

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement (“Agreement”) is made and entered into by and between Plaintiffs TROY HAY, EVETTE DURAN, PATRICK RYAN, and JEFFEREY HETTSMANSPERGER (collectively “Plaintiffs”), on the one hand; and Defendants MARK HUNTER’S PALM SPRINGS, LTD., JENNIFER SEYMOUR, and MARK SEYMOUR (collectively “Defendants”), on the other. Plaintiffs and Defendants are entering into this Agreement and are collectively referred to as the “Parties”. This Agreement shall be effective as of the date of the last signature applied to it (the “Effective Date”).

RECITALS

WHEREAS, on February 9, 2023, Plaintiffs filed a complaint (the “Complaint”) against these Defendants entitled TROY HAY, et al. v. MARK HUNTER’S PALM SPRINGS, LTD., et al., in the Riverside County Superior Court, Case No. CVRI2300738 (the “Lawsuit”). The Complaint asserts causes of action against the Defendants based on allegations of failure to make certain wage and overtime payments and maintain records in the employment context. The Complaint is entitled “Class Action”.

WHEREAS, although not alleged in the Complaint, Plaintiffs claim that additional causes of action under the California Fair Employment and Housing Act might be sought by amendment.

WHEREAS, Defendants, and each of them, deny each and every allegation in the Complaint, generally and specifically, deny any basis for individual liability, and, in addition to other available defenses, claim full compliance with statutory requirements. Defendants further claim that the Lawsuit is individual in nature and cannot properly be certified as a Class Action.

WHEREAS, Plaintiffs have not filed a motion nor sought an order for Class Action Certification in this Lawsuit, and there has been no such order issued by the Court.

WHEREAS, it is the desire of the Parties herein to resolve, compromise, and settle the above disputes and controversies amongst them on the terms and conditions set forth herein in accordance with the Agreement.

SETTLEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants herein, and for other good and valuable consideration, the receipt, and adequacy of which is acknowledged by the Parties hereto, and intending to be legally bound, it is agreed as follows:

1. **CONSIDERATION:**

- (a) In consideration of Plaintiffs’ dismissal of the entire Lawsuit, with individual claims dismissed with prejudice and class action claims dismissed without prejudice pursuant to California Rules of Court (“CRC”) 3.770 , against all Defendants, and upon providing an IRS Form 1099 to Harris & Ruble Law Firm,

Defendant MARK HUNTER'S PALM SPRINGS, LTD shall pay the total sum of \$200,000 (two hundred thousand dollars) (the "Settlement Funds") to Plaintiffs as follows:

- i. \$50,000 to be paid within 30 days after a dismissal with prejudice of the entire Lawsuit, including the Class Action, has been entered by the Court (the "Initial Payment");
 - ii. The balance of the Settlement Funds to be paid in equal monthly installments of \$6,250, with no interest (the "Monthly Payments"), payable in each consecutive month over 24 months;
 - iii. Monthly Payments are to commence 60 days after the Initial Payments and are due on the 1st of each month.
- (b) The Settlement Funds, including both the Initial Payment and Monthly Payments, shall be made payable to "Harris & Ruble Client Trust Account", attorneys for Plaintiffs. Parties acknowledge and agree that the Settlement Funds are being paid collectively to the Plaintiffs and that Plaintiffs' counsel shall bear all responsibility for proper allocation and disbursement of Settlement Funds to the individual Plaintiffs. Settlement Funds are to be delivered, by U.S. Mail or the equivalent, to:

Harris & Ruble
Attn: Alan Harris, David Garrett
655 North Central Avenue, 17th Floor
Glendale, CA 91203

- (c) In the event that a timely or proper Monthly Payment is not received by the 5th day of any month in which payment is due, Plaintiffs shall give Defendants electronic notice and Defendants shall be afforded ten (10) calendar day's to cure. Defendants' cure within this time period is not a breach of this Agreement.

2. Dismissal with Prejudice of Class Action: Dismissal with Prejudice of the Lawsuit, as allowed by CRC 3.770, including of the Class Action component of the Lawsuit in its entirety without prejudice pursuant to CRC 3.770, and as to every cause of action stated therein, against each and every Defendant, is a material part of this Agreement. Until and unless there is a dismissal with prejudice that fully and finally disposes of the potential for any party or representative to pursue a Class Action or certification of a Class Action in any respect against these Defendants, or any of them, no consideration provided for in Paragraph 1 is due or owing.

3. Plaintiffs Release of All Claims: In consideration for the promises and covenants set forth in this Agreement, Plaintiffs fully and finally release and forever discharge Defendants, and each of them, and their assigns, assignees, partners, directors, officers, managers, agents, representatives, predecessors, successors, and attorneys from any and all past, present and future claims, demands, obligations, actions, causes of actions, rights, damages, costs, losses of services, wages, costs, expenses and compensation of every nature whatsoever, whether based in tort, contract, equity, any statutory grounds or any other theory of recovery, known or unknown, including, but not limited to, breach of contract, wrongful termination, constructive termination, discrimination, associational discrimination, failure to accommodate, harassment, retaliation, violations of any and

all federal and state statutes (including, but not limited to, Civil Rights Acts of 1866, 1964, and 1991; 42 U.S.C. § 1981; California Fair Employment and Housing Act; Section 503 of the Rehabilitation Act of 1973; Fair Labor Standards Act; California Workers' Compensation Act; California Labor Code; Employment Retirement Income Security Act; violations of the California Constitution, breach of the implied covenant of good faith and fair dealing, violation of public policy, defamation, interference/impairment of future economic advantage or opportunity, pain and suffering, physical injury, medical and hospital expenses, lost earning capacity, lost wages, property damage, destruction and/or sale of property, and attorney's fees and costs, resulting directly or indirectly from the Complaint, the causes of action stated therein or which could have been stated therein, Plaintiffs' employment with the Defendants, or which arose or is associated with the Defendants' business or on Defendants' property. The Settlement Funds satisfies all claims, demands, actions or causes of action relating to all wage claims, wages due and owing claims, waiting penalty claims, attorney's fees and all California Labor Code sections relating to such claims. As of the date of this Agreement, Plaintiffs acknowledge that they have been paid all wages and vacation time due and owing to him, and that they fully and finally waive and forever release any and all wage and hour claims, and any and all related penalties, against these Defendants. This release does not extend to claims for breach of this Agreement.

4. Waiver of California Civil Code Section 1542: It is the Parties' intention through this Agreement (and with the advice of counsel) to fully, finally, and forever settle and release all claims and disputes, whether known or unknown, arising out of or connected with the Lawsuit. In connection with the releases provided for in this Agreement, the Parties shall be deemed to have waived any and all provisions, rights, and benefits conferred by Section 1542 of the *California Civil Code* and any statute, rule, and legal doctrine similar, comparable, or equivalent to Section 1542, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

The Parties hereby acknowledge that they may hereafter discover facts different from, or in addition to, those which they now know and believe, or should now know and believe, to be true with respect to the releases set forth herein and agree that said releases are now and will remain effective notwithstanding the existence, and/or subsequent discovery, of such different or additional facts.

5. Non-Disparagement: The Parties agree not to disparage one another as it relates to the subject matter of this Agreement. Each party agrees not to make any disparaging remarks about the other party or that party's business, or its business reputation, to cause or allow publication of any matter regarding the litigation in any publications, We Chat, Face Book or other media or means of dissemination, internet or news or other social media. If any inquiry is received by Defendants regarding any Plaintiff's employment, then Defendants shall respond with only position(s) and dates of employment, citing company policy.

6. No Admission of Liability: The execution of this Agreement shall not be deemed an admission of any liability or wrongdoing by any Party. Each Party has consistently maintained

that they are not liable or responsible to the other Party based upon the claims and contentions set forth in the Recitals.

7. Notices: Unless otherwise specified in this Agreement, all notices permitted or required to be given under this Agreement shall be given to the Parties via means of overnight delivery at the following addresses (or to such changed addresses as to which the Parties may notify each other in writing hereafter) with a copy sent to each Party or Party's counsel:

If to Plaintiffs herein, with a courtesy copy to:

Alan Harris
David Garrett
Harris & Ruble
655 North Central Avenue, 17th Floor
Glendale, CA 91203
Telephone: (323) 962-3777
Facsimile: (323) 962-3004
Email: DGarrett@harrisandruble.com

Counsel for Plaintiffs TROY HAY,
EVETTE DURAN, PATRICK RYAN,
and JEFFEREY HETTSMANSPERGER

If to Defendants herein, with a courtesy copy to:

A Scott Brown
Law Offices of A. Scott Brown
21700 Oxnard St., Suite 1770
Woodland Hills, CA 91367
Telephone: (805) 465-6410
Facsimile: (805) 267-1101
Email: scott@ascottbrownlaw.com

Counsel for Defendants, MARK HUNTER'S
PALM SPRINGS, LTD., JENNIFER
SEYMOUR, and MARK SEYMOUR

Any Party may change the address(es) at which it receives notices under this Agreement by notice to the other Parties pursuant to this paragraph.

8. No Modification or Waiver: Neither this Agreement nor any provision set forth herein may be amended, canceled, revoked, waived, discharged, terminated, or otherwise modified except by a signed written agreement subscribed and executed by the Party against whom or which enforcement of any change, waiver, modification, or discharge is sought.

9. Severability: If any provision of this Agreement is held to be invalid, void, or unenforceable, the balance of the provisions shall, nevertheless, remain in full force and effect and shall in no way be affected, impaired or invalidated. The waiver of any one provision shall not be deemed a waiver of any other provision herein.

10. Attorneys' Fees and Costs: The Parties shall each bear their own attorneys' fees and costs in connection with the Lawsuit, and the preparation and execution of this Agreement. In the event of any enforcement proceeding arising out of this Agreement, however, the prevailing party

shall be entitled to recover his or her reasonable attorneys' fees and costs in addition to all other appropriate relief.

11. Tax Matters: An IRS Form 1099 will be provided to counsel for Plaintiffs who shall also provide an accurate completed IRS W-9 form. Plaintiffs understand and agree that each is responsible for payment of any and all taxes which are required to be paid to the State of California, the United States Government, or to any other entity relative to the payments received by Plaintiffs pursuant to this Agreement. Plaintiffs acknowledge and agree that Defendants have not warranted or represented how the IRS or other governmental taxing authorities will treat the payments described above for tax purposes, and agree that no further payment of money to Plaintiffs or to their counsel from Defendants is due in the event that Plaintiffs, or any of them, fail to pay any required taxes on the payments received pursuant to this Agreement. Plaintiffs agree that in the event a government agency opines that Plaintiffs, or any of them, owe additional taxes on amounts paid pursuant to this Agreement, that Plaintiffs will be solely and completely responsible for payment of any such alleged tax obligations and will defend, indemnify and hold Defendants harmless from any resulting tax liability, interest, attorney's fees, or penalties associated with any such taxes or with Plaintiffs' failure to pay.

12. Representative Claims: Plaintiffs understand and agree that each is responsible for payment of any amounts that might be determined to be due and owing to any governmental agency, including but not limited to the Labor and Workforce Development Agency ("LWDA"), relative to payments received by Plaintiffs pursuant to this Agreement. Plaintiffs acknowledge and agree that Defendants have not made any warranties or representations in this regard. Should any governmental agency, or person or entity, seek rights, remedies, damages or penalties from Defendants based on any claim asserted in the Lawsuit, Plaintiffs will defend, indemnify and hold Defendants harmless.

13. Representations/Warranties: The Parties, and each of them, warrant: (i) that no other person or entity had or has or claims, any interest in any of the claims, demands, causes of action, or damages covered in this Agreement; (ii) that they, and each of them, have the sole right and exclusive authority to execute this Agreement; (iii) that they have not sold, assigned, transferred or disposed of any claim, cause of action, obligation, damage or liability covered in this Agreement.

14. No Further Action: Plaintiffs represent and warrant that they have not filed, initiated or caused to be filed or initiated any legal or administrative action or claim covering any claim released herein or regarding any claim whatsoever against Defendants, or any of them, and hereby agree and promise they will not file or initiate, or cause to be filed or initiated, at any time subsequent to the execution of this Agreement, any complaint, claim, charge, suit or action in any state or federal court or before any state, federal or local government or administrative agency, against Defendants. Plaintiffs further represent and warrant that they will not assist or encourage another person to bring any complaint, claim, charge, suit or action against Defendants or any of them. Should any such claims or charges be identified, Plaintiffs agree and promise to take all reasonable steps to revoke, withdraw or waive such claims or charges.

15. Construction: This Agreement shall be deemed to have been, jointly drafted by the Parties, such that conflicts over the terms of this Agreement shall not be construed in favor of or against any Party on the basis of any common law or equitable presumptions relating to contract interpretation.

16. Integration: This Agreement constitutes the entire understanding of the Parties in connection with the subject matter hereof. This Agreement represents the only agreements between the Parties regarding the subject matter hereof, and supersede all prior agreements, drafts, proposals, arrangements, or understandings, written or oral.

17. Counterparts: This document may be signed in counterparts, all of which when taken together shall constitute the Agreement of the Parties hereto. This document may be executed and thereafter transmitted by electronic mail; in which case the electronic copy of the signature may be relied upon as an original, wet ink signature.

18. Waiver of Breach: No waiver by any Party hereto of any breach of this Agreement by any other Party shall operate or be construed as a waiver of any other or subsequent breach. No waiver by any Party hereto of any breach of this Agreement by any other Party hereto shall be effective unless it is in writing and signed by the Party claimed to have waived such breach. A waiver of any breach of this Agreement by one Party shall not be binding as against any other Party who wishes to assert remedies pursuant to that breach.

The Court shall retain jurisdiction over this matter to enforce this Settlement Agreement under *California Code of Civil Procedure* Section 664.6.

EACH PARTY ACKNOWLEDGES THAT HE, SHE, OR IT HAS BEEN PROVIDED WITH SUFFICIENT TIME AND OPPORTUNITY TO CONSIDER THIS AGREEMENT AND TIME TO CONSULT WITH COUNSEL, AND EACH PARTY ENTERS INTO THIS AGREEMENT ON THE BASIS OF ADVICE RECEIVED BY COUNSEL.

EACH PARTY ACKNOWLEDGES AND REPRESENTS THAT HE, SHE OR IT ENTERS INTO THIS AGREEMENT FREELY, KNOWINGLY, VOLUNTARILY AND WITHOUT COERCION AND BASED ON EACH PARTY'S OWN JUDGMENT AND NOT IN RELIANCE UPON ANY REPRESENTATION OR PROMISES MADE BY ANY OTHER PARTY.

IN WITNESS WHEREOF, THE PARTIES STIPULATE AND AGREE TO ALL OF THE FOREGOING AND HAVE EXECUTED THIS AGREEMENT AS FOLLOWS:

PLAINTIFF

Dated: _____, 2023

TROY HAY, an individual

PLAINTIFF

Dated: _____, 2023

EVETTE DURAN, an individual

SETTLEMENT AGREEMENT

PLAINTIFF

Dated: _____, 2023

PATRICK RYAN, an individual

PLAINTIFF

Dated: _____, 2023

JEFFEREY HETTSMANSPERGER, an individual

[signatures continued]

Dated: _____, 2023

DEFENDANT

Name:
MARK HUNTER'S PALM SPRINGS,
LTD.

DEFENDANT

Dated: _____, 2023

JENNIFER SEYMOUR, an individual

DEFENDANT

Dated: _____, 2023

MARK SEYMOUR, an individual

APPROVED AS TO FORM:

HARRIS & RUBLE

Dated: _____, 2023

David Garrett, Esq.
Attorneys for Plaintiffs TROY HAY,
EVETTE DURAN, PATRICK RYAN, and
JEFFEREY HETTSMANSPERGER

LAW OFFICES OF A. SCOTT BROWN

Dated: _____, 2023

A. Scott Brown, Esq.
Attorneys for Defendants MARK HUNTER'S
PALM SPRINGS, LTD., JENNIFER
SEYMOUR, and MARK SEYMOUR