

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Sydney Castillo-Johnson (State Bar #343881)
Perssia Razma (State Bar #351398)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
scastillo@jcl-lawfirm.com
prazma@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com

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

**DECLARATION OF SYDNEY CASTILLO-
JOHNSON, ESQ. IN SUPPORT OF
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS AND PAGA ACTION
SETTLEMENT**

Date: August 6, 2024

Time: 8:30 a.m.

Judge: Hon. Harold W. Hopp

Dept.: 1

1 I, Sydney Castillo-Johnson, Esq., declare as follows:

2 1. I am over eighteen years of age and if called as a witness, I could and would competently
3 testify to the following facts from my own personal knowledge. I am an attorney-at-law at JCL Law
4 Firm, APC. I am counsel of record for Plaintiff Joseph Christopher Kirkham (hereafter “Plaintiff” or
5 “Class Representative”) in this wage and hour class action filed against Defendant Palm Desert Greens
6 Association (hereinafter “Defendant”).

7 2. This declaration is being submitted in support of Plaintiff’s Motion for Final Approval of
8 Class Action and PAGA Settlement.

9 3. Attached hereto as **Exhibit “1”** is a true and correct copy of the fully executed Amended
10 Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims.

11 4. Attached hereto as **Exhibit “2”** is a true and correct copy of the fully executed Stipulation
12 of Settlement of Class and PAGA Action Claims and Release of Claims.

13 5. Attached hereto as **Exhibit “3”** is a true and correct copy of the conformed April 3, 2024,
14 Preliminary Approval Order.

15 6. Attached hereto as **Exhibit “4”** is a true and correct copy of the March 8, 2024, proof of
16 filing the proposed Settlement with the LWDA.

17 7. Attached hereto as **Exhibit “5”** is a true and correct copy of the July 12, 2024, proof of
18 filing this motion seeking final approval of this Settlement with the LWDA.

19 **I. INTRODUCTION**

20 8. An objective evaluation of the proposed settlement of Three Hundred Fifty Thousand
21 Dollars and Zero Cents (\$350,000.00) (“Gross Settlement Amount”) confirms that the relief negotiated
22 on behalf of the Settlement Class is fair, reasonable, and valuable. The Settlement is a product of
23 informed, adversarial, and non-collusive negotiations, between experienced counsel, and presided over
24 by Hon. Steven R. Denton (Ret)., a respected jurist and experienced mediator of wage and hour class
25 actions. After deducting any Court-approved Class Counsel Award, Class Representative Service
26 Award, Settlement Administration Expenses, and the PAGA Payment, the Net Settlement Amount shall
27 be distributed to the Settlement Class Members based on the number of Workweeks they worked while
28 employed by Defendant during the Class Period. ***The Class greeted news of the Settlement with high***

1 *approval as, at the time of the filing of this motion, 152 Class Members chose to participate in the*
2 *Settlement.* The high approval by the Settlement Class evidences the clear fairness and reasonableness
3 of the Settlement.

4 9. The relief offered by the Settlement is immediate and is particularly impressive when
5 viewed against the difficulties encountered by plaintiffs pursuing similar wage-and-hour cases (*see*
6 *infra*). Indeed, by settling now rather than proceeding to trial, the Settlement Class will not have to wait
7 (possibly years) for relief, nor will they have to bear the risks associated with prolonged and uncertain
8 litigation.

9 10. As discussed below, the proposed Settlement satisfies all criteria for final settlement
10 approval under California law and falls well within the range of reasonableness. Accordingly, the Class
11 Representative and Class Counsel respectfully request this Court grant final approval of the Agreement
12 and entry of the proposed Final Approval Order and Judgment.

13 **II. OVERVIEW OF THE LITIGATION**

14 11. Defendant operates a non-profit, private senior home community of manufactured and
15 mobile homes in Riverside County, where Plaintiff worked. Plaintiff worked for Defendant in
16 California from 2007 until June 2021. During his employment, Plaintiff claims that he was denied
17 legally compliant meal and rest periods, and minimum wages and overtime compensation. Throughout
18 his employment, Plaintiff was subject to Defendant's written policies and procedures.

19 12. Generally, Plaintiff claims that Defendant failed to provide compliant meal and rest
20 periods, failed to pay for all time worked, failed to reimburse necessary business expenses, and failed
21 to furnish accurate, itemized wage statements. Defendant denies liability for each of Plaintiff's claims.
22 Further, Defendant asserts that it fully complied with all applicable employment laws and raised several
23 other significant defenses to Plaintiff's claims, including but not limited to, asserting that they
24 maintained facially compliant meal and rest period policies, paid their employees for all hours worked,
25 and properly reimbursed all necessary business expenses.

26 13. On April 18, 2022, Plaintiff served Defendant and the Labor and Workforce Development
27 Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA Notice set forth
28 the facts and theories supporting Defendant's alleged violations of various provisions of the California

1 Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of his intent to
2 pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections
3 2698 *et seq* (“PAGA”).

4 14. On June 23, 2022, Plaintiff filed a class-action complaint in the Riverside County
5 Superior Court, Case No. CVRI220569 (“Action”). The Action alleged nine causes of action against
6 Defendant for: (1) Unfair Competition in violation of Bus. and Prof. Code §§ 17200; (2) Failure to Pay
7 Minimum Wages in Violation of California Labor Code §§ 1194, 1197, and 1197.1; (3) Failure to Pay
8 Overtime Wages in Violation of California Labor Code §§ 510; (4) Failure to Provide Required Meal
9 Periods in Violation of California Labor Code §§ 226.7 and 512; (5) Failure to Provide Required Rest
10 Periods in Violation of California Labor Code §§ 226.7 and 512; (6) Failure to provide Accurate
11 Itemized Wage Statements in violation of California Labor Code § 226 (7)Failure to Provide Wages
12 When Due in Violation of California Labor Code §§ 201, 202, and 203; (8) Failure to Reimburse
13 Employees for Required Expenses in Violation of California Labor Code § 2802; and (9). Violation of
14 the Private Attorneys General Act in violation of California Labor Code sections 2698, *et seq*.

15 15. After Plaintiff commenced written discovery, the Parties agreed to mediate this action.
16 To prepare for mediation, the Parties agreed to informally exchange additional documents and data
17 points subject to the mediation privilege, including but not limited to, the Class Members’ time data
18 and certain payroll data points. As discussed *infra*, Plaintiff’s counsel retained the forensic consultants
19 at Berger Consulting Group (“BCG”) to analyze Defendant’s time and payroll data.

20 16. On January 22, 2024, the Parties participated in a full day mediation with Hon. Steven R.
21 Denton (Ret.), a respected jurist and experienced mediator of wage-and-hour class actions. The
22 mediation concluded with a settlement, after both sides agreed to a Mediator’s proposal, which was
23 subsequently memorialized in the form of a Memorandum of Understanding (“MOU”). After reaching
24 an agreement in principle, the Parties drafted and negotiated a long-form settlement agreement, which
25 is the subject of the instant motion.

26 **III. THE SETTLEMENT BEFORE THE COURT**

27 17. The Court preliminarily approved an initial Gross Settlement Amount of Three Hundred
28 Fifty Thousand Dollars and Zero Cents (\$350,000.00) based on a total of an estimated 12,777

1 Workweeks worked by the Class during the Class Period. The Gross Settlement Amount shall be used:
2 (1) to satisfy Individual Settlement Payments; (2) to satisfy the Class Representative Service Award;
3 (3) to satisfy the Class Counsel Award; (4) to satisfy the PAGA Payment; and (5) to satisfy the
4 Settlement Administration Expenses incurred in this action.

5 18. As explained in further detail below, the Settlement is fair, adequate, and reasonable to
6 the class and should be granted final approval. This is evidenced by the high approval of the Settlement
7 by the Settlement Class, the absence of any objections to the Settlement and the average Individual
8 Settlement Payment of **\$1,253.51**.

9 **IV. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE**

10 **A. Class Counsel Conducted a Thorough Investigation**

11 19. Months before filing the Action, Class Counsel began its pre-filing investigation into
12 Plaintiff's complaints. Class Counsel's investigation started with several lengthy interviews with
13 Plaintiff. As part of the interview process, the Plaintiff produced documents related to his employment.
14 At the conclusion of the interviews, Class Counsel determined that Plaintiff's complaints justified
15 further inquiry.

16 20. Class Counsel subsequently requested Plaintiff's employee files from Defendant. In
17 response, Defendant produced several documents, including but not limited, copies of Plaintiff's hiring
18 documents and payroll and time records, and various company policies. Class Counsel reviewed and
19 analyzed the documents and determined the documents appeared to substantiate Plaintiff's claims that
20 Defendant failed to, among other things, provide compliant meal and rest periods, and failed to pay for
21 all hours worked, failed to reimburse necessary business expenses, and failure to furnish accurate
22 itemized wage statements.

23 21. To prepare for mediation, Defendant produced time and payroll records for the Class
24 Members, aggregate workweek and pay period data for the Class Members, aggregate meal premiums
25 paid to the Class Members, average hourly rate for the Class Members, average shift length for Class
26 Members, number of current Class Members, number of former Class Members who were employed
27 during the Class Period, and copies of applicable handbooks, policies, and agreements. In total, Class
28

1 Counsel reviewed hundreds of pages of documents and hundreds of thousands of unique cells of time
2 and payroll data.

3 22. Class Counsel then retained the statisticians and economists at BCG to evaluate the Class
4 Members' payroll and time data. BCG provides data analysis and damage modeling consulting
5 services, specializing in wage and hour class actions. BCG's team of financial and data analysts are
6 credentialed and experienced experts in their fields and have provided their expertise on thousands of
7 cases.

8 23. BCG analyzed Defendant's time and payroll data to assist in the development of various
9 damage models. Among other things, BCG determined the approximate amount of unpaid wages,
10 amount of unpaid overtime wages, number of workweeks, pay periods, average length of shifts and
11 average number of hours worked per week. BCG also estimated the number of missed, late, or truncated
12 meal and rest periods, the amount of unpaid sick pay, the amount of off-the-clock work, and the amount
13 of missed meal and rest period premiums paid during the Class Period.

14 24. Overall, Class Counsel thoroughly investigated the claims at issue, including: (1)
15 determining Plaintiff's suitability as a putative class representative through interviews, background
16 investigations, and analysis of his employment files; (2) evaluating all of Plaintiff's potential claims;
17 (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions,
18 and the type of employer; (4) analyzing the Settlement Class's time and payroll records; (5) analyzing
19 Defendant's labor policies and practices; (6) researching settlements in similar cases as well as
20 outstanding issues which could affect settlement approval; (7) evaluating Plaintiff's claims and
21 estimating Defendant's liability for purposes of settlement; (8) drafting the mediation brief; and (9)
22 participating in the mediation. This investigation allowed Class Counsel to fully assess the nature and
23 magnitude of the claims being settled, as well as the impediments to recovery, such as to make an
24 independent assessment of the reasonableness of the terms to which the Parties have agreed.

25 25. Class Counsel only agreed to enter the Settlement following this thorough investigation
26 and evaluation of Plaintiff's claims. Based on their investigation of the facts, applicable law, and
27 marketplace for similar settlements, and considering the risk of significant delay and uncertainty
28 associated with litigation, and the various defenses asserted by Defendant, Class Counsel firmly believe

1 this Agreement to be in the best interests of the Class Members. Because the Settlement's terms are
2 fair, reasonable, and adequate, the Court should preliminarily approve the Settlement.

3 **B. The Parties Settled At Mediation**

4 26. On January 22, 2024, the Parties conducted a full day of mediation with Hon. Steven
5 Denton (Ret.), retired jurist and highly respected wage and hour mediator. Judge Denton helped manage
6 the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides.
7 The Parties made substantial progress with Judge Denton's assistance. Namely, the Parties exchanged
8 information regarding their respective claims and defenses, including their respective evaluation of the
9 damages. After more than eight hours of arm's length and adversarial negotiations, the mediation
10 concluded with a settlement after the Parties agreed to a Mediator's proposal. The amount of the service
11 awards was not negotiated until after the parties agreed to the Gross Settlement Amount and many other
12 terms. No action would likely have been taken by Class Members individually, and no compensation
13 would have been recovered for them, but for Plaintiff's service on behalf of the Class.

14 **D. The Gross Settlement Amount is Fair and Reasonable**

15 27. Here, the Settlement is clearly within the "ballpark" of reasonableness because the
16 Settlement provides a sizeable recovery to the Settlement Class and need not necessarily obtain 100
17 percent of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91
18 Cal.App.4th at 250. While the Gross Settlement Amount of Three Hundred Fifty Thousand Dollars and
19 Zero Cents (\$350,000.00) represents a discount on Defendant's potential exposure if Plaintiff
20 established liability on all claims and was awarded the full amount of the estimated damages at trial,
21 this compromise is reasonable because (1) the formidable defenses raised by Defendant presented a risk
22 that could award significantly less in damages than Plaintiff's estimate and (2) any theoretical post-trial
23 recovery may require many more years of litigation, resulting in added fees and costs without any
24 guarantee of recovery for the Class.

25 28. As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and
26 reasonable considering the nature and magnitude of the claims being settled and the various potential
27 impediments to recovery. Class Counsel developed varied economic damages models measuring
28 Defendant's liability exposure while accounting for the uncertainties of continued litigation. The various

models were informed by Class Counsel's investigation, including the analysis of a significant sample of time and payroll data. As detailed in greater depth during the preliminary approval process, Class Counsel projected a range of Defendant's liability exposure for the claims asserted on behalf of the Settlement Class. The Gross Settlement Amount represents between 33% and 44% of Defendant's class-wide liability exposure as estimated by Class Counsel at the time of mediation.

29. Clearly the goal of this litigation to obtain redress for the class has been met by this Settlement. Given the amount of the Settlement, the risks of litigation and the arm's length negotiations between experienced counsel, the settlement is fair and reasonable, and is therefore entitled to final approval.

E. The Strength of Plaintiff's Case and Risks of Continued Litigation

30. Although Class Counsel believes strongly in Plaintiff's claims, it would be misguided to ignore the asserted defenses. If successful on any one of its defenses, Defendant could defend the action or, at least, drastically undercut Plaintiff's claims.

31. With respect to the most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 ("[T]he reason, if any, that employees might not take their breaks were predominantly individualized questions of fact not susceptible to class treatment."); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of certification because employees' declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying

1 certification of driver meal and rest period claims based on the predominance of individual issues).
2 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
3 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
4 settlement.

5 32. Although Plaintiff is confident about the strength of his claims, Plaintiff nevertheless
6 recognizes that Defendant has factual and legal defenses that, if successful, would potentially defeat or
7 impair the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can
8 drastically affect the value of Plaintiff's claims and, in fact, already has.

9 33. As demonstrated by the decisions in *Magadia, supra*, 999 F.3d 668, *O'Conner v. Uber*
10 *Technologies* (N.D. Cal. 2018) 82 F.Supp.3d 1133 and *Duran v. U.S. Bank National Assn.* (2014) 59
11 Cal.4th 1, the complexities and duration of further litigation cannot be overstated. There is little doubt
12 that if Defendant faced a large adverse judgement, Defendant undoubtedly have the resources to post a
13 bond and appeal. A post-judgment appeal by Defendant would have required many more years to
14 resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case
15 could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh
16 an uncertain result three or more years in the future.

17 34. The Class Representative and Class Counsel recognize the expense and length of a trial
18 against Defendant through possible appeals, which could take another three years. In arriving at their
19 informed belief that the present settlement is fair and adequate, Class Counsel accounted for the
20 uncertain outcome and risk inherent in complex actions such as this one. Class Counsel is also mindful
21 of and recognizes the inherent problems of proof under, and alleged defenses to, the claims asserted in
22 the litigation. Moreover, post-trial motions and appeals would have been inevitable. Costs would have
23 mounted, and recovery would have been delayed if not denied, thereby reducing the benefits of an
24 ultimate victory. Class Representative and Class Counsel believe that the Settlement confers substantial
25 monetary and non-monetary benefits upon the Class. Based upon their evaluation, Class Representative
26 and Class Counsel have determined that the Settlement set forth in the Agreement is in the best interest
27 of the Class, is fair, reasonable, and adequate, and should be granted final approval.

28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3
4
5
6
7
8

9
10
11

13
14

16

17
18

EXHIBIT 1

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Sydney Castillo Johnson (State Bar #343881)
Perssia Razma (State Bar #351398)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
scastillo@jcl-lawfirm.com
prazma@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com

Attorneys for Plaintiff JOSEPH CHRISTOPHER KIRKHAM

(Additional Counsel on next page)

**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,

Defendants.

Case No. CVRI2202569

[Complaint Filed: June 23, 2022]

**AMENDED STIPULATION OF
SETTLEMENT OF CLASS AND PAGA
ACTION CLAIMS AND RELEASE OF
CLAIMS**

1 FITZGERALD & MULÉ LLP

2 David Mule, Esq.

3 Jana FitzGerald, Esq.

4 74770 Hwy. 111, Suite 205

5 Indian Wells, CA 92211

6 T: 760-325-5055

7 dmule@fitzgeraldmulelaw.com

8 jfitzgerald@fitzgeraldmulelaw.com

9 Attorneys for Defendant PALM DESERT GREENS ASSOCIATION

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 This Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims is
2 entered into by and between plaintiff JOSEPH CHRISTOPHER KIRKHAM (hereinafter
3 “Plaintiff”), an individual, on behalf of the Settlement Class, and in his representative capacity on
4 behalf of the State of California and the Aggrieved Employees, and Defendant PALM DESERT
5 GREENS ASSOCIATION, a California Corporation (“Defendant”):

6 **I. DEFINITIONS**

- 7 A. “Action” shall mean the putative class action lawsuit designated *Joseph Christopher*
8 *Kirkham v. Palm Desert Greens Association*, Riverside County Superior Court, Case
9 No. CVRI2202569, filed June 23, 2022.
- 10 B. “Aggrieved Employees” shall mean all persons who are or previously were employed
11 by Defendant in California during the PAGA Period.
- 12 C. “Aggrieved Employee Payment” shall mean the twenty-five (25%) of the PAGA
13 Payment (\$2,500) allocated and distributed to the Aggrieved Employees.
- 14 D. “Agreement” or “Settlement Agreement” means this Stipulation of Settlement of
15 Class and PAGA Action Claims and Release of Claims.
- 16 E. “Class Counsel” shall mean Jean-Claude Lapuyade, Esq. of JCL Law Firm, APC and
17 Shani Zakay of Zakay Law Group, APLC.
- 18 F. “Class Counsel Award” means the award of fees and expenses that the Court
19 authorizes to be paid to Class Counsel for the services they have rendered to Plaintiff
20 and the Class in the Action, consisting of attorneys’ fees currently not to exceed one-
21 third of the Gross Settlement Amount currently estimated to be \$116,666.66 out of
22 \$350,000.00, plus costs and expenses in the amount of \$15,000.00. Class Counsel’s
23 award for attorneys’ fees will be divided equally between Class Counsel (50% to
24 JCL Law Firm, APC and 50% to Zakay Law Group, APLC).
- 25 G. “Class Data” means information regarding Class Members that Defendant will in
26 good faith compile from its records and provide to the Settlement Administrator. It
27 shall be formatted as a Microsoft Excel spreadsheet and shall include: each Class
28

Member's full name; last known address; Social Security Number; start dates and end dates of employment.

H. "Class Members" or the "Class" means all persons who are or previously were employed by Defendant as a non-exempt employee in California during the Class Period.

I. "Class Period" means the period between June 23, 2018, through the date of Preliminary Approval or April 21, 2024, whichever is earlier.

J. "Class Representative" shall mean plaintiff Joseph Christopher Kirkham.

K. "Class Representative Service Award" means the amount that the Court authorizes to be paid to the Class Representative in recognition of his efforts and risks in assisting with the prosecution of the Action.

L. "Court" means the Superior Court for the State of California, County of Riverside currently presiding over the Action.

M. "Defendant" shall mean Palm Desert Greens Association.

N. "Effective Date" means the earliest date, following entry by the Court of an order and judgment finally approving this Settlement, upon which one of the following have occurred: (i) if no objection is filed to the settlement and no objector appears at the hearing on final approval, the date of the Court's entry of the order granting final approval, (ii) if an objection is filed to the settlement and/or an objector appears at the hearing on final approval, then the earlier of the following: (a) the expiration of all potential appeal periods without a filing of a notice of appeal of the final approval order or judgment; (b) final affirmance of the final approval order and judgment by an appellate court as a result of any appeal(s), or (c) final dismissal or denial of all such appeals (including any petition for review, rehearing, certiorari, etc.) such that the final approval order and judgment is no longer subject to further judicial review.

O. "Funding Date" shall mean sixty (60) calendar days after the Effective Date and is the date Defendant transfers the Gross Settlement Amount into the QSF in accordance with the terms of this Agreement.

- 1 P. "Gross Settlement Amount" means Three Hundred Fifty Thousand Dollars and Zero
2 Cents (\$350,000.00) that Defendant must pay into the QSF in connection with this
3 Settlement, inclusive of the sum of the Individual Settlement Payments, the Class
4 Representative Service Award, the Class Counsel Award, PAGA Payment and the
5 Settlement Administration Expenses and *exclusive* of the employer's share of payroll
6 tax, if any, triggered by any payment under this Settlement.
- 7 Q. "Individual Settlement Payment" means the amount payable from the Net Settlement
8 Amount to each Settlement Class Member and excludes any amounts distributed to
9 Aggrieved Employees pursuant to PAGA.
- 10 R. "LWDA Payment" shall mean the seventy-five percent (75%) of the PAGA Payment
11 (\$7,500) allocated to the California Labor and Workforce Development Agency.
- 12 S. "Net Settlement Amount" or "NSA" means the Gross Settlement Amount, less Class
13 Counsel Award, Class Representative Service Award, PAGA Payment, and
14 Settlement Administration Expenses.
- 15 T. "Notice Packet" means the Class Notice to be provided to the Class Members by the
16 Settlement Administrator in the form set forth as Exhibit A to this Agreement (other
17 than formatting changes to facilitate printing by the Settlement Administrator).
- 18 U. "PAGA" means the California Labor Code Private Attorneys General Act of 2004,
19 Labor Code § 2698 *et seq.*
- 20 V. "PAGA Payment" shall mean Ten Thousand Dollars and Zero Cents (\$10,000.00) to
21 be allocated from the Gross Settlement Amount in settlement of the Released PAGA
22 Claims.
- 23 W. "PAGA Payment Ratio" means the respective PAGA Pay Periods during the PAGA
24 Period for each Aggrieved Employee divided by the sum total of the PAGA Pay
25 Periods for all Aggrieved Employees during the PAGA Period.
- 26 X. "PAGA Pay Periods" for purposes of calculating the distribution of the Aggrieved
27 Employee Payment, as defined herein, means the number of pay periods of
28

employment during the PAGA Period that each Aggrieved Employee worked in California.

Y. “PAGA Period” means the period between April 18, 2021, through date of Preliminary Approval or April 21, 2024, whichever is earlier.

Z. “Parties” means Plaintiff and Defendant, collectively, and “Party” shall mean either Plaintiff or Defendant, individually.

AA. “Payment Ratio” means the respective Workweeks for each Class Member divided by the sum total Workweeks for all Class Members.

BB. “Plaintiff” shall mean Joseph Christopher Kirkham.

CC. “QSF” means the Qualified Settlement Fund established, designated and maintained by the Settlement Administrator to fund the Gross Settlement Amount.

DD. “Released Class Claims” means the wage claims that accrued during the Class Period, as follows: any and all claims under California law, based on or arising out of the same factual predicates of the Action, the Complaint, and/or the allegations in the Complaint, including (a) all claims that were or could have been raised in the Actions; and (b) all claims that are based on or relate to the purported payment or nonpayment of compensation, including, but not limited to, wages, overtime wage, and/or premium pay), meal or rest period premiums or penalties, improper wage statements, unfair business practices.

EE. “Released PAGA Claims” means all claims, demands, rights, liabilities and causes of action under the PAGA, premised on the facts, claims, causes of action or legal theories pled in the Operative Complaint in the Action (or Plaintiff’s letter to the LWDA dated April 18, 2022), or which could have been alleged based on the factual allegations therein, that arose during the PAGA Period.

FF. “Released Party” or “Released Parties” shall mean Defendant and its present and former officers, directors, and employees.

1 GG. "Response Deadline" means the date forty-five (45) days after the Settlement
2 Administrator mails Notice Packets to Class Members and the last date on which
3 Class Members may submit requests for exclusion or objections to the Settlement.

4 HH. "Settlement" means the disposition of the Action pursuant to this Agreement.

5 II. "Settlement Administrator" means Apex Class Action LLC, 18 Technology Drive,
6 Suite 164 Irvine, CA 92618. The Settlement Administrator establishes, designates
7 and maintains, as a QSF under Internal Revenue Code section 468B and Treasury
8 Regulation section 1.468B-1, into which the amount of the Gross Settlement Amount
9 is deposited for the purpose of resolving the claims of Settlement Class Members.
10 The Settlement Administrator shall maintain the funds until distribution in an
11 account(s) segregated from the assets of Defendant and any person related to
12 Defendant. *All accrued interest shall be paid and distributed to the Settlement Class*
13 *Members as part of their respective Individual Settlement Payment.*

14 JJ. "Settlement Administration Expenses" shall mean the amount to be paid for the costs
15 of administration of the Settlement from the Gross Settlement Amount in an amount
16 not to exceed \$7,800.00.

17 KK. "Settlement Class Members" or "Settlement Class" means all Class Members who
18 have not submitted a timely and valid request for exclusion as provided in this
19 Agreement.

20 LL. "Workweeks", for purposes of calculating the distribution of the Net Settlement
21 Amount, means the number of weeks of employment during the Class Period that
22 each Class Member was employed by Defendant in California, excluding weeks
23 during which the Class Member did not perform any work for Defendant.

24 **II. RECITALS**

25 A. On April 18, 2022, Plaintiff filed a Notice of Violations with the Labor and Workforce
26 Development Agency (LWDA) and served the same on Defendant.

27 B. On June 23, 2022, Plaintiff filed the Class Action lawsuit for:

28 1. Unfair Competition in Violation of Bus. and Prof. Code sections 17200 *et seq*;

2. Failure to pay minimum wages in violation of California Labor Code sections 1194, 1197 and 1197.1;
3. Failure to pay overtime wages in violation of California Labor Code sections 510 *et seq*;
4. Failure to provide required meal periods in violation of California Labor Code sections 226.7 and 512 and the applicable IWC wage order;
5. Failure to provide required rest periods in violation of California Labor Code sections 226.7 and 512 and the applicable IWC wage order;
6. Failure to provide accurate itemized wage statements in violation of California Labor Code section 226;
7. Failure to provide wages when due in violation of California Labor Code sections 201, 202 and 203; and
8. Failure to reimburse Plaintiff for required expenses in violation of California Labor Code section 2802; and
9. Violation of the Private Attorneys General Act in violation of California Labor Code sections 2698, *et seq*.

C. The Class Representative believes he has meritorious claims based on alleged violations of the California Labor Code, and the Industrial Wage Commission Orders, and that class certification is appropriate because the prerequisites for class certification can be satisfied in the Action, and this action is manageable as a PAGA representative action.

D. Defendant denies the allegations in the Action and denies any and all liability, including any liability for alleged failure to pay overtime compensation, failure to pay any wages, failure to pay gratuity payments, failure to provide meal and rest breaks, failure to provide accurate wage statements, or any other wage and hour or similar violation. This Settlement Agreement shall not be construed as an admission by Defendant or any of the Releasees (as defined above) of any fault, liability or wrongdoing, which Defendant expressly denies. Defendant further contends that, for

any purpose other than settlement, the Action is not appropriate for class or representative action treatment. Defendant further contends, among other things, that at all times it complied with the California Labor Code and the Industrial Wage Commission Orders.

E. The Class Representative is represented by Class Counsel. Class Counsel investigated the facts relevant to the Action, including conducting an independent investigation as to the allegations, reviewing financial documents, and information exchanged through informal discovery. Defendant produced for the purpose of settlement negotiations certain employment data concerning the Settlement Class, which Class Counsel reviewed and analyzed. Based on their own independent investigation and evaluation, Class Counsel are of the opinion that the Settlement with Defendant is fair, reasonable and adequate, and is in the best interest of the Settlement Class in light of all known facts and circumstances, including the risks of significant delay, defenses asserted by Defendant, uncertainties regarding class certification, and numerous potential appellate issues. Although it denies any liability, Defendant agrees to this Settlement solely to avoid the inconveniences and cost of further litigation. The Parties and their counsel have agreed to settle the claims on the terms set forth in this Agreement.

F. On January 22, 2024, the Parties participated in mediation presided over by Hon. Steven R. Denton (Ret.), a respected jurist and experienced mediator of wage and hour class actions. The mediation concluded in settlement after both sides agreed to a Mediator's proposal which was subsequently memorialized in the form of a Memorandum of Understanding ("MOU").

G. This Agreement replaces and supersedes the MOU and any other agreements, understandings, or representations between the Parties. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant that the claims in the Action of Plaintiff or the Class Members have merit or that Defendant bears any

liability to Plaintiff or the Class on those claims or any other claims, or as an admission by Plaintiff that Defendant's defenses in the Action have merit.

H. The Parties believe that the Settlement is fair, reasonable and adequate. The Settlement was arrived at through arms-length negotiations, considering all relevant factors. The Parties recognize the uncertainty, risk, expense and delay attendant to continuing the Action through trial and any appeal. Accordingly, the Parties desire to fully, finally, and forever settle, compromise and discharge all disputes and claims arising from or relating to the Action.

I. The Parties agree to certification of the Class for purposes of this Settlement only. If for any reason the settlement does not become effective, Defendant reserves the right to contest certification of any class for any reason and reserves all available defenses to the claims in the Action.

Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

III. TERMS OF AGREEMENT

A. Settlement Consideration and Settlement Payments by Defendant.

1. Settlement Consideration. In full and complete settlement of the Action, and in exchange for the releases set forth below, Defendant will pay the sum of the Individual Settlement Payment, the Class Representative Service Award, the Class Counsel Award, PAGA Payment, and the Settlement Administration Expenses, as specified in this Agreement, equal to the Gross Settlement Amount of Three Hundred Fifty Thousand Dollars and Zero Cents (\$350,000.00). The Parties agree that this is a non-reversionary Settlement and that no portion of the Gross Settlement Amount shall revert to Defendant. Other than the Defendant's share of employer payroll taxes and as provided for in Section III(A)(2) below, if any, Defendant shall not be required to pay more than the Gross Settlement Amount, except as provided for hereinbelow.
2. Class Size. At the time of mediation, Defendant estimated that the Settlement Class was comprised of 143 Class Members who collectively worked

1 approximately 12,777 Workweeks (“Projected Workweeks”) during the Class
2 Period and 105 Aggrieved Employees who worked a total of 3,418 Pay
3 Periods during the PAGA Period. Defendant will provide a declaration under
4 penalty of perjury confirming the number of applicable Class Members and
5 workweeks they worked during the applicable Class Period one week prior to
6 Plaintiffs' deadline to file their motion for preliminary approval of the
7 settlement. Should the number of workweeks increase by more than 10% of
8 what was represented at the mediation, the Gross Settlement Amount will
9 increase proportionally for the number of workweeks over 110% of 12,777,
10 for example, if the total workweeks in the Class Period are 115% of 12,777,
11 the Gross Settlement Amount shall increase by 5%.

- 12 3. Settlement Payment. Defendant and the Released Parties, and each of them,
13 are jointly and severally liable for payment of the Gross Settlement Amount.
14 Defendant shall pay the Gross Settlement Amount to the Settlement
15 Administrator on the Funding Date.
- 16 4. Defendant’s Share of Payroll Taxes. Defendant’s share of employer side
17 payroll taxes is in addition to the Gross Settlement Amount and shall be paid
18 together with the Gross Settlement Amount.

- 19 B. Release by Settlement Class Members. As of the Funding Date, in exchange for the
20 consideration set forth in this Agreement, Plaintiff and the Settlement Class Members,
21 on behalf of themselves and their respective and former and present representatives,
22 agents, attorneys, heirs, administrators, successors and assigns, shall and hereby do
23 release and discharge all Released Parties, from the wage claims that accrued during
24 the Class Period, as follows: any and all claims under California law, based on or
25 arising out of the same factual predicates of the Action, the Complaint, and/or the
26 allegations in the Complaint, including (a) all claims that were or could have been
27 raised in the Actions; and (b) all claims that are based on or relate to the purported
28 payment or nonpayment of compensation, including, but not limited to, wages,

overtime wage, and/or premium pay), meal or rest period premiums or penalties, improper wage statements, unfair business practices.

C. Release by the Plaintiff and the State of California. As of the Funding Date, in exchange for the consideration set forth in this Agreement, the Plaintiff, the LWDA and the State of California release the Released Parties from the Released PAGA Claims for the PAGA Period. As a result of this release, Plaintiff, the LWDA, and the State of California release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims, demands, rights, liabilities and causes of action under the PAGA, premised on the facts, claims, causes of action or legal theories pled in the Operative Complaint in the Action (or Plaintiff's letter to the LWDA dated April 18, 2022), or which could have been alleged based on the factual allegations therein, that arose during the PAGA Period.

D. General Release by Plaintiff. As of the Funding Date, for the consideration set forth in this Agreement, Plaintiff waives, releases, acquits and forever discharges the Released Parties from any and all claims, whether known or unknown, which exist or may exist on either Plaintiff's behalf as of the date of this Agreement, including but not limited to any and all tort claims, contract claims, wage claims, wrongful termination claims, disability claims, benefit claims, public policy claims, retaliation claims, statutory claims, personal injury claims, emotional distress claims, invasion of privacy claims, defamation claims, fraud claims, quantum meruit claims, and any and all claims arising under any federal, state or other governmental statute, law, regulation or ordinance, including, but not limited to claims for violation of the Fair Labor Standards Act, the California Labor Code, the Wage Orders of California's Industrial Welfare Commission, other state wage and hour laws, the Americans with Disabilities Act, the Age Discrimination in Employment Act (ADEA), the Employee Retirement Income Security Act, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, the California Family Rights Act, the Family Medical

1 Leave Act, California's Whistleblower Protection Act, California Business &
2 Professions Code Section 17200 et seq., and any and all claims arising under any
3 federal, state or other governmental statute, law, regulation or ordinance. Plaintiff also
4 waives and relinquishes any and all claims, rights or benefits that he may have under
5 California Civil Code § 1542, which provides as follows:

6
7 ***A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE***
8 ***CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO***
9 ***EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE***
10 ***RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE***
11 ***MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR***
12 ***OR RELEASED PARTY.***

13
14 Thus, notwithstanding the provisions of section 1542, and to implement a full and
15 complete release and discharge of the Released Parties, Plaintiff expressly
16 acknowledges this Settlement Agreement is intended to include in its effect, without
17 limitation, all claims Plaintiff does not know or suspect to exist in Plaintiff's favor at
18 the time of signing this Settlement Agreement, and that this Settlement Agreement
19 contemplates the extinguishment of any such claims. Plaintiff warrants that Plaintiff
20 has read this Settlement Agreement, including this waiver of California Civil Code
21 section 1542, and that Plaintiff has consulted with or had the opportunity to consult
22 with counsel of Plaintiff's choosing about this Settlement Agreement and specifically
23 about the waiver of section 1542, and that Plaintiff understands this Settlement
24 Agreement and the section 1542 waiver, and so Plaintiff freely and knowingly enters
25 into this Settlement Agreement. Plaintiff further acknowledges that Plaintiff later may
26 discover facts different from or in addition to those Plaintiff now knows or believes to
27 be true regarding the matters released or described in this Settlement Agreement, and
28 even so Plaintiff agrees that the releases and agreements contained in this Settlement

1 Agreement shall remain effective in all respects notwithstanding any later discovery
2 of any different or additional facts. Plaintiff expressly assumes any and all risk of any
3 mistake in connection with the true facts involved in the matters, disputes, or
4 controversies released or described in this Settlement Agreement or with regard to any
5 facts now unknown to Plaintiff relating thereto.

6 E. Conditions Precedent: This Settlement will become final and effective only upon the
7 occurrence of all of the following events:

- 8 1. The Court enters an order granting preliminary approval of the Settlement;
- 9 2. The Court enters an order granting final approval of the Settlement and a Final
10 Judgment;
- 11 3. If an objector appears at the final approval hearing, the time for appeal of the
12 Final Judgment and Order Granting Final Approval of Class Action
13 Settlement expires; or, if an appeal is timely filed, there is a final resolution of
14 any appeal from the Judgment and Order Granting Final Approval of Class
15 Action Settlement; and
- 16 4. Defendant fully fund the Gross Settlement Amount.

17 F. Nullification of Settlement Agreement. In the event that this Settlement Agreement is
18 not preliminarily or finally approved by the Court, fails to become effective, or is
19 reversed, withdrawn or modified by the Court, or in any way prevents or prohibits
20 Defendant from obtaining a complete resolution of the Released Class Claims, or if
21 Defendant fails to fully fund the Gross Settlement Amount:

- 22 1. This Settlement Agreement shall be void *ab initio* and of no force or effect,
23 and shall not be admissible in any judicial, administrative or arbitral
24 proceeding for any purpose or with respect to any issue, substantive or
25 procedural;
- 26 2. The conditional class certification (obtained for any purpose) shall be void *ab*
27 *initio* and of no force or effect, and shall not be admissible in any judicial,
28

1 administrative or arbitral proceeding for any purpose or with respect to any
2 issue, substantive or procedural; and

3 3. None of the Parties to this Settlement will be deemed to have waived any
4 claims, objections, defenses or arguments in the Action, including with respect
5 to the issue of class certification.

6 4. If Defendant fails to fully fund the Gross Settlement Amount, Defendant shall
7 bear the sole responsibility for any cost to issue or reissue any curative notice
8 to the Settlement Class Members and all Settlement Administration Expenses
9 incurred to the date of nullification.

10 G. Certification of the Settlement Class. The Parties stipulate to conditional class
11 certification of the Class for the Class Period pursuant to CAL. CIV. CODE PROC. §
12 382 for the sole purpose of settlement. In the event that this Settlement is not approved
13 by the Court, fails to become effective, or is reversed, withdrawn or modified by the
14 Court, or in any way prevents or prohibits Defendant from obtaining a complete
15 resolution of the Released Class Claims, the conditional class certification (obtained
16 for any purpose) shall be void *ab initio* and of no force or effect, and shall not be
17 admissible in any judicial, administrative or arbitral proceeding for any purpose or
18 with respect to any issue, substantive or procedural.

19 H. Tax Liability. The Parties make no representations as to the tax treatment or legal
20 effect of the payments called for, and Class Members and/or Aggrieved Employees are
21 not relying on any statement or representation by the Parties in this regard. Class
22 Members and/or Aggrieved Employees understand and agree that they will be
23 responsible for the payment of any taxes and penalties assessed on the Individual
24 Settlement Payments and/or Aggrieved Employee Payment described and will be
25 solely responsible for any penalties or other obligations resulting from their personal
26 tax reporting of Individual Settlement Payments and/or Aggrieved Employee Payment.

27 I. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section,
28 the “acknowledging party” and each Party to this Agreement other than the

acknowledging party, an “other party”) acknowledges and agrees that: (1) no provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department circular 230 (31 CFR part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his, her or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Agreement, (b) has not entered into this Agreement based upon the recommendation of any other Party or any attorney or advisor to any other Party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty that may be imposed on the acknowledging party, and (3) no attorney or adviser to any other Party has imposed any limitation that protects the confidentiality of any such attorney’s or adviser’s tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

J. Preliminary Approval Motion. Plaintiff shall draft and file with the Court a Motion for Order Granting Preliminary Approval and supporting papers within a reasonable period of time after complete execution of this agreement and will provide Defendant with a draft of the Motion at least five (5) business days prior to the filing of the Motion to give Defendant an opportunity to propose changes or additions to the Motion.

K. Settlement Administrator. The Settlement Administrator shall be responsible for: establishing and administering the QSF; calculating, processing and mailing payments to the Class Representative, Class Counsel, LWDA and Class Members; printing and mailing the Notice Packets to the Class Members as directed by the Court; receiving and reporting the objections and requests for exclusion; calculating, deducting and remitting all legally required taxes from Individual Settlement Payments and distributing tax forms for the Wage Portion and Non-Wage Portion of the Individual

1 Settlement Payments and/or Aggrieved Employee Payment; processing and mailing
2 tax payments to the appropriate state and federal taxing authorities; providing
3 declaration(s) as necessary in support of preliminary and/or final approval of this
4 Settlement; and other tasks as the Parties mutually agree or the Court orders the
5 Settlement Administrator to perform. The Settlement Administrator shall keep the
6 Parties timely apprised of the performance of all Settlement Administrator
7 responsibilities by among other things, sending a weekly status report to the Parties'
8 counsel stating the date of the mailing, the of number of Elections Not to Participate
9 in Settlement it receives (including the numbers of valid and deficient), and number of
10 objections received.

11 L. Notice Procedure.

12 1. Class Data. No later than ten (10) business days after the Preliminary
13 Approval Date, Defendant shall provide the Settlement Administrator with the
14 Class Data for purposes of preparing and mailing Notice Packets to the Class
15 Members.

16 2. Notice Packets.

17 a) The Notice Packet shall contain the Notice of Class Action Settlement
18 in a form substantially similar to the form attached as **Exhibit A** and a
19 Request for Exclusion form attached hereto as **Exhibit B**. The Notice
20 of Class Action Settlement shall inform Class Members and
21 Aggrieved Employees that they need not do anything in order to
22 receive an Individual Settlement Payment and/or Aggrieved Employee
23 Payment and to keep the Settlement Administrator apprised of their
24 current mailing address, to which the Individual Settlement Payments
25 and/or Aggrieved Employee Payment will be mailed following the
26 Funding Date. The Notice of Class Action Settlement shall set forth
27 the release to be given by all members of the Class who do not request
28 to be excluded from the Settlement Class and/or Aggrieved

1 Employees' in exchange for an Individual Settlement Payment and/or
2 Aggrieved Employee Payment, the number of Workweeks worked by
3 each Class Member during the Class Period and PAGA Period, if any,
4 and the estimated amount of their Individual Settlement Payment if
5 they do not request to be excluded from the Settlement and each
6 Aggrieved Employee's share of the PAGA Payment, if any. The
7 Settlement Administrator shall use the Class Data to determine Class
8 Members' Workweeks and PAGA Pay Periods. The Notice will also
9 advise the Aggrieved Employees that they will release the Released
10 PAGA Claims and will receive their share of the PAGA Payment
11 regardless of whether they request to be excluded from the Settlement.

12 b) The Notice Packet's mailing envelope shall include the following
13 language: "IMPORTANT LEGAL DOCUMENT- YOU MAY BE
14 ENTITLED TO PARTICIPATE IN A CLASS ACTION
15 SETTLEMENT; A PROMPT REPLY TO CORRECT YOUR
16 ADDRESS IS REQUIRED AS EXPLAINED IN THE ENCLOSED
17 NOTICE."

18 3. Notice by First Class U.S. Mail and Email. Upon receipt of the Class Data,
19 the Settlement Administrator will perform a search based on the National
20 Change of Address Database to update and correct any known or identifiable
21 address changes. No later than fourteen (14) calendar days after receiving the
22 Class Data from Defendant, the Settlement Administrator shall mail and email
23 copies of the Notice Packet to all Class Members via regular First-Class U.S.
24 Mail and electronic mail. The Settlement Administrator shall exercise its best
25 judgment to determine the current mailing address for each Class Member.
26 The address identified by the Settlement Administrator as the current mailing
27 address shall be presumed to be the best mailing address for each Class
28 Member.

- 1 4. Undeliverable Notices. Any Notice Packets returned to the Settlement
2 Administrator as non-delivered on or before the Response Deadline shall be
3 re-mailed to any forwarding address provided. The Settlement Administrator
4 will re-mail Notices within seven (7) days of receiving a returned Notice. If
5 no forwarding address is provided, the Settlement Administrator shall
6 promptly attempt to determine a correct address by lawful use of skip-tracing,
7 or other search using the name, address and/or Social Security number of the
8 Class Member involved, and shall then perform a re-mailing, if another
9 mailing address is identified by the Settlement Administrator. In addition, if
10 any Notice Packets, which are addressed to Class Members who are currently
11 employed by Defendant, are returned to the Settlement Administrator as non-
12 delivered and no forwarding address is provided, the Settlement Administrator
13 shall notify Defendant. Defendant will request that the currently employed
14 Class Member provide a corrected address and transmit to the Administrator
15 any corrected address provided by the Class Member. Class Members who
16 received a re-mailed Notice Packet shall have their Response Deadline
17 extended fifteen (15) days from the original Response Deadline.
- 18 5. Disputes Regarding Individual Settlement Payments. Class Members will
19 have the opportunity, should they disagree with Defendant's records regarding
20 the start and end dates of employment, to provide documentation and/or an
21 explanation to show contrary dates. If there is a dispute, the Settlement
22 Administrator will consult with the Parties to determine whether an
23 adjustment is warranted. The Settlement Administrator shall determine the
24 eligibility for, and the amounts of, any Individual Settlement Payments under
25 the terms of this Agreement. Unless the Class Member presents convincing
26 evidence proving he or she worked more workweeks than shown by
27 Defendant's records, his/her Settlement Award will be determined based on
28 Defendant's records. The Settlement Administrator's determination of the

1 eligibility for and amount of any Individual Settlement Payment shall be
2 binding upon the Class Member and the Parties, except as provided herein
3 below in Paragraph 6.

4 6. Disputes Regarding Administration of Settlement. Any disputes not resolved
5 by the Settlement Administrator concerning the administration of the
6 Settlement will be resolved by the Court under the laws of the State of
7 California. Before any such involvement of the Court, counsel for the Parties
8 will confer in good faith to resolve the disputes without the necessity of
9 involving the Court.

10 7. Exclusions. The Notice of Class Action Settlement contained in the Notice
11 Packet shall state that Class Members who wish to exclude themselves from
12 the Settlement must submit a signed copy of the Request for Exclusion form
13 that will be mailed together with the Notice Packet to all Class Members. The
14 Request for Exclusion will not be valid if it is not timely submitted, if the
15 Class Member does not sign it, or if it does not contain the name and address
16 and last four digits of the Social Security number of the Class Member. The
17 date of the postmark on the mailing envelope or fax stamp on the Request for
18 Exclusion shall be the exclusive means used to determine whether the request
19 for exclusion was timely submitted. Any Class Member who submits a timely
20 Request for Exclusion shall be excluded from the Settlement Class will not be
21 entitled to an Individual Settlement Payment and will not be otherwise bound
22 by the terms of the Settlement or have any right to object, appeal or comment
23 thereon. However, any Class Member that submits a timely Request for
24 Exclusion that is also a member of the Aggrieved Employees will still receive
25 his/her pro rata share of the PAGA Payment, as specified below, and in
26 consideration, will be bound by the Release by the Aggrieved Employees as
27 set forth herein. Settlement Class Members who fail to submit a valid and
28 timely Request for Exclusion on or before the Response Deadline shall be

1 bound by all terms of the Settlement and any final judgment entered in this
2 Action if the Court approves the Settlement. No later than fifteen (15)
3 calendar days after the Response Deadline, the Settlement Administrator shall
4 provide counsel for the Parties with a final list of the Class Members who have
5 timely submitted timely Requests for Exclusion. At no time shall any of the
6 Parties or their counsel seek to solicit or otherwise encourage members of the
7 Class to submit Requests for Exclusion from the Settlement.

- 8 8. Objections. The Notice of Class Action Settlement contained in the Notice
9 Packet shall state that Class Members who wish to object to the Settlement
10 may submit to the Settlement Administrator a written statement of objection
11 (“Notice of Objection” attached hereto as **Exhibit C**) by the Response
12 Deadline. The postmark date of mailing shall be deemed the exclusive means
13 for determining that a Notice of Objection was served timely. The Notice of
14 Objection, if in writing, must be signed by the Settlement Class Member and
15 state: (1) the case name and number; (2) the name of the Settlement Class
16 Member; (3) the address of the Settlement Class Member; (4) the last four
17 digits of the Settlement Class Member’s Social Security number; and (5) the
18 basis for the objection. Class Members who fail to make objections in writing
19 in the manner specified above may still make their objections orally at the
20 Final Approval/Settlement Fairness Hearing with the Court’s permission.
21 Settlement Class Members will have a right to appear at the Final
22 Approval/Settlement Fairness Hearing to have their objections heard by the
23 Court regardless of whether they submitted a written objection. At no time
24 shall any of the Parties or their counsel seek to solicit or otherwise encourage
25 Class Members to file or serve written objections to the Settlement or appeal
26 from the Order and Final Judgment. Class Members who submit a written
27 request for exclusion may not object to the Settlement. Class Members may
28 not object to the PAGA Payment.

1 M. Funding and Allocation of the Gross Settlement Amount. Defendant are required to
2 pay the Gross Settlement Amount on or before the Funding Date, plus any employer's
3 share of payroll taxes as mandated by law within the time specified herein.

4 1. Individual Settlement Payments. Individual Settlement Payments shall be
5 paid from the Net Settlement Amount and shall be paid pursuant to the
6 formula set forth herein. Using the Class Data, the Settlement Administrator
7 shall add up the total number of Workweeks for all Class Members. The
8 respective Workweeks for each Class Member will be divided by the total
9 Workweeks for all Class Members, resulting in the Payment Ratio for each
10 Class Member. Each Class Member's Payment Ratio will then be multiplied
11 by the Net Settlement Amount to calculate each Class Member's estimated
12 Individual Settlement Payments. Each Individual Settlement Payment will be
13 reduced by any legally mandated employee tax withholdings (e.g., employee
14 payroll taxes, etc.). Individual Settlement Payments for Class Members who
15 submit valid and timely requests for exclusion will be redistributed to
16 Settlement Class Members who do not submit valid and timely requests for
17 exclusion on a pro rata basis based on their respective Payment Ratios.

18 2. Calculation of Individual Payments to the Aggrieved Employees. Using the
19 Class Data, the Settlement Administrator shall add up the total number of
20 PAGA pay periods for all Aggrieved Employees during the PAGA Period.
21 The respective PAGA pay periods for each Aggrieved Employee will be
22 divided by the total PAGA pay periods for all Aggrieved Employees, resulting
23 in the "PAGA Payment Ratio" for each Aggrieved Employee. Each
24 Aggrieved Employee's PAGA Payment Ratio will then be multiplied by the
25 Aggrieved Employee Payment to calculate each Aggrieved Employee's
26 estimated share of the PAGA Payment.

27 3. Allocation of Individual Settlement Payments. For tax purposes, Individual
28 Settlement Payments shall be allocated and treated as follows: 20% as wages

(“Wage Portion”); 80% as penalties and interest (“Non-Wage Portion”). The Wage Portion is subject to wage withholdings and shall be reported on IRS Form W-2. The Non-Wage Portion shall not be subject to wage withholdings and shall be reported on IRS Form 1099.

4. Allocation of Aggrieved Employee Payments. For tax purposes, Aggrieved Employee Payments shall be allocated and treated as 100% penalties and shall be reported on IRS Form 1099.

5. No Credit Toward Benefit Plans. The Individual Settlement Payments and Aggrieved Employee Payment made to Settlement Class Members and/or Aggrieved Employees under this Settlement Agreement, as well as any other payments made pursuant to this Settlement Agreement, will not be utilized to calculate any additional benefits under any benefit plans to which any Class Members may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties’ intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any Class Members may be entitled under any benefit plans.

6. All monies received by Settlement Class Members under the Settlement which are attributable to wages shall constitute income to such Settlement Class Members solely in the year in which such monies actually are received by the Settlement Class Members. It is the intent of the Parties that Individual Settlement Payments and Aggrieved Employee Payment provided for in this Settlement Agreement are the sole payments to be made by Defendant to Settlement Class Members and/or Aggrieved Employees in connection with this Settlement Agreement, with the exception of Plaintiff, and that the Settlement Class Members and/or Aggrieved Employees are not entitled to any new or additional compensation or benefits as a result of having received the Individual Settlement Payments and/or their shares of the PAGA Payment.

- 1 7. Mailing. Individual Settlement Payments and Aggrieved Employee Payments
2 shall be mailed by regular First-Class U.S. Mail to Settlement Class Members'
3 and/or Aggrieved Employees last known mailing address no later than fifteen
4 (15) calendar days after the Funding Date.
- 5 8. Expiration. Any checks issued to Settlement Class Members and Aggrieved
6 Employees shall remain valid and negotiable for one hundred and eighty (180) days
7 from the date of their issuance. If a Settlement Class Member and/or Aggrieved
8 Employee does not cash his or her settlement check within ninety (90) days, the
9 Settlement Administrator will send a letter to such persons, advising that the check
10 will expire after the one hundred eightieth (180th) day, and invite that Settlement Class
11 Member and/or Aggrieved Employee to request reissuance in the event the check was
12 destroyed, lost or misplaced. In the event an Individual Settlement Payment and/or
13 Aggrieved Employee's Aggrieved Employee Payment check has not been cashed
14 within one hundred and eighty (180) days, the check will be voided and the Settlement
15 Class Member and/or Aggrieved Employee will remain bound by the Settlement.
16 The check will be voided and the funds from any such uncashed checks will then be
17 directed to the State Controller's Office Unclaimed Property Division in the name of
18 the Class Member or Aggrieved Employee..
- 19 9. Class Representative Service Award. In addition to the Individual Settlement
20 Payment and his Aggrieved Employee Payment to be paid to Plaintiff,
21 Plaintiff will apply to the Court for an award of not more than \$10,000, as the
22 Class Representative Service Award. Defendant will not oppose a Class
23 Representative Service Award of not more than \$10,000 for Plaintiff. The
24 Settlement Administrator shall pay the Class Representative Service Award,
25 either in the amount stated herein if approved by the Court or some other
26 amount as approved by the Court, to Plaintiff from the Gross Settlement
27 Amount no later than fifteen (15) calendar days after the Funding Date. Any
28 portion of the requested Class Representative Service Award that is not

1 awarded to the Class Representative shall be part of the Net Settlement
2 Amount and shall be distributed to Settlement Class Members as provided in
3 this Agreement. The Settlement Administrator shall issue an IRS Form 1099
4 — MISC to Plaintiff for his Class Representative Service Award. Plaintiff
5 shall be solely and legally responsible to pay any and all applicable taxes on
6 his Class Representative Service Award and shall hold harmless the Released
7 Parties from any claim or liability for taxes, penalties, or interest arising as a
8 result of the Class Representative Service Award. The Class Representative
9 Service Award shall be in addition to Plaintiff's Individual Settlement
10 Payment as a Settlement Class Member. Approval of this Settlement shall not
11 be conditioned on Court approval of the requested amount of the Class
12 Representative Service Award. If the Court reduces or does not approve the
13 requested Class Representative Service Award, Plaintiff shall not have the
14 right to revoke the Settlement, and it will remain binding.

- 15 10. Class Counsel Award. Defendant understand a motion by Class Counsel for
16 attorneys' fees not to exceed one-third of the Gross Settlement Amount
17 currently estimated to be One Hundred Sixteen Thousand, Six Hundred Sixty-
18 Six Dollars and Sixty-Six Cents (\$116,666.66) plus costs and expenses
19 supported by declaration not to exceed Fifteen Thousand Dollars and Zero
20 Cents (\$15,000.00), from the Gross Settlement Amount will be filed.
21 Defendant agrees not to oppose the request for the Class Counsel Award. Any
22 portion of the requested Class Counsel Award that is not awarded to Class
23 Counsel shall be part of the Net Settlement Amount and shall be distributed
24 to Settlement Class Members as provided in this Agreement. The Settlement
25 Administrator shall allocate and pay the Class Counsel Award to Class
26 Counsel from the Gross Settlement Amount no later than fifteen (15) calendar
27 days after the Funding Date. Class Counsel shall be solely and legally
28 responsible to pay all applicable taxes on the payment made pursuant to this

1 paragraph. The Settlement Administrator shall issue an IRS Form 1099 —
2 MISC to Class Counsel for the payments made pursuant to this paragraph. In
3 the event that the Court reduces or does not approve the requested Class
4 Counsel Award, Plaintiff and Class Counsel shall not have the right to revoke
5 the Settlement, or to appeal such order, and the Settlement will remain
6 binding.

7 11. PAGA Payment. Ten Thousand Dollars and Zero Cents (\$10,000.00) shall be
8 allocated from the Gross Settlement Amount for settlement of claims for civil
9 penalties under the Private Attorneys General Act of 2004 (“PAGA
10 Payment”). The Settlement Administrator shall pay the LWDA Payment,
11 comprised of seventy-five percent (75%) of the PAGA Penalties (\$7,500.00),
12 to the California Labor and Workforce Development Agency no later than
13 thirty (30) days after the Effective Date. The Aggrieved Employee Payment,
14 comprised of twenty-five percent (25%) of the PAGA Penalties (\$2,500.00),
15 will be distributed to the Aggrieved Employees as described in this
16 Agreement. For purposes of distributing the Aggrieved Employee Payment,
17 each Aggrieved Employee shall receive their pro-rata share of the Aggrieved
18 Employee Payment using the PAGA Payment Ratio as defined above.

19 12. Settlement Administration Expenses. The Settlement Administrator shall be
20 paid for the costs of administration of the Settlement from the Gross
21 Settlement Amount. The estimate of the Settlement Administration Expenses
22 is \$7,800. The Settlement Administrator shall be paid the Settlement
23 Administration Expenses no later than fifteen (15) calendar days after the
24 Funding Date.

25 N. Final Approval Motion. Class Counsel and Plaintiff shall use best efforts to file with
26 the Court a Motion for Order Granting Final Approval and Entering Judgment, within
27 twenty-eight (28) days following the expiration of the Response Deadline, which
28 motion shall request final approval of the Settlement and a determination of the

1 amounts payable for the Class Representative Service Award, the Class Counsel
2 Award, the PAGA Payment, and the Settlement Administration Expenses. Plaintiff
3 will provide Defendant with a draft of the Motion at least three (3) business days prior
4 to the filing of the Motion to give Defendant an opportunity to propose changes or
5 additions to the Motion.

6 1. Declaration by Settlement Administrator. No later than fifteen (15) days after
7 the Response Deadline, the Settlement Administrator shall submit a
8 declaration in support of Plaintiff's motion for final approval of this
9 Settlement detailing the number of Notice Packets mailed and re-mailed to
10 Class Members, the number of undeliverable Notice Packets, the number of
11 timely requests for exclusion and the names of the Class Members requesting
12 exclusion (if any), the number of objections received, the amount of the
13 average Individual Settlement Payment, lowest Individual Settlement
14 Payment, and highest Individual Settlement Payment, the amount of the
15 average Aggrieved Employee Payment, lowest Aggrieved Employee
16 Payment, and highest Aggrieved Employee Payment, the Settlement
17 Administration Expenses, and any other information as the Parties mutually
18 agree or the Court orders the Settlement Administrator to provide.

19 2. Final Approval Order and Judgment. Class Counsel shall present an Order
20 Granting Final Approval of Class Action Settlement to the Court for its
21 approval, and Judgment thereon, at the time Class Counsel files the Motion
22 for Final Approval.

23 N. Review of Motions for Preliminary and Final Approval. Class Counsel will provide
24 an opportunity for Counsel for Defendant to review the Motions for Preliminary and
25 Final Approval, including the Order Granting Final Approval of Class Action
26 Settlement, and Judgment before filing with the Court. The Parties and their counsel
27 will cooperate with each other and use their best efforts to affect the Court's approval
28

1 of the Motions for Preliminary and Final Approval of the Settlement, and entry of
2 Judgment.

3 O. Cooperation. The Parties and their counsel will cooperate with each other and use
4 their best efforts to implement the Settlement.

5 P. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action,
6 except such proceedings necessary to implement and complete the Settlement, pending
7 the Final Approval/Settlement Fairness Hearing to be conducted by the Court.

8 Q. Amendment or Modification. This Agreement may be amended or modified only by
9 a written instrument signed by counsel for all Parties or their successors-in-interest.

10 R. Entire Agreement. This Agreement and any attached Exhibit constitute the entire
11 Agreement among these Parties, and no oral or written representations, warranties or
12 inducements have been made to any Party concerning this Agreement or its Exhibit
13 other than the representations, warranties and covenants contained and memorialized
14 in this Agreement and its Exhibits.

15 S. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and
16 represent they are expressly authorized by the Parties whom they represent to negotiate
17 this Agreement and to take all appropriate Action required or permitted to be taken by
18 such Parties pursuant to this Agreement to effectuate its terms, and to execute any other
19 documents required to effectuate the terms of this Agreement. The persons signing
20 this Agreement on behalf of Defendant represent and warrant that he/she is authorized
21 to sign this Agreement on behalf of Defendant. Plaintiff represents and warrants that
22 he is authorized to sign this Agreement and that he has not assigned any claim, or part
23 of a claim, covered by this Settlement to a third-party.

24 T. No Public Comment: The Parties and their counsel agree that they will not issue any
25 press releases, initiate any contact with the press, respond to any press inquiry, or have
26 any communication with the press about the fact, amount or terms of the Settlement
27 Agreement. Class Counsel further agrees not to use the Settlement Agreement or any
28 of its terms for any marketing or promotional purposes. Nothing herein will restrict

1 Class Counsel from including publicly available information regarding this settlement
2 in future judicial submissions regarding Class Counsel's qualifications and experience.
3 Further, Class Counsel will not include, reference or use the Settlement Agreement for
4 any marketing or promotional purposes, either before or after the Motion for
5 Preliminary Approval is filed.

6 U. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure
7 to the benefit of, the successors or assigns of the Parties, as previously defined.

8 V. California Law Governs. All terms of this Agreement and the Exhibit and any disputes
9 shall be governed by and interpreted according to the laws of the State of California.

10 W. Counterparts. This Agreement may be executed in one or more counterparts. All
11 executed counterparts and each of them shall be deemed to be one and the same
12 instrument provided that counsel for the Parties to this Agreement shall exchange
13 among themselves copies or originals of the signed counterparts.

14 X. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this Settlement
15 is a fair, adequate and reasonable settlement of this Action and have arrived at this
16 Settlement after extensive arms-length negotiations, considering all relevant factors,
17 present and potential.

18 Y. Continuing Jurisdiction of the Court. The Parties agree that the Court shall retain
19 jurisdiction over this case under CCP section 664.6 to ensure the continuing
20 implementation of the provisions of this settlement and that the time within which to
21 bring this action to trial under CCP section 583.310 shall be executed from the date of
22 the signing of this Agreement by all Parties until the entry of the final approval order
23 and judgment or if not entered the date this Agreement shall no longer be of any force
24 or effect.

25 Z. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid,
26 the Court shall first attempt to construe the provisions valid to the fullest extent
27 possible consistent with applicable precedents so as to define all provisions of this
28 Agreement valid and enforceable.

1 AA. No Unalleged Claims. Plaintiff and Class Counsel represent that they do not currently
2 intend to pursue any claims against the Released Parties, including, but not limited to,
3 any and all claims relating to or arising from Plaintiff's employment with Defendant,
4 regardless of whether Class Counsel is currently aware of any facts or legal theories
5 upon which any claims or causes of action could be brought against Released Parties,
6 including those facts or legal theories alleged in the operative complaint in this Action.
7 The Parties further acknowledge, understand and agree that this representation is
8 essential to the Agreement and that this Agreement would not have been entered into
9 were it not for this representation.

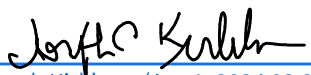
10 BB. Stipulation to Class Certification. The Parties agree to stipulate to class certification
11 for purposes of this settlement only.

12 CC. No Admissions by the Parties. Plaintiff has claimed and continues to claim that the
13 Released Claims have merit and give rise to liability on the part of Defendant.
14 Defendant claims that the Released Claims have no merit and do not give rise to
15 liability. This Agreement is a compromise of disputed claims. Nothing contained in
16 this Agreement and no documents referred to and no action taken to carry out this
17 Agreement may be construed or used as an admission by or against the Defendant or
18 Plaintiff or Class Counsel as to the merits or lack thereof of the claims asserted. Other
19 than as may be specifically set forth herein, each Party shall be responsible for and
20 shall bear its/his own attorney's fees and costs.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:

DATED: 04/01/2024


Joseph Kirkham (Apr 1, 2024 09:27 PDT)
JOSEPH CHRISTOPHER KIRKHAM

IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANT:

DATED: _____

PALM DESERT GREENS ASSOCIATION

Printed Name

Title

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

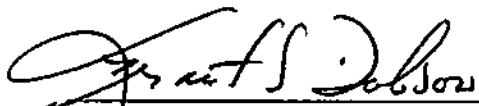
IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:

DATED: _____

JOSEPH CHRISTOPHER KIRKHAM

IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANT:

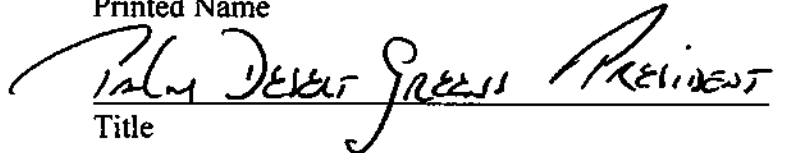
DATED: April 1, 2024



PALM DESERT GREENS ASSOCIATION

KENNETH S. DOBSON

Printed Name


Title

1 IT IS SO AGREED AS TO FORM BY COUNSEL:
2

3 DATED: April 1, 2024

JCL LAW FIRM, APC

4 By: 

5 Jean-Claude Lapuyade

6 Attorneys for Plaintiff and the Settlement Class
7 Members

8 DATED: April 1, 2024

ZAKAY LAW GROUP, APLC

9 By: 

10 Shani Zakay

11 Attorneys for Plaintiff and the Settlement Class
12 Members

13 DATED: _____

FITZGERALD & MULÉ LLP

15 By: _____

16 Jana FitzGerald

17 Attorneys for Defendant
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO AGREED AS TO FORM BY COUNSEL:

DATED: _____

JCL LAW FIRM, APC

By: _____

Jean-Claude Lapuyade
Attorneys for Plaintiff and the Settlement Class
Members

DATED: _____

ZAKAY LAW GROUP, APLC

By: _____

Shani Zakay
Attorneys for Plaintiff and the Settlement Class
Members

DATED: 4/1/24

FITZGERALD & MULÉ LLP

By:  _____

David B. Mulé
Attorneys for Defendant

EXHIBIT A

NOTICE OF SETTLEMENT
AND FINAL HEARING DATE

**(JOSEPH CHRISTOPHER KIRKHAM v. PALM DESERT GREENS ASSOCIATION, Riverside County
Superior Court Case No. CVRI2202569)**

PLEASE READ THIS NOTICE CAREFULLY.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	To receive a cash payment from the Settlement, you do not have to do anything. Your estimated Individual Settlement Payment is: \$<<[REDACTED]>>. Your estimated Aggrieved Employee Payment is <<[REDACTED]>>. See the explanation below. After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, please notify the Settlement Administrator as explained below. In exchange for the settlement payment, you will release claims against the Defendant as detailed below.
Exclude Yourself	If you wish to exclude yourself from the Settlement, you must send a written request for exclusion to the Settlement Administrator as provided below. If you request exclusion, you will receive no money from the Settlement. Instructions are set forth below.
Object	You may write to the Court about why you believe the Settlement should not be approved. Directions are provided below.

1. Why did I get this Notice?

A proposed class action settlement (the “Settlement”) of this lawsuit pending in the Superior Court for the State of California, County of Riverside (the “Court”) has been reached between Plaintiff JOSEPH CHRISTOPHER KIRKHAM (“Plaintiff”) and Defendant PALM DESERT GREENS ASSOCIATION, a California corporation (“Defendant”). The Court has granted preliminary approval of the Settlement. **You may be entitled to receive money from this Settlement.**

You have received this Class Notice because you have been identified as a member of the Class, which is defined as:

All persons who are or previously were employed by Defendant as a non-exempt employee in California during the period between June 23, 2018, through the date of Preliminary Approval or April 21, 2024, whichever is earlier (“Class Period”).

This Class Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Notice carefully as your rights may be affected by the Settlement.

2. What is this class action lawsuit about?

On June 23, 2022, Plaintiff filed a Complaint against Defendant in the Superior Court of the State of California, County of Riverside (the “Action”). Plaintiff asserted the following claims alleging that Defendant: (1) Unfair Competition in Violation of Bus. and Prof. Code sections 17200 *et seq*; (2) Failure to pay minimum wages in violation of California Labor Code sections 1194, 1197 and 1197.1; (3) Failure to pay overtime wages in violation of California Labor Code sections 510 *et seq*; (4) Failure to provide required meal periods in violation of California Labor Code sections 226.7 and 512 and the applicable IWC wage order; (5) Failure to provide required rest periods in violation of California Labor Code sections 226.7 and 512 and the applicable IWC wage order; (6) Failure to provide accurate itemized wage statements in violation of California Labor Code section 226; (7) Failure to provide wages when due in violation of California Labor Code sections 201, 202 and 203; (8) Failure to reimburse Plaintiff for required expenses in violation of California Labor Code section 2802; and (9) Violation of the Private Attorneys General Act in violation of California Labor Code sections 2698, *et seq*. (“PAGA”). PAGA is a mechanism by which the State of California itself can enforce state labor laws through the employee suing under the PAGA who does so as the proxy or agent of the state’s labor law enforcement agency. The purpose of the PAGA is not to recover damages or restitution, but to create a means of “deputizing” citizens as private attorney general to enforce the Labor Code.

Defendant contends that it has strong legal and factual defenses to these claims, but it recognizes the risks, distractions, and costs associated with litigation. Defendant contends that the wage and hour policies and practices at issue, including those regarding payment for time worked, overtime pay, meal breaks, and rest breaks are lawful and have been lawful throughout the relevant time periods. Defendant also contends that Plaintiff’s claims do not meet the requirements for class certification.

This Settlement is the result of good faith, arm’s length negotiations between Plaintiff and Defendant, through their respective attorneys. Both sides agree that in light of the risks and expenses associated with continued litigation, this Settlement is fair and appropriate under the circumstances, and in the best interests of the Settlement Class Members. This Settlement is a compromise and is not an admission of liability on the part of Defendant.

The Court has not ruled on the merits of Plaintiff’s claims or Defendant’s defenses.

The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved the Plaintiff to serve as the Class Representative, and the law firms of JCL Law Firm, APC and Zakay Law Group, APLC to serve as Class Counsel.

3. What are the terms of the Settlement?

Gross Settlement Amount. Defendant has agreed to pay an “all in” amount of Three Hundred Fifty Thousand Dollars and Zero Cents (\$350,000.00) (the “Gross Settlement Amount”) to fund the Settlement. The Gross Settlement Amount includes the payment of all Individual Settlement Payments to Settlement Class Members, Class Counsel Award, Settlement Administration Expenses, PAGA Payment, and the Class Representative Service Award to the Plaintiff.

After the Judgment becomes Final, Defendant will pay the Gross Settlement Amount by depositing the money with the Settlement Administrator. “Final” means the date the Judgment is no longer subject to appeal, or if an appeal is filed, the date the appeal process is completed, and the Judgment is affirmed.

Amounts to be Paid from the Gross Settlement Amount. The Settlement provides for certain payments to be made from the Gross Settlement Amount, which will be subject to final Court approval, and which will be deducted from the Gross Settlement Amount before settlement payments are made to Class Members, as follows:

- Settlement Administration Expenses. Payment to the Settlement Administrator, estimated not to exceed \$7,800.00 for expenses, including expenses of sending this Notice, processing opt-outs, and distributing settlement payments.
- Class Counsel Award. Payment to Class Counsel attorneys' not to exceed one-third of the Gross Settlement Amount (currently \$116,666.66) plus costs and expenses not to exceed \$15,000 for all costs and expenses incurred as documented in Class Counsel's billing records, both subject to Court approval. Class Counsel have been prosecuting the Action on behalf of Plaintiff and the Class on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses.
- Class Representative Service Award. Class Representative Service Award of up to Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff, or such lesser amount as may be approved by the Court, to compensate him for services on behalf of the Class in initiating and prosecuting the Action, and for the risks he undertook.
- PAGA Payment. A payment of Ten Thousand Dollars and Zero Cents (\$10,000.00) relating to Plaintiff's claim under the Private Attorneys General Act ("PAGA"), \$7,500 of which will be paid to the State of California's Labor and Workforce Development Agency ("LWDA Payment") and the remaining \$2,500 will be distributed to the Aggrieved Employees ("Aggrieved Employee Payment").
- Calculation of Individual Settlement Payments. After all the above payments of the court-approved Class Counsel Award, the Class Representative Service Award, the PAGA Payment, and the Settlement Administration Expenses are deducted from the Gross Settlement Amount, the remaining portion, called the "Net Settlement Amount," shall be distributed to class members who do **not** request exclusion ("Settlement Class Members"). The Individual Settlement Payment for each Settlement Class Member will be calculated by dividing the Net Settlement Amount by the total number of workweeks for all Settlement Class Members that occurred during the Class Period and multiplying the result by each individual Settlement Class Member's workweeks that occurred during the Class Period. A "workweek" is defined as a normal seven-day week of work during the Class Period in which, according to Defendant's records, a member of the class worked at least one day during any such workweek.
- Calculation of Aggrieved Employee Payments to Aggrieved Employees. The Aggrieved Employee Payment portion of the PAGA Payment shall be distributed to Aggrieved Employees irrespective of whether they exclude themselves or opt-out. The Aggrieved Employee Payment will be divided by the total number of pay periods worked by all Aggrieved Employees during the PAGA Period, and then taking that number and multiplying it by the number of pay periods worked by each respective Aggrieved Employee during the PAGA Period. "Aggrieved Employees" means all persons who are or previously were employed by Defendant in California during the PAGA Period. The PAGA Period means the period between April 18, 2021, through the date of Preliminary Approval or April 21, 2024, whichever is earlier.

If the Settlement is approved by the Court, you will automatically be mailed a check for your Individual Settlement Payment to the same address as this Class Notice. You do not have to do anything to receive a payment. If your address has changed, you must contact the Settlement Administrator to inform them of your correct address to ensure you receive your payment.

You may find the Settlement Agreement entitled "Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims" filed on **MONTH XX**, 2024, with the Riverside County Superior Court, Dept. 1, located at 4050 Main Street, Riverside, CA 92501. You may also find the Settlement Agreement online by visiting the Riverside County Superior Court website <https://www.riverside.courts.ca.gov/>. The Settlement Agreement can be found at Exhibit 1 of the Lapuyade Declaration filed on **MONTH XX**, 2024.

Tax Matters. Fifty percent (20%) of each Individual Settlement Payment is allocated to wages. Taxes are withheld from this amount, and each Settlement Class Member will be issued an Internal Revenue Service Form W-2 for such payment. Fifty percent (80%) of each Individual Settlement Payment is allocated to interest, penalties and other non-wage payments, and no taxes will be withheld from this portion, and each Settlement Class Member will be issued an Internal Revenue Service Form 1099 for such payment. In addition, no taxes will be withheld from Aggrieved Employee Payments paid to Aggrieved Employees, and each Aggrieved Employee will be issued an Internal Revenue Service Form 1099 for such payment. Neither Class Counsel nor Defendant's counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability. You may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order granting final approval of the Settlement and entering judgment.

4. What Do I Release Under the Settlement?

Released Claims. Upon entry of final judgment and funding in full of the Gross Settlement Amount by Defendant, Plaintiff and the Settlement Class Members shall release all Released Class Claims that occurred during the Class Period as to the Released Parties. Released Class Claims means the wage claims that accrued during the Class Period, as follows: any and all claims under California law, based on or arising out of the same factual predicates of the Action, the Complaint, and/or the allegations in the Complaint, including (a) all claims that were or could have been raised in the Actions; and (b) all claims that are based on or relate to the purported payment or nonpayment of compensation, including, but not limited to, wages, overtime wage, and/or premium pay), meal or rest period premiums or penalties, improper wage statements, unfair business practices. The Released PAGA Claims shall be released as follows: Upon entry of final judgment and upon funding in full of the Gross Settlement Amount by Defendant, all Aggrieved Employees shall release all Released PAGA Claims, irrespective of whether they opted-out of the Class Settlement and will be bound by this PAGA Release (the "PAGA Release"). "Released PAGA Claims" means all claims, demands, rights, liabilities and causes of action under the PAGA, premised on the facts, claims, causes of action or legal theories pled in the Operative Complaint in the Action (or Plaintiff's letter to the LWDA dated April 18, 2022), or which could have been alleged based on the factual allegations therein, that arose during the PAGA Period.

This means that, if you do not timely and formally exclude yourself from the Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant about the legal issues resolved by this Settlement. It also means that all of the Court's orders in this Action will apply to you and legally bind you.

5. How much will my payment be?

Defendant's records reflect that you have << ____ >> Workweeks worked during the Class Period (June 23, 2018, through MONTH XX, 2024).

Based on this information, your estimated Individual Settlement Payment is << ____ >>.

Defendant's records reflect that you have << ____ >> pay periods worked during the PAGA Period (April 18, 2021, to MONTH XX, 2024).

Based on this information, your estimated Aggrieved Employee Payment is << ____ >>.

If you wish to challenge the information set forth above, then you must submit a written, signed dispute challenging the information along with supporting documents, to the Settlement Administrator at the address provided in this Notice no later than _____ [forty-five (45) days after the Notice or re-mailed Notice].

6. How can I get a payment?

To get money from the Settlement, you do not have to do anything. A check for your settlement payment will be mailed automatically to the same address as this Notice. If your address is incorrect or has changed, you must notify the Settlement Administrator. The Settlement Administrator is: Apex Class Action LLC at 1-800-355-0700.

The Court will hold a hearing on _____ to decide whether to finally approve the Settlement. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed within a few months after this hearing. If there are objections or appeals, resolving them can take time, perhaps more than a year. Please be patient. After entry of the Judgment, the Settlement Administrator will provide notice of the final judgment to the Class Members by posting a copy of the Judgment on the administrator's website at <https://apexclassaction.com/>.

7. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or "opt out." **If you opt out, you will receive NO money from the Settlement, and you will not be bound by its terms, except as provided as follows.** Irrespective of whether you exclude yourself from the Settlement or "opt out," you will be bound by the Released PAGA Claims, you will be deemed to have released the Released PAGA Claims, and you will receive a share of the Aggrieved Employee Payment.

To opt out, you must submit to the Settlement Administrator, by First Class Mail, a written, signed and dated request for exclusion postmarked no later than _____. The address for the Settlement Administrator is 18 Technology Drive, Suite 164, Irvine, CA 92618. The request for exclusion must state in substance: "I wish to opt out of the settlement of the class action lawsuit entitled **JOSEPH CHRISTOPHER KIRKHAM v. PALM DESERT GREENS ASSOCIATION, Riverside County Superior Court, Case No. CVRI2202569**. I understand that by requesting to be excluded from the Settlement, I will receive no money from the Settlement described in this Notice." The request for exclusion must contain your name, address, signature and the last four digits of your Social Security Number for verification purposes. The request for exclusion must be signed by you. No other person may opt out for a member of the Class.

Written requests for exclusion that are postmarked after _____, or are incomplete or unsigned will be rejected, and those Class Members will remain bound by the Settlement and the release described above.

8. How do I tell the Court that I would like to challenge the Settlement?

Any Class Member who has not opted out and believes that the Settlement should not be finally approved by the Court for any reason, may object to the proposed Settlement. Objections may be in writing and state the Class Member's name, current address, telephone number, and describe why you believe the Settlement is unfair. All written objections or other correspondence must also state the name and number of the case, which is **JOSEPH CHRISTOPHER KIRKHAM v. PALM DESERT GREENS ASSOCIATION, Riverside County Superior Court, Case No. CVRI2202569**. You may also object without submitting a written objection by appearing at the final approval hearing scheduled as described in Section 9 below.

To object to the Settlement, you cannot opt out. If the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class Members who do not object. Any Class Member who does not object in the manner provided in this Class Notice shall have waived any objection to the Settlement, whether by appeal or otherwise.

Written objections must be delivered or mailed to the Settlement Administrator no later than _____. The address for the Settlement Administrator is Apex Class Action LLC, 18 Technology Drive, Suite 164, Irvine, CA 92618.

The addresses for the Parties' counsel are as follows:

Class Counsel:

Jean-Claude Lapuyade, Esq.
JCL Law Firm, APC
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Tel.: (619) 599-8292
Fax: (619) 599-2891
Email: jlapuyade@jcl-lawfirm.com

Class Counsel:

Shani O. Zakay, Esq.
Zakay Law Group, APLC
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Tel: (619) 599-8292
Fax: (619) 599-8291
Email: shani@zakaylaw.com

Counsel for Defendant:

David Mulé, Esq.
Jana FitzGerald, Esq.
Fitzgerald & Mulé LLP
74770 Hwy. 111, Suite 205
Indian Wells, CA 92211
Tel: (760) 325-5055
Email: jfitzgerald@fitzgeraldmulelaw.com

9. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at **00:00 AM/PM on** _____, at the Riverside County Superior Court, Dept. 1, located at 4050 Main Street, Riverside, CA 92501 before Judge Harold Hopp. The Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, reasonable, and adequate. At the Final Approval Hearing, the Court will determine whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement. If there are objections, the Court will consider them. The Court will listen to people who have made a timely written request to speak at the hearing or who appear at the hearing to object. This hearing may be rescheduled by the Court without further notice to you. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

10. How do I get more information about the Settlement?

You may call the Settlement Administrator at 1-800-355-0700 or write to **JOSEPH CHRISTOPHER KIRKHAM v. PALM DESERT GREENS ASSOCIATION, Riverside County Superior Court, Case No. CVRI2202569**, Settlement Administrator, c/o _____.

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You may receive a copy of the Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims ("Settlement Agreement") filed on **MONTH XX**, 2024, the Final Judgment or other Settlement documents by writing to JCL Law Firm, APC, 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121.

PLEASE DO NOT CONTACT THE COURT, THE CLERK OF THE COURT, THE JUDGE; OR DEFENDANT FOR INFORMATION ABOUT THE PROPOSED SETTLEMENT OR THIS LAWSUIT.

IMPORTANT:

- You must inform the Settlement Administrator of any change of address to ensure receipt of your Individual Settlement Payment.
- Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the check will be voided and the funds from any such uncashed check will be directed to the State Controller's Office Unclaimed Property Division in the name of the Class Member or Aggrieved Employee. checks. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

EXHIBIT B

Superior Court of California, County of Riverside
Joseph Christopher Kirkham v. Palm Desert Greens Association
Riverside County Superior Court Case No. CVRI2202569

REQUEST FOR EXCLUSION

Instructions: Please complete this Form ONLY IF YOU **DO NOT** WANT TO PARTICIPATE IN THE SETTLEMENT that is described in the Notice Pendency of Class Action Settlement and Final Hearing Date that accompanies this Form. If you choose to complete this Form, the deadline for mailing it to the Settlement Administrator is **【** INSERT DATE**】**.

I. PERSONAL INFORMATION

Name (first, middle and last): _____
Home Street Address: _____
City, State, Zip Code: _____
Telephone Number: (____) _____

II. REQUEST FOR EXCLUSION

By signing and returning this Form, I certify that I wish to opt out of the settlement of the class action lawsuit entitled *JOSEPH CHRISTOPHER KIRKHAM v. PALM DESERT GREENS ASSOCIATION*, Case No. CVRI2202569, filed in the Superior Court of California, County of Riverside. I understand that by requesting to be excluded from the Settlement, I will receive no money from the Settlement described in the Notice Pendency of Class Action Settlement and Final Hearing Date that accompanies this Form.

Any Class Member that submits a timely Request for Exclusion who is also an Aggrieved Employee will still receive his/her pro rata share of the PAGA Payment. Exclusion from the Class Action Settlement does not result in exclusion from the PAGA Payment.

III. MAILING INSTRUCTIONS

If you choose to return this Form, you must return it to the Settlement Administrator postmarked on or before **【**INSERT DATE**】** AT THE ADDRESS LISTED BELOW:

Apex Class Action LLC
18 Technology Drive, Suite 164
Irvine, CA 92618

IV. PLEASE SIGN BELOW

I declare that the foregoing is true and correct.

Dated: _____

(Signature)

(Print Name)

EXHIBIT C

Apex Class Action LLC
18 Technology Drive, Suite 164
Irvine, CA 92618

Must Be Postmarked
No Later Than
XXX, 2024

OBJECTION FORM

SUPERIOR COURT OF THE STATE OF CALIFORNIA – COUNTY OF RIVERSIDE
JOSEPH CHRISTOPHER KIRKHAM v. PALM DESERT GREENS ASSOCIATION, Case No.
CVRI2202569

<<Name>>
<<Address>>
<<City>>, <<State>> <<Zip Code>>

Indicate Name/Address Changes, if any:

YOU DO NOT NEED TO COMPLETE THIS FORM TO PARTICIPATE IN THE SETTLEMENT. THIS FORM IS TO BE USED ONLY IF YOU WANT TO PARTICIPATE IN THE SETTLEMENT, BUT YOU OBJECT TO THE TERMS OF THE SETTLEMENT. IF YOU OBJECT TO THE SETTLEMENT, YOU MUST SIGN AND COMPLETE THIS FORM ACCURATELY AND IN ITS ENTIRETY AND YOU MUST MAIL IT BY FIRST CLASS U.S. MAIL TO THE SETTLEMENT ADMINISTRATOR SO THAT IT IS POSTMARKED ON OR BEFORE XXX, 2024. THE ADDRESS FOR THE SETTLEMENT ADMINISTRATOR IS NOTED AT THE TOP OF THIS FORM. IF YOU DO NOT OBJECT TO THE SETTLEMENT, DO NOT SUBMIT THIS FORM.

The Court will consider your objection at the Final Approval Hearing if you submit a timely and valid written statement of objection. All of the information on this form is required. If you do not provide all of the information below, your objection will be deemed null and void.

I, _____, (name of Class Member) hereby object to the Settlement in this case for the following reasons:

Dated: _____

Signature: _____

Print or Type Name: _____

Telephone Number: _____

EXHIBIT 2

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Sydney Castillo Johnson (State Bar #343881)
Perssia Razma (State Bar #351398)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
scastillo@jcl-lawfirm.com
prazma@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com

Attorneys for Plaintiff JOSEPH CHRISTOPHER KIRKHAM

(Additional Counsel on next page)

**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,

Defendants.

Case No. CVRI2202569

[Complaint Filed: June 23, 2022]

**STIPULATION OF SETTLEMENT OF
CLASS AND PAGA ACTION CLAIMS
AND RELEASE OF CLAIMS**

1 FITZGERALD & MULÉ LLP

2 David Mule, Esq.

3 Jana FitzGerald, Esq.

4 74770 Hwy. 111, Suite 205

5 Indian Wells, CA 92211

6 T: 760-325-5055

7 dmule@fitzgeraldmulelaw.com

8 jfitzgerald@fitzgeraldmulelaw.com

9 Attorneys for Defendant PALM DESERT GREENS ASSOCIATION

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 This Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims is
2 entered into by and between plaintiff JOSEPH CHRISTOPHER KIRKHAM (hereinafter
3 “Plaintiff”), an individual, on behalf of the Settlement Class, and in his representative capacity on
4 behalf of the State of California and the Aggrieved Employees, and Defendant PALM DESERT
5 GREENS ASSOCIATION, a California Corporation (“Defendant”):

6 **I. DEFINITIONS**

- 7 A. “Action” shall mean the putative class action lawsuit designated *Joseph Christopher*
8 *Kirkham v. Palm Desert Greens Association*, Riverside County Superior Court, Case
9 No. CVRI2202569, filed June 23, 2022.
- 10 B. “Aggrieved Employees” shall mean all persons who are or previously were employed
11 by Defendant in California during the PAGA Period.
- 12 C. “Aggrieved Employee Payment” shall mean the twenty-five (25%) of the PAGA
13 Payment (\$2,500) allocated and distributed to the Aggrieved Employees.
- 14 D. “Agreement” or “Settlement Agreement” means this Stipulation of Settlement of
15 Class and PAGA Action Claims and Release of Claims.
- 16 E. “Class Counsel” shall mean Jean-Claude Lapuyade, Esq. of JCL Law Firm, APC and
17 Shani Zakay of Zakay Law Group, APLC.
- 18 F. “Class Counsel Award” means the award of fees and expenses that the Court
19 authorizes to be paid to Class Counsel for the services they have rendered to Plaintiff
20 and the Class in the Action, consisting of attorneys’ fees currently not to exceed one-
21 third of the Gross Settlement Amount currently estimated to be \$116,666.66 out of
22 \$350,000.00, plus costs and expenses in the amount of \$15,000.00. Class Counsel’s
23 award for attorneys’ fees will be divided equally between Class Counsel (50% to
24 JCL Law Firm, APC and 50% to Zakay Law Group, APLC).
- 25 G. “Class Data” means information regarding Class Members that Defendant will in
26 good faith compile from its records and provide to the Settlement Administrator. It
27 shall be formatted as a Microsoft Excel spreadsheet and shall include: each Class
28

Member's full name; last known address; Social Security Number; start dates and end dates of employment.

H. "Class Members" or the "Class" means all persons who are or previously were employed by Defendant as a non-exempt employee in California during the Class Period.

I. "Class Period" means the period between June 23, 2018, through the date of Preliminary Approval or April 21, 2024, whichever is earlier.

J. "Class Representative" shall mean plaintiff Joseph Christopher Kirkham.

K. "Class Representative Service Award" means the amount that the Court authorizes to be paid to the Class Representative in recognition of his efforts and risks in assisting with the prosecution of the Action.

L. "Court" means the Superior Court for the State of California, County of Riverside currently presiding over the Action.

M. "Defendant" shall mean Palm Desert Greens Association.

N. "Effective Date" means the earliest date, following entry by the Court of an order and judgment finally approving this Settlement, upon which one of the following have occurred: (i) if no objection is filed to the settlement and no objector appears at the hearing on final approval, the date of the Court's entry of the order granting final approval, (ii) if an objection is filed to the settlement and/or an objector appears at the hearing on final approval, then the earlier of the following: (a) the expiration of all potential appeal periods without a filing of a notice of appeal of the final approval order or judgment; (b) final affirmance of the final approval order and judgment by an appellate court as a result of any appeal(s), or (c) final dismissal or denial of all such appeals (including any petition for review, rehearing, certiorari, etc.) such that the final approval order and judgment is no longer subject to further judicial review.

O. "Funding Date" shall mean sixty (60) calendar days after the Effective Date and is the date Defendant transfers the Gross Settlement Amount into the QSF in accordance with the terms of this Agreement.

- 1 P. "Gross Settlement Amount" means Three Hundred Fifty Thousand Dollars and Zero
2 Cents (\$350,000.00) that Defendant must pay into the QSF in connection with this
3 Settlement, inclusive of the sum of the Individual Settlement Payments, the Class
4 Representative Service Award, the Class Counsel Award, PAGA Payment and the
5 Settlement Administration Expenses and *exclusive* of the employer's share of payroll
6 tax, if any, triggered by any payment under this Settlement.
- 7 Q. "Individual Settlement Payment" means the amount payable from the Net Settlement
8 Amount to each Settlement Class Member and excludes any amounts distributed to
9 Aggrieved Employees pursuant to PAGA.
- 10 R. "LWDA Payment" shall mean the seventy-five percent (75%) of the PAGA Payment
11 (\$7,500) allocated to the California Labor and Workforce Development Agency.
- 12 S. "Net Settlement Amount" or "NSA" means the Gross Settlement Amount, less Class
13 Counsel Award, Class Representative Service Award, PAGA Payment, and
14 Settlement Administration Expenses.
- 15 T. "Notice Packet" means the Class Notice to be provided to the Class Members by the
16 Settlement Administrator in the form set forth as Exhibit A to this Agreement (other
17 than formatting changes to facilitate printing by the Settlement Administrator).
- 18 U. "PAGA" means the California Labor Code Private Attorneys General Act of 2004,
19 Labor Code § 2698 *et seq.*
- 20 V. "PAGA Payment" shall mean Ten Thousand Dollars and Zero Cents (\$10,000.00) to
21 be allocated from the Gross Settlement Amount in settlement of the Released PAGA
22 Claims.
- 23 W. "PAGA Payment Ratio" means the respective PAGA Pay Periods during the PAGA
24 Period for each Aggrieved Employee divided by the sum total of the PAGA Pay
25 Periods for all Aggrieved Employees during the PAGA Period.
- 26 X. "PAGA Pay Periods" for purposes of calculating the distribution of the Aggrieved
27 Employee Payment, as defined herein, means the number of pay periods of
28

employment during the PAGA Period that each Aggrieved Employee worked in California.

Y. “PAGA Period” means the period between April 18, 2021, through date of Preliminary Approval or April 21, 2024, whichever is earlier.

Z. “Parties” means Plaintiff and Defendant, collectively, and “Party” shall mean either Plaintiff or Defendant, individually.

AA. “Payment Ratio” means the respective Workweeks for each Class Member divided by the sum total Workweeks for all Class Members.

BB. “Plaintiff” shall mean Joseph Christopher Kirkham.

CC. “QSF” means the Qualified Settlement Fund established, designated and maintained by the Settlement Administrator to fund the Gross Settlement Amount.

DD. “Released Class Claims” means the wage claims that accrued during the Class Period, as follows: any and all claims under California law, based on or arising out of the same factual predicates of the Action, the Complaint, and/or the allegations in the Complaint, including (a) all claims that were or could have been raised in the Actions; and (b) all claims that are based on or relate to the purported payment or nonpayment of compensation, including, but not limited to, wages, overtime wage, and/or premium pay), meal or rest period premiums or penalties, improper wage statements, unfair business practices.

EE. “Released PAGA Claims” means all claims, demands, rights, liabilities and causes of action under the PAGA, premised on the facts, claims, causes of action or legal theories pled in the Operative Complaint in the Action (or Plaintiff’s letter to the LWDA dated April 18, 2022), or which could have been alleged based on the factual allegations therein, that arose during the PAGA Period.

FF. “Released Party” or “Released Parties” shall mean Defendant and its present and former officers, directors, and employees.

1 GG. "Response Deadline" means the date forty-five (45) days after the Settlement
2 Administrator mails Notice Packets to Class Members and the last date on which
3 Class Members may submit requests for exclusion or objections to the Settlement.

4 HH. "Settlement" means the disposition of the Action pursuant to this Agreement.

5 II. "Settlement Administrator" means Apex Class Action LLC, 18 Technology Drive,
6 Suite 164 Irvine, CA 92618. The Settlement Administrator establishes, designates
7 and maintains, as a QSF under Internal Revenue Code section 468B and Treasury
8 Regulation section 1.468B-1, into which the amount of the Gross Settlement Amount
9 is deposited for the purpose of resolving the claims of Settlement Class Members.
10 The Settlement Administrator shall maintain the funds until distribution in an
11 account(s) segregated from the assets of Defendant and any person related to
12 Defendant. *All accrued interest shall be paid and distributed to the Settlement Class*
13 *Members as part of their respective Individual Settlement Payment.*

14 JJ. "Settlement Administration Expenses" shall mean the amount to be paid for the costs
15 of administration of the Settlement from the Gross Settlement Amount in an amount
16 not to exceed \$7,800.00.

17 KK. "Settlement Class Members" or "Settlement Class" means all Class Members who
18 have not submitted a timely and valid request for exclusion as provided in this
19 Agreement.

20 LL. "Workweeks", for purposes of calculating the distribution of the Net Settlement
21 Amount, means the number of weeks of employment during the Class Period that
22 each Class Member was employed by Defendant in California, excluding weeks
23 during which the Class Member did not perform any work for Defendant.

24 **II. RECITALS**

25 A. On April 18, 2022, Plaintiff filed a Notice of Violations with the Labor and Workforce
26 Development Agency (LWDA) and served the same on Defendant.

27 B. On June 23, 2022, Plaintiff filed the Class Action lawsuit for:

28 1. Unfair Competition in Violation of Bus. and Prof. Code sections 17200 *et seq*;

2. Failure to pay minimum wages in violation of California Labor Code sections 1194, 1197 and 1197.1;
3. Failure to pay overtime wages in violation of California Labor Code sections 510 *et seq*;
4. Failure to provide required meal periods in violation of California Labor Code sections 226.7 and 512 and the applicable IWC wage order;
5. Failure to provide required rest periods in violation of California Labor Code sections 226.7 and 512 and the applicable IWC wage order;
6. Failure to provide accurate itemized wage statements in violation of California Labor Code section 226;
7. Failure to provide wages when due in violation of California Labor Code sections 201, 202 and 203; and
8. Failure to reimburse Plaintiff for required expenses in violation of California Labor Code section 2802; and
9. Violation of the Private Attorneys General Act in violation of California Labor Code sections 2698, *et seq*.

C. The Class Representative believes he has meritorious claims based on alleged violations of the California Labor Code, and the Industrial Wage Commission Orders, and that class certification is appropriate because the prerequisites for class certification can be satisfied in the Action, and this action is manageable as a PAGA representative action.

D. Defendant denies the allegations in the Action and denies any and all liability, including any liability for alleged failure to pay overtime compensation, failure to pay any wages, failure to pay gratuity payments, failure to provide meal and rest breaks, failure to provide accurate wage statements, or any other wage and hour or similar violation. This Settlement Agreement shall not be construed as an admission by Defendant or any of the Releasees (as defined above) of any fault, liability or wrongdoing, which Defendant expressly denies. Defendant further contends that, for

any purpose other than settlement, the Action is not appropriate for class or representative action treatment. Defendant further contends, among other things, that at all times it complied with the California Labor Code and the Industrial Wage Commission Orders.

E. The Class Representative is represented by Class Counsel. Class Counsel investigated the facts relevant to the Action, including conducting an independent investigation as to the allegations, reviewing financial documents, and information exchanged through informal discovery. Defendant produced for the purpose of settlement negotiations certain employment data concerning the Settlement Class, which Class Counsel reviewed and analyzed. Based on their own independent investigation and evaluation, Class Counsel are of the opinion that the Settlement with Defendant is fair, reasonable and adequate, and is in the best interest of the Settlement Class in light of all known facts and circumstances, including the risks of significant delay, defenses asserted by Defendant, uncertainties regarding class certification, and numerous potential appellate issues. Although it denies any liability, Defendant agrees to this Settlement solely to avoid the inconveniences and cost of further litigation. The Parties and their counsel have agreed to settle the claims on the terms set forth in this Agreement.

F. On January 22, 2024, the Parties participated in mediation presided over by Hon. Steven R. Denton (Ret.), a respected jurist and experienced mediator of wage and hour class actions. The mediation concluded in settlement after both sides agreed to a Mediator's proposal which was subsequently memorialized in the form of a Memorandum of Understanding ("MOU").

G. This Agreement replaces and supersedes the MOU and any other agreements, understandings, or representations between the Parties. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant that the claims in the Action of Plaintiff or the Class Members have merit or that Defendant bears any

liability to Plaintiff or the Class on those claims or any other claims, or as an admission by Plaintiff that Defendant's defenses in the Action have merit.

H. The Parties believe that the Settlement is fair, reasonable and adequate. The Settlement was arrived at through arms-length negotiations, considering all relevant factors. The Parties recognize the uncertainty, risk, expense and delay attendant to continuing the Action through trial and any appeal. Accordingly, the Parties desire to fully, finally, and forever settle, compromise and discharge all disputes and claims arising from or relating to the Action.

I. The Parties agree to certification of the Class for purposes of this Settlement only. If for any reason the settlement does not become effective, Defendant reserves the right to contest certification of any class for any reason and reserves all available defenses to the claims in the Action.

Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

III. TERMS OF AGREEMENT

A. Settlement Consideration and Settlement Payments by Defendant.

1. Settlement Consideration. In full and complete settlement of the Action, and in exchange for the releases set forth below, Defendant will pay the sum of the Individual Settlement Payment, the Class Representative Service Award, the Class Counsel Award, PAGA Payment, and the Settlement Administration Expenses, as specified in this Agreement, equal to the Gross Settlement Amount of Three Hundred Fifty Thousand Dollars and Zero Cents (\$350,000.00). The Parties agree that this is a non-reversionary Settlement and that no portion of the Gross Settlement Amount shall revert to Defendant. Other than the Defendant's share of employer payroll taxes and as provided for in Section III(A)(2) below, if any, Defendant shall not be required to pay more than the Gross Settlement Amount, except as provided for hereinbelow.
2. Class Size. At the time of mediation, Defendant estimated that the Settlement Class was comprised of 143 Class Members who collectively worked

1 approximately 12,777 Workweeks (“Projected Workweeks”) during the Class
2 Period and 105 Aggrieved Employees who worked a total of 3,418 Pay
3 Periods during the PAGA Period. Defendant will provide a declaration under
4 penalty of perjury confirming the number of applicable Class Members and
5 workweeks they worked during the applicable Class Period one week prior to
6 Plaintiffs' deadline to file their motion for preliminary approval of the
7 settlement. Should the number of workweeks increase by more than 10% of
8 what was represented at the mediation, the Gross Settlement Amount will
9 increase proportionally for the number of workweeks over 110% of 12,777,
10 for example, if the total workweeks in the Class Period are 115% of 12,777,
11 the Gross Settlement Amount shall increase by 5%.

- 12 3. Settlement Payment. Defendant and the Released Parties, and each of them,
13 are jointly and severally liable for payment of the Gross Settlement Amount.
14 Defendant shall pay the Gross Settlement Amount to the Settlement
15 Administrator on the Funding Date.
- 16 4. Defendant’s Share of Payroll Taxes. Defendant’s share of employer side
17 payroll taxes is in addition to the Gross Settlement Amount and shall be paid
18 together with the Gross Settlement Amount.

- 19 B. Release by Settlement Class Members. As of the Funding Date, in exchange for the
20 consideration set forth in this Agreement, Plaintiff and the Settlement Class Members,
21 on behalf of themselves and their respective and former and present representatives,
22 agents, attorneys, heirs, administrators, successors and assigns, shall and hereby do
23 release and discharge all Released Parties, from the wage claims that accrued during
24 the Class Period, as follows: any and all claims under California law, based on or
25 arising out of the same factual predicates of the Action, the Complaint, and/or the
26 allegations in the Complaint, including (a) all claims that were or could have been
27 raised in the Actions; and (b) all claims that are based on or relate to the purported
28 payment or nonpayment of compensation, including, but not limited to, wages,

overtime wage, and/or premium pay), meal or rest period premiums or penalties, improper wage statements, unfair business practices.

C. Release by the Plaintiff and the State of California. As of the Funding Date, in exchange for the consideration set forth in this Agreement, the Plaintiff, the LWDA and the State of California release the Released Parties from the Released PAGA Claims for the PAGA Period. As a result of this release, Plaintiff, the LWDA, and the State of California release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims, demands, rights, liabilities and causes of action under the PAGA, premised on the facts, claims, causes of action or legal theories pled in the Operative Complaint in the Action (or Plaintiff's letter to the LWDA dated April 18, 2022), or which could have been alleged based on the factual allegations therein, that arose during the PAGA Period.

D. General Release by Plaintiff. As of the Funding Date, for the consideration set forth in this Agreement, Plaintiff waives, releases, acquits and forever discharges the Released Parties from any and all claims, whether known or unknown, which exist or may exist on either Plaintiff's behalf as of the date of this Agreement, including but not limited to any and all tort claims, contract claims, wage claims, wrongful termination claims, disability claims, benefit claims, public policy claims, retaliation claims, statutory claims, personal injury claims, emotional distress claims, invasion of privacy claims, defamation claims, fraud claims, quantum meruit claims, and any and all claims arising under any federal, state or other governmental statute, law, regulation or ordinance, including, but not limited to claims for violation of the Fair Labor Standards Act, the California Labor Code, the Wage Orders of California's Industrial Welfare Commission, other state wage and hour laws, the Americans with Disabilities Act, the Age Discrimination in Employment Act (ADEA), the Employee Retirement Income Security Act, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, the California Family Rights Act, the Family Medical

1 Leave Act, California's Whistleblower Protection Act, California Business &
2 Professions Code Section 17200 et seq., and any and all claims arising under any
3 federal, state or other governmental statute, law, regulation or ordinance. Plaintiff also
4 waives and relinquishes any and all claims, rights or benefits that he may have under
5 California Civil Code § 1542, which provides as follows:

6
7 ***A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE***
8 ***CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO***
9 ***EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE***
10 ***RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE***
11 ***MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR***
12 ***OR RELEASED PARTY.***

13
14 Thus, notwithstanding the provisions of section 1542, and to implement a full and
15 complete release and discharge of the Released Parties, Plaintiff expressly
16 acknowledges this Settlement Agreement is intended to include in its effect, without
17 limitation, all claims Plaintiff does not know or suspect to exist in Plaintiff's favor at
18 the time of signing this Settlement Agreement, and that this Settlement Agreement
19 contemplates the extinguishment of any such claims. Plaintiff warrants that Plaintiff
20 has read this Settlement Agreement, including this waiver of California Civil Code
21 section 1542, and that Plaintiff has consulted with or had the opportunity to consult
22 with counsel of Plaintiff's choosing about this Settlement Agreement and specifically
23 about the waiver of section 1542, and that Plaintiff understands this Settlement
24 Agreement and the section 1542 waiver, and so Plaintiff freely and knowingly enters
25 into this Settlement Agreement. Plaintiff further acknowledges that Plaintiff later may
26 discover facts different from or in addition to those Plaintiff now knows or believes to
27 be true regarding the matters released or described in this Settlement Agreement, and
28 even so Plaintiff agrees that the releases and agreements contained in this Settlement

1 Agreement shall remain effective in all respects notwithstanding any later discovery
2 of any different or additional facts. Plaintiff expressly assumes any and all risk of any
3 mistake in connection with the true facts involved in the matters, disputes, or
4 controversies released or described in this Settlement Agreement or with regard to any
5 facts now unknown to Plaintiff relating thereto.

6 E. Conditions Precedent: This Settlement will become final and effective only upon the
7 occurrence of all of the following events:

- 8 1. The Court enters an order granting preliminary approval of the Settlement;
- 9 2. The Court enters an order granting final approval of the Settlement and a Final
10 Judgment;
- 11 3. If an objector appears at the final approval hearing, the time for appeal of the
12 Final Judgment and Order Granting Final Approval of Class Action
13 Settlement expires; or, if an appeal is timely filed, there is a final resolution of
14 any appeal from the Judgment and Order Granting Final Approval of Class
15 Action Settlement; and
- 16 4. Defendant fully fund the Gross Settlement Amount.

17 F. Nullification of Settlement Agreement. In the event that this Settlement Agreement is
18 not preliminarily or finally approved by the Court, fails to become effective, or is
19 reversed, withdrawn or modified by the Court, or in any way prevents or prohibits
20 Defendant from obtaining a complete resolution of the Released Class Claims, or if
21 Defendant fails to fully fund the Gross Settlement Amount:

- 22 1. This Settlement Agreement shall be void *ab initio* and of no force or effect,
23 and shall not be admissible in any judicial, administrative or arbitral
24 proceeding for any purpose or with respect to any issue, substantive or
25 procedural;
- 26 2. The conditional class certification (obtained for any purpose) shall be void *ab*
27 *initio* and of no force or effect, and shall not be admissible in any judicial,
28

1 administrative or arbitral proceeding for any purpose or with respect to any
2 issue, substantive or procedural; and

3 3. None of the Parties to this Settlement will be deemed to have waived any
4 claims, objections, defenses or arguments in the Action, including with respect
5 to the issue of class certification.

6 4. If Defendant fails to fully fund the Gross Settlement Amount, Defendant shall
7 bear the sole responsibility for any cost to issue or reissue any curative notice
8 to the Settlement Class Members and all Settlement Administration Expenses
9 incurred to the date of nullification.

10 G. Certification of the Settlement Class. The Parties stipulate to conditional class
11 certification of the Class for the Class Period pursuant to CAL. CIV. CODE PROC. §
12 382 for the sole purpose of settlement. In the event that this Settlement is not approved
13 by the Court, fails to become effective, or is reversed, withdrawn or modified by the
14 Court, or in any way prevents or prohibits Defendant from obtaining a complete
15 resolution of the Released Class Claims, the conditional class certification (obtained
16 for any purpose) shall be void *ab initio* and of no force or effect, and shall not be
17 admissible in any judicial, administrative or arbitral proceeding for any purpose or
18 with respect to any issue, substantive or procedural.

19 H. Tax Liability. The Parties make no representations as to the tax treatment or legal
20 effect of the payments called for, and Class Members and/or Aggrieved Employees are
21 not relying on any statement or representation by the Parties in this regard. Class
22 Members and/or Aggrieved Employees understand and agree that they will be
23 responsible for the payment of any taxes and penalties assessed on the Individual
24 Settlement Payments and/or Aggrieved Employee Payment described and will be
25 solely responsible for any penalties or other obligations resulting from their personal
26 tax reporting of Individual Settlement Payments and/or Aggrieved Employee Payment.

27 I. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section,
28 the “acknowledging party” and each Party to this Agreement other than the

acknowledging party, an “other party”) acknowledges and agrees that: (1) no provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department circular 230 (31 CFR part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his, her or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Agreement, (b) has not entered into this Agreement based upon the recommendation of any other Party or any attorney or advisor to any other Party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty that may be imposed on the acknowledging party, and (3) no attorney or adviser to any other Party has imposed any limitation that protects the confidentiality of any such attorney’s or adviser’s tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

J. Preliminary Approval Motion. Plaintiff shall draft and file with the Court a Motion for Order Granting Preliminary Approval and supporting papers within a reasonable period of time after complete execution of this agreement and will provide Defendant with a draft of the Motion at least five (5) business days prior to the filing of the Motion to give Defendant an opportunity to propose changes or additions to the Motion.

K. Settlement Administrator. The Settlement Administrator shall be responsible for: establishing and administering the QSF; calculating, processing and mailing payments to the Class Representative, Class Counsel, LWDA and Class Members; printing and mailing the Notice Packets to the Class Members as directed by the Court; receiving and reporting the objections and requests for exclusion; calculating, deducting and remitting all legally required taxes from Individual Settlement Payments and distributing tax forms for the Wage Portion and Non-Wage Portion of the Individual

1 Settlement Payments and/or Aggrieved Employee Payment; processing and mailing
2 tax payments to the appropriate state and federal taxing authorities; providing
3 declaration(s) as necessary in support of preliminary and/or final approval of this
4 Settlement; and other tasks as the Parties mutually agree or the Court orders the
5 Settlement Administrator to perform. The Settlement Administrator shall keep the
6 Parties timely apprised of the performance of all Settlement Administrator
7 responsibilities by among other things, sending a weekly status report to the Parties'
8 counsel stating the date of the mailing, the of number of Elections Not to Participate
9 in Settlement it receives (including the numbers of valid and deficient), and number of
10 objections received.

11 L. Notice Procedure.

12 1. Class Data. No later than ten (10) business days after the Preliminary
13 Approval Date, Defendant shall provide the Settlement Administrator with the
14 Class Data for purposes of preparing and mailing Notice Packets to the Class
15 Members.

16 2. Notice Packets.

17 a) The Notice Packet shall contain the Notice of Class Action Settlement
18 in a form substantially similar to the form attached as **Exhibit A** and a
19 Request for Exclusion form attached hereto as **Exhibit B**. The Notice
20 of Class Action Settlement shall inform Class Members and
21 Aggrieved Employees that they need not do anything in order to
22 receive an Individual Settlement Payment and/or Aggrieved Employee
23 Payment and to keep the Settlement Administrator apprised of their
24 current mailing address, to which the Individual Settlement Payments
25 and/or Aggrieved Employee Payment will be mailed following the
26 Funding Date. The Notice of Class Action Settlement shall set forth
27 the release to be given by all members of the Class who do not request
28 to be excluded from the Settlement Class and/or Aggrieved

Employees' in exchange for an Individual Settlement Payment and/or Aggrieved Employee Payment, the number of Workweeks worked by each Class Member during the Class Period and PAGA Period, if any, and the estimated amount of their Individual Settlement Payment if they do not request to be excluded from the Settlement and each Aggrieved Employee's share of the PAGA Payment, if any. The Settlement Administrator shall use the Class Data to determine Class Members' Workweeks and PAGA Pay Periods. The Notice will also advise the Aggrieved Employees that they will release the Released PAGA Claims and will receive their share of the PAGA Payment regardless of whether they request to be excluded from the Settlement.

b) The Notice Packet's mailing envelope shall include the following language: "IMPORTANT LEGAL DOCUMENT- YOU MAY BE ENTITLED TO PARTICIPATE IN A CLASS ACTION SETTLEMENT; A PROMPT REPLY TO CORRECT YOUR ADDRESS IS REQUIRED AS EXPLAINED IN THE ENCLOSED NOTICE."

3. Notice by First Class U.S. Mail and Email. Upon receipt of the Class Data, the Settlement Administrator will perform a search based on the National Change of Address Database to update and correct any known or identifiable address changes. No later than fourteen (14) calendar days after receiving the Class Data from Defendant, the Settlement Administrator shall mail and email copies of the Notice Packet to all Class Members via regular First-Class U.S. Mail and electronic mail. The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Class Member. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Class Member.

- 1 4. Undeliverable Notices. Any Notice Packets returned to the Settlement
2 Administrator as non-delivered on or before the Response Deadline shall be
3 re-mailed to any forwarding address provided. The Settlement Administrator
4 will re-mail Notices within seven (7) days of receiving a returned Notice. If
5 no forwarding address is provided, the Settlement Administrator shall
6 promptly attempt to determine a correct address by lawful use of skip-tracing,
7 or other search using the name, address and/or Social Security number of the
8 Class Member involved, and shall then perform a re-mailing, if another
9 mailing address is identified by the Settlement Administrator. In addition, if
10 any Notice Packets, which are addressed to Class Members who are currently
11 employed by Defendant, are returned to the Settlement Administrator as non-
12 delivered and no forwarding address is provided, the Settlement Administrator
13 shall notify Defendant. Defendant will request that the currently employed
14 Class Member provide a corrected address and transmit to the Administrator
15 any corrected address provided by the Class Member. Class Members who
16 received a re-mailed Notice Packet shall have their Response Deadline
17 extended fifteen (15) days from the original Response Deadline.
- 18 5. Disputes Regarding Individual Settlement Payments. Class Members will
19 have the opportunity, should they disagree with Defendant's records regarding
20 the start and end dates of employment, to provide documentation and/or an
21 explanation to show contrary dates. If there is a dispute, the Settlement
22 Administrator will consult with the Parties to determine whether an
23 adjustment is warranted. The Settlement Administrator shall determine the
24 eligibility for, and the amounts of, any Individual Settlement Payments under
25 the terms of this Agreement. Unless the Class Member presents convincing
26 evidence proving he or she worked more workweeks than shown by
27 Defendant's records, his/her Settlement Award will be determined based on
28 Defendant's records. The Settlement Administrator's determination of the

1 eligibility for and amount of any Individual Settlement Payment shall be
2 binding upon the Class Member and the Parties, except as provided herein
3 below in Paragraph 6.

4 6. Disputes Regarding Administration of Settlement. Any disputes not resolved
5 by the Settlement Administrator concerning the administration of the
6 Settlement will be resolved by the Court under the laws of the State of
7 California. Before any such involvement of the Court, counsel for the Parties
8 will confer in good faith to resolve the disputes without the necessity of
9 involving the Court.

10 7. Exclusions. The Notice of Class Action Settlement contained in the Notice
11 Packet shall state that Class Members who wish to exclude themselves from
12 the Settlement must submit a signed copy of the Request for Exclusion form
13 that will be mailed together with the Notice Packet to all Class Members. The
14 Request for Exclusion will not be valid if it is not timely submitted, if the
15 Class Member does not sign it, or if it does not contain the name and address
16 and last four digits of the Social Security number of the Class Member. The
17 date of the postmark on the mailing envelope or fax stamp on the Request for
18 Exclusion shall be the exclusive means used to determine whether the request
19 for exclusion was timely submitted. Any Class Member who submits a timely
20 Request for Exclusion shall be excluded from the Settlement Class will not be
21 entitled to an Individual Settlement Payment and will not be otherwise bound
22 by the terms of the Settlement or have any right to object, appeal or comment
23 thereon. However, any Class Member that submits a timely Request for
24 Exclusion that is also a member of the Aggrieved Employees will still receive
25 his/her pro rata share of the PAGA Payment, as specified below, and in
26 consideration, will be bound by the Release by the Aggrieved Employees as
27 set forth herein. Settlement Class Members who fail to submit a valid and
28 timely Request for Exclusion on or before the Response Deadline shall be

1 bound by all terms of the Settlement and any final judgment entered in this
2 Action if the Court approves the Settlement. No later than fifteen (15)
3 calendar days after the Response Deadline, the Settlement Administrator shall
4 provide counsel for the Parties with a final list of the Class Members who have
5 timely submitted timely Requests for Exclusion. At no time shall any of the
6 Parties or their counsel seek to solicit or otherwise encourage members of the
7 Class to submit Requests for Exclusion from the Settlement.

- 8 8. Objections. The Notice of Class Action Settlement contained in the Notice
9 Packet shall state that Class Members who wish to object to the Settlement
10 may submit to the Settlement Administrator a written statement of objection
11 (“Notice of Objection” attached hereto as **Exhibit C**) by the Response
12 Deadline. The postmark date of mailing shall be deemed the exclusive means
13 for determining that a Notice of Objection was served timely. The Notice of
14 Objection, if in writing, must be signed by the Settlement Class Member and
15 state: (1) the case name and number; (2) the name of the Settlement Class
16 Member; (3) the address of the Settlement Class Member; (4) the last four
17 digits of the Settlement Class Member’s Social Security number; and (5) the
18 basis for the objection. Class Members who fail to make objections in writing
19 in the manner specified above may still make their objections orally at the
20 Final Approval/Settlement Fairness Hearing with the Court’s permission.
21 Settlement Class Members will have a right to appear at the Final
22 Approval/Settlement Fairness Hearing to have their objections heard by the
23 Court regardless of whether they submitted a written objection. At no time
24 shall any of the Parties or their counsel seek to solicit or otherwise encourage
25 Class Members to file or serve written objections to the Settlement or appeal
26 from the Order and Final Judgment. Class Members who submit a written
27 request for exclusion may not object to the Settlement. Class Members may
28 not object to the PAGA Payment.

1 M. Funding and Allocation of the Gross Settlement Amount. Defendant are required to
2 pay the Gross Settlement Amount on or before the Funding Date, plus any employer's
3 share of payroll taxes as mandated by law within the time specified herein.

4 1. Individual Settlement Payments. Individual Settlement Payments shall be
5 paid from the Net Settlement Amount and shall be paid pursuant to the
6 formula set forth herein. Using the Class Data, the Settlement Administrator
7 shall add up the total number of Workweeks for all Class Members. The
8 respective Workweeks for each Class Member will be divided by the total
9 Workweeks for all Class Members, resulting in the Payment Ratio for each
10 Class Member. Each Class Member's Payment Ratio will then be multiplied
11 by the Net Settlement Amount to calculate each Class Member's estimated
12 Individual Settlement Payments. Each Individual Settlement Payment will be
13 reduced by any legally mandated employee tax withholdings (e.g., employee
14 payroll taxes, etc.). Individual Settlement Payments for Class Members who
15 submit valid and timely requests for exclusion will be redistributed to
16 Settlement Class Members who do not submit valid and timely requests for
17 exclusion on a pro rata basis based on their respective Payment Ratios.

18 2. Calculation of Individual Payments to the Aggrieved Employees. Using the
19 Class Data, the Settlement Administrator shall add up the total number of
20 PAGA pay periods for all Aggrieved Employees during the PAGA Period.
21 The respective PAGA pay periods for each Aggrieved Employee will be
22 divided by the total PAGA pay periods for all Aggrieved Employees, resulting
23 in the "PAGA Payment Ratio" for each Aggrieved Employee. Each
24 Aggrieved Employee's PAGA Payment Ratio will then be multiplied by the
25 Aggrieved Employee Payment to calculate each Aggrieved Employee's
26 estimated share of the PAGA Payment.

27 3. Allocation of Individual Settlement Payments. For tax purposes, Individual
28 Settlement Payments shall be allocated and treated as follows: 20% as wages

1 (“Wage Portion”); 80% as penalties and interest (“Non-Wage Portion”). The
2 Wage Portion is subject to wage withholdings and shall be reported on IRS
3 Form W-2. The Non-Wage Portion shall not be subject to wage withholdings
4 and shall be reported on IRS Form 1099.

5 4. Allocation of Aggrieved Employee Payments. For tax purposes, Aggrieved
6 Employee Payments shall be allocated and treated as 100% penalties and shall
7 be reported on IRS Form 1099.

8 5. No Credit Toward Benefit Plans. The Individual Settlement Payments and
9 Aggrieved Employee Payment made to Settlement Class Members and/or
10 Aggrieved Employees under this Settlement Agreement, as well as any other
11 payments made pursuant to this Settlement Agreement, will not be utilized to
12 calculate any additional benefits under any benefit plans to which any Class
13 Members may be eligible, including, but not limited to profit-sharing plans,
14 bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave
15 plans, PTO plans, and any other benefit plan. Rather, it is the Parties’ intention
16 that this Settlement Agreement will not affect any rights, contributions, or
17 amounts to which any Class Members may be entitled under any benefit plans.

18 6. All monies received by Settlement Class Members under the Settlement which
19 are attributable to wages shall constitute income to such Settlement Class
20 Members solely in the year in which such monies actually are received by the
21 Settlement Class Members. It is the intent of the Parties that Individual
22 Settlement Payments and Aggrieved Employee Payment provided for in this
23 Settlement Agreement are the sole payments to be made by Defendant to
24 Settlement Class Members and/or Aggrieved Employees in connection with this
25 Settlement Agreement, with the exception of Plaintiff, and that the Settlement
26 Class Members and/or Aggrieved Employees are not entitled to any new or
27 additional compensation or benefits as a result of having received the Individual
28 Settlement Payments and/or their shares of the PAGA Payment.

- 1 7. Mailing. Individual Settlement Payments and Aggrieved Employee Payments
2 shall be mailed by regular First-Class U.S. Mail to Settlement Class Members’
3 and/or Aggrieved Employees last known mailing address no later than fifteen
4 (15) calendar days after the Funding Date.
- 5 8. Expiration. Any checks issued to Settlement Class Members and Aggrieved
6 Employees shall remain valid and negotiable for one hundred and eighty (180)
7 days from the date of their issuance. If a Settlement Class Member and/or
8 Aggrieved Employee does not cash his or her settlement check within ninety
9 (90) days, the Settlement Administrator will send a letter to such persons,
10 advising that the check will expire after the one hundred eightieth (180th) day,
11 and invite that Settlement Class Member and/or Aggrieved Employee to
12 request reissuance in the event the check was destroyed, lost or misplaced. In
13 the event an Individual Settlement Payment and/or Aggrieved Employee’s
14 Aggrieved Employee Payment check has not been cashed within one hundred
15 and eighty (180) days, the check will be voided and the Settlement Class
16 Member and/or Aggrieved Employee will remain bound by the Settlement.
17 The funds from any such uncashed checks shall be reallocated and
18 redistributed by the Settlement Administrator to those Settlement Class
19 Members and/or Aggrieved Employees who cashed their Individual
20 Settlement Payment checks through a second distribution using the same
21 allocation as the first distribution. The Parties agreed that under this
22 procedure, there is no residue as the entire Gross Settlement Amount will be
23 distributed.
- 24 9. Class Representative Service Award. In addition to the Individual Settlement
25 Payment and his Aggrieved Employee Payment to be paid to Plaintiff,
26 Plaintiff will apply to the Court for an award of not more than \$10,000, as the
27 Class Representative Service Award. Defendant will not oppose a Class
28 Representative Service Award of not more than \$10,000 for Plaintiff. The

1 Settlement Administrator shall pay the Class Representative Service Award,
2 either in the amount stated herein if approved by the Court or some other
3 amount as approved by the Court, to Plaintiff from the Gross Settlement
4 Amount no later than fifteen (15) calendar days after the Funding Date. Any
5 portion of the requested Class Representative Service Award that is not
6 awarded to the Class Representative shall be part of the Net Settlement
7 Amount and shall be distributed to Settlement Class Members as provided in
8 this Agreement. The Settlement Administrator shall issue an IRS Form 1099
9 — MISC to Plaintiff for his Class Representative Service Award. Plaintiff
10 shall be solely and legally responsible to pay any and all applicable taxes on
11 his Class Representative Service Award and shall hold harmless the Released
12 Parties from any claim or liability for taxes, penalties, or interest arising as a
13 result of the Class Representative Service Award. The Class Representative
14 Service Award shall be in addition to Plaintiff's Individual Settlement
15 Payment as a Settlement Class Member. Approval of this Settlement shall not
16 be conditioned on Court approval of the requested amount of the Class
17 Representative Service Award. If the Court reduces or does not approve the
18 requested Class Representative Service Award, Plaintiff shall not have the
19 right to revoke the Settlement, and it will remain binding.

- 20 10. Class Counsel Award. Defendant understand a motion by Class Counsel for
21 attorneys' fees not to exceed one-third of the Gross Settlement Amount
22 currently estimated to be One Hundred Sixteen Thousand, Six Hundred Sixty-
23 Six Dollars and Sixty-Six Cents (\$116,666.66) plus costs and expenses
24 supported by declaration not to exceed Fifteen Thousand Dollars and Zero
25 Cents (\$15,000.00), from the Gross Settlement Amount will be filed.
26 Defendant agrees not to oppose the request for the Class Counsel Award. Any
27 portion of the requested Class Counsel Award that is not awarded to Class
28 Counsel shall be part of the Net Settlement Amount and shall be distributed

1 to Settlement Class Members as provided in this Agreement. The Settlement
2 Administrator shall allocate and pay the Class Counsel Award to Class
3 Counsel from the Gross Settlement Amount no later than fifteen (15) calendar
4 days after the Funding Date. Class Counsel shall be solely and legally
5 responsible to pay all applicable taxes on the payment made pursuant to this
6 paragraph. The Settlement Administrator shall issue an IRS Form 1099 —
7 MISC to Class Counsel for the payments made pursuant to this paragraph. In
8 the event that the Court reduces or does not approve the requested Class
9 Counsel Award, Plaintiff and Class Counsel shall not have the right to revoke
10 the Settlement, or to appeal such order, and the Settlement will remain
11 binding.

12 11. PAGA Payment. Ten Thousand Dollars and Zero Cents (\$10,000.00) shall be
13 allocated from the Gross Settlement Amount for settlement of claims for civil
14 penalties under the Private Attorneys General Act of 2004 (“PAGA
15 Payment”). The Settlement Administrator shall pay the LWDA Payment,
16 comprised of seventy-five percent (75%) of the PAGA Penalties (\$7,500.00),
17 to the California Labor and Workforce Development Agency no later than
18 thirty (30) days after the Effective Date. The Aggrieved Employee Payment,
19 comprised of twenty-five percent (25%) of the PAGA Penalties (\$2,500.00),
20 will be distributed to the Aggrieved Employees as described in this
21 Agreement. For purposes of distributing the Aggrieved Employee Payment,
22 each Aggrieved Employee shall receive their pro-rata share of the Aggrieved
23 Employee Payment using the PAGA Payment Ratio as defined above.

24 12. Settlement Administration Expenses. The Settlement Administrator shall be
25 paid for the costs of administration of the Settlement from the Gross
26 Settlement Amount. The estimate of the Settlement Administration Expenses
27 is \$7,800. The Settlement Administrator shall be paid the Settlement
28

Administration Expenses no later than fifteen (15) calendar days after the Funding Date.

N. Final Approval Motion. Class Counsel and Plaintiff shall use best efforts to file with the Court a Motion for Order Granting Final Approval and Entering Judgment, within twenty-eight (28) days following the expiration of the Response Deadline, which motion shall request final approval of the Settlement and a determination of the amounts payable for the Class Representative Service Award, the Class Counsel Award, the PAGA Payment, and the Settlement Administration Expenses. Plaintiff will provide Defendant with a draft of the Motion at least three (3) business days prior to the filing of the Motion to give Defendant an opportunity to propose changes or additions to the Motion.

1. Declaration by Settlement Administrator. No later than fifteen (15) days after the Response Deadline, the Settlement Administrator shall submit a declaration in support of Plaintiff's motion for final approval of this Settlement detailing the number of Notice Packets mailed and re-mailed to Class Members, the number of undeliverable Notice Packets, the number of timely requests for exclusion and the names of the Class Members requesting exclusion (if any), the number of objections received, the amount of the average Individual Settlement Payment, lowest Individual Settlement Payment, and highest Individual Settlement Payment, the amount of the average Aggrieved Employee Payment, lowest Aggrieved Employee Payment, and highest Aggrieved Employee Payment, the Settlement Administration Expenses, and any other information as the Parties mutually agree or the Court orders the Settlement Administrator to provide.

2. Final Approval Order and Judgment. Class Counsel shall present an Order Granting Final Approval of Class Action Settlement to the Court for its approval, and Judgment thereon, at the time Class Counsel files the Motion for Final Approval.

- 1 N. Review of Motions for Preliminary and Final Approval. Class Counsel will provide
2 an opportunity for Counsel for Defendant to review the Motions for Preliminary and
3 Final Approval, including the Order Granting Final Approval of Class Action
4 Settlement, and Judgment before filing with the Court. The Parties and their counsel
5 will cooperate with each other and use their best efforts to affect the Court's approval
6 of the Motions for Preliminary and Final Approval of the Settlement, and entry of
7 Judgment.
- 8 O. Cooperation. The Parties and their counsel will cooperate with each other and use
9 their best efforts to implement the Settlement.
- 10 P. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action,
11 except such proceedings necessary to implement and complete the Settlement, pending
12 the Final Approval/Settlement Fairness Hearing to be conducted by the Court.
- 13 Q. Amendment or Modification. This Agreement may be amended or modified only by
14 a written instrument signed by counsel for all Parties or their successors-in-interest.
- 15 R. Entire Agreement. This Agreement and any attached Exhibit constitute the entire
16 Agreement among these Parties, and no oral or written representations, warranties or
17 inducements have been made to any Party concerning this Agreement or its Exhibit
18 other than the representations, warranties and covenants contained and memorialized
19 in this Agreement and its Exhibits.
- 20 S. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and
21 represent they are expressly authorized by the Parties whom they represent to negotiate
22 this Agreement and to take all appropriate Action required or permitted to be taken by
23 such Parties pursuant to this Agreement to effectuate its terms, and to execute any other
24 documents required to effectuate the terms of this Agreement. The persons signing
25 this Agreement on behalf of Defendant represent and warrant that he/she is authorized
26 to sign this Agreement on behalf of Defendant. Plaintiff represents and warrants that
27 he is authorized to sign this Agreement and that he has not assigned any claim, or part
28 of a claim, covered by this Settlement to a third-party.

- 1 T. No Public Comment: The Parties and their counsel agree that they will not issue any
2 press releases, initiate any contact with the press, respond to any press inquiry, or have
3 any communication with the press about the fact, amount or terms of the Settlement
4 Agreement. Class Counsel further agrees not to use the Settlement Agreement or any
5 of its terms for any marketing or promotional purposes. Nothing herein will restrict
6 Class Counsel from including publicly available information regarding this settlement
7 in future judicial submissions regarding Class Counsel's qualifications and experience.
8 Further, Class Counsel will not include, reference or use the Settlement Agreement for
9 any marketing or promotional purposes, either before or after the Motion for
10 Preliminary Approval is filed.
- 11 U. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure
12 to the benefit of, the successors or assigns of the Parties, as previously defined.
- 13 V. California Law Governs. All terms of this Agreement and the Exhibit and any disputes
14 shall be governed by and interpreted according to the laws of the State of California.
- 15 W. Counterparts. This Agreement may be executed in one or more counterparts. All
16 executed counterparts and each of them shall be deemed to be one and the same
17 instrument provided that counsel for the Parties to this Agreement shall exchange
18 among themselves copies or originals of the signed counterparts.
- 19 X. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this Settlement
20 is a fair, adequate and reasonable settlement of this Action and have arrived at this
21 Settlement after extensive arms-length negotiations, considering all relevant factors,
22 present and potential.
- 23 Y. Continuing Jurisdiction of the Court. The Parties agree that the Court shall retain
24 jurisdiction over this case under CCP section 664.6 to ensure the continuing
25 implementation of the provisions of this settlement and that the time within which to
26 bring this action to trial under CCP section 583.310 shall be executed from the date of
27 the signing of this Agreement by all Parties until the entry of the final approval order
28

1 and judgment or if not entered the date this Agreement shall no longer be of any force
2 or effect.

3 Z. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid,
4 the Court shall first attempt to construe the provisions valid to the fullest extent
5 possible consistent with applicable precedents so as to define all provisions of this
6 Agreement valid and enforceable.

7 AA. No Unalleged Claims. Plaintiff and Class Counsel represent that they do not currently
8 intend to pursue any claims against the Released Parties, including, but not limited to,
9 any and all claims relating to or arising from Plaintiff's employment with Defendant,
10 regardless of whether Class Counsel is currently aware of any facts or legal theories
11 upon which any claims or causes of action could be brought against Released Parties,
12 including those facts or legal theories alleged in the operative complaint in this Action.
13 The Parties further acknowledge, understand and agree that this representation is
14 essential to the Agreement and that this Agreement would not have been entered into
15 were it not for this representation.

16 BB. Stipulation to Class Certification. The Parties agree to stipulate to class certification
17 for purposes of this settlement only.

18 CC. No Admissions by the Parties. Plaintiff has claimed and continues to claim that the
19 Released Claims have merit and give rise to liability on the part of Defendant.
20 Defendant claims that the Released Claims have no merit and do not give rise to
21 liability. This Agreement is a compromise of disputed claims. Nothing contained in
22 this Agreement and no documents referred to and no action taken to carry out this
23 Agreement may be construed or used as an admission by or against the Defendant or
24 Plaintiff or Class Counsel as to the merits or lack thereof of the claims asserted. Other
25 than as may be specifically set forth herein, each Party shall be responsible for and
26 shall bear its/his own attorney's fees and costs.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:

DATED: 03/04/2024

Joseph Kirkham
Joseph Kirkham (Mar 4, 2024 13:20 PST)
JOSEPH CHRISTOPHER KIRKHAM

IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANT:

DATED: MARCH 8 2024

Kenneth S. Johnson
PALM DESERT GREENS ASSOCIATION
KENNETH S. JOHNSON

Printed Name

P.D.G. President
Title

1 IT IS SO AGREED AS TO FORM BY COUNSEL:
2

3 DATED: 03/04/2024

JCL LAW FIRM, APC

4 By: 
5

Jean-Claude Lapuyade

6 Attorneys for Plaintiff and the Settlement Class
7 Members

8 DATED: 03/04/2024

ZAKAY LAW GROUP, APLC

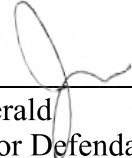
9 By: 
10

Shani Zakay

11 Attorneys for Plaintiff and the Settlement Class
12 Members

13 DATED: 03/07/2024

FITZGERALD & MULÉ LLP

14 By: 
15

Jana FitzGerald

16 Attorneys for Defendant
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

NOTICE OF SETTLEMENT
AND FINAL HEARING DATE

**(JOSEPH CHRISTOPHER KIRKHAM v. PALM DESERT GREENS ASSOCIATION, Riverside County
Superior Court Case No. CVRI2202569)**

PLEASE READ THIS NOTICE CAREFULLY.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	To receive a cash payment from the Settlement, you do not have to do anything. Your estimated Individual Settlement Payment is: \$<<[REDACTED]>>. Your estimated Aggrieved Employee Payment is <<[REDACTED]>>. See the explanation below. After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, please notify the Settlement Administrator as explained below. In exchange for the settlement payment, you will release claims against the Defendant as detailed below.
Exclude Yourself	If you wish to exclude yourself from the Settlement, you must send a written request for exclusion to the Settlement Administrator as provided below. If you request exclusion, you will receive no money from the Settlement. Instructions are set forth below.
Object	You may write to the Court about why you believe the Settlement should not be approved. Directions are provided below.

1. Why did I get this Notice?

A proposed class action settlement (the “Settlement”) of this lawsuit pending in the Superior Court for the State of California, County of Riverside (the “Court”) has been reached between Plaintiff JOSEPH CHRISTOPHER KIRKHAM (“Plaintiff”) and Defendant PALM DESERT GREENS ASSOCIATION, a California corporation (“Defendant”). The Court has granted preliminary approval of the Settlement. **You may be entitled to receive money from this Settlement.**

You have received this Class Notice because you have been identified as a member of the Class, which is defined as:

All persons who are or previously were employed by Defendant as a non-exempt employee in California during the period between June 23, 2018, through the date of Preliminary Approval or April 21, 2024, whichever is earlier (“Class Period”).

This Class Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Notice carefully as your rights may be affected by the Settlement.

2. What is this class action lawsuit about?

On June 23, 2022, Plaintiff filed a Complaint against Defendant in the Superior Court of the State of California, County of Riverside (the “Action”). Plaintiff asserted the following claims alleging that Defendant: (1) Unfair Competition in Violation of Bus. and Prof. Code sections 17200 *et seq*; (2) Failure to pay minimum wages in violation of California Labor Code sections 1194, 1197 and 1197.1; (3) Failure to pay overtime wages in violation of California Labor Code sections 510 *et seq*; (4) Failure to provide required meal periods in violation of California Labor Code sections 226.7 and 512 and the applicable IWC wage order; (5) Failure to provide required rest periods in violation of California Labor Code sections 226.7 and 512 and the applicable IWC wage order; (6) Failure to provide accurate itemized wage statements in violation of California Labor Code section 226; (7) Failure to provide wages when due in violation of California Labor Code sections 201, 202 and 203; (8) Failure to reimburse Plaintiff for required expenses in violation of California Labor Code section 2802; and (9) Violation of the Private Attorneys General Act in violation of California Labor Code sections 2698, *et seq*. (“PAGA”). PAGA is a mechanism by which the State of California itself can enforce state labor laws through the employee suing under the PAGA who does so as the proxy or agent of the state’s labor law enforcement agency. The purpose of the PAGA is not to recover damages or restitution, but to create a means of “deputizing” citizens as private attorney general to enforce the Labor Code.

Defendant contends that it has strong legal and factual defenses to these claims, but it recognizes the risks, distractions, and costs associated with litigation. Defendant contends that the wage and hour policies and practices at issue, including those regarding payment for time worked, overtime pay, meal breaks, and rest breaks are lawful and have been lawful throughout the relevant time periods. Defendant also contends that Plaintiff’s claims do not meet the requirements for class certification.

This Settlement is the result of good faith, arm’s length negotiations between Plaintiff and Defendant, through their respective attorneys. Both sides agree that in light of the risks and expenses associated with continued litigation, this Settlement is fair and appropriate under the circumstances, and in the best interests of the Settlement Class Members. This Settlement is a compromise and is not an admission of liability on the part of Defendant.

The Court has not ruled on the merits of Plaintiff’s claims or Defendant’s defenses.

The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved the Plaintiff to serve as the Class Representative, and the law firms of JCL Law Firm, APC and Zakay Law Group, APLC to serve as Class Counsel.

3. What are the terms of the Settlement?

Gross Settlement Amount. Defendant has agreed to pay an “all in” amount of Three Hundred Fifty Thousand Dollars and Zero Cents (\$350,000.00) (the “Gross Settlement Amount”) to fund the Settlement. The Gross Settlement Amount includes the payment of all Individual Settlement Payments to Settlement Class Members, Class Counsel Award, Settlement Administration Expenses, PAGA Payment, and the Class Representative Service Award to the Plaintiff.

After the Judgment becomes Final, Defendant will pay the Gross Settlement Amount by depositing the money with the Settlement Administrator. “Final” means the date the Judgment is no longer subject to appeal, or if an appeal is filed, the date the appeal process is completed, and the Judgment is affirmed.

Amounts to be Paid from the Gross Settlement Amount. The Settlement provides for certain payments to be made from the Gross Settlement Amount, which will be subject to final Court approval, and which will be deducted from the Gross Settlement Amount before settlement payments are made to Class Members, as follows:

- Settlement Administration Expenses. Payment to the Settlement Administrator, estimated not to exceed \$7,800.00 for expenses, including expenses of sending this Notice, processing opt-outs, and distributing settlement payments.
- Class Counsel Award. Payment to Class Counsel attorneys' not to exceed one-third of the Gross Settlement Amount (currently \$116,666.66) plus costs and expenses not to exceed \$15,000 for all costs and expenses incurred as documented in Class Counsel's billing records, both subject to Court approval. Class Counsel have been prosecuting the Action on behalf of Plaintiff and the Class on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses.
- Class Representative Service Award. Class Representative Service Award of up to Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff, or such lesser amount as may be approved by the Court, to compensate him for services on behalf of the Class in initiating and prosecuting the Action, and for the risks he undertook.
- PAGA Payment. A payment of Ten Thousand Dollars and Zero Cents (\$10,000.00) relating to Plaintiff's claim under the Private Attorneys General Act ("PAGA"), \$7,500 of which will be paid to the State of California's Labor and Workforce Development Agency ("LWDA Payment") and the remaining \$2,500 will be distributed to the Aggrieved Employees ("Aggrieved Employee Payment").
- Calculation of Individual Settlement Payments. After all the above payments of the court-approved Class Counsel Award, the Class Representative Service Award, the PAGA Payment, and the Settlement Administration Expenses are deducted from the Gross Settlement Amount, the remaining portion, called the "Net Settlement Amount," shall be distributed to class members who do **not** request exclusion ("Settlement Class Members"). The Individual Settlement Payment for each Settlement Class Member will be calculated by dividing the Net Settlement Amount by the total number of workweeks for all Settlement Class Members that occurred during the Class Period and multiplying the result by each individual Settlement Class Member's workweeks that occurred during the Class Period. A "workweek" is defined as a normal seven-day week of work during the Class Period in which, according to Defendant's records, a member of the class worked at least one day during any such workweek.
- Calculation of Aggrieved Employee Payments to Aggrieved Employees. The Aggrieved Employee Payment portion of the PAGA Payment shall be distributed to Aggrieved Employees irrespective of whether they exclude themselves or opt-out. The Aggrieved Employee Payment will be divided by the total number of pay periods worked by all Aggrieved Employees during the PAGA Period, and then taking that number and multiplying it by the number of pay periods worked by each respective Aggrieved Employee during the PAGA Period. "Aggrieved Employees" means all persons who are or previously were employed by Defendant in California during the PAGA Period. The PAGA Period means the period between April 18, 2021, through the date of Preliminary Approval or April 21, 2024, whichever is earlier.

If the Settlement is approved by the Court, you will automatically be mailed a check for your Individual Settlement Payment to the same address as this Class Notice. You do not have to do anything to receive a payment. If your address has changed, you must contact the Settlement Administrator to inform them of your correct address to ensure you receive your payment.

You may find the Settlement Agreement entitled "Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims" filed on **MONTH XX**, 2024, with the Riverside County Superior Court, Dept. 1, located at 4050 Main Street, Riverside, CA 92501. You may also find the Settlement Agreement online by visiting the Riverside County Superior Court website <https://www.riverside.courts.ca.gov/>. The Settlement Agreement can be found at Exhibit 1 of the Lapuyade Declaration filed on **MONTH XX**, 2024.

Tax Matters. Fifty percent (20%) of each Individual Settlement Payment is allocated to wages. Taxes are withheld from this amount, and each Settlement Class Member will be issued an Internal Revenue Service Form W-2 for such payment. Fifty percent (80%) of each Individual Settlement Payment is allocated to interest, penalties and other non-wage payments, and no taxes will be withheld from this portion, and each Settlement Class Member will be issued an Internal Revenue Service Form 1099 for such payment. In addition, no taxes will be withheld from Aggrieved Employee Payments paid to Aggrieved Employees, and each Aggrieved Employee will be issued an Internal Revenue Service Form 1099 for such payment. Neither Class Counsel nor Defendant's counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability. You may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order granting final approval of the Settlement and entering judgment.

4. What Do I Release Under the Settlement?

Released Claims. Upon entry of final judgment and funding in full of the Gross Settlement Amount by Defendant, Plaintiff and the Settlement Class Members shall release all Released Class Claims that occurred during the Class Period as to the Released Parties. Released Class Claims means the wage claims that accrued during the Class Period, as follows: any and all claims under California law, based on or arising out of the same factual predicates of the Action, the Complaint, and/or the allegations in the Complaint, including (a) all claims that were or could have been raised in the Actions; and (b) all claims that are based on or relate to the purported payment or nonpayment of compensation, including, but not limited to, wages, overtime wage, and/or premium pay), meal or rest period premiums or penalties, improper wage statements, unfair business practices. The Released PAGA Claims shall be released as follows: Upon entry of final judgment and upon funding in full of the Gross Settlement Amount by Defendant, all Aggrieved Employees shall release all Released PAGA Claims, irrespective of whether they opted-out of the Class Settlement and will be bound by this PAGA Release (the "PAGA Release"). "Released PAGA Claims" means all claims, demands, rights, liabilities and causes of action under the PAGA, premised on the facts, claims, causes of action or legal theories pled in the Operative Complaint in the Action (or Plaintiff's letter to the LWDA dated April 18, 2022), or which could have been alleged based on the factual allegations therein, that arose during the PAGA Period.

This means that, if you do not timely and formally exclude yourself from the Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant about the legal issues resolved by this Settlement. It also means that all of the Court's orders in this Action will apply to you and legally bind you.

5. How much will my payment be?

Defendant's records reflect that you have << ____ >> Workweeks worked during the Class Period (June 23, 2018, through MONTH XX, 2024).

Based on this information, your estimated Individual Settlement Payment is << ____ >>.

Defendant's records reflect that you have << ____ >> pay periods worked during the PAGA Period (April 18, 2021, to MONTH XX, 2024).

Based on this information, your estimated Aggrieved Employee Payment is << ____ >>.

If you wish to challenge the information set forth above, then you must submit a written, signed dispute challenging the information along with supporting documents, to the Settlement Administrator at the address provided in this Notice no later than _____ [forty-five (45) days after the Notice or re-mailed Notice].

6. How can I get a payment?

To get money from the Settlement, you do not have to do anything. A check for your settlement payment will be mailed automatically to the same address as this Notice. If your address is incorrect or has changed, you must notify the Settlement Administrator. The Settlement Administrator is: Apex Class Action LLC at 1-800-355-0700.

The Court will hold a hearing on _____ to decide whether to finally approve the Settlement. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed within a few months after this hearing. If there are objections or appeals, resolving them can take time, perhaps more than a year. Please be patient. After entry of the Judgment, the Settlement Administrator will provide notice of the final judgment to the Class Members by posting a copy of the Judgment on the administrator's website at <https://apexclassaction.com/>.

7. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or "opt out." **If you opt out, you will receive NO money from the Settlement, and you will not be bound by its terms, except as provided as follows.** Irrespective of whether you exclude yourself from the Settlement or "opt out," you will be bound by the Released PAGA Claims, you will be deemed to have released the Released PAGA Claims, and you will receive a share of the Aggrieved Employee Payment.

To opt out, you must submit to the Settlement Administrator, by First Class Mail, a written, signed and dated request for exclusion postmarked no later than _____. The address for the Settlement Administrator is 18 Technology Drive, Suite 164, Irvine, CA 92618. The request for exclusion must state in substance: "I wish to opt out of the settlement of the class action lawsuit entitled **JOSEPH CHRISTOPHER KIRKHAM v. PALM DESERT GREENS ASSOCIATION, Riverside County Superior Court, Case No. CVRI2202569**. I understand that by requesting to be excluded from the Settlement, I will receive no money from the Settlement described in this Notice." The request for exclusion must contain your name, address, signature and the last four digits of your Social Security Number for verification purposes. The request for exclusion must be signed by you. No other person may opt out for a member of the Class.

Written requests for exclusion that are postmarked after _____, or are incomplete or unsigned will be rejected, and those Class Members will remain bound by the Settlement and the release described above.

8. How do I tell the Court that I would like to challenge the Settlement?

Any Class Member who has not opted out and believes that the Settlement should not be finally approved by the Court for any reason, may object to the proposed Settlement. Objections may be in writing and state the Class Member's name, current address, telephone number, and describe why you believe the Settlement is unfair. All written objections or other correspondence must also state the name and number of the case, which is **JOSEPH CHRISTOPHER KIRKHAM v. PALM DESERT GREENS ASSOCIATION, Riverside County Superior Court, Case No. CVRI2202569**. You may also object without submitting a written objection by appearing at the final approval hearing scheduled as described in Section 9 below.

To object to the Settlement, you cannot opt out. If the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class Members who do not object. Any Class Member who does not object in the manner provided in this Class Notice shall have waived any objection to the Settlement, whether by appeal or otherwise.

Written objections must be delivered or mailed to the Settlement Administrator no later than _____. The address for the Settlement Administrator is Apex Class Action LLC, 18 Technology Drive, Suite 164, Irvine, CA 92618.

The addresses for the Parties' counsel are as follows:

Class Counsel:

Jean-Claude Lapuyade, Esq.
JCL Law Firm, APC
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Tel.: (619) 599-8292
Fax: (619) 599-2891
Email: jlapuyade@jcl-lawfirm.com

Class Counsel:

Shani O. Zakay, Esq.
Zakay Law Group, APLC
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Tel: (619) 599-8292
Fax: (619) 599-8291
Email: shani@zakaylaw.com

Counsel for Defendant:

David Mulé, Esq.
Jana FitzGerald, Esq.
Fitzgerald & Mulé LLP
74770 Hwy. 111, Suite 205
Indian Wells, CA 92211
Tel: (760) 325-5055
Email: jfitzgerald@fitzgeraldmulelaw.com

9. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at **00:00 AM/PM on** _____, at the Riverside County Superior Court, Dept. 1, located at 4050 Main Street, Riverside, CA 92501 before Judge Harold Hopp. The Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, reasonable, and adequate. At the Final Approval Hearing, the Court will determine whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement. If there are objections, the Court will consider them. The Court will listen to people who have made a timely written request to speak at the hearing or who appear at the hearing to object. This hearing may be rescheduled by the Court without further notice to you. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

10. How do I get more information about the Settlement?

You may call the Settlement Administrator at 1-800-355-0700 or write to **JOSEPH CHRISTOPHER KIRKHAM v. PALM DESERT GREENS ASSOCIATION, Riverside County Superior Court, Case No. CVRI2202569**, Settlement Administrator, c/o _____.

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You may receive a copy of the Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims ("Settlement Agreement") filed on **MONTH XX**, 2024, the Final Judgment or other Settlement documents by writing to JCL Law Firm, APC, 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121.

PLEASE DO NOT CONTACT THE COURT, THE CLERK OF THE COURT, THE JUDGE; OR DEFENDANT FOR INFORMATION ABOUT THE PROPOSED SETTLEMENT OR THIS LAWSUIT.

IMPORTANT:

- You must inform the Settlement Administrator of any change of address to ensure receipt of your Individual Settlement Payment.
- Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall pay all funds from such uncashed checks will be redistributed to those Class Members who did cash their Settlement checks. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

EXHIBIT B

Superior Court of California, County of Riverside
Joseph Christopher Kirkham v. Palm Desert Greens Association
Riverside County Superior Court Case No. CVRI2202569

REQUEST FOR EXCLUSION

Instructions: Please complete this Form ONLY IF YOU **DO NOT** WANT TO PARTICIPATE IN THE SETTLEMENT that is described in the Notice Pendency of Class Action Settlement and Final Hearing Date that accompanies this Form. If you choose to complete this Form, the deadline for mailing it to the Settlement Administrator is **【** INSERT DATE**】**.

I. PERSONAL INFORMATION

Name (first, middle and last): _____
Home Street Address: _____
City, State, Zip Code: _____
Telephone Number: (____) _____

II. REQUEST FOR EXCLUSION

By signing and returning this Form, I certify that I wish to opt out of the settlement of the class action lawsuit entitled *JOSEPH CHRISTOPHER KIRKHAM v. PALM DESERT GREENS ASSOCIATION*, Case No. CVRI2202569, filed in the Superior Court of California, County of Riverside. I understand that by requesting to be excluded from the Settlement, I will receive no money from the Settlement described in the Notice Pendency of Class Action Settlement and Final Hearing Date that accompanies this Form.

Any Class Member that submits a timely Request for Exclusion who is also an Aggrieved Employee will still receive his/her pro rata share of the PAGA Payment. Exclusion from the Class Action Settlement does not result in exclusion from the PAGA Payment.

III. MAILING INSTRUCTIONS

If you choose to return this Form, you must return it to the Settlement Administrator postmarked on or before **【**INSERT DATE**】** AT THE ADDRESS LISTED BELOW:

Apex Class Action LLC
18 Technology Drive, Suite 164
Irvine, CA 92618

IV. PLEASE SIGN BELOW

I declare that the foregoing is true and correct.

Dated: _____

(Signature)

(Print Name)

EXHIBIT C

Apex Class Action LLC
18 Technology Drive, Suite 164
Irvine, CA 92618

Must Be Postmarked
No Later Than
XXX, 2024

OBJECTION FORM

SUPERIOR COURT OF THE STATE OF CALIFORNIA – COUNTY OF RIVERSIDE
JOSEPH CHRISTOPHER KIRKHAM v. PALM DESERT GREENS ASSOCIATION, Case No.
CVRI2202569

<<Name>>
<<Address>>
<<City>>, <<State>> <<Zip Code>>

Indicate Name/Address Changes, if any:

YOU DO NOT NEED TO COMPLETE THIS FORM TO PARTICIPATE IN THE SETTLEMENT. THIS FORM IS TO BE USED ONLY IF YOU WANT TO PARTICIPATE IN THE SETTLEMENT, BUT YOU OBJECT TO THE TERMS OF THE SETTLEMENT. IF YOU OBJECT TO THE SETTLEMENT, YOU MUST SIGN AND COMPLETE THIS FORM ACCURATELY AND IN ITS ENTIRETY AND YOU MUST MAIL IT BY FIRST CLASS U.S. MAIL TO THE SETTLEMENT ADMINISTRATOR SO THAT IT IS POSTMARKED ON OR BEFORE XXX, 2024. THE ADDRESS FOR THE SETTLEMENT ADMINISTRATOR IS NOTED AT THE TOP OF THIS FORM. IF YOU DO NOT OBJECT TO THE SETTLEMENT, DO NOT SUBMIT THIS FORM.

The Court will consider your objection at the Final Approval Hearing if you submit a timely and valid written statement of objection. All of the information on this form is required. If you do not provide all of the information below, your objection will be deemed null and void.

I, _____, (name of Class Member) hereby object to the Settlement in this case for the following reasons:

Dated: _____

Signature: _____

Print or Type Name: _____

Telephone Number: _____

EXHIBIT 3

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Sydney Castillo Johnson (State Bar #343881)
Perssia Razma (State Bar #351398)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619)599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
scastillo@jcl-lawfirm.com
prazma@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619)255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com

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;

Defendants.

Case No. CVRI2202569

**~~PROPOSED~~ ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND PAGA ACTION SETTLEMENT**

Date: April 3, 2024

Time: 8:30 a.m.

Judge: Hon. Harold W. Hopp

Dept.: 1

Reservation #: 260735365086

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 04 2024

E. Escobedo

LAT

APR 05 2024

1 This matter having come before the Honorable Judge Harold W. Hopp of the Superior Court of
2 the State of California, in and for the County of Riverside, at 8:30 a.m. on April 3, 2024, with Jean-
3 Claude Lapuyade, Esq., of the JCL Law Firm, APC and Shani O. Zakay, Esq. of the Zakay Law Group,
4 APLC as counsel for plaintiff JOSEPH KIRKHAM ("Plaintiff"), and David B. Mulé, Esq. and Jana
5 Fitzgerald, Esq. of Fitzgerald & Mulé appearing for Defendant PALM DESERT GREENS
6 ASSOCIATION ("Defendant"). The Court, having carefully considered the briefs, argument of counsel
7 and all the matters presented to the Court, and good cause appearing, hereby GRANTS Plaintiff's
8 Motion for Preliminary Approval of Class and PAGA Action Settlement.

9 **IT IS HEREBY ORDERED:**

10 1. The Court preliminarily approves the Stipulation of Settlement of Class and PAGA
11 Action Claims and Release of Claims ("Settlement Agreement" or "Agreement"). This is based on the
12 Court's determination that the Settlement Agreement is within the range of possible final approval,
13 pursuant to the provisions of Section 382 of the California Code of Civil Procedure and California
14 Rules of Court, rule 3.769.

15 2. This Order incorporates by reference the definitions in the Agreement, and all terms
16 defined therein shall have the same meaning in this Order as set forth in the Agreement.

17 3. Subject to the terms of the Settlement Agreement, the Gross Settlement Amount that
18 Defendants shall pay is Three Hundred Fifty Thousand Dollars and Zero Cents (\$350,000.00). It
19 appears to the Court on a preliminary basis that the settlement amount and terms are fair, adequate, and
20 reasonable as to all Class Members when balanced against the probable outcome of further litigation
21 relating to certification, liability, and damages issues. It further appears that investigation and research
22 have been conducted such that counsel for the Parties are able to reasonably evaluate their respective
23 positions. It further appears to the Court that settlement at this time will avoid substantial additional
24 costs by all Parties, as well as avoid the delay and risks that would be presented by the further
25 prosecution of the litigation. It further appears that the Settlement has been reached as the result of
26 intensive, serious, and non-collusive arms-length negotiations.

27 4. The Court preliminarily finds that the Settlement appears to be within the range of
28

reasonableness of a settlement that could ultimately be given final approval by this Court. The Court has reviewed the monetary recovery that is being granted as part of the Settlement and preliminarily finds that the monetary settlement awards made available to the Class Members are fair, adequate, and reasonable when balanced against the probable outcome of further litigation relating to certification, liability, and damages issues.

5. Plaintiff seeks a Class Counsel Award in the amount of up-to one-third of the Gross Settlement Amount for attorneys' fees, currently estimated One Hundred Sixteen Thousand Six Hundred Sixty Six Dollars and Sixty Seven Cents (\$116,666.67), an award of litigation expenses incurred not to exceed Fifteen Thousand Dollars (\$15,000), and proposed Class Representative Service Award to the Class Representative, Joseph Kirkham, in the amount of Ten Thousand Dollars (\$10,000). While these awards appear to be within the range of reasonableness, the Court will not approve the Class Counsel Award or Class Representative Service Award until the Final Approval Hearing.

6. The Court recognizes that Plaintiff and Defendant stipulate and agree to certification of a class for settlement purposes only. This stipulation will not be deemed admissible in this or any other proceeding should this Settlement not become final. For settlement purposes only, the Court conditionally certifies the following Class:

“All persons who are or previously were employed by Defendant Palm Desert Greens Association as a non-exempt employee in California between June 23, 2018 through the date of Preliminary Approval or April 21, 2024, whichever is earlier.”

7. The Court concludes that, for settlement purposes only, the Class meets the requirements for certification under section 382 of the California Code of Civil Procedure in that: (a) the Class is ascertainable and so numerous that joinder of all members of the Class Members is impracticable; (b) common questions of law and fact predominate, and there is a well-defined community of interest amongst the Class Members with respect to the subject matter of the litigation; (c) the claims of the Class Representative are typical of the claims of the Class Members; (d) the Class Representative will fairly and adequately protect the interests of the Class Members; (e) a class action is superior to other

1 available methods for the efficient adjudication of this controversy; and (f) Class Counsel are qualified
2 to act as counsel for the Class Representative in his individual capacity and as the representative of the
3 Class Members.

4 8. The Court provisionally appoints plaintiff Joseph Kirkham as the representative of the
5 Class.

6 9. The Court provisionally appoints Jean-Claude Lapuyade, Esq., of the JCL Law Firm,
7 A.P.C., and Shani O. Zakay, of the Zakay Law Group, APLC, as Class Counsel for the Class Members.

8 10. The Court hereby approves, as to form and content, the Proposed Notice of Pendency of
9 Class Action Settlement and Final Hearing Date ("Class Notice"), a true and correct copy of which is
10 attached hereto as **Exhibit "1."** The Court finds that the notice appears to fully and accurately inform
11 the Class Members and Aggrieved Employees of all material elements of the proposed Settlement,
12 including right of any Class Member to be excluded from the Class by completing the attached Request
13 for Exclusion Form, and of each Class Member's right and opportunity to object to the Settlement via
14 the attached Objection Form. The Court further finds that the distribution of the notice substantially in
15 the manner and form set forth in the Agreement and this Order meets the requirements of due process,
16 is the most reasonable notice under the circumstances, and shall constitute due and sufficient notice to
17 all persons entitled thereto. The Court orders the mailing of the notice by first class mail, pursuant to
18 the terms set forth in the Agreement.

19 11. The Court hereby appoints Apex Class Action LLC as Settlement Administrator. No later
20 than ten (10) business days after the entry of this order, Defendant shall provide, to the Settlement
21 Administrator the Class Data, including information regarding Class Members that Defendant will in
22 good faith compile from its records, including each Class Member's full name; last known address;
23 Social Security Number; and start dates and end dates of employment. No later than fourteen (14)
24 calendar days after receiving the Class Data from Defendant, the Settlement Administrator shall mail
25 the Class Notice to all identified, potential Class Members via regular first class U.S. Mail and
26 electronic mail using the most current mailing address information available. The Settlement
27 Administrator shall also be required to perform all duties set forth in the Agreement.

12. The Court hereby preliminarily approves the proposed procedure for exclusion from the Settlement. A true and correct copy of the proposed exclusion form is attached hereto as **Exhibit "2."** Any Class Member may individually choose to opt out of and be excluded from the Settlement as provided in the Notice by following the instructions for requesting exclusion from the Settlement of the Released Claims that are set forth in the Notice and submitting the exclusion form to the Settlement Administrator. All requests for exclusion must be postmarked or received by the Response Deadline which is forty-five (45) calendar days after the date the Class Notice is mailed to the Class Members or, in the case of a re-mailed Notice, not more than fifteen (15) calendar days after the original Response Deadline. Any such person who chooses to opt out of and be excluded from the Settlement will not be entitled to an Individual Settlement Payment under the Settlement and will not be bound by the Settlement, or have any right to object, appeal or comment thereon. Class Members who have not requested exclusion shall be bound by all determinations of the Court, the Agreement and Judgment. A request for exclusion may only opt out that particular individual, and any attempt to affect an optout of a group, class, or subclass of individuals is not permitted and will be deemed invalid. The Settlement Administrator shall file a declaration concurrently with the filing of the Motion for Final Approval, authenticating a copy of every exclusion form received by the administrator.

13. Any Class Member may appear at the final approval hearing, regardless of whether they have submitted a timely written objection and notice of intention to appear. Class Members may express their views regarding the Settlement and may present evidence and file briefs or other papers that may be proper and relevant to the issues to be heard and determined by the Court as provided in the Notice. Class Members will have forty-five (45) days from the date the Settlement Administrator mails the Class Notice to postmark their objections to the Settlement Administrator. A true and correct copy of the proposed objection form is attached hereto as **Exhibit "3."** The Settlement Administrator shall file a declaration concurrently with the filing of the Motion for Final Approval authenticating a copy of every objection form received by the Settlement Administrator.

14. A final approval hearing shall be held before this Court on 08/06/24 at 9:30
AM/PM in Department 1 of the Riverside County Superior Court to determine all necessary matters

1 concerning the Settlement, including: whether the proposed settlement of the Action on the terms and
2 conditions provided for in the Agreement is fair, adequate and reasonable and should be finally
3 approved by the Court; whether an Order Granting Final Approval should be entered herein; whether
4 the plan of allocation contained in the Agreement should be approved as fair, adequate and reasonable
5 to the Class; and to finally approve the Class Counsel Award, Class Representative Service Award, and
6 the Claims Administration Expenses. All papers in support of the motion for final approval and the
7 motion for Class Counsel Award and Class Representative Service Award shall be filed with the Court
8 and served on all counsel no later than sixteen (16) court days before the hearing. The Settlement
9 Administrator must give notice to any objecting party of any continuance of the hearing of the Motion
10 for Final Approval.

11 15. Neither the Settlement nor any exhibit, document, or instrument delivered thereunder
12 shall be construed as a concession or admission by Defendants in any way, and shall not be used as
13 evidence of, or used against Defendants as, an admission or indication in any way, including with
14 respect to any claim of any liability, wrongdoing, fault or omission by Defendants or with respect to
15 the truth of any allegation asserted by any person. Whether or not the Settlement is finally approved,
16 neither the Settlement, nor any exhibit, document, statement, proceeding or conduct related to the
17 Settlement, nor any reports or accounts thereof, shall in any event be construed as, offered or admitted
18 in evidence as, received as or deemed to be evidence for any purpose adverse to the Defendants,
19 including, but not limited to, evidence of a presumption, concession, indication or admission by
20 Defendants of any liability, fault, wrongdoing, omission, concession or damage.

21 16. In the event the Settlement does not become effective in accordance with the terms of the
22 Agreement, or the Settlement is not finally approved, or is terminated, canceled, or fails to become
23 effective for any reason, this Order shall be rendered null and void and shall be vacated, and the Parties
24 shall revert to their respective positions as of before entering into the Agreement. In such an event, the
25 Court's orders regarding the Settlement, including this Preliminary Approval Order, shall not be used
26 or referred to in litigation for any purpose. Nothing in this paragraph is intended to alter the terms of
27 the Settlement Agreement with respect to the effect of the Settlement Agreement if it is not approved.

1 17. The Court reserves the right to adjourn or continue the date of the final approval hearing
2 and all dates provided for in the Agreement without further notice to Class Members and retains
3 jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

4
5
6 Dated: 4/3/24

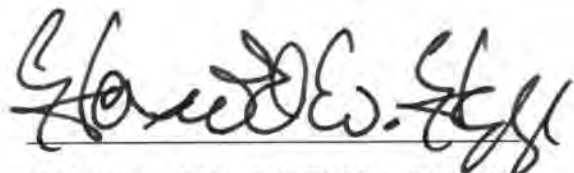

JUDGE OF THE SUPERIOR COURT

EXHIBIT 1

NOTICE OF SETTLEMENT
AND FINAL HEARING DATE

**(JOSEPH CHRISTOPHER KIRKHAM v. PALM DESERT GREENS ASSOCIATION, Riverside County
Superior Court Case No. CVR12202569)**

PLEASE READ THIS NOTICE CAREFULLY.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	To receive a cash payment from the Settlement, you do not have to do anything. Your estimated Individual Settlement Payment is: \$<< ____ >>. Your estimated Aggrieved Employee Payment is << ____ >>. See the explanation below. After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, please notify the Settlement Administrator as explained below. In exchange for the settlement payment, you will release claims against the Defendant as detailed below.
Exclude Yourself	If you wish to exclude yourself from the Settlement, you must send a written request for exclusion to the Settlement Administrator as provided below. If you request exclusion, you will receive no money from the Settlement. Instructions are set forth below.
Object	You may write to the Court about why you believe the Settlement should not be approved. Directions are provided below.

1. Why did I get this Notice?

A proposed class action settlement (the "Settlement") of this lawsuit pending in the Superior Court for the State of California, County of Riverside (the "Court") has been reached between Plaintiff JOSEPH CHRISTOPHER KIRKHAM ("Plaintiff") and Defendant PALM DESERT GREENS ASSOCIATION, a California corporation ("Defendant"). The Court has granted preliminary approval of the Settlement. **You may be entitled to receive money from this Settlement.**

You have received this Class Notice because you have been identified as a member of the Class, which is defined as:

All persons who are or previously were employed by Defendant as a non-exempt employee in California during the period between June 23, 2018, through the date of Preliminary Approval or April 21, 2024, whichever is earlier ("Class Period").

This Class Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Notice carefully as your rights may be affected by the Settlement.

2. What is this class action lawsuit about?

On June 23, 2022, Plaintiff filed a Complaint against Defendant in the Superior Court of the State of California, County of Riverside (the “Action”). Plaintiff asserted the following claims alleging that Defendant: (1) Unfair Competition in Violation of Bus. and Prof. Code sections 17200 *et seq.*; (2) Failure to pay minimum wages in violation of California Labor Code sections 1194, 1197 and 1197.1; (3) Failure to pay overtime wages in violation of California Labor Code sections 510 *et seq.*; (4) Failure to provide required meal periods in violation of California Labor Code sections 226.7 and 512 and the applicable IWC wage order; (5) Failure to provide required rest periods in violation of California Labor Code sections 226.7 and 512 and the applicable IWC wage order; (6) Failure to provide accurate itemized wage statements in violation of California Labor Code section 226; (7) Failure to provide wages when due in violation of California Labor Code sections 201, 202 and 203; (8) Failure to reimburse Plaintiff for required expenses in violation of California Labor Code section 2802; and (9) Violation of the Private Attorneys General Act in violation of California Labor Code sections 2698, *et seq.* (“PAGA”). PAGA is a mechanism by which the State of California itself can enforce state labor laws through the employee suing under the PAGA who does so as the proxy or agent of the state’s labor law enforcement agency. The purpose of the PAGA is not to recover damages or restitution, but to create a means of “deputizing” citizens as private attorney general to enforce the Labor Code.

Defendant contends that it has strong legal and factual defenses to these claims, but it recognizes the risks, distractions, and costs associated with litigation. Defendant contends that the wage and hour policies and practices at issue, including those regarding payment for time worked, overtime pay, meal breaks, and rest breaks are lawful and have been lawful throughout the relevant time periods. Defendant also contends that Plaintiff’s claims do not meet the requirements for class certification.

This Settlement is the result of good faith, arm’s length negotiations between Plaintiff and Defendant, through their respective attorneys. Both sides agree that in light of the risks and expenses associated with continued litigation, this Settlement is fair and appropriate under the circumstances, and in the best interests of the Settlement Class Members. This Settlement is a compromise and is not an admission of liability on the part of Defendant.

The Court has not ruled on the merits of Plaintiff’s claims or Defendant’s defenses.

The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved the Plaintiff to serve as the Class Representative, and the law firms of JCL Law Firm, APC and Zakay Law Group, APLC to serve as Class Counsel.

3. What are the terms of the Settlement?

Gross Settlement Amount. Defendant has agreed to pay an “all in” amount of Three Hundred Fifty Thousand Dollars and Zero Cents (\$350,000.00) (the “Gross Settlement Amount”) to fund the Settlement. The Gross Settlement Amount includes the payment of all Individual Settlement Payments to Settlement Class Members, Class Counsel Award, Settlement Administration Expenses, PAGA Payment, and the Class Representative Service Award to the Plaintiff.

After the Judgment becomes Final, Defendant will pay the Gross Settlement Amount by depositing the money with the Settlement Administrator. “Final” means the date the Judgment is no longer subject to appeal, or if an appeal is filed, the date the appeal process is completed, and the Judgment is affirmed.

Amounts to be Paid from the Gross Settlement Amount. The Settlement provides for certain payments to be made from the Gross Settlement Amount, which will be subject to final Court approval, and which will be deducted from the Gross Settlement Amount before settlement payments are made to Class Members, as follows:

- Settlement Administration Expenses. Payment to the Settlement Administrator, estimated not to exceed \$7,800.00 for expenses, including expenses of sending this Notice, processing opt-outs, and distributing settlement payments.
- Class Counsel Award. Payment to Class Counsel attorneys' not to exceed one-third of the Gross Settlement Amount (currently \$116,666.66) plus costs and expenses not to exceed \$15,000 for all costs and expenses incurred as documented in Class Counsel's billing records, both subject to Court approval. Class Counsel have been prosecuting the Action on behalf of Plaintiff and the Class on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses.
- Class Representative Service Award. Class Representative Service Award of up to Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff, or such lesser amount as may be approved by the Court, to compensate him for services on behalf of the Class in initiating and prosecuting the Action, and for the risks he undertook.
- PAGA Payment. A payment of Ten Thousand Dollars and Zero Cents (\$10,000.00) relating to Plaintiff's claim under the Private Attorneys General Act ("PAGA"), \$7,500 of which will be paid to the State of California's Labor and Workforce Development Agency ("LWDA Payment") and the remaining \$2,500 will be distributed to the Aggrieved Employees ("Aggrieved Employee Payment").
- Calculation of Individual Settlement Payments. After all the above payments of the court-approved Class Counsel Award, the Class Representative Service Award, the PAGA Payment, and the Settlement Administration Expenses are deducted from the Gross Settlement Amount, the remaining portion, called the "Net Settlement Amount," shall be distributed to class members who do **not** request exclusion ("Settlement Class Members"). The Individual Settlement Payment for each Settlement Class Member will be calculated by dividing the Net Settlement Amount by the total number of workweeks for all Settlement Class Members that occurred during the Class Period and multiplying the result by each individual Settlement Class Member's workweeks that occurred during the Class Period. A "workweek" is defined as a normal seven-day week of work during the Class Period in which, according to Defendant's records, a member of the class worked at least one day during any such workweek.
- Calculation of Aggrieved Employee Payments to Aggrieved Employees. The Aggrieved Employee Payment portion of the PAGA Payment shall be distributed to Aggrieved Employees irrespective of whether they exclude themselves or opt-out. The Aggrieved Employee Payment will be divided by the total number of pay periods worked by all Aggrieved Employees during the PAGA Period, and then taking that number and multiplying it by the number of pay periods worked by each respective Aggrieved Employee during the PAGA Period. "Aggrieved Employees" means all persons who are or previously were employed by Defendant in California during the PAGA Period. The PAGA Period means the period between April 18, 2021, through the date of Preliminary Approval or April 21, 2024, whichever is earlier.

If the Settlement is approved by the Court, you will automatically be mailed a check for your Individual Settlement Payment to the same address as this Class Notice. You do not have to do anything to receive a payment. If your address has changed, you must contact the Settlement Administrator to inform them of your correct address to ensure you receive your payment.

You may find the Settlement Agreement entitled "Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims" filed on MONTH XX, 2024, with the Riverside County Superior Court, Dept. 1, located at 4050 Main Street, Riverside, CA 92501. You may also find the Settlement Agreement online by visiting the Riverside County Superior Court website <https://www.riverside.courts.ca.gov/>. The Settlement Agreement can be found at Exhibit 1 of the Lapuyade Declaration filed on MONTH XX, 2024.

Tax Matters. Fifty percent (20%) of each Individual Settlement Payment is allocated to wages. Taxes are withheld from this amount, and each Settlement Class Member will be issued an Internal Revenue Service Form W-2 for such payment. Fifty percent (80%) of each Individual Settlement Payment is allocated to interest, penalties and other non-wage payments, and no taxes will be withheld from this portion, and each Settlement Class Member will be issued an Internal Revenue Service Form 1099 for such payment. In addition, no taxes will be withheld from Aggrieved Employee Payments paid to Aggrieved Employees, and each Aggrieved Employee will be issued an Internal Revenue Service Form 1099 for such payment. Neither Class Counsel nor Defendant's counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability. You may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order granting final approval of the Settlement and entering judgment.

4. What Do I Release Under the Settlement?

Released Claims. Upon entry of final judgment and funding in full of the Gross Settlement Amount by Defendant, Plaintiff and the Settlement Class Members shall release all Released Class Claims that occurred during the Class Period as to the Released Parties. Released Class Claims means the wage claims that accrued during the Class Period, as follows: any and all claims under California law, based on or arising out of the same factual predicates of the Action, the Complaint, and/or the allegations in the Complaint, including (a) all claims that were or could have been raised in the Actions; and (b) all claims that are based on or relate to the purported payment or nonpayment of compensation, including, but not limited to, wages, overtime wage, and/or premium pay), meal or rest period premiums or penalties, improper wage statements, unfair business practices. The Released PAGA Claims shall be released as follows: Upon entry of final judgment and upon funding in full of the Gross Settlement Amount by Defendant, all Aggrieved Employees shall release all Released PAGA Claims, irrespective of whether they opted-out of the Class Settlement and will be bound by this PAGA Release (the "PAGA Release"). "Released PAGA Claims" means all claims, demands, rights, liabilities and causes of action under the PAGA, premised on the facts, claims, causes of action or legal theories pled in the Operative Complaint in the Action (or Plaintiff's letter to the LWDA dated April 18, 2022), or which could have been alleged based on the factual allegations therein, that arose during the PAGA Period.

This means that, if you do not timely and formally exclude yourself from the Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant about the legal issues resolved by this Settlement. It also means that all of the Court's orders in this Action will apply to you and legally bind you.

5. How much will my payment be?

Defendant's records reflect that you have << _____ >> Workweeks worked during the Class Period (June 23, 2018, through MONTH XX, 2024).

Based on this information, your estimated Individual Settlement Payment is << _____ >>.

Defendant's records reflect that you have << _____ >> pay periods worked during the PAGA Period (April 18, 2021, to MONTH XX, 2024).

Based on this information, your estimated Aggrieved Employee Payment is << _____ >>.

If you wish to challenge the information set forth above, then you must submit a written, signed dispute challenging the information along with supporting documents, to the Settlement Administrator at the address provided in this Notice no later than _____ [forty-five (45) days after the Notice or re-mailed Notice].

6. How can I get a payment?

To get money from the Settlement, you do not have to do anything. A check for your settlement payment will be mailed automatically to the same address as this Notice. If your address is incorrect or has changed, you must notify the Settlement Administrator. The Settlement Administrator is: Apex Class Action LLC at 1-800-355-0700.

The Court will hold a hearing on _____ to decide whether to finally approve the Settlement. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed within a few months after this hearing. If there are objections or appeals, resolving them can take time, perhaps more than a year. Please be patient. After entry of the Judgment, the Settlement Administrator will provide notice of the final judgment to the Class Members by posting a copy of the Judgment on the administrator's website at <https://apexclassaction.com/>.

7. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or "opt out." **If you opt out, you will receive NO money from the Settlement, and you will not be bound by its terms, except as provided as follows.** Irrespective of whether you exclude yourself from the Settlement or "opt out," you will be bound by the Released PAGA Claims, you will be deemed to have released the Released PAGA Claims, and you will receive a share of the Aggrieved Employee Payment.

To opt out, you must submit to the Settlement Administrator, by First Class Mail, a written, signed and dated request for exclusion postmarked no later than _____. The address for the Settlement Administrator is 18 Technology Drive, Suite 164, Irvine, CA 92618. The request for exclusion must state in substance: "I wish to opt out of the settlement of the class action lawsuit entitled **JOSEPH CHRISTOPHER KIRKHAM v. PALM DESERT GREENS ASSOCIATION, Riverside County Superior Court, Case No. CVRI2202569**. I understand that by requesting to be excluded from the Settlement, I will receive no money from the Settlement described in this Notice." The request for exclusion must contain your name, address, signature and the last four digits of your Social Security Number for verification purposes. The request for exclusion must be signed by you. No other person may opt out for a member of the Class.

Written requests for exclusion that are postmarked after _____, or are incomplete or unsigned will be rejected, and those Class Members will remain bound by the Settlement and the release described above.

8. How do I tell the Court that I would like to challenge the Settlement?

Any Class Member who has not opted out and believes that the Settlement should not be finally approved by the Court for any reason, may object to the proposed Settlement. Objections may be in writing and state the Class Member's name, current address, telephone number, and describe why you believe the Settlement is unfair. All written objections or other correspondence must also state the name and number of the case, which is **JOSEPH CHRISTOPHER KIRKHAM v. PALM DESERT GREENS ASSOCIATION, Riverside County Superior Court, Case No. CVRI2202569**. You may also object without submitting a written objection by appearing at the final approval hearing scheduled as described in Section 9 below.

To object to the Settlement, you cannot opt out. If the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class Members who do not object. Any Class Member who does not object in the manner provided in this Class Notice shall have waived any objection to the Settlement, whether by appeal or otherwise.

Written objections must be delivered or mailed to the Settlement Administrator no later than _____. The address for the Settlement Administrator is Apex Class Action LLC, 18 Technology Drive, Suite 164, Irvine, CA 92618.

The addresses for the Parties' counsel are as follows:

Class Counsel:

Jean-Claude Lapuyade, Esq.
JCL Law Firm, APC
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Tel.: (619) 599-8292
Fax: (619) 599-2891
Email: jlapuyade@jcl-lawfirm.com

Class Counsel:

Shani O. Zakay, Esq.
Zakay Law Group, APLC
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Tel: (619) 599-8292
Fax: (619) 599-8291
Email: shani@zakaylaw.com

Counsel for Defendant:

David Mulé, Esq.
Jana FitzGerald, Esq.
Fitzgerald & Mulé LLP
74770 Hwy. 111, Suite 205
Indian Wells, CA 92211
Tel: (760) 325-5055
Email: jfitzgerald@fitzgeraldmulelaw.com

9. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at 00:00 AM/PM on _____, at the Riverside County Superior Court, Dept. 1, located at 4050 Main Street, Riverside, CA 92501 before Judge Harold Hopp. The Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, reasonable, and adequate. At the Final Approval Hearing, the Court will determine whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement. If there are objections, the Court will consider them. The Court will listen to people who have made a timely written request to speak at the hearing or who appear at the hearing to object. This hearing may be rescheduled by the Court without further notice to you. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

10. How do I get more information about the Settlement?

You may call the Settlement Administrator at 1-800-355-0700 or write to **JOSEPH CHRISTOPHER KIRKHAM v. PALM DESERT GREENS ASSOCIATION, Riverside County Superior Court, Case No. CVRI2202569**, Settlement Administrator, c/o _____.

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You may receive a copy of the Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims ("Settlement Agreement") filed on MONTH XX, 2024, the Final Judgment or other Settlement documents by writing to JCL Law Firm, APC, 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121.

PLEASE DO NOT CONTACT THE COURT, THE CLERK OF THE COURT, THE JUDGE; OR DEFENDANT FOR INFORMATION ABOUT THE PROPOSED SETTLEMENT OR THIS LAWSUIT.

IMPORTANT:

- You must inform the Settlement Administrator of any change of address to ensure receipt of your Individual Settlement Payment.
- Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall pay all funds from such uncashed checks will be redistributed to those Class Members who did cash their Settlement checks. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

EXHIBIT 2

Superior Court of California, County of Riverside
Joseph Christopher Kirkham v. Palm Desert Greens Association
Riverside County Superior Court Case No. CVRI2202569

REQUEST FOR EXCLUSION

Instructions: Please complete this Form **ONLY IF YOU DO NOT WANT TO PARTICIPATE IN THE SETTLEMENT** that is described in the Notice Pendency of Class Action Settlement and Final Hearing Date that accompanies this Form. If you choose to complete this Form, the deadline for mailing it to the Settlement Administrator is [**** INSERT DATE****].

I. **PERSONAL INFORMATION**

Name (first, middle and last): _____
Home Street Address: _____
City, State, Zip Code: _____
Telephone Number: (____) _____

II. **REQUEST FOR EXCLUSION**

By signing and returning this Form, I certify that I wish to opt out of the settlement of the class action lawsuit entitled *JOSEPH CHRISTOPHER KIRKHAM v. PALM DESERT GREENS ASSOCIATION*, Case No. CVRI2202569, filed in the Superior Court of California, County of Riverside. I understand that by requesting to be excluded from the Settlement, I will receive no money from the Settlement described in the Notice Pendency of Class Action Settlement and Final Hearing Date that accompanies this Form.

Any Class Member that submits a timely Request for Exclusion who is also an Aggrieved Employee will still receive his/her pro rata share of the PAGA Payment. Exclusion from the Class Action Settlement does not result in exclusion from the PAGA Payment.

III. **MAILING INSTRUCTIONS**

If you choose to return this Form, you must return it to the Settlement Administrator postmarked on or before [****INSERT DATE****] **AT THE ADDRESS LISTED BELOW:**

Apex Class Action LLC
18 Technology Drive, Suite 164
Irvine, CA 92618

IV. **PLEASE SIGN BELOW**

I declare that the foregoing is true and correct.

Dated: _____

(Signature)

(Print Name)

EXHIBIT 3

Apex Class Action LLC
18 Technology Drive, Suite 164
Irvine, CA 92618

Must Be Postmarked
No Later Than
XXX, 2024

OBJECTION FORM

SUPERIOR COURT OF THE STATE OF CALIFORNIA – COUNTY OF RIVERSIDE
JOSEPH CHRISTOPHER KIRKHAM v. PALM DESERT GREENS ASSOCIATION, Case No.
CVRI2202569

<<Name>>

<<Address>>

<<City>>, <<State>> <<Zip Code>>

Indicate Name/Address Changes, if any:

YOU DO NOT NEED TO COMPLETE THIS FORM TO PARTICIPATE IN THE SETTLEMENT. THIS FORM IS TO BE USED ONLY IF YOU WANT TO PARTICIPATE IN THE SETTLEMENT, BUT YOU OBJECT TO THE TERMS OF THE SETTLEMENT. IF YOU OBJECT TO THE SETTLEMENT, YOU MUST SIGN AND COMPLETE THIS FORM ACCURATELY AND IN ITS ENTIRETY AND YOU MUST MAIL IT BY FIRST CLASS U.S. MAIL TO THE SETTLEMENT ADMINISTRATOR SO THAT IT IS POSTMARKED ON OR BEFORE XXX, 2024. THE ADDRESS FOR THE SETTLEMENT ADMINISTRATOR IS NOTED AT THE TOP OF THIS FORM. IF YOU DO NOT OBJECT TO THE SETTLEMENT, DO NOT SUBMIT THIS FORM.

The Court will consider your objection at the Final Approval Hearing if you submit a timely and valid written statement of objection. All of the information on this form is required. If you do not provide all of the information below, your objection will be deemed null and void.

I, _____, (name of Class Member) hereby object to the Settlement in this case for the following reasons:

Dated: _____

Signature: _____

Print or Type Name: _____

Telephone Number: _____

EXHIBIT 4

Jennifer Heming

From: DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
Sent: Friday, March 8, 2024 2:43 PM
To: Madelyn Uchiyama
Subject: Thank you for your Proposed Settlement Submission

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

03/08/2024 02:41:47 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website:

https://nam02.safelinks.protection.outlook.com/?url=http%3A%2F%2Flabor.ca.gov%2FPrivate_Attorneys_General_Act.htm&data=05%7C02%7Cmuchiyama%40jcl-lawfirm.com%7C39823ba14d6a4a56653508dc3fc10f89%7C1f72d94e1dff4b9e9f45bdb37d49a25e%7C0%7C0%7C638455345626103482%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IklhaWwiLCJXVCI6Mn0%3D%7C0%7C%7C%7C&sdata=VTO94UXWQXMJVF5wrzKEPCPEAsagYgQKmZ7FYlzoUiU%3D&reserved=0

EXHIBIT 5