

1 DAVID G. SPIVAK (SBN 179684)
david@spivaklaw.com
2 CAROLINE TAHMASSIAN (SBN 285680)
caroline@spivaklaw.com
3 MAYA CHEAITANI (SBN 335777)
maya@spivaklaw.com
4 THE SPIVAK LAW FIRM
5 8605 Santa Monica Bl, PMB 42554
West Hollywood, CA 90069
6 Telephone: (213) 725-9094
7 Facsimile: (213) 634-2485

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

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

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

17 *Plaintiff(s),*

18 vs.

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

22 *Defendant(s).*

Case No. 20STCV20397

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

Hearing Date: October 18, 2022
Hearing Time: 10:00 a.m.
Hearing Dept.: 14, The Honorable
Kenneth R. Freeman

Action filed: May 28, 2020



SPIVAK LAW

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ADDITIONAL ATTORNEYS FOR PLAINTIFF(S)

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 Plaintiff(s),
ANDREW BURDICK, and all others similarly situated

ATTORNEY FOR DEFENDANTS

MICHAEL A. HOOD (SBN 71258)
michael.hood@jacksonlewis.com
JACKSON LEWIS P.C.
200 Spectrum Center Drive, Suite 500
Irvine, CA 92618
Telephone: 949-885-1360
Facsimile: 949-885-1380
Attorney for Defendants PEACH STATE ROOFING, INC., MARTIN KELLY, and CHRIS KELLY



SPIVAK LAW

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1 The Motion of Plaintiff Andrew Burdick (hereafter referred to as “Plaintiff”) for
2 Preliminary Approval of a Class Action Settlement (the “Motion”) was considered by the Court,
3 The Honorable Kenneth R. Freeman presiding. The Court having considered the Motion, the Joint
4 Stipulation of Class Action Settlement and Release of Claims (“Settlement” or “Settlement
5 Agreement”), and supporting papers, HEREBY ORDERS THE FOLLOWING:

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

17
18 2. For purposes of this Preliminary Approval Order, the “Settlement Class” means
19 all persons Defendants Peach State Roofing, Inc. and Martin Kelly employed as non-exempt,
20 hourly employees in California (collectively “Class Members”), who worked anytime during the
21 Class Period. The “Class Period” shall mean the period of time from May 28, 2016, through April
22 15, 2021. Defendants estimate that as of April 15, 2021, there were 90 potential Settlement Class
23 Members. The “Effective Date” means as follows: If no objection to this Settlement or to any of
24 the terms and or conditions of the Settlement are filed by Plaintiff, another member of the
25 Settlement class, or any intervenor to this Lawsuit, the Effective Date shall occur on the day that
26
27
28



SPIVAK LAW

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1 the Court enters an order of final approval of this Settlement; however, if any objection to this
2 Settlement or to any of the terms and or conditions of the Stipulation is filed by a member of the
3 Settlement class, or any intervenor to this Lawsuit, the Effective Date shall occur upon the
4 expiration of the time for the filing any appeal of the order of final approval of this Settlement. If
5 an appeal is filed or any writ granted, then the Effective Date shall occur after the appeal has been
6 dismissed or the writ dissolved and when there is no further time to appeal the dismissal of the
7 appeal or the dissolution of the writ. The occurrence of the Effective Date is a prerequisite to any
8 obligation of Defendants to pay any funds into the Settlement Account.

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

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

24 5. The Court finds that the dates set forth in the Settlement for mailing and
25 distribution of the Class Notice meet the requirements of due process and provide the best notice
26 practicable under the circumstances, and constitute due and sufficient notice to all persons entitled



SPIVAK LAW

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1 thereto, and directs the mailing of the Class Notice by first class mail to the Settlement Class as
2 set forth in the Settlement. Accordingly, the Court orders the following implementation schedule
3 for further proceedings:

4 a. Not later than fourteen (14) days if thus Preliminarily Approval Order,
5 Defendants shall provide ILYM Group, Inc., the appointed Settlement
6 Administrator, with: (a) An electronic database of all Class Members, last
7 known mailing address, Social Security number and Defendants' employee
8 identification number ("Class Members' Data"); and (b) Corresponding to
9 each Class Member's name, Defendants shall provide a figure indicating the
10 total number of Work Weeks during the Class Period in which Defendants
11 employed the Class Member. That number of Work Weeks shall be referred to
12 as that Class Member's "Individual Work Weeks;" (c) If any of the Class
13 Members' Data are unavailable to Defendants, Defendants will so inform
14 Class Counsel and the Parties will make their best efforts to reconstruct or
15 otherwise agree upon the Class Members' Data prior to when it must be
16 submitted to the Settlement Administrator. Class Members' Data will
17 otherwise remain confidential and will not be disclosed to anyone, except as
18 necessary to applicable taxing authorities, or pursuant to Defendants' express
19 written authorization or by order of the Court.

22 b. **Mailing of Class Notice.** Not later than fourteen (14) days after receiving the
23 Class Members' Data, or as soon thereafter as it can do so, the Settlement
24 Administrator will mail the Class Notice to all identified Class Members via
25 first-class U.S. mail using the mailing address information provided by
26
27
28



SPIVAK LAW

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1 Defendants, unless modified by any updated address information that the
2 Settlement Administrator obtains in the course of administration of the
3 Settlement.

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

21 d. **Declaration of Settlement Administrator.** Not later than twenty-one (21)
22 court days prior to the Final Approval Hearing, the Settlement Administrator
23 will provide the Parties for filing with the Court a declaration of due diligence
24



25 SPIVAK LAW

26 Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

27 Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1 setting forth its compliance with its obligations under this Agreement. Prior to
2 the Final Approval Hearing, the Settlement Administrator will supplement its
3 declaration of due diligence if any material changes occur from the date of the
4 filing of its prior declaration.

5 **e. Requests for Exclusion from Settlement; and Objections to Settlement.**

6 Class Members may submit requests to be excluded from the effect of the
7 Settlement, or objections to the Settlement, pursuant to the following
8 procedures:
9

- 10 i. **Request for Exclusion from Settlement.** A Class Member may
11 request to be excluded from the effect of this Agreement, and any
12 payment of amounts under this Agreement, by timely mailing a letter
13 to the Settlement Administrator stating that the Class Member wants to
14 be excluded from this Action. This letter must include the Class
15 Member's name, address, telephone number, and signature. To be valid
16 and timely, the request to be excluded must be postmarked by the date
17 specified in the Class Notice (not later than 60 days from the initial
18 mailing of the Class Notice by the Settlement Administrator). A Class
19 Member who properly submits a valid and timely request to be
20 excluded from the Action shall not receive any payment of any kind in
21 connection with this Agreement or this Action, shall not be bound by
22 or receive any benefit of this Agreement, and shall have no standing to
23 object to the Settlement. A request for exclusion must be mailed to the
24 Settlement Administrator at the address provided on the Class Notice.
25
26
27
28



SPIVAK LAW

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1 The Settlement Administrator shall transmit the request for exclusion
2 to counsel for the Parties as follows:

4 *To Class Counsel:*

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

To Defense Counsel:

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

10 ii. **Objections to Settlement.** The Class Notice will provide that any
11 Class Member who does not request exclusion from the Action and
12 who wishes to object to the Settlement should submit an objection in
13 writing to the Settlement Administrator not later than 60 days after the
14 Settlement Administrator mails the Class Notice, a written objection to
15 the Settlement which sets forth the grounds for the objection and the
16 other information required by this paragraph. The objection should be
17 mailed to the Settlement Administrator at the address provided on the
18 Class Notice. The Settlement Administrator shall transmit the
19 objections to counsel for the Parties as follows:

22 *To Class Counsel:*

23 David G. Spivak, Esq.
24 The Spivak Law Firm
25 8605 Santa Monica Bl
26 PMB 42554
27 West Hollywood, CA 90069

To Defense Counsel:

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



SPIVAK LAW

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

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

11 If the objecting Class Member does not formally intervene in the action
12 and/or the Court rejects the Class Member's objection, the Class
13 Member may still be bound by the terms of this Agreement.
14

- 15
- 16 f. **Report.** Not later than fourteen (14) days after the deadline for submission of
17 requests for exclusion, the Settlement Administrator will provide the Parties
18 with a complete and accurate list of all Class Members who sent timely
19 requests to be excluded from the Action and all Class Members who objected
20 to the settlement.

21

22 6. The Court approves, as to form and content, the Class Notice in substantially the
23 form attached as Exhibit A to the Settlement, the Exclusion Request form in substantially the
24 form attached as Exhibit B to the Settlement, and the Work Weeks Dispute form in substantially
25 the form attached as Exhibit C to the Settlement.

- 26 7. The Court approves, for settlement purposes only, David Spivak of The Spivak
27



SPIVAK LAW

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1 Law Firm and Walter L. Haines of United Employees Law Group as Class Counsel.

2 8. The Court approves, for settlement purposes only, Andrew Burdick as the Class
3 Representative.

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

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

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

9 12. The Court preliminarily approves Plaintiff's Class Representative Payment subject
10 to final review by the Court.

11 13. A Final Approval Hearing shall be held on _____ at _____**.m.** in the
12 Superior Court for the State of California, County of Los Angeles, located at the Spring Street
13 Courthouse, 312 North Spring Street, Los Angeles, CA 90012 to consider the fairness, adequacy
14 and reasonableness of the proposed Settlement preliminarily approved by this Preliminary
15 Approval Order, and to consider the application of Class Counsel for attorneys' fees and costs
16 and the Class Representative Payment to the Class Representative. The notice of motion and all
17 briefs and materials in support of the motion for final approval of class action settlement and
18 motion for attorneys' fees and litigation costs shall be served and filed with this Court sixteen
19 (16) Court days before the Final Approval Hearing.

20 14. If for any reason the Court does not execute and file a final approval order and
21 judgment, or if the Effective Date, as defined in the Settlement, does not occur for any reason, the
22 proposed Settlement that is the subject of this order, and all evidence and proceedings had in
23 connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the
24



SPIVAK LAW

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1 litigation, as more specifically set forth in the Settlement.

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

5 **IT IS SO ORDERED.**

6
7
8 **DATE**

HONORABLE KENNETH R. FREEMAN
JUDGE OF THE SUPERIOR COURT



SPIVAK LAW

25 Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
26 (213) 725-9094 Tel
(213) 634-2485 Fax
27 SpivakLaw.com

28 Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403