred to as "Attorney."

In consideration of the mutual promises herein contained, the parties hereto agree as follows:

I. PURPOSE OF REPRESENTATION

1.01 Client hereby retains and employs Attorney to sue for and recover all damages and compensation to which Client may be entitled as well as to compromise and settle all claims described below:

class action claims and Private Attorneys General Act representative claims against Peach State Roofing and related entities for unprovided rest and meal periods, and unreimbursed expenses

1.02 This agreement will not become binding on either party, and Attorney will not begin providing legal services, until Client has paid the initial deposit, if any, as described in Paragraph 2.03, and has signed this Agreement. This written agreement supersedes any and all previous agreements between the parties, if any.

1.03 Attorney will provide reasonably necessary legal services, and will take steps to keep Client informed of the progress of the case. Attorney will respond within a reasonable time and manner to Client's inquiries. If court action becomes necessary, Attorney will represent Client through trial and post-trial motions. Separate arrangements must be made for any appeal or execution proceedings that client wishes to pursue after judgment, or any other matters for which Client wishes to employ Attorney other than the matter described above.

II. ATTORNEY'S FEE AND EXPENSES

2.01 In consideration of services rendered and to be rendered by Attorney, Client hereby agrees to pay to Attorney in the event of an individual settlement or judgment the following amounts on any settlements, monies, judgments or other consideration which have or may be paid on this legal matter:

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a. Before the filing of a lawsuit or arbitration demand: 33 and 1/3 percent of any recovery.

b. After the filing of a lawsuit or arbitration demand: 40 percent of any recovery. In the event Client prevails at trial (or arbitration) of this matter, any fee awarded by the court, pursuant to statute or contract, in connection with the subject matter of this representation, shall be paid to Attorney and shall be applied against Client's fee obligation under this Agreement, but shall not limit or discharge Client's fee obligation. In the event there is a fee award by the court upon Client prevailing at trial, the Attorney shall receive either the fee award or 40% of the total award, whichever is greater.

If the total legal fees received in this case are \$250,000.00 or greater, it is agreed that the United Employees Law Group, PC will shall receive 33 and 1/3% of the total legal fees received and the Spivak Law Firm shall receive the remaining 66 and 2/3% of the total legal fees received. If the total legal fees received in this case are less than \$250,000.00, it is agreed that the United Employees Law Group, PC will shall receive 25% of the total legal fees received and the Spivak Law Firm shall receive the remaining 75% of the total legal fees received.

It is agreed and understood that if the amount of attorney's fees on this claim or cause of action are regulated or governed by law, and that law precludes any other fee arrangement other than the amount set by the law or regulation, then the amount payable hereunder to said Attorney shall be limited to the maximum so allowed by law. In the event of a class action settlement or judgment, Private Attorneys General Action settlement or judgment, or other representative settlement or judgment, a court's approval of an award of attorney fees is necessary. Normally with such settlements and judgments, a request for attorney fees will be for no more than one third (33 and 1/3%) of the total value of the settlement or judgment amount. Attorney will apply for an award of attorney fees from the court that may be more or less than the percentages stated above. Under such circumstances. Attorney will also ask the court to separately award Attorney the costs Attorney has advanced for this matter. In advance of such requests to a Court for attorney fees and costs, Attorney will seek Client's written consent to the attorney fees and costs sought.

2.01.1 This section concerns the possibility of settlement of individual claims, attorney fees, and costs in the event representative claims are no longer viable.

Under this Agreement, Attorney agrees to represent Client in Client's pursuit of the claims described in Section 1.01 of this Agreement, stated above. These claims are representative claims because Client agrees that Client will pursue the Claims for Client and all comparable employees and individuals. In this regard, Attorney advises Client of the following material information:

1. Attorney has chosen to represent Client primarily because the Client has claims that Client may be able to bring on behalf of numerous other comparable employees. As a result, Client's claims have the potential to support a class action lawsuit and/or a Private Attorneys General Act lawsuit.

2. Client's individual claims - and those of each of the other comparable employees that Attorney will file the lawsuit on behalf of - are generally worth very small amounts in unpaid wages, unreimbursed work expenses, interest, and/or statutory monetary penalties. Attorney would not have agreed to represent Client if it were not for the strong likelihood that a Court will permit Client's lawsuit to proceed to trial on behalf of numerous other employees with comparable claims to Client's claims.
3. Only by combining the claims of numerous individuals can Attorney reasonably hope to recover the attorney fees and costs Attorney incurs as part of Attorney's contingency representation of Client.
4. For reasons that are unknown at the time of this Agreement and for reasons that are well outside of the control of the Attorney and the Client, Attorney may discover after Client executes this Agreement that numerous comparable employees with comparable claims to Client's claims do not exist. In this instance, the Attorney and the Client may not be able to pursue the class action or Private Attorneys General Act claims any longer.
5. Based on Attorney's prior experience, Defendants (the party or parties Client sues or intends to sue) in class actions and Private Attorneys General Actions often attempt to settle with the Plaintiff (the party suing or intending to sue) for the maximum value of the Plaintiff's individual claims. Such settlements prevent the Plaintiff from continuing to represent comparable individuals (sometimes known as "class members," "putative class members," "proposed class members," and/or "aggrieved employees") who Client brought the lawsuit on behalf of.
6. Based on Attorney's prior experience, the Defendant may offer to settle Client's individual claims for an amount of money that equals or exceeds the maximum value of Client's claims. In this event, the Attorney's fees and costs will likely exceed the maximum value of Client's individual claims. Often in Attorney's experience, the Attorney's fees and costs will far exceed the value of Client's individual claims.
7. Attorney may advise Client to accept an individual settlement of Client's claims if numerous individuals with claims that are comparable to Client's do not exist and an individual settlement is in Client's best interest. Alternatively, Client may choose to enter into a settlement for an amount that equals or exceeds the maximum value of Client's individual claims even if there are numerous individuals with claims that are comparable to Client's claims.
8. Based on evidence Attorney may obtain after entering into this Agreement with client, Attorney's estimate of maximum value of Client's claims may change over the course of the Attorney-Client relationship under this Agreement.

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In the event the Defendant offers to settle with Client for an amount of money that equals or exceeds the maximum value of Client's individual claims, Client agrees that, if the Attorney's fees and costs exceed the maximum value of Client's claims, Attorney may elect, solely at Attorney's option, that Client receive only the maximum value of Client's individual claims from the settlement funds and that the Attorney receives the remaining settlement funds to cover all or part of the Attorney's fees and costs and the risks that arise from Attorney's contingency representation of Client. In other words, Client agrees to accept as settlement the amount equal to the estimated maximum value of Client's claims. Attorney discloses that attorney's fees and costs incurred may substantially exceed the client's net recovery.

Within seven days of Client's written request to Attorney, Attorney will provide Client with Attorney's estimate of the maximum value of Client's claims. This estimate of maximum value may change over the course of litigation.

Attorney strongly recommends that Client consult with an independent lawyer about this provision, including whether this provision is in Client's best interests. By initialing below, Client agrees that Attorney has provided Client with a reasonable opportunity to consult with an independent lawyer about this provision and Client consents to this provision.

AB (Client initials here)

2.02 The rates set forth above are not set by law, but are negotiable between an attorney and client.

2.03 Client agrees to grant law firm a lien on any and all claims or causes of action that are the subject of this Agreement. The lien, to ensure payment of any sums owing to law firm at the conclusion of services performed, will attach to any recovery you may obtain. Law firm may compel payment of fees and costs from any such funds recovered on behalf of you, even if law firm has been discharged before the end of the case. You may seek the opinion of an independent lawyer of your choice before agreeing to this lien. By initialing below, Client agrees that Client has had reasonable opportunity to consult an independent law firm, regardless of whether you have actually consulted such law firm, and Client agrees that law firm will have a lien as specified above.

AB (Client initials here) AB (Attorney initials here)

III. APPROVAL NECESSARY FOR SETTLEMENT

3.01 Attorney is hereby authorized to enter into any and all settlement negotiations on behalf of those whom Attorney represents as Attorney deems appropriate. This includes, but is not limited to, Attorney's prerogative to pursue cash or structured payment settlement negotiations.

3.02 Client hereby grants unto Attorney a power of attorney to handle negotiations and settlement discussions regarding the obtaining of possession of any and all monies or other things of

value subject of the matter due to Client under this claim as fully as Client could do so in person.

a. This expressly includes the right to sign Client's name on and to any insurance company drafts, money orders, cashier's checks, checks or other negotiable instruments made payable to Attorney and Client, Attorney, or to Client without the joinder of Attorney, submitted to Attorney on behalf of Client in full or partial settlement of this case.

b. This limited power of attorney further authorizes Attorney to place these monies, referred to above, in Attorney's trust account and from that trust account, make distributions and payments to Attorney for the agreed to fee stated above, reimbursement to Attorney for any and all expenses incurred by Attorney in handling this case, payments to Client of Client's interest in the monies recovered as stated above, and payments to parties other than Client and Attorney for their services performed, fees charged or bills rendered in connection with representing Client, including but not limited to medical bills, court reporter fees, deposition fees, investigative services, costs of exhibits or other special expenses incurred by Attorney on behalf of Client.

3.03 No settlement of any nature shall be made for any of the aforesaid claims or profits of Client without the complete approval of Client, nor shall Client obtain any settlement on the aforesaid claims without the complete approval of attorney.

3.04 Attorney is granted a limited power of attorney so that Attorney may have full authority to prepare, sign and file all legal instruments, pleadings, drafts, authorizations and papers as shall be reasonably necessary to conclude this representation, including settlement and/or reduce to possession any and all monies or other things of value due to Client under this claim as fully as Client could do so in person.

IV. REPRESENTATIONS

4.01 It is expressly agreed and understood that no promises or guarantees as to the outcome of the case have been made to Client by Attorney. Attorney has not represented to Client that Client will recover all or any of the funds so desired. Client also acknowledges that obtaining a judgment does not guarantee that the opposing party will be able to satisfy the judgment. It is further expressly understood and agreed that no other representations have been made to Client, except for those set out in this Contract.

V. DEDUCTION OF EXPENSES

5.01 All reasonable expenses incurred by Attorney in the handling of this legal matter shall be deducted from the gross settlement proceeds at the time the case is settled or resolved, and before the contingent fee is calculated.

5.02 The expenses contemplated above, include but are not limited to any and all out-of- pocket

expenses incurred in connection with this case, including but not limited to the following expenses: filing fees, court costs, certified copies of documents, pleadings, orders etc., transcripts, depositions, duplication costs, postage, office supplies, photographs, trial exhibits, long distance phone and fax calls, appraisal fees, consultants, expert witnesses and other fees associated with preparation and trial testimony, investigation fees, delivery charges, overnight mail/parcel services, parking, toll road and mileage expenses, out of town expenses including travel expense, air fare, hotels, meals, and any other expense incurred in connection with the matter.

5.03 Except for the following, all expenses and costs will be charged to Client at Attorney's cost: mileage at \$0.50/mile and photocopying at \$0.25/page.

VI. COOPERATION OF CLIENT

6.01 Client shall keep Attorney advised of Client's whereabouts at all times, and provide Attorney with any changes of address, phone number or business affiliation during the time period which Attorney's services are required, and shall comply with all reasonable requests of Attorney in connection with the preparation and presentation of aforesaid representation.

6.02 Attorney may, at Attorney's option, withdraw from the case and cease to represent Client for any reason, including without limitation Client's failure to timely pay fees and expenses or deposits for same in accordance with this Contract, subject to the professional responsibility requirements to which attorneys are subject.

It is further understood and agreed between the parties that upon such termination of any services of Attorney, any of Client's deposits remaining in Attorney's Trust Account shall be applied to any balance remaining owing to Attorney for fees and/or expenses and any surplus then remaining shall be refunded to Client.

6.03 Duties As A Class Representative In A Class Action or Private Attorney General Action. Client has retained Attorney to prosecute a class action and/or private attorney general action on behalf of Client and comparable employees and other individuals. This section applies only to Client's responsibilities as a class representative or as a private attorney general. Client will have certain duties and responsibilities to the comparable individuals the lawsuit is on behalf of. Certain of these duties are explained in greater detail below.

6.03.01 Attorney may apply to the Court for a special award to compensate the Client as the class representative or private attorney general for Client's contribution to the action and/or Client's release of all individual claims Client may have. Client understands however that unless such an award is approved by the Court, Client will only be entitled to Client's pro rata share of funds available for distribution to all class members, aggrieved employees, and comparable individuals.

6.03.02 A class representative represents the interests of all members of his class in litigation to recover money unpaid wages, penalties, reimbursement, restitution and/or obtain injunctive relief for the class. Likewise, a private attorney general represents the interests of all comparable aggrieved

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employees in litigation to recover money civil penalties (monetary penalties that traditionally only the State can sue for) on behalf of the Client, aggrieved employees, and the State of California.

6.03.03 The class or group of aggrieved employees usually consists of all persons who are similarly situated with respect to a common course of conduct or practice. In other words, all those persons who are affected by the challenged behavior.

6.03.04 A class representative or private attorney general has claims that are typical of those of the class or group of aggrieved employees, and thus involve common issues of law or fact. For example, as a class representative, Client's claims against the defendant are typical of the class and private attorney general claims against the defendant, simply because Client was injured by the same unlawful employment practices as the other class members and aggrieved employees.

6.03.05 A class representative and private attorney general always considers the interests of the class and/or aggrieved employees just as Client would consider Client's own interests and in some cases must put the interests of the class and other aggrieved employees before Client's own interests. This means that Client is a champion of the other individuals or a fiduciary litigant.

6.03.06 A class representative or private attorney general always actively participates in the lawsuit, as necessary, by among other things, answering interrogatories, producing documents to the defendants and giving deposition and trial testimony if requested. Client may be required to travel to give such testimony.

6.03.07 A class representative or private attorney general recognizes and accepts that any resolution of the lawsuit by dismissal or settlement, is subject to court approval, and must be designed in the best interest of the class as a whole.

6.03.08 A class representative or private attorney general is not required to be particularly sophisticated or knowledgeable about the subject of the lawsuit. However, a class representative private attorney general should follow the progress of the lawsuit and should provide all relevant facts to the lawyers for the class or aggrieved employees.

6.03.09 A class representative or private attorney general volunteers to represent or champion many other people with similar claims and injuries because of the importance of the case and that necessity that all class members or aggrieved employees benefit from the lawsuit equally; the savings of time, money and effort should benefit all parties and the court. Class actions and private attorney general actions are an important tool to assure compliance with the law even where an individual's losses may be relatively small.

By initially below, Client has reviewed and acknowledges Client's duties as a class representative and/or private attorney general.



_____ (Client initials here)

VII. CALIFORNIA LAW TO APPLY

7.01 This Agreement shall be construed under the laws of California, and all obligations of the parties created hereunder are performable in Los Angeles County, CA.

VIII. PARTIES BOUND

8.01 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Agreement.

IX. LEGAL CONSTRUCTION

9.01 In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

X. PRIOR AGREEMENTS SUPERSEDED

10.01 This Agreement constitutes the sole and only agreement by and between the parties. It supersedes any prior understandings or written or oral agreements between the parties concerning the subject matter discussed herein.

XI. RESOLUTION OF DISPUTES BY ARBITRATION

11.01 You have the right to elect arbitration pursuant to the fee arbitration procedures of the State Bar of California, in any dispute subject to the jurisdiction of the State of California over attorneys' fees, charges, costs or expenses, as set forth in California Business and Professions Code Section 6200, et seq. If, after receiving a notice of this right to arbitrate, you do not elect to proceed under the State Bar fee arbitration procedures, and do not file a request for fee arbitration within 30 days, any dispute over fees, charges, costs or expenses, will be resolved by binding arbitration as described below.

11.02 Any controversy between the parties regarding the construction, application or performance of any services under this Agreement, and any claim arising out of or relating to this Agreement or its breach, shall be submitted to binding arbitration upon the written request of one party after the service of that request on the other party. The sole and exclusive venue for the arbitration and or any legal dispute shall be Los Angeles County, California.

11.03 By initialing below, Client and law firm confirm that they have read and understand the paragraphs above, and voluntarily agree to binding arbitration. In doing so, Client and law firm voluntarily give up important constitutional rights to trial by judge or jury, as well as rights to appeal. You are advised that you have the right to have an independent law firm of your choice review these

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arbitration provisions, and this entire agreement, prior to initialing this provision or signing this Agreement.

AB (Client initials here) [Signature] (Attorney initials here)

TAX DISCLOSURE AND ACKNOWLEDGMENT:

CLIENT IS ADVISED TO OBTAIN INDEPENDENT AND COMPETENT TAX ADVICE REGARDING THESE LEGAL MATTERS SINCE LEGAL TRANSACTIONS CAN GIVE RISE TO TAX CONSEQUENCES.

THE UNDERSIGNED LAW FIRM AND ATTORNEY HAVE NOT AGREED TO RENDER ANY TAX ADVICE AND ARE NOT RESPONSIBLE FOR ANY ADVICE REGARDING TAX MATTERS OR PREPARATION OF TAX RETURNS, OR OTHER FILINGS, INCLUDING, BUT NOT LIMITED TO, STATE AND FEDERAL INCOME AND INHERITANCE TAX RETURNS.

FURTHERMORE, CLIENT SHOULD OBTAIN PROFESSIONAL HELP REGARDING THE VALUATION AND LOCATION OF ALL ASSETS WHICH MAY BE THE SUBJECT OF A LEGAL MATTER INCLUDING BUT NOT LIMITED TO PENSIONS, EMPLOYMENT BENEFIT AND PROFIT SHARING RIGHTS THAT MAY BE CONTROLLED BY ANY OTHER PARTY TO THE LEGAL MATTER.

XII. DISCLAIMER OF GUARANTEE

12.01 Nothing in this Agreement and nothing in Attorney's statements to Client will be construed as a promise or guarantee about the outcome of the matter. Attorney makes no such promises or guarantees. There can be no assurance that Client will recover any sum or sums in this matter. Attorney's comments about the outcome of this matter are expressions of opinion only. Client acknowledges that Attorney has made no promises or guarantees about the outcome.

XIII. DISCHARGE AND WITHDRAWAL

13.01 Client may discharge Attorney at any time, with written notice. Attorney may withdraw with Client's consent, or for good cause, which includes Client's breach of this Agreement, refusal to cooperate or communicate with Attorney on this matter, or any fact or circumstance that would render Attorney's representation unlawful or unethical. Attorney will, upon Client's request, deliver Client's file and property in Attorney's possession, unless subject to lien as provided above, whether or not Client has completed payment for all services rendered.

XIV. EFFECTIVE DATE

14.01 This Agreement will govern all legal services beginning on the date that Attorney began performing work for Client. That date of this document is to be used for reference only. Client will

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be required to pay Attorney the reasonable value of services performed by Attorney, even if this agreement never takes effect.

I further certify and acknowledge that I have read this Contract, and that I have voluntarily entered into this Contract fully aware of its terms and conditions as of the date Attorney first provided services. All clients signing below agree to be liable, jointly and severally, for all obligations under this agreement.

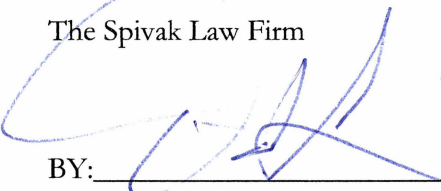
SIGNED on Mar 07, 2020



Andrew Burdick

SIGNED on 3/9/2020

The Spivak Law Firm


BY: _____
David G. Spivak
16530 Ventura Blvd., Suite 203
Encino, CA 91436
(818) 582-3086
(818) 582-2561 (telefax)
California Bar No. 179684

United Employees Law Group, PC


BY: _____
Walter L. Haines
5500 Bolsa Ave., Suite 201
Huntington Beach, CA 92649
(562) 256-1047
(562) 256-1006 (telefax)
California Bar No. 71075

STATEMENT OF CLIENT'S RIGHTS FOR CONTINGENCY FEES

Before you, the prospective client, arrange a contingent fee agreement with a lawyer, you should understand this statement of your rights as a client. This statement is not a part of the actual contract between you and your lawyer, but, as a prospective client, you should be aware of these rights.

1. There is no legal requirement that a lawyer charge a client a set fee or a percentage of money recovered in a case. You, the client, have the right to talk with your lawyer about the proposed fee and to bargain about the rate or percentage as in any other contract. If you do not reach an agreement with one (1) lawyer you may talk with other lawyers.

2. Any contingent fee contract must be in writing and you have three (3) business days to reconsider the contract. You may cancel the contract without any reason if you notify your lawyer in writing within 3 business days of signing the contract. If you withdraw from the contract within the first three (3) business days, you do not owe the lawyer a fee although you may be responsible for the lawyer's actual costs during that time. If your lawyer begins to represent you, your lawyer may not withdraw from the case without giving you notice, delivering necessary papers to you, and allowing you time to employ another lawyer. Often, your lawyer must obtain court approval before withdrawing from a case. If you discharge your lawyer without good cause after the 3-day period, you have to pay a fee for work the lawyer has done.

3. Before hiring a lawyer, you, the client, have the right to know about the lawyer's education, training, and experience. If you ask, the lawyer should tell you specifically about the lawyer's actual experience dealing with cases similar to yours. If you ask, the lawyer should provide information about special training or knowledge and give you this information in writing if you request it.

4. Before signing a contingent fee contract with you, a lawyer must advise you whether the lawyer intends to handle your case alone or whether other lawyers will be helping with the case. If you lawyer intends to refer the case to other lawyers, the lawyer should tell you what kind of fee sharing arrangement will be made with the other lawyers. If lawyers from different law firms will represent you, at least one (1) lawyer from each law firm must sign the contingent fee contract.

5. If your lawyer intends to refer your case to another lawyer or counsel with other lawyers, your lawyer should tell you about that at the beginning. If your lawyer takes the case and later decides to refer it to another lawyer or to associate with other lawyers, you should sign a new contract that includes the new lawyers. You, the client, also have the right to consult with each lawyer working on your case and each lawyer is legally responsible to represent your interest and is legally responsible for the acts of the other lawyers involved in the case.

6. You, the client, have the right to know in advance how you will need to pay the expenses and the legal fees at the end of the case. If you pay a deposit in advance for costs, you may ask reasonable questions about how the money has or will be spent and how much of it remains unspent. Your lawyer should give a reasonable estimate about future necessary costs. If your lawyer agrees to

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11. If at any time you, the client, believe that your lawyer has charged an excessive or illegal fee, you have the right to report the matter to The California Bar, the agency that oversees the practice and behavior of all lawyers in California. For information on how to reach The California Bar, contact the local bar association. Any disagreement between you and your lawyer about a fee can be taken to court and you may wish to hire another lawyer to help you resolve this disagreement. Usually fee disputes must be handled in a separate lawsuit, unless your fee contract provides for arbitration.

SIGNED on Mar 07, 2020



Andrew Burdick

SIGNED on 3/9/2020

The Spivak Law Firm

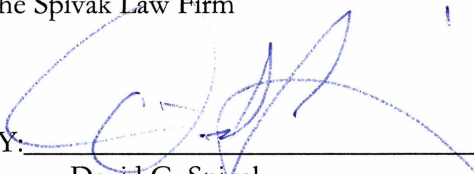

BY: _____
David G. Spivak
16530 Ventura Blvd., Suite 203
Encino, CA 91436
(818) 582-3086
(818) 582-2561 (telefax)
California Bar No. 179684

EXHIBIT 15

Case Name: Burdick v. Peach State (rev.)

Wednesday, March 15, 2023

Requesting Law Firm
Contact
E-Mail
ILYM Contact
E-Mail
Contact Number

The Spivak Law Firm
Emily Houg Ly
emily@spivaklaw.com
ILYM Group
Lisa@ilymgroup.com
714.878.8836

ESTIMATE FOR ADMINISTRATION SOLUTIONS

Opt-Out

ASSUMPTIONS	
Total Number of Class Members	90
Estimated Percentage of Undeliverable Mail	20%
NCOA	Yes
One-Page Notice Posted to ILYM Group Website	Yes
Certified Spanish Translations	No

Activity	Rate Type	Unit Cost	Volume	Amount
CASE STARTUP				
Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	1	\$150.00
Programming of Class Database	Hourly	\$175.00	1	\$175.00

**ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.*

Subtotal \$325.00

PROJECT MANAGEMENT				
Project Manager (Case notification and maintenance)	Hourly	\$120.00	3	\$360.00
Staff Hours for Processing Opt-Outs, Disputes & Objections	Hourly	\$70.00	1	\$70.00
Staff Hours for Processing Returned Mailed	Hourly	\$70.00	1	\$70.00
Report Processing	Hourly	\$70.00	2	\$140.00
NCOA	Per Piece	\$25.00	1	Waived
Toll-Free Call Center	Flat Fee	\$50.00	1	\$50.00
ILYM Group Static Website, Includes Hosting	Flat Fee	\$750.00	1	\$750.00
Certified Spanish Translations	Flat Fee	\$1,250.00	1	\$1,250.00
Weekly Reports	Flat Fee	\$500.00	1	Waived

Subtotal \$2,690.00

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Activity	Rate Type	Unit Cost	Volume	Amount
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NOTIFICATION/MAILING				
Fulfillment Notice	Per Piece	\$2.00	90	\$180.00
USPS First Class Postage	Per Piece	\$0.80	90	\$72.00
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$2.50	18	\$45.00
Storage, Photocopies, Deliveries	Flat Fee	\$261.50	1	\$261.50

Subtotal \$558.50

DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)				
Distribution Setup & Management	Hourly	\$150.00	2	\$300.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	2	\$250.00
Check, Print & Mail (Including W2/1099 Stub & Release)**	Per Check	\$1.00	90	\$90.00
USPS First Class 1oz Postage	Per Piece	\$0.60	90	\$54.00
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$2.50	9	\$22.50
Preparation of Taxes	Hourly	\$120.00	6	\$720.00
Annual Filing of Tax Return	Per Year	\$750.00	1	\$750.00

***Additional Bank fees may apply*

Subtotal \$2,186.50

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	2	\$200.00
Project Manager Final Reporting	Hourly	\$120.00	2	\$240.00
Declaration	Hourly	\$125.00	2	\$250.00

Subtotal \$690.00

Total Case Estimate: \$6,450.00

Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

EXHIBIT 16



Class Action Administrators

www.cptgroup.com

Contact Name: Timothy N. Phillips, Jr.

Randi Martz

Corporate Headquarters

50 Corporate Park, Irvine CA 92606

Tim@cptgroup.com

Main Number: (800) 542-0900

Direct Number: (818) 415-2703

Fax Number: (949) 428-1074

Case Name: Burdick v Peach State

Date: March 8, 2023

All-In Settlement

Requesting Attorney: **Emily Houg Ly**

* Class Members: **90**

Plaintiff or Defense: **Plaintiff**

** Opt-Out Rate: **1.5%**

Firm Name: **The Spivak Law Firm**

Opt-Outs Received: **1**

Telephone: **(818) 582-3086**

Postage Total: **\$155.57**

Email: emily@spivaklaw.com

Grand Total: **\$12,669.97**

***** DISCOUNTED FLAT FEE: \$8,500.00**

* This number is an estimate provided by counsel. If the actual number is different, our cost estimate will change accordingly.

** For ease of comparison, in the event competing estimates use an alternate filing rate to calculate estimated cost, please advise us so that we may modify the estimate accordingly.

*** This price is valid for administration of a maximum of 1 opt-out's filed. Any additional opt-out's filed above 1 will be billed at the rate of \$8.00 per member.

Case Setup

Case Setup / Data Management / Create a Unified Mailing List / TFN Establish & Setup / Static Website / Spanish Translation

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Project Manager	\$95.00	1	\$95.00
System Programming/Data Base Setup	\$150.00	1	\$150.00
Toll-Free Number Establish/Setup*	\$150.00	2	\$300.00
Static Website	\$500.00	1	\$500.00
Spanish Translation	\$1,200.00	1	\$1,200.00
Total			\$2,245.00

* Up to 120 days after disbursement

Notification Procedures

National Change of Address (NCOA) / Notice & Opt-Out Form in English & Spanish / Postage (up to 2 oz.)

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
NCOA	\$150.00	1	\$150.00
Project Manager-Opt-Out/Notice Format	\$95.00	2	\$190.00
Merged Data	\$0.35	90	\$31.50
Mailing of Notice Pack	\$1.50	90	\$135.00
Estimated Postage (up to 2 oz.)*	\$0.81	90	\$72.90
Total			\$579.40

*Additional charges will apply if the postage exceeds 1 oz. The final rate will be determined at the time of mailing.

Returned Mail

Notices Returned as Undeliverable / Skip Traces / Remail Notice Packets / Postage

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Update Undeliverable	\$0.50	9	\$4.50
Skip Traces	\$1.25	8	\$10.00
Remail Packs	\$1.50	7	\$10.50
Estimated Postage (up to 2 oz.)	\$0.81	7	\$5.67
Clerical Staff	\$60.00	1	\$60.00
Total			\$90.67

Opt-Out Processing

Process Opt-Outs, Deficiencies & Other Requests from Class Members / Call Center Support

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming of Opt-Out Data Base	\$150.00	4	\$600.00
Opt-Out Processing	\$10.00	1	\$10.00
Clerical Staff	\$60.00	1	\$60.00
Deficiency/Dispute Letters	\$20.00	1	\$20.00
Estimated Postage (up to 1 oz.)	\$0.60	1	\$0.60
Project Manager	\$95.00	1	\$95.00
Call Center Support	\$3.00	18	\$54.00
Total			\$839.60

SSN Verification

Verify SSN for Validity with IRS / IRS Backup Withholdings

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming for SSN Selection	\$150.00	1	\$150.00
Project Manager	\$95.00	3	\$285.00
SSN Verification	\$0.20	89	\$17.80
Total			\$452.80

Disbursement

Calculations / Data Management / Create & Manage QSF / Print & Mail Checks, 1099/W-2

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming Database-Calculate Totals	\$150.00	3	\$450.00
Project Supervisor Review of Distribution	\$150.00	3	\$450.00
Project Manager-Correspond w/ Attorney	\$95.00	2	\$190.00
Obtain EIN, Setup QSF/Bank Account	\$150.00	3	\$450.00
Programming/Setup & Printing of Checks	\$150.00	3	\$450.00
Print Mail Checks, W-2/1099 (8x10 sheet)	\$2.50	89	\$222.50
Estimated Postage (up to 1 oz.)	\$0.60	89	\$53.40
Total			\$2,265.90

Post-Disbursement & Tax Reporting

Account Recons / Skip Trace / Reissue Checks / Annual Tax Reporting / Final Reporting & Declaration

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Re-Issue Checks as Required	\$5.00	1	\$5.00
Project Supervisor -Account Recons	\$150.00	6	\$900.00
Skip Trace	\$1.25	7	\$8.75
Remail Undeliverable Checks	\$2.50	7	\$17.50
Estimated Postage (up to 1 oz.)	\$0.60	8	\$4.80
Project Supervisor-Reconcile Uncashed Chk	\$150.00	1	\$150.00
Programming- Final Reports	\$150.00	2	\$300.00
Project Manager - Acnt Files Sent to Atty	\$150.00	2	\$300.00
Project Supervisor - Final Declaration	\$150.00	2	\$300.00
CA Tax Preparation*	\$600.00	1	\$600.00
Annual Tax Reporting to IRS*	\$1,000.00	1	\$1,000.00
QSF Annual Tax Reporting	\$500.00	1	\$500.00
Total			\$4,086.05

*CPT will file Federal and California taxes in accordance to current state and federal regulations. Additional charges will apply if the Settlement/Order/parties require(s) multiple state tax filings.

Escheat Processing

Escheatment Processing to the State Controller Unclaimed Property Division / Uncashed Check Rate 21%

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
UPEnterprise Reporting Services	\$0.15	19	\$2.85
Project Manager - Fall Reporting	\$95.00	2	\$190.00
Project Supervisor-Fall Reporting	\$150.00	1	\$150.00
Certified Mail Report to SCO	\$8.53	1	\$8.53
Check Reissues - Winter/Spring QTR	\$5.00	2	\$9.50
Estimated Postage (up to 1 oz.) for Reissue	\$0.60	2	\$1.14
Project Manager - June Remittance	\$95.00	2	\$190.00
Project Supervisor- June Remittance	\$150.00	1	\$150.00
Certified Mail Report to SCO	\$8.53	1	\$8.53
Add'l Account Recons	\$150.00	6	\$900.00
Add'l QSF Annual Tax Reporting	\$500.00	1	\$500.00
Total			\$2,110.55
Grand Total:			\$12,669.97

TERMS AND CONDITIONS

These Terms and Conditions are made a part of, and incorporated by reference into, any cost proposal or Bid presented by CPT Group, Inc. to Client

Definitions.

- a) **"Affiliate"** means a party that partially (at least 50%) or fully controls, is partially or fully controlled by, or is under partial (at least 50%) or full common control with another party.
 - b) **"Approved Bank"** means a financial institution insured by the Federal Deposit Insurance Corporation with capital exceeding \$1 billion.
 - c) **"Case"** means the particular judicial matter identified by the name of plaintiff(s) and defendant(s) on the applicable Order.
 - d) **"Claims Administrator"** means CPT Group, Inc., a reputable third-party Claims Administrator selected by all the Parties (Plaintiff and Defense Counsel) to administer the Settlement or Notification Mailing.
 - e) **"Client"** means collectively Plaintiff Counsel and Defense Counsel.
 - f) **"Client Content"** means all Class Member written document communications relating to the Case, including claim forms, opt-out forms, and objections, which contain Client Data.
 - g) **"Client Data"** means proprietary or personal data regarding Client or any of its Class Members under this Agreement, as provided by Client.
 - h) **"Class Member"** means an individual who is eligible under the Settlement Agreement to receive a designated amount of the Settlement, including the named Plaintiff(s) in the Case and all other putative persons so designated or addressed therein.
 - i) **"Confidential Information"** means any non-public information of CPT or Client disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects, or to which the other party may have access, which a reasonable person would consider confidential and/or which is marked "confidential" or "proprietary" or some similar designation by the disclosing party. Confidential Information shall also include the terms of this Agreement, except where this Agreement specifically provides for disclosure of certain items. Confidential Information shall not, however, include the existence of the Agreement or any information which the recipient can establish: (i) was or has become generally known or available or is part of the public domain without direct or indirect fault, action, or omission of the recipient; (ii) was known by the recipient prior to the time of disclosure, according to the recipient's prior written documentation; (iii) was received by the recipient from a source other than the discloser, rightfully having possession of and the right to disclose such information; or (iv) was independently developed by the recipient, where such independent development has been documented by the recipient.
 - j) **"Court Order"** means a legal command or direction issued by a court, judicial office, or applicable administrative body requiring one or more parties to the Case to carry out a legal obligation pursuant to the Case.
 - k) **"Defendant"** means the named party and/or parties in the Case against whom action is brought.
 - l) **"Defense Counsel"** means the attorney of record for the defendant(s) in the Case.
 - m) **"Intellectual Property Right"** means any patent, copyright, trade or service mark, trade dress, trade name, database right, goodwill, logo, trade secret right, or any other intellectual property right or proprietary information right, in each case whether registered or unregistered, and whether arising in any jurisdiction, including without limitation all rights of registrations, applications, and renewals thereof and causes of action for infringement or misappropriation related to any of the foregoing.
 - n) **"Order"** means a Product purchase in a schedule, statement of work, addendum, exhibit, or amendment signed by Client and CPT.
 - o) **"Parties"** shall mean collectively Defendants, Defense and Plaintiff as defined in the Settlement Agreement or Court Order.
 - p) **"Plaintiff"** means the named party and/or parties in the Case who are bringing the action.
 - q) **"Plaintiff Counsel"** means the attorney of record for plaintiff Class Members in the Case.
 - r) **"Products"** means any and all CPT Services, and work products resulting from Services.
 - s) **"Qualified Settlement Fund"** means the entity as defined by Treasury Regulation section 4686-1 under which a bank account is established to receive settlement funds from the Defendant in the Case, which such funds are then disbursed by CPT according to the Settlement Agreement and pursuant to Court Order.
 - t) **"Service"** means any service rendered by CPT specifically to Client, including, but not limited to: (i) notifications to Class Members; (ii) setting up a Qualified Settlement Fund with a financial institution; (iii) management of disbursement of funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement; (iv) provision of customer support relating to the Case; (v) management of Case claim forms and correspondence; and/or (vi) any administrative or consulting service.
 - u) **"Software"** means any and all of CPT's proprietary applications, including, without limitation, all updates, revisions, bug-fixes, upgrades, and enhancements thereto.
 - v) **"Settlement"** means the total dollar amount agreed to between parties to the Case, as negotiated by Plaintiff Counsel and Defense Counsel, to resolve the Case to mutual satisfaction.
 - w) **"Settlement Agreement"** means the contract between parties to the Case to resolve the same, which specifies amounts to be disbursed from the Qualified Settlement Fund to attorneys, CPT, and individual Class Members.
 - x) **"Term"** means the term of the Agreement, as set forth in the Order.
 - y) **"Transmission Methods"** means the secure authorized manner to send Client Data and/or Wire Information as specified on a schedule or Order hereto.
 - z) **"Wire Information"** means instructions for (i) Defense Counsel to transfer funds from Defendant to the Qualified Settlement Fund or (ii) CPT to transfer funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement.
2. **Client Obligations.** Client will ensure that it has obtained all necessary consents and approvals for CPT to access Client Data for the purposes permitted under this Agreement and shall only transmit Client Data and/or Wire Instructions to CPT via the Transmission Methods. Client shall use and maintain appropriate administrative, technical, and physical safeguards designed to protect Client Data provided under this Agreement. Client shall not send, or attempt to send, Client Data and/or Wire Instructions via email, facsimile, unprotected spreadsheet, USB flash drive or other external or removable storage device, cloud storage provider, or any other method not specified in the Transmission Methods. Notwithstanding the foregoing, Client acknowledges and understands that the electronic transmission of information cannot be guaranteed to be secure or error free, and such information could be intercepted, corrupted, lost, and/or destroyed. Client further warrants that any Client Data and/or Wire Instructions it transmits shall be free of viruses, worms, Trojan horses, or other harmful or disabling codes which could adversely affect the Client Data and/or CPT. If Client is in breach of this section, CPT may suspend Services, in addition to any other rights and remedies CPT may have at law or in equity.
3. **Security.** The Parties and CPT shall each use reasonable administrative, technical, and physical safeguards that are reasonably designed to: (a) protect the security and confidentiality of any personally identifiable information provided by Class Members and/or Client under this Agreement; (b) protect against any anticipated threats or hazards to the security or integrity of such personally identifiable information; (c) protect against unauthorized access to or use of such personally identifiable information that could result in substantial harm or inconvenience to any individual; and (d) protect against unauthorized access to or use of such personally identifiable information in connection with its disposal. Each Party will respond promptly to remedy any known security breach involving the personally identifiable information provided by you and/or Client under this Agreement and shall promptly inform the other Parties of such breaches.
4. **CPT Obligations.** Provided that Client complies with all provisions of Section "Client Obligations", CPT will (i) maintain appropriate safeguards for the protection of Client Data, including regular back-ups, security and incident response protocols, and (ii) not access or disclose Client Data except (A) as compelled by law, (B) to prevent or address service or technical issues, (C) in accordance with this Agreement or the provisions of the Settlement Agreement, or (D) if otherwise permitted by Client.
5. **Mutual Obligations.**
- a) **Resources.** Each party agrees to: (i) provide the resources reasonably necessary to enable the performance of the Services; (ii) manage its project staffing, milestones, and attendance at status meetings; and (iii) ensure completion of its project deliverables and active participation during all phases of a Service project. The parties acknowledge that failure to cooperate during a Service project may delay delivery of the Service.
 - a) **Compelled Disclosure.** If receiving party is compelled to disclose any Confidential Information by judicial or administrative process or by other requirements of law, such party shall (i) promptly notify the other party, (ii) reasonably cooperate with the other party in

If there is a delay, the party experiencing the delay will notify the other party as soon as reasonably practicable, and representatives of each party will meet to discuss the reason for the delay and applicable

consequences. Changes beyond the scope of an Order and/or a party's delay in performing its obligations may require an amended Order.

- b) **Incident Notification.** Each party will promptly inform the other parties in the event of a breach of Client Data in their possession and shall utilize best efforts to assist the other parties to mitigate the effects of such incident.

Qualified Settlement Fund Account. At Client's request, CPT shall be authorized to establish one or more bank accounts at an Approved Bank. The amounts held at the Approved Bank under this Agreement are at the sole risk of Client. Without limiting the generality of the foregoing, CPT shall have no responsibility or liability for any diminution of the funds that may result from the deposit thereof at the Approved Bank, including deposit losses, credit losses, or other claims made against the Approved Bank. It is acknowledged and agreed that CPT has acted reasonably and prudently in depositing funds at an Approved Bank, and CPT is not required to conduct diligence or make any further inquiries regarding such Approved Bank.

Fees and Payment. Pricing stated within the proposal is good for 90 Days. All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the Client data and /or notice documents. Client will be invoiced for any remaining fees according to the applicable Order. Pricing stated within any proposal from CPT to Client is for illustrative purposes only and is only binding upon an Order executed by CPT and Client. Payment of fees will be due within 30 days after the date of the invoice, except where this Agreement expressly prescribes other payment dates. All fees set forth in an Order are in U.S. dollars, must be paid in U.S. dollars, and are exclusive of taxes and applicable transaction processing fees. Late payments hereunder will incur a late charge of 1.5% (or the highest rate allowable by law, whichever is lower) per month on the outstanding balance from the date due until the date of actual payment. In addition, Services are subject to suspension for failure to timely remit payment therefor. If travel is required to effect Services, Client shall reimburse CPT for pre-approved, reasonable expenses arising from and/or relating to such travel, including, but not limited to, airfare, lodging, meals, and ground transportation.

Term and Termination.

- a) **Term.** The Term is set forth in the Order. The Agreement may be renewed by mutual written agreement of the parties.
- b) **Termination for Cause.** Either party may immediately terminate this Agreement if the other party materially breaches its obligations hereunder, and, where capable of remedy, such breach has not been materially cured within forty-five (45) days of the breaching party's receipt of written notice describing the breach in reasonable detail.
- c) **Bankruptcy Events.** A party may immediately terminate this Agreement if the other party: (i) has a receiver appointed over it or over any part of its undertakings or assets; (ii) passes a resolution for winding up (other than for a bona fide scheme of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect and such order is not discharged or stayed within ninety (90) days; or (iii) makes a general assignment for the benefit of its creditors.
- d) **Effect of Termination.** Immediately following termination of this Agreement, upon Client's written request, Client may retrieve Client Data via Client's secure FTP site in the same format in which the Client Data was originally inputted into the Software, at no additional charge. Alternatively, Client Data can be returned in a mutually agreed format at a scope and price to be agreed. CPT will maintain a copy of Client Data and Client Content for no more than four (4) years following the date of the final check cashing deadline for Class Members under the Settlement Agreement, after which time any Client Data and Client Content not retrieved will be destroyed.
- e) **Final Payment.** If Client terminates this Agreement due to Section "Termination", Client shall pay CPT all fees owed through the termination date. If CPT terminates the Agreement in accordance with Section "Termination," Client shall pay CPT all fees invoiced through the termination date, plus all fees remaining to be invoiced during the Term, less any costs CPT would have incurred had the Agreement not been terminated.

Confidentiality. Each of the parties agrees: (i) not to disclose any Confidential Information to any third parties except as mandated by law and except to those subcontractors of CPT providing Products hereunder who agree to be bound by confidentiality obligations no less stringent than those set forth in this Agreement; (ii) not to use any Confidential Information for any purposes except carrying out such party's rights and responsibilities under this Agreement; and (iii) to keep the Confidential Information confidential using the same degree of care such party uses to protect its own confidential information; provided, however, that such party shall use at least reasonable care. These obligations shall survive termination of this Agreement.

15. Miscellaneous Provisions.

- a) **Governing Law; Jurisdiction.** This Agreement will be governed by and construed in accordance with the laws of the State of California and the federal laws of the United States of America, without regard

to the other party, (ii) reasonably cooperate with the other party in such party's efforts to prevent or limit such compelled disclosure and/or obtain confidential treatment of the items requested to be disclosed, and (iii) shall disclose only that portion of such information which each party is advised by its counsel in writing is legally required to be disclosed.

- b) **Remedies.** If either party breaches any of its obligations with respect to confidentiality or the unauthorized use of Confidential Information hereunder, the other party shall be entitled to seek equitable relief to protect its interest therein, including but not limited to, injunctive relief, as well as money damages.

10. **Intellectual Property.** As between the parties, CPT will and does retain all right, title and interest (including, without limitation, all Intellectual Property Rights) in and to the Products. Client retains all ownership rights to Client Data.

11. **Indemnification.** Client agrees to indemnify, defend, and hold harmless CPT, its Affiliates, and the respective officer, directors, consultants, employees, and agents of each (collectively, Covered CPT Parties") from and against any and all third party claims and causes of action, as well as related losses, liabilities, judgments, awards, settlements, damages, expenses and costs (including reasonable attorney's fees and related court costs and expenses) (collectively, "Damages") incurred or suffered by CPT which directly relate to or directly arise out of (i) Client's breach of this Agreement; (ii) CPT's performance of Services hereunder; (iii) the processing and/or handling of any payment by CPT; (iv) any content, instructions, information or Client Data provided by Client to CPT in connection with the Services provided by CPT hereunder. The foregoing provisions of this section shall not apply to the extent the Damages relate to or arise out of CPT's willful misconduct. To obtain indemnification, indemnitee shall: (i) give written notice of any claim promptly to indemnitor; (ii) give indemnitor, at indemnitor's option, sole control of the defense and settlement of such claim, provided that indemnitor may not, without the prior consent of indemnitee (not to be unreasonably withheld), settle any claim unless it unconditionally releases indemnitee of all liability; (iii) provide to indemnitor all available information and assistance; and (iv) not take any action that might compromise or settle such claim.

12. **Warranties.** Each party represents and warrants to the other party that, as of the date hereof: (i) it has full power and authority to execute and deliver the Agreement; (ii) the Agreement has been duly authorized and executed by an appropriate employee of such party; (iii) the Agreement is a legally valid and binding obligation of such party; and (iv) its execution, delivery and/or performance of the Agreement does not conflict with any agreement, understanding or document to which it is a party. CPT WARRANTS THAT ANY AND ALL SERVICES PROVIDED BY IT HEREUNDER SHALL BE PERFORMED IN A PROFESSIONAL MANNER CONSISTENT WITH PREVAILING INDUSTRY STANDARDS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CPT DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.

13. Liability.

- a) **Liability Cap.** EXCEPT FOR A PARTY'S WILLFUL MISCONDUCT, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, WILL BE LIMITED TO THE TOTAL CLAIMS ADMINISTRATOR FEES PAID OR PAYABLE BY CLIENT TO CPT HEREUNDER. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT EXPAND SUCH LIMIT. THE PARTIES ACKNOWLEDGE THAT THE FEES AGREED UPON BETWEEN CLIENT AND CPT ARE BASED IN PART ON THESE LIMITATIONS, AND THAT THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ANY ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATION SHALL NOT APPLY TO A PARTY'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT.

- b) **Exclusion of Consequential Damages.** NEITHER PARTY WILL BE LIABLE FOR LOST PROFITS, LOST REVENUE, LOST BUSINESS OPPORTUNITIES, LOSS OF DATA, INTERRUPTION OF BUSINESS, OR ANY OTHER INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

14. **Communications.** CPT may list Client's name and logo alongside CPT's other clients on the CPT website and in marketing materials, unless and until Client revokes such permission. CPT may also list the Case name and/or number, and certain Qualified Settlement Fund information, on the CPT website and in marketing materials, unless stated otherwise in the Settlement Agreement.

Agreement, CPT has the perpetual right to use aggregated, anonymized, and statistical data ("Statistical Data") derived from the operation of the Software, and nothing herein shall be construed as prohibiting CPT from utilizing the Statistical Data for

to conflict of law principles. CPT and Client agree that any suit, action or proceeding arising out of, or with respect to, this Agreement or any judgment entered by any court in respect thereof shall be brought exclusively in the state or federal courts of the State of California located in the County of Orange, and each of CPT and Client hereby irrevocably accepts the exclusive personal jurisdiction and venue of those courts for the purpose of any suit, action or proceeding.

- b) **Force Majeure.** Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including without limitation acts of war, acts of God, earthquake, flood, weather conditions, embargo, riot, epidemic, acts of terrorism, acts or omissions of vendors or suppliers, equipment failures, sabotage, labor shortage or dispute, governmental act, failure of the Internet or other acts beyond such party's reasonable control, provided that the delayed party: (i) gives the other party prompt notice of such cause; and (ii) uses reasonable commercial efforts to correct promptly such failure or delay in performance.
- c) **Counterparts.** This Agreement may be executed in any number of counterparts and electronically, each of which shall be an original but all of which together shall constitute one and the same instrument.
- d) **Entire Agreement.** This Agreement contains the entire understanding of the parties in respect of its subject matter and supersedes all prior agreements and understandings (oral or written) between the parties with respect to such subject matter. The schedules and exhibits hereto constitute a part hereof as though set forth in full herein.
- e) **Modifications.** Any modification, amendment, or addendum to this Agreement must be in writing and signed by both parties.
- f) **Assignment.** Neither party may assign this Agreement or any of its rights, obligations, or benefits hereunder, by operation of law or otherwise, without the other party's prior written consent; provided, however, either party, without the consent of the other party, may assign this Agreement to an Affiliate or to a successor (whether direct or indirect, by operation of law, and/or by way of purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of such party, where the responsibilities or obligations of the other party are not increased by such assignment and the rights and remedies available to the other party are not adversely affected by such assignment. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and permitted assigns.
- g) **No Third-Party Beneficiaries.** The representations, warranties, and other terms contained herein are for the sole benefit of the parties hereto and their respective successors and permitted assigns and shall not be construed as conferring any rights on any other persons.
- h) **Statistical Data.** Without limiting the confidentiality rights and Intellectual Property Rights protections set forth in this

construed as prohibiting CPT from utilizing the Statistical Data for business and/or operating purposes, provided that CPT does not share with any third-party Statistical Data which reveals the identity of Client, Client's Class Members, or Client's Confidential Information.

- i) **Export Controls.** Client understands that the use of CPT's Products is subject to U.S. export controls and trade and economic sanctions laws and agrees to comply with all such applicable laws and regulations, including the Export Administration Regulations maintained by the U.S. Department of Commerce and the trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control.
- j) **Severability.** If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, such provision shall be changed by the court or by the arbitrator and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Agreement shall remain in full force and effect.
- k) **Notices.** Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by electronic delivery, or mailed by registered or certified mail, return receipt requested and postage prepaid to the address for the other party first written above or at such other address as may hereafter be furnished in writing by either party hereto to the other party. Such notice will be deemed to have been given as of the date it is delivered, if by personal delivery; the next business day, if deposited with an overnight courier; upon receipt of confirmation of electronic delivery (if followed up by such registered or certified mail); and five days after being so mailed.
- l) **Independent Contractors.** Client and CPT are independent contractors, and nothing in this Agreement shall create any partnership, joint venture, agency, franchise, sales representative or employment relationship between Client and CPT. Each party understands that it does not have authority to make or accept any offers or make any representations on behalf of the other. Neither party may make any statement that would contradict anything in this section.
- m) **Subcontractors.** CPT shall notify Client of its use of any subcontractors to perform Client-specific Services. CPT shall be responsible for its subcontractors' performance of Services under this Agreement.
- n) **Headings.** The headings of the sections of this Agreement are for convenience only, do not form a part hereof, and in no way limit, define, describe, modify, interpret, or construe its meaning, scope or intent.
- o) **Waiver.** No failure or delay on the part of either party in exercising any right, power or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise or the exercise of any other right, power, or remedy.
- p) **Survival.** Sections of the Agreement intended by their nature and content to survive termination of the Agreement shall so survive.

EXHIBIT 17



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

March 7, 2023

CASE ASSUMPTIONS

Class Members	90
Opt Out Rate	1%
Opt Outs Received	1
Total Class Claimants	89
Subtotal Admin Only	\$8,500.73

Not-to-Exceed Total \$7,000.00

For 90 Class Members

Pricing Good for Scope of Estimate Only

Includes all Aspects of Escheating to the State of CA

Spanish Translation, Printing & Mailing Included

Case: Burdick v. Peach State, Opt-Out Administration

Phoenix Contact: Michael E. Moore
Contact Number: 949.331.0131
Email: mike@phoenixclassaction.com

Requesting Attorney: Emily Houg Ly
Firm: The Spivak Law Firm
Contact Number: (818) 205-9033
Email: emily@spivaklaw.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly. Estimate is based on **90** Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of \$150 per hour will be charged for any additional analysis or programming.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item	Estimate
Programming Manager	\$100.00	2		\$200.00
Programming Database & Setup	\$100.00	2		\$200.00
Toll Free Setup*	\$150.00	1		\$150.00
Call Center & Long Distance	\$2.00	23		\$45.00
NCOA (USPS)	\$25.00	1		\$25.00
Total				\$620.00

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Website / Spanish Translation

Project Action	Rate	Hours/Units	Line Item	Estimate
Notice Packet Formatting	\$100.00	2		\$200.00
Spanish Translation	\$800.00	1		\$800.00
Data Merge & Duplication Scrub	\$0.10	90		\$9.00
Notice Packet & Opt-Out Form	\$1.30	90		\$117.00
Estimated Postage (up to 2 oz.)*	\$0.84	90		\$75.60
Static Website	\$100.00	1		Included
Check Cashing Reminder Postcard	\$0.60	19		TBD
Postage Included				
Total				\$1,201.60

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Associate	\$55.00	4		\$220.00
Skip Tracing Undeliverables	\$0.85	23		\$19.13
Remail Notice Packets	\$0.75	20		\$14.63
Estimated Postage	\$0.84	20		\$16.38
Programming Undeliverables	\$50.00	1		\$50.00
Total				\$320.13

Database Programming / Processing Opt-Outs, Deficiencies or Disputes

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Claims Database	\$150.00	2		\$300.00
Non Opt-Out Processing	\$200.00	1		\$200.00
Case Associate	\$55.00	4		\$220.00
Opt-Outs/Deficiency/Dispute Letters	\$10.00	7		\$70.00
Case Manager	\$85.00	3		\$255.00
Total				\$1,045.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Calculations	\$135.00	2		\$270.00
Disbursement Review	\$135.00	1		\$135.00
Programming Manager	\$95.00	1		\$95.00
QSF Bank Account & EIN	\$135.00	2		\$270.00
Check Run Setup & Printing	\$135.00	4		\$540.00
Mail Class Checks *	\$1.00	89		\$89.00
Estimated Postage	\$0.55	89		\$48.95
Total				\$1,447.95

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Supervisor	\$115.00	4		\$460.00
Remail Undeliverable Checks (Postage Included)	\$1.35	23		\$31.05
Case Associate	\$55.00	4		\$220.00
Reconcile Uncashed Checks	\$85.00	7		\$595.00
Conclusion Reports	\$115.00	4		\$460.00
Case Manager Conclusion	\$85.00	4		\$340.00
Final Reporting & Declarations	\$115.00	4		\$460.00
IRS & QSF Annual Tax Reporting * (1 State Tax Reporting Included)	\$1,000.00	1		\$1,000.00
Check to Cy-Pres	\$150.00	1		Included
Uncashed Checks to the State of California Contolers Office Estimated <u>19</u> Total Class Members	\$300.00	1		\$300.00
Total				\$3,866.05

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$8,500.73



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

EXHIBIT 18