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

14 ANDREW BURDICK, on behalf of himself, and
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
19 vs.

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

23 *Defendant(s).*
24

Case No. 20STCV20397

**PLAINTIFF ANDREW BURDICK’S
SUPPLEMENTAL MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT OF 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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1 **SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**
2 **OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

3 Plaintiff Andrew Burdick ("Plaintiff") submits this supplemental memorandum of points
4 and authorities in support of his unopposed motion for preliminary approval of the First Amended
5 Joint Stipulation of Class Action Settlement and Release of Claims (the "Amended Settlement").
6 On October 12, 2022, the Court provided the Parties with the Checklist for Preliminary Approval
7 of Class Action Settlement and ordered further briefing on the items checked on this checklist.
8 Each of the items checked is recited below in bold, followed by a discussion of the Parties
9 response to the comment/question.

10 **I. Moving Papers (Motion and Declaration)**

11 **B. Dunk/Kullar Analysis:** Summary of the investigation and discovery conducted,
12 including the specific documents reviewed prior to agreeing to settle the case. (*Dunk v. Ford*
13 *Motor Co. (1996) 48 Cal.App.4th 1794, 1802, as modified Sept. 30, 1996 (Dunk).*) **If counsel's**
14 **analysis was informed by a data sample, show that the sample is statistically reliable.**

15 Prior to the mediation, in addition to Plaintiff's records, Defendant produced, and Plaintiff
16 reviewed and analyzed time and payroll records for approximately 33% of the Class. For
17 settlement purposes, this data sample was statistically reliable. Supplemental Declaration of
18 David Spivak ("Supp Spivak Decl."), ¶ 5.

19 **C. Class Certification. Adequacy:** Class Representative(s): Provide evidence that each
20 proposed class representative has agreed to act as same and understands his or her
21 responsibilities. (See *Soderstedt v. CBIZ Southern California, LLC (2011) 197 Cal.App.4th*
22 *133, 155-156; Jones v. Farmers Ins. Exchange (2013) 221 Cal.App.4th 986, 998-999*). Provide
23 a competent declaration from Plaintiff by which the Court can ascertain his adequacy as a
24 class representative.

25 Plaintiff has devoted many hours advancing the interests of the Settlement Class and
26 understands his responsibilities as the Class Representative. Please see Plaintiff Andrew
27 Burdick's declaration filed concurrently with this supplemental memorandum of points and
28 authorities.

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1 **E. Miscellaneous.**

- 2 • **If notice will be given in English only, explain why this is sufficient.**
- 3 • **Provide information regarding any fee splitting agreement and whether the client**
- 4 **has given written approval. (*Mark v. Spencer* (2008) 166 Cal.App.4th 219; Rules**
- 5 **Prof. Conduct, rule 1.5.1; Cal. Rules of Court, rule 3.769.).**

6 The Parties will provide notice both in English and Spanish. The Parties obtained revised

7 bids from Settlement Administrator to include Spanish translation. Supp Spivak Decl., ¶ 7,

8 Exhibit 15.

9 Based on Class Counsel's retainer agreement with Plaintiff, the Spivak Law Firm will

10 receive 75% of the total fees received and the United Employees Law Group will receive 25%.

11 This division was incorporated in the retainer agreement and was approved and signed by

12 Plaintiff. Supp Spivak Decl., ¶ 6, Exhibit 14.

13 **II. SETTLEMENT AGREEMENT**

14 **A. The Basics**

- 15 • **Class definition. If a PAGA representative action is settled with a proposed Class**
- 16 **Settlement consider whether there should be separate definitions for Class Members**
- 17 **and Aggrieved Employees.**

18 The Parties revised the entire settlement agreement to incorporate separate definitions

19 and distribution for Aggrieved Employees. *See in general* First Amended Settlement ("Amended

20 Settlement"). The Amended Settlement is attached as Exhibit 12 to the Supplemental Declaration

21 of David Spivak, which is submitted herewith under a separate cover.

22 **B. Release of Claims**

- 23 • **Scope: The scope of any release given by class members must be defined with**
- 24 **precision and clarity. Any released claims not presented directly in the operative**
- 25 **complaint should be based on the facts alleged in the operative complaint. (*See***
- 26 ***Amaro v. Anaheim Arena Mgmt.* (2021) 69 Cal. App. 5th 521, 537 and FN. 5; *Uribe***
- 27 ***v. Crown Building Maintenance Co.* 70 Cal. App. 5th 986, 1005.)**
- 28 ○ **Modify the release of claims to specify that Class Members will only release**
- **claims alleged in, or arising out of facts asserted in, the operative First**
- **Amended Complaint. See ¶ V.A.**
- **Class cases which include a PAGA claim should have a separate release for**
- **the PAGA claim tied to the facts alleged in the notice given to the LWDA. *Id.***
- **If PAGA and Class Settlement: The Release and Notice should provide an**
- **explanation that released claims include all PAGA claims that could have**
- **been premised on the facts alleged in the Plaintiff's LWDA Letter and**



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1 **aggrieved employees will release PAGA claims even if class members request**
2 **exclusion from the class. See *Robinson v. Southern Counties Oil Co.* (2020) 53**
3 **Cal.App.5th 476.**

4 The Parties amended the release of claims to specify that Class Members will only release
5 claims alleged in, or arising out of facts asserted in, the operative First Amended Complaint. See
6 Amended Settlement, ¶ V.A. The Parties also included a separate release for the PAGA claim
7 tied to the facts alleged in the notice given to the LWDA. See Amended Settlement, ¶ V.B.

8 The amended agreement and notice also clarify the scope of the PAGA release and state
9 that the Aggrieved Employees cannot exclude themselves from the PAGA claims. See Notice
10 (attached as Exhibit A to the Amended Settlement), § V.

11 **C. Monetary Terms of Settlement**

- 12 • Settlement Amount: Indicate the amount of the gross settlement, how and when the
13 settlement will be paid, and information regarding payment plan, if any. **If a class claim**
14 **is being settled with a PAGA claim the amounts allocated should be separated and**
15 **paid only to the aggrieved employees.**
16 • Payment Formula: Amount and manner of distribution of the compensation to each
17 class member, including the estimated amount each class member will receive and
18 the timeline on which payments will be issued.
19 ○ The formula for calculating individual settlement payments (¶ III.D.b) does
20 not appear to consume the net if any class member opts out. Please address.
21 ○ Provide a separate payment formula for the calculation of PAGA penalties
22 to be paid to PAGA members, considering the PAGA statute's applicable
23 statute of limitations.

24 The Parties revised the agreement to 1) separate the amounts allocated for PAGA and
25 paid to the Aggrieved Employees (see Amended Settlement, ¶ I.P, I.R, III.D.2), 2) clarify that
26 the formula consumes the net if any class member opts out (Amended Settlement, ¶IV.D.1.), and
27 3) provide separate payment formula for the calculation of PAGA penalties (Amended
28 Settlement, ¶III.D.2).

29 **D. Notice Administration**

- 30 • Indicate the administrator for the settlement **and why the bid for administration is fair.**
31 ○ **Why is it necessary for the agreement to provide for up to \$12,000 for**
32 **administration costs (¶III.C.3), when ILYM Group has estimated costs of**
33 **\$4,989?**
34 ○ **Indicate whether the list will be updated by the administrator prior to the**
35 **initial mailing by use of National Change of Address Registry.**



- Ensure the content of the notice complies with California Rules of Court, rule 3.766(d). In wage and hour cases the notice should indicate the specific amount the class member will receive and how that amount was calculated. **A separate breakdown for PAGA payments should be provided.** The terms of the release(s) should be reflected in the Notice.
- **Ensure the notice accurately reflects the Court's current social distancing procedures for attendance at hearings and review of court files. (Counsel should check the Court website for most current information.)**
- Explain how re-mailed notices, if any, will be handled. **Will class members who receive re-mailed notices be given an extended deadline to respond (i.e., opt-out, object, and dispute workweeks)?**

Before selecting ILYM, the Parties obtained bids from other reputable settlement administrators and ILYM presented the lowest bid. ILYM's revised bid (to include Spanish translation) remains the lowest bid in the amount of \$6,450.00. Supp Spivak Decl., ¶ 7, Exhibit Exhibits 15, 16, 17. The Parties have revised the agreement to allocate up to \$6,500 for administration costs. Amended Settlement, ¶III.C.3.

Further, as stated in the Amended Agreement and ILYM's bid, ILYM will update the list prior to the initial mailing by use of National Change of Address Registry. Amended Settlement ¶¶ II.F, IV.K. and Exhibit 15.

The Parties revised the Notice to indicates the estimated PAGA payment each Aggrieved Employees is expected to receive. *See* Notice, § VIII. The revised Notice further reflects the Court's current social distancing procedures and attendance requirement. *See* Notice, § VIII.

The Parties also revised the Settlement Agreement to extend the response deadline for those Class Members who receive re-mailed notices by an additional 14 days. Amended Settlement ¶ IV.B.3.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: March 24, 2023

By: 

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BURDICK, and all others similarly
situated



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