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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

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

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

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

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

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

11 **A. “Action”** shall mean: (1) the civil action commenced on May 28, 2020, by
12 Plaintiff against Defendants in the Superior Court of California, County of LOS ANGELES,
13 Case No. 20STCV20397, entitled: “Andrew Burdick, on behalf of himself, and all others
14 similarly situated, and as an ‘aggrieved employee’ on behalf of other ‘aggrieved employees’
15 under the Labor Code Private Attorneys General Act of 2004, *Plaintiff(s)*, vs. Peach State
16 Roofing, Inc., a Georgia corporation; Martin Kelly, a natural person; Chris Kelly, a natural
17 person; and DOES 1 through 50, inclusive, *Defendant(s)*.”
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19 **B. “Aggrieved Employees”** shall mean all persons who Defendants employed on a
20 non-exempt, hourly basis in California during the PAGA Period.
21

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

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

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

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

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

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

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

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

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

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

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

- 4 **1.** the Class Representative Payment approved by the Court;
5 **2.** the Class Counsel Fees Payment (one-third or 33 and 1/3% of Gross
6 Settlement Amount) and the Class Counsel Litigation Expenses Payment (of not more than
7 \$15,000.00) approved by the Court;
8 **3.** the Settlement Administrator’s reasonable fees and expenses approved by
9 the Court (not to exceed \$7,000.00);
10 **4.** the amount of \$4,000.00 PAGA Penalties paid to the Labor Workforce
11 Development Agency of California and Aggrieved Employees for the PAGA claim;
12 **5.** any other fees or expenses (other than attorneys’ fees and expenses)
13 incurred by Plaintiff in implementing the terms and conditions of this Agreement as approved by
14 the Court.
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17 **P. “PAGA Penalties”** means the total amount of PAGA civil penalties to be paid from
18 the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$1,000.00) and the
19 75% to LWDA (\$3,000.00) in settlement of PAGA claims.

20 **Q. “PAGA Period”** shall mean the period of time from October 21, 2018 through
21 April 15, 2021.
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23 **R. “PAGA Settlement Share”** shall mean each Aggrieved Employee’s pro rata
24 share of 25% of the PAGA Penalties calculated according to the number of Pay Periods worked
25 during the PAGA Period.

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

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

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

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

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

11 **II. RECITALS**

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

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

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

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

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

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

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

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

2 **A. Certification for Settlement Purposes.** Solely for the purposes of effectuating
3 this Settlement, and subject to Court approval, the Parties hereby stipulate to the conditional
4 certification of the Settlement Class. The Parties agree that if for any reason the Settlement is not
5 preliminarily and finally approved, the conditional certification of the Settlement Class will be
6 of no force or effect, does not constitute an admission by Defendants that class certification is
7 proper, and will not be deemed admissible in this or any other proceeding, and that the Parties
8 will litigate the issue of class certification.
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10 **B. Gross Settlement Amount.** Subject to the terms and conditions of this
11 Agreement, the Gross Settlement Amount of Five Hundred Fifty Thousand Dollars and No Cents
12 (\$550,000.00), plus Defendants' employer share of employer-side payroll taxes, is the maximum
13 amount payable by Defendants. In no event will Defendants be required to pay more than the
14 Gross Settlement Amount for distribution to the Plaintiff, Class Counsel, Class Members,
15 LWDA, and Settlement Administrator. However, Defendants estimated for purposes of
16 mediation that there were approximately 2,737 total qualifying Work Weeks and 90 Class
17 Members for the period of June 15, 2016 to March 24, 2021. These numbers would be expected
18 to increase proportionately for the passage of time between that date and the time of preliminary
19 approval. At least 10 days before the Settlement Administrator send out notice of the Settlement
20 to Class Members, the Settlement Administrator will advise Class Counsel of Defendants' report
21 of the total number of qualifying Work Weeks and Class Members between May 28, 2016 and
22 April 15, 2021. If the qualifying Work Weeks and/or Class Members exceeds the above
23 referenced qualifying Work Weeks and/or Class Members reported by Defendants by more than
24 10%, i.e., exceeds 3,011 qualifying Work Weeks and/or 99 Class Members ("Escalator
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Threshold”), the Maximum Settlement Amount will increase by the difference between the Escalator Threshold and the additional qualifying Work Weeks or Class Members over the Escalator Threshold. No other payment will be owed by Defendants.

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

1. To Plaintiff.

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

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

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

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

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

24 **D. Allocation of Net Settlement Amount and Calculation of Class Settlement**
25 **Shares and PAGA Settlement Shares.** Subject to the terms and conditions of this Agreement,
26 the Settlement Administrator will distribute a payment from the Net Settlement Amount to each
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1 Participating Class Member. The Class Settlement Share for each Participating Class Member
2 will be calculated as follows, understanding that the formulas below do not constitute an
3 admission by either party, and are intended only to provide a practical means to simplify and
4 administer the claims process:

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6 **1. Settlement Shares:**

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

11 **(b) Settlement Ratio Calculation.** The Settlement Administrator
12 shall assign to each Class Member a "Settlement Ratio," which shall be a fractional number
13 comprised of (a) that Class Member's Individual Work Weeks as the numerator, and (b) the
14 aggregate total of all Class Members' Individual Work Weeks as the denominator. The
15 Settlement Administrator shall assign to each Class Member the "Class Settlement Share" which
16 shall be calculated by multiplying that Class Member's Settlement Ratio by the amount allocated
17 to Class Members from the Net Settlement Amount.
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19 **2. PAGA Settlement Shares.** The Settlement Administrator shall assign to
20 each Aggrieved Employee a "PAGA Settlement Ratio," which shall be a fractional number
21 comprised of (a) that Aggrieved Employee's Individual PAGA Pay Period as the numerator, and
22 (b) the aggregate total of all Aggrieved Employees' Individual Pay Periods as the denominator.
23 The Settlement Administrator shall assign to each Aggrieved Employee the "PAGA Settlement
24 Share" which shall be calculated by multiplying that Aggrieved Employee's PAGA Settlement
25 Ratio by the amount allocated to Aggrieved Employees from the PAGA Penalties.
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27 **3. Class Settlement Share and PAGA Settlement Share Worksheets.**
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1 Upon calculation of the Class Members' Class Settlement Shares and PAGA Settlement Shares,
2 the Settlement Administrator shall furnish to Class Counsel and Defense counsel a worksheet
3 containing a list unique identifying numbers for each of the Class Members and Aggrieved
4 Employees with their corresponding Individual Work Weeks and Individual PAGA Pay Periods
5 and Class Settlement Shares.

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

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

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

23 **1.** At the hearing on the Motion for Preliminary Approval, the Parties
24 anticipate that they will appear and support the granting of the motion, and that Class Counsel
25 will submit an Order Granting Preliminary Approval of Settlement, Approval of Notice to Class
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1 and Setting Hearing for Final Approval of Settlement.

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

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

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

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

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

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

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

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

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

9 **C. Disputed Class Member Class Settlement Shares.** If a Class Member disputes
10 his/her estimated Class Settlement Share or PAGA Settlement Share, the Class Member may
11 produce evidence to the Settlement Administrator for the Class Period and PAGA Period. In
12 order for the dispute to be considered, he/she must follow the directions on the Class Notice. To
13 be valid and timely, all disputes and supporting documents must be postmarked by the date
14 specified in the Class Notice (no less than 60 days from the initial mailing of the Class Notice by
15 the Settlement Administrator). A Class Member may use the Work Weeks/Pay Periods Dispute
16 form (**Exhibit C** to this Settlement), though a Class Member is not obligated to do so to dispute
17 his/her shares.
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19 **D. Requests for Exclusion from Settlement; and Objections to Settlement.** Class
20 Members may submit requests to be excluded from the effect of the Settlement, or objections to
21 the Settlement, pursuant to the following procedures:
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23 **1. Request for Exclusion from Settlement.** A Class Member may request
24 to be excluded from the effect of this Agreement, and any payment of amounts under this
25 Agreement, by timely mailing a letter to the Settlement Administrator stating that the Class
26 Member wants to be excluded from this Action. This letter must include the Class Member's
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1 name, address, telephone number, and signature. To be valid and timely, the request to be
2 excluded must be postmarked by the date specified in the Class Notice (no less than 60 days from
3 the initial mailing of the Class Notice by the Settlement Administrator). A Class Member may
4 use the Exclusion Request form (**Exhibit B** to this Settlement), though a Class Member is not
5 obligated to do so to request exclusion from the Settlement. A Class Member who properly
6 submits a valid and timely request to be excluded from the Action shall not receive any payment
7 of any kind in connection with this Agreement or this Action, shall not be bound by or receive
8 any benefit of this Agreement, and shall have no standing to object to the Settlement. A request
9 for exclusion must be mailed to the Settlement Administrator at the address provided on the Class
10 Notice. The Settlement Administrator shall transmit the request for exclusion to counsel for the
11 Parties as follows:
12

13
14 *To Class Counsel:*

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

To Defense Counsel:

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

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

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

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

7
8 *To Class Counsel:*

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

To Defense Counsel:

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

14 Counsel will promptly file such objection with the Court.

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

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

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

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

16 **G. Additional Briefing and Final Approval.** Plaintiff will file with the Court a
17 motion for final approval of the Settlement and payment of the Settlement Administrator's
18 reasonable fees and expenses and a memorandum in support of their motion; and Plaintiff and
19 Class Counsel will serve on Defendants and file with the Court a motion for awards of the Class
20 Representative Payment, the Class Counsel Fees Payment, and the Class Counsel Litigation
21 Expenses Payment pursuant to this Settlement, and memoranda in support of their motions.
22

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

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

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

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

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

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

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

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

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

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

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

18 **V. RELEASE OF CLAIMS**

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

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

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

20 **C. Class Counsel.** As of the date the Judgment becomes Final, and except as
21 otherwise provided by this Agreement, Class Counsel and any counsel associated with Class
22 Counsel (The Spivak Law Firm and United Employees Law Group), including without limitation
23 David G. Spivak, Esq. and Walter L. Haines, Esq., waive any claim to costs and attorneys' fees
24 and expenses against Defendants or the Releasees arising from or related to the Action, except
25 those incurred to enforce this Agreement and collect the Judgment, including but not limited to
26 claims based on the California Labor Code, the California Civil Code, the California Code of
27

1 Civil Procedure, the Fair Labor and Standards Act, or any other statute or law (the “Class Counsel
2 Released Claims”).

3 **VI. NON-PUBLICITY PROVISION**

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

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16 **VII. MISCELLANEOUS TERMS**

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

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

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

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

25 **E. Attorney Authorization.** Class Counsel and Defense Counsel warrant and
26 represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate
27
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1 action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate
2 its terms, and to execute any other documents required to effectuate the terms of this Agreement.
3 The Parties and their counsel will cooperate with each other and use their best efforts to effect
4 the implementation of the Settlement. In the event the Parties are unable to reach agreement on
5 the form or content of any document needed to implement the Agreement, or on any supplemental
6 provisions that may become necessary to effectuate the terms of this Agreement, the Parties will
7 seek the assistance of the Court, and in all cases, all such documents, supplemental provisions
8 and assistance of the court will be consistent with this Agreement.
9

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

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

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

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

23 **J. Fair Settlement.** The Parties and their respective counsel believe and warrant that
24 this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived
25 at this Agreement through arms-length negotiations, considering all relevant factors, current and
26 potential.
27
28

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

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

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

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

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

Dated: 03 / 24 / 2023

By:


ANDREW BURDICK

Dated:

By:

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

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Dated:

By: _____
MARTIN KELLY

THE SPIVAK LAW FIRM

Dated: 03 / 24 / 2023

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

UNITED EMPLOYEES LAW GROUP

Dated:

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

JACKSON LEWIS P.C.

Dated:

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

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Dated:

By: MARTIN KELLY

THE SPIVAK LAW FIRM

Dated:

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

UNITED EMPLOYEES LAW GROUP

Dated: March 24, 2023

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

JACKSON LEWIS P.C.

Dated:

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

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EXHIBIT A

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

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

8 *Plaintiff,*

9 vs.

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

14 *Defendant(s).*

Case No. 20STCV20397

Action filed: 5/28/2020

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

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

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

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

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

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

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

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

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

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

III. WHO IS INCLUDED IN THIS CLASS ACTION?

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

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

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

IV. WHAT DOES THE PROPOSED SETTLEMENT OFFER?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 **VIII. HEARING ON PROPOSED SETTLEMENT**

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

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

IX. PROCEDURES FOR EXCLUSION FROM SETTLEMENT

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

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To Settlement Administrator:

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

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

X. PROCEDURES FOR OBJECTING TO SETTLEMENT

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

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

To Settlement Administrator

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

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

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

XI. EXAMINATION OF COURT PAPERS AND INQUIRIES

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

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

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

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

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EXHIBIT B

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

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

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

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

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

18 _____
19 (Typed or Printed Name)

20 _____
21 (Address)

22 _____
23 (City, State, Zip Code)

24 _____
25 (Telephone Number, Including Area Code)

26 _____
27 (Identification Number)

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

Dated: _____
(Signature)

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EXHIBIT C

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

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

5 Indicate Name/Address Changes, if any:

6 <<Name>> _____

7 <<Address>> _____

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

9 XX – XX - _ _ _ _

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

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

17 **YOUR ELIGIBLE WORK WEEKS**

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

20 **YOUR ESTIMATED SETTLEMENT AND DISPUTE PROCEDURE**

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

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

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

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

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

Plaintiff,

vs.

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

Defendant(s).

Case No. 20STCV20397

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12
13 *To Class Counsel:*

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

To Defense Counsel:

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

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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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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.
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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.
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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 _____.

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

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

16 **IT IS SO ORDERED.**

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18 DATED: _____

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 In accordance with the Court’s prior Order Granting Preliminary Approval of Class
6 Action Settlement, Class Members have been given notice of the terms of the Settlement and the
7 opportunity to submit a claim, request exclusion, comment upon or object to it or to any of its
8 terms. Having received and considered the Settlement, the supporting papers filed by the Parties,
9 and the evidence and argument received by the Court in conjunction with the motions for
10 preliminary and final approval of the Settlement, the Court grants final approval of the Settlement
11 and HEREBY ORDERS, ADJUDGES, DECREES AND MAKES THE FOLLOWING
12 DETERMINATIONS¹:
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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”).
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8 3. The Court finds and determines that the notice procedure afforded adequate
9 protections to Class Members and provides the basis for the Court to make an informed decision
10 regarding final approval of the Settlement based on the responses of Class Members. The Court
11 finds and determines that the notice provided in this case was the best notice practicable, which
12 satisfied the requirements of law and due process as to all persons entitled to such notice.
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14 2. **Release by Plaintiff and Class Members.** The Settlement will release any further
15 attempt, by lawsuit, administrative claim or action, arbitration, demand, or other action of any
16 kind by each and all of the Settlement Class Members (including participation to any extent in
17 any representative or collective action), against Defendants and all of their present and former
18 parent companies, subsidiaries, divisions, concepts, related or affiliated companies and its
19 shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns,
20 and any individual or entity that could be liable for any of the Released Claims, and Defendants’
21 counsel of record in these Action (“Released Parties”), arising during the period May 28, 2016
22 through April 15, 2021, are limited to any and all claims under state, federal, or local law, whether
23 statutory or common law arising out of the claims expressly pleaded the Actions and all other
24 claims, such as those under the California Labor Code, Wage Orders, regulations, and/or other
25 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.
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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 Class Settlement Shares to be paid to
20 Participating Class Members and (b) the LWDA payment as civil penalties under the California
21 Labor Code Private Attorneys General Act of 2004, as amended, California Labor Code sections
22 2699 *et seq.*, as provided for by the Settlement are fair and reasonable. The Court hereby grants
23 final approval to, and orders the payment of, those amounts be made to the Participating Class
24 Members and to the California Labor & Workforce Development Agency (“LWDA”), in
25 accordance with the terms of the Settlement.
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1 5. The Court further grants final approval to and orders that the following payments
2 be made in accordance with the terms of the Settlement:

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

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

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

9 d. Payment of \$3,000.00 (75% of the (\$4,000.00 PAGA penalty) to the
10 LWDA.
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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).
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19 8. Within 10 calendar days of the Effective Date of Settlement, Defendants shall
20 deposit the Settlement proceeds in an account designated by the Settlement Administrator: (i) the
21 total amount of all Class Settlement Shares to Participating Class Members, (ii) the Court
22 approved Class Counsel fees & costs, (iii) the Court-approved Class Representative Payment,
23 (iv) the Court-approved costs of the Settlement Administrator, and (v) the payment to the LWDA.
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25 9. Defendants' payment of such sums shall be the sole financial obligation of
26 Defendants under the Settlement, and shall be in full satisfaction of all claims released herein,
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1 including, without limitation, all claims for wages, penalties, interest, attorneys' fees, costs and
2 expenses.

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

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

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

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