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

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

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

16 *Plaintiff(s),*

17 vs.
18

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

22 *Defendant(s).*
23

Case No. 20STCV20397

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

Hearing Date: April 15, 2023
Hearing Time: 10:00 a.m.
Hearing Dept.: 14, The Honorable
Kenneth R. Freeman

Action filed: May 28, 2020



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1 The Motion of Plaintiff Andrew Burdick (hereafter referred to as “Plaintiff”) for
2 Preliminary Approval of a Class Action Settlement (the “Motion”) was considered by the Court,
3 The Honorable Kenneth R. Freeman presiding. The Court having considered the Motion, the First
4 Amended Joint Stipulation of Class Action Settlement and Release of Claims (“Amended
5 Settlement” or “Amended Settlement Agreement”), and supporting papers, HEREBY ORDERS
6 THE FOLLOWING:
7

8 1. The Court grants preliminary approval of the Amended Settlement and the
9 Settlement Class based upon the terms set forth in the Amended Settlement filed as an Exhibit to
10 the Motion for Preliminary Approval. All terms herein shall have the same meaning as defined in
11 the Amended Settlement. The Court has determined there is sufficient evidence to preliminarily
12 determine that (a) the terms of the Amended Settlement appear to be fair, adequate, and
13 reasonable to the Settlement Class and (b) the Amended Settlement falls within the range of
14 reasonableness and appears to be presumptively valid, subject only to any objections that may be
15 raised at the final hearing and final approval by this Court. The Court will make a determination
16 at the hearing on the motion for final approval of class action settlement (the “Final Approval
17 Hearing”) as to whether the Amended Settlement is fair, adequate and reasonable to the
18 Settlement Class.
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21 2. For purposes of this Preliminary Approval Order, the “Settlement Class” means
22 all persons Defendants Peach State Roofing, Inc. and Martin Kelly employed as non-exempt,
23 hourly employees in California (collectively “Class Members”), who worked anytime during the
24 Class Period. The “Class Period” shall mean the period of time from May 28, 2016, through April
25 15, 2021. Defendants estimate that as of April 15, 2021, there were 90 potential Settlement Class
26 Members. The “Effective Date” means as follows: If no objection to this Amended Settlement
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1 or to any of the terms and or conditions of the Amended Settlement are filed by Plaintiff, another
2 member of the Settlement Class, or any intervenor to this Lawsuit, the Effective Date shall occur
3 on the day that the Court enters an order of final approval of this Settlement; however, if any
4 objection to this Settlement or to any of the terms and or conditions of the Stipulation is filed by
5 a member of the Settlement Class, or any intervenor to this Lawsuit, the Effective Date shall occur
6 upon the expiration of the time for the filing any appeal of the order of final approval of this
7 Settlement. If an appeal is filed or any writ granted, then the Effective Date shall occur after the
8 appeal has been dismissed or the writ dissolved and when there is no further time to appeal the
9 dismissal of the appeal or the dissolution of the writ. The occurrence of the Effective Date is a
10 prerequisite to any obligation of Defendants to pay any funds into the Settlement Account.
11

12
13 3. This action is provisionally certified pursuant to section 382 of the California Code
14 of Civil Procedure and Rule 3.760, et seq. of the California Rules of Court as a class action for
15 purposes of settlement only with respect to the proposed Settlement Class.
16

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

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

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

b. **Mailing of Class Notice.** Not later than fourteen (14) days after receiving the Class Members' Data, or as soon thereafter as it can do so, the Settlement Administrator will mail the Class Notice to all identified Class Members via first-class U.S. mail using the mailing address information provided by Defendants, unless modified by any updated address information that the Settlement Administrator obtains in the course of administration of the Settlement.

c. **Returned Class Notice.** If a Class Notice is returned because of an incorrect address, the Settlement Administrator will promptly, and not later than ten (10) days from receipt of the returned Class Notice, search for a more current address for the Class Member and re-mail the Class Notice to the Class Member. The Settlement Administrator will use the Class Members' Data and otherwise work with Defendants' Counsel and Class Counsel to find a more current address. The Settlement Administrator will be responsible for taking reasonable steps, consistent with its agreed-upon job parameters, court orders, and fee, to trace the mailing address of any Class Member for whom a Class Notice is returned as undeliverable by the U.S. Postal Service. These reasonable steps shall include the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to Class Members for whom new addresses are found. If the Class Notice is re-mailed, the Settlement Administrator will note for its



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own records and notify Class Counsel and Defendants' Counsel of the date and address of each such re-mailing as part of a weekly status report provided to the Parties.

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

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

i. **Request for Exclusion from Settlement.** A Class Member may request to be excluded from the effect of this Agreement, and any payment of amounts under this Agreement, by timely mailing a letter to the Settlement Administrator stating that the Class Member wants to be excluded from this Action. This letter must include the Class Member's name, address, telephone number, and signature. To be valid and timely, the request to be excluded must be postmarked by the date specified in the Class Notice (not later than 60 days from the initial mailing of the Class Notice by the Settlement Administrator). A Class



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1 Member who properly submits a valid and timely request to be
2 excluded from the Action shall not receive any payment of any kind in
3 connection with this Agreement or this Action, shall not be bound by
4 or receive any benefit of this Agreement, and shall have no standing to
5 object to the Amended Settlement. A request for exclusion must be
6 mailed to the Settlement Administrator at the address provided on the
7 Class Notice. The Settlement Administrator shall transmit the request
8 for exclusion to counsel for the Parties as follows:
9

10
11 *To Class Counsel:*

12
13 David G. Spivak, Esq.
14 The Spivak Law Firm
15 8605 Santa Monica Bl
16 PMB 42554
17 West Hollywood, CA 90069

To Defense Counsel:

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

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

3
4 *To Class Counsel:*

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

To Defense Counsel:

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

10 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. The
14 written objection also should state whether the Class Member intends
15 to formally intervene and become a party of record in the action, and
16 upon formally intervening, appear and argue at the Final Approval
17 Hearing. However, the objectors will be provided with the opportunity
18 to speak at the final approval hearing regardless of whether they have
19 filed an appearance or submitted a written opposition beforehand.

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

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26 f. **Report.** Not later than fourteen (14) days after the deadline for submission of
27 requests for exclusion, the Settlement Administrator will provide the Parties
28 with a complete and accurate list of all Class Members who sent timely



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1 requests to be excluded from the Action and all Class Members who objected
2 to the Amended Settlement.

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

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

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

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

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

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 subject
20 to final review by the Court.

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

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

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

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15 **IT IS SO ORDERED.**

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18 **DATE**

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HONORABLE KENNETH R. FREEMAN
JUDGE OF THE SUPERIOR COURT



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