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and Proposed Class Counsel
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF TUOLUMNE**

11
12 YVONNE WELCH, on behalf of herself
and on behalf of all similarly situated
13 individuals,

14 Plaintiff,

15 v.

16 FIRST LIGHT RESORTS, LLC, a
California limited liability company, d/b/a
17 WEST CREEK LODGE and DOES 1
through 10, inclusive,

18 Defendants.
19
20

CASE NO: CV63506

*Assigned for all purposes to the Honorable Judge
Kevin M. Seibert, Dept. 2*

CLASS ACTION

**NOTICE OF UNOPPOSED MOTION AND
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: July 27, 2021

Time: 8:30 a.m.

Dept.: 2

Complaint Filed: December 11, 2020

1 **PLEASE TAKE NOTICE THAT** on July 27, 2021 at 8:30 a.m., or as soon thereafter as
2 the matter may be heard, in Department 2 of the above-entitled Court, located at 41 West Yaney
3 Avenue, Sonora, California 95370, Plaintiff Yvonne Welch will and hereby does move unopposed
4 for an Order (1) preliminarily approving the proposed class action settlement in the above-
5 captioned case, (2) provisionally certifying a settlement class, (3) provisionally approving the
6 appointment of Yvonne Welch as Class Representative, (4) provisionally approving the
7 appointment of Gaines & Gaines, APLC as Class Counsel, (5) provisionally approving the
8 appointment of ILYM Group, Inc. as settlement administrator, (6) approving and directing
9 distribution of notice to the settlement class, and (7) setting a final fairness and approval hearing.

10 This unopposed Motion is made pursuant to Rule 3.769 of the California Rules of Court,
11 which provides for court approval of the settlement of a purported class action and allows the Court
12 to preliminarily certify a class for settlement purposes only.

13 The basis for this unopposed Motion is that the proposed settlement is fair, adequate, and
14 reasonable and in the best interests of the settlement class as a whole, and that the procedures
15 proposed by the Parties are adequate to ensure the opportunity of class members to participate in,
16 opt out of, or object to the settlement.

17 This Motion will be based on the Memorandum of Points and Authorities set forth herein,
18 the Settlement Agreement and Release of Claims, the Declaration of Daniel F. Gaines, such
19 evidence or oral argument as may be presented at the hearing, and on the complete record and file
20 herein.

1 DATED: May 18, 2021

Respectfully submitted,

2 GAINES & GAINES,
3 A Professional Law Corporation

4
5 By: Daniel F. Gaines

6 DANIEL F. GAINES

ALEX P. KATOFISKY

7 Attorneys for Plaintiff Yvonne Welch and Proposed
8 Class Counsel

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The Parties have reached a resolution of this class action and hereby submit their Settlement
4 Agreement and Release of Claims (the “Settlement Agreement”) for the Court’s approval. The
5 Settlement is made and entered into by and between Yvonne Welch (“Welch” or “Plaintiff” or
6 “Class Representative”), individually and on behalf of all others similarly situated, and Defendant
7 First Lights Resorts, LLC (“Defendant”).

8 The settlement occurred as a result of extensive arm’s-length negotiations by experienced
9 counsel with the assistance of a respected mediator with experience in the area of employment class
10 actions. Most importantly, the settlement will result in significant financial benefit to the
11 participating claimants, on terms that are by any measure fair, reasonable and adequate. *See*
12 *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801-02.

13 For the foregoing reasons, the Parties respectfully request that the Court: (a) grant
14 preliminary approval of the settlement agreement, (b) conditionally grant certification of the
15 proposed Settlement Class, (c) provisionally approve the appointment of Yvonne Welch as Class
16 Representative, (d) provisionally approve the appointment of Gaines & Gaines, APLC as Class
17 Counsel, (e) approve appointment of the settlement administrator, (f) authorize the mailing of the
18 proposed class action notice packet; and (g) schedule a final fairness and approval hearing.

19 **II. BACKGROUND AND PROCEDURAL HISTORY**

20 On September 22, 2020 and on March 17, 2021, Plaintiff Welch exhausted the pre-filing
21 requirements of the California Private Attorneys General Act of 2004, Labor Code section 2698 et
22 seq. (“PAGA”). Declaration of Daniel F. Gaines (“Gaines Decl.”) at ¶ 6.

23 On December 11, 2020, Plaintiff Welch initiated her Action in the Tuolumne County
24 Superior Court by filing a class and representative PAGA action complaint on behalf of herself and
25 all other non-exempt California employees. As subsequently amended, the Action asserts class and
26 representative action claims against Defendant for (1) failure to pay all minimum and overtime
27 wages (Labor Code §§ 510, and 1194 and the IWC Wage Orders); (2) failure to provide rest periods
28 or compensation in lieu thereof (Labor Code § 226.7 and the IWC Wage Orders); (3) failure to

1 provide meal periods or compensation in lieu thereof (Labor Code §§ 226.7, 512 and the IWC
2 Wages Orders); (4) knowing and intentional failure to comply with itemized employee wage
3 statement provisions (Labor Code § 226); (5) failure to timely pay wages at the separation of
4 employment (Labor Code §§ 201-203); (6) violation of Business and Professions Code § 17200;
5 and (7) civil penalties pursuant to PAGA and specifically under Labor Code § 2699(f) for
6 underlying violations of the Labor Code, including but not limited to Labor Code §§ 201, 202,
7 226(a), 226.7, 510, 512 and 1194, and pursuant to Labor Code § 2699(a) for underlying violations
8 of the Labor Code §§ 226.3 and 558. Gaines Decl. at ¶ 7.

9 Defendant denies any liability or wrongdoing of any kind associated with the claims alleged
10 in the Action, and further denies that the Action is appropriate for class treatment for any purpose
11 other than this settlement. Defendant contends that it has complied at all times with the California
12 Labor Code. It is Defendant's position that, if this case were to be litigated, class certification
13 would be inappropriate because Plaintiff is not an adequate class representative, Plaintiff's claims
14 are not typical of putative class members, and individual issues predominate over class issues. The
15 Action, the negotiation and execution of this Settlement Agreement, and all acts performed or
16 documents executed pursuant to or in furtherance of the Settlement Agreement (i) shall not be used
17 as an admission or evidence of wrongdoing on behalf of Defendant; (ii) shall not be an admission
18 or evidence of fault on behalf of Defendant in any action before a civil, criminal, or administrative
19 agency; and (iii) shall not be deemed to be, and may not be used as, an admission or evidence of
20 the appropriateness of these or similar claims for class certification in the Action or with respect to
21 any other proceeding. Gaines Decl. at ¶ 8.

22 The Class Representative contends that Defendant violated the California Labor Code and
23 that this case is appropriate for class certification. Gaines Decl. at ¶ 9.

24 **III. INVESTIGATION AND SETTLEMENT DISCUSSIONS**

25 Class Counsel have conducted a thorough investigation into the facts and law at issue in
26 this case, including the exchange of informal discovery and the review and verification of statistical
27 data and other facts and information provided by Defendant. Counsel for the Parties also represent
28 that they have investigated the applicable law as applied to the facts discovered regarding the

1 alleged claims of Plaintiff and potential defenses thereto, and the damages claimed by Plaintiff.
2 Gaines Decl. at ¶ 10.

3 On March 16, 2021, the Parties participated in a full day mediation session with Brett
4 Sutton, Esq., a respected mediator with extensive experience litigating and resolving employment
5 wage and hour class actions. The mediation culminated with an agreement to resolve the Action,
6 assisted by the evaluative efforts of Mr. Sutton. Gaines Decl. at ¶ 11.

7 Based on their own independent investigation and evaluation, Class Counsel are of the
8 opinion that settlement for the consideration and on the terms set forth in the Settlement Agreement
9 is fair, reasonable, and adequate and is in the best interest of the Settlement Class in light of all
10 known facts and circumstances, including the risk of significant delay, the risk the Settlement Class
11 will not be certified by the Court, and the defenses asserted by Defendant. Gaines Decl. at ¶ 12.

12 The Parties agree that the Settlement Class described herein may be certified for settlement
13 purposes only and that any motion for approval seeking, *inter alia*, certification of the Settlement
14 Class is for purposes of the settlement only. If for any reason the settlement is not approved, the
15 certification will have no force or effect and will immediately be revoked. The Parties further agree
16 that certification for purposes of approving the Settlement Agreement is in no way an admission
17 that class certification is proper under the more stringent standard applied for litigation and that
18 evidence of this limited stipulation for settlement purposes only will not be admissible for any
19 purpose in this or any other proceeding. Gaines Decl. at ¶ 13.

20 **IV. LEGAL ANALYSIS**

21 **A. The Proposed Settlement Terms**

22 **1. The Settlement Class**

23 The Parties have agreed to a Settlement Class composed of: all persons employed by
24 Defendant in a non-exempt position at Rush Creek Lodge in Groveland, California between
25 December 11, 2016 and March 16, 2021 (the "Class Period"). Defendant represents that the
26 Settlement Class includes no more than 650 members. Stip. at ¶ A(4).

27 \\\

28 \\\

1 2. **Allocations to be Paid from the Maximum Settlement Amount**

2 The Stipulation provides that Defendant shall pay the sum of no more than \$600,000 in full
3 satisfaction of all claims arising from the Action. The Maximum Settlement Amount includes all
4 payments for wages, penalties, and interest; the attorneys' fees of Class Counsel; litigation costs
5 and expenses of Class Counsel (which includes, without limitation, all such fees and costs incurred
6 to date, as well as such fees and costs to be incurred in documenting the Settlement Agreement,
7 providing any notices required as part of the Settlement Agreement, securing Court approval of the
8 Settlement Agreement, and obtaining judgment in the Action); the service payment to the Class
9 Representative, as approved by the Court; the payment to the California Labor and Workforce
10 Development Agency ("LWDA") pursuant to the PAGA claims in the Action; and all costs of
11 administration, including, without limitation, settlement administration fees. Defendant shall pay
12 all employer payroll tax obligations due on wage payments made from the Net Settlement Proceeds
13 in addition to, and separate and apart from, the Maximum Settlement Amount. If the final number
14 of pay periods worked by Class Members is more than 11,000 during the Class Period, the
15 Maximum Settlement Amount shall increase proportionately for each pay period in excess of
16 11,000 (i.e., if the final pay periods are 12,100, each pay period in excess of 11,000 shall yield a
17 00.909% increase to the Maximum Settlement Amount). Stip. at ¶ C(1)(a).

18 From the Maximum Settlement Amount, Defendant will not oppose Plaintiff's counsel's
19 application to the Court for up to 40% of the Maximum Settlement Amount for attorneys' fees.
20 Plaintiff's estimated attorneys' fees to be requested from the Court are \$240,000. Stip. at ¶ C(1)(f).

21 From the Maximum Settlement Amount, Defendant will not oppose Plaintiff's counsel's
22 application to the Court for up to \$10,000 in reimbursement of litigation costs and expenses. Stip.
23 at ¶ C(1)(g).

24 From the Maximum Settlement Amount, Defendant will not oppose Plaintiff's counsel's
25 application to the Court for Service Payment to the Class Representative in the amount of \$12,000.
26 Stip. at ¶ C(1)(e).

27 From the Maximum Settlement Amount, settlement administration fees paid to ILYM
28 Group, Inc. will be no more than \$10,000. Stip. at ¶ C(1)(h).

1 From the Maximum Settlement Amount, the portion to be allocated for settlement of any
2 and all claims for penalties under the PAGA is \$20,000 (75% of which shall be paid to the
3 California Labor and Workforce Development Agency and 25% of which shall be paid to Class
4 Members who have not submitted a valid and timely request for exclusion form). Stip. at ¶ C(1)(d).

5 The Net Settlement Proceeds is defined as the Maximum Settlement Amount less the
6 amounts approved and awarded by the Court as follows: (1) attorneys' fees and documented
7 litigation costs and expenses incurred or advanced by Class Counsel; (2) the service payment to the
8 Class Representative; (3) the payment to the LWDA pursuant to PAGA; and (4) the costs of
9 administering the Settlement Agreement. Stip. at ¶ C(1)(b).

10 **3. Settlement of Claims Pursuant to Labor Code § 2699 et seq. (PAGA)**

11 Pursuant to PAGA, the Parties have agreed that \$20,000 of the Maximum Settlement
12 Amount will be allocated to settle the claims brought under Labor Code § 2699 et seq. Pursuant to
13 Labor Code § 2699(i), "civil penalties recovered by aggrieved employees shall be distributed as
14 follows: 75 percent to the Labor and Workforce Development Agency...and 25 percent to the
15 aggrieved employees." As such, 75 percent of the apportioned PAGA settlement amount – or
16 \$37,500 – shall be payable to the Labor and Workforce Development Agency. The remaining
17 twenty-five percent (25%), or \$5,000, shall be paid to Class Members who have not submitted a
18 valid and timely request for exclusion form as part of the Net Settlement Proceeds. Stip. at ¶
19 C(1)(d).

20 Concurrently with the filing of this Motion, Plaintiff is transmitting the Settlement
21 Agreement (and these approval documents) to the LWDA, in compliance with Labor Code §
22 2699(l)(2). Gaines Decl. at ¶ 31.

23 **B. Two-Step Approval Process**

24 Any settlement of class litigation must be reviewed and approved by the Court. Cal. R. Ct.
25 3.769; Fed. R. Civ. P. 23(e).¹ This is done in two steps: (1) an early (preliminary) review by the
26

27 ¹ The California Supreme Court has authorized California's trial courts to use Federal Rule 23 and
28 cases applying it for guidance in considering class issues. *See Vasquez v. Superior Court* (1971)
4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146. Where appropriate, therefore,
Plaintiff cites Federal Rule 23 and federal case law in addition to California law.

1 trial court, and (2) a final review after notice has been distributed to the Class Members informing
2 them of the terms of the settlement and allowing them to exclude themselves from, participate in
3 and/or object to the settlement. The Manual for Complex Litigation (Third) § 30.41 states:

4 Approval of class action settlements involves a two-step process.
5 First, counsel submit the proposed terms of settlement and the court
6 makes a preliminary fairness evaluation. If the preliminary
7 evaluation of the proposed settlement does not disclose grounds to
8 doubt its fairness or other obvious deficiencies, such as unduly
9 preferential treatment of class representatives or of segments of the
 class, or excessive compensation for attorneys, and appears to fall
 within the range of possible approval, the court should direct that
 notice ... be given to the class members of a formal fairness hearing,
 at which arguments and evidence may be presented in support of and
 in opposition to the settlement.

10 Thus, the preliminary approval by the trial court is simply a conditional finding that the
11 settlement appears to be within the range of acceptable settlements. *See Wershba v. Apple*
12 *Computer* (2001) 91 Cal.App.4th 224, 234-35. “The strength of the findings made by a judge at a
13 preliminary hearing or conference concerning a tentative settlement proposal may vary. The court
14 may find that the settlement proposal contains some merit, is within the range of reasonableness
15 required for a settlement offer, or is presumptively valid subject only to any objections that may be
16 raised at a final hearing.” 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, § 11.26
17 (4th ed. 2002).

18 The procedures for the Parties’ submission of a proposed settlement for preliminary
19 approval by the Court also are discussed in 4 *Newberg on Class Actions*:

20 When the parties to an action reach a monetary settlement, they will
21 usually prepare and execute a joint stipulation of settlement, which
22 is submitted to the court for preliminary approval. The stipulation
23 should set forth the essential terms of the agreement, including but
 not limited to, the amount of settlement, form of payment, manner of
 determining the effective date of settlement and any recapture clause.

24 *Id.* at § 11.24.

25 Here, the Parties have reached such an agreement and have submitted the Settlement
26 Agreement herewith. *See* Gaines Decl., **Exhibit B**; Gaines Decl. ¶ 14.

27 \\

28 \\

1 **C. Procedures for Settlement Before Class Certification.**

2 Pursuant to California Rules of Court, Rule 3.769(d), parties also may, at the preliminary
3 approval stage, request that the court provisionally approve certification of the class – conditioned
4 upon final approval of the settlement. “[P]re-certification settlements are routinely approved if
5 found to be fair and reasonable.” *Wershba, supra*, 91 Cal. App. 4th at 240. *Accord Dunk, supra*,
6 48 Cal. App. 4th at 1803 (although the settlement was reached before any “adversary certification,”
7 the court was satisfied that it was “fair, adequate and reasonable.”). *See also In re Baldwin-United*
8 *Corp.* (S.D.N.Y. 1984) 105 F.R.D. 475, 478² (“many courts have employed this practice in the
9 name of judicial efficiency in order to facilitate apparently beneficial settlement proposals.”)

10 The strength of the findings made by a judge at a preliminary hearing
11 or conference concerning a tentative settlement proposal . . . may be
12 set out in conditional orders granting tentative approval to the various
13 items submitted to the court. Three basic rulings are often
 conditionally entered at this preliminary hearing. These conditional
 rulings may approve a temporary settlement class, the proposed
 settlement, and the class counsel’s application for fees and expenses.

14 4 *Newberg on Class Actions*, at §11.26.

15 1. **The Settlement Class Should Be Certified for Settlement Purposes**

16 It is well established that trial courts should use a lower standard for determining the
17 propriety of certifying a settlement class, as opposed to a litigation class. *Dunk, supra*, 48 Cal.
18 App. 4th at 1807, n. 19. The reason for this is that no trial is anticipated in a settlement class, so
19 the case management issues inherent in determining if the class should be certified need not be
20 confronted. *Amchem Products, Inc. v. Windsor* (1987) 521 U.S. 591, 620. The proposed
21 Settlement Class meets all requirements for certification, as discussed below.

22 a. **The Settlement Class is Ascertainable**

23 The proposed Settlement Class is ascertainable. The class definition, the size of the Class,
24 and the means for identifying the members of the class determine whether the class is ascertainable.
25 *Reyes v. Board of Supervisors* (1987) 196 Cal. App. 3d 1263, 1274. In this case, the Class Members
26 are identifiable from Defendant’s employment and payroll records. Further, the Settlement Class

27 _____
28 ² In determining the fairness and reasonableness of a proposed settlement, California courts may
look to federal cases for guidance. *See Wershba*, 91 Cal. App. 4th at 239-40.

1 is sufficiently numerous to warrant certification. According to Defendant's records, the Class
2 contains approximately 650 employees. Gaines Decl. ¶ 26.

3 b. **Questions of Law or Fact Common to Members of the Settlement**
4 **Class Predominate**

5 The Class Members' claims all stem from a common source: members of the Settlement
6 Class allege that Defendant violated the same Labor Code provisions in connection with their
7 employment. All members of the Class seek the same relief under the same California laws. Under
8 these circumstances, the commonality requirement is satisfied for purposes of certifying the
9 Settlement Class for settlement purposes. Gaines Decl. ¶ 28.

10 c. **The Proposed Class Representative's Claims are Typical of the**
11 **Class Members' Claims**

12 A class representative's claims are typical when they arise from the same event or course
13 of conduct that gives rise to the claims of the class, and are based on the same legal theory.
14 *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46-47. In this case, named Plaintiff and proposed
15 Class Representative Yvonne Welch is a former non-exempt employee who worked for Defendant
16 in the State of California during the applicable class period. She contends that Defendant failed to
17 pay all wages, failed to provide meal and rest periods, failed to comply with itemized employee
18 wage statement provisions, and failed to timely pay wages at the separation of employment, in
19 violation of Labor Code §§ 201-203, 226(a), 226.7, 510, 512, 1194, 2698, 2699, and Business &
20 Professions Code § 17200. She has the same claims as those that the members of the Settlement
21 Class would reasonably be expected to bring based on the course of conduct alleged herein. Gaines
22 Decl. ¶ 29.

23 Plaintiff Welch has also demonstrated that she will aggressively and competently assert the
24 interests of the proposed Settlement Class; she has taken an active role in this litigation and has no
25 apparent conflicts with other class members. Gaines Decl. ¶ 30. Furthermore, Plaintiff has retained
26 competent counsel, experienced in litigating class action claims in the employment context. *See*
27 Gaines Decl. ¶¶ 2-5.

1 **D. The Settlement Is Fair and Reasonable and Not the Result of Fraud or**
2 **Collusion**

3 Courts presume the absence of fraud or collusion in the negotiation of a settlement unless
4 evidence to the contrary is offered. *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447; *Mars*
5 *Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.* (7th Cir. 1987) 834 F.2d 677, 682; *In re*
6 *Chicken Antitrust Litig.* (N.D. Ga. 1980) 560 F. Supp. 957, 962. Courts do not substitute their
7 judgment for that of the proponents, particularly where, as here, settlement has been reached with
8 the participation of experienced counsel familiar with the litigation. *Nat'l Rural Telecomms.*
9 *Coop. v. DIRECTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 528; *Hammon v. Barry* (D.D.C. 1990)
10 752 F. Supp. 1087, 1093; *Steinberg v. Carey* (S.D.N.Y. 1979) 470 F. Supp. 471, 478; *In re Armored*
11 *Car Antitrust Litig.* (N.D. Ga. 1979) 472 F. Supp. 1357, 1368; *Sommers v. Abraham Lincoln*
12 *Federal Sav. & Loan Ass'n* (E.D. Pa. 1978) 79 F.R.D. 571, 580.

13 While the recommendations of counsel proposing the settlement are not conclusive, the
14 Court can properly take them into account, particularly where, as here, such counsel have been
15 involved in informal discovery and negotiations for some period of time, appear to be competent,
16 have experience with this type of litigation, and have exchanged substantial evidence with the
17 opposing party. *See Newberg on Class Actions, supra*, § 11.47; *In re Paine Webber Ltd. P'ships*
18 *Litig.* (S.D.N.Y. 1997) 171 F.R.D. 104, 125 (“[s]o long as the integrity of the arm’s-length
19 negotiation process is preserved, however, a strong initial presumption of fairness attaches to the
20 proposed settlement . . . [citations] and ‘great weight’ is accorded to the recommendations of
21 counsel, who are most closely acquainted with the facts of the underlying litigation”); *see Gaines*
22 *Decl.* ¶¶ 2-5, 12-25.

23 Here, the Parties’ counsel have a great deal of experience in class action litigation and
24 specialize in employment wage and hour matters. Moreover, counsel for both Parties conducted
25 an extensive investigation of the factual allegations involved in this case. The Parties have engaged
26 in a broad exchange of documents, statistics, records and other information. Each side has apprised
27 the other, informally and at a formal mediation, of their respective factual contentions, legal
28 theories and defenses, resulting in extensive arms-length negotiations taking place among the

Parties. *See* Gaines Decl. ¶¶ 2-5, 12-25.

1. **The Settlement Falls Within The “Ballpark” of Reasonableness**

The Court must make an “independent assessment of the reasonableness of the terms of the settlement” prior to granting preliminary and final approval. *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 799; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 127-28, 130, 133. To do so requires the Parties to submit “basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise.” *Clark, supra*, 175 Cal.App.4th at 800. However, the Court should *not* “attempt to decide the merits of the case or to substitute its evaluation of the most appropriate settlement for that of the attorneys.” *Kullar, supra*, 168 Cal.App.4th at 133.

Plaintiff’s counsel created a comprehensive damage analysis using sampling information obtained through informal discovery. This damage analysis reveals that the negotiated settlement falls within a realistic range of recovery on class members’ claims. Gaines Decl. ¶ 15.

In the Action, Plaintiff asserts that Defendant failed to properly compute bonus wages and other non-base hourly wages earned by Plaintiff and other Class Members into their regular rate of pay for purposes of paying them overtime at the correct rates, in violation of Labor Code §§ 510, 558, and 1194 and IWC Wage Order 5-2001. Defendant allegedly failed to properly blend these bonus wages and other non-base hourly wages into the regular rate of pay and instead paid Plaintiff and Class Members overtime based only on the base hourly rate of pay, thus depriving Plaintiff and Class Members of all overtime wages earned. While this claim was strong, its value was minimal; no more than \$20,500 in the aggregate was allegedly underpaid, and it affected only a small subset of Class Members. Gaines Decl. ¶ 16.

Defendant allegedly failed to permit or authorize Plaintiff and Class Members to take timely 30-minute meal periods for shifts greater than 5 hours in length, in violation of Labor Code §§ 226.7, 512, 558 and IWC Wage Order 5-2001. Labor Code § 512 provides that employers (like Defendant) may not employ an employee for a work period of more than 5 hours without providing a 30-minute meal period starting no later than the end of the fifth hour. Plaintiff and Class Members

1 contend that they were routinely unable to take a proper meal break when they worked shifts in
2 excess of 5 hours in duration and a second meal break when they worked shifts in excess of 10
3 hours in duration. When Plaintiff and Class Members did receive a meal period, they were typically
4 late, cut short, or interrupted, requiring them to work during their meal periods. This violates Labor
5 Code §§ 226.7, 510, 512, 558, 1194, and 1194.2 and IWC Wage Order 5-2001. This claim, Plaintiff
6 learned, was weak because Defendant paid over \$240,000 in meal period premiums during the class
7 period, potentially demonstrating a policy that denied meal periods were frequently compensated
8 with a meal period premium. Plaintiff alleges that \$354,000 in meal period premium wages are
9 due and remain unpaid. This claim, however, required a discount for settlement purposes.
10 Defendant raised numerous defenses, including that it authorized and provided all meal periods and
11 that employees waived any meal periods not taken. The settlement reflects a fair and reasonable
12 compromise of this claim. Gaines Decl. ¶ 17.

13 Defendant allegedly failed to provide Plaintiff and Class Members with legally compliant
14 rest periods, or premium wages of one hour's pay in lieu thereof, as required by Labor Code § 226.7
15 and Wage Order 5-2001. If an employer fails to provide an employee a rest period in accordance
16 with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of
17 pay at the employee's regular rate of compensation for each workday that the rest period is not
18 provided. Plaintiff assessed the maximum value of this claim at \$1,368,000, but it required a
19 substantial discount for settlement purposes. Plaintiff was concerned this claim would not be
20 certified because Defendant maintained compliant written meal period policies, and while she
21 challenged the policies were not applied as written, demonstrating this on a classwide basis may
22 have been a hurdle toward a full recovery in the litigation. Gaines Decl. ¶ 18.

23 Class Members also sought wage statement penalties pursuant to Labor Code § 226(e),
24 waiting time penalties pursuant to Labor Code § 203 and PAGA penalties derivative of the
25 underlying violations alleged. The value of these penalties – which are derivative, discretionary,
26 and subject to defenses of their own – could be substantial, but their recovery carried substantial
27 risk. Gaines Decl. ¶ 19.

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1 Under new applicable case law, it became unlikely that Plaintiff would recover on her
2 derivative waiting time penalty and wage statement penalty claims because the Court could find
3 that they will not stem from meal and rest break claims (and only a small group of Class Members
4 were denied overtime wages). *See Ling v. P.F. Chang's China Bistro, Inc.* (2016) 245 Cal.App.4th
5 1242, 1261, *review denied* (July 13, 2016). It is also possible that, because these are derivative
6 claims (i.e. Plaintiff must prevail on her underlying unpaid wage, meal and rest break claims to
7 recover on these penalty claims) and subject to defenses to good faith and willfulness, Plaintiff
8 would not recover on them at all even if they were not otherwise barred by applicable case law. As
9 a result, Plaintiff gave them a discounted value for settlement purposes. Gaines Decl. ¶ 20.

10 A discount on the maximum value of Class members' claims was required (and warranted)
11 to resolve the matter at this junction. Class certification is a substantial risk in any class action
12 case. Here, while Plaintiff maintains that the requirements of class certification are met, Defendant
13 proffers various arguments why class treatment is not appropriate here, including but not limited to
14 that individualized inquires among class members predominate over common ones – particularly
15 with respect to Plaintiff's rest period claims. If Defendant were to defeat Plaintiff's class
16 certification motion, there would be no class wide relief whatsoever, and most class members would
17 likely not file individual claims. Gaines Decl. ¶ 21.

18 Finally, Plaintiff faced the risk that she would not obtain a maximum damage/penalty award
19 on all (or any of) her claims. For example, Plaintiff seeks discretionary penalties pursuant to the
20 Private Attorneys General Act. Even if Plaintiff did prevail on these claims, it is possible that the
21 Court would not impose all penalties pursuant to its discretionary power to reduce them. Gaines
22 Decl. ¶ 22.

23 Defendant strongly contends that its policies and practices do not violate any laws. It
24 contends that its meal and rest break policies properly provided for all meal and rest periods and
25 fully compensated its employees for all time worked. It further contends that the wage statements
26 it provides to its employees are fully compliant with California law. Gaines Decl. ¶ 23.

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1 When the costs and risks of non-certification and loss on the merits are considered,
2 Plaintiff's counsel are of the opinion that the settlement reached is clearly a favorable one. Gaines
3 Decl. ¶¶ 15-24.

4 The settlement for each participating Class Member is fair, reasonable and adequate, given
5 the inherent risk of litigation, the risk relative to class certification and the costs of pursuing such
6 litigation. The settlement shall finally resolve all claims of the Class Members as alleged in the
7 Action. Gaines Decl. ¶ 25.

8 2. **Despite the Asserted Fairness of the Settlement Terms, Class Members**
9 **May Request Exclusion From, Or Object To, The Settlement**

10 Despite the asserted fairness of the settlement terms, any potential Class Member who
11 objects to the terms of the settlement set forth in the Stipulation of Settlement has the right to submit
12 a request for exclusion (*i.e.*, opt out) from the settlement, pursuant to which the class member would
13 retain any claim he or she may have against Defendant.

14 Moreover, Class Members who do not opt out may, upon providing proper notice to the
15 Parties and the Court, attend the final fairness and approval hearing for the purpose of objecting to
16 one or more of the settlement terms set forth in the Stipulation of Settlement.

17 **V. CONCLUSION**

18 Based on the foregoing, as part of its preliminary approval of the settlement, the Parties
19 request that the Court:

- 20 1. Review the proposed Stipulation of Settlement setting forth the settlement terms.
- 21 2. Consider whether the proposed settlement preliminarily appears to be fair,
22 reasonable and adequate, and whether the proposed Settlement Class preliminarily appears to meet
23 the applicable certification criteria.
- 24 3. Appoint Plaintiff Yvonne Welch as the Class Representative.
- 25 4. Appoint Gaines & Gaines, APLC as Class Counsel.
- 26 5. Approve ILYM Group, Inc. as Settlement Administrator with regard to handling the
27 notice procedure as set forth more particularly in the Stipulation of Settlement.

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6. Enter an Order provisionally approving the proposed Settlement Class on a non-mandatory basis, approve forms to be distributed to the Settlement Class, direct notice to be given to the Settlement Class, and set the following schedule of settlement proceedings:

<u>EVENT</u>	<u>TIMING</u>
Last day for Defendant to provide the Settlement Administrator a list of all Class Members, including their last known addresses, telephone numbers, Social Security numbers, and their dates of employment in a non-exempt position at Defendant's Rush Creek Lodge in Groveland, California during the Release Period ("Settlement Class Information")	14 calendar days after entry of Court's Order granting preliminary approval of the Settlement Agreement
Last day for Settlement Administrator to mail Notice and Request for Exclusion to Class Members	21 calendar days after entry of Court's Order granting preliminary approval of the Settlement Agreement
Last day for exclusion requests by Class Members to be postmarked to Settlement Administrator	45 calendar days after mailing of Class Notice
Last day for written objections to the settlement by Class Members to be postmarked to Settlement Administrator	45 calendar days after mailing of Class Notice
Last day for Class Counsel to file and serve moving papers in support of final settlement approval and request for attorneys' fees and costs	10 calendar days before the final settlement approval hearing date
Last day for Class Counsel to file with the Court and serve declaration by Settlement Administrator specifying the due diligence undertaken with regard to the mailing of the Notice	10 calendar days prior to the final settlement approval hearing date
Final settlement approval hearing	_____, 2021, at _____. [approximately 85 calendar days after entry of the Order granting this Motion]

1 DATED: May 18, 2021

Respectfully submitted,

2 GAINES & GAINES,
3 A Professional Law Corporation

4
5 By: Daniel F. Gaines

6 DANIEL F. GAINES

7 ALEX P. KATOFISKY

8 Attorneys for Plaintiff Yvonne Welch and Proposed Class
9 Counsel