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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

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

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

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

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

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

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

5 **F.** “**Class Period**” shall mean the period of time from May 28, 2016 through April
6 15, 2021.

7
8 **G.** “Class Representative Payment” shall mean the special payment made to Plaintiff
9 in his capacity as Class Representative to compensate him for initiating the Action, performing
10 work in support of the Action, and undertaking the risk of liability for attorneys’ fees and
11 expenses in the event he was unsuccessful in the prosecution of the Action.

12 **H.** “**Court**” shall mean the Superior Court for the County of Los Angeles, 312 North
13 Spring Street, Spring Street Courthouse, Los Angeles, CA 90012.

14
15 **I.** “**Defense Counsel**” shall mean the attorneys representing Defendants in the
16 Action: Michael A. Hood of Jackson Lewis P.C.

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

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

4 **L. “Gross Settlement Amount”** shall mean the Gross Settlement Amount of
5 Five Hundred and Fifty Thousand Dollars and No Cents (\$550,000.00) payable by Defendants
6 as provided by this Agreement, plus Defendants’ employer-side payroll taxes. Defendants
7 estimated for purposes of mediation that there were approximately 2,737 total qualifying Work
8 Weeks and 90 Class Members for the period of June 15, 2016 to March 24, 2021. These numbers
9 would be expected to increase proportionately for the passage of time between that date and the
10 time of preliminary approval. At least 10 days before the Settlement Administrator send out
11 notice of the Settlement to Class Members, the Settlement Administrator will advise Class
12 Counsel of Defendants’ report of the total number of qualifying Work Weeks and Class Members
13 between May 28, 2016 and April 15, 2021. If the qualifying Work Weeks and/or Class Members
14 exceeds the above referenced qualifying Work Weeks and/or Class Members reported by
15 Defendants by more than 10%, i.e., exceeds 3,011 qualifying Work Weeks and/or 99 Class
16 Members (“Escalator Threshold”), the Maximum Settlement Amount will increase by the
17 difference between the Escalator Threshold and the additional qualifying Work Weeks or Class
18 Members over the Escalator Threshold. No other payment will be owed by Defendants.
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21 **M. “Judgment”** shall mean the Order of Final Judgment entered by the Court that
22 the Parties anticipate will be entered following a Final Approval Hearing on the Settlement in
23 this Action.
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25 **N. “Net Settlement Amount”** shall mean Five Hundred and Fifty Thousand Dollars
26 and No Cents (\$550,000.00) payable by Defendants pursuant to this Settlement, less:
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- 1 1. the Class Representative Payment approved by the Court;
- 2 2. the Class Counsel Fees Payment (one-third or 33 and 1/3% of Gross
- 3 Settlement Amount) and the Class Counsel Litigation Expenses Payment (of not more than
- 4 \$15,000.00) approved by the Court;
- 5 3. the Settlement Administrator's reasonable fees and expenses approved by
- 6 the Court (not to exceed \$12,000.00);
- 7
- 8 4. the amount of \$3,000.00 paid to the Labor Workforce Development
- 9 Agency of California for the PAGA claim;
- 10 5. any other fees or expenses (other than attorneys' fees and expenses)
- 11 incurred by Plaintiff in implementing the terms and conditions of this Agreement as approved by
- 12 the Court.

13 **O. "Participating Class" or "Participating Class Members"** shall mean all

14 Settlement Class members who do not submit a valid letter requesting to be excluded from the

15 Settlement, consistent with the terms set forth in this Settlement Agreement.

16 **P. "Preliminary Approval of the Settlement"** shall mean the Court's preliminary

17 approval of the Settlement without material change.

18 **Q. "Settlement"** shall mean the disposition of the Action and all related claims

19 effectuated by this Agreement.

20 **R. "Settlement Administrator"** shall mean ILYM Group, Inc. or another

21 administrator proposed by the Parties and appointed by the Court to administer the Settlement.

22 **S. "Settlement Share"** shall mean each Class Member's allocated share of the Net

23 Settlement Amount as provided by this Agreement.

24 **II. RECITALS**

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1 **A.** On or about October 21, 2019, Plaintiff, through his attorneys, sent a letter to the
2 Labor Workforce Development Agency (“LWDA”) alleging the following against Defendants:
3 failure to pay wages, failure to provide meal periods, failure to authorize and permit rest periods,
4 failure to indemnify for business expenses, failure to issue proper wage statements, failure to
5 timely pay wages and related allegations (the “PAGA letter”). Plaintiff asserted these
6 representative claims on behalf of all Class Members who are or were employed during the
7 applicable statutory period.
8

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

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

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

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

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

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

12 Based on the foregoing Recitals, the Parties agree as follows:

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15 **III. SETTLEMENT TERMS AND CONDITIONS**

16 **A. Certification for Settlement Purposes.** Solely for the purposes of effectuating
17 this Settlement, and subject to Court approval, the Parties hereby stipulate to the conditional
18 certification of the Settlement Class. The Parties agree that if for any reason the Settlement is not
19 preliminarily and finally approved, the conditional certification of the Settlement Class will be
20 of no force or effect, does not constitute an admission by Defendants that class certification is
21 proper, and will not be deemed admissible in this or any other proceeding, and that the Parties
22 will litigate the issue of class certification.

23
24 **B. Gross Settlement Amount.** Subject to the terms and conditions of this
25 Agreement, the Gross Settlement Amount of Five Hundred Fifty Thousand Dollars and No Cents
26 (\$550,000.00), plus Defendants' employer share of employer-side payroll taxes, is the maximum
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1 amount payable by Defendants. In no event will Defendants be required to pay more than the
2 Gross Settlement Amount for distribution to the Plaintiff, Class Counsel, Class Members,
3 LWDA, and Settlement Administrator. However, Defendants estimated for purposes of
4 mediation that there were approximately 2,737 total qualifying Work Weeks and 90 Class
5 Members for the period of June 15, 2016 to March 24, 2021. These numbers would be expected
6 to increase proportionately for the passage of time between that date and the time of preliminary
7 approval. At least 10 days before the Settlement Administrator send out notice of the Settlement
8 to Class Members, the Settlement Administrator will advise Class Counsel of Defendants' report
9 of the total number of qualifying Work Weeks and Class Members between May 28, 2016 and
10 April 15, 2021. If the qualifying Work Weeks and/or Class Members exceeds the above
11 referenced qualifying Work Weeks and/or Class Members reported by Defendants by more than
12 10%, i.e., exceeds 3,011 qualifying Work Weeks and/or 99 Class Members ("Escalator
13 Threshold"), the Maximum Settlement Amount will increase by the difference between the
14 Escalator Threshold and the additional qualifying Work Weeks or Class Members over the
15 Escalator Threshold. No other payment will be owed by Defendants.

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

21
22 **1. To Plaintiff.**

23 **(a) Class Representative Payment.** In addition to his Settlement Share,
24 Plaintiff will apply to the Court for an award of not more than Fifteen Thousand Dollars and No
25 Cents (\$15,000.00) as his Class Representative Payment. Defendants will not oppose a Class
26 Representative Payment of not more than \$15,000.00. Plaintiff will receive no other payment
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1 other than his Settlement Share and Class Representative Payment, and acknowledges that he is
2 aware of no other facts or circumstances related to his employment with Defendants that could
3 give rise to any additional entitlement to any further payments. The Settlement Administrator
4 will pay the Class Representative Payment approved by the Court out of the Gross Settlement
5 Amount. Payroll taxes, withholdings, and deductions will not be taken from the Class
6 Representative Payment, and instead a Form 1099 will be issued to Plaintiff with respect to that
7 payment. Plaintiff agrees to assume all responsibility and liability for the payment of taxes due
8 on the Class Representative Payment. Any portion of the Class Representative Payment not
9 awarded to Plaintiff will not revert to Defendant, but instead shall be returned to the Net
10 Settlement Amount.
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12 **2. To Class Counsel.** Class Counsel will apply to the Court for an award of
13 not more than One Hundred Eighty-Three Thousand Three Hundred Thirty-Three Dollars and
14 No Cents (\$183,333.00) (which is 33 and 1/3% of the Gross Settlement Amount) as their Class
15 Counsel Fees Payment and an amount not more than Fifteen Thousand Dollars and No Cents
16 (\$15,000.00) as their Class Counsel Litigation Expenses Payment, and Defendants will not
17 oppose this request. The Settlement Administrator will pay the amount approved by the Court
18 (but not more than One Hundred Eighty-Three Thousand Three Hundred Thirty-Three Dollars
19 and No Cents (\$183,333.00) in fees and not more than Fifteen Thousand Dollars and No Cents
20 (\$15,000.00) in expenses) out of the Gross Settlement Amount. Withholding and deductions will
21 not be taken from the Class Counsel Fees and Litigation Expenses Payment and one or more
22 Forms 1099 will be issued to Class Counsel with respect to those payments.
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25 **3. To the Settlement Administrator.** The Settlement Administrator will be
26 paid from the Gross Settlement Amount its reasonable fees and expenses as approved by the
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1 Court in an amount currently estimated to not exceed Twelve Thousand Dollars and No Cents
2 (\$12,000.00).

3 **4. To the LWDA.** The Parties will jointly apply to the Court for approval of
4 a settlement of claims under the Private Attorneys General Act (“PAGA”), California Labor Code
5 section 2698, *et seq.*, for Four Thousand Dollars and No Cents (\$4,000.00), of which, payment
6 from the Gross Settlement Amount to the LWDA will be made in the amount of Three Thousand
7 Dollars and No Cents (\$3,000.00), which is 75% of the PAGA settlement. One Thousand Dollars
8 and No Cents (\$1,000.00), 25% of the PAGA settlement, will remain in the Net Settlement
9 Amount for distribution.
10

11 **D. Allocation of Net Settlement Amount and Calculation of Settlement Shares.**
12 Subject to the terms and conditions of this Agreement, the Settlement Administrator will
13 distribute a payment from the Net Settlement Amount to each Participating Class Member. The
14 Settlement Share for each Participating Class Member will be calculated as follows,
15 understanding that the formulas below do not constitute an admission by either party, and are
16 intended only to provide a practical means to simplify and administer the claims process:
17

18 **(a) Participating Class Members’ Settlement Shares.** The
19 settlement shares are allocated 33.33% to wages (for which employment taxes will be deducted
20 and W-2s issued) and 66.66% to penalties (for which 1099s will be issued).
21

22 **(b) Settlement Ratio Calculation.** The Settlement Administrator
23 shall assign to each Class Member a “Settlement Ratio,” which shall be a fractional number
24 comprised of (a) that Class Member’s Individual Work Weeks as the numerator, and (b) the
25 aggregate total of all Class Members’ Individual Work Weeks as the denominator. The
26 Settlement Administrator shall assign to each Class Member the “Settlement Share” which shall
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1 be calculated by multiplying that Class Member's Settlement Ratio by amount allocated to Class
2 Members from the Net Settlement Amount.

3 **2. Settlement Share Worksheet.** Upon calculation of the Class Members'
4 Settlement Share, the Settlement Administrator shall furnish to Class Counsel and Defense
5 counsel a worksheet containing a list unique identifying numbers for each of the Class Members
6 with their corresponding Individual Work Weeks and Settlement Shares.

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

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19 **F. Appointment of Settlement Administrator.** The Parties will ask the Court to
20 appoint ILYM Group, Inc., a qualified administrator, to serve as the Settlement Administrator,
21 which, as a condition of appointment, will agree to be bound by this Agreement with respect to
22 the performance of its duties and its compensation. The Settlement Administrator's duties will
23 include preparing, printing, and mailing the Class Notice to all Class Members; and using
24 reasonable measures to contact all Class Members, including conducting a National Change of
25 Address search on all Class Members before mailing the Class Notice to each Class Member's
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1 address. The Settlement Administrator's duties will also include re-mailing the Class Notice to
2 the Class Member's new address for those Class Members whose address has changed; providing
3 the Parties with weekly status reports about the delivery of Class Notice; calculating Settlement
4 Shares; issuing and distributing checks to effectuate the payments due under the Settlement;
5 reporting to the Court as required; and otherwise administering the Settlement pursuant to this
6 Agreement. The Settlement Administrator's reasonable fees and expenses, including the cost of
7 printing and mailing the Class Notice, will be paid out of the Gross Settlement Amount, as set
8 forth herein, subject to Court approval. Any portion of the of the Settlement Administrator's fees
9 and expenses that are not used or which are not awarded by the Court will not revert to Defendant,
10 but instead will be part of the Net Settlement Amount for distribution to Participating Class
11 Members. If the Settlement Administrator's fees and expenses exceed Twelve Thousand Dollars
12 and No Cents (\$12,000.00), such cost will be deducted from the Net Settlement Amount.
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15 **IV. PROCEDURES FOR APPROVING SETTLEMENT**

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

24 **1.** At the hearing on the Motion for Preliminary Approval, the Parties
25 anticipate that they will appear and support the granting of the motion, and that Class Counsel
26 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.”

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

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

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

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

1 **C. Disputed Class Member Settlement Shares.** If a Class Member disputes his/her
2 estimated Settlement Share, the Class Member may produce evidence to the Settlement
3 Administrator for the Class Period. In order for the dispute to be considered, he/she must follow
4 the directions on the Class Notice. To be valid and timely, all disputes and supporting documents
5 must be postmarked by the date specified in the Class Notice (no less than 60 days from the initial
6 mailing of the Class Notice by the Settlement Administrator). A Class Member may use the Work
7 Weeks Dispute form (**Exhibit C** to this Settlement), though a Class Member is not obligated to
8 do so to request exclusion from the Settlement.
9

10 **D. Requests for Exclusion from Settlement; and Objections to Settlement.** Class
11 Members may submit requests to be excluded from the effect of the Settlement, or objections to
12 the Settlement, pursuant to the following procedures:
13

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

4
5 *To Class Counsel:*

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

To Defense Counsel:

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

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

19
20 *To Class Counsel:*

21 David G. Spivak, Esq.
22 The Spivak Law Firm
23 8605 Santa Monica Blvd.
24 PMB 42554
25 West Hollywood, CA 90069

To Defense Counsel:

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

26 Counsel will promptly file such objection with the Court.

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

6
7 Regardless of whether an objecting Class Member complies with the objection procedure
8 encouraged above, the Court will provide a Class Member with the opportunity to speak at the
9 final approval hearing regardless of whether he or she has filed an appearance or submitted a
10 written opposition beforehand. If the objecting Class Member does not formally intervene in the
11 action and/or the Court rejects the Class Member's objection, the Class Member will still be
12 bound by the terms of this Agreement.

13
14 **E. Report.** Not later than fourteen (14) days after the deadline for submission of
15 requests for exclusion, the Settlement Administrator will provide the Parties with a complete and
16 accurate list of all Class Members who sent timely requests to be excluded from the Action and
17 all Class Members who objected to the settlement.

18
19 **F. No Solicitation of Objection; Right to Void.** Neither the Parties, nor their
20 respective counsel, will directly or indirectly solicit or otherwise encourage any Class Member
21 to seek exclusion from the Settlement, object to the Settlement, or to appeal from the Judgment.
22 If Class Members accounting for 5.00% or more of the Class submit valid requests to be excluded
23 from the Settlement, then Defendants shall have the unilateral right to void this Settlement.
24 Defendants may do so by giving notice to Class Counsel and the Court of their election to void
25 the Settlement not later than seven (7) days before the Final Approval Hearing. No sums shall be
26 payable by Defendants if this Agreement is voided as provided for herein with one exception:
27
28

1 Defendants agree to pay any fees owing to the Settlement Administrator for services rendered in
2 the event Defendants exercise their right to void the Settlement.

3 **G. Additional Briefing and Final Approval.** Plaintiff will file with the Court a
4 motion for final approval of the Settlement and payment of the Settlement Administrator's
5 reasonable fees and expenses and a memorandum in support of their motion; and Plaintiff and
6 Class Counsel will serve on Defendants and file with the Court a motion for awards of the Class
7 Representative Payment, the Class Counsel Fees Payment, and the Class Counsel Litigation
8 Expenses Payment pursuant to this Settlement, and memoranda in support of their motions.
9

10 Before the Final Approval Hearing, the Parties shall be entitled to file and serve a
11 response to any Class Member's objection to the Settlement and/or reply in support of their
12 motion for final approval of the Settlement, and payment of the Settlement Administrator's
13 reasonable fees and expenses to the extent that any opposition to the motion is filed; and Plaintiff
14 and Class Counsel may file replies in support of their motions for the Class Representative
15 Payment, the Class Counsel Fees Payment, and the Class Counsel Litigation Expenses Payment.
16

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

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

10
11 After entry of the Judgment, the Court will have continuing jurisdiction over the Action
12 and the Settlement solely for purposes of (i) enforcing this Agreement, (ii) addressing settlement
13 administration matters, and (iii) addressing such post-Judgment matters as may be appropriate
14 under court rules or applicable law.

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

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

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

23 **K. Payment of Settlement Shares.** Within ten (10) calendar days of receipt of the
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1 Gross Settlement Amount, the Settlement Administrator shall pay Settlement Shares, from the
2 Settlement Account, to all Class Members (who do not submit valid requests to be excluded from
3 the Action). The Settlement Administrator shall pay each Settlement Share by sending a check
4 in the appropriate amount to the Class Member at the address indicated in the list of Class
5 Member names and addresses provided by Defendants, or as subsequently determined by the
6 Settlement Administrator to be the correct address.

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

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

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

22
23 **V. RELEASE OF CLAIMS**

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

16
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18 **B. Class Counsel.** As of the date the Judgment becomes Final, and except as
19 otherwise provided by this Agreement, Class Counsel and any counsel associated with Class
20 Counsel (The Spivak Law Firm and United Employees Law Group), including without limitation
21 David G. Spivak, Esq. and Walter L. Haines, Esq., waive any claim to costs and attorneys' fees
22 and expenses against Defendants or the Releasees arising from or related to the Action, except
23 those incurred to enforce this Agreement and collect the Judgment, including but not limited to
24 claims based on the California Labor Code, the California Civil Code, the California Code of
25 Civil Procedure, the Fair Labor and Standards Act, or any other statute or law (the "Class Counsel
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Released Claims”).

VI. NON-PUBLICITY PROVISION

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

VII. MISCELLANEOUS TERMS

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

B. No Admission of Liability. Defendants deny that they have engaged in any unlawful activity, have failed to comply with the law in any respect, or have any liability to anyone under the claims asserted in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission of liability or wrongdoing by Defendants, or an admission by

1 Plaintiff that any of his claims was non-meritorious or any defense asserted by Defendants was
2 meritorious. This Settlement and the fact that Plaintiff and Defendants were willing to settle the
3 Action will have no bearing on, and will not be admissible in connection with, any litigation
4 (other than solely in connection with the Settlement).

5
6 **C.** Whether or not the Judgment becomes Final, neither the Settlement, this
7 Agreement, any document, statement, proceeding or conduct related to the Settlement or the
8 Agreement, nor any reports or accounting of those matters, will be (i) construed as, offered or
9 admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to
10 Defendants or any other Releasees, including, but not limited to, evidence of a presumption,
11 concession, indication or admission by any of the Releasees of any liability, fault, wrongdoing,
12 omission, concession or damage; or (ii) disclosed, referred to or offered in evidence against any
13 of the Releasees, in any further proceeding in the Action, or any other civil, criminal or
14 administrative action or proceeding except for purposes of effectuating the Settlement pursuant
15 to this Agreement.
16

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

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

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

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

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

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

21 **J. Fair Settlement.** The Parties and their respective counsel believe and warrant that
22 this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived
23 at this Agreement through arms-length negotiations, considering all relevant factors, current and
24 potential.
25

26 **K. Headings.** The descriptive heading of any section or paragraph of this Agreement
27
28

1 is inserted for convenience of reference only and does not constitute a part of this Agreement.

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

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

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

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

17
18
19 Dated: 04 / 06 / 2022

By: 

ANDREW BURDICK

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21
22 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 / 16 / 2022

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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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 17, 2022

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

1 is inserted for convenience of reference only and does not constitute a part of this Agreement.

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

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

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

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

17
18
19 Dated:

By:

ANDREW BURDICK

20
21
22 Dated: 4/18/22

By:

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

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Dated: 4/18/22

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: 4/21/22

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 to pay
25 wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business
26 expenses, failure to issue proper wage statements, failure 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. At least
37 10 days before the Settlement Administrator send out notice of the Settlement to Class Members, the Settlement
38 Administrator will advise Class Counsel of Defendants’ report of the total number of qualifying Work Weeks and
39 Class Members between May 28, 2016 and April 15, 2021. If the qualifying Work Weeks and/or Class Members

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

5
6 **III. WHO IS INCLUDED IN THIS CLASS ACTION?**

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

9
10 **IV. WHAT DOES THE PROPOSED SETTLEMENT OFFER?**

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

19 B. Your individual share will be based on the number of Work Weeks you worked for Defendants
20 during the Class Period. The amount of money you receive will be based on the size of your share in comparison to
21 the size of all class members' shares combined. The Settlement Administrator will assign to each class member a
22 "Settlement Ratio," which will be a fractional number comprised of (a) the number of Work Weeks that a class
23 member worked for Defendants during the Class Period as the numerator, and (b) the aggregate total number of
24 Work Weeks that all class members worked during the Class Period as the denominator. The Settlement
25 Administrator will assign to each Class Member the "Settlement Share" which will be calculated by multiplying that
26 class member's Settlement Ratio by amount allocated to Class Members from the Net Settlement Amount.

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

29
30 **V. WHAT ARE MY OPTIONS?**

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

35 B. **You may accept your share of the \$550,000.00 settlement but dispute the number of your
36 Work Weeks.** If you do not agree with the number of Work Weeks on this Class Notice, you should provide the
37 corrected information to the Settlement Administrator. You may use the enclosed Work Weeks Dispute form for
38 this purpose but you are not required to do so to dispute the number of your Work Weeks. Write down all dates that

1 you worked or the number of Work Weeks you worked during the Class Period. Send in any documents to support
2 your Work Weeks by mail to the Settlement Administrator, ILYM Group, Inc., at the following address:
3 _____, or by calling _____. The Settlement Administrator will
4 read the documents both you and Defendants provide and make the final determination of the amount of your
5 settlement award. Your supporting documentation must be postmarked by <<date>> to be valid. Once the dispute
6 is resolved by the Settlement Administrator, and if the Settlement is finally approved by the Court, you will be sent
7 a check for your Settlement Share and you will have released all "Released Claims" as described above.

8
9 C. **You may exclude yourself from the class action settlement.** If you exclude yourself from the
10 class action settlement, you will no longer be a member of the Class so you will not receive any class action
11 settlement money and you will not be bound by the class settlement Release. To be excluded from the class action
12 settlement, you must send by mail, postmarked by <<date>>, a written letter requesting that you be excluded from
13 the class action with your name, address, telephone number, and signature to the Settlement Administrator, ILYM
14 Group, Inc., at the following address: _____, or by calling
15 _____.

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

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

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

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

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

30 A. The Settlement Administrator will calculate your share of the \$550,000.00 settlement and issue
31 you a check for your settlement share.

32 B. The settlement shares are allocated 33.33% to wages (for which employment taxes will be
33 deducted and W-2s issued) and 66.66% to penalties (for which 1099s will be issued).

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

38 D. It is important for the parties to have your current address in order to be able to send you other
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.

1 **VIII. HEARING ON PROPOSED SETTLEMENT**

2 A final fairness hearing will be held by the Court at <<time>> on <<date>>, in the Superior Court for
3 the County of Los Angeles, 312 North Spring Street, Spring Street Courthouse, Los Angeles, CA 90012, Dept.
4 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.

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

6 If you wish to exclude yourself settlement, and any payment of amounts under the Agreement, as described
7 above, you must mail a letter to the Settlement Administrator stating that you want to be excluded from the
Settlement. This 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:

8 *To Settlement Administrator:*

9 *Burdick v. Peach State Roofing, Inc.*

10 Settlement Administrator

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
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*.

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

18 *To Settlement Administrator*

19 *Burdick v. Peach State Roofing, Inc.*

20 Settlement Administrator

c/o _____

21 _____

22 The written objection should state your full name, address, and the dates of your employment with
23 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
24 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
25 at the final approval hearing regardless of whether they have filed an appearance or submitted a written opposition
beforehand.

26 **If you do not timely object to the Settlement and also formally intervene into the court action as set**
27 **forth above, you may waive your right to appeal and standing to appeal the class settlement judgment that**
28 **ultimately is entered by the Court over your objections.** If you send an objection and/or formally intervene in the

1 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
2 mail your written objection on time, the Court will consider it. You may also pay your own lawyer to attend the
3 Final Approval Hearing. The Court will also provide objectors the opportunity to speak at the final approval hearing
4 regardless of whether they have filed an appearance or submitted a written opposition beforehand.

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

6 This Notice summarizes the class action settlement. To obtain additional information regarding the
7 settlement you may: (1) call the Settlement Administrator at _____; (2) inspect the complete court
8 file at maintained by the Clerk of the Superior Court for the County of Los Angeles, Los Angeles County Courthouse,
9 312 North Spring Street, Spring Street Courthouse, Los Angeles, CA 90012, Department SSC-14 (The Honorable
10 Kenneth R. Freeman); (3) or access the court file via the Los Angeles County Superior Court's web site (information
11 about filed civil cases can be found on the Court's general website at https://www._____.com).

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

16 David G. Spivak, Esq.
17 The Spivak Law Firm
18 8605 Santa Monica Blvd.
19 PMB 42554
20 West Hollywood, CA 90069
21 Toll Free: (877) 203-9010
22 Fax: (213) 634-2485
23 david@spivaklaw.com

24 The Settlement Agreement and, ultimately, the order giving final approval to the Settlement will be posted on the
25 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
A SHARE OF THE SETTLEMENT PROCEEDS,
DO NOT FILL OUT THIS FORM.**

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

7 *Burdick v. Peach State Roofing, Inc.* Class Action Settlement Administrator
8 c/o _____
9 _____

10 I declare as follows: I have received notice of the proposed settlement in this action and I wish to be
excluded from the class and **not** to participate in the proposed settlement. I understand this means that I will not be
11 bound by the Settlement and also will not share in the settlement proceeds.

12 _____
13 (Typed or Printed Name)

14 _____
15 (Address)

16 _____
17 (City, State, Zip Code)

18 _____
19 (Telephone Number, Including Area Code)

20 _____
21 (Identification Number)

22 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 _____.

23 Dated: _____
24 _____
25 (Signature)

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EXHIBIT C

1 **WORK WEEKS 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>> _____

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

16 **YOUR ELIGIBLE WORK WEEKS**

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

19 **YOUR ESTIMATED SETTLEMENT AWARD AND DISPUTE PROCEDURE**

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

25 If you wish to dispute the number of May 28, 2016 credited to you, or anything else about your employment
26 status, you must complete and return this form by indicating what you believe is incorrect on the blank lines below
27 and return it on or before <<RESPONSE DEADLINE>> to the Settlement Administrator via U.S. Mail with proof
28 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.

24 **UNLESS YOU ARE FILING A DISPUTE REGARDING THE NUMBER OF WEEKS, RECEIPT OF A
25 DIRECT SETTLEMENT PAYMENT, OR YOUR EMPLOYMENT STATUS, YOU DO NOT NEED TO
26 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
14 *To Class Counsel:*

15 David G. Spivak, Esq.
16 The Spivak Law Firm
17 8605 Santa Monica Blvd.
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
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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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28

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.**

17
18 DATED: _____

19 **THE HONORABLE KENNETH R. FREEMAN**
20 **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
6 In accordance with the Court’s prior Order Granting Preliminary Approval of Class
7 Action Settlement, Class Members have been given notice of the terms of the Settlement and the
8 opportunity to submit a claim, request exclusion, comment upon or object to it or to any of its
9 terms. Having received and considered the Settlement, the supporting papers filed by the Parties,
10 and the evidence and argument received by the Court in conjunction with the motions for
11 preliminary and final approval of the Settlement, the Court grants final approval of the Settlement
12 and HEREBY ORDERS, ADJUDGES, DECREES AND MAKES THE FOLLOWING
13 DETERMINATIONS¹:
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.
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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.
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19 4. The Court finds and determines that (a) the 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. \$12,000.00 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 Settlement Shares to Participating Class Members, (ii) the Court approved
22 Class Counsel fees & costs, (iii) the Court-approved Class Representative Payment, (iv) the
23 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 Settlement
5 Share check. After the expiration of the 180-day period, on Defendants' behalf, the Settlement
6 Administrator shall remit any amounts from Voided Settlement Checks and otherwise unclaimed
7 (the "Residue"), plus interest on the Residue at the legal rate of interest from the date of entry of
8 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.**

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23 12. Nothing in this Final Order and Judgment shall preclude any action to enforce the
24 Parties' obligations under the Settlement or hereunder, including the requirement that Defendants
25 deposit funds for distribution by the Settlement Administrator to Participating Class Members in
26 accordance with the Settlement.

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