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Attorneys for Plaintiff JOSEPH CHRISTOPHER KIRKHAM

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

JOSEPH CHRISTOPHER KIRKHAM, an
individual, on behalf of himself and on behalf
of all persons similarly situated,

Plaintiff,

v.

PALM DESERT GREENS ASSOCIATION, a
California Corporation; and DOES 1-50,
Inclusive,

Defendant.

Case No. CVRI2202569

**~~PROPOSED~~ ORDER AND JUDGMENT
GRANTING FINAL APPROVAL OF CLASS
AND PAGA ACTION SETTLEMENT,
APPROVAL OF CLASS COUNSEL
AWARD, AND CLASS REPRESENTATIVE
SERVICE AWARD**

Date: August 6, 2024
Time: 8:30 a.m.

Judge: Hon. Harold W. Hopp
Dept.: 1

1 Plaintiff's motion for an order finally approving the Amended Stipulation of Settlement of
2 Class and PAGA Action Claims and Release of Claims ("Agreement"), attached as Exhibit "1" to
3 the Declaration of Sydney Castillo-Johnson, Esq, in support of Plaintiff's Motion for Final Approval
4 of Class Action and PAGA Payment filed on July 12, 2024, and Motion for Class Counsel Award
5 and Class Representative Service Award duly came on for hearing on August 6, 2024, before the
6 above-entitled Court. Zakay Law Group, APLC and the JCL Law Firm, APC appeared on behalf
7 of Plaintiff Joseph Christopher Kirkham ("Plaintiff"). FitzGerald & Mulé LLP, appearing as counsel
8 for defendant Palm Desert Greens Association. (hereinafter "Defendant").

9 **I.**

10 **FINDINGS**

11 Based on the oral and written argument and evidence presented in connection with the
12 motion, the Court makes the following findings:

13 1. All capitalized terms used herein shall have the same meaning as defined in
14 the Agreement.

15 2. This Court has jurisdiction over the subject matter of this litigation pending
16 in the California Superior Court for the County of Riverside ("Court"), Case No. CVRI2202569,
17 entitled *Kirkham v. Palm Desert Greens Association*, and over all Parties to this litigation, including
18 the Class.

19 **Preliminary Approval of the Settlement**

20 3. On April 3, 2024, the Court granted preliminary approval of a class-wide
21 settlement. At this same time, the court approved certification of a provisional settlement class for
22 settlement purposes only. The Court confirms this Order and finally approves the settlement and
23 the certification of the Class.

24 **Notice to the Class**

25 4. In compliance with the Preliminary Approval Order, the Notice Packet was
26 mailed by first class mail to the Class Members at their last known addresses on May 24, 2024.
27 Mailing of the Notice Packet to their last known addresses was the best notice practicable under the
28 circumstances and was reasonably calculated to communicate actual notice of the litigation and the

1 proposed settlement to the members of the Class Members. The Court finds that the Notice Packet
2 provided fully satisfies the requirements of California Rules of Court, rule 3.769.

3 5. The Response Deadline for opting out or objecting was July 8, 2024. There
4 was an adequate interval between notice and deadline to permit Class Members to choose what to
5 do and act on their decision. No Class Members objected. Only one Class Members requested
6 exclusion. 99.35% of the Class Members will be participating in the Settlement and will be sent
7 Individual Settlement Payments.

8 **Fairness Of the Settlement**

9 6. The Agreement provides for a Gross Settlement Amount of \$350,000.00.
10 The Agreement is entitled to a presumption of fairness. (*Dunk v. Ford Motor Co.* (1996) 48
11 Cal.App.4th 1794, 1801.)

12 a. The settlement was reached through arms-length bargaining between
13 the Parties. There is no evidence of any collusion between the Parties in reaching the proposed
14 settlement.

15 b. The Parties' investigation and discovery have been sufficient to allow
16 the Court and counsel to act intelligently.

17 c. Counsel for all parties are experienced in similar employment class-
18 action litigation and have previously settled similar class claims. All counsel recommended
19 approval of the Settlement.

20 d. The percentage of objectors and requests for exclusion is small. No
21 objections were received. One request for exclusion was received. The name of the Class Member
22 who requested exclusion was Stephanie F. Jackson.

23 e. The participation rate is high. 99.35% of Class Members will be
24 participating in the Settlement and will be sent settlement payments.

25 7. The consideration to be given to the Class Members under the terms of the
26 Agreement is fair, reasonable, and adequate considering the strengths and weaknesses of the claims
27 asserted in this Action and is fair, reasonable, and adequate compensation for the release of the
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Released Class Claims and Released PAGA Claims, given the uncertainties and risks of the litigation and the delays which would ensue from continued prosecution of the Action.

8. The Agreement is finally approved as fair, adequate, and reasonable and in the best interests of the Settlement Class Members.

PAGA Penalties

9. The Agreement provides for a payment of PAGA Penalties in the amount of \$10,000.00. The Court has reviewed the PAGA Penalties and finds and determines that the PAGA Penalties and the allocation of \$7,500.00 to the Labor and Workforce Development Agency (“LWDA Payment”) and \$2,500.00 to Aggrieved Employees (“Aggrieved Employee Payment”) is fair and reasonable and complies with the requirements set forth in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56.

Attorneys’ Fees and Litigation Expenses

10. The Agreement provides for a Class Counsel Award in the amount of up to One Hundred, Twenty-Seven Thousand, Two Hundred Ninety-Eight Hundred Dollars and Ten Cents (\$127,298.10). Subject to Court approval, the Class Counsel Award consists of attorneys’ fees equal to one-third (1/3) of the Gross Settlement Amount, or One Hundred Sixteen Thousand, Six Hundred Sixty-Six Dollars and Sixty-Six Cents (\$116,666.66) and reimbursement of costs and expenses in the amount of Ten Thousand, Six Hundred Thirty-One Dollars and Forty-Four Cents (\$10,631.44).

11. A Class Counsel Award of One Hundred, Twenty-Seven Thousand, Two Hundred Ninety-Eight Hundred Dollars and Ten Cents (\$127,298.10) comprised of attorneys’ fees in the amount of One Hundred Sixteen Thousand, Six Hundred Sixty-Six Dollars and Sixty-Six Cents (\$116,666.66) and reimbursement of actually incurred costs and expenses in the amount of Ten Thousand, Six Hundred Thirty-One Dollars and Forty-Four Cents (\$10,631.44) is reasonable in light of the contingent nature of Class Counsel’s fee, the hours worked by Class Counsel, and the results achieved by Class Counsel. The requested attorneys’ fee award represents 1/3 of the common fund, which is reasonable and at the low end of the range for fee awards in common fund cases and is supported by Class Counsel’s lodestar.

1 **Class Representative Service Award**

2 12. The Agreement provides for a Class Representative Service Award of Ten
3 Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff, subject to the Court's approval. The
4 Court finds that the amount of Five Thousand Dollars and Zero Cents (\$5,000.00) to Plaintiff is
5 reasonable in light of the risks and burdens undertaken by the Plaintiff in this class action litigation.

6 **Settlement Administration Expenses**

7 13. The Agreement provides for Settlement Administration Expenses to be paid
8 in an amount not to exceed \$7,800.00. The Declaration of the Settlement Administrator provides
9 that the actual claims administration expenses were \$7,800.00. The amount of this payment is
10 reasonable in light of the work performed by the Settlement Administrator.

11 **II.**

12 **ORDERS**

13 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:

14 1. The Class is certified for the purposes of settlement only. The Settlement
15 Class is hereby defined to include all persons who are or previously were employed by Defendant
16 as a non-exempt employee in California ("Class") during the period between June 23, 2018, through
17 April 3, 2024 ("Class Period").

18 2. Every person in the Class who did not submit a timely and valid Request
19 for Exclusion is a Settlement Class Member. The Court finds, based on the declaration of the
20 Settlement Administrator, that one of the Class Members opted-out of the Settlement. The name of
21 the Class Member who opted-out of the Settlement is Stephanie F. Jackson.

22 3. The Agreement is hereby approved as fair, reasonable, adequate, and in the
23 best interest of the Class. The Parties are ordered to effectuate the Settlement in accordance with
24 this Order and the terms of the Agreement.

25 4. Any envelope transmitting a settlement distribution to a Class Member shall
26 bear the notation, "YOUR CLASS ACTION SETTLEMENT CHECK IS ENCLOSED." Any
27 checks issued to Settlement Class Members and Aggrieved Employees shall remain valid and
28 negotiable for one hundred eighty (180) days from the date of their issuance. The administrator shall

1 mail a reminder postcard to any Class Member whose settlement distribution check has not been
2 negotiated within sixty (60) days after the date of mailing. If (i) any of the Class Members are current
3 employees of Defendant, (ii) the distribution mailed to those employees is returned to the Settlement
4 Administrator as being undeliverable, and (iii) the Settlement Administrator is unable to locate a
5 valid mailing address, the Settlement Administrator shall arrange with Defendant to have those
6 distributions delivered to the employees at their place of employment.

7 5. Class Counsel are awarded attorneys' fees in the amount One Hundred,
8 Twenty-Seven Thousand, Two Hundred Ninety-Eight Hundred Dollars and Ten Cents
9 (\$127,298.10) for the Class Counsel Award comprised of one-third of the Gross Settlement Amount,
10 or One Hundred Sixteen Thousand, Six Hundred Sixty-Six Dollars and Sixty-Six Cents
11 (\$116,666.66) and litigation expenses in the amount of Ten Thousand, Six Hundred Thirty-One
12 Dollars and Forty-Four Cents (\$10,631.44). The awarded fees will be paid as follows: Fifty-Eight
13 Thousand, Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$58,333.33) to JCL Law
14 Firm, APC and Fifty-Eight Thousand, Three Hundred Thirty-Three Dollars and Thirty-Three Cents
15 (\$58,333.33) to Zakay Law Group, APLC. The awarded litigation expenses shall be paid as follows:
16 \$4,887.60 to JCL Law Firm, APC, and \$5,743.84 to Zakay Law Group, APLC. Class Counsel shall
17 not seek or obtain any other compensation or reimbursement from Defendant, Plaintiff, or members
18 of the Class.

19 6. The payment of the Class Representative Service Award to Plaintiff in the
20 amount of \$5,000.00 is approved.

21 7. The payment of \$7,800.00 to the Settlement Administrator for Settlement
22 Administration Expenses is approved.

23 8. The PAGA Payment of \$10,000.00 is hereby approved as fair, reasonable,
24 adequate and adequately protects the interests of the public and the LWDA. Twenty-Five percent
25 (25%) of the PAGA Payment (\$2,500) shall be allocated to the LWDA ("LWDA Payment"). The
26 remaining seventy-five percent (75%) of the PAGA Payment (\$7,500) shall be distributed to the
27 Aggrieved Employees ("Aggrieved Employee Payment"). Further, the Court finds that Plaintiff
28 and Class Counsel negotiated the PAGA Payment at arms-length, absent of any fraud or collusion.

1 9. Final Judgment is hereby entered in this action. The Final Judgment shall
2 bind each Settlement Class Member. The Final Judgment shall operate as a full release and discharge
3 of Defendant from all class claims which are alleged in the operative complaint, or could have been
4 alleged based upon the facts in the operative complaint, which occurred during the Class Period,
5 and expressly excluding all other claims, including claims for vested benefits, wrongful termination,
6 unemployment insurance, disability, social security, workers' compensation, and class claims
7 outside of the Class Period.

8 10. Final Judgment shall also bind Plaintiff, acting on behalf of the State of
9 California and all Aggrieved Employees, pursuant to the California Labor Code Private Attorneys'
10 General Act ("PAGA") and shall release Defendant from all PAGA claims which are alleged in the
11 operative complaint and Plaintiff's PAGA notice to the LWDA which occurred during the PAGA
12 Period, and expressly excluding all other claims, including claims for vested benefits, wrongful
13 termination, unemployment insurance, disability, social security, workers' compensation, and
14 PAGA claims outside of the PAGA Period.

15 11. The term "Aggrieved Employees" is hereby defined as all persons who are
16 or previously were employed all persons who are or previously were employed. The PAGA Period
17 means the period between April 18, 2021, to April 3, 2024.

18 12. In addition to the release given by each Settlement Class Member, Plaintiff
19 also generally releases Defendant from any and all claims as set forth in the General Release by
20 Plaintiff in the Agreement.

21 13. The Agreement is not an admission by Defendant, nor is this Final Approval
22 Order and Judgment, a finding of the validity of any claims in the Action or of any wrongdoing by
23 Defendant. Neither this Final Approval Order, the Settlement, nor any document referred to herein,
24 nor any action taken to carry out the Settlement is, may be construed as, or may be used as an
25 admission by or against Defendant of any fault, wrongdoing, or liability whatsoever. The entering
26 into or carrying out of the Agreement, and any negotiations or proceedings related thereto, shall not
27 in any event be construed as, or deemed to be evidence of, an admission or concession with regard
28 to the denials or defenses by Defendant and shall not be offered in evidence in any action or

1 proceeding against Defendant by Plaintiff or vice versa in any court, administrative agency or other
2 tribunal for any purpose as an admission whatsoever other than to enforce the provisions of this
3 Final Approval Order and Judgment, the Settlement, or any related agreement or release.
4 Notwithstanding these restrictions, any of the Parties may file in the Action or in any other
5 proceeding this Final Approval Order and Judgment, the Agreement, or any other papers and records
6 on file in the Action as evidence of the Settlement to support a defense of res judicata, collateral
7 estoppel, release, or other theory of claim or issue preclusion or similar defense as to the claims
8 being released by the Settlement.

9 14. Notice of entry of this Final Approval Order and Judgment shall be given to
10 Class Counsel on behalf of Plaintiff and all Class Members. It shall not be necessary to send notice
11 of entry of this Final Approval Order and Judgment to individual Class Members and the Final
12 Approval Order and Judgment shall be posted on Settlement Administrator's website as indicated
13 in the Notice Packet.

14 15. After entry of Final Judgment, the Court shall retain jurisdiction to construe,
15 interpret, implement, and enforce the Settlement, to hear and resolve any contested challenge to a
16 claim for settlement benefits, and to supervise and adjudicate any dispute arising from or in
17 connection with the distribution of settlement benefits.

18 16. If the Settlement does not become final and effective in accordance with the
19 terms of the Settlement, resulting in the return and/or retention of the Gross Settlement Amount to
20 Defendant consistent with the terms of the Settlement, then this Final Approval Order and Judgment,
21 and all orders entered in connection herewith shall be rendered null and void and shall be vacated.

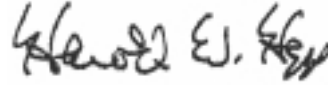
22 17. Plaintiff shall give notice of this Judgment to the Labor and Workforce
23 Development Agency within ten (10) days after entry of the Judgment or order pursuant to
24 California Labor Code section 2699(1)(3).
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1 18. A Final Report (Nonappearance) Hearing will be held on August 6, 2025.
2 Plaintiff will file a report concerning the amount of money distributed five (5) court days in advance

3 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO**
4 **ORDERED.**

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6 DATED: August 9, 2024

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10 Hon. Harold W. Hopp
11 Judge, Superior Court for the State of California,
12 County of Riverside
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