

From: Jolen Medwid

Fax: 12125712000

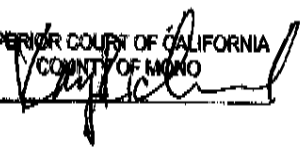
To:

Fax: (760) 924-6419

Page: 116 of 124 02/02/2022 6:18 PM

FILED

MAR 03 2022

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MONO
BY: 

Robert Ottinger (SBN 156825)
robert@ottingerlaw.com
THE OTTINGER FIRM, P.C.
930 Montgomery Street, #502
San Francisco, CA 94133
Telephone: (415) 262-0096
Facsimile: (415) 520-0555

Jennifer Liu (SBN 279370)
jliu@liulawpc.com
THE LIU LAW FIRM, P.C.
800 Menlo Avenue, Suite 102
Menlo Park, CA 94025
MAIN: 650-461-9000
FAX: 650-460-6967

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MONO

SAM STEUART, BRANDT EARHART, and
WILLIAM BERRIER, individually, and on
behalf of all other members of the general public
similarly situated,

Plaintiffs,

vs.

SQUAW VALLEY RESORT, LLC,
MAMMOTH MOUNTAIN SKI AREA, LLC,
AND SNOW SUMMIT, LLC; and DOES 1
THROUGH 100, inclusive,

Defendants.

Case No. 21UCM49

~~PROPOSED~~ ORDER GRANTING
PLAINTIFF'S MOTION FOR ORDER
APPROVING REPRESENTATIVE PAGA
ACTION SETTLEMENT

Date: March 3, 2022

Time: 9:30 a.m.

Location: Mammoth Lakes Courthouse

1 This matter came on regularly for hearing before this Court on March 3, 2022, at 9:30 a.m.
2 Having considered the Parties' Private Attorneys General Act Settlement Agreement and Release
3 ("Settlement"), the documents and evidence presented in support thereof, and recognizing the disputed
4 factual and legal issues involved in this case, the risks of further prosecution, the substantial benefits to
5 be received by the State of California and the Aggrieved Employees pursuant to the Settlement, the fair,
6 reasonable, and adequate nature of the settlement obtained as a result of good faith arm's-length
7 negotiations between the parties, the Court hereby makes a final ruling that the settlement is approved
8 pursuant to Labor Code § 2699(1). Good cause appearing therefor, the Court hereby GRANTS Plaintiffs'
9 Motion for Settlement Approval of Claims Brought under the Private Attorneys General Act, and
10 ORDERS as follows:

11 1. The "Aggrieved Employees" shall be defined as all persons who are or were employed
12 by Defendants in the state of California and classified as non-exempt employees between August 6, 2019
13 through July 1, 2021.

14 2. The "Release Period" means the time period from August 6, 2019 through July 1, 2021.

15 3. The "Effective Date" means two court days after: (a) the Parties are notified of entry of
16 the Court's order granting approval of the Settlement, if no timely motions for reconsideration and no
17 appeals or other efforts to obtain review have been filed; or (b) in the event that an appeal or other effort
18 to obtain reconsideration or review has been initiated, the date sixty-one (61) calendar days after such
19 appeal or other reconsideration or review has been finally concluded in favor of the order granting
20 approval of the Settlement and the order granting approval of the Settlement is no longer subject to
21 review, whether by appeal, petitions for rehearing, petitions for rehearing en banc, petitions for certiorari,
22 or otherwise and funding of the Settlement Payments.

23 4. The Court hereby approves the Settlement as fair, reasonable, and adequate, and directs
24 the parties to effectuate the Settlement according to the terms of the Settlement.

25 5. The Court orders that Defendants Squaw Valley Resort, LLC, Mammoth Mountain Ski
26 Area, LLC, and Snow Summit, LLC ("Defendants"), shall deposit the Gross Settlement Amount of
27 Eight Hundred Fifty Thousand Dollars (\$850,000) with the Settlement Administrator within fifteen
28 (15) business days after the Effective Date and after receiving the Settlement Administrator's wire

1 transfer information, which will be provided to Defendant within five (5) days after the Effective Date.

2 6. The Court hereby approves, as to form and content, the Notice of PAGA Settlement and
3 Release of Claims attached to the Settlement as **Exhibit A**.

4 7. Within ten (10) business days after the Effective Date, Defendants shall provide the
5 Settlement Administrator with information for Aggrieved Employees. Defendants will in good faith
6 compile from its records a list of Aggrieved Employees that will be in a computer-readable format, such
7 as a Microsoft Excel spreadsheet, and shall include each Aggrieved Employee's full name, last known
8 mailing address, last known telephone number, and Social Security numbers.

9 8. Within ten (10) business days after receipt of the Gross Settlement Amount, the
10 Settlement Administrator shall mail the Notice of PAGA Settlement together with a settlement payment
11 to all Aggrieved Employees as set forth in the Settlement Agreement.

12 9. The Court approves the request for attorneys' fees of one-third of the Gross Settlement
13 Amount, in the amount of \$283,333.33 and costs in the amount of \$ 5,355.44 as fair, reasonable, and
14 adequate, and orders that the Settlement Administrator distribute these payments to Plaintiffs' Counsel,
15 as provided for in the Settlement, and directs the Settlement Administrator to pay Plaintiffs' Counsel the
16 awarded fees and costs within ten (10) days after receipt of the Gross Settlement Amount.

17 10. The Court approves the reimbursement of reasonable Settlement Administration fees and
18 costs and directs this payment to be made to Settlement Administrator from the Gross Settlement
19 Amount upon the completion of all of its duties required under the Settlement Agreement.

20 11. The Court finds that the incentive payment of \$5,000 to each named Plaintiff is fair and
21 reasonable in recognition of the general releases that they entered into, the contributions they made and
22 the risks they undertook on behalf of the Aggrieved Employees and the State of California, and orders
23 that the Settlement Administrator distribute this payment to each Plaintiff from the Gross Settlement
24 Amount as provided for in the Settlement Agreement.

25 12. The Court finds that the amount from the Gross Settlement Amount remaining after
26 deductions for: (i) Plaintiffs' Counsel's attorneys' fees and costs, (ii) an incentive payments to the
27 named Plaintiffs; and (iii) Settlement Administrator fees ("Net Settlement Amount") shall be
28 distributed as follows: 75% shall to be paid to the California Labor and Workforce Development

Agency ("LWDA") and 25% to be distributed to the Aggrieved Employees pro rata based on the proportional number of pay periods worked by each Aggrieved Employee during the Release Period, as provided for in the Settlement. The Court finds that these amounts and the distribution formula as set forth in the Settlement are fair, adequate, and reasonable, and orders that payment be made to the LWDA and Aggrieved Employees in accordance with the terms of the Settlement. The Court hereby approves the limited scope of the release as set forth in the Settlement. Specifically, following entry of this Order, in their capacity as a Private Attorney General or "aggrieved employee" acting on behalf of themselves, the State of California and all Aggrieved Employees, Plaintiffs hereby release and forever discharge Defendants and all of its present and former parent companies (including, but not limited to, Alterra Mountain Company U.S., Inc.), subsidiaries, divisions, partnerships, or affiliates, and each other their respective present and former employees, officers, directors, partners, members, agents, attorneys, insurers, administrators, representatives, shareholders, predecessors, successors, and assigns (collectively, the "Released Parties") from any and all claims relating to any and all facts and claims asserted in the Action or any other claims, under PAGA, based on the facts alleged, including but not limited to any and all claims for PAGA penalties for violations of the California Labor Code governing: meal and rest breaks; unpaid wages, reporting time/pay, split-shift premiums, expense reimbursement, wage statements, and final pay. Specifically, the Released Claims are claims for civil penalties under PAGA for violations of Labor Code §§ 201, 202, 203, 204, 210, 218.5, 221, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 2800, 2802, 2810.5 and 2698 *et seq.*, and/or Industrial Welfare Commission Wage Order No. 10.

13. The Court further approves the named Plaintiffs general release of the Released Parties given in consideration for their incentive pay and for which, the named Plaintiff gave a unilateral individual release of all claims, known or unknown (the "General Release"). With respect to the General Release, Plaintiffs stipulate and agree that, upon the date the Court signs this Order, and subject to Defendants' full payment of the Gross Settlement Amount, Plaintiffs shall be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which provides:

From: Jolen Medwid

Fax: 12125712000

To:

Fax: (760) 924-5419

Page: 121 of 124 02/02/2022 6:18 PM

EXHIBIT A

From: Jolon Medwid

Fax: 12125712000

To:

Fax: (760) 924-5419

Page: 122 of 124 02/02/2022 6:19 PM

[Administrator's Letterhead]

To: «FirstName» «LastName»
«Address1» «Address2»
«City» «State» «Zip»

Enclosed please find a check in the amount of **[INDIVIDUAL SETTLEMENT SHARE]**.

You are receiving this check in connection with a lawsuit brought by Brandt Earhart, Sam Stuart, and William Berrier ("Plaintiffs") against Squaw Valley Resort, LLC, Mammoth Mountain Ski Area, LLC, and Snow Summit, LLC ("Defendants"). The case was filed in Mono County Superior Court under Case No. 21UCM49.

Plaintiffs sued Defendants for civil penalties pursuant to the California Private Attorneys General Act of 2004, a law that allows Plaintiff to stand in the shoes of the government and to recover penalties on the government's behalf and on behalf of those employees who Plaintiffs claim were "aggrieved" by Defendants' alleged unlawful conduct. Specifically, Plaintiffs allege that Defendants failed to comply with wage-and-hour laws as to non-exempt employees who worked as on-duty skiers and riders at the Squaw Valley, Alpine Meadows, Mammoth, and Big Bear resorts.

Defendants deny these claims and maintain that they fully complied with all applicable wage-and-hour laws. Nevertheless, to avoid further costs and uncertainty from further litigation, Defendants agreed to settle the case for a total payment of \$850,000.00. The settlement covers Defendants and their parent companies, subsidiaries, divisions, partnerships, or affiliates, and each of their respective present and former employees, officers, directors, partners, members, agents, attorneys, insurers, administrators, representatives, shareholders, predecessors, successors, and assigns (all of whom are referred to here as the "Released Parties"). The Court has approved the settlement and release of claims described below. By settling this case, Defendants and the Released Parties are not admitting they have done anything wrong, and they deny that they owe any penalties to the government or to you.

On [insert date] 2022, the settlement was approved by the Court. A portion of the settlement is being paid to the government and a portion is being paid to each non-exempt employee who worked for Defendants in California from August 6, 2019 until July 1, 2021 as an on-duty skier or rider, including but not limited to, ski instructors, ski team coaches, lift operators, hosts, ski patrol and associated on-mountain safety personnel and other employees (the "Aggrieved Employees"). You are receiving a portion of the settlement because Defendants' records indicate that you worked for Defendants from August 6, 2019 to July 1, 2021 (the "Release Period") in one of those roles.

You will not be retaliated against for cashing the check. It is entirely up to you if you cash your check or not. Checks that are not cashed within 180 days of issuance shall be sent to the California State Controller's Office. Regardless of what you do with the check issued to you, by law and Court order, you have released the Released Parties from the released claims described below.

One hundred percent (100%) of your payment under this settlement will be considered penalties and will be reported to the IRS and state tax authorities.

This settlement forever bars you and other Aggrieved Employees, for the period spanning August 6, 2019 through July 1, 2021 from pursuing any action or claims under the Private Attorneys General Act of 2004, Labor Code § 2698 *et seq.*, alleged or that could have been alleged against Defendants and the Released Parties based on or arising out of the facts, circumstances, and primary rights at issue in Plaintiffs' lawsuit, including but not limited to allegations of, and/or violation of, California Labor Code §§ 201, 202, 203, 204, 210, 218.5, 221, 226, 226.3, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 2800, 2802, 2810.5, and 2698 *et seq.*, and/or violation of Industrial Welfare Commission Wage Order No. 10, including alleged theories for unpaid wages (whether off-the-clock, donning/doffing, on-call time or other), non-compliant meal periods or rest breaks, reporting time pay, split-shift premiums, expense reimbursement, wage statements, and final pay.

Do not call or write the Court or Office of the Clerk to ask questions about the settlement.

If you have any questions, you may call or write [insert], at the following phone number or address: [insert address and telephone number for Administrator's contact person]

From: Jolen Medwid

Fax: 12125712000

To:

Fax: (760) 924-5419

Page: 123 of 124 02/02/2022 6:19 PM

Robert W. Ottinger (SBN 156825)
THE OTTINGER FIRM, P.C.
535 Mission Street
San Francisco, CA 94105
Telephone: (415) 262-0096
Facsimile: (212) 571-0505
robert@ottingerlaw.com

Jennifer Liu (Cal. Bar No. 279370)
THE LIU LAW FIRM, P.C.
800 Menlo Ave, Suite 102
Menlo Park, CA 94025
Tel: (650) 461-9000
Fax: (650) 460-6967
Email: jliu@liulawpc.com

Attorneys for Plaintiff and the Proposed Representative Class

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MONO**

BRANDT EARHART, SAM STEUART, and
WILLIAM BERRIER, on behalf of himself and
all those similarly situated,

Plaintiff,

vs.

SQUAW VALLEY RESORT, LLC,
MAMMOTH MOUNTAIN SKI AREA, LLC,
and SNOW SUMMIT, LLC, and DOES 1
THROUGH 100, inclusive,

Defendants.

Case No.: 21UCM49

PROOF OF SERVICE

PROOF OF SERVICE

From: Jolen Medwid

Fax: 12125712000

To:

Fax: (760) 924-5419

Page: 124 of 124 02/02/2022 6:19 PM

PROOF OF SERVICE

JURISDICTION: STATE OF CALIFORNIA, COUNTY OF MONO
CASE NAME: EARHART, et al. v. SQUAW VALLEY RESORT, LLC, et al.
CASE NO.: 21UCM49

I certify that I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is 535 Mission Street, 14th Floor, San Francisco, CA 94105.

On February 2, 2022, I served the following documents:

- **[PROPOSED] ORDER APPROVING SETTLEMENT**

in this action by transmitting a true copy thereof addressed as follows:

Alexander Chemers
OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
400 South Hope Street, Suite 1200
Los Angeles, CA 90071
Telephone: 213-330-0802
zander.chemers@ogletreedeakins.com

☐ **BY U.S. MAIL – FIRST CLASS:** I am readily familiar with the firm's practices of collection and processing correspondence for mailing. Under that practice it would be deposited within the U.S. Postal Service on that same day with postage thereon fully prepaid at San Francisco, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing this affidavit.

☒ **BY EMAIL:** By transmitting the foregoing documents to the e-mail addresses listed above.

☒ **STATE**

I declare under penalty of perjury under the laws of the State of Florida that the above is true and correct.

Executed on February 2, 2022 at Jupiter, Florida

/s/ Jolen Medwid
Jolen Medwid